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DEPARTMENT OF
WATER RESOURCES

10-5

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG (ISB No. 2207)
Deputy Attorney General
Chief, Natural Resources Division

DAVID I. STANISH (ISB No. 7310)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

Counsel for the State of Idaho

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. 01-02064

(American Falls Hydropower Storage Subcase)

SECOND AFFIDAVIT OF DAVID I.
STANISH

State of Idaho)
County of Ada)ss

DAVID I. STANISH, being first duly sworn, deposes and states:

1: I am a competent adult over the age of eighteen years, and the statements made herein are based upon my own personal knowledge of the events described.

2. I am a deputy attorney general assigned to the Snake River Basin Adjudication.

3. Attached to this affidavit are true and correct copies of the following documents:

Exhibit 47 Rule 30(b)(6) Deposition of Idaho Power Company: Testimony of Jon Bowling, *In re SRBA Case No. 39576, Subcase no. 01-02064* (Idaho 5th Dist. Ct. May 3-4, 2010); and

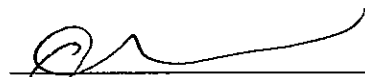
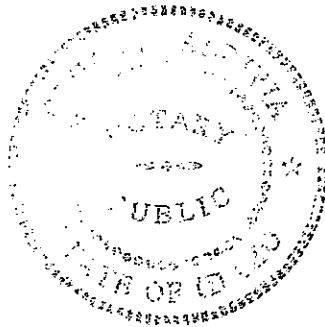
Exhibit 48 Standard Form 5: Stipulated Elements of a Water Right, *In re SRBA Case No. 39576, Subcase nos. 01-02017 et al.* (Idaho 5th Dist. Ct. Feb. 19, 2010).

4. Further your affiant sayeth naught.



DAVID I. STANISH
Deputy Attorney General
Natural Resources Division

Subscribed and sworn (or affirmed) to before me, a notary public in and for the State of Idaho this 5th day of October 2010.



Notary Public for Idaho
Residing at Boise, ID
My Commission expires: 2/8/2012

CERTIFICATE OF SERVICE

I certify that on this 5th day of October 2010, I caused to be served the original and copies of the **SECOND AFFIDAVIT OF DAVID I. STANISH** on the following persons by the methods indicated:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to:

IDAHO POWER COMPANY
Represented by:
JAMES C TUCKER
IDAHO POWER CO
PO BOX 70
BOISE, ID 83707

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:
- ☐ Statehouse Mail

IDAHO POWER COMPANY
Represented by:
JIM LOCHHEAD
BROWNSTEIN HYATT ET AL
410 17TH STREET, SUITE 2200
DENVER, CO 80202

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:
- ☐ Statehouse Mail

AMERICAN FALLS RESERVOIR
Represented by:
C THOMAS ARKOOSH
301 MAIN ST
PO BOX 32
GOODING, ID 83330

- ☒ U.S. Mail, postage prepaid
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ABERDEEN AMERICAN FALLS GWD
BINGHAM GWD
BONNEVILLE JEFFERSON GWD
CAREY VALLEY GWD
IGWA INC
JEFFERSON CLARK GWD
MADISON GWD
MAGIC VALLEY GWD
NORTH SNAKE GWD
Represented by:

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- ☐ Statehouse Mail

CANDICE MCHUGH
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHTD.
101 CAPITOL BLVD., STE. 208
BOISE, ID 83702

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT
FALLS IRRIGATION DISTRICT
Represented by:
ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
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NORTH SIDE CANAL CO LTD
TWIN FALLS CANAL COMPANY
Represented by:
TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
PO BOX 485
TWIN FALLS, ID 83303-0485

- ☒ U.S. Mail, postage prepaid
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MINIDOKA IRRIGATION DISTRICT
Represented by:
W KENT FLETCHER
1200 OVERLAND AVE
PO BOX 248
BURLEY, ID 83318

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USDI BUREAU OF RECLAMATION
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

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UNITED STATES OF AMERICA
REGIONAL DIRECTOR PN REGION
BUREAU OF RECLAMATION PN-3100
1150 N CURTIS RD STE 100
BOISE, ID 83706-1234

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IDWR DOCUMENT DEPOSITORY
PO BOX 83720
BOISE, ID 83720-0098

- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

A handwritten signature in black ink, consisting of a stylized 'D' followed by a long, sweeping horizontal line that ends in a small upward flick.

DAVID I. STANISH
Deputy Attorney General

Rule 30(b)(6) Deposition of Idaho Power Company: Testimony
of Jon Bowling, *In re SRBA Case No. 39576, Subcase no. 01-
02064* (Idaho 5th Dist. Ct. May 3–4, 2010)

EXHIBIT 47

TO

SECOND AFFIDAVIT OF DAVID I. STANISH

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. 01-02064
Case No. 39576) (American Falls Power Right)
_____)

VOLUME I
(Pages 1-250)

RULE 30(B)(6) DEPOSITION OF IDAHO POWER COMPANY

TESTIMONY OF JON BOWLING

MAY 3, 2010

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

Page 2	Page 4
1 THE RULE 30(B)(6) DEPOSITION OF IDAHO 2 POWER COMPANY, TESTIMONY OF JON BOWLING, was taken 3 on behalf of the United States at the offices of 4 Idaho Power Company, 1221 West Idaho Street, 5 Boise, Idaho, commencing at 9:10 a.m. on May 3, 6 2010, before Jeff LaMar, Certified Shorthand 7 Reporter and Notary Public within and for the 8 State of Idaho, in the above-entitled matter, 9 10 APPEARANCES: 11 For The United States: 12 UNITED STATES DEPARTMENT OF JUSTICE 13 NATURAL RESOURCES SECTION 14 ENVIRONMENT AND NATURAL RESOURCES DIVISION 15 BY MR. DAVID W. GEHLERT 16 1961 Stout Street, 8th Floor 17 Denver, Colorado 80294 18 For the State of Idaho: 19 OFFICE OF THE ATTORNEY GENERAL 20 BY MR. DAVID I. STANISH 21 700 West State Street, 2nd Floor 22 Post Office Box 83720 23 Boise, Idaho 83720-0010 24 /// 25 ///	1 APPEARANCES (Continued) 2 3 Also Present: 4 Matt Howard 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 3	Page 5
1 APPEARANCES (Continued) 2 3 For IDAHO POWER COMPANY: 4 BROWNSTEIN HYATT FARBER SCHRECK 5 BY MR. ADAM T. DeVOE 6 MR. DAVID G. SCOTT 7 410 Seventeenth Street, Suite 2200 8 Denver, Colorado 80202-4432 9 -and- 10 IDAHO POWER COMPANY LEGAL DEPARTMENT 11 BY JAMES C. TUCKER 12 1221 West Idaho Street 13 Post Office Box 70 14 Boise, Idaho 83702 15 For Idaho Ground Water Appropriators and 16 Aberdeen-Springfield Canal Company: 17 RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED 18 BY MS. CANDICE M. McHUGH 19 101 South Capitol Boulevard, Suite 208 20 Boise, Idaho 83702 21 For Upper Valley Storage Water Users: 22 RIGBY, ANDRUS & RIGBY 23 BY MR. ROBERT H. WOOD 24 25 North Second East 25 Rexburg, Idaho 83440	1 INDEX 2 3 TESTIMONY OF JON BOWLING 4 Examination by Mr. Gehlert 8 5 Examination by Mr. Wood 174 6 Examination by Mr. Stanish 178 7 EXHIBITS 8 1 - Deposition of Jon Bowling from the 9 9 federal case 10 2 - United States' Subpoena Duces Tecum to 10 11 the Idaho Power Company Pursuant to 12 I.R.C.P. 30(b)(6) 13 3 - Standard Form 1 Objection - Amended 12 14 4 - Contract Between the United States and 14 15 the Idaho Power Company, Relative to 16 Power Rights at American Falls, Idaho, 17 dated 06/15/1923 18 5 - Placeholder Contract Among the United 14 19 States, the American Falls Reservoir 20 District, and Idaho Power Company for 21 Storage in the American Falls 22 Replacement Dam and for Construction 23 and Operation and Maintenance of the 24 American Falls Replacement Dam Program, 25 dated 03/31/1976

2 (Pages 2 to 5)

(208) 345-9611

M & M COURT REPORTING (208) 345-8800 (fax)

Page 6 1 INDEX (Continued) 2 3 EXHIBITS PAGE 4 6 - Expert Report of David B. Shaw, P.E., 34 5 dated 11/2009 6 7 - Memorandum from Regional Supervisor of 89 7 Power to Regional Director, dated 8 08/02/1977 9 8 - Falling Water Contract, dated 91 10 03/31/1976 11 9 - Map 102 12 10 - Standard Form 1 Objection 111 13 11 - Flow spreadsheet 132 14 12 - Letter from R. O'Connor to R. Hogg, 148 15 dated 03/15/1972 16 13 - Portion of deposition of R. Hogg with 149 17 with change sheet 18 14 - Letter from J. Tucker to J. McDonald, 150 19 dated 10/18/2001 20 15 - Letter from J. Tucker to J. McDonald, 156 21 dated 10/11/2007 22 16 - Water Year 2002 spreadsheet 157 23 17 - Idaho Department of Water Resources 179 24 Recommended Water Rights Acquired Under 25 State Law, dated 12/16/2006	Page 8 1 JON BOWLING, 2 first duly sworn to tell the truth relating to 3 said cause, testified as follows: 4 5 EXAMINATION 6 BY MR. GEHLERT: 7 Q. Mr. Bowling, my name is David Gehlert. 8 I represent the United States in this matter. 9 If you could state your name and title 10 for the record. 11 A. Jon Bowling. I'm an engineering 12 leader with Idaho Power Company. 13 Q. Thank you. 14 Now, I know you've been deposed before 15 in a related case, but it never hurts to go over 16 the ground rules for a deposition again. 17 You do understand that your testimony 18 today applies as if you were giving it in a 19 courtroom? 20 A. Yes. 21 Q. Great. We need to make a clear record 22 for this proceeding, and that really involves two 23 things. One of which is you need to answer 24 questions audibly with a "yes" or "no." Head 25 shakes won't work for the record. And let's try
Page 7 1 APPEARANCES (Continued) 2 3 EXHIBITS PAGE 4 18 - Placeholder Holdings of Space in 215 5 American Falls Reservoir 6 19 - Letter Re: American Falls Reservoir 228 7 District, Idaho, to P. Putzi 8 20 - Tax Exempt Status of Obligations Used 230 9 to Provide Certain Irrigation 10 Facilities, dated 12/16/1975 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 9 1 not to talk over each other. I'll try to give you 2 the courtesy and time to make a complete answer, 3 and I'd appreciate it if you would do the same for 4 me asking questions. 5 A. Okay. 6 Q. If you don't understand any of my 7 questions, please ask. If you need to take a 8 break, feel free to ask for one. However, if 9 there's a question pending, I'll ask that you 10 finish it before we take a break. 11 Are you on any medication today? 12 A. No. 13 Q. Is there anything else that might 14 impair your ability to recall events or give 15 accurate testimony? 16 A. I don't think so. 17 Q. Fantastic. I mentioned your prior 18 deposition. 19 I would like to have the deposition 20 transcript marked as Exhibit 1. 21 And I'll give you a copy as well. 22 (Exhibit 1 marked.) 23 Q. (BY MR. GEHLERT): I take it you've 24 seen that before? 25 A. Yes.

3 (Pages 6 to 9)

(208) 345-9611

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1 Q. Have you reviewed it?

2 A. Yes.

3 Q. Great. This isn't going to be a
4 memory test. I am just introducing that as a
5 means to expedite this proceeding. I don't see
6 that we need to replot the same ground that's
7 already been covered.

8 A. Okay.

9 Q. Is there anything in that deposition
10 transcript which today you feel to be inaccurate?

11 A. I think I made corrections and
12 submitted those after I reviewed it, so I think
13 we're okay.

14 MR. GEHLERT: Okay. Jeff, do you have a
15 copy of the correction sheet? Not with you, but I
16 have not seen that.

17 THE COURT REPORTER: I have no idea. I
18 could call my office.

19 MR. GEHLERT: We can talk about that later.

20 I'm handing you a copy of the subpoena
21 which was served. I'd like to have this
22 Exhibit 2.

23 (Exhibit 2 marked.)

24 Q. (BY MR. GEHLERT): Mr. Bowling, have
25 you seen that document before?

1 A. I have.

2 Q. And you've reviewed it?

3 A. I have.

4 Q. Are you prepared to testify to the
5 best of your ability on the subjects identified?

6 A. I am.

7 Q. Have you done anything to prepare for
8 this deposition?

9 A. I've reviewed the information that you
10 sent and the information in this, this notebook.

11 Q. Did you talk to anybody in preparing
12 for the deposition?

13 A. I talked a little bit to my attorneys.

14 Q. And anybody outside of attorneys?

15 A. No.

16 Q. Did you bring any documents with you?

17 A. I did bring a few.

18 MR. GEHLERT: Why don't we go off the
19 record for a second.

20 (Discussion.)

21 Q. (BY MR. GEHLERT): Mr. Bowling, you
22 understand that you've been designated to testify
23 on behalf of Idaho Power as a witness pursuant to
24 Rule 30(b)(6)?

25 A. I do.

1 Q. I take it you spoke with Mr. DeVoe
2 about the responsibilities that are involved as a
3 30(b)(6) witness?

4 A. I have.

5 Q. I just want to clarify that you
6 understand two points. One is that you're
7 speaking for the company, so an "I don't know"
8 translates into Idaho Power Company doesn't know.

9 The second thing is that under the
10 rule you're expected to testify on matters that
11 are known or reasonably available to the company
12 as a whole. So if you don't know the answer but
13 do know who or what organization or what part of
14 Idaho Power Company might, then you need to tell
15 me that.

16 A. Okay.

17 Q. Thank you.

18 I'm handing you a set of Idaho Power's
19 amended objections.

20 A. Okay.

21 MR. GEHLERT: A copy for the reporter as
22 well. I'll have this designated 3.

23 (Exhibit 3 marked.)

24 Q. (BY MR. GEHLERT): Mr. Bowling, have
25 you seen that document before?

1 A. I have.

2 Q. Are you familiar with its contents?

3 A. Yes.

4 Q. Did you participate in developing it?

5 A. No.

6 Q. Do you know who did?

7 A. Our attorneys.

8 Q. Do you know if anybody from the
9 company who was not an attorney participated in
10 developing it?

11 A. Huh?

12 Q. Any nonattorneys who participated in
13 developing it from the company?

14 A. I don't know.

15 Q. Okay. Is it fair to say that the
16 thrust of the document is that Idaho Power has
17 contractual interests which the company believes
18 should be reflected on the United States water
19 right?

20 A. That's correct.

21 Q. And the document makes reference to
22 two contracts: One is numbered Ilr-733 and the
23 other Ilr-733S.

24 We might as well mark those as well.
25 Ilr-733 is dated June 15th, 1923. It's entitled

Page 14

1 "Contract Between the United States and the Idaho
 2 Power Company, Relative to Power Rights at
 3 American Falls, Idaho."
 4 Did you bring a copy of that with you?
 5 A. I believe I have a copy in this
 6 notebook.
 7 Q. You might want to pull it out.
 8 If we could have this marked as
 9 Exhibit 4.
 10 (Exhibit 4 marked.)
 11 Q. (BY MR. GEHLERT): The other contract
 12 we'll be talking about today is contract Ilr-733,
 13 dated March 31, 1976, entitled "Spaceholder
 14 Contract Among the United States, the American
 15 Falls Reservoir District, and Idaho Power." And
 16 I'll be referring to the contract Ilr-733 as the
 17 1923 contract for ease of reference.
 18 A. Okay.
 19 Q. And Ilr-733S as the spaceholder
 20 contract or 1976 spaceholder contract.
 21 A. Okay.
 22 MR. GEHLERT: And if we could have that
 23 marked as well.
 24 (Exhibit 5 marked.)
 25 Q. (BY MR. GEHLERT): Are you generally

Page 15

1 familiar with the terms of the contracts?
 2 A. Generally.
 3 Q. Did you review them prior to the
 4 deposition?
 5 A. I have reviewed them in the past.
 6 Q. But you did not review them
 7 specifically for this deposition?
 8 A. Not in detail.
 9 Q. Let's start with the 1923 contract.
 10 A. Okay.
 11 Q. As I understand the company's
 12 position, they're asserting that the contract
 13 created two interests: what we'll call a primary
 14 storage right and a secondary storage right; is
 15 that a correct understanding?
 16 A. I think that's correct.
 17 Q. If you could turn to page 17, about
 18 almost at the bottom, paragraph 16.
 19 A. Okay.
 20 Q. Can you read the title of that.
 21 A. "Company's Primary Storage Capacity."
 22 Q. Is that the clause that the company
 23 believes gave right to the primary storage water
 24 right?
 25 A. That's correct.

Page 16

1 Q. Does it provide for a particular
 2 quantity?
 3 A. It does.
 4 Q. And what is that quantity?
 5 A. 45,000 acre-feet.
 6 Q. And is it the company's position that
 7 the primary storage capacity right continues in
 8 the 1976 spaceholder contract?
 9 A. It is.
 10 Q. Can you turn to page 21. Read the
 11 title for paragraph 20.
 12 A. "Company Right to Primary Storage
 13 Water."
 14 Q. And can you read for the record the
 15 sentence starting at line 512. It's about
 16 three-quarters of the way down that paragraph.
 17 A. "The company shall have the privilege
 18 of holding after October 1st and until
 19 November 15th any water which it may have
 20 remaining in its own storage capacity of 45,000
 21 acre-feet, but the company's right shall expire on
 22 November 15th to any amount so held over beyond
 23 that date."
 24 Q. Would you characterize that provision
 25 as a limitation on holdover from year to year?

Page 17

1 A. I would.
 2 Q. Is it the company's position that that
 3 limitation applies today?
 4 A. It is.
 5 Q. Let's look at the objections again for
 6 a moment, which I believe are Exhibit 3. If you
 7 could turn to page 3.
 8 A. Okay.
 9 Q. Paragraph E, "Reasons Supporting
 10 Objection," there's a lengthy paragraph starting
 11 with "The Idaho Power Company."
 12 Is that paragraph intended to describe
 13 the secondary storage right the company's
 14 asserting?
 15 A. It is.
 16 Q. What does it mean for storage capacity
 17 to be secondary?
 18 A. That it's not primary storage. It's
 19 not water that can be used during the irrigation
 20 season.
 21 Q. Is there any other difference between
 22 primary storage capacity and secondary storage
 23 capacity beyond the time of use?
 24 A. Primary storage capacity is considered
 25 active storage. And there's an actual block of

5 (Pages 14 to 17)

1 water in American Falls Reservoir. Secondary
2 storage capacity is considered pass-through.

3 Q. So there's no storage component with
4 the secondary storage capacity?

5 A. I believe that there is a storage
6 space component.

7 Q. I'm trying to reconcile the
8 description of it as a pass-through right with the
9 idea that there's a storage component. If you
10 could elaborate on that.

11 A. Well, the contract speaks for itself
12 and says that it is water that is storable in
13 American Falls.

14 Q. Storable as opposed to actually
15 stored?

16 A. That's my understanding.

17 Q. Does Idaho Power take the position
18 that it can compel Reclamation to either pass
19 water through the reservoir or release stored
20 water pursuant to the secondary storage
21 provisions?

22 A. I think Idaho Power believes that the
23 Reclamation in honoring their contract with Idaho
24 Power should provide sufficient water by whatever
25 means to meet flow targets at the Snake River near

1 Kimberly when that water is not being used by
2 owners of the irrigation rights.

3 Q. And by what other means, either
4 passing through water in the sense of not storing
5 water that could be stored or releasing water that
6 has already been stored?

7 A. I don't quite understand how that part
8 of it works.

9 Q. You don't understand how the contract
10 works or you don't understand my question?

11 A. Your question.

12 Q. Okay. Maybe we should start with what
13 you consider a "pass-through" to mean.

14 A. Well, according to the contract, it
15 says that the company has the right, the first
16 300,000 acre-feet of water flowing into the
17 reservoir, and 45,000 acre-feet of that water is
18 active storage, which is stored in the reservoir.
19 255,000 acre-feet of that water is a pass-through
20 contract right that has been used in the past to
21 meet flow targets at the Snake River near Kimberly
22 for power generation at those projects.

23 Q. And you mentioned earlier that that
24 water is storable water.

25 A. It's water that could be stored but is

1 passed through.

2 Q. Okay. So the essence of
3 "pass-through" is that Reclamation is not storing
4 it, they're letting it go downstream?

5 A. Correct.

6 Q. So that would be one source of water
7 that the company contends is available for meeting
8 those flow targets.

9 The second part of my question is,
10 does Idaho Power take the position that it can
11 compel Reclamation to release water that has been
12 stored in order to meet those flow targets?

13 A. I don't believe so. I think that -- I
14 think that Idaho Power believes that Reclamation
15 should pass water through the project to meet
16 those flow targets, if necessary.

17 Q. Just to confirm. So your
18 understanding is that the company's position is
19 that Reclamation has an obligation to pass water
20 through to meet those flow targets but not to
21 release previously stored water?

22 A. That's my understanding.

23 Q. And you do understand you're speaking
24 on behalf of the company?

25 A. I do.

1 Q. You mentioned flow targets, and the
2 objections talk about meeting specified flows for
3 hydropower use downstream.

4 Can you identify those flow targets
5 for me in the 1923 contract. I think you'll find
6 them on pages 21 and 22.

7 A. Okay. They start on line 526 on
8 page 22.

9 Q. And you mentioned those flows being
10 measured at the Kimberly gauge?

11 A. At the Kimberly gauge.

12 Q. Where is that?

13 A. It's just downstream of the Twin Falls
14 hydro plant, upstream of Shoshone Falls.

15 Q. You anticipated my question. So the
16 flow targets that you identified are part of
17 paragraph 21. And are those numbers modified by
18 paragraph 22, which talks about the Twin Falls
19 power site? It's on the next page.

20 A. They are.

21 Q. And what does paragraph 22 require?

22 A. Paragraph 22 requires that "Should the
23 company construct a powerplant at Twin Falls, then
24 the flow to be maintained below Milner Dam shall
25 be measured and determined at Twin Falls instead

1 of Shoshone Falls and the schedule of flow set out
2 in the foregoing paragraph shall be reduced by 100
3 second-feet for each period, but nothing herein
4 contained shall be construed as waiving any rights
5 of the United States at Twin Falls" --

6 THE COURT REPORTER: I need you to keep
7 your voice up. That air-conditioner is kind of
8 loud. Can you give me the last part of that
9 again.

10 THE WITNESS: Well, I think the contract
11 speaks for itself, but --

12 MR. GEHLERT: You don't need to read it for
13 my benefit.

14 THE WITNESS: Okay. Do you need me to read
15 the whole thing again?

16 THE COURT REPORTER: You don't need to read
17 the whole thing. Start at "nothing herein."

18 THE WITNESS: "But nothing herein contained
19 shall be construed as waiving any rights of the
20 United States at Twin Falls or any other power
21 site on the Snake River, owned or controlled in
22 whole or in part by the United States."

23 Q. (BY MR. GEHLERT): Thank you,
24 Mr. Bowling.

25 So by operation of paragraph 22, the

1 numbers that you identified starting at line 526
2 would be reduced by 100 cfs; correct?

3 A. Correct.

4 Q. So just to be clear, the 790 would be
5 690 and so forth?

6 A. Correct.

7 Q. Can you look at page 19 of the
8 contract.

9 A. Okay.

10 Q. In particular, paragraph 18.

11 A. Okay.

12 Q. Is that the secondary storage capacity
13 right which the company is asserting?

14 A. It is.

15 Q. And if you'll take a moment to read
16 the paragraph. And can you tell me what the
17 purpose of that secondary storage is.

18 A. Would you like me to read it to myself
19 or out loud?

20 Q. You can read it out loud.

21 A. Okay. "Between October 1st of any
22 year and June 10th of the following year, the
23 company shall have and is hereby granted for the
24 purpose of regulating and controlling the water
25 reserved to the company under paragraph 19 hereof,

1 and the water which may be acquired under the last
2 sentence of paragraph 10, a secondary right to use
3 not-to-exceed 255,000 acre-feet of storage
4 capacity in the reservoir when such capacity is
5 not then required and not being used by the owners
6 of irrigation rights to the use of such capacity,
7 but shall have no further right to use any part of
8 said 255,000 acre-feet of capacity or any water
9 stored therein after the reservoir is first filled
10 each season, and the company shall in any event
11 release on April 1st of each year all right and
12 claim to such capacity and water stored therein,
13 except 60,000 acre-feet, and shall release all
14 right and claim to the remainder, if any, on
15 June 10th of each year."

16 Q. Thank you, Mr. Bowling. I appreciate
17 your patience in reading that. We'll be spending
18 some time talking about what that means so it's
19 important to get it into the record.

20 A. Okay.

21 Q. First off, has the company acquired
22 any water pursuant to paragraph 10?

23 A. We have.

24 MR. DeVOE: Objection. I think the -- can
25 you restate the question?

1 Q. (BY MR. GEHLERT): Has the company
2 acquired any water pursuant to paragraph 10?

3 MR. DeVOE: Paragraph 10 or paragraph 18?

4 MR. GEHLERT: Well, paragraph 18 makes
5 reference to paragraph 10, "...controlling the
6 water reserved to the company under paragraph 19
7 hereof and the water which may be acquired under
8 the last sentence of paragraph 10."

9 Q. And my only question is, is there any
10 water that the company has acquired under the last
11 sentence of paragraph 10?

12 A. I would say yes.

13 Q. And can you identify that water for
14 me.

15 A. I think that the company had acquired
16 300,000 acre-feet of primary and secondary storage
17 capacity.

18 Q. Just to be clear, so the water you're
19 identifying pursuant to paragraph 10 is the
20 300,000 acre-feet the company contends was
21 reserved through the 1923 contract?

22 A. That's correct.

23 Q. Any additional water?

24 A. No.

25 Q. Thank you.

Page 26 1 The paragraph talks about the water 2 being for the purpose of regulating and 3 controlling the water reserved to the company. 4 What does the company interpret 5 "regulating and controlling" to mean? 6 A. "Regulating and controlling" means 7 that there's water available to fill the primary 8 storage right as well as water available to fill 9 the secondary storage right. 10 Q. And available in what sense? 11 A. That if water -- if -- if reservoir 12 fills, there's water available to fulfill contract 13 right for the primary storage, the active storage, 14 and if no irrigation user is using water flowing 15 into the reservoir from October 1 to June 10, that 16 that water then is available to meet the flow 17 targets downstream of Milner. 18 Q. Okay. Let's just focus on the 19 secondary storage right flow targets for now. I 20 don't want to go into the primary. 21 A. Okay. 22 Q. Am I correct in understanding your 23 answer to be that there are effectively two 24 criteria, the reservoir being filled and the water 25 not being used by irrigators?	Page 28 1 of that reservation? 2 MR. DeVOE: I'm just going to interpose a 3 standing objection here that the line of 4 questioning calls for legal conclusions. And I 5 think Mr. Bowling has stated a couple of times 6 that the contract speaks for itself. But I just 7 want to make clear for the record that we continue 8 to go over information where the contract speaks 9 for itself. 10 MR. GEHLERT: Sure. And my interest is not 11 in getting Mr. Bowling's legal interpretations, 12 but just in finding out what the company's 13 position is. 14 THE WITNESS: Okay. Well, can you repeat 15 the question one more time? 16 Q. (BY MR. GEHLERT): Certainly. I'm 17 happy to do that at any point. 18 Lines 453 and 454 refer to 19 "...regulating and controlling the water reserved 20 to the company under paragraph 19." 21 And what is the source of that 22 reservation? 23 A. The source of that reservation? 24 Q. The source of water that was reserved. 25 A. Water flowing into American Falls
Page 27 1 A. There's a distinction between the 2 primary storage, which is active capacity in the 3 reservoir, and secondary storage, which is storage 4 capacity or water which is delivered downstream 5 but not being stored. 6 Q. And is filling the reservoir required 7 for Idaho Power to have access to that water? 8 A. To the primary storage? 9 Q. To the secondary. 10 A. No. 11 Q. The paragraph talks about Idaho Power 12 having reserved water. 13 Do you know what the source of the 14 reservation was? 15 A. Are you referring to paragraph 10 or 16 paragraph -- 17 Q. Well, the reservation is actually in 18 paragraph 19. 19 A. Okay. 20 Q. But it is referred to in paragraph 18. 21 A. Okay. Can you repeat the question? 22 Q. Sure. Just so that we're clear, 23 paragraph 18 at lines 453 and 454 talks about 24 controlling the water reserved to the company. 25 And my question is, what is the source	Page 29 1 Reservoir. 2 Q. Is it the company's position that it 3 held water rights prior to the creation of the 4 1923 contract, which it again reserved through the 5 contract? 6 A. It is. 7 Q. And how were those water rights 8 established? 9 A. I think we had established those with 10 the State of Idaho for a proposed project that we 11 were planning to build, is my understanding. 12 Q. Established those with the State of 13 Idaho through application? 14 A. That's my understanding. 15 Q. The reservation itself is in 16 paragraph 19 of the contract, which starts on 17 page 19. On page 20, lines 474 and 475, it talks 18 about -- well, I'll start at 473. "The first 19 300,000 acre-feet flowing into the reservoir after 20 October 1st and actually storable therein." 21 What does the company believe that 22 "actually storable therein" means? 23 A. That means water that flows into the 24 reservoir that is storable. That if -- if the 25 gates were shut, the water would be storable.

Page 30 1 Q. And does that encompass priority? 2 A. First 300,000 acre-feet of water that 3 flows into the reservoir. 4 Q. Maybe I should back up and ask you. 5 Are you familiar with the prior-appropriation 6 doctrine? 7 A. I am. 8 Q. So you understand the basic concept 9 that water is used in order of priority? 10 A. I am. 11 Q. So does "actually storable therein" 12 encompass this idea of priority? 13 MR. DeVOE: Objection. It calls for a 14 legal conclusion. 15 THE WITNESS: I'm not sure what they were 16 thinking in 1923, to be honest with you. Nobody 17 is obviously here at the company that was around 18 then. And so I think the contract does speak for 19 itself. The agreement says that the company was 20 entitled to the first 300,000 acre-feet of water 21 flowing into the reservoir. That's my 22 understanding of what our right was. 23 Q. (BY MR. GEHLERT): All right. Well, 24 let me see if I can simplify the question and be 25 responsive to your counsel's objection as well.	Page 32 1 contract? 2 A. October 1 through June 10th. 3 Q. And I take it that the company 4 believes those are the correct dates? 5 A. I believe that's correct. 6 Q. Thank you. 7 When is the irrigation season, 8 generally speaking, in the Upper Snake? 9 A. It varies. But April through October. 10 Q. And how significantly does it vary? 11 A. Quite a bit. I think some -- I think 12 some rights actually come into priority or some 13 periods of use are from March 15th, depending upon 14 where you are in the Upper Snake, through 15 October 31. 16 Q. Are there irrigation rights that are 17 senior to American Falls Reservoir? 18 A. There are. 19 Q. Are those rights substantial in 20 quantity? 21 A. I believe they are. 22 Q. And what are those rights? Can you 23 identify at least some of them? 24 A. Well, I think that several of the 25 canal companies, irrigation companies, irrigators,
Page 31 1 A. Okay. 2 Q. Is it Idaho Power's position that 3 water is actually storable in the reservoir when 4 the reservoir is not in priority? 5 A. Let me think about that. Can you 6 rephrase the question? 7 Q. Sure. In essence, I'm asking if the 8 priority of the reservoir's storage rights plays 9 any role in whether the water is actually 10 storable, in the company's view? 11 A. I believe that it does. 12 Q. So when the reservoir is not in 13 priority, water is not storable therein? 14 A. I believe that's correct. 15 Q. Is there a time limit on the secondary 16 storage right? 17 A. There is a time limit. 18 Q. Can you look at page 19. 19 A. Okay. 20 Q. I want to clarify what I believe is a 21 typo in the company's objection. The company's 22 objection refers to the time period October 1 23 through June 15th. Take a look at the contract. 24 A. Okay. 25 Q. And what are the dates provided in the	Page 33 1 farmers have rights that are senior to the 1920s. 2 Q. Thank you. 3 Can you take a minute to look at 4 lines 460 to 463, paragraph 18. And what I want 5 to get on the record is just the sense of the time 6 extent of this. 7 A. Okay. 8 Q. We talked a little bit about 9 October 1st through June 10th. 10 Does it apply through that period 11 every year, or are there other limitations, in the 12 company's view? 13 A. Limitations -- 14 Q. On -- 15 A. -- other than just the dates on the 16 secondary storage? 17 Q. Yes. 18 A. There is a limitation. 19 Q. And that is? 20 A. Until American Falls first fills. 21 Q. And is the date April 1st of 22 significance to the secondary storage right? 23 A. It is. 24 Q. And what happens on April 1st? 25 A. On April 1st there's a limit placed on

Page 34 1 the amount of the secondary storage that could be 2 used after that date of 60,000 acre-feet. 3 Q. I'm handing you a document entitled 4 "Expert Report of David B. Shaw." It was an 5 exhibit in your previous deposition, so I know you 6 have at least some familiarity with this. 7 If we could have that marked, I'd 8 appreciate it. 9 (Exhibit 6 marked.) 10 Q. (BY MR. GEHLERT): Are you familiar 11 with that document, Mr. Bowling? 12 A. I am. 13 Q. Did you participate in its 14 development? 15 A. I did not. 16 Q. Do you know who did? 17 A. I know Dave Shaw put this together and 18 may have worked with the attorneys. 19 Q. What's your understanding of what 20 Mr. Shaw was attempting to do? 21 A. My understanding is he was attempting 22 to quantify the shortage of water under the terms 23 of the contract for secondary storage of 255,000 24 acre-feet. 25 Q. And was there a particular time period	Page 36 1 interpreted? 2 A. It is. 3 Q. Have you done any analysis similar to 4 Mr. Shaw's? 5 A. I have. 6 Q. And were your results consistent with 7 his? 8 A. They were similar, but I was typically 9 a little bit higher on the shortage. 10 Q. And did you look at any years beyond 11 the 2001 to 2007 water years that he looked at? 12 A. I don't think so. 13 Q. Do you know if anybody at the company 14 has determined whether the company views that 15 there were shortages in years prior to 2001? 16 A. I think it would -- if it had been 17 done, it would be me. And I don't recall 18 looking -- I have looked to see if -- if the flow 19 targets have been met generally in subsequent 20 years from 2007. But I don't recall if I had done 21 a shortage analysis. 22 Q. So you've looked at subsequent years. 23 Have you looked at prior years? 24 A. I have plotted up prior years and just 25 looked at them in relation to the target.
Page 35 1 that he looked at? 2 A. I don't know for sure. I've seen this 3 document once, and I haven't thoroughly reviewed 4 it. And I had not seen this document until my 5 previous deposition. 6 Q. Do you want to take a moment to review 7 it? 8 A. I do. 9 Q. Please do. 10 Why don't we just go off the record 11 for a second. 12 (Recess.) 13 Q. (BY MR. GEHLERT): Mr. Bowling, if you 14 could turn to page 3. And read the first full 15 sentence starting with "If the reservoir has 16 filled." 17 A. "If the reservoir has filled, the 18 shortage is not a missed target as provided in 19 paragraph 18 of the contract. If the date is 20 later than April 1 and 60,000 acre-feet has been 21 released since April 1, the shortage is not a 22 missed target, as provided in paragraph 18 of the 23 contract." 24 Q. And does that statement reflect the 25 company's position of how the contract should be	Page 37 1 Q. When you say "plotted up," can you 2 elaborate. 3 A. I just plotted Snake River near 4 Kimberly data, and superimposed the target 5 schedule on those. I haven't done any analysis, 6 other than those graphs. 7 Q. So you've just looked at on a raw 8 basis whether the water was there or not, and 9 didn't factor in the other criteria, the contract 10 we've been talking about? 11 A. Nothing else. Just comparing the 12 flows to the flow schedule. 13 Q. And for what years did you do that? 14 A. 1950 through 2007. 15 Q. And what were the results? 16 A. There were a lot of lines on the 17 paper. 18 Q. I don't want to get too picky here, 19 but I have to ask you to clarify that a little 20 bit. 21 A. Well, the results were that there -- 22 and I didn't look at each individual year. It was 23 like a spaghetti chart. There was a lot of lines 24 on the paper, and certain -- a lot of them were 25 obviously above the target and there were a lot

10 (Pages 34 to 37)

Page 38 1 that were below the target. 2 Q. And that's what I wanted to get. So 3 there were some years that were above and some 4 years that were below? 5 A. That's right. 6 Q. Any sense of the proportion of those 7 years? 8 A. I don't have a sense. 9 Q. But you'd say that there were a 10 significant number that were both above and a 11 significant number below? It wasn't lopsided in 12 one way or the other? 13 A. Correct. 14 Q. You mentioned previously about the 15 water in the secondary storage right not being 16 needed by irrigators. Let's take a look at the 17 contract language to that effect. If you could 18 turn to page 19 of the 1923 contract. 19 A. Page 19? 20 Q. Yes. 21 A. Okay. 22 Q. I'll ask you another question about 23 paragraph 18. 24 A. Okay. 25 Q. And particularly lines 457 through	Page 40 1 me what the parties intended in 1923. I'm 2 interested in what Idaho Power's position is today 3 on when water is required by irrigators. 4 A. Well, I think that that means that 5 they are using the water for irrigation. 6 Q. So "required" is, then, the same as 7 "being used"? 8 A. That seems to be what the sentence 9 says. 10 MR. TUCKER: Counsel, can I ask a question. 11 Are you still referring to the lines 457 through 12 460? Is that about where you are? Because I'm 13 confused -- 14 MR. GEHLERT: Yes. 15 MR. TUCKER: -- because you're talking 16 about water and this talks about capacity. I 17 don't know exactly what lines you're referring to. 18 MR. GEHLERT: Thank you, Mr. Tucker. I 19 should clarify. 20 Q. Mr. Tucker brought up a useful point 21 that the contract is phrased in terms of capacity. 22 A. Capacity. 23 Q. And I've been asking you about water. 24 Is it the company's position that 25 those are two distinct things?
Page 39 1 459, which states, in essence, that the company 2 has a secondary right not to exceed 255,000 3 acre-feet, and now I'll quote, "...when such 4 capacity is not then required and not being used 5 by the owners of the irrigation right to the use 6 of such capacity." Now I want to talk a little 7 bit about the phrase "not then required and not 8 being used." 9 Is the company's position that that 10 phrase is conjunctive in the sense that there were 11 two separate requirements, the water must be not 12 then required and also not then being used? 13 A. I think that's correct. I think the 14 contract speaks for itself. It says, "...and not 15 being used." 16 Q. What does it mean for water to be 17 required by the irrigators? 18 A. I think it means that an irrigator 19 needs that water. 20 Q. Irrigator needs that water for the 21 coming irrigation season at that particular time? 22 A. I don't -- I don't know for sure what 23 that means. Again, I don't know what that meant 24 in 1923. And that -- that's my position on that. 25 Q. Sure. And I'm not asking you to tell	Page 41 1 A. I think that they're not. I think 2 that capacity and water, there's a distinction 3 between the two. 4 Q. And that distinction is? 5 A. Water is -- can be used several ways, 6 and capacity can be used several ways. I guess I 7 can't articulate that. 8 Q. Would it be fair to say that the 9 capacity is used to hold water? 10 A. Capacity is used to hold the water? I 11 think that's fair. 12 Q. So what is the company's position on 13 when capacity is required by irrigators? 14 A. Well, you know, it's really the 15 company's position that irrigation comes before 16 hydropower. And if an irrigator is using that 17 water or needs that capacity, then it's never been 18 the company's position to try to circumvent that 19 or usurp that. 20 And I think historically in the past 21 we've had a pretty good cooperation with the 22 irrigators. Even starting in 1923 with the 23 contract, there were times when the company did 24 forego delivery of that water so that the 25 irrigators could use it.

11 (Pages 38 to 41)

1 In 1934 we signed another contract
2 with the Bureau, and it was an energy exchange
3 contract to allow that water, the secondary
4 storage, to be stored in American Falls because we
5 were in a drought period. So that was another
6 time that we cooperated with the irrigation.

7 And I think all along we've always
8 contended through the history of the American
9 Falls project that irrigation was the highest
10 priority. The project was built for irrigation,
11 and that was a high priority. And this was a
12 contract right that we had. And like any
13 placeholder, we would like to protect our contract
14 right.

15 I'm not sure in 1923 -- and there's
16 nobody in the company that's sure what the 1923
17 contract meant exactly. There's varying opinions
18 on that, and there have been varying opinions over
19 the years.

20 But I think the company believes that
21 we have this right. It's a contract right. We
22 are just trying to protect our rights, just like
23 any placeholder would do. Even if you don't fully
24 understand it, we're obligated to our shareholders
25 and customers to do that.

1 So I think, back to your question, we
2 do believe that irrigators come first, when that
3 water is not needed for irrigation. But I think
4 that based on this '23 contract and the language
5 that's in here, the company does have a contract
6 right for certain stored water and certain
7 secondary storage capacity.

8 Q. Fair enough. We talked about how the
9 contract's provision regarding secondary storage
10 capacity goes from October 1st through June 10th,
11 subject to the limitations of the reservoir
12 filling and what I'll call the April 1 clause.

13 Let's take a hypothetical. It's
14 November 1st. How do you know what storage
15 capacity is required by an irrigator at that
16 point?

17 MR. DeVOE: Objection. Assumes facts not
18 in evidence. And if we're going to have a line of
19 questions with hypotheticals, I'll just make it a
20 standing objection.

21 MR. GEHLERT: That's fine.

22 THE WITNESS: The short answer is we don't
23 know. I don't know. In my original deposition I
24 said I don't understand fully how water is
25 distributed in the Upper Snake. I'm not sure

1 anybody really does.

2 You know, I think that -- I don't
3 understand how the Bureau's operations affect
4 placeholders and storage. It's something that we
5 are attempting to study now. We have a
6 cooperative effort going on with the Bureau, the
7 State of Idaho where we're going to look at some
8 of those things and try to model some scenarios
9 that try to give us a handle on what that means.

10 But right now I don't know. I don't
11 know how Bureau operations, how Bureau storage in
12 various reservoirs, how Bureau releases for
13 various things, such as flood control, irrigation,
14 power generation, how those affect placeholder
15 storage.

16 Q. (BY MR. GEHLERT): Okay. And we will
17 talk about some of those issues later today. But
18 am I correct in understanding that Idaho Power's
19 position is that on November 1st you cannot
20 determine what water is required for irrigation
21 use or what capacity is required for irrigation
22 use?

23 A. You -- I don't think you can. And
24 it's -- it's -- we do forecasting to try to
25 understand that and to know. Every year is

1 different. And it depends on runoff, depends on
2 carryover storage, and it depends on forecast.

3 And we can speculate and we can guess.
4 And that's what forecasting is, based on carryover
5 storage and historical analysis of past years and
6 future years and probabilities of occurrence, what
7 we may expect. But we all know that that's just a
8 guess.

9 Q. And I was --

10 A. It's an educated guess, but it's just
11 a guess.

12 Q. And I was going to ask how much
13 confidence you'd have in a projection of water
14 availability made on November 1st?

15 A. On November 1st? I would say that we
16 have some confidence, but it's not 100 percent.
17 It really depends on a guess. I think we're
18 getting better at guessing because we're getting
19 better information on meteorological forecasts.

20 We know more about La Niña and El Niño
21 and PDO and all these things that kind of help us
22 determine what type of a winter it's going to be.
23 But as we both know in the Snake Basin, for some
24 reason it's really hard to predict what's going to
25 happen because El Niño and La Niña behave

Page 46 1 differently than probably anywhere else in the 2 Northwest or in the western United States. 3 Q. If you could elaborate on that, I'd 4 appreciate it. 5 A. Sometimes the storms go south and 6 sometimes they go north for El Niño. And you 7 can't predict one year to the next how that's 8 going to impact the Snake Basin. 9 Q. And the hydrology in the Upper Snake 10 is essentially snowmelt driven or heavily snowmelt 11 driven in terms of water availability, would you 12 say? 13 A. It is. 14 Q. And El Niño and La Niña, are those 15 predictors of snow? 16 A. They're predictors of weather patterns 17 and ocean temperatures, which control those 18 weather patterns. Are they good predictors? 19 They're better than what we've used in the past, 20 but they're still not 100 percent certain. 21 Q. Is there a distinction between the 22 two? 23 A. El Niño is a warming of ocean 24 temperatures, and La Niña is a cooling of ocean 25 temperature.	Page 48 1 MR. DeVOE: 3, is it? 2 MR. GEHLERT: Yeah. 3 THE WITNESS: That was the company's 4 objection to the Bureau's claim? 5 Q. (BY MR. GEHLERT): Yes. At the very 6 bottom it talks about terms and conditions. And 7 my only interest in asking you about that is to 8 make sure that we've identified every term and 9 condition that the company feels is applicable. 10 A. At the very bottom on which page? 11 Q. Page 3, at the bottom of the big 12 paragraph under E. 13 A. Okay. Again, I didn't prepare this, 14 but I'll say I trust our attorneys and say yeah. 15 Q. My question was just, are there terms 16 and conditions that the company believes apply 17 that we have not discussed regarding the secondary 18 storage capacity of the '23 contract? 19 A. I don't believe so. 20 Q. We've talked about the primary and the 21 secondary storage capacity rights. 22 Are there other rights that the 23 company believes the contract created that should 24 be reflected on the United States water right? 25 A. I don't believe so.
Page 47 1 Q. And which of the two produces more 2 snow? 3 A. La Niña produces more snow, generally. 4 But we have had some El Niño years that were huge 5 water years. 6 Q. And when does the bulk of the snow 7 fall in the Upper Snake Basin? 8 A. Probably between October 1 and 9 April 1st. 10 Q. And is snow traditionally heavier in 11 the spring or in the fall? 12 A. It just depends. For example, in 13 March 2004 we were accumulating snow in the Snake 14 Basin at an average rate until March, and then 15 everything just shut off and got warm and runoff 16 started a month and a half early. 17 Q. The objection also makes reference to 18 the use of secondary storage capacity being 19 subject to specified terms and conditions. 20 And, Adam, I'm just about done with 21 the '23 contract, and then we'll take a break. 22 MR. DeVOE: Okay. Good. 23 Just for the record, you're back to 24 Exhibit 2? 25 MR. GEHLERT: 3, I believe it is.	Page 49 1 MR. GEHLERT: Thank you. Why don't we take 2 a ten-minute break. 3 MR. DeVOE: Okay. 4 (Recess.) 5 MR. GEHLERT: Go back on the record. 6 Q. Mr. Bowling, before we turn to the 7 1976 spaceholder contract, I just wanted to 8 elaborate a little bit on the discussion we had 9 right before the break. 10 A. Okay. 11 Q. You were talking about the difficulty 12 of forecasting, and we talked about forecasting on 13 November 1st in particular as to what the water 14 availability might be or the quantity of 15 precipitation might be come the -- strike that. 16 You were talking about forecasting in 17 terms of snowfall? 18 A. That's right. Actually, runoff. 19 Q. Runoff. 20 A. From snowfall and precipitation. 21 Q. And is water availability or the 22 quantity of water available in spring a fair term 23 used to summarize the runoff and the 24 precipitation? 25 A. I think that's fair.

13 (Pages 46 to 49)

1 Q. And you spoke generally about the
2 difficulty of forecasting.

3 Can you give me a percentage in terms
4 of accuracy for forecasts made November 1st?

5 A. Not off the top of my head.

6 Q. Just a ballpark or a confidence
7 interval, whatever term you want to use.

8 A. I really can't. It depends on what
9 period of record you're looking at to compare it
10 with. I'm just not prepared to -- to give you a
11 confidence interval on forecasting.

12 Q. Would you characterize your confidence
13 as high at that point?

14 A. For a November 1st --

15 Q. Yes.

16 A. -- runoff forecast?

17 I would say that it's average. Just
18 use average.

19 Q. Average. Okay.

20 A. 50/50.

21 Q. 50/50.

22 A. We could be high or we could be low.

23 Q. Fair enough. I was interested by your
24 statement to the effect that it's the company's
25 position that irrigation comes first. And if I've

1 inaccurately paraphrased that, please correct me.
2 But I understood that to be the substance of your
3 comment.

4 A. I think, generally speaking, that the
5 company does believe that the upstream projects
6 are for irrigation first. I don't know how else
7 to say that.

8 Q. Well, see if I can give you an
9 opportunity to clarify that. What I'm interested
10 in is how that concept interacts with what we've
11 been talking about in terms of the difficulty of
12 forecasting.

13 On November 1st, how does the
14 difficulty of forecasting what the water
15 availability will be in the spring factor into the
16 contractual terms regarding the water required for
17 irrigation use?

18 A. You know, I -- it's probably a
19 question that the Bureau would be better able to
20 answer, because they operate the system above
21 Milner. They do their own forecasting.

22 And how they operate their system to
23 provide for meeting their contract obligations is
24 really a question for them. When we forecast, we
25 get a general idea of what could happen, but we

1 have no understanding of where water goes, where
2 they store water, when they release water, how
3 unofficial flood control works. It's really kind
4 of, again, a question, I think, for the Bureau.

5 Idaho Power has no control over the
6 operation of the Upper Snake system. We attempt
7 to do some forecasts, but a lot of our forecasting
8 is based on conversations with Bureau of
9 Reclamation on a daily basis. "What are you guys
10 going to do? What do you think's going to
11 happen?" because what we're interested in is if
12 anything's going to happen to Milner.

13 And we really have -- just forecasting
14 runoff for us does not give us an indication of
15 what's going to happen at Milner because the
16 Bureau controls those operations.

17 Their operations are not the same from
18 year to year. I think the Bureau reacts in their
19 operations and they try to operate the system the
20 best they can, but I think that sometimes they
21 don't know from one week to the next exactly what
22 they're going to do. So really they're the entity
23 that really has the difficult time forecasting and
24 operating their system.

25 From our standpoint, we just kind of

1 ask them "What do you think's going to happen at
2 Milner?" And we do that regularly. We have to
3 know because it impacts us downstream of Milner.

4 And so we're in regular communication
5 with them and we discuss forecasts, and I'd like
6 that to continue in the future and actually have
7 better cooperation so we have a better
8 understanding.

9 So I guess I don't know how all of the
10 forecasting that the Bureau does impacts the
11 operations that they perform in the Upper Snake
12 system.

13 Q. Okay. And we'll talk about the
14 Bureau's operations a little bit later today. But
15 what I'm interested in right now is you've told me
16 that it is the company's position that under the
17 secondary storage capacity provisions of the 1923
18 contract the company has the ability to compel
19 water to be passed through in order to meet the
20 flow targets.

21 A. Well, I think the contract speaks for
22 itself. Actually, the contract, the agreement
23 that we have with the Bureau of Reclamation I
24 believe is what compels the company and the Bureau
25 to work cooperatively to fulfill those contract

1 obligations. So that's -- the Bureau should be
2 compelled on their own to meet those flow targets,
3 not through pleadings by the company.

4 Q. Fair enough. But it's a two-party
5 contract.

6 A. It is.

7 Q. And obviously, if one party doesn't
8 like what the other party is doing, there's
9 recourse. And as you're well aware from your
10 prior deposition, the company is pursuing recourse
11 in federal court.

12 A. That's right.

13 Q. And to an extent, this proceeding is
14 about that as well.

15 And so you've told me that the company
16 has asserted that this contract gives the company
17 the right to compel the Bureau to pass water
18 through in order to meet the flow targets;
19 correct?

20 A. I think that's correct. And I think
21 it has to do with whether the capacity, the
22 secondary storage capacity, is being used by the
23 irrigators. If that capacity is not being used by
24 the irrigators, the contract says that the company
25 has the right to use such capacity to control

1 flows, along with the Bureau, to maintain the
2 requirements of the contract.

3 Q. And in the company's view, when is the
4 capacity being used by the irrigators?

5 A. I -- I can't answer that with any
6 confidence.

7 Q. So the company has no position on
8 that?

9 A. When the capacity is being used by the
10 irrigators? I don't know. I know that's not
11 acceptable, but...

12 Q. Well, let's see if we can maybe put
13 some parameters on this.

14 November 1, am I correct in assuming
15 that there is no irrigation going on at that
16 point?

17 A. There may still be irrigation going on
18 during part of that time period that secondary
19 storage contract is in place.

20 Q. So the irrigation season can in some
21 instances extend into November?

22 A. (No audible response.)

23 Q. Are you aware of it ever extending
24 into December?

25 A. I'm not.

1 Q. Okay. Because what I'm asking is,
2 does the company equate the storage capacity being
3 used with an irrigator's calling for that water,
4 if you will, out of storage to apply to crops, or
5 is it something different than that?

6 A. I think it's something different than
7 that.

8 Q. And they could be using it in the
9 sense of holding the water so that it's available
10 in the spring?

11 A. Well, I think that's the general way
12 the Bureau and Water District 1 operate is fill
13 the reservoir in order to have a full reservoir
14 going into the irrigation season.

15 Q. Sure. And I appreciate that. But
16 that wasn't really my question. Give me a second
17 to think about how to phrase it in a way that I
18 can be sure that we're speaking the same language.

19 A. Right.

20 Q. You would agree that one purpose of a
21 reservoir is to hold water so that it's available
22 in a subsequent season, you in essence capture
23 water in the winter so that it's there in the
24 spring?

25 A. I do agree.

1 Q. And let's just call that holdover
2 water.

3 Is the use of storage capacity for
4 holdover water a use by irrigators within the
5 meaning of the contract in the company's view?

6 A. I think it's consistent with the
7 spaceholder contracts that the spaceholders have
8 with the Bureau that water will be stored in the
9 reservoir so that that water is available to the
10 spaceholder.

11 Q. Okay. So the spaceholders -- and this
12 includes Idaho Power under the 1976 contract --
13 have an entitlement to use capacity of the
14 reservoir for the purpose of holding water over so
15 that water is available when they want to use it?

16 A. I believe that's correct.

17 Q. Okay. And again, my question, though,
18 is, is the use of capacity for holding water for
19 the following season use of that capacity within
20 the terms of the 1923 contract, in the company's
21 view?

22 A. The use of the capacity by --

23 Q. By an irrigator.

24 MR. DeVOE: I just want to restate the
25 objection that we're asking for legal

1 interpretations and conclusions, that the
2 agreement speaks to itself. Obviously, I'll let
3 you go ahead and ask your questions, but I just
4 want to reiterate the objection.

5 MR. GEHLERT: Sure. And I don't have any
6 problem with that, Adam.

7 Q. I'm asking you what the company's
8 position is. And if we want to talk about in
9 terms of specifics, let's say Aberdeen-Springfield
10 has -- let me see if I can phrase this in a way
11 that will enable us to get to the root of what I'm
12 trying to ask for.

13 Aberdeen-Springfield has water
14 remaining in the reservoir at the end of their
15 irrigation season, whether that's October 1 or
16 whatever date, are they using that storage
17 capacity within the terms of the contract at that
18 point?

19 MR. DeVOE: Can you clarify, Counsel? I'm
20 sorry. But can you clarify? You're using terms
21 that are close to terms of art. Are you talking
22 about carryover storage? I've never heard this
23 term "holdover" before. I don't think it's a term
24 of art in the water --

25 MR. GEHLERT: We can use "carryover," if

1 you're more comfortable with that.

2 MR. DeVOE: Or just "stored water."

3 MR. GEHLERT: Or just "stored water."

4 MR. DeVOE: Because now we're just mixing
5 terms. And I don't know what you're talking
6 about. I'm not sure John knows what you're
7 talking about.

8 Q. (BY MR. GEHLERT): And certainly,
9 Mr. Bowling, if you don't follow my questions,
10 please ask me to clarify, and I'll do the best
11 that I can to clarify.

12 A. Restate, if you would, please.

13 Q. Sure. I'll see if I can do that.

14 Well, let me put it in the term that your counsel
15 used.

16 Is the use of reservoir capacity for
17 carryover storage by an irrigation entity use of
18 that capacity within the terms of the '23
19 contract, as the company interprets it?

20 A. The use of capacity by an irrigator in
21 the 1923 contract --

22 THE COURT REPORTER: I didn't hear that.
23 Can you slide down this way a little bit? You
24 have a tendency to trail off, and you're getting
25 drowned out by the air-conditioner.

1 THE WITNESS: Sorry about that. I'm kind
2 of thinking out loud.

3 Well, I would say that based on the
4 contract and what the contract states that if the
5 irrigator is using that capacity, then based on
6 the '23 contract they have the ability to do that.

7 But I don't fully understand what
8 those other uses are of the capacity. But surely
9 they have a contractual right to store water in
10 the reservoir as a spaceholder, and I think that's
11 my understanding of that.

12 Q. (BY MR. GEHLERT): And just to make
13 sure that I'm understanding what you're saying,
14 that's consistent with your earlier description of
15 the secondary storage capacity right as a
16 pass-through right, so -- I mean I should ask you,
17 is that correct?

18 A. Secondary storage -- our 255,000
19 acre-feet of secondary storage capacity is, my
20 understanding, a pass-through.

21 Q. Okay. So to get back to the
22 hypothetical that I was attempting to construct,
23 if an irrigation company has water stored for
24 carryover purposes, they're using that water, and
25 because the company views its right as a

1 pass-through right, the company is not asserting
2 an ability to require that water to be released to
3 meet the flow targets?

4 A. I guess I would have to agree.

5 Q. We talked about the contract's use of
6 the term "actually storable." And what I'm trying
7 to draw a distinction between is a question that I
8 just asked you had to do with water that was, in
9 essence, already in the reservoir for carryover
10 purposes. But it's now winter and we've got some
11 water coming into the reservoir. We're within the
12 October 1 through June 10 period. And this gets
13 back to the forecasting point.

14 That water is storable, in other
15 words, it could be left in the reservoir, but
16 you've also told me that the company asserts a
17 right to compel that water to be passed through
18 the reservoir, meaning that it would not be
19 stored. And there's a capacity associated with
20 incoming water. Let's just say there's space in
21 the reservoir so that, in fact, this incoming
22 water could be physically stored.

23 And what I'm getting at is on
24 November 1 you've talked about the difficulty of
25 forecasting how much water there will be the

1 following irrigation season; correct?

2 MR. DeVOE: Objection. Compound. I'm not
3 sure what question you're asking.

4 MR. GEHLERT: Okay. Fair enough.

5 Q. In a broad sense, Mr. Bowling, what
6 I'm attempting to do is reconcile the company's
7 statement that irrigation interests come first
8 with what you've told me in terms of the
9 difficulty of forecasting on November 1 and how
10 the company views those concepts playing out, if
11 you will, when there is water coming in that is
12 storable and whether the company considers water
13 that could be stored for later irrigation use --
14 and to phrase it in terms of the contract -- the
15 capacity in which that water would sit. And if
16 I'm losing you, please correct me.

17 A. Let me --

18 MR. DeVOE: Objection. Compound.

19 Go ahead.

20 THE WITNESS: I think maybe a way to
21 describe this would be based on some historical
22 anecdotal information that -- after the contract
23 was signed in 1923. Because it was a fresh
24 contract, it was in everybody's minds, the flows
25 that -- at Kimberly were tracked regularly.

1 There were documents provided,
2 documentations made on each water year and how
3 that contract was worked out and honored by the
4 Bureau and Idaho Power Company.

5 And there were several instances where
6 water was passed through, according to the 1923
7 contract to meet the flow targets at Kimberly, and
8 with no indication of whether the capacity was
9 being used by irrigators or not. And I think that
10 the opportunity to forecast then was probably a
11 little worse than it is now, but probably not
12 much.

13 And so along with the Bureau of
14 Reclamation, the company did ask for water to be
15 met -- targets to be met. The Bureau provided
16 water for that. And there are several instances
17 when American Falls didn't necessarily fill, but
18 the next year they did it the same way.

19 They still released water according to
20 the flow schedule, and I never in any of the
21 information I reviewed saw that there was an issue
22 with storage capacity or whether the irrigators
23 were using that capacity.

24 And so my understanding, based on that
25 early, anecdotal information, is that water was

1 passed through the reservoir, and maybe there was
2 a consideration of storage and filling space, but
3 it was not mentioned. And it didn't seem to be a
4 criteria that the reservoir necessarily fill.
5 It's not an opinion of mine. It was just based on
6 the information that I had reviewed from company
7 records.

8 Q. (BY MR. GEHLERT): Sure. And a couple
9 clarifications. You talked about this being close
10 to the time of the 1923 contract.

11 Are the records that you reviewed from
12 the '20s?

13 A. Well, I think the record was put
14 together that I reviewed was a summary of
15 operations from the '20s up until the '40s. I
16 have no idea who put the information together. It
17 was company files. And I think that was submitted
18 as part of the discovery.

19 MR. GEHLERT: I was going to ask if you
20 brought it with you today, the summary that he's
21 referring to?

22 MR. DeVOE: I'm not sure exactly which
23 document he's referring to. But we'd be happy to
24 take a look through the binder if you'd like.

25 MR. GEHLERT: Sure. Why don't we just wait

1 until the break to do that.

2 MR. DeVOE: Okay.

3 THE WITNESS: So that's in large part my
4 understanding of how this agreement worked. And I
5 think how the agreement worked shortly after the
6 agreement was signed is probably a pretty good
7 indication of how they expected the agreement to
8 work going forward.

9 And again, the power company has
10 cooperated. I think we believe irrigation is an
11 important part of those projects. And again, I'll
12 reiterate in 1934 we signed a new contract to
13 alter or supersede for some time the '23 contract
14 where we were willing to forego the secondary
15 storage in exchange for energy so that that water
16 was available then to be stored.

17 Q. (BY MR. GEHLERT): And I appreciate
18 that. You talked about a summary of the operation
19 of the water right that covered from the '20s
20 through the '40s.

21 Are you aware of any similar summary
22 for other periods?

23 A. I have seen some information tracking
24 flows. In particular, I found a record in a
25 file -- and I think it has all been provided --

1 1969 there's an internal document. I think Adam
 2 has the original right here.
 3 MR. DeVOE: It's an earlier period.
 4 THE WITNESS: And this is '69.
 5 MR. DeVOE: Okay.
 6 THE WITNESS: And it -- you can read that,
 7 if you'd like.
 8 MR. DeVOE: We can make copies for the
 9 record if you want to use it as an exhibit.
 10 MR. GEHLERT: Why don't we, because I've
 11 never seen this before.
 12 And, Jim, do you mind if we continue?
 13 MR. TUCKER: Oh, go ahead. Fine.
 14 Q. (BY MR. GEHLERT): We can come back to
 15 that. Why don't we talk about the 1976 contract
 16 for a little while.
 17 A. Sure.
 18 Q. That's Exhibit 4.
 19 MR. DeVOE: Just to clarify the record, the
 20 '23 agreement is Exhibit 4? It's probably tab 4
 21 in your binder, is the '76 agreement. That's depo
 22 Exhibit 5.
 23 MR. GEHLERT: Yeah. My apologies. I was
 24 looking at my outline, and I changed the exhibit
 25 numbers. Thank you for the correction. We're

1 talking about Exhibit 5, the 1976 contract.
 2 Q. Mr. Bowling, are you familiar with the
 3 contents of the 1976 spaceholder contract?
 4 A. Generally.
 5 Q. Are you familiar with the process by
 6 which it was drafted?
 7 A. Generally.
 8 Q. And I take it that familiarity comes
 9 from review of documents?
 10 A. That's my only familiarity. Again,
 11 there's nobody at the company now, working here
 12 now, that was around when this occurred.
 13 Q. Does the company have an historian or
 14 archivist or any personnel of that sort?
 15 A. No. We have archeologists,
 16 anthropologists for cultural studies for impacts
 17 from our projects on cultural resources, but I
 18 think that's it. I don't believe we have any
 19 historian that tracks company history, in general.
 20 Q. Where were the records that you
 21 reviewed relating to the 1976 contract?
 22 A. I have a copy of the contract.
 23 Q. And I'm sorry, I thought you had told
 24 me earlier that you had reviewed some documents
 25 relative to its drafting.

1 A. No. That must be a misunderstanding.
 2 I -- I have reviewed some documents around -- from
 3 around the time that this was put together, but I
 4 guess I didn't understand that to be the question.
 5 Q. Okay. And we'll talk a little bit
 6 more about the larger context of the
 7 reconstruction of American Falls and the
 8 congressional legislation.
 9 A. Okay.
 10 Q. But no documents particular to the
 11 drafting of this contract, or you did not review
 12 any documents particular to it?
 13 A. I have seen some bits and pieces of
 14 transcripts from testimony before and after this
 15 was put together.
 16 Q. Testimony in what sort of proceedings?
 17 A. I think hearings, various hearings
 18 related to this, maybe some before congress. And
 19 I don't know the specific details of all of them.
 20 But, you know, as you know, there's an awful lot
 21 of information surrounding American Falls from
 22 1923 to present.
 23 Q. Can you turn to page 10.
 24 A. Yeah.
 25 Q. Do you see a heading underneath the

1 first paragraph?
 2 A. I do.
 3 Q. And can you read that for me.
 4 A. "Storage capacity to be made available
 5 to spaceholder."
 6 Q. And that is paragraph 21 of the
 7 contract?
 8 A. Okay.
 9 Q. Can you read subparagraph (b).
 10 A. "The United States will continue to
 11 make available to the Spaceholder stored water
 12 accruing to 2.6471 percent of the active capacity
 13 of the Replacement Dam unless the Spaceholder is
 14 in default under the terms and conditions of the
 15 Existing Spaceholder Contract or this Spaceholder
 16 Contract."
 17 Q. What does "active capacity" mean to
 18 the company?
 19 A. It means a portion of the full
 20 reservoir content.
 21 Q. Would it be another way to phrase
 22 that, the water that's in the reservoir that's
 23 available for allocation pursuant to contract?
 24 A. Water that is stored and available in
 25 the reservoir to be used to honor the contract,

1 yes.

2 Q. And the term "accruing" meaning that
3 it is actually stored in the reservoir?

4 A. Stored in the reservoir.

5 Q. And for ease of communication I'll
6 refer to the 45,000 acre-feet. I realize that
7 2.64 and the full capacity is 44-and-some-change.
8 But just for easy reference, we'll call it 45,000
9 acre-feet.

10 What does the company use that water
11 for?

12 A. Well, currently the company uses that
13 water to maintain a target flow in the Milner
14 bypass region when there's not already water being
15 released at Milner. We'll call for that water to
16 maintain a 200 cfs target flow.

17 If there are other releases at Milner,
18 then the company will utilize that water for power
19 generation throughout the irrigation season.

20 Q. So the company has an obligation to
21 provide a flow of 200 cfs below Milner?

22 A. That's correct.

23 Q. And what's the source of that
24 obligation?

25 A. Our relicensing -- there's an article

1 in the Milner license that requires us to maintain
2 a target flow for a fishery.

3 Q. And when you talk about the Milner
4 license, that's a license issued by the Federal
5 Energy Regulatory Commission, FERC?

6 A. Correct.

7 Q. And is that 200 cfs requirement
8 applicable all year long or is it seasonal?

9 A. All year long.

10 Q. Can you turn to page 14.

11 A. Okay.

12 Q. I'm interested in talking for a moment
13 about subparagraph (e), which is the last full
14 paragraph on the page. Why don't you take a
15 minute. You can read that to yourself.

16 A. (Reviews.)

17 Okay.

18 Q. And I'm interested, in particular,
19 about the sentence after the number "3" in
20 parentheses about a little more than halfway down.

21 A. Okay.

22 Q. Does that generally describe the
23 relationship between hydropower and irrigation?

24 A. I agree.

25 Q. And what, in the company's view, does

1 it mean for irrigation to be the primary purpose
2 of the project?

3 A. Well, we've talked about that
4 previously. But I think the projects were
5 designated as irrigation first and hydropower
6 second. And I think that statement reflects that.
7 But in this agreement also it says that the
8 spaceholder contract -- the existing spaceholder
9 contract through this agreement will not be
10 altered or changed in any way.

11 And it was my -- I guess let me go
12 back a little bit. When I was made responsible
13 for tracking costs for the reservoir, they were
14 doing some things with O&M on the American Falls
15 Reservoir back in the late '90s where the costs
16 were pretty high.

17 The company, somebody came to me and
18 said "We don't understand why these costs have
19 quadrupled. We want you to start tracking this
20 and try to figure out if you can understand what
21 this is."

22 So I went to a meeting in Burley with
23 the Bureau where they were explaining operation
24 and maintenance costs for a particular year. And
25 it became apparent at that meeting that we had

1 2.6 percent of the storage, which is spelled out
2 here, and that we paid 7.12 -- or 1-4 percent of
3 the O&M costs.

4 I asked the gentleman, I think one of
5 whom is still with the Bureau, but the others
6 probably are not, why that was, and he said it is
7 in accordance with your spaceholder contract.

8 So after further review of this
9 contract, I found this table in here that said our
10 spaceholder contract was a 1923 contract. So at
11 that time I tried to track down the 1923 contract.
12 And that's when I became aware that there was
13 secondary storage.

14 Now, I think based on my review of the
15 records since then, my understanding is is that
16 the company had been aware of this. I was fairly
17 new to this responsibility, so I didn't know much
18 about it.

19 And that's kind of how this, I guess,
20 came about was by trying to understand why we paid
21 more O&M than we had storage. And in reviewing
22 the information and the table that's in this O&M
23 agreement that refers to our 1923 contract as our
24 spaceholder contract, that's -- that's when I
25 started doing a little digging into it. And

1 secondary storage capacity came up, and it -- used
2 to figure the O&M charges.

3 Q. Okay.

4 MR. DeVOE: Can you, for the record, just
5 identify the paragraph that you're talking about?

6 THE WITNESS: The paragraph --

7 MR. DeVOE: For O&M calculation. It's on
8 that page.

9 THE WITNESS: It's on that? Well, I think
10 it would be (b). "Commencing with the year of the
11 first Placeholder, bond payments are due the
12 Placeholder" --

13 THE COURT REPORTER: Hold on. You need to
14 slow down.

15 MR. DeVOE: It's all right, Jon. You don't
16 need to read the paragraph.

17 THE WITNESS: Okay.

18 MR. DeVOE: I just for the record wanted
19 you to identify the paragraph number and
20 subparagraph letter.

21 THE WITNESS: Okay. It's 28(b). It refers
22 to 7.24 percent.

23 Q. (BY MR. GEHLERT): And I appreciate
24 that. Your counsel anticipated one of my
25 questions.

1 A. It was just additional work, accounts
2 that Idaho Power, who had been tracking costs for
3 that, just wanted to know why the costs had
4 quadrupled. And they were legitimate costs. The
5 Bureau had to paint the gates, and that cost a lot
6 of money.

7 Q. Was there anything else besides
8 painting the gates?

9 A. Every year it's different. They do
10 different things every year.

11 Q. Do you know how the number 7.1388 was
12 incorporated into the contract?

13 A. Do I know how it was incorporated into
14 the --

15 Q. Right. Was it part of the
16 negotiations of the contract?

17 A. Are you talking about this particular
18 contract (indicating)?

19 Q. Yes, this contract. Excuse me.

20 A. I don't know. But I do know that
21 prior to the construction of this contract the
22 company referred to that higher percentage of O&M
23 costs based on secondary storage. And then again
24 in testimony after the contract was signed and the
25 dam was completed, the company had also testified

1 A. Okay.

2 Q. You made reference to the company had
3 been aware of this.

4 I just want to clarify, by "this," you
5 meant that the company was paying 7.14 percent of
6 the O&M while holding 2.6 percent of the capacity
7 as set forth in this contract?

8 A. Correct.

9 Q. You mentioned a meeting in Burley.
10 When was that?

11 A. It was in the late '90s. I don't
12 remember specifically whether it was the first
13 meeting on O&M. The Bureau has two meetings every
14 year on O&M. It was the first one that I had ever
15 attended.

16 Q. And very early in your statement about
17 O&M you made a reference to costs quadrupling.

18 Did the amount for which Idaho Power
19 was billed for O&M change at some point?

20 A. It did, because obviously as the
21 costs -- O&M costs go up, our percentage went up.

22 Q. Okay.

23 A. So our O&M charges went up.

24 Q. So it wasn't that the methodology
25 changed, just the costs got --

1 that the higher percentage was due to secondary
2 storage of 255,000 acre-feet.

3 Q. One clarification, and then another
4 question. You and I both referenced "this
5 contract," for purposes of record, we're talking
6 about the 1976 placeholder contract.

7 A. Okay.

8 Q. Do you agree?

9 A. I agree.

10 Q. And you mentioned testimony provided
11 by Idaho Power after this 1976 placeholder
12 contract went into effect.

13 What form was that testimony provided
14 in?

15 A. Well, I may have that, actually, if I
16 can find my -- I referred to testimony prior to.
17 This was a memo that was internal. I'm wondering
18 where that other -- here we go. 1972.

19 And this is a record of excerpts of
20 testimony in the William Kerner case. And that
21 document is from 1978.

22 MR. GEHLERT: Can we get copies of these
23 made?

24 MR. TUCKER: Yeah.

25 MR. DeVOE: Do you want to just take a two-

1 or three-minute break while he's getting copies,
2 and you guys can confer?

3 MR. GEHLERT: Sure.

4 (Recess.)

5 Q. (BY MR. GEHLERT): I had asked you
6 about paragraph 28, subparagraph (e) of the 1976
7 spaceholder contract, and particularly the third
8 clause, which refers to "the primary irrigation
9 purpose and the incidental purposes of the
10 Minidoka project."

11 Does the company have a position on
12 what the incidental purposes of the project are?

13 A. I don't know what that means.

14 Q. And I don't know either. But it's
15 fair to say that under this provision of the
16 contract utilization of water for power generation
17 is subordinate to those purposes, whatever they
18 are?

19 A. (No audible response.)

20 Q. And you need to say "yes" or "no,"
21 Mr. Bowling.

22 A. Yes.

23 Q. I see you nodding your head.

24 A. Yes. Yes.

25 Q. And in the language of the contract,

1 it's that those purposes "...shall not be impaired
2 by the subordinate utilization for power
3 generation at the powerplant of the water
4 released."

5 How might the use of water for power
6 generation impair the irrigation purposes of the
7 project?

8 A. I'm thinking about --

9 Q. Please take your time.

10 A. -- how that might occur.

11 MR. DeVOE: We can clarify this later in
12 the deposition as well, but it probably makes
13 sense to interpose an objection that "the
14 powerplant" is a defined term in the paragraph and
15 in this agreement. And the witness hasn't been
16 asked to talk about that paragraph in those terms.
17 And so the question may be confusing in that
18 regard.

19 THE WITNESS: I think it is, because I
20 think this specifically refers to the American
21 Falls powerplant. And I'm not -- I haven't really
22 looked at ways that the operation of that
23 powerplant would impair the use for irrigation,
24 because it's pretty much, from our standpoint, a
25 run of -- American Falls is a run-of-river

1 powerplant.

2 And we are subject to releases by the
3 Bureau at their call for generation at the
4 American Falls powerplant. And I think that
5 that's what this references.

6 So my comment would be in relation to
7 that. And I'm just not sure how Bureau releases
8 in operating the Upper Snake system and power
9 generation at the American Falls plant would
10 affect irrigation.

11 Q. (BY MR. GEHLERT): Fair enough. And
12 for purposes of this discussion, I'm really not
13 interested in the Bureau's operations. We'll talk
14 about those later.

15 But to make sure I understood what you
16 just told me, you're uncertain of how power
17 generation at the American Falls powerplant could
18 impair the primary irrigation purposes because you
19 consider that powerplant a run-of-the-river plant?

20 A. The only -- anything released past
21 American Falls is at the control of the Bureau.
22 If we have the -- if water's available to generate
23 electricity, then we do so under our falling water
24 contract.

25 And if no water is available, we don't

1 generate electricity at the American Falls plant.
2 And we don't -- we get orders from the Bureau. We
3 generally communicate with them on a regular basis
4 on what the flows are going to be at American
5 Falls so that we can make adjustments. If there's
6 anything that goes on at American Falls
7 powerplant, then it's really controlled by the
8 Bureau.

9 Q. And we'll talk about the falling water
10 contract in a few minutes.

11 A. Okay.

12 Q. But the company does view itself as
13 having an ability to request the 45,000 acre-feet,
14 the 2.64 percent through this contract; correct?

15 A. It does.

16 Q. If you could turn to page 7.

17 A. All right.

18 Q. And actually, I'm sorry, Mr. Bowling.
19 Why don't we start with page 6 so we can have an
20 idea of what we're talking about.

21 A. Okay.

22 Q. The bottom of page 6 is
23 paragraph 19(a) entitled "Purpose and Term."

24 Do you see that?

25 A. Yes.

1 Q. Earlier you made reference to the
2 company's belief that the storage rights were not
3 changed by this contract. And I believe what you
4 had in mind was a sentence beginning on the fifth
5 line down starting "Nothing herein."

6 And I'll ask you if that is what you
7 were thinking of?

8 A. That's correct.

9 Q. And can you read that sentence. And
10 if you could read it for the record, I'd
11 appreciate it.

12 A. Okay. "Nothing herein shall in any
13 way alter or change the present proportionate
14 storage rights of the Placeholder, and this
15 Placeholder Contract and the American Falls
16 Replacement Dam Program constitute a reaffirmation
17 by the United States of the rights of the
18 Placeholder under the existing Placeholder
19 Contract, except as modified by this Placeholder
20 Contract as authorized in the Act of
21 December 28th, 1973, and in this Government
22 Contract."

23 Q. What, in the company's view, are
24 present proportionate storage rights?

25 A. I think they're the rights that were

1 spelled out in the 1923 contract.

2 Q. Both the primary and the secondary?

3 A. I -- I believe so.

4 Q. Okay. And your basis for that belief?

5 A. Is that statement and the fact that
6 the company believe that we had primary and
7 secondary storage rights prior to the
8 implementation of this contract and following the
9 implementation of this contract.

10 And in fact, we have a -- I have seen
11 an internal memo from 1977 from the Bureau that
12 indicates that whoever reviewed the 1923
13 contract -- and again, I think that you probably
14 have this.

15 The conclusion in this by Merrill J.
16 Martz was that -- there's a statement in here that
17 says "The fact that the 1923 contract has been in
18 existence for 54 years without amendment is pretty
19 good evidence that either there is no pressing
20 need to amend it or no mutual agreement could be
21 reached for a permanent change. There are many
22 provisions in the 1923 contract that are no longer
23 applicable. Some of these merely deal with
24 actions that have been completed, such as
25 commitments to sell property and water rights to

1 the United States and provisions for payment
2 therefor. There are, however, provisions in the
3 '23 contract that would not be in conflict -- that
4 would be in conflict with the present new
5 arrangements for the replacement dam."

6 Let's see. "There's also a provision
7 in Article 21 of the 1923 contract which requires
8 that the winter releases for American Falls for
9 use by the company below Milner are to be made in
10 such a way that the required flow can be
11 maintained at Shoshone Falls by the utilization of
12 not more than 3,000 acre-feet of storage capacity
13 at Lake Walcott. I am not aware of any problems
14 that may come up regarding this provision."

15 It says, "The company has a primary
16 storage right in the amount of 45,000 acre-feet of
17 capacity in the American Falls Reservoir and a
18 secondary right to 255,000 acre-feet of capacity.
19 Generally speaking, the 255,000 acre-feet of
20 capacity is usable from the period of November 1
21 until the reservoir first fills, but there are
22 other limitations. Article 19 of the 1923
23 contract provides the company has the right to the
24 first 300,000 feet of water flowing into the
25 reservoir after October 1 and actually storable

1 therein with the exception that precedence is
2 given to the release through American Falls Dam
3 for water to supply the amount of power not
4 exceeding 10,000 kilowatts peaking power to supply
5 the power needs of the Minidoka project and other
6 government uses. The water required to fill the
7 45,000 acre-feet of primary storage is a part of
8 the 300,000 acre-feet. There are differences of
9 opinion between the Bureau and the company
10 regarding whether the company has the right to
11 claim the full 45,000 acre-feet in a year when
12 American Falls Reservoir fails to fill. The
13 Bureau has contended that the company storage
14 should be prorated. The company has consistently
15 denied this interpretation."

16 It goes on to say, "The company would
17 wish to retain the rights it has under the 1923
18 contract to have certain flows below Milner Dam
19 maintained by releases of water stored in the
20 company's 255,000 acre-feet of secondary storage
21 capacity. Generally, these flows have been
22 maintained over the years, and it is not likely
23 there would be conflicts regarding that. However,
24 if a conflict of views should somehow arise, and
25 there would be an interesting set of legal

1 considerations for the reasons that, one,
 2 section 2(a) of the Authorizing Act and
 3 Article 19A of the 1976 spaceholder contract
 4 provides that the construction of the replacement
 5 dam shall constitute reaffirmation of existing
 6 contract rights between the secretary and the
 7 spaceholders, except as otherwise provided in the
 8 Act; two, Section 4 of the Authorizing Act
 9 provides that the contract for falling water shall
 10 not impair the efficiency of the project to serve
 11 the other purposes of the Minidoka project; and
 12 three, Section 4.7 of the falling water contract
 13 provides that no liability shall accrue against
 14 the United States arising from reason of shortage
 15 in the quantity of water available through the
 16 existing dam or replacement dam or interruptions
 17 in water releases resulting from drought,
 18 inaccuracy in distribution, hostile diversions,
 19 prior superior claims, accident to or failure of
 20 the existing dam or the replacement dam.
 21 "On the other hand, the Act reaffirms
 22 the Idaho Power Company's (IPCO) right under the
 23 1923 contract. And on the other hand, the Act
 24 provides that the efficiency of the American Falls
 25 replacement dam to serve the other purposes of the

1 Minidoka project shall not be impaired. The
 2 United States would not wish to be bound by the
 3 provisions of Article 19 that purport to limit the
 4 United States' power marketing area to the
 5 Minidoka project and its proposed extensions, and
 6 including the town of Minidoka and the territory
 7 now supplied by the United States and the camps,
 8 buildings, construction work, dam and adjacent
 9 grounds of the United States at American Falls,
 10 but not elsewhere in the old or new town of
 11 American Falls.
 12 "Although there are provisions in the
 13 1923 contract which are no longer applicable, most
 14 of them have not prevented operations under the
 15 contract since by their very nature they no longer
 16 have effect. While an attempt could be made to
 17 meet the types of problems described above the
 18 contract amendments, it would be more practical
 19 and easier to solve such cases on a case-by-case
 20 basis and when and if they arise without
 21 negotiating an amendment.
 22 "This has been done on quite a few
 23 occasions in the past. It has been possible to
 24 meet circumstances not specifically provided for
 25 in the contract on an ad hoc basis for the benefit

1 of irrigation users with no amendment to the
 2 contract. My conclusion is that it is not
 3 necessary to undertake negotiations to amend the
 4 1923 contract."

5 So I guess my point of just reading
 6 that is that in this memo from the Bureau in 1977
 7 after the 1976 dam replacement contract was
 8 signed, this indicates that even the Bureau
 9 thought that the 1923 contract was intact and that
 10 the 255,000 acre-feet of storage was still a
 11 contract right.

12 Q. Thank you.

13 And why don't we identify the document
 14 that you just read from. It's a memorandum to the
 15 Regional Director from Regional Supervisor of
 16 Power, dated August 2, 1977; is that correct?

17 A. Correct.

18 MR. GEHLERT: And we might as well have it
 19 marked.

20 MR. DeVOE: Let's see if we have extra
 21 copies of that.

22 I don't know that this -- is this the
 23 original? I mean it's not --

24 MR. TUCKER: Oh, it's not an original, no.

25 MR. DeVOE: Any reason we can't just offer

1 this as the exhibit?

2 MR. TUCKER: I don't see any reason.

3 MR. DeVOE: Let's go ahead and mark that
 4 copy.

5 MR. GEHLERT: I've lost track of what
 6 number we're on.

7 MR. SCOTT: 7.

8 MR. GEHLERT: 7.

9 (Exhibit 7 marked.)

10 THE WITNESS: You know, I guess I've
 11 reviewed quite a few documents, and I've reviewed
 12 early documents, I've reviewed these later
 13 documents, I've seen some of this testimony, and
 14 there really isn't anything that leads me to
 15 believe that the company ever gave up the right
 16 that it had established in the 1923 contract.

17 I think what's at issue is how that
 18 contract will be honored. For me, this is a
 19 fairly simple -- I know it's a complicated issue
 20 for some, but for me it's fairly simple, and --
 21 based on my knowledge of the things I've reviewed.

22 Q. (BY MR. GEHLERT): Fair enough. What
 23 does "proportionate" mean?

24 A. Percentage.

25 Q. In what sense is the secondary storage

1 capacity right proportionate?
 2 A. I think they're talking about the
 3 active storage capacity in that.
 4 Q. So "the present proportionate storage"
 5 refers to active capacity?
 6 A. Because I think we've established that
 7 the secondary storage capacity is a pass-through
 8 and is not active storage capacity.
 9 Q. Thank you. I would agree.
 10 The memo that you referenced and the
 11 last part of paragraph 19(a) -- and feel free to
 12 read it if you want -- talk about how some
 13 portions of the 1923 contract might not be
 14 applicable. And the contract itself, it says that
 15 "It is the intention of the United States and the
 16 Spaceholder to subsequently meet and review the
 17 existing Spaceholder Contract for possible
 18 revision."
 19 A. That might have been the intention,
 20 but it has never happened.
 21 Q. All right. You anticipated my
 22 question. And the meeting has never happened.
 23 Did Idaho Power ever ask for such a
 24 meeting?
 25 A. I think that based on the information

1 A. Just paying the bills.
 2 Q. Paying the bills, paying the O&M
 3 bills?
 4 A. The O&M bills, and that's about it.
 5 Q. Okay. If you could turn to page 10.
 6 And the first half of page 10 is a continuation of
 7 section 2.1 from page 9.
 8 A. Okay.
 9 Q. I'm interested in subparagraph (e).
 10 A. Okay.
 11 Q. And in the company's view what does it
 12 mean that "Less than 10 percent of the water
 13 accruing to the active storage capacity in the
 14 Replacement Dam may be contractually scheduled for
 15 release from the Replacement Dam by the Idaho
 16 Power Company"?
 17 A. I think that that means that active
 18 storage, that the company could only acquire no
 19 more than 10 percent of the active storage of the
 20 reservoir.
 21 Q. And that's distinguished from a
 22 pass-through?
 23 A. From a secondary storage capacity.
 24 Q. Right. And what does "contractually
 25 scheduled" mean?

1 that I've seen, we have not. And I think based on
 2 the last document that I read, the Bureau, at
 3 least that person, agreed that it wasn't
 4 necessary.
 5 Q. A moment ago you made reference to the
 6 falling water contract.
 7 A. Uh-huh.
 8 Q. Why don't we take a look at that for a
 9 few minutes.
 10 A. Okay.
 11 MR. GEHLERT: If my math is correct, we're
 12 up to Exhibit 8. Could I have this marked.
 13 (Exhibit 8 marked.)
 14 Q. (BY MR. GEHLERT): If you're ready,
 15 there's just a few provisions I'd like to ask you
 16 about.
 17 A. Okay.
 18 Q. If you could turn to -- well, I should
 19 ask you, are you familiar with this contract?
 20 A. I have reviewed it, and I'm generally
 21 familiar with it.
 22 Q. I'll talk with you later in more
 23 detail about what your job requires.
 24 But do you have any interaction with
 25 the contracts as part of your job?

1 A. I think that refers to the contractual
 2 scheduled release of active storage. That would
 3 be the contractual scheduled release of our 45,000
 4 acre-feet.
 5 Q. And I just need to understand what
 6 "contractual scheduled release" means. I mean I
 7 wouldn't think that you have a contract every year
 8 about when you want your water.
 9 A. I think the 1923 contract spells out
 10 that the company has the right to call for the
 11 release of the 45,000 during certain times of the
 12 year.
 13 Q. Uh-huh.
 14 A. To me, that's what that means by
 15 "contractually scheduled."
 16 Q. Okay. I was going to ask you if there
 17 was a distinction in your mind between
 18 "contractually scheduled" and "requested"?
 19 A. To me, it's the same thing. There's a
 20 schedule, a release period. To me, that's the
 21 contractual schedule.
 22 Q. And we'll talk later about how that
 23 plays out in practice, but let's just finish up
 24 with this contract before we get to that.
 25 A. Okay.

1 Q. If you could turn to page 19. Is it
2 fair to characterize -- and I'll give you a minute
3 to review it. I'm interested in section 4.6, and
4 in particular, the material under
5 subparagraph (a).

6 Is it fair to characterize that as
7 Idaho Power's agreement regarding certain criteria
8 for operation of the reservoir?

9 A. I'll probably have you repeat that
10 question after I finish reading this.

11 Q. Please, take your time.

12 A. (Reviews.)

13 Okay. What was your question again?

14 Q. Is it fair to characterize that
15 section as Idaho Power's agreement to certain
16 criteria regarding how the dam should be operated?

17 A. I think so, because we -- it's in the
18 agreement and it speaks for itself and we signed
19 it.

20 Q. Sure. And subparagraph (a), just to
21 be overly detailed, comes from the government
22 contract, as is incorporated by reference?

23 A. Yes.

24 Q. And subsection (3) is the same primary
25 purposes language that appears in the placeholder

1 provided pursuant to the falling water contract;
2 correct?

3 A. Correct, other than other water that
4 the company leased.

5 Q. And that would be the water that
6 you've leased from the Sho-Bans? I think that's
7 S-h-o, dash B-a-n.

8 A. Correct. Close enough.

9 Q. And when did the company contract with
10 the Sho-Bans?

11 A. In 2009.

12 Q. And how much water does that contract
13 provide for?

14 A. 45,716 acre-feet.

15 Q. And where is that water stored?

16 A. In American Falls.

17 Q. And the company views that water as
18 equivalent to your primary storage right, you can
19 call for it?

20 A. Well, in the contract with the
21 Shoshone-Bannock Tribe, we could use that water
22 anytime from April 1st through October 12th.

23 Q. And what happens if the company
24 doesn't use it by October 12th?

25 A. It carries over.

1 contract that we talked about earlier; correct?

2 A. I'll have to look.

3 Q. If you want to compare them, feel
4 free.

5 A. I do.

6 What page was that?

7 MR. DeVOE: Page 14 of the '76 contract,
8 Exhibit 5. That's in paragraph 28(e)(3).

9 THE WITNESS: I agree that it's the same.

10 Q. (BY MR. GEHLERT): Thank you.

11 I'm curious, how much water did Idaho
12 Power use to generate hydropower at the American
13 Falls powerplant last year?

14 A. I don't know that right off the top of
15 my head.

16 Q. Can you just give me a ballpark
17 number? It doesn't have to be exact.

18 A. I can't give you a ballpark number.

19 Q. Is it hundreds of thousands of
20 acre-feet or tens of thousands?

21 A. I would say hundreds of thousands of
22 acre-feet.

23 Q. Okay. And my point being that other
24 than the 45,000 that's provided for under the 1976
25 placeholder contract, the rest of the water was

1 Q. Carries over. Okay. Any other
2 sources of water available to the company for
3 generation at American Falls besides the falling
4 water contract, primary 1976 placeholder contract,
5 and the Sho-Ban water?

6 A. That we can generate with at American
7 Falls?

8 Q. Yes.

9 A. It's probably not likely, because
10 there's a certain spin no-load flow that goes
11 through the turbines at which we cannot generate.

12 Q. And what is that number?

13 A. I think it's about a thousand cfs.
14 That's -- I guess you're going to quote me on
15 that, but --

16 Q. No, no. That's consistent with my
17 understanding of it too. For purposes of this
18 deposition, we don't have to get it exactly right.

19 A. Okay.

20 Q. I was going to ask you at some point
21 if there is, in fact, a minimum that was required
22 to spin the turbines and generate electricity?

23 A. Right.

24 Q. So it's roughly a thousand cfs?

25 A. There is. At almost all hydro

1 projects, there is.

2 Q. And is that called "spin no-load" or
3 "speed no-load" or --

4 A. Well, I call it "spin no-load."
5 That's the minimum amount required to spin it with
6 no load, and then you need more water than that
7 when you start putting a load on it to actually
8 push the turbine.

9 Q. Okay. And am I correct in
10 understanding that the turbines work at different
11 efficiencies relative to the flow rate?

12 A. They do.

13 Q. So they're relatively inefficient at a
14 thousand cfs through American Falls?

15 A. Correct.

16 Q. And then it gets increasingly
17 efficient as you get up to some -- does it go all
18 the way up to the capacity, or is there some lower
19 number that you hit?

20 A. There's what we call the sweet spot,
21 and highest efficiency is somewhere along the
22 middle of the curve. At flows above that, the
23 efficiency drops off; and at flows below that, the
24 efficiency drops off.

25 Q. Okay.

1 A. But with -- there's Kaplan units and
2 Francis units.

3 Q. And are those measures of efficiency?

4 A. Those are different types of turbine.

5 Q. Okay.

6 A. And a Kaplan unit allows you to vary
7 the pitch of the turbine blades to maximize the
8 efficiency at all flows.

9 Q. So there's more flexibility with a
10 Kaplan unit than a Francis?

11 A. That's my understanding.

12 Q. And is Kaplan the manufacturer or --

13 A. It's a type of turbine. I think
14 there's a guy named Francis that invented that
15 turbine, and Kaplan invented that one.

16 Q. And do you have Kaplans or Francis at
17 American Falls?

18 A. Kaplan. We can vary.

19 Q. And you mentioned the "sweet spot."

20 Roughly what is that for the American
21 Falls powerplant?

22 A. Well, it depends on the unit. I have
23 some information that you've been provided, I
24 think, just for reference, if I indeed brought it.

25 And this is just a printout. And I think that you

1 were provided with this information. It's just an
2 informational thing on American Falls.

3 Q. We may have been provided it, but I
4 have not seen it.

5 A. So at American Falls there's three
6 units. The total hydraulic capacity is 16,500.
7 And so if you divide that up into three, that's
8 typically what the normal operating range is for
9 one unit. But again, because they're variable
10 pitch blades, the efficiency can be maximized.

11 Q. Okay. And so it's maximized -- when
12 you said a thousand cfs, I take it that's a
13 thousand cfs per turbine, or total?

14 A. I think that's per turbine. But I --
15 maybe not. I guess I don't understand enough
16 about it to know.

17 Q. Okay.

18 A. I just know that may be per turbine.
19 It's a spin no-load on each one. And we wouldn't
20 run all of them at the same time. If there was
21 enough water to spin one of them, we would use
22 that until we got to a point where more turbines
23 had to be brought on. So I'm assuming fairly
24 confidently that that's one unit.

25 Q. Okay. That makes sense. Are the

1 three turbines at American Falls all the same?

2 A. They are.

3 Q. So you basically would use one up to
4 roughly 5,500 cfs and then kick it into the second
5 one?

6 A. Well, probably not.

7 Q. Okay. Why not?

8 A. We may bring another one on just to
9 make sure that we were at a maximum efficiency.

10 Q. Okay.

11 A. Even though the blades are variable,
12 there's still a point where they operate at the
13 most efficient level.

14 Q. And for purposes of this discussion, I
15 don't think we need to understand anything more
16 than a thousand is the floor, you can't generate
17 below that, and then as it goes up, you utilize
18 your turbine capacity in the most efficient way
19 possible?

20 A. That's my understanding.

21 Q. Okay.

22 A. And I'm not an operator, but that's my
23 understanding.

24 Q. Who is the operator or what unit in
25 the company operates the powerplant?

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1 A. Well, there's a specific crew that
 2 lives up there that works for Idaho Power Company
 3 that operates the American Falls plant.
 4 Q. And what is that unit called?
 5 A. American Falls operators.
 6 MR. DeVOE: Crafty title.
 7 MR. GEHLERT: Yeah, I would have never
 8 figured that one out.
 9 Q. Well, while we're talking about your
 10 turbines and capacities, why don't we just get all
 11 that on the table. And I brought a map, which I'm
 12 sure you've seen before, and I think it was an
 13 exhibit in one or more of the prior depositions,
 14 just for purposes of guiding our discussion. So
 15 I'll hand you a copy of that.
 16 One for your counsel.
 17 One for the record.
 18 (Exhibit 9 marked.)
 19 Q. (BY MR. GEHLERT): And I'm really only
 20 interested in the stretch from American Falls to
 21 your plant at Shoshone Falls.
 22 A. Okay.
 23 Q. Moving downstream from American Falls,
 24 there's a powerplant at Lake Walcott.
 25 That's a federal facility; correct?

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1 A. Correct.
 2 Q. There is a powerplant at Milner.
 3 A. Correct.
 4 Q. Who owns that?
 5 A. Idaho Power Company owns the
 6 powerplant.
 7 Q. Is the powerplant part of the dam or
 8 is it downstream from the dam?
 9 A. It's downstream from the dam.
 10 Q. And who owns the dam?
 11 A. The Twin Falls/North Side Canal
 12 Company.
 13 Q. Okay. And then the next powerplant
 14 downstream is Twin Falls?
 15 A. Correct.
 16 Q. And then there's one at Shoshone as
 17 well?
 18 A. Correct.
 19 Q. And those are both Idaho Power
 20 Company?
 21 A. Correct.
 22 Q. Am I correct in understanding that the
 23 powerplant in Twin Falls was operated at some
 24 point in the recent past?
 25 A. Correct.

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1 Q. When was that?
 2 A. In the early '90s.
 3 Q. And what was done?
 4 A. It was -- a unit was added, my
 5 understanding.
 6 Q. So how many turbines are there at Twin
 7 Falls now?
 8 A. There's two units.
 9 Q. "Units" being turbines?
 10 A. Correct.
 11 Q. Are they Francis or Kaplan?
 12 A. One Kaplan and one Francis.
 13 Q. And what's the spin no-load for Twin
 14 Falls?
 15 A. Well, there's a small unit that is
 16 8.4 megawatts. So I imagine that it's fairly
 17 small. And this information I have here doesn't
 18 necessarily tell exactly what it is, but -- I
 19 can't answer that.
 20 Q. Okay. Who could answer that?
 21 A. Well, I could answer it if I had
 22 access to different information.
 23 Q. Okay. Is there a Twin Falls operator?
 24 A. There's a Twin Falls operator.
 25 Q. And so certainly they would know?

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1 A. They would.
 2 Q. And you could find the information for
 3 us?
 4 A. Yes.
 5 Q. How about at Shoshone?
 6 A. Shoshone Falls, there are three units:
 7 Two real small units, and then an 11 1/2 megawatt
 8 unit.
 9 MR. DeVOE: In fact, if we want to expedite
 10 the deposition, we'll be happy to give you any
 11 information you want on the company's powerplants.
 12 MR. GEHLERT: Okay. That's fine. And I
 13 appreciate that.
 14 Q. I'm interested in just a couple of
 15 things about the powerplants, and then we'll move
 16 on.
 17 A. Okay.
 18 Q. Are there reach gains between American
 19 Falls and the Twin Falls powerplant?
 20 A. There is.
 21 Q. Can you give me an approximate volume?
 22 A. An approximate cfs.
 23 Q. Cfs would be fine.
 24 A. Probably 300. And that varies,
 25 depending upon the time of year.

1 Q. Higher in the fall or --

2 A. It kind of just depends.

3 Q. Okay. What are those reach gains
4 composed of?

5 A. Irrigation return flows, spring flows,
6 natural flow from precipitation events, creeks,
7 things like that.

8 Q. Okay. And you mentioned the dam at
9 Milner.

10 Is that senior or junior to American
11 Falls Reservoir?

12 A. Well, I think that's something that is
13 just -- is in litigation right now. So...

14 Q. Okay. Fair enough.

15 A. I don't know that it's been finally
16 decided.

17 Q. Is it the company's position that
18 water released or passed through -- excuse me, --
19 passed through American Falls Reservoir under the
20 1923 contract, the secondary storage capacity
21 provisions, would not be subject to being diverted
22 at Milner or stored at Milner?

23 A. I think the company's position is that
24 sufficient flow needs to be passed through to meet
25 the flow targets at the Snake River near Kimberly.

1 MR. DeVOE: Speak up, Jon.

2 THE WITNESS: Did you get that?

3 THE COURT REPORTER: "Snake River near
4 Kimberly"?

5 THE WITNESS: "Snake River near Kimberly."

6 Q. (BY MR. GEHLERT): When you say
7 "sufficient water needs to be passed," you're
8 talking about North Side Canal Company refraining
9 from either diverting it or storing it with Milner
10 Dam?

11 A. Well, we are partners with Twin
12 Falls/North Side Canal Company. And we are joint
13 applicants on the FERC license. And so we
14 cooperate, coordinate our operations with them,
15 including maintenance.

16 And so there are times when the
17 reservoir is drafted and stored and water is
18 stored and to refill that in cooperation with the
19 power company under our FERC license.

20 Q. And who actually operates the dam?

21 A. During the winter Idaho Power operates
22 the powerplant, pretty much operates the dam, is
23 my understanding.

24 And during the irrigation season, it's
25 operated by Twin Falls/North Side Canal Company.

1 Q. And "winter" being defined as not the
2 irrigation season?

3 A. I would say after irrigation stops,
4 after they quit diverting water into the canals,
5 until they start diverting water in the canals.

6 Q. And realizing that's different every
7 year?

8 A. And that's October through
9 wintertime -- nonirrigation would be
10 October/November through March/April.

11 Q. If you've got some additional
12 patience, why don't we clean up a couple things
13 relating to the objections, and then we'll get to
14 the lunch break.

15 A. Okay.

16 Q. And the objections were Exhibit No. 3.

17 A. Okay.

18 Q. And I'm interested in particular in
19 paragraph D.

20 And I'm sorry, Mr. Bowling, I can't
21 remember whether you told me you were involved in
22 the drafting of these or not.

23 A. I was not.

24 Q. Okay. And did you tell me who was?

25 A. Our attorneys.

1 Q. Okay. On page 2 at the bottom, the
2 last paragraph starts "The exercise of this water
3 right." Page 2 of the objections, Exhibit 3.

4 A. I'm looking at your objection.

5 Q. No, your objections to our water
6 right.

7 A. I think this is actually your
8 objections to your water rights.

9 Is that true?

10 MR. DeVOE: Yeah, the one you're looking at
11 is the U.S. objection to its own water right.

12 THE WITNESS: Right.

13 MR. DeVOE: You want to be looking at the
14 Idaho Power Company objection to --

15 THE WITNESS: -- to their water right.

16 MR. DeVOE: I may have a copy of that.

17 MR. GEHLERT: And I may have an extra copy
18 too.

19 THE WITNESS: And I think it's in this
20 folder I have. Let me look and see.

21 MR. DeVOE: Here you go, Jon.

22 THE WITNESS: Okay. Thanks. Sorry. Okay.

23 Q. (BY MR. GEHLERT): Bottom of page 2,
24 please.

25 A. Okay.

1 Q. Last paragraph starting with "The
2 exercise of this water right."
3 A. Okay.
4 Q. Why don't you read it to yourself for
5 a moment.
6 A. (Reviews.)
7 Okay.
8 Q. I take it the company's position is
9 that phrase is a necessary component of the water
10 right to be issued to the United States?
11 A. Well, my understanding of this entire
12 filing was that the company wanted to make sure
13 that the Bureau had claimed sufficient water to
14 comply with the 1923 contract.
15 And I also understand that it's the
16 same proportions for irrigation storage and power
17 storage as the Bureau's own objections to their
18 own filing.
19 Q. When you say "proportion," you're
20 talking about in paragraph 7 it says "Irrigation
21 storage should be 1,655,000 acre-feet"?
22 A. Correct. And power storage should be
23 300,000.
24 Q. So the source of those numbers was the
25 Bureau's objection?

1 A. My understanding is that that's true.
2 MR. DeVOE: And for the record, let's go
3 ahead and designate the Bureau's objection, just
4 so we have it --
5 MR. GEHLERT: Certainly.
6 MR. DeVOE: -- in the --
7 MR. GEHLERT: What exhibit number are we
8 on?
9 MR. SCOTT: 10.
10 MR. DeVOE: 10.
11 MR. GEHLERT: 10.
12 MR. DeVOE: And I have an extra copy that I
13 think is clean.
14 MS. McHUGH: Can I clarify? That's the
15 Bureau's objection to water right 2064?
16 MR. GEHLERT: Yes.
17 MS. McHUGH: Okay.
18 MR. GEHLERT: Thank you, Candice. Looks
19 like it was filed on or about April 20th, 2007,
20 judging by the date stamp.
21 (Exhibit 10 marked.)
22 Q. (BY MR. GEHLERT): I'm going to ask
23 you a series of questions about the terms that are
24 in this objection. And if you don't know the
25 answer, just tell me who would know --

1 A. Okay.
2 Q. -- and we can move on from there.
3 A. All right.
4 Q. Why does the company believe that it's
5 necessary to have the paragraph we just spoke
6 about, the one that starts "The exercise of this
7 water right as subject to the obligation of the
8 United States" included in the United States water
9 right?
10 A. We just wanted to make sure that the
11 Bureau had sufficient water rights claims to cover
12 their obligations under the contract.
13 Q. Sufficient claims in terms of the
14 quantity?
15 A. The quantity.
16 Q. Of water claimed by the Bureau?
17 A. Correct.
18 Q. If you look at the top of page 3 --
19 A. Okay.
20 Q. -- it says, "The following remarks
21 should be added under this element as being
22 necessary for the administration or definition of
23 this water right." And then it talks about the
24 45,000 acre-feet of primary reservoir storage.
25 Why does the company believe that's

1 necessary for the administration or definition of
2 the water right?
3 A. I believe that that is in there to
4 make sure that it's understood that the 45,000
5 acre-feet of primary storage can be called for and
6 used downstream of American Falls Reservoir at all
7 of the company's facilities.
8 Q. To put it in more legalistic jargon,
9 it's talking about the place of use for the water?
10 A. Well, just to be understood, that it's
11 not just water that -- if we call for, we will use
12 at American Falls. It needs to be able to pass
13 Milner to get downstream for hydro-generation at
14 our other project.
15 Q. Turning to paragraph E, "Reasons
16 Supporting Objections."
17 A. Okay.
18 Q. We talked a little bit about that.
19 There was one aspect of it that I found
20 particularly interesting. I'll give you a moment
21 to find it.
22 The material we talked about earlier
23 starts at the fifth line down, "...the United
24 States granted to Idaho Power, and Idaho Power
25 reserved, storage capacity and a water right in

1 the reservoir of 45,000 acre-feet of active or
2 primary storage for hydropower use."

3 A. Okay.

4 Q. What's the company's basis for
5 describing that as a water right in the reservoir?

6 MR. DeVOE: Objection. Calls for a legal
7 conclusion.

8 THE WITNESS: Is this where you want me to
9 tell you who might be able to answer that?

10 MR. GEHLERT: Sure.

11 THE WITNESS: I think maybe Jim Tucker
12 could.

13 MR. GEHLERT: Okay.

14 MS. McHUGH: There you go.

15 MR. GEHLERT: And I ask the question only
16 because it's my understanding that Idaho Power
17 Company has dropped its claims to a water right,
18 and that this case is now focused on what the
19 terms of the United States water right will be.
20 Is --

21 MR. DeVOE: Well, it's not Mr. Tucker's
22 deposition today.

23 MR. GEHLERT: All right.

24 MR. DeVOE: And we can discuss this in
25 settlement off the record.

1 Q. And do you have contracts through
2 which you provide --

3 A. We do --

4 Q. -- power?

5 A. -- have some contracts that we provide
6 energy to commercial and industrial users, and
7 everything is rate-based according to schedules
8 that the PUC and the company work out. There are
9 different rate schedules for different customer
10 classes, very similar to any utility that provides
11 electricity.

12 Q. Hopefully for your sake there's not
13 500,000 separate contracts?

14 A. There is not. The majority of our
15 customers are residential customers. And they are
16 just regular -- we're regulated through the PUC to
17 provide energy to them according to the rate
18 schedule set out for residential customers.

19 Q. And they in effect demand the energy
20 by how they operate their air conditioning and
21 whatnot or --

22 A. They have a meter, and they use
23 electricity at will.

24 Q. Okay. And you mentioned you have some
25 contracts with entities, I think you mentioned

1 Q. (BY MR. GEHLERT): I'll ask
2 Mr. Bowling if he thinks that that is a correct
3 summation.

4 A. I don't know.

5 Q. Fair enough.

6 MR. TUCKER: I'll be happy to discuss it
7 off the record, if you want to.

8 MR. GEHLERT: Okay. Why don't we just take
9 a break.

10 MR. DeVOE: Great.

11 (Lunch recess.)

12 Q. (BY MR. GEHLERT): All right. Ready
13 to talk about something that will probably be more
14 enjoyable for you.

15 A. Well, all right.

16 Q. I'm just looking for an understanding
17 of what Idaho Power does.

18 I mean I know you use the water that
19 you've contracted for for hydropower generation,
20 and I assume you then sell it?

21 A. Well, we supply energy to a population
22 of about a million people. And we have close to
23 500,000 customers: industrial, commercial,
24 residential. We provide power to all of those
25 customers. And that's what we do.

1 businesses in particular.

2 Roughly how many?

3 A. I don't know. I think that's public
4 information that can be gotten on the PUC website,
5 though.

6 Q. Okay. Is hydropower the only source
7 Idaho Power has for the electricity that it
8 provides to its customers?

9 A. It is not the only source. We are
10 partners in three coal-fire plants and we have two
11 gas turbines, and we buy energy on the market.

12 Q. Isn't that called the secondary
13 market?

14 A. Could be.

15 Q. Okay. Roughly what percentage does
16 hydropower supply of the total energy that Idaho
17 Power provides to its customers?

18 A. Of our generation in a normal water
19 year, probably 55 percent of our energy that we
20 generate is hydropower; 45 percent, roughly, is
21 thermal. And on a whole, we provide -- about
22 22 percent of the energy we provide for our
23 customers from the market.

24 Q. Okay. So you use the market every
25 year, it's not just an emergency provision?

1 A. Every year, that's right.

2 Q. Is buying power from the market more
3 expensive for Idaho Power than generating it
4 yourself?

5 A. It is.

6 Q. Is it -- just I have no idea of what
7 the costs are on this. Is it substantially more
8 expensive? close?

9 A. Well, it could be, depending upon the
10 time of year.

11 Q. Could be substantially more expensive
12 or could be close?

13 A. Could be substantially more expensive,
14 and it is in the summer. To go to the market
15 costs more than our thermopower plants or our
16 hydropower plants to produce the energy.

17 Q. And generally energy is most valuable
18 in the summer; is that correct?

19 A. It's generally most valuable in the
20 summer. That's our peak period.

21 Q. Earlier you talked about wanting to
22 know the Bureau's expectations as far as its
23 operations.

24 And I take it that's so the company
25 can position itself to be able to supply its

1 the thousands of dollars per megawatt hour, that's
2 when we implemented this risk management thing so
3 that we would never be caught on a short-term
4 basis having to pay these exorbitant prices. So
5 we're always managing our portfolio for an
6 extended period so that we can minimize that risk.

7 Q. Am I correct in understanding that
8 these contracts basically commit Idaho Power to
9 provide a certain quantity of energy to the
10 contractor at a certain time?

11 A. That's correct.

12 Q. And so if you have to resort to the
13 market more than you anticipated, and therefore
14 you're paying more for the energy that you're
15 providing, does that cost get passed through to
16 the customer?

17 A. It does.

18 Q. All of it or just some of it?

19 A. We have a 95/5 sharing relationship
20 with the customer. So 95 percent of the downside
21 gets passed through to the customer.

22 Q. And earlier this morning we talked
23 about the water that Idaho Power has rented from
24 the Shoshone-Bannock tribe.

25 And why did the company rent that

1 customers in the most economically efficient way?

2 A. Correct.

3 Q. Okay. How far in advance do you need
4 to know to be able to do that?

5 A. We have a risk management plan that we
6 implement that we look out 18 months and try to
7 fill our deficits or take care of our surpluses on
8 a monthly basis every month for a rolling 18-month
9 period.

10 Q. That being 18 months in the future?

11 A. 18 months in the future.

12 Q. That must be challenging, given what
13 we've talked about in terms of forecasting.

14 A. It is challenging. And we buy and
15 sell electricity every month in that 18-month
16 period. And at times we buy electricity and then
17 we sell it back and then we buy it back. But in
18 order to manage our risk, we try to stay on top of
19 surpluses and deficits as best we can.

20 Q. And what's the risk that you're
21 managing?

22 A. Cost increases for our customer. Our
23 ultimate goal is to maintain the lowest prices
24 that we can for our customers. And in 2001 when
25 the energy crisis hit and energy prices went into

1 water?

2 A. Why did the company rent it? Because
3 we could release it in the summer during our peak
4 period at a time when energy prices are higher,
5 demand is higher, our transmission facilities are
6 limited, and it allows us to offset costs and
7 helps improve our reliability.

8 Q. Uh-huh. Is hydropower generally the
9 cheapest of the sources of power that you have?

10 A. I'd say yes.

11 Q. Do you know, has Idaho Power rented
12 water for use in generation at American Falls or
13 in the Upper Snake prior to doing so from the
14 Sho-Bans?

15 A. Yes.

16 Q. And when was that?

17 A. Well, actually, in 2009 we rented
18 41,000 acre-feet of water from the Upper Snake
19 water bank as well as the Sho-Ban water.

20 Q. Okay. And when was that water
21 released?

22 A. In the summer and fall of 2009.

23 Q. And how about previous to that?

24 A. We have leased water in previous
25 years. A lot of the water that we used to lease

Page 122 1 was part of the water budget. It was started to 2 provide flows for salmon. But prior to that the 3 company, when necessary and water was available, 4 would lease water. 5 Typically, we would lease that water 6 for release in the fall. And I don't know the 7 specific years and the specific amounts, but I 8 know that on several occasions in the past we have 9 leased water. 10 Q. You used the term "water budget," and 11 I'm sorry, I'm just not familiar with that. 12 A. That was a plan that was concocted by 13 the federal agencies and I believe the Northwest 14 Powerplanting Council to provide water for 15 downstream fish migration. And that was what they 16 called it. 17 Q. Okay. What was the time frame on 18 that? 19 A. Mid-'80s to early '90s. 20 Q. If I recall right from reading your 21 deposition with Mr. Prouty, one of your first 22 responsibilities at Idaho Power was operating the 23 water-availability model, which I believe is 24 called PDR-580; is that correct? 25 A. Yeah. And it's a power generation,	Page 124 1 A. Kilowatts, megawatts. 2 Q. Okay. Are you still involved with 3 that model? 4 A. We still run that model in my group. 5 Q. Okay. 6 A. We use that model for various studies, 7 and it's the model that we use for our integrated 8 resource plan that we produce every two years. 9 Q. And what is the integrated resource 10 plan? 11 A. It's our plan for a 20-year period of 12 necessary resources that we will need to bring on 13 in the future to meet our customer demand. 14 Q. At a simplistic level, it's estimating 15 what the demand will be out over these 20 years 16 and gives you a means to try to figure out what 17 you need to do to be in position to meet that? 18 A. That's right. Correct. 19 Q. Okay. You mentioned that stream flows 20 were an input. 21 How are the stream flows determined? 22 A. For the integrated resource plan, we 23 use the IDWR Snake River planning model. 24 Q. And I'm not familiar with that. 25 Does that make projections?
Page 123 1 hydropower generation model. 2 Q. And what does the 3 hydro-generation-power model entail? 4 A. You load forecast flows or study flows 5 into the model for each of our forecast points. 6 And each one of our hydro projects is a forecast 7 point. 8 And then you run that model for a 9 period of time to see what your surpluses and 10 deficits for your energy demands are. 11 Q. So in effect, does it predict how much 12 water would be available for use at each of the 13 facilities over a range of time? 14 A. It does not. 15 Q. Okay. Then what does it do? 16 A. It calculates generation based on 17 thermal load, which is a base load, which goes 18 into a load file, and stream flows, which run 19 through the hydro projects for the main stem power 20 project. 21 Q. So stream flows are one of the inputs, 22 and the output is quantity of -- 23 A. Generation. 24 Q. -- generation? 25 And that's in kilowatts or --	Page 125 1 A. It's based on historical reach gains. 2 And so you're assuming that if history repeats 3 itself at today's current level of development, 4 hydro projects, irrigation diversions, and that 5 water was shaped on a monthly basis, if you take 6 historical reach gains, shape them in today's 7 level of development on a monthly basis -- 8 Q. Right. 9 A. -- then it reduces various stream 10 flows up and down the river. 11 Q. And fed into that is historic flow 12 data? 13 A. Historic reach gain data. 14 Q. Reach gain. 15 A. It's a model that's produced by the 16 Idaho Department of Water Resources. It's been 17 accepted for use by the PUC for the company, and 18 that's the model we use. 19 Q. Okay. Back to that PDR-580. 20 Is there another name for that? 21 A. No. 22 Q. Okay. What do you use for the input 23 for stream flows with that model? 24 A. We use output from the IDWR planning 25 model.

1 Q. And does the planning model
2 effectively run some period of past data through
3 it and then give you a projection that
4 corresponds? You take a 20-year set of hydrology
5 records and put it in, and then it gives you a
6 projection out over 20 years?

7 A. Yeah, it's a -- it doesn't predict
8 anything.

9 Q. Okay.

10 A. It's not a prediction tool. It
11 doesn't do a forecast.

12 What it does is it shapes historical
13 reach gains -- again, at the current level of
14 development -- from a period from 1928, and I
15 think the model now is calibrated through 2005.
16 So it takes those historical reach gains and
17 shapes that for that period '28 through 2005.

18 And you end up with a series of flows
19 for each year from 1928 through 2005 at various
20 targets along the river.

21 Q. Are those targets typically gauges
22 or --

23 A. They are. Some of them are gauges,
24 and most of them coincide with the gauges that are
25 on the Snake River.

1 Q. Do you know, does the model factor in
2 water rights at all?

3 A. It does not.

4 Q. We talked a little bit this morning
5 about how Idaho Power gets water pursuant to its
6 contract.

7 And if I recall right, you mentioned
8 that it's through Water District 1; is that
9 correct?

10 A. Through our contract for primary
11 storage?

12 Q. Yes. Or --

13 A. Typically.

14 Q. -- either of the contracts that we've
15 talked about today. I mean eventually I'll ask
16 you about both.

17 A. The O&M contract?

18 Q. Placeholder contract, I think that's
19 what you mean by "O&M contract."

20 A. When we release our 45,000 acre-feet
21 of primary storage, we have a discussion with
22 Water District 1, and they start tracking that
23 water. We have a conversation with the Bureau of
24 Reclamation and our plant operators at Milner so
25 that they know what to release. If anything

1 changes, we contact Water District 1, and they
2 take care of the accounting.

3 Q. And how long has Water District 1 been
4 administering the contract?

5 A. I would guess since it's been in
6 existence.

7 Q. Okay. How long have you worked for
8 Idaho Power?

9 A. Since 1993.

10 Q. Okay. So certainly since 1993,
11 probably earlier?

12 A. Yes.

13 Q. Okay. You mentioned to Mr. Prouty
14 that it was common for there to be a notation or
15 other sort of communication that in effect said
16 this is pursuant to your primary storage right.

17 Do you recall saying that or --

18 MR. DeVOE: Object. Foundation.

19 MR. GEHLERT: Sure.

20 THE WITNESS: I don't really recall, but --

21 Q. (BY MR. GEHLERT): Well, is there a
22 notation of some form?

23 A. We track our primary storage, and
24 Water District 1 tracks our primary storage. When
25 we think that we are getting pretty close to using

1 it, we contact Water District 1, and they give us
2 the fine details on when and how much water may be
3 available and for how long.

4 Q. Okay. When you say "when we're
5 getting pretty close to using it," meaning that
6 we're contemplating that we will ask for this
7 water, or you're already using it at that point?

8 A. Well, we may already be using it at
9 that point.

10 Q. And how do you initiate the use of it?
11 Do you contact Water District 1?

12 A. We contact Water District 1 and ask
13 them to release water from our primary storage.
14 Typically that happens as soon as irrigation
15 starts and the flow at Milner goes to zero.

16 Q. And I'm aware that at the end of the
17 season the water district produces what they call
18 the Black Book that shows how much water was
19 allocated to each contract right up and down their
20 territory.

21 Is there other evidence or records of
22 delivery of water?

23 A. I think recently we've been tracking
24 water deliveries for -- as part of our stream-flow
25 forecasting for Bureau releases for flow

1 augmentation, Idaho Power Company releases. And
2 so I think that in the last few years we've been
3 paying particular attention to that. I know IDWR,
4 aside from Water District 1 and the Boise office,
5 also tracks flow augmentation releases. And they
6 share that information with us.

7 The company tracks all flows in the
8 river on a daily basis and reservoir storage. And
9 we use that information in our stream-flow
10 forecasting to try to attempt to figure out what's
11 going to happen next.

12 Q. Sure. And how long has the company
13 been doing that?

14 A. Stream-flow forecasting?

15 Q. No. Tracking.

16 A. Well, probably for 25 years, that I
17 know of.

18 Q. So the company has been -- well, does
19 that tracking include releases under the
20 contracts?

21 A. I'm not sure if it does. I know what
22 we do is we track river flows. I don't know if
23 there's a specific notation that says "This is
24 related to secondary storage," other than an
25 example of the handout I gave you this morning.

1 Q. The 1969?

2 A. 1969, to show that here's the target
3 and an estimated flow target past Milner. I don't
4 see anything on there that -- I mean it is what it
5 is, and it says what it says. I can't draw any
6 conclusions from it other than at face value.

7 Q. Okay. And that's fair enough. If I
8 recall right, you told Mr. Prouty that in the late
9 '90s you began tracking releases under the
10 contracts?

11 A. That's correct.

12 Q. And what was the occasion for that?

13 A. Well, the occasion was discovering
14 that there was a secondary storage. And I had not
15 known that. The company obviously knew that. I
16 think that our attorneys knew that in the
17 water-right claims that they filed prior to my
18 responsibilities in this area. And so that's what
19 precipitated that.

20 Q. Is there any documentary evidence of
21 the company's tracking contract deliveries between
22 this 1969 spreadsheet, if you will --

23 And why don't we have this marked.

24 Are we up to 11 now?

25 THE COURT REPORTER: We are.

1 MR. GEHLERT: Great.

2 (Exhibit 11 marked.)

3 THE WITNESS: Okay. I don't believe that I
4 found anything indicating that we had specifically
5 tracked the flows in direct relation to the
6 secondary storage contract.

7 Now, in 1977, after American Falls was
8 constructed and the company signed the contract --
9 and you saw some of the memos that company
10 officials thought that the secondary storage right
11 was intact, as did the Bureau -- after that date
12 in 1977 many of you probably recall the company
13 was sued by ratepayers for -- and accused of not
14 protecting our water rights.

15 That culminated in the Swan Falls
16 lawsuit. And we were fairly busy at that time.
17 And that was -- it was a big deal. I wasn't
18 involved in it. I didn't work for the company. I
19 don't think anybody that is with the company now
20 that worked on that is necessarily still here.

21 But I think part of the issue was that
22 there were a lot of things going on in the water
23 world then. And we were preoccupied with Swan
24 Falls. I think a lot of energy went into that.

25 And it may be that the company had

1 sufficient resources for flows during most of the
2 year, according to the 1923 contract and the
3 secondary storage, that they just didn't track it.
4 And that's speculation on my part, but I would
5 imagine that there was just an awful lot going on.
6 Most of the records were relating to Swan Falls
7 and flows and related to the Snake River near
8 Murphy.

9 Q. (BY MR. GEHLERT): Weren't the late
10 1970s a relatively dry period?

11 A. 1977 was a relatively dry period. And
12 I believe that there were some other dry years in
13 there. And I think there were some fairly normal
14 years.

15 Q. Do you know, did the company ever
16 request water under the secondary storage capacity
17 during that period?

18 A. I don't know if the company requested
19 water. A lot of information that I saw indicated
20 that a lot of our dealings with the Bureau of
21 Reclamation were handled by telephone call. And
22 so I don't know that they didn't, but I don't know
23 that they did.

24 Q. Suffice it to say that there's no
25 written record of any request?

1 A. I haven't found a written record of
2 the request.

3 Q. When you say "I haven't found," I take
4 it that means you've looked?

5 A. I guess you could say there is none,
6 that I've found.

7 Q. When you began tracking -- or were you
8 tracking both water rights and the contract
9 rights? I'm just trying to sort out --

10 A. When I started tracking?

11 Q. Yes.

12 A. I was tracking specifically flow
13 targets at the Snake River near Kimberly. And
14 that culminated in the company writing a letter to
15 the Bureau requesting that those flow targets be
16 met under the 1923 contract.

17 Q. Okay. And just to reiterate, because
18 I'm not sure I asked this question, you're unaware
19 of any tracking of contract obligations between
20 1969 and the time you started doing it in 1998?

21 A. I'm unaware of them.

22 Q. And have you looked?

23 A. I've looked in plenty of places. But,
24 you know, there's some records that may be at each
25 plant. Back in the early days, they wrote down --

1 I realize you weren't in the deposition. But is
2 there any --

3 A. Right.

4 Q. -- reason to doubt Mr. Fuhrman on
5 that?

6 A. That could be true.

7 Q. Mr. Fuhrman explained that the gauge
8 program was developed to assist in FERC
9 compliance.

10 Any reason to dispute that?

11 A. I have no reason to dispute that.

12 Q. This morning you talked about the
13 coordination with Reclamation.

14 A. Right.

15 Q. And is that directly part of your job,
16 or do people who work for you do that
17 coordination, or both?

18 A. I participate in some of that, and
19 people that work for me -- for as far as
20 operations and how that -- those operations affect
21 flows in the river and our stream flows and our
22 generation, the people in my group have
23 conversations with the Bureau.

24 Q. And would I be correct in assuming
25 that those conversations largely go to asking the

1 handwrote down flows. They measured a flow at a
2 gauge and wrote it down.

3 And I suspect that a lot of these
4 documents, like this one from 1969, were probably
5 created by somebody at the Twin Falls or Shoshone
6 Falls plant.

7 It wasn't until the advent of
8 computers, sophisticated computers, that we were
9 able to start tracking flows on a daily basis with
10 any reliability.

11 Q. And roughly when was that?

12 A. Probably in the early '90s.

13 Q. And Roger Fuhrman is your boss;
14 correct?

15 A. He is.

16 Q. And I understand from his testimony
17 that the company began a program of installing
18 gauges roughly around that time in the early '90s;
19 is that correct?

20 A. That's correct.

21 Q. And that prior to that time there were
22 only two gauges that provided realtime
23 information?

24 A. That could be correct.

25 Q. I mean any reason to disagree with it?

1 Bureau how they plan to operate, how much water
2 they're going to release out of their facilities,
3 things like that?

4 A. That's correct.

5 Q. What is your understanding of
6 Reclamation's obligations -- or operations in
7 terms of their relative obligations?

8 A. In terms of?

9 Q. Their relative obligations.

10 A. Well, I have kind of a limited
11 understanding. I think in my federal deposition I
12 stated that I don't really understand how the
13 Bureau operates above Milner. I don't understand
14 how Water District 1 accounts for the water.

15 I know it's a complicated system.
16 They distribute water from certain reservoirs to
17 other reservoirs, swap water back and forth. And
18 it's something that I just don't understand. I
19 don't think anybody in the company has ever really
20 understood what they do.

21 That's probably why we have such a
22 difficult time trying to figure out what they're
23 going to do and why we spend so much time in
24 communication with them on their operations.

25 Q. Is there anybody at the company who

1 understands those operations better than you do?
2 A. I think there are people that
3 understand those operations probably as well as I
4 do.

5 Q. And who would those people be?

6 A. I think Pam Pace that works for me,
7 she has a lot of conversations with the Bureau.
8 So she's in -- not maybe day-to-day contact, but
9 at least twice-weekly contact with the Bureau in
10 talking about their operations.

11 We have a stream-flow forecast model
12 that we use that generally describes Bureau
13 operations based on historical operations. But it
14 is a model. It's calibrated, and its
15 predictability is about as good as any other
16 predictability for a future unknown.

17 Q. How is it calibrated?

18 A. It's calibrated based on historical
19 information from 1950 through 2004.

20 Q. Historical information in what form?

21 A. Snowpack, precipitation, reservoir
22 operations, releases, irrigation diversions, those
23 sort of things.

24 But I might add that the Upper
25 Snake -- we're fine-tuning the calibration of the

1 model below Milner, and we haven't even gotten to
2 the Upper Snake portion yet because it's the most
3 complicated, it has the most unknown to us, and we
4 are in such direct communication with the Bureau
5 that it will probably be the last part of this
6 model that gets fine-tuned in its calibration,
7 because so much depends on what the Bureau does
8 and what they tell us they're going to do, that we
9 rely on that.

10 And we -- right now we hand-construct
11 a forecast for above Milner based on the
12 conversations we have with the Bureau and
13 historical operations.

14 Q. So for instance, you might call and
15 say "Are you going to release flow augmentation
16 water this year? If so, when? how much?"
17 questions like that?

18 A. Right. We talk with canal companies
19 and the Bureau about when water will be turned out
20 in the canals. It's -- there's an awful lot of
21 legwork that we have to do to put together a
22 forecast, especially in the spring when things are
23 changing and irrigation is coming on.

24 Q. If I use the term "spill," what does
25 that mean to you?

1 A. "Spill" means water that flows over
2 the dam and not through it.

3 Q. Okay. And is "spill" used in
4 connection with the powerplant?

5 A. It is. If you're -- if you have an
6 issue with your generators and you can't generate,
7 then water typically spills if your reservoir is
8 full.

9 If you're at your maximum hydraulic
10 capacity, say during the spring, then anything in
11 excess of your hydraulic capacity is spill.

12 Q. Is it fair to say relative to the
13 powerplant that spill is water that's not
14 generating power?

15 A. That's fair.

16 Q. Is it fair to say that Idaho Power
17 would like to see Reclamation operate the project
18 to minimize spills at the powerplant?

19 A. It's fair to say that.

20 Q. Any advice on how to do that?

21 A. Well, I think that the group that's
22 been formed to talk about those kind of things and
23 look at the operations is going to address those
24 questions. And I think that it's a -- I think
25 that the State and the Bureau and Idaho Power and

1 other water users have an interest in that, in
2 that if you can use water to its maximum
3 beneficial use for all designated uses and not
4 just spill water through the system that more
5 would benefit.

6 Q. Does the company agree that
7 Reclamation should attempt to maximize the
8 quantity of water that's stored?

9 A. If that water is needed for irrigation
10 and there can be reasonable assurance that a
11 fill-and-spill operation that wastes water can be
12 avoided, I think that those two things go hand in
13 hand.

14 Q. How about when we're outside of the
15 irrigation season?

16 A. Should water be stored for the maximum
17 benefit of irrigation?

18 Q. No. Should Reclamation operate the
19 dams to maximize the amount of water that's stored
20 during the nonirrigation season?

21 A. I think Reclamation should operate the
22 projects to store water so that they can fulfill
23 their spaceholder contracts.

24 Q. From that response am I correct in
25 assuming that that's not necessarily maximizing

1 the amount of storage?

2 A. It may or may not be. I guess that
3 really depends on how the Bureau chooses to
4 operate their projects.

5 Q. Can you give me a situation where it
6 would not be maximizing storage?

7 MR. DeVOE: Objection. Assumes facts not
8 in evidence.

9 THE WITNESS: I can't.

10 Q. (BY MR. GEHLERT): Would it be the
11 case if Reclamation simply shut the gates at the
12 end of the irrigation season for the whole
13 winter -- and I recognize that that's not the
14 practice and not feasible, given environmental
15 concerns and all that -- but would that be the
16 practice that would maximize the probability that
17 you would capture all of the available storage?

18 MR. DeVOE: Same objection.

19 THE WITNESS: If the gates were slammed
20 shut and there's no other exit for water, all of
21 the water that flowed in the reservoir would be
22 captured. It's just a simple physical fact.

23 Q. (BY MR. GEHLERT): Sure. And it
24 follows from that that to the extent that you open
25 the gates during what I'll call the storage season

1 that you increase the risk that you'll wind up
2 with less storage at the end of the season?

3 MR. DeVOE: Same objection.

4 THE WITNESS: I think that the Bureau
5 probably needs to operate their projects to
6 fulfill their contracts with the spaceholder, and
7 that includes Idaho Power Company.

8 Now, whether the Bureau operates to
9 maximize fill or not, I think they have other
10 issues with flood control and minimum flows for
11 conservation flows. And so how they choose to
12 operate their system to meet all their
13 requirements is up to the Bureau.

14 We don't operate the projects above
15 Milner. We don't completely understand how they
16 operate the projects above Milner.

17 Q. (BY MR. GEHLERT): Fair enough. But I
18 was asking you a much simpler question. It seems
19 to me that as a matter of logic that to the extent
20 that you're releasing or letting water go through
21 the reservoir during the storage season that
22 otherwise could be stored, you're increasing the
23 risk that you will have less storage at the end of
24 the season?

25 A. Well, I think it depends on other

1 factors, too, like carryover storage, how much
2 carryover is in the system, as to whether they
3 would just slam the gates shut if they have a full
4 pool.

5 But if the ultimate goal is to fill
6 the reservoir at all costs, and regardless of
7 whether that water is spilled or used to its
8 maximum beneficial use, then slamming the gates
9 would certainly improve the probability that the
10 reservoir would completely fill.

11 Q. Sure. And the converse of that is
12 opening them creates some level of risk?

13 MR. DeVOE: Objection. Asked and answered.

14 MR. GEHLERT: It's a simple yes-or-no
15 question.

16 THE WITNESS: If water is not -- if water's
17 not being stored in the reservoir, then it
18 increases probability that the reservoir may not
19 fill, but it doesn't necessarily guarantee that
20 the reservoir will not fill.

21 Q. (BY MR. GEHLERT): Understood. Thank
22 you.

23 You mentioned Exhibit No. 11 as a time
24 when the company was tracking compliance with the
25 secondary storage capacity provisions of the '23

1 contract.

2 A. Right.

3 Q. And we talked about subsequent to
4 1969.

5 Are you aware of similar records prior
6 to 1969?

7 A. I am.

8 Q. And what time period are those?

9 A. 1923 through 1949. And then -- let me
10 see if there's something in here. We have a
11 document from 12/20/1932 from E. Darlington of the
12 BOR to B. Russell at Idaho Power.

13 There's another letter from
14 E. Darlington to BOR -- of the BOR to B. Russell
15 of Idaho Power from 2/15/1933.

16 Q. And, Mr. Bowling, if you don't mind my
17 interrupting for a second --

18 A. Okay.

19 Q. -- I'm going to try to save you
20 reading the whole list to me.

21 A. Okay.

22 MR. GEHLERT: Can I get a copy of that?

23 MR. DeVOE: Yes, of course.

24 MR. GEHLERT: Thank you.

25 Q. So there's nothing between the 1933

1 letter you first referenced and 1969?

2 A. Well, there's a -- several letters
3 here. There's correspondence between Idaho Power
4 and the BOR, 1935, 1936, 1941, 1942, 1943,
5 1946, and two letters -- two reports of Idaho
6 Power from 1961.

7 Q. Okay. And your counsel has indicated
8 that he'll provide a copy of that document.

9 And can you provide the documents that
10 are referenced as well?

11 MR. DeVOE: Of course.

12 MR. GEHLERT: Fantastic. Thank you.

13 MR. SCOTT: You gave us all those
14 documents.

15 MR. DeVOE: Well, Reid Prouty gave us all
16 these documents --

17 MR. SCOTT: Sorry.

18 MR. GEHLERT: Okay.

19 MR. DeVOE: -- in the Court of Federal
20 Claims case, so --

21 MR. GEHLERT: Can we go off the record for
22 a second.

23 (Discussion.)

24 MR. GEHLERT: Back on the record.

25 Q. Speaking of documents, I just want to

1 conversation at some point, and we'll get all this
2 stuff straightened out.

3 A. Okay.

4 Q. That's documents regarding tracking.

5 Idaho Power has also asserted that
6 there are internal memoranda that evidence the
7 company's belief in its retention, if you will, of
8 the 1923 contract, the secondary storage
9 provisions of the 1923 contract. And I want to
10 make sure we have all those identified.

11 A. Okay.

12 Q. Are they also set forth in that sheet?

13 A. I think I provided a couple of those
14 to you.

15 Q. Why don't we have these marked now
16 while we're thinking about it. I've got a letter
17 on Idaho Power Company letterhead dated
18 March 15th, 1972, to R.A. Hogg, who I understand
19 to have once been a vice president of Idaho
20 Power --

21 A. Yeah.

22 Q. -- from R.J. O'Connor, also a vice
23 president.

24 Could we have that marked as No. 12.
25 (Exhibit 12 marked.)

1 make sure that I've covered all the bases here,
2 and I'll move on.

3 As far as documents tracking contract
4 compliance, we have the ones that you've just
5 mentioned that I'll characterize as from the '20s,
6 '30s, and '40s, we have this 1969 document
7 (indicating).

8 And then you started at some point in
9 the late '90s?

10 A. Late '90s.

11 Q. Now, are there paper records of that
12 effort?

13 A. There may be spreadsheet records which
14 are electronic documents.

15 Q. Great. I'd like to see at least a
16 sample of those and one for the purpose of
17 figuring out when it started. I realize you
18 probably don't remember the date off the top of
19 your head. I certainly wouldn't. But I would
20 like to know what that date was.

21 A. Okay. Is that something that we could
22 provide later?

23 Q. Yeah.

24 A. Okay.

25 Q. Your counsel and I will have a

1 MR. GEHLERT: And the other one is
2 deposition of Mr. Hogg, dated August 29, 1978,
3 from the Federal Court case of Kerner versus
4 United States. And we have pages 185 through 187
5 of that transcript. Can we have that marked as
6 No. 13.

7 (Exhibit 13 marked.)

8 Q. (BY MR. GEHLERT): Any other internal
9 correspondence or memoranda or records?

10 MR. DeVOE: Yeah, and we -- stay on or off
11 the record. It makes no difference to me. We'll
12 do the same that we're going to do for the
13 tracking documents.

14 MR. GEHLERT: Great.

15 MR. DeVOE: And disclose these with an
16 index so that you can see the correspondence we've
17 located.

18 MR. GEHLERT: Okay. Fantastic.

19 Q. And the same thing for any documents
20 or records requesting deliveries under the
21 contract. Good.

22 Speaking of deliveries or requesting
23 deliveries under the contract, that brings us to
24 Mr. Tucker's letter from 2001, which you have
25 referred to earlier.

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1 We'll mark this as No. 14.
 2 (Exhibit 14 marked.)
 3 Q. (BY MR. GEHLERT): Let's start with a
 4 little context.
 5 2001, was that a wet year? average
 6 year? dry year?
 7 A. Fairly dry year.
 8 Q. And was that the beginning of a
 9 several-year period of dry to very dry years?
 10 A. I would say yes.
 11 Q. And can you identify that period?
 12 A. Well, 2001 through present, actually.
 13 There's been two years that were close to normal.
 14 Q. And when you say "2001," are you
 15 talking about water year 2001 or calendar year
 16 2001?
 17 A. We're talking about water year 2001.
 18 Q. And just for the record, so we all
 19 understand what we mean by "water year 2001," can
 20 you provide the dates.
 21 A. A water year is measured from
 22 October 1 through the following September.
 23 Q. So water year 2001 would be October 1,
 24 2000?
 25 A. 2000.

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1 Q. Great. How does this present period
 2 of water shortage compare to past periods?
 3 A. It's a -- it's one of the longer dry
 4 periods we've had, but it's not the lowest dry
 5 period that we've had.
 6 Q. Would the lowest dry period be during
 7 the '30s?
 8 A. I would assume that's correct, on
 9 record.
 10 Q. Right. How far back do the records
 11 go?
 12 A. I don't know.
 13 Q. Okay. Any other noteworthy periods of
 14 drought between the '30s and the present?
 15 A. '70s. '77 was a record low year,
 16 1992. There was a few years in the '90s that were
 17 fairly low. But then some of the highest years on
 18 record were also in the '90s.
 19 Q. And you mentioned a contract that
 20 Idaho Power entered into in 1934.
 21 A. Yes.
 22 Q. What was the purpose of that contract?
 23 A. The purpose of the contract was to
 24 conserve water in American Falls Reservoir to free
 25 up our secondary storage to be stored in American

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1 Falls for irrigation purposes and exchange for the
 2 energy that would have been generated with that
 3 from another Bureau project.
 4 Q. If I remember right, they brought
 5 energy in from the Payette system, didn't they?
 6 A. I think it was Black Canyon.
 7 Q. So the purpose of the 1934 contract
 8 was, to put it succinctly, to increase the amount
 9 of water that would be stored?
 10 A. That's correct.
 11 Q. And is it fair to say that there was a
 12 need to increase the amount of water being stored
 13 because there were shortages?
 14 A. I don't know that for a fact. But I'm
 15 assuming that's what the water users thought at
 16 the time.
 17 Q. And I'm sorry, I digressed from
 18 Mr. Tucker's letter.
 19 Were you involved in the preparation
 20 of this letter?
 21 A. I was not.
 22 Q. Did you have any knowledge of the
 23 letter at the time?
 24 A. I had knowledge of the letter after it
 25 was sent.

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1 Q. And how soon after it was sent?
 2 A. I don't know.
 3 Q. I mean relatively soon?
 4 A. Probably relatively soon.
 5 Q. Makes sense that somebody might have
 6 told you, "Maybe if we send a letter asking for
 7 water, there's a possibility that we'll get some,"
 8 something like that? Is that kind of the nature
 9 of the conversation?
 10 A. I don't know. It may have just been
 11 forwarded to me in an e-mail as an FYI.
 12 Q. Do you know what motivated Idaho Power
 13 to send that letter?
 14 A. The fact that we didn't believe we
 15 were getting water delivered according to our 1923
 16 contract.
 17 Q. You'll have to excuse me for a second.
 18 Have I already had this marked, the
 19 2001 letter?
 20 MR. DeVOE: No.
 21 MR. WOOD: 14.
 22 MR. SCOTT: 14.
 23 THE COURT REPORTER: This is 14.
 24 MR. GEHLERT: Okay. It is.
 25 MR. DeVOE: My apologies.

1 MR. GEHLERT: No worries. I just wanted to
2 make sure it's an exhibit. So we're talking about
3 Exhibit 14.

4 Q. And you indicated why Idaho Power sent
5 the letter.

6 A. Idaho Power sent the letter to request
7 that the Bureau operate their projects to fulfill
8 the requirements under the 1923 contract.

9 Q. And what's the basis for your
10 statement?

11 A. The fact that the letter was sent.

12 Q. Have you talked to anybody about why
13 the letter was sent?

14 A. I think after the letter was sent, I
15 did talk to Jim about it, but I don't recall our
16 exact conversation.

17 MR. DeVOE: And I'll object to any further
18 questions on privilege grounds.

19 Q. (BY MR. GEHLERT): And I'm certainly
20 not asking you to repeat what Mr. Tucker told you
21 in the way of legal advice.

22 A. And it was nine years ago, so I don't
23 recollect.

24 Q. Does the letter mention issues beyond
25 the secondary storage capacity?

1 A. It talks about Cascade Reservoir.

2 Q. Does it mention flow augmentation?
3 And if you want to take a minute to read it,
4 please do.

5 A. Yeah, let me review it.

6 (Reviews.)

7 Okay.

8 Q. Does the letter talk about flow
9 augmentation?

10 A. It does.

11 Q. Was that a significant question or
12 issue for Idaho Power Company at the time?

13 A. I think that it was.

14 Q. In what way?

15 A. I think Idaho Power was concerned with
16 other spaceholders and that flow augmentation
17 would impact its rights under its spaceholder
18 contract.

19 Q. And how would that be?

20 A. I think that it was water that -- I
21 think the letter kind of speaks for itself from
22 our legal department. I could read that passage
23 for you. That's my understanding of it, the
24 extent of my understanding of it.

25 Q. Okay. I assume Mr. Tucker could speak

1 more to the contents.

2 But is there anybody else in the
3 company who can?

4 A. I think Jim is probably the likely
5 person.

6 Q. All right. And what was the result of
7 this letter? Did Reclamation provide water under
8 the secondary storage?

9 A. No.

10 Q. And in fact, for purposes of the
11 record, Mr. Tucker wrote a second letter in 2007;
12 is that correct?

13 A. That's correct.

14 Q. Let's mark that. And you don't need
15 to take the time to read it. I'm not going to ask
16 you any questions --

17 A. Okay.

18 Q. -- beyond the fact that it essentially
19 says "You didn't release water when we asked you
20 for it."

21 Is that a fair summation?

22 And can I have this marked as No. 15.

23 (Exhibit 15 marked.)

24 Q. (BY MR. GEHLERT): I want to talk a
25 little bit about water year 2002, because although

1 Mr. Tucker's letter is dated October 2001, that is
2 part of --

3 A. Start of water year 2002.

4 Q. -- water year 2002.

5 And water year 2002 is one of the
6 years which Mr. Shaw identifies in his expert
7 report as having a shortage or miss under the
8 contract; correct?

9 A. Yes.

10 MR. GEHLERT: Can I have this marked as 16.
11 (Exhibit 16 marked.)

12 Q. (BY MR. GEHLERT): And what I've done
13 here is I've compiled some information. And I'll
14 give you as long as you want to look it over. And
15 there are footnotes showing where the information
16 came from.

17 A. Okay.

18 Q. The first column is the amount of the
19 shortage determined by Mr. Shaw.

20 A. Okay.

21 Q. And if you want to confirm that,
22 you're welcome to. Then we have columns for
23 American Falls Reservoir, Palisades Reservoir,
24 Jackson Lake Reservoir, and the system as a whole.
25 After that there's the total active content for

1 each reservoir and the system as a whole, the
2 maximum reservoir contents that were achieved in
3 water year 2002, and I believe that that is taken
4 from the Bureau's Hydromet system, which -- have
5 you accessed Hydromet on the Internet?

6 A. I have.

7 Q. Okay. Then you have some familiarity
8 with it?

9 A. I do.

10 Q. And does the company use that system
11 in its forecasting?

12 A. For some locations we do.

13 MR. DeVOE: I'm going to object to the
14 exhibit and the use of it in the deposition
15 because it wasn't identified before the
16 deposition. We can't verify the accuracy of any
17 of the numbers. We don't know, other than you
18 telling us that you put the table together, we
19 don't know what assistance you've had on it. So
20 we really can't verify anything about the
21 document. Mr. Bowling obviously hasn't had time
22 to do any analysis of it at all.

23 MR. GEHLERT: And just for the purposes of
24 this deposition, we'll assume that the numbers are
25 correct. And we can verify them in whatever

1 manner needs to be done later. And I wouldn't
2 expect Mr. Bowling to look at that and say "Oh, I
3 remember, yes, the maximum fill in 2002 was..."

4 Q. And I'll just finish my description of
5 it, and then we could turn to the next page.

6 A. Okay.

7 Q. We've got maximum reservoir contents
8 achieved during water year 2002; the shortfall,
9 which is the total minus the maximum, as it's
10 labeled here "Amount of Reservoir Failure to Fill
11 (Physical)." I'll stop at that point.

12 The next page --

13 MR. DeVOE: I'm also going to object that
14 at this point you're basically testifying on the
15 record. Mr. Bowling did not produce this
16 document. You're not asking him to verify the
17 contents. He's not an expert witness, and he's
18 not being asked to verify your expert report, of
19 which you haven't produced any.

20 And so I'm not sure where you're going
21 with this document, but I don't think the
22 questions regarding this document are really
23 legitimate.

24 MR. GEHLERT: And you can --

25 MR. DeVOE: You can't introduce new

1 evidence at a deposition that wasn't noticed
2 previously, especially evidence that requires some
3 analysis on the part of the witness to understand
4 it.

5 MR. GEHLERT: And you can note your
6 objection.

7 MR. DeVOE: Again, this is basically your
8 testimony.

9 MR. GEHLERT: And you're welcome to note
10 your objection. And if we can continue.

11 Q. We were looking at the next page,
12 which is labeled "American Falls Releases Water
13 Year 2002."

14 Assuming, again, that this is an
15 accurate graph depicting water released from
16 American Falls --

17 MR. DeVOE: And I'll object to foundation
18 on this. It doesn't identify where the
19 information came from.

20 MR. GEHLERT: Fair enough.

21 Q. Looking at November 1, 2001, on the
22 horizontal axis, can you tell me roughly what the
23 release was at that time?

24 A. 400 cfs.

25 Q. And did the releases continue at

1 roughly that same level up until toward the end of
2 March?

3 A. As depicted on this graph, they did.

4 Q. You mentioned flow augmentation.

5 Do you have a general knowledge of the
6 Bureau's obligations relative to flow
7 augmentation?

8 A. I do.

9 Q. And what do you understand those to
10 be?

11 A. That the Bureau will provide 427,000
12 acre-feet of flow augmentation in each year.

13 Q. And does the Bureau do that every
14 year?

15 A. It does not.

16 Q. And do you know if any flow
17 augmentation water was provided in water year
18 2002?

19 A. I don't know right off the top of my
20 head.

21 Q. Fair enough. We'll assume for
22 purposes of the deposition that no flow
23 augmentation water was provided.

24 Are you familiar with any
25 environmental obligations the Bureau has

1 downstream of American Falls Reservoir?

2 A. I have heard of environmental
3 obligations. I have heard that they have
4 environmental obligations. I am not intimate with
5 the details, but I know that they provide a
6 minimum release from American Falls during the
7 winter months.

8 Q. Do you have a ballpark idea of what
9 that release is?

10 A. 350 to 400 cfs.

11 Q. Is there somebody at Idaho Power who
12 is more familiar with that?

13 A. I think the records would indicate
14 what that happens to be.

15 Q. And you would agree that judging by
16 this graph that from roughly October 15th through
17 late March, the releases were at or very close to
18 that minimum?

19 MR. DeVOE: Objection. Foundation.

20 THE WITNESS: I would agree that the flows
21 depicted on this graph are very close to that.

22 Q. (BY MR. GEHLERT): Fair enough. Does
23 that suggest to you that water year 2002 was --
24 that and the drought we've already talked about --
25 was a relatively water-tight year?

1 A. That that was the minimum release?

2 Q. Well, maybe I should say, is a release
3 pattern that's at or very near the minimum
4 consistent with the idea that water year 2002 was
5 a water-short year?

6 A. I don't think that that indicates that
7 to me at all.

8 Q. Okay. Why not?

9 A. Because releasing a minimum flow from
10 American Falls in itself does not indicate what
11 type of water year there is. It could have been a
12 fill-and-spill operation and fill at all costs,
13 hold off on any releases from American Falls until
14 you absolutely had to release water for flood
15 control or something else. So just the depiction
16 on this graph in itself does not indicate that to
17 me.

18 Q. Sure. And I understand your point,
19 that that's not enough to draw that conclusion.

20 But it is consistent with that
21 conclusion; correct?

22 MR. DeVOE: Objection. Misstates his
23 testimony.

24 THE WITNESS: I don't know that it is. I
25 don't think that it is.

1 Q. (BY MR. GEHLERT): And why not?

2 A. For the reasons I stated earlier.

3 Q. If I understand your prior testimony
4 from this morning, it is that Idaho Power, through
5 the 1923 contract, and specifically in secondary
6 storage capacity versions of that contract, takes
7 the position that it can compel water to be passed
8 through?

9 A. I think we can compel or should compel
10 the Bureau to honor their 1923 contract, and to
11 compel the Bureau to operate the system in a
12 fashion necessary to honor that contract.

13 Q. And am I correct in understanding that
14 for water year 2002, based on Mr. Shaw's report,
15 what would have been required to honor the
16 contract, as you put it, would be releasing
17 roughly 71,000 acre-feet more water during the
18 course of that year?

19 A. Well, based on the information in your
20 table, which you indicate it came from Shaw's
21 report, I would say that he calculated the
22 shortage, but I don't have enough information to
23 determine in which months that shortage occurred.

24 Q. So your point being that that 71,000
25 is over the entire period of the contract, which

1 we've talked about was October 1 through June 10?

2 A. That's my understanding.

3 Q. Right. And the reservoirs didn't
4 fill, so we're not talking about a year where it
5 shut off earlier; correct?

6 A. Correct.

7 Q. Okay. In order to be considered a
8 shortage under the terms of the contract, that
9 71,000 acre-feet of water -- and I'll just use a
10 round number -- this morning you testified that
11 that had to be storable in the reservoir?

12 A. It's water that would be storable.

13 Q. Would be storable. So am I correct in
14 understanding, then, that had the Bureau operated
15 the project to honor the contract, as you put it,
16 it would have passed through roughly 71,000
17 acre-feet of additional water during that
18 October 1 through June 10 period; correct?

19 A. I think that's what Dave Shaw
20 indicated in his expert witness report.

21 Q. And does Dave Shaw speak for the
22 company on that point?

23 A. He was hired by the company.

24 Q. If the company has a different view of
25 what was required under the contract in water year

Page 166 1 2002 -- or I should ask you. 2 Does the company today have a 3 different view than what was espoused under 4 Mr. Shaw's report? 5 A. I don't believe so. 6 Q. And I'm sure your counsel will let me 7 know if that changes. 8 MR. DeVOE: Of course. 9 Q. (BY MR. GEHLERT): And my question for 10 you is, where would that 71,000 acre-feet of water 11 have come from? 12 A. It would have come from natural flow, 13 could have come from reach gains, could have come 14 from pass through of secondary storage capacity at 15 American Falls. 16 Q. You're talking about sources of water 17 that are available at Twin Falls, it sounds like? 18 A. Right. 19 Q. Okay. 20 A. But I guess my point is is that it 21 could have been -- the hydrology could have been 22 different than it was. So other things could have 23 happened that would have provided different flows. 24 But if this information as depicted here is used 25 in your argument, then the water would likely have	Page 168 1 Q. And those companies are predominantly 2 or perhaps exclusively irrigation companies? 3 A. That makes sense. 4 Q. This morning you were talking with me 5 about how the company views irrigation as coming 6 first. And if you want to elaborate or put a more 7 fine description on that, feel free. But what I 8 was interested in is how that plays out in terms 9 of contract allocations. 10 And is it the company's position that 11 irrigators are entitled to allocation under their 12 contracts before the company can obtain water 13 through the secondary storage capacity provision? 14 MR. DeVOE: Objection. Calls for a legal 15 conclusion. 16 MR. GEHLERT: And I'm just asking for the 17 company's position. 18 THE WITNESS: Can you repeat that, please? 19 Q. (BY MR. GEHLERT): Certainly. And 20 I'll attempt to repeat it. 21 Is it the company's position that the 22 irrigators are entitled to their full contract 23 allocation prior to the company obtaining water 24 through the secondary storage capacity provisions 25 of the 1923 contract?
Page 167 1 come from a pass-through at American Falls. 2 Q. Right. And the essence of the 3 operation of the pass-through is that 71,000 4 acre-feet of water that could have been stored and 5 wasn't? 6 MR. DeVOE: Objection. Asked and answered. 7 Q. (BY MR. GEHLERT): It's a simple 8 yes-or-no question. 9 A. I'd say yes. 10 Q. And the end result of that is there's 11 71,000 acre-feet less water available for 12 allocation under all the contracts, including 13 Idaho Power's primary storage contract; correct? 14 A. Correct. 15 MR. GEHLERT: Thank you. Why don't we take 16 a break. I think I'm done, but I want to spend a 17 minute. 18 MR. DeVOE: Okay. 19 (Recess.) 20 Q. (BY MR. GEHLERT): We were talking 21 about contract allocations in a very loose sense. 22 I take it Idaho Power is well aware 23 that there are other entities that hold contracts 24 for water at American Falls? 25 A. I agree.	Page 169 1 A. I think that the company would like 2 the Bureau to honor their contracts as stated in 3 the spaceholder agreement. And I think I'll go 4 back to the information I have on the early years 5 of operation after the 1923 contract was signed. 6 In those years the Bureau of 7 Reclamation released water according to the '23 8 contract in the secondary storage in the fall if 9 the flow targets were not being met. And at the 10 time they didn't discuss whether or not all of the 11 irrigation space would be filled. 12 And there's a lot of things that can 13 occur that would influence the fill of that space, 14 not just the release of or passing of water for 15 the secondary storage contract. So I think that 16 the company is supportive of irrigation needs 17 being met. 18 But I think it's up to the Bureau of 19 Reclamation to work with the company to try to 20 figure out if indeed they don't think those needs 21 can be met, then the company needs to understand 22 why that is and why the flows may need to be 23 altered in order to do that, rather than just not 24 discussing it with the company. 25 So again, the company is supportive of

1 irrigation and believes that irrigation rights
2 should be met. But I think it's incumbent upon
3 the Bureau to work with the company to explain
4 why, if that's not possible, they can't deliver
5 water according to the 1923 contract.

6 Q. Sure. And looking at it from your
7 perspective, I can understand why you'd want to
8 have that conversation. But you mentioned
9 irrigation needs being met.

10 And my question was, in the company's
11 view, are the irrigators entitled to their full
12 contract entitlements before Idaho Power can
13 compel water to be passed through pursuant to the
14 secondary storage capacity provisions under the
15 1923 contract?

16 MR. DeVOE: Objection. Asked and answered
17 and it calls for a legal conclusion.

18 Q. (BY MR. GEHLERT): And again, it's a
19 simple yes-or-no question.

20 A. I think I pretty much answered that.

21 Q. I didn't discern a yes or a no. I
22 heard you talk about the history.

23 MR. DeVOE: Objection. The witness is not
24 compelled to answer "yes" or "no."

25 Q. (BY MR. GEHLERT): Well, let me put

1 this it this way: From your discussion of the
2 history, when water was provided, apparently
3 without any reference to the entitlements being
4 fulfilled, the irrigation contract entitlements
5 being fulfilled, should I assume from that that
6 Idaho Power's position is that they can compel the
7 release of water pursuant to the 1923 contract
8 prior to the irrigators having enough water to
9 fulfill their contract allocations?

10 A. Well, again, obviously we can ask.
11 But the Bureau doesn't reciprocate, as evidenced
12 by history. We ask for the flows to be delivered.
13 If the Bureau delivers those flows, then they
14 deliver those flows. And history has shown that
15 we have asked, flows haven't been delivered. So I
16 think the Bureau feels that they're fulfilling
17 their obligations to certain spaceholders.

18 Q. And understanding that the parties
19 have a difference of opinion about how the
20 contract works, for lack of a better way to
21 describe it, I take it when you say "company can
22 ask," the company wouldn't ask unless it views
23 itself as having a valid entitlement?

24 A. The company just asked that the Bureau
25 honor their contract. And that if -- you know,

1 look at years when there's high carryover storage,
2 which has a big influence on the amount of runoff
3 for the next year because it's that much more
4 water obviously that doesn't have to be stored,
5 and -- because I think the Bureau should be
6 compelled to pass water through in those years,
7 knowing that there's a certain level of confidence
8 that the irrigation spaceholders will be filled
9 without the company having to compel them to do
10 that.

11 And that hasn't necessarily been the
12 case. And we have this contract, and we really
13 want to understand what the contract means.
14 Obviously, there is a difference of opinion
15 between what the contract means to Idaho Power
16 Company and the Bureau of Reclamation.

17 So I don't -- I guess I can say I
18 don't know what the Bureau would do in that
19 instance in every case, but I think that's the
20 Bureau's decision. It's the Bureau's project. If
21 they don't want to deliver water according to our
22 contract, obviously they don't have to.

23 So do I agree that a fill-and-spill
24 operation is the most prudent use of water in the
25 Upper Snake at all costs? I don't.

1 Q. And why do you say that?

2 A. Well, because then water is spilled
3 later in the year and it's not put to maximum
4 beneficial use.

5 Q. You --

6 A. But even in water year 2002, at the
7 end of the season, end of September, still in the
8 system of the four major reservoirs there was
9 400,000 acre-feet of carryover storage left in the
10 system. So even though the system didn't fill,
11 there was still water available that would have
12 gone towards that use by those irrigators.

13 In fact, I think since 1957,
14 95 percent of the time there's at least 300,000
15 acre-feet, or roughly, at the end of September
16 left in the system. So there is a certain amount
17 of carryover every year in the system. So whether
18 the space fills completely or not, it seems like
19 there would be adequate water to meet irrigators'
20 needs.

21 Q. Is it Idaho Power's position that all
22 the water should be distributed every year so that
23 there's no carryover?

24 A. No. It's just a fact. I'm just
25 pointing that out.

1 Q. Just pointing out that there was some
2 water available?

3 A. That there's some water available,
4 even in the years that the system doesn't fill.

5 Q. And 400,000, roughly speaking, is
6 about 10 percent of the total system capacity;
7 correct?

8 A. Correct.

9 MR. GEHLERT: No further questions.

10 THE WITNESS: Okay.

11 EXAMINATION

12 BY MR. WOOD:

13 Q. Mr. Bowling, you have the honor of
14 being my first deposition.

15 A. Okay.

16 Q. So if I sound like an idiot, feel free
17 to laugh. Just so you know, I'm new to this case,
18 and so my questions are mostly based -- they may
19 have somewhat been asked, but I'm trying to
20 understand this bigger issue and how it will
21 affect my clients. I usually deal with the more
22 local issues.

23 The water in this 255,000 acre-feet,
24 the secondary storage, needs to be storable,
25

1 you've said?

2 A. It's storage capacity.

3 Q. It's storage capacity. Can you define
4 that for me.

5 A. It's water that could be stored up to
6 that capacity.

7 Q. Up to that capacity. Now, does that
8 only apply to American Falls, or does that apply
9 to -- does that only apply to American Falls?

10 A. That's my understanding.

11 Q. Thank you.

12 Is it the company's position that in
13 order to meet its target flows and to take
14 advantage of that secondary storage that the
15 company could compel that water be passed through
16 reservoirs above American Falls between
17 October 1st and June 1st? Are those the dates?
18 June 10th. I apologize.

19 A. It's not Idaho Power's position. In
20 fact, the inflow to just American Falls is
21 sufficient, if water were passed through, to
22 provide those flows with no water coming from
23 upstream reservoirs.

24 Q. Okay. So no?

25 A. No.

1 Q. No. Okay. If that's the case, then
2 it would be fair to say that the company -- I want
3 to make sure I word this correctly. If that is
4 the case, then the company would most likely not
5 take the position that they would be willing to
6 have -- or strike that. I'm not saying this very
7 well.

8 You know, your answer to that question
9 has made my follow-up question useless.

10 A. Okay.

11 Q. I believe this question was somewhat
12 asked earlier. I had a hard time hearing it.

13 Has the company ever relied upon that
14 secondary storage to meet its target flows?

15 A. Has the company ever relied upon that?

16 Q. The 250,000 acre-feet to meet its
17 target flows.

18 A. I think that the company has relied
19 upon use of the 255,000 acre-foot storage capacity
20 to maintain the target flows.

21 MR. TUCKER: Excuse me. Can I just ask one
22 clarifying question? I apologize.

23 MR. WOOD: Absolutely.

24 MR. TUCKER: When you say "target flows,"
25 were you talking about the Milner minimum target

1 flows or target flows at Kimberly. There's been
2 two target flows talked about in this case.

3 MR. WOOD: Oh, you're right. I suspect the
4 Milner.

5 MR. TUCKER: Okay.

6 THE WITNESS: No, the company -- I'll
7 answer -- re-answer that.

8 Q. (BY MR. WOOD): Okay.

9 A. If you're talking about Milner bypass
10 reach target flows, the company has not relied on
11 that.

12 Q. But they have for Kimberly?

13 A. Snake River near Kimberly.

14 Q. Okay. Like I said, some of my
15 questions are just to help me understand what's
16 going on here.

17 I believe you've essentially already
18 answered this, but just to make sure, the company,
19 then, since 1993, since you've had this contract,
20 has never compelled water to be delivered from
21 upper reservoirs above American Falls to acquire
22 that 255,000 acre-feet?

23 A. It's just not something that we've
24 ever asked for. It's not necessary.

25 MR. WOOD: Okay. Those are all of my

1 questions.

2 THE WITNESS: All right.

3 MR. WOOD: If it's all right with everyone,
4 I'm going to stay until 3:30, and then at that
5 time I've got to leave.

6 (Recess.)

7
8 EXAMINATION

9 BY MR. STANISH:

10 Q. Mr. Bowling, my name is David Stanish,
11 deputy attorney general with the State of Idaho.

12 A. Okay.

13 Q. I'll start right off, I'm going to
14 apologize right off, I have a number of
15 questions --

16 A. Okay.

17 Q. -- and I believe some of them have
18 been answered before. And I did my best to try to
19 skip through those, but I may ask you to repeat
20 something. I'm not trying to get you to conflict
21 an answer; I'm just trying to be thorough.

22 A. Okay.

23 Q. Okay. I'd like to turn back to
24 Exhibit 3, the amended objection.

25 A. To the company's objection?

1 Q. The company's objections, correct.

2 A. Okay. Got it.

3 Q. I just had a quick follow-up question.
4 You told Mr. Gehlert earlier that you
5 had not helped in preparing those objections; is
6 that correct?

7 A. That is correct.

8 Q. Do you know who did prepare them?

9 A. My understanding is that our attorneys
10 did. And that's my extent of knowledge.

11 Q. But you have reviewed the objections
12 before?

13 A. I have seen this before, as -- from
14 the packet.

15 Q. And have you discussed it with anyone?

16 A. I have.

17 Q. And who is that?

18 A. The attorneys.

19 Q. Anyone else besides attorneys?

20 A. No.

21 MR. STANISH: All right. Could I have this
22 marked as Exhibit 17.

23 (Exhibit 17 marked.)

24 Q. (BY MR. STANISH): Mr. Bowling, you
25 are looking at what has been marked as Exhibit 17.

1 Do you recognize this document?

2 A. I might. It looks familiar.

3 Q. Okay. Well, what if I represent to
4 you that that's the IDWR director's report for
5 water right 01-2064?

6 A. Okay.

7 Q. If you look under the "Quantity"
8 element.

9 A. Okay.

10 Q. What amount is listed under the
11 "Quantity" element of that report?

12 A. For irrigation from storage,
13 irrigation storage, 1.628316 million.

14 Q. Let me interrupt you really quick.

15 A. Okay.

16 Q. I want to move up to the element table
17 under the "Quantity."

18 A. Okay. 1,672,590.

19 Q. What does that figure represent?

20 A. The full volume, full capacity of
21 American Falls Reservoir.

22 Q. In other words, that is the maximum
23 amount of water that can be stored in American
24 Falls Reservoir at any one time?

25 A. That's my understanding. I don't know

1 if they can surcharge it or not, but that's the
2 normal full pool.

3 Q. Okay. Now, under that same "Quantity"
4 element, there's an explanatory remark. Can you
5 please read that remark.

6 A. "Total reservoir capacity is 1,672,590
7 acre-feet when filled to elevation 4354.5 and
8 measured at the upstream face of the dam."

9 Q. Do you agree with that statement?

10 A. I don't disagree with it.

11 Q. Okay. I'm going to ask you to turn
12 back to Exhibit 3, your objections.

13 A. Okay.

14 Q. And under the "Purpose of Use" element
15 of the objections on page 2.

16 A. Okay.

17 Q. Under that element you assert that
18 irrigation storage should be 1.655000 acre-feet a
19 year and power storage should be 300,000 acre-feet
20 per year; is that correct?

21 A. That's correct, according to the...

22 Q. To the objection?

23 A. Yes.

24 Q. So is that amount above and beyond the
25 1.6-something-million acre-feet contained in the

1 director's report?

2 A. It is.

3 Q. And how do you explain that?

4 A. Well, I guess I would have to ask the
5 Bureau to explain it, since those numbers came
6 from their amended objection to their own water
7 right.

8 Q. Well, what you're looking at right now
9 is the company's objection --

10 A. I agree.

11 Q. -- to the director's report.

12 A. I agree.

13 Q. And you're asserting that there should
14 be 1.655 million acre-feet for irrigation and
15 300,000 acre-feet for power.

16 Explain to me why this water right
17 should have these two designations, which are
18 above and beyond the capacity of the reservoir.

19 A. Well, in order to match up with the
20 Bureau's objective -- of their objection to their
21 own claim, I think they have a refill component in
22 their objection that they want to be included in
23 their water right. And that's about the extent of
24 my understanding of it.

25 Q. All right. I want to ask you a little

1 have that much confidence in that output until we
2 fine-tune the calibration. And those are really
3 the extent of the models that we use.

4 Q. Now, do those models input data from
5 gauges along the Upper Snake and the Lower Snake,
6 including the Kimberly gauge?

7 A. The IDWR Snake River planning model
8 inputs reach gains, historical reach gain, and
9 routes that through the system according to the
10 current level of development. My understanding is
11 that model is calibrated based on historical
12 irrigation diversions, historical stream flow
13 gauge information, historical reservoir elevations
14 and operations, flood control elevations and
15 operations, and -- but the primary component of
16 that are these reach gains and diversions for
17 irrigation, and inflows from creeks and things
18 like that are just considered reach gains.

19 So there's a reach gain file
20 associated with that and a diversions file
21 associated with that. And that's the basis for
22 the entire model. And again, it's calibrated
23 according to historical stream flow reservoir
24 diversion data.

25 Q. Do you know when the Department of

1 bit about the modeling that the company does on
2 the Snake River.

3 A. Okay.

4 Q. Can you explain again, just for my own
5 sake, your involvement in that modeling.

6 A. Which modeling are you referring to?

7 Q. Well, go ahead and explain to me what
8 kind of modeling you do.

9 A. We use the -- for the Snake River
10 basin above Milner --

11 Q. Correct.

12 A. -- we use the IDWR planning model to
13 model American Falls releases and subsequent flows
14 at Milner for our integrated resource plan.

15 We also use that model in cooperation
16 with IDWR to look at various alternatives as
17 outlined in the ESPA CAMP that the company is
18 involved in with other water users.

19 We use PDR-580 model to model power
20 production for American Falls Reservoir and all of
21 our powerplant's downstream from that.

22 We have a hydrologic model that hasn't
23 yet been calibrated that we're still testing that
24 will model the system above Milner when it's done.
25 It does run. It produces output, but we don't

1 Water Resources started to keep that data and do
2 that modeling?

3 A. I think they started in the mid-'70s
4 with that model. And it was -- it's grown and
5 evolved and changed over the years. But it's a PC
6 platform model now. And when it originally
7 started, it was a mainframe-type model.

8 Q. I've seen some of the printouts, and
9 they're pretty obscure, to say the least.

10 A. Yeah.

11 Q. What about the power company's use of
12 those models, when did that begin?

13 A. I'm not sure exactly. But when I
14 started in 1993, we were using the Snake River
15 planning model and we were using PDR-580.

16 Q. Okay.

17 A. And I think that it started sometime
18 before that, but I don't think more than a decade.
19 I think it was probably in the '80s.

20 Q. Do you know someone that would know
21 when they began doing that modeling?

22 A. I do.

23 Q. Who would that be?

24 A. Probably Roger Fuhrman. And I can
25 find that out, you know...

1 Q. Yeah, if you don't mind, I'd
2 appreciate that.

3 A. Okay.

4 Q. You said earlier in response to a
5 question from Mr. Gehlert -- and correct me if I'm
6 wrong. He asked you whether your various models
7 track your water rights, and you said no; is that
8 correct?

9 A. They do not.

10 Q. Okay. Who is responsible at the
11 company for tracking your water rights?

12 A. Well, we track flows in the river. As
13 you know, in our hydro projects our water rights
14 are subordinated. And that was reaffirmed in Swan
15 Falls negotiation of late.

16 So we track flows. We have to have a
17 water right for our hydraulic capacity at all of
18 our projects, subordinated or not. So we make
19 sure that if we increase capacity or something
20 like that, we'll still continue to file for water
21 rights so that we are -- have sufficient water
22 rights to put that water to beneficial use.

23 But as far as tracking water rights
24 per se, we don't really do a lot of that. We do
25 track flows of the Snake River near Murphy in

1 near Kimberly.

2 Q. What about those flows under your
3 primary storage, 45,000?

4 A. We track those. We track all flows at
5 various locations in the river on a daily basis.
6 We put out a report every morning called the Daily
7 Water Report that has all reservoir storage, canal
8 diversions, stream inflows.

9 One thing we don't put in it is what
10 we think the reach gain is. But that comes out as
11 a mathematical manipulation when you subtract an
12 upstream gauge from a downstream gauge.

13 Q. Uh-huh.

14 A. So we track all the flows in the
15 river. But we specifically track flows for
16 targets for any water that we rent or lease. We
17 do track the minimum target flow in the Milner
18 bypass reach. We track the flows specifically for
19 an amount at the Snake River near Kimberly. And
20 we track Swan Falls/Snake River near Murphy
21 minimum flows.

22 Now, we have other flows that we
23 track. We have minimum flows below each project.
24 It's an operational constraint where we can't go
25 below a certain minimum. We have ramp rates and

1 conjunction with IDWR to see if we're going to get
2 close to the 3900 minimum. And that is done by
3 people in my group.

4 Q. And so is the stream flow gauge at
5 Murphy, is that the only place where you really
6 monitor to make sure your water rights are being
7 met?

8 A. That, and for a contract right we do
9 monitor the Snake River near Kimberly for the 1923
10 Bureau of Reclamation contract.

11 Q. And that's your group that does that?

12 A. That's my group.

13 Q. Okay. Great. So tell me exactly what
14 water rights you do monitor for up at Kimberly.

15 A. We look at the flows from the
16 October 1 through June 10th period. And as
17 evidenced by the letters that Mr. Tucker wrote,
18 we've been monitoring those, again, since the late
19 '90s in relation to this meeting.

20 Q. Right. So you say that your group
21 does track the storage releases that the company
22 believes it's entitled to?

23 A. We track flows at Kimberly. We don't
24 necessarily track releases from American Falls per
25 se. We just track the flows at the Snake River

1 those sort of things that we track. So I would
2 say that we track all flows.

3 But the ones that we specifically look
4 at to see if a contract right or a lease rate is
5 being met are those four that I mentioned.

6 Q. So help me understand this. So if you
7 on any given day when you're looking to get a
8 release of, say, your 45,000-acre feet of storage,
9 you call up the Bureau, they either give it to you
10 or not.

11 My understanding is they generally
12 give it to you and they tell you when it's going
13 to happen; is that correct?

14 A. 45,000?

15 Q. Yes.

16 A. That's -- when we request that that
17 water be delivered, it is generally delivered
18 immediately until it's gone.

19 Q. Okay. So explain to me how you track
20 that water from the time it leaves American Falls
21 until it leaves the state at Lewiston.

22 A. We track that water at Milner.

23 Q. And that's the only place you --

24 A. That's the only place we track it.

25 Q. Okay.

1 A. We don't try to track it down through
2 the system. If the water is being delivered at
3 Milner, we assume that everything else stays the
4 same and it propagates down through the system.

5 Q. Okay. And how do you track releases
6 made under the 255,000 acre-feet of secondary
7 storage?

8 A. We just track on a daily basis the
9 flows at the Snake River near Kimberly to see if
10 the flow targets or the flow schedule is -- is
11 being met, whether it's less than or greater than.

12 (Mr. Wood leaves the proceedings.)

13 Q. (BY MR. STANISH): So is it fair to
14 say that you track both of them the same in terms
15 of you just pick a point down the river and
16 determine if the minimum stream flow is being met
17 with that target area; is that right?

18 A. That's correct.

19 Q. Okay. Okay. Turning back to your
20 amended objections there that you have in front of
21 you.

22 A. Okay.

23 Q. No. 3, under the "Quantity" element --
24 and, again, excuse me if Mr. Gehlert already asked
25 you this -- the objection has two remarks.

1 power generation for water that's used in the
2 water-quality provision that's not generated with.
3 That's my basic understanding. I'm not intimately
4 familiar with it, but that's my basic
5 understanding.

6 Q. And is the purpose of that
7 clarification to recognize the payment obligation?

8 A. I think the purpose of that
9 clarification is to just make sure that our 1923
10 spaceholder contract and the 1976 O&M contract are
11 considered in the Bureau's claims and that they've
12 claimed sufficient water to cover both of those on
13 the contract requirement.

14 Q. And does this director's report that
15 we just designated No. 17 cover sufficiently the
16 amount of water that you deem necessary to be
17 referenced?

18 A. I don't believe that it does, since we
19 filed an objection and placed different purpose --
20 volumes for the purposes of use in the amended
21 objection.

22 Q. One more question on this one, I
23 think, in terms of the interests, again, that need
24 to be clarified.

25 A. Okay.

1 Could you please read what's been
2 marked as remark No. 1, "Should Be," then and
3 No. 1.

4 A. "This element should be clarified to
5 reflect the Objector Idaho Power Company's
6 interest in American Falls Reservoir under its
7 contract Ilr-733 and Ilr-733S."

8 Q. And just for the record, 733 is the
9 1923 contract?

10 A. Correct.

11 Q. And 733S is the 1976 contract?

12 A. It is. I think it's with the
13 water-quality provision.

14 Q. Okay. What are the interests that
15 should be clarified?

16 A. Our interests in American Falls are
17 our primary and secondary storage rights. And in
18 the 733S, our interests are -- also include water
19 quality.

20 Q. Explain the water-quality interests
21 that need to be referenced here.

22 A. We worked out an agreement with
23 American Falls Reservoir District to provide
24 certain operations for water quality. And I think
25 the agreement provides a payment in lieu of lost

1 Q. Is it your position that there needs
2 to be a remark in the water right that describes
3 the power company's ability to use that storage?

4 A. I believe that's correct.

5 Q. And in what way does it need to be
6 clarified, from your point of view?

7 A. Well, I think that's spelled out in
8 the reasons for supporting objections.

9 Q. Let me ask you what would be the ideal
10 remark that you would prefer to see in the
11 director's report?

12 MR. DeVOE: Objection. The document speaks
13 for itself.

14 THE WITNESS: I think that the remark
15 that's in there does speak for itself. And I
16 think the attorneys that drafted this were
17 thinking that that was the ideal remark.

18 Q. (BY MR. STANISH): Let me jump back
19 real quick. I missed something here, and it had
20 to do with the modeling.

21 A. Okay.

22 Q. Do you have any manuals that describe
23 the contents and purposes of those models?

24 A. We have some information that IDWR
25 provided when they calibrated the model for 2001

1 that pretty much describes the Idaho Department of
2 Water Resources Snake River planning model. The
3 PDR-580 model does not have documentation.

4 Q. Okay. Have those models been
5 peer-reviewed by anyone outside the company?

6 A. They have. They've been reviewed by
7 Public Utility Commission staff and been accepted
8 as the models that the company can use to do its
9 planning analysis.

10 (Matt Howard leaves the proceedings.)

11 Q. (BY MR. STANISH): Okay. Let's move
12 on to page 3 of your objection.

13 A. Okay.

14 Q. At the very top there, still
15 continuing from the "Purpose of Use" element, you
16 state that "The following remark should be added
17 under this element as being necessary for the
18 administration or definition of this water right."

19 Could you please read that remark for
20 me.

21 A. "45,000 acre-feet of primary reservoir
22 storage held by Idaho Power Company in American
23 Falls Reservoir under its contracts, including
24 contract Nos. Ilr-733 and Ilr-733S, is for power
25 use at Idaho Power's hydroelectric projects

1 downstream from American Falls Reservoir."

2 Q. Now, that remark states that the
3 45,000 acre-feet of primary reservoir storage is
4 for power use at hydropower projects downstream
5 from American Falls; correct?

6 A. Correct.

7 Q. Does that include the power company's
8 hydropower project at American Falls?

9 A. Well, it does, because obviously if we
10 pass that water, we will generate with it at
11 American Falls, unless it's passed at such a small
12 rate that it's below the minimum generating
13 threshold of a thousand cfs.

14 Q. Okay. Is that something you may need
15 to amend in your objection to make that clear?
16 I'll let you think about it.

17 A. Let me think about it.

18 Q. Let your attorney think about it.

19 Back to that remark. It only references the
20 45,000 acre-feet of primary reservoir storage.

21 Is the 255,000 acre-feet of secondary
22 storage also intended for power use downstream
23 from American Falls?

24 A. It's intended for power use at --
25 according to the 1923 contract, at Twin Falls or

1 Shoshone Falls.

2 Q. Why was the 255,000 acre-feet not
3 referenced in the remark proposed in your amended
4 objection?

5 A. Well, I think we referenced
6 specifically the 45,000 because we wanted to make
7 sure that it was understood that we counted on
8 that generation specifically at every project
9 downstream.

10 Q. And you do not have the same
11 dependency on the 255,000 acre-feet?

12 A. I think that it's a side benefit. If
13 there's sufficient water in the river, we will
14 generate with it downstream. But I think the
15 general clarification was to just make sure that
16 the 45,000, and that it was understood that we had
17 a right to generate with that at every one of our
18 projects.

19 Q. When you say it's a side benefit, what
20 do you mean by that?

21 A. Well, if water's being passed through
22 and the flow targets are being met at Snake River
23 near Kimberly, then there may be additional water
24 for generation at our other projects.

25 Q. Okay. And are those flow releases

1 under the 255,000 acre-feet of secondary storage
2 intended for power use at American Falls?

3 A. They are intended for power use,
4 according to the 1923 contract, at Twin Falls or
5 Shoshone Falls.

6 Q. And why aren't they used at American
7 Falls?

8 A. I don't know why -- I don't know why
9 it wasn't specifically spelled out in the 1923
10 contract. All I know is that it specifically
11 spells out Twin Falls and Shoshone Falls. I don't
12 know what they were thinking in 1923 that they
13 didn't include that.

14 Q. Okay.

15 A. Because that -- that's all I know
16 about that.

17 Q. Okay. Now I want to turn to the 1923
18 contract --

19 A. Okay.

20 Q. -- Exhibit 4. I'll just turn you to
21 page 17.

22 A. Okay.

23 Q. What are the company's expectations in
24 regards to its ability to call for the release of
25 the 45,000 acre-feet of primary storage?

1 A. Our expectations are that if that
2 water's available in American Falls Reservoir,
3 that we can call for its use at the rate that we
4 desire until that water is gone.

5 Q. Are there any limitations on how and
6 when you can request the release of that water?

7 A. There is a limitation on the dates.
8 It says that the water must be used by November 1.

9 Q. Okay. Are there any other
10 limitations?

11 A. Not that I'm aware of.

12 Q. How is the company's right to that
13 45,000 acre-feet of primary storage different from
14 the irrigator's right to use their irrigation
15 storage from American Falls Reservoir?

16 MR. DeVOE: Objection. Foundation.

17 THE WITNESS: I don't -- I don't know that
18 there is any.

19 Q. (BY MR. STANISH): Well, let's look at
20 page 18.

21 A. Okay.

22 Q. Line 425 at the end there, starting
23 with "...the company's right," go ahead and read
24 that real quick.

25 A. It says, "...the company's right to

1 such storage capacity is to be on an equal basis
2 in all respects, except as otherwise provided
3 herein, with other primary storage capacity rights
4 in the reservoir, as defined in the contracts
5 between the United States and the Irrigation
6 Companies and Districts cooperating with the
7 United States in the construction of said
8 reservoir, a form of which contract is attached
9 hereto and marked Exhibit C."

10 Q. Okay. Back up to the beginning of
11 what I asked you to read.

12 A. Okay.

13 Q. It says that "...the company's right
14 to such storage capacity to be on an equal basis
15 in all respects, except as otherwise provided
16 herein."

17 What are those exceptions?

18 A. I can't tell you right off the top of
19 my head. I guess I would speculate maybe time of
20 use.

21 Q. You explained a little bit before
22 about how you go about requesting that primary
23 storage.

24 In requesting that water, do you have
25 any contact with Water District No. 1 or the

1 Department of Water Resources?

2 A. We do.

3 Q. Explain what that involves.

4 A. We contact them and tell them that,
5 you know, it looks like irrigation is going to
6 start, the flows at Milner will likely go to zero,
7 if no other water is delivered and that if they do
8 indeed go to zero, then we need to provide
9 200 cfs.

10 So everybody just kind of keeps an eye
11 out about the time irrigation starts. And when
12 the canal companies start filling their canals,
13 and if it looks like there's not sufficient water
14 in the system to pass Milner to provide that
15 target flow, we ask IDWR to start accounting for
16 that target flow from our 45,000 acre-feet of
17 primary storage.

18 Q. Have you ever contacted Water District
19 No. 1 or IDWR concerning your rights under the
20 255,000 acre-feet of secondary storage?

21 A. No.

22 Q. And why not?

23 A. Because it's a Bureau of Reclamation
24 operation. We also contact the Bureau of
25 Reclamation on the 45,000. But the water that --

1 the reason we contact Water District 1 on the
2 45,000 is because they have to account for that
3 water as active storage. And that's their role.

4 So we could just contact the Bureau
5 and ask them to release the water, but we contact
6 both entities just for cooperation.

7 Q. There's no need to contact IDWR
8 because it's not storage flows? I'm trying to
9 understand why you would call on one and not the
10 other.

11 A. Well, I think it's just because it's
12 active storage, it's accounted for in the
13 reservoir, it's accounted for as part of releases
14 from the reservoir, and it's different than a
15 pass-through secondary storage capacity. That's
16 my answer.

17 Q. Sure. And I appreciate that. And so
18 are you saying that Water Resources and the water
19 district do not have to account for those 255,000
20 acre-feet flows?

21 A. I think they do account for them. But
22 it's -- they account for all water. I mean they
23 have a water accounting model. They account for
24 all water that flows in and out of the Upper
25 Snake. But it's not something that we've commonly

1 given them a courtesy call to start account of the
2 flow.

3 Q. Let's clear that up, because now
4 you're saying you don't commonly contact them.
5 And prior testimony you just said that you've
6 never contacted them.

7 Which one is it?

8 A. IDWR about that?

9 Q. Correct.

10 A. Well, let me just say that while I've
11 been tracking these flows and while we have
12 demanded or requested the delivery of those flows,
13 we haven't contacted IDWR to ask for them.

14 Q. Okay. Do you have a file --

15 A. Previously in 1923 and when they first
16 worked this out, I think IDWR was involved in the
17 tracking of those flows.

18 Q. What do you have to support that
19 statement?

20 A. Well, I've got some documentation from
21 1923 to '26. I think you guys may have this
22 (indicating).

23 MR. DeVOE: This will be among the
24 documents that we talked about providing earlier.
25 Of course, the State will receive all the same

1 using the Bureau of Reclamation's minimum release.

2 And they wouldn't have to release
3 anything or pass anything through the reservoir if
4 those flows were just naturally met at the Snake
5 River near Kimberly. It's not -- so I think
6 that's probably the answer for that.

7 Q. Right. But you understand that the
8 watermaster has a job to do?

9 A. I do.

10 Q. And he has to account for flows, and
11 all the water users' use thereof?

12 A. And he does account for those flows.
13 He accounts for all releases from American Falls.

14 Q. All right. And is there an account
15 set up for this 255,000 acre-feet in the water
16 district accounting methods?

17 A. Not that I know of, because it hasn't
18 been accounted for since I started tracking it,
19 because it hasn't specifically been passed through
20 for that purpose.

21 Q. And you never felt obligated to bring
22 it up to the water district?

23 A. We brought it up to the Bureau of
24 Reclamation and asked them to provide flows
25 necessary to meet that schedule. They operate the

1 copies.

2 MR. STANISH: Great.

3 THE WITNESS: And there's this information.
4 It's an Idaho Power Company.

5 Q. (BY MR. STANISH): Do you know who
6 this was provided to?

7 A. I have no idea who it was provided to.
8 I have an initial of who produced it, but I don't
9 know who that person is. It ends in 1949. And I
10 think that IDWR was included in that.

11 But as -- since 2001, this -- I became
12 aware of this (indicating) and we tried to
13 reconcile this issue with the Bureau, we have not
14 contacted IDWR in relation to the secondary
15 storage capacity.

16 Q. Now, is that because the secondary
17 storage releases are more in the nature of a
18 natural-flow right versus storage itself?

19 A. Well, that may be. But I think the
20 reason is is that if the water's not specifically
21 passed through for the flow schedule at Kimberly,
22 there isn't anything to track. There's a lot of
23 instances when those flows at the Snake River near
24 Kimberly are met through the winter -- and I'd say
25 most of the time they're met through the winter --

1 system. I'm sure they would send an order to IDWR
2 if they were operating the system to meet the
3 requirements of the 1923 contract in relation to
4 the secondary storage capacity, if they indeed
5 would release water, pass water through American
6 Falls to meet those flow targets. But as long as
7 I've been tracking this, the Bureau has not
8 acknowledged that they need to do that.

9 Q. Okay. I'm just trying to get a sense
10 of where --

11 A. So if there's --

12 Q. I'm just trying to get a sense of
13 where the water district fits into this whole
14 thing.

15 A. Okay. Well, the Bureau orders
16 releases for a lot of things. The Bureau operates
17 the project. My understanding is is that the
18 Bureau is contacted to bump flows up.

19 And the Bureau then contacts Water
20 District 1 -- this is my understanding. And
21 again, I don't know that much about how the Upper
22 Snake operates. It's a black box to me and
23 somewhat of a mystery.

24 My understanding is is that when the
25 canal companies need to increase flows out of

1 American Falls, the Bureau does that, and they
2 work with IDWR to track or account for those
3 flows. And I think IDWR has an accounting program
4 that they input all this data into, and they look
5 at priority dates, who's diverting the water, what
6 their priorities are. And it's a spreadsheet, I
7 think it's a fairly complicated spreadsheet. I
8 don't know how to run it.

9 And so I think there's a cooperation
10 between the Bureau and IDWR to account for these
11 flows and to notify Water District 1 that these
12 operational changes is occurring.

13 I think that holds with flood control,
14 minimum flows, moving water around from reservoir
15 to reservoir. And that's my understanding of it.
16 I don't have intimate knowledge of it, but that's
17 my general understanding of how it works.

18 Q. Okay. Well, again, I'm just trying to
19 understand where they fit in --

20 A. Right.

21 Q. -- because I think you've acknowledged
22 that the water districts and IDWR administers
23 water rights, they track stream flows and
24 diversions; correct?

25 A. Well, they do. And so they will

1 administer this water right -- whatever water
2 rights the Bureau of Reclamation has that they use
3 to fulfill their contract right. So it's really a
4 Bureau of Reclamation operational issue and a
5 communication that they need to make to Water
6 District 1.

7 Q. Are the releases under the 255,000
8 acre-feet, are those more of an operational
9 constraint rather than an assert of a water;
10 right?

11 A. I don't know. I mean that's a
12 question for the Bureau. And again, I just don't
13 know how that works because we haven't -- and I'll
14 just reiterate this. The Bureau has not passed
15 water through American Falls since I've been
16 tracking this specifically to meet the flow
17 schedule according to the 1923 contract at the
18 Snake River near Kimberly.

19 Q. Okay.

20 A. So there's been no communication, as
21 far as I know, by the Bureau to Water District 1
22 on that.

23 Now, we've not had a problem with
24 45,000 acre-feet. We -- as a courtesy, I think,
25 we go ahead and contact Water District 1.

1 Another thing that we do with Water
2 District 1 is we're required in our license -- and
3 the license article that relates to the minimum
4 target flow in the Milner bypass reach -- to track
5 those flows and to request of Water District 1 if
6 there's any flow available, any storage available
7 in their water bank, that we could rent in order
8 to continue to maintain that minimum target flow.
9 And if there is none, then the Milner bypass reach
10 dries up.

11 Q. And so when you just said "a minimum
12 target flow," you're talking about the Milner?

13 A. The Milner.

14 Q. Correct.

15 A. And that's another reason why I think
16 we work with them to track the 45,000, because
17 that's primarily what we use to meet the minimum
18 target flow in the Milner bypass reach.

19 Q. Uh-huh.

20 A. If we had other water that we could
21 lease, we would use that water. We wouldn't
22 distinguish between our primary storage. But it's
23 really the only water that we have that's
24 reliable -- a reliable source to use for meeting
25 those minimum flow targets in the Milner bypass

1 reach.

2 Q. Well, let's say -- you just indicated
3 that you really haven't had a conflict in regards
4 to the 45,000 acre-feet, and I have nothing to
5 indicate otherwise. Let's suppose that you did.

6 Who would you go to to resolve that?

7 A. I think we'd go to the Bureau of
8 Reclamation. They're our -- it's a placeholder
9 right, and they hold the placeholder contract.

10 Q. Okay. And Water Resources really
11 wouldn't have --

12 A. It's -- they're not their project.
13 It's a contract right. It's not really a water
14 right. It's a contract right that Idaho Power has
15 with the Bureau.

16 Q. Okay.

17 A. The Bureau holds the water right in
18 trust for Idaho Power.

19 Q. All right. Thank you.

20 A. Yeah.

21 MR. DeVOE: Do you mind if we take one more
22 short break?

23 MR. GEHLERT: Sure.

24 MR. DeVOE: We'll make it quick.

25 (Recess.)

Page 210 1 Q. (BY MR. STANISH): All right. We're 2 going to move on to the 1976 spaceholder contract, 3 Exhibit 5, I believe it is. 4 A. Okay. See if I can find that one. 5 Okay. 6 Q. All right. Does this document 7 reference the 45,000 acre-feet of primary storage? 8 MR. DeVOE: Counsel, can you just direct 9 him to the paragraph? 10 MR. STANISH: I will try. Let's see here. 11 MR. GEHLERT: I think it's 21, but I could 12 be off. 13 Q. (BY MR. STANISH): Paragraph 21, 14 page 10. 15 A. Paragraph 21. 16 Q. Yeah, page 10. Do you have a 17 different -- 18 A. Page 10. I must have a different 19 version. 20 Q. Let me see. 21 It appears that you do. 22 MR. SCOTT: That's the construction 23 contract. 24 MR. DeVOE: That's the construction 25 contract.	Page 212 1 paragraph 21(b). 2 A. Okay. Page 10. 3 Q. Let me know when you find it. 4 A. Okay. 5 Q. Go ahead and read paragraph 21(b) for 6 me. 7 A. "The United States will continue to 8 make available to the Spaceholder stored water 9 accruing to 2.6471 of the active capacity of the 10 Replacement Dam unless the spaceholder is in 11 default under the terms and conditions of the 12 Existing Spaceholder Contract or this Spaceholder 13 Contract." 14 Q. And how many acre-feet does 15 2.6471 percent of the active storage capacity of 16 the American Falls Reservoir represent? 17 A. Right now it represents 44,274 18 acre-feet. 19 Q. Excuse me. Could you repeat that for 20 me? 21 A. 44,274 acre-feet of 1.67 million 22 acre-feet. 23 Q. That's approximately your -- is that 24 your 45,000 -- 25 A. 45,000.
Page 211 1 MR. STANISH: That's right. That's the 2 construction contract. 3 THE WITNESS: Wrong one. I got this in 4 here. Let me pull it back out here. Okay. 5 Q. (BY MR. STANISH): Page 10. 6 A. All right. 7 Q. Paragraph 21. 8 A. Okay. 9 Q. Again, same question, does this 10 document reference the 45,000 acre-feet of primary 11 storage? 12 A. It does. 13 Q. And where does it make that reference? 14 A. Well, I think it makes that reference 15 in one place that I know of. Okay. Well, maybe 16 it doesn't. There's a table called Exhibit A. 17 Maybe that's in the other one. 18 Q. I believe it's Exhibit I. It's the 19 first one, yeah. 20 A. Exhibit I? 21 Q. You don't have a copy there. 22 A. Well, I thought I did in the copy that 23 I had. I grabbed the wrong copy. I don't see it 24 in this one either. 25 Q. Okay. Well, let's stick with	Page 213 1 Q. -- acre-feet of primary storage? 2 A. Right. 3 Q. Okay. And going backwards towards 4 page 1 of the spaceholder contract. 5 A. Okay. 6 Q. "Explanatory Recitals," No. 5. Go 7 ahead and read that for me. 8 A. "Whereas the United States and the 9 Spaceholder are parties to that certain contract 10 thereafter referred to as the Existing 11 Spaceholder Contract dated June 15th, 1923, symbol 12 and No. ILR-733 wherein the Spaceholder conveyed 13 to the United States certain lands and water 14 rights and obtained a right to use the stored 15 water accruing to 2.6471 percent of the active 16 storage -- water storage capacity in the existing 17 dam, as well as other rights related to the use of 18 water for power generation." 19 Q. And that 2.6471 percent, again, that's 20 your 45,000 acre-feet, give or take the primary 21 storage? 22 A. Correct. 23 Q. Can you show me where in this contract 24 there's a reference to the 255,000 acre-feet of 25 secondary storage?

Page 214 1 A. Well, if the exhibit was there that 2 had the table. 3 Q. Okay. And I think I know what you're 4 referring to. I think I found it. 5 A. There's a footnote. 6 Q. I think you're referring to the 7 falling water contract. 8 A. That might be it. I thought it was in 9 this conformed copy of the construction of 10 operation and maintenance too. 11 MR. DeVOE: I think it is. 12 THE WITNESS: But it's also in the falling 13 water. Same contract -- same table. I think in 14 this one it's Exhibit A. There's the table in the 15 construction and operation of O&M. And it's also 16 Exhibit I in the falling water contract. 17 MR. STANISH: Okay. I'm going to make this 18 an exhibit, if that's all right. It's Exhibit I 19 to the falling water contract. And yes, it is 20 highlighted, for the record, but I'll leave that 21 up to counsel to object. 22 MR. DeVOE: Well, I mean it's fine to make 23 it an exhibit to the deposition. I can't imagine 24 we're going to get through summary judgment 25 without the placeholder contract coming in and the	Page 216 1 is the computation for O&M charges, which relates 2 to the 255,000 acre-feet of secondary storage. 3 Q. Okay. And I understand that. This 4 Exhibit 18, this was an exhibit to the falling 5 water contract and the government contract, 6 approximately the same? 7 A. (No audible response.) 8 Q. Was this an exhibit to the spaceholder 9 contract? 10 A. I assume that it was, but I don't see 11 it in the spaceholder contract. 12 Q. Okay. So absent that exhibit, there 13 is no reference to the 255,000 acre-feet of 14 secondary storage in the 1976 spaceholder 15 contract? 16 A. I haven't reviewed that contract 17 sufficiently to know if it is or not. 18 Q. Okay. Well, let's just revisit this 19 table one more time. 20 A. Okay. 21 Q. Just to rephrase, the column entitled 22 "Approximate acre-feet," for Idaho Power Company 23 it designates 45,000 acre-feet; is that correct? 24 A. That's correct. 25 Q. And then percentage of "Active storage
Page 215 1 falling water contract. I mean it's all in. So 2 we're not going to object for the purposes of the 3 deposition to this one table. 4 MR. STANISH: So can we mark that as 5 Exhibit 18. 6 (Exhibit 18 marked.) 7 Q. (BY MR. STANISH): All right. 8 Mr. Bowling, you were saying that this table that 9 has been marked as Exhibit 18 -- 10 A. Right. 11 Q. -- references the 255,000 acre-feet. 12 Can you explain that answer. 13 A. If you look at the last line in the 14 main body of the table where it says "Idaho Power 15 Company," it says our contract number is Ilr-733; 16 the date is 6/15/23; the date of supplemental 17 contract, none; approximate acre-feet, 45,000; 18 percent of active capacity; percent to distribute 19 to construction costs, 2.6471; percent of -- and 20 then it has next to it "Percent to distribute to 21 annual replacement dam operation and maintenance 22 costs, 7.1388." 23 And there's a footnote 3 that says, 24 "Computed on the basis of Article 17 in the 25 contract 6/15/23." And Article 17 in the contract	Page 217 1 capacity - Percent to distribute construction 2 costs for Idaho Power Company," it designates 3 2.6471 percent; correct? 4 A. Correct. 5 Q. Is there a column that designates the 6 rate or references secondary storage? 7 A. There is not. The only reference is 8 the footnote. 9 Q. But there's not a column that 10 designates it? 11 A. I don't see one. 12 Q. The other question I have for you 13 about the '76 contract, who were parties to this 14 contract, this spaceholder contract, to be 15 precise? 16 A. Parties to this particular contract 17 (indicating)? 18 MR. DeVOE: That's the falling water 19 contract. 20 THE WITNESS: Oh. Spaceholder contract? I 21 think it was between American Falls Reservoir 22 District and Idaho Power Company. 23 Q. (BY MR. STANISH): Is it the United 24 States as well? I think if you read the title, 25 you could probably make it out.

1 A. It is.
2 Q. Okay. So this '76 contract was an
3 agreement between not just the United States and
4 the power company, but also the American Falls
5 Reservoir District?

6 A. That's correct.

7 Q. And the American Falls Reservoir
8 District was not a party to the 1923 spaceholder
9 contract?

10 A. That's correct.

11 Q. Okay. I'm going to ask you to turn
12 back to the 1923 contract. And I apologize for
13 jumping around on you.

14 A. Okay.

15 Q. Let's turn to pages 19 and 22. And
16 specifically, page 19.

17 A. Okay.

18 Q. And Mr. Gehlert asked you a number of
19 questions about this, but I just had a couple
20 follow-ups. Under paragraph 18, the company's
21 secondary storage capacity, starting on line 456.

22 A. Rockets.

23 Q. "A secondary right to use not to
24 exceed 255,000 acre-feet of storage capacity in
25 the reservoir when such capacity is not then

1 required and not being used by the owners of
2 irrigation rights."

3 Who determines when that capacity is
4 not then required?

5 MR. DeVOE: Objection. Calls for a legal
6 conclusion.

7 THE WITNESS: I don't have an answer to
8 that.

9 Q. (BY MR. STANISH): Well, you explained
10 earlier that the Bureau --

11 A. The Bureau obviously controls the
12 releases from American Falls Reservoir.

13 Q. So they're the ones that are
14 determining whether this water is not then
15 required?

16 A. I think that's correct.

17 Q. Is the watermaster responsible for
18 making that determination?

19 A. I don't know if the watermaster has
20 anything to do with it. I don't know. I think
21 that I've always believed that that was a
22 conversation that the company and the Bureau of
23 Reclamation had.

24 I know early on in the process from
25 that document that I provided to you, I think that

1 those discussions did take place. I think that's
2 what resulted in the 1934 contract to use that
3 secondary storage water in those low years in lieu
4 of energy production and replacement of the energy
5 that would have been produced with Black Canyon.
6 So I think it was a joint communication between
7 Idaho Power Company and the Bureau of Reclamation.

8 And I don't know if in 1926 that the
9 water district was involved in that. But I know
10 that those communications, as outlined in that
11 summary, occurred.

12 Q. Do you envision the watermaster ever
13 playing a role in making that determination?

14 A. I don't know that they don't now. So
15 I don't know if they ever will or if they ever
16 have. I don't envision -- I don't envision one
17 way or the other.

18 Q. All right. Well, I think my question
19 goes to a broader issue of when there's a conflict
20 between the spaceholder, Idaho Power Company, and
21 the Bureau of Reclamation, the operator, as to
22 what water should be held back because it's
23 required for irrigation.

24 A. Well, you know, it's -- and that
25 discussion may happen between the Bureau and Water

1 District 1.

2 Q. Uh-huh.

3 A. Because I know it is Water
4 District 1's responsibility to track water and
5 water rights and priority dates. So I don't know
6 how that -- if they have a relationship in regard
7 to all of the spaceholder contracts, other than
8 priority of fill. And that's all I know about
9 that.

10 Q. So as a contractor, spaceholder
11 contractor, the power company's really not in a
12 position to compel the watermaster to make a
13 determination?

14 A. To compel the watermaster?

15 Q. Right.

16 A. I don't believe so.

17 Q. Maybe this is a good time to revisit
18 something that you said earlier, and that was that
19 it was the power company's policy in the past that
20 irrigation comes first.

21 Did I recite that correctly? Is
22 that --

23 A. I think, generally speaking, the power
24 company does agree with that.

25 Q. How far does that accommodation go?

1 A. Well, I think we talked about that
2 earlier. I think I addressed that. And I think
3 it's really up to the Bureau to determine how to
4 operate their project to meet their contract
5 needs. And I think the company believes that in
6 doing so the Bureau will operate their projects
7 according to the prior-appropriation doctrine and
8 allocate water in priority.

9 Q. Uh-huh.

10 A. And if that's what they do, then
11 that's what they need to do.

12 Q. Well, you do recognize that there
13 are --

14 A. So I guess I believe that that holds
15 up as long as water is allocated and administered
16 in priority according to the prior-appropriation
17 doctrine.

18 Q. Sure. And maybe here's a good
19 follow-up question.

20 So for the water right No. 01-2064,
21 there's two purposes of use: There's irrigation
22 storage and hydropower storage; correct?

23 A. Right.

24 Q. And they both have the same priority
25 date of 1921 or thereabouts?

1 A. I do agree.

2 Q. Again, to the extent there's a limited
3 water supply, what relationship does the secondary
4 storage releases have to the Bureau's attempt to
5 maximize storage at Palisades?

6 MR. DeVOE: Objection. Calls for a legal
7 conclusion.

8 THE WITNESS: I don't know that it has
9 anything to do with maximizing space in Palisades.

10 Q. (BY MR. STANISH): And why not?

11 A. Well, I know that in the 1923 contract
12 it provided for additional storage to be built
13 above American Falls. But I don't understand how
14 all that works. I don't understand how they move
15 water around in the reservoirs and how the
16 operation of the upstream reservoir projects fits
17 into that. I think it's pretty complicated.

18 I know they store American Falls water
19 in other reservoirs. That part of this
20 administration I don't have a clear understanding
21 of. So I don't -- that's why I don't understand
22 how Palisades fits into this administration of the
23 1923 contract and the secondary storage.

24 Q. But you do recognize that the
25 secondary storage would have a senior in priority

1 A. Okay.

2 Q. In terms of the company's right to
3 that secondary storage, given a limited supply of
4 water, how is that water allocated between the
5 irrigation storage and the releases for
6 hydropower?

7 MR. DeVOE: Objection. Calls for a legal
8 conclusion.

9 THE WITNESS: The secondary storage?

10 Q. (BY MR. STANISH): Correct.

11 A. Well, as long as I've been tracking
12 this, it hasn't been administered and there hasn't
13 been a distinction, as far as the Bureau of
14 Reclamation is concerned.

15 How it was done in the past, I don't
16 have any knowledge of that.

17 Q. Okay. That leads me to another
18 question about later or junior priority storage
19 rights upstream.

20 Are you familiar with Palisades
21 Reservoir?

22 A. I am.

23 Q. And it has a later priority date than
24 American Falls.

25 Do you agree with that?

1 to the Palisades storage right?

2 A. It's American Falls storage.
3 American -- and as such, American Falls storage is
4 senior to Palisades. That's my understanding.

5 Q. Right.

6 A. So I guess that would say that it does
7 because it -- the secondary storage is storage
8 capacity in American Falls, and Palisades has the
9 later priority.

10 Q. So in this case, irrigation storage in
11 Palisades would not come first?

12 A. Depends on the priority. And again,
13 if the Bureau operates the projects according to
14 the prior-appropriation doctrine, I guess that's a
15 decision that the Department and the director
16 would have to make.

17 Q. Well, the reason I ask is because you
18 said that hydropower has been accommodating to
19 irrigation and irrigation storage. And so the
20 reality is you have a junior storage right at
21 Palisades that's used primarily for irrigation.

22 And so what I'm trying to ask is, is
23 this 255,000 acre-feet accommodating to assure
24 that that Palisades junior right is filled?

25 MR. DeVOE: Objection. Misstates the

Page 226 1 testimony and calls for a legal conclusion. 2 THE WITNESS: Again, I don't -- I just 3 don't understand enough about it to make an 4 informed response. 5 Q. (BY MR. STANISH): Okay. That's fair 6 enough. I got plenty of questions. We're getting 7 there. Okay. If you could turn to the falling 8 water contract, Exhibit 8. Page 10. 9 A. Okay. 10 Q. And I'm going to ask you to read 11 section 2.1(e). 12 A. "Less than 10 percent of the water 13 accruing to the active storage capacity in the 14 Replacement Dam may be contractually scheduled for 15 release from the Replacement Dam by the Idaho 16 Power Company, except for temporary increases 17 following a default by a nonparticipating water 18 user or a spaceholder as provided in Section 3.5 19 thereof or arising from unusually wet or dry 20 weather in the service area of the Replacement 21 Dam." 22 Q. Can you explain what that section 23 means. 24 MR. DeVOE: Objection. Asked and answered. 25 Mr. Gehlert covered this.	Page 228 1 American Falls Dam. And Mr. Bowling hasn't had a 2 chance to review these documents, and won't have a 3 chance to review them today. 4 We started the deposition at 5 9:00 a.m., and were handed these documents at 6 2:45 p.m., and since then haven't had even close 7 to sufficient time for him to review these. 8 Counsel certainly knew that this 9 deposition was going to take place today and has 10 known for some time and could have provided these 11 documents well ahead of time for Mr. Bowling to 12 prepare. So he's not prepared to answer any 13 questions, and these documents speak for 14 themselves. 15 MR. STANISH: Okay. I'm just going to ask 16 him a few questions. 17 I'll have this marked as Exhibit 19, I 18 believe. 19 (Exhibit 19 marked.) 20 Q. (BY MR. STANISH): Mr. Bowling, if you 21 could please turn to what is page 6. 22 MR. DeVOE: Which document are you 23 referring to? 24 MR. STANISH: This is the memorandum from 25 AFRD to the Honorable Donald C. Alexander.
Page 227 1 Q. (BY MR. STANISH): Well, briefly. 2 A. That means that -- and what I take 3 that to mean is that Idaho Power can have no more 4 than 10 percent of the active storage capacity in 5 the American Falls Reservoir. 6 Q. And the 255,000 acre-feet is separate 7 from this? 8 A. Yes. It's secondary storage. It's 9 not active storage. 10 Q. And does it provide that exception in 11 section (e) anywhere? 12 A. It does not. 13 Q. All right. I'm now going to turn to 14 the two documents I handed to you over the long 15 break there. 16 MR. DeVOE: I'm going to go ahead and make 17 a record on these documents now. 18 Idaho Power Company objects to the use 19 of these documents as exhibits today or in the 20 future. They weren't disclosed prior to the 21 deposition, and Mr. Bowling hasn't had time to 22 review them. 23 There are about 25 single-spaced pages 24 of documents dealing with what appears to me to be 25 the tax exemption issue around the rebuild of the	Page 229 1 Q. Go ahead and just read that last 2 paragraph for me -- or sentence. 3 A. "Pursuant to Public Law 93-206, a 4 falling water contract has been drafted which 5 specifically states that the company has no right 6 to call upon the Bureau of Reclamation or the 7 spaceholders for the release of water from 8 American Falls Reservoir except for 45,000 9 acre-feet which the company owns, has a 10 spaceholder of the 1,700,000 acre-feet capacity." 11 Q. Do you agree with that statement? 12 MR. DeVOE: Objection. Calls for a legal 13 conclusion. 14 THE WITNESS: If -- it makes no reference 15 of active storage. But I would agree with that as 16 it pertains to active storage only. 17 Q. (BY MR. STANISH): And it doesn't 18 reference secondary storage at all? 19 A. It does not. 20 Q. And go ahead and turn to the last page 21 here. 22 A. Okay. 23 Q. Who are the signators on this? Or 24 it's typed out. The authors? 25 A. On the very last page --

58 (Pages 226 to 229)

1 Q. Yes.
 2 A. -- at the bottom?
 3 Q. Correct.
 4 A. "Attorneys for American Falls
 5 Reservoir District, Chapman and Cutler, Parry,
 6 Robertson, Daly & Larson."
 7 Q. And the American Falls Reservoir
 8 District, they were a party to that 1976
 9 spaceholder contract; is that correct?
 10 A. That's correct.
 11 MR. STANISH: We'll mark this as
 12 Exhibit 20.
 13 (Exhibit 20 marked.)
 14 MR. DeVOE: Just to be clear for the
 15 record, the same objection applies to Exhibit 20.
 16 Q. (BY MR. STANISH): Do you have what's
 17 been marked as Exhibit 20? All right. Let's go
 18 ahead and turn to page 3.
 19 A. Okay.
 20 Q. Three paragraphs down --
 21 A. Okay.
 22 Q. -- starting with the second sentence
 23 with "There," go ahead and read that for me.
 24 A. Okay. "It was intended that in normal
 25 circumstances substantially all of the falling

1 government contract, and the falling water
 2 contract -- under those contracts, was there any
 3 intention to release water specifically for use by
 4 the Idaho Power Company to generate electricity,
 5 except for 45,000 acre-feet?
 6 A. Not at the American Falls plant. I
 7 think what these documents are referring to is
 8 specifically the American Falls plant. And I
 9 talked about that earlier, that I don't think this
 10 references any other projects or any other plants,
 11 other than American Falls itself.
 12 Q. So explain that for me.
 13 A. Well, I think all of this information
 14 was -- pertained to power generation and calling
 15 for water to generate electricity at the American
 16 Falls project, American Falls plant itself.
 17 That's my opinion.
 18 Q. Okay. And do you see a qualifier in
 19 this second sentence that conditions it upon just
 20 the American Falls plant?
 21 A. I do not.
 22 Q. Okay. Thank you.
 23 Down to the next paragraph there, and
 24 I'll go ahead and read it for you because it's --
 25 I believe it's eight lines down starting with "In

1 water would be made available to Idaho Power
 2 Company only when water was released from the dam
 3 for irrigation purposes. There has been no
 4 intention to release water specifically for use by
 5 the Idaho Power Company to generate electricity,
 6 except for 45,000 acre-feet (2.65 percent of the
 7 storage capacity) whose release of Power Company
 8 in its capacity as a spaceholder in the irrigation
 9 district can schedule for the purpose of
 10 generating electric energy. Thus, the use of
 11 water for electric energy would be subordinated to
 12 the use of water for irrigation."
 13 Q. Do you agree with the statements made
 14 in that paragraph?
 15 MR. DeVOE: Objection. Calls for a legal
 16 conclusion and the document speaks for itself.
 17 THE WITNESS: I -- I think that it does
 18 speak for itself. And we've said that we -- I'm
 19 having a hard time reading this because it's not
 20 very clear. It's sort of playing tricks with my
 21 eyes.
 22 Q. (BY MR. STANISH): Let me ask you, in
 23 terms of the three contracts that the power
 24 company and AFRD and the United States were party
 25 to in 1976 -- the 1976 spaceholder contract, the

1 this."
 2 A. Okay.
 3 Q. It states, "In this case the Idaho
 4 Power Company has a limited spaceholder right
 5 (under 3 percent)."
 6 Is that correct? Did I read that
 7 correctly?
 8 A. You did read it correctly, as far as I
 9 can tell.
 10 Q. And do you agree with that statement,
 11 the company only has a 3 percent spaceholder right
 12 at American Falls?
 13 A. I haven't done the math to determine
 14 that, so I don't know what the percentage of
 15 storage is. I haven't had time to review this,
 16 so...
 17 Q. Well, let's go back to what was marked
 18 as Exhibit 18, I believe. It was the table that
 19 was attached to the falling water contract.
 20 A. Okay. And I do know that that's 2.65.
 21 So if you're referring to active storage capacity,
 22 I agree.
 23 Q. Okay. So that's what this document
 24 was most likely referring to?
 25 A. Referring to active storage capacity.

1 Q. Just a couple more questions on this.
 2 Page 4.
 3 A. 4?
 4 Q. Yeah. Go ahead and read that first
 5 sentence for me.
 6 A. First paragraph?
 7 Q. Yeah. Starting with "The committee."
 8 A. "The committee intends that
 9 subordinate use of water for generating
 10 electricity -- electric energy means that less
 11 than 10 percent of the normal supply of stored
 12 water may contractually be scheduled for release
 13 by the power company and used for generating
 14 electric energy."
 15 Q. Do you agree with that statement?
 16 A. That's what the document says.
 17 Q. All right.
 18 A. I don't know anything about the
 19 committee or who was on the committee or what the
 20 relationship of this document is to the whole
 21 thing, because I haven't had a chance to review
 22 it.
 23 Q. Do you see anything in that sentence
 24 that distinguishes active storage versus secondary
 25 storage?

1 acre-feet --
 2 Q. Each year?
 3 A. -- to generate power.
 4 Q. In each year they've used that amount?
 5 A. Well, at American Falls plant, I would
 6 say yes. But what -- I'm not sure what you're
 7 referring to, then.
 8 Q. I'm asking, did the power company use
 9 all 300,000 acre-feet each year since 1976?
 10 A. I don't know.
 11 Q. Okay. I just want to revisit a couple
 12 questions on the effect the 255,000 acre-feet has
 13 on the operations of American Falls, if that's
 14 okay.
 15 A. Okay.
 16 Q. During what period of year are the
 17 Upper Snake River storage reservoirs typically
 18 filling?
 19 MR. DeVOE: Objection. Asked and answered.
 20 THE WITNESS: During the fill season.
 21 Q. (BY MR. STANISH): And when is that?
 22 What months are those?
 23 A. Typically, October through June or
 24 July. Maybe even September through June or July.
 25 It really depends on irrigation demand and whether

1 A. I do not.
 2 Q. Okay. That's all I have on those two
 3 documents, Mr. Bowling.
 4 A. Okay.
 5 Q. Okay. Just going back to your amended
 6 objection, No. 3, Exhibit 3.
 7 A. Okay.
 8 Q. Keep you on your toes. Under the
 9 "Purpose of Use" element --
 10 A. Okay.
 11 Q. -- there's a claim that power storage
 12 and power from storage in the amount of 300,000
 13 acre-feet; is that correct?
 14 A. That's correct.
 15 Q. Has the power company used all 300,000
 16 acre-feet of storage for power purposes each year
 17 since the construction of the original American
 18 Falls Dam in the '20s?
 19 A. I can't answer that question. I don't
 20 know. I haven't -- I mean that's a long history.
 21 I don't know. I don't have documentation from all
 22 years. I can't answer.
 23 Q. How about since 1976 when the project
 24 was rebuilt, have they used all 300,000 acre-feet?
 25 A. They have used more than 300,000

1 or not water is being used.
 2 MR. DeVOE: I think Mr. Gehlert made a
 3 pretty extensive record on that.
 4 MR. STANISH: Okay. Just a couple more
 5 questions.
 6 Q. And would you say the nonirrigation
 7 season is more important to filling than the
 8 irrigation season?
 9 A. No.
 10 Q. And why not?
 11 A. Well, I think that if Water District 1
 12 and the Bureau has the ability to put water in the
 13 reservoir, they will. I don't know that they
 14 distinguish between irrigation season and
 15 nonirrigation season, if they have the ability to
 16 do that.
 17 Q. Okay. Fair enough. Are there any
 18 limitations on the exercise of the 255,000
 19 acre-feet of secondary storage that would result
 20 in stream flows at Twin Falls below those set
 21 forth in the 1923 contract?
 22 A. There is. There's a date limitation
 23 and if American Falls first fills.
 24 Q. And what if there are unfilled
 25 reservoirs upstream?

1 A. I don't believe that that's a
2 limitation.

3 Q. Okay. And so those flows at Twin
4 Falls would be delivered regardless of whether
5 those upstream storage reservoirs have been
6 filled?

7 A. In the past right after the contract
8 was signed in 1923, that was the case.

9 Q. Okay.

10 A. Lately, that hasn't been the case.

11 Q. And under your interpretation of the
12 '23 contract, is that the case?

13 A. Based on the operations following the
14 signing of it, I would have to say that those
15 actions lead me to believe that that's not the
16 case.

17 Q. You confused me there.

18 A. Okay. Right after the signing of the
19 agreement and based on my review of anecdotal
20 information, those secondary storage -- that
21 secondary storage capacity was used to reregulate
22 flows to maintain the flow schedule for the Snake
23 River at Kimberly while the reservoirs were still
24 filling. And that's how I believe that they
25 intended that contract to be implemented.

1 Q. And that's not occurring now?

2 A. It's not occurring now. Flow schedule
3 has not been delivered or the contract has not
4 been administered by the Bureau according to the
5 1923 agreement.

6 Q. Do you believe it should return to the
7 way it had been?

8 A. Well, a lot of things have changed.
9 But that's how I believe that it was intended to
10 operate.

11 Q. So let me see if I got this correct.
12 Under this water right No. 01-2064, the Bureau of
13 Reclamation is obligated to release water from
14 American Falls Reservoir, that amount of the
15 255,000 acre-feet in order to meet those stream
16 flows at Twin Falls, regardless of any negative
17 effect it may have on the probability of filling
18 irrigation storage upstream?

19 MR. DeVOE: Objection. Asked and answered.

20 THE WITNESS: I think the Bureau is
21 obligated to honor their contract. And that --
22 all contracts, all of their spaceholder contracts.
23 And how they operate their system to do that to
24 the best of their ability is really the Bureau's
25 decision.

1 Q. (BY MR. STANISH): If projections
2 indicate that the irrigation storage component of
3 01-2064 will not fill, is water right 01-2064
4 still required to release the secondary storage?

5 MR. DeVOE: Objection. Asked and answered.
6 We've covered this same ground now in about 12
7 different ways.

8 MR. STANISH: Last question.

9 THE WITNESS: Well, I think that that's
10 something that the Bureau and the power company
11 would talk about, and there's evidence in the past
12 that we did talk about those things. And the
13 company did say "Hey, why don't we work something
14 out so that that water can be used by the
15 irrigators."

16 And so I think that it's a
17 case-by-case situation. I think the Bureau
18 themselves in the memo from 1977 indicated that
19 they thought that is how it should be handled, on
20 a case-by-case basis. When issues arise, they
21 would best be handled on a case-by-case basis.
22 And I think the company agrees with that.

23 Q. (BY MR. STANISH): Certainly you can
24 sympathize with the fact that I do represent the
25 State of Idaho, and ultimately the State of Idaho

1 has to administer these water rights. And clarity
2 is the ultimate goal in the SRBA, so when the
3 watermaster looks at a water right he knows
4 exactly what to do. And so these kind of
5 agreements or informal agreements don't always
6 translate to easy water management.

7 So given that fact, what would be the
8 de facto direction the watermaster should take?

9 MR. DeVOE: Objection. Calls for a legal
10 conclusion and misstates the facts and testimony.

11 THE WITNESS: I guess I don't know. But I
12 do know that we -- the company would welcome
13 discussions with the Bureau, who is -- who we have
14 the 1923 contract. We have to work that out. I
15 think there's a lot of give and take in the Snake
16 Basin on water and water issues and cooperating.

17 I think some of the recent settlements
18 that the power company's been involved in
19 illustrate that and that things can be worked out.
20 And I think that that's what happens all the time.
21 I don't think anything is very clearcut.

22 I know that the watermaster would like
23 to have something that he can look up, a column
24 and a row and there's my decision. But that
25 doesn't even happen. And so I still think that

Page 242 1 communication and working these things out is the 2 best solution. 3 Q. (BY MR. STANISH): Would you welcome 4 the watermaster directing or demanding the Bureau 5 to release that water in those times that it 6 hasn't or refused to? 7 A. If that's what the watermaster and the 8 Bureau decided that they wanted to do in 9 discussions with Idaho Power, that's what would be 10 worked out. I don't know if I would say I would 11 welcome it. That sounds like we would be elated. 12 We would like our contract to be administered 13 according to the 1923 agreement. 14 Q. And I can certainly understand that. 15 But I'm asking specifically about the watermaster. 16 If the Bureau refuses to release that water that 17 you believe you're entitled to, I mean do you 18 welcome the watermaster stepping in and demanding 19 them to do that? 20 MR. DeVOE: Objection. I think he's 21 answered the question. And now we're well beyond 22 the scope of the 30(b)(6), at any rate. 23 THE WITNESS: I think I have answered the 24 question. I don't know -- our -- our issue is 25 with the Bureau and the contract that we have with	Page 244 1 water being stored. 2 Q. (BY MR. STANISH): Okay. Less water 3 stored for irrigation? 4 A. Less water stored for irrigation or 5 power. 6 Q. Okay. Now, under the "Quantity" 7 element of your amended objection, remark No. 2, 8 you claim that 2064 has a right to refill; is that 9 correct? 10 A. Correct. 11 Q. Explain what a right to refill is. 12 A. Well, if you'd look at the numbers, 13 and you have 1,655,000 acre-feet for irrigation, 14 and you have 300,000 acre-feet for power, in order 15 to fulfill that amount that's over the capacity 16 of -- the current capacity of American Falls, 17 there would have to be a second fill to provide 18 that water. Again, I didn't prepare that, but 19 that's my understanding. 20 Q. Okay. Fair enough. Do you have an 21 understanding of the power company's receipt of 22 refill credits in the past? 23 A. No. 24 Q. I know Mr. Gehlert asked you about 25 what the minimum amount of water that is necessary
Page 243 1 the Bureau. 2 Q. (BY MR. STANISH): Not with the 3 watermaster? 4 A. Not with the watermaster. 5 Q. Not with the administration of these 6 water rights? 7 A. The Bureau's administration of the 8 water rights is their issue. And their honoring 9 the contract with the power company is the issue 10 that we have with the Bureau. 11 Q. Okay. Have there been years in the 12 Upper Snake River Basin where the reservoirs have 13 not all filled to capacity? 14 A. There have been. 15 Q. And has the release of that 255,000 16 acre-feet of water under 2064 contributed to the 17 failure of those reservoirs to fill? 18 A. I don't know that it has. 19 Q. Finally, does more water released from 20 American Falls for hydropower purposes mean less 21 water for irrigation storage? 22 A. It means -- 23 MR. DeVOE: Objection. Asked and answered 24 a number of times. 25 THE WITNESS: It means that there's less	Page 245 1 to spin the turbines at American Falls. And 2 apparently it's a thousand cfs, or roughly that. 3 A. That's my understanding. 4 Q. What's the minimum amount of water 5 needed to spin the turbines at Twin Falls? 6 A. There's a small unit on the diversion 7 dam itself that requires about 200 cfs. And then 8 there's two other units, but the minimum amount 9 required to generate any electricity is about 200 10 cfs. 11 Q. And just so we're clear, under the 12 1923 contract -- 13 A. Okay. 14 Q. -- we're talking about flows, target 15 flows, at Twin Falls between 590 and 790 cfs? 16 MR. DeVOE: Can you refer Mr. Bowling to 17 the contract? 18 Q. (BY MR. STANISH): Page 22. 19 A. 590 and 790 at Twin Falls. 20 Q. Correct. And that's less than the 21 amount of the minimum capacity at American Falls? 22 A. That's correct. 23 Q. All right. The negotiations leading 24 up to the 1976 rebuild and the contracts relevant 25 thereto, did the company ever express an intent to

62 (Pages 242 to 245)

Page 246	Page 248
1 retain any control over the 255,000 acre-feet of 2 storage at American Falls? 3 A. I don't know. From the documents that 4 I provided earlier, the company expressed an 5 intent to maintain the right in the 1923 contract 6 to 255,000 acre-feet of storage capacity. 7 Q. So there were express statements 8 directly to that secondary storage in those 9 documents? 10 A. I believe so. 11 Q. Okay. And do you know who those 12 statements were made to? 13 A. They were made to various committees. 14 I don't know exactly which ones, but I know that 15 they were made in testimony to various committees 16 at the time of the negotiations for the 17 replacement dam. 18 Q. And just so I got this clear in my 19 head here, you discovered this interest in the 20 255,000 acre-feet in the late '90s when you were 21 doing some research? 22 A. Correct. 23 MR. DeVOE: Objection. Misstates the 24 testimony. 25 Q. (BY MR. STANISH): Well, tell me when	1 (Signature requested.) 2 -oOo- 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
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1 you discovered them and how. 2 A. Can you restate the question? 3 Q. When did you first discover the power 4 company's interest in the 255,000 acre-feet? 5 A. I personally first discovered its 6 interest in the late '90s. 7 Q. And after that, the company made a 8 claim in the SRBA for that water? 9 A. Correct. 10 MR. STANISH: If we could just take a short 11 break, I'm going to go over my notes and ask some 12 quick follow-ups. 13 MR. DeVOE: Well, I think given that 14 Candice is going to have questions and I'm going 15 to have questions, we ought to just plan on 16 starting at 9:00 a.m. tomorrow and finishing up 17 then. 18 MR. STANISH: Okay. Is that what you want 19 to do? 20 MS. McHUGH: Fine with me. I would say in 21 fairness I have a half an hour. 22 MR. DeVOE: All right. And I probably do 23 as well. So there's no point in trying to hold 24 over tonight. 25 (Deposition adjourned at 5:05 p.m.)	

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. 01-02064
Case No. 39576) (American Falls Power Right)
_____)

VOLUME II
(Pages 251-339)

CONTINUED RULE 30(B)(6) DEPOSITION OF IDAHO POWER
COMPANY, TESTIMONY OF JON BOWLING
MAY 4, 2010

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

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1 THE RULE 30(B)(6) DEPOSITION OF IDAHO
 2 POWER COMPANY, TESTIMONY OF JON BOWLING, was taken
 3 on behalf of the United States at the offices of
 4 Idaho Power Company, 1221 West Idaho Street,
 5 Boise, Idaho, commencing at 8:35 a.m. on May 4,
 6 2010, before Jeff LaMar, Certified Shorthand
 7 Reporter and Notary Public within and for the
 8 State of Idaho, in the above-entitled matter.
 9
 10 APPEARANCES:
 11 For The United States:
 12 UNITED STATES DEPARTMENT OF JUSTICE
 13 NATURAL RESOURCES SECTION
 14 ENVIRONMENT AND NATURAL RESOURCES DIVISION
 15 BY MR. DAVID W. GEHLERT
 16 1961 Stout Street, 8th Floor
 17 Denver, Colorado 80294
 18 For the State of Idaho:
 19 OFFICE OF THE ATTORNEY GENERAL
 20 BY MR. DAVID I. STANISH
 21 700 West State Street, 2nd Floor
 22 Post Office Box 83720
 23 Boise, Idaho 83720-0010
 24 ///
 25 ///

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1 APPEARANCES (Continued)
 2
 3 For IDAHO POWER COMPANY:
 4 BROWNSTEIN HYATT FARBER SCHRECK
 5 BY MR. ADAM T. DeVOE
 6 MR. DAVID G. SCOTT
 7 410 Seventeenth Street, Suite 2200
 8 Denver, Colorado 80202-4432
 9 -and-
 10 IDAHO POWER COMPANY LEGAL DEPARTMENT
 11 BY JAMES C. TUCKER
 12 1221 West Idaho Street
 13 Post Office Box 70
 14 Boise, Idaho 83702
 15 For Idaho Ground Water Appropriators and
 16 Aberdeen-Springfield Canal Company:
 17 RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED
 18 BY MS. CANDICE M. McHUGH
 19 101 South Capitol Boulevard, Suite 208
 20 Boise, Idaho 83702
 21
 22
 23
 24
 25

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1 JON BOWLING,
 2 having been previously duly sworn to tell the
 3 truth relating to said cause, testified as
 4 follows:
 5
 6 EXAMINATION
 7 BY MR. STANISH:
 8 Q. Morning, Jon. We're continuing the
 9 deposition, Tuesday, May 5th, at 8:30 in the
 10 morning.
 11 A. Okay.
 12 Q. I just have a couple more follow-up
 13 questions, and that's it.
 14 A. Okay.
 15 Q. If you could turn to page 19 of the
 16 '23 contract, Exhibit 4.
 17 A. Okay.
 18 Q. I'm going to go ahead and read
 19 line 460 for you starting with, quote, "...but
 20 shall have no further right to use any part of
 21 said 255,000 acre-feet of capacity or any water
 22 stored therein after the reservoir is first filled
 23 each season," end quote.
 24 You indicated yesterday that you were
 25 aware that the American Falls storage is sometimes

2 (Pages 252 to 255)

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M & M COURT REPORTING (208) 345-8800 (fax)

1 captured on paper upstream from American Falls; is
2 that correct?

3 A. It's my understanding.

4 Q. So explain to me whether the statement
5 "after the reservoir is first filled each season"
6 implies when the American Falls storage rate is
7 filled on paper, when the American Falls Reservoir
8 is physically filled to capacity, or both?

9 MR. DeVOE: Objection. Calls for a legal
10 conclusion.

11 THE WITNESS: That's a question that I've
12 asked on multiple occasions. I'm not sure that
13 I've ever gotten a straight answer. But certainly
14 in 1923 the storage capacity above American Falls
15 was not as great as it is today and the
16 probability of refill at American Falls was
17 probably higher because they weren't able to store
18 American Falls storage upstream in the highest
19 reservoirs as they do today.

20 So based on my understanding of the
21 physical constraints, I would say that they had
22 intended this to mean physical fill of American
23 Falls in 1923. That's my understanding.

24 Q. (BY MR. STANISH): And so the
25 reservoirs are now operated as a system; is that

1 right?

2 A. That's my understanding.

3 Q. And do you agree with that operation
4 as it being operated as a system?

5 A. I agree that that's how the system is
6 operated, but I don't necessarily agree that
7 that's how the system should be operated.

8 Q. Okay. And when you said that you had
9 talked to someone about that question, about paper
10 fill versus physical fill, who did you talk to?

11 A. Well, I've talked to the Bureau of
12 Reclamation. I've talked to our attorneys. I've
13 talked to -- essentially that's who I've talked
14 to. And it's related to discussions that we've
15 had, settlement discussions around this issue.

16 Q. Of course, all those people agreed on
17 how it's operated?

18 A. They did not.

19 Q. Okay. Moving on to my last topic.

20 A. Okay.

21 Q. Are you familiar with the CAMP
22 program?

23 A. I am.

24 Q. Explain to me what that is.

25 A. The CAMP program is -- stands for the

1 Comprehensive Aquifer Management Plan. And there
2 are several aquifers in the state of Idaho that
3 will have management plans. There's one in the
4 Rathdrum Prairie, there's one that just started
5 for the Treasure Valley, and then there's one the
6 ESPA CAMP, the Eastern Snake Plain Aquifer
7 Comprehensive Aquifer Management Plan has been
8 going for I think a little over three years.

9 And that was implemented to try to
10 help solve some of the issues, conjunctive
11 management issues, with the Eastern Snake Plain
12 Aquifer. And the goal of the CAMP is to restore,
13 maintain, and work to improve the health of the
14 aquifer.

15 Q. And is the company a participant in
16 that process?

17 A. The company is a participant in that
18 process.

19 Q. How about you personally?

20 A. I am technical support for the
21 official company representative, who is Jim
22 Tucker.

23 Q. Jim Tucker. What effect would the
24 secondary storage flows if they were met each and
25 every day of each and every year have on the

1 availability of recharge in the CAMP process?

2 A. The --

3 MR. DeVOE: Objection. Calls for
4 speculation.

5 THE WITNESS: The company has agreed to --
6 in the Swan Falls reaffirmation to cooperate in
7 the CAMP process to provide a certain amount of
8 water for recharge. I don't know exactly how that
9 would affect recharge.

10 The amount of recharge that can be
11 recharged to -- the water diverted each year for
12 recharge varies. So it's not just based on flow
13 in the river. It's based on a number of factors.
14 So I can't answer that definitively.

15 Q. (BY MR. STANISH): Okay. But you
16 envision the possibility that those secondary
17 storage flows would be available for recharge
18 projects?

19 A. I think that with discussion in the
20 CAMP and with agreement by all parties, that is a
21 possibility.

22 MR. STANISH: Okay. That's all I have,
23 Jon.

24 THE WITNESS: Okay.

25 MR. STANISH: Thank you.

EXAMINATION

BY MS. McHUGH:

Q. Good morning, Mr. Bowling. My name is Candice McHugh, and I represent Aberdeen-Springfield Canal Company -- my law firm does -- and the Idaho Ground Water Appropriators and its ground water district members.

A. Okay.

Q. And I just have some questions that I need to have some clarification on.

A. Okay.

Q. And we'll try hard not to replot ground.

First of all, do you understand what my clients' interests are in this proceeding?

A. I think I understand -- I understand what the interest of your clients would be related to surface water for surface water users.

Q. And as far as my clients that are ground water users and junior ground water users to surface users, do you understand what their interests would be?

A. I do not.

Q. Do you understand that junior ground water users are currently subject to providing

mitigation water to senior surface water users in the event of a finding of material injury by the director?

A. I do understand that.

Q. And do you know where we obtain the mitigation water?

A. I believe that it's from storage.

Q. Okay. And as for the surface water interests that our firm represents, explain to me what you think their interests are.

A. Well, I think Aberdeen-Springfield may have storage space in American Falls Reservoir.

Q. Okay. And is it your understanding that they believe that the secondary storage could affect their storage space?

A. I have no knowledge of that.

Q. Have you ever discussed that with anybody?

A. I have not.

Q. Now, I've heard a question asked several times here yesterday, and I'm not entirely sure I understand your answer. So I want to kind of just kind of make sure I'm clear on where you're at.

Does the company agree that the

primary purpose for the Bureau of Reclamation storage reservoirs is for agricultural and irrigation purposes?

MR. DeVOE: Objection. Asked and answered.

THE WITNESS: I think we did discuss that in quite a bit of detail yesterday. But I think the company believes that irrigation is important, and we support irrigation needs being met as long as they're being met according to the prior-appropriation doctrine.

And I think we have demonstrated that we're cooperative with irrigators and we're willing to work with irrigators to ensure that irrigators have an adequate supply of water for their needs.

And so in that reference, in that frame, I think that we'd agree that irrigators' needs are very important and that we aren't trying to do anything that would short irrigators of their use of water in the Snake above American Falls or above Milner.

Q. (BY MS. McHUGH): And I understand that answer and I understand, but my question was a little bit different.

My question was, do you as the company

believe that the primary purpose of the Reclamation projects was for irrigation purposes?

A. I agree that the primary purpose is for irrigation and power generation and flood control.

Q. Okay. And where do you get your understanding that one of the primary purposes of the Bureau of Reclamation projects were for hydropower purposes?

A. And not all projects, but I think the projects that have hydropower on them, especially Palisades, that is one of the listed purposes of that project. And Minidoka, is my understanding.

Q. And it's your understanding that those are listed as the primary purpose of those two reservoirs?

A. That's my understanding.

Q. And the primary purpose of American Falls Reservoir does not include hydropower?

A. I don't know if it does. I know American Falls Reservoir had hydropower generation after it was first built, but I don't know that that's a primary purpose.

Q. And the water stored in the Bureau projects, your understanding is that that water is

1 then used by contract holders; is that what you
2 understand?

3 A. I understand.

4 Q. Okay. And the contract holders have
5 contracts for varying purposes; is that fair to
6 say?

7 A. True.

8 Q. Would you believe that it's
9 consistent, then, with the primary purposes of the
10 reservoirs and those contract holders that the
11 Bureau of Reclamation's first obligation would be
12 to protect those users who are using water for the
13 primary purpose of irrigation?

14 A. Well, I believe that the Bureau has an
15 obligation to honor all of its spaceholder
16 contracts, including the contract that it has with
17 Idaho Power Company.

18 And how the Bureau operates its system
19 to honor all of those contracts is really up to
20 the Bureau. And I believe that they need to honor
21 all of their contracts for all spaceholders.

22 Q. Do you believe the Bureau could
23 operate its projects in violation of State law?

24 A. I think that would be between the
25 water right holder, the Bureau, and the State.

1 report, and nobody else in this case has produced
2 an expert report to show what the impact is on
3 spaceholders or fill or anything else. And
4 Mr. Bowling has answered this question enough.
5 There isn't any further purpose in rehashing this
6 ground.

7 MS. McHUGH: Thank you.

8 Q. You can go ahead and answer the
9 question.

10 A. Well, I think I have answered the
11 question several different ways. And I think that
12 was my answer.

13 Q. Okay. And then I'm going to have to
14 have you repeat your answer, because I didn't
15 understand your answer before.

16 A. Okay. Repeat your question, then, how
17 you phrased it.

18 Q. Okay. And I'm going to say this, that
19 I understand the company's position is that you
20 support irrigated agriculture. I've heard that
21 several times. But let's back up a little bit.

22 Are you familiar with the teacup
23 diagram or something that's referred to as "the
24 teacup diagram" in the Upper Snake?

25 A. I am.

1 Q. Do you have an understanding of
2 whether the Bureau can operate its projects in
3 violation of State law?

4 MR. DeVOE: Objection. Calls for a legal
5 conclusion.

6 THE WITNESS: I don't have an understanding
7 of that.

8 Q. (BY MS. McHUGH): Have you ever had a
9 conversation about that?

10 A. I have not.

11 Q. Now, I think you've been asked this
12 question in different ways. And I understand that
13 the company's answer is "We're supportive of
14 irrigation." So I'm clear on that.

15 But I guess I would like a real direct
16 answer, bottom line, on whether or not Idaho Power
17 Company's demand for secondary storage could
18 affect fill of the reservoirs.

19 MR. DeVOE: Objection. This has been asked
20 and answered more than ten times in this
21 deposition now. We don't need to keep repeating
22 testimony for the record. Both parties have
23 gotten an answer to this question on multiple
24 occasions.

25 Now, you have not produced an expert

1 Q. And are you aware that Water
2 District 1 has an accounting system that
3 distributes water in the Upper Snake?

4 A. I am.

5 Q. Okay. And are you aware of when that
6 accounting system came online, when it started?

7 A. Not specifically.

8 Q. Does the year 1976 ring a bell?

9 A. Not for me.

10 Q. Okay. Do you understand that it's a
11 computerized system?

12 A. I do understand that.

13 Q. And do you understand that it
14 regulates deliveries and diversions to storage
15 every day of the year?

16 A. I understand that.

17 Q. Do you understand that prior to 1976
18 that was not the case?

19 A. I don't -- I don't know that.

20 Q. Okay. Do you have an understanding of
21 when water was distributed in Water District 1
22 prior to 1976 by the watermaster?

23 A. I don't have knowledge of that.

24 Q. Can you explain to me your
25 understanding of the teacup diagram.

1 A. My understanding of the teacup diagram
2 is a daily graphical depiction of the state of the
3 hydro system for the Upper Snake. There's one for
4 the Boise Basin, the Payette Basin, eastern
5 Oregon. That's my understanding of it.

6 Q. You said it was a graphic depiction of
7 the hydro system.

8 Did you mean to say "the reservoir
9 system"?

10 A. Reservoir/hydro system.

11 Q. Okay. And does it depict reservoir
12 fill, where we're at on what reservoirs are being
13 filled?

14 A. It depicts current storage in each
15 reservoir.

16 Q. Okay. And is it your understanding
17 that the practice of the Bureau is to hold water
18 as high up in the system as possible?

19 A. That is my understanding.

20 Q. Okay. And do you know why they do
21 that?

22 A. They do that so the water won't -- so
23 that -- they store it in the highest reservoir so
24 that it can be released later downstream after
25 flows have dropped.

1 Q. And does it maximize the ability to
2 fill all reservoirs in the system?

3 A. It does.

4 Q. Okay. Because you can't get water
5 back up the system once it's released; right?

6 A. That's correct.

7 Q. Okay. So you have an understanding of
8 how the reservoir system generally fills and the
9 Bureau's operation thereof?

10 A. Generally.

11 Q. So then I'm going to come back to my
12 question that I still haven't really heard the
13 answer to on whether Idaho Power's demand of
14 secondary storage could affect the fill of the
15 reservoir system.

16 MR. DeVOE: Same objection. Calls for
17 speculation.

18 THE WITNESS: I think any water released
19 from any reservoir will affect fill of that
20 reservoir. That's the answer I gave yesterday.

21 However, I also indicated that since
22 1957 at the end of September there has always been
23 carryover storage in the four major reservoirs
24 above American Falls, including American Falls.

25 And so the effect of releases from the

1 reservoirs and whether or not the reservoir system
2 filled in any given year did not impact whether or
3 not there was water remaining in the reservoir
4 system at the end of the irrigation season.
5 There's always been storage.

6 95 percent of the time there's been at
7 least 280,000 acre-feet of storage water remaining
8 in the upstream reservoir. So there was still
9 water available for spaceholders and irrigation
10 since 1957.

11 Q. (BY MS. McHUGH): And did you do an
12 analysis of like water district records, or where
13 did you get that understanding?

14 A. I did an analysis of water district
15 records, information that the power company has
16 accumulated over the years.

17 Q. Okay.

18 A. It's public information. Anybody can
19 go out and pull this information off IDWR's
20 website and do the same analysis.

21 Q. And my clients don't dispute the fact
22 that there's been enough water in storage, the
23 storage system has never failed to fill.

24 A. We don't dispute the fact that if
25 water passes through a reservoir, it's not stored

1 in that reservoir.

2 Q. Do you understand that the director's
3 currently pursuing conjunctive management under
4 delivery calls?

5 A. I understand that.

6 Q. And do you understand that junior
7 ground water users, who I represent, are the
8 people required to provide an answer to the
9 director's orders in those cases?

10 A. I generally understand that.

11 Q. And do you understand the impact of
12 what happens when the reservoirs end up not
13 filling? Do you understand what happens when that
14 happens?

15 MR. DeVOE: Objection. Calls for
16 speculation.

17 THE WITNESS: I haven't done an analysis to
18 understand that to know how it impacts your
19 clients on a day-to-day, year-to-year basis. I
20 have no knowledge of that because I have not
21 studied that.

22 Q. (BY MS. McHUGH): Do you understand
23 whether or not the amount of the price for storage
24 water, whether it's impacted on whether the
25 reservoir fills or not?

1 MR. DeVOE: Objection. Calls for
2 speculation.

3 THE WITNESS: I don't know that. I don't
4 understand price variability based on reservoir
5 fill.

6 Q. (BY MS. McHUGH): Are you familiar
7 with the Committee of Nine?

8 A. I am.

9 Q. Are you familiar with the rental pool?

10 A. I am. But we have leased water from
11 the rental pool on occasion. And I understand the
12 price that we pay for water below Milner, but I
13 don't understand how water is marketed above
14 Milner. I know that there's Mitigation, Inc. I
15 know there's third-party leases.

16 The power company is not a party to
17 any of those type of market transactions. We have
18 a very specific -- we have a very specific role in
19 that and very specific requirements on when the
20 power company can release water from above Milner.

21 And I don't have -- I don't even know
22 if I have a general understanding of all of the
23 different ways that water could be marketed by
24 irrigators above Milner.

25 Q. Okay. Well, let's take for argument

1 sake right now that if the reservoirs don't fill,
2 it affects price, it makes the price increase.

3 MR. DeVOE: Objection. Assumes facts not
4 in evidence.

5 THE WITNESS: I don't know that for a fact.

6 Q. (BY MS. McHUGH): Okay. I just have a
7 question on that.

8 A. Okay.

9 Q. If the company's use of their
10 secondary storage resulted in non-fill of the
11 reservoirs, which we can accept as just a general
12 possibility, and that increases the amount of the
13 cost of what renting water would be, does that
14 impact irrigation?

15 MR. DeVOE: Objection. Assumes facts not
16 in evidence, compound, calls for speculation.

17 THE WITNESS: I don't know that it does. I
18 have no direct knowledge of that.

19 (Mr. Gehlert leaves the proceedings.)

20 Q. (BY MS. McHUGH): So if the use of the
21 secondary storage either causes less water
22 available for irrigation uses to mitigate for
23 irrigation uses or the ability to purchase water
24 for irrigation uses, does that impact irrigated
25 agriculture?

1 MR. DeVOE: Objection. Compound, assumes
2 facts not in evidence.

3 THE WITNESS: I don't know how storage
4 capacity affects the ability of irrigators to rent
5 water. I don't know that. Again, my
6 understanding is that there's water left over
7 every year, there's always carryover storage.

8 I don't know that not filling the
9 reservoir does impact the ability of people to
10 lease water, because there's always water left
11 over.

12 Q. (BY MS. McHUGH): If -- I'll come back
13 to that.

14 So I just wanted to understand kind of
15 the mechanics of how Idaho Power would request
16 their secondary storage. I understood that you
17 would request the Bureau delivery of secondary
18 storage.

19 Is my understanding correct?

20 MR. DeVOE: Objection. Asked and answered.

21 THE WITNESS: (No audible response.)

22 Q. (BY MS. McHUGH): Okay. Is that a
23 yes?

24 A. That's correct.

25 Q. Okay. And I never really understood

1 if the Bureau refused to deliver your secondary
2 storage. I believe Mr. Stanish asked you whether
3 or not you'd then invoke the power of the
4 watermaster, but I wasn't sure what your answer
5 was.

6 So would you invoke the power of the
7 watermaster?

8 A. We have a 1923 contract with the
9 Bureau. We could request delivery of water,
10 primary and secondary storage under that contract
11 from the Bureau. That is a request to the Bureau.

12 The Bureau is the water right holder.
13 The Bureau would have to request water from the
14 watermaster in Water District 1 as the water right
15 holder. We make a request of the Bureau, and we
16 have done that in writing twice. That's why we're
17 here today.

18 The Bureau then has chose not to honor
19 their 1923 contract. And if the Bureau wanted
20 additional water or wanted something in relation
21 to their water right, they would be the entity
22 that would request or make a call with IDWR, the
23 director, and Water District 1.

24 Q. When you say --

25 A. The power company does not -- would

1 not do that. We don't have a right, a water
2 right. That's the Bureau's obligation under their
3 water right.

4 Q. When you say "a call," do you mean a
5 delivery call, place a demand on the river?

6 A. Water right holder is the only one
7 that can make a delivery call. We have a
8 contract; we can request the Bureau honor that
9 contract.

10 Q. So it's your understanding that the
11 company doesn't have the right to make a delivery
12 call?

13 A. Not on our storage right.

14 Q. Do other contract holders have a right
15 to make a delivery call?

16 A. I don't know if they do. I don't
17 understand enough about it to know that.

18 Q. Yesterday, I think it was in response
19 to a question by Mr. Gehlert, you mentioned that
20 the company measures water at the stream gauge at
21 Murphy?

22 A. Correct.

23 Q. Okay. And I believe it was related to
24 the Swan Falls agreement; was that --

25 A. Correct.

1 Q. I wasn't understanding that. Does the
2 company do that daily or is that a monthly
3 calculation? I wasn't clear on that.

4 A. We measure flows at all of our
5 forecast points continuously. We operate the
6 gauge at the Snake River near Murphy, and it
7 electronically and automatically collects stage
8 data that converts to flow data on a 15-minute
9 basis and stores that data.

10 We record that information several
11 times a day in a database that we have, and that's
12 where that's stored.

13 Q. And do you share that information with
14 some public agency, or is that just used
15 internally?

16 A. We share that information with anybody
17 that wants it. It's publicly available on our
18 website.

19 Q. Okay. Now I'm just going to do some
20 cleanup questions on a couple of follow-ups from
21 Mr. Gehlert's questions. I believe you stated in
22 response to a question by Mr. Gehlert that Idaho
23 Power believes that the Bureau of Reclamation
24 should pass water to meet its target flows, if
25 necessary, but not release previously stored

1 water.

2 Did I characterize your testimony
3 correctly?

4 A. My understanding of the secondary
5 storage right is that it's storage capacity. It's
6 water that could be stored, but it's a
7 pass-through right. And it's not water released
8 from storage.

9 We have never asked that the Bureau
10 release water from anybody else's storage account
11 to meet that secondary storage capacity. It's
12 strictly a pass-through right. We've never asked
13 them to draft the reservoir to provide that water.
14 We don't expect them to.

15 It's a pass-through right. There's
16 sufficient water flowing into American Falls to
17 fulfill that 1923 contract and meet those
18 scheduled flows at the Snake River near Kimberly
19 without drafting the reservoir.

20 Q. Okay. And so I'm just trying to
21 reconcile that with what you said just a minute
22 ago, that since 1957 there's always been carryover
23 storage.

24 A. There's always been carryover storage
25 at the end of September in the four major

1 reservoirs above American Falls, including
2 American Falls.

3 Q. And so that indicated to you that
4 there was water available?

5 A. There was still water available,
6 active storage at the end of the irrigation
7 season.

8 Q. Okay. So is that water that's
9 remaining, is that stored water?

10 A. It is stored water.

11 Q. Okay. So you're not asking that that
12 water be released to meet your secondary storage?

13 A. Absolutely not.

14 Q. Okay. Because that is owned by
15 another --

16 A. Exactly. It's somebody else's
17 carryover.

18 Q. Okay. What would happen to that
19 carryover? That's the thing I can't seem to make
20 sense of in my mind. What happens to that
21 remaining water if you pass through the secondary
22 storage?

23 A. That remaining water stays just as it
24 is.

25 Q. So it's your understanding --

1 A. It doesn't draw on that remaining
2 water.

3 Q. -- that if you pass through more water
4 during the irrigation season, you wouldn't expect
5 that the remaining water would decrease?

6 A. Correct. It would not.

7 Q. What's that based on? What's that
8 understanding based on?

9 A. That's based on the fact that after
10 irrigation season's over, water is currently
11 passed through American Falls as a minimum flow,
12 350 to 500 cfs. And while that water is passing,
13 the reservoir is filling.

14 The remaining carryover water is a
15 block of water that stays in there, remains
16 unchanged. That water is accounted for as
17 carryover water for spaceholders, and it doesn't
18 diminish as American Falls fills.

19 Q. And just to be clear on the idea of
20 storable, does that mean that the reservoir
21 actually has the physical capacity to be able to
22 store the water, what you're saying is the
23 reservoir is not filled yet?

24 A. That's my understanding.

25 Q. Okay.

1 A. The storage capacity.

2 Q. Okay. You also stated to Mr. Gehlert
3 that the company owned water rights prior to the
4 1923 contract.

5 Do you remember that?

6 A. That's my understanding.

7 (Mr. Gehlert rejoins the proceedings.)

8 Q. (BY MS. McHUGH): And in a license?

9 A. We gave up our 300,000 acre-feet of
10 claimed water right, the company, my understanding
11 was, was going to build a reservoir. The United
12 States also had a desire to build a reservoir.

13 That resulted in the 1923 contract and
14 agreement where Idaho Power gave lands and water
15 rights to the federal government in exchange for
16 certain things to be given back to the company in
17 that contract. And those are the rights I was
18 referring to.

19 Q. Okay. Have you ever seen the license
20 or evidence, like a piece of paper, that evidenced
21 these pre-1923 water rights owned by the company?

22 A. I have not specifically seen a license
23 prior to 1923.

24 Q. So your understanding came from
25 historical research?

1 A. Historical research and discussions
2 with water -- our water attorney and information
3 from the 1923 contract itself.

4 Q. Yesterday in response, I think, to
5 Mr. Gehlert again you had mentioned that you
6 became familiar with the secondary storage in the
7 mid to late '90s, but it was your understanding
8 that the company knew it was there all along.

9 To the extent that the watermaster
10 hasn't been accounting for that secondary storage
11 and hasn't been delivering that secondary storage,
12 would you expect that the water district
13 accounting system would need to be revised in
14 order to account for that, or what's your
15 understanding?

16 MR. DeVOE: Objection. Calls for a legal
17 conclusion, speculation.

18 THE WITNESS: I don't have any knowledge of
19 how they would account for that. I don't
20 understand how they account for water necessarily
21 up there now. We have 45,000 acre-feet of
22 storage. We have a right to 255,000 acre-feet of
23 secondary storage as a pass-through, and that's
24 really my general understanding of how water's
25 accounted for.

1 I know that water's accounted for up
2 there. I know there's an accounting program. But
3 I don't have a recommendation for how Water
4 District 1 would account for water from the Upper
5 Snake Basin.

6 Q. (BY MS. McHUGH): And so if the Bureau
7 started requesting on behalf of the company the
8 secondary storage, do you have an understanding of
9 whether that would impact the administration of
10 the Upper Snake?

11 MR. DeVOE: Objection. Calls for a legal
12 conclusion.

13 THE WITNESS: I don't have an understanding
14 of that.

15 Q. (BY MS. McHUGH): So I guess I'm
16 trying to figure out, if you don't understand if
17 there's a change in administration and you're not
18 sure whether the watermaster's delivery of water
19 would change, what exactly will you get, what's
20 your expectation of what will happen if the Bureau
21 suddenly decides to call for the secondary
22 storage?

23 A. My expectation is that the Bureau
24 would work that out as a water right holder with
25 Water District 1. And our desire is that the

1 Bureau would honor our 1923 contract as a
2 spaceholder.

3 It's really up to the Bureau of
4 Reclamation to determine how their water rights
5 will be accounted for. It's not up to Idaho Power
6 Company. We are not the water right holder.

7 Q. What will change for you, the contract
8 holder, if that happens?

9 A. The Bureau will or will not honor
10 their 1923 contract with us and deliver water
11 according to the schedule. It's that simple. I
12 mean --

13 Q. That's not my question. My question
14 is, as the contract holder, what will you see
15 change going forward if that becomes the new
16 practice or becomes the practice?

17 MR. DeVOE: Counsel, I don't understand
18 your question, and I'm sure the witness doesn't
19 understand it.

20 THE WITNESS: I guess I don't understand
21 it. I haven't done a very good job of answering
22 it, so...

23 Q. (BY MS. McHUGH): That's all right.
24 You're saying that you don't understand that the
25 Water District 1 administration will change if the

1 Bureau starts demanding, as the company's
2 requesting, the 255,000 acre-feet of secondary
3 storage, you're not sure what the watermaster --
4 how they will account for that; is that true?

5 A. That's true.

6 Q. Okay. And you're also not sure on
7 whether or not that will affect how the Upper
8 Snake is administered; right?

9 A. I don't know how that will affect the
10 Upper Snake being administered.

11 Q. But I guess I'm expecting that the
12 company thinks it's going to get a benefit from
13 that because you've been requesting it for the
14 last several years; correct?

15 MR. DeVOE: This has been asked and
16 answered. The witness has made clear the company
17 will have its contract rights delivered if the
18 contract rights are delivered. That's the
19 benefit.

20 THE WITNESS: That's the benefit.

21 Q. (BY MS. McHUGH): The benefit is the
22 company will get its contract rights delivered,
23 and that's the benefit?

24 A. That's the benefit.

25 Q. Does it give you more water?

1 A. It gives us water that we're entitled
2 to under our contract.

3 Q. So the answer is yes, it gives you
4 more water?

5 A. If the water is -- if -- if the Snake
6 River near Kimberly flows are not up to the
7 scheduled flow and water is released to provide
8 that, it would give us more water.

9 Q. So you're expecting that you will
10 receive more water to meet your target flows; is
11 that fair to say?

12 A. Fair to say.

13 Q. Okay.

14 A. I think there was an expert report
15 prepared that indicated that there was a shortage
16 each year. Had the contract been honored, there
17 would not have been shortages. That's our
18 position.

19 Q. There would not have been shortages to
20 the company as a contract holder; correct?

21 A. That's my understanding.

22 Q. All right. So if the company's
23 getting more water, will that affect the
24 administration of Water District 1?

25 A. It might. I don't -- I don't know how

1 they do it now. I don't know if it will affect
2 how they account for water. I think they will
3 still account for water the same way they do.
4 They will account for water as they do
5 in the winter now with various releases from
6 reservoirs by the Bureau. I don't think it will
7 change anything about how they account for water.

8 I don't know -- I don't have any
9 knowledge of whether it will affect water right
10 administration. I think water right
11 administration will be -- it seems likely that it
12 will be handled the same way that it is now.

13 MR. DeVOE: I'm going to interpose an
14 objection now. This is beyond the 30(b)(6). This
15 witness is not a watermaster. He's not here today
16 to answer questions about the administration of
17 the Upper Snake Basin. Haven't been any expert
18 reports provided by you or anybody else to
19 demonstrate how it will change. And now he's
20 answered the question, I think, four times. So
21 let's just move on from this topic.

22 MS. McHUGH: Well, I think a key part to
23 the power company's water right claim for the
24 secondary storage, I think one of the key things
25 in the SRBA --

1 MR. DeVOE: Contract claim. This is a
2 contract claim.

3 MS. McHUGH: Contract claim.

4 -- one of the key things in the SRBA
5 is how administration of water rights will occur.

6 MR. DeVOE: Is that to be determined by the
7 Idaho Power Company, or is that to be worked out
8 by the State, the Bureau, and the SRBA court?

9 MS. McHUGH: I think it's fair to have an
10 understanding of whether the company's expectation
11 of having a secondary storage right delivered
12 under the Bureau's water right, how that may
13 impact administration and whether the company has
14 an expectation on that.

15 MR. DeVOE: I understand. And he's
16 answered the question the best he can. I'm sorry
17 you're not getting the answer you want. But
18 you've asked and he's answered, and let's move on.

19 MS. McHUGH: And I think I've only asked it
20 once or twice, and we're building up. That's just
21 fine. Now I lost my train of thought, so we're
22 going to have to get back to it.

23 Q. Oh, this is my other. So I need to
24 re-create my train of thought so the question
25 makes sense. We've established that by the

1 THE WITNESS: Again, I think my answer is
2 that the company would like the Bureau to honor
3 their contract with us. We have a contract right.
4 They're the water right holder. It's up to the
5 Bureau to work with the State, the SRBA court, and
6 the water district to administer their water
7 rights.

8 Q. (BY MS. McHUGH): Just a point of
9 clarification for me.

10 Is your gauge station at Kimberly
11 above or below Milner?

12 A. It's below Milner.

13 Q. And I apologize, could you grab the
14 exhibit that's the falling water contract. I
15 can't remember what exhibit number that is at the
16 moment.

17 MR. SCOTT: 8.

18 Q. (BY MS. McHUGH): Exhibit 8.

19 A. Okay.

20 Q. And would you look at page 6, the
21 definition of falling water.

22 A. I will.

23 Q. And if you just want to kind of review
24 it to yourself. I don't need you to read it out
25 loud. Just so you're familiar with it.

1 Bureau, in your mind, honoring its 1923 contract
2 by demanding the delivery of the 255,000 acre-feet
3 of secondary storage will result in increased
4 water for the company's use under its contract.

5 And you're expecting that that 255,000
6 acre-feet of secondary storage come from the Upper
7 Snake reservoir system --

8 A. True.

9 Q. -- correct?

10 Okay. Because you're not expecting
11 that there's some other new source of water for
12 that 255,000 acre-feet of water?

13 A. I don't have any knowledge of any new
14 source of water.

15 Q. Okay. So the demand would be on the
16 Upper Snake system?

17 A. It would have to be, unless the Bureau
18 pumped that water from some other basin or
19 upstream or something. But I think it's obvious
20 that it would have to come from the Upper Snake.

21 Q. And the company doesn't have a
22 position on whether or not that disrupts historic
23 administration or how it might affect
24 administration?

25 MR. DeVOE: Objection. Asked and answered.

1 A. (Reviews.)

2 Okay.

3 Q. Okay. Can you explain to me, if you
4 know, how the falling water contract relates to
5 the secondary storage?

6 A. The falling water contract, my
7 understanding is, it does not necessarily relate
8 to the secondary storage. It relates to all
9 releases at American Falls and the company's
10 contractual right to generate electricity with
11 that water at the American Falls plant.

12 Q. Okay. And if the secondary storage
13 were released from American Falls, would it be
14 considered falling water? Do you have an
15 understanding of that?

16 A. If sufficient water was passed through
17 American Falls in relation to the 255,000
18 acre-foot storage capacity contract right from the
19 1923 contract to meet the flow schedule, there
20 would be no generation at the current plant from
21 the release of that water. So in my opinion,
22 based on the contract, it doesn't relate to
23 falling water.

24 Q. So the subordination of the falling
25 water provision that's in this doesn't relate to

1 the secondary storage, the subordination to
2 irrigation?

3 A. That's my understanding.

4 MS. McHUGH: I don't have any further
5 questions. Thank you.

6
7 EXAMINATION

8 BY MR. DeVOE:

9 Q. Mr. Bowling, obviously I'm on the
10 record, but my name is Adam DeVoe. I'm from the
11 law firm of Brownstein, Hyatt, Farber, Schreck.
12 I'm Idaho Power Company's counsel in this matter
13 and have been defending your deposition for the
14 last two days.

15 I just want to ask you some follow-up
16 questions to give you an opportunity to clarify
17 your answers over the last couple days, and
18 especially in light of the fact that we've retread
19 some of the same ground, I want to make sure that
20 you have made the proper record in this case.

21 A. Okay.

22 Q. Yesterday Mr. Gehlert was talking
23 about whether or not water is storable,
24 quote/unquote, "storable" in the American Falls
25 Reservoir.

1 Do you remember that discussion?

2 A. I do.

3 Q. And Mr. Gehlert introduced the concept
4 that Idaho Power Company was only entitled to
5 water passed through American Falls in priority.

6 Do you remember that discussion?

7 A. I do.

8 Q. Does the 1923 contract make reference
9 to the priority of water passing through the
10 American Falls Reservoir?

11 A. It does not.

12 Q. Does the 1976 contract make reference
13 to the priority of the water passing through
14 American Falls Reservoir?

15 A. Not to my knowledge.

16 Q. Does Idaho Power Company administer
17 the Upper Basin?

18 A. No.

19 Q. Describe your understanding of how the
20 Bureau of Reclamation operates the Upper Basin
21 with reference to priority.

22 A. Well, I know that they store water
23 upstream as high as they possibly can. And my
24 understanding is -- I don't know if they -- I
25 don't know if that actually is in priority. I

1 know that reservoirs have certain priority, and I
2 know that they put water in upstream reservoirs
3 first. It seems to me that that may or may not be
4 in priority.

5 Q. Have you seen a detailed accounting
6 from the Bureau of Reclamation of that practice of
7 storing water in priority?

8 A. I have not.

9 Q. Have you been informed by the Bureau
10 of Reclamation that water is not available to meet
11 the 1923 contract in priority?

12 A. No.

13 Q. Does the State of Idaho operate the
14 priority system in the Upper Basin?

15 A. Yes.

16 Q. Have you seen a detailed accounting of
17 the administration of the Upper Basin from the
18 State of Idaho?

19 A. No.

20 Q. Have you been informed by the State of
21 Idaho that water is not available in priority to
22 meet the 1923 contract terms?

23 A. No.

24 Q. Have you been informed by any other
25 party to this litigation that water is not

1 available in priority to meet the 1923 contract?

2 A. No.

3 Q. Now, you had a discussion yesterday
4 with Mr. Gehlert as well in which there was
5 reference to, quote/unquote, "water not being used
6 by irrigators" or not being needed by irrigators
7 under the provisions of the 1923 contract.

8 Do you remember that discussion?

9 A. I do.

10 Q. Can you please clarify the difference
11 in the 1923 contract between, quote/unquote,
12 "storage capacity" and water? And we'll make
13 reference here to the 1923 contract, which is
14 Exhibit 4 to the deposition. And if it assists in
15 your understanding, it's paragraph 18 at page 19
16 of the contract.

17 A. Okay.

18 Q. So if you could please describe for
19 the record the difference in that paragraph
20 between, quote/unquote, "storage capacity" and
21 water.

22 A. Well, let me review this.

23 (Reviews.)

24 I think that what this refers to is
25 that the company has available to it 255,000

1 acre-feet of storage capacity in order to control
2 water that is reserved to the company under
3 paragraph 19.

4 Q. Does Idaho Power Company claim the
5 right to use another spaceholder's water in
6 American Falls Reservoir?

7 A. No.

8 Q. Explain again, if you will, the
9 concept of the 255,000 acre-foot secondary storage
10 capacity as a pass-through right.

11 A. My understanding is that the 255,000
12 acre-feet is a pass-through. And it's a
13 volumetric limit on the amount of water that can
14 be passed through. It's not actual stored water
15 that can be delivered. It's a volumetric limit on
16 a pass-through under the 1923 contract for meeting
17 the flow schedule downstream of Milner at the
18 Snake River near Kimberly.

19 Q. So would that pass-through concept
20 involve the release of stored water from the
21 American Falls Reservoir?

22 A. It would not.

23 Q. And a moment ago you referred to this
24 255,000 acre-foot storage capacity as a volumetric
25 cap.

1 THE WITNESS: Okay.

2 Q. (BY MR. DeVOE): Can you tell me for
3 the record what Exhibit 10 is, please.

4 A. It's the -- my understanding is it's
5 the Bureau's objection to their own SRBA filing.

6 Q. And can you tell me who the attorney
7 is that filed the Standard Form Objection for the
8 United States to water right 01-2064?

9 A. David W. Gehlert.

10 Q. And is that the same attorney who took
11 your deposition yesterday?

12 A. I assume so.

13 Q. If you could turn to page 2 of this
14 amended objection.

15 A. Okay.

16 Q. At the bottom of the page under No. 7
17 for "Purposes of Use," can you read the line
18 "Power storage."

19 A. "Power storage should be 3,000 AFY."

20 Q. I think you said "3,000."

21 A. Sorry. "300,000 AFY."

22 Q. Thank you.

23 Turning to the next page, the second
24 full paragraph on page 3 refers to a remark that
25 should be placed in the water right.

1 Can you explain that in detail.

2 A. It's one of the limitations on the
3 secondary storage capacity right, that if water is
4 passed through to meet the flow schedule at the
5 Snake River near Kimberly at such time that the
6 accumulation of that pass-through would sum to
7 255,000 acre-feet, that pass-through would no
8 longer be required by the contract and that
9 right -- obligation by the Bureau would be
10 fulfilled in that year.

11 Q. Okay. Thank you.

12 I'd like to turn now to a discussion
13 you had yesterday with Mr. Gehlert and Mr. Stanish
14 about the company's amended objection to water
15 right 01-2064.

16 Do you recall that discussion?

17 A. Yes.

18 Q. Okay. And if you could, please, pull
19 out Exhibit No. 10.

20 MR. STANISH: Exhibit No. 10 is the
21 Bureau's objection; is that correct?

22 MR. DeVOE: That's right.

23 THE WITNESS: Well, let me see if I can --
24 that's one of my --

25 MR. SCOTT: Do you need a copy, Jon?

1 And can you read that paragraph into
2 the record.

3 A. Okay. "The above-stricken remark
4 should be replaced with the following remark:
5 "The exercise of this water right for power
6 purposes is subject to the limitations and
7 conditions set forth in the Act of December 28th,
8 1973, Pub L" -- public legislation, I'm
9 assuming -- "93-206 and the following contracts:
10 Contract between the United States and Idaho Power
11 Company dated June 15th, 1923, Symbol ILR-733;
12 Spaceholder Contract among the United States, the
13 American Falls Reservoir District, and Idaho Power
14 Company dated March 31, 1976, contract No.
15 Ilr-733S; Falling Water Contract between American
16 Falls Reservoir District and Idaho Power Company
17 dated March 31, 1976; and the Contract between the
18 United States and American Falls Reservoir
19 District dated March 31, 1976 Contract
20 No. 14-06-10-9041."

21 Q. And is it your understanding that that
22 paragraph references the 1923 agreement and the
23 series of 1976 agreements between the Idaho Power
24 Company and the Bureau of Reclamation?

25 A. That's correct.

Page 300 1 Q. And is it your understanding that that 2 paragraph is substantially the same as the 3 objection filed by the Idaho Power Company? 4 A. That's correct. 5 Q. And just to point out one more thing, 6 at the top of this page can you read the line 7 regarding "Power from storage." 8 A. "Power from storage should be 300,000 9 AFY." 10 Q. So is it your understanding, then, 11 that the Idaho Power Company's objection to the 12 water right and the Bureau of Reclamation 13 objection to the water right are substantively the 14 same? 15 A. That's my understanding. 16 Q. Okay. I want to turn now to 17 Exhibit No. 17. 18 A. Okay. That was -- 19 Q. This is the director's report. 20 A. Okay. 21 Q. And can you tell me for the record 22 again what document this is. 23 A. This is the director's report for the 24 Bureau of Reclamation water right claim in the 25 SRBA for American Falls Reservoir.	Page 302 1 only differ by a few thousand acre-feet. 2 Q. And can you read the paragraph below 3 those numbers. 4 A. "The diversion and release of storage 5 for power purposes under this water right is 6 subject to those conditions contained in contracts 7 ILR-733 and ILR-801 between the United States 8 Bureau of Reclamation and Idaho Power Company." 9 Q. And is that paragraph an apparent 10 reference to the rights and obligations the Idaho 11 Power Company has under the 1923 agreement and the 12 1976 agreement? 13 A. I believe that it is. 14 Q. And so is it your understanding that 15 the director's report is consistent with the 16 claims and objections filed for the American Falls 17 Reservoir in the 1923 contract? 18 A. That is my understanding. 19 Q. Both yesterday and this morning we've 20 had a little bit of a discussion about, 21 quote/unquote, "calling for water." And I just 22 want to clarify. 23 You understand -- and can you please 24 describe for the record -- what is a call for a 25 water right?
Page 301 1 Q. And do you understand the SRBA 2 proceedings well enough to tell me when this 3 report would have been issued? 4 A. Well, the date on this says 5 12/16/2006. 6 Q. Was that issued before or after the 7 objections filed by the Idaho Power Company and 8 the Bureau of Reclamation? 9 A. My understanding is after. 10 Q. Okay. And if you could, please, look 11 at the director's report under "Purpose and Period 12 of Use." 13 Do you see that section of the 14 director's report? 15 A. I do. 16 Q. And if you could, please, read "Power 17 Storage" and "Power from Storage." 18 A. Power storage period of use is 1/1 to 19 12/31, 295,163.00 AFY. Power from storage, period 20 of use 1/1 to 12/31, quantity 295,163.00 AFY. 21 Q. And can you explain in round numbers 22 whether that matches up with the claims filed and 23 the objections filed by the Bureau of Reclamation 24 and the Idaho Power Company? 25 A. It's very close. Just -- the numbers	Page 303 1 A. My understanding is -- of a call is 2 that it's a call for administration of a senior 3 water right upon a junior water right holder. 4 Q. Who calls for the water rights at 5 American Falls? 6 A. The Bureau of Reclamation would have 7 to, being the water right holder. 8 Q. What kind of a demand does Idaho Power 9 Company make for satisfaction of its contractual 10 rights under the 1923 contract at American Falls? 11 A. Idaho Power requests or demands 12 delivery from or to the Bureau of Reclamation in 13 accordance with the 1923 contract. 14 Q. Is that a water rights call, as you 15 understand the term of art? 16 A. No. It's a request to honor the 17 conditions in the contract. 18 Q. Now, you've also had some discussion 19 with Mr. Gehlert and Mr. Stanish, and then again 20 this morning with Ms. McHugh, about carryover 21 storage in the reservoirs. And this took place 22 both in the context of forecasting fill for the 23 year and in whether or not there was any impact to 24 spaceholders in the reservoir. 25 Do you recall those conversations?

1 A. I do.
 2 Q. And yesterday Mr. Gehlert asked you
 3 about a report that was developed for Idaho Power
 4 Company by Mr. Shaw.
 5 Are you familiar with that report?
 6 A. I am.
 7 Q. And what did Mr. Shaw's report
 8 indicate that the shortage to Idaho Power's
 9 contract rights was in 2002?
 10 A. I -- there it is.
 11 Q. And you're referring now to
 12 Exhibit No. 16?
 13 A. I am.
 14 71,766 acre-feet.
 15 Q. And you also had a discussion with
 16 Mr. Gehlert about the carryover storage in the
 17 Upper Basin reservoirs in 2002, didn't you?
 18 A. I did.
 19 Q. And do you recall what the amount of
 20 carryover storage was in 2002?
 21 A. It was roughly 280,000 acre-feet at
 22 the end of September.
 23 Q. Now, I recall that you said yesterday
 24 that it was 400,000 acre-feet in 2002.
 25 A. Oh, that's correct.

1 Q. Okay. So let's assume for the sake of
 2 discussion that had the Bureau of Reclamation met
 3 its contract obligations to the Idaho Power
 4 Company and passed through 71,000 acre-feet of
 5 water to meet the flow targets and the terms of
 6 the 255,000 acre-foot storage capacity that that
 7 would have reduced drop for drop the storage in
 8 the Upper Basin reservoirs.
 9 Do you understand that hypothetical so
 10 far?
 11 A. Yeah. Yes.
 12 Q. How much water would have been left
 13 over? If you deduct that from the carryover
 14 storage in 2002, how much water still would have
 15 been left in the Upper Basin reservoirs?
 16 A. In excess of 300,000 acre-feet.
 17 Q. Can you explain to me what the injury
 18 would be to other spaceholders in the Upper Basin
 19 reservoirs in water year 2002 if there was in
 20 excess of 300,000 acre-feet of carryover storage.
 21 A. Well, I think generally speaking, if
 22 there's water left over that's available for
 23 irrigation use, I don't know that there would be
 24 any injury to the spaceholders.
 25 Q. So under that hypothetical scenario,

1 you'd agree with me that there's no injury to any
 2 other spaceholder from the operation and
 3 satisfaction of the contract rights for Idaho
 4 Power Company under the 1923 agreement?
 5 MR. GEHLERT: Objection. Leading.
 6 THE WITNESS: I -- I know that there would
 7 be water left over. And if there wasn't any water
 8 left over in carryover, I think that somebody may
 9 be shorted. But because there is water left over,
 10 that indicates to me that nobody is short.
 11 Q. (BY MR. DeVOE): Okay. Thank you.
 12 And now turning to the aspect of this
 13 discussion that revolved around forecasting. You
 14 had some detailed discussion with Mr. Gehlert
 15 about the ability to forecast flows in the Snake
 16 River.
 17 Do you recall that?
 18 A. Yes.
 19 Q. And just to clarify, does the 1923
 20 contract call for any party to forecast the fill
 21 of the reservoirs?
 22 A. Not to my knowledge.
 23 Q. Are the rights and obligations of that
 24 contract dependent upon accurate forecasts?
 25 A. Not to my knowledge.

1 Q. Does the 1976 agreement call for
 2 forecasting in order to administer that contract?
 3 A. I don't believe that it does.
 4 Q. Does the 1923 contract say that Idaho
 5 Power Company can have its contract rights
 6 satisfied only if the spaceholder rights are fully
 7 satisfied?
 8 A. It does not say that.
 9 Q. Does the 1976 contract say that Idaho
 10 Power Company's contract rights are satisfied only
 11 if other spaceholders are fully satisfied?
 12 A. I don't think that it says that.
 13 Q. Does the contract say that Idaho Power
 14 Company gets delivery of its flow targets only if
 15 the system will fill entirely?
 16 A. It does not say that.
 17 Q. Does the 1976 agreement suggest that
 18 Idaho Power's rights will be satisfied only if the
 19 reservoir system will fill entirely?
 20 A. Not to my knowledge.
 21 Q. Explain to me how the timing would
 22 work for Idaho Power Company to have its right
 23 satisfied under the 1923 agreement if the company
 24 were required to wait for the reservoir to fill.
 25 A. Well, according to the 1923 contract,

1 the delivery or pass-through related to the
2 255,000 acre-feet of storage capacity in relation
3 to delivery of flows at the Snake River near
4 Kimberly, according to the flow schedule, will
5 only occur until the reservoir first fills.

6 So if the flows were not passed
7 through until the reservoir filled, then the flows
8 would never be passed through because at which
9 time the reservoir first fills, the Bureau has met
10 their contractual obligation.

11 Q. Would it make sense that the parties
12 drafted numerous paragraphs to describe a right
13 that under its own terms would expire?

14 A. I don't believe so. And as I
15 described yesterday, after the contract was
16 signed, and the first few years after the contract
17 was signed, the releases were made, the
18 pass-through occurred. And in several of those
19 years American Falls did not fill, but yet the
20 contract was honored.

21 Q. And you're referring in part to the
22 discussion you had with Mr. Gehlert about the
23 period after the contract was signed in 1920; is
24 that correct?

25 A. That's correct.

1 Q. And could you describe a little bit
2 more why you think that that's indicative of how
3 the contract was drafted.

4 A. Well, my understanding is is that
5 right after a contract is drafted and signed,
6 there's the most knowledge. The parties to that
7 contract have present knowledge of what they meant
8 to happen in the contract.

9 And so I believe that those operations
10 that occurred immediately -- in the years
11 immediately after the contract was signed were how
12 the parties intended the contract to be
13 administered.

14 Q. Thank you.

15 I'd like to turn now to a discussion
16 about the operation and maintenance charges. Can
17 you please take a look at Exhibit No. 5, the 1976
18 contract.

19 A. Okay.

20 Q. That's the falling water. I think
21 it's tab 4.

22 A. 4. Okay.

23 Q. Excuse me. Can you turn to page 14,
24 please.

25 A. Okay.

1 Q. And if you would -- you don't have to
2 read it into the record. It's been introduced
3 already. But describe what paragraph 28(b) is
4 referring to.

5 A. It's referring to operation and
6 maintenance payments by the spaceholder, in this
7 case Idaho Power Company, to the United States,
8 and the percentage of the total cost of the
9 operation and maintenance that Idaho Power Company
10 will pay.

11 MS. McHUGH: I'm sorry. Just to clarify --
12 I'm not sure I'm on the right page -- could you
13 say that one more time.

14 MR. DeVOE: You're looking at the falling
15 water contract.

16 MS. McHUGH: Okay.

17 MR. DeVOE: We're on the 1976 spaceholder
18 contract.

19 MS. McHUGH: Okay. Thank you.

20 Q. (BY MR. DeVOE): Can you help me
21 understand generally the percentage that Idaho
22 Power Company pays in O&M charges.

23 A. According to the 1923 contract, the
24 7.14 percent is calculated in a formula that
25 includes Idaho Power Company's primary storage

1 right of 45,000 acre-feet and the proportion of
2 Idaho Power Company's secondary storage capacity
3 right of 255,000 acre-feet.

4 Q. To your knowledge, has Idaho Power
5 Company always paid the O&M charges?

6 A. To my knowledge, the company has
7 always paid seven-plus percent of the O&M.

8 Q. Never missed a payment?

9 A. To my knowledge, we've never missed a
10 payment.

11 Q. What does that indicate to you and
12 about your understanding of the Idaho Power
13 Company's belief that the 1923 contract is still
14 in existence?

15 A. Well, as I described yesterday, I
16 think the company has always believed that it had
17 a right to 45- -- a contractual right to 45,000
18 acre-feet of primary storage and a contractual
19 right to 255,000 acre-feet of storage capacity at
20 American Falls Reservoir.

21 Q. Would Idaho Power have paid O&M
22 charges on rights it didn't believe it had?

23 A. I don't believe they would have.

24 Q. Let's turn now to page 14. Oh, you're
25 at page 14. I'm sorry. And you had a discussion

1 yesterday with Mr. Gehlert about
2 paragraph 28(e)(3) at the bottom of that page.

3 Do you see that provision?

4 A. I do.

5 Q. And Mr. Gehlert was suggesting that
6 this provision somehow controls the operation of
7 water rights in the Upper Basin.

8 Do you recall that?

9 A. I do.

10 Q. And can you read paragraph 28(e)(3)
11 into the record again, please.

12 A. Okay. "The Replacement Dam will be
13 operated by the United States pursuant to the
14 operating criteria set forth in Article 16 of the
15 Government Contract in a manner so that (1) the
16 present proportionate storage rights of the
17 Spaceholder shall not be altered or changed except
18 as provided in the Government Contract and in the
19 Spaceholder Contracts, (2) the water surface
20 elevation of the Replacement Dam shall not exceed
21 a maximum of 4354.5 feet above mean sea level
22 USC&GS datum, and (3) the primary irrigation
23 purpose and the incidental purposes of the
24 Minidoka project shall not be impaired by the
25 subordinate utilization of power generation at the

1 Q. Tell me what your understanding is of
2 subpart (3) of that paragraph and what that
3 paragraph is referring to specifically.

4 A. That paragraph is referring to the
5 operating criteria and contractual arrangement for
6 the American Falls powerplant.

7 Q. Does that make any reference to Idaho
8 Power Company's secondary storage capacity under
9 the 1923 agreement?

10 A. No.

11 Q. Does that read like a general
12 statement of policy about Upper Basin
13 administration?

14 A. No.

15 Q. I want to turn now to just a more
16 general discussion about the history of this
17 contract and the Idaho Power Company and your
18 understanding of what's happened with the American
19 Falls' rights over the years.

20 A. Okay.

21 Q. I won't rehash all of the questions
22 and testimony, but you talked at some length
23 yesterday with Mr. Gehlert about the company's
24 tracking of this water right between 1923 and
25 1969.

1 powerplant of the water released from the
2 Replacement Dam. The United States is not
3 obligated to operate the Replacement Dam in a
4 manner to have water in the Replacement Dam at
5 elevations for power generation or to operate to
6 increase the head in the Replacement Dam for power
7 generation."

8 Q. Now, can you turn back to page 5 of
9 this contract for me.

10 A. Okay.

11 Q. Is it your understanding that this is
12 part of the definitional section of the agreement?

13 A. It is.

14 Q. Can you read the definition of
15 powerplant on this page.

16 A. "Powerplant shall mean the
17 hydroelectric generating facility attached to the
18 Replacement Dam to be constructed, operated, and
19 maintained by the Idaho Power Company in
20 accordance with the license."

21 Q. What powerplant is that?

22 A. The American Falls powerplant.

23 Q. And now turn back, if you will, to
24 page 14.

25 A. Okay.

1 Do you recall that?

2 A. I do.

3 Q. And have you reviewed evidence that
4 the company on a regular basis tracked this water
5 right between those years?

6 A. I think there is evidence that the
7 company did a fairly good job of tracking the
8 water right into the 1960s, and probably not such
9 a good job in the '70s and until again a good job
10 in the late 1990s.

11 Q. And are you aware that there was a
12 problem discovered with the American Falls Dam in
13 the early 1970s?

14 A. I am aware of that.

15 Q. Can you generally describe your
16 understanding of what the problem was.

17 A. Well, my understanding -- and this is
18 what necessitated the need to replace the dam --
19 was that the concrete was beginning to fail, and
20 because of that there was a safety concern. So
21 they wanted to replace the dam as soon as they
22 could.

23 I think I have an understanding that
24 they weren't able to fill the reservoir to its
25 maximum capacity in those later years before they

1 replaced the dam.

2 Q. Do you know how much storage was cut
3 back during that time for safety concerns?

4 A. Well, my understanding is is that they
5 may have only been able to fill it half full in
6 those later years.

7 Q. Would it make sense, then, that the
8 Idaho Power Company wasn't calling for its
9 contract rights during that time?

10 A. It makes sense. Again, I think maybe
11 there were -- it might have been discussions. I
12 didn't find anything in written records. I
13 haven't seen anything produced that would lead me
14 to believe that there were those discussions, but
15 there could have been. I don't have a record to
16 show that we had called for that water.

17 Q. Are you aware that the Idaho Power
18 Company was actively engaged in and participating
19 in the rebuild of the American Falls Reservoir?

20 A. I -- that's my understanding.

21 Q. Is it your understanding that the
22 company participated in the financing of the
23 rebuild of the American Falls Reservoir?

24 A. That's my understanding.

25 Q. Would the Idaho Power Company have

1 participated in that effort if it didn't believe
2 it had any contract rights at the American Falls
3 Reservoir?

4 A. I don't believe that we would have.

5 Q. Can you tell me what significant event
6 happened for the Idaho Power Company in 1977?

7 A. We were sued by some ratepayers and
8 accused of not protecting our water rights.

9 Q. And what is that dispute referred to
10 as?

11 A. That was the beginning of the Swan
12 Falls issue.

13 Q. And was there litigation surrounding
14 the Swan Falls issue?

15 A. There was. My understanding, based on
16 the information that I've read and discussions
17 I've had with people, is that the ratepayers filed
18 a lawsuit against the company for not protecting
19 its water rights. The company -- and the PUC also
20 intervened in that.

21 And the company in turn filed a
22 lawsuit against water right holders to try to
23 understand what its rights were and how those
24 rights were being impacted.

25 Q. How many water rights holders did

1 Idaho Power Company file suit against?

2 A. In excess of 7,000, I believe.

3 Q. Are you aware that that litigation was
4 called "The 7500 Lawsuit"?

5 A. I have heard that.

6 Q. Do you know that it was also called
7 "Idaho Power Company versus The World"?

8 A. I've heard that more often.

9 Q. Is it safe to say that Idaho Power
10 Company was devoting a large amount of resources
11 to that litigation?

12 A. That's my understanding. I have an
13 understanding that that was a huge issue for the
14 company and all water users that were affected. I
15 think that it probably occupied a lot of people's
16 time, and was the major focus of the day in
17 relation to water administration, water tracking,
18 and water use.

19 Q. And when was that litigation resolved?

20 A. Well, it started in '77. I think that
21 the Swan Falls agreement was signed in 1984.

22 Q. And were there some follow-on
23 proceedings after that with FERC?

24 A. My understanding is that FERC didn't
25 approve the Swan Falls agreement until sometime in

1 the late '80s, 1988 or thereabouts.

2 Q. And did that litigation lead to the
3 start of the SRBA proceedings?

4 A. That's my understanding, is that as
5 part -- as one of the requirements in the Swan
6 Falls agreement that there would be an
7 adjudication and an attempt to sort out water
8 rights in the Snake River Basin, and that all
9 stemming from this lawsuit and this Swan Falls
10 agreement.

11 Q. Would that explain in part why Idaho
12 Power Company wasn't focused on the American Falls
13 1923 agreement between 1977 and the conclusion of
14 that litigation?

15 A. And I talked about this yesterday.
16 And I think there were periods over the time from
17 1923 to present when there were numerous things
18 going on. The company probably did a better job
19 of tracking flows at various times over that
20 history. And I do think that since everybody was
21 so preoccupied, that could explain why there's not
22 a better record of Idaho Power Company tracking
23 flows after 1977.

24 Q. In the period after that you
25 discussed -- and I won't ask you to repeat, but

1 it's when you started working for the company and
2 you discovered this issue with the O&M payments.

3 A. Okay. Well, again, I went to a
4 meeting. I was asked to track the costs. This
5 was -- occurred sometime in '97, '98, the late
6 '90s.

7 In trying to figure out why the costs
8 went up so high from one year to the next, I was
9 trying to determine exactly what our percentage of
10 the O&M costs were. In trying to formulate that
11 solution I became aware of the percentage of O&M
12 that we paid in relation to our storage. I
13 reviewed the 1923 contract as the spaceholder
14 contract from the documents that I reviewed, and
15 it indicated that, at least for me, that we did
16 have a 1923 spaceholder contract and that it
17 included primary and secondary storage.

18 Q. Okay. Thank you, Mr. Bowling.

19 Now, turning to the 1976 agreement.
20 You had a discussion with Mr. Stanish yesterday
21 about whether or not the 255,000 acre-feet is
22 specifically referenced in the 1976 contract.

23 Do you remember that?

24 A. Is that the spaceholder agreement?

25 Q. That's the spaceholder agreement.

1 A. Okay.

2 Q. Let's turn to Exhibit 5.

3 A. Can you repeat your --

4 Q. I was just refreshing your memory that
5 you had a discussion with Mr. Stanish about that
6 yesterday.

7 A. Okay.

8 Q. And that Mr. Stanish was pointing out
9 that there isn't a specific reference to the
10 255,000 acre-feet in the 1976 agreement.

11 A. I remember that.

12 Q. And you had a discussion about the
13 fact that it is referenced in a table but that
14 some of the contract terms don't specifically talk
15 about that 255,000 acre-feet.

16 A. I agree.

17 Q. Okay. Can you turn to page 4 of
18 Exhibit 5 for me, please.

19 A. Okay.

20 Q. And is this the definitional section
21 of the 1976 agreement?

22 A. It's a portion of it.

23 Q. Can you read the definition of
24 "Existing Spaceholder Contract."

25 A. "'Existing Spaceholder Contract' shall

1 mean that certain contract dated June 15th, 1923,
2 symbol and No. ILR-733 between the United States
3 and the Spaceholder."

4 Q. Is that a direct reference to the 1923
5 agreement?

6 A. It is.

7 Q. Would you turn now to page 6, please.
8 On the bottom of page 6 is paragraph 19(a).

9 Do you see that paragraph?

10 A. I do.

11 Q. And five lines down there's a sentence
12 starting "Nothing herein."

13 A. Okay.

14 Q. Can you read that sentence, please.

15 A. "Nothing herein shall in any way alter
16 or change the present proportionate storage rights
17 of the Spaceholder, and this Spaceholder Contract
18 and the American Falls Replacement Dam program
19 constitute a reaffirmation by the United States of
20 the rights of the Spaceholder under the Existing
21 Spaceholder Contract, except as modified by this
22 Spaceholder Contract as authorized in the Act of
23 December 28th, 1973, and in the Government
24 Contract."

25 Q. Is it your understanding that that

1 sentence is referring to the 1923 agreement?

2 A. That's been my understanding.

3 Q. And it states that it's a
4 reaffirmation of the 1923 agreement?

5 A. That's my understanding.

6 MR. DeVOE: I'd like to mark a new exhibit.
7 I'm not sure what number we're on.

8 MR. SCOTT: 21.

9 MR. DeVOE: This will be Exhibit No. 21.
10 This is a confirmation proceeding in the District
11 Court of the Fifth Judicial District of the State
12 of Idaho in civil No. 28378.

13 Q. And I'd like for you to please look at
14 page 578 of this exhibit.

15 MR. STANISH: What's the title?

16 MR. GEHLERT: Do you have copies for the
17 rest of us?

18 MR. DeVOE: I think so. Do you have
19 copies, Dave?

20 MR. SCOTT: I don't. We can make a copy of
21 it.

22 MR. DeVOE: Oh, I thought Sandra gave us an
23 extra copy.

24 MR. TUCKER: We can take a minute.

25 MR. DeVOE: Let's just take a two-minute

1 break.

2 (Recess.)

3 (Exhibit 21 marked.)

4 MR. DeVOE: Let's go back on the record.

5 This will be a new exhibit to the
6 deposition. It's going to be No. 22, I think.

7 MR. SCOTT: Yeah.

8 (Exhibit 22 marked.)

9 MR. DeVOE: Exhibit No. 22 is the 1973
10 legislation regarding the American Falls Dam.

11 Q. Have you had a chance to review this,
12 Mr. Bowling?

13 A. I think I reviewed it yesterday when
14 it was brought up.

15 Q. Can you see halfway down the first
16 page there is section 2(a)?

17 A. Yes.

18 Q. And can you read into the record
19 section 2(a).

20 A. "Replacement of the existing dam as
21 authorized in section 1 thereof shall in no way
22 alter or change the present proportionate storage
23 rights of present spaceholders in the American
24 Falls Reservoir and shall constitute a
25 reaffirmation of existing contract rights between

1 anticipated that water would be stored in an
2 upstream reservoir, Palisades, that wasn't to be
3 built for another 30 years?

4 A. Well, I guess somebody may have
5 anticipated that, but I don't have a -- I don't
6 have any firsthand knowledge that they did.

7 Q. Have you seen any documents that
8 indicate that the contract refers to a paper fill?

9 A. I have not.

10 MR. DeVOE: That's all my questions, other
11 than waiting for the copies of the new exhibit.

12 MS. McHUGH: Would you mind if I did a
13 couple follow-up just between, because I have a
14 ten o'clock meeting that I'm already ten minutes
15 late for?

16 MR. DeVOE: Go ahead.

17 MS. McHUGH: Okay. Just based on your
18 questions that you just did.

19 FURTHER EXAMINATION

20 BY MS. McHUGH:

21 Q. Again, this is Candice McHugh for the
22 record representing the ground water districts and
23 Aberdeen-Springfield Canal Company.

24 Your attorney asked you about whether
25

1 the Secretary and the spaceholders except as
2 otherwise provided in this Act."

3 Q. And what's your understanding of the
4 existing rights of the Idaho Power contract?

5 A. That Idaho Power Company's spaceholder
6 contract is the 1923 contract.

7 Q. Let's go ahead and touch on one other
8 issue, and then when we get copies of the new
9 Exhibit 21 we'll just finish that up, and then
10 I'll be done.

11 This morning you were talking with
12 Mr. Stanish about the concept of physical fill
13 versus paper fill.

14 Do you recall that?

15 A. I do.

16 Q. Can you tell me for the record what a
17 paper fill is.

18 A. Paper fill is an accounting fill.
19 They store water in various places and account for
20 that water on paper, rather than a physical volume
21 of water that's stored in one location.

22 Q. And when was the Palisades Reservoir
23 built?

24 A. 1957.

25 Q. Could the parties in 1923 have

1 or not you thought that, using the example in
2 2002, if there was 400,000 acre-feet of storage
3 left in the reservoir and you took away the
4 77ish-thousand acre-feet determined in Mr. Shaw's
5 report to be a shortage to Idaho Power's secondary
6 storage right that there would still be water left
7 in the reservoir.

8 Do you remember those questions?

9 A. I do.

10 Q. And you said that that wouldn't cause
11 any injury to other spaceholders in your opinion;
12 right?

13 A. I -- basically that's correct.

14 Q. Okay. Do you have an opinion on does
15 it create a shortage for irrigators? Do you know?

16 A. I don't know that it does. I think
17 what I said was that it seems logical to me that
18 if there's water left over in storage at the end
19 of the irrigation season that could have been
20 utilized for irrigation and was not, there may --
21 or it's not likely that there was a shortage. And
22 if there was, that that water should have been
23 used to cover that shortage.

24 Q. And do you understand that the ground
25 water users have been advancing that argument for

1 the last five years before the director?

2 A. I think I have heard something about
3 that.

4 Q. And do you understand the director has
5 determined that that's not true?

6 A. I don't specifically understand that.
7 I haven't reviewed any rulings or documents, but
8 that's my general understanding.

9 Q. If the director decides that there's
10 no water available for fulfilling your secondary
11 storage right, does that change your position?

12 MR. DeVOE: Objection. Calls for
13 speculation.

14 THE WITNESS: I'm not sure I have a
15 position.

16 Q. (BY MS. McHUGH): Idaho Power
17 Company's position on its ability to demand the
18 255,000 acre-feet.

19 A. Our position is that the Bureau of
20 Reclamation should honor their contract.

21 Q. Yeah, I understand that position.
22 Does it alter your position that the Bureau of
23 Reclamation should demand of 255,000 acre-feet if
24 the director decides there isn't any water to fill
25 the secondary storage?

1 director that there is no water available, you're
2 going to be satisfied with that, then your demand
3 to the Bureau --

4 MR. DeVOE: Objection.

5 Q. -- stops?

6 MR. DeVOE: Asked and answered, calls for
7 speculation.

8 THE WITNESS: I think we'd have to cross
9 that bridge when we get to it, because I don't
10 know what that outcome would be and I'm not
11 prepared to make a decision like that for the
12 company at this proceeding.

13 MS. McHUGH: Thank you. I have nothing
14 further.

15 MR. TUCKER: You know, just off the record
16 a little bit.

17 (Discussion.)

18 (Ms. McHugh not present.)

19 MR. DeVOE: Back on the record.

20 FURTHER EXAMINATION

21 BY MR. DeVOE:

22 Q. We're just circling back for a moment
23 to the discussion you had yesterday with
24 Mr. Stanish about whether or not the 1976
25

1 MR. DeVOE: Objection. Calls for
2 speculation. You're posing a hypothetical that
3 doesn't exist that's the very purpose of the
4 litigation. If we get a determination, we'll
5 decide at that time.

6 MS. McHUGH: Okay. And you asked the
7 questions and had him give an opinion on injury.
8 The director has already decided that that
9 constitutes injury -- that carryover can be
10 injury, that if there's a shortage in carryover
11 shortage, that's going to cause injury to
12 spaceholders. I'm just exploring that a little
13 bit on Idaho Power Company.

14 MR. DeVOE: And I'm just objecting that
15 it's speculation about what we'll do in the
16 future.

17 MS. McHUGH: Okay.

18 Q. Go ahead.

19 A. I'm not sure that I said that anybody
20 would be injured. I think what I said was that
21 there was still water available for irrigators to
22 use.

23 Q. And just one last follow-up based on
24 what your attorney just said.

25 If you get a determination from the

1 agreement specifically referenced the 255,000
2 acre-feet of secondary storage capacity.

3 Okay, Mr. Bowling?

4 A. Okay.

5 Q. And I just have one more document that
6 I want to refer to, and then I think my questions
7 are done.

8 We're looking at what's been marked as
9 Exhibit 21 to the deposition. And this is a
10 confirmation proceeding in 1977 over the American
11 Falls rebuild and the bonding. And I'd like for
12 you to take a look, please, at page 577 of this
13 Amended Findings of Fact and Conclusions of Law.

14 A. Okay.

15 Q. And you see the header at the top of
16 this page that indicates that this is the
17 Conclusions of Law section of this order?

18 A. I do.

19 Q. And can you turn to page 578, please.

20 A. Okay.

21 Q. And you see there at the bottom of
22 page 578 Roman numeral X?

23 A. Yes.

24 Q. Can you please read Roman numeral X
25 into the record.

1 A. "The Spaceholders Contracts are
2 consistent with the Existing Spaceholder Contracts
3 and do not alter or change the proportionate
4 storage rights of the water users in the American
5 Falls Reservoir and constitute a reaffirmation and
6 do reaffirm existing contract rights between the
7 Secretary of the Interior and the present water
8 users, except as authorized by Public Law 93-206
9 and do not make provision for erosion control."

10 Q. And just a moment ago I had you take a
11 look at Public Law 93-206.

12 Do you remember that?

13 A. Yes.

14 Q. And do you agree with me that that
15 public law also constitutes a reaffirmation of
16 contract rights?

17 A. I do.

18 MR. DeVOE: I don't have any further
19 questions.

20 MR. GEHLERT: No questions.

21 MR. STANISH: I have a few, and they should
22 be quick.

23 THE WITNESS: Okay.

24 ///

25 ///

1 described that it is a volumetric limit, that once
2 that limit is reached the contract has been
3 fulfilled for that year and the pass-through of
4 water to meet the flow schedule at the Snake River
5 near Kimberly will cease.

6 It's akin to the period limitation,
7 which is that that water can only be passed
8 through in the winter months and that -- or that
9 once American Falls first fills, then the water no
10 longer needs to be passed through.

11 So my understanding is that there are
12 three limitations that limit the delivery of water
13 or the pass-through of water to meet that flow
14 schedule.

15 Q. Okay. So just so I understand it, so
16 you're saying that those paragraphs are a
17 volumetric limit on the amount that the Bureau can
18 store at any one time?

19 MR. DeVOE: Objection. Misstates the
20 testimony.

21 THE WITNESS: It's not storage.

22 Q. (BY MR. STANISH): Right.

23 A. It's a pass-through.

24 Q. But it's a choice between storage and
25 release.

1 FURTHER EXAMINATION

2 BY MR. STANISH:

3 Q. Again, this is David Stanish with the
4 State of Idaho.

5 Earlier Mr. DeVoe was asking you about
6 paragraph 18 of the 1923 contract.

7 A. Okay.

8 Q. And he asked you to distinguish the
9 storage capacity versus the water reserved under
10 paragraph 19.

11 Do you remember that conversation?

12 A. I do.

13 Q. And as I understood what you said, you
14 said that the pass-through right was a volumetric
15 limit on the pass-through water, not on the stored
16 water?

17 MR. DeVOE: Objection. Misstates the
18 testimony.

19 Q. (BY MR. STANISH): If I misstate it,
20 just tell me exactly what you said. I'm sorry.

21 A. What I said was that the secondary
22 storage right is 550,000 acre-feet of storage
23 capacity for the purpose of regulating and
24 controlling the water reserved to the company.

25 I think further in that discussion I

1 So they can't store, instead they're
2 supposed to release it to Twin Falls?

3 MR. DeVOE: Objection. Misstates the
4 testimony.

5 THE WITNESS: It's not storage water. It's
6 storable water that's passed through. It's not
7 water that is released from storage that was
8 previously stored.

9 Q. (BY MR. STANISH): And I understand.

10 A. Okay.

11 Q. I'm just trying to get a sense.

12 So instead of storing it, they're
13 supposed to pass it through?

14 A. It's storable water that is passed
15 through to meet the flow target.

16 Q. Okay. Fair enough. Mr. DeVoe also
17 asked you about whether you believe that your
18 amended objections were consistent with the
19 director's report.

20 Do you remember that question?

21 A. Yes.

22 Q. You said that they were?

23 A. I believe that they're generally
24 consistent with the director's report. Not exact,
25 but generally consistent.

1 Q. Then why object?

2 A. The objection occurred based on the
3 Bureau's initial filing sometime before the
4 director's report came out.

5 Q. Okay. Another topic that you
6 discussed with Mr. DeVoe --

7 A. Okay.

8 Q. -- was the question of the shortages
9 that Mr. Gehlert prepared in this table --

10 A. Okay.

11 Q. -- Exhibit 16.

12 A. Okay.

13 Q. Have you done any analysis on what
14 effect additional releases would have, not just on
15 the next year, because you spoke about how there
16 was enough holdover to cover the next year, but
17 how additional releases would affect two years
18 from that time?

19 A. I have not.

20 Q. Okay. Just a couple more here.

21 In one response to Mr. DeVoe's
22 questions you said essentially that you believe
23 that the operations that occurred immediately
24 after the signing of the contract were the best
25 representation of how the parties intended the

1 contract to be administered; is that correct?

2 A. That's correct.

3 Q. And so that would apply not only to
4 the 1923 contract but also the contracts that were
5 entered into in 1976?

6 A. Our 1923 contract is our placeholder
7 contract. It's referenced in the 1976 contract.
8 So I agree to that -- unless something was
9 changed, which I haven't found evidence that
10 anything was, that's correct.

11 Q. So the operations after those '76
12 contracts would be the best representation of the
13 parties' intentions?

14 A. The operations after the 1923 contract
15 would be the best representation of how the
16 project -- how the contract would be honored.

17 Q. The 1923 contract?

18 A. The 1923 contract.

19 MR. STANISH: I think that's it. Thank
20 you.

21 MR. DeVOE: No further questions for me. I
22 think we're done.

23 (Deposition concluded at 10:30 a.m.)

24 (Signature requested.)

25 -oOo-

Standard Form 5: Stipulated Elements of a Water Right, *In re*
SRBA Case No. 39576, Subcase nos. 01-02017 et al. (Idaho 5th
Dist. Ct. Feb. 19, 2010)

EXHIBIT 48

TO

SECOND AFFIDAVIT OF DAVID I. STANISH

380

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

FEB 19 2010

By _____
Deputy Clerk

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. 01-02017
	)	
	)	STANDARD FORM 5
	)	
Case No. 39576	)	STIPULATED ELEMENTS OF A
	)	WATER RIGHT
	)	

This form is used to report the stipulated elements of one water right acquired under state law. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; and that they have been served with sufficient process, according to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

The parties and IDWR agree and stipulate that the elements of this water right should be decreed as described per the attached. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.

CLAIMANT/OBJECTOR:
Idaho Power Company

OBJECTOR:
State of Idaho


James C. Tucker
Attorney for Claimant/Objector

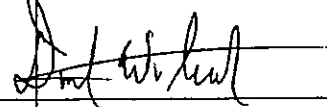
1/21/10
Date


David I. Stanish
Deputy Attorney General
Attorney for Objector

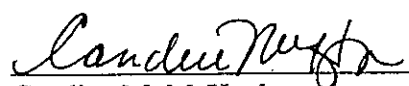
1/21/10
Date

OBJECTOR:
U.S. Bureau of Reclamation

OBJECTOR:
Ground Water Districts


David W. Gehlert
Attorney for Objector

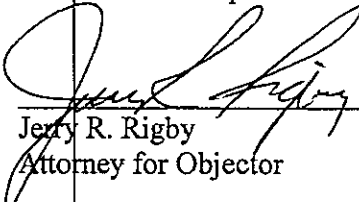
2/5/10
Date


Candice M. McHugh
Attorney for Objector

2/15/10
Date

OBJECTOR:

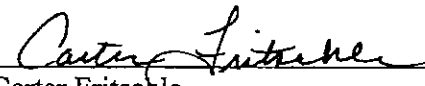
American Falls Spaceholders



Jerry R. Rigby
Attorney for Objector

1-21-10
Date

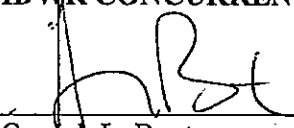
IDWR CONCURRENCE:



Carter Fritschle
Water Rights Adjudication
Section Manager

1-25-10
Date

IDWR CONCURRENCE:



Garrick L. Baxter
Deputy Attorney General
Attorney for IDWR

1-21-10
Date

CERTIFICATE OF SERVICE

I certify that on this 16th day of Feb. 2010, I caused to be served the original and copies of the **STANDARD FORM 5** on the following persons by the methods indicated:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to:

IDAHO POWER COMPANY
Represented by:
JAMES C TUCKER
IDAHO POWER CO
PO BOX 70
BOISE, ID 83707

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:
- ☐ Statehouse Mail

IDAHO POWER COMPANY
Represented by:
JIM LOCHHEAD
BROWNSTEIN HYATT ET AL
410 17TH STREET, SUITE 2200
DENVER, CO 80202

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:
- ☐ Statehouse Mail

ABERDEEN AMERICAN FALLS GWD
BINGHAM GWD
BONNEVILLE JEFFERSON GWD
CAREY VALLEY GWD
IGWA INC
JEFFERSON CLARK GWD
MADISON GWD
MAGIC VALLEY GWD
NORTH SNAKE GWD
Represented by:
CANDICE MCHUGH
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHTD.
101 CAPITOL BLVD., STE. 208
BOISE, ID 83702

- ☒ U.S. Mail, postage prepaid
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- ☐ Statehouse Mail

USDI BUREAU OF RECLAMATION

Represented by:

US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☐ Statehouse Mail

UNITED STATES OF AMERICA
REGIONAL DIRECTOR PN REGION
BUREAU OF RECLAMATION PN-3100
1150 N CURTIS RD STE 100
BOISE, ID 83706-1234

- ☒ U.S. Mail, postage prepaid
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☐ Statehouse Mail

STATE OF IDAHO

Represented by:

NATURAL RESOURCES DIV. CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
P.O. BOX 44449
BOISE, ID 83711-4499

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☐ Statehouse Mail

AMERICAN FALLS SPACEHOLDERS

Represented by:

JERRY R. RIGBY
RIGBY, ANDRUS & MOELLER
P.O. BOX 250
REXBURG, ID 83440

- ☒ U.S. Mail, postage prepaid
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☐ Statehouse Mail

IDWR DOCUMENT DEPOSITORY
PO BOX 83720
BOISE, ID 83720-0098

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☐ Statehouse Mail

✓ *US Mail*

Candace Rytter

01/07/2010

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 1-2017

NAME AND ADDRESS: IDAHO POWER CO
PO BOX 70
BOISE ID 83707

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 1,400.000 CFS

~~The quantity of water for this right and Right Nos. 01-2017, 01-2032 and 01-10383 when combined together is limited to 100 CFS beginning April 1, increasing uniformly to 2500 CFS on May 1, and continuing at that amount to September 15 inclusive, then decreasing uniformly to 100 CFS on October 31, and none from November 1 to March 31 inclusive.~~

PRIORITY DATE: 09/03/1908

The right for the use of water acquired under this right shall be junior and subordinate to all other rights for the use of water within the State of Idaho with a priority date later in time than the priority of this right and shall not give rise to any claim against any future rights for the use of water within the State of Idaho initiated later in time than the priority of this right.

POINT OF
DIVERSION:

T07S R31E S30 SWSE Lot 12 Within POWER County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

POWER

04/01 10/31

1,400.000 CFS

Power generation is at the American Falls Power Plant.

PLACE OF USE: POWER in POWER County

T07S R31E S30 Lot 12 SWSE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

~~As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, Idaho Power Company limited its power water rights on the Snake River at whatever point and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water.~~

~~The remainder of this right was conveyed to the United States by the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, also identified in the United States records as Symbol ILR 733, and the deeds recorded as instrument numbers 31019, 31020, 31021 and 38454 as on file at the recorders office in Power County, Idaho.~~

~~As a condition of the accomplished transfer, the project shall be operated in such manner as will not conflict with the future depletion in flow of the waters of the Snake River and its tributaries, or prevent or interfere with the future upstream diversion and use of such waters for the irrigation of lands and other beneficial consumptive uses in the Snake River watershed.~~

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.