

Audio Transcription

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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DEPT OF WATER RESOURCES
SOUTHERN REGION

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 47-17664 IN) VOLUME II
THE NAME OF ROBERT K AND JANA) (PAGES 73-172)
L LINDERMAN.)
_____)

HEARING BEFORE
HEARING OFFICER: CINDY YENTER
(Present remotely)

Date: April 8, 2021

Location: Idaho Department of Water Resources
650 Addison Avenue West, Twin Falls, Idaho

REPORTED BY:

JAHNENE ADMIRE, CSR No. 760, RPR

Notary Public

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18	Denise Maline	18	(No Exhibits marked.)
19	Nathan Erickson	19	
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1	HEARING OFFICER: All right. Good morning,	1	I will also take official notice of the
2	everyone. I am Cindy Yenter. I'm from the Salmon	2	department file in this -- in this case, the water right
3	office of Department of Water Resources. I'll be the	3	file.
4	hearing officer today. And I am participating in this	4	Okay. I think we are ready to put on your
5	hearing via Zoom from Salmon, Idaho, and the rest of the	5	first -- your witness, Mr. Fowler. Would you like to --
6	parties are on site at the IDWR Southern Region	6	and I'm going to -- you know, I don't know if I need to
7	conference office.	7	swear him in again, but I think I'm going to since we're
8	Today is Thursday, April 8th. It is about	8	on a new day. So if you'll have him step up to the
9	9:10 a.m. With me from the department are Denise	9	witness stand, and we'll have Mr. Erickson adjust the
10	Maline, my assistant; and Nathan Erickson, who is kindly	10	microphone and the camera, and I'll swear him in again
11	running the Zoom show.	11	before he starts.
12	Purpose of this hearing is to re-record	12	That's good. Raise your right hand, please.
13	evidence and testimony from two witnesses, Robert	13	Do you solemnly affirm that the testimony you
14	Linderman and Tanner Butler, whose testimony was taken	14	are about to present at this hearing is the truth, the
15	earlier, but the recording was lost. And so to complete	15	whole truth, and nothing but the truth?
16	that record, we're going to re-open the record today and	16	THE WITNESS: Yes.
17	re-do those two testimonies.	17	HEARING OFFICER: Thank you. Please be
18	In the earlier hearing on March 10th, the	18	seated.
19	parties did stipulate to the admission of all the	19	All right, Mr. Fowler. We're going to have
20	exhibits that had been submitted. During the hearing	20	the camera on Mr. Linderman, if you don't mind. I can't
21	there were modifications made to Exhibits C and F. And	21	see you both.
22	there were admissions of three new exhibits labeled H,	22	THE WITNESS: No, that's fine.
23	J, and Department Exhibit 200. And so those were --	23	DIRECT EXAMINATION
24	have also been added to the record, will be recognized	24	QUESTIONS BY MR. FOWLER:
25	today and for the record.	25	Q. Mr. Linderman, would you please state your

Page 78 1 full name for the record. 2 A. Robert Keith Linderman. 3 Q. Okay. And what is your current place of 4 address, your address? 5 A. 4377 North 1400 East, Buhl. 6 Q. Okay. And how long you lived at that address? 7 A. Since 2014. 8 Q. Okay. Mr. Linderman, do you understand that 9 we're here today regarding an application for a permit 10 that was filed by you and your wife, Ms. Linderman? 11 A. Yes. 12 Q. Could you just please explain just on the 13 record the genesis or the -- what started -- the reason 14 that you applied for this water use application in the 15 first place? 16 A. Okay. When we -- we bought the place in 2014, 17 there was a -- as part of the sale, the agreement, the 18 paperwork was showed that we had the domestic use 19 permit, along with several water rights, and also a 20 storage facility. And at one point, like I said, to get 21 it transferred into my name is when I showed up at -- at 22 IDW here in Twin Falls. There was some snafu; even 23 though I had -- the permit was written out to the 24 previous owners, there was some snafu, and we couldn't 25 change it. So that's why they decided to just reapply.	Page 79 1 And I don't know if I can say exactly what the snafu 2 was, even though the paperwork and the number was 3 assigned to that permit, but I had to reapply for one. 4 Seemed like the easier route, I guess. 5 Q. Can you -- do you have the exhibit book in 6 front of you? 7 HEARING OFFICER: Excuse me just a moment. I 8 am having trouble hearing -- hearing counsel just a 9 little bit. I can hear Mr. Linderman just fine. 10 MR. FOWLER: Can I move this closer to me? 11 MR. ERICKSON: It's actually -- if you can 12 just speak up a little bit -- 13 MR. FOWLER: Okay. All right. 14 MR. ERICKSON: -- she'll be able to hear you. 15 Q. (BY MR. FOWLER) Mr. Linderman, do you have 16 the exhibit book in front of you? 17 A. Yes. 18 MR. FOWLER: Can you hear me okay? 19 HEARING OFFICER: Yeah, that's better. 20 Thanks. 21 MR. FOWLER: Okay. All right. 22 Q. (BY MR. FOWLER) Can you please turn to 23 hearing Exhibit C? 24 A. Okay. 25 Q. So on that first page, it's titled
Page 80 1 "Application for Permit." Is this -- is this the 2 application for permit that you requested? 3 A. Yes. 4 Q. And I believe that you said that you requested 5 this because you went to IDWR, and they instructed you 6 to apply for a new permit; is that correct? 7 A. Right. And they couldn't explain why the 8 other permit wasn't complete in their records. They 9 couldn't find -- find all the records on -- even though 10 I had -- they had -- acknowledged that I had the 11 paperwork, but . . . 12 Q. Did -- can you please explain for the hearing 13 officer who completed this application, or how it was 14 completed? 15 A. It was done in the office, so I said, I think 16 they pretty much just kind of mimicked whatever was 17 applied for before. 18 Q. Okay. So did you -- did you sign -- is that 19 your signature on the second page, signing this 20 application? 21 A. Yes. 22 Q. Okay. But as far as other parts of the 23 application, were those completed by you or by someone 24 else? 25 A. They were by the office.	Page 81 1 Q. Okay. 2 A. Yeah. 3 Q. And this application, Mr. Linderman, is 4 identifying the source of the water as an unnamed 5 stream. Is that -- is that your intention to use water 6 from unnamed stream? 7 A. No. Where the -- yeah, it's set up to use 8 ground -- I don't know what you'd call it -- 9 groundwater. It's under -- it's seep, is what it is. 10 Q. Okay. So -- so this source here says an 11 unnamed stream. So are we saying that the application, 12 there may be some revisions that are needed to this 13 application to get it to the point where you want it? 14 A. Yes. It was filled out in the office, like I 15 said. We just kind of filed it, didn't think this was 16 going to be an issue, so . . . 17 Q. Okay. So what is your understanding as the 18 source of the water? 19 A. That's as the irrigation system starts, I 20 said, in that area where our home is, I said, the water 21 subs to the surface. And so there's been drain tile put 22 in to keep that from overflowing, turning into swamp. 23 And, I said, so that's where it comes from. 24 Q. So the source of the water would be the 25 collection from the drain tile?

Page 82 1 A. Yes. 2 Q. Okay. All right. 3 MR. BROWN: Excuse me. I'm going to object at 4 this point. And the objection is I haven't prepared for 5 all this. We went through our hearing before, and, 6 unfortunately, the recording didn't happen. But as 7 you'll recall, Ms. Yenter, for over six or eight months 8 now, we've been trying to get a clear application about 9 what he was applying for and what he was not applying 10 for. 11 And so today, after the change in hearing, 12 after we had a full hearing and, unfortunately, the 13 recording wouldn't work, we're being told that he's 14 intending to get something entirely different than on 15 the application. They're trying to change it from 16 ground -- to groundwater from an unnamed spring after we 17 just tried the issue on an unnamed spring. And I think 18 that's absolutely unfair, and that they should not be 19 allowed to amend their application in the way they're 20 trying to do it today, after the fact. 21 HEARING OFFICER: Well, and I would -- I would 22 tend to agree with that. This is not the venue, I 23 guess, to amend the application. I really don't know -- 24 I mean, short of requiring that you just repeat the 25 questions that you asked on March 10th, you know, I was	Page 83 1 just going to wait and see what happened in that aspect. 2 But, yeah, now is not -- I should caution you -- now is 3 not the time to seek to amend this application. We have 4 to move forward on the merits of the application as 5 filed. 6 So, Mr. Fowler, if you can try and keep your 7 questions, you know, directed towards that goal, please. 8 MR. FOWLER: Well, just to respond to 9 Mr. Brown, we did -- my client very clearly stated that 10 this was for groundwater in his previous testimony. So 11 to the extent that he's not prepared for that, I can't 12 speak further on that. But we're not changing anything. 13 My testimony -- the testimony from my client is that 14 this is not for an unnamed stream but for groundwater, 15 which is consistent with his testimony at our last 16 hearing. 17 And also to the extent the application -- and 18 we can get into this further -- but describes the place 19 of use. I think we -- I think all parties have agreed 20 that the place of use is -- is not accurate as far as 21 the intended place of use that Mr. Linderman use -- 22 intends to use it. However, the department has agreed 23 that we can modify the map to accurately reflect where 24 the place of use will be. So to that extent, the 25 application will be -- will be amended.
Page 84 1 MR. BROWN: If I might respond to that. 2 First, on the question -- amendments are liberally 3 granted, provided they don't prejudice and provided they 4 are timely. What Mr. Fowler is describing here, he says 5 his client said he wanted groundwater. Under 6 cross-examination at the hearing for an unnamed stream 7 application, he admitted he was looking for groundwater. 8 And we were ready to proceed on that. And we considered 9 the matter fully submitted until the recording came back 10 as missing some testimony. But to suggest that they can 11 amend it post hearing or Phase 2 hearing is ridiculous. 12 MR. FOWLER: It was just the purpose for 13 clarification that the request is not for an unnamed 14 stream but for groundwater, which is consistent with Mr. 15 Linderman's testimony in the previous hearing. 16 HEARING OFFICER: Well, the department does 17 retain the discretion, of course, to require amendment, 18 but I don't know that I'm there yet. You know, I'm 19 still listening to all the testimony, and I have not yet 20 made a decision in this. 21 So I think the things that are at -- in 22 question here are, you know, the source is possibly in 23 question. Maybe we need to hear about the system again 24 because that's the part of the testimony that we missed. 25 And the place -- the actual place of use, we need to	Page 85 1 hear about that because that seems to question. 2 So, I mean, we need to proceed and not get too 3 -- too far in the weeds, but I would ask both counsel to 4 try and not introduce anything that wasn't originally 5 discussed in the first hearing, to the extent that 6 you're able to do that. We, of course, don't have 7 photographic memories, and we lost the tape. So all 8 we've got is our notes. 9 But to the extent that you cannot introduce 10 anything and just try to keep this on track, Mr. Fowler, 11 would you please continue. 12 Q. (BY MR. FOWLER) Mr. Linderman, will you 13 please describe the system for your groundwater 14 collection? 15 A. Yes. There's a -- tiles that were put in 16 place prior to us owning it. And the tiles, as the 17 water surfaces from below, enters those tiles, and then 18 is distributed. There's on out-pipe right where the 19 pump is at. 20 Q. Do you know the location of these tiles? 21 A. I didn't. I said, I don't know if there was 22 some discrepancies that the Hamiltons hired a guy to 23 scan the ground, and he found some of them, some of them 24 he didn't know, so, I said, I've got a general idea, and 25 that's it. They were, like I said, they were in place

Page 86 1 when we bought it, so, I said, I don't know exactly the 2 extent of them beyond that, so . . . 3 Q. But it's your understanding that the water 4 goes from the drain tiles into what -- what's the 5 collection? Can you describe the collection system, 6 where the water goes into? 7 A. It's almost like a cement 30-gallon barrel. 8 So it dumps into there. It can only hold a small amount 9 of water, and then it overflows and goes down to the 10 creek. Anything that overflows goes in a pipe down at 11 the creek. 12 Q. And so in that collection system, could you 13 describe how the water gets from that collection system 14 to the irrigation, or how you use it for irrigation? 15 A. Oh, it's pumped out of there. There's an 16 underground line that goes up to the -- to the yard, and 17 then there's portable hoses that can be connected to 18 that, as well, and drug around. 19 Q. Okay. Could you describe your method of 20 irrigation and your, I'll say, frequency and duration? 21 A. I describe it better than various, but it 22 depends on the lawn, I said. Early in the season, I 23 said, you know, you're one, two times a week. Later in 24 the season, I said, more often, I said. The only time 25 you really have a shortage there is basically the hot	Page 87 1 months, I said, they're July and August, but . . . 2 Q. Okay. How often -- let me see this. The 3 water that's draining into the culvert, does that ever 4 stop flowing -- or describe how the flow of the water 5 throughout the year in the culvert. 6 A. There's -- I don't know how you estimate it. 7 I said, there's a tremendous amount of flow that comes 8 out of that culvert. And it starts -- it never shuts 9 off completely. So, I said, all winter long, there's 10 water surfacing inside that drain tile that comes out. 11 And then as irrigation season starts, then, I said, then 12 the quantity goes way up. So, I don't know, it is what 13 it is. That pipe's half full, I would say. 14 Q. Okay. And can you -- let's see. When you 15 turn on the pump to irrigate, can you describe, I guess, 16 the flow of water inside the culvert? 17 A. Okay. The flow is it never stops overflowing. 18 So, I said, there's no -- you can't pump everything out 19 of there that comes in there. So, I said, there's an 20 excess of water. So that continues the overflow all the 21 time. And I don't know -- I don't know what more to say 22 in that. Yeah, there's more water than you can pump 23 out. 24 Q. Okay. So are you saying that as you turn on 25 your irrigation system and pump, does water still
Page 88 1 overflow out of the culvert? 2 A. Yes. Yeah. There's more overflowing than -- 3 than what we pump out. 4 Q. Do you know when -- when the drain tiles were 5 placed on your property? 6 A. I don't. 7 Q. Okay. How long have you lived at that 8 property? 9 A. Since the fall of 2014, like October. 10 Q. With this application, what is your intent as 11 far as the rate of diversion? The application states 12 it's .02 CFS. Is that your intent to use up to that 13 amount? 14 A. Yes. 15 Q. Okay. How much acreage do you intend to 16 irrigate on your property? 17 A. About a half an acre. 18 Q. Do you intend to irrigate more than half of an 19 acre? 20 A. No. This permit just for the domestic is. 21 Q. Okay. So you understand that this application 22 is specifically for .02 CFS and not to exceed 13,000 23 gallons in a half of an acre of irrigation? 24 A. Yes. 25 Q. And you're willing to abide by that?	Page 89 1 A. Yes. 2 Q. Okay. 3 MR. FOWLER: I don't have any further 4 questions. 5 HEARING OFFICER: That's the end of your 6 questions, Mr. Fowler? 7 MR. FOWLER: Yes, it is. 8 HEARING OFFICER: Okay. 9 Mr. Brown, would you like to cross? 10 MR. BROWN: Yes, I would. 11 CROSS-EXAMINATION 12 QUESTIONS BY MR. BROWN: 13 Q. And I want to start out by asking you what we 14 have as Exhibit F modified in our record. 15 Mr. Linderman, you testified at the previous 16 hearing in this case; right? 17 A. About Exhibit F? 18 Q. Answer my question, please. Did you testify 19 in this case -- 20 MR. FOWLER: Ask a clear question. 21 Q. (BY MR. BROWN) -- at the hearing? 22 A. I don't know what you're talking about, sir. 23 MR. FOWLER: Don't badger the witness. 24 Q. (BY MR. BROWN) Did you testify in the 25 previous hearing in this case?

Page 90 1 A. Yes. 2 Q. Okay. And did you mark up Exhibit F with a 3 blue pen? 4 A. I remember marking something. I don't 5 remember the exhibit, but . . . 6 Q. Look at Exhibit F modified with the blue pen. 7 You drew in blue pen ink. 8 A. Oh, that's when you -- yeah, that was -- the 9 question wasn't about this permit, though; that was you 10 were asking about some other water rights and where I 11 thought they were coming from. 12 Q. I didn't ask you about anything other than did 13 you mark this exhibit with a blue pen. Did you mark it 14 with blue pen? 15 A. Yes. 16 Q. And when you testified and marked it with blue 17 pen, the blue pen was to represent where you diverted 18 water under Water Right 47-17431, where you say you 19 diverted water to your place of use; correct? 20 A. Yes. 21 Q. And -- 22 MR. FOWLER: Objection. It's beyond the scope 23 of the application. I'll continue a renewed objection 24 from the last hearing regarding this line of 25 questioning.	Page 91 1 MR. BROWN: Let me -- I'll withdraw the 2 question and back up. 3 Q. (BY MR. BROWN) Mr. Linderman, you just 4 testified you intend on using .02 CFS under this 5 application; correct? 6 A. Yes, for the -- 7 Q. And is it also true that you do not intend to 8 use more than .02 CFS at any point in time? 9 A. No. I -- we're here for the domestic water 10 use. And anything outside of that, I'm not prepared to 11 answer, like I said. You bring up stuff that I said. I 12 can't bring my witnesses when you change the format of 13 what I'm here for. 14 Q. Under this application -- 15 A. Under this application, I'm -- 16 Q. Let me -- 17 A. -- allowed a half acre -- 18 Q. Let me ask the question. 19 A. -- and the restrictions on it -- 20 HEARING OFFICER: Show down. Slow down. One 21 thing at a time. 22 Mr. Brown, allow him to answer. Okay? Allow 23 him to answer. 24 MR. BROWN: And I would move to strike the 25 nonresponsive answers.
Page 92 1 Q. (BY MR. BROWN) I will ask again: You just 2 testified that you're applying for up to .02 CFS under 3 this application -- 4 A. Yes, sir. 5 Q. -- correct? 6 And under this application, you are now saying 7 you are not applying to divert any water from an unnamed 8 stream; correct? 9 A. Not for this application. 10 Q. And, instead now, even though the application 11 says it's for an unnamed stream, you are applying for 12 groundwater out of a tile system -- 13 A. Right. 14 Q. -- right? 15 A. And unknown why the application -- I didn't 16 fill that out. That was done -- 17 Q. I just asked you what you were applying for. 18 I'm not asking -- 19 MR. FOWLER: Objection. Let the witness 20 answer the question. 21 And are we going beyond the scope? I thought 22 there was a direction that we were not bringing new 23 information, but we're talking about -- 24 HEARING OFFICER: No, just -- we are. 25 Mr. Brown, let him answer the question. So ask him the	Page 93 1 question again, please, and then let him answer it. 2 THE WITNESS: For this hearing today, for the 3 domestic use, that's exactly what I'm applying for. 4 That paperwork was done at the state office. And, 5 unfortunately, there is some verbiage that needs to be 6 corrected. Much as we've discussed in the past, is that 7 the map that was drawn up was just a map by a trainee. 8 And, I said, my understanding I was told with the -- 9 once it's approved, they -- they're going to require 10 that a correct map be drawn for the placement of the 11 half acre. 12 Q. (BY MR. BROWN) Back to my question. My 13 question is: Isn't it true that you're not applying, as 14 you testified today, for any water from an unnamed 15 stream? 16 A. No. 17 HEARING OFFICER: I didn't quite hear that. I 18 can't quite understand that question. 19 Q. (BY MR. BROWN) Okay. Your application, as 20 written, states that it is for diversion from an unnamed 21 stream; correct? 22 A. Yes, I think that -- yeah, that's on there, 23 yup. 24 Q. Today, you're saying you're applying for 25 groundwater; correct?

Page 94 1 A. Yes. And that's what we stated the last time 2 we met together here. 3 Q. So are you applying under this permit for any 4 water from an unnamed stream? 5 A. No. 6 Q. So you're not applying, under this application 7 if granted, you would agree that you're not allowed to 8 use the red pump down in the unnamed stream to pump up 9 to the culvert; correct? 10 A. Correct. 11 Q. And you're -- under Exhibit F modified, the 12 one in front of you, you marked in blue pen where you 13 say you diverted the water from the point of diversion 14 to the place of use on Water Right 17 -- excuse me -- 15 Water Right 17431 as labeled on the exhibit? 16 Do you want me to clean that up? 17 MR. FOWLER: Objection. Beyond the scope of 18 the application. 19 HEARING OFFICER: It doesn't appear -- well, 20 that's another water right. 21 If you have a question about that water right, 22 Mr. Brown, you know, ask -- ask that, please. 23 Q. (BY MR. BROWN) When you marked that exhibit, 24 the blue ink was intended to show where you diverted 25 water under that water right; correct?	Page 95 1 A. Yes. 2 Q. And it's true that you've never, since 2014, 3 diverted water from the place -- point of diversion of 4 that water right as indicated on the exhibit, the yellow 5 dot? 6 MR. FOWLER: Objection. Beyond the scope of 7 the application. 8 HEARING OFFICER: Yeah. And I cautioned you 9 last time. We're -- you know, this may or may not be -- 10 that may or may not be a compliance issue. We're not 11 going to deal with that. And the only questions I would 12 like to hear about, you know, that I think we need to 13 talk about Mr. Linderman's other applications is how 14 they interface with the current -- Mr. Linderman's other 15 rights is how they may interface with his current 16 application. 17 MR. BROWN: Your Honor, if I may clarify why 18 I'm asking the questions. Part of your role is to 19 condition the -- any granting of the application so that 20 it cannot be used in excess of itself or in combination 21 with other rights. We were told up until today that he 22 was going to divert out of the stream where this other 23 right supposedly has water, and that he's going to pump 24 all that out of the culvert. So we're talking about 25 water coming from at least three different rights,
Page 96 1 apparently, to go through his system. 2 And it's completely appropriate that we go 3 down the details of these rights so that you can 4 condition it so we're not playing hide-and-seek like we 5 have up until today. 6 HEARING OFFICER: Agreed. Just try to keep 7 your questions focused towards the interface with this 8 present application. 9 MR. BROWN: Well, that's what I'm trying to 10 get to with Exhibit F. 11 HEARING OFFICER: Okay. 12 Q. (BY MR. BROWN) You understand the water right 13 represented in Exhibit F, Mr. Linderman? 14 A. I believe so, yes. 15 Q. Okay. And you understand the yellow dot means 16 that's the point of diversion for that right; correct? 17 A. I -- yeah, I guess so. I'm not sure why they 18 call it diversion, but, yeah. 19 Q. And since, as you testified before, since 2004 20 [sic], when you purchased the property, you have never 21 diverted water out of that point of diversion; correct? 22 A. That's where the water comes from for that 23 water right, yes. 24 Q. You have never diverted water out of that 25 point of diversion?	Page 97 1 MR. FOWLER: Objection. Beyond the scope of 2 the application. 3 HEARING OFFICER: Now, once again, I'm not 4 sure that it is. 5 Why don't you back up and restate, Mr. Brown, 6 and see, you know, if you can . . . 7 Q. (BY MR. BROWN) Since you purchased the 8 property in 2014, you have never diverted water out of 9 the point of diversion indicated on Exhibit F modified? 10 A. Yes. That's where the water comes from for 11 this water right. 12 Q. Do you understand what a diversion is? 13 A. Yes. 14 Q. Okay. 15 A. Because water's coming out of that area. I 16 have operated this property exactly how the previous 17 owners told me it was being done. 18 Q. So you understand -- 19 A. And that's where they said -- that's where 20 this water right comes from. 21 Q. You understand what a point of diversion is 22 under a water right? 23 A. If there's a -- might be another definition. 24 You have a definition that you're -- that I'm not 25 answering correctly to?

Page 98 1 Q. A point of diversion under a water right in 2 the terms I'm using it means where water is taken out of 3 a public source to a -- into a conveyance system to be 4 used. 5 A. Yes. And that's how it's -- the water gets to 6 me. 7 Q. Okay. The point at which it can be taken out 8 of the public source is the point of diversion. Do you 9 understand that? 10 A. Sure. 11 Q. And you understand that you've never taken 12 water with that meaning out of this creek at the yellow 13 dot; correct? 14 A. No. That is where the water initiates to come 15 that direction. 16 Q. How does the water get to you from that yellow 17 dot? 18 A. It comes onto Ron Rose's property, and, I 19 said, then dumps into the creek that crosses the road. 20 And that's how the water's gotten over there, that's 21 gotten the previous two owners; that's how the water has 22 gotten -- 23 Q. Where the yellow dot is, there are headgates 24 to take water out of the creek for several water rights; 25 correct?	Page 99 1 A. Right. 2 Q. And one of those headgates goes to 3 Mr. Hamilton, as he testified last time; correct? 4 A. Yes. 5 Q. And one of those headgates would go to this 6 water right of yours represented in Exhibit F; correct? 7 A. Yes, through Ron Rose's headgate. 8 Q. That's -- let's break this down. Okay? 9 That's what I'm trying to clarify. You keep saying 10 water was used through the creek there or water was used 11 through Ron Rose's water right. 12 A. That's been -- if you have -- 13 Q. Listen to me. Listen to me. I'm trying to 14 get so you can answer my question. 15 A. Okay. 16 Q. Ron Rose has a couple of water rights on his 17 property; correct? 18 A. Yes. 19 Q. And he's the neighbor immediately to the east 20 of you -- 21 A. Yes. 22 Q. -- across the road? 23 And those are his fields around which you drew 24 the blue lines; correct? 25 A. Yes.
Page 100 1 Q. Okay. Now, Mr. Rose has his own points of 2 diversion that are separate than yours; correct? 3 A. No. We share that diversion through Ron 4 Rose's property. 5 MR. FOWLER: Objection -- 6 THE WITNESS: I can explain the way it was 7 presented to me if you want me to come up with another 8 term. I said, that's the way it was explained to me. 9 That's the way it was when I bought the place. And 10 we've never done anything different. 11 MR. BROWN: No. What I'm -- 12 MR. FOWLER: Objection -- 13 MR. BROWN: I'm not asking you -- 14 MR. FOWLER: You're asking him to testify to 15 the points of diversion for somebody else's water right 16 here -- 17 MR. BROWN: No. 18 MR. FOWLER: Yes, you are. 19 MR. BROWN: I'm asking him to clarify. He 20 said that -- 21 HEARING OFFICER: One at a time, please. 22 MR. BROWN: -- this point of diversion is the 23 same. 24 HEARING OFFICER: Excuse me. 25 THE WITNESS: I've answered multiple times.	Page 101 1 It's the same answer. I don't know what you're 2 expecting me to say. 3 Q. (BY MR. BROWN) Isn't it true that Ron Rose 4 has a couple points of diversion for his property, but 5 none of them are where the one on Exhibit F -- 6 HEARING OFFICER: Mr. Brown, don't -- don't 7 answer his questions for him, please. Move on to -- 8 move on, please, to something germane to the application 9 at hand. 10 Q. (BY MR. BROWN) Well, what's germane, with 11 respect to this water right, is are you contending you 12 can continue to divert water in the manner you've 13 testified today -- you've diverted water under 17431 -- 14 and use it in combination with the application water? 15 A. Be a different location on the property where 16 that water right can be used. That one's portable. I 17 can move it -- move it around, that water right. 18 Q. So you're contending that you can continue to 19 use the 17431 right -- 20 A. Yes. 21 Q. -- in addition to this water right you're 22 applying for today? 23 A. Right. 24 Q. And would they be used on the same place of 25 use in the manner?

Page 102 1 A. You mean would there be watering over the top 2 of -- 3 Q. Would the water -- 4 A. -- the two permits? No, they have separate 5 areas where they would water. 6 Q. Okay. So you're contending that under the 7 water right you contend you already have, the one in 8 Exhibit H, that you would not irrigate any of the place 9 of use that you're applying for today? 10 A. No. This water would be used in the half acre 11 that will define primarily around the yard. 12 Q. But it would come through the same sprinkler 13 pump? 14 A. Yeah. I can use -- I can use the same pumps. 15 Q. And it would go through the same sprinkler 16 system, the hoses and sprinkler system? 17 A. No. They're different. There's portable 18 hoses that are drug around for this -- the Water Right 19 17431. There's 100 feet of hose there or better. I'm 20 not sure of the exact total. 21 Q. Then how -- how is anyone going to tell what 22 water's going through your pump or what water right it 23 comes from? 24 A. I don't know if I can -- if you can answer it. 25 Q. Can you not answer that?	Page 103 1 A. I don't -- I don't believe so. I mean -- 2 Q. Okay. 3 A. -- I'm not sure how to answer it. 4 Q. So you're saying the way you're proposing to 5 use it, no one can tell from which right the water is 6 coming through the pump? 7 A. Oh, it can easily separate them. 8 Q. I just asked you if you could do it, and you 9 told me you didn't understand or can't tell me. Now -- 10 A. No, you're asking how I can separate the 11 water. I said, if I push water to a different spot, 12 but, I said, can it be separated, you didn't ask that. 13 Q. How can IDWR, how can your neighbors know that 14 you're not using water inappropriately between the 15 different rights if you're pumping the water through the 16 same pump for the different rights? 17 A. If there's -- if IDW wants me to change how I 18 draw there, I said, that's certainly doable. This is a 19 simple system that was put together for efficiency, not 20 to be redundant. 21 Q. Okay. 22 A. And that was all established prior to me 23 purchasing this place. 24 Q. I want to understand your testimony from 25 earlier today. You indicated that when you bought the
Page 104 1 place in 2014 you -- it came with permits and, 2 therefore, you sat down with water resources to try to 3 get all the permits put in your name? 4 A. Yes. 5 Q. Okay. That included all the water rights? 6 A. Yes. 7 Q. And you're saying at that point in time an 8 issue came up and that you couldn't transfer a permit; 9 therefore, it was easier to reapply? Correct? 10 A. That was the advice from the IDW. 11 Q. Is that what you just correctly testified? 12 A. Yup. I took that in there. And he -- I asked 13 for an explanation. And he said we don't show that in 14 our records as being completed. And, like I said 15 earlier, I'll repeat it, because that piece of paper you 16 see a copy of is exactly what we had with the previous 17 owner's right. 18 I had to wait until they cleared up -- sorry, 19 I'm at a loss of words here -- that we purchased the 20 land, anyway. I said, I did submit that when I came in. 21 And he says we're not showing that in our system. And 22 that was the advice I was given. He says -- he couldn't 23 explain why it wasn't completed, even when I asked why 24 do I have a copy of this, why the previous owners have a 25 copy of it. I don't know what he said. So his	Page 105 1 suggestion was that why don't you just reapply. And so 2 they took it from there. 3 Q. And you're saying that that reapplication 4 happened because you were simply trying to get the 5 paperwork corrected so everything was in your name after 6 you -- 7 A. Yes, after we -- from purchasing it, yes. 8 Q. Isn't it true that you had confrontations with 9 Hamiltons in the spring of 2017 over your using more 10 water than you should be? 11 A. Nope. The confrontations, but, I said -- 12 MR. FOWLER: Objection. 13 THE WITNESS: -- nothing was ever said about 14 that. 15 MR. FOWLER: This line of questioning -- this 16 line of questioning did not occur in the last hearing. 17 We're supposed to be reiterating our last questions. 18 MR. BROWN: This is starting off with what he 19 started with this morning. 20 MR. FOWLER: He didn't say anything about the 21 Hamiltons or confrontation. 22 THE WITNESS: Yup. 23 Q. (BY MR. BROWN) Isn't it true that you had 24 confrontations in April of 2017 with the Hamiltons over 25 your use of water?

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1 MR. FOWLER: Objection. 2 THE WITNESS: No. 3 Q. (BY MR. BROWN) You'd had no confrontations? 4 A. No. The confrontation we had -- you want me 5 to say it, say what it is? Since you keep bringing up 6 other issues, I'll go ahead and complete it. 7 Q. (BY MR. BROWN) I want you to tell me if you 8 had any confrontations -- 9 A. Yes. 10 Q. -- with Hamiltons -- 11 A. Yes. 12 Q. -- in April of 2017. 13 A. I don't remember the exact date, but, yes. 14 Q. Okay. So you're saying there could have been 15 confrontations in April 2000 -- 16 A. So I'm going to speak about now -- since you 17 keep bringing it up, it has nothing to do with the 18 application -- 19 MR. FOWLER: Opposing counsel is bringing up 20 questioning based on subsequent testimony from witnesses 21 that was not addressed in the preliminary questioning 22 with my client. 23 THE WITNESS: If you're going to go this 24 direction, I said, I've been totally eliminated the 25 opportunity to bring witnesses --	1 HEARING OFFICER: Mr. Linderman, please be 2 silent. You don't need to answer that question. 3 Mr. Fowler, I agree. 4 Mr. Brown, please move on. 5 MR. BROWN: I would like to make an offer of 6 proof, then. And if you would like a simple explanation 7 why all of these objections are wrong, as you will 8 recall, when he started his testimony this morning, he 9 said in 2014, when he bought the property, he went to 10 IDWR to try to get the ownership of the permits all 11 corrected. 12 THE WITNESS: Not in 2014. 13 MR. BROWN: And I'm simply trying to show 14 that's not true. He went in and did all this after 15 confrontations that he didn't have water rights. 16 THE WITNESS: I did not go in there in 2014. 17 MR. FOWLER: Don't say -- don't answer. 18 THE WITNESS: Okay. 19 HEARING OFFICER: Any more questions, 20 Mr. Brown? 21 MR. BROWN: I'm waiting. I want to ask that 22 question. And I guess he answered it on to something 23 else. 24 Q. (BY MR. BROWN) But it is true that you did 25 not go in until 2017? You didn't go in in 2014 when you
Page 108	Page 109
1 purchased the property; correct? 2 A. No. It was October in 2014 when we thought 3 there was no water. The water was shut down in October. 4 Q. You did not go in to IDWR about the permits 5 until May of 2017, some three years after you purchased 6 the property; is that correct? 7 A. No. That's when we -- yeah, when we went in 8 -- that's when we did the application, when they 9 couldn't figure it out. They looked in their records 10 and took some time with that. And they said we just -- 11 we see the permit there. And he says it's like it 12 didn't get completed. Nobody could solve it. So that's 13 what we were directed to do. So there was attempts made 14 by the office to try to figure out why that was issued 15 yet they didn't show it in their records. 16 Q. Okay. Look at Exhibit C, please. That's your 17 application, as you testified earlier today; correct? 18 A. Yes. 19 Q. And you signed that -- or that was received by 20 IDWR, if you look at the second page of Exhibit C, on 21 5/24/17; correct? 22 A. Yes. 23 Q. And that's after you'd had confrontations 24 with -- 25 MR. FOWLER: Objection.	1 Q. (BY MR. BROWN) -- Hamiltons about water use 2 on your property; correct? 3 MR. FOWLER: Objection. 4 HEARING OFFICER: Mr. Brown, questions about 5 how this relates to the merits of the application. 6 Q. (BY MR. BROWN) Isn't it true on Exhibit C 7 that the -- that you signed the application? 8 A. Yes. 9 Q. And that when you signed that, it truly and 10 accurately reflected what you were applying to have a 11 permit for; correct? 12 A. They put together the paperwork, and I signed 13 it. But I think -- we can see that there's an error on 14 the front. 15 Q. Tell me what the error was, the unnamed stream 16 error. Is that what you're talking about? 17 A. Yes. Yeah. 18 Q. Is that the only error? 19 A. Well, I don't know. I haven't reviewed it. I 20 don't see any -- domestic -- it's a domestic use permit. 21 They filled it out for me, and we signed it. Thought it 22 was just a simple replacement of the previous one. 23 Q. And do you see any other errors in there? 24 A. I don't, no. 25 Q. Okay. Look at halfway down the first page, it

Page 110 1 says "point of diversion." Did I just read correctly 2 what's put in application where it says "pump in 3 stream"? 4 A. Yes. That -- the previous application was 5 written -- 6 Q. I just asked you if that's what it says. 7 MR. FOWLER: Objection. Let the witness 8 finish his answer. 9 MR. BROWN: I asked if the paper says "pump in 10 stream." And he wants to give me some -- go on about 11 something nonresponsive. 12 Q. (BY MR. BROWN) The application you signed, 13 sir, says "pump in stream"; correct? 14 A. Yes. 15 Q. Mr. Butler, Tanner Butler, is an expert for 16 us. And he testified at the previous hearing -- 17 MR. FOWLER: Objection. 18 Q. (BY MR. BROWN) -- that wasn't recorded, also; 19 correct? 20 MR. FOWLER: Objection. Mr. Brown cannot ask 21 my witness about any testimony of Mr. Butler that is -- 22 was given after the testimony of Mr. Linderman. 23 HEARING OFFICER: Yeah, I agree. Let's keep 24 it -- keep it on track, please. You can ask -- 25 MR. BROWN: I'm trying to save us hours of	Page 111 1 time by asking if he recalls Mr. Butler's testimony and 2 if there were inaccuracies in that. 3 HEARING OFFICER: Well, technically, 4 Mr. Butler's testimony hasn't -- isn't on the record 5 yet. So, please -- 6 MR. BROWN: Let's do it this way, then. 7 Q. (BY MR. BROWN) Look at Exhibit A, please. 8 You're familiar with that document, the declaration of 9 Tanner Butler; correct? 10 A. Okay. 11 Q. You have read the testimony of Mr. Butler set 12 forth in that declaration before today; correct? 13 A. It's been some time, but, yes. 14 Q. Is there anything in his declaration that is 15 inaccurate? 16 A. I would have to review the whole thing. I 17 mean, I -- 18 Q. So you've read it before; correct? 19 A. Yes. 20 Q. But you say you'd have to read the whole thing 21 to be able to say whether it was accurate or not? 22 A. I didn't see where this -- this applied. It 23 has nothing to do with the permit that I'm applying for. 24 So, I said, do I put a lot of work into it? No. 25 My understanding, I was coming here for a
Page 112 1 domestic use permit. And, yet, I'm continually being 2 questioned about all these other things. 3 HEARING OFFICER: Mr. Linderman, you do need 4 to answer the question. 5 THE WITNESS: Okay. Could you restate the 6 question? 7 HEARING OFFICER: Ask him the question again, 8 please. 9 Q. (BY MR. BROWN) After reviewing Mr. Tanner 10 Butler's declaration, Exhibit A, correct, you have -- 11 let me strike that. 12 My question is: After reviewing Mr. Butler's 13 declaration, was there anything in it that was 14 inaccurate factually? 15 A. Not that I can say. I mean, it's not -- it's 16 complete to what was stated, yes. 17 Q. And it completely states how the diversion 18 system and piping works; correct? 19 A. It -- it explains what's there, yes. 20 Q. Okay. And under that it describes the volumes 21 of the pumps and the pressures and those things; you 22 have no reason to dispute anything he says in there, 23 correct, about how your system actually works? 24 A. It does not include -- 25 MR. FOWLER: Objection. Mr. Brown is asking	Page 113 1 my witness questions that were not asked at the previous 2 hearing. 3 HEARING OFFICER: Well, I don't know that I 4 can stop that, Mr. Fowler. I think that the -- he needs 5 to ask more direct questions. 6 And, Mr. Linderman, you need to just answer 7 them to the best of your ability. 8 MR. FOWLER: Clarification. 9 HEARING OFFICER: Yes. 10 MR. FOWLER: Are we -- okay. So is the scope 11 of this hearing to reiterate what was done at the 12 previous hearing or to ask questions that were not asked 13 at the previous hearing? 14 HEARING OFFICER: Well, I would hope that we 15 would just try to reiterate. We kind of have a 16 disadvantage that people have had a couple, three weeks 17 to think about prior testimonies. And, you know, the 18 re-do may be an opportunity to maybe steer the testimony 19 in a little different direction. I -- but I think no 20 matter how you approach it -- I mean, I would like that 21 not to happen, but I don't think I can stop it. 22 No matter how you approach it, though, please 23 remember that we're looking at this on the merits of 24 Idaho Code 42-203A. And so to the extent that -- that 25 this application cannot be approved because of, you

Page 114 1 know, any of the merits of Idaho Code 42-203A, the 2 questions need to be directed that the record reflects 3 those things. 4 Now, if you're taking a roundabout way to get 5 to something, Mr. Brown, that's fine, but, you know, 6 let's not -- let's not take all day with it. So, I 7 mean, I get it. I get it. We have to look at the -- at 8 the other water rights and the system. I don't have a 9 problem with this line of questioning, but we need to 10 move it forward, please. 11 MR. BROWN: And I am trying to do that by 12 using admitted testimony to see if there's any dispute 13 about what the system is, how much water it pumps, where 14 it pumps, as described by Mr. Tanner Butler. 15 Q. (BY MR. BROWN) You have no reason to dispute 16 anything Mr. Butler said in his declaration; correct? 17 A. No, I would dispute it, I said. The 18 information I'm going to assume is accurate, that is his 19 expertise, that these pumps. But, I said, it doesn't 20 take into account that these are running through long 21 lines, and there's, I said -- so, I said, that would 22 take calculations. It's just a different calculation. 23 But, I said, the restriction on those lines, I said, 24 yeah, these are all the information that appears there 25 is what the pump puts out at the pump.	Page 115 1 Q. Sir, do you have any expertise in how long 2 lines affect the flow of water? 3 A. Some. 4 Q. Tell me -- 5 A. I am a -- 6 Q. Tell me what friction loss is, sir. 7 A. Friction loss is the -- from the drag on the 8 outside of the lines as you're pushing forward. I said, 9 I couldn't you give you the calculations, but, I said, 10 it's -- they're real numbers, I said. People have set 11 up these irrigation systems, I said. Those are all 12 calculations to get the water distributed to their 13 pivots and such. 14 Q. Did Mr. Butler, in his declaration, ignore any 15 significant friction loss in any of the piping -- 16 A. I don't see -- I didn't see where it was 17 addressed, yeah. It's just -- you asked me if I was 18 validating his information. I said I assume that those 19 are right, but, I said, that -- that calculation is not 20 -- was not in there. 21 Q. That's fine -- 22 A. It's a real -- 23 Q. You're trying to question what he's done -- 24 A. No, I'm not. You asked -- no, sir. No, sir. 25 You asked me what I thought of his testimony, and I said
Page 116 1 that is his -- I'm assuming those -- that's right. 2 Q. You're assuming that everything he says is 3 right? 4 A. At the pump. Those are -- those numbers are 5 at the pump, I said. I didn't see anything where the 6 length of the hoses and all those things were included. 7 Q. Okay. Do you see the parts where it says how 8 much comes out of the nozzle of each sprinkler head? 9 A. Yes. And if that were hooked directly to the 10 pump, that's -- that would assumably be accurate. 11 Q. You're suggesting it's not accurate because of 12 the pipe between the pump and the sprinkler head, the 13 nozzle can somehow -- 14 A. Yeah. Like I said -- yes -- there's friction 15 -- friction loss which is calculated by the distance of 16 the pipe sizes that they install. 17 Q. How does the friction loss restrict the amount 18 of the -- that comes out of a sprinkler head? 19 A. By the ending pressure. The pressure at the 20 pump versus the pressure at the end of the line is going 21 to be different. 22 Q. Are you telling me there's any significant -- 23 A. Or volume, I guess, it would be. 24 Q. -- friction loss in your system as described 25 by Mr. Butler?	Page 117 1 A. I wouldn't know what it was, but, yes, there's 2 -- it's -- it's a moot point. I mean, the -- I don't 3 understand what you're asking me to testify. That's not 4 my expertise. But I'm saying the statement does not 5 include any distance. 6 Q. It would -- the pump you intend to use -- you 7 said you don't intend to use the red pump from the creek 8 under this right; correct? 9 A. Which right are we talking about now? You've 10 brought up several. 11 Q. Under the one you're applying for. 12 A. Applying for. No. 13 Q. Okay. But you intend to use the same pump 14 that's on the culvert; correct? 15 A. Unless IDW instructs me otherwise. 16 Q. And that pump is going to be pumping 40 -- 30, 17 40 gallons per minute; correct? 18 A. It was -- it wasn't pressure tested. I 19 couldn't tell you. That's beyond my scope. 20 Q. Well, Mr. Butler gave a declaration to you 21 more than six months ago -- or excuse me, not more than 22 six months ago -- more than -- before our last hearing 23 saying exactly how much that pump he would expect to 24 pump, and it's -- 25 A. Right.

Page 118 1 MR. FOWLER: Objection. Let the expert 2 testify to the amount, not my witness. He's not an 3 expert in this area. 4 Where is this line of questioning going? 5 HEARING OFFICER: I agree. 6 MR. BROWN: It's going directly to whether 7 he's going to go out of here and get a permit and then 8 pump 40 gallons a minute, not .09 -- .02 CFS or 9 9 gallons a minute. 10 THE WITNESS: These are two different -- 11 HEARING OFFICER: This is not his expertise. 12 Please move on, Mr. Brown. 13 Q. (BY MR. BROWN) Well, sir, you intend to use 14 the pump in place that pumps about 43 gallons a minute 15 under this application; correct? 16 A. Under -- the current application I plan on 17 using to sprinkler the half acre. 18 Q. I'm asking how you intend to pump the water 19 under this application. You intend to use that pump 20 that pumps 43 gallons a minute; correct? 21 MR. FOWLER: Objection. Mr. Brown's making 22 assumptions as to what the pump can do. 23 MR. BROWN: These are completely inappropriate 24 objections. They're all leading. They all disclose 25 what the answer should be to the witness. If he wants	Page 119 1 to object and state his objection without speaking, 2 that's fine. I'm entitled to ask him what I'm trying to 3 ask him right now, which is he said he's going to -- 4 HEARING OFFICER: Yes, you are, Mr. Brown. 5 You are, and he needs to answer them to the best of his 6 ability. But if he doesn't know, he doesn't know. So 7 let's -- 8 Q. (BY MR. BROWN) Okay. So under the water 9 proposed for in this application, you intend to use the 10 pump that pumps 43 gallons per minute; correct? 11 A. I assume I'd be having -- I'll have additional 12 conversations with IDW. So, I said, they'll instruct me 13 how they want me to do this new application. 14 Q. Can you answer my question? 15 A. I did. 16 Q. So you're saying you can't tell me -- 17 A. I'm saying I don't know because, like I said, 18 until I get approved and talk to IDW of their -- there's 19 a process here, the way it was explained to me, is that 20 upon approval, I need to come in to the office, and we 21 need to clarify this. That's as much as I know. 22 MR. FOWLER: Mr. Brown is saying that the pump 23 pumps 43 gallons per minute. The expert, Mr. Butler, 24 has said that the pump can produce 35 gallons per 25 minute, 43 gallons per minute, 52 gallons per minute.
Page 120 1 There's a range there. And Mr. Brown is making 2 assumptions in asking my client to testify to those 3 assumptions. 4 MR. BROWN: That's not accurate at all. I'm 5 asking him if he -- 6 MR. FOWLER: It is accurate. Your expert said 7 the pump can pump 35 to 52 gallons per minute, and you 8 keep saying 43. 9 MR. BROWN: You are not following the rules 10 here. 11 HEARING OFFICER: All right. Hold on a 12 minute. 13 MR. BROWN: I'm not asking about -- let me -- 14 let me start over, Your Honor. I'll make it very clear. 15 HEARING OFFICER: Just ask him a question. 16 Mr. Linderman, you need to answer the question 17 that you're asked to the best of your ability. 18 Q. (BY MR. BROWN) Mr. Linderman, you intend to 19 use the pump Mr. Tanner Butler describes, not the red 20 pump from the creek, but the pump in the culvert to pump 21 water right under water -- trying to get under this 22 application; right? 23 A. Unless otherwise directed. 24 Q. And you already testified you're only applying 25 for .02 CFS; correct?	Page 121 1 A. It's -- the application, my understanding, 2 it's 13,000 gallons a day. 3 Q. You've already testified you were only 4 applying for .02 CFS -- 5 A. Well -- 6 Q. -- as your intended use. 7 A. I assume that's the same. I don't know. 8 Q. Do you understand that .02 CFS is about 9 9 gallons per minute? 10 A. I wouldn't know. I wouldn't know what that 11 converts to, so . . . 12 Q. Well, I'll represent to you it's about 9 13 gallons a minute. And I'll represent your pump, as your 14 counsel just said, pumps in a range of 30, 40 gallons a 15 minute. You would agree that's a significant difference 16 going from 9 gallons a minute to 30 or 40 gallons? 17 A. The domestic use, the way it was explained to 18 me, the IDW, was 13,000 gallons a day. 19 Q. You would agree that -- answer my question -- 20 you would agree -- 21 A. I'm not an expert on pumps. What do you want 22 me to say? You're talking about an application that I 23 -- that we acknowledge that needed to be cleaned up a 24 little bit. I said, I didn't -- I didn't write that. I 25 just took their direction. There's some error there.

Page 122 1 Q. You would agree that 9 gallons per minute is 2 substantially less than 30 or 40 gallons a minute; 3 correct? 4 A. Yeah, that's obviously two different -- 5 substantially different. 6 Q. And you have been asked in discovery if you 7 propose or are willing to have any conditions put in 8 place to assure that you don't go from 9 gallons a 9 minute to 30 or 40 gallons a minute, have you not? 10 A. Nope. It's going -- this application's for 11 13,000 gallons a day. If it's defined by anything else, 12 that's not what -- what I understood. That's what the 13 application is, that's the way they're administered, to 14 my understanding, is 13,000 gallons a day. 15 Q. And as you sit here today, we talked about the 16 other water right in Exhibit F, you're going to use it 17 through the same system as what you're proposing to use 18 the water under this right for; correct? 19 A. I wouldn't have to, no. 20 Q. You've already testified you were going to use 21 it under both systems, just different places; right? 22 A. I've made it clear, and I've said that already 23 today, is that that clarification has to come from IDW. 24 If they have an issue about me combining these, I said, 25 that's fine. I mean, I can switch. You've already	Page 123 1 asked me about the red pump. I said the red pump is not 2 part of this application. 3 Q. So you're agreeing that for somebody to 4 administer this right, if they went out and looked, 5 they'd have to know whether or not the red pump could be 6 included, wouldn't they? 7 A. No. The red pump is for a different water 8 right. 9 Q. Okay. So you're saying somebody from IDWR 10 could drive out to your place, if you get this 11 application, and they would be there to determine are 12 you using more than .02 CFS and -- 13 A. I couldn't speak -- speak on that. 14 Q. You might be using the red pump under the 15 other right, but you'd be using -- not using it under 16 this right? 17 A. What does this have to do with why we're here? 18 I mean, I don't understand that. It has nothing to do 19 with the application that I'm doing. And we spend most 20 of our time here -- I want it for the record -- I said, 21 this is an unfair approach, is that this changing of 22 venue, I said, leaves me without any witnesses to bring. 23 I didn't need witnesses for the application for a 24 domestic use, yet, this has changed course. And, I 25 said, now I can't bring anyone. And, yet, I have to go
Page 124 1 spend hours on something that's different from the 2 application. I just want -- wanted to share that. 3 HEARING OFFICER: Mr. Brown, come on now, 4 let's at least try and keep this on track. You're kind 5 of badgering the witness. If you've got more questions, 6 please ask them. I mean, the witness should not be 7 expected to know what IDWR does in a field exam, because 8 that is not -- we're here to talk about this 9 application. 10 Q. (BY MR. BROWN) Okay. You filled out this 11 application in May of 2017; correct? 12 A. It was done through the office. So, I said, 13 they pretty much mimicked what was there before, I 14 guess. I don't know. 15 Q. The application you just testified -- 16 A. I signed it, yes. I did not fill out 17 anything. 18 Q. Okay. But at that time, you had lawyers 19 representing you on your water rights; correct? 20 A. They were different water rights than these. 21 Q. You had lawyers representing you on your water 22 rights at that time; correct? 23 A. I don't recall if that's when we -- 24 Q. You don't deny that you had lawyers 25 representing --	Page 125 1 A. No. There was some water rights that were 2 sold to us that actually weren't even in that area. 3 Q. And you don't -- you didn't have your lawyers 4 fill out your water right applications; correct? 5 A. No. IDW. 6 Q. And you cannot propose any conditions on your 7 permit, as you sit here today, that would assure people 8 that you're not going to divert more than .02 CFS? 9 A. 13,000 gallons a day. That's what I said. 10 That's what the permit is. If it's different than that, 11 then I need to hear that from IDW. 12 Q. Sir, I just asked you about .02 CFS. I said 13 nothing about 13,000. 14 A. I can't answer to it. 15 Q. So you don't have any proposes -- 16 A. Nope. I don't have the calculation. I don't 17 have any idea. I just have what you're telling me. 18 Q. So can you tell me any conditions that you're 19 willing to put in place to assure you don't divert more 20 water under this right than it authorizes? 21 A. There wouldn't be future diverting more water 22 in front of this. If I am -- 23 Q. Sir, I did not ask you about that. I asked 24 you if you proposed any conditions to put restrictions 25 on this right, physically or otherwise, so that it will

Page 126 1 not divert more than .02 CFS. 2 A. No. That's not required by IDW. And they do 3 numerous of these applications, I said, the -- very well 4 knowing that at 13,000 gallons a day, it would be 5 detrimental, unless you lived in sand, to apply that 6 quantity of water on a continuous basis. 7 Q. The areas that you'd be irrigating with this 8 right, they're basically pasture; correct? 9 A. It's my -- my yard is what the application's 10 for, is around my yard. 11 Q. So it's grass and pasture; correct? 12 A. Grass and pasture. Grass, I said, circles my 13 yard a half acre. 14 Q. And how much water does grass or pasture 15 require? 16 A. On a daily basis, I said, we use a probe 17 system. So, I said, by probing it, I said, you'll find 18 the majority of the year it'd be much less than 13,000 19 gallons. The only time that you're going to have excess 20 of needs, that area with the sub water, which is being 21 collected -- I said, the deep-rooted grasses get all 22 they need. You'll see that even starting today, as 23 there's been no water turned on, but those -- that 24 water's being taken -- it's subbing up underneath there. 25 Q. So you have some expertise in this, and you	Page 127 1 can say that if you watered the area you're proposing to 2 water, you could never exceed your right -- 3 A. My -- 4 Q. -- correct? 5 A. -- expertise, since you asked, I said, 6 life-long involved in agriculture. I am an Idaho 7 certified licensed crop advisor. So, I said, I deal in 8 irrigation of crops from pastures to potatoes. 9 Q. Okay. So what's -- what's ET? What's 10 evapotranspiration? 11 A. I don't know. I couldn't tell you that. 12 Q. Is that an important component in the 13 determining how much will be consumed by the lawn? 14 A. If you -- it depends on many things, the soil 15 condition, the soil CEC numbers, the base saturation. 16 Q. But you can't tell me what evapotranspiration 17 is? 18 A. No. I don't use the figure. 19 Q. Let's go back -- actually, I don't have any 20 further questions. 21 HEARING OFFICER: You said you had no further 22 questions, Mr. Brown? 23 MR. BROWN: No, not at this point. 24 HEARING OFFICER: Okay. Mr. Fowler, do you 25 have any clarifying questions for your witness?
Page 128 1 MR. FOWLER: Just a couple. Just a couple 2 follow-up questions. 3 REDIRECT EXAMINATION 4 QUESTIONS BY MR. FOWLER: 5 Q. Mr. Linderman, on average, how many hours a 6 day would you say that you irrigate your land, your 7 grass and your pasture? 8 A. It wouldn't be daily, but, I said, they're set 9 to run either half-hour, hour rotations. And, I said, 10 that'll happen about every three days. 11 Q. Have you ever left your irrigation system 12 running 24 hours a day? 13 A. No. I've left -- I've left it in the same -- 14 same place, but, I said, there's shallow areas where, I 15 said, we turn it off and on because, I said, to get that 16 water down the roots -- 17 MR. BROWN: Excuse me. We're way beyond the 18 scope here. If we're going to restrict, we need to 19 restrict. He doesn't get to go into new topics. 20 THE WITNESS: This -- this was asked me of the 21 last time I was here. 22 HEARING OFFICER: Make me understand how it 23 relates to the application, please. 24 MR. BROWN: Do you want me to explain what I'm 25 saying? I'm saying they had the chance to put their	Page 129 1 witness on, and then we get to cross. Their going back 2 to the witness can only be within those areas we asked 3 about. They don't get to go to new areas. 4 HEARING OFFICER: Well, that is -- that is 5 correct. And I don't recall talking about this this 6 morning. So, you know, if you got anything to clarify, 7 Mr. Fowler, please just do it. 8 THE WITNESS: This was in the last time we 9 were here, though. 10 Q. (BY MR. FOWLER) Mr. Linderman, your 11 understanding of the application is that your rate of 12 diversion is .02 CFS? 13 A. Yes. 14 Q. Okay. Opposing counsel is saying that that's 15 9 gallons per minute. And do you understand that 9 16 gallons per minute times the number of minutes in a day 17 would equal 24 hours? 18 A. Right. 19 Q. Okay. So to clarify, you have -- 20 MR. BROWN: I'm going to object. He's 21 completely leading the witness. He didn't ask the 22 witness for any information; he asked him to confirm his 23 statements. 24 HEARING OFFICER: Well, I've heard you both do 25 that.

Page 130 1 So why don't you just restate a little bit, 2 Mr. Fowler. 3 MR. FOWLER: I'm just -- Your Honor, I'm just 4 trying to reiterate that my client is not going to use 5 more than 13,000 gallons a day, because doing so would 6 require 9 gallons a minute for a period of 24 hours 7 straight of irrigation. And I just clarified with my 8 client that he has never irrigated for a period of 24 9 hours straight. That's all. 10 HEARING OFFICER: And, Mr. Linderman, you 11 answered that question? 12 THE WITNESS: Yes. Yes. 13 HEARING OFFICER: All right. I believe I 14 heard him answer. 15 MR. FOWLER: Okay. 16 HEARING OFFICER: Continue. I'm sorry for the 17 interruption. 18 MR. FOWLER: No, that's fine. That's all I 19 have. 20 HEARING OFFICER: Okay. I just have one quick 21 question, if you're done Mr. Fowler, for Mr. Linderman. 22 If you could, please -- and this might be a 23 little tough over Zoom, but we're going to give it a 24 whirl -- please turn to Exhibit 3, which is your 25 application and your application map -- or Exhibit --	Page 131 1 what did I say, 3 -- Exhibit C. Turn to C, please, 2 which is your application and your application map. And 3 had a lot of talk about how that -- okay. I'll give you 4 a minute to get there. Are you there? 5 THE WITNESS: Yeah. 6 HEARING OFFICER: Yeah, I think you're there, 7 the application map with blue line drawn around -- 8 THE WITNESS: Yes, uh-huh. 9 HEARING OFFICER: -- your house. Yeah. 10 And, you know, I mean, that was -- I think 11 there's some question that if that is not -- and so I 12 guess my question to you is, is if that is not the 13 correct area that you intend to apply the water under 14 this permit, should you receive it, what is the correct 15 shape? You know, what is the correct area where you 16 would intend to apply the water if that is not the 17 correct shape? 18 THE WITNESS: Yeah. And so how this map came 19 about is they had -- they were training a guy with a 20 computer drawing. And so he -- when I said, well, do we 21 need to spell out this map, because actually not even a 22 current representation -- 23 HEARING OFFICER: That's why -- answer my 24 question. It doesn't really matter -- 25 THE WITNESS: Just give me the lawn and then
Page 132 1 circling around the outside of the property, but it 2 doesn't -- it just shifts a little bit. 3 HEARING OFFICER: Well, what would be correct? 4 Could you draw on that map in front of you? Could you 5 draw -- 6 THE WITNESS: Yeah, I can get pretty close. 7 HEARING OFFICER: -- a more correct shape -- 8 THE WITNESS: Yes. 9 HEARING OFFICER: -- of where you're going to 10 irrigate? 11 Denise, do you have a Sharpie you can hand him 12 and have him -- 13 Just correct the shape so that -- 14 THE WITNESS: Okay. 15 HEARING OFFICER: -- we all have a little 16 better idea of where he actually intends to irrigate 17 under this. And I realize scale might be an issue, and 18 it's going to be hard and -- 19 THE WITNESS: I can give a rough 20 representation. 21 HEARING OFFICER: Yeah, do the best you can. 22 I mean, if that's not where you intend to irrigate, show 23 us where you intend to irrigate after this. 24 MR. FOWLER: I think part of this is 25 Mr. Linderman is relying on IDWR to say --	Page 133 1 MR. BROWN: I object. This is not correct. 2 The witness is asked a question. 3 HEARING OFFICER: I just asked him to please 4 clarify if that's not correct, tell us what you feel is 5 correct. And know that in the water right process, 6 these shapes can change. I will say that much. 7 Just sketch it in there, yeah. Whatever you 8 feel is appropriate to what you would define as your 9 yard sprinklers. 10 THE WITNESS: Okay. 11 HEARING OFFICER: And then did you -- 12 MR. BROWN: May I approach and look? 13 HEARING OFFICER: Snap that out of there and, 14 yeah, pass it around or let counsel approach and 15 everybody have a look at it. And then Nathan can hold 16 it up to the camera for me when you're all done looking 17 at it. 18 MR. FOWLER: Just to be clear, this is not 19 going to be admitted as an exhibit; correct? Because 20 we're not admitting any new exhibits today. I think 21 that was what the order said. 22 HEARING OFFICER: No, but I need to know 23 exactly what he -- I need to know what he's doing here. 24 MR. FOWLER: Right. I think what he's saying 25 is that he's relying on IDWR and their GIS program to

Page 134 1 say here's a half of an acre, here's where you can 2 irrigate, and he would abide by that. That's what -- I 3 mean, that's what he went in to in the first place with 4 the application, and they said here's a half of an acre. 5 HEARING OFFICER: Okay. All right. Thanks. 6 All right. Well, you know, know that, you 7 know, in the water right application, these shapes can 8 and do -- applications are, in some respects, proposals. 9 But -- but I was just kind of curious. And I thought 10 that was asked the first -- the first go-round, but I 11 didn't ever see it written down anywhere. 12 MR. FOWLER: Right. And I don't think this 13 changes any -- I mean, this is what we talked about from 14 the outset of this, is that Mr. Linderman has said that 15 the map was wrong. And then we discussed this in status 16 conferences that, during the hearing, and the IDWR would 17 modify that map. 18 HEARING OFFICER: Well, that's -- that's not 19 usually how that works, but I don't think -- 20 MR. FOWLER: That was what we discussed. 21 That's what we talked about in our calls. 22 HEARING OFFICER: Well, I'm -- I wasn't in all 23 of the status conferences. 24 So, well, that's really all the questions I 25 had for him. Like I said, I didn't really -- I mean, if	Page 135 1 there's objections to that modify. I said we weren't 2 accepting any, so I won't accept it. I was just kind of 3 curious. 4 MR. BROWN: Could I ask to describe into the 5 record with him what he drew so it is in the record? 6 And there's no basis whatsoever to say that what he drew 7 on is not admissible. That's ridiculous. 8 MR. FOWLER: Well -- 9 MR. BROWN: It's an -- 10 MR. FOWLER: -- the hearing officer said -- 11 the hearing officer said that no new exhibits would be 12 admitted. 13 HEARING OFFICER: I did. 14 MR. BROWN: It's not. It's an admitted 15 exhibit that's being changed in an open hearing, and we 16 need to preserve what was changed in it. 17 HEARING OFFICER: Let's preserve -- I did say 18 that, Mr. Fowler, that we wouldn't -- you know, that we 19 would not accept any new exhibits. I think there is a 20 little bit of a wiggle room to clarify things. 21 So, basically, in your own words, 22 Mr. Linderman -- and sorry, I don't want to stress you 23 out here -- but in your own words, just explain, 24 basically, for the record how the shape that you drew 25 looks different from the map that is with your
Page 136 1 application. 2 THE WITNESS: The original map is older map, 3 and so there's a two-car garage storage building there 4 and a big gravel area that was included in that original 5 drawing. And, obviously, there's no grass there. So 6 it's just -- it includes my yard and the surrounding 7 border and some trees. 8 And so I'm just totally guessing on a half 9 acre there of the total. But, I mean, that's -- that 10 was the plan to get the half acre, but if it needs to -- 11 you know, they can do that with their GIS to shift one 12 way or the other. 13 HEARING OFFICER: Moved the shape -- it looks 14 to me like, from my recollection, you moved the shape 15 more to the west of the house and eliminated the dry 16 lot. 17 THE WITNESS: To the south. 18 HEARING OFFICER: To the south. You 19 eliminated the dry lot, and you put the -- 20 THE WITNESS: Yeah. I don't know if you can 21 read my writing. I wrote "gravel" in there. So all 22 that -- right up to those trees, there's -- that's a big 23 -- gravel all the way to my cement driveway. 24 HEARING OFFICER: All right. Okay. Well, 25 that's all I have.	Page 137 1 And, Mr. Fowler -- 2 MR. BROWN: If I could just ask to redirect on 3 that so I can get into the record what he drew. 4 HEARING OFFICER: Well -- 5 MR. BROWN: I mean, I want to get it described 6 on the record so that it's clear what he drew versus 7 what the original exhibit was. 8 HEARING OFFICER: Mr. Fowler, how do you feel 9 about that? I mean, we can, in under limited 10 conditions, use a redirect. It does have to be, you 11 know, directly related to previous testimony. 12 MR. FOWLER: Whatever you want to do. 13 HEARING OFFICER: Well, limit it to this 14 photo, please. 15 MR. BROWN: Yes. 16 RECROSS-EXAMINATION 17 QUESTIONS BY MR. BROWN: 18 Q. On the exhibit, sir, you were asked to draw in 19 the place of use that you're currently proposing; 20 correct? 21 A. Yes. 22 Q. And on the -- on the exhibit, it already had 23 blue -- a blue ink boundary of the proposed place of use 24 from before; correct? 25 A. Yes.

Page 138 1 Q. So you used a black Sharpie to draw a line for 2 the new place of use, which is essentially on the north 3 side, the same line; correct? 4 A. Yes. 5 Q. It goes a little bit further to the west of 6 the blue line; correct? 7 A. Yes. 8 Q. And then it goes further south of the 9 southernmost blue line; correct? 10 A. Yes. 11 Q. And then you also wrote in there -- you drew a 12 square and labeled it "shop"; and what else did 13 you write -- 14 A. It says "gravel." 15 Q. "Gravel," "shop." So you drew a square in 16 there to indicate that you built a shop there since this 17 photo was taken? 18 A. When I bought it, it was already built. It's 19 just that when they drew this, I didn't realize that 20 that's -- yeah, that actually was the -- 21 Q. The picture predates the shop? 22 A. Yeah, exactly. 23 Q. Okay. And then you intended to go along that 24 further south -- southern boundary back to the roadway; 25 correct?	Page 139 1 A. Right. 2 MR. BROWN: All right. Thank you. 3 HEARING OFFICER: Thank you, Mr. Brown. 4 Okay. I'm satisfied that he's answered the 5 question I asked him. 6 Mr. Fowler, anything else? 7 MR. FOWLER: Nothing further. Thank you. 8 HEARING OFFICER: Okay. So we are done with 9 this witness? Okay? 10 Hearing no other comments, Mr. Linderman, 11 thank you. You may step down. 12 I need a break. How about the rest of you? 13 Let's take a ten-minute break. Did Mr. Butler -- there 14 he is. I see him. So Mr. Butler is here? 15 MR. BROWN: He is here. 16 HEARING OFFICER: Okay, good. Let's take a 17 ten-minute break. Let's come back about 10:35. And 18 Denise will show you guys where the bathrooms are. And 19 I will see you in about ten minutes. We're off the 20 record temporarily. Thank you. 21 (Recess was held.) 22 HEARING OFFICER: We're back on the record 23 now. It is 10:35 a.m. And I believe that we're here to 24 repeat the testimony of Mr. Tanner Butler; is that 25 correct?
Page 140 1 MR. BROWN: That's correct. 2 HEARING OFFICER: Okay. Mr. Tanner, why don't 3 you come on up to the witness stand, and Nathan will 4 pivot the -- for you again. Okay. Raise your right 5 hand, please. 6 Do you solemnly affirm that the testimony you 7 are about to present at this hearing is the truth, the 8 whole truth, and nothing but the truth? 9 THE WITNESS: Yes. 10 HEARING OFFICER: Thank you. Please be 11 seated. 12 DIRECT EXAMINATION 13 QUESTIONS BY MR. BROWN: 14 Q. Mr. Butler, you previously testified in this 15 hearing, but because we don't have a recording, we're 16 doing this again. 17 HEARING OFFICER: Yeah. Having issues with 18 volume with Mr. Brown again. 19 MR. BROWN: Okay. I -- which speaker is it? 20 HEARING OFFICER: You're just too soft-spoken, 21 Pat. Okay, there you go. Thank you. 22 MR. BROWN: You want to get me riled up here. 23 Okay. 24 Q. (BY MR. BROWN) Mr. Butler, you previously 25 testified in this hearing as an expert on what	Page 141 1 irrigation and watering system was on the Linderman 2 property; correct? 3 A. Yes. 4 Q. And, briefly, since we have to re-do this, 5 could you briefly tell us what your qualifications are 6 to be someone who knows how to deal with irrigation 7 systems? 8 A. Yes. I've got 21 years of experience in this, 9 in this field. I've worked all aspects of it, designing 10 the systems being the last of what -- what I've done. 11 So I run an irrigation store. I'm the manager -- the 12 branch manager of the store. So, yeah, I overview other 13 salesmen's designs and make sure that they're right 14 before we actually present them. 15 Q. So you design -- you've got 21 years 16 experience designing, measuring -- 17 A. 20 years -- 18 Q. -- recommending both agricultural and lawn 19 sprinkler systems for people? 20 A. Yes. Limited lawns, but, yes, lawn sprinkler 21 systems, as well. It all -- all applies together, and I 22 have done those, too. 23 Q. Okay. And if you will look at the notebook in 24 front of you, look at Exhibit A. Do you recognize that 25 document?

Page 142 1 A. Yes. 2 Q. What is it? 3 A. It's what I put together overiewing from my 4 qualifications, as well as the irrigation system and 5 what I was told about it. 6 Q. Okay. On December -- it indicates on December 7 10th, 2020, you went to the property; correct? 8 A. Yes. 9 Q. And you met with Mr. Linderman and counsel for 10 both parties and Mike and Sally Hamilton; correct? 11 A. Yes. 12 Q. And when you did -- turn to paragraph 6 of the 13 exhibit. I'm just going to go by the declaration 14 paragraph numbers. It'd be the second page. 15 A. Yeah. Right here, yeah. 16 Q. Item 6 says you spoke with Mr. Linderman; he 17 showed me the system. Explain to me what he showed you 18 and what you observed in terms of what the watering 19 systems are on the property. 20 A. Okay. So I'm sure I've got it laid out here. 21 And I remember the system. There was a pump on a CPM, 22 or a sump, you know, just different terminology, that he 23 had drain tiles going into that he was pumping out of. 24 And then below that, he told me that there was a pipe 25 feeding that sump from the lower pump. Which in the	Page 143 1 last testimony, I didn't realize the pipe wasn't there, 2 but I remember him telling me that he fed that sump with 3 that pipe. 4 Q. In other words, the testimony -- you were at 5 the last hearing and heard all the testimony? 6 A. Yes. 7 Q. So you heard all the testimony that the -- 8 there is a red pump in the creek. It pumps back up to 9 the culvert where the system pump is? 10 A. Correct. 11 Q. So there are two ways for him to get water 12 into the culvert out of which he pumps; correct? 13 A. Correct. 14 Q. One would be the drain tiles. You were here 15 this morning when he said that's groundwater he's 16 collecting with the drain tiles, and that's what this 17 application applies to; correct? 18 A. That's the way I understood it. 19 Q. Okay. The other way is to pump water out of 20 the creek with the red pump up to the culvert; correct? 21 A. Correct. 22 Q. And you observed that system? 23 A. I observed the system, yes. 24 Q. Okay. And I don't think we need to re-do all 25 of the numbers in your declaration. It's already in
Page 144 1 evidence. 2 But is it fair to say that you have, in the 3 declaration with exhibits, you provided pump -- or 4 photographs, other documentation so that we know how 5 much the pump he uses from the culvert pumps; correct? 6 A. Yes. 7 Q. And it's fair to say that's from 35 to 45 8 GPMs; correct? 9 A. Yes. 10 Q. And you took into consideration the pipes that 11 would go through, after it leaves that pump, to go up to 12 various sprinkler heads; correct? 13 A. Yes. 14 Q. And you included in your testimony the volume 15 and how much each one of those would discharge; correct? 16 A. Yes. 17 Q. And in all of your calculations, did you -- 18 back up. 19 This morning, did you hear Mr. Linderman 20 testify that friction loss was a concern that you'd 21 overlooked? 22 A. I heard that in his testimony, yes. 23 Q. Did you consider friction loss? 24 A. I did the best that I could with what we had 25 because there is a lot of variables there. So I put a	Page 145 1 buffer in for friction loss. 2 Q. Okay. So you did take it into consideration. 3 So the numbers you put into your declaration, 4 Exhibit 1 -- or A -- I don't know if we're on A or 1. 5 Is that Exhibit 1 or A? 6 A. A, I believe. 7 Q. So your declaration, Exhibit A, the 8 measurements and ranges, function of the pump, sprinkler 9 heads, et cetera, are accurate as set forth in your 10 declaration? 11 A. Yes. 12 Q. Is it fair to say that the pump he proposed to 13 use today, the pump that comes out of the culvert, will 14 pump 35 to 45 gallons a minute, generally? 15 A. It -- yes. 16 Q. And how many gallons per minute are in .02 17 CFS? 18 A. Roughly, 9. 19 Q. Okay. So that's significantly more water than 20 the permit application would allow; correct? 21 A. Yes. 22 Q. Can you explain to me what needs to be done to 23 assure that he does not use that pump, which is -- pumps 24 much more than the right, so that somebody can verify 25 he's not using more water that he would be authorized

Page 146 1 under the permit to use? 2 A. I would put a water meter on the discharge of 3 the pump that gives you an accurate flow and totalizer. 4 Q. Okay. Now, that would give you the total 5 volume he pumps? 6 A. Correct. 7 Q. It would give you an instantaneous rate; 8 correct? 9 A. Correct. 10 Q. Okay. So if you turn a pump on that pumps 40 11 -- 30, 40 gallons a minute, and you put a meter on it, 12 and he's only supposed to have .02 CFS, what's going to 13 keep it from pumping 35 gallons a minute instead of 9 14 gallons a minute? 15 A. The nozzles on the birds or a discharge valve. 16 So, typically, you would put a valve after the water 17 meter that you can valve it back to 9 gallons a minute. 18 And then -- then it can never overpressure or overrun 19 how much water is going out. 20 Q. Okay. And that's the only physical way of 21 assuring that it does not utilize more than the 9 22 gallons under that ap- -- applied-for right? 23 A. Correct, yes. 24 Q. You also heard his testimony about his other 25 water right this morning. And before -- it's Exhibit --	Page 147 1 I just lost it -- Exhibit F modified, the -- the water 2 right that should be diverted up on the hill and then 3 would irrigate a different portion of his property; 4 correct? 5 A. Yes. 6 Q. Okay. Assuming, as he testified today, that 7 he's going to use that right and this right through that 8 same culvert pump -- in other words, under the other 9 right he's going to pump from the creek through the red 10 pump up to the culvert and comingle that creek water 11 with the groundwater coming out of the drain tiles. Are 12 you with me? 13 A. Yes, I'm following you. 14 Q. Is it your understanding that that's how that 15 system would work? 16 A. That's how they explained that they were going 17 to operate that system, yes. 18 Q. Okay. Given all of that, with the water from 19 different rights going through the same pump, how do you 20 -- how would a person administer it so that they know 21 what the water is -- what right the water's coming from 22 and whether it's an appropriate quantity? 23 A. There would not be a way to know which water 24 was going where and how you were applying it once they 25 entered the same pipe and went through the water meter.
Page 148 1 Because at that point, your water meter would flow more 2 gallons a minute, and who's to say which water right it 3 was coming from. 4 Q. So, in other words, if you're going to put a 5 meter on to be sure he doesn't use more than .02 CFS, 6 you can't pump through that same system for the other 7 water right? 8 A. That is correct. You would have to use the 9 red pump on its own system and not comingle the water. 10 Q. Okay. So you would have to not comingle the 11 water. 12 I guess, is there a way you can put valves on 13 a -- or meters on a whole different bunch of places so 14 that you can make it work? 15 A. You could put water meters on -- I'm not sure 16 how each water right works. So I don't know how to 17 answer that clearly other than just knowing to separate 18 the two waters would be you would have a water meter or 19 water measuring device that was okay with ditch water 20 versus the water metering that is okay with IDWR. 21 So the water meter with IDWR is a water meter 22 that they have approved. So that one would have to 23 require that type of meter. The other one you would 24 have to keep separate to actually keep a record that 25 anybody could come in, look at it, know what water was	Page 149 1 going where. 2 Q. Is there a way to do it physically in this 3 manner? And tell me if it's not possible. The water 4 that is pumped out of the culvert that he proposes to 5 use for both rights, if you had a discharge pipe coming 6 out of the pump and you put a key on it and then put 7 valves, you can put a water meter on the one that goes 8 to the water applied under this application; correct? 9 A. Yes. 10 Q. And you can physically restrict it so it 11 doesn't exceed the .02 CFS; correct? 12 A. Yes. 13 Q. Okay. And then out of that T -- so once it 14 reaches its maximum, it's going to push all the water 15 the other way -- 16 A. Right. 17 Q. -- to the other water right; correct? 18 A. Correct. 19 Q. Is that a feasible way to do it? 20 A. In my opinion, it is not because the pump 21 curve is a curve that fluctuates. So as you start using 22 more water over here, it affects the pressure that's 23 going into the water meter onto the valve. And the way 24 a valve works is you start restricting the amount of 25 water that goes through it, and as the pressure changes,

Page 150 1 then the amount of water will change that's going 2 through it. So, in my opinion, where it is on a pump 3 and not a constant pressure, you really should have two 4 separate pumps. 5 So in this case, if he wants to pump it from 6 the lower up into that sump, he needs to have a pump for 7 the lower water with a water measuring on it and a pump 8 that pumps the groundwater with the water measuring on 9 it as two separate devices. Because you can't put it 10 together and know who's using what, what's going where, 11 how you are distributing it. 12 MR. FOWLER: I just -- objection -- I just 13 want to go on record to say that the questioning by 14 Mr. Brown and the responses by the expert are not in 15 line with the prior testimony. The expert did not talk 16 about separate measurement devices or separate 17 monitoring. This line of questioning was not asked of 18 him by Mr. Brown. I just want to go on record that the 19 line of questioning is not consistent with what was 20 previously done in our prior hearing. 21 MR. BROWN: And I will go on the record saying 22 that's absolutely bunk. He was asked about meters and 23 how to constrict it in different ways to deal with the 24 situation. 25 HEARING OFFICER: And I -- both of your	Page 151 1 comments are noted for the record. Let's please move 2 on. 3 Q. (BY MR. BROWN) Will you finish explaining? 4 A. I thought I -- that I was finished explaining 5 on that. Was there something that somebody didn't 6 understand, so that I can -- 7 Q. No. Let me follow up. 8 One of the things that has to or is supposed 9 to occur when somebody gets a water right application, 10 if it gets approved, is it's supposed to be approved 11 with conditions so that it can be managed so they don't 12 exceed the right. 13 Am I correct in understanding your testimony 14 to be that if he's going to use the same pump out of the 15 culvert for other water rights and this water right, 16 doesn't work so well because the pump curve, the 17 fluctuation -- and while it's physically possible to 18 measure, you know, off of a T what goes to the use under 19 this application, .02 CFS, plus what goes under the 20 other right, but it doesn't work very well, and you're 21 saying the best solution and the most practical one to 22 assure he doesn't exceed the right, either this right or 23 the other right, is to have two separate pumps? 24 A. That is correct. That's the best way to make 25 sure that the rights are being followed.
Page 152 1 Q. Okay. And you don't believe that meters using 2 one pump with a T each with a meter and valve on it to 3 the two different systems is a practical way to operate? 4 A. There's too many -- too many variables to do 5 it that way to make it practical, to where it becomes a 6 gray area, and then you get people fighting. 7 So, in my opinion, it is better to have two 8 separate pumps so that it's cut and dry, there's no 9 question. There's too much that a guy would have to 10 manually do to cause human error to have it off of one 11 system. 12 Q. So assume that we didn't take your 13 recommendation that needs to have two pumps so the 14 rights can be monitored appropriately with meters, and 15 we opt for the not-so-good solution, one pump with a T 16 and meters. If you have that kind of sytem, how can 17 someone administering the pump understand what water is 18 used for the place of use under his right versus water 19 being used through the system on other places of use? 20 A. The only way that I know that you could do 21 that is have a physical marker on each water meter 22 saying what the water right was so that anybody walking 23 up there could say 9 gallons a minute or the CFS, or 24 whatever that happened to be, is this so they can 25 physically flip up the cap on the meter and read what's	Page 153 1 going through it. 2 Q. Okay. I want to change topics here. In the 3 last time when you were -- when you testified and it 4 wasn't recorded, counsel quizzed you about the subject 5 of 13,000 gallons a day versus .02 CFS. 6 Now, just so the record's clear and it's easy, 7 if you pump .02 CFS or about 9 gallons a minute 8 constantly for 24 hours, that's 13,000 gallons; correct? 9 A. Correct. 10 Q. Okay. So they're trying to say -- you were 11 being questioned about their saying they could use this 12 pump that's 30 or 40 gallons a minute and only use it 13 part -- 14 MR. FOWLER: Objection. Mr. Brown is 15 questioning the witness regarding cross-examination 16 questions. Mr. Brown is bringing up 17 cross-examination -- 18 HEARING OFFICER: I mean, I'm not sure I 19 follow that. I recall this -- I recall this 20 conversation, too. 21 MR. FOWLER: Right. But the conversation was 22 I asked the expert on cross-examination. Mr. Brown is 23 now asking the expert during direct. He's bringing up 24 new issues that were not addressed in his original 25 direct. I just want to go on record that Mr. Brown is

Page 154 1 bringing up new issues on direct that were not addressed 2 until cross at the prior hearing. 3 MR. BROWN: The direct from before is a 4 nullity. It doesn't count. This is the direct right 5 now. 6 HEARING OFFICER: Please continue, Mr. Brown. 7 I think it's -- I think they're valid questions. Please 8 continue. 9 Q. (BY MR. BROWN) Okay. So what we're talking 10 about is the distinction between the use of .02 CFS or 11 diverting considerably more for a shorter period so you 12 don't exceed the 13 [sic] gallons a day. You indicated 13 that pumping more in that manner will hold a larger 14 quantity for a shorter time can affect the water system. 15 Can you explain that, please? 16 A. Yes. So when you pump a lot of water, it 17 draws it down. And then as -- as you shut off, then the 18 water's got to rush back into that area. So as you 19 fluctuate that, what I was getting at when I was saying 20 that, is it caused problems downstream to the next user 21 because of fluctuations. 22 Q. Okay. And those fluctuations could be 23 considerable in terms of whether water is available 24 downstream for Sally Hamilton to water her cattle; 25 correct?	Page 155 1 A. Correct. 2 Q. In other words, if you pump a lot for a short 3 period of time, you could dry up the stream for periods 4 and the cows couldn't drink; correct? 5 A. Yes. 6 MR. BROWN: I don't have any further 7 questions. Thank you. 8 HEARING OFFICER: Thank you. 9 Okay, Mr. Fowler. 10 CROSS-EXAMINATION 11 QUESTIONS BY MR. FOWLER: 12 Q. Mr. Tanner, when you -- let's see. You went 13 to the property on December 10th, 2020, correct -- 14 A. Yes. 15 Q. -- to Mr. Linderman's property? 16 When you went to the property that day, was 17 the red pump in the creek, was that -- was that pump 18 connected to any piping? 19 A. It was not connected. 20 Q. You testified that -- in your previous 21 testimony, you testified about domestic wells and their 22 gallons per minute. Could you -- just for the record 23 again, could you reiterate the gallons per minute of a 24 typical domestic well? 25 A. The -- typically, I see the pumps run about 14
Page 156 1 gallons a minute. No different than this pump running 2 40. 3 Q. Okay. So a domestic well running 14 gallons 4 per minute -- domestic well is under a domestic use 5 water right; correct? 6 A. I would assume so. 7 Q. And that is -- domestic use water is .02 CFS. 8 A. Okay. 9 Q. In your -- it's your testimony that a domestic 10 well pumps, on average, about 14 gallons per minute -- 11 A. Has the capability. 12 Q. Okay. So it has the capability, then, to 13 exceed the 9 gallons per minute under the domestic use 14 accepted; is that correct? 15 A. That is correct. 16 Q. Have you ever seen a meter on a domestic well? 17 A. Yes. 18 Q. How many cases have you seen? 19 A. Percentage-wise, less than 1. 20 Q. Okay. So just to be clear, the 9 gallons per 21 minute is the 13,000 gallons per day. And that's -- 22 A. Yes. 23 Q. -- is that your testimony, that is, if you 24 were to run 9 gallons per minute, how many hours in the 25 day would you have to run that to reach the	Page 157 1 13,000-gallon -- 2 A. 24. 3 Q. 24 hours. Okay. 4 Now, you talk about this -- this fluctuation 5 drawdown. And it's your opinion that a water right at 6 .02 CFS is -- can only be used at a maximum 9 gallons 7 per minute; is that correct? 8 A. That's what -- that's the only way I read it 9 in the water right application that I've had before me. 10 Can you -- can you show me where it says you can use the 11 13,000 gallons? 12 Q. In Idaho Code, it specifies that for domestic 13 use you can use up to 13,000 gallons a day. 14 A. Okay. I've not seen that. 15 Q. That's fine. I don't want to interpret law 16 and argue that. But that's where I'm getting that 17 13,000 gallons, just so you're aware. 18 A. Okay. 19 Q. But I'm just curious about is this drawdown in 20 the fluctuations. Can you describe the system of Mr. 21 Linderman's -- the culvert that you observed on the day 22 in question, on December 10th that you were there? Can 23 you describe that system for us? 24 A. Yeah. So I couldn't see it because it was 25 under water, the -- how the water supplied to it. And

Page 158	Page 159
1 then it had the pump, had the suction to go down into 2 it, and then it had an overflow out of it. 3 Q. Was water going into the culvert the day that 4 you were visiting the property? 5 A. I -- I do not remember. I believe so because 6 I know it was full. I don't remember observing the 7 overflow on how much was coming out, so . . . 8 Q. So in this case -- that's fine. 9 I'm just curious about meters in general and 10 your experience in the 21-plus years that you've been 11 doing this. On average, how many, you know, the 12 percentage of the meters would you see -- okay. Just to 13 be clear, you said about 1 percent, you're talking about 14 1 percent of domestic use? 15 A. Of what I -- what I have personally seen on 16 the domestic use. I do very few domestic use pumps. 17 Q. Have you ever seen multiple meters, as you 18 described in the recommendation for Mr. Brown, have you 19 seen multiple meters on a system -- 20 A. Only in the application that the particular 21 guy using it wanted to know what was going each 22 direction. 23 Q. Okay. Thank you. 24 Have you ever seen a domestic well run dry? 25 A. Yes.	1 Q. Do you remember Mr. Linderman telling you that 2 his domestic well -- 3 MR. BROWN: This is completely beyond the 4 scope of what was asked on direct. 5 MR. FOWLER: Oh, that direct is irrelevant. 6 I'm going to the direct of the expert -- that was given 7 in the prior testimony. 8 MR. BROWN: We're starting over today. You 9 don't get to jump back and forth. And when I tried to 10 ask him about what he testified before when it was 11 Mr. Linderman, you objected. Now you're trying to pull 12 the same thing after saying that's not proper. 13 HEARING OFFICER: We did not talk about the 14 well this morning. Just go a different direction there, 15 Mr. Fowler. 16 MR. FOWLER: Okay. So just to be clear on the 17 record, we did talk about the well in the prior hearing, 18 but you are not allowing me to talk about the well in 19 this hearing? Is that correct? 20 HEARING OFFICER: I remember talking about it, 21 but Mr. Brown has objected to it. 22 MR. BROWN: The well came up in the prior 23 meeting under Mr. Linderman's prior testimony. We heard 24 none of it from him today, and we've not raised it with 25 Mr. Butler.
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1 HEARING OFFICER: The application does not 2 really relate to the well, so . . . 3 MR. FOWLER: Okay. So just to be clear, I was 4 able to ask Mr. -- 5 MR. BROWN: This is inappropriate. 6 HEARING OFFICER: Give him a minute to ask it, 7 please, Mr. Brown, and let's see if it's inappropriate. 8 MR. BROWN: No. We're -- we're making 9 objections, you rule on the objection, then we keep 10 going again. And he wants to ask you what you think he 11 can do. 12 HEARING OFFICER: I think he -- 13 MR. BROWN: That's inappropriate advice. 14 HEARING OFFICER: I think he should move on to 15 a different line of questioning if there's objections to 16 asking about the well at this point. I've asked -- I 17 told him that, so . . . 18 MR. FOWLER: Sorry. I just want to make a 19 clear record of what is permissible questioning versus 20 not -- and understanding that these are extenuating 21 circumstances -- I just want to -- 22 HEARING OFFICER: I agree. And quite 23 honestly, Mr. Fowler, I'm not entirely sure what the 24 rules should be either. I would entertain questions 25 about the well, but Mr. Brown is -- seems to be	1 objecting to them. 2 MR. FOWLER: And you're sustaining his 3 objection. 4 HEARING OFFICER: They probably should have 5 been asked of Mr. Linderman, but they were not. You 6 know, maybe -- maybe that should have happened. But for 7 right now, let's ask Mr. -- you know, questions about -- 8 you know, questions about the information that he 9 submitted, I think, is probably the best avenue here. 10 MR. FOWLER: Okay. 11 Q. (BY MR. FOWLER) What's the range of gallons 12 per minute of Mr. Linderman's pump that you observed? 13 A. Which pump? 14 Q. The pump in the culvert. 15 A. Which is the -- it's the R20L, and 43 to 62 16 gallons a minute. 17 Q. Okay. So at 43 gallons per minute, how long 18 would it take -- and you can pull out your calculator if 19 you need to -- how long would it take Mr. Linderman to 20 reach 13,000 gallons? 21 A. A little over 302 minutes. 22 Q. Can you divide that by six and give us the 23 number of hours? 24 A. 5 hours. 25 Q. Okay. Thank you.

Page 162 1 So 43 gallons per minute, Mr. Linderman could 2 irrigate, roughly, 5 hours to reach 13,000 gallons? 3 A. Correct. 4 Q. And then I think you said 35 gallons per 5 minute also; right? Is that kind of the range? 6 A. Well, the operating -- you asked me what the 7 operating of the pump was -- 8 Q. Okay. 9 A. -- and it's 43 to 62. So that's the 10 recommended operating. 11 Q. Okay. I guess I'm just reading from your -- 12 your declaration on paragraph 13. It says here on 13 Exhibit A. 14 A. Okay. So I'll go ahead and answer. 15 Q. No, go ahead. 16 A. I know where you're going with this. The pump 17 can run at 35 gallons a minute. There's variables in 18 the system. That is just the operating that I gave you 19 between the 43 and the 62. 20 Q. Okay. So what is the -- so, in your opinion, 21 what's the optimal gallons per minute? 22 A. Of what? 23 Q. The operation of the irrigation system. 24 A. The optimal of this pump? It does not give 25 you the efficiency curve, so I cannot tell you the	Page 163 1 optimal of this particular pump. 2 Q. Okay. And the PSI that -- let's see. So it's 3 your opinion in your declaration that the pump is only 4 producing 30 PSI; is that correct? 5 A. I was using 30 PSI to allow for a buffer for 6 friction loss and elevation difference. 7 Q. Okay. I'm trying to remember. In your prior 8 testimony, you talked about the birds not operating very 9 well at a certain gallons per minute or PSI. Do you 10 remember what that was? 11 A. I don't remember the exact. But as the 12 pressure goes down, an impact-style bird starts to 13 operate bi-sufficiently, and then it also starts putting 14 out a P stream instead of atomizing the water and 15 spreading it efficiently. 16 Q. Okay. And at about what PSI would that occur? 17 A. Each bird is different. So the bigger birds 18 are going to be close to that 35 PSI. The smaller birds 19 may operate down to 25 to 30, just roughly. 20 Q. So if you had a bird at 30 PSI, would there be 21 a decrease in the performance of that? Is that what 22 you're saying? 23 A. A performance, yes, because the bird would 24 quit being able to oscillate at a certain point. 25 MR. FOWLER: That's all the questions I have.
Page 164 1 Thanks. 2 HEARING OFFICER: Is that all the questions 3 you have? Okay. 4 I don't think I have any more questions of 5 Mr. Butler. So you may step down, sir. 6 But I would, using my discretion as hearing 7 officer, would like to ask a follow-up question of 8 Mr. Linderman. 9 So, Nathan, if could you just swivel the 10 camera. You can stay where you're at. 11 MR. FOWLER: Do you want to cross -- redirect? 12 HEARING OFFICER: Just turn it around over 13 there and let me look at Mr. Linderman. 14 MR. BROWN: Before we do that, can I just 15 follow up on redirect? I just have a couple quick 16 questions on redirect. 17 HEARING OFFICER: No, I don't think we're 18 going to -- we're not going to do recross, I don't 19 think. I mean, unless Mr. Fowler doesn't object to it. 20 I would prefer not to go there. 21 MR. FOWLER: No. I think what Mr. Brown is 22 talking about is a redirect. So he directed, I crossed, 23 and then -- 24 HEARING OFFICER: I'm sorry. I'm sorry. I 25 got confused, and I didn't give you your opportunity. I	Page 165 1 apologize. Yes. 2 Go on back over there, Mr. Butler. I guess 3 we're not done with you. I lost -- I lost track. My 4 apologies. 5 MR. BROWN: Okay. A couple questions. 6 REDIRECT EXAMINATION 7 QUESTIONS BY MR. BROWN: 8 Q. You were asked about seeing the frequency in 9 which you see meters on domestic wells. And you don't 10 see them very often, correct, almost never? 11 A. Correct. 12 Q. How often do you see domestic wells or 13 domestic rights, like the one proposed here today, 14 combined with irrigation rights? 15 A. I -- the only one that I've seen was -- had 16 the water meter on it. 17 Q. Okay. So it's fair to say that in your 18 experience people don't typically try to combine other 19 rights with their domestic right; correct? 20 A. Correct. 21 Q. And one of the reasons is because it's a 22 nightmare to try to separate and monitor each of the two 23 rights as is being proposed today; correct? 24 A. Correct. 25 Q. All right. And you heard the testimony at the

Page 166 1 last hearing, you were present, when Sally Hamilton 2 testified? 3 A. Yes. 4 Q. And you're aware that her testimony -- 5 A. Hold on. Hold on. I answered that wrong. I 6 was not here when Sally -- 7 Q. Then I'll withdraw the question. 8 A. Yup. Okay. 9 MR. BROWN: Okay. That's all I have. 10 HEARING OFFICER: Okay. I think we are now 11 done with this witness. Again, I'm sorry for that. 12 But I do have a follow-up with Mr. Linderman. 13 And, Mr. Linderman -- no, wrong side of the room. Keep 14 going. There he is, right there. Okay. 15 Let me remind you you're still under oath. 16 And I'm just going to ask you a couple -- one question 17 that -- and I think this might clear up some of the 18 confusion that was happening a minute ago, that weren't 19 asked about your domestic well. And the only reason I 20 want to know about your domestic well is maybe how it 21 interfaces with your use under this new application, 22 which is also for a domestic use. 23 Is there a reason, obviously, you use your -- 24 and I'm talking about a case -- the drilled, cased 25 domestic well, and not any other kind of well. And you	Page 167 1 use this well in your house, correct -- 2 THE WITNESS: Yes. 3 HEARING OFFICER: -- for culinary water? 4 Okay. 5 Is there a reason you don't irrigate from it, 6 from your domestic -- 7 THE WITNESS: It's got a history going owner, 8 owner, owner, I said. It can't regenerate -- I don't 9 know what the -- if that's the correct word -- it can't 10 regenerate water fast enough. So, yeah, so we've had 11 that happen numerous times as it -- even up near the 12 house, the first 6 feet is actually comes out of that 13 well, and between that and, like, spring watering trees 14 where I lay the hose down around, runs the house out of 15 water. And so we have to be real cautious about that. 16 And that's why, I said, we have this application, is 17 that we can't generate enough to be able to sprinkler 18 from it. 19 HEARING OFFICER: Right. So you use -- if you 20 irrigate from your domestic well, it's sparingly, is 21 what I'm hearing? 22 THE WITNESS: Right. 23 HEARING OFFICER: But to the best of your 24 knowledge, is -- are the lines from the domestic well in 25 any way, shape, or form connected to the lines from the
Page 168 1 pump and the sump? 2 THE WITNESS: They're not. We don't -- we 3 don't have to have a drain -- that system -- there's 4 part of that system -- so at one point, probably when 5 they built the house, and it has to do with -- it's 6 required to come out of the ground, part of a domestic 7 well. And I don't know what that system -- that's 8 there, but, I said, it's never had to be blown out or 9 drained. It's not hooked up to water. And, I said, it 10 had to do with the previous owners had disconnected it 11 somehow. 12 When that -- when the well went dry this last 13 year, when I dug that section up next to the well, I 14 could see where that water -- that line is severed right 15 there that goes to the main system. 16 HEARING OFFICER: So maybe -- 17 [unintelligible.] 18 THE WITNESS: Yeah, I found it, but it's not 19 hooked to anything. 20 HEARING OFFICER: So maybe it was connected to 21 an irrigation system earlier, but it isn't now -- 22 THE WITNESS: Right, yeah. 23 HEARING OFFICER: Do you believe -- 24 THE WITNESS: It's with about 3 feet of the 25 well head itself. There's a line that's been cut off	Page 169 1 there. 2 HEARING OFFICER: Okay. So there is an 3 unlikely chance that the well is still connected to the 4 irrigation system that's being fed from the sump? 5 THE WITNESS: Right. 6 HEARING OFFICER: Okay. Okay. Well, I don't 7 have any other questions. And I think we are done with 8 all the witnesses. Everybody -- is everyone finished 9 asking all the questions they need to ask? I really 10 don't want to re-do the witnesses, but if there is 11 something that is missing that we have missed from last 12 time, I would consider putting a witness back on the 13 stand. 14 But that's -- I asked Mr. Linderman that 15 question because I believe that's missing from last 16 time. And if there are no -- no reason to do that, I 17 will now close the testimony record, and we'll move on 18 to buttoning this up. 19 Okay. Hearing no comments, Mr. Brown 20 previously -- so the record will be considered closed 21 for testimony. Mr. Brown had previously requested 22 copies of the tapes right away because he wanted to have 23 a transcript made. And with the understanding, you're 24 still wanting to do that? 25 MR. BROWN: Yes.

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1 HEARING OFFICER: Okay.
2 MR. BROWN: But differently this time.
3 HEARING OFFICER: I'm sorry?
4 MR. BROWN: But more successfully this time.
5 HEARING OFFICER: I didn't catch that.
6 MR. BROWN: I said more successfully,
7 hopefully, we'll get it --
8 HEARING OFFICER: My suggestion's going to be
9 this: Denise, as soon as we go off the record, Denise,
10 I would like you to check and make sure you have audio
11 before you let people leave the building. Just make
12 sure that it's there and that we've got good audio
13 before we let everybody out.
14 And then I'll let you and Denise just
15 coordinate, or you and your assistant and Denise
16 coordinate, on how to get those recordings over to you
17 as soon as possible. How about that?
18 MR. BROWN: That will work great.
19 MS. MALINE: Yes.
20 HEARING OFFICER: Okay. Anything else that I
21 have forgotten, we will look at. Your follow-up -- or
22 your post-hearing brief's in three weeks' time, which is
23 going to be April 29th. Is that satisfactory?
24 Actually, I'm not asking you; I'm just --
25 MR. FOWLER: No, that works.

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1 **REPORTER'S CERTIFICATE**
2 **I, JAHNENE ADMIRE, CSR No. 760, Certified**
3 **Shorthand Reporter, certify:**
4 **That the audio recording of the proceeding were**
5 **transcribed by me or under my direction.**
6 **That the foregoing is a true and correct**
7 **transcription of all testimony given, to the best of my**
8 **ability.**
9 **I further certify that I am not a relative or**
10 **employee of any attorney or party, nor am I financially**
11 **interested in the action.**
12 **IN WITNESS WHEREOF, I set my hand and seal this**
13 **15th day of April, 2021.**
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16
17
18
19 
20
21 **JAHNENE ADMIRE, CSR NO. 760, RPR**
22 **Notary Public**
23 **P.O. Box 2636**
24 **Boise, Idaho 83701-2636**
25 **My commission expires May 04, 2024**

1 HEARING OFFICER: Okay. April 20 -- all
2 right. Thank you once again, all of you. I do
3 appreciate you taking time out for this re-do, round 2.
4 We're all learning. We all continue to learn. And Zoom
5 is a new thing, too, which is really to our advantage.
6 So, yeah, if you maybe hang around for a few
7 minutes, please, and give Denise a chance to check her
8 audio before you leave. Then we'll look forward to
9 hearing from you by the 29th. We'll close the record
10 now, Denise. Thank you.
11 MS. MALINE: Okay. Off the record.
12 -- End of hearing --
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	123:4;147:20	83:25	approval (1)
[	administered (1)	amendment (1)	119:20
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