

Audio Transcription

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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MAY 04 2021

DEPT OF WATER RESOURCES
SOUTHERN REGION

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 47-17664 IN) VOLUME I
THE NAME OF ROBERT K AND JANA) (PAGES 1-72)
L LINDERMAN.)
_____))

HEARING BEFORE

HEARING OFFICER: CINDY YENTER

Date: March 10, 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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1	HEARING OFFICER: Okay. We're back on record.	1	Q. Can you tell me where you reside,
2	It is 1:40 p.m. The parties -- you made a copy over the	2	Mr. Hamilton?
3	lunch break of the modified Exhibit F and have given you	3	A. Buhl, Idaho.
4	both a copy, and there's also -- and put the original	4	Q. Okay. Where do you reside in relationship to
5	back in the book over there, so -- the drawing that was	5	Mr. Linderman's property?
6	made Exhibit F, did you both find that?	6	A. It would be a little bit north and west of the
7	MR. BROWN: I've got it.	7	property, probably within a half mile.
8	MR. FOWLER: Thank you, yes.	8	Q. Okay. Could you open the exhibits in front of
9	HEARING OFFICER: Okay. So we are still	9	you? Go ahead and go to -- let me call Exhibit F the
10	hearing protestants' witnesses. So, Mr. Brown, you may	10	modified map. Looks like this.
11	call your next.	11	A. Exhibit F with -- okay -- with the lines on
12	MR. BROWN: I'll call Mike Hamilton.	12	it. Okay.
13	HEARING OFFICER: Mr. Hamilton, will you raise	13	HEARING OFFICER: [Unintelligible.]
14	your hand, please, get sworn in.	14	MR. BROWN: Do you want me to --
15	Do you solemnly affirm that the testimony	15	HEARING OFFICER: No, that's fine. I looked
16	you're about to present at this hearing is the truth,	16	at it.
17	the whole truth, and nothing but the truth?	17	Q. (BY MR. BROWN) Okay. So you're looking at
18	THE WITNESS: I do.	18	Exhibit F that was modified with blue lines
19	HEARING OFFICER: Thank you very much. Please	19	Mr. Linderman drew?
20	have a seat. Okay.	20	A. Yes, mm-hmm.
21	DIRECT EXAMINATION	21	Q. Okay. I would like you to kind of describe.
22	QUESTIONS BY MR. BROWN:	22	You said you live west of the Linderman property?
23	Q. Can you state your name for the record,	23	A. It'd be west and north. It'd be the
24	please.	24	northwesterly direction from there.
25	A. James Michael Hamilton.	25	Q. Okay. On the exhibit, there's a -- off the

Page 6 1 edge, it's S60 on the left edge. 2 A. On the left edge. 3 Q. Just to the left of the place of use, yellow 4 line. 5 A. Oh, yes. It'd be to the left, yes. 6 Q. So you would live down there just a little 7 bit? 8 A. Yeah. Yeah, pretty close. 9 Q. And you're familiar with the Linderman 10 property itself? 11 A. Yes. 12 Q. Do you have any other property near the 13 Linderman property? 14 A. Sally and I own a property directly to the 15 north that borders the Linderman property on their -- 16 their north side. 17 Q. Okay. So if you went just -- on the exhibit, 18 if you went just above the top yellow line, place of 19 use, that would be your property? 20 A. Yes, it would. 21 Q. Okay. Do you see the blue lines, blue ink 22 Mr. Linderman drew on this exhibit? 23 A. Yes, mm-hmm. 24 Q. Okay. I want to ask you some parcels of it. 25 First of all, let's start with the point of diversion.	Page 7 1 Are you familiar with where that point of diversion is, 2 where the yellow dot is? 3 A. Yes. 4 Q. And how is it you're familiar with that? 5 A. That -- that's our point of diversion also for 6 the property we have that's to the north of the 7 Linderman property. 8 Q. Okay. And for long have you had that 9 property? 10 A. Since -- I think it was purchased in 2017, I 11 believe, spring of '17. 12 Q. Okay. And since that time, have you ever seen 13 a diversion at that point for the Linderman property? 14 A. No. It's never been utilized. 15 Q. Is there any ditch or piping or other 16 conveyance system from that point of diversion down to 17 Linderman's property? 18 A. No. 19 Q. Okay. Just to the right of the place of use 20 on the exhibit, there's a north-south road. What road's 21 that? 22 A. That is -- like, you want the grid address of 23 that? 24 Q. Or just the name of the road so we can refer 25 to it.
Page 8 1 A. Oh, I -- let's see. 44? I don't know if 2 that's 1400 or 14 -- I think it's 1400 East, maybe 3 it's -- 4 Q. Okay. That's 1400 East Road? 5 A. Well, I'm speculating. I don't know. I don't 6 know -- remember which exactly the grid number is on it. 7 44's to the north. I can't remember the east. 8 Q. In other words, the 1400 -- I'll call it the 9 1400 East Road -- it parallels the blue line on the 10 exhibit, the vertical blue line? 11 A. Correct, it is, mm-hmm. 12 Q. Okay. And you understand that's a section 13 line? 14 A. Yes. 15 Q. Okay. I want to talk to you about the blue 16 line Mr. Linderman has drawn to the left of the section 17 line and the left of the road grid. Do you see what I'm 18 referring to? 19 A. Left of the section line. Okay. Yes, mm-hmm. 20 Q. In other words, is there a culvert across the 21 1400 Road in the area he indicated? 22 A. Yes. There's a culvert that comes from the 23 Rose property and crosses over, and it just basically 24 feeds the creek into Sally's diversion point. 25 Q. Okay. From where that crosses over down to	Page 9 1 where he ended his blue line by the number 23, is that 2 the creek bed? 3 A. Yes. 4 Q. So, in other words, when he says he's 5 conveying his water down to his point of diversion where 6 he's pumping out, what he's saying is he's conveying 7 water down the creek? 8 A. That would -- that would be, and it'd have to 9 cross our point of diversion. 10 Q. There's no other ditch or pipe or other way to 11 convey water except through the creek; correct? 12 A. Correct. 13 MR. FOWLER: Objection; calls for speculation. 14 THE WITNESS: And that's to the -- to the 15 aesthetic permit. 16 MR. FOWLER: He's asking his client to -- 17 HEARING OFFICER: At what point -- 18 [unintelligible] what are you speculating? 19 MR. FOWLER: He's asking the witness to 20 speculate as to what Mr. Linderman meant by what he 21 said. 22 MR. BROWN: No, I'm not. 23 Q. (BY MR. BROWN) I'm asking as a matter of fact 24 to tell me you're familiar with this ground; correct? 25 A. Correct.

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1 Q. And you've walked the ground? 2 A. Yes. 3 Q. And you've looked along the roadway and from 4 the point of diversion on the hill down to Linderman 5 property for any kind of conveyance systems; correct? 6 A. There's no conveyance to the Linderman 7 property -- 8 Q. Okay. 9 A. -- from the point of diversion for that 10 permit. 11 Q. So you have -- you have personal knowledge 12 that there's no way to convey water from that point of 13 diversion down to near the number 23 on this section 14 where he drew his line saying he diverts out of the 15 creek? 16 A. Yes. Cannot -- cannot be done at this point. 17 Q. Look at Exhibit C, please. Let's back up. 18 Look at Exhibit D. 19 A. E? 20 Q. "D" as in "dog." 21 A. "Dog." 22 Q. And I apologize. The louder I speak, the more 23 my glasses fog up. 24 Do you have Exhibit D in front of you? 25 A. Yes.	1 Q. Okay. Can you tell me what that is? 2 A. That's the application for the permit that was 3 submitted to IDWR in May of '17. 4 Q. Okay. You see the point of diversion there? 5 A. Yes. 6 Q. And you understand that that point of 7 diversion is out of that vertical culvert that's been 8 described where the pump is? 9 A. Correct. 10 Q. So that's not a diversion out of the creek? 11 A. That's correct. 12 Q. Where would the creek be in relationship to 13 the yellow dot on the exhibit? 14 A. From the dot it would be, probably, due 15 straight west, about 30 feet, I suppose, 40 feet to the 16 creek. 17 Q. Downstream or upstream? 18 A. Well, it'd be the west. It'd be -- it'd just 19 hit -- it'd go to the west until it hit the creek, so -- 20 Q. So from the dot flowing to the west is down -- 21 A. Down -- 22 Q. -- downhill? 23 A. -- it's downhill a little bit, but it's not in 24 the -- it's not in the creek bottom, but it would -- it 25 flows -- it goes to the creek bottom.
Page 12	Page 13
1 Q. Okay. Trying to see if there's a better -- 2 better view. Can you tell me approximate -- well, let's 3 look at a different map. 4 Look at Exhibit B, Mr. Patterson's 5 declaration, and then turn to that -- the exhibit on 6 there, the one that's called Linderman underground. 7 HEARING OFFICER: It's under Tab B-A, B -- 8 THE WITNESS: Oh, just the straight B, okay. 9 HEARING OFFICER: Straight B. 10 Q. (BY MR. BROWN) Okay. Are you familiar with 11 what that photo shows? 12 A. Yes, mm-hmm. 13 Q. Were you present on December 10th, 2020, when 14 Mr. Patterson came out and located these underground 15 piping systems? 16 A. Yes. 17 Q. Okay. So you're familiar with where the 01 18 pump is; correct? 19 A. Correct. 20 Q. And that is not in the creek; correct? 21 A. That's correct. 22 Q. Okay. If you look at the photo to the left of 23 where it's labeled "01 pump," there's a white pipe; 24 correct? 25 A. Correct, mm-hmm.	1 Q. At what angle does that pipe lay? 2 A. It lays mainly westbound. 3 Q. Okay. 4 A. And it's on a downward angle to the creek, 5 probably a 35-degree angle to the creek. 6 Q. Okay. So the pump is above the creek? 7 A. Yes, the 01 pump here. 8 Q. And that pipe runs down towards the creek? 9 A. Correct. 10 Q. Okay. Turn to Exhibit A for a minute, the 11 photos attached to Mr. Butler's declaration. 12 HEARING OFFICER: Those are under A-5. 13 THE WITNESS: Photos are in A-5. 14 MR. BROWN: I'm not sure how those are 15 numbered. 16 HEARING OFFICER: They're aren't, really. 17 We've got them under Tab A and 5. Photos themselves are 18 not numbered. 19 Q. (BY MR. BROWN) Okay. Let's do this. Can you 20 get to the first photo in that exhibit? 21 A. Sure, I've got the first one, mm-hmm. 22 Q. Is -- okay. And that's a photo of the people 23 standing around where the vertical culvert is; correct? 24 A. Correct. 25 Q. Okay. Now, go -- sorry. My pictures are

Page 14 1 [unintelligible]. Go to ten pictures down. It would be 2 page 36, but I'm not sure -- I'm trying to get to this 3 picture. 4 A. Yeah, I've got that one, mm-hmm. 5 HEARING OFFICER: The one with the pipe? 6 THE WITNESS: It's just the white PVC pipe? 7 Q. (BY MR. BROWN) Yeah. Can you describe to 8 me -- 9 MR. FOWLER: Can I see what that -- 10 HEARING OFFICER: Sharing you that one. 11 MR. BROWN: The page 36. 12 HEARING OFFICER: Yeah. I got it, okay. 13 Q. (BY MR. BROWN) Okay. So the -- that picture 14 shows a white PVC pipe, and it also shows a black 15 smaller pipe; correct? 16 A. Correct. 17 Q. Okay. Starting at the top of the picture 18 where the white pipe seems to go out of view, can you 19 tell me where that is? 20 A. That is the -- that is the creek. 21 Q. Okay. And then how would water get from -- 22 that's where the red pump is? 23 A. Correct, mm-hmm. 24 Q. Okay. Now, how does water get from the creek 25 at the end of that white pipe on the top of the picture	Page 15 1 up to the culvert? 2 A. There's a pump in the creek that would pump 3 water up to the culvert. 4 Q. Okay. And at the time you were also - 5 MR. FOWLER: Objection; speculation. This 6 witness has no personal knowledge of that. 7 HEARING OFFICER: Okay. And I believe we 8 covered this in Mr. Butler's -- 9 THE WITNESS: I mean, I've seen it with my 10 eyes. Does that -- 11 MR. FOWLER: Have you ever seen it operating? 12 THE WITNESS: Hmm? 13 MR. FOWLER: Ever seen it operating? 14 THE WITNESS: I just -- I stated there's a 15 pump in the creek. I didn't say I stated it operating, 16 was the way I answered the question. 17 MR. BROWN: Let me back up. Excuse me. 18 THE WITNESS: Okay. 19 Q. (BY MR. BROWN) So on December 10th, when you 20 were there, you heard Mr. Linderman describe the system 21 to Mr. Butler and the other people that were present? 22 A. Yes. 23 Q. And is it true that he described the fact that 24 the red pump at the end of that white pipe was next to 25 the creek; correct?
Page 16 1 A. Correct. 2 Q. And as Mr. Butler testified today, there was 3 -- the pipe was not connected into the pump; correct? 4 A. That's what was stated. 5 Q. Okay. But there was, nevertheless, a pipe 6 there that all they had to do was screw it into the 7 pump; correct? 8 A. Yeah. It's -- I mean, to me, it's -- the pump 9 was located there. I saw it. It would take just a 10 little bit to hook it back up, in my opinion. 11 Q. Okay. And that black hose seen in the photo 12 on page 36, that comes out at the white pipe towards the 13 bottom of it, where does that go to? 14 A. Well, without certainty, I mean, I would say 15 it flows down to the creek. I don't know if that's an 16 overflow pipe or direct coming from the pump system and 17 the creek that pumps to the culvert. The exact function 18 I couldn't sit here and state, but I could figure it out 19 real quick, if I operated it. 20 Q. Okay. But you know it goes up to the vertical 21 culvert? 22 A. It definitely goes to the vertical culvert, 23 and either has to let water go back to the creek or 24 bring water from the creek up there, one of the two. 25 Q. Okay. So go down five more pictures. Are you	Page 17 1 there? 2 That photo shows the creek with some water 3 cress and black pipe; correct? 4 A. Okay. I've got one there's a fence post 5 across the creek with a white -- yeah, I think we're on 6 the same. Oh, there's the black pipe, okay. 7 Q. Okay. Now, is that the same black pipe as the 8 one that goes into the culvert? 9 A. Yes. It looks to be the same exact size pipe. 10 Q. Okay. And is -- on the far right of the 11 picture, there's a white flex hose; correct? 12 A. Correct. 13 Q. And isn't it true that that is right adjacent 14 to the red pump? 15 A. Yes, mm-hmm. 16 Q. And that white hose you can see there goes 17 right into the creek; correct? 18 A. It could be placed in. It's not in the creek 19 at the moment. But it could be placed there on short 20 notice. 21 Q. Okay. So it's your understanding from the 22 conversations that day that the white hose goes into the 23 -- comes from the creek into the red pump, and the black 24 hose goes from the red pump up to the vertical culvert; 25 is that correct?

Page 18 1 A. Correct. 2 Q. Go to the next photo, if you will. That is 3 also a photo of the -- both the white hose as it comes 4 from the creek going to the red pump and the black hose 5 that goes up to the culvert; correct? 6 A. Correct. Correct, mm-hmm. 7 Q. So, in other words, you didn't see the pump 8 actually connected and operating, but you saw all of the 9 apparatus in place? 10 A. Correct. Yeah, we saw the apparatus, but it 11 -- it wasn't hooked up on December 10th. 12 Q. And you heard Mr. Linderman tell you that day 13 that that pump would be used to pump water up into the 14 culvert? 15 A. It'd been used for that purpose in the past, 16 yes. 17 Q. And you heard him testify today that he pumped 18 water from the creek up to the culvert to use for 19 irrigation? 20 A. Yes. 21 Q. And it's your understanding that that's the 22 means he uses? 23 A. Pardon? 24 Q. These pipes and the red pump are the means he 25 uses to do it?	Page 19 1 A. Correct. 2 Q. Okay. I want to ask you a minute about the 3 concerns you had about the water use on the Linderman 4 property. Now, you said you had one property just to 5 the north of Linderman's; correct? And then you have 6 another property to the west, downstream, where you and 7 Sally live; correct? 8 A. The property to the north Sally and I own 9 jointly, and then the property to the -- to the west is 10 Sally's property. 11 Q. Okay. Sally's right, where is that diverted? 12 From where in the creek is that diverted? 13 A. Sally's right is diverted in the creek -- 14 well, we had a picture of it earlier, but it's in the 15 creek bottom where there's a concrete structure there 16 for the point of diversion. It's approved at IDWR. 17 Q. If you could turn to Exhibit C for a moment. 18 The third page is an aerial photo. 19 A. Yes. 20 Q. This one? 21 A. Yes, mm-hmm. 22 Q. Okay. All right. You recognize what that 23 photo shows? 24 A. Yes, I do. 25 Q. Okay. Can you, in reference to that photo,
Page 20 1 tell me where Sally's point of diversion from the creek 2 is? 3 A. This -- this is an old photo. And her point 4 of diversion is approximately where you're seeing -- 5 there's some Russian olives. There's one little group, 6 and then right about where the white -- where you see 7 the white pipe ends on the east end, that -- her point 8 of diversion's right underneath those trees. They've 9 since been removed. 10 MR. BROWN: May -- May I approach and have him 11 mark the exhibit? 12 HEARING OFFICER: Please. 13 Q. (BY MR. BROWN) Can you put a circle with that 14 blue ink on where Sally's point of diversion is? 15 A. Yes. 16 HEARING OFFICER: And you're on Exhibit C, are 17 you not? 18 MR. BROWN: Yes. 19 HEARING OFFICER: Okay. Go ahead. 20 Q. (MR. BROWN) And then can you tell me, for the 21 record, from where you've drawn the circle to the left 22 and upwards a little, there's white pipe; correct? 23 A. Correct. 24 Q. And is that Sally's pipeline to her place from 25 the point of --	Page 21 1 A. Yeah, that delivers water to her property. 2 Q. Okay. 3 HEARING OFFICER: [Unintelligible.] So we 4 will -- so for the record, Exhibit C has been modified, 5 and we have to get copies of that modified Exhibit 6 [unintelligible]. 7 Q. (BY MR. BROWN) Okay. So that's Sally's point 8 of diversion from the creek; correct? 9 A. Correct. 10 Q. And have you ever had any involvement in that 11 point of diversion? 12 A. Yes, I have. 13 Q. Does that point of diversion look now as it 14 does in this photo? 15 A. Is it in the same location? Yes. 16 Q. Yes. 17 A. Yes. 18 Q. Same diversion? 19 A. Well, we've replaced the structure -- back 20 when this pic- -- this is an old aerial. And at that 21 time, the -- it needed replaced. And we went in and 22 replaced the -- at the exact location but rebuilt that 23 point of diversion. 24 Q. Okay. So that point of diversion's been 25 rebuilt, but it's right in the creek?

Page 22 1 A. Same location. 2 Q. Okay. And have you ever had any issues with 3 Mr. Linderman in terms of using the point of diversion? 4 A. Yes. And in the -- in May of '17, we went 5 down to do some repairs on -- the first part of this was 6 a pipeline, a corrugated pipeline, that was starting to 7 sag. And it'd been braced with railroad ties and 8 things, and it was starting to sag. And we were there 9 to fix it and repair it. And we had an altercation and 10 a disagreement and some words at that time. 11 And then we went back the next day to fix it, 12 and we had more. We were faced again with the same 13 issues. And I -- I didn't back down, and will not back 14 down. And I asked the Lindermans, "Do you want me to 15 call the sheriff? Let's call the police right now." 16 Didn't want to do that. 17 Q. Okay. Now, for how long have you been 18 familiar with the irrigation of the Linderman property? 19 A. The Linderman property. Since -- it'd be the 20 spring of '16, 2016. 21 Q. Okay. And since that time, have you seen more 22 than a half an acre being irrigated up there? 23 A. Yes, consistently. 24 Q. Explain to me the extent of irrigation that 25 you've observed.	Page 23 1 A. Well, he -- he irrigates pretty much the east 2 side of the creek. He doesn't water on the west side of 3 the creek, but that's not much property. The water 4 right doesn't extend there. But there's probably -- he 5 probably irrigates, my guesstimation -- we could do an 6 aerial -- but it's probably -- probably 2 1/2 acres. 7 Q. Are you aware of any water rights that provide 8 water for that 2 1/2 acres? 9 A. No. 10 Q. In 2019, I understand you had concerns about 11 his use of water. What were your concerns as they 12 relate to your own water rights? 13 A. Concerns about? 14 Q. His use of water for irrigation in 15 relationship to your rights. 16 A. In relation to Sally's rights or -- 17 Q. Yes. 18 A. Yes. Well, our concern is it's pulling -- 19 pulling water that could flow downstream to cattle. 20 Because we rent the place out for quite a few head of 21 cattle, and -- probably 35 head of cows and calves -- 22 and the -- it's pulling water from our stock water 23 rights. And I -- I'm frustrated because it's a 24 subsurface right which is riparian in Idaho law, to me, 25 and -- and taking that and feeding that. And then the
Page 24 1 other water could flow to Sally's diversion, too. Now, 2 that is hard to calculate how much would have flowed to 3 Sally's diversion point, but it could, could be taking 4 water from the subsurface. 5 Q. So do I understand correctly, in addition to 6 the water diverted through her point of diversion on 7 Linderman property, she has a right to water the cattle 8 on her property -- 9 A. Yes. 10 Q. -- from the spring? 11 A. Yes, she does. 12 Q. Okay. So his pumping out of the stream 13 depletes the stream flow to Sally's? 14 A. Correct, yeah. 15 Q. And has it gotten -- how low has the water 16 gotten at Sally's? 17 A. Well, the water's gotten to where we weren't 18 -- there wasn't much water going over the headboards at 19 our point of diversion -- it depends -- a lot of it 20 depends on what the neighbor is coming down the stream 21 from above. But there's been times when Sally's water 22 -- and we have our headboards in -- there's not water 23 flowing over the -- over the boards that would feed the 24 cattle down below. And then if Mr. Linderman's pumping 25 water, pumping out of the subsurface, that's robbing	Page 25 1 from the -- water going down the creek -- 2 MR. FOWLER: Objection; speculation. 3 THE WITNESS: -- to the cattle. 4 MR. FOWLER: He has no proof that it's 5 affecting the water level, speculation. 6 MR. BROWN: A matter for cross-examination, 7 not for -- 8 HEARING OFFICER: We don't have -- yeah, 9 noted. We don't have that data, so . . . 10 Q. (BY MR. BROWN) Okay. I want to -- look at 11 Exhibit D. 12 A. "B?" 13 Q. Exhibit -- let's start with Exhibit G. For 14 the record, I'll represent that's what I call the pond 15 right for Mr. Linderman. Are you familiar with the 16 place of use of that right? 17 A. You said "Exhibit D"; correct? 18 Q. "G," as in "George." 19 A. "George." Sally's going to get me hearing 20 aids. 21 "G." Okay. We're there. 22 Q. Okay. Look at the map there. Do you 23 understand what the yellow circle is? 24 A. Yes. That -- that's the Water Resource's mark 25 for an aesthetic permit.

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1 Q. Okay. For a pond; correct? 2 A. Pond. Yes, correct. 3 Q. Have you ever personally seen a pond there? 4 A. No. There's no pond. There might be a little 5 bit of shovel work or little spot dug out to stick a 6 pump in the creek, but there's no pond. 7 Q. Okay. And just so the record's clear, the 8 road -- there's two roads there, 1400 East that runs 9 north and south, and then there's the one that runs at 10 an angle just below the circle; correct? 11 A. Correct. 12 Q. That one runs at an angle, what road's that? 13 A. That's -- that's a little bit of a mystery in 14 the Melon Valley. They've like -- they might call that 15 Melon Valley Road or 4400 Road. 16 Q. Okay. Is that a road you travel? 17 A. Yes. 18 Q. How often do you travel the road? 19 A. At least twice a day. 20 Q. For how many years? 21 A. Five years. 22 Q. Okay. And from that road, can you see where 23 that pond would be? 24 A. Yes. 25 Q. Easily?	1 A. Yes. 2 MR. FOWLER: Objection; relevance, this line 3 of questioning. 4 HEARING OFFICER: Yeah. Where -- where are we 5 going with it, Pat? 6 MR. BROWN: I'll just finish up. 7 Q. (BY MR. BROWN) And in all the time you've 8 traveled it, you've never seen a pond there; correct? 9 A. Correct. 10 Q. But you have seen Mr. Linderman divert water 11 from that area up to his culvert? 12 A. Yes. 13 Q. Okay. I want to switch gears on the 14 irrigation that's occurred on his property in the last 15 couple years. You're familiar with Exhibit A, 16 Mr. Butler's description of the irrigation system on the 17 Linderman property? 18 A. Yes. 19 Q. Okay. So you understand what he means when he 20 says there are Gun carts or sprinklers on a cart that 21 you can wheel around? 22 A. Yes. 23 Q. Have you seen those in operation on the 24 property? 25 A. Yes.
Page 28	Page 29
1 Q. And how many at a time would you see running? 2 A. I've seen up to three running. 3 Q. Okay. And those include the ones that 4 Mr. Butler says pump 16 gallons a minute? 5 A. Right. There's -- the big one's a 17 and 6 then . . . 7 Q. Okay. Well, let's put things in perspective. 8 So you've observed -- since he bought the property, 9 you've observed him running those Guns? 10 A. Can you state that again? 11 Q. You've observed him sprinkling with those 12 Guns? 13 A. Yes, I have. 14 Q. You've also seen him sprinkling with the 15 sprinklers along the fence? 16 A. Yes. 17 Q. And in that time that you observed it, have 18 you been able to tell how -- how do I say this -- on 19 what schedule he changes sets or how much he irrigates 20 at a time? 21 A. Yes. We -- we -- we've monitored. We have a 22 calendar -- it's not a part of the record here -- but we 23 have the days of watering. And we'll even observe the 24 times. We've seen a sprinkler be set and stay in the 25 same location for three days at a time and not be moved.	1 Q. Including the Big Guns? 2 A. Including the Big Gun. 3 Q. Did you bring that to IDWR's attention? 4 A. I did not bring that to their attention. 5 HEARING OFFICER: Yeah. Let me remind you, 6 parties. This is not a compliance conference. This is 7 about the new application. Okay? Keep questions on 8 track, please. 9 Q. (BY MR. BROWN) Okay. And in 2019, you had a 10 meeting out there that Mr. Linderman's already described 11 with Corey Skinner; correct? 12 A. Correct. 13 Q. And was -- did Mr. Skinner advise 14 Mr. Linderman about what rights he had -- had or might 15 not had? 16 A. Correct. Corey Skinner's stated, after we 17 went through a lot of things, and he -- he -- and we 18 were -- Sally was there, myself, Mr. Linderman's 19 counsel, who was a -- one of the May, younger May. And 20 he stated right there that -- 21 MR. FOWLER: Objection; hearsay. 22 THE WITNESS: -- we don't -- you don't have 23 any water right here. 24 MR. FOWLER: Objection; hearsay. 25 MR. BROWN: It's not offered for --

Page 30 1 THE WITNESS: No, it's not hearsay. I heard 2 it. 3 HEARING OFFICER: And hearsay's not always 4 inadmissible in these hearings. So let's -- let's let 5 him finish his answer, please. 6 THE WITNESS: Okay. So -- so Corey stated 7 directly with the witnesses there that, "Mr. Linderman, 8 the only water right you have here is your well house." 9 And it was quite clear at that point. 10 Q. (BY MR. BROWN) Okay. 11 A. And it's a -- it's for a half acre. 12 Q. Okay. Did Mr. Linderman continue to irrigate 13 after that point in time more than a half an acre? 14 A. Yes, he did. 15 HEARING OFFICER: Again, we're not looking at 16 what he did wrong. We're looking at this application. 17 Please keep the questions on the merits of the 18 application. 19 MR. BROWN: I understand conditions of the 20 application are an appropriate topic, and whether 21 they're required is what I'm trying to get at. 22 Q. (BY MR. BROWN) Okay. So now look at 23 Exhibit C. 24 HEARING OFFICER: Say again which one, please. 25 MR. BROWN: "C" as in "Charlie."	Page 31 1 HEARING OFFICER: Got it. 2 Q. (BY MR. BROWN) Okay. I understand you saw 3 that application or a description of it in the paper 4 which is what led to your protest; correct? 5 A. Yes. I saw the -- I think it was -- I believe 6 it was the first printing of the notice in the 7 Times-News. 8 Q. Okay. And you heard Mr. Linderman testify 9 today that the water coming out of his drain tiles into 10 the culvert is groundwater; correct? 11 A. Correct. 12 Q. Do you see on the exhibit where it says "Point 13 of diversion," and it says "Unnamed stream"? 14 A. Correct. 15 Q. Go down to "Point of diversion," you see it 16 says, "Pump in stream"? 17 A. Yes, it does state "Pump in stream" there. 18 Q. So as you sit here today, do you know whether 19 he's contending he can get a permit to pump out of the 20 stream or whether he has to use only the groundwater 21 coming out of the drain tile? 22 A. That -- that is a confusing issue to me 23 because we're talking about groundwater and -- and then 24 we're talking about a pump in the stream. And then in 25 some places, I see "surface water" printed. And from
Page 32 1 what I know about water law, it's -- it's not making 2 sense. 3 Q. Okay. And if his permit were to be granted 4 and stated that he could only use groundwater and only 5 as it came out of the drain tile -- 6 A. That's what we heard today that -- 7 Q. -- if that is heard, and if it was conditioned 8 with the meters and valves, as Mr. Butler testified to, 9 would you be okay with that? 10 A. If we could -- if we could -- yeah, if we 11 could get the proper measuring device in there and have 12 it monitored, we could live with that. 13 Q. Okay. And I understand that you wouldn't be 14 okay with it if it's, as he says he's applied for, 15 pumping out of the stream? 16 A. Correct. 17 Q. Because that affects how much water goes to 18 you? 19 A. Right, correct. 20 MR. BROWN: I don't have any more questions at 21 this point. 22 CROSS-EXAMINATION 23 QUESTIONS BY MR. FOWLER: 24 Q. I want to go back to the line of questioning 25 about Sally's point of diversion and its location in	Page 33 1 respect to Mr. Linderman's. Three-quarter horsepower 2 pump, what are we calling that? 3 HEARING OFFICER: The red pump. 4 Q. (BY MR. FOWLER) The red pump is the 2 5 horsepower? The red pump is the three-quarter 6 horsepower on the other side of the creek? 7 MR. BROWN: The Ace water pump is in the 8 culvert, the red Lion is in the creek. 9 MR. FOWLER: Okay. So the red Lion. 10 Q. (BY MR. FOWLER) So the red Lion pump, is that 11 location upstream or downstream from Sally's diversion? 12 A. Downstream. 13 Q. Okay. So if Mr. Linderman were to pump water 14 from the stream, would it impact Sally's use of her 15 water? 16 A. Yes, because it would affect her stock water 17 right. When you put 30 or 40 head of pairs out there, 18 they need water to drink. 19 Q. What is this stock water right that you're 20 referring to? Do you have a reference number -- 21 A. Well, I think every- -- we have a stock water 22 right. Every -- there's an in-stream water right for 23 stock in the state of Idaho. 24 Q. What's the stock water right number that 25 you're referring to?

Page 34	Page 35
1 A. Well, we'd have to look up Sally's permit. 2 And even -- even if it's not on there, there's an 3 assumed stock water right. Even Bob can let cattle 4 drink out of the creek, in Idaho law, to my 5 understanding, even if he doesn't have a stock water 6 right. Unless I'm not correct. 7 Q. So your concern is that if -- well, I don't -- 8 A. There's -- 9 Q. -- want to go any further. 10 But to be clear on the record, Mr. Linderman's 11 location of the pump, the red pump, is downstream of 12 Sally's diversion point; correct? 13 A. That's correct. 14 Q. Okay. All right. 15 A. And there's not -- 16 Q. Thank you. 17 A. -- and I don't see a point of diversion at 18 that point, the location either. 19 Q. I want to go back to this May 2017, two days, 20 consecutive days. Do you remember the dates of those 21 where you were doing repairs on the dam? 22 A. I've got it written in my file, but it's -- it 23 was approximately May 18th or somewhere in there, maybe 24 May 20th, maybe 17th, somewhere in that bone. 25 Q. Okay. We'll say maybe, that's fine.	1 So if you went onto -- was this 2 Mr. Linderman's property that you went onto to make the 3 repairs? 4 A. Yes. 5 Q. Okay. Did you give him prior notice that you 6 would be entering onto his property? 7 A. No, we don't, because we -- 8 Q. It's yes or no, that's fine. 9 What time of day were you entering onto his 10 property? 11 A. It was about 6:00-ish, probably. 12 Q. 6 a.m. or p.m.? 13 A. P.m. 14 Q. Okay. And you say you were approached by 15 Mr. Linderman on this day? 16 A. Correct. 17 Q. What was the nature of that conversation? 18 A. Well, the nature, Bob approached from the 19 creek side and started chewing on my wife and saying 20 things. And I came up out of the creek and said, "Bob," 21 you know, "what are you -- what are you up to?" 22 And he commanded us to leave the property and 23 that we were trespassing. 24 And I said, "We're not. We have a -- we have 25 a right under Idaho law to go to our point of diversion
Page 36	Page 37
1 and access that point," which I believe is correct. And 2 -- and it persisted. 3 Bob gave an excuse that, "Well, I'm not 4 feeling good," you know, "I'm not feeling good right 5 now," something like that. 6 And I said, you know, "If you got a problem, 7 let's call Water Resources or the -- let's call the 8 sheriff right now." 9 Q. Was that before or after you grabbed the 10 shovel? 11 A. Before or after what? 12 Q. You grabbed the shovel. 13 MR. BROWN: The questions -- 14 THE WITNESS: Grabbed a shovel? 15 Q. (BY MR. FOWLER) Right. You grabbed a 16 shovel -- 17 MR. BROWN: I'm objecting. It's 18 argumentative. 19 THE WITNESS: What you talking about? 20 HEARING OFFICER: Let's -- let's back up, 21 please, gentlemen. This is isn't a civil -- this isn't 22 a civil harassment case. Let's talk about the 23 application, please. 24 MR. FOWLER: Okay. 25 Q. (BY MR. FOWLER) You don't have any proof that	1 Mr. Linderman pumping out of the stream affected your 2 water rights, do you? 3 A. Do I not have any proof that it affected water 4 rights. Okay. By pumping out of the stream, I believe 5 that it does pull water of the stream that would flow 6 down the creek for cattle to stock water rights. 7 Q. You don't have any evidence to show that 8 Mr. Linderman pumping out of his vertical culvert has 9 reduced your -- your water rights? 10 A. Do you mean from an expert-type evidence 11 situation? 12 Q. Yes. 13 A. It surely would, the -- whether it's either 14 going to -- water that he is pulling from there through 15 his underground subsurface system is -- and the tile 16 system, it's either going to flow and damage stock water 17 rights down the creek and maybe possibly some -- it 18 would flow and get to Sally's -- above Sally's point of 19 diversion which would help her irrigation rights. 20 Q. Okay. But you don't have any proof of that, 21 though? 22 A. No. 23 Q. Thank you. 24 A. I'd have to pull in a geologist water expert. 25 Q. How many water rights do you have,

Page 38 1 Mr. Hamilton, in your name? 2 A. Personally? 3 Q. Yes. 4 A. Oh, I've got some Twin Falls Canal Company 5 water rights. And then Sally and I have a water right 6 there that's under this Mendini Tunnel water right 7 that's to the north of Bob's property. 8 Q. Do you have a Water Right No. 47-17430? 9 A. That -- 17430. Wait a minute. You know, I'd 10 have to look at my stuff. 11 Q. Okay. 12 A. But if you want me to look at it, I can sure 13 tell you what it is. 14 Q. I will. 15 THE WITNESS: You don't need to look. 16 I want to see it, where we're looking at. 17 Q. (BY MR. FOWLER) Sure. Just going to give 18 this to you to refresh your recollection. 19 Does that look like a water right that -- 20 A. Yup. 21 Q. Okay. Great. 22 A. That's -- that's correct. That's to the 23 property that Sally and I jointly own that's -- we refer 24 to as the Ponderosa. 25 Q. Just for the record, this is what I'm showing.	Page 39 1 I'm not admitting this into evidence. I'm just showing 2 -- you can hold on to that. 3 A. I got two of them. Anybody need one? 4 Q. So -- well, one's irrigation, one's a stock 5 water right. 6 Okay. So it's your testimony that -- that 7 that point of diversion for your water right is at the 8 same point of diversion as Mr. Linderman's water right 9 listed as No. 47-17431, which is Exhibit F? 10 A. Yeah, 17431, yeah, it's the same -- same point 11 of diversion. 12 Q. Okay. And I believe it's also your testimony 13 that there wasn't a way for the water from that point of 14 diversion to reach Mr. Linderman's place of use boundary 15 as is shown in the water right in Exhibit F? 16 A. Well, no, in its present format, there's not a 17 way to turn the water loose there and get it to his 18 property, unless he spends a fair amount of money to get 19 it there. 20 Q. Okay. So if we look at your water right of 21 17430, where is your water right in relation to 22 Mr. Linderman's Water Right 17431? 23 A. Ours is -- well, it's kind of due north of his 24 water right. 25 Q. Wouldn't it be -- wouldn't it be true that
Page 40 1 they're actually -- they're bordering each other? So 2 it's due north of that; it's adjacent to Mr. Linderman's 3 place of use? 4 A. Correct. Yeah, this -- it goes -- there's a 5 fence line there. 6 Q. All right. But -- but you are able to get 7 water from your -- that point of diversion to your place 8 of use; however, you're saying that Mr. Linderman, 9 there's not a system set up so he can get it to his when 10 he's due south of you? 11 MR. BROWN: I'm going to object. It's a 12 compound question. 13 THE WITNESS: I need that -- rephrase that. I 14 can get water to our property and this water right. I 15 have a way to get it from that point of diversion there. 16 Q. (BY MR. FOWLER) Okay. 17 A. And I don't think there's a system in place 18 presently for Mr. Linderman to do that. And, 19 furthermore, he hasn't done it, you know, in my 20 experience, the spring of '16. And I -- 21 Q. His place of use is directly south of yours? 22 A. Correct. 23 Q. Okay. And at the same point of diversion? 24 A. Same point of diversion. But it hasn't been 25 utilized.	Page 41 1 MR. FOWLER: Move to strike that last comment 2 from the record. 3 HEARING OFFICER: Pardon me? 4 MR. FOWLER: I asked the witness a yes-or-no 5 question. I just wanted that last comment stricken from 6 the record -- 7 HEARING OFFICER: Okay. 8 MR. FOWLER: -- "hadn't been utilized." That 9 was -- 10 HEARING OFFICER: Not asked. 11 MR. FOWLER: -- not asked. 12 That's all the questions that I have. 13 MR. BROWN: Let's talk about your water right 14 174 -- 15 HEARING OFFICER: Well, if you can hang on 16 just a minute, Mr. Brown. I have a couple questions 17 that I'm going to ask this witness. 18 MR. BROWN: Okay. 19 HEARING OFFICER: Then I'll turn it back to 20 you. 21 MR. BROWN: I apologize. 22 HEARING OFFICER: No, that's fine. I'm just 23 trying to make a note about what he just said before I 24 move forward here. Okay. 25 I'm confused. And so I am going to hand to

Page 42 1 the witness this map; it's a map that I made. And I 2 will submit this into the record as an IDWR -- as an 3 IDWR exhibit. 4 Where is Sally's property? I'm not really 5 sure which property is Sally's property -- 6 THE WITNESS: Well, that -- 7 HEARING OFFICER: -- for sure. 8 THE WITNESS: What's going on here is this -- 9 this map -- we've went through -- Sally's previous 10 husband's deceased, and he was there. Her name was 11 Baugh and with John -- John Ritchie. 12 HEARING OFFICER: Okay. 13 THE WITNESS: And we went through -- 14 HEARING OFFICER: Now I pull the dots -- 15 THE WITNESS: And so -- and then, also, since 16 she was little, she's been called "Sally." Well, this 17 was "Sarah." So we've got all that changed. It's -- 18 HEARING OFFICER: Okay. So basically -- 19 THE WITNESS: It's now it's -- this -- if you 20 check the vesting on this property now, it's Sally 21 Hamilton. 22 HEARING OFFICER: And the water right is in 23 her name, as well. But I was just confused because the 24 property name was still different. And so I was just 25 curious, number one, what is Sally's property.	Page 43 1 THE WITNESS: Okay. 2 HEARING OFFICER: Thank you for clarifying 3 that. 4 This is the one -- when you get this -- I had 5 drawn it in pink because it was not a Mendini Tunnel 6 right, so it's drawn in pink. There's a point of 7 diversion right there. 8 THE WITNESS: You know, that -- the Mendini 9 Tunnel right, it talks about that, but then it'll state 10 Mud Creek in one location, and it goes -- it floats back 11 and forth. 12 HEARING OFFICER: Yeah, it does. And I'm -- 13 and so this is what he's referring to as Sally's 14 property. 15 So what you're saying is Sally's diversion is 16 very near Mr. Linderman's pump in the creek? That's 17 what I'm hearing from you? Or it's just -- 18 THE WITNESS: Right. It's -- they're 19 relatively close, yes. 20 HEARING OFFICER: Okay. Okay. So -- so 21 Denise will give this a number, and we will admit this 22 into the record as a Department exhibit. And I will 23 make sure that you guys all get copies. 24 MR. BROWN: Your Honor, for the record, on 25 that exhibit, you've outlined a place of use in pink, I
Page 44 1 think. 2 HEARING OFFICER: Yes. 3 MR. BROWN: And that is Sally Hamilton's 4 property, even though the name on it says, "Sarah 5 Baugh." 6 HEARING OFFICER: Right. And there is, for 7 the record, a water right there. I don't have the 8 number with me, but I -- that's in the Department 9 records. I remember seeing it. So I was just curious 10 mostly to bring the conversation into reference which 11 property we were talking about here. That wasn't really 12 clear to me. So -- so with this, this will be Exhibit 13 200, for the record, and we'll get that to you. 14 (Exhibit 200 admitted.) 15 THE WITNESS: Could I add one little thing? 16 HEARING OFFICER: Sure. 17 THE WITNESS: There is -- between Sally's 18 point of diversion and where you drew hers, there's 19 another water right in between there, and it's with 20 people by the name of Keaton. And it's for a .02. So 21 -- and her point of diversion, they've got to serve her 22 water right under the IDWR, plus the Keaton water -- 23 HEARING OFFICER: So Keaton comes out of your 24 diversion, as well? 25 THE WITNESS: And it's a .02 right.	Page 45 1 HEARING OFFICER: Also Keaton, okay. Hang on. 2 I had a number of questions, some of which are moot, but 3 some I want to still ask. 4 So you mentioned that you have Twin Falls 5 Canal Company water. Is that available on all your 6 properties or just certain properties do you have Twin 7 Falls Canal shares? 8 THE WITNESS: The canal -- the canal water 9 shares, it doesn't amount to a lot. There's probably 10 10 or 12 shares that are in my name. But they're up on 11 top, and they're -- they're under the control of the 12 canal company, not -- 13 HEARING OFFICER: I was just curious where 14 they were used. 15 THE WITNESS: Yeah, they're not down in this 16 zone. 17 HEARING OFFICER: Where -- how are they 18 delivered? I'm not really familiar with Twin Falls 19 delivery system down there. So are they delivered in a 20 Twin Falls canal -- are they delivered in a canal that's 21 operated and maintained by the canal company -- 22 THE WITNESS: Yes -- 23 HEARING OFFICER: -- separate from -- 24 THE WITNESS: -- separate from this property, 25 yes. Totally separate.

Page 46 1 HEARING OFFICER: That's what I was getting 2 at, just right there. So they are totally -- even if 3 they were used on the same property, they're delivered 4 separately. Okay. That was the what I was trying to 5 get at. 6 And even though I realize that the application 7 is -- well, no, I'm not going to ask that question. 8 Never mind. 9 I just wanted to confirm, again, for the 10 record, that -- because we've spent a lot of time 11 talking about the rights from the Mendini Tunnel, which, 12 you know, may or may not impact this new application or 13 anything. But, I guess -- but I heard you say -- and 14 I'm just kind of curious to confirm -- is that you're 15 not aware of any distinct delivery system that gets that 16 to Mr. Linderman's property; yet, you do have a separate 17 system from that Mendini system that can get water up 18 here to your property? 19 THE WITNESS: Correct. 20 HEARING OFFICER: Okay. I'm leaving it at 21 that because it's not really the subject of this. I was 22 just curious how it all fit together because of those 23 sources are -- okay. 24 I think, Mr. Brown, that's all I have. Please 25 go ahead with your --	Page 47 1 MR. BROWN: Let me just clear a couple things 2 up. 3 REDIRECT EXAMINATION 4 QUESTIONS BY MR. BROWN: 5 Q. First of all, you were asked about your right 6 to the north of Linderman's that's 47-17430; correct? 7 A. Correct. 8 Q. Okay. And you said that the point of 9 diversion for it is the same place where Mr. Linderman's 10 used to be but hasn't been used; correct? 11 A. Correct. 12 Q. Explain to me how the water gets to your 13 property from the point of diversion you have under 14 171430 -- 15 A. Okay. 16 Q. -- 17430, excuse me. 17 A. It comes from -- from the yellow mark there, 18 and it -- well, it head northwesterly a bit around the 19 house, and goes around the house and comes back behind 20 the Kelsey property, and we put another measuring device 21 there. Then it goes back to the south and follows the 22 fence line down to the county road, inside a PVC pipe, 23 and crosses the road into a standpipe on our property. 24 Q. Okay. So -- 25 MR. FOWLER: Can we have the witness just mark
Page 48 1 out with blue ink pen and just have this submitted as an 2 exhibit? 3 Q. (BY MR. BROWN) Do you have a blue pen, sir? 4 A. Yes. To draw -- 5 Q. Draw in the pipeline you just described. Or, 6 actually, can we use the red marker from -- that might 7 show up better. 8 HEARING OFFICER: This one's even better. 9 THE WITNESS: Is it erasable? No, I'm just 10 kidding. 11 HEARING OFFICER: It's not. 12 What exhibit are you modifying? 13 MR. FOWLER: It's a new exhibit. 14 THE WITNESS: This is the one that he -- 15 MR. BROWN: Mark it as an exhibit or not? You 16 didn't mark it? 17 MR. FOWLER: I hadn't marked it as an exhibit, 18 but if we're going to testify to it, then I think we 19 should have it admitted. 20 HEARING OFFICER: Yeah, well, maybe we ought 21 to. 22 Go ahead and draw -- go ahead and finish what 23 you're going to do, and then we'll talk about admitting 24 it. 25 MR. BROWN: Okay. So on Exhibit --	Page 49 1 HEARING OFFICER: I think let's call this one 2 J because I don't like to use I's. So let's make this 3 Exhibit J. 4 Q. (BY MR. BROWN) So you've drawn the 5 underground pipe line in red on Exhibit J that delivers 6 your water from the point of diversion? 7 A. Yeah, except it's -- it's all above -- it's 8 pretty well all aboveground, but underground it goes 9 when it crosses the road here. 10 HEARING OFFICER: All right. 11 Thank you. So Exhibit J has been submitted. 12 (Exhibit J submitted.) 13 HEARING OFFICER: Do you have a problem with 14 that? 15 MR. FOWLER: I don't. 16 HEARING OFFICER: Okay. So Exhibit J has been 17 admitted for the record. 18 (Exhibit J admitted.) 19 Q. (BY MR. BROWN) Mr. Fowler asked you if you'd 20 given prior notice prior to trying to get water -- 21 Sally's point of diversion on the Linderman property. I 22 understood that you contend that you have a statutory 23 right to go and turn your own headgate on the property; 24 correct? 25 A. Correct.

Page 50 1 Q. It doesn't require any prior notice 2 or permission? 3 A. No. There's no -- under Idaho law, to my 4 understanding, there's -- we have that -- that water 5 right, and her permit goes back to the 1916s and that 6 point of diversion. And we do not have to seek 7 permission to enter the property. 8 MR. BROWN: Okay. I don't have any more 9 questions. Thank you. 10 HEARING OFFICER: Okay. Mr. Brown, are we 11 completed with this witness? 12 MR. BROWN: Yes. 13 HEARING OFFICER: All right. Thank you, 14 Mr. Hamilton. You may step down. 15 Do you have other witnesses, Mr. Brown? 16 MR. BROWN: I'd like to call Sally Hamilton. 17 THE WITNESS: You want -- you want that back? 18 MR. FOWLER: Oh, sure. 19 HEARING OFFICER: We'll make sure to make 20 copies. 21 Good afternoon. 22 Do you solemnly affirm that the testimony you 23 are about to present at this hearing is the truth, the 24 whole truth, and nothing but the truth? 25 THE WITNESS: I do.	Page 51 1 HEARING OFFICER: Thank you very much. Have a 2 seat. 3 DIRECT EXAMINATION 4 QUESTIONS BY MR. BROWN: 5 Q. Could you state your name for the record, 6 please. 7 A. Sally K. Hamilton. 8 Q. And you're one of the protestants in this 9 case? 10 A. I am. 11 Q. And you have been here this morning and 12 through this afternoon for the entire proceeding, and 13 you heard the testimony? 14 A. Yes. 15 Q. Okay. You just heard Mike Hamilton testify 16 about a water right on your property; correct? 17 A. Yes. 18 Q. Your property that's downstream to the west of 19 the Linderman property; correct? 20 A. Mm-hmm. 21 Q. Okay. Now, I understand that's the lot -- 22 that property gets water under your water right at a 23 point of diversion on the Linderman property; correct? 24 A. It does. 25 Q. Can you tell me, is that 47-17412 your water
Page 52 1 right? 2 A. Yes, it is. 3 Q. And does that right also have stock water 4 rights? 5 A. It does. 6 Q. And does that also allow you to divert stock 7 water out of the stream on your property as opposed to 8 up at Linderman's through a pipeline? 9 A. Right. 10 Q. Have you ever had any concerns about whether 11 you were getting enough stock water for cows on your 12 property? 13 A. At times that water fluctuates, and sometimes, 14 like Mike said, it's not even coming over the boards. 15 And so down -- that water has to travel quite a ways to 16 get to where our stock is. And by the time it gets 17 there, sometimes there's just a few mud holes. So it 18 just varies -- 19 Q. Over this -- 20 A. -- so I have been concerned. 21 Q. -- past couple years, have you observed 22 whether Mr. Linderman has pumped out of the creek or 23 not? 24 A. Yes. 25 Q. And you have observed him pumping out of the	Page 53 1 creek? 2 A. Yeah. 3 Q. And is it your testimony that you're aware 4 that his pumping out of the creek affects the water that 5 shows up down at your property for the cattle to drink? 6 A. I believe it does. I mean, I don't know why 7 else the water would get low. 8 Q. Prior to Mr. Linderman living on that 9 property, you didn't have problems or concerns that your 10 stock water was going to dry up, did you? 11 A. No. 12 MR. FOWLER: Objection; leading the witness. 13 Q. (BY MR. BROWN) And you didn't have anybody 14 pumping water out of the creek on the Linderman property 15 before, did you? 16 A. No. 17 MR. FOWLER: Objection; leading the witness. 18 HEARING OFFICER: Yeah. Okay. Noted. Let's 19 move it on. 20 Q. (BY MR. BROWN) Correct? 21 A. Correct. 22 Q. Okay. Now, so when you heard Mr. Hamilton 23 testify before that your right, the 7 -- 17412 right is 24 not affected at the point of diversion on his property, 25 do you agree with that?

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1 A. Say that again. 2 Q. Can you describe to me how you understand your 3 water right being affected by his pumping out of the 4 creek? 5 A. Just that it makes the creek lower, so . . . 6 Q. Okay. How frequently do you go by the 7 Linderman property? 8 A. Every day a few times a day. 9 Q. Along what route? 10 A. I go -- I go along 1400, and I also go down 11 4400. 12 Q. So on both of the two roads -- 13 A. Right. 14 Q. -- shown to border his property? 15 A. Mm-hmm, yes. 16 Q. And you've gone down that path a couple times 17 a day for how many years? 18 A. Well, I -- since 1994 when I moved there. 19 Q. Okay. And in that time, since -- you're 20 familiar with how the property was used at Linderman's 21 before his purchase in 2014? 22 A. Yes. 23 Q. Let's talk about since he purchased it, 2014 24 up to the present. Okay? 25 A. Okay.	1 Q. Have you ever seen any diversion of water 2 coming from up on the hill, where we just talked about 3 his point of diversion for the one right is, down to 4 that property? 5 A. No. 6 Q. You heard Mike testify about the path from the 7 point of diversion where Mr. Linderman said he conveyed 8 the water down to his property to use it. 9 Is it true that where he drew that route, 10 where it crosses onto his property down to the red pump 11 where he's diverting out of the creek, is the creek? In 12 other words, there's no ditch there? 13 A. No, there's no ditch. 14 MR. FOWLER: Objection; leading the witness. 15 THE WITNESS: There's just the culvert pipe -- 16 Q. (BY MR. BROWN) Go ahead. 17 A. -- that brings my water down from around 18 Rose's, and it comes underground into the streambed. 19 Q. Okay. So the creek -- what comes across the 20 road onto Linderman's property down to your point of 21 diversion on his property is the creek? 22 A. Right. 23 Q. Okay. So any water coming across the road 24 there is the creek? 25 A. Right.
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1 Q. Okay. You heard Mr. Butler testify about the 2 way to assure that extra water above what may be 3 permitted is not taken is to put in a meter and a valve; 4 correct? 5 A. Yes. 6 Q. If the permit is granted for a groundwater 7 right only, not for a surface right, would you agree 8 that it could be granted, provided it required a meter 9 and a valve? 10 A. Yes. 11 Q. And if it didn't have a meter and valve on it, 12 would that be a concern to you? 13 A. It would be a concern. 14 Q. And why is that? 15 A. Just because I've seen his operation of 16 watering, and it's extreme to what he supposedly should 17 be taking. 18 Q. Have you seen how much he is irrigating on his 19 property in the past couple of years? 20 A. Yes. 21 Q. How much have you seen him irrigating in terms 22 of acreage? 23 A. I would like say, like Mike, 2 1/2 acres, 24 probably. 25 Q. Okay. Have you observed how -- what his	1 watering practices are, how frequently he waters and -- 2 A. It's pretty much every day. If he's not 3 watering the pasture, he's watering his lawn, so . . . 4 Q. So watering his pasture outside the half acre 5 he's marked under this application? 6 A. Yes. 7 Q. And in terms of sets, how -- what have you 8 observed about his -- let's back up a bit. 9 You know how to irrigate; right? 10 A. Yes. 11 Q. You've irrigated, yourself, for -- 12 A. Long time. 13 Q. -- some time? 14 A. Yes. 15 Q. Can you tell us how long? 16 A. Since 1994. 17 Q. Okay. So you're aware of how much water it 18 takes in that area to irrigate? 19 A. Yes. 20 Q. And, specifically, how much it takes to 21 irrigate pasture? 22 A. Mm-hmm, yes. 23 Q. Okay. And, in general, how often do you need 24 to irrigate to keep pasture healthy in that area? 25 A. It depends on how big and how long the water

Page 58 1 has to go. But, you know, I water mine every day, the 2 bigger pastures. But a small pasture like his, where it 3 doesn't have to go very far, it's -- it would -- and .2 4 -- 02 CFS or whatever it is, that wouldn't be much. 5 Q. Okay. Have you observed how -- for how long a 6 duration he sets the water on any particular piece of 7 property? 8 A. Yes. 9 Q. Can describe to me what you've observed in 10 that? 11 A. I -- as far as I can see, because I leave for 12 work at 2:30 in the morning, in between 2:30 and 3:30, 13 and he's watering 24 hours a day. 14 Q. In the same place? 15 A. In the same place for three days sometimes. 16 Q. Okay. And that would be with his Big Guns 17 or -- 18 A. Yes. 19 Q. -- or what you call the Gun carts? 20 A. Yes. 21 Q. How many Gun carts going at a time? 22 A. I've seen as many as three. 23 MR. BROWN: Okay. I don't have any more 24 questions. Thank you. 25 THE WITNESS: You bet.	Page 59 1 CROSS-EXAMINATION 2 QUESTIONS BY MR. FOWLER: 3 Q. Ms. Hamilton, how many people are diverting 4 water upstream from the point of diversion that you have 5 which is on Mr. Linderman's residence? 6 A. There is the Keatons and then there's me. 7 Q. So two people? 8 A. Mm-hmm. And below me, I don't know. 9 Q. Right. But only two people are diverting 10 upstream with you? 11 How big is that creek? 12 A. I don't know. Let's see. It's probably -- it 13 can -- it's wide in some spots and narrow in some spots, 14 but it's a pretty good clip. 15 Q. Where's the starting point of that creek? 16 Where's the source of that coming from? 17 A. It comes -- as far as I know, it goes around 18 Rose's property, up behind and further up. There's 19 another property it goes through, too, behind Rose's. 20 Q. Okay. And does that property divert any of 21 the water from the creek, as well? 22 A. I don't know. 23 Q. So it's possible there could be more than two 24 people diverting water up creek? 25 A. There could be.
Page 60 1 Q. Okay. So you don't know how many people are 2 diverting water from up creek? 3 You testified that -- I just want to be clear 4 on this. So did you testify that you saw Mr. Hamilton 5 -- Mr. Linderman operating Big Guns continuously for a 6 24-hour period? 7 A. Well, just because we would see him late at 8 night, and then I leave for work in the wee hours of the 9 morning, and they're still going. When I come home from 10 work, they're still in the same place, and they're still 11 going. 12 Q. And you saw this for three days at one time? 13 A. A one time, yeah -- more than one time. 14 Q. How much water do you -- was there standing 15 water there? It seems like that would turn into a 16 swamp. Was there a lot of water after that? 17 A. Well, probably. I didn't go up under the 18 sprinkler. But he lives on a hillside, too, so it 19 probably disperses. 20 Q. It was your testimony that his use was, I 21 quote, extreme as to how much he should be taking? 22 A. Right. 23 Q. What is your opinion as to how much he should 24 be taking? 25 A. Well, if it's the .02 CFS, I mean, if you	Page 61 1 measure that in a pipe coming down the road, it's -- 2 it's very little. I mean, you couldn't get any pressure 3 from that, if you were going to -- very little. 4 Q. You say you couldn't get any pressure from 5 that? 6 A. Not unless you put a -- maybe made a great big 7 dam and put a pump in it and maybe you could push it up 8 and save it for a week and push it up. But that's not 9 very much water. 10 Q. So it's your opinion that .02 CFS is -- is not 11 a sufficient amount or not very much to irrigate? Is 12 that what you're saying? 13 A. The way he irrigates, yes. 14 Q. What do you mean "the way he irrigates"? 15 A. He couldn't run three big sprinklers, plus all 16 those little sprinklers, and fill up a big pump that he 17 runs it with. There's no way. 18 Q. Does he run the big sprinklers at the same 19 time as he runs the little sprinklers? 20 A. Sometimes. Sometimes he just runs the big 21 ones. 22 Q. You said you've been at your residence since 23 1994? 24 A. Yes. 25 Q. Prior to Mr. Linderman purchasing his

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1 property, approximately how many incidents of depleted 2 water would you have had in that amount of time? 3 A. Well, there was a couple years in there that 4 we had real low water years, and my water was 5 substantially smaller. 6 Q. Prior to Mr. Linderman purchasing the 7 property? 8 A. Mm-hmm. But then it's been good for probably 9 six, seven, eight years. 10 Q. Have you had any incidents of the water being 11 depleted after Mr. Linderman moved in? 12 A. I felt like the stock water down below at the 13 bottom of my other property -- that's below the property 14 we're talking about -- I felt like it was diminished 15 down there. 16 Q. And that's only -- is that only since Bob -- 17 since Mr. Linderman moved into his property? 18 Are you aware that -- 19 MR. BROWN: Excuse me. You need to say 20 "yes" -- 21 THE WITNESS: Yes. I'm sorry. 22 MR. BROWN: -- instead of just shake your 23 head, please. 24 HEARING OFFICER: Thank you, Mr. Brown. 25 Q. (BY MR. FOWLER) Are you aware that the prior	1 owners were pumping water out of the creek? 2 A. I was aware they -- they didn't water like he 3 did. I would see one of those Big Gun sprinklers once 4 every two to three weeks for probably six hours, and 5 then they were done. 6 Q. So you say that you've seen Mr. Linderman 7 watering at least at one time for three consecutive 8 days. Has there ever been a time where he did not water 9 for a week or longer during the -- you know, March 10 through November period? 11 A. There -- let's see. A whole week, like seven 12 days or five days? Seven? I don't remember that. 13 Q. Okay. What about five days? 14 A. It could have been. There was only once or 15 twice. I think they probably went on vacation or 16 something. 17 MR. FOWLER: Okay. Nothing further. Thank 18 you. 19 HEARING OFFICER: We may not be done with you 20 yet. 21 THE WITNESS: Okay. 22 HEARING OFFICER: I think I'm going to have 23 you look at the Department's Exhibit 200. Again, I 24 apologize for not providing copies for everybody. But 25 below what we're going to call Sally's property, which
Page 64	Page 65
1 happens to be marked in pink -- 2 THE WITNESS: Okay. 3 HEARING OFFICER: -- you have another really 4 small water right that's up in -- up in red up in here. 5 THE WITNESS: Yeah, I think it's -- 6 HEARING OFFICER: Yeah. And then Mr. Teague 7 has a water right here. And both of those rights come 8 from the Mendini Tunnel? 9 THE WITNESS: Right. 10 HEARING OFFICER: How is water delivered to 11 those properties? 12 THE WITNESS: Like Mr. Linderman said, in his 13 property, it comes down -- Teague has a pipe that comes 14 down through Ron Rose's, east of Linderman. It goes to 15 Linderman's -- there's a little concrete pipe -- 16 standpipe in there, but it's all concealed. You can't 17 see down in it. Then it goes from his standpipe, I 18 believe it goes under the road down to Teague, and then 19 Teague delivers it to me back across the road. 20 HEARING OFFICER: So this is a third distinct 21 system that's been described -- 22 THE WITNESS: Yes. 23 HEARING OFFICER: -- from the Mendini Tunnel? 24 THE WITNESS: Right. 25 HEARING OFFICER: Okay. Thank you.	1 Do you flood or sprinkle irrigate on your 2 pastures? 3 THE WITNESS: I flood and sprinkle. 4 HEARING OFFICER: Okay. 5 THE WITNESS: Whatever works. 6 HEARING OFFICER: Yeah, I get that part. 7 Just a minute, Mr. Brown. Hang on here just a 8 second, Pat, and I'll turn it over to you. 9 You said that came down through Rose is in a 10 pipe, a buried pipe underneath the road? 11 THE WITNESS: Yes, it's buried. 12 HEARING OFFICER: I don't need you to draw it. 13 I was just looking for a description, in a pipe. 14 And it crosses in a different place than the 15 creek crosses? 16 THE WITNESS: I believe so because -- 17 HEARING OFFICER: To the best of your 18 knowledge. 19 THE WITNESS: -- it's just a corrugated pipe 20 that the creek crosses. 21 HEARING OFFICER: Okay. This crossing, in 22 your -- to the best of your knowledge, is a different 23 place? 24 THE WITNESS: Right. 25 HEARING OFFICER: Okay. And then south of the

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1 road, it travels up to Teague and then back, delivered 2 to you? 3 THE WITNESS: Right. 4 HEARING OFFICER: Is that also in a pipe? 5 South of the road, okay. 6 THE WITNESS: Yes. 7 HEARING OFFICER: Okay. Perfect. Okay. 8 Thank you. I think I have it now. 9 THE WITNESS: Okay. 10 HEARING OFFICER: That's all I have. 11 Mr. Brown, if you've got any -- 12 MR. BROWN: I've got nothing else. Thank you. 13 HEARING OFFICER: You don't have any redirect? 14 Then we are completed with this witness. She 15 has been dismissed. 16 Well, I believe this concludes the direct 17 testimony, unless there's anything else that needs to be 18 covered that anyone knows of. Or do we need to do 19 closing? 20 MR. FOWLER: Just whatever you -- 21 HEARING OFFICER: Okay. Mr. Brown, do you 22 want to make any closing remarks? 23 MR. BROWN: Your Honor, at this point in time 24 we'd like to ask that we be able to brief it so that we 25 can get the hearing transcripts so we can highlight the	1 testimony for you. 2 HEARING OFFICER: Okay. I don't have a 3 problem with post-hearing briefs. I mean, if you want 4 to do it, you know, I'm not going to deny you that. 5 Mr. Fowler, do you have any closing remarks? 6 MR. FOWLER: I do, yeah, sure. Okay. If it's 7 okay, let's go with the same. 8 HEARING OFFICER: Okay. Are you willing -- 9 and also include in that if you're requesting 10 post-hearing brief. 11 MR. FOWLER: Well, certainly, if the party is 12 doing post-hearing briefing, then I will -- I will also 13 do post-hearing briefing. 14 HEARING OFFICER: Okay. 15 MR. BROWN: If you'd forgive me if I say so, 16 but, typically, you do one or the other, but not both. 17 HEARING OFFICER: But not both. Okay. Well, 18 what would we like to do? I guess -- I guess we will -- 19 if you want the brief, then -- 20 MR. BROWN: We would prefer to brief it so 21 that we get the transcript so we can cite the testimony 22 to you. 23 HEARING OFFICER: Okay. Do you have -- 24 MR. FOWLER: What was it -- 25 HEARING OFFICER: What are your objections to
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1 that? Let's hear your comments. 2 MR. FOWLER: I don't have any objection to 3 briefing it. I think if we are going to do briefing, we 4 can do briefing. If we do oral arguments, we do oral 5 arguments. But I don't think we do briefing on one side 6 and oral on the other side. 7 HEARING OFFICER: And I'm learning -- 8 MR. FOWLER: I prefer oral argument. 9 HEARING OFFICER: So you prefer the oral, but 10 he -- 11 MR. FOWLER: That's fine. I'll defer to -- 12 I do accommodate. 13 HEARING OFFICER: Yeah. And for your 14 information, yeah, we don't make a transcript, but the 15 tape is public information. 16 MR. BROWN: Yeah, we'll have to request it. 17 HEARING OFFICER: Yeah, okay. Well, then, he 18 says [unintelligible]. Okay. 19 So -- so the -- so just, you know, for the 20 record, I do take official notice of the Department's 21 whole file for the application for permit -- which I -- 22 let me look up the numbers so I don't get it wrong -- 23 47-17664. So that file is automatically included in the 24 record. 25 We do have the additional exhibits which were	1 included in the record. We've got all the exhibits 2 accounted for, and we owe you some copies of some. 3 We'll get them -- we'll get them to you before you 4 leave, if you'd like, get these copied and get them to 5 you, or she can print them and scan them. Let's see. 6 So post-hearing briefs, two weeks from today? 7 MR. FOWLER: That's fine. 8 HEARING OFFICER: And so that will be 25th? 9 Somebody have a calendar on them? 10 MR. BROWN: If I may inquire on that, my only 11 concern about that deadline is how long it takes to get 12 a transcript -- a transcription. 13 HEARING OFFICER: Well, I don't know. 14 MR. BROWN: So you guys -- 15 HEARING OFFICER: We only provide the tape. 16 The -- do you have any experience with that, Peter, if 17 he wants -- 18 MR. BROWN: So you'll do the tape, and then we 19 can have a -- like a court reporter transcribe it; 20 correct? 21 HEARING OFFICER: Yeah. You have to pay for 22 that. 23 MR. BROWN: Okay. That's fine about paying 24 for it. I imagine, it's probably going to take two 25 weeks, though, to get the transcription.

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1 HEARING OFFICER: So what's reasonable for you
2 to get the tape, which will be available here, you know,
3 real soon, probably by the end of the day, maybe
4 tomorrow.

5 MR. BROWN: Well, if we can get it tomorrow,
6 I'm sure we can probably get it done within two weeks.
7 Usually they charge double or triple if it's less than,
8 what, seven days or something.

9 HEARING OFFICER: And that's your transcript?

10 MR. BROWN: Yeah.

11 HEARING OFFICER: And then from the
12 transcript, you're going to build your brief?

13 MR. BROWN: Yeah. Then we'll brief that, so
14 another week or two. So if we can have it in three to
15 four weeks being the briefing due, that would be --

16 HEARING OFFICER: Well, I -- you know, I don't
17 want to drag the decision out interminably, so three
18 weeks puts us at March 31st. In order for me to make a
19 timely decision, I think we need to have this thing -- I
20 think the briefs need to be in by March 31st. Okay.

21 So is there anything else that I have
22 overlooked?

23 MR. BROWN: Only if we're doing simultaneous
24 briefing versus the applicant does his, I respond, and
25 then they reply. Either way.

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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.**

14

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18

19

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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**

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1 HEARING OFFICER: You want simultaneous
2 briefs, or would you like a chance to rebut?

3 MR. FOWLER: I'm comfortable with
4 simultaneous. I think it will expedite the matter.

5 HEARING OFFICER: I believe it will. So let's
6 do simultaneous briefing.

7 So the hearing is now concluded. The record
8 will remain open for 21 days for the submittal of the
9 simultaneous briefs on March 31st.

10 Please note the information must be provided
11 to all the parties. You know that. Parties normally
12 have 14 days to respond, but if we do simultaneous
13 briefing, then that'll -- it'll close after that time.

14 Okay. I will -- I mean, I'm not going to go
15 through all the time frames for potential
16 reconsideration on this. You know all that stuff.

17 I will try -- you know, my goal is to have
18 this decision out within 60 days of the close of the
19 record. And I will do my best to make that. Okay.
20 With that, our hearing is now concluded.

21 Is there anything else --

22 UNKNOWN SPEAKER: Got a question --

23 HEARING OFFICER: -- you can go off record at
24 approximately 3:03 p.m. Thank you.

25 - End of Hearing -

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