

Robert L. Harris (ISB #7018)

rharris@holdenlegal.com

Luke H. Marchant (ISB # 7944)

lmarchant@holdenlegal.com

HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

1000 Riverwalk Dr., Ste. 200

P.O. Box 50130

Idaho Falls, Idaho 83405

Telephone: (208) 523-0620

Facsimile: (208) 523-9518

Attorneys for Jeffrey and Chana Duffin

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS
FOR TRANSFER NO. 83160 IN THE
NAME OF JEFFREY AND CHANA
DUFFIN

**DECLARATION OF ROBERT L. HARRIS
IN SUPPORT OF APPLICANT'S
ARGUMENT BRIEF**

I, Robert L. Harris, state that the following is made on my personal knowledge, and that I would so testify in open court if called upon to do so.

1. I am over the age of eighteen (18) and am competent to testify to the matters contained herein.
2. I am a member of Holden, Kidwell, Hahn & Crapo, P.L.L.C., and my firm and I represent the applicants in this matter, Jeffrey and Chana Duffin.
3. Attached hereto as **Exhibit 1**, which is incorporated herein by reference, is a true and correct copy of the Deposition of Jeff Peppersack, August 25, 2017, before the Idaho Department of Water Resources, In the Matter of Application for Transfer Nos. 81292 and

81293 in the Name of Kip Hunter and Brandi Hunter. I attended and participated in this deposition.

4. Attached hereto as **Exhibit 2**, which is incorporated herein by reference, is a true and correct copy of the Deposition of Carter Fritschle, August 25, 2017, before the Idaho Department of Water Resources, In the Matter of Application for Transfer Nos. 81292 and 81293 in the Name of Kip Hunter and Brandi Hunter. I attended and participated in this deposition.
5. Attached hereto as **Exhibit 3**, which is incorporated herein by reference, is a true and correct copy of the Deposition of Michael Holliday, August 29, 2017, before the Idaho Department of Water Resources, In the Matter of Application for Transfer Nos. 81292 and 81293 in the Name of Kip Hunter and Brandi Hunter. I attended and participated in this deposition.

I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct. Idaho Code § 9-1406; Idaho Rule of Civil Procedure 2.7.

July 17, 2020

Date

Robert L. Harris

Robert L. Harris, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2020, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed below by the method(s) indicated.

**DOCUMENT SERVED: DECLARATION OF ROBERT L. HARRIS IN SUPPORT OF
APPLICANT'S ARGUMENT BRIEF**

ORIGINAL TO: **James Cefalo**
Hearing Officer, Idaho Department of Water Resources
900 North Skyline Dr., Ste. A
Idaho Falls, ID 83402-1718
James.Cefalo@idwr.idaho.gov

ATTORNEYS AND/OR INDIVIDUALS SERVED:

JEFFREY AND CHANA DUFFIN
PO Box 525
Aberdeen, ID 83210
jeffduffin33@gmail.com

☐ Mail
☐ Hand Delivery
☐ Facsimile
☒ Email

Jonas Reagan
BARKER ROSHOLT & SIMPSON LLP
163 Second Avenue West
P. O. Box 63
Twin Falls, ID 83303-0063
jreagan@idahowaters.com

☐ Mail
☐ Hand Delivery
☐ Facsimile
☒ Email

Kent Fletcher
FLETCHER LAW OFFICE
P. O. Box 248
Burley, ID 83318
wkf@pmt.org

☐ Mail
☐ Hand Delivery
☐ Facsimile
☒ Email



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Exhibit 1

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF APPLICATION FOR)
TRANSFER NOS. 81292 and 81293 IN THE)
NAME OF KIP HUNTER AND BRANDI HUNTER)
_____)**

**DEPOSITION OF JEFF PEPPERSACK
AUGUST 25, 2017**

REPORTED BY:

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

Notary Public

Page 2 1 THE DEPOSITION OF JEFF PEPPERSACK was taken 2 on behalf of Minidoka Irrigation District and AFRD-2 at 3 the offices of Idaho Department of Water Resources, 4 322 East Front Street, Room 602B, Boise, Idaho, 5 commencing at 9:05 a.m. on August 25, 2017, before 6 Jeff LaMar, Certified Shorthand Reporter and Notary 7 Public within and for the State of Idaho, in the 8 above-entitled matter. 9 10 11 APPEARANCES: 12 For Kip Hunter, Brandi Hunter, and Lance Funk: 13 HOLDEN KIDWELL HAHN & CRAPO, P.L.L.C. 14 BY MR. ROBERT L. HARRIS 15 1000 Riverwalk Drive, Suite 200 16 Post Office Box 50130 17 Idaho Falls, Idaho 83405 18 rharris@holdenlegal.com 19 For Minidoka Irrigation District and AFRD-2: 20 FLETCHER LAW OFFICE 21 BY MR. W. KENT FLETCHER 22 Post Office Box 248 23 1200 Overland Avenue 24 Burley, Idaho 83318-0248 25 wfk@pmt.org	Page 4 1 I N D E X 2 3 TESTIMONY OF JEFF PEPPERSACK PAGE 4 Examination by Mr. Fletcher 6 5 Examination by Mr. Simpson 49 6 Examination by Mr. Budge 61 7 Examination by Mr. Harris 67 8 9 10 EXHIBITS 11 Exh 1 - Letter from R. Harris to Counsel, dated 8 12 1/27/2017, and other related documents 13 Exh 2 - Supplemental to Primary Example 8 14 Exh 3 - Existing transfer memo, dated 12/21/2009 8 15 Exh 4 - Administrator's Memorandum, dated 8 16 1/21/2009 17 Exh 5 - E-mail from J. Peppersack to G. Spackman, 8 18 dated 8/21/2008, with attachment 19 Exh 6 - E-mail from J. Peppersack to C. Skinner, 8 20 C. Yenter, and J. Stanton, dated 21 8/7/2008 22 Exh 7 - E-mail from J. Peppersack to C. Skinner, 8 23 dated 6/6/2008, with attachment 24 Exh 8 - Letter from ERO Resources Corp. to 8 25 G. Spackman, dated 6/12/2006
Page 3 1 APPEARANCES (Continued): 2 For Idaho Ground Water Appropriators, Inc.: 3 RACINE, OLSON, NYE & BUDGE, CHARTERED 4 BY MR. THOMAS J. BUDGE 5 Post Office Box 1391 6 Pocatello, Idaho 83204-1391 7 tjb@racinelaw.net 8 For A & B Irrigation District, Milner Irrigation 9 District, Burley Irrigation District, Twin Falls Canal 10 Company, and North Side Canal Company: 11 BARKER, ROSHOLT & SIMPSON LLP 12 BY MR. JOHN K. SIMPSON 13 1010 West Jefferson, Suite 102 14 Boise, Idaho 83702 15 jks@idahowaters.com 16 For Idaho Department of Water Resources: 17 OFFICE OF ATTORNEY GENERAL 18 IDAHO DEPARTMENT OF WATER RESOURCES 19 BY MR. GARRICK L. BAXTER 20 MS. EMMI L. BLADES 21 322 East Front Street 22 Boise, Idaho 83720 23 garrick.baxter@idwr.idaho.gov 24 emmi.blades@idwr.idaho.gov 25 Also Present: Dave Shaw	Page 5 1 I N D E X (Continued) 2 3 EXHIBITS PAGE 4 Exh 9 - E-mail from G. Skinner to P. Skaggs, 8 5 dated 1/31/2006, with attachments 6 Exh 10 - Administrator's Memorandum, dated 8 7 10/30/2002 8 Exh 11 - Draft proposed rules relating to 8 9 Transfer Memo 24 10 Exh 12 - Order of Partial Decree 25 11 Exh 13 - Idaho Department of Water Resources 27 12 Water Right Report for Water 13 Right 35-2824 14 Exh 14 - Letter from P. Arrington to J. Cefalo, 33 15 dated 3/3/2017 16 Exh 15 - Memorandum from J. Peppersack to Water 56 17 Right File - Transfer 78283, dated 18 1/27/2017 19 20 21 22 23 24 25

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1 JEFF PEPPERSACK, 2 first duly sworn to tell the truth relating to said 3 cause, testified as follows: 4 5 EXAMINATION 6 BY MR. FLETCHER: 7 Q. Good morning. I'm Kent Fletcher, and I 8 represent Minidoka Irrigation District and AFRD-2 in 9 these proceedings. You've been designated by the 10 Department to answer some questions concerning transfer 11 policy. And I'll get into those in a minute. 12 I guess before we start, you need to state 13 your full name. 14 A. My name is Jeff Peppersack, spelling 15 P-e-p-p-e-r-s-a-c-k. 16 Q. And your address? 17 A. My address is 6918 West Ustick Road, Boise, 18 Idaho 83704. 19 Q. Can you give us a brief history of your 20 post high school education. 21 A. Yes. I graduated from University of Idaho 22 in 1983 with a degree in civil engineering, and worked 23 for -- well, besides some temporary duties, worked for 24 the Department starting in 1984. Worked with the 25 Energy Bureau for a few years. And then in 1987 began	1 were asked to bring documents with you. And today 2 you've brought a stack of documents. So I guess I will 3 ask that those be marked, if you would, each 4 individually. So we'll go off the record for a minute. 5 (Exhibit 1, Exhibit 2, Exhibit 3, 6 Exhibit 4, Exhibit 5, Exhibit 6, Exhibit 7, 7 Exhibit 8, Exhibit 9, Exhibit 10, and Exhibit 11 8 marked.) 9 Q. (BY MR. FLETCHER): So in the notice you 10 were asked to bring copies of all documents relating to 11 the issues that were identified in questions 1 through 12 3 of Paul Arrington's letter -- we'll get that in the 13 record in a minute -- and all documents you reviewed or 14 will review in preparation for this deposition. 15 So I guess Exhibits 1 through 11 represent 16 everything you've reviewed and everything you looked at 17 in relationship to those questions? 18 A. That's correct. 19 MR. BAXTER: Okay. Kent, I'll make a 20 clarification. There was one document in there we 21 identified as attorney-client privileged communication 22 that was withheld. 23 MR. FLETCHER: Okay. 24 Q. So let's briefly go through these so you 25 can explain what they are and why you looked at them.
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1 work for the Adjudication Bureau through 1999. At that 2 point I was a section manager for the water rights 3 section through 2007, and then the Bureau Chief of the 4 Water Allocation Bureau, which is my present position, 5 from 2007 forward. 6 Q. So you started work with the Department 7 what year? 8 A. '84. 9 Q. '84. Okay. Can you describe what your 10 duties are in your position at the Department. 11 A. My current duties, I'm the chief of the 12 Water Allocation Bureau, which I have oversight for 13 currently both the water rights section and the 14 adjudication section. 15 Q. Okay. Have you had your deposition taken 16 before? 17 A. I have. 18 Q. Okay. So I'm not going to prolong this, 19 but it's important that you wait until I finish a 20 question to answer it and make sure you answer 21 everything audibly. If for some reason you don't 22 understand something I've asked you, which is not a 23 unique circumstance, let me know that, and I'll try to 24 rephrase it. 25 Pursuant to the Notice of Deposition, you	1 Exhibit 1 is Rob Harris' letter dated 2 January 27, 2017. 3 A. So the question is why I reviewed it? 4 Q. Yeah. Why did you review that letter as 5 part of this process? 6 A. This letter was provided by counsel just as 7 a summary, I guess, of the potential issues that were 8 covered. 9 Q. Did you look at any of the other letters in 10 this water right file pertaining to the history of this 11 water right? 12 A. No. 13 Q. Okay. Exhibit 2 is a one-page example, I 14 believe, of a transfer of a supplemental right to a 15 primary right? 16 A. Yeah. Exhibit 2 is an example I prepared 17 for my own benefit and for the benefit of others. It's 18 helpful just to kind of demonstrate how we would go 19 through a supplemental to primary analysis. 20 Q. Okay. Exhibit 3 is the existing transfer 21 memo; is that correct? 22 A. That's correct. 23 Q. And you authored that transfer memo? 24 A. I was -- I think I signed this version, 25 yes, sir. So I authored or at least was involved in

Page 10	Page 12
1 various versions. And this version is the version I 2 signed in my capacity. 3 Q. Okay. Exhibit 4 is an administrative memo 4 dated January 21, 2009. 5 What is that? 6 A. And that's an early version of the transfer 7 memo signed by Gary Spackman at the time. 8 Q. Was that transfer memo the controlling memo 9 for a period of time? 10 A. For a period of time, yes. 11 Q. And what were the dates that that was in 12 use? 13 A. This was signed January 21, 2009. It took 14 the place of the memo that was signed back in 2002, 15 which is also in the packet. 16 Q. Okay. And then Exhibit 5 is an e-mail to 17 you? 18 A. Actually, from me to Gary Spackman, just 19 kind of discussing some potential changes to the 20 earlier version of the transfer memo. 21 Q. Okay. So that was written before 22 Exhibit 4, which was the January 21, 2009 memo, was 23 adopted; correct? 24 A. That's correct. 25 Q. Exhibit 6, can you describe what that is.	1 Q. When you say it's the "first version," 2 what's the date of that one? 3 A. It's October 30th, 2002. 4 Q. October -- 5 A. October 30. 6 Q. 2002? 7 A. Yes. 8 Q. Okay. Was that the first memo issued in 9 the Department dealing with transfer that you're aware 10 of? 11 A. No. There's been a number of memos issued 12 regarding transfers, probably not this comprehensive. 13 Q. Okay. 14 A. But over time, you know, back in the '80s 15 probably there had been a number of them. I think this 16 is No. 24, so there were 23 before it. 17 Q. So this was the first version of No. 24? 18 A. Correct. 19 Q. Okay. Thank you. 20 And Exhibit 11? 21 A. And 11 is some draft proposed rules 22 prepared by Glenn Saxon back in 2001 that was sort of 23 the beginning of the Transfer Memo 24 write-up. 24 Q. Do you know if any administrative rules 25 have ever been adopted concerning the transfer of water
Page 11	Page 13
1 A. Exhibit 6 is an e-mail -- a series of 2 e-mails back and forth discussing generally the number 3 of years of data required to come up with reasonable 4 estimate of historic beneficial use. 5 Q. Okay. 6 A. E-mails to the staff. 7 Q. Exhibit 7? 8 A. Another string of e-mails with staff just 9 discussing partial supplemental to primary conversions. 10 Q. Exhibit 8? 11 A. Exhibit 8 is a letter from Dave Shaw 12 discussing generally -- most of this dealt with ESPA 13 issues and transfers. There is a small part in there 14 that discusses a little bit about supplemental to 15 primary. It's Dave's review of Department-proposed 16 policy. 17 Q. Exhibit 9, what is it that? 18 A. Another string of e-mails between me and 19 staff and others discussing supplemental rights. It 20 includes a memo that is probably part of the water 21 right file that also discusses how supplemental issue 22 was addressed. 23 Q. Exhibit 10? 24 A. 10 is the first version of Transfer Memo 25 24.	1 rights? 2 A. They have not. 3 MR. BUDGE: Kent, can we go off the record for a 4 moment? 5 MR. FLETCHER: Sure. 6 (Discussion.) 7 Q. (BY MR. FLETCHER): Is Exhibit 3 the 8 current version of the Department's transfer memo? 9 A. Yes. 10 MR. FLETCHER: Okay. Let's go off. 11 (Discussion.) 12 Q. (BY MR. FLETCHER): We'll talk about most 13 of those things as we go through this. I guess before 14 we start, though, before we start with the questions 15 that were in the letter, in the transfer memo it uses 16 various terms. And I think it's important that we try 17 to figure out what some of those terms mean. 18 Can you tell me what a primary water right 19 is. 20 A. A primary water right -- and I don't know 21 that it's -- there's a written definition anywhere. 22 But a primary water right, as we apply it in the 23 Department, is usually the senior-priority water right 24 that provides the primary supply of water for 25 irrigation. That's probably enough, unless you've got

Page 14 1 other questions about it. 2 Q. Okay. You mentioned you didn't know if 3 there was a definition. 4 Is there a statutory definition that you're 5 aware of? 6 A. Not that I'm aware of. 7 Q. Is there a definition by any rule? 8 A. Not that I'm aware of. 9 Q. How about a supplemental water right, what 10 is a supplemental water right? 11 A. In the transfer memo there's at least a 12 start at a definition. I think it's on page 29. 13 Page 29 under section 4 says, "A supplemental 14 irrigation right is a stacked water right authorizing 15 the diversion of water for irrigation from a secondary 16 source to provide a full supply for crops when used in 17 combination with a primary right." 18 Q. Do you agree with that definition? 19 A. Yes. And I guess there's always confusion 20 over exactly what it means. And I don't know if that's 21 a comprehensive definition that would include 22 everything or not, but it's a good starting point. 23 Q. Okay. Are all primary water rights 24 indicated as primary water rights on licenses and 25 decrees?	Page 16 1 primary right. 2 Q. Okay. So based upon what you're telling 3 me, it's not clear necessarily looking at a water right 4 itself whether it's primary or supplemental, you have 5 to review all the water rights appurtenant to a 6 particular parcel of real estate? 7 A. That's correct. 8 Q. So another term that's used is "stacked 9 water right." 10 What is a stacked water right? 11 A. Go back to the transfer memo. I think it's 12 on page 28. I'll have to check to see if it's defined. 13 But yeah, on page 28 under item 3, "Water rights are 14 'stacked' when two or more water rights, generally of 15 different priorities and often from different sources, 16 are used for the same use and overlies the same place of 17 use." 18 Q. So if water rights are stacked, that means 19 there's two different water rights on the same real 20 estate, as I understand it, is one always primary and 21 others secondary or... 22 A. I don't know if I'd say "always." I think 23 stacked water rights can be -- I don't know that we 24 view all stacked water rights as supplemental 25 relationship. Stacked water rights can be just a
Page 15 1 A. No. I don't think any of them are 2 indicated that way. 3 Q. Okay. Are all supplemental water rights 4 indicated that way on water rights that have been 5 issued pertaining to supplemental? 6 A. Generally not, although there are 7 conditions that might identify them as supplemental. 8 Q. Okay. When you say "might," is that always 9 true or -- 10 A. Not always, no. 11 Q. So how does the Department determine 12 whether a water right is supplemental versus primary? 13 A. Well, I think they would be -- they would 14 meet the definition. They would be used -- it would 15 overlap another water right. They would be used to 16 supplement another water right, either when that water 17 right wasn't available or not fully available. So they 18 would be used in conjunction or as a supplement to 19 another water right that's usually earlier in priority. 20 And so I think generally that's how it would be 21 understood by the Department. 22 Q. Okay. So when you say "overlap," first of 23 all, are you talking about overlap of the same real 24 property description? 25 A. Overlapping the place of use under the	Page 17 1 series of water rights from the same source with 2 different priority dates. And of course, I think you 3 would assume that the earliest priority is the primary 4 water right, but I don't know that you could say that 5 the later priority rights supplement in the way we look 6 at it, because they wouldn't be an alternate supply if 7 the original water right was out of priority. Because 8 obviously if they're from the same source, a later in 9 time water right would be out of priority first. And 10 so it wouldn't really be viewed as a way to supplement 11 if that primary right were unavailable. 12 Q. Okay. And I forgot to ask you this about 13 the definition you gave of "supplemental water rights," 14 but is that definition statutory that you're aware of? 15 A. No, it's not. 16 Q. Is it in any rule that you're aware of? 17 A. Not that I'm aware of. 18 Q. And as far as "stacked rights," same 19 question, is that a statutory definition? 20 A. Not a statutory definition. 21 Q. And is it defined by rule? 22 A. Not defined by rule, that I'm aware of. 23 Q. If water rights are stacked on the same 24 parcel of real estate, are they indicated as being 25 stacked rights on the water rights?

Page 18 1 A. Not in those terms, although I think there 2 might be combined limits. The rights might identify 3 other rights for the place of use in one form or 4 another of conditions. 5 Q. Okay. And is that wording on the decree or 6 license itself? 7 A. The "stacked" word? 8 Q. No. The language that you mentioned about 9 making reference to other water rights. 10 A. It can be if they're stacked. And I would 11 assume you're referring to other conditions that aren't 12 on the decree like explanatory conditions where there 13 may be information available to the Department in those 14 cases, too, to identify them that they might be used 15 with other water rights. 16 Q. So in some cases when water rights are 17 stacked, that's not necessarily indicated on the 18 decree; is that what you're telling me? 19 A. I think it's possible, especially in cases 20 where we're talking about canal company or irrigation 21 district water. There may not be necessarily 22 identification on the face of the decree that would 23 suggest that they're stacked rights used in 24 combination. 25 Q. Okay. You'd mentioned explanatory remarks	Page 20 1 fact, I'll wait a second because I want to know how 2 this gets put together. 3 But you also mentioned earlier this is the 4 most current transfer memo that's used by the 5 Department; correct? 6 A. That's correct. 7 Q. Okay. So first of all, why does the 8 Department have a transfer memo? 9 A. Well, in order to apply the criteria in 10 statute for transfers under 42-222, we need guidance 11 for staff because there are always a lot of questions 12 on how to analyze the criteria in a statute. And so 13 the transfer memo was developed over time to help staff 14 process and evaluate transfers. 15 Q. Okay. So is it a guidance? 16 A. It is. 17 Q. And I think you may have already answered 18 this, but this has not been adopted as a rule; correct? 19 A. That's correct. 20 Q. What is the source of information that's 21 contained in the transfer memo? 22 A. Source of information? Well, it was 23 developed over a number of years. This version, 24 obviously there's earlier versions, and I suppose parts 25 were written by various Department staff and
Page 19 1 were conditions. 2 Can you explain that again. How do you use 3 those when you're doing this analysis? 4 A. In -- and I know Carter Fritschle will be 5 deposed on the subject, and he'll have a lot more 6 detail than I do. But in general, explanatory remarks, 7 as I understand it, are remarks that the Department has 8 applied to recommendations for decrees. And those 9 conditions are not found on the face of the decree, but 10 they are used as informational by the Department in 11 making decisions. 12 Q. Are you talking about decisions for 13 administrative purposes? 14 A. Correct. 15 Q. Do you look at that language when you're 16 doing transfers, for example? 17 A. We do. 18 Q. So I'd like you to look at Exhibit 3. I 19 think you already answered these questions, but you are 20 the author of this transfer memo, Exhibit 3; correct? 21 A. I signed this memo. I guess when you say 22 "author," it's usually a group effort in the 23 Department. So -- but I did sign this version, and so 24 I could be considered the author. 25 Q. I was going to ask you about that. In	Page 21 1 information came from applying the statute and 2 practical knowledge and experience by the individuals 3 that put it together. So I guess just historical 4 application of the laws and the way the Department has 5 interpreted them and applied them and tried to -- to 6 guide staff with. 7 Q. Is this an attempt to compile previous 8 writings or memos of Department employees concerning 9 transfer issues? 10 A. Well, in some cases it might compile. In 11 other cases it probably was stuff that had not been 12 written in the past that we needed guidance on. 13 Q. Who reviews the transfer memo before it's 14 issued? 15 A. I guess I'd start with earlier versions. 16 It was a combined effort. The first version was -- was 17 a group, Karl Dreher as the Director, Norm Young as the 18 administrator, myself as a water section manager at the 19 time, Allen Merritt was a regional manager, Phil 20 Rassier was an attorney. I think I've covered all of 21 them. So that was the first version, and we all went 22 through it in detail. 23 Q. I don't mean to interrupt you. When you 24 say "first version," do you mean the first version of 25 No. 24?

Page 22 1 A. That's correct, the 2002 version. The 2 subsequent versions, the January 2009 version, again, 3 we go through quite a process. You know, we write, we 4 review with others. 5 And then I think the second version was 6 signed by Gary Spackman. So he reviewed it, obviously 7 with others. 8 And the third version was a similar process 9 where we make changes, we share them with other staff, 10 and then we -- and I ultimately signed that version. 11 Q. Okay. Why was the transfer memo changed 12 from the version that came out in early 2009 to the 13 version Exhibit 3? 14 A. There's always, I guess, changes in 15 interpretation and understanding as we try to apply 16 things. More questions are raised. And so we're 17 always trying to fine-tune what we have in answer to 18 questions coming up. So between 2002 and 2009, I think 19 there were a lot of questions that came up and that we 20 wanted to try to address in some way throughout the 21 transfer memo. 22 Q. Do you remember specifically why the 23 version signed by Director Spackman in I think it's 24 2009, the January 2009 version, which is Exhibit -- if 25 somebody can help me here.	Page 24 1 and he had some extensive review. But since that time, 2 the Director hasn't been as involved in the process. 3 Q. Okay. And I think you mentioned at least 4 some of the versions have been reviewed by counsel as 5 well? 6 A. Correct. 7 Q. And did that include the version Exhibit 3? 8 A. I would say at least parts of the versions 9 were reviewed by counsel. I don't know that in its 10 entirety that it was. 11 Q. Are you familiar with the applications that 12 we're dealing with in this matter? Let me give you the 13 numbers. It's 80292 and -- let me make sure I get the 14 numbers right -- 81293? 15 MR. HARRIS: 81292 and 81293. 16 Q. (BY MR. FLETCHER): Oh, 8-1. Excuse me. 17 81292 and 81293. 18 A. I haven't reviewed the water right files at 19 all. I did look at a partial decree of one of those, 20 and then I -- what I gleaned from the letter from Rob 21 Harris, which I think is Exhibit 1. So that's the 22 extent of my knowledge of the actual transfers. 23 Q. Did you review the applications themselves? 24 A. No. 25 MR. FLETCHER: Can you mark that.
Page 23 1 MR. BAXTER: 4. 2 MR. FLETCHER: Thanks. 3 Q. -- Exhibit 4 and then it was changed to 4 what is now Exhibit 3, why there were changes there? 5 A. I think there were changes throughout the 6 entire document. So I think it was a good time for a 7 review, and a number of years had passed. And as we 8 applied it, you know, like I said, questions came up. 9 So I don't think there was any one focus in 10 that particular one. There were a number of changes 11 throughout the entire document that were just 12 fine-tuning, tweaking, whatever the case may be. 13 Q. So there wasn't any one big issue that the 14 Department was facing -- 15 A. Correct. 16 Q. -- and felt like it needed to make a 17 change? 18 A. That's right. 19 Q. Before you sign off in your position, does 20 the Director review and approve it? 21 A. Not necessarily, no. 22 Q. Okay. 23 A. These are administrative memos, so they're 24 signed at the administrative level. Now, in the case 25 of the 2002 version, Karl Dreher did sign that version,	Page 25 1 (Exhibit 12 marked.) 2 Q. (BY MR. FLETCHER): You've been handed 3 Exhibit 12. 4 Can you describe what that is. 5 A. It looks like an order of partial decree 6 for Water Right 35-02824. 7 Q. And is that the same decree you reviewed in 8 preparation? 9 A. I reviewed one of them. It seems like 10 there's more than one, if I'm remembering correctly. 11 Maybe not. I did review one, but I don't know if it's 12 the same one or not. 13 Q. Okay. Can you tell me the date on 14 Exhibit 12, the date it was issued. 15 A. It looks like April 2nd, 2012. 16 Q. In your review of the various documents 17 pertaining to this matter, are you aware of any other 18 water rights that are appurtenant to the real property 19 described in Exhibit 12? 20 A. Well, I understand that there's some 21 Aberdeen-Springfield Canal Company shares that are 22 associated with the property. 23 Q. Okay. Do you know any details on that? Do 24 you know how many shares are appurtenant? 25 A. I don't.

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1 Q. Do you know how much of the real property 2 described in Exhibit 12 is covered by 3 Aberdeen-Springfield Canal Company shares? 4 A. I don't know. 5 Q. Do you know anything about 6 Aberdeen-Springfield's water rights? 7 A. Very little. 8 Q. Okay. Do you know their priority dates? 9 A. No, I don't. 10 Q. Are the Aberdeen-Springfield Canal Company 11 water rights senior to Exhibit 12? 12 A. I would assume they are, just based on my 13 knowledge of surface water rights and groundwater 14 rights in general. 15 Q. Okay. 16 A. But I don't know specifically. 17 Q. Yeah, I guess it's a good time to mention 18 the priority date on Exhibit 12. 19 What priority date is stated on there? 20 A. It is August 28, 1961. 21 Q. Okay. To your knowledge, is 22 Aberdeen-Springfield Canal Company a surface water 23 delivery organization? 24 A. Yes. 25 Q. And this water right, Exhibit 12, is a	1 Exhibit 12. 2 Q. Okay. 3 MR. BAXTER: Can I take a look at that real 4 quick? 5 MR. FLETCHER: Sure. 6 MR. BAXTER: Thank you. 7 Q. (BY MR. FLETCHER): As a Department 8 employee, when you are reviewing a water right, do you 9 see the same information as the public sees when you 10 first look up the water right and look at the summary 11 of the water right? Is it similar to what is shown on 12 Exhibit 13? 13 A. Well, our internal database and access 14 would be similar. There might be additional 15 information that's available to us that's not online, 16 depending on the report that's produced from the 17 website. 18 Q. Okay. So Exhibit 13 is a summary of 19 Exhibit 12; is that a fair statement? 20 A. It's a summary of the water right. 21 Q. Okay. Is there a reference to other water 22 rights appurtenant to this property on Exhibit 13? 23 A. Yes, there is. 24 Q. And what is that statement? 25 A. It says, "Use of this right is combined
Page 27	Page 29
1 groundwater right; is that correct? 2 A. That's correct. 3 Q. In your examination of the files of the 4 Department, do you have any understanding of why this 5 water right evidenced by Exhibit 12 was developed in 6 the first place? 7 A. I don't have any historical knowledge about 8 it, no. 9 Q. Okay. Based upon your review of the files, 10 is there a primary water right and a supplemental water 11 right associated with the real property described in 12 Exhibit 12? 13 A. Well, the only information I have is from 14 the letter in Exhibit 1. And it identifies that both 15 the surface water from Aberdeen-Springfield Canal 16 Company and the groundwater right are somehow 17 associated with the property. Whether they're primary 18 or supplemental, I guess I haven't made a 19 determination. 20 (Exhibit 13 marked.) 21 Q. (BY MR. FLETCHER): Can you identify 22 Exhibit 13. Can you tell what it is. 23 A. It looks like it's a printout probably from 24 the Department's website, maybe the online website, of 25 the same decree number that we talked about in	1 with water from Aberdeen-Springfield Canal Company." 2 Q. What does that mean? 3 A. Well, that's an indication that there is or 4 at least was other water source available on the 5 property. 6 Q. Okay. Is there any statement on either 7 Exhibit 12 or 13 concerning a water right being 8 primary? 9 A. No. 10 Q. Is there any statement on Exhibit 12 or 13 11 about a water right being supplemental? 12 A. No. 13 Q. I'd like you to look at Exhibit 3, please, 14 and turn to paragraph 5(d)(3), which I think you turned 15 to earlier. 16 MR. BAXTER: That's page 28. 17 Q. (BY MR. FLETCHER): Based upon your review 18 of these water rights, are the Aberdeen-Springfield 19 rights and the water rights evidenced by Exhibit 12 20 stacked water rights to the extent they're on the same 21 real property? 22 A. Well, based on what I've seen and if 23 they're still there, it looks -- I guess based on the 24 letter, Exhibit 1, it looks like the water rights both 25 exist, Aberdeen-Springfield Canal Company and the other

Page 30	Page 32
1 water right. So they are used at the same -- used or 2 have been used the same place of use. 3 So are they stacked? I guess generally 4 they would be considered stacked without other 5 information. 6 Q. So what analysis does the Department do to 7 determine if they're stacked? 8 A. I think we would look at whatever 9 information is available to figure out if and how 10 they're used at the place of use, whether it's 11 information in the water right file or information from 12 the water user, to see if there's a relationship there 13 and if they're used in combination or if there are 14 limits in the use together in some way. 15 Q. Okay. And when you say "used," what time 16 period are you looking at to determine the use? 17 A. Well, we're looking probably at -- because 18 things change over time, we're looking probably at more 19 recent history. And I couldn't give you a number of 20 years, but we look initially at like the most recent 21 five-year period perhaps as a way of determining what 22 the current use is. 23 Q. Okay. So if this application was filed -- 24 I think it was filed last year, if I'm correct, 2016, 25 you'd look at the five years prior to 2016?	1 A. Then we would reject or deny the 2 application, unless -- unless it can be demonstrated 3 that that enlargement wouldn't occur in some way. 4 Q. Okay. And how does it not occur if the 5 transfer goes forward? 6 A. Well, if there were -- if it was 7 demonstrated, for example, that it wouldn't be an 8 enlargement because of conditions or limitations that 9 would be imposed or -- or perhaps, you know, an 10 explanation of the relationship of the rights, that 11 might get at trying to decide whether they are truly 12 stacked or primary or supplemental or, you know, used 13 in combination some way. 14 So if it's demonstrated that they really 15 weren't, even though they might reside on the same 16 place of use, then we might decide that it's not an 17 enlargement because they haven't been used together to, 18 you know, provide a full water supply for the place of 19 use. 20 Q. Have you been asked to review whether this 21 proposed transfer is presumed to be -- actually, 22 there's two transfers involved, whether these two 23 transfers constitute a presumption of enlargement under 24 this definition? 25 A. No, I haven't been asked to do that.
Page 31	Page 33
1 A. I think that would be a starting point, 2 yes. 3 Q. Okay. In that paragraph there's a sentence 4 that begins with "An application for transfer proposing 5 to 'unstack'." 6 Can you read that sentence. 7 A. "An application for transfer proposing to 8 'unstack' one or more water rights used for irrigation 9 or other use, without changing all the rights for the 10 same use, is presumed to enlarge the water right." 11 Q. Okay. Can you explain what that means. 12 A. Well, if there were stacked water rights, 13 so water rights used at the same place, used for the 14 same purpose in combination in some form and the 15 proposal is to move one of those water rights off, then 16 we would presume that it enlarges the water right 17 without other information showing otherwise. 18 Q. What is the issue with the term "enlarge" 19 or "enlargement"? 20 A. Well, enlargement is one of the criteria we 21 have to look at under 42-222 when we're evaluating a 22 transfer to see if enlargement would occur as a result 23 of the transfer. 24 Q. Okay. What happens if enlargement occurs 25 as a result of a transfer?	1 Q. Okay. Do you have an opinion about that? 2 A. I don't have enough information to make an 3 opinion. 4 Q. So what information would have to be 5 supplied to you to make that determination? 6 A. I think I'd want to know what the exact 7 relationship is between the surface water and the 8 groundwater and the timing of events. And we'd have to 9 decide, I guess, whether we'd consider them stacked or 10 primary/supplemental relationship and what kind of 11 limits there might be, what the intended transfer is 12 and what the development of the groundwater rights have 13 been, those kind of things. 14 MR. FLETCHER: Okay. 15 (Exhibit 14 marked.) 16 Q. (BY MR. FLETCHER): You've been handed 17 Exhibit 14. 18 Have you seen that document before? 19 A. Yes, I have. 20 Q. Can you describe what it is. 21 A. Maybe I spoke too soon. I don't know if 22 I've seen this one specifically. I've seen those 23 questions. 24 Q. Okay. 25 A. I don't know if I've seen the one

Page 34 1 specifically to Mr. Cefalo, but I may have. 2 Q. Okay. Well, I'll represent to you that you 3 drew the short straw or were designated the one to 4 answer questions 1 through 3 on that letter. Some of 5 those you've addressed already to some degree. But I'd 6 like to start with the first question, which deals 7 with -- well, first read the question to make sure. 8 A. Do you want me to read it out loud? 9 Q. Yeah, why don't you just read the first 10 sentence of that question. I guess we'll start there. 11 A. "The transfer memorandum provides that 12 supplemental water rights may be changed to primary 13 rights if the water user shows five years of use 14 records in the transfer process." 15 Q. Okay. First of all, is the premise of 16 that -- or that's really not a question. It's a 17 statement, I guess, but is that statement correct? 18 A. I don't know if it's comprehensively 19 correct. I think it's a starting point, that we would 20 look at five years of records. 21 Q. So I'd ask you to look at the transfer 22 memo, Exhibit 3, page 29, subparagraph (4) on that 23 page. 24 Is this the part of the transfer memo 25 addressing this issue?	Page 36 1 ground; is that what we're talking about? 2 A. That's correct. 3 Q. Okay. So can you lead me through how a 4 supplemental right is converted to a primary right? 5 A. I can. And if it would help, I have that 6 example, if we want to go through that. 7 Q. Yeah, that would be great. It's already 8 marked as an exhibit, so... 9 A. That's Exhibit 2. 10 Q. Let me see if I can find it. Okay. 11 A. Okay. So in the example, just assuming a 12 primary surface water right of 100 acres and a 13 supplemental groundwater right, the same hundred acres, 14 and we have five years of groundwater use data, so that 15 would presumably to be measured data. So in the 16 left-hand table there are years one through five 17 showing different crops. 18 So in year one there's alfalfa and field 19 corn, 67 acres of alfalfa, 33 acres of field corn. And 20 the groundwater diverted is 140 acre-feet. So for all 21 five years there's data there, and we find an average. 22 The table on the right of that is just an 23 estimate of the total water use for those crops. And 24 that's usually the situation. We may have groundwater 25 use data, but we more often than not don't have good
Page 35 1 A. Yes, it is. 2 Q. Okay. So the question seems to indicate 3 that if there's five years of use a supplemental right 4 can be converted to a primary right? 5 A. Well, I think -- I think what we're saying 6 here is that we need at least five years of data to 7 come up with a reasonable estimate of the historic use. 8 And based on what's in the transfer memo -- and I don't 9 know if it's in this part or in part (5), but that five 10 years of use really would be five years of good and bad 11 water years so that we can get a good variation on 12 coming up with an average use under that supplemental 13 right in order to convert it to a primary use. 14 Q. So for example, if a surface water right is 15 used on the property for five years and the groundwater 16 right is put in the water bank, would the use in the 17 water bank be considered? 18 A. I don't think we generally have considered 19 use in the water bank when we're reviewing the 20 transfers. 21 Q. Okay. So you're looking at what's really 22 going on on the ground where the water right's 23 appurtenant? 24 A. Correct. 25 Q. And which water has been applied to the	Page 37 1 surface water data because it's not measured in the 2 same way. So what we're trying to get at is an 3 estimate of a total water use and then what fraction is 4 provided by the groundwater use. 5 So the table on the right, we may use 6 published data to come up with the consumptive 7 irrigation requirement or the precipitation deficit. 8 And that's an amount needed by the crop from irrigation 9 to grow to maturity. 10 So what I've done in the -- I guess it 11 would be the fourth column on that right-hand table is 12 just calculated the total water requirement for each 13 crop. So if we just take the acres of the crop, 14 multiply by that published value, so for example, for 15 alfalfa, 2.9, take that times the number of acres. 16 We're dividing by an efficiency so that we know how 17 much would actually be applied to the crop. We come up 18 with the number of 259, and similarly for the rest of 19 the crops, the crop water requirement. 20 So then the right-hand column is just the 21 total for each year. So for example, the alfalfa and 22 field corn total for year one would be 343 acre-feet. 23 And then an average of that is 348. 24 So to figure out what we would call the 25 primary equivalent of that groundwater, so we're trying

Page 38 1 to figure out what equivalent -- if it were a primary 2 water right, what would be the equivalent number of 3 acres out of that hundred acres. So we take the 4 groundwater volume average and the total water 5 requirement divided and come up with a value down 6 there, 139 divided by 348 times 100 acres. 7 So 40 acres is what we'd call the fraction 8 of supplemental use diverted to meet the total crop 9 water requirement. So that would be the equivalent 10 primary acres value given as a primary water right if 11 we were to convert it. So that's the basic methodology 12 that we would use, given the data that would be 13 available to us. 14 Q. Okay. So do you only look at use, or do 15 you look at reasons why the applicant may or may not 16 have used the senior right? 17 A. We would first try to decide whether or not 18 the primary/supplemental relationship exists 19 appropriately. There might be circumstances -- and 20 it's happened where somebody might have surface water 21 and groundwater together, but they don't use them 22 together. They may be there on a temporary basis and, 23 you know, they never intended to use them as a 24 primary/supplemental relationship. 25 And so we've recognized that in cases and	Page 40 1 otherwise available. So we put conditions on the water 2 rights to ensure that the groundwater is used as a 3 supplemental use only when the surface water isn't 4 available, either fully or partially. And we restrict 5 that groundwater use to those times when -- when it 6 gets used and when the surface water isn't available. 7 And we prohibit the use of groundwater until it's 8 necessary. 9 And so with those conditions, you know, we 10 would look at that and say, you know, that relationship 11 exists, the primary/supplemental relationship exists, 12 and if somebody elected not to use the primary water 13 right, then we would say, "Well, you're in violation 14 of -- if you're using groundwater, you're in violation 15 of the water right." 16 So yeah, we take that into account. Now, 17 there are other supplemental/primary relationships out 18 there that don't have those restrictions. And we don't 19 have the control that we would with the conditions that 20 are more strict that prohibit the use of groundwater 21 when surface water is available. 22 So we have to take that into account, 23 whether that relationship existed and what the actual 24 use has been, what the relationship between the primary 25 and supplemental uses have been.
Page 39 1 tried to make sure, with conditions or otherwise, that 2 they would be kept separated or separated in some way 3 so that that primary/supplemental relationship didn't 4 exist. 5 Q. Okay. Well, let me just give you a 6 hypothetical. Based upon my own experience, there are 7 some water users that have surface water rights 8 appurtenant to their property that are very senior in 9 time. The amount of water available isn't really the 10 issue, but they prefer to irrigate with groundwater 11 because it's easier to manage, it doesn't have as many 12 weeds in it. I mean there could be any number of 13 reasons. They may not have to draw their water from a 14 great depth or, you know, for whatever reason. 15 A. Right. 16 Q. Do you take that into account in your 17 analysis, that they're electing to use groundwater 18 instead of a surface water supply? 19 A. Yes. And it really gets back to how the -- 20 how the development of the groundwater occurs, and it 21 gets into the conditions that we apply at the time of 22 permitting and licensing. 23 Normally if surface water is available, 24 it's Department policy that groundwater would be used 25 only when the surface water wasn't in priority or	Page 41 1 Q. Okay. When you're looking at that, are you 2 looking at the totality of history of water right on 3 that property? For example, getting back to my example 4 where the ground may have been developed in 1890 and 5 had a surface water supply available then, and then a 6 groundwater right is developed in 1961, are you looking 7 at the use of water during that entire time on that 8 piece of property? 9 A. Well, we might, but we usually don't have 10 that good of information. But I think we'd be looking 11 to see -- well, essentially we'd have to go back -- and 12 presumably this would be a transfer situation where 13 they're looking to transfer the groundwater right away, 14 convert it to a primary. 15 Q. Right. 16 A. And so we'd be looking at whether or not 17 the supplemental right was used as supplemental or not 18 and whether they were restricted to use it as 19 supplemental or not. So we might be looking at maybe 20 it developed into a primary right over time, maybe the 21 groundwater use, it was used as a primary use over 22 time. 23 And if it wasn't restricted, then we'd 24 probably recognize that that groundwater use was 25 developed into a full primary use in place, even though

Page 42 1 there may have been surface water shares in existence 2 on the property. 3 Q. What is your experience -- or and if you 4 don't know the answer to this, tell me. But when 5 groundwater rights are located within a surface water 6 delivery organization, are you aware of the Department 7 enforcing these supplemental rights the way you're 8 describing? 9 A. I don't know that we do -- have done any 10 large scale enforcement action. I know we've 11 contemplated. I think in individual cases we have 12 denied transfers, for example, that -- where the water 13 right, with supplemental conditions specifically 14 prohibiting the use of primary, we've denied a transfer 15 on the basis that they have -- have used it in a way 16 that's not appropriate based on the water right 17 conditions. 18 So we've enforced it in probably individual 19 cases, but I don't think we've gone through a 20 comprehensive effort to look at all supplemental rights 21 and to see if the conditions are being applied 22 appropriately. 23 Q. And is there anything in the two documents 24 dealing with the water right that I've shown you, which 25 were, I think, Exhibits 12 and 13, that indicates that	Page 44 1 right to a primary water right? 2 A. I think the basis is -- again, the memo is 3 used as guidance for staff to apply the criteria in a 4 transfer analysis. And so enlargement is a concern in 5 these situations, and we'd want to make sure that in 6 allowing a transfer of a supplemental groundwater right 7 to become a primary right somewhere else, we would 8 ensure that there is no enlargement. So I guess the 9 basis is the statute prohibiting enlargement of a water 10 right. 11 Q. Okay. Other than the enlargement statute, 12 you don't know of any statute or rule that deals with 13 this conversion of supplemental rights to primary 14 rights? 15 A. Not that I'm aware of. 16 Q. Okay. The second question on -- let me 17 make sure I covered all of it. Yeah, I think so. 18 The second question, can you go ahead and 19 read that into the record. 20 A. "If the Department does allow a 21 supplemental right to be changed to a primary right, 22 what becomes of the status of the former primary 23 right?" 24 Q. Do you understand that question? 25 A. Yes.
Page 43 1 that water right is supplemental or that there's any 2 duty to not use that right if surface water is 3 available? 4 A. I think from -- from the condition on the 5 computer printout, there's an indication that there's 6 surface water available on the property, or at least 7 was. But there's nothing prohibiting the groundwater 8 from being fully utilized based on the conditions. 9 Q. Okay. So how does that play into what you 10 were just saying about your analysis? 11 A. I think we would have to take that into 12 account. We'd want information about the use of 13 groundwater and how it was developed in relation to the 14 surface water and how it may have been developed over 15 time to where we're at today before we can decide 16 whether we look at it as a primary/supplemental 17 relationship or otherwise. 18 So yeah, we'd start with that information 19 to recognize that there's probably a surface water 20 right there that we need to account for in some way, 21 and we'd want some kind of an explanation as to the 22 historic use and the relationship. 23 Q. Okay. What is the basis of this policy -- 24 or I don't know if it's a policy, but what's stated in 25 the transfer memo concerning changing a supplemental	Page 45 1 Q. Can you answer it. 2 A. In a typical primary -- or supplemental to 3 primary conversion, if we move off groundwater right to 4 a primary use somewhere else, and assuming that the 5 entire supplemental right is moved off, then the 6 primary right that remains is really no change to it at 7 all. It's -- the assumption is it existed without a 8 supplemental right historically, and it kind of stands 9 alone and we wouldn't attempt to make any kind of 10 revision to that. 11 And the only exception to that is if the 12 supplemental right that's moved off is only moved off 13 in part. And then we'd be concerned about enlargement 14 of the remaining part of the supplemental right, 15 because presumably they'd want to spread the residual 16 of that supplemental right on the entire acreage, which 17 would enlarge the remaining part of the supplemental 18 right. And so we'd have to take some kind of action to 19 address that enlargement issue. 20 Q. What kind of action would you take under 21 those circumstances? 22 A. Well, I think either they'd have to move 23 the residual portion of that supplemental elsewhere so 24 it doesn't create that concern, or they would have to 25 reduce the area if they could apply that -- that

Page 46 1 residual portion of the supplemental right to ensure 2 that it's not spread over additional acres. 3 Q. Okay. Can you read question 3 into the 4 record. 5 A. "If both rights become primary and are used 6 to irrigate different acres, does that constitute an 7 expansion of the original water rights?" 8 You want an answer to that, I assume? 9 Q. I would. 10 A. We would look at the -- well, the primary 11 right doesn't change, and that certainly wouldn't 12 expand the original water right because it's not 13 changing and it's irrigating what it has historically 14 with or without a supplemental right. 15 The supplemental right that's moved and 16 becomes primary in itself is not -- not irrigating 17 additional acres, and presumably we've ensured that 18 they're not using it in a way that enlarges the right 19 by limiting the volume to the historical amount, so we 20 would consider that it wouldn't expand the original 21 water rights. 22 Q. Well, what if it is irrigating additional 23 acres or new acres? 24 A. If it were -- if they were to move it to -- 25 Q. New ground.	Page 48 1 that the beneficial use under both rights remains the 2 same. 3 So in the first instance, you know, when 4 they're a primary/supplemental relationship, they -- 5 they provide a whole supply for the crop. And in the 6 second instance I think you're -- because the primary 7 acres no longer have supplemental, they're a reduced 8 supply like it was historically, and then the 9 supplemental right is reduced to ensure that it hasn't 10 gone beyond its historic amount. 11 So in total, the acres are more, but the 12 use is the same, presumably. 13 Q. That's assuming that the senior right 14 wasn't adequate to irrigate the entire property? 15 A. Correct. 16 Q. But if the senior right is adequate to 17 irrigate the entire property, wouldn't that constitute 18 an enlargement or an expansion? 19 A. I think if the senior right was adequate, I 20 would think what we'd find is there's no need for the 21 use of the supplemental right. And there wouldn't be 22 anything to transfer. 23 MR. FLETCHER: Okay. I think that's all the 24 questions I have. Thanks. I think John Simpson might 25 have some. Thank you.
Page 47 1 A. -- new ground that exceeds the water right 2 amount or just new ground at all? 3 Q. Well, when you say "the water right 4 amount," maybe a better example would be you have a 5 hundred acres and it has a senior surface water right 6 on it that, just for purposes of our example, let's say 7 covers the hundred acres -- 8 A. Okay. 9 Q. -- and there's a groundwater right covering 10 the same hundred acres. 11 If the groundwater right is moved off and 12 irrigates new acres, doesn't that create an expansion 13 situation? 14 A. So what I think you're saying is if you 15 start with a hundred acres with the primary and 16 supplemental together, and you move it off to let's 17 just say another 40-acre tract with the supplemental, 18 now you've got a total of 140 acres, is that an 19 enlargement? Well, it's certainly an enlargement of 20 the total acres under the two water rights. 21 But that's not what we're interested in in 22 the transfer. What we're looking at is does it enlarge 23 the original right. And it went from 100 acres of 24 supplemental to 40 acres as primary, so that's not 25 enlarged. And I think in combination we're making sure	Page 49 1 MR. SIMPSON: Let's take a break for five 2 minutes and let me get organized. 3 (Recess.) 4 MR. SIMPSON: Back on the record. 5 6 EXAMINATION 7 BY MR. SIMPSON: 8 Q. Morning, Jeff. My name is John Simpson. 9 I'm one of the attorneys that represents A & B 10 Irrigation District, Milner Irrigation District, Burley 11 Irrigation District, Twin Falls Canal Company, North 12 Side Canal Company. I think I've named everyone. So I 13 just have a couple questions to follow up on what 14 Mr. Fletcher asked you. 15 And maybe I'll start with the last answer 16 that you gave regarding an answer that -- I'm going to 17 paraphrase what you said, but I think you said if a 18 senior right is adequate, then there is no need or 19 basis for a transfer of a supplemental or a stacked 20 right. 21 A. Well, I think if we were analyzing a 22 transfer, to move the supplemental right off and if the 23 primary right was adequate, then presumably there would 24 be no use shown, no need shown for the supplemental 25 groundwater right. And given that information, there

Page 50 1 wouldn't be anything to transfer, but I don't -- I mean 2 that's... 3 Q. So similar to like on your Exhibit 2, your 4 example, what you've described is in a situation where 5 if the primary right diverts for the hundred acres a 6 sufficient water supply or adequate water supply, then 7 the records wouldn't show that the supplemental or 8 groundwater right would have pumped? 9 A. If the data is accurate, then it shouldn't 10 show that there's any groundwater use. 11 Q. Or if the primary right was decreed with an 12 adequate water supply, then there wouldn't be a basis 13 to then have pumping occurring under the supplemental 14 right? 15 A. When you say the primary right's decreed 16 with an adequate water supply, I guess it really 17 depends on the priority date. So they may have a -- on 18 paper a full supply, but if they're curtailed, then it 19 wouldn't be a full supply. 20 Q. But absent a curtailment because of 21 priority date, then that condition could exist; 22 correct? 23 A. Correct. 24 Q. So if you could again look at Exhibit 2. 25 The example you gave in Exhibit 2 already identified a	Page 52 1 when you were asked by Mr. Fletcher regarding 2 Exhibit 2. 3 During that review did you make a statement 4 that we try to resolve the uses in order to allow a 5 transfer to occur, I mean that is, a supplemental right 6 to be transferred off or the separation of the water 7 rights? Is that a fair statement? 8 A. Well, I think what we need to do is 9 determine that relationship, determine if there is 10 enough data and use to understand the value of a 11 supplemental right, and then to ensure that whatever 12 we're allowing to be transferred doesn't result in an 13 enlargement. 14 Q. In looking at the supplemental use, is 15 there a criteria on the number of years that you've 16 reviewed and determined if it's used a certain 17 percentage of the time? 18 A. Yes. And it's in the transfer memo. We're 19 looking at at least five years. And we want to make 20 sure that the -- that the supplemental use has been 21 used regularly. And the reason for that is because we 22 don't want -- it probably would be an enlargement if 23 you had a right that was used one year in ten and they 24 wanted to transfer it to a primary right. It seems 25 like just going through the numbers you probably
Page 51 1 primary right and a supplemental right. 2 My question, Mr. Peppersack, is if you had 3 your example but you hadn't yet determined whether or 4 not one of these rights was supplemental to the other, 5 could you explain the criteria again for me in making 6 that determination. 7 A. Well, we'd be looking first to see if 8 there's a relationship with a primary/supplemental or 9 surface water/groundwater, whatever the case may be, 10 other rights besides the one being transferred, and 11 then ask for information to -- to help us define what 12 the historic use has been and what that relationship 13 has been. So we need that as a starting point. 14 Q. So you would look and ask the question, are 15 there multiple rights decreed or licensed in the same 16 place of use? 17 A. That would be a good point to start, yes. 18 Q. And then a subsequent question might be, 19 are there differences in the priority dates of the 20 rights that exist at the same place of use? 21 A. Yes, differences in priority dates, 22 differences in source. 23 Q. Other criteria? 24 A. Not that I can think of. 25 Q. And I'm trying to recall your statement	Page 53 1 wouldn't get at a very big equivalent, primary anyways. 2 It seems like it ought to be something that's used 3 regularly so there is some value there to transfer. 4 So we'd look at at least five years, and we 5 also want to make sure that, you know, they're not just 6 high water use years for that supplemental right. We 7 want a representation so we can get an average to 8 ensure that it doesn't enlarge in that way, and... 9 Q. So when you look at Exhibit 3, which is the 10 memo that you authored or signed, on page 29 I believe 11 it discusses the changing of a supplemental right to a 12 primary right, and there's a percentage that's 13 described in that paragraph. 14 Do you see that at the bottom -- 15 A. Yes. 16 Q. -- of paragraph 4? 17 A. Yes. 18 Q. Just if you could read that sentence. 19 A. "The supplemental right must have been used 20 on a regular basis, it says in parentheses, "used more 21 than 50 percent of the time." 22 Q. So for a five-year period that you're 23 describing, more than two years out of five -- 24 A. Correct. 25 Q. -- would be one way to look at that?

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1 A. Correct. 2 Q. And then you've identified another 3 criteria, which would be looking at a dry year 4 condition/wet year condition as well? 5 A. That's right. 6 Q. Okay. Back to Exhibit 2 where you 7 described the five years of groundwater use data, do 8 you also look to see whether or not that water is 9 needed to grow crop as opposed to it may be more 10 convenient to use one source as opposed to another? 11 A. So is your question whether or not the -- 12 Q. Well, for example, I think earlier you said 13 it's a policy of the Department that you have to use 14 your surface water right first before you turn to 15 groundwater. 16 A. And that would be where we've restricted 17 that use on conditions on a permit or water right. 18 Q. So if that condition doesn't exist on a 19 permit or water right, then you're saying it doesn't 20 apply in the Department's review? 21 A. I don't think we'd have a way of enforcing 22 the use of surface water first otherwise. 23 Q. So then I guess the question then becomes, 24 do you then view that surface water as then being the 25 supplemental right?	1 January 27th, 2014. Title is "Exceptions to 2 Preliminary Order Approving Transfer in Part." 3 MR. BAXTER: John, do you have an extra copy? 4 Thank you. 5 THE WITNESS: So I guess that's the 6 identification. 7 Q. (BY MR. SIMPSON): Okay. Do you want to 8 take a moment and look at it? 9 A. I'd probably have to read through it before 10 I can remember what it says. 11 MR. HARRIS: Are there copies for everybody? 12 MR. SIMPSON: Yeah, I... 13 MR. BAXTER: Would you like me to go -- 14 MR. SIMPSON: Yeah, go ahead and make a copy. 15 Thanks, Garrick. 16 MR. FLETCHER: We'll go off the record. 17 MR. SIMPSON: Yeah. 18 (Recess.) 19 (Exhibit 15 marked.) 20 MR. SIMPSON: Back on the record. 21 Q. Mr. Peppersack, you've had a chance to 22 review what has been marked as Exhibit 15; is that 23 correct? 24 A. Yes. 25 Q. Could you identify Exhibit 15.
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1 A. So in other words, if the groundwater was 2 used more often than the surface water, would the 3 surface water be viewed as supplemental? 4 Q. Yeah, even though the priority of the 5 surface water was substantially earlier. 6 A. I guess you can call it whatever you want. 7 But I don't know -- I don't know the value of calling 8 it supplemental or not, unless they were trying to 9 transfer the surface water away and we were trying to 10 analyze it that way, then maybe we'd try to 11 characterize it. But I think ultimately we'd want to 12 get to the same place, and that's look at the data, 13 look at the relationship, and see if there's 14 enlargement in a transfer. 15 Q. Generally speaking, is a supplemental right 16 always junior in priority to the primary right? 17 A. I would say typically, yes. I mean maybe 18 there's some circumstance where it wouldn't be the 19 case, but the way we look at it, and it's typically 20 groundwater/surface water, and that's almost always a 21 junior-priority groundwater right. I haven't really 22 thought whether we could look at the reverse or not. 23 Q. Jeff, I'm going to hand you a document. If 24 you can identify it for the record. 25 A. Well, it's a memo written by me, dated	1 A. It's a memo that I wrote regarding 2 exceptions on a transfer that was approved and 3 contested by the applicant regarding a number of 4 surface water rights for Buckeye Farms. 5 Q. And that transfer involved a number of 6 surface rights that were at least decreed to the same 7 place of use; is that correct? 8 A. That's correct. 9 Q. Okay. And I'm not going to get into the 10 particulars regarding that transfer, but I did want to 11 ask you a number of questions about it, a number of 12 statements that you've made in this document. So with 13 that, I'd ask you to turn to the third page of the 14 document. And the first full paragraph starts "As 15 discussed above." 16 Do you see that paragraph? 17 A. Yes. 18 Q. And can you read the last sentence of that 19 first paragraph that starts with "The enlargement." 20 A. "The enlargement issue arises as a result 21 of the request to alter the way the rights would be 22 exercised by separating the overlapping portion of the 23 rights through a change in the place of use." 24 Q. So you've been asked a number of questions 25 today about the enlargement issue as it applies to a

Page 58 1 transfer process. 2 And is that a general statement regarding 3 one of the issues the Department looks at where you 4 have the transfer of rights that are stacked or 5 overlapping? 6 A. Yes. We would always look at enlargement 7 if we're unstacking rights. 8 Q. Okay. And then down in what would be the 9 third full paragraph that starts with "In practice," 10 can you read that sentence into the record. 11 A. The first sentence? 12 Q. Yes. 13 A. "In practice, the Department considers a 14 supplemental right to have a different source than the 15 associated primary right and is restricted to use when 16 the primary right is unavailable or insufficient." 17 Q. Okay. So is that still the Department's 18 practice today? 19 A. I think that would be a good way to look at 20 supplemental rights. 21 Q. Okay. And then if you could read the next 22 two sentences as well. 23 A. "A typical example would be a groundwater 24 right used to supplement an earlier priority surface 25 right. A supplemental right is always considered to be	Page 60 1 enlargement of the primary right is usually not a 2 concern." 3 Q. And again, the same questions arise out of 4 that sentence. 5 Is that still the Department's 6 understanding or policy that they implement with 7 respect to reviewing primary and supplemental water 8 rights? 9 A. I think it is, but I think I need to 10 clarify that this would be the type where we have put 11 on restrictive conditions that say that it's a -- it 12 can only be used when -- when the primary surface water 13 is not available or not sufficient. 14 Q. And can you point to a Department policy 15 that states that? 16 A. I think I'd have to just point to the 17 practice that where we've applied those conditions, 18 those conditions state that the -- the supplemental 19 groundwater use is limited in use to when the -- the 20 surface water is not available or not sufficient. 21 MR. SIMPSON: That's all the questions I have. 22 Thank you, Mr. Peppersack. 23 /// 24 /// 25 ///
Page 59 1 an overlapping or stacked right, whether it is used 2 while the associated primary right is still partially 3 available or after the primary right is fully 4 curtailed." 5 Q. Okay. And are those two sentences 6 consistent with how the Department views a supplemental 7 right today? 8 A. I think so. 9 Q. And that would be part of the analysis the 10 Department would undertake? 11 A. Yes. 12 Q. And the policy the Department would 13 implement with respect to a supplemental right? 14 A. Yes, I think that's right. 15 Q. And then at the bottom of the page, the 16 last paragraph, the second sentence in that paragraph, 17 if you could read that into the record. 18 A. The last paragraph? 19 Q. Yes. On the bottom of that page. 20 A. The one starting with "Since the 21 Department"? 22 Q. Correct. 23 A. "Since the Department requires that use of 24 a supplemental right is limited to times when the 25 primary right is unavailable or insufficient,	Page 61 1 EXAMINATION 2 BY MR. BUDGE: 3 Q. Mr. Peppersack, I'm TJ Budge. I represent 4 Idaho Ground Water Appropriators. I appreciate your 5 time today and the information you provided. It's been 6 helpful. I just wanted to make sure I have a clear 7 understanding on a few of the items that have been 8 discussed already, so just a few follow-up questions. 9 First on the distinction between a stacked 10 water right and a supplemental right, am I 11 understanding correctly that if as a matter of fact the 12 places of use overlap, then the water rights are 13 considered stacked? 14 A. That's generally right. 15 Q. And whether that stacked right has a 16 supplemental and primary relationship depends on the 17 development of the right and whether they were both 18 needed to provide a full water supply? 19 A. Yeah, as a general statement, that's 20 probably right. 21 Q. And you mentioned that those are factual 22 inquiries that require looking at the water rights and 23 the history and things of that nature? 24 A. Correct. 25 Q. To follow up on a question John just asked,

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1 my understanding is that some supplemental groundwater 2 rights have conditions that require the surface water 3 to be used before groundwater and other supplemental 4 groundwater rights don't; is that correct? 5 A. That's correct. 6 Q. And did you testify that if that condition 7 is in place, then in terms of daily administration of 8 the water right the Department will require use of the 9 surface water right first? 10 A. That would be the expectation of the water 11 user. 12 Q. Now, in the context of a transfer 13 application, you may evaluate that primary versus 14 supplemental relationship regardless of whether the 15 water right has a condition on its face to that effect; 16 is that right? 17 A. That's correct. 18 Q. Switching gears for a moment, earlier we 19 reviewed the different versions of the Department's 20 transfer memorandum. 21 Do you recall that discussion? 22 A. Yes. 23 Q. I have not spent time comparing those. You 24 probably understand the differences better than I do. 25 But I wanted to ask, do you know if the	1 helpful, so thank you for taking the time to do this in 2 advance of our discussion today. 3 Am I understanding this correctly that 4 under the conversion there would be no increase in the 5 gross number of acres irrigated between the primary and 6 supplemental right? 7 A. The gross number of acres irrigated? If 8 you converted and moved some acreage off, the gross 9 number would increase. So in other words, if you 10 started with 100 acres and they overlapped 11 primary/supplemental relationship, and then you wanted 12 to transfer the supplemental off, which was equivalent 13 to 40 acres, it would be a total of 140 acres irrigated 14 between the two. So there would be an increase in 15 acres. 16 Q. And you would allow the original hundred 17 acres to continue to be irrigated with the primary 18 right? 19 A. Yes. 20 Q. Does the Department take into account 21 consumptive use when it's making an enlargement 22 analysis? 23 A. Yes, in general terms we do. It depends 24 more on the type of transfer. Change or nature of use, 25 we definitely do. And irrigation to irrigation, we
Page 63	Page 65
1 2002 version of that memo included a section that dealt 2 with this conversion of supplemental to primary rights? 3 A. It did. It was less detailed. I think 4 that was one of the reasons for updating is to provide 5 a little more guidance to staff, because over time 6 questions arise on how to implement. And we try to 7 address those questions. 8 Q. Okay. Did the Department have any type of 9 policy prior to 2002 regarding allowing supplemental 10 rights to be converted? 11 A. My recollection is that it probably 12 wasn't -- didn't happen that often. It probably was 13 more restrictive because we didn't have the kind of 14 data that's available maybe later in time regarding the 15 groundwater use. 16 So I don't think it would -- occurred that 17 much. And I think what the transfer memo said, even at 18 the time, was that it would be an enlargement unless 19 information could be shown otherwise. But that's kind 20 of as far as it went. So I think it opened the door at 21 that point, and then the questions came, you know, how 22 do we apply that. 23 Q. Okay. That's helpful. A question about 24 Exhibit No. 2, which was the Supplemental to Primary 25 Example that you created. And this, again, was very	1 generally don't. Supplemental use, it's probably built 2 in when we're looking at the crop numbers and the 3 beneficial use history. So to some extent, yes, 4 consumptive use is considered. 5 Q. So under the example you just gave where 6 you had a primary and a supplemental right that covered 7 a hundred acres and the supplemental right was allowed 8 to be transferred to cover some other 40-acre piece, 9 leaving a 140 total acres irrigated, there would be an 10 increase in consumptive use under those water rights? 11 A. No, that -- our intent would be that there 12 would not be, because the surface water right does not 13 provide the full crop requirements. And so in tandem 14 when they're used as primary/supplemental, you would 15 get at, you know, 100 acres worth at full supply. 16 But if you separate them, then you have 17 less consumptive use utilized on the primary acres 18 because they don't provide a full supply, and you've 19 reduced the acres on the supplemental to the historic 20 amounts. So the intent there would be to not be an 21 increase in consumptive use. 22 Q. And would the Department impose some type 23 of condition on the primary surface water right to 24 ensure that it is utilized in that way? 25 A. If they're moving the entire supplemental

Page 66 1 supply off, there's no change to the primary right. I 2 mean the assumption is that it operates as it always 3 has and that it's curtailed, you know, historically -- 4 in the future the way it has been historically, so 5 there probably wouldn't be a full supply available in 6 each year. And, you know, that's just based on 7 historic record. 8 So there would be nothing done to the 9 primary right, and it wouldn't be a subject of the 10 transfer, so we wouldn't usually go there anyways, but 11 unless, you know, they're apart like I explained 12 earlier where we might have to limit the primary right 13 to ensure that there's no enlargement of the 14 groundwater on top of the remaining -- or no 15 enlargement of the residual supplemental right on top 16 of the primary right by spreading acres. 17 Q. Okay. Thank you. 18 And so the example that you provided 19 there's an assumption here that the appropriator has 20 used their primary right at all times when water has 21 been available under it; is that correct? 22 A. Yes. 23 Q. And if the appropriator had not been using 24 the primary right out of convenience or something, then 25 this example may not hold up; is that correct?	Page 68 1 questions about the definition of stacked water rights 2 that's on page 28 of the transfer memo. 3 And I'm not sure I caught this, but who 4 prepared that definition of "stacked water rights"? 5 A. I probably did. 6 Q. Did you receive input from anybody else 7 within the Department that you recollect? 8 A. It was reviewed by a number of others. 9 Q. Do you know who that would have been? 10 A. Well, generally we send them out to each of 11 our regional offices and other managers in the State 12 office. So at the time, depending on who the regional 13 managers were, it would have been them and probably 14 Shelley Keen in our water rights section, and that may 15 be the extent of it. I'm not sure who else may be. 16 But we generally go through a process just to make sure 17 others have had a chance to look at it. 18 Q. Did you come up with the term "stacked"? 19 A. No. The term "stacked" has been around for 20 as long as I've been here. 21 Q. Do you know where it originated? 22 A. No. 23 Q. Are there different categories of stacked 24 water rights? 25 A. There are different types of stacked water
Page 67 1 A. That's correct. 2 MR. BUDGE: I have no further questions. 3 4 EXAMINATION 5 BY MR. HARRIS: 6 Q. Mr. Peppersack, my name is Rob Harris. I'm 7 the attorney for the applicant in this matter. Kip and 8 Brandi are the applicants, Kip and Brandi Hunter. I do 9 have a couple of questions. 10 The first one is a little more generic: 11 When the Department reviews a transfer application, 12 what does it look at first? 13 A. Well, first we would just look at the 14 application itself to make sure it's complete. 15 Q. Do you start by looking at the water right 16 elements and conditions? 17 A. Not -- not first -- not when we first 18 receive an application, no. We would just look at 19 whether the application has been filled out 20 appropriately and the information is there and the fee 21 has been paid. 22 Q. Eventually are the water right elements and 23 conditions reviewed in a transfer 42-222 analysis? 24 A. Yes. 25 Q. Mr. Fletcher asked you a number of	Page 69 1 rights, perhaps. I don't know that we've categorized 2 them. But I mean, for example, a supplemental right is 3 considered a stacked water right, but the reverse isn't 4 necessarily true. So yeah, there are different types. 5 Q. So I want to make sure I understand that. 6 As I understand your testimony, when we talk about 7 supplemental water rights, you made a distinction 8 between conditioned supplemental water rights and then 9 nonconditioned but considered to be supplemental water 10 rights. 11 Is that a fair characterization of those 12 two categories? 13 A. Yes, I think so. 14 Q. Okay. And in both cases would those both 15 be considered stacked water rights? 16 A. If we considered them supplemental, then 17 yes, they would both be stacked water rights. 18 Q. Other than those two categories, is there 19 another category or another situation where there would 20 be stacked water rights? 21 A. Well, stacked water rights would be any -- 22 any set of water rights where they overlapped the same 23 place of use for the same purpose. So there would be 24 supplemental, there would be those that are not 25 supplemental. And those that are not supplemental,

Page 70 1 there could be a number of types, whether they're from 2 the same source or different sources. So yeah, I don't 3 know if I'd limit it to just those types. I'd have to 4 think about it more, but... 5 Q. Would a situation where you have combined 6 groundwater rights that irrigate a common place of use, 7 would those be stacked water rights as well? 8 A. Those would be considered stacked if 9 they're combined at the same place of use. 10 Q. So we got at least three categories of 11 stacked rights. 12 And you're saying you might have to think 13 more about maybe what some other categories would be? 14 A. Yes. 15 Q. Okay. Did you participate in reviewing or 16 issuing recommendations in the Snake River Basin 17 Adjudication? 18 A. Yes. 19 Q. Was there a concerted effort to try to 20 identify which water rights were truly supplemental or 21 should be conditioned as such and those that were not, 22 or was there any analysis done? 23 A. I'm not that familiar with -- my 24 understanding is that the agents relied on the historic 25 record in the water right file or information from the	Page 72 1 analysis of stacked water rights, not necessarily 2 supplemental. Although I think the supplemental 3 conditions -- the intent was probably to carry them 4 forward, but I don't think that always happened that 5 way. They may have changed them from the more 6 restrictive supplemental conditions to the more 7 informational type supplemental condition. 8 Q. Did they ever do an analysis to go the 9 other direction, where there's no indication on the 10 license that it's supplemental, but the Department 11 determined in the SRBA to include a supplemental 12 condition in the water right? 13 A. I'm not aware that they've done that. 14 Q. Who within the Department might know the 15 answer to that question? 16 A. Carter Fritschle would probably be a good 17 one. 18 Q. Okay. Does IDWR have a number of 19 conditions that are used to designate a water right as 20 a supplemental water right? 21 A. Well, they probably don't specifically say 22 they're supplemental. But yes, there are conditions 23 placed on permits and licenses that would restrict the 24 use of groundwater to times when surface water isn't 25 available or insufficient. And that would essentially
Page 71 1 water user. My understanding is that the more 2 restrictive supplemental conditions that prohibited 3 groundwater use when surface water was available, those 4 came from water rights that originate as permits in the 5 Department where we've applied those conditions, 6 whereas other water rights in the SRBA that didn't 7 originate from permit probably wouldn't have received 8 those conditions. 9 And I understand that some of those 10 conditions were removed. Some of the more restrictive 11 conditions were removed through the SRBA as well for 12 one reason or another. So I don't know exactly what 13 the process was that the individual agents went through 14 to identify supplemental. 15 My understanding is I don't know that they 16 had gone through an extensive effort to determine that 17 exact supplemental relationship. But if they 18 understood that there was surface water available in 19 some form, then they probably had some kind of a 20 condition placed on the water right. 21 Q. And would that condition typically be 22 included in a prior licensed water right? 23 A. If the -- there would have been -- if there 24 would have been conditions in a prior licensed water 25 right, then that would have triggered that -- that	Page 73 1 identify them as supplemental rights. 2 Q. Do you know how many different versions of 3 those conditions there are? 4 A. Over time it's probably been changed and 5 updated. But yeah, I don't know. A handful at least 6 probably over time. 7 Q. By "handful," do you mean more than ten 8 different versions? Less than ten? 9 A. I don't know for sure. We'd have to look 10 back. But somewhere in that ballpark, perhaps. 11 Q. Are you aware of what the number of the 12 current conditions are? 13 A. You mean identification number or how many 14 we have? 15 Q. Yeah. My experience is there's usually an 16 identification number with a condition. And I would 17 like to know if you know the number of different 18 versions or varieties that are available to an agent -- 19 A. No. 20 Q. -- to insert into a water right today 21 within the Department's database. 22 A. No, I don't know the exact number. 23 Q. Is there someone? Who do you know that 24 would know that or that could provide that? 25 A. We'd look into our database, and we can

Page 74 1 find those. Shelley Keen would be a good one. 2 Q. And just continuing on that, I've seen 3 conditions that say you have to use surface water 4 before groundwater is used. 5 What other varieties are out there that 6 indicate that the water right is supplemental, other 7 than that one that you've discussed? 8 A. I think the varieties that are out there 9 have to do with whether or not there are other uses of 10 water besides irrigation. 11 Q. What form would the condition take if 12 they -- well, that's what I'm really getting at is how 13 do you distinguish between different conditions that 14 are included? 15 A. Well, I think if there were other uses 16 besides irrigation we'd want to be clear that -- that 17 use of surface water -- well, I guess I'd have to look 18 back at them to see what the distinction is and why we 19 do that. I mean it also depends, I think, on whether 20 they're fully supplemental or not, fully stacked or 21 not. I mean there's variations. But I -- I don't -- I 22 haven't looked at them recently, so I don't know. 23 Q. Is it fair to say that that determination 24 is made at licensing, there's some determination made 25 when that water right comes to being that the	Page 76 1 A. Can you ask that again? 2 Q. Yeah. Let me ask it this way. We'll use 3 Aberdeen-Springfield Canal Company as an example. 4 Okay? They have a digital boundary and they have 5 decreed water rights that are used within the boundary. 6 Do acres authorized under the 7 Aberdeen-Springfield rights match calculated acreage of 8 the digital boundary? 9 A. The acres authorized under the water right? 10 Q. Uh-huh. 11 A. So you're asking if that matches the acres 12 of the digital boundary? 13 Q. Right. 14 A. Well, the acres authorized might be smaller 15 within that area. 16 Q. I agree with you. So is there a 17 presumption, though, that a groundwater that's within a 18 digital boundary of a surface water entity, is there a 19 presumption that that water right is supplemental until 20 historic analysis is made? 21 A. I don't know if there's necessarily a 22 presumption there. I think we would -- we would ask 23 the question knowing that it's in a -- in a digital 24 boundary or a canal company or irrigation district, 25 that type of entity, I think that would be a good
Page 75 1 Department determines that it truly is supplemental in 2 nature? 3 A. Yeah, licensing is when we would review the 4 field exam information, other information available to 5 determine whether or not they're supplemental and what 6 conditions applies. 7 Q. I believe Mr. Fletcher asked you when you 8 looked at Exhibit 12, which is the partial decree, and 9 you did not identify any condition on the partial 10 decree indicating that water right was supplemental; 11 correct? 12 A. Not on the partial decree, correct. 13 Q. Are you familiar with what a digital 14 boundary is and those issued in the SRBA? 15 A. Yes. 16 Q. What is a digital boundary? 17 A. You're gonna make me say it? 18 Q. Sure. 19 A. Well, it's a boundary that is kept in a 20 computer file essentially that we can reproduce and 21 provides the outer boundary of a place of use. So it's 22 not described by 40-acre tract. 23 Q. Does the transfer memo presume that every 24 groundwater right acre within a digital boundary of a 25 surface water entity is supplemental?	Page 77 1 starting point is to ask the question is -- is there a 2 supplemental relationship. And I don't know if that 3 would necessarily presume that there is right off. 4 Q. It's part of the analysis you would 5 perform? 6 A. Yes. 7 Q. If a groundwater right is developed on its 8 own and surface water is later obtained for the same 9 place of use, does the Department still consider that 10 situation to be a stacked water right situation? 11 A. I guess it depends on the circumstances. 12 There have been cases where -- and I think that in the 13 examples you provided in your letter, Exhibit 1, cases 14 where the intent was to replace groundwater with 15 surface water. And so they weren't necessarily 16 recognized as a stacked or supplemental/primary 17 relationship. 18 Q. So are you saying that you would look at 19 intent on how the water rights got moved or used at the 20 place of use? 21 A. We'd look at how they were developed and, 22 yeah, what the intent was. 23 Q. On page 27 of the transfer memo that's 24 Exhibit 3 -- I'm sorry, it's actually page 29. In 25 subparagraph (4) there's a sentence that starts out "An

Page 78 1 exception is when the applicant can clearly 2 demonstrate." 3 Do you see that? 4 A. Whereabouts is it? 5 Q. About the middle of the paragraph. 6 A. Okay. 7 Q. The sentence continues at the very end it 8 says "...that there would be no enlargement of the 9 water right being changed or other related water 10 rights." 11 Is there any statutory language that 12 supports the Department's review of other related water 13 rights? 14 A. Not that I'm aware of. 15 Q. When you review transfers that propose to 16 move off supplemental water rights, do you look at the 17 priority date of the surface water right that's 18 associated with the property? 19 A. That would be part of our review just 20 looking at the water rights, yes. 21 Q. Okay. Exhibit 8 is a letter that Dave Shaw 22 had written, I believe, to you or the Department. You 23 indicated that there's a small part of that letter that 24 deals with supplemental and primary. 25 Could you point to me where that's at.	Page 80 1 MR. BAXTER: I have no questions. 2 MR. FLETCHER: Oh, sorry. Didn't mean to jump 3 in front of you there. 4 MR. BAXTER: No problem. 5 MR. SIMPSON: None. 6 MR. BUDGE: None here. 7 (Deposition concluded at 11:24 a.m.) 8 (Signature requested.) 9 -oOo- 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 79 1 A. Yeah. That would be on page 3, item 10. 2 Q. Could you generally describe what Mr. Shaw 3 was suggesting in that paragraph. 4 A. I think there was a concern raised about 5 reducing the primary right to ensure no enlargement on 6 a potential taking of property. 7 Q. And I'll probably have a chance to ask 8 Mr. Shaw about this at some future point, but I've read 9 through this. I'm not sure I understand the takings 10 argument. 11 Do you have any understanding of what 12 argument was being made there? 13 A. Well, I'm just assuming, since I didn't 14 write it, that the idea -- and actually, in our earlier 15 versions of the transfer memo, I think it talked about 16 a proportionate reduction of the primary's surface 17 water source in any move. 18 And we've since changed that to just cases 19 where they're just leaving a portion of the 20 supplemental right behind and decided there was really 21 no need to reduce the primary right if they're moving 22 the entire right, supplemental right, off. 23 MR. HARRIS: I have no further questions. Thank 24 you. 25 MR. FLETCHER: I don't have anything further.	Page 81 1 CERTIFICATE OF JEFF PEPPERSACK 2 3 I, JEFF PEPPERSACK, being first duly sworn, 4 depose and say: 5 That I am the witness named in the foregoing 6 deposition; that I have read said deposition and know 7 the contents thereof; that the questions contained 8 therein were propounded to me; and that the answers 9 contained therein are true and correct, except for any 10 changes that I may have listed on the Errata Sheet 11 attached hereto. 12 DATED this ____ day of _____ 20____. 13 14 CHANGES ON ERRATA SHEET YES___ NO ___ 15 16 _____ 17 JEFF PEPPERSACK 18 19 SUBSCRIBED AND SWORN to before me this 20 ____ day of _____ 20____. 21 22 23 _____ 24 NAME OF NOTARY PUBLIC RESIDING AT _____ 25 MY COMMISSION EXPIRES _____

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REPORTER'S CERTIFICATE

1
2 I, JEFF LaMAR, CSR No. 640, Certified Shorthand
3 Reporter, certify:
4 That the foregoing proceedings were taken before
5 me at the time and place therein set forth, at which
6 time the witness was put under oath by me.
7 That the testimony and all objections made were
8 recorded stenographically by me and transcribed by me
9 or under my direction.
10 That the foregoing is a true and correct record
11 of all testimony given, to the best of my ability.
12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.
15 IN WITNESS WHEREOF, I set my hand and seal this
16 5th day of September, 2017.
17
18
19
20
21 JEFF LaMAR, CSR NO. 640
22 Notary Public
23 Post Office Box 2636
24 Boise, Idaho 83701-2636
25 My commission expires December 30, 2017

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9 (2) 8:7;11:17			

Exhibit 2

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF APPLICATION FOR)
TRANSFER NOS. 81292 and 81293 IN THE)
NAME OF KIP HUNTER AND BRANDI HUNTER)
_____)**

**DEPOSITION OF CARTER FRITSCHLE
AUGUST 25, 2017**

REPORTED BY:

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

Notary Public

Page 2	
1	THE DEPOSITION OF CARTER FRITSCHLE was taken
2	on behalf of Idaho Ground Water Appropriators, Inc., at
3	the offices of Idaho Department of Water Resources,
4	322 East Front Street, Room 602B, Boise, Idaho,
5	commencing at 12:32 p.m. on August 25, 2017, before
6	Jeff LaMar, Certified Shorthand Reporter and Notary
7	Public within and for the State of Idaho, in the
8	above-entitled matter.
9	
10	
11	APPEARANCES:
12	For Kip Hunter, Brandi Hunter, and Lance Funk:
13	HOLDEN KIDWELL HAHN & CRAPO, P.L.L.C.
14	BY MR. ROBERT L. HARRIS
15	1000 Riverwalk Drive, Suite 200
16	Post Office Box 50130
17	Idaho Falls, Idaho 83405
18	rharris@holdenlegal.com
19	For Minidoka Irrigation District and AFRD-2:
20	FLETCHER LAW OFFICE
21	BY MR. W. KENT FLETCHER
22	Post Office Box 248
23	1200 Overland Avenue
24	Burley, Idaho 83318-0248
25	wfk@pmt.org

Page 3	
1	APPEARANCES (Continued):
2	For Idaho Ground Water Appropriators, Inc.:
3	RACINE, OLSON, NYE & BUDGE, CHARTERED
4	BY MR. THOMAS J. BUDGE
5	Post Office Box 1391
6	Pocatello, Idaho 83204-1391
7	tjb@racinelaw.net
8	For A & B Irrigation District, Milner Irrigation
9	District, Burley Irrigation District, Twin Falls Canal
10	Company, and North Side Canal Company:
11	BARKER, ROSHOLT & SIMPSON LLP
12	BY MR. JOHN K. SIMPSON
13	1010 West Jefferson, Suite 102
14	Boise, Idaho 83702
15	jks@idahowaters.com
16	For Idaho Department of Water Resources:
17	OFFICE OF ATTORNEY GENERAL
18	IDAHO DEPARTMENT OF WATER RESOURCES
19	BY MR. GARRICK L. BAXTER
20	MS. EMMI L. BLADES
21	322 East Front Street
22	Boise, Idaho 83720
23	garrick.baxter@idwr.idaho.gov
24	emmi.blades@idwr.idaho.gov
25	Also Present: Dave Shaw

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1	I N D E X
2	
3	TESTIMONY OF CARTER FRITSCHLE
4	Examination by Mr. Budge
5	Examination by Mr. Harris
6	Examination by Mr. Fletcher
7	
8	
9	EXHIBITS
10	Exh 16 - Notice of Taking Deposition Duces Tecum
11	of Carter Fritschle (sic)
12	Exh 17 - History of Remarks and Conditions in
13	SRBA Director's Reports
14	Exh 18 - Adjudication Memo 32, from
15	L. Krogh-Hampe to Adjudication Staff,
16	dated 8/20/1992
17	Exh 19 - Adjudication Memo 32A, from D. Shaw to
18	Adjudication Staff, dated 5/1/1996
19	Exh 20 - Adjudication Memorandum 32, from
20	D. Shaff to Adjudication Staff, dated
21	7/27/2004
22	Exh 21 - Adjudication Memo 32B, from C. Fritschle
23	to Adjudication Staff, revised 8/9/2013
24	Exh 22 - Order Denying Request for Attorney's
25	Fees and Costs

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1	I N D E X (Continued)
2	
3	EXHIBITS
4	Exh 23 - Adjudication claim backfile printed from
5	the Department's document management
6	system
7	Exh 24 - Water right backfile printed from the
8	Department's document management system
9	Exh 25 - Adjudication Memo 32A, from D. Shaw to
10	Adjudication Staff, dated 5/1/1996
11	Exh 26 - Order of Partial Decrees for Irrigation
12	Delivery Entity Using Digital Boundary
13	Description
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1 CARTER FRITSCHLE, 2 first duly sworn to tell the truth relating to said 3 cause, testified as follows: 4 5 EXAMINATION 6 BY MR. BUDGE: 7 Q. Thank you, Mr. Fritschle, for being here 8 today. My name is TJ Budge. I represent Idaho Ground 9 Water Appropriators. I'm going to begin your 10 deposition and ask you several questions, and then some 11 of the other attorneys may have follow-up questions. 12 Carter, have you been deposed before? 13 A. Yes, I have. 14 Q. Okay. You may recall, then, in a 15 deposition I'll ask questions and you provide answers, 16 and we both need to do our best not to speak over each 17 other. So try to let me finish my question before you 18 answer, and I'll try to let you finish your answers 19 before I ask another question. 20 A. Okay. 21 Q. The reporter can only record audible 22 answers, so head nods don't work. So you need to 23 answer with "yeses" and "noes." He doesn't do very 24 good with "huh-uhs" and "uh-huhs" either. 25 If you don't understand any of the	1 brought with you today, beginning with Deposition 2 Exhibit 16. 3 A. Okay. Well, Exhibit 16 is the notice I 4 received for taking the deposition today. 5 Do you need any more information than that? 6 Q. No. 7 A. Okay. Exhibit 17 is a history of remarks 8 and conditions that I put together in preparation for 9 the deposition. 10 Adjudication memo -- or Exhibit 18 is 11 Adjudication Memo 32, dated August 20th, 1992. And 12 this is -- was a paper copy of that that I copied from 13 a notebook I've kept on the adjudication memos. 14 Exhibit 19 is a copy of Adjudication Memo 15 32A from May 1st, 1996. And I also took it out of my 16 notebook and made a copy for this deposition. 17 Adjudication Memo 32 is dated July 24th, 18 2004. That's Exhibit 20. And this is -- was printed 19 as an electronic version that I'd saved on my hard 20 drive computer. 21 And then Exhibit 21 is Adjudication 22 Memorandum 32B, dated August 9th, 2013. And this was 23 taken off of the Department's internal website and 24 printed for the deposition. 25 Exhibit 22 is an order I found in docs in
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1 questions that I ask, you're welcome to ask me to 2 restate it or rephrase it or clarify it or something 3 like that. And then if your attorney instructs you not 4 to answer a question, then you should not answer that. 5 But other than that, otherwise you should answer every 6 question that's asked of you, even if an objection were 7 made. 8 Carter, you brought with you a stack of 9 documents. I would like to begin this deposition by 10 taking a moment to go through those and have you 11 explain those. But before you do that, I think what 12 we'll do is just take a minute to go off the record and 13 mark those before you discuss them. 14 Okay? 15 A. Okay. 16 (Recess.) 17 (Exhibit 16, Exhibit 17, Exhibit 18, 18 Exhibit 19, Exhibit 20, Exhibit 21, Exhibit 22, 19 Exhibit 23, Exhibit 24, and Exhibit 25 marked.) 20 MR. BUDGE: Back on the record. 21 Q. Carter, while we were off the record, we've 22 gone through each of the documents that you brought 23 with you today, and we've marked them with deposition 24 exhibit numbers. I'd now like to take a minute and 25 have you explain each of these documents that you	1 the Department's document management system. It's the 2 order denying request for attorneys' fees and costs. 3 And Exhibit 23 is the adjudication claim 4 backfile that came from the -- that I printed out from 5 our -- from the Department's document management 6 system. And all of them have, of course, some notes 7 there where I might need to refer. 8 And Exhibit 24 is the water right backfile 9 that I printed from the Department's document 10 management system. 11 And finally, this Exhibit 25 is another 12 copy of 32A with additional pages that appear to be the 13 condition codes that were in place as of May 1st, 1996. 14 Q. Thank you, Carter. I'll come back and ask 15 a few questions about those, but first want to have you 16 explain your current position with the Department of 17 Water Resources. 18 A. I am the adjudication section manager 19 within the Department. Basically I manage the State 20 office adjudication staff and coordinate with our 21 adjudication unit up in northern region, in 22 Coeur d'Alene office. 23 Q. Okay. How long have you held that 24 position? 25 A. I've been in this position since around

Page 10 1 January of 2006. 2 Q. So you were in that position during the 3 Snake River Basin Adjudication as well? 4 A. No. For -- well, from 1992 -- I think it 5 was September or October of '92 through December into 6 January of 2006 I was the water rights supervisor at 7 the State office for the Adjudication Bureau at that 8 time. 9 Q. Explain what you did as the water right 10 supervisor. 11 A. I -- well, I supervised the agents that 12 were assigned to the State office, which were -- for 13 the most part, they were liaison agents with the 14 regions. And I also worked as a liaison agent for the 15 eastern region office. 16 And basically what a State office liaison 17 agent would do would be work with the staff in the 18 region, help them with their field exams, and 19 coordinate any issues -- bring any issues that may 20 arise from the regional work and bring it back to the 21 State office so that it could be discussed and we could 22 work on resolving those issues. 23 Q. And the agents at the regional offices that 24 you worked with, were they engaged in permitting and 25 licensing or the adjudication or both?	Page 12 1 Q. And did you say that it was from '92 until 2 2006? 3 A. Well, it actually started around 1990. We 4 took claims from 1988 through May of 1990. And then in 5 June of 1990 I went out in Basin 34 and met with the 6 watermaster and started gathering information for -- to 7 assist with our claim review. 8 Q. And then was it 2006 that you took on your 9 current position? 10 A. Yes. 11 Q. And explain what you do in your current 12 role. 13 A. Basically, I'm now -- well, still doing 14 much of what I did before, but I'm also supervising all 15 of the people in the State office that are working in 16 the adjudication on the technical side of it, as well 17 as in facilitating and working with our northern Idaho 18 adjudication unit. Certainly worked -- we still had a 19 lot of the SRBA to finish as of 2006, so I worked 20 through a lot of that, settling objections -- or 21 working with the settlement of objections. 22 Now, you know, planning, projecting where 23 we're going to be, you know, down the road is part of 24 the job. But I never have really given up sort of my 25 first love, and that's reviewing the claims and
Page 11 1 A. They generally were reviewing adjudication 2 claims. Certainly there may have been a licensing exam 3 or two, but for the most part it was doing the 4 investigation of the claims that were filed in the 5 SRBA. 6 Q. So you were superior or advisor to the 7 field agents who were examining adjudication claims on 8 the ground? 9 A. Only those that worked out of the State 10 office. 11 Q. Okay. 12 A. There was -- each region had their own 13 supervisor, and they supervised those agents. I just 14 sort of facilitated communications with those agents 15 and helped them out, really. 16 Q. How much involvement did you have with the 17 regional offices during the adjudication? 18 A. Well, in eastern region I was more or less 19 treated just as an additional agent for that office for 20 the most part, at least until about the mid-'90s. And 21 so I would review field exams. I certainly did a lot 22 of field exam review and claim review in Basin 34, 35, 23 31, and got a little bit of work in some of the other 24 regions as well. But those were the main ones I worked 25 in.	Page 13 1 presenting -- or preparing the recommendations for the 2 Court -- or Director's reports. 3 Q. So it's my understanding, then, that you 4 were involved on behalf of the Department in the SRBA 5 through its duration from 1990 until it concluded in 6 2014 or so. 7 A. Actually, I started working for the 8 Adjudication Bureau under Dave Shaw in early November 9 of 1987. So I was actually working for the 10 Adjudication Bureau when the commencement for the SRBA 11 was signed -- or the commencement order was issued. 12 Q. Well, you certainly sound like the right 13 guy for this deposition. 14 Are there any documents that you reviewed 15 to prepare for the deposition that are not in the stack 16 you provided today? 17 A. No. 18 Q. Did you review the transfer applications 19 themselves that we're dealing with in this case? 20 A. I may have looked at them, but I didn't 21 really get into any depth, you know, trying to 22 understand them or anything. 23 Q. Okay. Good. On the deposition notice 24 you've been designated as the person to answer the 25 three items that are shown in bullets on page 1.

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1 A. Uh-huh. 2 Q. And the first one asks you to be prepared 3 to address "The difference between an 'explanatory 4 remark' and a 'condition' on a water right." And we've 5 had discussion of conditions, remarks, explanatory 6 material, explanatory remarks, and so I'm not sure the 7 designations are correct, but it would be helpful if 8 you could explain to me the difference between the 9 different types of remarks that accompany water rights 10 in the Department. 11 A. Well, on -- for adjudication 12 recommendations we have categories for the remarks and 13 conditions. They have since -- they're now all 14 conditions. That change took place probably over ten 15 years ago, anyway. A condition or remark can be in a 16 category, and depending on what the category is is 17 depending -- which element it is under on the face of 18 the recommendation, which then would become -- would 19 also be transferred to the face of the partial decree. 20 So explanatory material are remarks and 21 conditions that essentially go on the end of the 22 Director's report, and they do not then necessarily 23 appear on the face of the partial decree, unless they 24 get changed in the process. We've had explanatory 25 material sometimes converted to a different category	1 in the water right numbers involved and of course the 2 total quantity that those water rights would be limited 3 to. 4 So a remark was, if you will, could be 5 edited by the agent making the recommendation, where a 6 condition generally could not. 7 Q. And then you said around 2007 that changed? 8 A. We combined the conditions and water right 9 tables together, and everything became -- could be 10 edited at that point. So conditions no longer were 11 always exactly the same, but they were hopefully kept 12 very similar from one recommendation to the next. 13 Q. Okay. When you say you combined them, is 14 that in some type of database or data entry system? 15 A. There was tables in the database, yes. We 16 essentially took two tables and made one large table. 17 Q. Could you describe this database that 18 you're discussing and explain how it works. 19 A. Probably not. But from a user's point of 20 view, you put in a code for a condition, and then that 21 condition has a preassigned category, so you just add 22 those conditions to a field, if you will, that is 23 linked to the water right -- or claim that you're 24 working on, a link to that recommendation. 25 And then when it gets saved with that, the
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1 through objection process because someone felt it was 2 necessary to be on the face of the partial decree, but 3 for the most part if it's a combined quantity limit, it 4 would be under the quantity element. If it's something 5 that may affect the administration and doesn't 6 necessarily fit under a specific category, it would go 7 under other provisions necessary for the administration 8 of the water right. 9 Q. Is there a difference between "condition" 10 and "remark," or are those terms used interchangeably? 11 A. They were used interchangeably, until we 12 just completely eliminated remarks sometime around 13 2007. 14 Q. Okay. Prior to 2007, then, those terms 15 were used interchangeably? 16 A. Correct. 17 Q. And were they applied the same in the 18 adjudication process? 19 A. Yes. Generally what a condition was -- a 20 condition was a text, if you will, sentence or 21 sentences, that could not be modified. So every time 22 you saw a specific condition, the text was always the 23 same. 24 A remark could modify an element, but if it 25 was, say, a combined quantity limit, you'd have to put	1 right idea, the recommendation, points to each one of 2 the fields, if you will, but it is necessary to produce 3 the recommendation. And the condition table and all 4 the various conditions in there is one of the fields 5 that then gets printed out with the recommendation and 6 also sent to the Court. That is a lousy job of 7 explaining it, but... 8 Q. No, that's okay. And I think what might be 9 helpful is maybe you could take us through the process 10 from when an adjudication claim was received by the 11 Department in the SRBA, how they received that, if that 12 came through the court system or directly to the 13 regional office, and then the process from that step to 14 where the Department submitted its recommendation to 15 the SRBA Court. Explain how the data was entered and 16 the process that was undertaken by the regional agents. 17 A. Okay. Well, when claims were filed, they 18 were -- they could either be mailed in on paper, paper 19 claim forms, or they could -- we could actually assist 20 the claimant and do direct data entry in either a 21 mobile office or any of the regional offices. 22 So essentially it was entered into a 23 database where we had all the claimant's information, 24 you know, obviously the water right number and claim 25 number. And each element then was data-entered so that

Page 18 1 we could produce a report which essentially was the 2 notice of claim. So we could do it electronically -- 3 enter it all electronically, produce a paper copy for 4 the claimant to sign, or if they filled out a paper 5 form we'd take that paper form and do all the data 6 entry just like we would have had they been sitting 7 across from us at the time. 8 Q. Okay. 9 A. Once they're in the database, they need to 10 be assigned to an agent for review and investigation to 11 make the recommendations. 12 In the early days generally what we did was 13 pick either a drainage or area described by a township 14 range or series of townships or range, and then an 15 agent would be assigned that area to work on. And they 16 would take all the claims that were in that area and 17 methodically go through and review them, decide which 18 ones need to be field-examined, make arrangements with 19 the water user to come out and visit the property, 20 investigate the water system, look at it, see how it 21 works, and get all the information hopefully in one 22 visit, and then write all that up and be able to make a 23 recommendation. 24 Q. Was it customary for the agents to do a 25 field exam?	Page 20 1 reduced the number of actual on the ground field exams. 2 But if the mapping wasn't sufficient, then we'd go out 3 and still do a field exam on the ground. 4 Q. And explain the purpose of the field exam. 5 A. Basically, the field exam was to confirm 6 that the water was being used where it was claimed. 7 And so if it was a beneficial-use right, we might have 8 to measure the diversion rate to confirm that they were 9 actually diverting what they had claimed they were. 10 Q. Did the Department use those field exams to 11 assess whether there were other sources of water that 12 served the property? 13 A. Part of our claim review was to look at 14 overlapping points of diversion, overlapping places of 15 uses. And that was in our claim verification record, 16 and that was something we were always supposed to check 17 on. 18 Q. Okay. So in the process of preparing a 19 Director's report, I assume that the agent would 20 examine the decreed elements of the water right or the 21 elements to be decreed; correct? 22 A. Yes. 23 Q. And then what was the process of imposing 24 or inserting conditions, remarks, or explanatory 25 material? How did that happen?
Page 19 1 A. Most of the early basins, almost -- 2 especially if it was an irrigation right or more 3 complicated right, almost all of those were 4 field-examined. Domestic stock water rights weren't 5 necessarily field-examined. But I know my work in 6 Basin 34 and pretty much 35, I went out and looked at 7 everything that was an irrigation or more complicated 8 right. And most of the domestic and stock water rights 9 were done by a contractor anyway, so we didn't have a 10 lot of those to work on anyway. 11 Q. Okay. So early on there were typically 12 field exams, and then that changed at some point? 13 A. As we got desktop GIS, basically once 14 ArcView was purchased with enough licenses to go around 15 so everybody had it on their computer, we relied a lot 16 more heavily, especially if it was an existing license 17 or decry for an irrigation right, and looked at, you 18 know, did our mapping with the computer, certainly, you 19 know, licensed right, was there any indication that any 20 of it had been forfeited. You know, we -- for the most 21 part we were able to figure out where wells were so we 22 could identify the points of diversion, either from 23 map -- other maps or the map they supplied with the 24 claim. 25 So once we got desktop GIS working, we	Page 21 1 A. Well, say you had two licenses for the same 2 place of use, and maybe they weren't -- at the time 3 they were licensed, particularly the first license, 4 didn't know the second license was going to come along, 5 the more junior water right, so we'd make sure we 6 conditioned both water rights, the senior and junior, 7 so that they did not exceed the total beneficial use. 8 So there may have been -- needed to be a 9 combined quantity condition. Maybe the diversion rate 10 and/or volume needed to be identified as combined. The 11 second right may have -- or the volume on the two 12 rights may have added up to more than what could 13 actually be beneficially used for the number of acres 14 that were irrigated. Frequently there had to be 15 combined acre limits between the two rights. 16 The most senior right, if it didn't include 17 the entire place of use that the two rights now 18 covered, would have to have an acre limit for it. It 19 would be limited to a certain number of acres within 20 that larger place of use that the two rights now 21 covered. 22 Oh, explanatory conditions could include 23 parcel numbers, other -- you know, if there was water 24 rights that were not owned by the claimant but used on 25 the same place of use, those might be noted in

Page 22 1 explanatory material. There could be any -- or 2 measuring devices, originally if that was a requirement 3 on the license, we would -- that would often wind up in 4 explanatory material that may have started out as a 5 point of diversion or other provisions necessary, but 6 ultimately most of those wound up as explanatory 7 material. 8 Q. Does the Department have any type of policy 9 documents or anything else instructing agents when to 10 use explanatory material versus a condition or remark? 11 A. Well, now within the database if you pull 12 up a condition, it will come into that category, 13 whether it's quantity, place of use, point of 14 diversion, other provisions necessary, which is general 15 or explanatory, and purpose of use. There's a bunch of 16 them. Period of use. 17 And so that helps the agent right there, 18 because when the agent's doing the review and they 19 enter a condition code, it will tell the agent if it's 20 an adjudication condition what category it's in. 21 Q. So how does the database work? Is there a 22 series of drop-down menus for conditions, or is the 23 agent just supposed to think this condition may apply 24 here? How does that work? 25 A. Basically, there's a list of all the	Page 24 1 there might be a memo or some memos out there that say 2 something about adding a condition. But theoretically, 3 everything should be consolidated into the Memo 32 and 4 all its versions. 5 Q. Did the SRBA Court provide any direction to 6 the Department in this regard? 7 A. The original director's reports in the test 8 basins, all of the conditions appeared after the list 9 of the elements. And so the Court's guidance was 10 initially that they don't want to see those conditions, 11 period. 12 Legislative changes said that no, we can't 13 have conditions or remarks in recommendations. And 14 somewhere in the '95/'96 time frame I want to say an 15 agreement was reached -- I'm not sure there's a person 16 in this room that knows much more about it than I do -- 17 that we could include the conditions, but they needed 18 to go under the element they modified. 19 And so late '90s up to about 2000 we 20 actually produced the paper copies of the partial 21 decrees for the Court, would send to the Court. If we 22 didn't get a condition the way they thought it should 23 be, we got that paper copy back, and they told us where 24 the condition should be. 25 Q. So during that time frame the condition had
Page 23 1 categories. And if you click on one of those 2 categories, it will give you all the conditions under 3 that category. 4 Q. And so were the agents left to use their 5 own judgment as to what conditions might be appropriate 6 in a given case? 7 A. Well, there's certainly a lot of guidelines 8 in the memos as to what should be used. But there was 9 certainly, you know, an amount of personal judgment. 10 But for the most part there was also secondary review. 11 I did a lot of that. I've done a lot of that over the 12 years, where you look at a recommendation and see 13 something and you wonder, Well, maybe something's 14 missing. So you go back and you look and see if there 15 really needs to be an additional condition in there or 16 not. 17 Q. When you say that there's guidelines in the 18 memos, were you referring to the adjudication memos 19 that you brought with you today? 20 A. Yes. I'm sorry. 21 Q. Were there any other memos that provided 22 guidance to field agents in terms of when to include 23 conditions or explanatory material in their 24 recommendations? 25 A. If there were, it was not -- it was --	Page 25 1 to appear embedded in the context of the elements, of 2 the defined elements? 3 A. Yes. 4 Q. They couldn't appear just at the bottom of 5 the -- 6 A. Any material that appeared at the bottom 7 would be under the heading "explanatory material." 8 Q. Okay. 9 A. All the other conditions had to be 10 specifically under the element that they modified, or 11 if it was what we'd consider a more general type 12 condition, it might modify more than one element or be 13 necessary for administration, it would appear under 14 other provisions necessary for administration. 15 Q. What was the time frame again? 16 A. Well, '96, May 1st of '96 is when the memo 17 came out that said, you know, we need to reformat. So 18 leading up to that there, that was where the 19 back-and-forth was to try to resolve the difference 20 between the Department's position and the Court's 21 position as to where the condition should appear. 22 Q. And did that continue through the remainder 23 of the adjudication, or did that practice change at 24 some point after '96? 25 A. Once -- once we established the categories,

Page 26 1 a condition could move from one category to another, 2 depending on what was, you know, necessary. Certainly 3 we moved a condition from explanatory to point of 4 diversion for the CSRBA because of the number of 5 objections. 6 And so for the most part, most of the 7 conditions have stayed in the same category that they 8 were in, you know, once we got all the feedback from 9 the Court as to where they thought those conditions 10 should be. 11 Q. When you refer to categories, explain that. 12 A. Okay. A category, basically, each element 13 of the water right is a category starting with the 14 name. So there we have name conditions, priority date 15 conditions, quantity conditions, purpose of use 16 conditions, period of use conditions, place of use 17 conditions. I'm sure I'm missing some. And then 18 general for other provisions and then the explanatory 19 material. 20 Q. Okay. Were there some conditions that 21 could be added either as explanatory material or as a 22 condition within one of the water right element 23 categories? 24 A. Occasionally that happened. The Court told 25 us that basically all measuring device conditions	Page 28 1 start where it has U01-EXP (fed abstracts) on about the 2 eighth or ninth page of this, from that point on it 3 looks like that's where the -- basically the database 4 dump, if you will, of what the condition codes were and 5 remark codes were at the time. 6 Q. Okay. So I found some codes begin with 7 GEN, some with E, F, W, R, L, M, N, R, U. 8 Are those all separate categories? 9 A. Well, what it is, if you go to this -- I 10 don't know how to show you this page, but if you go 11 about eight or nine pages into this. 12 Q. Yeah. 13 A. And you look down where you have 001 14 general, GEN. 15 Q. Yes, I see that. 16 A. Okay. That means that was a general 17 condition. It's condition code 001, and the category 18 is general, which means it will appear in other 19 provisions necessary. 20 Q. Okay. 21 A. So the code numbers, which are on the first 22 seven or eight pages, you know -- well, let's go to an 23 earlier page here where it gives a code number. All 24 right. So condition codes like A01, that goes on 25 permits, that would be general so other provisions.
Page 27 1 should be explanatory. But I remember working on a 2 transfer out of a Pass Creek water right in Basin 34 3 where the measurement condition was very complicated 4 and contained very specific information for the 5 water -- or for the watermaster in order to deliver the 6 water right. 7 And so a conversation with the Court, and 8 they decided, yes, that should be a point of diversion 9 condition rather than explanatory condition that was so 10 unique to that water right. 11 Q. So when I was looking through Adjudication 12 Memo 32A, and the version that I've given you is 13 Deposition Exhibit 25, which has those codes in the 14 back. 15 A. Uh-huh. 16 Q. Do each of those codes correspond to the 17 categories that you just mentioned? 18 A. Yes. This -- yeah, well, at the time it 19 was printed, because the -- if you will, the paper copy 20 that we had in our notebooks did not include the list 21 of conditions. I always kept those in a separate 22 notebook. And they had to be updated regularly as you 23 added new conditions or when we got feedback from the 24 Court saying, no, that condition needs a category. 25 So if you look -- well, it looks like they	Page 29 1 A03 is a prior condition, which is PCD, and 2 those actually no longer appear in the reports. We've 3 done away with those. 4 Q. Okay. So the categories, when you refer to 5 category, is the category GEN or PCD or EXP, or is the 6 category A, C, and so forth? 7 A. No, the categories are the GEN, the PCD, 8 the EXP. 9 Q. Do the letters that precede the category, 10 for example A01 or C01, do those have any significance? 11 A. Other than to find the standard text. So 12 if I were working on a permit that hasn't gone to 13 license yet, I would enter condition code A01, I would 14 get a drop-down that would show me exactly what that 15 text was, then I could add that and save it to the 16 recommendation. And it would be saved under general -- 17 as a general condition, which means it would appear 18 under other provisions necessary. 19 Q. Okay. So let me take that a step further. 20 I was looking through this at what types of text 21 related to combined use or supplemental use, and if you 22 flip a few pages back, you'll get to code E01, E02, 23 E03. 24 A. Okay. Uh-huh. 25 Q. There's several combined use conditions.

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1 A. Uh-huh. 2 Q. And now that I understand the three-letter 3 code, what you're saying is these pertain to the 4 quantity category and these conditions could be 5 inserted into the quantity element of the water right? 6 A. Right. The agent would type in say E02 and 7 that text would come up, and then they'd fill in the 8 water right number and the cfs amount. 9 MR. BAXTER: TJ, just so we're all on the same 10 page, I'm doing a quick numbering, you're on page 5 of 11 that document, of Exhibit 25; is that right? 12 MR. BUDGE: I think page 6. 13 MR. FLETCHER: It starts on 5, at least the one 14 I have. 15 MR. BUDGE: The one you're looking at? So on 25 16 it's 6. 17 MR. FLETCHER: Starts at the bottom, page 5. 18 MR. BUDGE: Oh, that's right. 5. I apologize. 19 THE WITNESS: Yeah, the standard remarks start 20 on page 5. 21 MR. BAXTER: So the reference to E01 is that 22 "E01" that appears midway through the page on page 5 23 and has the "E01 - QNT use of this water right with 24 Water Right No. blank," those were the E01, E02, and 25 E03 you were referring to earlier?	1 was in place back in '96? 2 A. A lot of them would be quite significantly 3 different. I mean you would -- for E01 as the 4 condition, it would be entirely different than this E01 5 as the remark. 6 Q. Okay. Is there a list somewhere of the 7 codes that are used today? 8 A. We have a workflow process where you can 9 generate a list of conditions on demand that gives the 10 codes, and then it comes out as an Excel spreadsheet 11 and you could sort it. 12 Q. If you'd generate that, would it show each 13 code and the condition text? 14 A. It would show the code, the condition text, 15 the category, and it might -- if it's been changed over 16 the years or something, it would probably include some 17 history. 18 Q. Okay. After we're done today, would you 19 mind preparing that? 20 And, Garrick, would you mind circulating 21 that among the parties? 22 A. Okay. I can do that. 23 MR. BAXTER: We can do that, TJ. 24 MR. BUDGE: That would be great. 25 Q. So I appreciate that the codes have
Page 31	Page 33
1 MR. BUDGE: Right. 2 MR. BAXTER: Thank you. 3 MR. HARRIS: What exhibit is this again? 4 MR. BUDGE: This is Exhibit 25, which I 5 apologize, I don't have copies of. It is the same as 6 Exhibit 19, except that 25 includes the text for all of 7 the different codes. 8 Q. So is that how you'd describe these 9 additional pages? 10 A. That's basically a printout of the codes as 11 they were in 1996. So E01 no longer exists. That's 12 actually E51 now. 13 Q. Okay. 14 A. So there's been a lot of changes over the 15 years. As condition codes and remark codes were 16 combined into a single table, we also had a condition 17 E01 that referred to an overlap possibly with an 18 irrigation organization. 19 Q. Okay. 20 A. So that has changed. When remarks and 21 conditions got combined, we had to essentially recode, 22 if you will, assign new code numbers to various remarks 23 and conditions throughout there. 24 Q. So if we looked at a list of the codes that 25 are used today, how much would they differ from what	1 changed. I still have a few questions just about the 2 codes that were in place at that time and how they were 3 put into practice. 4 A. Okay. 5 Q. I don't have page numbers here, so it's 6 going to be a little bit tedious. But if you will flip 7 through the general condition codes until you get to 8 the 30s. 9 A. Okay. 10 Q. Have you found those? 11 A. Uh-huh. 12 Q. Right between 39 and 40 there's a code that 13 relates to combined use. 14 A. Uh-huh. 15 Q. It's labeled 03A here. 16 A. Right. 17 Q. But it states, "The rate of diversion of 18 water for irrigation under this right and all other 19 water rights on the same land shall not exceed 20 0.02 cubic feet per second for each acre of land." 21 A. Yes. 22 MR. BAXTER: TJ, do you mind if I try to get 23 caught up with you here? 24 MR. BUDGE: That would be fine. 25 MR. HARRIS: Are you still on Exhibit 25?

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1 MR. BUDGE: Yeah. Rob, I'm not going to spend a 2 lot of time here, but we can stop and make copies if 3 you want. 4 MR. FLETCHER: Do you have a copy of Exhibit 25? 5 MR. BAXTER: I do. 6 MR. FLETCHER: Okay. 7 THE WITNESS: Okay. You need to have the zeros 8 in front. I'm sorry. You're too far back. There it 9 is. 10 MR. BAXTER: Okay. 11 THE WITNESS: Sorry. 12 MR. BAXTER: Thank you. Apologize for that, TJ. 13 Q. (BY MR. BUDGE): So as a general condition, 14 remind me where this would appear on the 15 recommendation. 16 A. Initially we probably sent them to the 17 Court with it under other provisions necessary. This 18 is one the Court would have said "No, it doesn't belong 19 there. It belongs under quantity." 20 Q. Okay. 21 A. And it's one that was pretty much after a 22 further review of the conditions, it was not used in 23 the adjudication recommendations. A similar condition 24 is still used for water right licensing, and sometimes 25 it will get carried over, but an adjudication agent	1 A. The codes are in alphabetical order. So do 2 the codes start with E? 3 Q. They do. But there's no category 4 designated. 5 Does that mean it's explanatory material? 6 A. Not necessarily. Okay. I'm on where I 7 have E12. Is that -- at the top of the page it says 8 "condition code" -- or second line "condition code 9 table listing page 13"? 10 Q. Okay. 11 A. Is that at the top of your page there or... 12 Q. With E02? Is that the first code you see? 13 A. Okay. That's on the page before that. 14 Okay. Well, I have E01, which -- 15 Q. I see that. 16 A. Okay. And that's actually an explanatory, 17 because it says "E01 EXP." It doesn't have the hyphen, 18 but... 19 Q. So I'm at a section -- I'm just going to 20 show this to you. 21 A. Okay. 22 Q. But it has the, you know, E number, but 23 there's no category code after it. 24 A. Okay. So that's page 2. 25 Q. No, this is towards the very end.
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1 would do their best to find out what other water rights 2 were there and do a combined quantity condition rather 3 than just say the .02. 4 Q. Okay. So the agreement between the 5 Department and the Court that conditions would be 6 inserted in the context of elements -- 7 A. Uh-huh. 8 Q. -- and then explanatory material below, did 9 that happen after 1996 when this memo came out? 10 A. When this memo came out, I believe if 11 you -- this was, if you will, the beginning of the 12 change. This was the first of our instructions where 13 it said everything would default to general. And then 14 we would go through and format them and rechange the 15 categories to what -- we would follow this table 16 initially, but then as it evolved over time to the 17 categories that that condition or remark would modify. 18 So... 19 Q. Okay. And I guess to speed things up a 20 little bit, when I flip back towards the back where I 21 think what are explanatory material is found -- 22 A. Uh-huh. 23 Q. -- there's a bunch of E codes, then you get 24 into some F and G. They don't say "EXP," but towards 25 the back of this document you'll see a lot of codes.	1 A. Well, I was trying to look here, though. 2 This is -- oh, it's in the remarks, not the conditions. 3 Okay. Okay. 4 Q. So all of the text that is in this part of 5 the document, I don't see a three-digit category code. 6 A. There isn't, and these are the conditions 7 that were going to be changed to quantity conditions. 8 So I'm not sure why -- I'm not -- this is not a format 9 I am used to seeing the conditions in. 10 Q. Okay. 11 A. So I'm not sure when it was generated 12 because -- okay. You got the end of your approval 13 conditions. But these would have been -- this whole 14 group -- well, E02 through E08 have now all become 15 quantity conditions. 16 Q. Okay. 17 A. And they're in the 50s range is how they're 18 currently described. And then E011 is place of use 19 irrigation condition. 20 Q. So during the course of the SRBA, were 21 there periods where certain information would be 22 presented as explanatory material and then other 23 periods where it would be presented as a condition or 24 remark, the same information? 25 A. Well, there was this transition period of

Page 38 1 trying to reformat them. Once the condition was 2 reformatted, very few conditions changed over time. So 3 once it became a quantity condition, it pretty much 4 stayed a quantity condition. 5 The few that have changed, any condition 6 that may have been a restatement of law, at the time 7 the SRBA Court said "We don't want to see any of those 8 on the face of the partial decrees," but occasionally 9 the one I referred to in the Coeur d'Alene/Spokane 10 Basin adjudication is condition 004, and says "This 11 water right does not grant a right-of-way of easement 12 across the land of another." That became a big issue 13 of the CSRBA, so now that uses a point of diversion 14 condition. 15 For the most part, once they -- once we -- 16 during the 1996 time frame, once we got them 17 categorized and put into their conditions, very few 18 actually changed from one category to another, so once 19 we got the conditions coded for each category. 20 Q. Okay. 21 A. I didn't say that quite -- once each 22 condition was identified as -- for its category, 23 there's been very little change. But there has been 24 some change over the years. 25 Q. Okay. That's helpful. So one thing that's	Page 40 1 exhibits that we used in Jeff Peppersack's deposition 2 this morning. And I want to cite you to 3 Exhibit Nos. 12 and 13. 4 A. Okay. 5 Q. Have you seen these before? 6 A. I've seen partial decrees before. Whether 7 this specific one or not, I couldn't tell you. 8 Q. Okay. You can take a moment to review 9 those. This is the water right that's at issue in this 10 case. Exhibit 12 is the partial decree, and then 11 Exhibit 13 is the water right report. 12 A. Okay. 13 Q. And if you notice on the water right report 14 there is a code explaining that this water right's 15 combined with water from Aberdeen-Springfield Canal 16 Company. 17 A. Uh-huh. 18 Q. Did the Department ever include that remark 19 or remarks for other irrigation entities as conditions, 20 or were those always treated as explanatory material? 21 A. You'd need to check the original Director's 22 report for this basin. But since it doesn't appear on 23 the face of the partial decree, it should have been 24 categorized as an explanatory material. And E02, in 25 all likelihood, is currently an explanatory condition.
Page 39 1 been confusing in this case is there are some partial 2 decrees in Basin 35, which we're dealing with here, 3 that have combined use information in the context of 4 explanatory remarks, and there's others that have 5 combined use information in the partial decree itself 6 as a condition. 7 Are you familiar with this happening? 8 A. I was not aware of it in 35. I do know we 9 found some in 34 where the reformatting did not get 10 done correctly. And apparently it got carried on to 35 11 if you've been finding those like that. 12 Q. And tell me about the reformatting. Is 13 this what we're talking about, the change in conversion 14 stuff? 15 A. Yeah. This Memo 32 from 1996 -- 32A, I 16 guess, we're in actually -- was the beginning of our 17 directions to take all the recommendations in the three 18 test basins, 34, 36, and 37. The default was that all 19 the conditions would become general. And then 20 individually, we generally had one person assigned to 21 each region, would go through and look at each 22 recommendation, review the conditions and remarks, and 23 reassign the category so it came -- was associated with 24 the correct element that it modified. And... 25 Q. Okay. So next to you is a stack of	Page 41 1 Q. And can you explain the significance of 2 explanatory material. 3 A. Explanatory material was -- were 4 conditions/remarks that we felt should be preserved. 5 They weren't particularly absolutely necessary for the 6 daily administration of the water right. A watermaster 7 wouldn't necessarily need to look at that information 8 to go out and measure the water to open a headgate or 9 close a headgate or send a letter to curtail the 10 diversion rates. But they were certainly helpful 11 information to be retained in the Department's records. 12 Q. Okay. So was that really the defining 13 distinction between a condition versus explanatory 14 material is that conditions were deemed necessary to 15 help the watermaster in daily administration whereas 16 explanatory material may have been important but not 17 necessary for day-to-day distribution of water? 18 A. That's a correct assessment of it. 19 Q. Who at the Department decided whether to 20 classify this type of information as a condition versus 21 explanatory material? 22 A. I'm sure the Bureau chief at the time had 23 some input in it. I know that I worked a lot with Don 24 Shaff, D-o-n, S-h-a-f-f, who was the section manager at 25 the time. And Don and the regional supervisors, when

Page 42 1 we had a condition we weren't sure of, we'd sort of 2 look at it and see whether or not, you know, we could 3 come up with a consensus as to what it would be. If we 4 were wrong, the Court let us know. 5 Q. Did you have circumstances where the Court 6 came back to the Department and said this should either 7 be explanatory material or a condition? 8 A. Generally what we erred, according to the 9 Court, that we put too much -- too many conditions 10 under the elements and not enough of them under the 11 explanatory material. So frequently this condition E02 12 may have started out as either general or, you know, 13 under place of use or something, and it's one that in 14 all likelihood the Court said, no, it doesn't belong 15 there, it should be explanatory material. 16 Q. How would the Court communicate this to the 17 Department? 18 A. Sometimes with a phone call, sometimes with 19 partial decrees we prepared with -- marked up and say 20 "Fix these." We'd send a stack of partial decrees 21 down. We may get a smaller stack back and said "These 22 need to be changed." 23 Q. Okay. Do you recall if the Court ever 24 provided that type of guidance with respect to 25 supplemental use conditions?	Page 44 1 Q. The explanatory material does appear on the 2 Director's report submitted to the Court? 3 A. It does, yes. 4 Q. How come it did not appear on the partial 5 decrees? 6 A. Well, there again, it was the decision of 7 the judge that that was not necessary for the 8 administration of the water right. Initially the judge 9 said that all he needed was a list of the elements. He 10 didn't need any -- we didn't need to include any 11 conditions. And that was a battle that was fought and 12 went to the legislature, and then the legislation went 13 all the way to the Supreme Court to say yes, the 14 Department can have conditions and remarks on the face 15 of the partial decrees. I mean the Court should issue 16 those. And they were necessary for administration. 17 Certainly if two rights were 1 cfs and 18 combined they were only good for 1.5 cfs, we needed a 19 condition that said that on the water rights 20 themselves, not just in explanatory material in our 21 database. 22 Q. During this debate you said there was 23 legislative action? 24 A. Yes. 25 Q. Were there changes to the State code to
Page 43 1 A. That, I can't remember. 2 Q. Were you involved internally, then, in 3 deciding whether certain information should be 4 characterized as a condition versus explanatory 5 material? 6 A. I generally worked closely with Don Shaff 7 on that. 8 Q. And I know we just discussed that a 9 defining characteristic was whether it was necessary 10 for the watermaster versus not. 11 Were there other factors that you took into 12 account? 13 A. That was -- the primary objective was to 14 determine whether or not if this right was -- happened 15 to be decreed without that condition or, you know, if 16 it was put into the explanatory material would there be 17 a problem down the road in a watermaster going out 18 there and deciding whether or not they could make the 19 deliveries. 20 The Department's position was generally, 21 you know, the more information we had on the face of 22 the partial decree, the easier it would be to -- for 23 administration down the road. The Court's position was 24 the less information on the partial decree, the better 25 it was for them, I guess, to make the decrees.	Page 45 1 address this? 2 A. Yes. 3 Q. Do you recall what sections were modified? 4 A. May I look at my history? I don't think I 5 actually -- oh, yes, it is. I did put it. 42-1411. 6 Q. And that's when the legislature added the 7 condition -- 8 A. In 1994. 9 Q. -- added the language for including 10 conditions? 11 A. Yeah, it... 12 Q. Do you recall if that change also 13 referenced explanatory material? 14 A. It did. 15 Q. And what's your understanding of why the 16 Department felt it important to include explanatory 17 material? 18 A. It's just information that needs to be 19 preserved. Typically for domestic uses especially, we 20 would use parcel numbers and subdivision lot/block 21 descriptions. The Court said no. 22 And one of the reasons I think the Court 23 said no on those two is because they were subject to 24 change. Well, yeah, a subdivision could be 25 resubdivided or a parcel number changed. But for a

Page 46 1 change of ownership, if you have a 40-acre tract and 2 you don't have a good chain of title and someone comes 3 in with a change of ownership and says, "Well, I bought 4 this house and I think this is the water right for it," 5 if their property they own had the current parcel 6 number on it that matched the one that is in our 7 explanatory material, plus the lot/block information, 8 then, yes, we could go be very certain that they bought 9 the house that water right was appurtenant to. 10 Q. So the explanatory material included in 11 this water right 35-2824 that explains it's combined 12 with water from Aberdeen-Springfield Canal Company, did 13 the Department commonly include similar remarks with 14 other ground water rights that were served by 15 irrigation entities? 16 A. It could be either groundwater or surface 17 water. If someone was diverting a wastewater right 18 within an irrigation delivery organization, we'd 19 probably put the condition identifying the 20 organization. So any other water -- any -- let's put 21 it this way. 22 Any privately held water rights that were 23 used within a delivery organization, we tried to 24 identify the delivery organization that there was 25 potential overlap with.	Page 48 1 MR. BAXTER: Rob, do you have a copy of that 2 Exhibit 25? I've asked somebody to make some copies 3 for us, but they haven't come in yet. 4 Do you want me to go hunt? 5 MR. HARRIS: No, I don't think I have any 6 questions. 7 MR. BAXTER: On Exhibit 25? Okay. 8 MR. HARRIS: I'm going to do this before I 9 forget. I do have a copy of Aberdeen-Springfield 10 partial decree that I'd like to have marked. 11 (Exhibit 26 marked.) 12 13 EXAMINATION 14 BY MR. HARRIS: 15 Q. Carter, in your materials you included, as 16 Exhibit 22, which is subcase 37-21112. And it's an 17 Order Denying Request for Attorney's Fees and Costs. 18 A. Uh-huh. 19 Q. Do you have that in front of you? 20 A. Yes. 21 Q. Okay. I'm familiar with this case, and I 22 was actually going to ask you just a couple things. I 23 think this case is helpful, and I just want to walk 24 through it. 25 Starting on page 4 --
Page 47 1 Q. Okay. Is that the type of information the 2 Department thought may be relevant to other 3 proceedings, even though it's not on the face of the 4 decree? 5 A. Correct. 6 Q. Did the Department anticipate that some of 7 this type of information might be important in water 8 right transfer proceedings? 9 A. I, you know, wasn't involved with that 10 forward thinking at the time, but I'm sure it was on 11 people's minds. 12 Q. Okay. But the very existence of 13 explanatory material means the Department attached some 14 significance to that information, even though it wasn't 15 a condition within the partial decree? 16 A. Correct. 17 MR. BUDGE: I do not have any further questions 18 at this time. Thanks, Carter. 19 THE WITNESS: Okay. 20 MR. FLETCHER: I don't have any questions. 21 MR. SIMPSON: No questions. 22 MR. HARRIS: I don't want you to leave without 23 having more fun than you've had. 24 THE WITNESS: Okay. 25 MR. HARRIS: So I have some.	Page 49 1 A. Uh-huh. 2 Q. -- there's some -- this is a decision from 3 Judge Wildman, and he made some conclusions about 4 explanatory remarks. And I just want to see if that's 5 consistent with your understanding of the SRBA process 6 and inclusion of explanatory remarks. 7 So under part (a) it says, "Marathon is 8 correct in its assertion that explanatory material 9 section remarks are not included in a Partial Decree." 10 Do you agree with that? 11 A. Yes. 12 Q. Okay. And then it says, "However, such 13 remarks nonetheless may have significance." 14 Do you agree with that? 15 A. I do, yes. 16 Q. The next sentence I want to focus on for a 17 minute. It says, "In the early stages of the SRBA, in 18 an effort to facilitate a preference for standardizing 19 and simplifying the form and content of a Partial 20 Decree, the determination was made to not include in 21 the face of the Partial Decree every legal principle or 22 factual detail that might be relevant to future 23 administration of the water right unless it was 24 determined to be absolutely necessary." 25 Do you agree with that recounting of how

Page 50 1 explanatory conditions came to be in SRBA decrees? 2 A. Yes, I think that pretty much sums up my 3 memory how that came about. 4 Q. And then skip a sentence, there's another 5 one that says, "The explanatory material section 6 includes information determined by the Department to be 7 useful and/or important with respect to future 8 administration of the right even though determined to 9 not be absolutely essential for administration of the 10 right." I believe that's consistent with your 11 testimony. 12 Do you agree with that? 13 A. Yes. 14 Q. Okay. And then finally, the very bottom of 15 page 4, it says, "Although," and then going to page 5, 16 "the explanatory material does not appear in the face 17 of the Partial Decree it is included in the 18 Department's backfile for the water right." 19 Do you believe that's consistent with your 20 testimony today? 21 A. Yeah, I'm not sure if backfile is quite 22 right, but it remains in the database. 23 Q. Okay. So you would say that it's in the 24 Department's database but not necessarily in the 25 backfile?	Page 52 1 So it's kind of the conditions that were 2 factual information about the water use or the water 3 right, but we felt we needed to preserve that 4 information, but a watermaster didn't necessarily need 5 that information. While the watermaster had a copy of 6 the partial decree, they could administer the water 7 right with that copy of the partial decree. And that 8 explanatory material would be preserved, but the 9 watermaster didn't necessarily need to know it to do 10 their job. 11 Q. TJ had had you look at Exhibit 12. 12 Actually, Exhibit 13, which was the water right report. 13 A. Uh-huh. 14 Q. And it does include the E02 addition that 15 says "Use of this right is combined with water from 16 Aberdeen-Springfield Canal Company." 17 A. Uh-huh. 18 Q. In your experience, what information did 19 you have to have to include something like that in a 20 water right explanatory material section? 21 A. Well, we had to have knowledge where the 22 water was being used and whether or not the, in this 23 case Aberdeen-Springfield, water might be used on the 24 same property, same place of use. 25 Q. Okay. You said the word "might," and
Page 51 1 A. Well, the way we use the term "backfile" is 2 a little different than the way it is -- we use -- we 3 refer to a water right backfile as the documents that 4 are in our document management system, while the 5 explanatory material just like this exhibit -- 6 Q. Do you agree, then, that the explanatory 7 material is not an element of the water right? 8 A. It's not listed under any of the elements. 9 Q. Okay. Did some explanatory conditions 10 result from settlement negotiations? 11 A. Yes, there were times where explanatory 12 material may become under other provisions necessary or 13 a specific element, and sometimes we took a condition 14 or element and made it explanatory in order to resolve 15 an objection. So there was some flexibility there. 16 Q. So how did you decide what items needed to 17 be included in the explanatory material? 18 A. Basically, it was anything that didn't 19 modify a specific element, so it didn't fit any of the 20 other categories, it wasn't a quantity, place of use, 21 period of use, point of diversion, priority date, and 22 it wasn't essential, if you will, for the day-to-day 23 administration, so it wouldn't necessarily have to 24 appear under "other provisions necessary" for 25 administration.	Page 53 1 that's what I'm getting at. 2 Was there an assumption, then, if you had a 3 groundwater right that was within the service area of 4 delivery entity, was there an assumption that they also 5 had entitlement to that water and that's why that 6 condition was included? 7 A. Actually, we had the person that did the 8 review of the Aberdeen-Springfield water rights made 9 maps of every section out there. And so he actually 10 went through and showed every place 11 Aberdeen-Springfield water could be used. So that's 12 what -- I certainly referred to it, his maps, to see 13 whether or not I should add that condition E02 on 14 Basin 35 rights that I recommended. 15 Q. And who was that person? 16 A. It was Al Ruberry. 17 Q. Did Al have access to stockholder lists 18 from Aberdeen-Springfield? 19 A. I'm not sure about that. 20 Q. Could you look at Exhibit 12. It's the 21 partial decree. And I don't have a copy of it, and so 22 my version may be a little bit different. 23 A. I got these too far out of order. 24 Q. Could I just look over your shoulder a 25 minute. It is a little bit different. Okay.

Page 54	Page 56
1 Were you involved at all with the so-called 2 recovered water subcases involving Aberdeen-Springfield 3 Canal Company? 4 A. Very loosely. 5 Q. What do you mean by that? 6 A. I was aware they were going on, but I was 7 working in other basins primarily at the time, so I 8 wasn't this directly involved. I helped with some of 9 the settlement documents, but I didn't -- wasn't in, if 10 you will, the day-to-day workings of it. 11 Q. In a special master report for a number of 12 these water rights there were 84 subcases where 13 Aberdeen-Springfield had filed objections based on that 14 recovered water theory. 15 A. Uh-huh. 16 Q. Did that go into the Department's 17 consideration at all to include a reference to the 18 Aberdeen-Springfield water in this particular Water 19 Right 35-2824? 20 A. My recollection is that all came after the 21 Director's reports were filed, that the recovered water 22 issue was raised after we'd already filed the 23 Director's reports, and it came through the objection 24 process. 25 Q. Okay. So after it was objected to. Was	1 backfile. That's why I don't like to use the word 2 "backfile" as the Court used it. And let's see how far 3 back you need to go. There's -- the claim verification 4 records, I think it's on the last -- yeah, the last 5 document there -- or second-to-the-last. But anyway 6 the second-to-the-last page you have the person that 7 did the review of that water right or that claim for 8 the recommendation. And it would appear from the 9 initials it's Greg Taylor. And then that -- 10 Q. So the very, very last page, there's a 11 colored map. 12 A. Yeah, he created the map. It is Greg 13 Taylor. 14 Q. Is Greg Taylor still with the Department? 15 A. No, he is not. 16 Q. If I understand your testimony correctly, 17 then, Al Ruberry went out, made some maps of land that 18 was using Aberdeen-Springfield water, and then that 19 informed whether the condition was included or not? 20 A. That's -- yes, he was actually the initial 21 reviewer. I'm not sure if he did the final review of 22 Aberdeen-Springfield. But he was the initial 23 investigator, and he went down the system and mapped 24 everywhere the canal water went. 25 Q. So I think one of the major issues in these
Page 55	Page 57
1 the fact that it was one of those objected to water 2 rights, was that the basis for including a condition 3 like that? 4 A. No. No. The condition should have been in 5 there before. 6 Q. Okay. 7 A. Unless we had a settlement document that 8 added it, it should have been in there -- in the 9 original Director's report. 10 Q. So before a condition like E02 in 35-2824 11 was included, there was some level of ground-truthing 12 that had to occur; is that fair? 13 A. Yeah, or history of the water right or 14 something like that. There was some information that 15 the agent relied on. And like I say, for me, it was 16 looking at Al Ruberry's maps and determining if he had 17 already shown that, yes, there was an 18 Aberdeen-Springfield lateral that served this property 19 or not. 20 Q. Is there a way to know in the Department's 21 database the specific agent that worked on this 22 particular Water Right 35-2824? 23 A. Okay. I think if you go to Exhibit 23. 24 Q. Which one? 25 A. Exhibit 23, which is the adjudication claim	1 contested cases is what's the legal significance of 2 that explanatory condition. So I'm going to ask some 3 questions about what analysis may have been done by 4 Department folks. 5 Did they look at the number of shares 6 associated with the property? Do you know? 7 A. I certainly didn't have that information, 8 unless it was written on the claim. 9 Q. Are you aware of any sort of share per acre 10 rule of thumb that Aberdeen-Springfield Canal Company 11 has? 12 A. I wasn't aware of any, no. 13 Q. You mentioned that field visits were 14 sometimes accomplished in Basins 34 and 35, as I 15 understand? 16 A. Most parts through about '97/'98 time 17 frame, we -- most of them were done with field exams. 18 I know all of those I did in 35 I went out and visited 19 the property to verify it. I didn't necessarily always 20 meet with the water right user or the claimant because 21 a lot of times they had a section or half section that 22 was easy to drive the county roads around it and see 23 whether the point of the pump was, point of diversion, 24 and check to see -- well, one thing we had access to at 25 the time for Basin 35 was the ASCS aerial photos, the

Page 58	Page 60
1 Farm Service Agency now. And at that time they would 2 gladly share those with us. 3 And once we had ArcMap available, our 4 desktop GIS -- and I don't know what other issues, but 5 the ASCS office quit sharing their aerial photos with 6 us. 7 Q. Are you familiar with what a supplemental 8 water right is? 9 A. Yes. We didn't necessarily use that term 10 much, but I know -- I am familiar with it. 11 Q. In your review of adjudication claims, how 12 would you determine whether a water right was 13 supplemental? 14 A. That's why we tried not to use that term 15 very much. 16 Q. What was the term that you used? 17 A. We just used generally a -- if a person 18 owned two water rights, say a surface water right and a 19 groundwater right and they're both in their name, we 20 would just use the combined limits. We wouldn't 21 identify which one was primary or supplemental. 22 Q. So that's if there was a privately held 23 water right -- 24 A. Yeah. 25 Q. -- a surface water right with a privately	1 A. Yes. 2 Q. What's your definition of a stacked water 3 right? 4 A. Basically, it's multiple water rights on 5 the same place of use. That's the simplest way of 6 defining it. 7 Q. Are there any specific conditions that 8 dealt with stacked water rights? 9 A. Well, that's where our combined place of 10 use limits frequently identified those. If you had six 11 water rights to the same place of use, you'd list all 12 six water right numbers on the recommendation and say 13 those six water right numbers are for the irrigation of 14 combined total of say 320 acres. 15 Q. I want you to take a look at the partial 16 decree, then, for 35-2824. It's Exhibit 13. 17 A. Okay. 18 Q. Is there a supplemental condition on that 19 water right? 20 A. You mean Exhibit 12? 21 Q. Exhibit 12. Sorry. 22 A. No. The only condition is the standard, 23 this partial decree is subject to such general 24 provisions. It's the standard condition C18, "This 25 partial decree is subject to such general provisions
Page 59	Page 61
1 held groundwater right? 2 A. Yeah. 3 Q. With canal company shares where title to 4 the water right is held in the name of the canal 5 company, did you avoid that then? 6 A. That's why we just used this condition to 7 say they're out there. We don't know the extent of 8 which water right is used -- might be a primary right 9 and which one might be a supplemental right. We're 10 just recognizing that both rights go to the same 11 property or water sources, if you will. 12 Q. If there was a prior license or a decree 13 that included a supplemental condition, did you 14 generally translate that over into the Director's 15 report? 16 A. I'm trying to remember one in Basin 34. I 17 think we determined that it should be included. But 18 they were quite rare. I don't think I came across more 19 than a handful in the years that I was down 20 recommending adjudication claims. 21 Q. Earlier we participated in the deposition 22 of Jeff Peppersack, and there's a phrase that the 23 Department often uses, and that's "stacked water 24 rights." 25 Are you familiar with that phrase?	1 necessary," et cetera. 2 Q. I'll have you now look at the 3 Aberdeen-Springfield decree that I gave you, 4 Exhibit 26. I'll have you go to the partial decree for 5 1-23B. So I think it's on page 4. 6 A. Okay. 7 Q. So I think I understood your testimony 8 pretty well before, but I want to make sure I 9 understand. 10 When you would decide how to code a 11 condition, an actual limitation on a water right, it 12 would either fall under other provisions necessary or 13 it would describe or modify one of the actual listed 14 elements of the water right; is that fair? 15 A. Uh-huh, yes. 16 Q. Okay. So under place of use, for example, 17 Aberdeen-Springfield is limited to 61,772.6 acres? 18 A. Yes. I see that. 19 Q. And then there's further language that 20 describes the digital boundary -- 21 A. Correct. 22 Q. -- is that correct? 23 A. Yes. 24 Q. Okay. If this is considered to be a 25 primary water right, which I think folks here consider

Page 62 1 it to be, was there ever any conditions you would add 2 to say which rights were supplemental to the primary 3 right? 4 A. No. 5 Q. Is there a reason why that wasn't done? 6 A. Particularly for Aberdeen-Springfield, it 7 would be a list that would be impossible to compile. 8 There was -- this is one thing Al Ruberry did identify 9 were the various irrigation wells held by individuals. 10 And there were hundreds, if not thousands out there. 11 MR. HARRIS: I have no further questions. Thank 12 you. 13 MR. BAXTER: No questions. 14 MR. BUDGE: Nothing more from me. 15 MR. FLETCHER: I just wanted to briefly cover 16 one issue because I was a little confused by the 17 questioning. 18 19 EXAMINATION 20 BY MR. FLETCHER: 21 Q. How familiar are you with the review 22 process that occurred in the SRBA for a claim like 23 Aberdeen-Springfield's which led to Exhibit 26 being 24 issued? When their claim -- first of all, let me start 25 at the beginning.	Page 64 1 A. That was Al Ruberry's field work. 2 Q. Okay. 3 A. That was what he was doing was determining 4 how many acres Aberdeen-Springfield Canal Company had 5 in each quarter-quarter they claimed. 6 Q. By this point in time wasn't there 7 satellite technology available for the Department to 8 use in analyzing irrigated acres? 9 A. Only towards the tail end of the '90s. 10 Q. Okay. 11 A. So it was -- and really it wasn't really 12 working really well until the early 2000s. 13 Q. Okay. Well, do you know when the Basin 1 14 reviews were occurring? 15 A. Certain amount of the reviews occurred well 16 before 2000. 17 Q. I see. 18 A. But the final review, which would have been 19 after Al Ruberry had left to go on to another job, 20 different agency, I believe Michael Holliday probably 21 finished them up. And he used the digital boundary, 22 and oftentimes we'd send out a map to the irrigation 23 organization, and they would show us where to draw the 24 lines. 25 Q. Okay.
Page 63 1 When an irrigation district filed a claim, 2 or in this case a canal company filed a claim, do you 3 know what their claim showed as far as place of use? 4 A. I am not that familiar with 5 Aberdeen-Springfield because I didn't review it. But 6 the irrigation entities that I did review, we generally 7 had a claim place of use that identified 8 quarter-quarters. 9 Q. Okay. So to make that clear, the, in this 10 case canal company or irrigation district, had to 11 identify the place of use down to a 40-acre parcel? 12 A. Yes. As long as they filed their claim 13 prior to the change in the statute that allowed the 14 digital boundary. 15 Q. Right. 16 A. We had 40-acre tracts with -- oftentimes 17 with acres in them for each entity. 18 Q. And so fast-forward, we get to Basin 1, 19 which is Aberdeen-Springfield, which is the last basin 20 we're dealt with, in the meantime the digital boundary 21 technology has come on; isn't that correct? 22 A. Yes. 23 Q. Okay. And how did the Department initially 24 go about determining the irrigated acres in a canal 25 company or irrigation district in Basin 1?	Page 65 1 A. They would look at the acres we came up 2 with. They would say, "Well, no, there should be more 3 acres here or less acres there" or whatever. 4 Q. So the Department would look at this 5 digital imagery and say, "Well, I think there's this 6 many acres," and they would send that out to the 7 entity, and the entity would review it and make an 8 appointment with the Department rep and they'd argue 9 about it or -- 10 A. They'd negotiate. 11 Q. Negotiate. But in the end, the number of 12 irrigated acres was determined or agreed upon or else 13 litigated, if necessary? 14 A. Right. 15 Q. Okay. So when a water right is issued like 16 26 with the place of use indicated, that is a 17 combination of what the applicant put on their 18 application, the Department's review of the actual 19 irrigated acres, and some resolution between the 20 parties as to what the irrigated acres should be within 21 the greater boundary of the entity? 22 A. The water rights on Exhibit 26, you're 23 talking about? Not Water Right 26. 24 Q. I meant the water rights on Exhibit 26. 25 I'm sorry.

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1 A. Okay. Yes. Yes. Aberdeen-Springfield
2 would have worked with the agent in our Idaho Falls
3 office, and they would have determined what the digital
4 boundary should be and how many irrigated acres within
5 that boundary.
6 MR. FLETCHER: Okay. I don't have any further
7 questions. Thanks.
8 MR. SIMPSON: None.
9 MR. HARRIS: No follow up for me.
10 MR. BAXTER: We done?
11 MR. BUDGE: All done.
12 (Deposition concluded at 1:55 p.m.)
13 (Signature requested.)
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1 **CERTIFICATE OF CARTER FRITSCHLE**
2
3 I, CARTER FRITSCHLE, being first duly sworn,
4 depose and say:
5 That I am the witness named in the foregoing
6 deposition; that I have read said deposition and know
7 the contents thereof; that the questions contained
8 therein were propounded to me; and that the answers
9 contained therein are true and correct, except for any
10 changes that I may have listed on the Errata Sheet
11 attached hereto.
12 DATED this ____ day of _____ 20___.
13
14 CHANGES ON ERRATA SHEET YES___ NO ___
15
16 _____
17 **CARTER FRITSCHLE**
18
19 SUBSCRIBED AND SWORN to before me this
20 ____ day of _____ 20___.
21
22
23 _____
24 **NAME OF NOTARY PUBLIC**
25 **RESIDING AT** _____
MY COMMISSION EXPIRES _____

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1 **ERRATA SHEET FOR CARTER FRITSCHLE**
2 **Page ____ Line ____ Reason for Change**
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25 **SIGNATURE:** _____

1 **REPORTER'S CERTIFICATE**
2 I, JEFF LaMAR, CSR No. 640, Certified Shorthand
3 Reporter, certify:
4 That the foregoing proceedings were taken before
5 me at the time and place therein set forth, at which
6 time the witness was put under oath by me.
7 That the testimony and all objections made were
8 recorded stenographically by me and transcribed by me
9 or under my direction.
10 That the foregoing is a true and correct record
11 of all testimony given, to the best of my ability.
12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.
15 IN WITNESS WHEREOF, I set my hand and seal this
16 5th day of September, 2017.
17
18
19 
20
21 **JEFF LaMAR, CSR NO. 640**
22 **Notary Public**
23 **Post Office Box 2636**
24 **Boise, Idaho 83701-2636**
25 **My commission expires December 30, 2017**

A			
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Exhibit 3

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF APPLICATION FOR)
TRANSFER NOS. 81292 and 81293 IN THE)
NAME OF KIP HUNTER AND BRANDI HUNTER)
_____)**

**DEPOSITION OF MICHAEL HOLLIDAY
AUGUST 29, 2017**

REPORTED BY:

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

Notary Public

Page 2 1 THE DEPOSITION OF MICHAEL HOLLIDAY was taken 2 on behalf of A & B Irrigation District, Milner 3 Irrigation District, Burley Irrigation District, Twin 4 Falls Canal Company, and North Side Canal Company at 5 the offices of Idaho Department of Water Resources, 900 6 North Skyline Drive, Suite A, Idaho Falls, Idaho, 7 commencing at 9:05 a.m. on August 29, 2017, before 8 Jeff LaMar, Certified Shorthand Reporter and Notary 9 Public within and for the State of Idaho, in the 10 above-entitled matter. 11 APPEARANCES: 12 For Kip Hunter, Brandi Hunter, and Lance Funk: 13 HOLDEN KIDWELL HAHN & CRAPO, P.L.L.C. 14 BY MR. ROBERT L. HARRIS 15 1000 Riverwalk Drive, Suite 200 16 Post Office Box 50130 17 Idaho Falls, Idaho 83405 18 rharris@holdenlegal.com 19 For Minidoka Irrigation District and AFRD-2: 20 FLETCHER LAW OFFICE 21 BY MR. W. KENT FLETCHER 22 Post Office Box 248 23 1200 Overland Avenue 24 Burley, Idaho 83318-0248 25 wfk@pmt.org	Page 4 1 I N D E X 2 3 TESTIMONY OF MICHAEL HOLLIDAY PAGE 4 Examination by Mr. Thompson 7,112 5 Examination by Mr. Fletcher 60,110 6 Examination by Mr. Budge 78,107 7 Examination by Mr. Harris 96,112 8 Examination by Ms. Blades 113 9 10 EXHIBITS 11 Exh 27 - Notice of Taking Deposition Duces Tecum 8 12 of Michael Holliday 13 Exh 28 - Notice of Claim to a Water Right 11 14 Acquired Under State Law, Water 15 Right 1-23 16 Exh 29 - Memorandum from Michael Holliday, dated 15 17 8/28/2017, with attachments 18 Exh 30 - E-mail from M. Holliday to D. Tuthill 15 19 and M. Ciscell, dated 11/22/2005 20 Exh 31 - E-mail from E. Carlsen to M. Holliday, 15 21 dated 12/5/2005 22 Exh 32 - E-mail from W. Robertson to M. Holliday 15 23 dated 8/23/2017 24 Exh 33 - E-mail from W. Robertson to M. Holliday, 15 25 dated 8/24/2017
Page 3 1 APPEARANCES (Continued): 2 For Idaho Ground Water Appropriators, Inc.: 3 RACINE, OLSON, NYE & BUDGE, CHARTERED 4 BY MR. THOMAS J. BUDGE 5 Post Office Box 1391 6 Pocatello, Idaho 83204-1391 7 tjb@racinelaw.net 8 For A & B Irrigation District, Milner Irrigation 9 District, Burley Irrigation District, Twin Falls Canal 10 Company, and North Side Canal Company: 11 BARKER, ROSHOLT & SIMPSON LLP 12 BY MR. TRAVIS L. THOMPSON 13 163 Second Avenue West 14 Post Office Box 63 15 Twin Falls, Idaho 83301-3029 16 tlt@idahowaters.com 17 For Idaho Department of Water Resources: 18 (Present Via Videoconference) 19 OFFICE OF ATTORNEY GENERAL 20 IDAHO DEPARTMENT OF WATER RESOURCES 21 BY MS. EMMI L. BLADES 22 322 East Front Street 23 Boise, Idaho 83720 24 emmi.blades@idwr.idaho.gov 25 Also Present: Bryce Contor	Page 5 1 I N D E X (Continued) 2 EXHIBITS PAGE 3 Exh 34 - E-mail from M. Holliday to S. Sherman, 15 4 dated 9/21/2007 5 Exh 35 - E-mail from M. Holliday to S. Howser, 15 6 dated 9/26/2007 7 Exh 36 - Notice of Taking Deposition Duces Tecum 15 8 of Michael Holliday 9 Exh 37 - Handwritten notes 15 10 Exh 38 - Letter from T.J. Budge to J. Cefalo, 15 11 dated 3/2/2017 12 Exh 39 - Idaho Exhibit 2: Affidavit of Michael 15 13 Holliday dated April 15, 2009 14 Exh 40 - Memorandum from B. Jordan to 15 15 Transfer 81513, dated 3/17/2017 16 Exh 41 - Amended Director's Reports, Subcase 22 17 Nos. 01-23B, 01-297, 35-2543, & 35-4246 18 Exh 42 - Excel file entitled "conditions 41 19 search.xls" 20 Exh 43 - Excel file entitled "explanatory 45 21 conditions.xls" 22 Exh 44 - Excel file entitled "supplemental 46 23 conditions.xls" 24 Exh 45 - Excel file entitled 48 25 "GWrtslessfrags_table.xlsxsm"

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3	EXHIBITS	PAGE
4	Exh 46 - Excel file entitled "GW Rights and their	49
5	Selected Conditions.xls"	
6	Exh 47 - Excel file entitled "GW rights	49
7	summarized by condition type.xls"	
8	Exh 48 - Excel file entitled "Water rights	53
9	included in Analyses.xls"	
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11	summarized by condition type.xls"	
12	Exh 50 - Water Right 35-2824 map, dated 8/29/2017	106
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1 MICHAEL HOLLIDAY,
2 first duly sworn to tell the truth relating to said
3 cause, testified as follows:
4
5 EXAMINATION
6 BY MR. THOMPSON:
7 Q. Morning, Mr. Holliday. Travis Thompson. I
8 represent some of the protestants in this case.
9 Could you please state and spell your name
10 for the record.
11 A. Michael Holliday, M-i-c-h-a-e-l,
12 H-o-l-l-i-d-a-y.
13 Q. What's your current address?
14 A. 255 Tautphaus Drive, Idaho Falls, Idaho.
15 Q. Have you had your deposition taken before?
16 A. Yes.
17 Q. So you recognize the procedures? If I ask
18 a question, try not to answer over me, and I'll do the
19 same when you answer. If you need a break at any time,
20 just let me know.
21 What did you do to prepare for this
22 deposition today?
23 A. I started working on answering the
24 questions that were presented in the letter that was
25 sent to me by -- or I guess was given to me by James

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1 Cefalo. And it was a letter from TJ Budge that listed
2 out five questions. So I started reviewing those
3 questions and preparing .shp files to answer the
4 questions. I looked at different documents that I
5 brought with me today, also looked at the transfer
6 memo, portions of that transfer memo. So I think
7 that's about it.
8 MR. THOMPSON: Mark this as an exhibit.
9 (Exhibit 27 marked.)
10 Q. (BY MR. THOMPSON): Mr. Holliday, this is
11 the prior Notice of Deposition. I'm not going to mark
12 the one we have for today since it's basically the same
13 thing, but could you review that.
14 And is that the letter you were referencing
15 that's attached to that?
16 A. Yes, this is the letter.
17 Q. And just to understand the process, who did
18 you receive this letter from?
19 A. Well, it was back in April. I think -- I
20 think it was given to me by James Cefalo.
21 Q. And the questions you tried to answer, you
22 looked into, were those 1 through 5 --
23 A. That is correct.
24 Q. -- on the March 2nd letter from TJ Budge?
25 A. Yes.

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1 Q. And were you instructed to look into
2 anything else in either of those letters from TJ or
3 Paul Arrington?
4 A. No, just those five questions.
5 Q. And did you understand what you were asked
6 to produce for this deposition through that notice?
7 A. I did.
8 Q. And what did you bring today?
9 A. I brought some e-mail correspondence, a
10 memo that explains the process that I went through in
11 order to make my determinations on the -- or to answer
12 the questions. Let's see. I brought another
13 deposition notice that was sent to me from TJ Budge,
14 some notes, the letter that we already discussed with
15 some other handwritten information on there as I was
16 going through it initially, an affidavit that I
17 prepared when I was working on the Aberdeen-Springfield
18 Canal Company claims in the adjudication, and a
19 transfer evaluation memo for Transfer No. 81513, and
20 Transfer Memo No. 24.
21 Q. Okay. And are those copies of all those
22 materials? Is that what those stacks are?
23 A. All except for the transfer memo.
24 Q. Okay.
25 A. Which I understand is already an exhibit.

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1 Q. That's right. And you brought some Excel 2 spreadsheets too? 3 A. I did. 4 Q. Maybe we'll take a break and look at those 5 before we get into that. And I'll do the same with 6 that material too. 7 I guess did you review Aberdeen's notices 8 of claim in the SRBA? 9 A. I was partially responsible for the review. 10 It was shared between me and Ernie Carlsen. 11 Q. And how did you break up the duties looking 12 into that, those claims? 13 A. And actually, I -- you know, just backing 14 up a little bit here, I believe that Allen Ruberry was 15 at least somewhat involved in the recommendations for 16 the groundwater claims, but that was before I ever was 17 involved in the adjudication. 18 Q. And how long were you involved in the SRBA 19 as an agent in the adjudication section? 20 A. From 2003 through about 2012. 21 Q. And what sort of investigation did you 22 undertake with Aberdeen's claims? 23 A. I was responsible for making most of the 24 recommendations for the water rights from the Snake 25 River. And so I looked at the prior decrees, the	1 Hunter water right place of use that is 35-2824? 2 A. I haven't looked specifically at the 3 location of the Hunter water right, or at least I don't 4 remember doing so. I may have -- I may have looked at 5 it initially when the application arrived in our 6 office, because I look at most of the transfer 7 applications that come into the office before assigning 8 it to an agent to work on. 9 Q. Do you do the initial review of all 10 transfer applications? 11 A. Not all, but most come to me, and I look to 12 make sure that they're complete, that the proper fees 13 have been paid, and then I assign those transfer 14 applications to the folks that are best able to deal 15 with those and consider the workload of the agents and 16 make a determination of who gets it. 17 Q. And the two transfers in this case, 81292 18 and 81293, who did you assign those to? 19 A. I don't remember. 20 Q. Okay. But it would have been an agent 21 within the Department? 22 A. Yes. 23 Q. And then what do they do next? 24 A. So they would -- they would enter the 25 transfer into the computer and begin to evaluate the
Page 11	Page 13
1 diversion records, the adjudication claim file itself, 2 and agreement that was entered into between the 3 Director and Aberdeen-Springfield Canal, and with all 4 of that information made the preliminary 5 recommendation. 6 MR. THOMPSON: Mark this as 28. 7 (Exhibit 28 marked.) 8 Q. (BY MR. THOMPSON): Michael, do you 9 recognize that document I've handed you, Exhibit 28? 10 A. Yes. This is a portion of the 11 Aberdeen-Springfield Canal Company's adjudication claim 12 for Water Right 1-23. 13 Q. And I believe they filed at least one 14 amended claim. 15 Is that your understanding? 16 A. That's correct. 17 Q. And do you know if the represented place of 18 use changed from that original claim to the amended 19 claim? 20 A. Yes, the place of use did change. Or at 21 least the place of use, the number of acres that were 22 claimed changed. 23 Q. And do you know how that claimed place of 24 use that Aberdeen filed eventually or the final amended 25 claim they filed with the Court matches up with the	1 application to determine whether there are enlargement 2 or injury concerns. They would prepare the application 3 for advertising to give parties an opportunity to 4 protest the application if they believed they're going 5 to be adversely impacted. 6 Q. Is there any initial memo that's completed 7 in that stage? 8 A. Sometimes it's completed prior to the 9 advertising. Other times it's while it's being 10 advertised, or sometimes even after the fact. 11 Q. And is that document in your stack of 12 materials you brought today? 13 A. No. 14 Q. Was there a memo completed? 15 A. I'm not sure. 16 Q. Maybe I don't know if that's something you 17 can check on during the break or after today just to 18 find out who that assignment went to and if there was 19 anything initially completed in evaluating these 20 transfer applications. 21 And just to get back to the process, once 22 that transfer is advertised and protested, is there 23 anything else the Department does at that time, or is 24 it just assigned to a Hearing Officer and off we go 25 with the case?

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1 A. If -- if the -- if the application is
2 protested, then at that point my boss, James Cefalo,
3 kind of takes the ball from there and runs with it.
4 Q. Okay. So as part of your review of the
5 Aberdeen-Springfield water right claims in the SRBA, do
6 you know the total number of acres within the service
7 area, not just irrigated, but the total?
8 A. Yes.
9 MR. HARRIS: Counsel, just to make sure I
10 understand, when you say "service area," do you mean
11 within the digital boundary?
12 MR. THOMPSON: Yeah, whatever the boundary of
13 the canal company is that's represented on their water
14 right.
15 THE WITNESS: So just to clarify, you're wanting
16 to know the number of acres within the boundary, the
17 total area?
18 Q. (BY MR. THOMPSON): Correct. If you have
19 copies of that memo, maybe we could just mark that and
20 distribute those.
21 A. Yes. Well, I have copies of everything
22 that I've got here right here for you guys.
23 MR. THOMPSON: Okay. Let's mark that memo as an
24 exhibit and use that one first.
25 MR. FLETCHER: Could we go off the record for a

Page 15

1 second.
2 (Discussion.)
3 (Exhibit 29, Exhibit 30, Exhibit 31,
4 Exhibit 32, Exhibit 33, Exhibit 34, Exhibit 35,
5 Exhibit 36, Exhibit 37, Exhibit 38, Exhibit 39,
6 and Exhibit 40 marked.)
7 MR. THOMPSON: Back on.
8 Q. Mr. Holliday, we've marked as exhibits all
9 the documents you've brought today. Could you pull out
10 Exhibit 38.
11 And if I understand it, you wrote some
12 answers on this letter to these questions or these
13 topics, and then you had a memo, Exhibit 29.
14 Is it better to go through this letter or
15 the memorandum to kind of show what you did?
16 A. I think probably the memorandum is going to
17 include this. These are just notes that I was writing
18 on it in the very early stages of my review.
19 Q. Okay. Let's go back to that memo,
20 Exhibit 29, if that's okay with you.
21 A. Yep.
22 Q. And that first topic, I guess could you go
23 ahead and go through the response to that, the total
24 acres of land.
25 A. So total acres came to 80,340 acres.

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1 Q. And that map, is that something that you
2 actually prepared or that's the service area?
3 A. Yes, that's the digital boundary of the
4 Aberdeen-Springfield Canal Company. And I prepared it.
5 Q. Okay. How about the total acres authorized
6 for irrigation under their surface water rights,
7 Aberdeen's surface water rights, do you know that
8 number?
9 A. Yes. That would be 61,772.6 acres.
10 Q. And how was that investigated, I guess, as
11 part of the original SRBA recommendation?
12 A. So you want to know how we got to that
13 number --
14 Q. Correct.
15 A. -- during the SRBA, or where I got the
16 number from to answer the question?
17 Q. Let's start with the number to answer the
18 question, and then we'll go back.
19 A. Okay. So in order to answer the question,
20 I went to the partial decrees for Aberdeen-Springfield.
21 There are four of them: two from surface water, one
22 from one ground -- two from surface water, two from
23 groundwater.
24 The -- on the face of each one of the
25 decrees, there is a total acreage, and there's also a

Page 17

1 combined limit remark that says that when those four
2 rights are used in combination they're limited to that
3 same acreage.
4 Q. Okay. If you could put on your
5 adjudication cap and go back to just generally the
6 process you undertook to arrive at that recommendation.
7 A. Well, the way that we determined acreage
8 within canal companies was -- was similar. It was up
9 to the various canal companies to identify on maps or
10 with .shp files their irrigated acreage based on what
11 had been historically irrigated. And they were to
12 identify acres irrigated prior to 1987, and to irrigate
13 those acres that had not been moved.
14 So there had to be shares associated with
15 the land, and the shares were on the land. If the
16 shares had ever been irrigated and the shares had not
17 been moved, then they were counted as part of the
18 irrigated acreage.
19 So in the case of Aberdeen-Springfield,
20 Ernie Carlsen worked directly with Steve Howser to come
21 to that number. And you'll see in some of the e-mail
22 correspondence that a .shp file that was given to Ernie
23 was larger than the number of acres claimed. And in
24 that -- as a result of that, they filed an amended
25 claim to increase the number of -- their total number

Page 18 1 of acres. 2 When it was all said and done, they were 3 limited by the total number of acres that they had 4 claimed. The .shp file that they provided was still 5 larger than the number of acres that they had claimed. 6 Q. And do you still have that .shp file that 7 they submitted as part of their claim? 8 A. Yes. And it's -- you can see an 9 illustration of that in one of the exhibits -- or one 10 of the attachments. It's Attachment No. 4, Map 1 -- or 11 Question No. 4, Map 1. 12 Q. Okay. And this may help, and this may be 13 something we can do when we get a second. I looked at 14 their original notice of claim and just tried to match 15 up the place of use with the Hunter groundwater right. 16 And is that something you could pull out of 17 that .shp file as a screenshot just to show how that 18 claimed acreage by Aberdeen matched up with the 19 specific sections we're looking at for the groundwater 20 right? 21 A. Sure. 22 Q. Okay. Might have you do that at a break. 23 And let's go back to the memo, I guess that 24 third topic. Can you tell me the total acres 25 authorized for irrigation under groundwater rights	Page 20 1 some of those polygons overlapped each other, I merged 2 them together into one for the purpose of counting 3 acres. 4 Q. (BY MR. THOMPSON): I'm sorry. What do you 5 mean "overlapped"? 6 A. You have a lot of groundwater rights that 7 overlap each other. They have the same place of use or 8 a portion of the same place of use. It's not uncommon 9 to have three or four groundwater rights all share the 10 same place of use, sometimes more than that, so -- 11 Q. So those maps would show up separately or 12 those polygons would show up separately? 13 A. They would all be on top of one another or 14 stacked over the top of each other one way or another, 15 maybe fully overlapped, maybe partially overlapped. So 16 there were a lot of -- when you're taking that many 17 water rights, you're going to have quite a few 18 overlapping rights. 19 Q. And that's that first number, the 45,803, 20 including all the overlaps? 21 A. Correct. 22 Q. Okay. 23 A. And so after merging all of those into one 24 polygon for the purpose of calculating the number of 25 acres, I came up with 32,276 acres.
Page 19 1 within the Aberdeen-Springfield service area. 2 A. So I didn't know a way to determine the -- 3 the exact number authorized without going through every 4 single water right one at a time. And so in order to 5 expedite the process, I used our GIS .shp files that 6 were in the computer and ran an analysis using those 7 .shp files. 8 Q. Which .shp files did you use? 9 A. Okay. So -- 10 MR. FLETCHER: Can we go off the record just a 11 second? 12 THE WITNESS: Yeah. 13 (Discussion.) 14 THE WITNESS: So initially I took the 15 Aberdeen-Springfield boundary and intersected the 16 Aberdeen-Springfield boundary with all of the water 17 rights for irrigation from groundwater. And that 18 was -- that way I was able to select all of the -- all 19 of the water rights. Some of those water rights 20 extended out beyond the boundary, but I took them all, 21 and then started narrowing down by cutting stuff out 22 until I got to 32,255 acres. 23 And so you'll see on the maps that I've 24 provided here, I started out with 686 polygons, added 25 together came to 45,830 acres. In order -- because	Page 21 1 And then I went through a process of 2 eliminating some of the water rights that were captured 3 within the boundary. And that's because there were a 4 number of just little slivers. There were very small 5 acreages that it was questionable as to whether or not 6 they should be included in the analysis. 7 And so in my own judgment I made a 8 determination as to whether or not it was appropriate. 9 I looked at the water right place of use, as far as 10 what was decreed, I looked at the imagery as to how it 11 was rectified. And there's an example of what I did 12 here on -- on Question No. 3, Map 3. 13 Here you see a 0.03-acre fragment. This is 14 for Water Right 35-7992. That water right, as you can 15 see, is primarily south of the Aberdeen-Springfield 16 Canal Company digital boundary, which is in yellow 17 there. So when you look at the face of Water Right 18 35-7992, it says that the water right is in section 15. 19 And it looks to me like when the agent 20 prepared the recommendation for this particular right, 21 he was drawing it, and he kind of slopped over into 22 section 10 just a wee bit. And so it doesn't make 23 sense to include that water right in there, because 24 while the .shp file is over into the 25 Aberdeen-Springfield Canal Company boundary, the water

Page 22	Page 24
1 right itself is located entirely in section 15. 2 Q. So -- 3 A. So I eliminated 66 polygons in that process 4 to narrow down the number of water rights that were 5 squarely within Aberdeen-Springfield Canal Company. 6 Q. And is that the difference between Map 1 7 and Map 3? 8 A. That is the difference between -- yes, 9 Map 1 and Map 4. 10 Q. 4. I'm sorry. So about 45 acres? 35? 11 A. Something like that, yes. So after 12 eliminating those slivers or fragments of water rights, 13 I ended up with one polygon by, again, merging all of 14 those water rights together for the purpose of 15 calculating the total acres, and I came to 16 32,255 acres. 17 MR. THOMPSON: Okay. Mark this exhibit. 18 (Exhibit 41 marked.) 19 Q. (BY MR. THOMPSON): Michael, do you 20 recognize be Exhibit 41? And if so, could you identify 21 that. 22 A. Yes. These are amended Director's reports 23 prepared in 2008 for Water Right Nos. 1-23B, 1-297, 24 35-2543, and 35-4246. 25 Q. Did you work on these recommendations?	1 Did you prepare that? 2 A. Yes. 3 Q. And did you understand what the referenced 4 procedures were that are referred to in this paragraph? 5 A. Not too much. I mean it's been -- I'm 6 pretty far removed from this. I don't really recall 7 much about it. I know that these -- this remark was 8 included on a large number of water rights for 9 irrigation companies that had space in the reservoirs, 10 but the -- I wasn't involved in the crafting of that 11 remark. 12 Q. Did you recognize this water right was 13 originally decreed in those Eagle decrees? Is that 14 your understanding? 15 A. Yes. 16 MR. THOMPSON: Let's mark this one. I'm just 17 going to pause for a second. 18 Is this already in the record? 19 MR. BUDGE: Actually, it is. 20 MR. HARRIS: Actually, it is. I introduced it 21 as 26. 22 MR. BUDGE: 26. 23 MR. FLETCHER: Yeah, it's 26. So we can 24 withdraw that. 25 MR. THOMPSON: Yeah, let's use that one. I'll
Page 23	Page 25
1 A. I did. 2 Q. And in the place of use -- I'll just take 3 1-23B, water right description for that -- the place of 4 use has a remark referencing "Diversion of this right 5 for the purpose of recharge for irrigation is 6 authorized for a maximum of 17,161.6 acres." 7 Do you know what acres those are that are 8 referenced in that remark? 9 A. The recommendation is based on an agreement 10 between Aberdeen-Springfield Canal Company and the 11 Department. I don't know where that number came from. 12 I wasn't involved in any way in that agreement. I just 13 took the agreement and put it into the recommendation, 14 making sure that the recommendation reflected the 15 agreement. So I have no background in terms of the 16 17,000 acres. 17 Q. Do you know if those were lands irrigated 18 with groundwater? 19 A. I would imagine that they are, but like I 20 say, I wasn't involved in the -- in the agreement, and 21 so I'm not sure where those -- that number came from. 22 Q. Okay. Can you turn to the next 23 description, the 1-297. I just had a question about 24 that first paragraph in that "Other Provisions 25 Necessary."	1 take that one back. 2 Q. Can you take a look at Exhibit 26, Michael, 3 in the binder there. 4 A. Okay. 5 Q. Can you identify that. Do you recognize 6 that? 7 A. Yes. These are the partial decrees for the 8 Aberdeen-Springfield Canal surface water rights. 9 Q. Can you turn to the partial decree for 10 1-23B. 11 And once the partial decree was entered, it 12 did remove that recharge for irrigation purpose of use, 13 and then that acreage number we identified, that 14 17,161.6. 15 Do you know why that was removed? 16 A. I wasn't involved. Once it got to this 17 status of being objected to, there were other -- other 18 folks that were involved in that process of dealing 19 with that. I imagine it was Ernie, but I'm -- I'm not 20 sure. 21 Q. Okay. And the next description, the 1-297, 22 if you could turn to that description. 23 The same question, that "Other Provisions" 24 remark referencing the contracts in the Eagle decree, 25 that was removed before the decree was entered.

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1 Do you know why that was taken out?

2 A. I don't remember.

3 Q. And I guess go back your memo. Total

4 number of groundwater-irrigated acres within the

5 Aberdeen surface area, as I understand it, you did that

6 review, and it's 32,255; is that correct?

7 A. Within the -- within the digital boundary,

8 correct.

9 Q. And do you know how many of those acres are

10 irrigated with groundwater rights held by individuals

11 or entities other than Aberdeen-Springfield?

12 A. How many of those acres are -- I'm sorry.

13 Can you repeat the question?

14 Q. Sure. How many of those acres are not

15 irrigated by Aberdeen-Springfield if they're private

16 groundwater rights held by individuals or other

17 entities?

18 A. It would be the -- you know, I can only

19 estimate that number. It would be the number of acres

20 found in -- under Question 4, Map 4. The difference

21 between that number and the 32,255 number would be an

22 estimate.

23 Q. Maybe I'll ask it a different way, if I'm

24 understanding this correctly.

25 Is the difference between the 32,255 and

Page 27

1 the 27,643, that number, is that groundwater lands

2 irrigated by Aberdeen-Springfield?

3 A. No. No. The difference between those two

4 numbers would be an estimate of the number of acres

5 that are stand-alone groundwater rights that are not

6 covered, at least by Aberdeen-Springfield shares. And

7 that's assuming that the .shp file that was presented

8 by Steve Howser, that those shares have not been moved

9 to other acreages.

10 Q. Okay. So the .shp file you received from

11 Aberdeen, you took that, and I guess to your

12 understanding, is that the current irrigated lands

13 irrigated by Aberdeen-Springfield, or that may have

14 changed?

15 A. It certainly could have changed. The best

16 information that I have in order to come up with the

17 estimate was the .shp file that was given to me to

18 determine the total number of irrigated acres --

19 water -- I'm sorry, acres irrigated with surface water

20 by Aberdeen-Springfield at that time.

21 If Aberdeen-Springfield had given me a more

22 up-to-date acreage as far as the surface water acres

23 that they are currently irrigating, then I could have

24 compared that with the groundwater rights as they

25 exist. But the best information that I had was that

Page 28

1 existing .shp file.

2 Q. Okay. So the difference between those two

3 numbers, that 5,000 roughly acres, those are acres that

4 are, to your understanding, irrigated with groundwater

5 only and do not overlap with claimed irrigated area by

6 Aberdeen-Springfield?

7 A. Partially correct. I think it's not --

8 it's at least, as far as we can tell, based on -- if we

9 assume -- make those assumptions that the surface water

10 acres haven't changed, it's correct that they're not

11 being irrigated by Aberdeen-Springfield, but there

12 could be -- they could be irrigated by other canal

13 companies that also overlap into Aberdeen-Springfield.

14 So there are a couple of companies, New Lavaside,

15 Peoples that could be irrigating -- those groundwater

16 acres could also be covered by surface water acres from

17 those companies.

18 Q. And is that something you looked at, or

19 not?

20 A. No. I limited it to Aberdeen-Springfield.

21 Q. Do you know how many acres of New Lavaside

22 and Peoples overlap into Aberdeen?

23 A. I didn't look into that.

24 Q. Any idea total?

25 A. No, not without -- not without actually

Page 29

1 doing the analysis.

2 Q. Okay. Just to follow up on that

3 Question 4, so that number, the 27,643, that is a

4 common .shp that shows both groundwater-irrigated area

5 and Aberdeen-irrigated area?

6 A. Correct.

7 Q. Okay.

8 A. Based on the .shp file that it was to

9 represent, the 1987 acreage.

10 Q. Do you know how many groundwater rights

11 that represents?

12 A. Yes.

13 Are you talking about the number of

14 groundwater rights --

15 Q. In that number, that 27,000.

16 A. Okay. Yeah. So that -- not including the

17 two Aberdeen-Springfield Canal Company groundwater

18 rights, it's 400 -- let's see. 418.

19 Q. And is that the number -- I'm just looking

20 at your memo. There's an e-mail attached to the end,

21 that from Wilma Robertson to you.

22 A. Correct.

23 Q. And who is Wilma Robertson?

24 A. So Wilma Robertson works in Boise. She is

25 our -- one of our GIS experts. And once we got to the

Page 30	Page 32
1 point in the analysis where we were going to have to 2 determine whether or not there were supplemental 3 conditions or explanatory conditions, those kinds of 4 things, that was something that she could do that I 5 didn't know how to do. So she kind of took the ball 6 from there. 7 Q. So she actually pulled up the actual water 8 rights and looked at them one by one? 9 A. I sent her a copy of the water rights or a 10 spreadsheet that had the water rights that I wanted her 11 to look at. And then she took the stacked acres .shp 12 file and intersected that with those -- those water 13 rights to take the 451 water rights that were in -- 14 within the service area, to narrow it down to just the 15 water rights that were counted by Aberdeen-Springfield 16 Canal during the adjudication. 17 Q. The stacked acres counted by Aberdeen with 18 the groundwater rights stacked on top or vice versa? 19 A. Right. So there are -- you know, when you 20 have a canal company, you've got really -- you've got 21 one place of use, the digital boundary, but not 22 everything within the digital boundary is irrigated. 23 There is some portion of the acreage within the digital 24 boundary that is irrigated. 25 So the 61,000-and-some-odd acres that was	1 rights -- 2 A. Yes. 3 Q. -- by number? 4 Is that one of the spreadsheets in your 5 Excel? 6 A. It is. 7 Q. Okay. Did you investigate the private 8 groundwater rights in the SRBA in Aberdeen's service 9 area? 10 A. I did not. That was done prior to the time 11 that I got involved in the review. 12 Q. Do you know when it was completed? 13 A. You know, there were -- there were small -- 14 or there was a small number of late claims that 15 stretched out into -- deeper into the adjudication, but 16 I think all of the groundwater rights -- not all, but 17 most of the groundwater rights in Basin 35 were done 18 well before I got involved in it. I think it was in 19 the late '90s. 20 Q. Do you know the agent that was involved 21 with doing most of those recommendations? 22 A. There was more than one. Allen Ruberry did 23 some of them. Eric Verner. Paul Meyer. There could 24 be others. 25 Q. Did you perform any investigations for
Page 31	Page 33
1 counted by Aberdeen-Springfield in the adjudication 2 were the actual acres that were used to compare to the 3 groundwater rights in order to determine which water 4 rights were stacked with both surface water and 5 groundwater. 6 Q. In looking at that e-mail from Wilma, 7 there's a table there at the bottom. 8 Do you understand? I was just looking at 9 the back of your memo, Michael. 10 A. Oh, okay. 11 Q. I think it's the last few. Well, that one. 12 A. Gotcha. Yes. 13 Q. So can you just explain what that table 14 represents or what you know about it. And then there's 15 one on the next page too. 16 A. So this table and the maps that follow, 17 you'll see a map representation of that table. The 18 information that I have for Question 5, Map 1, comes 19 directly from Wilma's table. 20 So of the water rights that were determined 21 to be stacked, 3200 acres worth had -- had supplemental 22 conditions on them. 79,000 -- 7,925 acres did not have 23 either a supplemental or an explanatory condition. And 24 the remainder had at least one explanatory condition. 25 Q. And do you have a list of those water	1 groundwater claims in the SRBA? 2 A. Yes. 3 Q. And what was your process for those 4 investigations? Was it similar to what you did for the 5 canal company claims? 6 A. Sure. Not -- you know, canal companies are 7 quite different than -- than private groundwater 8 rights. They're -- generally the private groundwater 9 rights are quite a bit more straightforward in many 10 respects. But yeah, the investigation was -- was 11 similar in that you were going through each one of the 12 elements of the water rights one at a time and looking 13 at the evidence in support of the claim and making a 14 recommendation based on the strength of the evidence. 15 Q. And did you ever review those lands covered 16 by private groundwater to determine if they were 17 irrigated with other sources as well, like surface 18 water? 19 A. I'm sure I did. That was -- that was part 20 of the -- that was -- actually appeared on the face of 21 the claim as to whether or not there were other water 22 rights associated with the land. It didn't appear on 23 every claim, but there were many claims that would list 24 whether or not they had canal company shares or some 25 other water source. There was a spot on the claim to

Page 34	Page 36
1 list other water rights. 2 Q. So going back to this table in your 3 memorandum, that supplemental condition number, the 48 4 water rights, 3200 acres, is that a condition on the 5 decree? 6 A. Condition on which decree? 7 Q. On those 48 water rights, is that what that 8 refers to when it says "supplemental condition"? 9 A. Not all those water rights are necessarily 10 decreed. Some of those may be licenses. But yeah, on 11 the licenses and decrees, if it's listed here, it means 12 that there's a supplemental condition associated with 13 that right. 14 Q. Okay. And so the 152 water rights, the 15 7,924 acres, those contain no condition whatsoever? 16 A. None of the conditions that I was searching 17 for. 18 Q. Okay. 19 A. So there were 44 conditions that I was 20 looking for. I believe it was 32 explanatory 21 conditions and 12 supplemental conditions. 22 Q. Do you have that list of those exact 23 numbers? 24 A. That's on the Excel spreadsheet. 25 Q. Okay. Are you familiar with the lands	1 A. I don't. 2 Q. And do you know what the term "primary 3 groundwater right" is? 4 A. Yeah. 5 Q. What does that mean to you? 6 A. It would mean that the land is irrigated 7 with groundwater primarily. It's not dependent upon 8 another water right. 9 Q. And in this example, I guess other than the 10 caveat of New Lavaside and Peoples, that 5,000 acres 11 that didn't intersect Aberdeen but were irrigated with 12 groundwater, would you understand that to be primary 13 groundwater? 14 A. I would -- I would imagine that's the case, 15 but, you know, without actually looking at each one of 16 those water rights to see what kind of conditions are 17 on there. If they've been identified in the analysis 18 as not having a supplemental condition or -- and most 19 definitely if there was no explanatory condition on 20 there, then I would be more likely to say yeah, it 21 would be a primary groundwater right. 22 Q. And how about the term "supplemental 23 groundwater right," what does that mean to you? 24 A. I'd say if it's supplemental, then it is 25 associated with another water right.
Page 35	Page 37
1 covered by the Hunter groundwater right in this case, 2 35-2824? 3 A. I'm sure I've looked at the map when the 4 transfer application came in the door, but I don't -- I 5 can't visualize it right now. 6 Q. Okay. Do you know if any of those lands 7 have Aberdeen Canal Company shares? 8 A. I believe they do. I think that that 9 was -- my recollection is that that was on the -- on 10 the transfer application itself. 11 Q. Okay. And that map that I was referring to 12 earlier where you had the groundwater polygon 13 overlapped with the Aberdeen, if we went to that exact 14 file, you could pull up the boundary of the Hunter 15 property to see how those two compare? 16 A. I could. 17 Q. Is that something we could do? 18 I guess as far as the Department's records, 19 do you know when those Aberdeen rights would have 20 become appurtenant to that property? 21 A. I'm sorry. Say that again. 22 Q. Do you know when the Aberdeen shares, if 23 there are some shares appurtenant to that Hunter 24 property, do you know when they first became 25 appurtenant?	1 Q. And how are supplemental groundwater rights 2 developed, based on your understanding? 3 A. They -- they most often come along for 4 water users that have some source of water that is not 5 all that reliable, or at least at times is not 6 reliable. And it's used when the primary water right 7 is not available to finish out a crop or to provide 8 additional water in combination with a smaller supply 9 of primary right. 10 Q. And have you been involved in reviewing 11 transfers of supplemental groundwater rights before? 12 A. We don't get very many of those. I 13 don't -- I don't recall personally reviewing a 14 supplemental groundwater right transfer. I may have, 15 but it -- I don't -- I don't remember having done so. 16 Q. Does the Department have any specific 17 policies on how those type of transfers are reviewed? 18 A. Yes. 19 Q. And what are those? 20 A. Those are spelled out in the -- the 21 transfer processing memo. 22 Q. Have you reviewed the Hunter groundwater 23 right in this case? 24 A. No. Not -- no more than when it first came 25 in the door. I didn't look extensively at the Hunter

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1 groundwater right. 2 Q. I guess if you were involved in the 3 analysis of it, what would you look at to determine if 4 it's a primary or supplemental groundwater right? 5 A. I would first of all look at the conditions 6 on the water right itself, and then would look at the 7 transfer application and response to the question 8 regarding whether or not there were other water rights 9 associated with the property. 10 Q. And other than the application, is there 11 other information in the Department's file that would 12 answer that question? 13 A. There may be additional information. I 14 suppose if the Department had this particular .shp file 15 that -- for -- that was used to count the acres for 16 Aberdeen-Springfield, that might give the Department a 17 clue as to whether or not there is Aberdeen-Springfield 18 shares associated with that land. But that doesn't 19 necessarily mean that the shares haven't been moved 20 elsewhere. 21 Q. And does the Department's explanatory 22 condition, does that show up on there, in your file? 23 A. Yes. 24 Q. And what is your general understanding of 25 what those conditions are for?	1 the Department would look at when performing that 2 transfer evaluation? 3 A. Well, as far as determining -- looking at 4 quantity, there would also be information regarding the 5 place of use to the degree that it could be 6 distinguished between surface-water irrigated acres, 7 which is oftentimes a challenge to distinguish between 8 those. 9 MR. THOMPSON: Let's take a break and maybe look 10 at your spreadsheets, what you brought with the thumb 11 drive. 12 THE WITNESS: Okay. 13 (Recess.) 14 Q. (BY MR. THOMPSON): Michael, I'm going to 15 point you to your conditions search spreadsheet that 16 you brought with you today, and just go to the 17 conditions rather than the water rights. 18 I guess can you generally explain that list 19 of conditions and how you determined to use those 20 specific codes in the search. 21 MR. FLETCHER: Excuse me. Before we do that, 22 can we mark that as an exhibit number so that we can 23 refer back to that? 24 MR. THOMPSON: Do you want to print it off? 25 MR. FLETCHER: No. I think you can put that in
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1 A. It's to explain that there are other water 2 rights on that property from a surface water source. 3 Q. Did you ever review the original 4 appropriation documents associated with the water right 5 for this type of review? 6 A. You mean after -- after the decree? 7 Q. Just like the original permit or licensed 8 file if you're looking at a transfer. 9 A. Yeah, there are times when you want to 10 gather more information about the water right. So 11 looking at the original license can -- can give you 12 insight into that. 13 Q. And are you familiar with the actual use of 14 the groundwater right in this case, how it's been used 15 over time? 16 A. I don't recall. I wasn't involved in the 17 nuts and bolts of reviewing the transfer application. 18 It was assigned to another agent. 19 Q. And what records would the Department have 20 regarding its actual use? 21 A. It should have diversion records. Because 22 it's within a water district and it -- it's probably 23 measured, there's probably been measurement data that's 24 been gathered from the late '90s through today. 25 Q. And that would be the type of information	1 the record as an exhibit as an Excel file. 2 MR. HARRIS: Just an identification number. I 3 think that's a good idea. So the "conditions search" 4 spreadsheet will be 41. 5 MR. BUDGE: 42. 6 THE COURT REPORTER: 42 is next. 7 (Exhibit 42 marked.) 8 THE WITNESS: Perhaps it might make more sense 9 to go to -- to look at the conditions themselves first, 10 because all you're going to see is a bunch of code 11 numbers. 12 Q. (BY MR. THOMPSON): Yeah, that's the same 13 list, but that has the actual language. Let's use that 14 one instead. 15 A. I need to open up the other one too. That 16 was the supplement. Okay. All right. 17 Q. Let's start with the conditions. 18 A. With the "explanatory conditions" or the 19 "conditions search"? 20 Q. The "conditions search." 21 A. Okay. 22 Q. No, the one you just had. 23 MR. CONTOR: Supplemental. 24 THE WITNESS: "Supplemental conditions"? 25 Q. (BY MR. THOMPSON): Yeah.

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1 A. So there's a spreadsheet that has all the 2 supplemental conditions, there's a spreadsheet that has 3 the explanatory conditions, and then there's a 4 spreadsheet that has the water rights that I want Wilma 5 to search, and a list of the codes. 6 Q. Okay. Let's start with this one. 7 A. Okay. 8 Q. Well, did we already mark that other one? 9 MR. FLETCHER: Well, I think we're going to get 10 really confused because we're not looking at a 11 document. 12 MR. THOMPSON: Let's just print these off. 13 MR. FLETCHER: He said they don't print off 14 because they run off the page. 15 Q. (BY MR. THOMPSON): Well, you could shrink 16 it, couldn't you? 17 A. It's just going to print off all these 18 little bits and pieces, every single one of those. The 19 formatting is just a challenge for these things, and 20 that's why I didn't print them off. 21 MR. FLETCHER: I would suggest we label every 22 spreadsheet with an exhibit number. And then when he 23 references it, let's reference it as an exhibit number 24 so we know what he's talking about. 25 MR. HARRIS: So the "conditions search"	1 44 conditions that I -- or the code condition -- the 2 codes for the conditions that I had Wilma search for. 3 Q. Okay. I'm going to stop you right there. 4 How did you determine to generate that list 5 of 44 codes? 6 A. So I went through all of the active and 7 inactive conditions, both in the allocations as well as 8 the adjudication batch, and just went through all of 9 them one by one to determine whether or not they were 10 within the scope of -- of the -- of the search that we 11 were doing in order to answer the questions. 12 Q. So of the whole list of inactive and active 13 codes, you found 44 that related in some way to a 14 combination or a supplemental use with surface water? 15 A. Well, I found others that -- that would 16 also be explanatory but would not have appeared in our 17 region. Like so for an explanatory code in western 18 would you have a W prefix. 19 Q. Okay. 20 A. And so I didn't -- I knew that we weren't 21 going to have those, so I limited it just to the 22 eastern codes. So all these E codes are for our 23 region. 24 Q. Okay. And those numbers specifically 25 reference a surface water entity?
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1 spreadsheet is 42. This is now a "supplemental 2 conditions" spreadsheet. 3 Do you want to call this one 43? 4 MR. CONTOR: Michael, could you just go to your 5 directory right now and append that exhibit number to 6 the file name, close them all and append those exhibit 7 numbers before you start looking at them? 8 MR. HARRIS: That's a good idea. 9 Q. (BY MR. THOMPSON): Well, let's mark them 10 in the way you want to go through them. I mean if 11 there's a particular order, it doesn't matter to me. 12 A. Okay. 13 Q. If it doesn't matter, let's just start with 14 the first one, and let's just go down the line. 15 A. So right now we're just going to identify 16 what the exhibit numbers are on each one of these? Or 17 are we just opening and explain what it is, and then 18 we'll come back and refer to -- 19 Q. We'll just do it as we go through. So this 20 is 42, the "conditions search" spreadsheet. Let's pull 21 that up. 22 A. Okay. 23 Q. I see there's two tabs in the spreadsheet; 24 is that correct? 25 A. There's two tabs. The first tab lists the	1 A. Correct. Each one of them represents a 2 different surface water -- well, they might not 3 necessarily be surface water. Just a canal company of 4 some type. 5 Q. Okay. 6 A. There are some canal companies on there 7 too. 8 Q. Let's go to the next tab, "water rights." 9 A. "Water rights." So these are the 451 water 10 rights located within the Aberdeen-Springfield Canal 11 Company boundary that I asked to -- Wilma to search 12 through for those condition codes. 13 MR. THOMPSON: Okay. Let's mark this one 43, 14 "explanatory conditions" spreadsheet. 15 (Exhibit 43 marked.) 16 THE WITNESS: So the "explanatory conditions," 17 there are 32 of those that I found as I went through 18 and looked at all the -- all the conditions, both -- 19 these are the category -- or the 32, I guess, that were 20 specifically used to search for the 451. So these are 21 the conditions that correspond to the various codes. 22 Q. (BY MR. THOMPSON): Okay. Can you go to 23 the second sheet. That was the first sheet. 24 A. The second sheet is just the same 44 codes. 25 Q. Okay. Let's mark that next one 44.

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1 A. Do you want to do this one or this one? 2 Q. Doesn't matter. This is "supplemental 3 conditions" spreadsheet. 4 A. Can we be done with that one? 5 (Exhibit 44 marked.) 6 Q. (BY MR. THOMPSON): Can you just describe 7 it. 8 A. Yeah. These are the 17 supplemental -- 9 actually, there's less than 17. There's a dozen, 10 because some of them are in both the adjudication and 11 the water rights. So you'll see the same condition 12 twice. So there's a dozen conditions that I found as I 13 searched through the conditions database. 14 Q. And these are actual conditions on a water 15 right itself, be it a permit, license, or decree? 16 A. These would appear on the -- on the decree, 17 yeah, or on a license, a permit. 18 Q. So I'm going to stop you right there. 19 Going back to those two different lists, we had a list 20 of "explanatory conditions" in Exhibit 43, and then 21 Exhibit 44 was a list of "supplemental conditions." 22 What's the difference to you between those 23 two lists, or generally the difference between a 24 condition and that explanatory remark? 25 A. We don't generally draw a whole lot of	1 MR. THOMPSON: Let's mark this as Exhibit 45. 2 (Exhibit 45 marked.) 3 Q. (BY MR. THOMPSON): This is the groundwater 4 rights less fragments table. 5 Is that the spreadsheet? 6 A. Correct. This spreadsheet was generated 7 from a .shp file. It is a list of 451 water rights 8 that are all located within Aberdeen-Springfield Canal 9 Company's boundary. 10 Q. And what's the first tab, the table tab? 11 A. The table tab is the same water rights, 12 although they appear sometimes more than once in the 13 table. Actually, I'm going to change my mind on that. 14 I think what that is is you'll recall there 15 was -- no. That has to be what it is. There -- so 16 it's been awhile since I prepared this so I've kind of 17 forgotten. But I believe that it's the 620 polygons. 18 That's what it is. So those polygons are duplicated. 19 So when you do an intersect, what happens 20 is if you have, let's say, two .shps that intersect 21 each other, when you do an intersect, you end up with 22 three because you've got, you know, the part that 23 intersects and then you've got the two other parts. So 24 you end up with sometimes more polygons. But it just 25 means that the same water right ends up showing up more
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1 distinction between what category it's in. It's 2 just -- and I don't know who made the determination as 3 to which conditions go in which categories, but when 4 you -- you know, in the water rights, whether it's an 5 explanatory condition or a supplemental condition, it's 6 going to appear on the approval. 7 So if you were to file a transfer and it 8 had explanatory conditions, it would appear on the 9 approved transfer. Whereas if it were in the 10 adjudication, anything that was explanatory would not 11 appear on the water right decree. 12 Q. And from your standpoint as an agent who 13 works on transfers, would a review of the water right's 14 explanatory conditions be appropriate and relevant to 15 analyzing that water right for purposes of the 16 transfer? 17 A. Yeah. Usually the explanatory conditions 18 provide information regarding delivery of the water 19 right or administration of the water right. So for 20 example, with surface water you might have an 21 explanatory condition that says "This right is 22 delivered through Aberdeen-Springfield Canal Company." 23 It would be -- that's information that's helpful to the 24 watermaster to know which headgate to deliver that 25 water right to.	1 than once on the list. 2 Q. And these are all the spreadsheets in your 3 folder or Wilma's? 4 A. These are from my folder, yeah. 5 Q. Okay. Let's go to Wilma's. Why don't we 6 mark this one as 46. 7 (Exhibit 46 marked.) 8 Q. (BY MR. THOMPSON): Can you describe this 9 spreadsheet, Mike. 10 A. When I initially gave Wilma the list of 451 11 water rights, she ran her analysis and determined how 12 many conditions were associated with -- and which 13 conditions were associated with each right. And 14 that's -- this is the results of that search. 15 Q. Okay. Go to the next one. Let's mark this 16 one as 47. 17 (Exhibit 47 marked.) 18 Q. (BY MR. THOMPSON): Can you generally 19 describe this spreadsheet. 20 A. This has a -- this spreadsheet has a tab 21 for each individual condition that showed up in Wilma's 22 search. So of the 44 conditions that were -- were 23 searched for, there were ten conditions that were 24 found. And under each -- there's a tab for each 25 condition code that shows all the water rights that

Page 50 1 contain that condition. 2 Q. So just to back up, the 44 conditions, 3 explanatory conditions codes that you generated kind of 4 a search list, a query, these are the ten that showed 5 up on water rights within the Aberdeen-Springfield 6 area, and you've further classified them by each code 7 with the water right list that had each of those in it; 8 is that right? 9 A. That's right. 10 Q. Okay. 11 A. Close? 12 Q. I was just going to look at that 13 "Summaries" tab. I see all the different tabs. I was 14 just curious what that one said. And so is that the 15 32,000 acres -- or I'm sorry. Was it the 27,000 that 16 showed a -- more than that, it looks like. Maybe if 17 you can describe it. 18 A. No. So this is something that Wilma did 19 that I did not request her to do. So what she did was 20 she took each one of the water rights and looked at the 21 number of acres and the acre limit, and she took the 22 higher of -- I'm sorry. If it was an acre limit, she 23 would put the acre limit over here [indicating]. 24 Q. Okay. 25 A. Otherwise, she would just put the total	Page 52 1 their digital boundary that they could irrigate. 2 So initially when Wilma ran the analysis, 3 she used all of the groundwater rights within the 4 boundary, not just those water rights that intersected 5 the irrigated acres .shp file used to count acres. 6 Q. So this spreadsheet just includes all 7 groundwater within the Aberdeen service area, 8 regardless of whether or not it overlaps with Aberdeen 9 shares or irrigated area? 10 A. No. So I initially chose 451 water rights. 11 And in order to answer one of these questions -- 12 because one of the questions was "How many groundwater 13 rights are within the service -- or the digital 14 boundary of Aberdeen-Springfield Canal?" And then 15 there was another question that was asked saying "How 16 many water rights are overlapping surface water and 17 groundwater?" 18 You can't answer that question using the 19 boundary because not every acre within the boundary is 20 being irrigated. So the first analysis that she ran 21 really was unnecessary because it hadn't been narrowed 22 down to the 418 water rights. It included water rights 23 that really needed to be cut out because they weren't 24 overlapping the surface water irrigated acres that were 25 identified by Aberdeen-Springfield.
Page 51 1 acres, and then she added them all together. And it's 2 not really very helpful information, because it doesn't 3 really answer the questions that we're trying to 4 answer. So I would disregard the summary. 5 Q. Okay. But for each condition, each water 6 right, you could tally those individual water rights as 7 far as each acreage covered under those categories? 8 A. I don't think this would be the best place 9 to do that. 10 Q. Okay. 11 A. There are other spreadsheets that would -- 12 that would -- it would make more sense to do it under 13 some of the other spreadsheets. I'd say this 14 particular spreadsheet is most useful for knowing how 15 many different water rights had each one of those 16 conditions. 17 Q. Okay. 18 A. However, this one was superseded by a later 19 spreadsheet, because this one was based on all the 20 water rights within the boundary, not the water rights 21 that were associated with the acre count .shp. 22 Q. So explain that to me. 23 A. So when I talk about the acre count .shp, 24 I'm talking about the Aberdeen-Springfield .shp file 25 that was used to calculate the number of acres within	Page 53 1 Q. So this list of 451 includes rights that 2 may just be irrigating land on their own without any -- 3 A. Right, that are not overlapping. 4 Q. Okay. And is there a different spreadsheet 5 that -- 6 A. Yes. 7 Q. -- just narrows that down? 8 A. Yes. 9 MR. THOMPSON: Okay. We'll mark this one as 48. 10 (Exhibit 48 marked.) 11 Q. (BY MR. THOMPSON): Can you just describe 12 the title of this spreadsheet first. 13 A. "Water rights included in the Analyses." 14 This spreadsheet narrows the 451 water rights within 15 the boundary down to the 418 water rights that 16 intersect the irrigated acre .shp file from 17 Aberdeen-Springfield Canal Company. 18 MR. THOMPSON: Okay. Identify this as 49. 19 (Exhibit 49 marked.) 20 Q. (BY MR. THOMPSON): Can you give the title 21 of this spreadsheet. 22 A. "Water rights summarized by condition 23 type." 24 Q. And is this the 418? 25 A. Yes. So this is limited to the 418. And

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1 so it's just a more current version of the earlier 2 spreadsheet that shows the various water rights 3 associated with each one of the conditions in the lower 4 tabs. And in this case the summary has a little bit 5 more meaning to it. It's not showing the -- you know, 6 there's no permit acres calculation. I had her just 7 list out the number of times that that condition 8 appeared -- or the number of water rights that had each 9 one of those conditions. 10 Q. It doesn't look like that totals 418. I'm 11 just curious. 12 A. Not all of the water rights have a 13 supplemental or an explanatory condition. 14 Q. Okay. 15 A. So therefore, those would not show up in 16 the list. 17 Q. Okay. 18 A. And some of these are going to have more 19 than one. 20 Q. Okay. So that summary of that e-mail table 21 on your memo had those with conditions, those with the 22 explanatory conditions, and then those with no 23 conditions. 24 And so those with no conditions don't show 25 up in this spreadsheet?	1 back and forth with Wilma kind of showed the process 2 from where we started -- or we were going through the 3 451, and then we transitioned to the 418, and there 4 were a couple other things that -- adjustments that we 5 needed to make along the way in order to get to the 6 point where we had the final determination of the 7 various condition codes associated with those rights. 8 Q. And going back to your time in the SRBA, 9 how did you make the decision to put on a condition or 10 an explanatory remark if one was necessary? 11 A. Whether or not it was something that was 12 helpful in providing -- or helpful to the watermaster 13 to administer the water right would be a big reason why 14 an explanatory remark would be on there. There are 15 other types of explanatory remarks that just help give 16 a fuller understanding of what the water right's being 17 used for. 18 So like on an industrial right, you might 19 have the specific industrial process that that water 20 right is used for, for example. So it just gives us 21 some more information about -- that -- and it's useful 22 just in kind of understanding the use of the water 23 right. 24 Q. And were you provided any type of 25 instruction for that, or was it just a case-by-case
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1 A. Correct. 2 MR. THOMPSON: Just take a quick break. I'm 3 going to look through the rest of this stuff and see if 4 I have anything else on this. 5 (Recess.) 6 MR. THOMPSON: Back on the record. 7 Q. I'm not going to go through these one by 8 one, but if you could just generally refer to 9 Exhibits 30 through 35. I think they're just e-mails. 10 Are those generally the e-mails -- 11 A. Where are 30 through 35? 12 Q. Oh, I'm sorry. You should have a stack 13 there. 14 A. Oh, okay. 15 Q. And I just briefly looked through them, but 16 it looked like -- 17 MR. HARRIS: Oh, Emmi isn't back. There she is. 18 Q. (BY MR. THOMPSON): -- various e-mails back 19 when Aberdeen was making its claim and you were 20 conducting the investigation, and then it looked like 21 some e-mails with Wilma -- 22 A. Right. 23 Q. -- this month about the spreadsheets we 24 were just talking about; is that correct? 25 A. Right. And just kind of the -- the e-mails	1 basis on the individual right you were looking at? 2 A. I'm -- well, I'm sure I was provided 3 instruction along the way, but, you know, one of the 4 things about getting involved in the adjudication is 5 you kind of learn as you go. You start making 6 recommendations. If your supervisor, you know, finds 7 some errors, then he's going to let you know that 8 there's some changes that need to be made or conditions 9 that need to be included. 10 But, you know, oftentimes the way those 11 decisions were made was going through and looking at 12 the list of conditions. And you knew as you were 13 making your recommendations, you could easily discount 14 some of those conditions because you knew that it 15 really didn't apply to that particular water right. 16 So it's not as though you had to spend an 17 extensive amount of time and analysis for every single 18 one of those hundreds of conditions to determine 19 whether or not it should be there or not. You knew 20 that if it was an irrigation right, you know, there's 21 a -- or certain water rights that appear on the 22 irrigation rights, there's certain conditions that 23 appear on groundwater rights, there's certain 24 conditions that appear primarily on surface water 25 rights. And depending on -- you know, each water right

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1 is a different animal, and depending on the water 2 right, that's -- and how it's used and what the history 3 is on it is going to determine, you know, what water 4 right would -- what condition would appear. 5 Q. I'm sorry. I don't -- can you turn to your 6 affidavit dated April 15, 2009. I don't know which 7 exhibit number that is. 8 Is it 40? 9 MR. BUDGE: 39. 10 MR. THOMPSON: Is it 39? 11 Q. And could you just identify that for the 12 record. 13 A. This is an affidavit that was prepared at 14 the time that recommendations were being worked through 15 for the Aberdeen-Springfield Canal Company water 16 rights. 17 Q. And that page 2, paragraph 9, I believe 18 this is in reference to that agreement that Aberdeen 19 had made with the Department. And I see that reference 20 to that 17,161.6 acres being converted from surface 21 water to groundwater. 22 Do you know the water rights that would be 23 associated with that number? 24 A. I don't. 25 Q. Okay. I guess would it be your	1 2 EXAMINATION 3 BY MR. FLETCHER: 4 Q. I have some questions, Michael. I'm Kent 5 Fletcher. I represent MID and AFRD 2 in this matter. 6 And I just have some follow-up questions. 7 I'd like you to look at Exhibit 40. 8 A. Okay. 9 Q. Exhibit 40 does not pertain to these 10 transfer applications, does it? 11 A. Oh, no. No. 12 Q. Okay. 13 A. This does not -- it has nothing to do with 14 the -- the Hunter water rights. 15 Q. Okay. Now, I think you testified earlier 16 that this type of memorandum is typically done whenever 17 an application is received? 18 A. At some point prior to approval, not 19 necessarily exactly at the time it's received. 20 Q. Okay. And to your knowledge, concerning 21 the applications that we're dealing with here with the 22 Hunters, has this type of memorandum been prepared by 23 the Department? 24 A. I don't know. 25 Q. Okay. Who would know that?
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1 understanding that that list, the analysis you 2 undertook, the 451 down to the 418, would likely be 3 rights in that list? 4 A. I -- I'm not sure. 5 Q. Okay. 6 A. I don't know. 7 Q. Do you know if the Department analyzed that 8 in any way at that time? I guess the specific 9 groundwater rights. 10 A. Well, as far as -- as far as the agreement 11 itself, at the time that the agreement was made, I 12 would -- you know, I wasn't -- I wasn't involved in 13 that. I don't know anything about the agreement. What 14 I was trying to do in the adjudication recommendation 15 was just to accurately reflect the results of the 16 agreement in the recommendation. 17 Q. Okay. 18 A. And so I -- I wasn't involved in the nuts 19 and bolts of the agreement and don't really -- all I 20 know is what the numbers were, and I plugged them in. 21 I didn't have anything to do with the determination of 22 those -- where those acres were located or anything 23 else. 24 MR. THOMPSON: Okay. That's all the questions I 25 had.	1 A. The person that was responsible for 2 reviewing it. 3 Q. Okay. And you don't know that person's 4 name? 5 A. I think I know who it is, but I'm not 6 100 percent sure. 7 Q. Okay. But someone at the Department can 8 tell us who that person is? 9 A. Yeah, I could tell you. I could tell you 10 pretty fast. I'd have to look them up. Just go on to 11 my computer and look it up. I could ask him. He's 12 here today, and ask him as to whether or not he's 13 completed that memo. 14 Q. Okay. And do you know under transfers, 15 does the Department ask for a recommendation from the 16 watermaster? 17 A. Yes. 18 Q. And in this matter dealing with these two 19 applications, has the watermaster made any 20 recommendations? 21 A. I'm -- I don't know. 22 Q. Okay. 23 A. I'm -- because I wasn't involved in the 24 review of -- of these transfers at all. 25 Q. Okay.

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1 A. Other than just initially kind of giving it 2 a once-over, making sure it was complete, making sure 3 the fees were right, those kinds of things, and then 4 farming it out to an agent. 5 Q. Okay. So who would know the answer to that 6 question? 7 A. The person that worked on the transfer 8 applications. 9 Q. Okay. And if that recommendation was made 10 by the watermaster, doesn't that typically appear in 11 the background documents, online even, pertaining to 12 the transfer application? 13 A. Yes, it should. 14 Q. Okay. So why did you include Exhibit 40 in 15 the exhibits that you produced today? 16 A. It pertains -- it's not super important, 17 but it -- if we look at some of the e-mails here from 18 Wilma, let me see which one -- which exhibit it is. 19 Hold on a second. 20 Exhibit 33 when I originally created this 21 stacked acres .shp file where I was taking the 22 Aberdeen-Springfield .shp -- their irrigated acre .shp, 23 not the boundary, but the irrigated acre .shp, and I 24 was intersecting that with the water rights, I did that 25 prior to the approval of this transfer, Transfer	1 place of use had moved from -- from here [indicating], 2 which is where it was from my initial .shp file, and 3 that's what she used to cut out the water rights or to 4 intersect with the other water rights. 5 So when she changed the -- the stacked 6 acres .shp file to reflect the water rights as they 7 exist today, then she was able to get -- to narrow that 8 gap and have less of a discrepancy between what she 9 expected and what she found. 10 Q. One thing I noticed in the first paragraph 11 of Exhibit 40, it mentions that on this transfer, as I 12 understand it from this summary, they were transferring 13 a groundwater right that also had Aberdeen-Springfield 14 water rights appurtenant to other ground that also had 15 Aberdeen-Springfield rights appurtenant; correct? 16 A. Correct. 17 Q. And do you know in the Hunter case, if 18 that's what they're doing in the Hunter case? 19 A. That is not what is being proposed in the 20 Hunter case. 21 Q. Okay. In the Hunter case they're proposing 22 to transfer the groundwater right to acres that don't 23 have any Aberdeen-Springfield rights; correct? 24 A. Correct. 25 Q. Do you know if the Hunter acres where the
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1 No. 81513. 2 When Wilma did her analysis, one of her 3 earlier analyses, she used that stacked acres .shp file 4 that I had generated, but the transfer application, 5 which came afterwards, moved the location of the place 6 of use of that water right. So -- so -- so that's why 7 I included this document, because it explains that -- 8 you know, more of just for reference to that particular 9 water right in the transfer. 10 So she had to rerun the analysis again. 11 That stacked acres .shp file was changed to reflect the 12 new location of the water right after the transfer. 13 Q. Okay. So this is included as an exhibit 14 primarily to show her methodology of a way to do this; 15 is that a fair statement? 16 A. No. No. It was just to -- I wanted to 17 make sure that you guys had the information that you 18 needed to understand -- if you look on page 2 of 19 Exhibit 33, she has a drawing of a .shp file that 20 showed up that -- when she did -- she compared the 21 difference between the overlaps, which was 1385 acres, 22 to the number of acres that she would have expected to 23 have had, which was 1317, so there was a discrepancy 24 between what she expected to find and what -- in 25 reality. And much of that discrepancy was because the	1 water rights are going to be transferred is located 2 within the greater boundary of Aberdeen-Springfield? 3 A. My recollection is that it's outside of the 4 boundary. 5 Q. Do you know if the Department was consulted 6 before the applications to transfer were filed by 7 anyone pertaining to this transfer? 8 A. I'm not aware of it. 9 Q. It's not uncommon, is it, for a water user 10 to come into the Department and tell them "This is what 11 I would like to do. What do you think about it? How 12 can I go about it?" Isn't that a common practice? 13 A. Yeah, that's common. 14 Q. Does the Department keep records of those 15 types of meetings? 16 A. Not really. 17 Q. Okay. So the Department considers them 18 more informational than anything; is that a fair 19 statement? 20 A. Well, a lot of times folks will come in and 21 they want to file a transfer and they don't really know 22 how to go about doing that, and we will assist them in 23 preparing an application because we have the tools to 24 be able to help them, walk them through that, and we 25 know what information needs to be on the application so

Page 66 1 in order to accomplish whatever it is that they're 2 trying to do. 3 Q. Okay. But typically there aren't records 4 kept of those meetings? 5 A. Not usually, no. 6 Q. In this case the water right number that 7 we're dealing with is 35-2824. 8 To your knowledge is 35-2824 a stacked 9 water right? 10 A. If -- I would -- I'm not sure. Without 11 looking at the .shp file, I -- my recollection -- and 12 it's kind of hazy because I don't remember this 13 clearly, but I believe that the application -- or the 14 water right itself says that it is -- has 15 Aberdeen-Springfield Canal Company shares. So it had 16 the E02 condition on it. 17 Q. Okay. So if it does have 18 Aberdeen-Springfield Canal Company shares appurtenant 19 to the same ground -- 20 A. Uh-huh. 21 Q. -- as the water right, is it a stacked 22 water right? 23 A. Yeah. 24 Q. And what is a stacked water right? 25 A. Well, it's a -- well, you can't really have	Page 68 1 person that is authorized to sign those permit -- the 2 permits that are issued or the licenses. 3 Q. Well, when a transfer application is filed 4 with the Department -- 5 A. Yeah. 6 Q. -- and it's a request to transfer a 7 groundwater right that is stacked with surface water 8 rights, who makes the determination about what water 9 right is primary and what water right is supplemental? 10 A. The water right itself should have -- if it 11 is a supplemental right, should have the conditions on 12 it that would make it clear that it's a supplemental 13 right. 14 Q. Okay. When you say it has the conditions 15 on it, where would those conditions appear? 16 A. They would appear on the water right prior 17 to the -- you know, as it exists prior to the transfer. 18 Q. Okay. Are you talking about on the decree? 19 A. It could be a decree or it could be a 20 license. 21 Q. Okay. You had mentioned in the SRBA 22 explanatory or conditional remarks do not necessarily 23 appear on the decree? 24 A. Right. 25 Q. If there are explanatory or conditional
Page 67 1 a stacked water right. You would have stacked water 2 rights; right? So stacked water rights would be water 3 rights that share the same place of use. 4 Q. Okay. Do you know if 35-2824 is a primary 5 right? 6 A. I don't know a lot about the details of 7 35-2824 without actually looking at Water Right 2824. 8 Q. Okay. 9 A. Do you have a -- 10 Q. Well, no, if you don't know, that's fine. 11 A. Yeah. 12 Q. Who in the Department makes those 13 determinations if a water right is primary or 14 supplemental? Who makes the determination? 15 A. I guess the agent that -- in the case of 16 the adjudication, the agent reviews all of the 17 information in the claim, all the information that the 18 Department has available to it to make -- to make that 19 recommendation, and then conditions it based on the 20 information that's available, you know, to the best of 21 his or her knowledge. 22 In the case of a permit, then that is 23 something that that determination is made, you know, 24 initially by the -- an agent, but is confirmed by a 25 supervisor. So in our office James Cefalo is the	Page 69 1 remarks making reference to a surface water right 2 appurtenant to the same property, how does that factor 3 into what you're telling me? 4 A. Can you -- 5 Q. Well, in a transfer evaluation -- 6 A. Uh-huh. 7 Q. Well, maybe the best way to do this, why 8 don't you look at Exhibit 12. 9 Do you see Exhibit 12? 10 A. Yes. 11 Q. And what is Exhibit 12? 12 A. Partial decree for Water Right 35-2824. 13 Q. Okay. And as you look at that water right, 14 is there any indication on that decree that there are 15 other rights appurtenant to the acreage or that it's 16 supplemental? 17 A. No. 18 Q. Okay. And then I'd like you to look at 19 Exhibit 13. And look toward the end of it, if you 20 would, under the conditions. 21 A. Okay. 22 Q. Now, is there anything on that that would 23 indicate to you that there are other water rights 24 appurtenant to this same real property? 25 A. Yes.

Page 70 1 Q. What language are you referring to when you 2 say that? 3 A. "Use of this right is combined with water 4 from Aberdeen-Springfield Canal Company." 5 Q. Okay. That wording is not on the decree, 6 correct, Exhibit 12? 7 A. That's right. 8 Q. But it is on Exhibit 13? 9 A. Correct. So it was part of the Director's 10 report. 11 Q. Okay. 12 A. But it did not appear on the decree. 13 Q. Okay. So if you see that language 14 appearing as a condition on the explanation of the 15 water right, Exhibit 13, what does that indicate to 16 you? 17 A. That at least at the time that the claim 18 was made there was Aberdeen-Springfield Canal Company 19 water associated with that land. 20 Q. Okay. 21 A. Or some portion of that land. 22 Q. And when an application comes in to 23 transfer that property, how does that impact your 24 analysis of the transfer, that type of language? 25 A. One would need to determine whether or not	Page 72 1 A. So what's -- with what being proposed? 2 What's the proposal? Is the proposal that the -- 3 what's the nature of the transfer? Are you talking 4 about this particular transfer? 5 Q. Yeah. In this transfer. Assume 6 Aberdeen-Springfield Canal Company shares are 7 appurtenant to the same real property as 35-2824. 8 A. Yeah, okay. 9 Q. And the proposal is to transfer 35-2824 to 10 other ground that has no Aberdeen-Springfield Canal 11 Company rights. 12 A. Right. 13 Q. How does that fact impact your analysis of 14 the transfer? 15 A. It sounds like an unstacking of water 16 rights, which would be considered an enlargement. So 17 it's -- it's -- whether or not their water rights are 18 stacked or not may not be obvious based on the water 19 rights themselves, but it's -- it either is or it isn't 20 stacked. And so, you know, we're somewhat dependent 21 upon the applicant being forthright with us regarding 22 what water rights they have on their property. 23 Q. Uh-huh. 24 A. You know, it's challenging for the 25 Department because there's a --
Page 71 1 there is Aberdeen -- you know, to what extent is there 2 Aberdeen-Springfield Canal shares associated with the 3 property or not. 4 Q. Okay. 5 A. And that's -- you know, that's one of the 6 challenges with the -- the service area, the large 7 place of use digital boundary, is that it doesn't nail 8 down, you know, exactly where the acres are located 9 within the boundary. And the canal companies have the 10 flexibility to be able to move their -- their acres 11 around within their boundary without filing a transfer. 12 So it means that additional digging needs 13 to be done to determine whether or not -- where those 14 shares were located, because it's not obvious just 15 looking at our database as to where those acres are. 16 Q. Okay. Well, assume for the sake of 17 argument or hypothetically that there are 18 Aberdeen-Springfield Canal Company shares appurtenant 19 to the same real property -- 20 A. Uh-huh. 21 Q. -- that your investigation shows that. 22 How does that color your analysis of the 23 transfer of this application? 24 A. So -- 25 Q. Of this water right. Excuse me.	Page 73 1 Q. Well, I don't mean to cut you off. Let's 2 assume in this case the applicant's forthright and 3 tells you there are Aberdeen-Springfield Canal Company 4 rights appurtenant to this real property. So that's 5 not the issue anymore. You know, there are 6 Aberdeen-Springfield rights, and there is 35-2824 7 appurtenant to the same real property. 8 A. Okay. 9 Q. The application wants to transfer 35-2824 10 to another place of use that doesn't have any surface 11 water supply. 12 So how do those facts color your analysis 13 of the transfer? 14 A. Well, the applicant could move the shares 15 of Aberdeen-Springfield water, along with the 16 groundwater right, to that other piece of property. 17 And that would not be an unstacking because they're 18 moving them together. But a -- with just the 19 information that you've given me and nothing else, I 20 would think it would be an enlargement. 21 Q. Now, as part of the analysis that the 22 Department does under the transfer memo, do you look at 23 the actual usage of the water rights on the real 24 property, in other words, do you look to see if the 25 surface water has been supplied to the ground or the

Page 74 1 groundwater has been supplied to the ground? 2 A. Yes. Some of those records are more easily 3 obtained. So for the groundwater rights, they're in 4 water districts. And they've been -- you know, we've 5 been keeping up with water-use data since the late 6 '90s, so we have that data available to us. 7 Different kinds of irrigation systems can 8 be, you know, complex. And it's difficult to 9 determine, just if you were to look at the land from an 10 aerial photo, how -- whether it's been irrigated with 11 groundwater or surface water. That's pretty tough. 12 So, you know, you may need to seek additional 13 information from the -- from the canal company. And 14 they may or may not have that information. That's why 15 I'm saying you're dependent on the honesty of the 16 applicant. 17 Q. How far back do you look at the usage? In 18 other words, if the application was filed this year, 19 how far back do you look at the usage on the real 20 property? 21 A. I don't know. 22 Q. I mean is there any -- 23 A. There's some guidance in the transfer memo 24 regarding, say, use for a supplemental right, if one 25 was trying to move a supplemental right to another, say	Page 76 1 I would just like to know on the ones that deal with 2 actual water rights on which spreadsheets the Water 3 Right 35-2824 appear, if any. 4 Okay. Can you identify which spreadsheet 5 you're look at. 6 A. This is "Water rights summarized by 7 condition type." 8 Q. Okay. And does 35-2824 appear on that 9 spreadsheet? 10 A. Yes. 11 Q. And which condition is shown on being on 12 that water right? 13 A. Well, I'm only looking at the E02 tab, 14 which would be the water rights used with water from 15 Aberdeen-Springfield Canal Company. 16 Q. Okay. And what does the spreadsheet say 17 about that water right? 18 A. There's -- it's for 121 acres. And of that 19 121, there's 92 acres that is clipped to the 20 overlapping acres .shp file, the stacked acres .shp 21 file. 22 Q. Okay. So according to this spreadsheet, 23 92 acres of the groundwater right overlap with the 24 Aberdeen-Springfield Canal Company water rights? 25 A. From 1987, yeah.
Page 75 1 within another piece of land that has a comparable 2 primary right, you know, that could be done. There's 3 no increase in the consumptive use that way. 4 Q. Okay. Well, I'm just trying to figure out, 5 I mean in this case Aberdeen-Springfield's rights are 6 like -- I don't know, they date back to 1890 or 7 something like that. 8 A. Uh-huh. 9 Q. The groundwater right we're dealing with is 10 a 1961 priority date. I just was wondering what kind 11 of scope of use does the Department look at in trying 12 to determine a primary right versus a supplemental 13 right. 14 A. Yeah, I guess what I'm getting at is that a 15 water right is stacked or not stacked. You can't 16 always tell immediately just by looking at say the face 17 of the decree or the water right, you know, on paper. 18 It's -- there's -- whether or not there's 19 other water rights associated with that, that land, is 20 a matter of fact, you know, yes or no there is surface 21 water here or there isn't. And of course, it can be 22 dynamic and challenging because of the difficulty of 23 the large place of use concept where the -- not every 24 single acre is accounted for. 25 Q. Okay. Can you open up your spreadsheets.	Page 77 1 Q. Okay. All right. And is there any other 2 information pertain to the right of what you're looking 3 at right now? 4 A. Not really. 5 Q. Okay. 6 A. I mean there's other information, but not 7 that -- probably not that useful. 8 Q. Which exhibit did you say that was? 9 A. "Water rights summarized by condition 10 type." 11 Q. And that's Exhibit 49? Are you looking at 12 the final -- 13 A. I don't know what exhibit. 14 Q. Are you looking at your spreadsheet? 15 A. Yeah. 16 Q. The one that took out the difference 17 between the 458 and the 418? 18 A. Yeah, yeah, yeah. This one's down to 19 the -- 20 Q. So Exhibit 49? 21 MR. THOMPSON: That's right. 22 Q. (BY MR. FLETCHER): All right. So the E02 23 condition you're referring to that was on Exhibit 13, 24 making reference to the Aberdeen-Springfield Canal 25 Company shares --

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1 A. Right. 2 Q. -- that's the condition? 3 A. Right. 4 MR. FLETCHER: Okay. I don't think I have any 5 other questions. Thanks. 6 MR. BUDGE: Michael, how are you doing? You 7 need a break? 8 THE WITNESS: Yeah, it would be nice. 9 MR. BUDGE: So I probably have about maybe 15 10 minutes of questions. 11 THE WITNESS: Okay. 12 MR. BUDGE: So if you want to get it out of the 13 way, we can do that now. 14 THE WITNESS: If I could just have a quick 15 bathroom break, that would be good. 16 MR. BUDGE: That would be good. Okay. And then 17 come back before your lunch break and we'll finish you 18 up. 19 THE WITNESS: Okay. 20 (Recess.) 21 MR. BUDGE: Back on the record. 22 23 EXAMINATION 24 BY MR. BUDGE: 25 Q. Michael, I'm TJ Budge. I'm representing	1 it had been objected to, otherwise it probably would 2 have been decreed earlier. Anyway, it was -- I don't 3 remember this thing. This happened a long time ago. 4 But according to the -- you know, just what 5 I'm reading there, I -- I took what was already on the 6 Basin 35 groundwater right recommendations for 7 Aberdeen-Springfield, the two groundwater rights, at 8 some point that was the number of acres that was 9 associated with the recommendation for those two 10 rights. 11 Q. Okay. So this pertains to the 12 Aberdeen-Springfield Canal Company groundwater rights 13 during some stage of the adjudication? 14 A. Yeah. 15 Q. Okay. Next, we have discussed various .shp 16 files and polygons that you've prepared in advance of 17 this deposition and you've referred to. I just want to 18 confirm that those can be provided to the parties if 19 needed. 20 Emmi, can you confirm that? 21 MS. BLADES: That those e-mails can be provided? 22 MR. BUDGE: The .shp files, the GIS .shp files 23 that Michael prepared in connection with the data he's 24 provided today. 25 MS. BLADES: Right.
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1 Idaho Ground Water Appropriators in this matter, 2 commonly known as IGWA. Thanks for being here today, 3 and thanks for all of the work you've put into 4 providing the data that you provided today. It's very 5 helpful. It's information we couldn't have gotten on 6 our own, so I really appreciate that. 7 I don't have a lot of questions for you, 8 but I did make notes as we were going through your 9 earlier testimony, and I want to ask you a few 10 questions, just to make sure I understand clearly your 11 testimony on some of the information that has been 12 presented. I'll try and do this in as organized way as 13 much as possible. 14 To begin with, you brought a number of 15 documents and e-mails with you. And I want to just 16 draw your attention to one of those marked as 17 Exhibit 30. It's an e-mail from you to Dave Tuthill, 18 dated November 22nd, 2005. And the top of that e-mail 19 refers to some work done by Allen Ruberry, and then it 20 has a recommendation concerning 37,798 acres. 21 A. Uh-huh. 22 Q. What does that acre figure represent? 23 A. So I -- I'm not sure if it's a preliminary 24 recommendation or perhaps a recommendation that was 25 sitting out there that had been objected to. I imagine	1 MR. BUDGE: Okay. Just wanted to confirm that. 2 Q. And then you mentioned when you started 3 your deposition that you reviewed the transfer memo in 4 connection with preparing for this deposition. 5 What part of the transfer memo did you 6 review? 7 A. Primarily the part that deals with 8 enlargement. 9 Q. Okay. Michael, if you'll turn to 10 Exhibit 29. That's the memo you prepared to explain 11 the process you went through to answer the questions 12 that were presented to you. And again, I appreciate 13 you doing this. This is helpful for today and future 14 reference. 15 Just to clarify, on your answer to 16 Question 2 you've got the number of 17 Aberdeen-Springfield Canal Company acres irrigated at 18 61,772 acres. 19 Do you see that? 20 A. Yeah. 21 Q. Did I understand correctly that that's 22 based on the number of acres that the company irrigated 23 in 1987? 24 A. Correct. 25 Q. Are those acres that were actually

Page 82 1 irrigated in '87, or are those acres that had ever been 2 irrigated prior to '87? 3 A. It was acres that had been irrigated prior 4 to 1987 and the shares had not been moved. 5 Q. What would become of acres that had been 6 irrigated and the shares had been moved? 7 A. So to explain that, if -- if you have let's 8 say Land A that was irrigated in the early 1900s, but 9 then in the mid-1900s those shares got moved to Land B, 10 I wouldn't count the acres from Land A and Land B. I 11 would just count the -- you know, the acres on Land B. 12 Q. Okay. Good. So the 61,000, those are 13 acres that had been irrigated and had appurtenant 14 shares as of 1987? 15 A. Correct, based on the .shp file that was 16 provided to us by Steve Howser. 17 Q. Okay. Good. If you'd turn to page 2 of 18 that memo. The top paragraph completes your 19 explanation of how you calculated the total number of 20 groundwater acres within the Aberdeen-Springfield 21 service area. The figure you arrived at is 22 32,255 acres. 23 Do I understand correctly that that figure 24 does not include acres irrigated under canal company 25 groundwater rights?	Page 84 1 second before I tell you what that is. 2 So it's the intersection of all the active 3 water rights for irrigation that are not a large place 4 of use and the source is groundwater with the digital 5 boundary. So -- so the purpose of the Map 2 is to 6 calculate what the -- what the acres are, because 7 they're the overlaps. So what Map 2 does for us is get 8 rid of all the overlaps just so that they could -- so 9 that the total acreage can be counted. 10 But Map 3 shows that they're the fragments 11 that had to be removed. So after the fragment wipes 12 that did not appear to -- you know, weren't 13 appropriately put in the Aberdeen-Springfield Canal 14 Company service area, after those were taken out, then 15 you ended up with 32,255 acres. 16 Q. Okay. So I want to understand the 17 different types of fragments that were excluded. You 18 do have this Map 3 example, and I understood that. 19 A. Yeah. So there's -- I started out with 686 20 polygons when I did the intersection. And I eliminated 21 66 polygons, leaving 620. So the -- so there was a 22 little bit of a drop in acreage. The difference -- the 23 total drop in acreage is the difference between 32,276, 24 which is on Map 2, and 32,255. So 21 acres. There's a 25 21-acre difference between before and after those
Page 83 1 A. Correct, because the canal company 2 groundwater rights don't -- don't have any kind of acre 3 limitation on them, other than the 61,772.6. So 4 there's a sense in which all the acres, all of the 5 61,000, are covered by groundwater. 6 Q. So the place of use of the canal company's 7 groundwater rights would mirror the place of use of its 8 surface water rights? 9 A. Right. 10 Q. Okay. Turning further back in that memo, I 11 just want to make sure I understand the maps and some 12 of the attachments. The first map that I come to is 13 labeled "IGWA Question No. 3, Map 1." 14 And am I understanding correctly that the 15 areas highlighted in green on that map make up the 16 32,255 groundwater acres within the service area? 17 MR. HARRIS: Which map are you referring to, TJ? 18 MR. BUDGE: The map labeled "IGWA Question 3, 19 Map 1." 20 THE WITNESS: So Question 3, Map 1, you're 21 wanting to know if -- if those acres shown are the same 22 acres as -- as Map 5? 23 Q. (BY MR. BUDGE): Yes. 24 A. It is not. They are not the same. Okay. 25 So Map 1 is -- is the intersection of -- hold on just a	Page 85 1 polygons -- those little fragment sub water right 2 polygons were removed. 3 Q. Okay. So those made up 21 acres, something 4 like that? 5 A. Right. 6 Q. And then going from the 45,000 to the 7 32,000, that's where you eliminated stacked groundwater 8 rights? 9 A. Yeah. I mean if you look at the -- if you 10 look at Map 4 with the -- with the 45,000 acres, if 11 you -- visually that map is identical -- well, I 12 shouldn't say "identical," because it -- it's -- 13 there's no more acres covered by Map 5 than there is -- 14 or Map 4 than by Map 5. It's just that when you add 15 all those polygons, because some of those polygons are 16 stacked on top of each other, they get counted twice on 17 the same acres. 18 Q. Okay. And so then my last question is, 19 what are the clipped acres? 20 A. So the clipped acres on the spreadsheet or 21 the clipped acres the way that Wilma uses it in her 22 e-mail? 23 Q. Well, I assume they were the same, but why 24 don't you explain each. 25 A. So she talks about clipping, and I don't

Page 86 1 generally use that -- the word the way that she does. 2 But, you know, she's a GIS person, and I've heard other 3 GIS people use it that way, but what they're doing is 4 it's like they're trimming out everything that 5 doesn't -- that doesn't overlap, you know. 6 So -- but they're clipping it to a -- it's 7 like they're taking a cookie cutter and they're putting 8 it over a big batch of dough. They're clipping it to 9 the cookie cutter. So what you have inside of the 10 cookie cutter has been clipped by that thing. 11 So does that make sense? 12 Q. So are they clipping acres that fall 13 outside the digital boundary? 14 A. In one of the things -- one of the things 15 that was done -- and that was something that I did -- 16 was to clip -- first, in order to answer Question 17 No. 3, "Total acres authorized for irrigation under 18 groundwater rights within the Aberdeen-Springfield 19 Canal Company service area." So in order to answer 20 that question, I had to use the digital boundary. 21 But in order to answer the question 22 regarding stacked rights, I couldn't use the digital 23 boundary. I had to use the specific surface-water 24 irrigated acres that had been identified by 25 Aberdeen-Springfield that the -- you know, that ended	Page 88 1 as a practical matter there's surface water going 2 outside the digital boundary because they're all in the 3 same irrigation system, but maybe we clipped some of 4 those out. 5 A. There's surface water, you said, going 6 outside of the digital boundary? 7 Q. So -- 8 A. So that could be. If that's the case, then 9 Aberdeen-Springfield Canal Company needs to change 10 their digital boundary. 11 Q. Right. You don't have a sense of whether 12 that's common or uncommon, based on the work you did 13 for this? 14 A. No, that wasn't even something I was 15 looking for. 16 Q. Okay. Okay. Let's keep going through 17 this. Let's flip to the information or the e-mail by 18 Ms. Robertson that's included in your memo. 19 A. Oh, okay. Uh-huh. 20 Q. And there's two tables. There's a table on 21 page 1 of her e-mail and a table on page 2 of her 22 e-mail. 23 Did I understand correctly that the figures 24 in these tables come from the spreadsheets that we 25 reviewed earlier?
Page 87 1 up being the -- you know, the number of acres that was 2 decreed. 3 Q. So when you applied the digital boundary to 4 clip out everything that's outside of it, do you recall 5 how many groundwater-irrigated acres were clipped 6 because they fell outside that boundary? 7 A. No. 8 Q. Do you recall whether it was, you know, 9 relatively few or were there -- 10 A. There were some that were just -- you know, 11 like in the case of the illustration that I have for 12 the fragment, there were some that were just barely in 13 the boundary, I mean, and in this case shouldn't have 14 been in the boundary to begin with. But there were 15 some that are just barely easing over into the 16 boundary. There are others that are fully in the 17 boundary. And others that are, you know, partway in 18 and partway out, half and half, you know, something 19 like that. So there's quite an assortment. 20 Q. Yeah. So what I'm trying to understand -- 21 and maybe we don't know the answer, but I'm trying to 22 understand, how many groundwater rights along the 23 boundary, along the digital boundary that overlap the 24 boundary in some form, how many of those stacked water 25 rights that are along the digital boundary overlap, and	Page 89 1 A. No. No. Those -- those figures came 2 from -- well, some of them -- some of the figures did, 3 like as far as the number of rights, but the figures as 4 far as the acreage is concerned was based on the .shp 5 files, which, you know, you could also figure out the 6 number of water rights through the .shp files too. I 7 mean either way there's a relationship between the two. 8 Q. Okay. So the total acres came from your 9 GIS analysis? 10 A. No. From Wilma's. So -- so she took -- I 11 gave her the codes that I wanted her to search for, the 12 condition codes, and I gave her the -- a list of water 13 rights. And I gave her a .shp file of stacked acres. 14 Q. Okay. 15 A. And she took all of that information and 16 generated this table. 17 Q. Okay. That's helpful. Okay. And then the 18 next table, I was confused by this. 19 A. Yeah. 20 Q. She has this overlap analysis. 21 A. Right. 22 Q. And you're going to have to explain this 23 for me. What confused me is the second category where 24 it says "Supplemental and no condition 193.2 acres." 25 A. Yeah. Okay. So what she did -- and if you

Page 90 1 look on the Map 1, she took any of the water rights 2 that had a supplemental condition on them, and she 3 melted all of those together into one polygon. And 4 then she took all the water rights that had no -- 5 neither an explanatory, nor a supplemental, and she 6 melted all those together into one polygon. And then 7 she took, you know, all the ones that just had an 8 explanatory condition on there, put those together. 9 So the thing is there are some water 10 rights -- or some pieces of land that have a water 11 right on it that has a supplemental condition on it and 12 also has another groundwater right that has no 13 condition on it. So when she's talking about the 14 overlaps, she's not talking about overlaps in the same 15 sense that we're talking about groundwater/surface 16 water overlap. We're talking about condition overlap. 17 Q. That's really helpful. Thank you. Okay. 18 Let me shift gears. 19 There were some questions about in the 20 adjudication when you included a certain piece of 21 information as a condition versus explanatory remark. 22 And I just want to make sure I understood. My 23 understanding of your answer was that if it was 24 something that was needed for daily administration by 25 the watermaster, then it would typically be put in as a	Page 92 1 example, in water rights side, we -- we have a 2 condition that puts volume, cfs, and acres all in one 3 condition. 4 But the adjudication didn't want that. 5 They wanted the quantity conditions to be in the 6 quantity section, and they wanted the acres condition 7 to be in the place of use section. So we had to redo 8 the way that we do our conditions normally in the water 9 rights side, and we had to split that out. So -- 10 Q. We went through this with Carter Fritschle, 11 so I remember this discussion on Friday. And I 12 guess -- so for today's purposes, in your mind there 13 wasn't a big distinction between condition versus 14 explanatory. 15 A. Well, there's an explanatory condition, and 16 there's a quantity condition, and there's a -- you 17 know, so explanatory is just one of the types of 18 conditions. It's just -- it's additional information 19 that's important to include on the recommendation. 20 Q. Okay. And did you say that in permitting 21 and licensing they all appear -- 22 A. Right. 23 Q. -- on the face of the water right? 24 A. Yep. We have them organized logically, you 25 know, in a flow, but they're not necessarily
Page 91 1 condition, but if it was some other important piece of 2 information that wasn't absolutely necessary for daily 3 administration, then it was more often an explanatory 4 remark. 5 A. We didn't really make much distinction 6 between conditions and remarks. I mean they're all 7 conditions. And so we would just go through and we 8 would look at our conditions that are out there. You 9 got, you know, hundreds of these things. And you 10 just -- knowing what you know as you've reviewed this 11 water right you know, you know, how this water right is 12 supposed to be administered, you know -- you know, 13 you've gathered some information from the file. You 14 just go through the list of conditions and you pick the 15 ones that are appropriate for that recommendation. 16 Whether or not it's -- you know, we're -- 17 whether or not it was an explanatory or a 18 nonexplanatory condition was just something that 19 someone else had made that determination about which -- 20 which recommendation -- I mean which conditions will be 21 explanatory and which will be general and which would 22 be priority date, and which ones would go under -- and 23 it all had to do with where it was going to appear in 24 the Director's report, because the Court was specific 25 about, you know, what -- you know, initially, like, for	Page 93 1 categorized in terms of importance. I guess, you know, 2 we tend to put the -- the conditions that are very -- 3 like we go from smaller amounts to larger amounts. 4 So if there's a -- the first condition will 5 be this water right is good for 10 acres, and then the 6 next will be these water rights together are good for 7 20 acres, you know. So there's -- we try to make it a 8 logical pattern, but it doesn't always work out that 9 way. Sometimes they're just thrown out there on the -- 10 on the approval. 11 Q. Okay. Okay. That's helpful. So I got one 12 last question or set of questions, and it deals with 13 the difference between the 451 water rights and the 418 14 water rights. And I think I understand it, but I 15 wanted to just have you explain one more time the 16 difference between those two figures. 17 A. Okay. So the 451 water rights was where I 18 landed by just using the digital boundary to cut out 19 the -- you know, to cut the groundwater acres that were 20 within Aberdeen-Springfield service area. 21 Q. Got that. 22 A. Okay. I used a different .shp file to 23 cut -- to come out -- to come up with the 418. It was 24 the -- it was the acres that were identified that -- it 25 was the irrigated acre .shp file, which is a smaller

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1 .shp file, that's illustrated on Question 4, Map 1. So
2 if you take -- which was the .shp file for irrigated
3 acres that were provided to us.
4 So you can see that there's some white
5 space in there that's not where there's no -- that
6 wasn't counted by Aberdeen-Springfield as being
7 irrigated acreage. But, you know, the biggest part of
8 the land within the boundary was counted. I mean we
9 have a total of 80,000, and of that 60,000 was counted.
10 So it's an intersection -- so what we're
11 doing is we're taking all of the groundwater rights and
12 we're -- instead of cutting with the digital boundary,
13 we're cutting with the irrigated acre .shp, the 60 --
14 we're cutting -- instead of cutting with the
15 80,000-acre .shp, we're cutting with the 62,000-acre
16 .shp.
17 Q. So there's 451 total groundwater rights in
18 the service area, and of that number 418 are stacked
19 with canal water?
20 A. Well, that's not totally accurate. So
21 there's 451 water rights that we retained. Remember,
22 there were more water rights than that that we said,
23 nah, those are just little slivers, and we got rid of
24 all those, you know.
25 Q. Yeah.

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1 A. But yeah, this started out as 451 within
2 the service area that we said yeah, these are squarely
3 within the service area. And not necessarily totally
4 within the service area, but significantly within the
5 service area and were appropriately within the service
6 area.
7 And then we have the -- so that 450 -- once
8 we nailed it down to the 451, we took those 451 water
9 rights and we cut using the irrigated acres .shp file
10 to come up with the -- with the -- with the 418.
11 Q. So my understanding, the 418, they're
12 stacked?
13 A. Yeah.
14 Q. But there's, whatever that is, 33 that are
15 water rights that aren't stacked?
16 A. Right. So what that means is there was
17 some groundwater acres that was not stacked. That's
18 right. There was some groundwater acres out there that
19 were just groundwater rights or there's the possibility
20 that they have surface water from another company.
21 Q. Yeah.
22 A. Yeah. That's it, yeah.
23 MR. BUDGE: Perfect. Thank you. I don't have
24 any further questions.
25 MR. HARRIS: I have some questions. I'm good to

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1 keep moving forward, unless you guys want to take a
2 lunch break.
3 MR. FLETCHER: If the witness is okay. I'd just
4 as soon complete his depo, unless you're going to take
5 a long time.
6 MR. HARRIS: I'll only take two hours. I'm just
7 kidding. Maybe 10 minutes, 15 minutes.
8 You doing okay if we just continue?
9 THE WITNESS: Yeah. I am getting kind of
10 hungry, but...
11
12 EXAMINATION
13 BY MR. HARRIS:
14 Q. Michael, we've worked together a lot. You
15 know me. Rob Harris. I'm the attorney for the
16 applicants in this matter, Kip and Brandi Hunter. I'm
17 going to jump around a little bit just because I have a
18 couple follow-up questions. And we'll start here while
19 it's opened up.
20 Your exhibit binder is opened up to
21 Exhibit 13, which is the water right report for Water
22 Right No. 35-2824. And I'm nitpicking a little bit
23 with the language, but a couple times the testimony has
24 been that there's a reference to canal company shares.
25 Could you read the actual E02 condition.

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1 A. "Use of this right is combined with water
2 from Aberdeen-Springfield Canal Company."
3 Q. So that statement doesn't actually use the
4 word "shares"; correct?
5 A. True.
6 Q. And does Aberdeen-Springfield Canal Company
7 have surface water and groundwater rights?
8 A. Yes.
9 Q. Okay. So water from either of those
10 sources could be combined with 35-2824?
11 A. Correct.
12 Q. There's no designation of the number of
13 shares that would have been appurtenant to 35-2824
14 property in the water right report?
15 A. In the water right report, no.
16 Q. Is there a database where the Department
17 actually tracked the number of shares appurtenant to
18 each parcel in the Snake River Basin Adjudication?
19 A. That would be something for the individual
20 canal companies to keep up with.
21 Q. The Department doesn't track that?
22 A. No.
23 Q. Okay.
24 A. Not that I'm aware of.
25 Q. Mr. Fletcher asked you some questions about

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1 whether when you receive a transfer application do you 2 look at the actual usage of water. And I just want to 3 kind of ask some more detailed questions. 4 When we're looking at actual usage of 5 water, does the Department look at the surface water 6 deliveries to the actual place of use of say the Hunter 7 water right? 8 A. Most of our analysis regarding the actual 9 use of water has to do with whether or not there's 10 forfeiture concerns. So we're looking at the land to 11 see whether or not that has occurred. And, you know, 12 we don't -- you know, if it looks like the land has 13 been irrigated, whether it's from surface water or 14 groundwater, we don't -- there's no red flags that pop 15 up to say that there's a forfeiture issue. 16 So no, we wouldn't, you know, make that 17 determination as to whether or not it was irrigated 18 with surface water versus groundwater. We were just -- 19 just has it been irrigated. 20 Q. And that would be looking at aerial 21 photography; correct? 22 A. Right. 23 Q. So my question is -- maybe I'll ask it a 24 different way: The Water District tracks the diversion 25 amounts that are diverted into the Aberdeen-Springfield	1 A. No, I can't remember the details of it. 2 Q. Okay. 3 A. Because like I say, that was whenever 4 the -- whenever the thing was filed, I remember looking 5 at it at that time, at the time that it was filed, but 6 I don't remember all the ins and outs of it. 7 Q. Well, getting back to the question I'm 8 asking, though: So you're saying this is an unusual 9 situation, but that to the best of your knowledge the 10 Department doesn't look at actual canal company 11 internal delivery records to determine whether 12 Aberdeen-Springfield Canal Company water was readily 13 available to the Hunter property? 14 A. I wouldn't say we're looking at 15 availability so much as they were -- we may contact 16 Steve Howser and say "Hey, are there canal company 17 shares associated with this land?" 18 Q. Okay. And that would be -- 19 A. Not actually usage. 20 Q. Okay. 21 A. But yeah, that would -- that might be the 22 extent of it. But, you know, I don't know that the 23 Department has always been consistent in the way that 24 they have handled this kind of situation, because 25 obviously as time has moved on and water has -- things
Page 99	Page 101
1 Canal Company system at the Snake River; correct? 2 A. Right. 3 Q. Okay. Does the Department track the actual 4 delivery of water to each shareholder within the canal 5 company? 6 A. No. 7 Q. Okay. It would be the canal company that 8 maintains those records; right? 9 A. Right. 10 Q. Okay. So do you check with like Steve 11 Howser to say "There's a transfer, there's a Hunter 12 water right that's proposed to be transferred, can you 13 provide us water delivery records"? Do you guys do 14 that? 15 A. This is a -- this is -- well, let me just 16 say that this is an unusual situation. There's not -- 17 it doesn't come across -- I mean in the time that I've 18 processed transfers, there's not very many transfers 19 that come in and say hey, we want -- this proposal 20 that's like the Hunter transfer, this is what -- we 21 want to propose taking this water outside of the 22 service area. That -- it's not very common. 23 Q. Do you know for certain that this transfer 24 will move it to lands located outside the 25 Aberdeen-Springfield Canal Company system?	1 have kind of tightened up a little bit, you know, 2 there's -- there's -- there's a lot more attention 3 being paid to, you know, additional, you know, 4 consumptive use as a result of a transfer. 5 Q. I understand that. But I'm just asking a 6 simple question, whether you inquire as to deliveries, 7 individual users in -- 8 A. I don't recall personally having to contact 9 a canal company to find out whether or not there were 10 shares, because, you know, in -- I -- there was a 11 period of time when I was processing transfers prior to 12 becoming a supervisor. But now as a supervisor, I 13 really don't do a whole lot of transfers myself. I do 14 some transfers. 15 Q. What about the actual usage of groundwater? 16 In a conversion like this where we're converting a 17 supplemental right to a primary right, Memo 24 talks 18 about allowing that to be done if you look at five 19 years of historic pumping data or more. What 20 information does the Department have on historic 21 pumping data? 22 A. So this water right is within Water 23 District 120, and so Water District 120 would keep 24 records for the -- either based on power-consumption 25 coefficient or flow meters or some other measuring

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1 device to determine what the volume of water has been 2 pumped -- 3 Q. And is that -- 4 A. -- you know, out of that well. 5 Q. And is that data housed in the W-M-I-S 6 system, or the WMIS system, within the Department? 7 A. Yes. 8 Q. And is that generally viewed as a reliable 9 place to look for historical pumping data in transfer 10 applications? 11 A. It depends. 12 Q. Okay. 13 A. So some data is entered by groundwater 14 districts that aren't -- don't do as good a job as 15 other groundwater districts, for example. And some of 16 that data is -- you know, it depends on the source of 17 the data, really. And it also has something to do with 18 the complexity of the irrigation system. 19 Q. Uh-huh. 20 A. So some data is going to be more reliable 21 than others. And of course as now, as we're veering 22 now more over into flow meters, magnetic meters having 23 to be installed on all of these diversions, I would 24 imagine that our data would become more available -- or 25 more reliable over time.	1 for irrigation one. 2 A. Okay. So there was an agreement that was 3 entered into between the Department and 4 Aberdeen-Springfield related to water that had been 5 recharged through the leaky system. And there -- there 6 was some quantity that was -- was settled upon between 7 the Department and Aberdeen-Springfield as to what 8 would qualify as a recharge for irrigation. I don't -- 9 I don't know where that data came from. 10 Q. And weren't there also individual 11 objections filed to groundwater rights asserting that 12 those rights were not pumping groundwater but they were 13 actually pumping recovered water from the 14 Aberdeen-Springfield Canal Company system? 15 A. Yes, there was. 16 Q. And so if that were successful, then the 17 water pumped from those wells would be recovered 18 Aberdeen-Springfield Canal Company water; is that a 19 fair characterization of that? 20 A. If it were successful. 21 Q. Right. And it wasn't? 22 A. Right. 23 Q. But conceptually they would essentially be 24 pumping canal water? 25 A. I don't know.
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1 Q. In your testimony about your work in the 2 SRBA, it sounds like you became very familiar with the 3 Aberdeen-Springfield Canal Company water rights. 4 Is it fair to say that you became familiar 5 with their delivery system? 6 A. I'd say not so much. 7 Q. Do you know if it's a leaky system? Does 8 it have a lot of conveyance loss? 9 A. Yes, it does. 10 Q. Do you know approximately how much? 11 A. No, I couldn't -- I couldn't tell you off 12 the top of my head, no. 13 Q. Do you know how long their main canal is? 14 A. I don't. 15 Q. Okay. What was the basis for the recovered 16 water subcases? Could you just generally describe what 17 was that dispute over. 18 A. You mean the Aberdeen-Springfield rights 19 themselves? 20 Q. Uh-huh. 21 A. The recharge for irrigation? 22 Q. Correct. 23 A. Okay. Okay. Because that's a little bit 24 different than the recovered water cases. 25 Q. That's fair. I'm referring to the recharge	1 Q. Did you review the objections that were 2 filed in those recovered -- 3 A. No. 4 Q. Okay. So you weren't involved in that 5 detail? 6 A. I wasn't involved in that case beyond 7 making the recommendation. 8 Q. I see. That's fair. Okay. 9 A. Or not that I remember. It has been -- it 10 was a long time ago, so... 11 Q. I'm going to have you refer to this partial 12 decree. It's Exhibit 12. Actually, it's 26. I 13 apologize. I'll have you refer to the partial decree 14 for Water Right No. 1-23B. 15 Do you see that in front of you? 16 A. Yeah. 17 Q. Can you identify the Hunter water right 18 place of use from any of the language on that decree? 19 A. No. 20 Q. Okay. So what is identified, as far as the 21 place of use? Is it just the digital boundary and the 22 acreage? 23 A. Yes. 24 Q. As far as the acreage is concerned, does 25 the Department require Aberdeen-Springfield to keep an

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1 updated .shp file of the 61,722.6 acres?
2 A. No.
3 MR. HARRIS: Okay. That's all the follow-up
4 questions I have. Thank you.
5 MR. FLETCHER: Emmi, do you have any questions?
6 MS. BLADES: I don't have any follow-up
7 questions, no.
8 I kind of want to know about the .shp files
9 and how we're going to get those to you guys, but we
10 can do that off the record.
11 MR. FLETCHER: Do you have anything else?
12 MR. BUDGE: Only that after the break, after
13 lunch, Michael, you're going to produce a map showing
14 the place of use of 35-2824 overlaid by the
15 Aberdeen-Springfield Canal Company place of use. And
16 if there's additional questions, we'll have an
17 opportunity at that time to ask about that particular
18 map.
19 THE WITNESS: Okay.
20 MR. BUDGE: Nothing further at this time.
21 MR. FLETCHER: So we'll just go off the record
22 for lunch.
23 (Lunch recess.)
24 (Exhibit 50 marked.)
25 MR. BUDGE: Back on the record.

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1 FURTHER EXAMINATION
2 BY MR. BUDGE:
3 Q. Michael, welcome back. We are back after
4 our lunch break. And before we came on the record,
5 Michael, you provided us a copy of a map you prepared
6 during the lunch break. We premarked that as
7 Deposition Exhibit 50.
8 Will you please explain for the record how
9 you prepared that map and what it reflects.
10 A. So I took the acres that were -- the acre
11 .shp that was used to count the total number of acres
12 within the Aberdeen-Springfield Canal Company digital
13 boundary. And it's overlaid by the place of use for
14 Water Right No. 35-2824.
15 Q. So the Aberdeen-Springfield Canal Company
16 acres are shown in peach color; is that correct?
17 A. That's right.
18 Q. And those were the acres irrigated by
19 surface water with appurtenant shares in 1987?
20 A. That's right.
21 Q. And before the break on one of the
22 spreadsheets -- I don't recall which one. I believe it
23 was Exhibit 49. On one of the spreadsheets there were
24 two columns, one showing total acres authorized for
25 irrigation under Water Right 35-2824 at 121 acres.

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1 Do I remember that correctly?
2 A. It sounds right.
3 Q. And of that amount there was a column that
4 showed how many of those were covered with surface
5 water.
6 And it was around 92 or something like
7 that; is that right?
8 A. That sounds right.
9 Q. And so the difference between those numbers
10 are represented by the .shp files on this map labeled
11 Exhibit 50; is that right?
12 A. Well, I'm not -- when you say "the
13 difference," I'm not really showing the differences.
14 I'm just showing the -- the actual place of use for the
15 full 121 acres of the water right, and then that
16 overlaying the -- the .shp that was used to count
17 acres.
18 Q. Would you mind pulling up that spreadsheet.
19 I believe it's the one we identified as Exhibit 49. I
20 have in my notes that it's called "Water rights
21 summarized by condition."
22 Thank you. So for the record, Mr. Holliday
23 has pulled up Exhibit 49. He's clicked on the tab
24 "E02," and he's taken us to row 188, which lists
25 information for Water Right 35-2824. And in column K

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1 it shows 121.
2 Mr. Holliday, that's the total number of
3 acres authorized for irrigation under this water right;
4 correct?
5 A. Correct.
6 Q. And those would be the acres marked in
7 yellow on Exhibit 50?
8 A. Correct.
9 Q. In column M of Exhibit 49 it shows 92.43?
10 A. Correct.
11 Q. That's an acre figure?
12 A. That's right.
13 Q. And just for the record, explain where
14 those acres are shown on Exhibit 50.
15 A. So that would be -- that would be shown
16 everywhere where the yellow .shp file for Right 35-2824
17 does not overlay the SRBA ASCC acre count .shp.
18 Q. So there's about 28 acres covered by yellow
19 hashmarks on Exhibit 50 that are not covered by the
20 SRBA acre count .shp?
21 A. That's right, as far as I can tell.
22 MR. BUDGE: I don't think I have any further
23 questions regarding this exhibit.
24 MR. FLETCHER: I just want to clarify.
25 ///

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1 FURTHER EXAMINATION 2 BY MR. FLETCHER: 3 Q. Within the greater yellow boundary that's 4 drawn on Exhibit 50, which I think is the total place 5 of use for the groundwater right, there's yellow 6 circles -- or I shouldn't say circles, but yellow 7 shapes. 8 A. Voids, right. 9 Q. When something is enclosed with a line 10 inside the greater boundary, what does that mean? 11 A. So the -- the -- the area where there is a 12 line is the area that is part of the place of use shape 13 for the water right. If there is no line, that means 14 that that area is not covered by the water right. 15 Q. So it would not be covered by any water 16 right? 17 A. It would not be covered by Water Right 18 No. 35-2824. 19 Q. And if it doesn't have the peach color on 20 it, it wouldn't be covered by Aberdeen-Springfield 21 either? 22 A. At least not by the -- the -- the 23 Aberdeen-Springfield shares as portrayed by Steve 24 Howser for 1987. 25 Q. Okay. And did you discover the name of the	1 this matter is either settled or goes through the 2 hearing process? 3 A. Right. 4 MR. FLETCHER: Okay. Thank you. I don't have 5 any other questions. 6 7 FURTHER EXAMINATION 8 BY MR. THOMPSON: 9 Q. Just one question, Michael: What's the 10 date of the aerial photo on this Exhibit 50? Do you 11 know? 12 A. It's, I believe, 1987. 13 MS. BLADES: Has everybody completed their 14 follow-up questions? 15 MR. HARRIS: Travis, is that all the questions 16 you have? 17 MR. THOMPSON: Yes. Sorry. 18 MR. HARRIS: Just one. 19 20 FURTHER EXAMINATION 21 BY MR. HARRIS: 22 Q. When we say that 35-2824 is depicted in 23 yellow, the projection style you've picked is what's 24 called yellow single hatch, correct, where there's 25 diagonal lines that go through the interior of the
Page 111	Page 113
1 employee who's handling the transfer application? 2 A. Yes. 3 Q. And what is that employee's name? 4 A. Cooper Fritz. 5 Q. And did you investigate whether Cooper 6 Fritz prepared a memorandum similar to Exhibit 40 7 pertaining to these transfer -- 8 A. I did. 9 Q. Okay. 10 A. And he did not prepare an evaluation memo. 11 Q. As part of the normal procedures of the 12 Department, will that memo be prepared at some point in 13 time during this process? 14 A. If -- if all of the issues are resolved and 15 we're able to move forward to the approval stage, then 16 that memo would be prepared. 17 Q. I see. 18 A. So they are -- when applications come in, 19 we enter them into the system and prepare them for 20 advertising. Sometimes we do the memo on the spot. 21 Other times we wait and see. And in this case we 22 waited. It was protested. There was no need to invest 23 employee resources in writing memos for something that 24 may come to nothing, so... 25 Q. Okay. So it would not be prepared until	1 shape? 2 A. Yeah, I'm not sure what it's called, but 3 that's exactly right. It's the interior of the shape 4 has the hatch marks. 5 Q. And so just to follow up with 6 Mr. Fletcher's question where there's a solid yellow 7 line, if there's no diagonal line through it, that area 8 is not included within the .shp file? 9 A. That's right. 10 MR. HARRIS: I have no further questions. 11 MS. BLADES: I do have a couple of follow-up 12 questions, if you're all done. And then, of course, 13 you could do follow-up after me if you'd like. 14 But is now a good time? 15 MR. HARRIS: Yep. 16 MS. BLADES: All right. 17 18 EXAMINATION 19 BY MS. BLADES: 20 Q. Mr. Holliday, could you look, please, at 21 Exhibit 36. This is your notice of taking deposition 22 that was introduced as an exhibit today. 23 A. Okay. 24 Q. Let me know when you're there. 25 Are you there?

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1 A. I got it.
2 Q. Okay. So as it states here, were you the
3 Department staff member identified to address the five
4 bulleted items there in your deposition, in the notice
5 on Exhibit 36?
6 A. Yes.
7 Q. And today you've been asked some additional
8 questions outside of these five bulleted items; is that
9 correct?
10 A. That's correct.
11 Q. I'd like you to now turn to Exhibit 16,
12 which is the notice of taking deposition of Carter
13 Fritschle. And some of the questions you were asked
14 today dealt with the difference between an explanatory
15 remark and a condition on a water right and the
16 Department's policy for inserting explanatory remarks
17 and the history regarding that; is that correct?
18 A. That's right.
19 Q. And was Mr. Fritschle the person identified
20 at the Department to speak for the Department in
21 response to these questions?
22 A. Yes, he was.
23 Q. Thank you.
24 And a similar line, but I don't know that
25 we have the Notice of Deposition of Jeff Peppersack in

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1 the record as an exhibit anywhere.
2 Do you all recall that being introduced as
3 an exhibit?
4 MR. FLETCHER: I don't believe it was. We
5 did --
6 MS. BLADES: Well, obviously not there.
7 MR. FLETCHER: We did --
8 MS. BLADES: What's that?
9 MR. FLETCHER: We did admit Paul Arrington's
10 letter, though, and his --
11 MS. BLADES: Do you know which exhibit that was?
12 MR. FLETCHER: Yeah. It was Exhibit --
13 MR. BUDGE: 14.
14 MR. FLETCHER: -- 14. And Mr. Peppersack was
15 asked to address the first three questions. I believe
16 that's what it was.
17 MS. BLADES: All right.
18 Q. I don't have Exhibit 14, but I am referring
19 to the deposition, I'm assuming that those questions
20 dealt with the Transfer Memorandum No. 24, how the
21 Department applies this policy allowing supplemental
22 rights to be changed to primary rights.
23 And you've been asked some similar
24 questions about that today; correct, Mr. Holliday?
25 A. Yes.

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1 Q. So I would just clarify again, was
2 Mr. Peppersack the person identified by the Department
3 to speak in response to these questions?
4 A. He was.
5 MS. BLADES: Okay. Thank you. Those are all
6 the follow-up I had.
7 MR. BUDGE: Nothing further for me.
8 MR. FLETCHER: Nothing further.
9 MR. HARRIS: Same for me.
10 MR. FLETCHER: You're done. Thank you.
11 (Deposition concluded at 1:56 p.m.)
12 (Signature requested.)
13 -oOo-
14
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1 **CERTIFICATE OF MICHAEL HOLLIDAY**
2
3 I, MICHAEL HOLLIDAY, being first duly sworn,
4 depose and say:
5 That I am the witness named in the foregoing
6 deposition; that I have read said deposition and know
7 the contents thereof; that the questions contained
8 therein were propounded to me; and that the answers
9 contained therein are true and correct, except for any
10 changes that I may have listed on the Errata Sheet
11 attached hereto.
12 DATED this ____ day of _____ 20____.
13
14 CHANGES ON ERRATA SHEET YES___ NO ___
15
16 _____
17 MICHAEL HOLLIDAY
18
19 SUBSCRIBED AND SWORN to before me this
20 ____ day of _____ 20____.
21
22
23 _____
24 NAME OF NOTARY PUBLIC
RESIDING AT _____
25 MY COMMISSION EXPIRES _____

ERRATA SHEET FOR MICHAEL HOLLIDAY

1
2 Page ___ Line ___ Reason for Change
3 Reads
4 Should Read
5 Page ___ Line ___ Reason for Change
6 Reads
7 Should Read
8 Page ___ Line ___ Reason for Change
9 Reads
10 Should Read
11 Page ___ Line ___ Reason for Change
12 Reads
13 Should Read
14 Page ___ Line ___ Reason for Change
15 Reads
16 Should Read
17 Page ___ Line ___ Reason for Change
18 Reads
19 Should Read
20 Page ___ Line ___ Reason for Change
21 Reads
22 Should Read
23
24
25 SIGNATURE: _____

REPORTER'S CERTIFICATE

1
2 I, JEFF LaMAR, CSR No. 640, Certified Shorthand
3 Reporter, certify:
4 That the foregoing proceedings were taken before
5 me at the time and place therein set forth, at which
6 time the witness was put under oath by me.
7 That the testimony and all objections made were
8 recorded stenographically by me and transcribed by me
9 or under my direction.
10 That the foregoing is a true and correct record
11 of all testimony given, to the best of my ability.
12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.
15 IN WITNESS WHEREOF, I set my hand and seal this
16 8th day of September, 2017.
17
18
19
20
21 JEFF LaMAR, CSR NO. 640
22 Notary Public
23 Post Office Box 2636
24 Boise, Idaho 83701-2636
25 My commission expires December 30, 2017

	105:22,24	13:5	105:13
/	acres (2)	advertised (2)	appear (20)
/// (1)	21:5;27:9	13:10,22	33:22;46:16;47:6,8,11;48:12;
109:25	acres (138)	advertising (3)	57:21,23,24;58:4;62:10;68:15,
	11:21;14:6,16;15:24,25,25;	13:3,9;111:20	16,23;70:12;76:3,8;84:12;
	16:5,9;17:12,13,23;18:1,3,5,24;	aerial (3)	91:23;92:21
	19:22,25;20:3,25,25;22:10,15,	74:10;98:20;112:10	appeared (3)
	16;23:6,7,16;26:4,9,12,14,19;	affidavit (3)	33:20;44:16;54:8
[	27:4,18,19,22;28:3,3,10,16,16,	9:16;58:6,13	appearing (1)
[indicating] (2)	21;30:11,17,25;31:2,21,22;	AFRD (1)	70:14
50:23;64:1	34:4,15;36:10;38:15;40:6;	60:5	append (2)
A	50:15,21;51:1,25;52:5,5,24;	afterwards (1)	43:5,6
	54:6;58:20;59:22;62:21;63:3,	63:5	applicant (3)
Aberdeen (16)	11,21,22;64:6,22,25;71:8,10,	again (5)	72:21;73:14;74:16
11:24;18:18;26:5;27:11;	15;76:18,19,20,20,23;79:20;	22:13;35:21;63:10;81:12;	applicants (1)
28:22;30:17;35:7,13,19,22;	80:8;81:17,18,22,25;82:1,3,5,	116:1	96:16
36:11;52:7,8;55:19;58:18;71:1	10,11,13,20,22,24;83:4,16,21,	agent (11)	applicant's (1)
Aberdeen-irrigated (1)	22;84:6,15,24;85:3,10,13,17,	10:19;12:8,20;21:19;32:20;	73:2
29:5	19,20,21;86:12,17,24;87:1,5;	39:18;47:12;62:4;67:15,16,24	application (23)
Aberdeen's (4)	89:8,13,24;92:2,6;93:5,7,19,24;	agents (1)	12:5;13:1,2,4;14:1;35:4,10;
10:7,22;16:7;32:8	94:3;95:9,17,18;106:1;107:10,	12:15	38:7,10;39:17;60:17;62:12;
Aberdeen-Springfield (86)	11,16,18,24,25;108:15,17;	ago (2)	63:4;65:23,25;66:13;68:3;
9:17;11:3,11;14:5;16:4,20;	109:3,6,14,18	80:3;105:10	70:22;71:23;73:9;74:18;98:1;
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