

# EXHIBIT C

The Hearing on the As Applied Order Transcript  
Volume II  
May 25, 2010

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF )  
WATER TO VARIOUS WATER RIGHTS HELD) Docket No.  
BY OR FOR THE BENEFIT OF A & B ) CM-DC-2010-001  
IRRIGATION DISTRICT, AMERICAN )  
FALLS RESERVOIR DISTRICT #2, )  
BURLEY IRRIGATION DISTRICT, MILNER)  
IRRIGATION DISTRICT, MINIDOKA )  
IRRIGATION DISTRICT, NORTH SIDE )  
CANAL COMPANY, AND TWIN FALLS ) VOLUME II  
CANAL COMPANY. ) (Pages 180-364)

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BEFORE  
HEARING OFFICER: GARY SPACKMAN  
Date: May 25, 2010 - 8:30 a.m.  
Location: Idaho Department of Water Resources  
322 East Front Street  
Boise, Idaho  
REPORTED BY:  
JEFF LaMAR, C.S.R. No. 640  
Notary Public

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APPEARANCES (Continued):

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THE HEARING OFFICER: Thank you. Please be seated.

Ms. Klahn.

MS. KLAHN: Thank you, Mr. Director.

DIRECT EXAMINATION

BY MS. KLAHN:

Q. Good morning, Mr. Sullivan.

A. Good morning.

Q. Would you state your name for the record and give us your business address as well.

A. Gregory K. Sullivan. My address is 1000 Logan Street, Denver, Colorado 80203.

Q. Are you a consultant for the City of Pocatello in water rights matters?

A. Yes, I am.

Q. And have you appeared in front of other agency hearings on behalf of the City of Pocatello?

A. Yes, I have.

Q. Could you describe generally your experience -- or your education and your experience.

A. I have a bachelor of science degree from Colorado State University in civil

THE HEARING OFFICER: We're recording now. And today is the second day of the hearing for the As-Applied Order. And I thank everyone for their assistance this morning. It's about 8:45 in the morning.

And yesterday at the end of the hearing we finished testimony by Department witnesses.

And, Mr. Bromley, you finished the examination that you wish and the testimony you wish to put into the record?

MR. BROMLEY: Yes, sir.

THE HEARING OFFICER: Okay. So at this juncture, Ms. Klahn, will you begin calling your witnesses, please.

MS. KLAHN: Okay. The City of Pocatello calls Greg Sullivan.

THE HEARING OFFICER: Mr. Sullivan, if you'll come forward.

Please raise your right hand.

GREGORY K. SULLIVAN, having been called as a witness by the City of Pocatello, was duly sworn and testified as follows:

engineering that I got in 1985. I have a master of science degree in civil engineering that I got from the University of Colorado in 1990.

I've been working as a consultant in water rights matters since I got my bachelor's degree, so since 1985. I've been with my current firm, Spronk Water Engineers, since 1990, again working predominantly in water rights matters, water resources, water supply planning.

I've been working in Idaho on various matters since the early 1990s, matters related to the adjudication. I've been on the various versions of committees that have guided some of the ground water modeling for the Department, the current version of which is the Eastern Snake Hydrologic Modeling Committee.

I've been involved in various of these conjunctive administrative matters testifying in the Surface Water Coalition hearing several years ago and the A & B hearing. That covers it.

Q. Thank you.

And Justice Schroeder, acting as hearing officer, has accepted you as an expert in water resources, water rights, and other engineering matters in those prior proceedings; is

1 that right?

2 A. Yes.

3 Q. And just to round out the record, have  
4 you been accepted as an expert in other venues?

5 A. Yes, I have.

6 Q. Can you just give us a short list.

7 A. I've testified in several of the water  
8 courts in Colorado in the various divisions. And  
9 this is in relation to water rights matters in  
10 Colorado; adjudications of water rights; transfers  
11 of water rights; plans for augmentation, which is  
12 a term that's similar to what they call a  
13 mitigation plan up here.

14 I've testified in front of a special  
15 master for the U.S. Supreme Court in the case of  
16 Kansas v. Colorado on several occasions. That's  
17 about it.

18 Q. Thank you.

19 And I'm not sure about the formality  
20 of this hearing, Mr. Director, but just for the  
21 sake of completeness, I'm going to offer  
22 Mr. Sullivan as an expert on water rights, water  
23 resources, and modeling issues, ground water  
24 modeling issues.

25 THE HEARING OFFICER: Any objection from

1 determination is made in April. And then shortly  
2 after -- shortly upon the reservoirs filling and  
3 the water being allocated to storage, there's  
4 another calculation.

5 There's one made at the time of need  
6 later in the year. And then -- that's typically  
7 August, September. And then there's another one  
8 made at the end of the year.

9 Q. Do you recall his testimony that after  
10 April -- after the April determination the  
11 calculations related to in-season demand are  
12 increasingly based on weather conditions and crop  
13 requirements as they may unfold over the course of  
14 the year?

15 A. Yeah.

16 Q. Do you have an understanding of how  
17 IDWR proposes to modify the RISD after April to  
18 account for weather conditions and crop  
19 requirements?

20 A. Yes. They will -- as the year unfolds  
21 and we get further into the season, then -- say  
22 we're in July, then -- then IDWR will determine  
23 the irrigation water requirements for the crops  
24 that are grown by the Surface Water Coalition  
25 members for the months that have occurred to date.

1 the parties?

2 So recognized.

3 Q. (BY MS. KLAHN): Mr. Sullivan, were  
4 you here yesterday for the testimony of Mr. Weaver  
5 and Ms. Cresto related to the As-Applied matter --  
6 As-Applied Order in this matter?

7 A. Yes.

8 Q. And in front of you do you have  
9 Exhibit 1000?

10 A. I do.

11 Q. And Exhibit 1001?

12 A. Yeah.

13 Q. I'd ask you to pull both of those out,  
14 because I think we'll be talking about them today.  
15 You were here yesterday for the testimony of  
16 Mr. Weaver, as you said.

17 Do you recall his testimony regarding  
18 the calculations that are called for under Step 3  
19 for in-season adjustments to demand?

20 A. Yes.

21 Q. What are the -- what are the times of  
22 year, if you recall, when those adjustments are to  
23 be performed, according to the Director's order?  
24 And you can refer to those if you need to.

25 A. Well, there's -- the initial

1 So that -- if we're in July, then that would be  
2 April, May, and June.

3 And for those months they would get  
4 AgriMet consumptive use information from the  
5 Bureau's website, and then using cropping  
6 distribution information and actual irrigated area  
7 information, they will calculate the volume of  
8 water that the crops require that are grown under  
9 each of the Surface Water Coalition's systems.

10 And then taking that volume, they then  
11 divide each of those monthly volumes by monthly  
12 values of what IDWR terms project efficiencies.  
13 And that's a mechanism that's used to convert the  
14 on-farm requirements, the crop requirements, into  
15 a diversion requirement at the river headgate.

16 And then -- so then those monthly  
17 diversion requirements substitute in for whether  
18 the -- what at the beginning of the season are the  
19 2006 -- or the average of 2006 and 2008 diversions  
20 that are used as the demand at the beginning of  
21 the season.

22 So as the season unfolds, then, month  
23 by month those -- the 2006, 2008 values are  
24 replaced by computed diversion requirements that  
25 are based on conditions in the current year.

1 So generally if it's hotter and dryer,  
2 the diversion requirements will be greater. If  
3 it's cooler and wetter, the diversion requirements  
4 will be less.

5 Q. So in a sense the starting point is  
6 historic diversions -- historical diversions from  
7 the analogue year or years, as we heard yesterday,  
8 but as the season goes on, it becomes more of  
9 the -- the demand becomes more and more tied to  
10 crop needs; is that right?

11 A. Right.

12 Q. And you used a term that I'm not  
13 familiar with, "project efficiency."

14 How does IDWR define project  
15 efficiency?

16 MR. ARKOOSH: Your Honor, for the record,  
17 if these are beyond predicate questions about what  
18 we're going to do in the future, the issue at the  
19 hearing, as I understood it, is whether we've  
20 correctly followed Steps 3 and 4.

21 And this is Step -- so far Step 5 and  
22 beyond. And I think it's beyond the scope of the  
23 hearing. So I'm not really sure where we're  
24 going, but so far we haven't talked about Step 3  
25 or 4 but future activities. And on that basis I

1 rest of it, I don't know where it's going. But so  
2 far it's nothing to do with Steps 3 and 4 that I  
3 can see.

4 MR. FLETCHER: I would also ask for  
5 clarification. When you talk about errors in the  
6 order, which order are you talking about? You  
7 mentioned errors in an order you were pointing  
8 out.

9 Are you talking about the Methodology  
10 Order?

11 MS. KLAHN: Uh-huh, yeah.

12 MR. ARKOOSH: Well, we would object to that  
13 as well if it's not the As-Applied Order.

14 MR. THOMPSON: Your Honor, the April 29th  
15 comments were specific to the Methodology Order.  
16 And I believe Ms. Klahn's taking issue with the  
17 methodology, and I think that's beyond the scope  
18 of this hearing.

19 THE HEARING OFFICER: Okay. Well, I'll  
20 allow some examination on this subject. And the  
21 reason that I'll allow it is because I think it's  
22 preliminary or predicate, as termed by  
23 Mr. Arkoosh.

24 But if this examination has some focus  
25 related to Steps 3 and 4 ultimately, which it

1 would object.

2 MR. THOMPSON: Your Honor, I'd just join in  
3 that to the extent Mr. Sullivan's describing what  
4 happens in the order. I think the order explains  
5 itself. We don't need to go through and have him  
6 tell us what all the steps mean.

7 THE HEARING OFFICER: Ms. Klahn.

8 MS. KLAHN: The -- part of the purpose for  
9 this is to point out some errors that we think we  
10 may have found in the order, which it seems to me  
11 goes directly to the point of whether or not the  
12 steps have been followed.

13 Part of the purpose here is to provide  
14 a framework for Mr. Sullivan to talk about his  
15 technical comments submitted in the context -- on  
16 April 29th in the context of the issues related to  
17 reasonable in-season demand.

18 And part of the context is for what  
19 I'm sure is going to turn into an offer of proof.  
20 But that's where we're going.

21 MR. ARKOOSH: Well, it was my understanding  
22 concerning offers of proof, I suppose people could  
23 state, if allowed to do so, I would do. But you  
24 made it very clear we're not going to do it in Q&A  
25 context. And I would object on that basis. The

1 possibly could, then I'm willing to have it come  
2 into the record.

3 But if it ultimately appears that the  
4 questions are either for a challenge of the  
5 Methodology Order itself or a challenge more  
6 generally to the subsequent steps that are defined  
7 by the Methodology Order, I'll cut the questioning  
8 off.

9 So at least right now overruled,  
10 Ms. Klahn.

11 MS. KLAHN: Thank you.

12 Q. To complete the foundational questions  
13 before we start talking about the errors that you  
14 found, Mr. Sullivan, I was asking you about how  
15 IDWR defines project efficiency.

16 Could you finish your answer on that.

17 A. Well, so the Methodology Order has  
18 values, monthly values of project efficiency in it  
19 for each of the -- each of the Surface Water  
20 Coalition members. And those were -- those were  
21 derived from historical data, historical diversion  
22 data, and historical data on crop water  
23 requirements.

24 And in general, calculations were made  
25 by the Department by just taking the monthly crop

1 irrigation requirements for each month between  
2 2001 and 2008 and dividing those values by the  
3 monthly diversions. So consumptive use divided by  
4 diversions gives you a fraction.

5 And then -- then for all of the April,  
6 say, they took all of those monthly values -- and  
7 they might range from 10 percent to 60 percent,  
8 depending on the year -- they calculated an  
9 average of all of those values, then they -- then  
10 they did a statistical analysis to determine  
11 whether any of those individual values were beyond  
12 plus or minus two standard deviations from the  
13 mean.

14 And if there were any of those values  
15 that -- I think their purpose for doing that was  
16 to consider those values as outliers. If there  
17 were any of those values, they were thrown out and  
18 then a new mean was calculated.

19 And that mean -- so the mean of all of  
20 the April values for a particular user became the  
21 project efficiency for that user for that month.

22 And so for each user there are -- are  
23 monthly project efficiencies, one for each month  
24 of the season. And those efficiency values vary  
25 from one another from user to user and month to

1 Order. Pocatello submitted comments on the  
2 Methodology Order.

3 If there's questions about  
4 differences, what was provided by the Department  
5 in the data, they've made that case. It has  
6 nothing to do with the applying Steps 3 and 4.

7 MS. KLAHN: I disagree. It's clear from  
8 the finding of fact 44 that the month of April and  
9 May both have project efficiency values associated  
10 with them. And based on my understanding of the  
11 testimony yesterday, calculation and recalculation  
12 of reasonable in-season demand is part of that.

13 And to the extent that the information  
14 in the order is inconsistent with the underlying  
15 information in the spreadsheets, I think there's a  
16 question about what was actually done as far as  
17 the following of Steps 3 and 4.

18 Certainly the transparency of the  
19 effort is in question if what's published for the  
20 public to see is different than what was actually  
21 used. And that's our purpose here is to simply  
22 identify those things for the record.

23 MR. THOMPSON: I think the calculation  
24 you're talking about goes to a calculation made  
25 later in the year, as Mr. Sullivan's just

1 month.

2 Q. In the Exhibit 1000, I believe if you  
3 turn to finding of fact 44 there's a table of  
4 project efficiencies.

5 Are these the project efficiency  
6 values that IDWR has used or will use in this  
7 matter, since it contains all the ones?

8 A. I don't think so.

9 Q. Why not?

10 A. Well, in the information that we  
11 received from IDWR to back up their calculations,  
12 there was a different set of tables, different  
13 values in those spreadsheets than the values that  
14 are in the order.

15 Q. How different?

16 A. Well, quite different. I mean it  
17 varied by -- by the user, but there were some  
18 values that were significantly different from the  
19 ones in the tables.

20 Q. And which spreadsheet was this in  
21 again that you found the values, the different  
22 values?

23 MR. THOMPSON: Mr. Director, I think I'll  
24 object to this line of questioning. Petitions for  
25 reconsideration have been filed on the Methodology

1 testified to, not in applying Steps 3 or 4.

2 MR. ARKOOSH: And I would join that  
3 objection as to foundation. He's not yet  
4 testified that this has anything to do with  
5 Steps 3 and 4 that were performed and presented in  
6 Exhibit 1001.

7 THE HEARING OFFICER: Ms. Klahn, how --  
8 tell me how these tables and efficiencies were  
9 used in Steps 3 and 4 and in the Methodology Order  
10 that was issued. I mean I'm happy to look at the  
11 Methodology Order and look at any portion of that  
12 Methodology Order where these efficiencies were  
13 applied.

14 MS. KLAHN: The -- as I understand it, the  
15 table in the Methodology -- or the Steps 3 and 4  
16 Order, 1001, contains a column that has a baseline  
17 year number. As I understand the testimony from  
18 yesterday, that baseline year number is going to  
19 change.

20 It's going to -- that's essentially  
21 the demand number. And that's going to change  
22 based on the incorporation of additional  
23 information associated with these project  
24 efficiencies. It's like a sliding scale.

25 So you start out with those average

1 diversions from 2006 and 2008 before you know  
2 anything about the year, then that BLY becomes  
3 increasingly less important as the season goes  
4 along. So it's my understanding that is the way  
5 that the project efficiency values are used in --

6 THE HEARING OFFICER: Well, sure. But  
7 they're used in subsequent steps.

8 MS. KLAHN: They are used in subsequent  
9 steps as well.

10 THE HEARING OFFICER: They're used in  
11 Steps 5, 6.

12 Where? I don't see where they're  
13 used.

14 MS. KLAHN: Pardon?

15 MR. THOMPSON: Your Honor, the column --  
16 the baseline year for 2006 and 2008 has nothing to  
17 do with project efficiencies. What she's  
18 described takes place in subsequent steps.

19 THE HEARING OFFICER: That's my  
20 understanding as well, Ms. Klahn. If you can  
21 establish foundation that those efficiencies are  
22 used in Steps 3 and 4, I'll allow this line of  
23 testimony. Otherwise, I won't.

24 Q. (BY MS. KLAHN): Mr. Sullivan, can you  
25 explain to us how project efficiencies are

1 strike his testimony after the qualification as an  
2 expert.

3 THE HEARING OFFICER: Well, I'll leave it  
4 in.

5 MS. KLAHN: I oppose that.

6 THE HEARING OFFICER: I think it was  
7 preliminary and foundational.

8 You may proceed, Ms. Klahn.

9 MS. KLAHN: Thank you.

10 Q. Mr. Sullivan, I would ask you to turn  
11 your attention to Exhibit 1001, Steps 3 and 4,  
12 which are pages 1 described again -- and they're  
13 also in Exhibit 1000, described on pages 1, 2, and  
14 3.

15 Do you believe the Steps 3 and 4, as  
16 outlined in the Exhibit 1001, are consistent with  
17 the record and the Hearing Officer's ruling below  
18 in this matter?

19 MR. ARKOOSH: Objection.

20 MR. THOMPSON: Objection.

21 MR. ARKOOSH: The issue here is not whether  
22 it's consistent with that, but whether it's  
23 consistent with the Methodology Order.

24 MS. KLAHN: And, your Honor, I would like  
25 to make a written offer of proof. It's about

1 incorporated into Steps 3 and 4.

2 A. Well, as I heard the testimony from  
3 Mat Weaver, he testified yesterday that Steps 3  
4 and 4 are repeated through the year, and at each  
5 of those junctures that I discussed earlier, and  
6 with these calculated values of water requirements  
7 based on the actual conditions of the year subbing  
8 in for the original values. And as I heard it, he  
9 described that as repeated applications in Steps 3  
10 and 4.

11 THE HEARING OFFICER: Okay. But that's an  
12 inappropriate bootstrap, in my opinion. When you  
13 talk about a repeat of Steps 3 and 4, those  
14 repeats are essentially a process that later takes  
15 into account these efficiencies.

16 And I'll cut off the examination on  
17 this subject. The question -- the question, in my  
18 opinion, here today is -- is the direct use of  
19 3 -- Steps 3 and 4, as described in the  
20 Methodology Order, were those steps followed.

21 And it really has to do with using  
22 2006 and 2008 and the average of the two as a  
23 baseline year. So no more examination on this  
24 subject.

25 MR. ARKOOSH: Mr. Director, I'd move to

1 three pages long. I can submit it to the Director  
2 first thing in the morning to describe the  
3 testimony Mr. Sullivan would give regarding to the  
4 relationship between the methodology in Steps 3  
5 and 4 and the record below.

6 THE HEARING OFFICER: And the record that  
7 you're referring to is the previous record?

8 MS. KLAHN: Yes. The record from the 2008  
9 hearing and the final Director's order in  
10 September of 2008.

11 THE HEARING OFFICER: Well, I'm not taking  
12 it in as an offer of proof. If you want to argue  
13 from the record in briefing or to the Department,  
14 I think that's appropriate. I don't see it as an  
15 appropriate method of offering to the Department  
16 in the form of an offer of proof. Okay?

17 MS. KLAHN: Thank you.

18 And with that, I have no more  
19 questions of Mr. Sullivan.

20 THE HEARING OFFICER: Okay. Let's see.  
21 How do we proceed?

22 Ms. McHugh?

23 MS. McHUGH: No, thank you.

24 THE HEARING OFFICER: Mr. Arkoosh?

25 MR. ARKOOSH: No questions, your Honor.

1 THE HEARING OFFICER: Mr. Fletcher?  
 2 MR. FLETCHER: I don't have any questions.  
 3 MR. ARKOOSH: We would renew our motion to  
 4 strike, your Honor, and in that motion include all  
 5 of the testimony. Thank you.  
 6 THE HEARING OFFICER: Okay. Same ruling.  
 7 Mr. Thompson?  
 8 MR. THOMPSON: No questions.  
 9 THE HEARING OFFICER: Mr. Bromley?  
 10 MR. BROMLEY: Nothing, your Honor.  
 11 THE HEARING OFFICER: Okay. Thank you,  
 12 Mr. Sullivan.  
 13 THE WITNESS: Thank you.  
 14 THE HEARING OFFICER: Next witness?  
 15 MR. BUDGE: We call Dr. Brendecke.  
 16 THE HEARING OFFICER: Okay. Dr. Brendecke,  
 17 if you'll come forward, please. Raise your right  
 18 hand.  
 19  
 20 CHARLES M. BRENDECKE,  
 21 having been called as a witness by Idaho Ground  
 22 Water Appropriators, Inc., was duly sworn and  
 23 testified as follows:  
 24  
 25 THE HEARING OFFICER: Thank you.

1 previously testified in both the Surface Water  
 2 Coalition case and the Blue Lakes/Clear Springs  
 3 delivery call cases?  
 4 A. Yes, I have.  
 5 Q. And are you the lead expert for the  
 6 Idaho Ground Water Appropriators, Inc., and the  
 7 ground water districts in these matters?  
 8 A. Yes, I am.  
 9 Q. In this As-Applied case, I believe you  
 10 submitted an affidavit under date of May 6, 2010;  
 11 is that correct?  
 12 A. That's correct.  
 13 Q. And have you in this proceeding  
 14 reviewed what's been referred to as the  
 15 Methodology Order dated April 7th, which is  
 16 Exhibit 1000?  
 17 A. Yes, I have.  
 18 Q. And have you also reviewed what's been  
 19 referred to as the As-Applied Order, which I  
 20 believe is dated April 29th and is Exhibit 1001 in  
 21 this proceeding?  
 22 A. Yes, I have.  
 23 Q. Have you also had an opportunity to  
 24 review the May 17th order, which is Exhibit 1002  
 25 in this case?

1 Please be seated.  
 2  
 3 DIRECT EXAMINATION  
 4 BY MR. BUDGE:  
 5 Q. Would you state your name and business  
 6 address for the record, please.  
 7 A. My name is Charles M. Brendecke. Last  
 8 name is spelled B-r-e-n-d-e-c-k-e. My business  
 9 address is 1002 Walnut Street, Suite 200, Boulder,  
 10 Colorado 80302.  
 11 Q. Would you briefly summarize for the  
 12 record your educational background.  
 13 A. I have a bachelor's degree in civil  
 14 engineering from the University of Colorado from  
 15 1971. I have a master's degree in civil  
 16 engineering from Stanford University in 1976, and  
 17 a doctor of philosophy degree in civil engineering  
 18 from Stanford University in 1979.  
 19 Q. Have you previously filed an affidavit  
 20 of Charles M. Brendecke with the Department in the  
 21 Surface Water Coalition case that sets forth and  
 22 details your qualifications and background?  
 23 A. Yes, I have.  
 24 Q. I believe you testified as well  
 25 yesterday in the Methodology Order case and you've

1 A. Yes, I have.  
 2 Q. And I believe the affidavit, without  
 3 going into the details of it, that was submitted  
 4 previously you mentioned was essentially your  
 5 review and comments on the As-Applied Order?  
 6 A. Yes.  
 7 Q. Do you have a copy of your affidavit  
 8 available?  
 9 A. I brought one with me, but I don't  
 10 have it in front of me right now. I'd be happy to  
 11 grab it out of my briefcase.  
 12 Q. Do you have your briefcase here?  
 13 A. Yes.  
 14 Q. Why don't you grab your copy so we can  
 15 refer to it specifically.  
 16 A. Certainly.  
 17 Q. If you could turn to paragraph 9  
 18 located on page 4 of your affidavit and read the  
 19 first sentence of paragraph 9.  
 20 A. "The shortfall calculated in the  
 21 As-Applied Order does not appear to consider the  
 22 beneficial effects to the water supplies of the  
 23 Surface Water Coalition entities afforded by other  
 24 ongoing mitigation activities of ground water  
 25 users."

1 Q. Now, if you have in front of you --  
2 I'm not sure where it is. It would be  
3 Exhibit 1002, and that's the Director's May 17th,  
4 2010 order.

5 A. Yes, I do.

6 Q. If you would look at findings of fact  
7 No. 12 and No. 13. And if I could summarize, it  
8 appears that this order entered after your  
9 affidavit filed addresses a concern set forth in  
10 paragraph 9 of your affidavit about receiving a  
11 credit for some other IGWA mitigation activities,  
12 CREP, conversion recharge.

13 Do you see that in the finding of  
14 fact --

15 A. Yes.

16 Q. -- 12 and 13?

17 And finding of fact 12 derives credit  
18 of 5707 acre-feet?

19 A. That's correct. Those are credits  
20 from ongoing IGWA mitigation activities.

21 Q. And does that credit that was allowed  
22 in finding of fact 12 address and satisfy the  
23 concerns raised in paragraph 9, at least the first  
24 paragraph -- the first sentence of paragraph 9  
25 that you read?

1 set forth of 84,300 acre-feet into the April 29th  
2 As-Applied Order, and that number's reduced down  
3 to 62,234 acre-feet, if you note that in finding  
4 of fact 11?

5 A. Yes, it was reduced. The shortfall  
6 estimate and reach gain simulation was reduced.

7 Q. And would that adjustment and  
8 reduction in the shortfall subsequent to your  
9 affidavit also give you reason to correct other  
10 numbers contained in your affidavit that were  
11 relying upon the 84,000 acre-foot shortfall that  
12 was in place at the time your affidavit was  
13 submitted?

14 A. Yes, it would. The first few  
15 paragraphs, the first few substantive paragraphs  
16 of the affidavit refer to calculations based on  
17 the 84,300 acre-foot shortfall calculation. And  
18 those should be adjusted -- or could be adjusted  
19 now based on the findings in the May 17th order.

20 Q. And so with the exception -- other  
21 than changing the numbers to reflect the current  
22 shortfall as it exists, would be comments made in  
23 your affidavit previously remain the same?

24 A. Yes.

25 Q. I'd like you to turn again, if you

1 MR. THOMPSON: I guess I'll object, your  
2 Honor. This line of questioning, this testimony  
3 has nothing to do with Steps 3 and 4. The issue  
4 of this credit is it's going to be the issue of a  
5 separate proceeding. And I think delving into  
6 this line of questioning goes beyond the scope of  
7 this proceeding.

8 THE HEARING OFFICER: It does highlight,  
9 Mr. Thompson, something that I'm struggling with,  
10 and have struggled with in the timing of what  
11 we're doing. These credits were recognized in  
12 the -- in this particular order. And consequently  
13 I can't deny Mr. Budge the opportunity from  
14 exploring, at least generally, these credits that  
15 were recognized. So overruled at this point.

16 Mr. Budge, you may proceed.

17 MR. BUDGE: Yeah. I believe it  
18 specifically addresses how Steps 3 and 4 were  
19 applied. I don't know anything that could be more  
20 direct than this.

21 THE HEARING OFFICER: I agree.

22 Q. (BY MR. BUDGE): Dr. Brendecke, as one  
23 looks at Exhibit 1002, the May 17th order, the  
24 Director made some further adjustments on the  
25 shortfall, reducing the initial shortfall that was

1 would, to the May 17th order, Exhibit 1002. That  
2 finding of fact 11 that I referred to, that set  
3 out the mitigation obligation 62,232.

4 A. Yes.

5 Q. I believe you were present during the  
6 testimony of Mr. Weaver yesterday?

7 A. Yes, I was.

8 Q. And if I recall his testimony  
9 correctly, he indicated that that number  
10 represented an obligation of all ground water  
11 users, and that the Department had not made an  
12 effort to try to segregate that out as between  
13 IGWA ground water districts and other ground water  
14 users that may be outside the district but within  
15 the common ground water area?

16 A. Yes. I believe Mr. Weaver's testimony  
17 was that he was unaware of any such segregation.

18 Q. Would it be necessary and appropriate  
19 to make a separate determination of the mitigation  
20 requirements of user groups when it came down to  
21 supplying mitigation water in determining who  
22 meets the obligation, who doesn't, who gets  
23 curtailed, who doesn't?

24 A. Yes, it would. And that's partly  
25 because some organizations, such as IGWA, don't

1 represent all junior ground water users.  
 2 Q. Have you determined of the 62,232  
 3 acre-feet of obligation what amount would be the  
 4 share of IGWA's ground water districts,  
 5 approximately?  
 6 A. Simply -- your Honor, simply based on  
 7 the modeling that Dr. Wylie did related to the  
 8 84,000 acre-foot shortfall, I would estimate that  
 9 the -- the obligation of -- in terms of the 62,000  
 10 acre-feet, the obligation of the IGWA districts  
 11 should be somewhere in the neighborhood of 50- to  
 12 51,000 acre-feet.  
 13 But I haven't seen the specific  
 14 modeling to derive that number. I'm simply  
 15 extrapolating from past modeling and my experience  
 16 with the model itself.  
 17 Q. There was testimony yesterday, if I  
 18 recall correctly, from Department witnesses  
 19 Mr. Weaver and Ms. Cresto, regarding adjustments  
 20 to the predicted supply to take out reservoir  
 21 evaporation.  
 22 Do you recall that testimony?  
 23 A. Yes, I do.  
 24 Q. Do you recall from your review of the  
 25 order, the Methodology Order, anything in there

1 are relied upon by the Surface Water Coalition,  
 2 they were constructed prior -- with the exception  
 3 of Palisades Reservoir, constructed prior to the  
 4 onset of ground water development.  
 5 Palisades was constructed in the late  
 6 1950s. Ground water development had begun at that  
 7 point but had not reached even its median level of  
 8 development by the time Palisade was in operation.  
 9 MR. BUDGE: No further questions. Thank  
 10 you.  
 11 THE HEARING OFFICER: How do we want to  
 12 proceed with respect to the questions Ms. Klahn  
 13 might have?  
 14 Any questions?  
 15 MS. KLAHN: No, thank you.  
 16 THE HEARING OFFICER: Okay. Surface Water  
 17 Coalition, order of examination.  
 18 Mr. Arkoosh?  
 19 MR. ARKOOSH: I'll go first in line, like  
 20 we did yesterday, Mr. Hearing Director.  
 21 THE HEARING OFFICER: Okay.  
 22  
 23 CROSS-EXAMINATION  
 24 BY MR. ARKOOSH:  
 25 Q. Mr. Brendecke, is it your position

1 that authorized or directed the removal of  
 2 evaporation from the storage supply?  
 3 A. I don't.  
 4 Q. What's the effect of the evaporation  
 5 adjustment made by the Department?  
 6 A. By not including or by removing  
 7 evaporation from the storage that's allocated to  
 8 the Surface Water Coalition entities, the net  
 9 effect is to increase the mitigation obligation.  
 10 So in effect, ground water users are  
 11 asked to provide mitigation for reservoir  
 12 operation -- or reservoir evaporation effects on  
 13 their water supply.  
 14 Q. Is that an appropriate adjustment, in  
 15 your opinion?  
 16 A. I don't believe so.  
 17 Q. Explain why.  
 18 A. Because ground water pumping does not  
 19 cause reservoir evaporation. The evaporation is a  
 20 result of the reservoirs having been constructed  
 21 and water being stored in them.  
 22 Q. What is the date of the construction  
 23 of the reservoirs in the system as compared with  
 24 when ground water pumping began on the plain?  
 25 A. With respect to the reservoirs that

1 that if ground water pumping does not cause a  
 2 shortage -- ground water pumping cessation would  
 3 provide water to the senior user, ground water  
 4 pumping has no responsibility to cease diversions?  
 5 A. I'm not sure I understand your  
 6 question.  
 7 Q. Okay. You said that ground water  
 8 pumping did not cause evaporation, if I understood  
 9 you correctly.  
 10 A. I did say that, yes.  
 11 Q. Okay. I'm assuming that the relevance  
 12 of that, although you did not say directly, is  
 13 that if ground water pumping does not cause the  
 14 absence of water from the senior supply, then  
 15 ground water pumping has no responsibility to  
 16 cease diversions to provide greater supply to the  
 17 senior.  
 18 Is that what the purpose of your  
 19 testimony was?  
 20 A. My purpose is to state that ground  
 21 water -- ground water pumping does not cause  
 22 reservoir evaporation. The holders of space, the  
 23 senior -- the Surface Water Coalition spaceholders  
 24 would suffer that evaporation loss to their supply  
 25 whether ground water pumping existed or not.

1 Q. Okay. Isn't that true of drought, if  
2 there were a drought, senior supply would suffer  
3 from less water, whether or not there were junior  
4 ground water diversions?

5 A. Yes, it is true.

6 Q. Okay. And it is true, is it not, that  
7 in times of drought the junior must respond to the  
8 senior to provide supply to the senior?

9 A. I believe in a very general sense  
10 that's true. But I believe the argument -- or I  
11 believe there are statements in the order, the  
12 Methodology Order, that say the purpose is not to  
13 eliminate all shortages on the part of senior  
14 water rights.

15 Q. Well, let me generally try to  
16 understand the relevance of what you were saying.

17 A. Yes.

18 Q. Do you concur that if a senior does  
19 not have enough water and the cessation of  
20 diversions by a junior would provide that water,  
21 the junior must cease diversions?

22 A. I believe the conjunctive management  
23 rules require a demonstration of material  
24 injury --

25 Q. Okay.

1 Q. Notwithstanding what the reason is, if  
2 the cessation of the diversion by the junior would  
3 provide the fulfillment of the senior right, under  
4 conjunctive management must the junior cease  
5 diversions?

6 A. It seems like you're asking for an  
7 interpretation of the conjunctive management  
8 rules.

9 Q. May be, may not be. What's the answer  
10 to the question, in your view?

11 A. In my view, the -- if the -- if  
12 juniors are depleting the supply of the seniors  
13 and causing material injury, then the conjunctive  
14 management rules, in my interpretation, require  
15 either mitigation or curtailment or some other  
16 remedy.

17 Q. If the senior is short of water due to  
18 drought, not junior pumping, but the cessation of  
19 junior diversions would provide water to the  
20 senior, must the junior cease diversions?

21 A. I think the conjunctive management  
22 rules, if I recall, state that mitigation water is  
23 not to be required at times when the senior right  
24 would not otherwise have had a full supply.

25 Q. That's your view of the rules?

1 A. -- as a result of the junior use.

2 Q. And then do you concur or not concur  
3 with what I just said?

4 A. There are a variety of reasons why  
5 seniors might be short of water, some of which are  
6 related to result of consumption by junior rights  
7 and some of which are not.

8 Q. Notwithstanding why they're short of  
9 water, if cessation of diversion would provide  
10 water to fulfill a senior right, must the junior  
11 cease diversions, in your view? I'm trying to  
12 understand your view.

13 A. If ceasing diversions -- ceasing  
14 ground water -- ceasing the junior diversions will  
15 not -- ceasing the junior ground water  
16 diversions -- pardon me -- will not reduce the  
17 reservoir evaporation.

18 Q. Okay. That didn't answer my question  
19 at all. There can be a variety of reasons why a  
20 senior right's not fulfilled. It could be junior  
21 diversions, it could be drought, could be change  
22 in irrigation efficiencies, could be a variety of  
23 reasons.

24 Do you concur with that?

25 A. I would concur with that.

1 A. That's my -- that's my understanding  
2 of what's in the rules.

3 Q. Okay. The ultimate responsibility --  
4 you testified -- let me restate that question.

5 You testified that in your view IGWA  
6 members were responsible for, by extrapolation,  
7 some 50- to 57,000 acre-feet of the total  
8 68,000-plus acre-feet; is that correct?

9 A. I believe I said 50- to 51,000.

10 Q. Okay.

11 A. It was a rough estimate.

12 Q. The truth of the matter is that in  
13 terms of responsibility, it is -- it is well by  
14 well, is it not? And we have the technical  
15 supplement, 1003, indicating which wells are  
16 responsible to provide water to the seniors by  
17 cessation of diversions?

18 A. I have Exhibit 1003 in front of me.  
19 Maybe you can repeat the question.

20 Q. I will.

21 A. Is there something specific in here?

22 Q. It was a compound question. 1003 has  
23 a list of wells that under the Director's order  
24 must cease diversions to provide water to the  
25 seniors; is that right?

1 A. Yes.  
 2 Q. Okay. And so it is a question of not  
 3 which group or individual owns the well, but it's  
 4 a question of the priority date on the well; isn't  
 5 that correct?  
 6 A. Yes, it's my understanding.  
 7 Q. And that would be true whether or not  
 8 the well was inside the defined common ground  
 9 water area of the rules or really outside the  
 10 defined ground water area of the rules, would it  
 11 not be? Or do you know the answer to that  
 12 question?  
 13 A. I'm not sure I know the answer to that  
 14 question.  
 15 Q. Fair enough. You commented that 1002,  
 16 there's a chart on page 4 giving credits to junior  
 17 users for conversions in 130, the effects of CREP,  
 18 '07 and '09 recharge for a total of 57,007  
 19 acre-feet; is that correct?  
 20 A. I believe it's 5707 acre-feet.  
 21 Q. You're right. 5707 acre-feet. Thank  
 22 you.  
 23 And that was -- that related to some  
 24 of the comments in your affidavit; is that  
 25 correct?

1 A. Yes.  
 2 Q. In Exhibit 1003, the Director's  
 3 calculated a shortfall after credit for water  
 4 provided.  
 5 And the credits from Exhibit 1002 of  
 6 5700 or approximately 3500 acre-feet; is that  
 7 correct?  
 8 A. Yes.  
 9 Q. Is it your -- do you know whether,  
 10 given the curtailment proposed in Attachment C of  
 11 1003, whether that water will arrive in the  
 12 reaches this year?  
 13 A. If you'll give me a moment to look at  
 14 the exhibit.  
 15 Q. If you don't know the answer, it's all  
 16 right.  
 17 A. I can't say for sure of what the basis  
 18 of the modeling was, whether it was transient or a  
 19 steady-state model.  
 20 MR. ARKOOSH: Thank you, Doctor. That's  
 21 all I have. Thank you.  
 22 THE HEARING OFFICER: Mr. Thompson,  
 23 questions?  
 24 ///  
 25 ///

1 A. Yes.  
 2 Q. And the 130 conversions were done by  
 3 IGWA; is that correct?  
 4 A. Yes. By the North Snake Ground Water  
 5 District, predominantly.  
 6 Q. Who did the 2007 and 2009 recharge?  
 7 A. That was also done in Water District  
 8 130.  
 9 Q. By whom?  
 10 A. By IGWA.  
 11 Q. Who paid for it? Did --  
 12 A. I believe the North Snake Ground Water  
 13 District users.  
 14 Q. Okay. Who paid for CREP?  
 15 A. I think IGWA makes a contribution to  
 16 the CREP program to create incentives for  
 17 enrollment.  
 18 Q. Do you know what percentage of the  
 19 CREP program IGWA pays for?  
 20 A. I don't know.  
 21 Q. Okay. Will this 5700 acre-feet arrive  
 22 in the reaches -- in the relevant Near Blackfoot  
 23 to Minidoka reaches during the 2010 irrigation  
 24 season, according to the sentence immediately  
 25 prior to the chart on page 4 in paragraph 12?

1 CROSS-EXAMINATION  
 2 BY MR. THOMPSON:  
 3 Q. Morning, Dr. Brendecke. A couple  
 4 questions.  
 5 You testified about what portion of  
 6 the 62,000 acre-foot demand shortfall was  
 7 attributed to IGWA, and I believe you testified it  
 8 was around 50- to 51,000 acre-feet; is that  
 9 correct?  
 10 A. Yes, that's a rough estimate.  
 11 Q. And was that just based upon reviewing  
 12 the prior modeling that was done by the Department  
 13 and guessing at what that would be?  
 14 A. Yes. There were some modeling done  
 15 associated with the 84,300 acre-foot shortfall,  
 16 and I received the results of that modeling that  
 17 simulated the reach gain attributable to the  
 18 curtailment in various water districts.  
 19 Q. So was that, your estimate of 50- to  
 20 51-, just based upon that correlation?  
 21 A. It was based on extrapolating from  
 22 those modeling results related to the 84,000  
 23 acre-foot shortage.  
 24 Q. So you haven't performed any specific  
 25 analysis to determine the location of where those

1 ground water rights would be without priority; is  
2 that true?

3 A. That's correct.

4 Q. Okay. You testified you were familiar  
5 with the Eastern Snake Plain Aquifer model; is  
6 that correct?

7 A. Yes, I've been serving on the modeling  
8 committee for about ten years.

9 Q. And is it your opinion that aquifer  
10 areas defined within that model supply water to  
11 and receive water from the Snake River?

12 A. The model domain is comprised of  
13 20-some-thousand cells, and a little over half of  
14 them are active cells. So the ones that are  
15 active would, at some level, have a connection to  
16 the river. It might be very remote in many cases.  
17 But...

18 Q. And is it your opinion that ground  
19 water rights within that model boundary, within  
20 those active cells, impact water supplies  
21 tributary to the Snake River?

22 A. Conceivably at some -- at some level.

23 Q. And that can be modeled; would you  
24 agree with that?

25 A. Yes. But I would say just because you

1 water supply defined by the rule took some water  
2 off the table, I'll call it; would you agree with  
3 that?

4 A. Yes.

5 Q. Would you agree that any demand  
6 shortfall that's calculated, if it included that  
7 water back in, you could identify a priority date  
8 to curtail ground water rights within the area of  
9 common ground water supply to make up that  
10 shortfall?

11 A. You could simulate the curtailment to  
12 any priority date you want to generate whatever  
13 volume of water you want with the model.

14 Q. So to come up with that demand  
15 shortfall, that's what's required?

16 A. You could do that, yes. It's  
17 technically possible.

18 MR. THOMPSON: Thank you. No further  
19 questions.

20 THE HEARING OFFICER: Mr. Bromley?

21 MR. BROMLEY: Nothing.

22 MR. FLETCHER: I have one area I'd like to  
23 talk about.

24 THE HEARING OFFICER: Oh, I'm sorry,  
25 Mr. Fletcher.

1 can model it, doesn't mean you should. Many of  
2 these effects would be so small as to be  
3 immeasurable.

4 Q. Would you agree that you could perform  
5 a model run to determine what rights would need to  
6 be curtailed within the area of common ground  
7 water supply defined by the rule to make up the  
8 shortfall calculated by the Director in the  
9 various orders?

10 A. Let me see if I understand your  
11 question.

12 Could simulation be made to affect the  
13 same reach gain as -- maybe you should ask me the  
14 question again. Make sure I understand it.

15 Q. Yeah. In the Director's order, in the  
16 As-Applied Order, he calculated the demand  
17 shortfall of 84,300 acre-feet.

18 A. Yes.

19 Q. And subsequent to that we have a new  
20 order, May 17th, which reduced that to the 62,000  
21 acre-feet.

22 A. You know, there were two reduc- -- two  
23 different changes there.

24 Q. Right. And the decision to exclude  
25 ground water rights outside of the common ground

1 CROSS-EXAMINATION  
2 BY MR. FLETCHER:

3 Q. I'd like to address this evaporation  
4 issue you raised, Dr. Bredecke.

5 You had stated that evaporation --  
6 well, the reservoir system effectively was in  
7 place prior to ground water pumping significantly  
8 affecting water supplies; correct?

9 A. Yes.

10 Q. And so the water that evaporates from  
11 a reservoir is not available as a source of supply  
12 to a surface water user, is it?

13 A. No, it's not.

14 Q. And that effect by evaporation that  
15 was occurring on the source of supply was  
16 occurring prior to ground water pumping; correct?

17 A. Yes.

18 Q. And so for a water user to have water  
19 at his headgate as a source of supply, whether  
20 that is prior to or after the onset of ground  
21 water pumping, the effect of evaporation would  
22 have been part of the determination of that source  
23 of supply?

24 A. I'm not sure I understand the  
25 question.

1 Q. Okay. Whether -- whether the  
 2 evaporation occurred in 1920 or 1950 or 2010, it  
 3 was affecting the source of supply to the surface  
 4 water user; correct?  
 5 A. Yes.  
 6 Q. And so if the evaporation occurred in  
 7 1920 before the onset of ground water pumping, or  
 8 in 2010, no matter how -- when evaporation  
 9 occurred, it reduced the amount of water available  
 10 to the surface water user; correct?  
 11 A. Yes.  
 12 Q. Okay. So if you do not subtract  
 13 evaporation from the source of supply, aren't you  
 14 artificially stating the amount of water that  
 15 would be available as a source?  
 16 A. No. I believe that reservoir  
 17 evaporation is the price you pay for building a  
 18 reservoir and storing water in it.  
 19 Q. But evaporation is not available as a  
 20 source of supply, is it?  
 21 A. Evaporation is not available as a  
 22 source of supply.  
 23 Q. And it wasn't available in 1920 before  
 24 the ground water rights were issued?  
 25 A. That's right.

1 MR. FLETCHER: I have no further questions.  
 2 MR. BUDGE: A couple follow-ups.  
 3  
 4 REDIRECT EXAMINATION  
 5 BY MR. BUDGE:  
 6 Q. So if I understand your testimony,  
 7 Dr. Brendecke, the reason you don't think  
 8 evaporation should be charged to ground water  
 9 users is because they don't --  
 10 MR. ARKOOSH: Objection. He's leading the  
 11 witness. I would object at this point to leading  
 12 questions. If he wants to ask him his reason, I  
 13 think that's fair.  
 14 THE HEARING OFFICER: Overruled.  
 15 Q. (BY MR. BUDGE): Was it your  
 16 testimony, Dr. Brendecke -- well, go ahead and  
 17 re-explain the -- would ground water pumping, if  
 18 all of it were shut off, have any impact on the  
 19 amount of evaporation on the reservoir system?  
 20 A. It's difficult to see that it would.  
 21 I can't see how it would. If anything, it would  
 22 increase evaporation, if it does anything. But I  
 23 doubt it has any effect.  
 24 Q. And with respect to flows coming in at  
 25 Heise, would ground water pumping have any ability

1 Q. And it's not available now; correct?  
 2 A. Right. It's no more or less available  
 3 now than it was prior to pumping.  
 4 Q. So if you do not take into account  
 5 evaporation, you're overstating the source of  
 6 supply available to the surface water user; isn't  
 7 that correct?  
 8 A. The source of wet water.  
 9 Q. Well, what other water is there to  
 10 supply to the user except wet water?  
 11 A. Well, it's like I said, if you build a  
 12 reservoir to store water, part of the price you  
 13 pay for that reservoir is that you lose some of it  
 14 in evaporation.  
 15 Q. Yeah. Wet water is what we're talking  
 16 about here, isn't it?  
 17 A. Well, you couldn't get that wet water  
 18 if you weren't storing it and evaporating some of  
 19 it.  
 20 Q. Right.  
 21 A. So it's part of what you have to have  
 22 to generate your supply.  
 23 Q. And it has been since the advent of  
 24 the storage system?  
 25 A. Yes.

1 to impact those annual flows coming into the  
 2 system?  
 3 A. It has no effect on the physical flows  
 4 coming into the system at Heise.  
 5 Q. And Mr. Arkoosh asked you after his  
 6 evaporation cross-examination questions whether or  
 7 not that you had the same problem with respect to  
 8 surface water supplies that may be diminished by  
 9 drought, whether ground water users should be  
 10 responsible.  
 11 Do you remember that question?  
 12 A. Yes.  
 13 Q. Okay. And so was the line that you're  
 14 drawing a cause-and-effect relationship?  
 15 A. Yeah, I would say it is.  
 16 Q. Is it your view that ground water  
 17 users, then, should be responsible for depletions  
 18 if they cause that result in injury to surface  
 19 water rights, but not to anything they don't  
 20 cause? Is that where you're drawing the line?  
 21 A. I believe that that's right.  
 22 Q. And is that the same basis of your  
 23 criticism of the shortage that was calculated to  
 24 AFRD2 as you address in paragraphs 10 through 15  
 25 of your affidavit?

1 A. It is --  
 2 MR. THOMPSON: I'll object.  
 3 MR. ARKOOSH: Objection.  
 4 THE HEARING OFFICER: The objection,  
 5 Mr. Thompson?  
 6 MR. THOMPSON: Yeah. I guess if we're  
 7 going to talk about paragraphs 10 through 15 of  
 8 his affidavit, I think that what is offered in  
 9 that affidavit goes beyond the scope of this  
 10 hearing and should not be admitted into evidence  
 11 if it's offered.  
 12 MR. BUDGE: The entire affidavit's in the  
 13 record, and he's available for cross-examination  
 14 on it. The cross-examination brought up the issue  
 15 of cause and effect. What are ground water users  
 16 responsible for? Does depletion equal injury?  
 17 Are we responsible for it, or are we responsible  
 18 only for things we cause?  
 19 Now, they asked questions about  
 20 evaporation. They asked questions about  
 21 incidental recharge. And so I'm addressing on the  
 22 redirect the issues they raise on cause and  
 23 effect.  
 24 And AFRD2 is simply another  
 25 illustration, as is evaporation, as is drought, as

1 paragraphs 9 through 15 in the affidavit. And  
 2 just from the standpoint of continuity of the  
 3 record, if you want to explore those particular  
 4 subjects with Dr. Brendecke, I'd invite you to  
 5 explore them, and then let's see what the  
 6 admissibility of them is.  
 7 So I'll strike the reference to those  
 8 particular paragraphs. And if you want to explore  
 9 further each of those subjects and whether they're  
 10 in those paragraphs along the lines that you're  
 11 referring or --  
 12 Q. (BY MR. BUDGE): With respect to this  
 13 same cause-and-effect issue where we've discussed  
 14 drought, we've discussed evaporation, if changes  
 15 in the irrigation practices of the Surface Water  
 16 Coalition, for example, that resulted in a  
 17 reduction of incidental recharge affected their  
 18 supply, is that also something that would fall  
 19 into your cause-and-effect analysis?  
 20 MR. ARKOOSH: I'm going to interpose an  
 21 objection that this does not tell us whether the  
 22 As-Applied Order followed Steps 3 and 4.  
 23 THE HEARING OFFICER: Well, overruled,  
 24 Mr. Arkoosh. It seems to me this door was opened  
 25 during cross-examination. Mr. Budge has some

1 is change in irrigation practices. So whether  
 2 they wanted to go into that subject, I'm entitled  
 3 to clarify how he would apply it in all of these  
 4 factual circumstances that relate precisely to  
 5 Step 4.  
 6 MR. ARKOOSH: If you please, Mr. Director.  
 7 I was trying to understand what on earth, whether  
 8 pumping caused or didn't cause evaporation had to  
 9 do with Step 3 and 4. I didn't interject it. I  
 10 examined about it.  
 11 Paragraphs 10 through the rest of the  
 12 affidavit are in the record. They've got nothing  
 13 to do with Steps 3 and 4. They're about the  
 14 methodology and the complaints about methodology.  
 15 I didn't intend to introduce  
 16 methodology into this case. The -- IGWA's lost  
 17 the issue of Steps 3 and 4 three times now, and  
 18 it's not part of this hearing.  
 19 And I just think that by saying --  
 20 asking Dr. Brendecke the relevance of whether  
 21 pumping causes or doesn't cause evaporation opens  
 22 this up to challenge in the Methodology Order is  
 23 wrong.  
 24 THE HEARING OFFICER: Okay. My problem,  
 25 Mr. Budge, is that there's a reference to

1 opportunity to pursue it.  
 2 Q. (BY MR. BUDGE): Do you want to answer  
 3 that question? I think the --  
 4 A. I can't remember the question.  
 5 Q. -- bottom line was, should ground  
 6 water users be responsible for the changes in  
 7 incidental recharge resulting from the Surface  
 8 Water Coalition's irrigation practice changes?  
 9 A. I don't believe they should.  
 10 MR. BUDGE: No further questions.  
 11 THE HEARING OFFICER: Okay. Recross,  
 12 Mr. Arkoosh?  
 13 MR. ARKOOSH: No, thank you, sir.  
 14 THE HEARING OFFICER: Mr. Thompson?  
 15 MR. THOMPSON: No, I don't have any  
 16 questions.  
 17 THE HEARING OFFICER: Mr. Fletcher?  
 18 MR. FLETCHER: I don't have any.  
 19 THE HEARING OFFICER: Mr. Bromley?  
 20 MR. BROMLEY: No.  
 21 THE HEARING OFFICER: Thank you,  
 22 Dr. Brendecke.  
 23 THE WITNESS: Thank you.  
 24 THE HEARING OFFICER: Shall we take a  
 25 break, come back at 10:00? Is that long enough?

1 Ten o'clock.  
 2 (Recess.)  
 3 THE HEARING OFFICER: We're back recording  
 4 after a midmorning recess. And again, this is  
 5 continuation of the As-Applied Order hearing.  
 6 Mr. Budge, we just finished with one  
 7 of your witnesses.  
 8 Do you have more witnesses to call at  
 9 this point?  
 10 MR. BUDGE: Yes, your Honor. We have one  
 11 more witness: Tim Deeg, who we have some brief  
 12 testimony for and who we'd indicated to the  
 13 Coalition we would make available for their  
 14 cross-examination. And I expect he'll be able to  
 15 come up right after the noon break. He's in  
 16 route. And that will conclude our case.  
 17 So there being no other witnesses, as  
 18 I understand it in the As-Applied case, other than  
 19 Mr. Deeg, I think we can proceed forward with the  
 20 Mitigation Plan case.  
 21 THE HEARING OFFICER: Okay. And as I  
 22 understand the arrangement that's made between  
 23 parties and agreed to by the Hearing Officer, is  
 24 that Mr. Deeg's testimony will be offered in the  
 25 mitigation hearing. And then that testimony --

1 hearing until Mr. Deeg arrives, and then -- and  
 2 then continue the As-Applied hearing until -- to  
 3 its culmination.  
 4 MR. BUDGE: Right.  
 5 THE HEARING OFFICER: And in the interim,  
 6 we'll start in on the mitigation hearing.  
 7 MR. BUDGE: Correct.  
 8 THE HEARING OFFICER: Okay.  
 9 MR. BUDGE: Mr. Deeg's testimony will be  
 10 longer and more involved in the mitigation case,  
 11 but in order to shorten that testimony, we think  
 12 rather than duplicate some of the questions and  
 13 answers, we can just take what he does in the  
 14 As-Applied case, make that the first part of his  
 15 testimony in the Mitigation Plan case. And we  
 16 would immediately use him in that same case so  
 17 that we can get him on and off and out of here, if  
 18 that's okay.  
 19 THE HEARING OFFICER: Okay. All right. I  
 20 have not asked the question. I've asked the  
 21 Surface Water Coalition whether they intend to  
 22 call any witnesses.  
 23 Mr. Bromley, any rebuttal testimony  
 24 you wish to offer?  
 25 MR. BROMLEY: Excuse me for being out of

1 and then that testimony, or a transcript of it,  
 2 will be added to the As-Applied hearing.  
 3 Is that the understanding of it?  
 4 MR. BUDGE: It may be the other way around.  
 5 THE HEARING OFFICER: Oh, okay.  
 6 MR. BUDGE: I think we were going to put  
 7 his testimony in in the As-Applied case first, and  
 8 then give the Coalition an opportunity to see what  
 9 he says. If they don't have a problem with his  
 10 testimony, then we would put the transcript for  
 11 the Mitigation Plan case.  
 12 THE HEARING OFFICER: Okay. Go ahead,  
 13 Candice.  
 14 MS. McHUGH: With one caveat, not all of  
 15 the questions for Mr. Deeg in the Mitigation Plan  
 16 hearing will be covered in the As-Applied case.  
 17 THE HEARING OFFICER: Right.  
 18 MS. McHUGH: But those that are duplicated,  
 19 we would just dispense with any duplication.  
 20 THE HEARING OFFICER: Okay. So the  
 21 arrangement -- I misunderstood the arrangement,  
 22 then.  
 23 MR. FLETCHER: So did we.  
 24 THE HEARING OFFICER: The arrangement is to  
 25 at least hold and not complete the As-Applied

1 the room.  
 2 Are we talking about the Mitigation  
 3 Plan proceeding?  
 4 THE HEARING OFFICER: No. We're talking  
 5 about the As-Applied.  
 6 MR. BROMLEY: No, your Honor.  
 7 THE HEARING OFFICER: Okay. All right. At  
 8 this juncture, then, we'll at least hold the  
 9 As-Applied hearing and the proceeding in abeyance.  
 10 And for the court reporter, I hope  
 11 that's understandable, Jeff.  
 12 And then we'll reconvene and call  
 13 Mr. Deeg in this proceeding after the lunch break.  
 14 And so with that continuance, I guess,  
 15 we will now begin the hearing for the Mitigation  
 16 Plan. And this time frame was -- this is a  
 17 Mitigation Plan that was offered by IGWA, and it  
 18 was the original purpose for this hearing at this  
 19 time that was scheduled.  
 20 And so is that break okay with you,  
 21 Jeff, what we're doing?  
 22 THE COURT REPORTER: Yeah. Could we go off  
 23 just for a second so I can create a new file here?  
 24 THE HEARING OFFICER: Yeah, we'll go off  
 25 for a second.

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1 (Recess.)  
2 THE HEARING OFFICER: Okay. We're back on  
3 the record.  
4 And this is a continuation of the  
5 record for the As-Applied hearing. The reason  
6 that we've restarted the record for the As-Applied  
7 hearing is that there's a matter that the City of  
8 Pocatello and Ms. Klahn need to take up at this  
9 point.  
10 And so, Ms. Klahn, I'll give you an  
11 opportunity to speak at this point.  
12 MS. KLAHN: Okay. Thank you, Mr. Director.  
13 As I understand it, the As-Applied  
14 hearing is going to be suspended until Mr. Deeg,  
15 the last witness in that hearing, arrives and we  
16 have an understanding of the scope of his  
17 testimony and no particular concerns about it as  
18 far as cross-examination.  
19 And we would propose to leave now to  
20 try and get out of town. And we are not  
21 participants in the Mitigation Plan hearing. So  
22 we're kind of assuming that the As-Applied hearing  
23 is going to end fairly summarily, and then the  
24 Mitigation Plan hearing can proceed.  
25 So as long as counsel doesn't have any

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1 objection.  
2 MR. ARKOOSH: We would stipulate that  
3 Pocatello's counsel and its experts get out of  
4 town.  
5 THE HEARING OFFICER: And I suppose with  
6 that stipulation, there's an inference that no  
7 additional witnesses besides Mr. Deeg will be  
8 called that might surprise counsel or City of  
9 Pocatello.  
10 MR. FLETCHER: Well, we didn't say that.  
11 THE HEARING OFFICER: Well, I guess my  
12 understanding is if there's -- and I understand  
13 you can't do that. But there will be --  
14 Mr. Deeg's testimony, and probably at least not --  
15 from my impression, not extension of testimony  
16 beyond that. So I would be surprised.  
17 MS. KLAHN: I appreciate everybody's  
18 indulgence, especially Mr. Arkoosh, who I know is  
19 heartbroken to have to make that stipulation.  
20 MR. ARKOOSH: I'll miss the laughter over  
21 in your corner.  
22 MS. KLAHN: Yeah. Thank you.  
23 THE HEARING OFFICER: Okay. Thank you,  
24 Ms. Klahn and thanks for your attendance.  
25 MS. KLAHN: Yes, thank you.

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1 THE HEARING OFFICER: I will again suspend  
2 the record until Mr. Deeg is called upon his  
3 arrival.  
4 Do we need another break, Jeff?  
5 THE COURT REPORTER: Yeah.  
6 (Recess.)  
7 (Ms. Klahn and Ms. Pemberton not  
8 present.)  
9 THE HEARING OFFICER: Okay. We have  
10 resumed the record for the As-Applied Order  
11 hearing.  
12 As we contemplated, we suspended that  
13 hearing so that Mr. Tim Deeg could arrive and be  
14 called as a witness.  
15 And so Mr. Deeg has been called. And  
16 I'm assuming he's being called by you, Mr. Budge  
17 or Ms. McHugh. And so let's see.  
18 I haven't sworn you in yet, have I?  
19 MR. DEEG: You haven't.  
20 THE HEARING OFFICER: Let's stand, please.  
21  
22 TIMOTHY P. DEEG,  
23 having been called as a witness by Idaho Ground  
24 Water Appropriators, Inc., was duly sworn and  
25 testified as follows:

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1 THE HEARING OFFICER: Thank you. Please be  
2 seated.  
3 Mr. Budge or Ms. McHugh.  
4 MR. BUDGE: Thank you.  
5  
6 DIRECT EXAMINATION  
7 BY MR. BUDGE:  
8 Q. Could you please state your name and  
9 address for the record.  
10 A. My name is Timothy P. Deeg. I reside  
11 at 2957 Deeg Road, American Falls, Idaho.  
12 Q. Would you just give a brief summary of  
13 your educational background.  
14 A. I went to high school at American  
15 Falls High School. I went on to Idaho State  
16 University, majored in engineering, later on  
17 switched to business. I'm now currently farming  
18 and grow irrigated crops on 900 acres of  
19 irrigation ground.  
20 Q. Is the land that you farm, or some of  
21 it, located within one of the ground water  
22 districts which are members of the Idaho Ground  
23 Water Appropriators, Inc.?  
24 A. Yes. Land that we have in Bingham  
25 County is in the American Falls-Aberdeen Ground

1 Water District and is in Water District 120.  
 2 Q. Do you have any position or title or  
 3 involvement in Water District 120?  
 4 A. Yes. I'm currently the chairman of  
 5 Water District 120.  
 6 Q. Are you also involved in the Idaho  
 7 Ground Water Appropriators?  
 8 A. Yes. I've been the acting president  
 9 since 1998, I believe.  
 10 Q. Too long, I suppose?  
 11 A. Yeah.  
 12 Q. Have you had involvement in the CAMP  
 13 process, the Comprehensive Aquifer Management Plan  
 14 process?  
 15 A. Yes, I have participated in that  
 16 process.  
 17 Q. And have you testified previously  
 18 before the Department in the Surface Water  
 19 Coalition delivery call case?  
 20 A. Yes, I did testify before.  
 21 Q. And I believe you also filed testimony  
 22 in the case pertaining to the delivery call  
 23 matters of Blue Lakes Trout and Clear Springs?  
 24 A. I don't recall if I did or not.  
 25 Q. Okay.

1 in that April 29th As-Applied Order are the steps  
 2 that are at issue for purposes of this particular  
 3 hearing?  
 4 A. Yes, I am.  
 5 Q. I'd like you to take a look at that  
 6 order. And let me just refresh your memory on  
 7 some language. That would be order No. 1001 in  
 8 front of you. And if you turn to page -- well,  
 9 actually, on page 1 you'll see Step 3 consists of  
 10 findings of fact 2 and 3 that deal with the joint  
 11 forecast that is to be issued in April of this  
 12 year, and then finding of fact 4 sets forth the  
 13 basically shortfall to the Surface Water Coalition  
 14 members.  
 15 A. Yes, I see that.  
 16 Q. You're basically familiar with that?  
 17 A. Yes.  
 18 Q. So you're aware, then, that based upon  
 19 this particular Methodology Order, the initial  
 20 shortfall combined to Twin Falls Canal Company and  
 21 AFRD 2 was the 84,300 acre-feet number shown there  
 22 in the order?  
 23 A. Yes, I'm aware of that.  
 24 Q. And if you look at the next finding of  
 25 fact 5 in that order, you see what's been referred

1 A. I may have.  
 2 Q. Are you generally familiar with what's  
 3 been referred to here as the Methodology Order  
 4 that was entered by the Director on April 7th of  
 5 this year that determined and set forth the  
 6 methodology that was to be used for determining  
 7 the reasonable in-season demand and carryover  
 8 requirements of the Surface Water Coalition?  
 9 A. Yes, I have reviewed that order that  
 10 he issued.  
 11 Q. And I believe that may be one of the  
 12 exhibits in front of you, Exhibit 1000.  
 13 A. Yes.  
 14 Q. Are you also generally familiar with  
 15 what's been referred to as the As-Applied Order,  
 16 being an order that was entered on April 29th of  
 17 this year that took a look at the April 1 forecast  
 18 and made a projection of the shortfall to Twin  
 19 Falls Canal Company and AFRD 2?  
 20 A. Yes, I did.  
 21 Q. And I think that may be an  
 22 Exhibit 1001 that's there in front of you.  
 23 A. Yes.  
 24 Q. And are you generally aware that the  
 25 review of Steps 3 and Steps 4 that are contained

1 to as Step 5 -- or excuse me, Step 4. And to  
 2 follow along there with me, if you would, it says  
 3 that "Junior ground water users will be required  
 4 to establish to the satisfaction of the Director  
 5 their ability to secure and provide storage  
 6 water," and then it goes on to say that basically  
 7 ground water users have to supply an amount equal  
 8 to this identified shortfall, which at that time  
 9 was 84,000 feet.  
 10 A. Right. I'm aware of that.  
 11 Q. And is my understanding correct that  
 12 the fundamental purpose of your testimony here is  
 13 to discuss Step 4 and what IGWA does to secure  
 14 water to try to comply with this order and the  
 15 subsequent orders?  
 16 A. Yes.  
 17 Q. Initially I'd like to ask you just  
 18 some general background questions about IGWA's  
 19 activities.  
 20 Does IGWA have a practice of leasing  
 21 storage water as one means of meeting the  
 22 mitigation obligations that have been due in  
 23 previous years in both Water District 120 and also  
 24 Water District 130?  
 25 A. Yes. We've leased water in 2005 and

1 2007 to meet the Director's orders back then.  
2 So...

3 Q. And so that practice began in 2005,  
4 you're saying?

5 A. Yes, that's correct.

6 Q. And was 2005 the first year that the  
7 Department Director Dreher had entered orders that  
8 first provided for the fact that ground water  
9 users could be subject to curtailment if they  
10 didn't mitigate for some shortfalls?

11 A. Yes.

12 Q. And since 2005, has IGWA, in fact,  
13 pursued various methods and programs in order to  
14 meet the mitigation obligations entered by the  
15 Director in those two mentioned cases over a  
16 period of years based on the orders?

17 MR. THOMPSON: Your Honor, I'll object to  
18 the form of the question. He seems to be leading  
19 the witness.

20 THE HEARING OFFICER: Overruled. I think  
21 that's fine at this point and this juncture to get  
22 us through.

23 MR. BUDGE: These are mainly introductory  
24 questions.

25 THE HEARING OFFICER: Yeah, proceed on.

1 Q. You mentioned some of the dry-land  
2 leasing and CREP programs.

3 Are any of those programs ongoing?

4 A. Yes. Most of those -- the CREP  
5 program is ongoing, and the conversion process is  
6 ongoing, which provides some credit. So that's --

7 Q. Is the lease of storage water the  
8 primary tool that IGWA currently relies upon to  
9 meet mitigation obligations?

10 A. Yes, because doing all of these other  
11 projects that we've done does not provide as quick  
12 a relief to the senior user and is better bang for  
13 your buck, if you will, in providing a source of  
14 water.

15 Q. And again, I'm just speaking  
16 generally, has the price that IGWA has paid for  
17 the lease of storage water varied on a  
18 year-to-year basis?

19 A. Yes, very much so.

20 Q. And how is the price generally  
21 determined?

22 A. Well, it's usually determined by  
23 whatever the rental pool price is. But if there  
24 is an order of such that was 84,000 acre-feet, I  
25 think there were folks that were willing to

1 THE WITNESS: Yes.

2 Q. (BY MR. BUDGE): To your knowledge,  
3 has the efforts that IGWA has made through leasing  
4 water and otherwise been sufficient to meet these  
5 mitigation obligations in each year that an order  
6 has required it?

7 A. Very much so.

8 Q. Has the number of leases and the  
9 quantity of water available under the leases of  
10 storage water that IGWA has relied upon varied  
11 over the years?

12 A. Oh, to some extent it has varied. But  
13 we have a base core of leases that are there that  
14 provide a minimum supply.

15 Q. And after that minimum supply, what  
16 does IGWA do if a greater amount's needed?

17 A. Well, we've had -- engaged various  
18 programs from CREP to dry-land leasing, and then  
19 we've used high-lift pump water one year and  
20 leased lands and transferred water under the  
21 high-lift program that we developed and exchanged  
22 that with the Bureau to provide water.

23 But those actions require a  
24 substantial amount of time to take place. And we  
25 have leased additional water from other sources.

1 provide water, but at a great -- greater price.  
2 So we were able to secure the water, it just took  
3 more dollars to do that.

4 Q. In a year when IGWA has been seeking  
5 to lease water, what time of the year did the  
6 lessors make it known the quantity of water that  
7 would be available to them?

8 A. Well, typically, they can provide a  
9 little water early. But really, if they're going  
10 to provide water for us to meet obligations, it's  
11 really after the date of allocation. And that's  
12 where most of the water comes from.

13 Q. And do you know why that's the case?

14 A. Well, until they know that they have a  
15 full storage supply, they're not really willing to  
16 risk going out and renting a lot of water, not  
17 knowing what their supply is going to be.

18 Q. And when is the price known, the  
19 rental pool price known?

20 A. Well, as I understand it, it's when  
21 they make that allocation and they determine that  
22 they have full reservoir space, that's when that  
23 allocation price is made.

24 Q. So is the price that is available to  
25 the lessors based on whatever the rental pool

1 rates is a factor in how much water they might  
2 make available to IGWA?

3 A. Yes. It's a combination of both of  
4 those. You know, as the supply goes down, the  
5 price goes up, so it consequently creates some  
6 difficulty.

7 Q. So in most years prior to this year,  
8 what time of year is it that IGWA is out able to  
9 go to its lessors and make a determination of what  
10 water will be available and what price?

11 A. Well, typically that's the end of May,  
12 mid-June, end of June, can be within that  
13 two-month window or good month, five-week window.

14 Q. Let me understand, or if you would  
15 simply explain, what is the role of IGWA in  
16 securing this supply? Who is the water being  
17 secured for?

18 A. Well, the water is being secured for  
19 the members of IGWA, which are comprised of some  
20 eight ground water districts, some municipal folks  
21 that are members of IGWA, as well as some  
22 commercial businesses. So we have -- we really  
23 represent a lot of different folks out there, as  
24 well as dairy industry, some of the dairies that  
25 participate.

1 questions we're going to address here, which is  
2 under Step 4, IGWA's ability to secure to the  
3 satisfaction of the Director a supply.

4 So I think what is relevant to the  
5 order this year is not only how IGWA has performed  
6 to meet its obligation this year, but what is  
7 IGWA's track record in the past. And we're trying  
8 to demonstrate the part of our responsibility to  
9 show that the Director may well be willing and  
10 able to take a consideration -- or give  
11 consideration to how IGWA has performed in the  
12 past in determining how it might perform in the  
13 future, both for purposes of this As-Applied year  
14 and otherwise. That seems to be the precise issue  
15 that Step 4 contemplates.

16 MR. ARKOOSH: Mr. Director, I just  
17 disagree. It's whether they've provided you  
18 satisfactory proof they have water this year.

19 THE HEARING OFFICER: Well, Mr. Budge, I'll  
20 allow some further testimony on this subject. I  
21 guess in my reading of Step 4, past performance is  
22 not necessarily a -- at least from my perspective,  
23 a factor in my looking to see whether, to the  
24 satisfaction of the Director, water has been or  
25 will be able to be provided.

1 Q. So if IGWA goes out and secures a  
2 supply, how is it paid for?

3 A. It's paid through assessments from our  
4 constituents on a -- basically at a cfs rate.  
5 As -- everyone pays their fair share typically of  
6 whatever the water cost is. That way we're not  
7 out trying to bid the price of this water up  
8 amongst the ground water users.

9 Q. Has IGWA experienced difficulty in  
10 securing a lease supply from its lessors if it  
11 seeks to do so prior to the time storage  
12 allocation is made and the price is known?

13 MR. ARKOOSH: For the record, your Honor,  
14 you know, it's interesting, but it seems to do  
15 with the methodology -- or not even with that,  
16 whether or not -- the issue is whether water was  
17 provided to the satisfaction of the Director.  
18 This isn't relevant information.

19 THE HEARING OFFICER: I question the  
20 continued exploration of the subject, Mr. Budge.

21 Can you tell me why it is relevant to  
22 the As-Applied Order.

23 MR. BUDGE: This is simply background as to  
24 what IGWA has historically done to secure its  
25 supplies, which will lead into the precise

1 But anyway, I understand your  
2 argument. So go ahead.

3 MR. BUDGE: Okay.

4 Q. Just one other preliminary question.  
5 Has IGWA experienced situations where the leases  
6 that you had in place get cancelled and changed,  
7 or do you have pretty much the same leases?

8 A. The leases that we've engaged in are  
9 still in place and still continue to operate.  
10 They're renewed on an annual basis automatically.

11 And I guess we did have one company,  
12 New Sweden, that did earlier in the year decide  
13 not to provide any water, but they didn't cancel  
14 the lease. They just decided not to provide any  
15 water, but then came back and did decide to  
16 provide water. So under certain circumstances  
17 things all change.

18 Q. Let's move forward into the situation  
19 of this year, and specifically addressing Step 4.

20 We talked earlier about the April 29th  
21 As-Applied Order that established the shortfall  
22 that IGWA had to meet of 84,300 acre-feet --

23 A. Yes.

24 Q. -- correct?

25 A. That's correct.

1 Q. Are you also aware that IGWA had some  
2 mitigation obligations in 2010 in Water District  
3 130 to Clear Springs?

4 A. Yes, I am aware they had an  
5 obligation.

6 Q. And do you know approximately what the  
7 obligation to provide mitigation water was for in  
8 that district?

9 A. It was somewhere between 25- and  
10 27,000 acre-feet of water.

11 Q. So if one added up the obligations in  
12 120 and 130, what was the total amount that IGWA  
13 was looking for in mitigation water at the time  
14 that April 29th order came out?

15 A. We were looking for around 110-,  
16 111,000 acre-feet of water.

17 Q. Has IGWA ever been able -- excuse me.  
18 Strike that question.

19 Has IGWA ever been required to lease  
20 that high of an amount in the past to meet its  
21 mitigation obligations?

22 A. No. We've never had an obligation  
23 that high.

24 Q. When you look at the timing under  
25 Step 4, it basically says that the -- IGWA has to

1 early in the year. We've always had to supply it,  
2 but not as of that early of a date.

3 Q. (BY MR. BUDGE): When the April 29th  
4 order was issued and IGWA had a combined  
5 obligation of 110-, 111,000 acre-feet, what did  
6 you do or what did IGWA do in order to try to meet  
7 that obligation?

8 A. Well, we first attempted to contact  
9 our lessors and lessors and tried to get  
10 additional water from them. We made application  
11 to the rental pool for the full 50,000 acre-feet,  
12 and, you know, we tried to think of other options  
13 that were out there, as we had performed in the  
14 past, used the high-lift water, tried to rent the  
15 water out of the Idaho water -- Idaho State --  
16 Idaho Water Resource Board pool, the FMC storage  
17 water.

18 We tried to do -- use the -- have the  
19 director issue an order that would develop the  
20 CREP acres and what would be accounted for there,  
21 and the conversion projects that were in place,  
22 and get the credit known what we needed to really  
23 finally come up with the end number so we could  
24 finally determine what we were short. But those  
25 were the steps that we took.

1 notify the Director of its supply within 14 days  
2 from the issuance of the April 29th order, which  
3 would have been by May 13th, it says or by  
4 May 1st.

5 Do you recall whether in prior years  
6 IGWA has been able to -- has been required to come  
7 up with mitigation supply that early in the year?

8 MR. ARKOOSH: Same relevance objection,  
9 your Honor.

10 THE HEARING OFFICER: I'll sustain that  
11 objection. I don't think it goes to the issue  
12 that you've addressed.

13 Q. (BY MR. BUDGE): In previous years  
14 what is the timing of the supply that IGWA has  
15 secured to meet its mitigation obligation?

16 MR. ARKOOSH: Same relevance objection,  
17 your Honor. It's the same question.

18 THE HEARING OFFICER: No, I think this is a  
19 different question. I'll allow Mr. Deeg to answer  
20 it. I think it's been asked and answered  
21 previously.

22 But go ahead, Mr. Deeg. I don't  
23 want...

24 THE WITNESS: Okay. We typically have had  
25 to supply the Director with that information that

1 Q. And what did you do with respect to  
2 your existing lessors to entice them to, if you  
3 will, to provide water early and more than they  
4 were obligated to provide under their base leases?

5 A. Well, we increased the dollar cost per  
6 acre-foot to try to allow them to sign on and  
7 provide additional water.

8 Q. And was there a price at which the  
9 existing lessors were willing to provide more than  
10 they ordinarily would have under their base lease?

11 A. Yes. At \$20 an acre-foot, they would  
12 provide an additional amount.

13 Q. You testified earlier that IGWA had  
14 submitted an application to lease 50,000 acre-foot  
15 from the rental pool?

16 A. Yes, I did.

17 Q. And what would the -- do you know what  
18 the price would be in the rental pool?

19 A. Well, it will vary, as I understand  
20 it, based on the reservoir fill and whether water  
21 is leased to the Bureau. Based on those rental  
22 pool rules, you know, it could be anywhere from \$5  
23 to \$18.

24 Q. And do you know today whether or not  
25 that lease application will be accepted?

1 A. I do not know today whether that  
 2 will --  
 3 Q. And what's your understanding of when  
 4 it will be known whether water will be available,  
 5 how much, what the price will be?  
 6 A. My understanding is is that after the  
 7 date of allocation, then the price is set, I  
 8 guess, for that cost of that water. And then the  
 9 entities that have placeholders have first  
 10 priority to put a request in for that water.  
 11 And they have priority over the ground  
 12 water users because they're placeholders, which  
 13 would allow them to jump in front of the ground  
 14 water users to acquire water for their needs this  
 15 season.  
 16 Q. At this time your application remains  
 17 pending?  
 18 A. Yes, that's correct.  
 19 Q. And you'll know at some future date  
 20 the price and how much might be available?  
 21 A. Yes.  
 22 Q. Mr. Deeg, I believe you've filed two  
 23 different affidavits in this particular  
 24 proceeding; is that correct?  
 25 A. Yes.

1 Q. And at the time you made that  
 2 submission on April 13th, did IGWA have the full  
 3 84,300 feet under lease and available to meet the  
 4 obligation of the Surface Water Coalition in Water  
 5 District 120?  
 6 A. No.  
 7 Q. And did your affidavit then request  
 8 additional time to secure the shortfall? Do you  
 9 recall?  
 10 A. I don't know if it did or not.  
 11 Q. Have you had an opportunity to review  
 12 recently that second affidavit to look at the  
 13 attached leases that were made a part of that  
 14 document?  
 15 A. Yes.  
 16 Q. And do you recall that the -- some of  
 17 the information, the price and the name of the  
 18 lessor, was redacted from that initial filing on  
 19 May 13th?  
 20 A. Yes.  
 21 Q. And do you have an explanation to  
 22 provide why that information was redacted at that  
 23 time?  
 24 A. Yes, I do. And it was clearly under  
 25 my advisement to counsel to do that because we

1 Q. And was one of the purposes of those  
 2 affidavits to respond to the Director's order, the  
 3 As-Applied Order, Step 4, and supply the Director  
 4 with information concerning what mitigation water  
 5 IGWA had acquired?  
 6 A. Yes, it was.  
 7 Q. And if my notes are correct here, your  
 8 first affidavit would have been on or about  
 9 May 5th, 2010?  
 10 A. Yes, I believe that's correct.  
 11 Q. And then you filed a second affidavit  
 12 that was at least dated May 13th, 2010?  
 13 A. Yes.  
 14 Q. And was that filed on what you  
 15 understood to be the deadline that we were  
 16 required to respond under Step 4 of that  
 17 As-Applied Order?  
 18 A. Yes.  
 19 Q. At the time that the affidavit was  
 20 submitted on May 13th, the obligation here under  
 21 the As-Applied Order was still 84,300 acre-feet,  
 22 if my understanding is correct.  
 23 A. That's correct.  
 24 Q. Is that your understanding?  
 25 A. Yes.

1 were in the process of negotiating further leases.  
 2 And it makes it very difficult to negotiate leases  
 3 with these folks if you, in fact, have a public  
 4 document that's out there that spells out what  
 5 you've paid and who it is to for water. And so it  
 6 was my instruction for her to remove those.  
 7 Q. Mr. Deeg, were you aware later that on  
 8 May 17th the Director entered a second order? And  
 9 I think it should be there in front of you marked  
 10 as Exhibit 1002.  
 11 A. Yes.  
 12 Q. That was -- it was your understanding  
 13 that there was a later order that reduced that  
 14 mitigation obligation to IGWA and its members?  
 15 A. Yes.  
 16 Q. And if you'll look at that order if  
 17 you have it in front of you, would you take a look  
 18 at finding of fact No. 11. I think it's in the  
 19 bottom line of that.  
 20 Do you see there that the ground water  
 21 users' obligation was reduced from the 84,300  
 22 acre-feet down to a number 62,232 acre-feet?  
 23 A. Yes, I'm aware of that.  
 24 Q. And is it your understanding that that  
 25 quantity represented the mitigation obligation of

1 all ground water users in the common ground water  
 2 supply area?  
 3 A. That's what I understand.  
 4 Q. And do you -- there's been some  
 5 testimony in this proceeding previously by IGWA's  
 6 expert, Dr. Brendecke, that the share of IGWA's  
 7 members would be somewhere in the 50- to 51,000  
 8 acre-foot range?  
 9 A. Yes, I'm --  
 10 Q. And was that generally your knowledge  
 11 based on conversations that you've had with  
 12 Dr. Brendecke?  
 13 A. Yes.  
 14 Q. So as of this -- the date of this  
 15 May 17th order, the obligations that IGWA had  
 16 would still be, if my understanding's correct, the  
 17 27,000-foot amount in 130 and the approximately  
 18 somewhere in the 50,000 acre-foot range in 120?  
 19 A. Yes.  
 20 Q. Is that your understanding?  
 21 A. That's correct. I understand that.  
 22 Q. So you still had an obligation of some  
 23 77,000 acre-feet on May 17th when that order came  
 24 down?  
 25 A. Yes.

1 Q. On that date, May 17th, did you  
 2 believe that IGWA had secured sufficient water to  
 3 meet both of those obligations we've just  
 4 discussed?  
 5 MR. THOMPSON: I guess I'll enter an  
 6 objection. The obligation being referenced I  
 7 don't think represents what's reflected in the  
 8 order. I don't think there's any foundation for  
 9 the question Mr. Budge is asking.  
 10 THE HEARING OFFICER: Well, the obligation,  
 11 as I understand -- maybe you can clarify it,  
 12 Mr. Budge, rather than my restating it. So maybe  
 13 we can just establish with Mr. Deeg what his  
 14 understanding is of the obligation that you're  
 15 talking about.  
 16 Q. (BY MR. BUDGE): What was your  
 17 understanding of the mitigation obligations in  
 18 Water District 120 and in 130 when that May 17th  
 19 order came out?  
 20 A. My understanding, I guess, was is that  
 21 we had an obligation of 27,000 acre-feet in Water  
 22 District 130 and approximately 50,000 acre-foot  
 23 obligation in 120 under the current Director's  
 24 analysis, so the total obligation of about 77,000  
 25 acre-feet.

1 MR. BUDGE: May I approach the witness?  
 2 THE HEARING OFFICER: Yes.  
 3 MR. BUDGE: I'm handing the witness  
 4 Exhibit 4002.  
 5 (Exhibit 4002 marked.)  
 6 Q. (BY MR. BUDGE): Do you recognize  
 7 what's been marked as Exhibit 4002?  
 8 A. Yes, I do. It appears that we have --  
 9 Q. If you could just describe what the  
 10 exhibit consists of.  
 11 A. It appears that we have water lease  
 12 entities 1 through 7 that are automatic lease  
 13 renewals. The others are leases that -- or the  
 14 other -- well, there's a host of automatic lease  
 15 renewals and some leases that we're still  
 16 negotiating and --  
 17 Q. Without going into specifics, let  
 18 me -- excuse me for interrupting. Let me just  
 19 identify the document.  
 20 So the document consists of a first  
 21 page, which is entitled "Summary of IGWA water  
 22 leases for 2010" --  
 23 A. Yes.  
 24 Q. -- correct?  
 25 And it has a date on it of May 17th,

1 2010?  
 2 A. Yes, that's correct.  
 3 Q. And take a quick look, but would the  
 4 documents that follow be a copy of each -- a copy  
 5 of each of the water rights lease agreement that  
 6 IGWA had entered into with various lessors?  
 7 A. It appears that that's right.  
 8 Q. And with respect to those leases, are  
 9 they in the same order as reflected on page 1? In  
 10 other words, they start with Aberdeen-Springfield  
 11 Canal Company and go from there?  
 12 A. I believe so.  
 13 Q. And with respect to the leases  
 14 identified on the summary page of 1 through 6, do  
 15 you see that there is a lease agreement, water  
 16 right lease agreement, for each of those?  
 17 A. Yes.  
 18 Q. And for each entity listed on the  
 19 summary page 1, following the written lease  
 20 agreement for those that you have written lease  
 21 agreements, which I believe would be 1 through  
 22 6 -- Aberdeen-Springfield, Enterprise, Idaho  
 23 Irrigation District, Snake River Valley Irrigation  
 24 District, New Sweden, and Peoples -- do you see  
 25 that there's a page attached that would reflect an

1 additional amount of water from each entity for  
 2 2010?  
 3 A. Yes, I do.  
 4 Q. And would those -- those documents are  
 5 all entitled "Storage water option"?  
 6 A. Uh-huh, they are.  
 7 Q. And towards the end you also see what  
 8 is called a storage water option for those other  
 9 entities that don't have a regular lease  
 10 agreement, which would be Mitigation, Inc.,  
 11 Madison-Fremont, and Progressive Irrigation  
 12 District?  
 13 A. Yes.  
 14 Q. And are all of those attachments,  
 15 being the leases and the storage water options,  
 16 the storage water leases that IGWA secured and had  
 17 in place by May 17th of 2010?  
 18 A. Yes.  
 19 Q. And now I'd like you to turn to the  
 20 very last document in Exhibit 4002 and tell me if  
 21 that consists of the Water District 1 rental pool  
 22 water lease agreement that you referred to earlier  
 23 as being an application to lease water from the  
 24 rental pool?  
 25 A. Yes, it is.

1 if -- I guess I'm a little concerned about what  
 2 this hearing's about.  
 3 I guess as I understand it, this is  
 4 not what was tendered to the Director pursuant to  
 5 the order. One of the issues we're facing in this  
 6 action is whether the Director acted within his  
 7 discretion when he accepted what was tendered.  
 8 This is not what was tendered. There's  
 9 substantially more information.  
 10 I guess to the extent that this is  
 11 representing leases that IGWA is claiming that are  
 12 currently in place as of the date of the hearing  
 13 today, I have no objection. But this is not  
 14 evidence of what was tendered to the Director  
 15 under the order.  
 16 MR. ARKOOSH: I join that objection. And  
 17 I -- I think summaries are allowable and  
 18 admissible, but I have no idea to know, you know,  
 19 whether or not this is accurate, the first page.  
 20 So my objection to the first page would be that it  
 21 may well not be accurate. I just don't know.  
 22 Again, it is about the third set of documents  
 23 we've seen, and I haven't gone through it.  
 24 MR. THOMPSON: One other point,  
 25 Mr. Director. I guess we could take this up on

1 Q. And immediately in front of that  
 2 rental pool application, do you see the  
 3 transmittal letter from Lyle Swank, the manager?  
 4 A. Yes.  
 5 Q. And is it your understanding that  
 6 you're on the copy list of that letter?  
 7 A. I am.  
 8 Q. And is it your understanding that  
 9 that's the letter pursuant to which the rental  
 10 pool application was submitted with the required  
 11 fees?  
 12 A. Yes.  
 13 Q. And to your knowledge, does the  
 14 summary page 1 accurately reflect a summary of the  
 15 information contained in each of those leases,  
 16 including the additional option water that was in  
 17 place as of May 17th, 2010?  
 18 A. I believe it does.  
 19 MR. BUDGE: With that, we'd offer  
 20 Exhibit 4002.  
 21 THE HEARING OFFICER: Any objection from  
 22 the parties?  
 23 MR. FLETCHER: It's -- this is the third  
 24 version of documents we've been handed. This  
 25 differs dramatically from what was given. I guess

1 cross, but the reference of a quantity lease  
 2 minimum for Palisades Water Users in the city of  
 3 Idaho Falls says 5,000 acre-feet on the summary  
 4 sheet, and the actual document for Palisades Water  
 5 Users says 500 acre-feet. And I don't see one for  
 6 the city of Idaho Falls.  
 7 There is a lease agreement with  
 8 Palisades Water Users, 1,000 maximum, 500  
 9 acre-foot minimum, but I don't see the 5,000  
 10 acre-feet being reflected in this set of  
 11 documents. I don't think it's accurate.  
 12 THE HEARING OFFICER: Mr. Budge?  
 13 MR. BUDGE: It's somewhat ironic that those  
 14 who contend that we haven't supplied sufficient  
 15 water don't want to see the sufficient water that  
 16 we have available to supply them.  
 17 Responding to their objections, this  
 18 is offered as evidence for exactly what the  
 19 witness testified, and that is the water that we  
 20 had available and secured as of May 17th.  
 21 And one will note that all of the  
 22 leases were part of the previous submissions to  
 23 the Director. The attachments on the additional  
 24 optional water secured this year, with maybe the  
 25 exception of one or two that were added after

1 Mr. Deeg's last affidavit on May 13th, are also  
2 identical to what's been submitted, except that  
3 they were redacted.

4 Now, the Coalition's counsel objected  
5 to the redaction. So we previously supplied -- I  
6 don't know when it was, a day or two ago, a few  
7 days ago, copies of all of these documents, the  
8 leases and the unredacted documents.

9 So we're not -- we're offering this as  
10 evidence in the hearing today, along with  
11 everything else that's being offered.

12 MR. THOMPSON: Mr. Director --

13 MR. BUDGE: The Director can certainly take  
14 a look at the record and make a comparison of what  
15 was submitted May 6th, what was submitted  
16 May 13th, and what we have now, and see that there  
17 are some differences. They are a little  
18 different.

19 MR. FLETCHER: Mr. Director, I'm just  
20 looking at IGWA's own filings in this case, and  
21 I'm basing my statements on that. If you look at  
22 the supplement to IGWA's notice of secured water,  
23 it states that they have a total of 68,000  
24 acre-feet of water, and based upon nine attached  
25 leases, which is what they purported to attach to

1 THE HEARING OFFICER: Okay. Here's what I  
2 will do with respect to this document. I  
3 recognize that there was a document that was  
4 attached to the supplemental submittal that was  
5 proffered to the Department, and I believe the  
6 date was May 14th, 2010, as I recall.

7 And I recognize that this document,  
8 for the record, is different than what was  
9 submitted to the Director, both in terms of the  
10 number of leases or options that are contained  
11 herein, and it's also different in that the -- the  
12 redactions that were a part of the attachment to  
13 the supplemental submittal are now removed.

14 And so I'll receive this document into  
15 evidence with those qualifications. And  
16 hopefully, that at least partially addresses the  
17 concerns of the protestants.

18 Mr. Budge.

19 Q. (BY MR. BUDGE): Mr. Deeg, turning to  
20 page 1 of Exhibit 4002, the summary. Go down to  
21 item No. 10, "Progressive leases and Progressive  
22 irrigation."

23 A. Yes.

24 Q. If you go over to the fifth column on  
25 "Contract details," I think we identified it there

1 their supplement. That's the only thing the  
2 Director saw before this moment.

3 According to this document, there's 13  
4 different leases, 10 of which were executed before  
5 today.

6 MR. BUDGE: That's not accurate. There's  
7 10 different leases. No lease for 11 through 13.

8 MR. FLETCHER: Okay. So there's 10 leases,  
9 according to this, instead of 9. And the amount  
10 of water shown on here is 77,000. All I'm saying  
11 is that based upon what the Director was looking  
12 at, it was to supplement, not these documents.  
13 And that was my concern about the issue dealing  
14 with the Director's discretion at the time the  
15 Director issued his orders in this case. This is  
16 new evidence.

17 MR. THOMPSON: And, Director, one point:  
18 What was handed to us a couple days ago is not  
19 what's in this packet. And again, what's  
20 represented as being 5,000 acre-feet is in neither  
21 packet from Palisades Water Users or the City of  
22 Idaho Falls.

23 So I think we have a right to know  
24 what water is there when and where these leases  
25 are.

1 incorrectly as an automatic renewal.

2 Is the Progressive lease based on the  
3 attachment actually an option for this year?

4 A. Actually, I believe it is. That threw  
5 me when I started to go through those to see that.

6 Q. Would you pen in on Exhibit 4002 --  
7 strike out the words "automatic renewal," pen in  
8 "options," put your initials adjacent to it, if  
9 you would.

10 A. (The witness complies.)

11 Q. Now, on 4002, Exhibit 4002, I want to  
12 have you explain, if you would, items 11, 12, and  
13 13 for which no information is provided in columns  
14 one or two. For the City of Pocatello under the  
15 column "In negotiation" there's a number of 10,000  
16 acre-feet.

17 What does that represent?

18 A. Well, it represents a quantity of  
19 water that we were negotiating for. And the mayor  
20 being out of town, the City of Pocatello didn't  
21 want to commit without conferring with the mayor  
22 to meet the May 13th deadline date.

23 Q. So was it your understanding that  
24 Pocatello has committed 10,000 acre-feet, but you  
25 haven't agreed to any lease terms or price?

1 A. That's -- that's true.  
 2 Q. And with respect to item 12, as shown  
 3 as a confidential spaceholder, and again, under  
 4 the "In negotiation" column there's the amount of  
 5 10,000 acre-feet.

6 Can you explain what that is. Is that  
 7 another possible supplier that negotiations are  
 8 pending?

9 A. That's correct. We're looking to them  
 10 as a possibility of a long-term supplier.

11 Q. And item No. 13 would be the depiction  
 12 of the rental pool application that you discussed  
 13 earlier?

14 A. Yes, that's correct.

15 Q. So the fourth column total at the  
 16 bottom would show the current leases that you have  
 17 in place total 77,000 acre-feet; is that correct?

18 A. That's correct.

19 Q. And under column four there's another  
 20 80,000 acre-feet in negotiation?

21 A. Yes.

22 Q. And the total, then, would be  
 23 reflective of potential supplies, would be the  
 24 157,000 acre-feet?

25 A. That's correct.

1 Q. And if one looks at column three under  
 2 "Prices accepted," there seems to be a variety of  
 3 prices, some being rental pool plus \$1 and some  
 4 being \$20 plus the administrative fees.

5 Do you have an explanation for those  
 6 variations in the rentals that are being paid?

7 A. Well, I think the simple explanation  
 8 is is that with the minimum -- the minimum amount  
 9 of the lease, that goes at the -- at the rental  
 10 pool price or is a firm price.

11 And then to entice those folks to  
 12 provide additional water through the letter that  
 13 we sent out, they responded in saying that for \$20  
 14 we would provide you an additional amount.

15 Q. And if the 77,000 acre-feet would meet  
 16 IGWA's obligations as they now appear changes what  
 17 happens, if that number goes up because the year  
 18 becomes hot and dry or the order changes or if it  
 19 goes down because it stays wet and cool, what  
 20 happens? What does IGWA do?

21 A. Well, we'll continue to negotiate. If  
 22 the mitigation obligation goes up, we'll firm up  
 23 these other commitments or other negotiations with  
 24 other folks.

25 Or if in fact it stays cool and wet

1 and we don't need that amount of water, then it's  
 2 going to be a lot of -- a lot of money spent for  
 3 water that may not go anyway. It may end up going  
 4 out the end of the system.

5 Q. And would the next supply that IGWA  
 6 would look for for additional amounts should that  
 7 be required, would that be the lease price water  
 8 available, if you know?

9 A. Say that again.

10 Q. Let's say that the 77,000 that you  
 11 have now to meet your existing obligations turns  
 12 out to be short and at the end of the year after  
 13 the final accounting's done and all the numbers  
 14 are run the Director said we need to come up with  
 15 another 10,000 acre-feet, would IGWA -- and you  
 16 have these basically 80,000 acre-feet there, would  
 17 it be your anticipation that IGWA would look to  
 18 the whatever water is available at the lease  
 19 price?

20 A. Yes. We would try to negotiate some  
 21 kind of price to acquire the additional water  
 22 needed.

23 Q. And if the reservoirs fill, would that  
 24 lease price be the rental pool water, to the  
 25 extent it was available?

1 A. It would be. Probably would be. If  
 2 it fills, it would be \$5, plus fees.

3 Q. And with respect to these commitments  
 4 at \$20 per acre-foot, are those firm commitments  
 5 to those lessors that were obtained to comply with  
 6 the April 29th order by the April 13th -- excuse  
 7 me, by the May 13th deadline?

8 A. They are. They are firm financial  
 9 commitments.

10 Q. And is there any way to substitute  
 11 that \$20 water for the \$5 water that might be  
 12 available under the rental pool?

13 A. Not that I know of.

14 Q. Is it IGWA's intent to supply  
 15 mitigation water to comply with the Director's  
 16 orders for those ground water users in the common  
 17 ground water area that are not IGWA members?

18 A. Not at this time.

19 Q. Has there ever been a time -- well,  
 20 strike that question.

21 Has IGWA been able to secure water  
 22 later in the irrigation season to meet a growing  
 23 obligation due to hot, dry conditions in the  
 24 summer?

25 A. We've been able to acquire water

1 throughout the irrigation season to meet whatever  
2 obligations.

3 Q. Has there been a time after the final  
4 accounting has come in at the end of the year that  
5 IGWA was required to come up with more water?

6 A. Yes. We had to provide additional  
7 water for I believe it was Director Dreher's final  
8 year-end accounting that required us to have an  
9 additional 14,000 acre-foot to balance the books.

10 Q. And would that have been year-end  
11 2007?

12 A. I think it was in '7, yes. Probably  
13 would have been.

14 Q. And do you recall where that water was  
15 leased from and when it was supplied?

16 MR. THOMPSON: I guess objection.  
17 Relevance to the question.

18 THE HEARING OFFICER: Overruled.

19 THE WITNESS: It was leased from the City  
20 of Pocatello, and it was around the 20th of  
21 December.

22 As I recall, I was sitting in the  
23 Director's conference room when we made the final  
24 accounting. So we acquired the water subsequently  
25 after that, and provided it to Twin Falls --

1 of 27,000 acre-feet of water.

2 Q. Okay.

3 A. Okay.

4 Q. And the source of that 27,000  
5 acre-feet is the same leases that are described on  
6 Exhibit 4002?

7 A. Yes.

8 Q. And so the 27,000 acre-foot obligation  
9 should be subtracted from the amount of water you  
10 have rented in order to determine how much water  
11 is available in this column?

12 A. You could do the accounting in that  
13 fashion, yes.

14 Q. I mean it's the only source of water  
15 for the two columns, correct, are these leases?

16 A. Yes, that's correct.

17 Q. So if you subtract away 27,000 from  
18 77,000, that leaves you with 50,000 acre-feet  
19 available in this column; is that correct?

20 A. That's correct.

21 Q. Okay. I'd like you to look at  
22 Exhibit 4001.

23 Is that up there?

24 A. Yes.

25 Q. Now, to put this in context, this was

1 provided it to the Director so he could provide it  
2 to Twin Falls.

3 Q. (BY MR. BUDGE): And the date of  
4 delivery was sometime in the following January?

5 A. It was January when it was finally  
6 accounted for.

7 MR. BUDGE: No further questions.

8 THE HEARING OFFICER: Okay. Do you want to  
9 start in directly with Mr. Deeg now, or do you  
10 want to break?

11 MR. FLETCHER: Unless you want to break.  
12 It's up to you.

13 THE HEARING OFFICER: Okay. Let's forge  
14 ahead.

15 MR. FLETCHER: All right.

17 CROSS-EXAMINATION

18 BY MR. FLETCHER:

19 Q. Mr. Deeg, I'm Kent Fletcher. I  
20 represent Minidoka Irrigation District. I'm a  
21 little confused about where water is committed.

22 Do you agree that as of today 27,000  
23 acre-feet of your rented water is committed to the  
24 spring users call?

25 A. I believe that we have an obligation

1 filed on a deadline established by the Director,  
2 correct, May 14, 2010?

3 A. Yes.

4 Q. Were you familiar with what this  
5 document said?

6 A. Yes.

7 Q. And attached to this document were  
8 various leases, and I think Mr. Budge referred to  
9 them as the redacted copies of things; correct?

10 A. That's correct.

11 Q. Okay. If you look on the first page  
12 of that document, in the second paragraph isn't it  
13 represented that you had acquired 68,000 acre-feet  
14 of water at that time?

15 A. On that given hour, that's correct.

16 Q. And then the next sentence says that  
17 53,000 acre-feet of that -- this water was pledged  
18 to the delivery call?

19 A. And that's correct as well.

20 Q. Okay. And so that leaves a difference  
21 of 15,000 acre-feet?

22 A. Yes, that's correct.

23 Q. So what happened to the 27,000  
24 acre-feet that is committed to the surface water  
25 column -- or spring users column? I'm sorry.

1 A. That amount of water, that additional  
2 10,000 acre-foot of water, was being negotiated,  
3 was in the process of being made available in the  
4 next upcoming days.

5 And so consequently -- but I could  
6 not -- when the allocation was made for the 53,000  
7 acre-feet to be assigned to Water District 120,  
8 the allocation was made -- and I made the  
9 allocation -- based on the total water supply  
10 percentage of mitigation obligation, in other  
11 words, the total obligation that we had was  
12 110,000.

13 And of that I believe 23,000 was the  
14 mitigation -- Water District 130, and the balance  
15 was -- I think it was 68 percent was for Water  
16 District 120 because water users in IGWA acquire  
17 water on an equal percentage basis.

18 And until we had a meeting to  
19 determine how to allocate that water, that was the  
20 only methodology that I could use, because all  
21 water users buy water on an equal basis.

22 Q. Okay. And isn't it true that  
23 basically this assignment you made here was in  
24 this column for the purposes of attempting to  
25 avoid curtailment in this column?

1 A. Because going forward with the  
2 curtailment process and not allowing the ground  
3 water users to have sufficient time frame to  
4 acquire and compile the rest of the results of the  
5 leases would be wrong -- doing folks wrong in the  
6 fact that you're going to be looking at providing  
7 curtailment.

8 Q. Okay. But the purpose of this  
9 document was to attempt to get the Court -- a  
10 court to stop the Director from curtailing you;  
11 isn't that correct?

12 A. Yes.

13 Q. And I'd like to draw your attention to  
14 paragraph 4.

15 In the first sentence of paragraph 4,  
16 you acknowledge that the Director at that time had  
17 ordered you to come up with 84,300 acre-feet of  
18 storage water in this proceeding; correct?

19 A. That's correct.

20 Q. Can you read the second sentence of  
21 that paragraph to me.

22 A. "This is in addition to the amount of  
23 water that we need to meet our obligation to Clear  
24 Springs, which is roughly 27,000 acre-feet of  
25 total water -- 27,000 acre-feet, bringing the

1 A. No, it was not. At that point in time  
2 I had 84,000 acre-feet obligation.

3 MR. FLETCHER: What number are we on?

4 THE HEARING OFFICER: Let's go off the  
5 record for a second.

6 (Recess.)

7 (Exhibit 4010 marked.)

8 THE HEARING OFFICER: Now we're recording.  
9 Mr. Fletcher.

10 Q. (BY MR. FLETCHER): Mr. Deeg, I've  
11 handed you what's been marked Exhibit 4010.

12 Are you familiar with this document?

13 A. Yes.

14 Q. Can you describe what it is.

15 A. It's a document that states that if in  
16 fact the Director continues forward with the  
17 curtailment program --

18 Q. No, I just wanted you to describe what  
19 this document is.

20 A. Oh, okay. This is an affidavit that  
21 was by me, prepared by Ms. McHugh, and filed  
22 before the Department of Water Resources.

23 Q. Okay. And why would -- why did you  
24 prepare and sign -- or why did you sign and file  
25 this affidavit? Do you know?

1 total amount of water IGWA needs to secure for  
2 2010 to 110,000 acre-feet."

3 Q. Okay. Has the amount of water  
4 required to meet your obligations to Clear Springs  
5 changed since the time you signed this affidavit?

6 A. No.

7 Q. This affidavit you signed on May 12th;  
8 correct?

9 A. Yes.

10 Q. That's two days before this supplement  
11 to IGWA's notice of secured water, Exhibit 4002?

12 A. That's correct.

13 Q. So on May 12th, you felt you were  
14 committed -- you had committed 27,000 acre-feet to  
15 Clear Springs, but on May 14 you were representing  
16 to the Director that out of the water you had  
17 leased only 15,000 would be available to Clear  
18 Springs?

19 MR. BUDGE: I'm going to object to the form  
20 of the question, which mischaracterizes the  
21 testimony of Mr. Deeg you just read on  
22 paragraph 4. That paragraph 4 language read does  
23 not say he made a commitment. He says they need  
24 to meet their obligation of 27,000. He did not  
25 say a commitment was made. Counsel's question

1 mischaracterizes his affidavit as stating he made  
2 a commitment. He did not.

3 So if you'd rephrase it to accurately  
4 reflect the affidavit, then I would not object.

5 Q. (BY MR. FLETCHER): You referred to  
6 this, Mr. Deeg, as an obligation to Clear Springs  
7 in the amount of 27,000 acre-feet; correct?

8 A. That's correct.

9 Q. And you're adding that to your  
10 obligation owing in this column in order to come  
11 up with the total that you represented to the  
12 District Court of 110,000 acre-feet; correct?

13 A. That's correct.

14 Q. Okay. And then in your supplement to  
15 IGWA's notice of secured water, IGWA is claiming  
16 it only has 68,000 acre-feet of water, of that  
17 amount you're stating 53,000 is available in this  
18 call; correct?

19 A. That's correct.

20 Q. So you're basically stating there  
21 that -- the result of that is you're not  
22 committing 27,000 acre-feet of that water to the  
23 spring users call; correct?

24 A. I'm -- that's correct, at that point  
25 in time I'm only committing 15-

1 water, as you phrase it, an obligation to the  
2 spring users; correct?

3 A. Correct.

4 Q. And you have an additional 3,525  
5 acre-feet of water required in this call, correct,  
6 in order to avoid curtailment?

7 A. I -- as I understand the order, yes.

8 Q. Okay. So that would be a total of  
9 83,525 acre-feet of water?

10 A. If the math is right, yes.

11 Q. I'm not trying to mislead you. If you  
12 need more time to add that up.

13 A. Okay.

14 Q. It's 53,000, plus 27,000, plus 3525;  
15 correct?

16 A. Okay.

17 Q. And you don't have 83,525 as of today?

18 MR. BUDGE: Excuse me. To properly  
19 characterize Mr. Deeg's testimony based on the  
20 77-, he reduced the 62,000 to the amount only owed  
21 by ground water users, which was 50,000. That's  
22 the difference in your adding apples and oranges.

23 MR. FLETCHER: No, I'm not adding apples  
24 and oranges.

25 Q. The Director gave you credit for

1 Q. So as of the date you filed this, I  
2 guess you were willing effectively to leave the  
3 spring users uncertain of the amount of water they  
4 would receive in order to provide us 53,000  
5 acre-feet in this call?

6 A. I was not willing to -- not equally  
7 represent every constituent of IGWA equally in  
8 terms of their potential mitigation -- or  
9 potential curtailment.

10 Q. So as of today, you're claiming under  
11 these leases that you have 77,000 acre-feet of  
12 water available; correct?

13 A. That's correct.

14 Q. So the number has changed since you  
15 filed your supplement, 4002?

16 A. That's correct.

17 Q. And since you filed this supplement,  
18 you've acquired an additional 9,000 acre-feet of  
19 water?

20 A. Yes.

21 Q. So if you go through the math on this,  
22 in this call you committed 53,000 acre-feet of  
23 water under Exhibit 4002; correct?

24 A. That's correct.

25 Q. And you have 27,000 acre-feet of

1 53,000 acre-feet of water in this proceeding.

2 Do you understand that?

3 MR. BUDGE: Could you refer to the order  
4 that you're -- where that was discussed?

5 MR. FLETCHER: Okay.

6 Q. In the --

7 MR. BUDGE: May 17th order.

8 Q. (BY MR. FLETCHER): -- Exhibit 1001,  
9 which I think you have there -- did I call the  
10 wrong number? I'm sorry. That's the methodology.  
11 I'm sorry.

12 MR. THOMPSON: 1002.

13 MS. McHUGH: 1002.

14 Q. (BY MR. FLETCHER): It's 1002,  
15 Mr. Deeg. I'm sorry.

16 A. Okay.

17 Q. And if you'd turn to page 5 of that  
18 order, paragraph 17.

19 It sets out your obligation; correct?

20 A. Yes.

21 Q. And it shows that there's 62,232;  
22 correct?

23 A. Correct.

24 Q. And that you're given credit for  
25 53,000 acre-feet; correct?

1 A. Correct.  
 2 Q. And that number, that 53,000  
 3 acre-feet's the same number that's represented in  
 4 Exhibit 4002; correct?  
 5 A. Yes.  
 6 Q. I mean that's where that number comes  
 7 from, isn't it?  
 8 A. Yes, I believe so.  
 9 Q. And then you're given a credit for  
 10 other things in the amount of 5,707 acre-feet;  
 11 correct?  
 12 A. Yes.  
 13 Q. That leaves a total owing of 3525,  
 14 that was the number I was stating earlier --  
 15 A. Okay.  
 16 Q. -- right?  
 17 A. All right.  
 18 MR. FLETCHER: So I guess I'm not sure what  
 19 the objection was.  
 20 MR. BUDGE: The objection was that you were  
 21 attempting to mischaracterize the witness' prior  
 22 testimony and confuse it with references to the  
 23 order as if he is agreeing that IGWA -- IGWA's  
 24 obligations were 62,000. You already testified  
 25 that for purposes of his conclusion that the

1 THE HEARING OFFICER: Overruled. This is  
 2 cross-examination.  
 3 Q. (BY MR. FLETCHER): I mean, Mr. Deeg,  
 4 you've already agreed to this. I'm not trying to  
 5 fool you or anything. It's what the order says.  
 6 Okay?  
 7 A. It's what the order says.  
 8 Q. So the total, if you add up what the  
 9 order currently requires, you've already committed  
 10 53-, the Director says you owe another 3525 in  
 11 this call, and you've committed 27,000 to the  
 12 spring users, the total of those would be 83,525;  
 13 correct?  
 14 A. Correct.  
 15 Q. Okay. I'm going to ask you about some  
 16 of these leases simply because I think it will  
 17 save some time later.  
 18 Are any of these leases that are  
 19 attached to Exhibit 4002 for more than one year?  
 20 A. They're one-year automatic renewals.  
 21 Q. Okay. So they could be terminated by  
 22 either party any year --  
 23 A. Those could be, yes.  
 24 Q. -- correct?  
 25 Do you have any lease -- does IGWA

1 77,000 was adequate. He was relying upon the  
 2 testimony of Dr. Brendecke, that the portion of  
 3 the 62- owed by IGWA is 50-. So when the 50,000  
 4 is added to 27-, he had exactly 77-. That was his  
 5 testimony that you're trying to --  
 6 MR. FLETCHER: No.  
 7 THE HEARING OFFICER: Do I have a pending  
 8 objection? I'm not sure I do. I've listened  
 9 to --  
 10 MR. SIMPSON: You don't.  
 11 MR. BUDGE: I actually --  
 12 THE HEARING OFFICER: I've listened to  
 13 it --  
 14 MR. FLETCHER: I thought he did object, and  
 15 that's what I was -- I was trying to --  
 16 THE HEARING OFFICER: I've listened to a  
 17 colloquy, but I don't think I have a pending  
 18 objection.  
 19 MR. FLETCHER: Let me just move on.  
 20 Q. I'm just saying as of today, unless  
 21 the Director buys your counsel's argument and your  
 22 expert's argument, currently you're ordered to  
 23 come up with 3535; correct?  
 24 MR. BUDGE: The order speaks for itself.  
 25 Objection.

1 have any lease for more than one year?  
 2 A. No.  
 3 Q. And some of these leases have variable  
 4 quantities; isn't that correct?  
 5 A. That's correct.  
 6 Q. And let's just look at the first lease  
 7 you've attached to 4002, for example. That lease  
 8 is with Aberdeen-Springfield.  
 9 And on the first page it shows in the  
 10 little block 20,000 acre-feet of water; correct?  
 11 A. Yes.  
 12 Q. But if you look down in paragraph 1.1,  
 13 that can be reduced to 10,000 acre-feet?  
 14 A. That's correct.  
 15 Q. Okay. And then the cancellation  
 16 provision that we talked about earlier is  
 17 contained in paragraph 2 where either party can  
 18 cancel?  
 19 A. Yes.  
 20 Q. And there are several other leases  
 21 attached with varying quantities, but they contain  
 22 those same basic provisions, either party can  
 23 reduce the amount?  
 24 A. Yes.  
 25 Q. Or --

1 A. Maximum and then --  
 2 Q. Or they have a range and then a  
 3 minimum?  
 4 A. Yes.  
 5 Q. Excuse me. A maximum and a minimum,  
 6 and they can be terminated each year; correct?  
 7 A. Correct.  
 8 Q. Okay. And then if you turn to the --  
 9 toward the back, you have some one-page documents.  
 10 I think the first one is with Palisades Water  
 11 Users Association.  
 12 Do you see that?  
 13 A. Yes.  
 14 Q. I'm sorry, you have a long-term lease  
 15 with Palisades Water Users for a range of between  
 16 500 and 1,000; correct?  
 17 A. Yes.  
 18 Q. But on the front cover sheet, doesn't  
 19 it say 5,000?  
 20 A. As I recall --  
 21 Q. Can you look at the very front page of  
 22 that exhibit.  
 23 A. Yes. Yes. I believe they leased us  
 24 additional water.  
 25 Q. Okay. Is there -- I haven't had time

1 So that should be 1,000?  
 2 A. Actually, I think there was 1500 that  
 3 was leased, and then they came back and leased us  
 4 an additional amount.  
 5 Q. Well, I'm just talking about the  
 6 documents you filed here today.  
 7 A. I know.  
 8 Q. It shows a thousand total; right?  
 9 A. I think, yes.  
 10 Q. Okay. So unless something else is  
 11 produced --  
 12 MR. BUDGE: Excuse me. A thousand total  
 13 under the written document. He also said they  
 14 have an additional 4,000.  
 15 So your question didn't distinguish  
 16 between the documents and his testimony that said  
 17 there was an additional 4,000.  
 18 MR. FLETCHER: I was talking about the  
 19 written documents.  
 20 Q. The written documents you furnished to  
 21 show that you have written leases show that you  
 22 have a thousand acre-feet rented from Palisades;  
 23 correct?  
 24 A. A thousand, yes.  
 25 Q. Okay.

1 to really look through there.  
 2 Is there anything in here that shows  
 3 that additional water?  
 4 A. I don't see that at this point.  
 5 Q. Okay. And do you have a written lease  
 6 for anything over 500 acre-feet with them?  
 7 A. I believe we do in the sense that it  
 8 picked up that additional amount that we're  
 9 showing, but I'd have to go back and look. Okay?  
 10 Q. Well, at least for the Director's  
 11 consideration, as of now the only thing in  
 12 evidence is 500 acre-feet.  
 13 So that number should be corrected?  
 14 A. Okay.  
 15 Q. Excuse me. I don't want to mislead  
 16 you, Mr. Deeg. I hear counsel whispering over  
 17 here.  
 18 Sorry to eavesdrop.  
 19 But I think that's a total of a  
 20 thousand that Palisades is leasing; is that  
 21 correct? It's 500 at one rate and 500 at another  
 22 rate?  
 23 A. It's 1500.  
 24 Q. They didn't fill in the total, and  
 25 that's what was confusing.

1 A. In the written documents. But I  
 2 believe that there's also an additional 4,000 to  
 3 make the total come to 5-.  
 4 Q. Well, for the front page of  
 5 Exhibit 4002 to be accurate as a representation of  
 6 the leases that are attached, the number 5,000 by  
 7 "Palisades water" should be changed to 1,000;  
 8 correct?  
 9 MR. BUDGE: I'm going to object to that  
 10 because the witness has basically said we have a  
 11 thousand under the written documents, but we have  
 12 a verbal commitment for 4,000. So the summary  
 13 actually reflects the total that is available to  
 14 IGWA.  
 15 MR. ARKOOSH: While they're visiting, your  
 16 Honor, I would renew my objection to the cover  
 17 sheet. It's no longer a summary of the documents,  
 18 unless it's changed. It was represented to be an  
 19 accurate summary of the documents. And evidently  
 20 that no longer is the case. We couldn't verify  
 21 yes or no because we just got it just now.  
 22 MR. FLETCHER: I thought this was offered  
 23 as being an illustration of the documents that  
 24 were attached.  
 25 THE HEARING OFFICER: That was my

1 understanding, Mr. Budge. Now we're changing. It  
2 probably shouldn't even be a part of the total.

3 MR. BUDGE: As -- it was a summary of the  
4 documents and his testimony that -- his testimony  
5 was what we have in place. And we know we have a  
6 commitment for 5,000 in place.

7 And the written document here is only  
8 reflecting a thousand. But the summary is  
9 accurate. And his testimony was "What leases do  
10 you have in place for storage water this year?"  
11 and it is accurate as shown on summary. His  
12 explanation was given.

13 The document may be only showing a  
14 thousand and there's an additional 4,000 committed  
15 verbally, to which we have not yet got the updated  
16 document. I'll make that representation.

17 These documents have been floated  
18 around in the mail and fax. And this is not  
19 reflecting the commitment from Palisades.  
20 Mr. Deeg is aware of it. He's testified to it.  
21 So the front page is accurate.

22 Now, we will stipulate that the  
23 document attached as it relates to Palisades is  
24 reflective, as Mr. Fletcher properly points out, a  
25 thousand. But the commitment and the amount that

1 available when you sent out the inquiry and said  
2 "Give me your leases."

3 But they want to show you that they've  
4 got some matters under negotiation. I get it.  
5 It's not relevant, and I don't think you're going  
6 to be tricked by it. But I think it is  
7 misrepresentative to stick this document as a  
8 representation of a summary of the documents on  
9 the front of it and leave it inaccurate, and then  
10 require somebody to dig back through the record  
11 and find a sentence of testimony to make the thing  
12 make sense. It's difficult.

13 And so I'd either move to strike the  
14 entire exhibit, except for 1 through 10, that were  
15 in front of the Director at the time he made his  
16 decision, or at least make it accurate. And I  
17 think that's a fair thing to do.

18 MR. BUDGE: I'd like to be heard on this.

19 MR. THOMPSON: Mr. Director, I've got one  
20 more point on this.

21 THE HEARING OFFICER: Okay. Mr. Thompson.

22 MR. THOMPSON: Thank you.

23 As to the Palisades Water Users,  
24 what's identified on this summary sheet is 500  
25 acre-foot at rental pool plus a dollar, then 4500

1 we have leased is 5,000, per Mr. Deeg's testimony  
2 of the additional commitment, for which the  
3 updated document's not here.

4 And I'll take some responsibility for  
5 that, because we're compiling it based upon what I  
6 can glean from .pdf documents on our network  
7 without the benefit of the written documents that  
8 are in the mail or in the file at the office.

9 So with that clarification, we will  
10 supplement the record with the correction page  
11 from Palisades as soon as I track it down.

12 MR. ARKOOSH: Your Honor.

13 THE HEARING OFFICER: Mr. Arkoosh.

14 MR. ARKOOSH: Your Honor, what's relevant  
15 here is Step 4. 11, 12, 13 are not relevant to  
16 Step 4. The 4,000 represented at some point after  
17 May 13th as an oral lease is not relevant to  
18 Step 4.

19 You let this in as an accurate  
20 representation of the documents available. It was  
21 modified by counsel to accurately reflect the  
22 documents available.

23 I would either move to strike this as  
24 an irrelevant document because it doesn't tell  
25 you -- it doesn't answer your inquiry what's

1 acre-feet at \$20.

2 That is not what is reflected in the  
3 lease, nor the storage water option signed by  
4 Palisades Water Users, Inc., which isn't even  
5 signed by Mr. Deeg, this copy.

6 This has 500 acre-feet at the rental  
7 pool rate, plus a dollar, plus 500 acre-feet at  
8 \$19.

9 So you have discrepancies between the  
10 documents attached to this summary and what is  
11 being represented as a summary. I think that's --  
12 I don't think it's an accurate representation of  
13 what's attached to this packet --

14 THE HEARING OFFICER: Okay. Mr. Budge.

15 MR. THOMPSON: -- nor is his testimony.

16 MR. BUDGE: Let me respond to Mr. Thompson.

17 Again, the summary accurately reflects  
18 the testimony as to what IGWA has in place. The  
19 supporting document, as to Palisades, is not  
20 complete and consistent with the summary. But the  
21 summary accurately reflects the water in place on  
22 May 17th. And we will supplement when we run it  
23 down.

24 As to Mr. Arkoosh's question, let me  
25 point out the absurdity of his argument, your

1 Honor. If you look at Step 5, it basically said  
 2 by this deadline of May 13th, IGWA had to show to  
 3 the satisfaction of the Director their ability to  
 4 secure and provide water to avoid curtailment,  
 5 because all we know is what has happened since  
 6 that day is we haven't gotten curtailed yet.  
 7 THE HEARING OFFICER: Now, wait a minute.  
 8 You're referring to Step 5?  
 9 MR. BUDGE: I'm referring to Step 4.  
 10 Excuse me. Did I say 5?  
 11 THE HEARING OFFICER: Yes.  
 12 MR. BUDGE: I meant Step 4. Okay. Step 4  
 13 says if failure to secure. So we made a filing  
 14 with the Director.  
 15 On the date of that filing on  
 16 May 13th, it was less than the obligation that  
 17 then existed, the 84,000. We filed with what we  
 18 had. But that filing contained more than the  
 19 leases we had.  
 20 It contained testimony from Mr. Deeg  
 21 in his affidavit that IGWA was diligently securing  
 22 additional water, and that we think we'll be able  
 23 to get the additional water and we want some more  
 24 time.  
 25 So apparently the Director accepted

1 got the water that was required. We've got that,  
 2 potentially a whole lot more that's there, way  
 3 more than we think we need.  
 4 The Surface Water Coalition ought to  
 5 be tickled pink and happy, yet they want to sit  
 6 here and piss and moan that we're not trying to  
 7 come and mitigate their shortage.  
 8 Now, to say that somehow it's not  
 9 relevant to show that IGWA performs when it says  
 10 it's going to perform and we're going to do what  
 11 the Director orders to do, and when he filed an  
 12 affidavit and said we're continuing to get more  
 13 water, we'll get some more -- give us some more  
 14 time and we'll get it done, and the Director  
 15 didn't issue the curtailment order immediately, we  
 16 assumed that meant we must have then satisfied him  
 17 that we either have the ability to secure it, and  
 18 he'll give us more time.  
 19 Well, we certainly are going to go out  
 20 and perform, as we represented we would perform,  
 21 and we've done that. And I think it's incumbent  
 22 upon this hearing to show that the Director's  
 23 faith in us to perform has now been fulfilled and  
 24 demonstrated by solid proof that we have it and  
 25 there's more there if we need more.

1 that, because you didn't immediately issue a  
 2 curtailment order. But we still are at risk that  
 3 we perform on the commitment we made May 13th.  
 4 And our commitment was -- for May 13 was is, one,  
 5 we think we can get some more water. Give us some  
 6 more time. We'll get it.  
 7 We still are under the risk that you  
 8 might say "IGWA, you didn't do good enough. I was  
 9 waiting for you to come up with more leases. And  
 10 you didn't do it, I'm going to curtail you."  
 11 Now I think it is incumbent upon us,  
 12 only -- we're only out a week or ten days from  
 13 that date -- ten days from the 13th. IGWA is  
 14 still under risk of curtailment. The Director  
 15 could decide -- you said you were going to come up  
 16 with more that you didn't.  
 17 And all we're demonstrating now is  
 18 that we performed, as we said we would do, on  
 19 May 13th. And that is, we'll continue to get some  
 20 more water, give us some more time, we'll get it.  
 21 And what this exhibit does is exactly  
 22 what Step 4 required that we do, is demonstrate to  
 23 the Director's satisfaction that we're going to  
 24 have the water to mitigate for him.  
 25 Now, the frustrating thing is we have

1 And so it may go to the weight of the  
 2 evidence. And I don't know how the Director's  
 3 going to sort all that out, and we don't know  
 4 today, we didn't know on May 13, we won't know  
 5 until we get a final order here.  
 6 But this is an evidentiary hearing to  
 7 see how we're going to demonstrate that we can  
 8 secure or we will secure enough to meet the order,  
 9 and that's why it's relevant and admissible.  
 10 THE HEARING OFFICER: Okay. One more  
 11 chance to respond, Surface Water Coalition.  
 12 MR. THOMPSON: Mr. Director, just a quick  
 13 point. I'll jump in front of these guys.  
 14 The question is, does this summary  
 15 accurately reflect what the documents are attached  
 16 to it. And the answer is no.  
 17 Does this summary answer his  
 18 testimony? Well, we've got the testimony. We  
 19 don't need a document that may conflict with that.  
 20 I think the document doesn't reflect what's  
 21 attached to it. So I think if we take the summary  
 22 sheet off, the documents can come in.  
 23 MR. BUDGE: That's the purpose of  
 24 cross-examination.  
 25 THE HEARING OFFICER: Okay. Here's --

1 MR. ARKOOSH: Or another suggestion is do  
2 what counsel did is to the extent the summary is  
3 inaccurate as a reflection of the summary of the  
4 documents, just make the change. They've got a  
5 thousand in the documents, not 5,000.

6 THE HEARING OFFICER: Okay. Here's what I  
7 want to do, based on everything that's been  
8 discussed. I have one document here that's been  
9 marked as Exhibit 4002.

10 I don't think this has been offered  
11 yet, has it?

12 MR. BUDGE: It has, and it's been admitted.

13 THE HEARING OFFICER: Okay.

14 MR. BUDGE: That's another reason why a lot  
15 of the --

16 MR. FLETCHER: 4002.

17 THE HEARING OFFICER: Has it been admitted?

18 MR. BUDGE: Offered and admitted, and now  
19 we're getting after-the-fact objections.

20 THE HEARING OFFICER: Okay. You're right.  
21 All right. I'm backing up on this particular  
22 document based -- go ahead. I'm backing up based  
23 on the cross-examination and what I know about  
24 this document right now.

25 And what I want to do is separate it

1 leased. But in addition to the thousand acre-feet  
2 shown on the document from Palisades, that there  
3 is an additional 4,000 committed from Palisades.  
4 And keep in mind they are an IGWA member, so...

5 THE HEARING OFFICER: Well, maybe you have  
6 a better recollection of the certainty of the  
7 establishment of those numbers. I don't recall it  
8 with that degree of certainty.

9 MR. BUDGE: I'll clarify that on  
10 cross-examination -- on redirect.

11 THE HEARING OFFICER: And if -- okay. So  
12 I'm retracting the admission of this document as a  
13 whole. Let's split it in three parts so that we  
14 can keep track of it. And let's take a brief  
15 recess so we can take care of it, including the  
16 numbering. Thank you.

17 (Recess.)

18 (Exhibits 2001 through 2004 marked.)

19 THE HEARING OFFICER: Okay. After a  
20 recess, we have resumed the hearing for the  
21 As-Applied Order.

22 And just prior to the recess, I  
23 revoked the admission of what was marked as  
24 Exhibit 4002. And based on my suggestion, the  
25 document was separated in four parts, as I

1 into three parts: the summary sheet, the leases  
2 that were -- that were consistent with the  
3 supplemental submittal on May 14th, and everything  
4 else. And then there will be three documents.

5 And let's go through individually, and  
6 let's establish which are which, because I think  
7 we could easily identify the leases that are the  
8 same leases as were submitted on May 14th. I  
9 think those could easily come in.

10 Then I think we have two others for  
11 which we need to establish facts that would  
12 justify those documents coming in. And I'm not  
13 sure, even based on your representations,  
14 Mr. Budge, that Mr. Deeg has testified to my  
15 satisfaction about what has been leased from --  
16 let's see, I think it's the Palisades Water Users  
17 and what has not.

18 I think there's been some general  
19 representations about his understanding, but I'm  
20 not sure we've established what really has been  
21 leased and what has not been leased and what the  
22 price is.

23 MR. BUDGE: We'll bring that out on  
24 redirect. But my -- I think his testimony was  
25 pretty clear, the documents showed what was

1 understand it.

2 And I understand, Mr. Budge, that  
3 those will be re-offered in separate pieces. And  
4 I also understand, based on the discussions  
5 between the parties, that the most efficient way  
6 to deal with these documents is to ask you,  
7 Mr. Budge, now to examine Mr. Deeg regarding each  
8 of them and establish the necessary foundation and  
9 background and then offer these documents into  
10 evidence. And the parties all have copies.

11 So is that the approach that we want  
12 to take, everyone?

13 MR. BUDGE: I think I can do additional  
14 foundation, or we can just stipulate that -- what  
15 they are, expedite the process.

16 MR. FLETCHER: The one document that I  
17 think we would have a problem with -- and we just  
18 need to lodge the purpose for its omission -- is  
19 2001, because that same issue is there on the  
20 Progressive amount of water -- excuse me, on the  
21 Palisades amount of water.

22 The written leases show 1,000. I  
23 assume they're going to have Mr. Deeg testify with  
24 more clarity on redirect as to the 4,000.

25 And so I guess if the purpose of this

1 is to illustrate his testimony, assuming they fill  
2 that gap, we would -- you know, it would be  
3 admissible for that purpose. It would not be  
4 necessarily -- well, it is not a representation of  
5 the written documents.

6 MR. BUDGE: I'd just go ahead and put it  
7 back in then on some further testimony on these  
8 exhibits alone, and continue your cross.

9 THE HEARING OFFICER: Okay. However you  
10 want to approach this and offer them, Mr. Budge,  
11 I'll leave that up to you.

12 MR. BUDGE: Okay.

13 THE HEARING OFFICER: But nobody's in  
14 disagreement or everybody's agreeing that we allow  
15 Mr. Budge to question Mr. Deeg out of order to  
16 have these documents offered and then have the  
17 further cross-examination.

18 MR. FLETCHER: I think it would be more  
19 efficient to do that.

20 THE HEARING OFFICER: Okay. Let's do it.

22 FURTHER DIRECT EXAMINATION  
23 BY MR. BUDGE:

24 Q. Mr. Deeg, do you have in front of you  
25 documents that have now been remarked and

1 that May 17th, 2010 date?

2 A. It does.

3 Q. Now, I'd like to clarify the record  
4 with respect to lease identified as No. 7,  
5 Palisades Water Users.

6 The amount there is 5,000 acre-feet is  
7 the total?

8 A. That's correct.

9 Q. And is that the correct amount that  
10 IGWA has under lease from Palisades Water Users?

11 A. That is the correct amount.

12 Q. And is there a written document  
13 reflecting that amount?

14 A. There's actually two documents.  
15 There's one for a thousand and one for an  
16 additional 4,000, for a total of 5-.

17 Q. And the additional document for 4,000  
18 is not a part of any of the other exhibits that  
19 we've previously reviewed in this matter?

20 A. It is not at this point.

21 Q. And what is -- what is IGWA's  
22 arrangement for the additional 4,000 second-feet  
23 of water leased from Palisades to bring the total  
24 to 5,000?

25 A. In terms of dollar cost?

1 identified as Exhibits 201, 202, 203, and 204  
2 (sic)?

3 A. I do.

4 Q. And is 201 entitled "Summary of IGWA  
5 water leases for 2010"?

6 A. Yes.

7 THE HEARING OFFICER: Mr. Budge, I'd just  
8 state that these are 2001. I heard you say "201,  
9 202." And I want to make sure the record --

10 MR. FLETCHER: 2001, 2002.

11 MR. BUDGE: Did I say "201"?

12 THE HEARING OFFICER: Yes.

13 MR. BUDGE: 2001, 2002, 2003, 2004.

14 THE HEARING OFFICER: Okay.

15 Q. (BY MR. BUDGE): So do you have  
16 Exhibit 2001 in front of you?

17 A. Yes.

18 Q. And that's entitled "Summary of IGWA  
19 water leases for 2010" with a date of May 17,  
20 2010?

21 A. Yes.

22 Q. And does that document, with respect  
23 to the total amount of water leased, reflect --  
24 the 77,000 acre-feet represent the total amount of  
25 water that IGWA had available under lease as of

1 Q. No. What represents -- strike that.  
2 Let me rephrase.

3 Does Palisades and IGWA have an  
4 agreement for a total of 5,000?

5 A. Yes.

6 Q. And do we have a document reflecting  
7 an initial commitment of Palisades for 1,000  
8 acre-feet, which is a part of Exhibit 202 (sic)?  
9 About the eighth page back.

10 A. Yes.

11 Q. And is it your testimony that IGWA and  
12 Palisades have an agreement for an additional  
13 4,000 to bring the total to 5-?

14 A. That's correct.

15 Q. And where is that document?

16 A. Somewhere between here and Idaho  
17 Falls. Actually, the secretary, Wendy Murphy,  
18 probably did not get it sent out. She's had  
19 surgery and so --

20 Q. And have you been able to speak  
21 personally during the break with the president of  
22 Palisades Water Users to confirm that that signed  
23 document -- that document has been signed by  
24 Palisades?

25 A. Yes, I did speak with Ralph, and --

1 Isom, and he did indicate he signed the document,  
 2 and I as well know I did sign one.  
 3 Q. So it's a matter of rounding up the  
 4 document for the additional 4,000?  
 5 A. That's correct.  
 6 Q. So also with respect to the same  
 7 Exhibit 2001 with respect to Palisades Water Users  
 8 on item No. 7, in column three can you state  
 9 with -- whether or not the pricing terms reflected  
 10 there are accurate. The terms there show 500  
 11 acre-feet of rental pool, plus one, another 4500  
 12 acre-feet at \$20 plus fees.  
 13 A. I believe that's correct.  
 14 Q. Now look at Exhibit 202 (sic), which  
 15 has a cover page entitled "IGWA leases as of  
 16 May 13th, 2010."  
 17 A. I have that.  
 18 Q. Are these the same documents that were  
 19 submitted by IGWA on May 13th, 2010, unredacted,  
 20 those being submitted previously had redacted  
 21 information?  
 22 A. They appear to be similar.  
 23 Q. And now look at Exhibit 2003. It has  
 24 a cover page entitled "Additional IGWA lease as of  
 25 May 17th, 2010."

1 the parties?  
 2 The documents are received into  
 3 evidence. Thanks for the help of everyone. Okay.  
 4 And thank you for bringing them in  
 5 that way, Mr. Budge.  
 6 (Exhibits 2001 through 2004 admitted.)  
 7 THE HEARING OFFICER: Mr. Fletcher, you may  
 8 continue your cross-examination.  
 9 MR. FLETCHER: Thank you.  
 10  
 11 FURTHER CROSS-EXAMINATION  
 12 BY MR. FLETCHER:  
 13 Q. Just to clarify, Mr. Deeg,  
 14 Exhibit 2002 are the documents that are attached  
 15 to the supplement to IGWA's notice of secured  
 16 water, which is Exhibit 4001; is that correct?  
 17 A. 4- --  
 18 Q. Excuse me. 2001.  
 19 A. Yes.  
 20 Q. These are the unredacted copies?  
 21 A. That's true.  
 22 Q. Okay. And then Exhibit 2003 was not  
 23 tendered to the Director until today; correct?  
 24 A. I believe so.  
 25 Q. And it was not attached in your

1 A. I have that.  
 2 Q. Do you have that in front of you?  
 3 A. Yes.  
 4 Q. And that has one document attached,  
 5 which is "Storage water lease for 5,000 acre-feet  
 6 from Mitigation, Inc." --  
 7 A. Yes.  
 8 Q. -- is that correct?  
 9 A. That's correct.  
 10 Q. And would that represent the  
 11 additional lease that IGWA had secured after the  
 12 May 13th, 2010 submission to the Department?  
 13 A. That's correct.  
 14 Q. And that additional lease is also  
 15 reflected on the summary Exhibit 2001?  
 16 A. Yes, it is.  
 17 Q. And looking at the Exhibit 2004, is  
 18 this a copy of the rental pool application IGWA  
 19 submitted to Water District 1 together with the  
 20 cover transmittal letter that you testified to  
 21 previously?  
 22 A. It is.  
 23 MR. BUDGE: With that, we would offer  
 24 Exhibits 2001, 2002, 2003, and 2004.  
 25 THE HEARING OFFICER: Any objection from

1 initial filing?  
 2 A. It was not. It was in process.  
 3 Q. Okay. And then Exhibit 2004 is your  
 4 application to the rental pool; correct?  
 5 A. That's correct.  
 6 Q. Now, in order to make that  
 7 application, you had to tender a sum of money; is  
 8 that correct?  
 9 A. That is correct.  
 10 Q. How much money did you have to tender?  
 11 A. I believe it was 315,000.  
 12 Q. And have you done that?  
 13 A. We have.  
 14 Q. When did you pay that?  
 15 A. The same day this was filed.  
 16 Q. Mr. Deeg, do you know if any of the  
 17 private leases that IGWA's entered into, have any  
 18 of those been filed with the rental pool  
 19 committee?  
 20 A. I do not know.  
 21 Q. Who would know that?  
 22 A. Probably legal counsel probably would  
 23 know, or Lyle, Lyle Swank.  
 24 Q. Is it your intention that if they have  
 25 not been filed as of today, to file them

1 immediately or to wait to file them or -- is the  
 2 private lease enforceable through the rental pool  
 3 until it's filed with the rental pool committee?  
 4 A. Probably not. I think it needs to be  
 5 filed and monies may be -- in some instances may  
 6 be paid.  
 7 Q. Okay. So to your knowledge, they  
 8 haven't yet been filed?  
 9 A. To my knowledge, they haven't.  
 10 Q. Mr. Deeg, in your direct testimony you  
 11 had mentioned that the storage right holders  
 12 generally have a concern about leasing water until  
 13 their supply of water is known; is that a fair  
 14 statement?  
 15 A. That's correct.  
 16 Q. And so is it a fair statement to say  
 17 that you're not sure how much -- whether you can  
 18 lease water at all or -- I shouldn't say at all.  
 19 But some of these leases are difficult  
 20 to come by until allocation occurs?  
 21 A. It's difficult to raise as large  
 22 amount of water as we've had to this year --  
 23 Q. Okay.  
 24 A. -- before the date of allocation.  
 25 Q. Based upon your experience, does the

1 A. I really couldn't -- I don't know what  
 2 it is.  
 3 Q. Okay. And what percentage of the CREP  
 4 program have you guys contributed to? Do you  
 5 remember that?  
 6 A. We contributed a signing bonus, which  
 7 was \$30 an acre, one-time fee.  
 8 Q. And what's the total benefit per acre  
 9 so I can figure percent of what you're  
 10 contributing?  
 11 A. Total -- say it again.  
 12 Q. What's the total benefit per acre?  
 13 You're providing \$30, and what's the total  
 14 provided per acre from CREP?  
 15 A. It varies anywhere from, I believe,  
 16 100 to maybe close to \$150 an acre, 140-something.  
 17 Q. Okay. Is there any way from the  
 18 records of your company it can be shown what the  
 19 percentage benefit IGWA and its members provide  
 20 versus what governmental entities provide?  
 21 A. I don't know if -- I don't believe  
 22 there's probably any of those numbers available,  
 23 but maybe they are. I don't know. But I will say  
 24 that IGWA was instrumental in getting CREP  
 25 initiated in Idaho.

1 amount of fill of the reservoirs affect the  
 2 availability of water --  
 3 A. To some degree.  
 4 Q. -- for lease?  
 5 A. To some degree.  
 6 Q. And Mr. Budge and I kind of engaged in  
 7 an exchange earlier about this 50,000 acre-feet,  
 8 understanding that you, I believe, testified that  
 9 you derived from your expert witness about the  
 10 mitigation required by members of IGWA versus  
 11 others located in the common ground water area.  
 12 Are you familiar with what I'm talking  
 13 about?  
 14 A. I think I understand. I didn't hear  
 15 that part of it.  
 16 MR. FLETCHER: Okay. Never mind. I have  
 17 no further questions. Thank you.  
 18 THE HEARING OFFICER: Okay. Mr. Arkoosh,  
 19 Mr. Thompson, I don't think you've had an  
 20 opportunity.  
 21  
 22 CROSS-EXAMINATION  
 23 BY MR. ARKOOSH:  
 24 Q. Mr. Deeg, what percentage of CAMP does  
 25 members of IGWA pay? Do you know?

1 Q. Would you look at Exhibit -- your  
 2 Exhibit 2001, please, Mr. Deeg.  
 3 A. Okay.  
 4 Q. My understanding is from your last  
 5 answer to Mr. Fletcher is that you have a lot of  
 6 difficulty in uncertain years obtaining water  
 7 until after date of allocation for a couple  
 8 reasons: One, your lessors don't know how much  
 9 water they'll have available, and secondly the  
 10 price isn't set.  
 11 Are those the two reasons?  
 12 A. Those are some of them.  
 13 Q. And then regarding rental pool water,  
 14 you won't know whether that's -- you'll never know  
 15 that at May 14th, that will always be at least 30  
 16 to 60 days subsequent to May 14th, whether you'll  
 17 have rental pool water; is that correct?  
 18 A. Probably, that's correct.  
 19 Q. Both because there's 14 days  
 20 subsequent to allocation to obtain the water, plus  
 21 you don't know the pricing until date of  
 22 allocation; is that correct?  
 23 A. True.  
 24 Q. Okay. But notwithstanding any of  
 25 that, if I understand your testimony correctly,

1 that water is always available; is that right? Is  
 2 that your position?  
 3 A. That is my position.  
 4 Q. Okay. It's just a matter of price?  
 5 A. It's a matter of price and timing.  
 6 Q. Well, you said as the supply goes  
 7 down, the price goes up; is that an accurate  
 8 quote?  
 9 A. That's true.  
 10 Q. Okay. You indicated that you didn't  
 11 put names and prices in the lease in order to make  
 12 those matters hard to verify in the marketplace  
 13 because you were out competing in the marketplace;  
 14 is that correct?  
 15 A. That's correct.  
 16 Q. Don't those -- doesn't that same lack  
 17 of information make it difficult for the Director  
 18 to verify the adequacy and accuracy of your  
 19 submittal?  
 20 A. It might in this instance where the  
 21 Director -- but I have submitted information to  
 22 the prior Directors and didn't provide that same  
 23 information, and it was adequate.  
 24 Q. Okay. When's the last time you  
 25 visited with Dr. Brendecke prior to this hearing

1 A. I might give -- no, I think it's more  
 2 of a contract between the two of us.  
 3 Q. Well, let's just pick the first one.  
 4 A. Okay.  
 5 Q. The first one is with Idaho Irrigation  
 6 District.  
 7 It's fair to say that that's the same  
 8 as all the rest, except for the blanks that are  
 9 filled in; isn't that correct?  
 10 A. Okay.  
 11 Q. It says, "The undersigned lessor  
 12 reservoir spaceholder hereby grants to IGWA an  
 13 option to lease the following quantities of  
 14 storage water for the 2010 irrigation season"; is  
 15 that accurately read?  
 16 A. I would assume it does.  
 17 Q. So IGWA's not obligated to lease it,  
 18 but you have the option to lease it for the price  
 19 and terms set out in the option agreement?  
 20 A. True, probably. Yes.  
 21 Q. Okay. So your concern about wasting a  
 22 lot of water if you get too much on option is  
 23 inaccurate?  
 24 A. I don't believe it's inaccurate. I  
 25 believe should we have a lot of additional water

1 date?  
 2 A. It's been some time ago.  
 3 Q. Okay. By "some time," you mean six  
 4 months?  
 5 A. Probably.  
 6 Q. Okay. A lot of these one-page  
 7 documents I see in Exhibit 2002, the filing of  
 8 May 13th, 2010, are what are labeled "Storage  
 9 water options."  
 10 Are you familiar with that document?  
 11 A. 200 --  
 12 Q. 2002. Excuse me.  
 13 A. Okay.  
 14 Q. A lot of the one-page documents we've  
 15 been referring to are leases of storage water  
 16 options; is that correct?  
 17 A. Yes.  
 18 Q. And as I understand it, you send these  
 19 forms out and you get a response, and then if IGWA  
 20 accepts the essentially offer made, then you sign  
 21 it, and then it becomes a water option?  
 22 A. Yes.  
 23 Q. And an option, as I understand it, is  
 24 something that gives the optionor, IGWA, the  
 25 opportunity to accept or reject; is that right?

1 left over that we purchased, we could potentially  
 2 see that go out the end of the system.  
 3 Q. Well, maybe we're talking at cross  
 4 purposes, because as I read the document, you're  
 5 not purchasing the water yet, and you're not  
 6 obligating yourself to pay \$20 an acre-foot, but  
 7 you're obtaining an option to get the water at \$20  
 8 an acre-foot?  
 9 MR. BUDGE: Excuse me, Counsel, for  
 10 interrupting. But was your question being posed  
 11 with respect to this storage water option before  
 12 Mr. Deeg had signed his acceptance? It says,  
 13 "IGWA's acceptance of offer." Or were your  
 14 questions prefaced on when the offer is received  
 15 before he signs acceptance? If you'll just  
 16 clarify that.  
 17 MR. ARKOOSH: Thank you very much.  
 18 Q. My questions are prefaced as of  
 19 May 13th when you submitted this to the Director.  
 20 According to the face of the document,  
 21 you bought on option to purchase water at \$20 an  
 22 acre foot -- actually, lease water at \$20 an  
 23 acre-foot.  
 24 Is this something different? Have you  
 25 written a check for this water? You're committed

1 to this water or --  
 2 A. I believe we're committed for this  
 3 water.  
 4 Q. Even though it's drafted as an option?  
 5 A. I believe we're committed.  
 6 Q. Okay.  
 7 A. I've signed it as an offer. They  
 8 signed it as an option. And I've committed that  
 9 we're going to do it.  
 10 Q. Even though the language is -- that's  
 11 what the language is, option to lease something  
 12 means to you that you're required to do it?  
 13 A. We're required. I accepted the offer.  
 14 Q. Okay. All right.  
 15 MR. BUDGE: If you think you could get us  
 16 out of that, maybe we could employ you as special  
 17 counsel.  
 18 THE HEARING OFFICER: Well, I'm glad  
 19 Mr. Arkoosh pursued this particular question  
 20 because an option agreement, as I've always seen  
 21 them, are signed by both parties, earnest money  
 22 agreements are signed by both parties. I don't  
 23 see what the cost of the option is here.  
 24 But I would interpret this document to  
 25 be an option to be exercised in the future should

1 Q. Okay. Now, in those situations where  
 2 you use all of this option water, doesn't it go to  
 3 last to fill, doesn't that become the priority on  
 4 this water the next year?  
 5 A. As near as I know it does, according  
 6 to the rules.  
 7 Q. So if you have a tough year next year,  
 8 you can't option the same water unless the system  
 9 fills to the final priority; is that correct?  
 10 A. I -- I guess that's the way it works.  
 11 Q. Okay.  
 12 A. I think that's the way it works.  
 13 Q. Are you familiar with both -- orders  
 14 by both Director Tuthill and Director Dreher that  
 15 individuals cannot submit mitigation plans, it's  
 16 got to come through your organization?  
 17 A. I -- I don't remember. I know we had  
 18 some issues about that.  
 19 Q. Would you look at Exhibit 1002.  
 20 A. Okay.  
 21 Q. It's called "Order regarding IGWA  
 22 mitigation obligation," is it not?  
 23 A. Yes.  
 24 Q. And then it shows in that order an  
 25 obligation of first 84,000 and then on page 3 it's

1 IGWA decide to exercise the option. So if it's  
 2 different than what's -- what the normal  
 3 interpretation of the document is on its face, I  
 4 think that needs to be clarified because I would  
 5 have interpreted it otherwise.  
 6 MR. ARKOOSH: Well, I might just suggest  
 7 for the membership, you're signing -- if you want  
 8 some free legal advice, you're signing options.  
 9 You're not signing leases.  
 10 MR. FLETCHER: They already hired you, Tom.  
 11 What more do you want?  
 12 Q. (BY MR. ARKOOSH): So if the document  
 13 on its face isn't exactly what it says and you go  
 14 ahead buy this water -- or lease -- I'm sorry, you  
 15 don't buy it, you lease this water, even though  
 16 it's not required to mitigate, what do you do with  
 17 the water you don't use for the mitigation? What  
 18 do you do with it?  
 19 A. Well, we may do some recharge with it.  
 20 We may try to carry some of it over, if possible.  
 21 Q. Well, isn't it currently sitting in  
 22 the account of the --  
 23 A. Spaceholders.  
 24 Q. -- lessor reservoir spaceholder?  
 25 A. That's correct.

1 reduced to 68,400?  
 2 A. Yes.  
 3 Q. Okay. There's no ambiguity in the  
 4 title of that document, it's IGWA's obligation; is  
 5 that correct?  
 6 A. That's what it says.  
 7 Q. Okay. So when you were representing  
 8 you thought you had enough water based on a  
 9 \$50,000 cut -- or 50,000 acre-foot cut because of  
 10 Dr. Brendecke's representations, you hadn't talked  
 11 to him for a long time, had you?  
 12 A. I hadn't personally talked to him. I  
 13 had talked to -- relayed messages through counsel.  
 14 Okay?  
 15 Q. Prior to the time you made those  
 16 representations?  
 17 A. "Prior to the time you made those" --  
 18 Q. You made those representations  
 19 regarding your belief you had enough water at  
 20 50,000 acre-feet on May 13th.  
 21 A. On -- on May 13th, no.  
 22 Q. It was after that time that you spoke  
 23 with Mr. -- Dr. Brendecke through counsel?  
 24 A. No, it wasn't after. It was before.  
 25 Q. Before that time?

1 A. Yes.  
 2 Q. So you assumed that even though you  
 3 were under order 1002 that it wasn't IGWA's  
 4 obligation, part of that obligation was somebody  
 5 else's?  
 6 A. Yes, that was my -- my interpretation  
 7 as well.  
 8 Q. Okay. Do you have a different  
 9 interpretation today?  
 10 A. No. I still am under that  
 11 interpretation.  
 12 Q. When you told the District Court that  
 13 you were obligated for 27,000 acre-feet in  
 14 District 130, you were telling the District Court  
 15 that in order to establish irreparable harm in the  
 16 event you did not receive a stay against the  
 17 Director; isn't that correct?  
 18 A. Say it one more time. Would you  
 19 repeat the question?  
 20 Q. When you told the District Court that  
 21 IGWA was obligated for 27,000 acre-feet in 130,  
 22 you were making that representation under oath to  
 23 the District Court for the purposes of  
 24 establishing irreparable harm if the District  
 25 Court did not give you a stay against the Director

1 Q. On that issue I guess Mr. Arkoosh just  
 2 discussed with you, Exhibit 2004 is your  
 3 application to the common pool in Water District 1  
 4 rental pool; is that correct?  
 5 A. Yes.  
 6 Q. And to your knowledge, this  
 7 application hasn't been accepted yet, has it? Is  
 8 that correct?  
 9 A. I don't --  
 10 Q. As far as executed and the amount of  
 11 water for IGWA.  
 12 A. Yes, that's true. But there aren't  
 13 any that have been accepted or executed as I'm  
 14 aware of today.  
 15 Q. Right. And were you at the Committee  
 16 of Nine meeting held in Pocatello on April 22nd?  
 17 A. No, but I think I should have been.  
 18 Q. So you weren't aware that the  
 19 Committee of Nine required an applicant to submit  
 20 a rental pool rate of \$14 per acre-foot with its  
 21 application for this year?  
 22 A. I was not aware of that.  
 23 Q. Going back to questions asked by  
 24 Mr. Budge where he discussed prior mitigation  
 25 obligations under prior orders, 2007.

1 issuing a curtailment order?  
 2 A. That's true.  
 3 Q. Were you at the water board meeting  
 4 when the rental pool price was set at 14?  
 5 A. No, I was not.  
 6 Q. Okay. Have you had any discussions  
 7 with whoever decided it was set at 6 for your  
 8 purposes?  
 9 A. Had any discussions with anyone?  
 10 Q. How did your price for the rental pool  
 11 get set?  
 12 A. We assumed that the -- from what our  
 13 knowledge was from the Bureau that the system was  
 14 going to fill and that the rental pool price would  
 15 be \$6.  
 16 MR. ARKOOSH: Okay. Thank you, Mr. Deeg.  
 17 THE HEARING OFFICER: Mr. Thompson?  
 18  
 19 CROSS-EXAMINATION  
 20 BY MR. THOMPSON:  
 21 Q. Good afternoon, Mr. Deeg. Travis  
 22 Thompson --  
 23 A. Hi Travis.  
 24 Q. -- members of the Coalition.  
 25 A. Good afternoon.

1 Isn't it true that those prior orders  
 2 were approving replacement water plans, not  
 3 mitigation plans?  
 4 A. That's true.  
 5 Q. And those were directed toward prior  
 6 injury orders, not any orders modified by any  
 7 District Court decisions; is that correct?  
 8 A. That's correct.  
 9 Q. Looking at Exhibit 2002, the first  
 10 lease agreement I believe with  
 11 Aberdeen-Springfield Canal Company, you indicated  
 12 that this was an automatic renewal contract every  
 13 year unless it's terminated; is that correct?  
 14 A. Yes.  
 15 Q. And at least for this particular  
 16 agreement, that termination date is on or before  
 17 February 1st; is that true?  
 18 A. That's true.  
 19 Q. So it's true that IGWA doesn't know  
 20 what water it has to lease, at least under this  
 21 agreement, until February 1st of the year; is that  
 22 right?  
 23 A. That's correct.  
 24 Q. Is that date different for other  
 25 lessors?

1 A. I think we've tried to standardize the  
2 leases, so they should be the same, but --

3 Q. I guess I'll just represent to you  
4 from another exhibit that the order 4002 that was  
5 withdrawn, there are other lease agreements, and  
6 one of them has April 15th as that date --

7 A. Okay.

8 Q. -- I guess.

9 So if that date is different, would  
10 you agree that you wouldn't know until April 15th  
11 whether or not you have water?

12 A. That's -- that's true.

13 Q. And I guess based upon your experience  
14 this season, isn't it true that the lessors may  
15 not identify what is available to IGWA to provide  
16 for mitigation early in the season?

17 A. They would -- the minimum is  
18 identified in the form of the lease. So there is  
19 a certain amount of water that is provided unless  
20 they notify us earlier.

21 Q. And then on that same Exhibit 2002,  
22 the lease with Aberdeen-Springfield Canal Company,  
23 paragraph 1.1 identifies that -- that either party  
24 may reduce the quantity down to the minimum no  
25 later than May 1st.

1 A. We did not have those in place because  
2 of the time frame to get it done.

3 Q. So did you have an offer for 84,000  
4 acre-feet that was just beyond what IGWA was  
5 willing to pay?

6 A. We did not have an offer. Well,  
7 close. Maybe.

8 Q. Okay. Maybe. You don't know?

9 A. Right.

10 Q. So at least as of this year, you  
11 weren't able to acquire --

12 A. That's right.

13 Q. -- 84,300 feet?

14 A. To meet -- to meet that deadline, no.

15 Q. Okay. I guess could IGWA remedy the  
16 unknown of not having storage available? Under  
17 these leases you don't know until February 1st,  
18 and some of them until April 15th, at least up  
19 until May 1st what that amount is, by having a  
20 long-term lease in place for a certain amount of  
21 water?

22 A. Yes, that would be one solution.

23 Q. But presently IGWA doesn't have any of  
24 these type of leases in place?

25 A. No, we don't have a long-term lease.

1 A. Right.

2 Q. And that's dependent upon the year,  
3 dependent upon the parties' wishes?

4 A. Yes.

5 Q. I believe you testified that you admit  
6 that IGWA did not have 84,300 acre-feet as of  
7 May 13th, as required by the Director's As-Applied  
8 Order; is that correct?

9 A. That's true.

10 Q. And I guess based upon that experience  
11 and the efforts that IGWA made to go out and get  
12 water this spring in that April/early May time  
13 frame, would you agree that water is not always  
14 available to acquire?

15 A. No, I think water is available to  
16 acquire. There is water. It just takes a certain  
17 dollar price to get it.

18 Q. So the 84,300 acre-feet could have  
19 been acquired had you been willing to pay a  
20 certain price?

21 A. I think given the short time frame, it  
22 was difficult to get the leases in place to  
23 acquire the 84,000 acre-feet.

24 Q. You didn't have those in place by  
25 May 13th; is that right?

1 We are working on that as we speak.

2 Q. Okay. A question on -- if you could  
3 look at Exhibit 2001 and 2002.

4 Do you have lease agreements with the  
5 entities identified on the first column on 2001  
6 that are different than the options identified in  
7 2002?

8 A. What are you asking me?

9 Q. Do you have lease agreements with the  
10 entities in the column 1 that are different than  
11 what is identified in Exhibit 2 with the option  
12 agreements, with the same entity? I'll give you  
13 an example, Mr. Deeg, just to be quick.

14 A. Okay.

15 Q. Idaho Irrigation District you have an  
16 option for 10,000 acre-feet this year; is that  
17 correct?

18 A. Yes.

19 Q. And I believe under your existing  
20 lease agreement with Idaho Irrigation District,  
21 your maximum available water to be leased on a  
22 renewed basis year to year is 3,000 acre-feet.

23 Is that different than the option, is  
24 my question?

25 A. I'm not sure that it --

1 Q. Let me rephrase the question.  
 2 Are the options renewable every year  
 3 from here on out?  
 4 A. No, they're not renewable.  
 5 Q. Okay.  
 6 A. They were kind of a new lease.  
 7 Q. So the options identified in  
 8 Exhibit 2002 may not be automatic renewal, as  
 9 listed in the column on Exhibit 2001?  
 10 A. True.  
 11 Q. The automatic renewals may be the  
 12 lease amounts that you have identified in signed  
 13 lease agreements with those entities?  
 14 A. True.  
 15 Q. It could be something less?  
 16 A. It could be something else.  
 17 Q. I'll represent to you it is for Idaho  
 18 Irrigation District.  
 19 I have one exhibit I'd like to mark.  
 20 If I could mark this as 4011.  
 21 (Exhibit 4011 marked.)  
 22 Q. (BY MR. THOMPSON): Mr. Deeg, I'm  
 23 handing you a copy of Exhibit 4011.  
 24 Do you recognize that document?  
 25 A. Yes.

1 deliveries in Water District 130?  
 2 A. That's correct.  
 3 Q. Mr. Deeg, were you here for  
 4 Dr. Brendecke's testimony this morning?  
 5 A. I was not.  
 6 Q. And were you aware that he had  
 7 performed no analysis to determine whether IGWA's  
 8 obligation from the latest order was 50,000  
 9 acre-feet or approximately that amount?  
 10 A. Was I aware of that? No.  
 11 Q. You're aware he performed no specific  
 12 analysis to determine that?  
 13 A. I was not aware that he did not.  
 14 Q. And were you aware that he did not  
 15 analyze the location of those ground water rights,  
 16 whether they were located within ground water  
 17 districts or not, to come up with that estimation?  
 18 A. I was not aware of that.  
 19 Q. Okay. And have you performed any  
 20 analysis to determine if IGWA's obligation is  
 21 50,000 acre-feet of that 62,000?  
 22 A. There -- I have done some, yes.  
 23 Q. What have you done?  
 24 A. I've taken the -- and looked at what  
 25 we had as far as processors' agreement. There's a

1 Q. And I believe you testified earlier  
 2 that you hadn't -- didn't know if the private  
 3 leases had been submitted to the rental pool or  
 4 not.  
 5 Does this document refresh your memory  
 6 as to at least one of the private leases?  
 7 A. Yes.  
 8 Q. And does this letter represent that  
 9 10,000 acre-feet from Aberdeen-Springfield Canal  
 10 Company is directed to be delivered to North Side  
 11 Canal Company for conversions in Water District  
 12 130 this year?  
 13 A. That's correct.  
 14 Q. And this was as of April 21st; is that  
 15 correct?  
 16 A. Yes.  
 17 Q. And is that the same 10,000 acre-feet  
 18 identified in Exhibit 2001 under --  
 19 A. Yes.  
 20 Q. -- "Quantity lease minimum" from  
 21 Aberdeen-Springfield, 10,000 acre-feet?  
 22 A. Yes.  
 23 Q. So at least as of April 21st, the  
 24 10,000 acre-feet from Aberdeen-Springfield had  
 25 been committed to North Side Canal Company for

1 10,000 acre-foot commitment from the processors to  
 2 provide mitigation. And so that should have  
 3 reduced the 62,000 significantly.  
 4 Plus we have some of the -- well, CREP  
 5 hadn't been added in earlier, or the conversions.  
 6 And so all of those factoring in should have  
 7 reduced it well below 50,000.  
 8 Q. So if the -- I guess you're disputing  
 9 what the Director has done in that May 17th order  
 10 where he's credited certain factors?  
 11 A. No. I'm just saying I've looked at it  
 12 in terms of what we have had in prior orders and  
 13 looked at what the Director has given us credit  
 14 for and said that number must be substantially  
 15 less for IGWA than what was purported in that  
 16 particular order.  
 17 Q. Based upon prior orders approving  
 18 replacement water plans or --  
 19 A. They're covering replacement water  
 20 plans.  
 21 Q. Okay.  
 22 A. Okay.  
 23 Q. Nothing to do with this year; is that  
 24 correct?  
 25 A. No.

1 Q. So you performed no analysis to go out  
2 and determine the ground water rights affected by  
3 that May 17th order and whether or not their  
4 members of IGWA are within ground water districts;  
5 is that true?

6 A. There are some that aren't. But --  
7 and there are -- there are folks that are outside  
8 Water District 120 that would not be subject to  
9 curtailment that could actually be causing  
10 depletion.

11 MR. THOMPSON: No further questions. Thank  
12 you.

13 (Mr. Bromley leaves the proceedings.)

14 THE HEARING OFFICER: Okay. It is about  
15 quarter to 6:00.

16 Do we want to knock off right now, or  
17 what do we want to do?

18 MR. BUDGE: I have just two or three  
19 questions on redirect. We can finish this  
20 witness.

21 THE HEARING OFFICER: Well, I think that's  
22 fine, even though Mr. Bromley is leaving. If the  
23 other parties are here and counsel, I'm willing to  
24 press forward. I think he would probably agree.  
25 See if we can finish with Mr. Deeg. I hate to

1 REDIRECT EXAMINATION

2 BY MR. BUDGE:

3 Q. Mr. Deeg, you received some questions  
4 about the automatic renewal provision under the  
5 various lease agreements and the fact that a  
6 lessor could give notice and exercise their option  
7 to terminate those that have the signed lease.

8 Do you recall those questions?

9 A. Yes.

10 Q. Since IGWA has been entering into  
11 those types of lease agreements beginning in 2005,  
12 has there ever been an instance that a lessor has  
13 terminated their lease agreement by giving the  
14 notice of termination?

15 A. No, we've never had anyone give notice  
16 of termination.

17 Q. If you'd refer to Exhibit 202 (sic),  
18 where you received questions concerning the  
19 storage water option, and I think if I recall your  
20 testimony was you felt that once you signed that  
21 document on behalf of IGWA it became a binding  
22 obligation?

23 A. I do.

24 Q. Counsel's questions were referring to  
25 the language in the first paragraph where it says

1 hold him overnight.

2 MR. FLETCHER: This would conclude the  
3 As-Applied hearing, wouldn't it?

4 MR. BUDGE: Yes.

5 MR. FLETCHER: So that would be a good  
6 breaking point.

7 THE HEARING OFFICER: Although we still  
8 need him, I guess, for additional testimony in the  
9 mitigation hearing.

10 MR. BUDGE: Yes, and he'll be back  
11 tomorrow.

12 MR. FLETCHER: We can start with a fresh  
13 record tomorrow.

14 MR. BUDGE: We had hoped -- we have about  
15 six questions for Mr. Carlquist, who may not be  
16 available tomorrow, but I guess we won't get to  
17 him.

18 THE HEARING OFFICER: Well, let's talk  
19 about it.

20 MR. BUDGE: Anyway, I'll finish him, and we  
21 can conclude the As-Applied case just very  
22 briefly. And I appreciate everyone's indulgence.

23 ///

24 ///

25 ///

1 "The spaceholder hereby grants to IGWA an option  
2 to lease."

3 Was the practice that you would  
4 receive the document signed by the proposed lessor  
5 giving IGWA the option?

6 A. Yes. We would send those out, and  
7 they would, if they wanted to participate, fill in  
8 the blanks and sign it and send it back.

9 Q. And if you'll look at the instructions  
10 on the bottom, instruction 4 says, "IGWA will sign  
11 and return accepted offers."

12 Do you see that?

13 A. Yes, I do.

14 Q. And then up above the signature line  
15 where you signed as president for IGWA it says  
16 "IGWA's acceptance of offer."

17 A. Yes.

18 Q. So does IGWA take the position that  
19 once an offer has been accepted by your signature  
20 as president it becomes a binding obligation?

21 A. I believe it does.

22 Q. Mr. Arkoosh asked you about talking to  
23 Dr. Brendecke, and you said you hadn't talked to  
24 him for about six months.

25 Do you recall that he participated in

1 a lengthy conference call where you were present  
2 on May 19th, 2010, in my office?

3 A. Yes.

4 Q. And was that the conference call  
5 during which the discussion occurred regarding  
6 IGWA's obligations under the Director's orders?

7 A. Yes.

8 MR. BUDGE: I have one final matter. I'd  
9 like to mark as Exhibit 2004 the --

10 MS. McHUGH: 2005.

11 MR. THOMPSON: 2005.

12 MR. BUDGE: Excuse me, Exhibit 2005. And  
13 I'll just represent to the parties that these are  
14 the leases reflected in the summary that are not  
15 part of the other exhibits that Mr. Thompson I  
16 think was raising question about.

17 (Exhibit 2005 marked.)

18 Q. (BY MR. BUDGE): Mr. Deeg, take a  
19 quick review of Exhibit 2005. And as you review  
20 it, have Exhibit 2001 in front of you and tell me  
21 with respect to the leases that are identified  
22 there as No. 1 through 7, which are  
23 Aberdeen-Springfield through Palisades, and after  
24 you've had a chance to do that, if you can tell  
25 me, if you would, whether Exhibit 2005 is a copy

1 clarify, the only -- may I ask a question just in  
2 aid of objection?

3 THE HEARING OFFICER: Sure.

4  
5 VOIR DIRE EXAMINATION  
6 BY MR. FLETCHER:

7 Q. Mr. Deeg, the only lease that was  
8 furnished to the Director in your supplemental  
9 filing was the Aberdeen-Springfield lease, is that  
10 correct, the very first lease in this packet?

11 A. Supplemental filing?

12 MR. THOMPSON: Exhibit 2002.

13 MR. BUDGE: I think he's referring to  
14 Exhibit 2002.

15 MR. FLETCHER: Yeah.

16 Q. If you look at Exhibit 2002, the one  
17 with the redacted copies.

18 A. Yes, that's correct. That's true.

19 Q. All the rest of these leases that are  
20 in this packet are being furnished to the Director  
21 for the purposes of this proceeding for the first  
22 time today; is that correct? I mean you can look  
23 through that exhibit if you need to.

24 A. That's probably true. That is true.  
25 Okay.

1 of all of the base leases that IGWA has in place  
2 as reflected in the summary items 1 through 6.

3 A. I believe it is.

4 Q. And would that enable you to respond  
5 to the questions that Mr. Thompson raised of why  
6 are some of the leases not included in  
7 Exhibit 2002?

8 A. I --

9 Q. Let me strike that question. I didn't  
10 mean to get ahead of myself and confuse you.

11 Exhibit 2005, then, would be a true  
12 and correct copy of each of the base leases that  
13 reflect the minimum and maximum amount that IGWA  
14 has available under the leases shown in the  
15 summary 2001 which would be for  
16 Aberdeen-Springfield, Enterprise Canal, Idaho  
17 Irrigation, Snake River Valley Irrigation, New  
18 Sweden, and Peoples Canal?

19 A. Yes.

20 Q. Are those true and correct copies of  
21 the original ones that are in place, as far as you  
22 know?

23 A. As far as I know, they are.

24 MR. BUDGE: We'd offer Exhibit 2005.

25 MR. FLETCHER: Your Honor, just again to

1 MR. FLETCHER: With that clarification that  
2 these are being represented to be leases in place  
3 and that only the one lease was actually tendered  
4 to the Director for consideration under his order,  
5 with that understanding, I don't have an  
6 objection.

7 THE HEARING OFFICER: Any other objections?

8 MR. ARKOOSH: We join in Mr. Fletcher's  
9 understanding.

10 THE HEARING OFFICER: Okay. The document  
11 marked as Exhibit 2005 is received into evidence.

12 I still, I guess, after having looked  
13 at this, and particularly for the Idaho Irrigation  
14 lease and the option, the numbers don't match up.  
15 And I guess I still go back to -- at least I don't  
16 think they do. I go back to Mr. Thompson's  
17 question.

18 MR. THOMPSON: I was just trying to clarify  
19 the spreadsheet summary, because I don't -- I  
20 don't think the automatic renewal and the amount  
21 stated -- I think the amount stated includes the  
22 option for this year. And I just wanted to  
23 clarify that the automatic renewal was for the  
24 base lease, not for the option that had been  
25 entered into for 2010. I think Mr. Deeg answered

1 that.  
 2 MR. FLETCHER: The only other mathematical  
 3 issue is the oral lease with Palisades that would  
 4 make the number 4,000 less than I think -- 73,000  
 5 instead of 77,000.  
 6 MR. BUDGE: We'll supplement when the  
 7 Palisades lease becomes available.  
 8 MR. FLETCHER: Otherwise, I believe the  
 9 math.  
 10 THE HEARING OFFICER: I'm willing to accept  
 11 it. I hate to make an issue out of something that  
 12 the parties haven't made an issue out of.  
 13 But, Mr. Thompson, I look at a water  
 14 rights lease agreement for Idaho Irrigation, Idaho  
 15 Irrigation District, and it says it's 3,000  
 16 acre-feet maximum, a thousand -- or a thousand  
 17 acre-feet minimum, per the contract.  
 18 And yet I look at a storage water  
 19 option that I'm assuming is supposed to match up  
 20 with this, and it shows a thousand acre-feet, and  
 21 9,000 additional acre-feet, for 10,000, instead of  
 22 3,000. And so I'm left with a question as to  
 23 whether this option is in addition to this  
 24 contract. But, you know --  
 25 MR. BUDGE: I think the answer is simply to

1 guess I don't know how we reconcile them.  
 2 Maybe we don't, Mr. Budge.  
 3 MR. BUDGE: State again what your --  
 4 THE HEARING OFFICER: Huh?  
 5 MR. BUDGE: -- what the question was.  
 6 THE HEARING OFFICER: Well --  
 7 MR. BUDGE: I didn't hear what you were --  
 8 I didn't follow what you were referring to.  
 9 THE HEARING OFFICER: Well, my  
 10 understanding was that these documents that are  
 11 contained in 2005 are the underlying lease  
 12 agreements for the options that were exercised in  
 13 2002.  
 14 So then I go through and I'm trying to  
 15 match the numbers up, but I look at Idaho  
 16 Irrigation District and the lease agreement, and I  
 17 try to match it up with the option, and the  
 18 numbers don't match up.  
 19 So then my immediate question is, do I  
 20 have a lease agreement that's separate from the  
 21 option that was signed or is one -- is one  
 22 incorporated into the other or is one an extension  
 23 of the other? I don't know the answer.  
 24 MR. BUDGE: That's why, again, I think if  
 25 you look at Exhibit 2001, which Mr. Deeg testified

1 look at Exhibit 2001, which reflects the total  
 2 amount under both, and the prices in the second  
 3 column will show what is the rental pool rate plus  
 4 one, which is not under the base lease. And all  
 5 the water that is at a higher price for \$20 is  
 6 what was obtained under the options that were \$20.  
 7 So Exhibit 2001 becomes the document  
 8 that reflects Mr. Deeg's testimony of what IGWA  
 9 has. The rest is all just supportive documents  
 10 that got filed with the Department.  
 11 MR. THOMPSON: One question, Director. At  
 12 least the storage water option identified for  
 13 Idaho Irrigation District identifies a thousand  
 14 acre-feet, not at the rental pool price identified  
 15 in the lease agreement, but at \$20 an acre-foot,  
 16 an additional 9,000 acre-feet at \$20 an acre-foot.  
 17 I think you're probably right. I  
 18 should object to these lease agreements coming in  
 19 if they don't accurately reflect what is presented  
 20 in this summary or what is presented in  
 21 Exhibit 2002. So I think I would object to the  
 22 admission of this.  
 23 THE HEARING OFFICER: Well, here I am --  
 24 here I've caused a problem. But I just was trying  
 25 to track the numbers. So I don't know how -- I

1 this is what we have right now. And I'll admit  
 2 it's not entirely the most clear from the  
 3 documentation.  
 4 But the reality is simply this: For  
 5 some folks we have base leases, for some we don't.  
 6 When we needed more water, we went out to those  
 7 with the base leases, and some others who we  
 8 didn't have leases with, and say "If we offer you  
 9 \$20, can you come up with some more water right  
 10 away? because we got an order to comply with."  
 11 And so we got back what we got back.  
 12 And there were conversations with the boards and  
 13 people, and at the end of the day is you have with  
 14 some a base lease and they'll say "We'll give you  
 15 some more if you pay us more money."  
 16 And with others we didn't have a base  
 17 lease and they basically said, "Gee, for \$20,  
 18 we'll give you some more."  
 19 So you have this -- it is somewhat  
 20 convoluted trying to chase paperwork down between  
 21 multiple entities on short notice with multiple  
 22 boards and players involved. And that was the  
 23 purpose of the summary, to at least say "Well,  
 24 here's what we know we have in total from all of  
 25 these documents." And that's the one that should

1 be relied on.  
2 THE HEARING OFFICER: I'm willing to -- I'm  
3 willing to accept your explanation and at least  
4 what's been presented as testimony of what the  
5 documents represent, if the other parties are  
6 willing to accept it as well.

7 MR. ARKOOSH: Well, for the record,  
8 Mr. Director, I thought that was the nature of  
9 Mr. Fletcher's objection. You've got -- on  
10 May 14th you've got 2002, and that's what you were  
11 presented.

12 And there's no testimony saying that  
13 these leases are -- the fundament of the options  
14 or the options are given pursuant to the leases.  
15 And I think that explanation says that's probably  
16 correct, they went out, notwithstanding the  
17 leases, and did some things.

18 MR. FLETCHER: See, the way I'm evaluating  
19 this, because I spent some time last night looking  
20 at what I'd been given by that time, and those  
21 leases, Exhibit 2005, are really more appropriate  
22 for the Mitigation Plan hearing. They're not  
23 really particularly important in this hearing,  
24 based -- based upon the testimony, because as I  
25 understand it, the witness has testified to what's

1 (Exhibit 2005 admitted.)  
2 THE HEARING OFFICER: Mr. Thompson.  
3 MR. THOMPSON: Director, Mr. Budge did make  
4 a change to one of these automatic renewals for  
5 Progressive to an option, and I just want to  
6 clarify that I think the same exercise should be  
7 done for all of these amounts that aren't included  
8 in the base lease that are the storage water  
9 option for 2010 so they're not reflected as an  
10 automatic renewal for the amount.

11 Like Idaho Irrigation District, 10,000  
12 acre-feet, that's an option for 2010, not an  
13 automatic renewal based upon a lease, at least  
14 that amount.

15 THE HEARING OFFICER: I would agree. It  
16 appears to me that all of these, except the lease  
17 included for Aberdeen-Springfield Canal Company,  
18 are options and not subject to automatic renewal,  
19 at least that's my understanding of the testimony.

20 MR. THOMPSON: Okay. That's just not  
21 what's reflected on this document right now.

22 THE HEARING OFFICER: So the document is  
23 incorrect, at least with respect to that, to be a  
24 fair representation.

25 MR. BUDGE: I would concur with

1 on 2001.

2 We do have written documentation of  
3 all those things, except for the Palisades lease.  
4 And he's covered that orally. And I guess the  
5 Director has to make a determination about what  
6 your standards are.

7 I guess the bottom line out of all of  
8 this is I'm hoping -- and I'm speaking for myself.  
9 But I'm hoping that the order that comes out of  
10 this will perhaps give us some guidance about what  
11 is required to satisfy the Director in the future  
12 and perhaps provide some clear direction on what  
13 you're going to require so that we're not caught  
14 up in this mishmash of trying to figure out of  
15 what's supplied and what's not and who's doing it.

16 THE HEARING OFFICER: Well, to get over the  
17 issue of the documents, and based on your  
18 explanation, Mr. Fletcher and Mr. Arkoosh, again,  
19 2005 -- what's been marked as 2005 is acceptable  
20 to me with the qualification that this is -- these  
21 leases are not a representation of what was  
22 actually submitted or available by IGWA -- or for  
23 IGWA to satisfy its obligations under the  
24 As-Applied hearing. Okay? So it comes in with  
25 that qualification.

1 Mr. Fletcher. I can say the practice is 2005 has  
2 been able to send the Director a summary of what  
3 leases we've got in place, and never even provided  
4 the leases.

5 The leases get filed in two places,  
6 and all of these leases exist in two places. They  
7 exist in the records of the Department in Idaho  
8 Falls, because each lease requires that we pay  
9 administrative fees. So we send the lease and pay  
10 the fees.

11 We're also required to submit them to  
12 the State water supply bank to pay those fees. So  
13 we got two places they've been filed with the  
14 Department every year in 2005.

15 Same thing we've done this year.  
16 We've provided a lot more paper for -- we've  
17 provided the support with what we did.

18 If what we're doing isn't enough, this  
19 Director wants us to do something different than  
20 past Director's have done, fine. Provide that  
21 clarification and we'll be happy to comply the  
22 best we can.

23 THE HEARING OFFICER: Okay.

24 MR. BUDGE: And I guess I just didn't  
25 expect the Surface Water Coalition to particularly

1 care what we paid and they'd be more concerned  
 2 that we were able to confirm our supply.  
 3 And I would have thought that the  
 4 testimony of the president as to how much water  
 5 we've got, we paid for, has been committed to us,  
 6 would be adequate.  
 7 To the extent there was some  
 8 discrepancy in the records, that certainly is not  
 9 Mr. Deeg's fault. I'll take responsibility to the  
 10 extent we were trying to manage a rather difficult  
 11 problem, particularly in the -- myself personally  
 12 had been primarily doing it up until this year,  
 13 and I was out of the country for a period of three  
 14 weeks and left it in the hands of others to try to  
 15 figure out what I had been doing.  
 16 I still had -- just because it's been  
 17 me testifying, I had just two questions that I  
 18 wasn't quite done with with Mr. Deeg. And I'll  
 19 finish those, and it was simply this, that the --  
 20 MR. FLETCHER: Do we get to cross you?  
 21 MS. McHUGH: Yes, absolutely. Absolutely.  
 22 MR. BUDGE: Actually, as an officer of the  
 23 court, I'll let you swear me in and you can ask me  
 24 whatever you want.  
 25 THE HEARING OFFICER: Well, I know one

1 Department on these leases would be a third filing  
 2 with the Department?  
 3 A. Yes, that's true.  
 4 MR. BUDGE: No further questions.  
 5 THE HEARING OFFICER: Where are we at in  
 6 the order of examination? Recross, I guess.  
 7 MR. FLETCHER: I just have one question.  
 8  
 9 RECCROSS-EXAMINATION  
 10 BY MR. FLETCHER:  
 11 Q. Just to clarify that last issue  
 12 Mr. Budge talked about, it wasn't clear to me if  
 13 he was talking past tense like past years or this  
 14 year.  
 15 A. Past years.  
 16 Q. I believe you had told me that you  
 17 didn't know if they had been filed this year or  
 18 not; is that --  
 19 MR. BUDGE: I was asking the question from  
 20 prior years as we made them --  
 21 Q. (BY MR. FLETCHER): And so your answer  
 22 still is you don't know if they've been filed for  
 23 this year?  
 24 A. I don't know if the 2010 leases have  
 25 been filed this year.

1 attorney in Rupert that if I would have said  
 2 "Mr. Blank, you've been testifying," he'd  
 3 immediately jump me and say "I know when I'm  
 4 testifying. And when I don't know and when I'm  
 5 not testifying, you don't have to tell me."  
 6 MR. ARKOOSH: I can't imagine who that  
 7 might be.  
 8  
 9 FURTHER REDIRECT EXAMINATION  
 10 BY MR. BUDGE:  
 11 Q. Mr. Deeg, with respect to these leases  
 12 that are identified in the written leases in  
 13 2000 -- or excuse me, in Exhibit 2005, to your  
 14 knowledge, has IGWA filed these with the  
 15 Department in the Idaho Falls office as a part of  
 16 your payment of the rental pool fees on an annual  
 17 basis?  
 18 A. Yes, we have.  
 19 Q. And to your knowledge, has IGWA in  
 20 conjunction with the annual payment of the  
 21 administrative fees to the State water supply bank  
 22 also been required to provide leases on an annual  
 23 basis?  
 24 A. We have.  
 25 Q. And so this filing today with the

1 Q. So I need to cross your attorney about  
 2 that?  
 3 A. One of them has, the  
 4 Aberdeen-Springfield.  
 5 Q. Right, that was filed with the spring  
 6 users call.  
 7 Thank you.  
 8 THE HEARING OFFICER: Mr. Arkoosh?  
 9 MR. ARKOOSH: Nothing. Thank you, sir.  
 10 THE HEARING OFFICER: Mr. Thompson?  
 11 MR. THOMPSON: No questions, your Honor.  
 12 I just would move to admit  
 13 Exhibit 4011. That was the April 21st letter.  
 14 THE HEARING OFFICER: Thanks for following  
 15 up. Okay. It's received into evidence.  
 16 (Exhibit 4011 admitted.)  
 17 THE HEARING OFFICER: Any other matters we  
 18 need to present regarding the As-Applied hearing?  
 19 Okay. We'll close the record, then,  
 20 Jeff, in the As-Applied.  
 21 (Hearing concluded at 6:09 p.m.)  
 22 -oOo-  
 23  
 24  
 25

A				
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