

Before the State Workforce Development Council

In the matter of the appeals of:)
)
 PANHANDLE AREA COUNCIL;)
 CLEARWATER ECONOMIC)
 DEVELOPMENT ASSOCIATION; SAGE)
 COMMUNITY RESOURCES; REGION IV)
 DEVELOPMENT ASSOCIATION; and)
 SOUTHEAST IDAHO COUNCIL OF)
 GOVERNMENTS, INC.;)
 Appellants,)
)
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)
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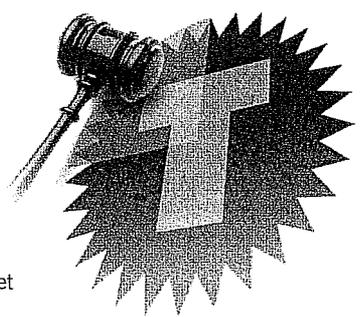
BEFORE
 D.DUFF McKEE
 Hearing Officer

Held on WEDNESDAY, SEPTEMBER 28, 2005
 9:00 a.m.

Reported by
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ALSO PRESENT:

Joe Herring, Executive Director, Region IV
Kathleen Lewis, Executive Director, Region V
Dave Jett, Board Chair, Sage Community Resources, Region III
James Gruber, Finance Director, Sage Community Resources
Alice Taylor, Workforce Development Council

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- 101 Letter from Roger Madsen to John Currin dated 193
September 28, 2004

1 BOISE, IDAHO
 2 Wednesday, September 29, 2005, 9:01 a.m.
 3
 4 HEARING OFFICER MCKEE: Good morning,
 5 everyone. I'm going to open the record at this
 6 time.
 7 This is the time and place set for the
 8 hearing in the matter of the appeals of the
 9 Panhandle Area Council, Clearwater Economic
 10 Development Association, Sage Community Resources,
 11 Region IV Development Association, and Southeast
 12 Idaho Council of Governments.
 13 This is the matter pending before the
 14 Idaho State Workforce Development Council.
 15 My name is Duff McKee. I'm the hearing
 16 officer in this matter. I've been appointed by
 17 the chairman of the Workforce Development Counsel
 18 to hear this matter pursuant to the terms of the
 19 WIA plan.
 20 The letter of appointment is contained
 21 in the agency file. I think that the parties and
 22 counsel have received a copy of that letter from
 23 Chairman McGee.
 24 At this time, I would ask that the
 25 parties and their counsel identify themselves. If

1 HEARING OFFICER MCKEE: That is Region V?
 2 MS. LEWIS: V, yes.
 3 MR. JETT: I'm Dave Jett, Board Chair from
 4 Sage Community Resources, Region III.
 5 MR. GRUBER: Jim Gruber, Finance Director
 6 for Sage Community Resources.
 7 HEARING OFFICER MCKEE: Anyone else?
 8 Thank you. This matter is on appeal
 9 from decisions made by the Governor pursuant to
 10 the plan, and those appeals have been filed by the
 11 Regions I, II, III, IV, and V.
 12 We have had certain preliminary
 13 proceedings. There are preliminary orders that
 14 were entered in this matter by Chairman McGee.
 15 There was a preliminary order that was entered by
 16 a prior hearing officer on procedural issues, and
 17 there was a preliminary order governing
 18 proceedings that I entered on September 19th.
 19 I indicated in the order that I entered
 20 that to the extent any of the previous procedural
 21 orders were not inconsistent, that all of the
 22 procedural matters would remain in effect.
 23 At this time, I'd offer counsel for the
 24 appellants and Ms. Keefer an opportunity to make
 25 an opening statement, outline what their positions

1 counsel would state their appearances, please.
 2 Mr. Kelso, let me start with you.
 3 MR. KELSO: Certainly. My name is
 4 Starr Kelso. I'm here representing Regions I,
 5 III, IV, and V.
 6 MS. KEEFER: I'm Wanda Keefer. I'm the
 7 Executive Director of the Clearwater Economic
 8 Development Association. I'm representing the
 9 Region II, and I'm not an attorney.
 10 MR. BLEDSOE: Craig Bledsoe, Deputy Attorney
 11 General, Department of Commerce and Labor,
 12 representing the Department of Commerce and Labor.
 13 HEARING OFFICER MCKEE: Anyone else who
 14 wishes to identify themselves for the record?
 15 If for whatever reason you need to have
 16 a notation in the record of your presence, I'll
 17 offer you the opportunity to so identify
 18 yourselves at this time.
 19 MR. HERRING: I'm Joe Herring. I'm the
 20 Executive Director of the Region IV Development
 21 Association.
 22 MS. LEWIS: Kathleen Lewis, Executive
 23 Director of -- or I will give you the initials if
 24 you want; SICO, which stands for the long name.
 25 Southeast Idaho Council of Governments.

1 are.
 2 Mr. Kelso, I'll let you go -- or
 3 Ms. Keefer, I'll let you decide who is going to go
 4 first.
 5 MR. KELSO: Could I inquire first as to the
 6 documentation we were required through your last
 7 order to submit, a list of exhibits and witnesses,
 8 and that was sent down to you, care of
 9 Alice Taylor.
 10 And apparently those documents that
 11 were -- at least some of them are not here in the
 12 meeting room. Ms. Taylor indicated she wasn't
 13 aware she was supposed to bring them with her, and
 14 so before we start, perhaps it would be a good
 15 idea to have those documents here.
 16 HEARING OFFICER MCKEE: I have an exhibit
 17 witness list that you submitted, Mr. Kelso, dated
 18 September 23rd.
 19 MR. KELSO: Correct.
 20 HEARING OFFICER MCKEE: And I think it was
 21 submitted to Ms. Taylor, and she provided me a
 22 copy.
 23 Is that what you are talking about?
 24 MR. KELSO: No. I'm talking about the
 25 exhibits that I specifically asked that she bring

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1 with her.

2 HEARING OFFICER MCKEE: What do you want?

3 MR. KELSO: Well, if you look at the second

4 paragraph, it's pretty clear what I want. I want

5 all the documents that were filed, all the

6 correspondence that was back and forth with

7 Chairman McGee.

8 HEARING OFFICER MCKEE: Why?

9 MR. KELSO: For the record.

10 HEARING OFFICER MCKEE: They are in the

11 record.

12 MR. KELSO: Well, I guess that's a good

13 interesting point, because our discussion before

14 was that there was a distinction between what was

15 lodged and was an exhibit. So, if they are in the

16 record as exhibits, then I would like to know.

17 HEARING OFFICER MCKEE: What I'm

18 understanding is that the correspondence between

19 Chairman McGee, for example, and the parties is

20 part of the administrative record of the case.

21 If you have instruments that you want

22 to submit in addition to that, why certainly I

23 will take them as exhibits.

24 MR. KELSO: I would like to see them here.

25 I would like to see that administrative record.

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1 HEARING OFFICER MCKEE: Why?

2 MR. KELSO: Just because I would like to see

3 what is in the record before I proceed.

4 HEARING OFFICER MCKEE: No. Counsel, we are

5 going to go forward right now, please.

6 MR. KELSO: Well, I'm trying to make a

7 record here, and my understanding is that you are

8 refusing to bring what you refer to as the record,

9 the administrative record that is part of this

10 proceeding, to this conference room.

11 HEARING OFFICER MCKEE: Any piece of paper

12 that you want, but if it's just idle curiosity you

13 want to look at it, make an opportunity for you to

14 go look at it at a recess; that's fine.

15 If you want to call my attention to a

16 document that's in the record, I am assuming you

17 have copies of all this stuff, call my attention

18 to it. I will take judicial notice of anything

19 that's in the record.

20 Just packing it around, I don't

21 understand. I mean, I've been doing this for a

22 long time. Ordinarily you don't pack stuff around

23 out of idle curiosity. I will make you an

24 opportunity for you to see anything you want.

25 MR. KELSO: And I know that the Supreme

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1 Court, when they hear appeals, takes a U-haul van

2 with them so that the documents that are in the

3 record are there.

4 So all I'm asking is, whatever

5 documents you feel are in the record, as you have

6 defined the record here, I would like to see what

7 those documents are.

8 HEARING OFFICER MCKEE: Let me turn it

9 around the other way. What instrument are you

10 concerned about that you think might not be in the

11 record and we'll make sure it's covered.

12 MR. KELSO: Well, all of them, because I

13 don't know what's in the record.

14 HEARING OFFICER MCKEE: What does it consist

15 of; the file folder or box or what?

16 MS. TAYLOR: I have file folders.

17 HEARING OFFICER MCKEE: How many?

18 MS. TAYLOR: Lots.

19 HEARING OFFICER MCKEE: What are we talking

20 about in task; is it just a ten-minute task to go

21 across the street and get them and come over here?

22 MS. TAYLOR: Just the ones from Mr. Kelso?

23 HEARING OFFICER MCKEE: I don't know. If

24 you understand what Mr. Kelso is asking for. I

25 went over that list with you, and I took out what

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1 I thought I needed and I have got them right here.

2 And I provided a list to counsel of what I

3 considered to be the working file of the

4 instruments that were necessary for this hearing.

5 And I provided this to counsel. It's

6 entitled "Workforce Development Council Appeal

7 Table of Contents" bottom up. I think there are

8 now 25 documents in it.

9 From my concept, for my purposes as a

10 hearing officer, given the scope of my review,

11 which I reviewed to counsel and presented to you

12 in the order of September 23rd, that I considered

13 to be the operative file.

14 Now, frankly, I didn't take out

15 notices, for example. I didn't take out

16 administrative correspondence because I didn't

17 think that I needed that for my purposes.

18 I have no problem if you need any of

19 that -- any of those instruments for this hearing

20 that you want to call to my attention. I have no

21 problem if you call it to my attention. I will

22 make sure that I get it and take a look at it.

23 As far as it being part of the file for

24 wherever this is going from here, it is; it's in

25 the file. I think Ms. Taylor provided -- she

1 provided me a spreadsheet of the documentation,
2 which I examined for the purpose of building a
3 working file, which I brought with me.

4 MR. KELSO: And that list didn't contain all
5 the documents that were requested. And it was
6 specifically requested that she bring those with
7 her, and specifically requested that all those
8 documents be part of the record.

9 This is a hearing. A record is to be
10 established. It's difficult to establish what the
11 record is if those documents aren't here, and I
12 don't necessarily agree with those documents that
13 you have identified as being relevant.

14 And what I'm trying to do is develop a
15 record. So I would request that those documents
16 be brought here and be -- so I can physically see
17 which those documents are to make sure they are
18 the ones that should be there in the record.

19 Whether you choose to evaluate them or
20 take them into consideration is your discretion as
21 a hearing officer, but it's my obligation to make
22 a record.

23 HEARING OFFICER MCKEE: I have no problem.
24 You can make any record that you want. My
25 struggle is the physical requirement of bringing

1 MR. KELSO: It's my understanding that we
2 have been instructed to proceed, and that I have
3 not been given an opportunity to review those
4 documents that the Hearing Officer believes are
5 part of the record.

6 And I have identified, just in the
7 three to five minutes I have had a chance to look
8 at those documents, that they contain
9 inappropriate documents that have to do with
10 matters that are not related to this
11 administrative hearing appeal process.

12 There are files in there with regards
13 to District Court case, State District Court case,
14 Federal District Court case.

15 HEARING OFFICER MCKEE: Let me --

16 MR. KELSO: Let me finish.

17 HEARING OFFICER MCKEE: No. I want to make
18 this point: You have asked for what I considered
19 to be the administrative record, and I advised
20 counsel that I looked at and extracted what I
21 considered to be the administrative record that I
22 need necessary for this appeal. I have provided a
23 copy of that index to counsel. It's the file that
24 I have with me at the desk.

25 Mr. Kelso, you said you wanted

1 over the files for you to look at.

2 MR. KELSO: I would be happy to carry them
3 over.

4 HEARING OFFICER MCKEE: I'm assuming that
5 you have copies of all of this because the
6 correspondence all involves the regions and the
7 chairman. And I would certainly accept copies of
8 whatever you've got as an exhibit.

9 I would take a look at it, and I'd take
10 judicial notice. I'm just struggling with this
11 concept of trying to assemble, in the middle of a
12 hearing, an administrative file.

13 MR. KELSO: Well, it's my understanding they
14 are assembled; they are in files. I don't see
15 what the issue is to bring the files over and put
16 them on the table so they can be examined.

17 If there is something that is missing
18 that I feel is important, then I'll supplement it,
19 but I would like to see the record as it exists.

20 HEARING OFFICER MCKEE: How long would it
21 take?

22 MS. TAYLOR: Ten minutes.

23 HEARING OFFICER MCKEE: Recess 15 minutes.
24 (Court in Recess.)

25 HEARING OFFICER MCKEE: Make your record.

1 everything. Okay. Now you have got everything.
2 What's in the file is every piece of paper that
3 has been submitted to the Workforce Development
4 Council in connection with anything touching on
5 the subject.

6 You are right. It includes all kinds
7 of stuff because there are District Court actions
8 pending. I don't have that stuff in my file. I
9 didn't want it. And I agree with you. It doesn't
10 have anything to do with what is here today. It
11 is not relevant to the administrative proceeding,
12 and I said I wasn't interested in looking at or
13 reviewing what is going on in the District Court.
14 That is the matter for the District Court to pay
15 attention to.

16 I'll say again, the administrative
17 record that I consider relevant -- counsel have an
18 index of it, and you know what it is. I will
19 certainly take judicial notice of anything else
20 that is in the agency file that you think is
21 relevant to this, but what's in that -- if it's
22 not on this list, I don't have it and I haven't
23 looked at it.

24 I will certainly look at anything that
25 you want to present to me from your file, exhibits

1 identified by a witness or from the agency file.
 2 Anything you want, I'll take into account.
 3 I'll take administrative notice of
 4 what's in the files of the agency, and I will
 5 consider as an exhibit any document that you want
 6 to offer upon proper authentication.
 7 But the comment that what's in the file
 8 is not necessarily relevant to this proceeding, I
 9 agree; it's not. That's why I made the
 10 preliminary call and I provided counsel with an
 11 index of what I would look at because of what is
 12 obviously relevant.
 13 Now, with that background, I'll let you
 14 make whatever record you want.
 15 MR. KELSO: And the record is, we don't know
 16 the basis for your determination of what is
 17 relevant and what isn't relevant and whether that
 18 is appropriate or not. And ultimately, if this
 19 thing -- you know, the hand gestures don't do any
 20 good, Mr. McGee.
 21 HEARING OFFICER MCKEE: My name is McKee.
 22 I've been a district judge in this state for
 23 20 years. I would appreciate it if you would
 24 pronounce my name correctly if you are going to
 25 make a record.

1 MR. KELSO: You are operating as a hearing
 2 officer. It's my understanding that you are
 3 retired, and your status today is as a hearing
 4 officer, am I incorrect? Are you here as some
 5 sort of a district judge?
 6 HEARING OFFICER MCKEE: No, sir. I just
 7 asked you to pronounce any name correctly.
 8 MR. KELSO: I believe I did. There is a
 9 McGee and a McKee, and they both sound a lot alike
 10 the way I speak. So I apologize if my speech
 11 isn't correct enough for you and you get terribly
 12 upset. I particularly don't get terribly upset
 13 when people call me Stan.
 14 I would like the record to reflect that
 15 essentially what's going on so far is a dialogue
 16 of hostility by the Hearing Officer. And I would
 17 move then, since we don't know what's in the
 18 administrative record that you have defined as the
 19 record, that the two volumes, the tapes, the
 20 exhibits that I indicated that I would be filing
 21 that are located over there, and the files that
 22 were brought over be marked one, two, three, four,
 23 five, six, seven, eight, nine, and ten.
 24 And you take into consideration -- as
 25 you said you will, what's in there, and you

1 determine what is relevant and what isn't. And
 2 then we will argue from there.
 3 HEARING OFFICER MCKEE: Make a record on
 4 what you are offering now.
 5 MR. KELSO: Well, they are not identified by
 6 any numbers or any exhibit stickers. One of the
 7 primary issues is procedural rights. And I have
 8 practiced in Idaho, Montana, Colorado particularly
 9 extensively, and I have never been involved in a
 10 hearing where the procedure is unknown and there
 11 are no exhibit stickers to identify what the
 12 exhibits are.
 13 There is a Hearing Officer Volume
 14 No. 1. There is a Hearing Officer Volume No. 2.
 15 There's three tapes of telephonic conferences that
 16 were not recorded by a court reporter. There's
 17 two -- three documents with regards to -- excuse
 18 me. Two documents with regards to voter
 19 registration in Kootenai County and the last
 20 census projections by the U.S. Department of
 21 Census and Inland Northwest Demographics by
 22 JP Stravens & Associates.
 23 And then there are two legal-sized
 24 expando files full of various documents that
 25 Ms. Taylor just brought over.

1 So however you want to identify those,
 2 those are what's offered.
 3 HEARING OFFICER MCKEE: Mr. Bledsoe?
 4 MR. BLEDSOE: The Department would object.
 5 Without any kind of foundation I don't know how
 6 the Department can have a position.
 7 HEARING OFFICER MCKEE: If I understand
 8 correctly, the hearing books 1 and 2 are the
 9 exhibits that you tendered earlier, I think, to
 10 one of the hearing officers?
 11 MR. KELSO: Correct.
 12 HEARING OFFICER MCKEE: And they have been
 13 retained in the same condition that you sent them
 14 down in FedEx boxes. I just asked Ms. Taylor to
 15 just hang on to them and make them available to
 16 you.
 17 I'm not sure what those three tapes
 18 are. Did those come from you?
 19 MR. KELSO: Yes. And the original tapes are
 20 Idaho copies thereof.
 21 HEARING OFFICER MCKEE: All right. And the
 22 two documents on voter registration, those came
 23 from you?
 24 MR. KELSO: Well, they came from me. The
 25 copies of documents generated by third parties;

1 one is U.S. Census Bureau and one is
 2 JP Stravens Planning & Associates.
 3 HEARING OFFICER MCKEE: At this time and
 4 absent a stipulation, I would sustain an objection
 5 to those documents on essential evidentiary
 6 foundation. We certainly can get to those in the
 7 evidentiary hearing, but at this time on the offer
 8 made, there is not a basis to admit the documents
 9 in evidence yet.
 10 MR. KELSO: Okay. Well, let me address --
 11 HEARING OFFICER MCKEE: With respect to the
 12 agency files, I'll say, again, one more time, the
 13 files are part of the agency file. I would take
 14 administrative notice of foundation of particular
 15 documents in them, but the entire file, the
 16 folders and the organization of the file is not
 17 necessarily relevant.
 18 So on the basis of authenticity -- not
 19 authenticity, but on the basis of relevance and
 20 foundation, I would sustain an objection to the
 21 wholesale admission of all the files. I will
 22 certainly take administrative notice of any
 23 particular document that you think is necessary
 24 for these proceedings.
 25 MR. KELSO: Okay. Given that, it's my

1 that were listed subsequent to that.
 2 HEARING OFFICER MCKEE: I made a ruling on
 3 the evidence offered, Mr. Kelso.
 4 MR. KELSO: On what basis? What rule basis?
 5 What case law?
 6 HEARING OFFICER MCKEE: I made a ruling on
 7 the evidence offered. Did you understand the
 8 ruling?
 9 MR. KELSO: No, I don't understand what the
 10 rule is based on. How can you understand a
 11 ruling?
 12 HEARING OFFICER MCKEE: I didn't ask that.
 13 I asked if you understood when I say, "The
 14 objection is sustained."
 15 MR. KELSO: No, I don't. Because I don't
 16 know what you are sustaining means in the context
 17 of a world of no rules.
 18 HEARING OFFICER MCKEE: And you have asked
 19 one time if I would admit those documents, and I
 20 said no.
 21 MR. KELSO: And you have said that you would
 22 take administrative notice of all the documents
 23 that I felt were relevant.
 24 HEARING OFFICER MCKEE: I said any specific
 25 document.

1 request that you take administrative notice of all
 2 those documents.
 3 HEARING OFFICER MCKEE: And I won't do that.
 4 I will take administrative notice of any document
 5 in it, but I see no reason at all to invite me
 6 just out of idle curiosity to go through five file
 7 folders of stuff that even you say contains a
 8 whole bunch of stuff that is not relevant, like
 9 all the matters pertaining to the District Court
 10 action.
 11 MR. KELSO: I was willing to go through them
 12 and pull them, but you wouldn't give me the
 13 opportunity to do that. That is essentially, and
 14 for the record, one of the most fundamental issues
 15 in the matter, that there is no procedure.
 16 You're making rulings on whether or not
 17 documents in evidence can be introduced based upon
 18 what? You are not following any Idaho Rules of
 19 Civil Procedure. You are not following any
 20 administrative rules that I'm aware of.
 21 There has been no rules of procedure
 22 informed. There's been no objection filed to any
 23 of those documents, particularly the ones that
 24 were originally filed under the hearing officer.
 25 There's been no objection filed to any documents

1 MR. KELSO: Well, I just listed them.
 2 HEARING OFFICER MCKEE: Okay. And I ruled.
 3 MR. KELSO: And so your ruling is that you
 4 are not going to take administrative notice of the
 5 documents that I have identified that you said you
 6 would take administrative notice of?
 7 HEARING OFFICER MCKEE: Yes.
 8 MR. KELSO: And what is the basis, what
 9 rule?
 10 HEARING OFFICER MCKEE: I'm not going to
 11 explain my ruling.
 12 MR. KELSO: You're not going to explain your
 13 ruling?
 14 HEARING OFFICER MCKEE: Mr. Kelso, let's
 15 move on.
 16 MR. KELSO: You are not going to explain
 17 your ruling?
 18 HEARING OFFICER MCKEE: Let's move on.
 19 MR. KELSO: Is that a yes?
 20 HEARING OFFICER MCKEE: Let's move on.
 21 MR. KELSO: You are not going to explain
 22 your ruling?
 23 HEARING OFFICER MCKEE: Let's move on.
 24 MR. KELSO: Well, I would like a yes or no,
 25 sir.

1 HEARING OFFICER MCKEE: Let's move on.
 2 MR. KELSO: You are not going --
 3 HEARING OFFICER MCKEE: Let's move on or
 4 I'll terminate the hearing.
 5 MR. KELSO: Well, then I would like to speak
 6 to my clients for a moment.
 7 HEARING OFFICER MCKEE: Speak to your
 8 clients.
 9 (Brief discussion held off the record.)
 10 MR. KELSO: Thank you. Based upon your
 11 suggestion, my clients will accept your decision
 12 to terminate the hearing for failure to answer the
 13 inquiry and state the basis for your ruling.
 14 HEARING OFFICER MCKEE: You wish to offer
 15 anything further in this proceeding?
 16 MR. KELSO: It's my understanding that you
 17 ruled that you were terminating the hearing, and
 18 we said fine.
 19 HEARING OFFICER MCKEE: Okay.
 20 Do you wish to offer anything in this
 21 proceeding?
 22 MR. BLEDSOE: The Department does.
 23 HEARING OFFICER MCKEE: Department may
 24 proceed.
 25 MR. KELSO: No. Excuse me. I would like to

1 raise that as another issue. We are the
 2 appellant. You have terminated the hearing.
 3 HEARING OFFICER MCKEE: I terminated your
 4 participation in it if you don't want to proceed.
 5 MR. KELSO: No. You terminated the hearing.
 6 We can check the record.
 7 HEARING OFFICER MCKEE: What I intended on
 8 this thing, and I'll back up on this if there is
 9 clarification. This is the time and place set for
 10 hearing. If you want to proceed, proceed. If you
 11 don't want to proceed, that's fine; that's your
 12 choice. But either proceed or withdraw.
 13 MR. KELSO: Then explain to me what rules we
 14 are proceeding under.
 15 HEARING OFFICER MCKEE: The general
 16 framework -- no. Counsel, I don't have to
 17 explain.
 18 MR. KELSO: Okay. Good. Then thank you.
 19 That's all we have. Since you don't have to
 20 explain, we are not proceeding any further.
 21 HEARING OFFICER MCKEE: Mr. Bledsoe, do you
 22 have anything?
 23 MR. BLEDSOE: Yes.
 24 HEARING OFFICER MCKEE: You may proceed.
 25 MR. BLEDSOE: The Department would call

1 Jay Engstrom.
 2 HEARING OFFICER MCKEE: Mr. Engstrom, stand
 3 and raise your right hand.
 4 Do you swear that the testimony in this
 5 proceeding will be the truth, the whole truth, and
 6 nothing but the truth; so help you God.
 7 THE WITNESS: Yes, I do.
 8 HEARING OFFICER MCKEE: Inquire by the
 9 Department.
 10 MR. KELSO: And we would object without
 11 waiving our prior position in view of the hearing
 12 officer's decision to proceed, that while
 13 Mr. Engstrom was identified earlier, he wasn't
 14 identified in the latest specific ruling of this
 15 Hearing Officer as a witness.
 16 Indeed, only exhibits were identified.
 17 MR. BLEDSOE: My filing with the
 18 Hearing Officer and copies to opposing counsel
 19 identified Mr. Engstrom as a witness and also
 20 identified the exhibits.
 21 MR. KELSO: I'm not sure which filing you
 22 are referring to, but the last filing under Judge
 23 -- excuse me -- Hearing Officer McKee's ruling
 24 listed four or five exhibits.
 25 MR. BLEDSOE: Do you have that filing?

1 MS. TAYLOR: I might not have it, the most
 2 recent.
 3 MR. BLEDSOE: It was filed on...
 4 MR. KELSO: I have a copy of it right here.
 5 Oh, excuse me. It does say we will call Jay
 6 Engstrom. My mistake. Withdraw the objection but
 7 not the objection to proceeding.
 8 MS. KEEFER: If I might also remind the
 9 Hearing Officer, there is another party to this
 10 case, the one who is in the process of trying to
 11 decide whether to participate or not.
 12 HEARING OFFICER MCKEE: Ms. Keefer, I beg
 13 your pardon. I'm very sorry. I swept right over
 14 you. You have absolutely the right to present
 15 Region II's appeal in this matter, and you may
 16 certainly present either your position, opening
 17 statement, or present evidence first.
 18 And I apologize for overlooking. I got
 19 wrapped up in the dialogue with Mr. Kelso.
 20 MS. KEEFER: At this time, I'm interested in
 21 what Mr. Jay Engstrom might say for the record
 22 since the record seems to be open.
 23 HEARING OFFICER MCKEE: It is.
 24 MS. KEEFER: Had the record closed because
 25 the hearing was terminated?

1 HEARING OFFICER MCKEE: I did not mean the
2 record was closed on this. I was ruling on this
3 with Mr. Kelso that I had ruled on his evidence
4 point. The concept of the Chair having to explain
5 rulings is, Mr. Kelso, as you know, is
6 unnecessarily --

7 MR. KELSO: I take direct offence to that.
8 That is a derogatory, hostile comment.

9 HEARING OFFICER MCKEE: As long as the
10 ruling is clear on either the motion is granted or
11 the motion is overruled, you have absolutely the
12 right to go forward with that. My ruling in this
13 will eventually be a recommendory -- what's the
14 word?

15 MS. KEEFER: Recommendation?

16 HEARING OFFICER MCKEE: Recommendation, I
17 guess. I don't know if there is such a word as a
18 recommendory. A recommended ruling to the
19 Workplace Development Council.

20 I've indicated to the parties, and I
21 think you got a copy of it, of the limitation on
22 jurisdiction because of the hierarchy of things.

23 Now, in terms of where this goes, I
24 appreciate the fact that because of the nature of
25 the beast, there is not a body of procedural

1 I'll try to be as clear as I can in my rulings,
2 but this really isn't a contest.

3 I will try to give you as open of a
4 platform as I can to present any position and
5 protect your record and get to your position out
6 so that wherever of you go from here, if you
7 accept my ruling, fine, if the Council accepts my
8 ruling, fine. If the Council doesn't like my
9 ruling, you have an opportunity to talk to
10 counsel.

11 And I think I commented in one of the
12 pieces that I wrote earlier there is a separate
13 and completely unrelated area of appeal to the
14 Secretary of Labor, which I think is probably
15 where most of the issues that you raised to me may
16 belong now.

17 I'm not sure of that, but it seems to
18 me all the questions pertaining to the validity of
19 the plan may belong to a discussion with an
20 administrative law judge on the federal side
21 between the Department of Labor, the Secretary of
22 Labor's approval.

23 But integral operation of the plan is a
24 different matter. And that is subject to what the
25 plan is, and that is subject to what the

1 rules. The rules are abstracted from the plan,
2 and the plan is woefully silent on where you go.

3 I looked in the administrative
4 procedures code, and I can't find any procedural
5 rules applicable to the Department of Commerce.
6 The only other place to look is, the
7 Attorney General has some general guidelines for
8 administrative hearings in general that is
9 contained in the Idaho Administrative Procedures
10 Act on basic format of appellant goes first or
11 respondent goes second, order of proof, and
12 matters of evidence and those natures are
13 relatively a very broad framework.

14 So what we are doing basically in this,
15 and I'll explain to you, we are hunting and
16 pecking through this.

17 Now, the question on that thing is, you
18 are a party in this. I understand you are not a
19 lawyer. I can't be your lawyer, but I can
20 certainly offer you a wide platform to present the
21 position of your region, and I certainly will do
22 so.

23 I do apologize for overlooking you in
24 the heat of the moment in moving from Mr. Kelso to
25 Mr. Bledsoe. Now, what I want to do on this is

1 administrative -- what the administrative act to
2 me.

3 Now, I grant you that the rules are a
4 very broad brush. The Attorney General's rules
5 are a very broad guideline of administrative
6 proceedings. That is basically how this is going
7 to operate.

8 MS. KEEFER: What I have understood up to
9 this point, and forgive me for my ignorance on
10 this matter, but it strikes me that if we are to
11 go to the U.S Department of Labor to pursue this,
12 there are concerns about the plan, what exact
13 rules ought to apply as we get redesignated to
14 continue our decades of service on these workforce
15 issues.

16 It's the matter of the record that we
17 establish at the beginning, and so even though I
18 have said that -- I'm not sure what boat I'm
19 getting in because I'm unclear as to what --
20 whether we have terminated this hearing or if it's
21 all of a sudden going to proceed and the
22 appellants are silent on it. So that's why I'm on
23 the fence on this.

24 HEARING OFFICER MCKEE: Those that want to
25 participate, that's fine. And I offered Mr. Kelso

1 the right to make an opening statement; I'll offer
 2 him the right to present evidence. I'll offer him
 3 the right to introduce any piece of evidence that
 4 he wants to on proper foundation, and that is to
 5 identify the document, connect it up to this
 6 proceeding.
 7 And if Mr. Bledsoe has a problem with
 8 it, to solve the problem on authenticity, make
 9 sure whatever documentary evidence comes in is
 10 both relevant, connected to the hearing and is a
 11 piece of evidentiary information that I can take
 12 into account in terms of making a recommendation
 13 to the Workforce Council.
 14 Anything that is in the files, if it's
 15 already in the agency file, point it out to me.
 16 Let me take a look at it. It doesn't need any
 17 foundation for authenticity as far as the file.
 18 If it's not part of the file, then if
 19 Mr. Bledsoe doesn't recognize it, then somebody
 20 has got to identify what is it, who did it come
 21 from, how did it get created, and what's its
 22 connection.
 23 If Mr. Bledsoe recognizes and agrees to
 24 it, I suspect a lot of administrative documents
 25 you have there would not be a problem other than

1 just call Mr. Bledsoe's attention to what it is.
 2 Most of this -- in my experience, most
 3 of this stuff will come in by stipulation, by
 4 agreement as soon as counsel for the State
 5 understands what it is, understands as the
 6 authenticity of it, moves very smoothly.
 7 In terms of simply offering everything,
 8 that's not fair because everything isn't relevant.
 9 There is all kinds of stuff in those files over
 10 there that has nothing to do with the issues
 11 before the hearing today.
 12 So my only request is, call my
 13 attention to what you want me to look at and I'll
 14 look at anything you put under my nose.
 15 MS. KEEFER: My question is: If this is not
 16 part of this record at this level, these
 17 documents, then can they be considered by the U.S.
 18 Department of Labor?
 19 HEARING OFFICER MCKEE: Absolutely,
 20 absolutely. Same rules, same rules apply when you
 21 go into the administrative proceedings.
 22 If it's in the agency file, it will
 23 probably, I can't say definitely, because it
 24 depends upon the nature of the agency file, but
 25 anything that is in the agency file can probably,

1 on request, be made prior to the record before the
 2 federal agency.
 3 Now, not automatically. You have got
 4 to make a picture of it and probably separately
 5 attach it. The federal rules have special rules
 6 making the agency record, but it's probably,
 7 probably the same rules before the agency file as
 8 before the administrative file. Because anything
 9 that is in the agency record is almost, by nature
 10 of the fact that it is in the record is
 11 authenticated; that is that it's a piece of paper
 12 in the government process.
 13 Then the only thing you have to do is
 14 show that it's physically -- that it's relevant to
 15 whatever it is that you are appealing from.
 16 Sometimes a showing of nothing more than just
 17 looking at the document. But everything that's in
 18 the agency file, there's millions and millions of
 19 documents having to do with Commerce and Labor,
 20 don't have anything to with any of them at all.
 21 So solving the authenticity problem is
 22 only one problem. The next problem is some kind
 23 of materiality or relevance to the proceedings,
 24 and that's the second step and usually requires
 25 somebody to look at the document and identify it

1 in the proceeding.
 2 MS. KEEFER: If I can get clarification as
 3 to what's over there on the table and, as you say,
 4 agency record, then we are really talking about
 5 those expandable file folders on the right-hand
 6 side of the table?
 7 HEARING OFFICER MCKEE: Yes.
 8 MS. KEEFER: Then the other evidence that
 9 Mr. Kelso has offered in terms of the three-ring
 10 binders and the tapes, is that part of the agency
 11 record as of today?
 12 HEARING OFFICER MCKEE: No.
 13 MS. KEEFER: They are not?
 14 HEARING OFFICER MCKEE: I don't know because
 15 I don't know what's in those files. They may be
 16 copies of documents in the files that are
 17 documents that are in the agency file. Well, in
 18 which case usually the copies are authenticated,
 19 but we don't know the authentication of the
 20 materials that Mr. Kelso sent down.
 21 Now, again, as a matter of a witness
 22 with knowledge saying, I know what this document
 23 is; it's a letter to so and so from so and so and
 24 I wrote it or I received it. If it is otherwise
 25 relevant, I suspect if you show it to Mr. Bledsoe,

1 he will agree that the document is authentic,
2 relevant, and material to the proceeding; those
3 are the three parts.

4 MS. KEEFER: Okay. I think I'm
5 understanding that. I need clarification, if you
6 please, on your offer to Mr. Kelso to terminate
7 the hearing, Mr. Kelso's acceptance of that but
8 then the continuation. I'm really confused.

9 HEARING OFFICER MCKEE: You should be
10 confused because I used the wrong word. I said
11 withdraw -- I should have said withdraw rather
12 than terminate. We were stuck in the box where I
13 had said I have ruled on the issue, and Mr. Kelso
14 was insisting that I rerule.

15 And I said I've already ruled and he
16 wanted me to rerule. And I said, "I have already
17 ruled; you may proceed. And if you don't want to
18 proceed" -- I said terminate. I should have said,
19 "if you don't want to proceed, then withdraw"
20 because I'm not going to get stuck in this box.

21 Either go forward with the hearing,
22 make an opening statement, begin presenting your
23 evidence, call your witnesses, offer your
24 witnesses, offer the exhibits, do whatever in
25 context with my ruling.

1 either abide by the rulings of the Hearing Officer
2 and proceed or withdraw.

3 MR. KELSO: The record's already clear. I
4 don't intend to do it --

5 HEARING OFFICER MCKEE: I'm going to get in
6 a set-to again. It's either --

7 MR. KELSO: There is nothing to discuss.

8 HEARING OFFICER MCKEE: It's either proceed
9 or withdraw.

10 MR. KELSO: I'm not even involved. You
11 terminated this matter as far as I'm concerned,
12 and I don't have notice of us reopening or a date
13 certain or time. Of course, we don't have any
14 rules. So you are correct that --

15 HEARING OFFICER MCKEE: Then --

16 MR. KELSO: -- this lady has an opportunity
17 to proceed in regards to Region II.

18 HEARING OFFICER MCKEE: If that is your
19 position then, Mr. Kelso, I'm going to have to ask
20 that you sit in the back of the room and that you
21 not participate any further.

22 If you want to participate in this
23 hearing, you may do so. If you want to withdraw,
24 you may do so. Those are your options.

25 MR. KELSO: On -- is that Hearing Officer

1 And Mr. Kelso and I got into a little
2 set-to on that. He would not proceed, and I said,
3 "Either proceed" -- I said terminate. What I was
4 thinking, terminate his participation in it. The
5 correct word I should have used is withdraw;
6 either proceed or withdraw.

7 MR. KELSO: And I object to that
8 characterization. As a judge of 25 years you
9 certainly would know the difference between
10 terminate and withdraw.

11 HEARING OFFICER MCKEE: No question.

12 MR. KELSO: So therefore, my decision was
13 made on the termination and we stand on that.

14 HEARING OFFICER MCKEE: I will certainly
15 allow you to reconsider on that because what I'm
16 looking at in this thing is I won't take -- I
17 either require you to adhere to the rulings and
18 proceed or if you don't want to proceed, withdraw.

19 And if you want to take another look at
20 that, I absolutely will allow you to do so. I
21 apologize if you were confused. I used the wrong
22 word. I should not have used terminate, because I
23 didn't mean to terminate everybody's rights. I
24 can't terminate everybody's rights this is noticed
25 for hearing at this time, but I can require you

1 McKee's --

2 HEARING OFFICER MCKEE: That's my ruling.

3 MR. KELSO: -- rules of procedure on -- what
4 day is today? Wednesday --

5 HEARING OFFICER MCKEE: That is my rule.

6 MR. KELSO: -- rule of Wednesday?

7 HEARING OFFICER MCKEE: That's my ruling.

8 You may participate in this hearing and proceed or
9 you may withdraw.

10 MR. KELSO: I'm going to participate without
11 waiving the termination, because there may be
12 questions that I may want to ask Mr. Engstrom.

13 HEARING OFFICER MCKEE: Interesting. Let's
14 see what happens.

15 What do you want to do?

16 MS. KEEFER: Frankly, what I wanted to do
17 was say ditto every time Mr. Kelso spoke because
18 I'm not an attorney. I'm not, you know, up on all
19 of these rules. I think perhaps an opening
20 statement would be appropriate.

21 HEARING OFFICER MCKEE: You may.

22 MS. KEEFER: And I am going to make
23 reference to certain documents in the three-ring
24 binders. This is just opening. This isn't the
25 evidentiary part of it, as I understand it.

1 As you know from our phone
 2 conversation, I am extremely disappointed by the
 3 narrowness of the scope of this hearing. I
 4 believe it does injustice to partners that have
 5 been on board in the workforce training for
 6 decades.
 7 We have had hundreds of people working
 8 together hard in Idaho to address workforce
 9 training issues and to suddenly cut them off at
 10 the feet and say that they are not important to
 11 the process, they don't add value to the process,
 12 moreover, to pretend to have the same level of
 13 input from the Workforce Development Council that
 14 any nay-sayers get kicked off of is extremely
 15 disappointing.
 16 I'm here for one reason and one reason
 17 only. I believe in Idaho's workforce training
 18 system. I believe it has been outstanding where
 19 it has incorporated views of partners across the
 20 state. I strongly believe in grassroot solutions.
 21 I am alarmed by the fact that we have a
 22 handful of staff at Commerce and Labor guiding
 23 Workforce Development Council's decision that's
 24 then rubber stamped policy issues, and those folks
 25 do not understand the impacts on the ground level.

1 What I wish to do for my opening
 2 statement is convey to you that very specifically
 3 I do not believe that 116-A-2, and -3 are the only
 4 parts of this rule that ought to be considered.
 5 Our decades of partnership were formed
 6 under 116-A-1. And from what I have looked at and
 7 this is in regard to, I believe, Volume II of
 8 Mr. Kelso's Exhibit 50 beginning on page 15, the
 9 guidelines for recertification. And as you read
 10 through the entire guidelines on page 22, it
 11 discussed the conditions under which
 12 decertification should occur.
 13 There must be a cause to eliminate the
 14 partnership. There must be failure to meet
 15 recertification requirements. There must be fraud
 16 or abuse, failure to carry out the rules and
 17 responsibilities of the act. There must be
 18 failure to meet local performance measures.
 19 I do not see that those conditions have
 20 been met and that there are -- is any cause for
 21 having terminated the long-term relationship. We
 22 still want to have a voice in this. We believe
 23 strongly in checks and balances and, again, that
 24 certain people -- you know, I've been at the level
 25 of a staff person where you get caught up in the

1 little issues and you don't look for creative
 2 solutions.
 3 What we've been able to do by making a
 4 grassroot approach is leverage our ability to tap
 5 other resources and accomplish terrific
 6 objectives.
 7 I won't go into detail on that. I can
 8 see that I'm getting on my soap box, and I don't
 9 know if that is appropriate for an opening
 10 statement or not. I would be disappointed if the
 11 other regions do not have a chance to have a say
 12 in this, but also with a foregone determination
 13 that unless we have a population of 500,000
 14 people, is not a mandatory designation, but in the
 15 future, I would not blame them for not taking up
 16 their time to try to argue otherwise.
 17 HEARING OFFICER MCKEE: You want to call any
 18 witnesses at this time, or do you want to reserve
 19 and see who the State is calling or what would you
 20 like to do?
 21 MS. KEEFER: I would like to reserve.
 22 HEARING OFFICER MCKEE: You referred to an
 23 exhibit that is in the book over there.
 24 Is it numbered; do you know?
 25 MS. KEEFER: Yes. 50-15 is where it begins.

1 HEARING OFFICER MCKEE: 15?
 2 MS. KEEFER: And it's the recertification --
 3 HEARING OFFICER MCKEE: Give me the title of
 4 the document.
 5 MS. KEEFER: "Guidelines for Recertification
 6 of Idaho Works Board under the Workforce
 7 Investment Act."
 8 HEARING OFFICER MCKEE: Hold on.
 9 "Guidelines for"?
 10 MS. KEEFER: "Recertification of Idaho Works
 11 Board under the Workforce Investment Act of 1998."
 12 I believe the 2002 version is at the beginning.
 13 HEARING OFFICER MCKEE: I still have to
 14 write all of this down. Guidelines for the
 15 recertification of Idaho's Workforce under the?
 16 MS. KEEFER: Workforce Investment Act of
 17 1998. And the one that begins on 50-15 is the
 18 most recent version which was published in April
 19 of 2004.
 20 HEARING OFFICER MCKEE: Mr. Bledsoe, are you
 21 familiar with that document?
 22 MR. BLEDSOE: Yes, I am.
 23 HEARING OFFICER MCKEE: Any objection?
 24 MR. BLEDSOE: The Department would object.
 25 It has absolutely nothing to do with this hearing.

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1 It talks about the recertification of boards,
 2 which is a different entity than an area.
 3 So what may or may not be required for
 4 the recertification of a Workforce Investment
 5 Board has absolutely nothing to do with Section
 6 116-A or A-2 or A-3. So it's irrelevant.
 7 HEARING OFFICER MCKEE: Let me ask a
 8 question. Is there any question as to the
 9 authenticity of the document? Is it a State
 10 publication or a Department of Labor publication?
 11 MS. KEEFER: My presumption was it was a
 12 Department of Labor. Contact person would be
 13 Laura Grayson (phonetic) from the Idaho Department
 14 of Labor.
 15 HEARING OFFICER MCKEE: Someplace on the
 16 front of that thing it ought to be that -- it is
 17 usually promulgated by the Commerce and Labor, the
 18 Workforce Development Council, or the Secretary of
 19 the Department -- U.S. Department of Labor.
 20 Can you tell me what -- if I'm looking
 21 at this, what I'm perceiving in this is that the
 22 Secretary, the Department of Labor has promulgated
 23 guidelines, and then the State Department
 24 promulgates a plan in accordance with the
 25 guidelines. And I'm trying to fit what this is.

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1 Is this the guideline from the
 2 Department of Labor to the State Commerce and
 3 Labor/Workforce Development Council, or is it a
 4 promulgation by the State, Commerce and Labor,
 5 State Workforce Council to the blank -- to the
 6 regions or to -- am I making any sense?
 7 MR. BLEDSOE: If I may, it looks to me, by
 8 looking at the documents, that there is a
 9 submission requirement, and that is to be -- they
 10 are submitted applications for recertification to
 11 the Department in both of these.
 12 HEARING OFFICER MCKEE: To the Department.
 13 Now, that is the state, right?
 14 MR. BLEDSOE: To the Idaho Department of
 15 Commerce and Labor.
 16 HEARING OFFICER MCKEE: So it sounds like
 17 this is a state guideline?
 18 MR. BLEDSOE: It could be.
 19 HEARING OFFICER MCKEE: Like Congress,
 20 Labor, or Workforce Development Council to the
 21 regions, I guess.
 22 MR. BLEDSOE: It could be, and I'm not
 23 prepared to make that representation, but I would
 24 point out to the Hearing Officer that they say
 25 both guidelines for 1998, which is the first one,

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1 and the second one of guidelines effective April
 2 of '04, both of them say in the very beginning
 3 exactly what their purpose is.
 4 It says in the introduction that these
 5 guidelines are being issued pursuant to Section
 6 117 of the Workforce Investment Act, which
 7 requires local areas to appoint boards, and how
 8 those boards get appointed and recertified.
 9 So, again, they have absolutely nothing
 10 to do with local areas, which is under 116, or
 11 under the automatic or temporary subsequent
 12 designation criteria that we are trying to
 13 consider in this hearing.
 14 HEARING OFFICER MCKEE: It's a fine line,
 15 but it sounds like you are arguing applicability
 16 on this, not necessarily the admissibility of the
 17 document. It seems to me that it's reasonably
 18 authenticated as a State document; either State or
 19 Federal document. I gather it's a State document
 20 just from the description that you gave me.
 21 MR. BLEDSOE: I believe that they probably
 22 are, but I'm not prepared to make that
 23 representation. And my objection doesn't go to
 24 their authenticity, just not relevant.
 25 HEARING OFFICER MCKEE: I understand what

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1 your objection is. I understand that. I'm going
 2 to allow it and admit it. And I understand in
 3 rule in this that the objection, I think, goes to
 4 the weight of the document, not to the
 5 admissibility of it and that it is a proper piece
 6 of evidence to consider. Somehow, somewhere I'll
 7 find this Exhibit 15 and deem it a part of the
 8 evidence.
 9 MS. KEEFER: Do you need to see a copy now
 10 because I could probably find it?
 11 HEARING OFFICER MCKEE: I don't need it
 12 right now. That's why I carefully made a notation
 13 of exactly what it is, and you read me the part.
 14 Tell me what page you were reading
 15 from, by the way. It looks like a pretty thick
 16 document.
 17 MS. KEEFER: As I read the title of it, back
 18 on page 50-15.
 19 HEARING OFFICER MCKEE: 50-15?
 20 MS. KEEFER: 50-15. And --
 21 HEARING OFFICER MCKEE: Did you say that is
 22 Exhibit 15 or Exhibit 50?
 23 MS. KEEFER: Exhibit 50.
 24 MR. BLEDSOE: Exhibit 50, if you look in the
 25 book over there, has, it looks like, a total of 23

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1 pages.
 2 HEARING OFFICER MCKEE: Okay. So I see it's
 3 Exhibit 50, page 15.
 4 MS. KEEFER: Correct.
 5 (Exhibit 50 was marked.)
 6 HEARING OFFICER MCKEE: I have marked
 7 Exhibit 15. Okay. I've got it. And reading from
 8 page 15, you are talking about the guidelines for
 9 recertification, decertification, and need to
 10 cause, et cetera. I got it now. It takes a
 11 while, but I'll get there.
 12 Okay. Anything further?
 13 MS. KEEFER: Well, that's my opening
 14 statement. If you could grant me the courtesy of
 15 letting the State go first, and then I'll better
 16 understand what I need to tell you.
 17 HEARING OFFICER MCKEE: Okay. Let's go,
 18 Mr. Bledsoe.
 19 MR. BLEDSOE: The Department of Commerce and
 20 Labor would call Jay Engstrom.
 21 HEARING OFFICER MCKEE: Mr. Engstrom, I
 22 think I did put you under oath and then we
 23 switched off onto other matters, so I will allow
 24 your testimony.
 25 ///

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1 DIRECT EXAMINATION
 2 BY MR. BLEDSOE:
 3 Q. Please state your full name.
 4 A. Jay Engstrom.
 5 Q. How do you spell your last name?
 6 A. E-N-G-S-T-R-O-M.
 7 Q. How are you employed?
 8 A. I'm employed with the Idaho Department
 9 of Commerce and Labor.
 10 Q. What is your position?
 11 A. I'm the Assistant Deputy Director.
 12 Q. Are you familiar with the Federal
 13 Workforce Investment Act?
 14 A. Yes, I am.
 15 Q. How are you familiar with it?
 16 A. The Department of Commerce and Labor is
 17 the administrative entity for the WIA in Idaho.
 18 Q. What federal agency administers the
 19 Workforce Investment Act?
 20 A. U.S. Department of Labor, the ETA,
 21 Employment Training Administration, within the
 22 Department of Labor.
 23 Q. As an Assistant Deputy Director for the
 24 Idaho Department of Commerce and Labor, do you
 25 have any duties or responsibilities regarding the

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1 Federal Workforce Investment Act?
 2 A. Yes, I do.
 3 Q. What are they?
 4 A. WIA primarily comes to the Governor of
 5 the state of Idaho. The Governor has asked the
 6 Idaho Department of Commerce to be the
 7 administrative entity for that program.
 8 Being the administrative entity, the
 9 Department of Commerce ensures compliance with the
 10 WIA rules and regulations. This is at the local
 11 workforce area, the participants, and the service
 12 delivery people.
 13 That portion of the administration has
 14 really been assigned to a division within the
 15 Department of Commerce as a Workforce Systems
 16 Bureau; that bureau reports to me.
 17 HEARING OFFICER MCKEE: The bureau is
 18 Workforce Systems Bureau?
 19 MR. BLEDSOE: Bureau.
 20 THE WITNESS: Yes.
 21 BY MR. BLEDSOE:
 22 Q. Does the Federal Department of Labor
 23 require anything from the State of Idaho before it
 24 can receive money from the Federal Treasurer?
 25 A. Yes, it does.

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1 Q. What is required?
 2 A. It requires the Governor to develop and
 3 submit a plan to the Secretary of U.S. Department
 4 of Labor; that plan must entail several things.
 5 One is the workforce area designations and how
 6 really the services of WIA will be delivered
 7 throughout the state.
 8 Q. When WIA first began, was a strategic
 9 plan submitted to the Secretary of Labor?
 10 A. Yes, it was.
 11 Q. What were the beginning and ending
 12 dates of that initial state plan?
 13 A. July 1 of 2000 was the beginning date
 14 of the initial plan, and the ending date was
 15 June 30th of 2005. That plan has been -- is
 16 expired.
 17 Q. Have you received guidance or
 18 instructions from the Federal Department of Labor
 19 for the submission of a new WIA state plan?
 20 A. Yes, we have.
 21 Q. I am handing you what's been marked for
 22 identification as Department's Exhibit A.
 23 (Exhibit A was marked.)
 24 BY MR. BLEDSOE:
 25 Q. Can you tell me what that is please?

1 A. It's a copy of the Federal Register
2 from the Department of Labor Employment and
3 Training Administration, and it's entitled
4 "Guidance and Instruction For Submission of Two
5 Years of the Strategic Five Years of the State
6 Plan."

7 Q. Is that a complete and accurate copy of
8 the notice in the Federal Register?

9 A. Yes, it is.

10 MR. BLEDSOE: The Department would offer --

11 MR. KELSO: I would object to that based
12 upon the fact that there's been no foundation
13 laid, but I don't happen to know what rules we are
14 proceeding under, so therefore, I will object just
15 because I don't know what rules we are proceeding
16 under.

17 There's been no establishment that this
18 person is fully aware of the entire code of
19 federal regulations and what they contain and
20 don't contain.

21 MR. BLEDSOE: I believe I have not offered
22 it yet.

23 HEARING OFFICER MCKEE: It's premature.

24 MR. BLEDSOE: The Department would offer
25 what's been marked for identification as

1 what the entire scope of the CFRs were with
2 regards to that direction.

3 So I'm not disputing that those are a
4 copy of the CFR. My dispute, my question is his
5 ability to testify. That is all there is.

6 HEARING OFFICER MCKEE: That's all what is?

7 MR. KELSO: All the directions he received
8 from the Federal Government.

9 HEARING OFFICER MCKEE: I'm not sure he said

10 that. Are you just laying a foundation for this
11 piece of paper as being the Federal Register
12 guidance for submission for the state two-year
13 plan?

14 MR. KELSO: Limited to that issue.

15 HEARING OFFICER MCKEE: It looks like it's
16 -- let's see. What's the reference on this?

17 Extract from Federal Register Volume 70, No. 69,
18 pages 19,206 through pages 19,220.

19 MR. KELSO: We don't dispute what it is and
20 what it purports to be. The only dispute was what
21 his testimony was as foundation of knowing that
22 those are all the guidelines that they received
23 from the Federal Government.

24 Now, if the record reflects that I have
25 misstated what the witness testified to, so be it.

1 Department's Exhibit A into evidence as
2 Department's Exhibit A.

3 MR. KELSO: Same objection.

4 HEARING OFFICER MCKEE: Okay. On the
5 surface, this appears to be a Xerox copy from the
6 Federal Register. It is an item that HEARING
7 OFFICER MCKEE ordinarily -- or the hearing officer
8 of the administrative hearing would take
9 administrative notice of as an official government
10 publication.

11 The struggle I have is, certainly
12 subject to your right to go check it out, if you
13 think it's worth while, that it's, for some reason
14 or other, not a copy of what it purports to be.
15 The business world operates on Xerox copies, and
16 this appears to be a Xerox copy of the Federal
17 Register.

18 The Hearing Officer will certainly take
19 judicial notice or administrative notice of the
20 Federal Register like I would take notice of Idaho
21 Code, Federal Code, Idaho Administrative Procedure
22 Rules.

23 MR. KELSO: The objection wasn't to that.
24 The objection was to the testimony that he was
25 familiar with the entire scope of it; and that is

1 We don't have any objection to that document
2 speaking for what it speaks to.

3 HEARING OFFICER MCKEE: I misunderstood, and
4 for clarification, Mr. Bledsoe can clarify it or
5 can you take it up on -- or I guess I'll let you
6 take it up on cross-examination. But I understood
7 that he wasn't saying these are all the
8 regulations that apply; he is just saying this
9 regulation is a copy of the regulation on this
10 topic, so...

11 MR. BLEDSOE: That's correct.

12 HEARING OFFICER MCKEE: So if you were
13 suggesting these are all the regulations that
14 apply, you better clarify that because I didn't
15 understand that to be the witness' testimony.

16 MR. BLEDSOE: No. What he was asked and
17 what he testified to was that this is a fair and
18 accurate copy of this particular --

19 HEARING OFFICER MCKEE: Of this particular.

20 MR. BLEDSOE: -- Federal Register notice.

21 HEARING OFFICER MCKEE: That's what I
22 understood him to say. If you think more
23 clarification needs to be of that, then certainly
24 you can inquire further on direct. If you think
25 I've got it wrong or you can certainly clarify it

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1 on cross-examination.
 2 Mr. Bledsoe.
 3 MR. BLEDSOE: Has it been admitted then?
 4 HEARING OFFICER MCKEE: Yes, I'll admit
 5 Exhibit A.
 6 (Exhibit A was admitted.)
 7 BY MR. BLEDSOE:
 8 Q. When was this planning guidance
 9 published in the Federal Register?
 10 A. April 12th, 2005.
 11 Q. Does it explain why it was issued?
 12 A. Yes, it does. On the second page, page
 13 19,206, the center column, there is a statement of
 14 purpose there, and it says, "The purpose of this
 15 document is to provide planning guidelines to
 16 states and localities for the development of a
 17 strategic five-year state plan."
 18 And skipping down here it says, "The
 19 state plan is required in order for the states to
 20 receive formula allotments under the act. The
 21 current strategic five-year plan expires June 30th
 22 of 2005. The Department of Commerce is
 23 anticipating the reauthorization of WIA within the
 24 next two years."
 25 And it goes on, "To meet this

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1 requirement, the states must have an approved
 2 state plan in place to receive those allotments
 3 from the Employment and Training Administration."
 4 Q. Did the planning guidance require that
 5 the Governor designate local Workforce Investment
 6 Areas?
 7 A. Yes, it did. On page 19,213, bottom of
 8 the center column there is a Section 8-A which is
 9 titled, "Local Area Designations."
 10 HEARING OFFICER MCKEE: 8-A?
 11 THE WITNESS: Yeah, 8-A, Subsection 1.
 12 Subsection 1 is at the top right-hand column of
 13 page 19,213.
 14 HEARING OFFICER MCKEE: I'm there.
 15 THE WITNESS: The upper right-hand column.
 16 In this Subsection 1, it states: "Identify the
 17 State's designated local Workforce Investment
 18 Areas and the date of the most recent area
 19 designation including whether the state is
 20 currently re-designating local areas pursuant to
 21 the end of the subsequent designation period for
 22 areas designated in the previous state plan."
 23 BY MR. BLEDSOE:
 24 Q. Can you explain what you understand
 25 that language to mean?

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1 A. It basically is telling the Governor
 2 through the state plan that he will have to
 3 designate -- he or she will have to designate
 4 workforce investment areas.
 5 But it also goes on to remind us that
 6 the subsequent designation period was -- it has
 7 expired because it ended with the state plan, the
 8 previous state plan.
 9 Q. What were the submission requirements
 10 for the new state plan?
 11 A. The submission requirements are on page
 12 19,210, the left-hand column bottom under the
 13 heading "Plan Submission Requirements." Basically
 14 the plan would need to be developed, would need to
 15 be signed by the Governor, an original sent to the
 16 Secretary of the Department of Labor by May 31st
 17 of 2005.
 18 Q. Did the state of Idaho meet that
 19 deadline?
 20 A. Yes, it did.
 21 Q. Has Idaho's new WIA state plan been
 22 approved by the Federal Department of Labor?
 23 A. Yes, it has. The Department -- well,
 24 actually it was a letter from the Department dated
 25 June 29th that approved the state plan.

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1 Q. I'm handing you what's been marked for
 2 identification as Department's Exhibit B.
 3 (Exhibit B was marked.)
 4 BY MR. BLEDSOE:
 5 Q. Can you tell me what that is, please?
 6 A. It is a letter from the U.S. Department
 7 of Labor to Governor Dirk Kempthorne dated
 8 June 29th. And it says in the very first line,
 9 "This letter provides approval of Idaho's
 10 strategic plan for Title I of Workforce Investment
 11 Act and the Wagner-Peyser Act for a two-year
 12 period starting July 1 of 2000 through June 30th
 13 of 2007."
 14 Q. Is that a fair and accurate copy of the
 15 letter that was received by the Governor?
 16 A. Yes, it is.
 17 MR. BLEDSOE: The Department would offer
 18 what's been marked for identification as
 19 Department's Exhibit B into evidence as to
 20 Department's Exhibit B.
 21 MR. KELSO: It's my understanding that my
 22 participation is relative to cross-examination, so
 23 we are neither agreeing or disagreeing.
 24 HEARING OFFICER MCKEE: Mr. Kelso, so long
 25 as you and I are not in a dust up, you can

1 participate in this hearing. You choose. Hearing
 2 no objection Exhibit B is admitted.
 3 (Exhibit B was admitted.)
 4 MR. KELSO: Well, I will make a record that
 5 I continue to try to follow what the procedure is,
 6 and the last procedure I was aware of not more
 7 than 15, 20 minutes ago was that you were going to
 8 allow me to cross-examine, so that's what I'm
 9 operating under.
 10 If we are going to change the rules,
 11 maybe we should put them on the black board so we
 12 know what the rules are.
 13 HEARING OFFICER MCKEE: However you would
 14 like to proceed.
 15 Mr. Bledsoe.
 16 BY MR. BLEDSOE:
 17 Q. Are you familiar with the appellants in
 18 this proceeding?
 19 A. Yes.
 20 Q. How are you familiar with them?
 21 A. All five appellants were designated
 22 Workforce Investment Areas under the 2000 State
 23 plan, which is now expired.
 24 Q. Under the current plan, were the
 25 appellants designated as local Workforce

1 MR. KELSO: Same position.
 2 HEARING OFFICER MCKEE: Hearing no
 3 objection, Exhibit C is admitted.
 4 (Exhibit C was admitted.)
 5 BY MR. BLEDSOE:
 6 Q. Did the Governor give a reason for not
 7 designating appellants to local workforce areas
 8 under the new state plan?
 9 A. Yes, he did.
 10 Q. What explanation did he give?
 11 A. At the very -- I guess it would be the
 12 last complete paragraph at the bottom of the page
 13 says, "Since no unit of local government in Idaho
 14 qualifies for designation as a local area under
 15 sections 116-A-2 and or 116-A-3 of the WIA, please
 16 notify all parties who submitted requests for
 17 recognition as a local area under the new WIA
 18 state plan that their requests are denied."
 19 Q. Did the director of the Department of
 20 Commerce and Labor notify each of the appellants
 21 that their request for designation for local
 22 workforce areas under the current WIA state plan
 23 were denied?
 24 A. Yes, he did.
 25 Q. I'm handing you what's been marked for

1 Investment Areas?
 2 A. No, they were not.
 3 Q. Did the Governor designate someone to
 4 notify appellants that their request for
 5 designation as local workforce investments areas
 6 under the current plan were denied?
 7 A. Yes, he did.
 8 Q. Who was that?
 9 A. He designated the director of the
 10 Department of Commerce and Labor.
 11 Q. I'm handing you what's been marked for
 12 identification as Department's Exhibit C.
 13 (Exhibit C was marked.)
 14 BY MR. BLEDSOE:
 15 Q. Can you tell me what that is?
 16 A. It's a letter from Governor Kempthorne
 17 to Roger Madsen, Director of Department of
 18 Commerce and Labor dated June 1st of 2005.
 19 Q. Is this a fair and accurate copy of the
 20 letter that was sent to Director Madsen?
 21 A. Yes, it is.
 22 MR. BLEDSOE: The Department would offer
 23 what's been marked for identification as
 24 Department's Exhibit C into evidence as
 25 Department's Exhibit C.

1 identification as Department's Exhibit D.
 2 (Exhibit D was marked.)
 3 BY MR. BLEDSOE:
 4 Q. Can you tell me what that is?
 5 A. There are five letters to all the
 6 appellants dated June 9th of 2005, from
 7 Roger Madsen.
 8 Q. Is this a fair and accurate copy of the
 9 letter that Director Madsen sent to each of the
 10 appellants?
 11 A. Yes, it is.
 12 MR. BLEDSOE: The Department would offer
 13 what's been marked for identification as
 14 Department's Exhibit D into evidence as
 15 Department's Exhibit D.
 16 (Brief discussion held off the record.)
 17 MR. KELSO: Could I see B?
 18 HEARING OFFICER MCKEE: It's from the
 19 Department of Labor?
 20 MR. BLEDSOE: It's from the U.S. Department,
 21 yeah.
 22 HEARING OFFICER MCKEE: And then Exhibit D
 23 is a copy of each of the letters to each the five
 24 regions?
 25 THE WITNESS: Yes.

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1 MR. BLEDSOE: Okay. Exhibit D will be
 2 admitted.
 3 (Exhibit D was admitted.)
 4 BY MR. BLEDSOE:
 5 Q. What specific notice did the director
 6 give to each of the appellants?
 7 A. He makes two points within the letter;
 8 "he" being Roger Madsen, the director that states
 9 that, "Your current designation as a WIA local
 10 area expires on June 30th of '05."
 11 The second paragraph or point 2:
 12 "Because you are not" -- excuse me. "Because you
 13 do not meet the criteria for designation as a
 14 local area under Section 116-A-2 and 116-A-3 of
 15 the WIA, your request for designation as a local
 16 area under the new WIA state plan is denied."
 17 Q. Does the Idaho Department of Commerce
 18 and Labor have any official responsibilities
 19 regarding U.S. census figures for the state of
 20 Idaho?
 21 A. Yes, we do.
 22 Q. What responsibility does the Department
 23 have?
 24 A. We are designated as an official data
 25 center by the U.S. Commerce -- I mean, the

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1 Department of Commerce Census Bureau. Under that
 2 responsibility, we help the Bureau of the Census
 3 distribute information, hold trainings, and
 4 several other different issues.
 5 Q. I'm handing you what's been marked for
 6 identification as Department's Exhibit E.
 7 (Exhibit E was marked.)
 8 BY MR. BLEDSOE:
 9 Q. Can you tell me what that is?
 10 HEARING OFFICER MCKEE: This is E?
 11 MR. BLEDSOE: E.
 12 THE WITNESS: This is a census population
 13 for counties and cities of Idaho.
 14 BY MR. BLEDSOE:
 15 Q. Is this a record that would be
 16 generated in the ordinary course of the
 17 Department's business?
 18 A. Yes, it is.
 19 MR. BLEDSOE: The Department would offer
 20 what's been marked for identification as
 21 Department's Exhibit E into evidence as
 22 Department's Exhibit E.
 23 HEARING OFFICER MCKEE: Give me a date on
 24 it. What is the date or range of dates?
 25 THE WITNESS: There are two dates here that

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1 -- the first one is the actual census count, which
 2 is April 1 of 2000, and then it has the most
 3 current estimate, which is July 1 of 2004. So
 4 that's the range of 2000 to 2004.
 5 HEARING OFFICER MCKEE: Okay. Let's see.
 6 The actual count as of April 1st of 2000 --
 7 THE WITNESS: Right.
 8 HEARING OFFICER MCKEE: -- based upon the
 9 decennial census.
 10 THE WITNESS: Right. Correct.
 11 HEARING OFFICER MCKEE: And then the
 12 estimate of?
 13 THE WITNESS: July 1 of 2004.
 14 HEARING OFFICER MCKEE: And that's the
 15 projected?
 16 THE WITNESS: That is the most current
 17 estimate according to U.S. Bureau of Census.
 18 HEARING OFFICER MCKEE: Tell me, is this
 19 instrument, is this prepared within Idaho for
 20 Idaho or prepared by the U.S. Census Bureau for
 21 Idaho or some combination?
 22 THE WITNESS: Data comes from the census, we
 23 take it from them, project it on our own website,
 24 but we also use that information to make other
 25 publications.

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1 This one is very close to one that you
 2 normally see coming from a census. I believe, in
 3 this case, it has the city, county population, but
 4 the total stated population was added in on this
 5 document.
 6 HEARING OFFICER MCKEE: Okay.
 7 THE WITNESS: From our data.
 8 HEARING OFFICER MCKEE: My struggle on that
 9 is, for my own tracking, I want to keep track of
 10 what's Federal date and what is State data.
 11 I gather the actual census, the
 12 April 1, 2000 would be the United States census
 13 calculations for Idaho.
 14 THE WITNESS: All the data here is census
 15 data. None of it comes from Idaho. We take their
 16 data and sometimes we change the format of it; in
 17 other words, we don't change the number, but we
 18 may move the columns around on it.
 19 HEARING OFFICER MCKEE: Okay. That's my
 20 question. All the data is U.S. Census data --
 21 THE WITNESS: Correct.
 22 HEARING OFFICER MCKEE: -- and you may have
 23 recast it, reformatted it, put it into different
 24 slots to line it up with cities and counties in
 25 Idaho?

1 THE WITNESS: Correct.
 2 HEARING OFFICER MCKEE: But the numbers are
 3 all U.S. census numbers, both the actual count in
 4 2000 and the projections?
 5 THE WITNESS: Right. We do not do any
 6 estimating.
 7 HEARING OFFICER MCKEE: Okay. That all
 8 comes from the U.S. Census Bureau. All you are
 9 doing is putting it in the right slot.
 10 THE WITNESS: Correct.
 11 HEARING OFFICER MCKEE: Taking it from
 12 wherever they have it for Arco and Butte County,
 13 and you may have Arco and Butte County in a
 14 different place on your table.
 15 So that is the only change you are
 16 making in preparing this document?
 17 THE WITNESS: Yes.
 18 HEARING OFFICER MCKEE: With that
 19 understanding, counsel?
 20 MR. KELSO: Same position.
 21 HEARING OFFICER MCKEE: What position?
 22 MR. KELSO: The position I stated the first
 23 time an exhibit was offered.
 24 HEARING OFFICER MCKEE: Okay. Ms. Keefer?
 25 MS. KEEFER: I don't have any objections.

1 HEARING OFFICER MCKEE: I'll admit
 2 Exhibit E.
 3 (Exhibit E was admitted.)
 4 BY MR. BLEDSOE:
 5 Q. According to Exhibit E, what is the
 6 total population for the state of Idaho?
 7 A. According to --
 8 HEARING OFFICER MCKEE: When, now?
 9 BY MR. BLEDSOE:
 10 Q. What were the official -- what is the
 11 official census figures for the population for the
 12 state of Idaho?
 13 A. The official census of April 1 of 2000
 14 is 1,293,953. The July 1st of 2004 estimate, the
 15 most current data out is 1,393,262.
 16 Q. According to Exhibit E, what is the
 17 population density for the state of Idaho?
 18 A. Again, accordingly to the actual census
 19 in 2000, it was 15.6 people per square mile, and
 20 July 1, 2000, estimate was 16.8 people per square
 21 mile.
 22 Q. What county in Idaho has the largest
 23 population?
 24 A. Ada County.
 25 Q. What is the population of Ada County?

1 A. The census of 2000 was 300,904, and the
 2 July 1, 2004 estimate was 332,523.
 3 Q. What city in Idaho has the largest
 4 population?
 5 A. The city of Boise.
 6 Q. What is the population of Boise?
 7 A. The actual census in 2000 was 185,787,
 8 and the estimate of 2004 was 190,122.
 9 Q. As the Assistant Deputy Director for
 10 the Department of Commerce and Labor, the agency
 11 responsible for the state-wide administration of
 12 WIA, do you have an opinion about appellant
 13 eligibility for mandatory designation as local
 14 Workforce Investment Areas under the current state
 15 plan?
 16 A. Yes, I do.
 17 Q. What is your opinion?
 18 A. None of the appellants meet the
 19 statutory criteria for mandatory designation.
 20 None of them also fit the automatic designation.
 21 There is no city or county in Idaho with a
 22 population of 500,000 or greater, therefore it
 23 doesn't fit.
 24 The appellants allege an entitlement to
 25 a declaration -- I mean, allege entitlement to a

1 designation that has expired with the state plan
 2 under the temporary and subsequent designation.
 3 There was -- temporary and subsequent
 4 expired with the last state plan of June 1st of
 5 this year; therefore, the appellants are seeking
 6 designation under a provision of the law that is
 7 currently not available.
 8 Q. Is your opinion supported by any
 9 technical guidance you have received from the
 10 Federal Department of Labor?
 11 A. Yes, it is.
 12 Q. I'm handing you what's been marked for
 13 identification as Department's Exhibit F.
 14 (Exhibit F was marked.)
 15 BY MR. BLEDSOE:
 16 Q. Can you tell me what that is?
 17 A. It is technical guidance from the U.S.
 18 Department of Labor to the Idaho Department of
 19 Commerce and Labor dated July 14th of '05.
 20 Q. Is it a fair and accurate and complete
 21 copy of the technical guidance that the Department
 22 received?
 23 A. Yes, it is.
 24 HEARING OFFICER MCKEE: Tell me what this
 25 is. Is this a letter or a publication?

1 THE WITNESS: A letter.
 2 HEARING OFFICER MCKEE: And U.S. Department
 3 of Labor to who?
 4 THE WITNESS: To the Idaho Department of
 5 Commerce.
 6 HEARING OFFICER MCKEE: Any particular
 7 individual?
 8 THE WITNESS: It's John McCallister, the
 9 deputy director.
 10 MR. BLEDSOE: The Department would offer
 11 what's been marked for identification as
 12 Department's Exhibit F into evidence as
 13 Department's Exhibit F.
 14 MR. KELSO: Same position.
 15 HEARING OFFICER MCKEE: Hearing no
 16 objection, Exhibit F will be admitted.
 17 (Exhibit F was admitted.)
 18 BY MR. BLEDSOE:
 19 Q. You mentioned this is technical
 20 guidance from the Department of Labor.
 21 How do you know that?
 22 A. It's fairly clear, within the Federal
 23 Register on page 19,210.
 24 Q. What Exhibit is that?
 25 A. It's Exhibit A. On page 19,210, it

1 states in here that, "The designated federal
 2 coordinator for the review and approval process is
 3 Christine Kulick," and it gives her e-mail and
 4 phone number right here in the part of the center
 5 column on 19,210.
 6 Q. Why is that important?
 7 A. The letter was signed -- look at the
 8 back part of the letter. It's been signed by
 9 Christine Kulick with her title of Federal
 10 Coordinator For Plan Review and Approval. Not
 11 only is Christine that coordinator, but also in
 12 the last sentence of the first paragraph --
 13 HEARING OFFICER MCKEE: Whatever you are
 14 talking about, I don't have.
 15 THE WITNESS: I'm sorry.
 16 HEARING OFFICER MCKEE: No. This letter
 17 isn't signed.
 18 THE WITNESS: The second page right here has
 19 a signature.
 20 HEARING OFFICER MCKEE: Oh, there it is.
 21 THE WITNESS: There was an attachment.
 22 HEARING OFFICER MCKEE: Oh. I was looking
 23 at the end of the document. It's a two-page
 24 letter with a three-page attachment.
 25 THE WITNESS: Right.

1 BY MR. BLEDSOE:
 2 Q. Is there any other reason why this
 3 would be considered official technical guidance?
 4 A. Yes. The first paragraph of the letter
 5 states, the last sentence, "The specific points of
 6 clarification are listed below along with the
 7 Employment and Training Administration's
 8 response."
 9 She is speaking on behalf there as
 10 Employment Training Administration.
 11 Q. So you understand Exhibit F to contain
 12 the official responses of the Federal Employment
 13 and Training Administration?
 14 A. Yes, it is, yes.
 15 Q. What is the Federal Employment and
 16 Training Administration?
 17 A. The Employment Training Administration
 18 is really the federal administrative entity for
 19 the Workforce Investment Act.
 20 Q. What relationship do they have with the
 21 Federal Department of Labor?
 22 A. They are a subdivision of the
 23 U.S. Department of Labor.
 24 Q. What responsibility does the state of
 25 Idaho have, if any, to follow or not follow

1 official guidance from the Federal Department of
 2 Labor?
 3 A. The state of Idaho is a recipient of
 4 federal funds. With the receipt of that, we need
 5 to ensure compliance on receiving those funds and
 6 also the use of those funds, the expenditures of
 7 them. If these rules and regulations are not
 8 followed, we would suffer financial and legal
 9 consequences.
 10 Q. How does that official technical
 11 guidance support your opinion?
 12 A. There's several points here that
 13 Ms. Kulick makes, and the first one is that they
 14 confirm that the original 2000 five-year plan
 15 expired on June 30th.
 16 The response cites back to the same
 17 guidance that was in the Federal Register, Exhibit
 18 A, and the response from Employment Training
 19 Administration.
 20 The technical response says the
 21 Department of Labor's DOL April 12th, '05, Federal
 22 Register notice, quote, "Planning guides and
 23 instructions for submission of the two years of
 24 the strategic five-year state plan for Title I of
 25 the Workforce Investment Act of 1998, the

1 Wagner-Peyser Act," unquote, clearly states that
 2 the prior five-year plans expired on June 30th of
 3 2005.
 4 It goes on to state another
 5 confirmation, and that is to confirm that
 6 optional, temporary, and subsequent workforce area
 7 designations in the program year, PY 2000
 8 five-year plan also expired on June 30th of 2005.
 9 Here is the response from the U.S. DOL,
 10 the Employment Training Administration, and that
 11 response states, it's right here in the letter
 12 that, "DOL program year 2005 planning guidelines
 13 referenced above clearly requires states to
 14 designate local Workforce Investment Areas for
 15 program year 2005 to 2006 and provides subsequent
 16 designation period for areas designated in the
 17 prior five-year plan has ended."
 18 Q. And that's referring both to optional
 19 designations as well as temporary?
 20 A. Yes, it does. The final confirmation,
 21 they confirm that temporary and subsequent
 22 workforce area designations were only available in
 23 the program year 2000 plan.
 24 The response from U.S. DOL is that, "It
 25 is DOL policy that the period of subsequent

1 MS. KEEFER: Congress intended or the
 2 administration intended?
 3 HEARING OFFICER MCKEE: That was what I was
 4 looking for.
 5 MS. KEEFER: There were no legal changes.
 6 HEARING OFFICER MCKEE: What was the
 7 reference to the language you said was omitted?
 8 THE WITNESS: It's the law, and the
 9 reference in there will take me a second to find
 10 it, but it is in the law here.
 11 BY MR. BLEDSOE:
 12 Q. You are referring to the automatic
 13 designation criteria?
 14 A. Right. It says here.
 15 HEARING OFFICER MCKEE: Where?
 16 MR. BLEDSOE: What is the section cite?
 17 THE WITNESS: In 16-2-A under automatic --
 18 HEARING OFFICER MCKEE: Hang on. Now, wait
 19 a minute. You are now looking at federal
 20 regulation or the statute?
 21 THE WITNESS: Well, which ever. This is the
 22 WIA --
 23 MR. BLEDSOE: It's the statutory duty. He
 24 is looking at the statute Section 116, the
 25 automatic designation criteria under A-2.

1 designation under WIA Section 116-A-3 extended
 2 until the end of the period covered by the prior
 3 state plan. The law contains no provision
 4 mandating temporary and subsequent designation
 5 following the expiration of the prior plan."
 6 Q. Regarding the automatic designation
 7 criteria, do you have an opinion about whether
 8 cities and counties can combine to meet the
 9 population requirement?
 10 A. Yes, I do.
 11 Q. What is your opinion?
 12 A. Under the automatic designation
 13 criteria, the phrase as used, any unit of general
 14 local government without any other identification
 15 phrasing at all on that; that is in the automatic.
 16 This is somewhat different than in the
 17 temporary and subsequent classification where they
 18 add a qualifying phrase to that term stating that,
 19 including any combination of any such units.
 20 So it is clear by not adding that
 21 qualifier in the automatic designation that it is
 22 clear that Congress' intent was not to allow
 23 combination of general units of local government.
 24 HEARING OFFICER MCKEE: What is the
 25 reference again?

1 HEARING OFFICER MCKEE: This is the
 2 current -- well, let's see. The law hasn't
 3 changed.
 4 THE WITNESS: No.
 5 HEARING OFFICER MCKEE: So this is the
 6 Workplace Enforcement Act of 1998, and Section
 7 116-A-2 says?
 8 THE WITNESS: A-2 is the automatic
 9 designation which states: "The Governor shall
 10 approve any requests for designation as a local
 11 area." But then the subsection A states in there
 12 "...from any unit" --
 13 HEARING OFFICER MCKEE: 116-A-2-A?
 14 THE WITNESS: Yeah. States any unit of
 15 general local government with a population of
 16 500,000 or more.
 17 HEARING OFFICER MCKEE: Any unit, okay. And
 18 you were saying that that language does not
 19 include something that someplace else or does
 20 include something that isn't someplace else, and
 21 that is what I'm looking for.
 22 THE WITNESS: Under 116-A-3, under the
 23 temporary and subsequent designation, under
 24 parenthesis there is a statement following any
 25 unit of general local government. Under -- within

1 the parentheses it says, "(including a combination
 2 of such units)"; that is in the temporary and
 3 subsequent designation.
 4 HEARING OFFICER MCKEE: All right. You are
 5 saying because of that parenthetical qualifier it
 6 is not in Section 116-A-2-A --
 7 THE WITNESS: Right. It doesn't apply.
 8 HEARING OFFICER MCKEE: -- it doesn't apply.
 9 In the 116-A-2-A, in your opinion, any unit with
 10 population of 500,000 means just that. It has to
 11 be a single unit, either a county or city, but not
 12 a combination?
 13 THE WITNESS: Correct. They did allow under
 14 temporary and subsequent the combination of such
 15 units as it is stated; however, the criteria
 16 temporary and subsequent designation expired with
 17 the initial state plan.
 18 HEARING OFFICER MCKEE: I understand that.
 19 THE WITNESS: So it's no longer available.
 20 HEARING OFFICER MCKEE: You are maintaining
 21 that temporary and subsequent was only available
 22 during the initial five-year period and it expired
 23 on June 30th of 2005?
 24 THE WITNESS: Correct.
 25 HEARING OFFICER MCKEE: And that for any

1 subsequent plan after that, the designation
 2 temporary and subsequent, if I understand your
 3 testimony, you're saying is not available?
 4 THE WITNESS: Yes.
 5 HEARING OFFICER MCKEE: And the only
 6 criteria then, other than the Governor's
 7 discretion, is the automatic designation of
 8 116-A-2?
 9 THE WITNESS: Yes. There are two other
 10 designations here, neither one of which apply to
 11 Idaho. They are rather obscure, and I could go
 12 into those.
 13 MS. KEEFER: Could I explain my objection?
 14 HEARING OFFICER MCKEE: Yes.
 15 MS. KEEFER: I still, for the record, object
 16 to Mr. Engstrom's interpretation of the
 17 congressional intent by the fact that they left
 18 language out does not mean that they intended to
 19 prohibit combinations of governmental units.
 20 HEARING OFFICER MCKEE: Certainly, I'm going
 21 to let you -- No. 1, you can ask him questions.
 22 No. 2, you can present that on your evaluation. I
 23 fully understand.
 24 MS. KEEFER: I object to his comment.
 25 HEARING OFFICER MCKEE: In terms --

1 MS. KEEFER: It's the question that I have
 2 to object to?
 3 HEARING OFFICER MCKEE: Not really. His
 4 opinion is his opinion, and you may object. I
 5 understand you object to it.
 6 MS. KEEFER: I understand. I will be given
 7 another opportunity to bring it up?
 8 HEARING OFFICER MCKEE: But in terms of
 9 objecting to speak his opinion, he's entitled to
 10 tell me his opinion. Whether he's correct or not,
 11 I'm going to hear everybody out on that once we
 12 get to the bottom of this.
 13 Right now we are just trying to get in
 14 what is his opinion and why. So that is what we
 15 are after, and what I wanted to figure out,
 16 because I wasn't clear at the very beginning,
 17 whether his opinion is founded upon his
 18 interpretation of the statute or his
 19 interpretation of the Federal Register.
 20 But you made a good point on this as
 21 whether he is looking at the statute, which is the
 22 statute that is the expression of Congress, or the
 23 Federal Register, which is an expression of the
 24 agency, Department of Labor, interpreting the act
 25 of Congress.

1 Now, they are both entitled to weight,
 2 and I don't want to get in yet which trumps the
 3 other. I think it's clear the statute trumps the
 4 Register. But what consideration does the
 5 Governor, for example, have to give to a
 6 regulation as opposed to the statute?
 7 I don't know if we will get into that
 8 at all, but there could be a distinction between a
 9 federal regulation of a federal agency, which I
 10 think you correctly identify as being an
 11 expression of the agency's interpretation of
 12 federal law, and the act of Congress, which is the
 13 statute.
 14 So I'm going to keep that in mind.
 15 That is a legitimate -- but in terms of this
 16 witnesses expression of opinion, I understand you
 17 object. But it's not a reason to not let him
 18 testify.
 19 Okay. Mr. Bledsoe, back to you.
 20 BY MR. BLEDSOE:
 21 Q. Does the Workforce Investment Act
 22 statute itself define the phrase "unit of general
 23 local government"?
 24 A. Yes, it does. In Section 101,
 25 Subsection 48, it defines unit of local government

1 as any general political subdivision which has
 2 general police power and the power to levy taxes.
 3 HEARING OFFICER MCKEE: Unless we are going
 4 to get into some technical distinction, I would
 5 assume that that is broad enough so it fits, for
 6 example, Louisiana's parishes, and let's see. I
 7 think Connecticut, for example, doesn't have
 8 counties, but they have some other kind of
 9 political subdivision.
 10 In Idaho what it would apply to would
 11 be counties or cities?
 12 MR. BLEDSOE: That's correct.
 13 MR. KELSO: I would disagree respectfully
 14 for whatever procedure it is. I don't know how
 15 you can make that assumption. You ought to at
 16 least wait until --
 17 HEARING OFFICER MCKEE: I just did.
 18 MR. KELSO: -- cross-examination is over.
 19 HEARING OFFICER MCKEE: I just did. I want
 20 to speed it up a little bit. If you have a
 21 problem with that -- what do you think it applies
 22 to, Mr. Kelso?
 23 MR. KELSO: Well, if you read my prehearing
 24 memorandum, you should know. It is set forth in
 25 that, and I presume that is part of the record.

1 counties that comprise Region III. All of which
 2 have power to levy taxes, spend funds as well as
 3 general corporate and policy powers.
 4 Exhibit 30 -- at 30-6, which is the
 5 opinion, it's not as the advisory letter of the --
 6 of John C. Hummell (phonetic) Deputy Attorney
 7 General for the Department of Employment with
 8 regards to private industry councils dated July 6,
 9 1993.
 10 And the Hearing Officer can take
 11 judicial notice or administrative notice or notice
 12 under some rule or procedure that these regions
 13 are the heirs subsequent parties to private
 14 industry councils.
 15 And what the sum and substance of
 16 Mr. Hummell's extensive review that the members of
 17 a private industry council are subagencies of
 18 those public agencies. And therefore, it's our
 19 position that they fit within the definition of
 20 any unit.
 21 HEARING OFFICER MCKEE: Okay. Help me
 22 understand. Region III, that's on Ada County?
 23 MR. KELSO: There's ten counties that
 24 comprise Region III. Ada county is the primary.
 25 HEARING OFFICER MCKEE: The ten southwestern

1 HEARING OFFICER MCKEE: Well, I read it, but
 2 I don't have it in mind. What did you have in
 3 mind? What do you think political unit means if
 4 we are not talking about city -- in Idaho anyway,
 5 cities and counties?
 6 MR. KELSO: Okay. Page 4 -- you seem to, in
 7 all of these hearings, have to be shown page and
 8 verse and paragraph. Region III undisputably
 9 contains population of 596,829, which is
 10 referenced in Exhibit 53-3.
 11 HEARING OFFICER MCKEE: 53-3.
 12 MR. KELSO: As such, it is entitled to
 13 mandatory designation because it is quote, "any"
 14 underlined, "any unit of local government with the
 15 population of 500,000 or more."
 16 As addressed by the Department, "Any
 17 unit of local government requires a general
 18 purpose political subdivision, quote, "any," "that
 19 has any power to levy taxes and spend funds as
 20 well as general corporate and policy powers."
 21 Now, the point. Contrary to the
 22 Department's assertion, it is undisputed that
 23 Region III exceeds -- Region III exceeds 500,000
 24 in population, and it's our position that it
 25 exceeds this because it is a subagency of the ten

1 counties of Idaho; Ada, Canyon, Elmore, Boise --
 2 MR. KELSO: Let's see. I've got a map in
 3 here.
 4 HEARING OFFICER MCKEE: Up to the Idaho
 5 county line?
 6 COURT REPORTER: I can't write three people
 7 talking at once.
 8 MR. KELSO: I can list them: Adams, Valley,
 9 Washington, Payette, Gem, Boise, Canyon, Ada,
 10 Elmore, and Owyhee.
 11 HEARING OFFICER MCKEE: I think
 12 traditionally the ten southwestern counties of
 13 Idaho Region III. And your point is that the ten
 14 southwestern counties constitute Region III, and
 15 Region III itself is under the federal definitions
 16 of local unit of government?
 17 MR. KELSO: Is a subagency of a general unit
 18 of local government that has those authorities
 19 according to the Idaho Attorney General for the
 20 Idaho Department of Employment at that time.
 21 HEARING OFFICER MCKEE: Well --
 22 MR. KELSO: And it's also our position that,
 23 as was pointed out by Ms. Keefer, that 20CFR661280
 24 refers to, a combination of units may appeal, and
 25 that specific provision of the code of federal

1 regulations applies to appeals.
 2 And we are appealing, and it's our
 3 position that there is no distinction because the
 4 appeal process says that any combination of units
 5 or combination of units can appeal.
 6 HEARING OFFICER MCKEE: All right. Back to
 7 you.
 8 MR. BLEDSOE: The federal definition is very
 9 specific. It says that a unit of general local
 10 government means any general purpose political
 11 subdivision of a state. If Region III thinks that
 12 they are a political subdivision, then I would
 13 suggest that would need to be a reference in the
 14 Idaho Constitution or some state statute giving
 15 them that kind of political power. And there is
 16 not, and they are not.
 17 Just because Ada County sits on a
 18 larger board that represents ten counties, that
 19 doesn't give Ada County the right to set to
 20 enforce police powers or to levy taxes on people
 21 in Elmore County.
 22 HEARING OFFICER MCKEE: Let me ask. What --
 23 give me the statutory reference again.
 24 MR. BLEDSOE: Section 101, Subsection 48.
 25 HEARING OFFICER MCKEE: Of Workforce

1 Investment Act.
 2 MR. BLEDSOE: Yes, of the Workforce
 3 Investment Act.
 4 HEARING OFFICER MCKEE: And it's -- Section
 5 48 is the definition?
 6 MR. BLEDSOE: Yes.
 7 HEARING OFFICER MCKEE: Or is it Section 48
 8 sub A sub 1 sub 2 sub ii sub x?
 9 MR. BLEDSOE: No. 48 is the definition.
 10 HEARING OFFICER MCKEE: Okay. That's the
 11 definition. Okay. I'm used to federal statutes,
 12 too. Every once in a while you get trapped. I
 13 understand the point.
 14 BY MR. BLEDSOE:
 15 Q. Are any of the appellant organizations
 16 general purpose political subdivision of the state
 17 of Idaho?
 18 MR. KELSO: Objection. It asks for a legal
 19 conclusion. Of course, I don't know if I can
 20 object or not, but for the record, it seeks a
 21 legal statement, not an opinion.
 22 HEARING OFFICER MCKEE: Yeah, probably. But
 23 I'm going to let him testify.
 24 THE WITNESS: No, they do not.
 25 ///

1 BY MR. BLEDSOE:
 2 Q. Do you have an opinion about whether
 3 any of the appellants meet the requirements in the
 4 statute WIA Section 116, Subsection A, Subsection
 5 2 Subsection b?
 6 A. Yes, I do.
 7 HEARING OFFICER MCKEE: Okay. Subsection B?
 8 MR. BLEDSOE: Yes.
 9 HEARING OFFICER MCKEE: Which one is that?
 10 BY MR. BLEDSOE:
 11 Q. Can you tell me what that subsection
 12 relates to in general?
 13 A. It relates to designation -- actually,
 14 relates to an old designation from, if I
 15 understand it right, the CEDA period of time, and
 16 it was a designation called: Areas that were
 17 served by Rural Concentrated Employment Program
 18 grant recipients.
 19 Q. Before we get into that, let's back up
 20 just a second.
 21 You are referring to a subsection in
 22 one of the designated criteria's, aren't you?
 23 A. Yes. It's under the automatic
 24 designation. Designation 16-A-2, and it's
 25 paragraph B.

1 HEARING OFFICER MCKEE: Of the area served
 2 by a Rural Concentrated Employment Program grant
 3 recipient of a demonstrating effectiveness that
 4 served as a Service Delivery Area or substitute
 5 area under the Job Training Partnership Act if the
 6 grant participant has submitted a request?
 7 THE WITNESS: Yes.
 8 HEARING OFFICER MCKEE: Is that what we are
 9 looking at?
 10 THE WITNESS: Correct, that's the area.
 11 BY MR. BLEDSOE:
 12 Q. Do you have an opinion about whether
 13 any of the appellants qualify under that
 14 particular provision?
 15 A. No. There's never been a Rural
 16 Concentrated Employment Program Grant received in
 17 the state of Idaho. There's -- as a matter of
 18 fact, there have only been about five in the
 19 nation, and they are kind of an old hold-over from
 20 CEDA and there is none here in Idaho.
 21 HEARING OFFICER MCKEE: So you are saying
 22 that everybody in this room flunks the first
 23 phrase, "area served by Rural Concentrated
 24 Employment Program grant recipient," that there
 25 are none in Idaho?

1 THE WITNESS: Yes.
 2 HEARING OFFICER MCKEE: And never have been?
 3 THE WITNESS: Correct.
 4 HEARING OFFICER MCKEE: If I understand what
 5 you are saying.
 6 THE WITNESS: Yes.
 7 HEARING OFFICER MCKEE: Okay.
 8 BY MR. BLEDSOE:
 9 Q. Again, looking at the automatic
 10 designation criteria, referring now to Subsection
 11 C, do you have an opinion about whether any of the
 12 appellants meet this criteria?
 13 A. Yes, I do.
 14 Q. What is your opinion?
 15 A. They do not meet --
 16 HEARING OFFICER MCKEE: Hold on a minute. I
 17 got to the end.
 18 THE WITNESS: It's right below the rule.
 19 HEARING OFFICER MCKEE: No. I was still
 20 making a note on that first one.
 21 Now, the subpart C, the area served by
 22 the Service Delivery Area under Section 101-A, et
 23 cetera of the Job Training Partnership Act, as in
 24 effect on the day before the date of enactment of
 25 this act in a state that has a population of not

1 any of the criteria under that designation
 2 criteria?
 3 A. No, they did not.
 4 MR. BLEDSOE: The Department of Commerce and
 5 Labor has no further questions.
 6 HEARING OFFICER MCKEE: Mr. Kelso, do you
 7 want to participate?
 8 MR. KELSO: I wish to cross-examine.
 9 HEARING OFFICER MCKEE: You may.
 10 MR. KELSO: But I would like to take a break
 11 for a moment, please.
 12 HEARING OFFICER MCKEE: That is a good idea.
 13 We'll take ten minutes.
 14 (Short break taken.)
 15 HEARING OFFICER MCKEE: Back on the record,
 16 please.
 17 Mr. Kelso, cross-examination.
 18 MR. KELSO: I will cross-examine him, for
 19 the record, subject to our prior understanding
 20 that what occurred and without waiving that prior
 21 understanding.
 22 I may have been looking at something,
 23 Mr. McKee, at the beginning, but I don't recall
 24 the witness being sworn under oath.
 25 HEARING OFFICER MCKEE: I put him under

1 more than 1.1 million and a population density
 2 greater than 900 persons per square mile.
 3 Okay. Now, what is -- what are we
 4 talking about, and what's your answer?
 5 BY MR. BLEDSOE:
 6 Q. Do you have an opinion about whether
 7 any of the appellants qualify for automatic
 8 designation under this provision?
 9 A. Yes, I do.
 10 Q. What is your opinion?
 11 A. They did not qualify. It states here
 12 that the state has a population not more than 1.1
 13 million. Idaho's population is approximately 1.3
 14 million, and also the population density greater
 15 than 900 persons per square mile. And Idaho's
 16 density is 16.8 people per square mile.
 17 HEARING OFFICER MCKEE: So you are saying
 18 you'd have a larger population and a less per mile
 19 density?
 20 THE WITNESS: Correct. Neither one of those
 21 apply.
 22 BY MR. BLEDSOE:
 23 Q. Based on your understanding of the
 24 automatic designation criteria in the law, the
 25 federal statute, can any of the appellants satisfy

1 oath.
 2 MR. KELSO: Okay.
 3 HEARING OFFICER MCKEE: The record should
 4 reflect.
 5 MR. KELSO: Okay.
 6
 7 CROSS-EXAMINATION
 8 BY MR. KELSO:
 9 Q. Is it Engstrom?
 10 A. Yes.
 11 Q. Mr. Engstrom, isn't it true that the
 12 Idaho Workforce Council monitored each of the five
 13 appellants in this matter as a unit?
 14 A. As a unit? I guess -- are you
 15 referring to the last plan or are you talking
 16 about the current plan?
 17 Q. Well, let's take during the period of
 18 2000 to July 1st, 2005.
 19 A. Well, no. Because there was two
 20 separate units. Region III was their own kind of
 21 a -- there was really one service -- there were
 22 two Service Delivery Areas, if I could use that
 23 term, in Region III in the mountain state.
 24 So really, since Region III is included
 25 in your 5, I guess I would have to say no, because

1 there was two different Service Delivery Areas.
 2 Q. How is --
 3 HEARING OFFICER MCKEE: Let's find out.
 4 What did you call it; a Service
 5 Delivery Area or service area? No. I just didn't
 6 hear you.
 7 THE WITNESS: Service Delivery Area.
 8 HEARING OFFICER MCKEE: Okay. Thank you.
 9 BY MR. KELSO:
 10 Q. Well, let's go through Region I. Was
 11 it monitored by the Idaho Workforce Council as
 12 part of the Idaho Workforce Council's duties and
 13 obligations as a unit?
 14 A. Yes.
 15 Q. So when you addressed the performance
 16 of Region I, you addressed the impact on all the
 17 counties within Region I?
 18 HEARING OFFICER MCKEE: Help me understand,
 19 Counsel. When you use the proceed noun "you," are
 20 you referring to this, then, in his capacity, to
 21 the Department of Commerce, or to the Workforce
 22 Council?
 23 MR. KELSO: I'm talking about the Idaho
 24 Workforce Council.
 25 THE WITNESS: Yes, a brief performance is

1 looked at as a unit of a region.
 2 HEARING OFFICER MCKEE: I'm sorry. I don't
 3 want to get hung up because if these terms have
 4 definitions, you need to keep me straight. You
 5 said a unit of a region?
 6 THE WITNESS: Well, they were part of a --
 7 what's referred to as balance of state, but as we
 8 evaluated their performance, Region I was a -- was
 9 analyzed by themselves. They were not responsible
 10 for Pocatello's performance, let's say.
 11 BY MR. KELSO:
 12 Q. Okay. So, when we are talking about
 13 how they, Region I, was evaluated, Region I's
 14 performance in implementing their directives under
 15 the Workforce Investment Act as a unit
 16 representing the counties in that region, correct?
 17 A. Yes.
 18 Q. And the same would be true for Region
 19 II?
 20 A. Yes.
 21 Q. The same would be true for Region III?
 22 A. Right.
 23 Q. The same would be true for Region 4?
 24 A. Correct.
 25 Q. And the same would be true for Region

1 5?
 2 A. Yes.
 3 Q. And in that evaluation process, it was
 4 your opinion that you were complying with the
 5 federal statutes and regulations on how these
 6 regions should be reviewed?
 7 A. Yes.
 8 Q. Now, would you agree -- or excuse me.
 9 Isn't it true that Ada County has in excess of
 10 200,000 population? Would you just refer to your
 11 Exhibit there.
 12 A. Yes, it's more than 200,000.
 13 Q. What exhibit number is that?
 14 A. Exhibit E.
 15 Q. And it has an excess of 200,000 under
 16 that exhibit that you have offered and admitted?
 17 A. Right.
 18 Q. Isn't it true that all of the counties
 19 in Region III, using the figures set forth on
 20 Exhibit 3, exceed a total population of 500,000?
 21 A. All of Region III, yes, exceeds
 22 500,000.
 23 HEARING OFFICER MCKEE: The sum of ten
 24 southwestern counties would exceed 500,000?
 25 THE WITNESS: Yes.

1 HEARING OFFICER MCKEE: Okay.
 2 BY MR. KELSO:
 3 Q. Are you familiar with JP Stravens
 4 Planning & Associates?
 5 A. Yes, I am.
 6 Q. And who is JP Stravens Planning &
 7 Associates?
 8 HEARING OFFICER MCKEE: Say that name again.
 9 MR. KELSO: JP Stravens, S-T-R-A-V-E-N-S,
 10 Planning Associates, Inc.
 11 HEARING OFFICER MCKEE: And they are --
 12 okay. Go ahead.
 13 BY MR. KELSO:
 14 Q. And to your knowledge, in your
 15 capacity, who are they?
 16 A. They are a provider of demographic
 17 information in northern Idaho and possibly other
 18 areas.
 19 Q. Is that information that the Idaho
 20 Workforce Council reviews or utilizes in its
 21 normal course of business?
 22 A. I have no knowledge of that.
 23 Q. How about the Idaho Department of
 24 Commerce and Labor; do they use and review that
 25 information that he provides?

1 A. They may have. I do not know.
 2 Q. In your experience, you are not aware
 3 of the Idaho Department of Commerce and Labor ever
 4 utilizing demographics provided by JP Stravens
 5 Planning Associates, Inc.?
 6 A. I personally have not, no.
 7 Q. I don't have any marks, but I'll put
 8 this as A. Showing you what's been marked --
 9 HEARING OFFICER MCKEE: I guess the
 10 Government wants to preempt you on A. If would
 11 you use 1, 2, 3, I guess.
 12 MR. KELSO: Okay. Let's use 1. That would
 13 make it much clearer. Just scratch that out and
 14 put 1.
 15 HEARING OFFICER MCKEE: Either that or you
 16 can have what's next, F.
 17 MR. KELSO: Let's go 1.
 18 HEARING OFFICER MCKEE: Okay. Then it will
 19 be clear. Anything with a number on it belongs to
 20 this side of the table. Anything with a letter on
 21 it belongs to this side of the table.
 22 (Exhibit I was marked.)
 23 BY MR. KELSO:
 24 Q. Just take a moment and look at that
 25 document. You indicated you were familiar with

1 start your answer.
 2 THE WITNESS: Thank you.
 3 HEARING OFFICER MCKEE: I can hear both
 4 sometimes. Sometimes I can, sometimes I can't.
 5 But our reporter has trouble writing down two
 6 conversations at the same time, so let the lawyer
 7 finish his questions.
 8 BY MR. KELSO:
 9 Q. What is your understanding of what
 10 Mr. Stravens does with regards to demographics?
 11 A. My understanding is that he is a
 12 consultant that supplies demographic information.
 13 Q. Would you define "demographic
 14 information"?
 15 A. Taking census material and probably
 16 adding some value to it.
 17 Q. Okay. Another way of saying that would
 18 be estimating population?
 19 A. Possibly. I have no knowledge of JP
 20 Stravens' ability to estimate or not estimate
 21 population.
 22 Q. I'm not asking you to tell me what your
 23 understanding of his ability is, but I'm just
 24 asking you to define that term, whether that was
 25 estimating population.

1 JP Stravens Planning & Associates.
 2 How did you become familiar with them?
 3 A. They've been in our office a few times.
 4 I've met them. But actually they were grant
 5 administrators probably a hundred million years
 6 ago, so I've known about them for quite some time.
 7 Q. Grant administrators; what do you mean
 8 by that?
 9 A. Under another program, another EDA
 10 program many years ago.
 11 Q. Would it be under the --
 12 A. Had nothing to do with WIA.
 13 Q. It would be through the Idaho
 14 Department of Commerce and Labor or through the
 15 Department of Commerce at that time?
 16 A. No.
 17 Q. Who would it be through?
 18 A. I don't know.
 19 Q. How were you aware --
 20 A. They have been around for several
 21 years, so I -- I can't really remember exactly
 22 when I met them.
 23 Q. Okay.
 24 HEARING OFFICER MCKEE: It's going to help a
 25 lot if you let him finish his question before you

1 HEARING OFFICER MCKEE: He answered the
 2 question, Counsel.
 3 BY MR. KELSO:
 4 Q. Well, have you seen this Document 1
 5 before.
 6 A. No.
 7 Q. You have any reason to dispute that it
 8 was prepared by JP Stravens Planning and
 9 Associates and stands for whatever it stands for?
 10 A. I have no reason to believe it wasn't
 11 produced by him.
 12 Q. Okay.
 13 A. It says that on the bottom of the page.
 14 It's a copyrighted document by him.
 15 Q. Okay.
 16 A. By JP Stravens.
 17 MR. KELSO: I would offer 1.
 18 MR. BLEDSOE: The Department would object.
 19 And if I could ask a couple of questions ahead of
 20 the objection?
 21 HEARING OFFICER MCKEE: Well, let me
 22 struggle with this for just a minute. If we are
 23 after the foundation of the document, in fairness,
 24 this witness can't get you quite there. It looks
 25 like -- if you have a witness that you could

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1 offer, I will allow you to offer subject to the
 2 foundation being connected up.
 3 If Mr. Bledsoe doesn't recognize it
 4 then we have -- have a problem with the
 5 foundation. If the problem goes to content of the
 6 document, that goes to the weight or to the --
 7 what's in it rather than the authenticity of it,
 8 then let's get it in, and then I will hear both
 9 sides out as to what the data means.
 10 I'm kind of looking at it from afar.
 11 Technically speaking, you are almost there on
 12 authenticity, but this witness can't quite get you
 13 over the hill in terms of authenticating that this
 14 document is a -- where is it going to come from, a
 15 historical document or scientific document?
 16 I suspect if you have anybody in the
 17 wing that you can offer, it doesn't take much more
 18 to get it authenticated, but it's not quite there
 19 yet. So if Mr. Bledsoe is objecting on the basis
 20 of authentication, I would offer you the
 21 opportunity to offer the document subject to it
 22 being connected up and we can get on with it.
 23 MR. KELSO: Is that the objection?
 24 MR. BLEDSOE: To foundation and to
 25 relevance. Without some testimony as to how he

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1 derived these 2005 estimates that I believe he is
 2 leading to, I don't know how we could determine
 3 what kind of relevance they have.
 4 HEARING OFFICER MCKEE: I don't know what
 5 you guys are talking about, because you haven't
 6 gotten any father than the face sheet so far.
 7 MR. KELSO: And that is the point I would
 8 like to make with regards to this proceeding, is
 9 that the position of the Idaho Workforce Council
 10 is that the regions have no funds to hire
 11 attorneys, hire experts, to pay for experts to
 12 come down here to have experts testify.
 13 This is an administrative hearing.
 14 That is a document that this witness has no reason
 15 to disbelieve it isn't what it is.
 16 HEARING OFFICER MCKEE: And that's why I'm
 17 saying it doesn't take much to get you over the
 18 hump. Now, come on. Let's be fair.
 19 If you have a witness that will give me
 20 that this outfit is someone that they rely on or
 21 that he relies on or that your administrator
 22 relies on and that he has some knowledge about
 23 what they do and they provide reliable data, and
 24 frankly from an administrative standpoint, I'm
 25 going to admit it because this is an

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1 administrative hearing, and the technical rules of
 2 evidence don't apply.
 3 MS. KEEFER: I have hired JP Stravens as a
 4 consultant.
 5 HEARING OFFICER MCKEE: That's all I'm
 6 looking for. You are not a witness yet, but you
 7 could be. That's why I'm offering, Mr. Kelso.
 8 And I think in all -- I'm not trying to fence with
 9 you on this. This is a concept of saying
 10 conditionally admitted now subject to being
 11 connected up.
 12 There is just a couple questions you
 13 have to ask someone with knowledge to connect
 14 these up. I'm perfectly willing to let you do
 15 that and get on with it and get into the meat of
 16 the stuff.
 17 And now we can hear Mr. Bledsoe howl
 18 about whether it's relevant or not; that's a
 19 different issue. So it's just a foundational
 20 issue. Technically speaking, is this piece of
 21 paper authenticated?
 22 Frankly, if we weren't crossing swords,
 23 I would expect this would be something, if
 24 Mr. Bledsoe would stipulate to, he'd say, okay,
 25 I'm aware of this outfit. They have produced

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1 demographic data; they are generally reliable;
 2 they are used throughout the state; the Department
 3 has used them from time to time.
 4 This particular witness may not, but
 5 the Department generally may be familiar with it
 6 and we can move on.
 7 We don't want to do that. Okay. We'll
 8 cross swords. I'll give you the opportunity at an
 9 appropriate time or Ms. Keefer to put the witness
 10 on that says, I know that they are a reliable
 11 outfit and this is a document that is generally
 12 used throughout the regions by the Council, by
 13 others in this area, this is the kind of
 14 demographic information that is relied upon.
 15 It doesn't take much to get there.
 16 This isn't rocket science, Counsel. This is just
 17 plain, old, fundamental, garden variety rules of
 18 evidence.
 19 Now, not all the rules of evidence
 20 apply, but some of them do, so this is where we
 21 are.
 22 MR. KELSO: With all due respect, it takes
 23 money to provide people to testify, to retain them
 24 to testify, particularly when there are no
 25 subpoenas authorized or issued, and therefore,

1 since, as an offer of proof, the regions do not
 2 have money to pay for witnesses or the ability to
 3 subpoena to this hearing, that is the only
 4 evidence we have. And it's been documented pretty
 5 well.
 6 HEARING OFFICER MCKEE: Ms. Keefer said she
 7 could authenticate it.
 8 MR. KELSO: She's not been listed as a
 9 witness. So now we are not going to pay attention
 10 to who's listed as witnesses?
 11 HEARING OFFICER MCKEE: She is a party on
 12 this thing, and I thought you designated all the
 13 regional administrators as witnesses.
 14 MR. KELSO: As may be willing -- as may be
 15 necessary to call.
 16 HEARING OFFICER MCKEE: Okay. However you
 17 want to run it. I will offer you the opportunity,
 18 subject to being connected up, to go ahead and
 19 talk about the document. If you can't connect it
 20 up, then this witness, unfortunately, can't get it
 21 authenticated.
 22 It doesn't take much, but it takes a
 23 little bit more than you've got.
 24 MR. KELSO: What it takes is money and
 25 subpoena power, and that's the point I am trying

1 between the plan administration and, I guess, the
 2 federal government approval of the plan
 3 administration, because the plan says no money for
 4 lawyers.
 5 MR. KELSO: The 2005 plan. The 2000 plan
 6 doesn't say that.
 7 HEARING OFFICER MCKEE: Well, if you --
 8 still a matter you have to take up with the
 9 Secretary, I think, in terms of the interpretation
 10 of the plan. Not the implementation of the plan,
 11 but the interpretation of the grant
 12 administration.
 13 Folks in charge of the grant
 14 administration have said no money for lawyers.
 15 That is not a matter for this proceeding or this
 16 hearing under the eligibility of the regions.
 17 MR. KELSO: Well, it is, and I beg to differ
 18 with regards to establishing procedural rights,
 19 which are a ground for appeal, and you need a
 20 record of the lack thereof.
 21 HEARING OFFICER MCKEE: Okay. In terms of
 22 what is going on in this particular issue, the
 23 ruling is that that is not relevant. So let's go.
 24 BY MR. KELSO:
 25 Q. Showing you what's been marked as 24-1.

1 to make. None of which were provided to any of
 2 the appellants in this matter.
 3 Q. What fund, what budget are the services
 4 of the Attorney General in this matter being paid
 5 out of?
 6 MR. BLEDSOE: Objection. Relevant.
 7 HEARING OFFICER MCKEE: Sustained.
 8 MR. KELSO: It's very relevant because we've
 9 been expressly -- the regions have been expressly
 10 denied any funds for legal counsel or witnesses.
 11 So when we are talking about procedural rights
 12 under the appellate rules of the WIA, it is very
 13 relevant.
 14 HEARING OFFICER MCKEE: Not in this
 15 proceeding. It absolutely may be relevant if you
 16 want to object to this matter to the Secretary.
 17 I think it may be relevant in the terms
 18 of the plan, but in terms of the four corners of
 19 the plan, I already ruled on this once that this
 20 particular issue pertains to grant administration,
 21 and it's clearly not within the purview of the
 22 Workforce Development Council and its advisory
 23 role to the Governor.
 24 This pertains to the grant
 25 administration, and it's a matter to take up

1 (Exhibit Nos. 24-1 and 24-2
 2 were marked.)
 3 BY MR. KELSO:
 4 Q. Can you tell us what that is, 24-1 and
 5 24-2?
 6 A. What appears to be a House resolution.
 7 A...
 8 HEARING OFFICER MCKEE: Congress or
 9 legislature?
 10 MR. KELSO: It's WIA 1998 Section 116 if
 11 this witness can't identify what that document
 12 represents.
 13 Q. What does it represent?
 14 A. I would imagine it represents the House
 15 resolution that formed the statute. I'm not sure
 16 of that though.
 17 Q. Do you know whether or not that
 18 document, 24-1, is or isn't the same as Section
 19 116 of the WIA of 1998?
 20 A. Not unless I take a minute here to look
 21 through it.
 22 Q. Sitting here as the representative of
 23 Department of Commerce and Labor, you can't look
 24 at that as you sit there and tell whether or not
 25 it is or isn't?

1 A. I have no knowledge of where you got
 2 this thing from.
 3 Q. Well, look at it. And tell me whether
 4 it is or isn't.
 5 MR. BLEDSOE: Objection. The question has
 6 been asked and answered.
 7 HEARING OFFICER MCKEE: I'm not sure. What
 8 is it? I can't see it from here. What is it?
 9 Let me see it.
 10 Counsel, it appears to be a computer
 11 search of the bill from the...
 12 MR. KELSO: That's exactly what it is, and
 13 that's -- all I'm asking for him to tell me is, is
 14 it the same as Section 116 of the WIA that we've
 15 been talking about here. If you want to use the
 16 Hearing Officer's that he is referring to of 116,
 17 I'd be happy to do that.
 18 HEARING OFFICER MCKEE: If you want to make
 19 a representation that it is the same, I see no
 20 reason to ask the witness to sit down and compare
 21 it line for line. I'll accept Counsel's
 22 representation.
 23 The bill, the Act appears in a number
 24 of places, depends where you got it. It looks
 25 like this came off line. The copy that we have

1 here looks like it's a Xerox copy out of a book.
 2 The United States Codes or the USCA, they are
 3 informally printed, and they all look different.
 4 So the struggle on this thing is, if
 5 they are the same document, I will accept
 6 counsel's representation that this is the bill.
 7 And it should be identical. If there is something
 8 wrong with the copy, then that will force its way
 9 out.
 10 MR. KELSO: I'm not here to represent or --
 11 HEARING OFFICER MCKEE: Rather than ask the
 12 witness to sit here and compare line for line with
 13 a copy of the attachment that he has seems to be a
 14 waste of time.
 15 MR. KELSO: Well, let's use the copy that he
 16 has.
 17 HEARING OFFICER MCKEE: Okay. We are
 18 looking at 116-A of the act, right?
 19 MR. KELSO: Well, the testimony is, he
 20 doesn't know what that document is. So let's use
 21 -- what document does the Hearing Officer have as
 22 116-A?
 23 HEARING OFFICER MCKEE: I don't know. I got
 24 a copy that somebody gave me. Where did this come
 25 from? Workforce Investment Act of 1998. Public

1 law. 105-220. It's a Xeroxed copy.
 2 MR. KELSO: Why don't we pull it out and
 3 have the witness look at it.
 4 HEARING OFFICER MCKEE: Do you have a copy
 5 of the act?
 6 THE WITNESS: Yes. This appears to be the
 7 first section of the Section 116-A.
 8 MR. KELSO: Well, let's not use "what
 9 appears." Let's use 116-A. I don't care what
 10 document we use. Some document you are referring
 11 to is not part of the record or the one that is
 12 part of the record?
 13 HEARING OFFICER MCKEE: The statute isn't
 14 part of the record, Counsel. The statute is the
 15 statute.
 16 MR. KELSO: You have it in your documents,
 17 and you referred to it as "the record."
 18 HEARING OFFICER MCKEE: My working file, but
 19 it's not "the record." No more so than in a
 20 court. You don't put the statutes in HEARING
 21 OFFICER MCKEE file. I will take judicial notice
 22 of the statute.
 23 Now, the particular copy, the
 24 particular piece of paper, I got it from a variety
 25 of sources.

1 MR. KELSO: Well, let's use the one you are
 2 using.
 3 HEARING OFFICER MCKEE: No. Use the one
 4 that he has got.
 5 MR. KELSO: Maybe he ought to look at them
 6 to make sure they are the same. He is holding
 7 himself out as an expert.
 8 HEARING OFFICER MCKEE: Ask a question and
 9 let's see if there is a problem.
 10 MR. KELSO: Well, my question is: Is that
 11 the statute, WIA 1998, Section 116? And unless we
 12 know what we are referring to, there is no way he
 13 can answer that question.
 14 HEARING OFFICER MCKEE: Ask the question.
 15 MR. KELSO: That is the question.
 16 MR. BLEDSOE: I suggest we go to the next
 17 question and see if we have a problem, because I
 18 don't think we really do, and I don't see why we
 19 have to get stuck on it.
 20 HEARING OFFICER MCKEE: I don't think we do
 21 either. What I see is everybody has got a
 22 different reference, all different copies of the
 23 statute and depending on who made the copy of
 24 what.
 25 ///

1 BY MR. KELSO:
 2 Q. Is it your understanding that WIA 1998,
 3 Section 116, Local Workforce Investment Areas has
 4 been changed or modified by Congress and signed
 5 into law by the President at any time since its
 6 enactment?
 7 A. I know of no changes.
 8 Q. Okay. So let's look then at Section
 9 116-A-3, temporary and subsequent designation.
 10 Do you have that?
 11 A. Yes.
 12 Q. What bill statute signed into law --
 13 HEARING OFFICER MCKEE: I'm sorry. I'm
 14 sorry 116-A-3.?
 15 MR. KELSO: A-3, temporary and subsequent
 16 designation.
 17 Q. What bill, what act signed into law
 18 changes or modifies the wording set forth in
 19 116-A-3?
 20 A. Nothing.
 21 Q. So it's your understanding that
 22 116-A-3, as in the various copies around here, is
 23 the law of the land today; is that correct?
 24 A. As in the statute, yes.
 25 Q. So as I understand your testimony, is

1 Q. Have you seen that document before?
 2 A. I more than likely have, yes.
 3 Q. Well, yes or no? It's a transmittal
 4 from Roger Madsen, from the director of the Idaho
 5 Commerce and Labor on its face to the Workforce
 6 Development Council. And you are their expert
 7 here today. May 11th wasn't that long ago.
 8 A. Yes, I have seen this.
 9 Q. Okay. Now, on 8.2, there's the
 10 statement made by Mr. Madsen to the Idaho
 11 Workforce Council pursuant to this transmittal
 12 No. 2. The second paragraph -- or first full
 13 paragraph of page 2, "Five of the existing six
 14 areas including these," meaning 1, 2, 3 -- or
 15 excuse me -- 1 and 4, "were appointed under
 16 criteria in the law for optional designation."
 17 Do you see that statement?
 18 MR. BLEDSOE: I'm going to object. There is
 19 an exhibit that talks about the merits or lack of
 20 merits or discussion about the state plan. That
 21 is not relevant for the purposes of this hearing.
 22 The discussion about the state plan,
 23 the council's vote about the state plan has
 24 nothing to do with whether appellants are entitled
 25 to mandatory designation.

1 it true that there's no law signed into law by the
 2 President that delineates, extracts, or takes out
 3 in any way 116-A-3 from the Workforce Investment
 4 Act of 1998?
 5 A. As far as law, no.
 6 Q. As the expert presented by the Idaho
 7 Department of Commerce and Labor, I want to ask
 8 you your opinion on a matter.
 9 Do you have an opinion as to whether it
 10 is appropriate, under any circumstances, to
 11 structure a program or proposal in the manner that
 12 it evades the law of the land?
 13 A. I wouldn't think anyone would want to
 14 do that, no.
 15 Q. It was "I wouldn't think"?
 16 A. Yes.
 17 Q. I want you to take a look at 8.1 and
 18 8.2 of that.
 19 HEARING OFFICER MCKEE: What are we looking
 20 at, Counsel?
 21 MR. KELSO: Of the Volume 2 of exhibits,
 22 Exhibit 8.1 and 8.2.
 23 HEARING OFFICER MCKEE: When you say 8.1, is
 24 it Exhibit 8, page 1 and Exhibit 8, page 2.
 25 MR. KELSO: Correct.

1 HEARING OFFICER MCKEE: Overruled.
 2 THE WITNESS: Yes. And I'm sorry. What was
 3 your question?
 4 MR. KELSO: Would you read it back, please.
 5 HEARING OFFICER MCKEE: I think it was, do
 6 you see that section?
 7 THE WITNESS: Yes, I do.
 8 HEARING OFFICER MCKEE: Next question,
 9 please.
 10 BY MR. KELSO:
 11 Q. Do you agree with that statement?
 12 A. Yes.
 13 Q. Now, since we are talking about and
 14 used various terms here, under 116-A-1, 2, 3, 4,
 15 5, ad nauseam, under which section is an optional
 16 designation?
 17 A. It's under Section 4.
 18 HEARING OFFICER MCKEE: Section 4 of what?
 19 THE WITNESS: It's 16.
 20 HEARING OFFICER MCKEE: Sub 4?
 21 THE WITNESS: Let's see. It would be 16 --
 22 MR. BLEDSOE: 116.
 23 THE WITNESS: I'm sorry. 116.
 24 HEARING OFFICER MCKEE: 116 sub A?
 25 THE WITNESS: Sub 4.

1 HEARING OFFICER MCKEE: Designation upon
 2 recommendation of state board?
 3 THE WITNESS: Correct.
 4 BY MR. KELSO:
 5 Q. What then is your understanding of
 6 Section 116-A-1 A and B?
 7 HEARING OFFICER MCKEE: I'm sorry. What was
 8 the question again, please?
 9 MR. KELSO: What is his understanding of
 10 Section 116-A-1 A and B.
 11 HEARING OFFICER MCKEE: With respect to
 12 what?
 13 MR. KELSO: With respect to designation of
 14 areas.
 15 HEARING OFFICER MCKEE: I'm -- I still lost
 16 the question.
 17 MR. KELSO: Well, I guess it boils down to
 18 it would be the region's position of those that I
 19 represent, that optional is A-1 A and B under 116.
 20 And he is now saying that it's Section
 21 A-4. So, if you take his interpretation of what I
 22 think he is saying, Section 116-A-1 A and B are
 23 modifying terms and considerations that would
 24 apply to 2, 3, as well as 4. And so I'm asking
 25 him what his understanding is.

1 HEARING OFFICER MCKEE: So you are asking
 2 him the understanding. Let me see if I can
 3 rephrase it so I can understand what his answer is
 4 going to be. You are asking him what is the
 5 relationship between the designation requirements
 6 in Subsection 1 A and B and Subsection 4; what is
 7 the relationship between those two sections?
 8 MR. KELSO: That would be a good starting
 9 place.
 10 HEARING OFFICER MCKEE: Okay.
 11 THE WITNESS: Section 116-A-1 A and B are
 12 kind of the process of how to go about the
 13 designation. B is considerations in making the
 14 designation of the local areas that the Governor
 15 shall take into consideration the following, and
 16 it lists a group of those.
 17 And A is the process in which you go
 18 through, again, consultation with the board, et
 19 cetera.
 20 BY MR. KELSO:
 21 Q. So the next question would be, is it
 22 your understanding that 116-A-1 A and B, which is
 23 the process and the considerations, only applies
 24 to 4?
 25 A. No. I'm just saying that's the process

1 and considerations for how to apply the
 2 designations on the following pages as automatic
 3 designation, the subsequent designation,
 4 et cetera.
 5 Q. Okay. So the next question would be
 6 then, 116-A-1 A and B would apply in some manner
 7 to Subsection 2, automatic designation?
 8 A. Well, if you refer to the fact that --
 9 well, probably not on A because it's automatic
 10 designation, and automatic is only -- automatic A,
 11 is least, is only the population.
 12 Q. Where does it tell us that? Where does
 13 it tell us that in this?
 14 A. Well, I think it's pretty obvious by
 15 reading it.
 16 Q. So it's a guess. In other words, you
 17 are not aware of anything that says that
 18 subsection A-1 A and B which sets forth the
 19 process and considerations for some reason doesn't
 20 apply to Subsection 2?
 21 A. Well, no. A says the Governor shall
 22 designate a Local Workforce Investment Area in the
 23 state. So that is fairly consistent, and he will
 24 take into consideration the following; geographic
 25 areas, et cetera. And the following sentence it

1 says, here's some other criteria to follow.
 2 Q. So wouldn't, by your testimony, 1 A and
 3 B be included in 2?
 4 HEARING OFFICER MCKEE: And 3?
 5 MR. KELSO: Well, I'm just trying to take
 6 one at a time.
 7 THE WITNESS: And 4.
 8 BY MR. KELSO:
 9 Q. So would you agree that all those
 10 considerations go into 1, 2, 3, and 4?
 11 A. Well, as far as the Governor shall
 12 designate.
 13 Q. Well, yes or no?
 14 A. Yes.
 15 Q. Isn't it true that subsection A-1, A
 16 and B were not taken into consideration with
 17 regards to the termination under 2?
 18 A. I don't see how you could jump to that
 19 conclusion.
 20 MR. BLEDSOE: Objection. The decision maker
 21 is the Governor. We don't have the Governor here,
 22 so asking him what was considered and what was not
 23 considered is a waste of time.
 24 HEARING OFFICER MCKEE: Well, I'm struggling
 25 somewhat with the designation on this. Let me

1 see. I recognize you were slicing this pretty
2 fine. According to what I'm understanding, your
3 position is it's not that they terminated, it's
4 that they didn't reappoint.

5 Now, I understand everybody to say what
6 is the difference? And there may be no practical
7 difference except when I'm looking at this and it
8 says plan A, the first five-year plan ended on the
9 30th of June.

10 Plan B, I thought it was a five-year
11 plan, but I guess it's a two-year plan, started on
12 July 1. And the Governor notified everybody that
13 their appointment as a Local Workforce Investment
14 Area terminated on plan A on June 30th.

15 Then he was not appointing the regions
16 to be Local Workforce Investment Areas under the
17 new plan. Now, they operative effect, and I take
18 it obviously that meant they were terminated and
19 they weren't going to do it anymore.

20 But I don't know if it means there is a
21 technical distinction. It seems there might be
22 when we dig into this thing. Whether you
23 terminated them or just did not reappoint them.

24 MR. KELSO: That is a -- very important.

25 HEARING OFFICER MCKEE: It seems to me the

1 HEARING OFFICER MCKEE: Maybe we can short
2 stop this.

3 Does the State contend that it had any
4 basis for a termination for cause of any of the
5 regions?

6 MR. BLEDSOE: No.

7 HEARING OFFICER MCKEE: That's what I
8 thought. That was my understanding. The State
9 isn't mad at anybody, and they didn't jerk the rug
10 out from under them for cause. It was a decision
11 by the Governor in the administration because of,
12 quote, "things," close quotes.

13 It was upon the termination of the
14 first plan and what the Governor perceived and the
15 State's going to argue to me is the commencement
16 of the second plan and that they are unrelated.
17 They are not connected; they are unrelated.

18 MR. KELSO: But the point still is that 116
19 is still the law of the land. Everybody agrees
20 with that.

21 HEARING OFFICER MCKEE: Yes.

22 MR. KELSO: So we follow the law of the
23 land, and in the process, we consider consultation
24 with the state board, consultation with chief
25 elected officials and the considerations.

1 State's position in this is that he simply did not
2 reappoint them. That their authority
3 automatically expired on June 30th, and that the
4 Governor, pursuant to the new plan that was to
5 begin on July 1 and pursuant to these instructions
6 that the witness talked about earlier, did not
7 reappoint.

8 MR. KELSO: And the converse of that is,
9 under the law, there's specific manners whereby
10 servicing entities under a region can be
11 terminated for cause.

12 HEARING OFFICER MCKEE: Yes, I understand
13 that.

14 MR. KELSO: But there are none for
15 terminating a region.

16 HEARING OFFICER MCKEE: A region or Local
17 Workforce Investment Area.

18 MR. KELSO: Right. That's the point.

19 HEARING OFFICER MCKEE: I understand that,
20 but the issue on this, as I understand from the
21 State's position, is that doesn't apply because
22 this wasn't a termination for cause, this wasn't
23 interim, this wasn't in the middle of the thing.
24 This was the end of the plan.

25 MR. KELSO: And I understand that.

1 Q. And the question I want is, whether or
2 not there are is any document that you are aware
3 of, as the expert presented by the Department of
4 Commerce and Labor, whereby those matters were
5 presented to the State Council, Workforce
6 Investment Council.

7 In other words, I'm looking here at
8 A-2, again, which is the report from Roger Madsen
9 from the Workforce Development Council. And is
10 says, "The designation criteria no longer applies.
11 No areas in Idaho are entitled, under legal
12 criteria, for mandatory designation because none
13 contains a single unit of government with the
14 population of 500,000 or more."

15 Well, the testimony that I've heard is
16 that under the law, you are supposed to take into
17 consideration the information in 116-A-1 A and B
18 in each of these 2, 3, and 4, but I don't see
19 where any of that information is presented.

20 MR. BLEDSOE: I object to that
21 representation to what the law requires; that is
22 not what the law requires.

23 HEARING OFFICER MCKEE: The law says what it
24 says. I understand the argument. Let's get into
25 the argument on the application of law separately

1 from this. And I'm going to allow some latitude
2 asking the witness to interpret the law.
3 I take it all -- I'll hear him out
4 because he has some technical expertise in this
5 area, but I think the final arbiter of the law is
6 supposed to be me in terms of determining what the
7 law is and how the law is applied to the question
8 of law.

9 MR. KELSO: And I disagree with that simply
10 because now you have taken to a decision making as
11 opposed to a recommendation level.

12 HEARING OFFICER MCKEE: Yes. In terms of
13 recommending to the Workforce Council and in terms
14 of determining what the decision is. I don't
15 weigh the evidence on whose opinion of the law and
16 say, well, the preponderance of the opinion, I
17 have more testifying on the law this way.

18 I want to determine what the law is and
19 advise the Workforce Advisory Council. I take it
20 the question in terms of the Hearing Officer's
21 authority to determine questions of the law that I
22 have the authority to determine within the scope
23 of my hearing officer findings.

24 And I come up with a recommendation, so
25 I'm going to allow some latitude in terms of

1 allowing some questions on the interpretation of
2 the law simply because it's an administrative
3 proceeding. And I have some technicians in here
4 that can give me some assistance in my decision
5 making.

6 In determining the questions of fact, I
7 think I'm bound by the evidence that is produced,
8 and I weigh that in accordance with the testimony
9 of the witness on the fact questions, if there are
10 fact questions in dispute.

11 So far I'm struggling with it because
12 don't know if I see any fact issues in dispute.
13 It seems to me most of what I hear is a dispute
14 over the interpretation of either the regulation
15 or the application of the statute and a dispute
16 over the interpretation of the statute as it
17 pertains to the first five-year plan and the
18 second five-year plan and whether they should be
19 linked together, whether the rights created under
20 the first five-year plan held life into the second
21 five-year plan, whether there is a spillover of
22 rights, whether under the Act if an entity created
23 under the Act with respect to the first five-year
24 plan, whether that gives any independent
25 significance to that entity, such as a Local

1 Investment Area that carries over after the
2 termination.

3 I think that is a mixed question of
4 fact and law because I have some -- some guidance
5 from the Federal Government, I think, in one of
6 these on the impact of the application of
7 expiration.

8 But that is an area where, I think,
9 there may be a mixed question of fact and law, but
10 it seems to me it's not a question of fact over
11 what happened or why it happened, what's the
12 stated reasons for why it happened.

13 But the question is over the
14 interpretation of what happened as it relates to
15 the Federal regulations, the State statute, the
16 Governor's authority, and then we get into the
17 authority of the Workforce Council.

18 If I have any of this wrong, Counsel,
19 these are my inclinations and this is the
20 direction I'm going, and if you think I'm going in
21 the wrong direction and I need to look at
22 something else, help me understand it --

23 MR. KELSO: I'm trying --

24 HEARING OFFICER MCKEE: -- because that's
25 the direction I'm going right now.

1 MR. KELSO: I'm trying because I do think
2 that you're, shall we say, partially wrong. And
3 the point is, is that the regions are entitled to
4 procedure. If Section 116-A-1 A and B is by
5 interpretation included within 2 also and by
6 interpretation included within 3 and 4 --

7 HEARING OFFICER MCKEE: And 4, yeah.

8 MR. KELSO: -- whether this witness will
9 agree with me that there is nothing in the record
10 reflected that the Governor took into
11 consideration those matters in 116-A-1 A and B.

12 He made his decision as set forth in
13 Mr. Madsen's 8.1 and 8.2 that they didn't have
14 500,000 people. That was the basis for his
15 opinion; that's the only consideration that he has
16 delineated to the Workforce Council.

17 Q. Is that correct?

18 A. No.

19 Q. Well, tell me where it is in the
20 information that the Workforce Investment Council
21 where the Governor reflects his considerations of
22 116-A-1 A and B?

23 A. I think in Section 116-A-1 and A it
24 says, "The Governor of the state of Idaho shall
25 designate Local Workforce Investment Areas within

1 the state."
 2 And the Governor made that decision,
 3 and the process in which he went through to make
 4 that decision, you know, I don't know exactly all
 5 the steps he took. One of which was consultation.
 6 I mean, the board made a recommendation to him,
 7 you know.
 8 Q. Would you just answer the question?
 9 A. I'm trying to. You are asking --
 10 Q. Tell me where it is in the documents
 11 presented to the Workforce Investment Board that
 12 the Governor provided any other information other
 13 than his opinion that the 500,000 population
 14 wasn't met.
 15 A. I don't think the statute says that the
 16 Governor has to --
 17 Q. I don't care what you think.
 18 HEARING OFFICER MCKEE: I've got to tell
 19 both of you fellas now, we are trying to make a
 20 record of this. We've got a court reporter here.
 21 Let the witness finish his sentence before you
 22 interrupt him.
 23 If you can get him to quit at the end
 24 of his sentence, then you can interrupt him. If
 25 he continues to talk, then you have to stop until

1 he stops. And I'm going to make the witness do
 2 the same thing. So only one at a time.
 3 BY MR. KELSO:
 4 Q. Okay. Let's just ask a question, and
 5 I'll reference 116-A-1 B: "Considerations in
 6 making a designation of local areas, the Governor
 7 shall take into consideration the following:"
 8 Show me where in the records or
 9 information that you have presented into the
 10 record the Governor took into consideration I,
 11 2-I, 3-I, 4 and 5.
 12 A. Since I am not the Governor and have no
 13 knowledge of what all the factors he took into
 14 consideration, I can't show you.
 15 Q. Okay. You don't know, correct?
 16 A. If that's your -- yes.
 17 Q. So, if we follow what I understand your
 18 testimony is, is that we include all of 116-A-1 A
 19 and B and 2, you are not aware that the Governor
 20 provided this information to the Workforce
 21 Investment Council for consideration, correct?
 22 A. Correct, with a qualifier that the
 23 Governor can make the decision. It doesn't say he
 24 has to go back and tell the board what his
 25 decision is. It says that he will have a

1 consultation with the board, and that that's what
 2 he did. But it doesn't say he has to go back and
 3 explain to that board how he made his decision.
 4 Q. I guess that's why we are having an
 5 appeals hearing because there isn't a record
 6 indicating, that I'm aware of and apparently that
 7 you are not aware of, that the Governor took any
 8 consideration of 116-A-1 A and B and presented it
 9 under 2, 3, or 4, correct?
 10 A. It says, "Consistent with 2, 3, and 4."
 11 Q. Just yes or no?
 12 A. What you are asking me yes or no on
 13 statements that you just said something different
 14 here, and so I'm just trying to clarify what the
 15 law is.
 16 Q. Well, the law is what the law is.
 17 Either yes or no, please. I would ask the Hearing
 18 Officer to direct a simple yes or no. Because if
 19 the answer is no, we can ask where this
 20 information is.
 21 HEARING OFFICER MCKEE: He just told you.
 22 He said no unless you put the word consistent in
 23 and interpret it, then it's yes.
 24 BY MR. KELSO:
 25 Q. Okay. Then where is the information

1 with regards to particularly B of 116-A-1 that was
 2 provided to the Workforce Investment Council?
 3 MR. BLEDSOE: Objection, if I could.
 4 HEARING OFFICER MCKEE: I think it's been
 5 asked and answered, hasn't it?
 6 MR. BLEDSOE: I think it has, and it's also
 7 irrelevant. I mean, the burden on the appellants
 8 is to show entitlement to automatic --
 9 MR. KELSO: But let me make one more point.
 10 He is trying to have some -- at the expense of the
 11 witness, misinterpreting the law deliberately
 12 because it says, "...consistent with paragraphs 2,
 13 3, and 4." So you have to make them consistent.
 14 In 2, under automatic designation, it
 15 says, if you meet the half a million population
 16 requirement, you get designated. The Governor
 17 doesn't have any further discretion. It says,
 18 "shall."
 19 So in that case, to make them
 20 consistent, whether he liked their geographic area
 21 or whether he thought it was a great deal or they
 22 were really close to schools, he doesn't have that
 23 authority anymore, because in 2 it says, "The
 24 Governor shall...if A is met."
 25 So that's the problem. You can't

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1 interpret this in a vacuum and then try to trip up
 2 a witness on a misunderstanding of the law. It
 3 says that it has to be consistent with paragraphs,
 4 2, 3 and 4; not inconsistent.
 5 HEARING OFFICER MCKEE: What I'm going to do
 6 is allow some latitude to make sure all of this is
 7 taken into context, but I don't think there is any
 8 point in beating up on the witness or over the
 9 issue.
 10 If I understand it, there is not a
 11 record of the Governor's thought process of
 12 whether he specifically took into consideration
 13 the elements designated in 116-A-1 A and B. There
 14 is not a record.
 15 If there is a document -- the only
 16 document that's been offered so far is the letter
 17 from Governor Kempthorne to Director Madsen.
 18 There's also a memo from Director Madsen to the
 19 Workforce Investment Council, which I gather that
 20 is Exhibit 8.
 21 MR. KELSO: Which we would offer.
 22 HEARING OFFICER MCKEE: I'll take it. I'll
 23 take a look at it. But my understanding is, so
 24 far in terms of mental processes of the
 25 information applied, that is the record. And my

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1 understanding is that record does not contain any
 2 enumeration of the factors set forth in 116-A-1 A
 3 and B.
 4 MR. KELSO: Thank you.
 5 HEARING OFFICER MCKEE: That is the record.
 6 MR. KELSO: Thank you. I agree.
 7 HEARING OFFICER MCKEE: Okay. That's the
 8 record. That's what I'm taking in as being the
 9 record in this case, and I will accept that.
 10 I understand Mr. Bledsoe. He can argue
 11 later on, so what Judge, it's not relevant, A, or
 12 B, it's not within the reach of the Hearing
 13 Officer in this consideration. Okay. I'll listen
 14 to that later on.
 15 But in terms of the fact record, that's
 16 what I understand the fact record to be, and if I
 17 need to go further, okay. If I've got it wrong,
 18 then I'll ask some more questions. But if I've
 19 got it right, let's move on.
 20 BY MR. KELSO:
 21 Q. Okay. Would you look at 13-7, please.
 22 Have you seen this document before?
 23 A. Uh-huh.
 24 Q. Is that a yes?
 25 A. Yes.

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1 Q. Do you know who prepared that document?
 2 A. I believe it might have been the
 3 Workforce Systems Bureau.
 4 Q. Who is the Workforce Systems Bureau?
 5 A. A bureau of the Department of Commerce
 6 and Labor.
 7 Q. And No. 1 indicates that Governor
 8 Kempthorne plans to move toward a creation of
 9 single workforce area when regulations permit.
 10 HEARING OFFICER MCKEE: I'm sorry, Counsel.
 11 I was doing something and I need to catch up with
 12 you a little bit. We are on Exhibit 13. Tell me
 13 what it is again.
 14 MR. KELSO: 13-7.
 15 HEARING OFFICER MCKEE: Okay. 13 page 7.
 16 MR. KELSO: No. 1.
 17 HEARING OFFICER MCKEE: What is it again?
 18 MR. KELSO: No. 1 is --
 19 Q. Go ahead. Can you identify it?
 20 A. It's a page on Workforce Investment
 21 Priorities, and No. 1 says, "Elimination of
 22 duplicative administrative systems" --
 23 HEARING OFFICER MCKEE: Hold on. It's a
 24 page on what; Workforce?
 25 THE WITNESS: Investment Priorities.

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1 BY MR. KELSO:
 2 Q. And who is it, to your understanding,
 3 prepared that?
 4 A. I believe it's the --
 5 HEARING OFFICER MCKEE: Does the Exhibit
 6 say? Flip the other way and see what it is.
 7 Mr. Kelso, help us out. What is it?
 8 MR. KELSO: Well, that's why I'm asking this
 9 witness. He has testified that it was a document
 10 prepared by the Department of -- the Department --
 11 of the subdepartment of the Department of Labor
 12 and Commerce, and I just asked him a question with
 13 regards to the first sentence in paragraph one.
 14 HEARING OFFICER MCKEE: I don't want to get
 15 there yet because I want to know what the document
 16 is so I can understand where it's coming from.
 17 THE WITNESS: It's a...
 18 MR. KELSO: Well, only this witness can tell
 19 us what that it is.
 20 HEARING OFFICER MCKEE: Well, you can. You
 21 make a representation to the Hearing Officer of
 22 what it is.
 23 MR. KELSO: I can't make a representation
 24 because I didn't prepare it. It was a document
 25 that I received. I can't represent to you what

1 this document is; that's why I'm asking the
 2 witness to tell me.
 3 HEARING OFFICER MCKEE: Let me see it. No,
 4 no, no. I want all of Exhibit 13. I'm assuming
 5 that this thing has a title on it.
 6 Let's take a break. HEARING OFFICER
 7 MCKEE reporter needs a brief break.
 8 (Short break taken.)
 9 HEARING OFFICER MCKEE: The document we are
 10 talking about now, Exhibit 13, is a May 11th memo
 11 apparently from Director Madsen to the Workforce
 12 Investment -- or to the Workforce Council.
 13 Page 13, which the witness has been
 14 asked to look at, was apparently an attachment
 15 with that memo, and it's an undated, unsigned.
 16 You can't tell who the author is, but it's
 17 entitled "Workforce Investment Priorities."
 18 And with that, it places me in context
 19 of time and place. And Counsel, I'll let you go
 20 ahead -- and well, let me -- before you do that,
 21 let me take a few more seconds.
 22 (Short break taken.)
 23 HEARING OFFICER MCKEE: Okay. Back on the
 24 record again.
 25 Cross-examination, continue, Mr. Kelso.

1 Governor Kempthorne intends to -- read
 2 the sentence again for me.
 3 THE WITNESS: "Governor Kempthorne plans to
 4 move towards creation of a single workforce area
 5 when regulations permit."
 6 HEARING OFFICER MCKEE: Is it your
 7 understanding that, and I recognize the Governor's
 8 objectives were to maximize the available funds
 9 and get as much funds into the labor unit dollars
 10 that -- it's your understanding that his means of
 11 accomplishing that is his first sentence, he was
 12 going to do this by consolidating the state into
 13 one -- one -- I don't have a copy of it.
 14 MR. KELSO: "Designed to function as a
 15 single state area."
 16 HEARING OFFICER MCKEE: "Designed to
 17 function as a single state area."
 18 That is how the Governor intended to
 19 achieve what you said you understood his stated
 20 goals to be?
 21 THE WITNESS: Yes.
 22 HEARING OFFICER MCKEE: Okay. I thought
 23 that's what you were explaining. It wasn't two
 24 separate things. The Governor intended to achieve
 25 this first sentence, by means of or the Governor's

1 BY MR. KELSO:
 2 Q. The first sentence -- actually may be
 3 technically the second sentence: "Governor
 4 Kempthorne plans to move toward creation of a
 5 single workforce area when regulations permit. In
 6 the interim, the Governor will name two workforce
 7 areas within the state designed to function as a
 8 single state area."
 9 Is that your understanding of what this
 10 2005 plan is intended to accomplish?
 11 A. The 2000 plan, you mean the 2005 plan?
 12 Q. Yes.
 13 A. The 2005 plan really was intended to
 14 respond to some decreased budget cuts that the
 15 State has experienced, and being that we have --
 16 being that this money is designated for job
 17 training, I believe that the intent of the plan --
 18 or I believe the intent of the plan is to -- to
 19 try to cut administrative funds and overhead into
 20 actual job training dollars.
 21 Q. Okay. Well, let's narrow the question
 22 down a little bit and go to the next sentence.
 23 HEARING OFFICER MCKEE: Hang on. I'm not
 24 dead sure I understand that in context with the
 25 Governor's first sentence.

1 goal was to maximize the dollars, and he intended
 2 to do it by what he said in the first sentence.
 3 Okay. I think I've got that in mind.
 4 BY MR. KELSO:
 5 Q. And it's true there is an agreement
 6 between the non-appellant Region VI and the State
 7 of Idaho or Department of Commerce and Labor or
 8 Workforce Investment Council, some entity that
 9 they will operate under the guidance and direction
 10 of that other entity as a single state area?
 11 A. Yes.
 12 HEARING OFFICER MCKEE: Tell me what
 13 non-appellant Region VI is.
 14 MR. KELSO: Well, there's six regions. And
 15 the point we are making here is --
 16 HEARING OFFICER MCKEE: Just geographically,
 17 where is that?
 18 MR. KELSO: Okay. Well, that's --
 19 THE WITNESS: Idaho Falls, Rexburg.
 20 MR. KELSO: It's on the map part too.
 21 HEARING OFFICER MCKEE: Okay. I appreciate
 22 it is in there someplace. I just don't have it in
 23 mind, and I didn't want to go look. I mean,
 24 mentally I have 1, 2, 3, 4, 5. I was thinking
 25 that we had the -- and then 6 is the far Eastern

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1 part of the state.
 2 MR. KELSO: Central East.
 3 MS. LEWIS: It's east and north.
 4 HEARING OFFICER MCKEE: Northeast. Idaho
 5 Falls up. Okay.
 6 BY MR. KELSO:
 7 Q. The question of that testimony was is
 8 that there was an agreement entered into by and
 9 between Region VI and who; was it the Governor;
 10 was it the Workforce Investment Council; was it
 11 the Commerce and Labor? Do you know who the
 12 agreement was entered into with?
 13 A. Commerce and Labor was the
 14 administrative entity for WIA, so it was entered
 15 into between that region and the Department of
 16 Commerce and Labor.
 17 Q. And that agreement, you would agree,
 18 makes the operation of Region VI, which may be now
 19 Region I or II subservient to the direction of the
 20 Idaho Workforce Council?
 21 A. For policy, yes.
 22 Q. And the intent being that it operates
 23 as a single state area?
 24 A. Yes.
 25 HEARING OFFICER MCKEE: I'm sorry.

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1 Region VI operates as a single state area or the
 2 Council?
 3 BY MR. KELSO:
 4 Q. Well, actually, isn't it true that both
 5 work -- the State Investment Council is designated
 6 as an area in and of itself that includes 35
 7 counties?
 8 A. The Workforce Development Council is a
 9 policy group that recommends policy to the
 10 Governor, and the designation is really
 11 established in the plan. The Workforce Investment
 12 Areas are designated in the plan through input by
 13 the Governor, through input from the Council.
 14 HEARING OFFICER MCKEE: Help me understand.
 15 What does the new plan designate then, as the
 16 Workforce Investment Area?
 17 THE WITNESS: The entire state.
 18 HEARING OFFICER MCKEE: Administered by?
 19 THE WITNESS: Workforce Development Council.
 20 HEARING OFFICER MCKEE: So Workforce
 21 Development Council, you think, under the plan,
 22 puts on two hats; they wear a policy hat advising
 23 the Governor, and then they take their hat off and
 24 they are an administrator under the plan?
 25 THE WITNESS: Well, they develop local

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1 plans. They will be in a position to operate as a
 2 local board did and develop local plans.
 3 HEARING OFFICER MCKEE: What did I just ask?
 4 Did I say it wrong?
 5 THE WITNESS: No, I think you said it right.
 6 MS. KEEFER: And then they provide all the
 7 service delivery.
 8 HEARING OFFICER MCKEE: And then -- well,
 9 isn't that part of the administrative plan? You
 10 are all using the language, and I want to make
 11 sure I understand just the grasp that the
 12 administrator of the plan is the service delivery
 13 -- service deliverer?
 14 MS. KEEFER: There are consultants that can
 15 be hired under that, and then if --
 16 HEARING OFFICER MCKEE: But that is all
 17 within the responsibility of the administrator of
 18 the plan, whether mechanically they do it
 19 themselves or whether they mechanically hire
 20 someone.
 21 MS. KEEFER: The local boards used to make
 22 the decisions on the consultants that could be
 23 selected on the implementation level.
 24 HEARING OFFICER MCKEE: And now the decision
 25 is going to be made by?

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1 MS. KEEFER: Commerce and Labor.
 2 HEARING OFFICER MCKEE: Commerce and Labor
 3 or the -- well, that's where I'm struggling.
 4 MS. KEEFER: The Council is advisory only.
 5 HEARING OFFICER MCKEE: That's what I'm
 6 struggling with. I just thought the witness said
 7 that the Workplace Advisory Council now will wear
 8 two hats; hat one was advisory, but I also
 9 understood it will also function as a local area
 10 investment -- or local investment area.
 11 THE WITNESS: Right. But there are actually
 12 two areas in the state of Idaho. There is still
 13 Region VI as an area and the rest of the state.
 14 HEARING OFFICER MCKEE: And the Workforce
 15 Council will operate as?
 16 THE WITNESS: Policy over both of those.
 17 HEARING OFFICER MCKEE: Help me understand
 18 now. Who is going to run the show? Who is going
 19 to drive the train for the rest of the state?
 20 THE WITNESS: Workforce Development Council.
 21 HEARING OFFICER MCKEE: So they are going to
 22 wear two hats?
 23 THE WITNESS: Yes.
 24 HEARING OFFICER MCKEE: It will be policy
 25 over everybody, including Region VI?

1 THE WITNESS: Correct.
 2 HEARING OFFICER MCKEE: And over themselves?
 3 THE WITNESS: Yes.
 4 HEARING OFFICER MCKEE: And then they will
 5 be the investment advisory area for the rest of
 6 the state, and Region VI will continue to be an
 7 investment advisory area in Region VI?
 8 THE WITNESS: Right.
 9 MS. KEEFER: They don't have planning
 10 functions in Region VI. They will accept the
 11 Workforce Planning Council. I'm really confused
 12 about this too, because the Planning Council is
 13 advisory, and there is nothing that I have seen
 14 that invests them with authority. So they're not
 15 truly the decision makers.
 16 HEARING OFFICER MCKEE: Invest them being
 17 who; them being the Workforce Council?
 18 MS. KEEFER: The Workforce Development
 19 Council is advisory, so they are not policy
 20 makers. They are only policy suggesters, so the
 21 decisions will be made within Commerce and Labor
 22 on all levels.
 23 HEARING OFFICER MCKEE: The actual decision,
 24 if I'm understanding this thing correctly, the
 25 Council advises the Governor. So, when it is

1 HEARING OFFICER MCKEE: Uh-huh. Because now
 2 they are in effect, quote, "Reporting to the
 3 Workplace Advisory Council."
 4 THE WITNESS: Workforce Development Council.
 5 HEARING OFFICER MCKEE: So you are
 6 suggesting that the Workplace Development Council
 7 what used to be inherent within a region, both
 8 policy making, implementation, planning, and
 9 administration has now been split.
 10 The administration of the plan stays
 11 with Region VI, but the policy making and decision
 12 is going to be by Workplace Advisory Council?
 13 MR. KELSO: I don't think the administration
 14 stays with Region VI.
 15 THE WITNESS: No, it doesn't.
 16 HEARING OFFICER MCKEE: What is with Region
 17 VI?
 18 THE WITNESS: There was a waiver that was
 19 sought after.
 20 MR. KELSO: I will object.
 21 HEARING OFFICER MCKEE: Don't go there.
 22 Just tell me out right what stays with Region VI.
 23 What are they going to do and not do?
 24 THE WITNESS: The geographic area, and we
 25 have funded a planner over there to help the

1 acting as a policy advisory body, it advises the
 2 Governor on policy.
 3 And then the Governor, I assume,
 4 directs Commerce and Labor on policy matters, and
 5 in that respect, Commerce and Labor carries all
 6 the direction of the Governor in implementing the
 7 policy decisions?
 8 THE WITNESS: Ultimately, yes.
 9 HEARING OFFICER MCKEE: So then you have the
 10 plan administration, which comes around the other
 11 way, if I'm understanding it correctly, and there
 12 is some autonomy in the Workplace Investment Area,
 13 LWI -- no. The Local Workplace Investment Area,
 14 LWIA, is that the term? Well, there is, under the
 15 old plan, some autonomy within the five regions.
 16 MS. KEEFER: They used to roll-up their
 17 sleeves and make decisions on a grass roots level.
 18 HEARING OFFICER MCKEE: Now, under the new
 19 plan, if I'm understanding your question,
 20 Region VI continues as a Local Workplace
 21 Investment Area under the new plan?
 22 THE WITNESS: They are a region, but they do
 23 not have a board.
 24 MS. KEEFER: They do not have the same
 25 decision-making authority that they used to have.

1 Workforce Development Council implement various
 2 different projects over in that area.
 3 HEARING OFFICER MCKEE: So it's entirely
 4 different -- the operation of Region VI is going
 5 to be entirely different from what it was under
 6 the first plan?
 7 THE WITNESS: The staff will be the same,
 8 but the board will not be there, so it will be
 9 different.
 10 HEARING OFFICER MCKEE: All right. Now,
 11 Mr. Bledsoe, I can understand you squirming in
 12 your chair because I don't know what this has to
 13 do with fried potatoes either.
 14 MR. BLEDSOE: It doesn't have anything to do
 15 with --
 16 HEARING OFFICER MCKEE: But I think I need
 17 to understand how all of this stuff fits together
 18 before we get to the end of it so it is all
 19 useful; maybe, maybe not. If it's not, I'll just
 20 dump it out and ignore it. But if it's useful, I
 21 may need it to understand how this inter relates.
 22 Do I have it right?
 23 MS. KEEFER: Almost. I'm afraid I'll make
 24 more editorial comments.
 25 HEARING OFFICER MCKEE: Don't worry about

1 that. I recognize and I don't have to know -- I
2 don't think I have to know exactly how all the
3 pieces and parts function. This is one of those
4 things you don't have to understand how a computer
5 operates to work it, but I think I do understand
6 how it is put together generally.

7 MS. KEEFER: Commerce and Labor act for the
8 conduit, and the conduit is the federal moneys to
9 the state. So they administer that part, but they
10 also run all the job services. And the job
11 services are the ones that translate that money
12 into services to people on the ground.

13 When the local boards were in place,
14 they got to decide whether it was Job Service or
15 North Idaho College or Lewis and Clark State
16 College or another service provider that did the
17 work. The new plan says no competition.

18 HEARING OFFICER MCKEE: It's now all back up
19 to state level. And not I'm dead sure I
20 understand yet whether state level Workforce
21 Council or state level Department of Commerce and
22 Labor, but it is not a state level.

23 What it is, is it is not regions, and
24 it's not region to Region VI either from what I'm
25 understanding.

1 I'm understanding that correctly because I
2 understand the function of the Workforce Council,
3 at least it appears to me, is to act as an
4 advisory body to the Governor.

5 I'm still struggling around all the
6 corners, but that's where I am right now.

7 MR. KELSO: And I -- go ahead.

8 MS. KEEFER: I think you have captured the
9 -- what's happening and the changes for the point
10 that we are at now.

11 HEARING OFFICER MCKEE: Okay. Well, I'm
12 running as fast as I can. Let's go.

13 BY MR. KELSO:

14 Q. And I just want to take that
15 understanding one step further because I don't
16 understand who is calling the shots.

17 Is it the Department of Commerce and
18 Labor? This is what we are doing on a -- this is
19 what is we do on a day-to-day basis, you do this
20 contract, he does this work, blah, blah, blah or
21 is it the Workforce Development Council?

22 HEARING OFFICER MCKEE: Good question.

23 THE WITNESS: The Workforce Development
24 Council will develop procurement policies, and it
25 will be their decision in how we go about

1 MR. KELSO: Is that a yes?

2 HEARING OFFICER MCKEE: Yeah, he's nodding.
3 I think he is nodding.

4 THE WITNESS: Well, there's two areas in the
5 state, and how you want to -- as part as the plan
6 goes, there's two planning areas in the state, but
7 they are acting as a single state entity.

8 HEARING OFFICER MCKEE: But from what I
9 thought you just told me, there may be two areas
10 in the state for planning purposes, but planners
11 for both areas are at the state level; Workplace
12 Council or the Commerce and Labor/Governor.

13 THE WITNESS: The Workforce Development
14 Council is state wide, yes.

15 HEARING OFFICER MCKEE: For both areas?

16 THE WITNESS: Right.

17 HEARING OFFICER MCKEE: And that's what, I
18 think, your point is, is all of this now has been
19 -- all the policy and all the planning function
20 has been drawn up into the State, either the
21 Workforce Planning Council or the
22 Governor/Commerce and Labor.

23 And if I need to know the distinction
24 there, we can get to that, but I'm sort of lumping
25 the Governor and Commerce and Labor together. If

1 procuring services into the future.

2 We have not had a meeting since the
3 last meeting, so that decision has not been made.
4 Ms. Keefer is saying it will all be the Department
5 of Commerce and Labor. There are substantially
6 today mostly Department of Commerce and Labor by
7 the decisions of the local boards throughout the
8 state.

9 In her area there, they have used
10 almost primarily the local offices. There are
11 currently still many subcontractors out there, and
12 I do not know whether that will continue on.

13 So as far as the policy goes and
14 whether we go out and hire services done or do
15 them ourselves, that will be decided at the policy
16 level, the board level, and at the -- and that
17 meeting hasn't been done yet.

18 HEARING OFFICER MCKEE: Let me see if I can
19 translate what, I think, you just told me is that
20 momentum is that you are doing things today like
21 you did them before and before the termination in
22 terms of all the contacts and providers that were
23 in place, and there haven't been many changes
24 throughout the state?

25 THE WITNESS: Under the current plan, we

1 said we would try to the best of our abilities to
 2 try to keep all the procurement decisions that had
 3 already been done at the local level in place.
 4 But this would give us a year to work
 5 with the Workforce Development Council and develop
 6 new policies for how we are going to operate the
 7 different configurations.
 8 HEARING OFFICER MCKEE: So you don't know
 9 how it's going to work yet because you haven't had
 10 to make any of these decision in terms of planning
 11 or policy of implementing the new plan. Things
 12 are continuing on as they were before --
 13 THE WITNESS: Correct.
 14 HEARING OFFICER MCKEE: -- and the Council
 15 hasn't met, and you haven't faced any decisions.
 16 And the staff of Commerce and Labor is -- not
 17 letting sleeping dogs lie necessarily, but keeping
 18 hands off.
 19 BY MR. KELSO:
 20 Q. I want to make this very clear under
 21 oath. Your testimony, as I understand it, is that
 22 Department of Commerce and Labor has not made
 23 changes from how the system operated under the
 24 2000 plan?
 25 A. I said that the best of our knowledge

1 I understand that the Hearing Officer
 2 needs to hear some things to get some background,
 3 but now we are marching down the road well beyond
 4 what their burden of proof is in this case. It
 5 has no probative value on any of the issues to be
 6 decided, and it's irrelevant.
 7 HEARING OFFICER MCKEE: Yeah, I'm struggling
 8 with trying to understand. I think I understand
 9 the general concept, and I don't know whether the
 10 specifics are necessary to help me understand any
 11 part of it or not.
 12 Let me tell you what I'm assuming
 13 because the witness just said the Council has not
 14 met, and therefore, if decisions were made, they
 15 were made by Congress and Labor.
 16 That would be my assumption. If I've
 17 got it wrong, then I'll let you inquire. But if
 18 I've got it right, that's all I need to know.
 19 MR. KELSO: Just have him affirm that.
 20 THE WITNESS: No, not all of the decisions
 21 have been made -- some of the decisions were made
 22 by the local entities to -- and contractors.
 23 HEARING OFFICER MCKEE: You can't go there
 24 because you told me that the local entities don't
 25 exist anymore and can't make any decisions after

1 -- I mean, to the best of our ability, we would
 2 keep the subcontractors intact.
 3 Q. Okay. The question is, there has been
 4 changes made by the Department of Commerce and
 5 Labor from how the system under the WIA worked
 6 into the 2000 plan, correct?
 7 A. Well, there's been financial
 8 considerations because we have lost money.
 9 Q. Just yes or no?
 10 A. So there are have been some changes
 11 made, but...
 12 Q. So there have been changes made on how
 13 the WIA program works in the state of Idaho after
 14 -- since the 2000 plan, correct?
 15 A. Yes, there have been changes.
 16 Q. Who has made the decision on those
 17 changes?
 18 A. Well, some of the changes were a result
 19 of failure at the local level of certain service
 20 providers.
 21 Q. Who made the decision?
 22 MR. BLEDSOE: I'm going to object. I think
 23 we are going way down the road for talking about
 24 things that are not relevant. The authority of
 25 the state Council is very limited.

1 July 1.
 2 THE WITNESS: They --
 3 HEARING OFFICER MCKEE: If you want to go
 4 and say they are still in operation, then I need
 5 to back up and we'll start this hearing all over
 6 again. If the local agencies still have authority
 7 to do anything at all under the plan, then what
 8 you just told me and what Mr. Bledsoe just told me
 9 is that there is no continuity and that everything
 10 expired on June 30th; that goes out the window and
 11 we start over again.
 12 THE WITNESS: I'm sorry if I led anyone down
 13 that path. The procurement decisions were being
 14 made at the end of the planning year.
 15 HEARING OFFICER MCKEE: And I understood you
 16 to say -- you weren't going to tough those and
 17 those decisions were left in place.
 18 THE WITNESS: And those decisions were --
 19 HEARING OFFICER MCKEE: Certain decisions
 20 have been made since July 1 pertaining to the
 21 implementation of workplace investment funds or
 22 grants or operations or whatever.
 23 Question was, who made the decision;
 24 Workplace Council or Commerce and Labor. I'm
 25 scratching my head and says, well, that is a no

1 brainer. You told me that counsel has not met.
 2 So, if any decisions were made, they had to have
 3 been made by Commerce and Labor.
 4 THE WITNESS: Yes.
 5 HEARING OFFICER MCKEE: And now you say no,
 6 they were made by the local boards.
 7 THE WITNESS: Again, I'm sorry if I misled
 8 you. We implemented those follow-through
 9 decisions, and since then, since the plan has
 10 ended, yes, we have been making decisions.
 11 HEARING OFFICER MCKEE: One more time to
 12 make sure we get it straight. If any decisions
 13 have been made since July 1st to this day
 14 pertaining to the operation of WIA plans or
 15 anything in Idaho, is it correct to say that those
 16 decisions have been made by Commerce and Labor?
 17 THE WITNESS: Yes.
 18 HEARING OFFICER MCKEE: Okay. That's what I
 19 understand. Now, I don't know if I need to know
 20 the specifics of decisions. I don't think I do.
 21 I mean, if there's some particular reason of a
 22 particular decision, you've got to convince me
 23 that I need to know it. But right now I don't
 24 need think I need to know specifics, but I have a
 25 grasp of how this thing is working.

1 BY MR. KELSO:
 2 Q. So based upon your responses to the
 3 Hearing Officer, is it true that the State of
 4 Idaho, Department of Commerce and Labor is acting
 5 in the capacity of a single state entity?
 6 A. No.
 7 Q. Well, tell me what other entities are
 8 involved in making these decisions that you just
 9 said were made by the Department of Commerce and
 10 Labor after July 1st.
 11 A. There are decisions being made --
 12 contractual decisions being made at the local
 13 level that we write the contracts; we always have
 14 developed the contracts. But if you are talking
 15 about the full policy end of it -- I guess I
 16 didn't understand your question.
 17 MR. KELSO: Well, do you want to read it
 18 back?
 19 (Record was read by the Reporter.)
 20 THE WITNESS: Yes, within the policies of
 21 Workforce Development Council.
 22 BY MR. KELSO:
 23 Q. Now, I want to return back to one of
 24 the very first questions I asked you by inference,
 25 isn't it true that the operation of the State

1 Commerce and Labor Department acting as a single
 2 state entity through this arrangement with what
 3 used to be Region VI --
 4 Counsel, are you showing documents to
 5 the witness on what to say or not to say? I mean,
 6 I saw you write something and show it to him. He
 7 looked at it. I would like the record to reflect
 8 that counsel is coaching the witness as I'm asking
 9 him questions under oath.
 10 MR. BLEDSOE: I'm free to make notes as I
 11 see fit.
 12 HEARING OFFICER MCKEE: Not show them to the
 13 witness, Counsel. And if you are doing that, I
 14 will have you move to the other side and we'll put
 15 the witness stand someplace else.
 16 We did this as an accommodation, simply
 17 was comfortable to have testimony from the seat.
 18 But it would not be appropriate for counsel to
 19 pass notes to the witness while he is testifying.
 20 BY MR. KELSO:
 21 Q. Did your counsel give you some sort of
 22 indication of how you should testify with regard
 23 to that --
 24 A. He made a note.
 25 HEARING OFFICER MCKEE: What did the note

1 say, please?
 2 MR. BLEDSOE: It said no. But I didn't show
 3 it to him. He looked and saw it. I'm making lots
 4 of notes on what I'm going to talk about.
 5 HEARING OFFICER MCKEE: I have no problem
 6 with that. I certainly don't want to foreclose
 7 you in making notes. But I have a difficult time,
 8 and if we need to, maybe we need to put the
 9 witness stand someplace else so that there is not
 10 a temptation to suggest by -- at least by written
 11 memorandum what the answers should be.
 12 I'm going to allow some latitude in
 13 this because I think most of it is technical
 14 stuff, and you are testifying as the agency -- a
 15 witness for the agency.
 16 I don't know if there is any prejudice
 17 involved in this or not, but please try to avoid
 18 giving direct subrosa instructions to the witness
 19 on how the questions should be answered.
 20 Mr. Kelso, let's move on.
 21 MR. KELSO: I'm sorry, but I don't remember
 22 the question I asked that he was instructed to say
 23 no to, so if you could tell me what we've got.
 24 (Record was read by the Reporter.)
 25 ///

1 BY MR. KELSO:

2 Q. Okay. Continuing on with that, is in
3 place to avoid the provisions of the 1998 WIA law
4 as it exists until such time as it may be amended
5 in the future?

6 A. No.

7 Q. And what basis do you say that no from
8 other than your counsel's indicated you should say
9 no?

10 A. Because our plan reveals that we were
11 looking at Region VI as a special entity. Within
12 that region is the Idaho National Engineering --
13 Idaho National Lab, and they have special training
14 needs over there due to the recent issues
15 revolving around energy.

16 And we have been working with them
17 specifically on some projects over there on some
18 training that fits very well within the WIA
19 process. And so it was, in our mind, a special
20 area or region of emphasis.

21 Q. Okay. Well, let's look at the next
22 sentence on 13-7. It says, "Throughout this
23 document the reference to a single state area will
24 be maintained."

25 What does that mean?

1 Development Council recommends that the six
2 applicant's," which are the regions 1, 2, 3, 4, 5,
3 and 6 under the 2000 plan that, "The six
4 applications submitted for Workforce Investment
5 Area designation be approved as having met the
6 stated requirements."

7 Do you see that?

8 A. Yes.

9 Q. What stated requirements is it that
10 your understand that those six areas meet?

11 A. It's my understanding that the Region
12 III met the temporary designation at that point,
13 and the other -- the rest of the state was
14 optional at that point. There was an optional
15 designation.

16 HEARING OFFICER MCKEE: Under the
17 Subsection 4?

18 THE WITNESS: Yes.

19 HEARING OFFICER MCKEE: That we talked about
20 earlier. Okay.

21 MR. BLEDSOE: Does counsel wish to admit
22 Exhibit 31?

23 MR. KELSO: Yeah, I'd offer it.

24 MR. BLEDSOE: I have no objection.

25 HEARING OFFICER MCKEE: I think that

1 A. I'm not too sure what the point of that
2 is, actually. Just an editing convenience.

3 Q. Would you look at 31-1, please.

4 HEARING OFFICER MCKEE: Did you want to
5 introduce 13?

6 MR. KELSO: Please. Excuse me.

7 HEARING OFFICER MCKEE: Okay. I'll admit 13
8 for reference, and the particular exhibit is
9 page 7, this essay on Workforce Investment
10 Properties. Now, we are 13.1. What is 13.1 --
11 31, I'm sorry.

12 (Exhibit No. 13 was admitted.)

13 MR. KELSO: 31.1 which is a December 8,
14 1998, memorandum from Karen McGee to Governor Batt
15 and approved and signed by Governor Batt on
16 December 10, 1998.

17 Q. Have you seen that document before?

18 A. Yes, I have.

19 Q. Is there any reason for you to believe
20 that is not a formal document of the Workforce
21 Development Council approved by Governor Batt on
22 December 10, 1998?

23 A. No, I do not.

24 Q. 31.2, which is the second page of 31
25 under counsel recommendations. "The Workforce

1 particular document is in the administrative file.

2 MR. BLEDSOE: It is.

3 HEARING OFFICER MCKEE: If not, I'll
4 certainly accept it as an exhibit, but I think it
5 is part of the -- what I consider to be the
6 Workforce file in this case, but that would be
7 fine.

8 (Exhibit 31 was admitted.)

9 HEARING OFFICER MCKEE: What I would like to
10 do, Counsel, given the hour on this, if this is a
11 stopping place, is stop for lunch.

12 Any idea of how much longer you are
13 going to be, Mr. Kelso.

14 MR. KELSO: I'm actually getting fairly
15 close to the end.

16 HEARING OFFICER MCKEE: Do you have any
17 further or was this your witness to defend the
18 State?

19 MR. BLEDSOE: This is our only witness
20 unless a rebuttal witness is necessary for some
21 reason. But if we are close to the end, I would
22 prefer that we move forward and wrap this up.

23 HEARING OFFICER MCKEE: Would you like to
24 try to finish up this witness before we break for
25 lunch?

1 MS. KEEFER: I would like some time also.
 2 HEARING OFFICER MCKEE: You want to talk to
 3 this witness. Okay. Let's go ahead and take
 4 lunch.
 5 (Lunch break taken.)
 6 HEARING OFFICER MCKEE: Back on the record,
 7 please. Cross-examination. You may continue
 8 Mr. Kelso.
 9 MR. KELSO: Thank you.
 10 Q. Just for the record, Mr. Engstrom,
 11 Mr. Bledsoe isn't here today as your personal
 12 attorney, correct?
 13 A. No, he isn't.
 14 Q. Did you have any conversations with
 15 Mr. Bledsoe during the intermission here with
 16 regards to your testimony or that you have given
 17 or what testimony you may give in the future?
 18 A. I had conversations with him, yes.
 19 Q. About your testimony you have given?
 20 A. Just in general how things were going.
 21 Q. And did he discuss with you any
 22 questions he would be asking you later on in the
 23 hearing?
 24 A. No, he did not.
 25 Q. We had a discussion about 31-1, which

1 was the original approval by Governor Batt signed
 2 on 12-10-98.
 3 Do you recall that?
 4 A. Yes.
 5 Q. I don't recall if that was admitted or
 6 if we moved.
 7 HEARING OFFICER MCKEE: Yeah, it's admitted.
 8 I think I observed that it -- I recall because I
 9 think I've seen that, and I'm not sure. I think I
 10 have it attached, but it's part of the agency file
 11 in this case. But in any event, I'll deem it as
 12 an exhibit also.
 13 BY MR. KELSO:
 14 Q. And I was trying to recollect, but it
 15 seemed to me, my recollection of your testimony
 16 was I asked you to look at this and about the
 17 Council's recommendation that they be approved as
 18 having met the stated requirements.
 19 And you made, I believe, and I'm just
 20 trying to clear the record up here, a reference
 21 that Region III was a -- because it was somehow
 22 split into two entities or something, that it fell
 23 under the temporary appointment.
 24 And that was my understanding of what
 25 the record is. My question is, in order to clear

1 that up, would you look at 31-1 and 2, which are
 2 two pages of the same document. I don't see
 3 anywhere in there that it states that Region III
 4 is treated any different than Regions I, II, III,
 5 IV, and V.
 6 The one that is treated differently, I
 7 believe, is Region VI, and if would you just see
 8 if you could clarify that.
 9 A. In Governor Batt's letter up on the top
 10 section of the second page, it's important to note
 11 that Southwest Idaho area qualifies for temporary
 12 mandatory designation under the provisions of the
 13 Workforce Investment Act.
 14 And then all of the rest of them, this
 15 was recommending to be under the optional
 16 provision, because at that time, none of the other
 17 areas met the criteria for temporary and
 18 subsequent at that time.
 19 Q. And the southwest?
 20 A. Would be Region III.
 21 Q. Okay. And as I understand your
 22 testimony, is that the temporary designation
 23 Subsection 3 of 116 no longer is in effect or in
 24 existence for some reason?
 25 A. It ended at the end of the initial

1 planning period.
 2 Q. Okay. And can you show me anywhere in
 3 the WIA, Workforce Investment Act of 1998, that
 4 says that that Subsection 3 ended at the end of
 5 the June -- or at June of 2005, June 30th, 2005?
 6 A. Okay. In Section 3-B it says here, "A
 7 temporary designation of this paragraph shall be
 8 for a period of not more than two years, after
 9 which the designation shall be extended until the
 10 end of the period covered by the state plan."
 11 Q. Okay. I understand that, but tell me
 12 how the law has changed so that when the Governor
 13 and the Council are implementing a plan that says,
 14 under the law the Governor shall designate a
 15 region that meets its temporary 200,000 number of
 16 population, how that is changed, why that law that
 17 was enacted in 1998 and has not been amended, is
 18 not applicable on June 2005 or July 2005?
 19 A. It is called a temporary designation
 20 under Section B here, and it says that it is -- it
 21 is "...extended until the end of the period
 22 covered by the state plan."
 23 Q. Okay.
 24 A. And the state plan ends, therefore, the
 25 designation ends.

1 Q. Okay. I understand your discussion,
2 but I don't necessarily agree with it. But my
3 question is, why would that Subsection 3 not apply
4 when you are preparing what is referred to as the
5 2005 plan; why would this law not apply?

6 A. Due to the guidance that we have from
7 the Federal Register, it tells us that that
8 section ends. The guidance we have from
9 Christine Kulick says it ends, and the statute
10 here says that it ends at the end of the planning
11 period.

12 So there are several references that
13 state that it's only for the period of the state
14 plan.

15 Q. And let's be clear. It's my
16 understanding that your position is that the
17 designation as a temporary area ends at the end of
18 the plan, correct?

19 A. Yes.

20 Q. I'm sorry?

21 A. The temporary subsequent
22 designations --

23 Q. Ends --

24 A. -- as a Workforce Investment Area ends.

25 Q. And my question -- okay, if we assume

1 Q. So that's your position is that some
2 federal agency, Department of Labor said that this
3 section of WIA of 1998 no longer exists; there is
4 some act of Congress that you are aware of?

5 A. No.

6 MR. KELSO: And I would ask the Hearing
7 Officer to take administrative notice of 30, which
8 consists of eight pages and it's the July 6, 1993
9 correspondence, legal guideline of the Attorney
10 General submitted to the Idaho Department of
11 Employment.

12 HEARING OFFICER MCKEE: July 6, 1993?

13 MR. KELSO: Yes. That is the one that has
14 to do with subagencies as private industry
15 Councils which were the predecessors of WIA
16 regions were deemed to be subagencies.

17 HEARING OFFICER MCKEE: Okay. You have to
18 give me a little bit more. What is the reference
19 again? Do you have a copy of it?

20 MR. KELSO: Yeah. It's 30.

21 MS. KEEFER: The most relevant portion is on
22 page 30-6, the first paragraph.

23 HEARING OFFICER MCKEE: I was going to do --
24 the lead of this conclusion state private industry
25 Council that is subject to the open meeting law.

1 for the sake of the argument that that is correct,
2 and we are assuming that only for argument, here
3 we have Section 116 that says, okay, we are going
4 to designate new areas under this new plan.

5 And if they met the requirement in 1998
6 under the 1998 law in 2000 when they are finally
7 enacted, what is it that makes it so they didn't
8 meet those requirements at the end of the plan of
9 2000?

10 A. I don't know how I can make it any
11 clearer. The statute says that, the federal
12 regulations state that the plan ends and their
13 designation ends.

14 I mentioned that on page -- let's see.
15 19,213 that, "Areas pursuant to the end of the
16 subsequent designation periods for areas
17 designated in the previous state plan." Those are
18 the references and the letter from Ms. Kulick.

19 Q. But what I'm looking at is 116 where it
20 talks about -- okay. And would you agree we are
21 operating under 116 as the law still today?

22 A. With its modifications as the Federal
23 Register and the interpretation of the law as they
24 use the federal regulations -- I mean, the Federal
25 Register, yes.

1 And I'm thinking, what does this have to do with
2 the price of potatoes?

3 MR. KELSO: Well, the rationale of why it is
4 subject to the open meeting laws as a subagency,
5 they are subagencies of the counties.

6 HEARING OFFICER MCKEE: What -- on the
7 private industry Council, what connection does
8 that have to what we are talking about today?

9 MS. KEEFER: It's a predecessor of our local
10 boards.

11 MR. KELSO: They do essentially the same
12 job.

13 HEARING OFFICER MCKEE: Okay.

14 MR. KELSO: The same counties.

15 HEARING OFFICER MCKEE: Is there a dispute
16 that the regional Councils would be subagencies
17 subject to the open meeting law?

18 MR. BLEDSOE: No.

19 MR. KELSO: Okay. Great.

20 HEARING OFFICER MCKEE: I would assume that
21 they are. They are not private corporations. I
22 don't think they are independent. It would be
23 quasi. Are they a corporation?

24 MR. KELSO: They are non-profit
25 corporations, but they address that issue in the

1 opinion that say they are run by -- they are
 2 appointed -- people are appointed by the counties,
 3 they are run by the counties, they are under the
 4 federal state monies, they're public.
 5 HEARING OFFICER MCKEE: Utah has a mechanism
 6 called a quasi public corporation. I don't think
 7 we have such in Idaho, but generally we recognize
 8 a lot of non-profit corporations that are, in
 9 fact, organized by municipal corporations, cities.
 10 MR. KELSO: Cities would be an example.
 11 HEARING OFFICER MCKEE: Yeah, exactly.
 12 That's one. And I think planning only has --
 13 well, I don't think planning only is, but there
 14 are -- yeah CCDC, Campbell City Development
 15 Corporation, I think, is a quasi municipal
 16 corporation, I'm going to guess, and considered to
 17 be an agency of the state for the purpose of
 18 things like considered to be an agency of the
 19 state in an open meeting law, administrative
 20 procedures, and other aspects.
 21 So I'm assuming, unless there is an
 22 issue in this area, I'll take that the regional
 23 councils are all arms of governmental -- are
 24 governmental entities.
 25 MR. BLEDSOE: For the purposes of the open

1 meeting law?
 2 HEARING OFFICER MCKEE: Well, for all
 3 purposes. Now, whether that makes them a, quote,
 4 "unit" close quote, under the Workforce Investment
 5 Act, I will scratch my head, but they are a
 6 governmental entity.
 7 MR. BLEDSOE: I only raise that limitation
 8 because the public records of the open meeting law
 9 gives a specific definition, but whether that
 10 definition would play --
 11 HEARING OFFICER MCKEE: Hold on,
 12 Mr. Bledsoe. You are going down a way I don't
 13 want to go. What I'm trying to do is get out of
 14 going through pieces and parts and says, well,
 15 public meeting. Now I've got to look at tax
 16 revenue. I say, no, no, no. I don't want to go
 17 there.
 18 And I think the general principal is,
 19 and unless I've got it wrong, the general
 20 principal would be that the regional councils are
 21 all governmental units, governmental entities.
 22 They are entities of their respective
 23 local governments. The combination of counties
 24 were somehow formed within county government, and
 25 they are public entities in this sense and in that

1 generic general sense as opposed to private
 2 companies.
 3 You are scowling at me.
 4 MR. BLEDSOE: No.
 5 HEARING OFFICER MCKEE: I don't want to pile
 6 up the record with this stuff of saying, well,
 7 they fit under the private Council and they are a
 8 prodigy of the private Council and the Attorney
 9 General deemed them to be public entity for the
 10 public meeting law and try to go by analogy
 11 because I don't think there is an issue here.
 12 MR. KELSO: Okay.
 13 HEARING OFFICER MCKEE: So that's where I
 14 am.
 15 MR. KELSO: That's fine.
 16 HEARING OFFICER MCKEE: What I would like
 17 you to do --
 18 MR. KELSO: You've made a ruling, and that's
 19 fine.
 20 HEARING OFFICER MCKEE: If that's where you
 21 are going, I'll take that without anything further
 22 because I will just recognize that based upon
 23 what's going on.
 24 Now, Mr. Bledsoe wants to attack it and
 25 say no, no, no, Judge, you misunderstand. They

1 are profit corporations. They really contract
 2 with the State; they are contract entities of some
 3 kind, and they are private corporations. They are
 4 not governmental units.
 5 Then we open it back up again. As I
 6 understand it, these are all entities like ACOG,
 7 CCDC, like a variety of organizations created by
 8 cities and counties for the purpose of carrying on
 9 the business of cities and counties.
 10 And if I've got it right, why let's
 11 move on. If I've got wrong, then I'll let you
 12 pick and poke at me.
 13 MR. KELSO: I'm not sure that I agree that
 14 you've got it entirely right, but it's a question
 15 of law based upon your analysis of what they are,
 16 so...
 17 HEARING OFFICER MCKEE: Well, I'm not sure
 18 if it's specifically relevant, the specific
 19 organization of each of the areas. Okay. I'll
 20 listen. Or are they all non-profit corporations
 21 or are some of them just associations?
 22 MR. KELSO: They are all non-profit
 23 corporations.
 24 HEARING OFFICER MCKEE: They are all
 25 formally incorporated as non-profit corporations?

1 MR. KELSO: -- or whatever.
 2 HEARING OFFICER MCKEE: And are the board of
 3 directors all selected by the governmental units
 4 that created them?
 5 MR. KELSO: By the counties.
 6 MS. KEEFER: And the cities.
 7 MR. KELSO: And the cities.
 8 HEARING OFFICER MCKEE: Yeah. Whoever
 9 joined together to create the counsel, but they
 10 are all governmental units that elect the boards,
 11 municipalities, or counties.
 12 MS. KEEFER: Or the elected officials
 13 themselves.
 14 HEARING OFFICER MCKEE: By function of their
 15 office though, not their individual -- not because
 16 they are good guys. But virtue of the fact that
 17 the county commissioner of such and such a county
 18 and mayor of such and such of city has the vote to
 19 select the board of directors of the county X
 20 official -- I say X official by virtue of their
 21 office as a municipality.
 22 I'm still going to hold that I would
 23 conclude from this that they are all governmental
 24 entities of some kind as opposed to private
 25 entities. They are not corporations for profit;

1 of Utah. They finally kept tweaking it until they
 2 snipped all the cords, and I finally said, Okay.
 3 Now you've got it.
 4 I don't know where it's going. I don't
 5 know if they went on or if everybody folded their
 6 tent and accepted it, but -- so I'm familiar with
 7 that designation. And we don't have in Idaho the
 8 corporate structure they have in Utah, which I'm
 9 familiar with, and other states that creates a
 10 vehicle within the state to create clearly a
 11 governmental unit to do things like ACOG or these
 12 planning councils.
 13 So what we do in Idaho, I think, is you
 14 form a non-profit corporation and then invest the
 15 control in the -- in the municipalities by name or
 16 the elected official of the municipalities and you
 17 come to the same conclusion.
 18 So I'm going to say unless there is
 19 something that I'm missing, but I think those are
 20 governmental units -- governmental entities. I
 21 don't want to use the word "unit" yet because I
 22 think the unit might get me over into the federal
 23 act, and I don't know whether it's a, quote,
 24 "unit" close quote, as used in the federal act.
 25 But it's a governmental entity.

1 they are not non-profit private entities. They
 2 are quasi governmental entities.
 3 Now, whether that is sufficient to
 4 bring them under where you go with that, I'll let
 5 you argue to me. But I would assume that is as
 6 close as Idaho comes, because I don't think we
 7 have a particular law that creates a governmental
 8 corporation, I don't think.
 9 MR. KELSO: I think the State Insurance Fund
 10 would fall under that.
 11 HEARING OFFICER MCKEE: But that is a
 12 statute, and that's by statute. I mean, they
 13 created the State Insurance Fund. I went down
 14 that road because I was looking at Utah, and I was
 15 trying to figure this thing out for this question,
 16 because Utah has a corporation that was a public
 17 corporation and they wanted to qualify it to do
 18 business in Idaho.
 19 And they went round and round and round
 20 and round and round, and I was the hearing officer
 21 about six different times while they kept tweaking
 22 that thing and tweaking it and tweaking it.
 23 And I kept saying, no, you didn't tweak
 24 it enough. It's still a, quote, "state entity"
 25 because it was still connected to the government

1 How is that?
 2 MR. KELSO: I think you have a grasp on the
 3 issue.
 4 HEARING OFFICER MCKEE: Okay. If that's
 5 true, then I don't see any necessity for the
 6 documentation like, well, there's subject to the
 7 open meeting law and there's subject to your
 8 attorney's opinion here and there because those
 9 are just chewing around the ankles of this thing
 10 rather than have to core the issue of this.
 11 Okay?
 12 MR. KELSO: Okay.
 13 Q. Thinking back to the JTPA, you are
 14 familiar with the JTPA?
 15 A. Somewhat.
 16 Q. Isn't it true that each of the six
 17 regions in Idaho under the 2000 plan were
 18 sub-state entities -- sub-state areas under the
 19 JTPA?
 20 A. I don't know that.
 21 Q. Okay.
 22 A. I know at least Region III was because
 23 that's what got them into the temporary and
 24 subsequent designation.
 25 Q. Is there some way to facilitate this to

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<p>1 either say yes or no that they were or weren't?</p> <p>2 MR. BLEDSOE: I could make a suggestion if</p> <p>3 it would be helpful.</p> <p>4 MR. KELSO: Sure.</p> <p>5 MR. BLEDSOE: One of your proposed exhibits</p> <p>6 is the 2000 plan. The 2000 plan explains exactly</p> <p>7 who was what and how they were designated. If you</p> <p>8 want to offer that, I don't have any objection.</p> <p>9 MR. KELSO: That's a good point in that that</p> <p>10 comes back to one of the issues is procedure. I</p> <p>11 presume that the Hearing Officer would be taking</p> <p>12 notice of the 2000 plan and the 2004 plan without</p> <p>13 offering them as exhibits or 2005.</p> <p>14 HEARING OFFICER MCKEE: Yes, if I've got it.</p> <p>15 MR. KELSO: Well, they are in Volume --</p> <p>16 HEARING OFFICER MCKEE: I'm not sure. The,</p> <p>17 quote, "the plan" closed quote, for some strange</p> <p>18 reason, was not part of the spreadsheet on the</p> <p>19 hearing exhibits that I looked at, and I know that</p> <p>20 is just a matter of, you know, like the statutes</p> <p>21 are not part of court file.</p> <p>22 I'll take judicial notice of it, sure,</p> <p>23 but somebody has got to put a copy of it under my</p> <p>24 nose. I think I've got the 2005. Let me see.</p> <p>25 MR. KELSO: I think that was the discussion</p>	<p>1 I just want to make sure, because my</p> <p>2 understanding was you were going to get a copy of</p> <p>3 the 2000 plan.</p> <p>4 HEARING OFFICER MCKEE: Well, I'm looking at</p> <p>5 that, and I'm groaning. Do I need the whole thing</p> <p>6 or do I just need a couple of pages?</p> <p>7 MR. BLEDSOE: I don't have any objection to</p> <p>8 the 2000 plan being a part of the record. I'm</p> <p>9 thumbing through this though, and I noticed there</p> <p>10 are marks that look like changes were being made</p> <p>11 or revisions to the document, so I'm not sure this</p> <p>12 is the current, full version.</p> <p>13 But the Department does have that.</p> <p>14 It's a matter of public record, and we can</p> <p>15 certainly -- but for the purposes of what we are</p> <p>16 doing today, I don't mind if he asks questions</p> <p>17 about it.</p> <p>18 HEARING OFFICER MCKEE: Let's do that, and</p> <p>19 the marks you see, are they marks that maybe</p> <p>20 counsel made to the plan?</p> <p>21 MR. BLEDSOE: No. They look like they're</p> <p>22 marks on the side.</p> <p>23 MR. KELSO: I think those are just photocopy</p> <p>24 marks, but I could be wrong. That is the plan</p> <p>25 that was provided to me as is. No marks that I</p>
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<p>1 we had was that you were provided a 2005 but not</p> <p>2 the 2000.</p> <p>3 HEARING OFFICER MCKEE: I think I have the</p> <p>4 2005 plan. I think that was in here, but I don't</p> <p>5 know that the 2000 plan is in here.</p> <p>6 MR. KELSO: Well, I just happen to have a</p> <p>7 copy.</p> <p>8 HEARING OFFICER MCKEE: Show it to</p> <p>9 Mr. Bledsoe, please. I don't know if I have the</p> <p>10 whole plan or just extracts of the plan.</p> <p>11 MR. KELSO: It was the same one in the book</p> <p>12 that I gave you.</p> <p>13 HEARING OFFICER MCKEE: I have extracts of</p> <p>14 the plan that I have from Mr. Bledsoe. Extract of</p> <p>15 the State Plan State Government Structure Extract</p> <p>16 From Grant.</p> <p>17 MR. KELSO: Is there a missing page in</p> <p>18 there?</p> <p>19 MR. BLEDSOE: Have you got a letter dated</p> <p>20 April 29, 2005?</p> <p>21 MR. KELSO: Okay. That wasn't intended to</p> <p>22 be in there. All I want is the 2000 plan, just</p> <p>23 the 2000 plan. Or we could -- the Commerce and</p> <p>24 Labor can give you a copy of it. I don't care.</p> <p>25 We don't need to go through page by page.</p>	<p>1 had originated. But I think it would be best just</p> <p>2 to receive a copy from the Department, and</p> <p>3 whatever they give you is -- I'll presume, is what</p> <p>4 the law is.</p> <p>5 HEARING OFFICER MCKEE: Okay. Alice,</p> <p>6 somewhere in your files, do you have a copy of</p> <p>7 that plan? She is nodding. Probably the best</p> <p>8 place to get it is from her. I'll arrange to get</p> <p>9 a complete copy of both the 2000 plan and a</p> <p>10 complete copy of the 2005 plan from the Department</p> <p>11 of the Commerce and Labor.</p> <p>12 Is that satisfactory?</p> <p>13 MR. KELSO: Yes, that is absolutely</p> <p>14 satisfactory.</p> <p>15 HEARING OFFICER MCKEE: And I will take</p> <p>16 administrative notice of both plans. So for the</p> <p>17 purpose of today, if anybody can give the witness</p> <p>18 whatever you have handy that he can look at, he</p> <p>19 can use that for the hearing.</p> <p>20 MR. KELSO: I didn't have any specific</p> <p>21 questions out of that plan for this witness. It</p> <p>22 was just that I wanted to make sure.</p> <p>23 HEARING OFFICER MCKEE: Well, the question</p> <p>24 you had pending that is maybe unanswered,</p> <p>25 Mr. Bledsoe said what is answered in there is</p>

1 whether or not the six regions were, in fact --
 2 what do you call it? Something under the Job
 3 Training Partnership Act. What do you call it?
 4 MR. KELSO: Well, there's JTPA and there's
 5 also Private Industry Council and history.
 6 MR. BLEDSOE: What the 2000 plan explains --
 7 HEARING OFFICER MCKEE: You had a particular
 8 question as to whether or not the area councils
 9 were -- what their predecessors were.
 10 MR. KELSO: If they were subareas under the
 11 JTPA.
 12 HEARING OFFICER MCKEE: Subareas, that was
 13 it. And the witness didn't know, and Mr. Bledsoe
 14 said that is all answered in the 2000 plan because
 15 the 2000 plan, I guess, identifies.
 16 MR. KELSO: And I will represent his
 17 representation that it is.
 18 HEARING OFFICER MCKEE: Okay.
 19 MR. KELSO: Unless I'm told otherwise by my
 20 clients in the interim, I guess it's not there.
 21 MR. BLEDSOE: It's on page 41 and 42.
 22 MR. KELSO: The six regional planning areas
 23 in the state. I think that's the -- probably the
 24 primarily relevant portion for your notes 41, 42.
 25 But depending on the process of whether or not you

1 that, but I'm not going to wait for it for my
 2 purposes.
 3 I'll leave it up to you if you want to
 4 request it be prepared and delivered to the
 5 Council, I think that -- to the Counsel along with
 6 my findings, I think that is appropriate. Or if
 7 the Council just wants it, that is appropriate.
 8 MR. KELSO: It's from what I can glean is
 9 that the Council reviews your recommendation and
 10 the record that is before you, and I would submit
 11 that transcript would be part of the record as
 12 well as the testimony, obviously, that it
 13 contains.
 14 And therefore, the Regions would
 15 request that a copy be provided to the Council for
 16 their hearing on your recommendation.
 17 HEARING OFFICER MCKEE: Okay. We'll make
 18 arrangements for that, but I will repeat; I don't
 19 want to wait for it for my purposes because I've
 20 got to get busy. If I wait for the transcript,
 21 that is going to jam me up in getting this out in
 22 15 days.
 23 So it was my understanding that the
 24 record was available for review by the counsel and
 25 wherever the parties think that this may go from

1 want to anticipate any sort of briefing after the
 2 record is transcribed in this, I may want to refer
 3 you to another specific portion of the plan.
 4 HEARING OFFICER MCKEE: Okay. In fairness,
 5 the Act requires me to rule within 15 days, and I
 6 did not anticipate waiting for the transcript of
 7 the record to be prepared.
 8 So what I anticipated was I would hear
 9 counsel out today on whatever you need, and then I
 10 would take this under advisement because I have to
 11 get an opinion out quickly. The record is for
 12 wherever this goes from here, but I did not intend
 13 on waiting for the record to be prepared and then
 14 briefing after the record or that anticipation.
 15 What I anticipated was, we would finish
 16 this thing up and I would close the record today
 17 and take it under advisement.
 18 MR. KELSO: But it's my understanding that
 19 Madam Court Reporter is going to be transcribing a
 20 copy, and that is available for the counsel when
 21 they receive your recommendation.
 22 HEARING OFFICER MCKEE: I think I'm going to
 23 leave that to the Council, if they want it or to
 24 counsel -- if you want to request it to be
 25 delivered to the counsel. I have no problem with

1 there. If this is going to go into the federal
 2 system, you will have a record that you can take
 3 into the federal system or wherever it goes.
 4 That's up to somebody else, not me.
 5 Okay. Well, anyway, where are we going
 6 from here?
 7 MR. KELSO: That's all the questions I have.
 8 HEARING OFFICER MCKEE: Ms. Keefer, you want
 9 to ask questions?
 10 MS. KEEFER: I do want to ask questions.
 11 I have a document I would like to
 12 submit into the record, and then maybe
 13 Mr. Engstrom can help me with it. This is the
 14 same document that is included in Mr. Kelso's
 15 Exhibit 46.2 and 68.3. Not exactly the same
 16 documents, but it deals with other regions. This
 17 one deals with region --
 18 HEARING OFFICER MCKEE: What do you want to
 19 mark this? You said it was Exhibit 46?
 20 MS. KEEFER: Well, it's included in
 21 Mr. Kelso's Exhibit 46.2 it's included as 6.3 for
 22 another district. And then I didn't find mine in
 23 there, so you could even assign that a separate
 24 number.
 25 HEARING OFFICER MCKEE: How far do your

1 numbers go? What is your next available number
 2 that you don't have blocked out?
 3 MR. KELSO: I think we go up to 96, maybe
 4 95.
 5 HEARING OFFICER MCKEE: How about use 101?
 6 MR. KELSO: That would be great.
 7 HEARING OFFICER MCKEE: We'll mark this
 8 Exhibit 101, and that would belong to Region II,
 9 the 100 series.
 10 MS. KEEFER: It's going to be the same
 11 document.
 12 HEARING OFFICER MCKEE: Okay. We're going
 13 to mark this.
 14 (Exhibit No. 101 was marked.)
 15
 16 CROSS-EXAMINATION
 17 BY MS. KEEFER:
 18 Q. If you could read the date of that
 19 document.
 20 A. September 28th of '04.
 21 MS. KEEFER: I would just like to note for
 22 the record that is exactly a year from today.
 23 Q. If you could read the last paragraph of
 24 that document, Mr. Engstrom.
 25 A. It says, "This legislation has provided

1 Idaho an excellent opportunity to bring together
 2 the various partners in the workforce development
 3 system at this state and local levels to
 4 collaboratively streamline service delivery and
 5 enhance ability of the system to meet the needs of
 6 its customers. We look forward to continuing our
 7 work with you towards this end."
 8 Q. The legislation that's being referred
 9 to in that paragraph has not been changed; is that
 10 correct?
 11 A. I didn't see that it referred to
 12 legislation, but if you are talking about
 13 Workforce Investment Act, no, it hasn't changed.
 14 Q. If you would read the first paragraph
 15 now, actually, just the first sentence in the
 16 first paragraph.
 17 A. "As you will recall, Local Workforce
 18 Investment Areas were required to submit
 19 applications for recertification of Local Work" --
 20 "Idaho Works Boards to the state earlier this
 21 year."
 22 Q. As I recall earlier, our discussion was
 23 whether the boards needed recertification or
 24 whether the Workforce Investment Areas needed
 25 recertification, and basically I read from this,

1 and correct me if I'm wrong, that it was only the
 2 Workforce Boards themselves, that the areas were
 3 continuing at the time that this plan was written?
 4 A. This is a recertification. It has
 5 nothing to do with the classification of Workforce
 6 Investment Areas. They are completely different
 7 animals.
 8 Q. Can you tell me how?
 9 A. One is a recertification of performance
 10 and the process that we have undertaken, and the
 11 classification of the area is designated in the
 12 law here. And it's very clear as to what the
 13 designation as the Workforce Areas are. This is
 14 recertification, and this is area.
 15 Q. Basically the law hasn't changed, but
 16 something has changed. Something's changed in
 17 that the cord extended to the various partners has
 18 been wiped out along with the redesignations. So
 19 the law hasn't changed, only the workforce areas
 20 have changes. And I'm having difficulty
 21 comprehending how that came to be.
 22 A. Well, as we have said throughout this
 23 testimony, Region II, in your case, was designated
 24 under the optional designation. That expired at
 25 the end of the 2000 program year plan. That area

1 designation expired.
 2 This is a recertification. It has
 3 nothing to do with area designation. This is more
 4 of an administrative accounting function saying
 5 that, you know, as far as -- you know, your
 6 activities were reviewed, and your activities were
 7 fine. We don't have a problem with what your
 8 activities were. It's just that the Governor
 9 chose not to redesignate the areas the same as
 10 they were in the 2000 plan.
 11 Q. Okay. If I can just recapture previous
 12 discussion, then I believe it was Exhibit 8, the
 13 transmittal notice.
 14 Did we renumber that to be a different
 15 exhibit than Exhibit 8? I believe that did get
 16 submitted to the record.
 17 MR. KELSO: Just 8.1 and 8.2.
 18 HEARING OFFICER MCKEE: Roger Madsen's memo
 19 from May 11, 2005, you mean?
 20 MS. KEEFER: Right.
 21 Q. And if I'm recalling correctly, I'm not
 22 finding the words on the page, but the cost
 23 criteria was the primary consideration in going to
 24 the almost single state process?
 25 A. Yes.

1 Q. If I can go back to what is Mr. Kelso's
2 Exhibit 24 but actually WIA legislation Section
3 116-A-1-B. We just talked about the Governor
4 using the financial constraints being the primary
5 consideration.

6 Can you look through quickly at item
7 roman numeral I through V and tell me which of
8 those -- I know we revisited this, but I'm just
9 needing to -- tell me how that criteria was or was
10 not considered?

11 A. As I said before, in this case, the
12 Governor has the ability to designate Local
13 Workforce Investment Areas. And as the Act, he
14 shall, I guess that is the term, Governor shall
15 take into consideration this -- these items.

16 I am not -- since I am not the Governor
17 I do not know how that process all worked, but I
18 do know what the final designation was. And he
19 included that in a letter to Roger Madsen. I mean
20 he communicated that to Roger Madsen which was
21 sent out in a letter from him.

22 Q. As I recall from the earlier discussion
23 you just reiterated, that you are not sure if the
24 connection were in terms of the Governor looking
25 at this particular criteria and making this

1 operationalizing, it should be represented in
2 elaborate process among state and local elected
3 officials, board, and partners."

4 Q. That's the primary substance. So, if I
5 were to infer that if the Governor is taking on
6 this responsibility correctly as he went forward
7 in making a new state plan, he looked at all the
8 criteria under item B, he also considered all the
9 financial constraints because there were fewer
10 dollars flowing down, and he collaborated
11 extensively with the local areas.

12 Can you explain for me that
13 collaboration, please?

14 A. He got input through the state boards,
15 and again, I don't know where all his input came
16 from. I'm not the Governor.

17 MS. KEEFER: For the record, this is where,
18 Mr. McKee, I think that this whole state plan
19 missed the boat on the understanding of the
20 partnerships to operationalize it; that there was
21 a lack of outreach.

22 I know there was not a visit to
23 Region II. What I am aware of is that, I don't
24 know if it was Jay or if it was Duane Johnson,
25 Office of Commerce and Labor who contacted

1 judgment.

2 Obviously, from what we presented
3 before in Governor Batt's memo and these other
4 things, that each criteria were considered, and
5 they were considered to be very relevant and
6 that's how the area designation occurred to begin
7 with.

8 If I can bring you to another document,
9 it's really going to be a question. My apologies
10 for not doing this all the right way, but I think
11 I have got some points to make. I've been
12 practicing for a while, so I'll find out.

13 I'm looking at Exhibit A submitted by
14 the State, page 19,210. Under plan development,
15 as I understand what you just said, the Governor
16 has the ability to designate these areas.

17 Would you read that first paragraph
18 either aloud or to yourself and tell me if that's
19 then the guidance to the Governor in making these
20 determinations.

21 A. "WIA gives state and local areas a
22 unique opportunity to develop employment and
23 training systems tailored specifically to state
24 and local needs. Since the state plan is only as
25 effective as the partnership, that

1 Senator Joe Stegner and said, would you like us to
2 come to your region? And Joe Stegner said no.

3 But Joe Stegner was the wrong person to
4 ask because in the documentation that I can put
5 before you, and I probably wrote down the wrong
6 code, Exhibit 79 of Mr. Kelso's documents, "Local
7 elected officials serving on Region II's board of
8 directors constitute local elected officials."

9 So I guess the point that I would make
10 is that there is a lack of collaboration that
11 should have occurred, and had it occurred, you
12 probably wouldn't need to be spending your time in
13 front of us; that there's a major gap between the
14 Exhibit that I offered in terms of giving voice to
15 the outstanding partnership.

16 Q. I do have another question for
17 Mr. Engstrom. What I would ask, for the 2000 to
18 the 2005 plan year how Idaho measured up in terms
19 of performance with regard to the other states in
20 the U.S?

21 A. We did -- Idaho's historically had a
22 fairly good record, and that record stands on the
23 fact that the service delivery people throughout
24 the state do a good job in their delivering
25 services. And much of that service delivery is

1 the local office of the Idaho Department of
 2 Commerce and Labor.
 3 Q. So what I'm reading from your discreet
 4 responses is that you attribute this success to
 5 the local job service offices and not necessarily
 6 to the local boards?
 7 A. I believe I said service delivery
 8 people, which could be other people than the local
 9 area offices. Certainly the local boards have
 10 input into the process. I'm not diminishing that,
 11 but the service delivery can't be overlooked
 12 either. They are a very important part of this
 13 since that's where the rubber hits the road.
 14 Q. I heard you say fairly good in terms of
 15 outcome, but what my understanding is, Idaho ranks
 16 No. 1 in this region in regards to performance; is
 17 that not correct?
 18 A. Within this region, yes, uh-huh.
 19 Q. And did quite, quite well nationally?
 20 A. Yes, we have been up in the top
 21 indicator for quite some time.
 22 Q. Local boards were the recipients of so
 23 called incentive monies because of the high
 24 performance that was achieved?
 25 A. Correct.

1 Q. Local boards in controlling these
 2 incentive monies, certainly that implies they had
 3 some hand in that performance; is that not
 4 correct?
 5 A. Yes, they had a hand in that
 6 performance.
 7 Q. So certainly what we have drawn is a
 8 connection between Idaho's outstanding performance
 9 and the activities of the boards on a local level?
 10 A. We can also draw the same conclusion of
 11 the hard work that the service delivery people
 12 have done to doing their job with the people in
 13 bringing all the indicators up.
 14 So there is a lot of work to be shared
 15 around, a lot of benefits -- I mean, a lot of
 16 people can take benefit and pride in the program.
 17 MS. KEEFER: What I would do is have you
 18 recall the date of the letter that Mr. Engstrom is
 19 reading from, and that was a year ago today. It
 20 is somehow the nature of the beast changed
 21 dramatically in one year.
 22 But I would offer that be changed
 23 dramatically before then, and I don't know if it's
 24 fair to continue to question Jay or if I should
 25 just call your attention, if I could, to

1 Mr. Kelso's Exhibit 25. It is a memo from
 2 Cheryl Brush to Megan Ronk who is in the
 3 Governor's office and in this memo which is
 4 dated --
 5 HEARING OFFICER MCKEE: Is that something
 6 that you attached earlier by any chance?
 7 MR. KELSO: I believe so.
 8 THE WITNESS: Is it 25?
 9 MS. KEEFER: Exhibit 25.
 10 HEARING OFFICER MCKEE: I remember that
 11 being a memo from being hooked onto something that
 12 was submitted earlier.
 13 MS. KEEFER: It's a copy of an e-mail.
 14 HEARING OFFICER MCKEE: Yes, I saw that. I
 15 remember seeing that.
 16 MS. KEEFER: You will note the date was
 17 March 29th.
 18 HEARING OFFICER MCKEE: This is Exhibit 25?
 19 MS. KEEFER: And basically the --
 20 HEARING OFFICER MCKEE: Let me get an
 21 identification for my notes. It's from Brush.
 22 THE WITNESS: To Megan Ronk.
 23 HEARING OFFICER MCKEE: To Megan Ronk,
 24 R-O-N-K?
 25 THE WITNESS: Yes.

1 HEARING OFFICER MCKEE: What is the date of
 2 it?
 3 THE WITNESS: March 29, 2005.
 4 HEARING OFFICER MCKEE: And this is a copy
 5 of an e-mail?
 6 MS. KEEFER: Correct. The point I would
 7 make is that on September 28th, 2004, local boards
 8 were doing an outstanding work in the partnership
 9 that had evolved at that level was being
 10 appraised.
 11 Six months and one day later there is
 12 this communication which indicates that the chair
 13 of the Workforce Development Council fully
 14 supported elimination of any support for local
 15 workforce investment.
 16 To me that is a pretty dramatic
 17 turnaround in just six months, and I would venture
 18 to tell you that or just want to point out, for
 19 your benefit, a couple more dates.
 20 The Federal Register notice that
 21 required collaboration with the partners, again,
 22 the provision I had Mr. Engstrom read from Exhibit
 23 A required it to interact with local boards; and
 24 that's dated April 12th.
 25 It was on April 15th that the new plan

1 was unveiled for the regional comments, but it was
2 already cast in stone at that point. So I made
3 all kinds of errors in terms of editorializing,
4 and my apologies for the attorneys in the room.
5 But I thought those were important points that I
6 thought ought to be on the record.

7 HEARING OFFICER MCKEE: The final date was
8 April 15th?

9 MS. KEEFER: April 15th, I believe, was the
10 date that we got phone calls from Roger Madsen and
11 Karen McGee. Those are the phone calls that she
12 is planning to be available to make calls on
13 Monday morning via conference. I believe that is
14 it. Maybe that was a different one.

15 HEARING OFFICER MCKEE: The new plan was to
16 be...

17 MS. KEEFER: That the local workforce boards
18 whose participation and has been touted, has been
19 very clearly effective in creating an outstanding
20 program to then be eliminated without input from
21 the local level.

22 HEARING OFFICER MCKEE: Here's my problem,
23 and let me tell you what my take is. I think I
24 understand the complaint, but my take is that the
25 complaint is addressed to the structure of the

1 got the Governor's office and a relationship
2 between the Governor and the Department of Labor;
3 I have got the Commerce and Labor, the Department
4 of Commerce and Labor is on a line; they are all
5 part of the executive branch of government.

6 So I say the Governor is kind of the
7 Governor/director of Commerce and Labor.
8 Administratively they are sort of one combination,
9 the executive branch of the state of Idaho. The
10 Governor operates, the director of Commerce and
11 Labor operates, but they are the executive branch.

12 And then I have the Workplace Advisory
13 Council, which is, as I understand it, is an
14 advisory body to the Governor, and then I have,
15 because of the nature of this plan, the plan
16 creates an appellate body on certain questions
17 that might come before the Workplace Council and
18 puts a hearing officer to make recommended
19 findings to the Workplace Council, which makes --
20 which advises the Governor.

21 MR. KELSO: Could I just interrupt a second?

22 HEARING OFFICER MCKEE: Yeah.

23 MR. KELSO: That was the question we
24 discussed earlier. And I believe Mr. Bledsoe said
25 in a telephone conference that that was unclear,

1 2005 plan, not to implementation of it.

2 That the 2005 plan was pursuant to the
3 Workforce Investment Act because the 2000 plan
4 expired on June 30th, and so something had to come
5 along to replace it. The 2005 plan is a two-year
6 plan beginning anew on July 1, but this is a
7 brand-new -- quote, closed quote, "brand-new"
8 plan.

9 And it looks to me from the guidance
10 that the director -- or the Governor received from
11 the director of -- or from the Secretary of Labor,
12 the representative, I think this is the Exhibit A.

13 MR. BLEDSOE: Yes. The federal planning
14 guidance.

15 HEARING OFFICER MCKEE: I think it's F.
16 From John McCallister. This comes along in July.
17 It comes along after the plan was actually put
18 together, but it is still setting forth the number
19 of criteria that people are looking at and
20 thinking about when they put it in.

21 They put it in as a brand-new plan.
22 The plan was submitted to the Department of Labor
23 and was approved by the Department of Labor. Now,
24 my struggle is that I have got the Department of
25 Labor up here someplace up in the clouds; I have

1 but he believed that went to the Governor, correct
2 me if I'm wrong, from the Council.

3 And I, in my memorandum, cited that the
4 appeal rules specifically provide that it goes --
5 the appeal comes from the decision of the state
6 Council to the U.S. Department of Labor.

7 So I guess the point I'm trying to make
8 is that in -- according to the appeal rules, it
9 doesn't go to the Governor; the Council is the
10 deciding body from which the direct appeal to the
11 U.S. DOL goes according to the WIA of 1998.

12 HEARING OFFICER MCKEE: Well, and this is
13 where I'm kind of scratching my head, because the
14 struggle I'm having is the language of the plan
15 seems to be fairly specific in that the hearing,
16 if there is to be a hearing, is a hearing over the
17 decision made under 116-A -- I lost it. 116-A-2
18 and 116-A-3. I scratch my head because it doesn't
19 say --

20 MS. KEEFER: Can I ask a question?

21 HEARING OFFICER MCKEE: Yes.

22 MS. KEEFER: I didn't see the guidance from
23 the U.S. Department of Labor say you can't
24 consider 116-A-1 or 116-A-4. I didn't hear that
25 things, until -- you know, for the Governor to

1 throw out consideration.
 2 HEARING OFFICER MCKEE: 116-A-1 is a general
 3 criteria for the whole section. 116-A-2, if I'm
 4 reading it correctly, is the automatic
 5 qualification of an area. The 116-A-3 is this
 6 temporary and subsequent. 116-A-4 is the
 7 Governor's discretion, the optional to Governor's
 8 discretion.
 9 The appellate Section 116-A-5, I think,
 10 says that the appeal can lie from a fair to
 11 appoint under 116-A-2, which is automatic, and
 12 116-A-3, which is, it looks to me, like it's
 13 automatic if you qualify.
 14 But it specifically doesn't say in the
 15 statute appeal from 116-A-4. You scratch your
 16 head and you say, what's going on here? Well,
 17 116-A-4 looks to me like it's what you all are
 18 calling the optional, what the statute seems to
 19 say is the discretionary.
 20 "Governor may approve a request from
 21 any unit of general local government as a local
 22 area," blah, blah, blah, "if the state board," and
 23 I gather that is the Workplace Council,
 24 "determines taking into account the factors
 25 described and clauses 1 through 5 of paragraph 1-B

1 and recommends to the Governor that such areas
 2 should be so designated."
 3 So workplace area council made that
 4 determination, made that recommendation to
 5 Governor Batt back in 19-when-ever. And that is
 6 the exhibit you just offered, for an optional
 7 discretionary appointment under subparagraph 4.
 8 And the Governor making that
 9 determination took into consideration items 1
 10 through 5 of 116-A-1 A and B, I guess. You said
 11 he did. And those were covered in the memo.
 12 The Governor comes along this time and
 13 says, I don't want to hear anything because I'm
 14 not going to reappoint. I'm not going to create
 15 these agencies, so I don't want the Workplace
 16 Council to make a recommendation, so they didn't.
 17 Now, 116-A-5 appeal unit of general
 18 local government including combination of such
 19 including combinations of such may -- oh, that is
 20 not designated an area as a local area under
 21 paragraphs 2 or 3 may submit an appeal to the
 22 state board in the appeal process as established
 23 by the plan.
 24 How come they left out 4? I don't
 25 know, but they did. The State and I say, well,

1 the reason they left out 4 is to reinforce that 4
 2 is discretionary. It's not a matter of right;
 3 it's not a matter of entitlement; it's not a
 4 matter of statutory qualification. You qualify or
 5 you don't. If you qualify, you get the
 6 appointment. If you don't qualify, you don't.
 7 The two subparts above, subpart 2
 8 automatic designation. If you qualify, you get
 9 the appointment; if you don't qualify, you don't.
 10 Temporary and subsequent starts out
 11 notwithstanding paragraph 2-A, "The Governor shall
 12 approve any request," et cetera.
 13 So the temporary and subsequent
 14 designation seems to have at least some quotient
 15 of automatic statutory entitlement; if you
 16 qualify, you get the appointment; if you don't
 17 qualify, you don't.
 18 Subparagraph 4 or Section 4 seems to be
 19 clearly discretionary, and you come down to the
 20 appeal. The appeal provides for an appeal for a
 21 refusal or a denial or a withdrawal of a
 22 designation under paragraph 2 or 3, which is the
 23 statutory rights, but not 4.
 24 Rationale, it seems to me, is 4 is
 25 clearly intended to be discretionary, and there is

1 an administrative appeal at the under level from
 2 me to me to the Workplace Council advising the
 3 Governor.
 4 Now, does that mean that you are
 5 totally without? Well, I don't know. Because it
 6 seems to me that what your criticizing and what
 7 you are talking about now are the manner in which
 8 the new plan, the 2005 plan was designed to be
 9 implemented.
 10 And it seems to me that those
 11 criticisms, rather than coming from the bottom up,
 12 you need to go from the top down and get in
 13 between the Governor's office and the Secretary
 14 and criticize or challenge the Secretary's
 15 approval of the plan for the failure to recognize
 16 the partnerships and failure to recognize the
 17 involvement of the community level for these
 18 things that we are talking about.
 19 This is what it seems to me. If I've
 20 got it wrong, I will listen and hear you out.
 21 MS. KEEFER: Well, I think you have it right
 22 in a lot of sense, but there are nuances. And the
 23 nuance is that we are not starting fresh with
 24 brand-new people who don't know what we're going.
 25 We are dealing with people who have

1 been engaged in these issues for decades and are
 2 chopped off at the knees without adequate input --
 3 HEARING OFFICER MCKEE: Question. And I
 4 fully understand --
 5 MS. KEEFER: So if you read -- if that said
 6 redesignation and we don't get a chance to appeal,
 7 that is another thing because we are in a
 8 redesignation process. The legislative mandates
 9 that hasn't changed a bit.
 10 We have been in existence for a very
 11 long time, and we have contributed very positively
 12 to the process, so we are in a reform, not
 13 starting from scratch kind of basis.
 14 HEARING OFFICER MCKEE: I understand that.
 15 I understand that. My struggle is that the
 16 arguments you just made to me it seems to me are
 17 arguments that you should be addressing to the
 18 administrative law judge or to the delegate from
 19 the U.S. Department of Labor saying you folks
 20 should not have approved Governor Kempthorne's
 21 2005 plan because it did not comport with the
 22 consideration that you just talked about; that the
 23 arguments that you are making to me is whatever I
 24 may think about the wisdom of the Governor's
 25 decision.

1 I can stretch under plain wording and say I can
 2 stretch that out to include Subsection 4?
 3 I don't think I can because Subsection
 4 2 and 3 are mandatory provisions of the statute
 5 and are subject to administrative review, are
 6 subject to a determination by an administrative
 7 law judge that I can find the facts.
 8 The facts are that the units qualify or
 9 don't qualify under the statute. I can find as a
 10 matter of law what the statute says. I can make a
 11 recommendation that based upon these facts, based
 12 upon this interpretation of the law, these areas
 13 do qualify for mandatory designation under either
 14 Subsection 2 or Subsection 3. That is all
 15 administrative law stuff under the plan because
 16 that's what the plan says.
 17 Now, do I have jurisdiction to say,
 18 well, I ought to expand that and interpret the
 19 implementation of the plan? I don't think I can.
 20 I think that determination has to be made by
 21 whoever is in charge of implementing the plan or
 22 approving the plan, and that is something between
 23 the Governor's office or state agency
 24 Governor/Commerce and Labor and whoever is tooting
 25 the whistle, the Secretary of Commerce, Secretary

1 I'm having a great deal of difficulty
 2 understanding how I can wind up from down at the
 3 bottom, getting myself up to the point where I can
 4 bang on the Governor's door and say, Governor,
 5 you've got to change your mind; you did it wrong;
 6 you made an error.
 7 My jurisdiction is whether or not the
 8 Governor is required to reappoint the two -- the
 9 agencies under either Section 2 or Section 3.
 10 It's not a question of whether the Governor
 11 correctly exercised his discretion if he has it
 12 under subsection 4.
 13 The way I'm reading this is that is not
 14 included in the jurisdiction of the Hearing
 15 Officer under Subsection 5 under the plan. Now,
 16 maybe the plan should have included this as a
 17 jurisdiction, but, again, this is a question, can
 18 I decide my own jurisdiction?
 19 I don't think I can. I can interpret
 20 my jurisdiction, but I can't broaden it. I can't
 21 expand it. I can interpret the way it's written,
 22 and I've got to read the plan language of the
 23 section.
 24 Plan language of the sections says I've
 25 got jurisdiction here and here. Is there any way

1 of...
 2 THE WITNESS: Labor.
 3 HEARING OFFICER MCKEE: Secretary of Labor
 4 under the Federal Act. Now, whether you've got a
 5 direct hearing before an administrator of the
 6 Secretary's office, I don't know that procedure;
 7 that's out of my experience.
 8 My guess is that you initiate some kind
 9 of application. There's probably some informal
 10 proceedings first and eventually you end up before
 11 a federal administrative law judge, and he is the
 12 one, if I'm understanding correctly, if there is
 13 anybody that you make this argument to that the
 14 implementation of the state plan was wrong because
 15 it didn't take into consideration all the stuff
 16 you talked about it.
 17 It didn't take into consideration the
 18 input from the local government, the local
 19 entities. It doesn't recognize the partnership;
 20 it doesn't carry out the policies expressed in the
 21 Federal Register.
 22 I think those are good, solid, sound
 23 arguments. I'm not saying that they're not good,
 24 solid, sound arguments, but whether they carry the
 25 day or not, I don't know.

1 But what I'm having a struggle with is
2 other than commiserating with you for whatever
3 appears to be foul play, can I do anything about
4 it as Administrative Hearing Officer in this case?
5 And I scratch my head and say, I don't think so
6 because I think I'm the last guy on the totem
7 pole. And you want to be about three layers up in
8 terms of getting at what has happened to the area
9 Council.

10 Now, you may have to start with me in
11 order to exhaust the administrative remedies, and
12 I fully understand that. And you may have to
13 start here and say, okay, we tried to get McKee to
14 do as much as he could, and all he could do is go
15 to here; and that doesn't get us to where we need
16 to go.

17 You have exhausted your remedy at this
18 level, and that sets the stage for you to move on
19 to the next one. I fully understand that
20 application, but my perception is I can't go where
21 you want me to go in terms of going and banging on
22 the Governor's door and tell him he did it wrong.
23 I don't think I can do that.

24 I don't think that is allowed. That is
25 not allowed to me under Subsection 5 of "the

1 plan," and that's what I'm looking at. I think
2 what you want to do is appeal under the Federal
3 Act, and that's a different area and a different
4 animal and a different procedure.

5 Now, I've been rattling on. I don't
6 know if I've helped anybody, but that's where I am
7 right now. If you think I'm wrong, I'll sure let
8 you wail away.

9 MR. KELSO: Can I make a suggestion?

10 HEARING OFFICER MCKEE: Absolutely.

11 MR. KELSO: 20CFR667640, which is attached
12 to the prehearing memorandum talks about --

13 HEARING OFFICER MCKEE: Hang on. 20CFR?

14 MR. KELSO: 667640. Talks about that the
15 appeal to the state board does not result in
16 designation. The appellant may request review by
17 the Secretary under Section 667645, and that is
18 whether you make a detour to the Governor or go
19 straight up.

20 So I would suggest to you it's within
21 your purview, because you are not making a
22 decision, you are making a recommendation, that
23 you need to include all of these points and facts
24 in your analysis and say just what you said, I
25 feel I'm limited by these things, but you, the

1 Council, should understand that it smells.

2 HEARING OFFICER MCKEE: I don't know if I
3 would gratuitously -- in all fairness, I don't
4 know if I feel comfortable gratuitously advising
5 the Council one way or the another.

6 I might make these findings of this is
7 that these arguments were made, and although these
8 arguments were made because of my interpretation
9 and because of how they are laid out in the
10 limited hearing, I think that this is outside of
11 the jurisdiction of the Council's hearing officer
12 at this level and that these arguments need to be
13 made to another entity.

14 MR. KELSO: But not necessarily outside of
15 the purview of the Council. Under the 2005 plan,
16 I understand your argument that they are outside
17 the purview of the hearing officer, and we also
18 have a disagreement with regard to 60 days.

19 But the Council is the appellate body
20 from which the appeal is taken, so they should
21 have authority to consider the whole guacamole.

22 HEARING OFFICER MCKEE: I'll leave that to
23 the Council, I think.

24 MR. KELSO: And all I'm saying is if you set
25 forth what you just discussed on the record, that

1 gives them the information they need to know what
2 the evidentiary issues and facts were as
3 presented.

4 HEARING OFFICER MCKEE: I want to see where
5 it leads us.

6 MS. KEEFER: Nothing further from me.

7 HEARING OFFICER MCKEE: Okay. Anything
8 further.

9 Mr. Bledsoe?

10 MR. BLEDSOE: Just a few follow-up. Could I
11 see Exhibit 101?

13 REDIRECT EXAMINATION

14 BY MR. BLEDSOE:

15 Q. Mr. Engstrom, I'm showing you
16 Exhibit 101.

17 That talks about recertification,
18 doesn't it?

19 A. Yes, it does.

20 Q. What is being recertified?

21 A. The performance of the local boards.

22 Q. Is there a difference between a local
23 board and a local area?

24 A. Yes, very much so.

25 Q. What is the difference?

1 A. One is a geographic area, and one is a
 2 board of individuals.
 3 Q. Who has authority to appoint the local
 4 board?
 5 A. They are appointed at the local level
 6 at the local elected officials.
 7 Q. Does Exhibit 101 say what the period of
 8 recertification is?
 9 A. It's says every two years.
 10 Q. And in the second paragraph, does it
 11 say when that -- what it's being recertified for?
 12 A. It says here, "On behalf" --
 13 HEARING OFFICER MCKEE: Counsel, I'm not
 14 sure where this is going on this thing. It's part
 15 of the Act. If I'm reading this thing correctly,
 16 temporary and subsequent designation requires a
 17 certification every two years that the entity has,
 18 quote, "performed successfully." And you are
 19 looking at the criteria, Section sub 3-A and sub
 20 iii.
 21 Isn't that what we are talking about?
 22 MR. BLEDSOE: No. We are talking apples and
 23 oranges. 116 talks about what the criteria is and
 24 the process of designating a local area. Section
 25 117 of the act says that local areas can appoint

1 qualifications under the statute as a temporary
 2 and subsequent designation, that you get audited
 3 every two years.
 4 MR. BLEDSOE: No. Can I be heard on that,
 5 please?
 6 HEARING OFFICER MCKEE: Sure.
 7 MR. BLEDSOE: What Exhibit 101 is talking
 8 about is the board, not the area. If you turn to
 9 Section 117.
 10 HEARING OFFICER MCKEE: I didn't go there.
 11 I just have 116.
 12 MR. BLEDSOE: 117, Subsection C,
 13 Subsection 2.
 14 HEARING OFFICER MCKEE: Well, let me ask you
 15 a question because I think what Ms. Keefer was
 16 pointing out is that one year prior to today the
 17 Commerce and Labor were writing to the regions and
 18 saying you guys are doing great. We look forward
 19 to a continuing partnership.
 20 MR. BLEDSOE: That the board was doing
 21 great, and that the -- if you look at the law, and
 22 maybe you don't have to look at it now, but it's
 23 Section 117, Subsection C-2. It says,
 24 "Certification. The Governor shall, every two
 25 years certify, one local board for each local area

1 boards, and then it talks about the process for
 2 appointing boards and that boards have to be
 3 recertified every two years.
 4 So they are not the same thing, and the
 5 point I'm trying to make is it's misleading to
 6 offer this as an exhibit to imply that there was
 7 some approval given to the area when what this is
 8 really talking about is the recertification
 9 process every two years for the board. So those
 10 are two different entities.
 11 HEARING OFFICER MCKEE: Well, what does that
 12 mean in the criteria for temporary and subsequent
 13 designation notwithstanding paragraph 2-A,
 14 "Governor shall appoint," et cetera. And then it
 15 says, "If the Governor determines that the area" A
 16 -- or sub i, "performed successfully in each of
 17 the last two years prior to the request for which
 18 data are available in the delivery of services to
 19 participants under party of Title II and III of
 20 the Job Training Partnership Act has effect on
 21 such day."
 22 And sub ii, "Has sustained the fiscal
 23 integrity of the funds used by the area to carry
 24 out activities under such part and title."
 25 It looks like, to me, to maintain your

1 in the state."
 2 That's what this is doing. It's
 3 certifying a local board for a local area in the
 4 state; that has to be done every two years.
 5 So that's what this is talking about,
 6 and it's not talking about a local area. So it
 7 really has nothing to do with a designation of the
 8 local area under Section 116.
 9 HEARING OFFICER MCKEE: Except if the local
 10 board is no longer a local area, do they have
 11 anything to do?
 12 MR. BLEDSOE: Well, I would put it another
 13 way. The problem is if the government doesn't
 14 recertify the local board, then you have a problem
 15 of getting them money. So as long as the area is
 16 in business and they have a local board, you have
 17 to make sure the certifications are current so
 18 that the money can go to the local board to do the
 19 work of the local board.
 20 HEARING OFFICER MCKEE: Well, it does have
 21 something to do with it. The local board is the
 22 local area, right?
 23 MR. BLEDSOE: No.
 24 HEARING OFFICER MCKEE: The local board
 25 governs the local area?

1 MR. BLEDSOE: The local area has to have at
 2 least one local board under the Act. It could
 3 have more than one. They could have several.
 4 They could have as many as they wanted, but they
 5 have to have at least one.
 6 HEARING OFFICER MCKEE: In Idaho, each of
 7 the areas has a local board.
 8 MR. BLEDSOE: That's correct, I believe.
 9 THE WITNESS: I believe so.
 10 HEARING OFFICER MCKEE: I got five
 11 appellants and one more, and everybody is saying
 12 the one that is not an appellant made a deal. And
 13 if I'm understanding correctly, the six appellants
 14 are all "the board" of "the area."
 15 MR. BLEDSOE: No, I don't believe that is
 16 correct. And maybe if Ms. Keefer -- is she a
 17 witness now that can -- since she provided
 18 testimony?
 19 MR. KELSO: Could we take a break for a
 20 minute?
 21 HEARING OFFICER MCKEE: Sure. Let's take a
 22 break.
 23 (Short break taken.)
 24 HEARING OFFICER MCKEE: Okay. What do we
 25 need to do now?

1 MR. BLEDSOE: A few more questions.
 2 HEARING OFFICER MCKEE: Go ahead.
 3 BY MR. BLEDSOE:
 4 Q. So when Exhibit 101 talks about the
 5 recertification of the Workforce Investment Board,
 6 it's not talking about recertification of the
 7 area?
 8 A. No, it's not.
 9 Q. I'm showing you what's been offered as
 10 the 2000 plan. I'm not sure what this was
 11 designated. I don't know if we gave it a number
 12 or not.
 13 HEARING OFFICER MCKEE: I just said I would
 14 get it and look at it.
 15 BY MR. BLEDSOE:
 16 Q. Does the 2000 plan talk about how the
 17 designations were made in the initial plan?
 18 A. It says here, "The Southwest Idaho" --
 19 Q. Give us a page.
 20 A. I'm sorry. Page 41 of the plan. It
 21 says, "The Southwest Idaho Service Delivery Area
 22 met the requirements for mandatory temporary
 23 designation as a workforce area and was
 24 designated. Each of the five planning areas
 25 within the balance of state Service Delivery Area

1 applied for and were designated as Workforce
 2 Investment Areas bringing the total number of the
 3 Workforce Investment Areas to six compared to the
 4 two Service Delivery Areas that existed under
 5 JTPA.
 6 That reminded me of -- I said earlier
 7 in my testimony that Region III was a JTPA area,
 8 and the rest was -- the remainder of the state was
 9 a kind of combined into one.
 10 Q. When you say JTPA, do you mean J-T-P-A?
 11 A. Yes. I'm sorry.
 12 Q. What do those initials stand for?
 13 HEARING OFFICER MCKEE: JTPA, I understand.
 14 BY MR. BLEDSOE:
 15 Q. Turning to page 42, is there any
 16 further explanation as to how the designations
 17 were made?
 18 A. "Application for designation were
 19 received from chief local elected officials
 20 representing each of the six regional planning
 21 areas in the state. These applications were
 22 reviewed by the Workforce Development Council in
 23 November of 1998.
 24 The Council agreed that each
 25 application was complete and complied with the

1 established designation criteria and recommended
 2 to the Governor that all six applicants be
 3 approved because the Council was concerned about
 4 scarcity of administrative resources and the need
 5 for efficient administration of the local
 6 Workforce Investment System.
 7 The Council also recommended that
 8 Workforce investment funds be administered by a
 9 single entity for maximum efficiency and cost
 10 effectiveness.
 11 The Governor designated the six
 12 recommended areas in December of 1998, encouraging
 13 local elected officials to further explore
 14 participation in a single administrative system
 15 for the State of Idaho."
 16 Q. So what is your understanding, given
 17 what's in the 2000 plan, as to how the appellants
 18 in this case were initially designated in 2000?
 19 A. The Region III was designated in the
 20 initial plan under temporary and subsequent, and
 21 the remainder of the state was designated under
 22 optional.
 23 Q. And that's because it says they were
 24 recommended?
 25 A. Recommended by the board.

1 Q. Looking just briefly at the law, this
 2 is the statute of Section 116 referring to the
 3 temporary and subsequent designation criteria in
 4 Subsection A.
 5 If someone wanted to make application
 6 under this criteria, when did they have to submit
 7 an application?
 8 A. It was...
 9 Q. In the first sentence of Subsection A.
 10 MR. KELSO: I would just interpose an
 11 objection. I think 116 speaks for itself, and it
 12 would be a legal conclusion on this witness beyond
 13 we have a plethora of legal issues in this case.
 14 And I don't know that this one has been
 15 established as a legal expert to render legal
 16 opinions.
 17 HEARING OFFICER MCKEE: Let him get to his
 18 point on this.
 19 THE WITNESS: "A temporary designation under
 20 this paragraph shall be for a period of" --
 21 HEARING OFFICER MCKEE: No.
 22 BY MR. BLEDSOE:
 23 Q. Subsection A.
 24 HEARING OFFICER MCKEE: No.
 25 "Notwithstanding, the Governor shall make a

1 as I understand your testimony, they were found to
 2 meet it in 1998, November.
 3 So I would ask you why it is that they
 4 wouldn't meet today?
 5 A. I guess the operative sentence is,
 6 "...the application made not later than the date
 7 of submission of the initial state plan." The
 8 initial state plan expired on June 30th of this
 9 year.
 10 Q. But they made, would you agree with me,
 11 the application for designation; Region III was
 12 filed prior to June 30th of 2005?
 13 A. Yes. And they did file that, but it
 14 was under a section of the act that is no longer
 15 current.
 16 Q. Okay.
 17 HEARING OFFICER MCKEE: You guys are fencing
 18 with one another. I understand the problem on
 19 that. The question is, what does the word
 20 "initial" mean, I think, in this Subsection 3 when
 21 it says, temporary and subsequent designation,
 22 that you've got to make this request not later
 23 than the date of submission of the initial state
 24 plan.
 25 Does that -- if I'm understanding it,

1 request not later than the date of submission of
 2 the initial state plan under the subtitle," et
 3 cetera.
 4 BY MR. BLEDSOE:
 5 Q. What it says, "Request made not later
 6 than the date of submission of the initial state
 7 plan."
 8 What do you understand that to mean?
 9 A. The last day of the last JTPA planning
 10 period.
 11 Q. Did this provide an opportunity for an
 12 entity to apply for this designation period in
 13 subsequent plans?
 14 A. No.
 15 MR. BLEDSOE: I have no further questions.
 16 HEARING OFFICER MCKEE: Counsel?
 17
 18 RECROSS-EXAMINATION
 19 BY MR. KELSO:
 20 Q. Would you agree with me that if, in
 21 fact, 116-A-3 temporary and subsequent designation
 22 is still the law of the land, that Region III
 23 still meets the law of the land?
 24 A. No, I wouldn't agree with you.
 25 Q. Well, they were found to meet it in --

1 looks like the federal government, at least in
 2 their advice to the State, seems to think that
 3 that temporary and subsequent designation is only
 4 going to operate on the first plan. And the later
 5 plans, if you come down the road, that they have
 6 got to be under something else; I presume either 2
 7 or 4.
 8 Now, the question is, what does
 9 "initial" mean? Does that mean each time you have
 10 a plan, is that an initial plan? I gather that
 11 would be -- that is an argument.
 12 MR. KELSO: The other issue that that raises
 13 to that discussion is if Sub 3 doesn't exist in
 14 the law anymore, why would the 2005 plan
 15 specifically refer to it as appealable from that
 16 section?
 17 HEARING OFFICER MCKEE: I don't know.
 18 MR. KELSO: I mean, just refer to some law
 19 that doesn't exist anymore?
 20 HEARING OFFICER MCKEE: Well, well, let's
 21 not beat this guy up over it.
 22 MR. KELSO: Just following up your comments.
 23 HEARING OFFICER MCKEE: Yeah, well -- but
 24 that's the argument, and I understand that to be
 25 the legal argument. But I think unless there's

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<p>1 some fact part that you want to get out of this 2 witness. 3 MR. KELSO: Just following up on your 4 conversation. 5 HEARING OFFICER MCKEE: I think trying to 6 box him into the corner and make him agree with 7 you -- on the legal interpretation, I understand 8 their interpretation of it, and I understand, I 9 think I do. 10 Now, I'm going to let Mr. Bledsoe make 11 sure I do when we get to it, but I don't think 12 it's a matter for the witness to work on any 13 further. 14 MR. KELSO: Well, I don't intend to ask any 15 further questions. 16 HEARING OFFICER MCKEE: Ms. Keefer, do you 17 have anything further? 18 MS. KEEFER: I think I have conveyed as much 19 as I can as best I can. 20 HEARING OFFICER MCKEE: All right. Thank 21 you, Mr. Engstrom. 22 Anything further from the State, from 23 the state side? 24 MR. BLEDSOE: No. 25 HEARING OFFICER MCKEE: Is there any</p>	<p>1 If you want to proceed, we'll do that. 2 If you want to withdraw, that is perfectly okay 3 with me. 4 MR. KELSO: Why, if I have nothing more to 5 offer based upon your ruling, would I be 6 withdrawing? I'm not withdrawing. The regions 7 aren't withdrawing. I'm standing on your prior 8 ruling, but I'm certainly not withdrawing and the 9 regions aren't withdrawing. 10 HEARING OFFICER MCKEE: Whatever you want to 11 do in terms of proceeding today, you want to 12 present evidence or present additional exhibits, 13 you may do so. 14 MR. KELSO: I have already said my piece. 15 HEARING OFFICER MCKEE: Okay. 16 Ms. Keefer, do you want to present any 17 evidence or present any additional exhibits? 18 MS. KEEFER: Thank you for the opportunity, 19 but no. 20 HEARING OFFICER MCKEE: Given that, I'm 21 going to close the evidence record at this time. 22 Counsel, do you want to argue this 23 matter, do you want to submit? I'll give you a 24 chance to submit a written brief, but I'm going to 25 put on a very short string because I've got to get</p>
Page 234	Page 236
<p>1 testimony that you want to present in this? I'm 2 going to allow you to participate anyway you want 3 to in this thing, Mr. Kelso. I want you to be 4 satisfied that you got a fact record in front of 5 me one way or the other. 6 MR. KELSO: And I understand that, and with 7 all due respect, I'm feeling that it's highly 8 prejudicial to say no, you can't participate, you 9 are terminated and then you can do 10 cross-examination and now after cross-examination 11 is over, if you want to do direct. 12 HEARING OFFICER MCKEE: Anything you want to 13 do? If you don't want to -- 14 MR. KELSO: Then it goes to procedure 15 rights. What I want to do -- 16 HEARING OFFICER MCKEE: If you don't want to 17 do it, then you don't have to. 18 MR. KELSO: And I was rejected, and it's -- 19 HEARING OFFICER MCKEE: I gave you an -- 20 MR. KELSO: It's a day late and a dollar 21 short. 22 HEARING OFFICER MCKEE: Any way you want to 23 do this. But you either have to proceed and 24 withdraw. If you don't want to proceed, that's is 25 perfectly okay with me. We'll call it to a halt.</p>	<p>1 a decision out on this quickly. 2 So if you want to put written briefs, I 3 would say like tomorrow maybe or certainly not 4 later than Friday, if you want to submit written 5 briefs. If you want to argue the matter and just 6 present it orally, I will take a break and come 7 back in and hear final arguments on it today. 8 MR. KELSO: I believe that the Regions, and 9 through the adoptions, made their arguments, there 10 may be in over the night some arguments that have 11 come up, and so I would say by Friday faxed to you 12 any additional points based upon what has 13 occurred. 14 HEARING OFFICER MCKEE: I would do that. My 15 only concern is that I don't want to leave this 16 open for a brief and a brief, you know, two weeks 17 for a brief and a belief. If I leave this record 18 open to Friday, say the close of business Friday, 19 perfectly willing to do that for written 20 submission and comments. 21 Let me do this: Simultaneous 22 submission of written comments by Friday. If 23 somebody submits a written comment and goes 24 somebody's ox, I would entertain a reply not later 25 than the close of business Monday.</p>

1 But the close of business Monday is
 2 only if you are replying to something that was
 3 submitted on Friday and is only in reply to that
 4 submitted on Friday.
 5 All right. I don't want somebody to
 6 submit something on Friday and then give me
 7 chapter two and three on Monday.
 8 Is that fair? Given that, do you want
 9 to make an oral argument today or do you just want
 10 to submit it in writing?
 11 MR. KELSO: I think that is very fair just
 12 to proceed that way.
 13 HEARING OFFICER MCKEE: Mr. Bledsoe?
 14 MR. BLEDSOE: I would want to make a brief
 15 oral argument if I could.
 16 HEARING OFFICER MCKEE: Fair. I'm going to
 17 let you do that. I'm going to let Mr. Kelso
 18 reply. I'm still going to let him submit
 19 something in writing if he wants to.
 20 You want to proceed or do you want take
 21 a break to gather your thoughts?
 22 MR. BLEDSOE: I'm ready to proceed.
 23 HEARING OFFICER MCKEE: Hold on.
 24 MR. BLEDSOE: According to the Workforce
 25 Investment Act, Section 116, that governs appeals,

1 crossed over and entitled them to continue to
 2 operate under the 2005 plan.
 3 However, the plain language of the
 4 statute that talked about when a request is
 5 required, that it's required for the initial state
 6 plan, the temporary -- the duration of the
 7 subsequent designation language that is in the law
 8 that talks about you can only be a temporary
 9 designation for two years and then you can get a
 10 subsequent designation for three years to take you
 11 to the end of the initial five-year plan.
 12 It's been -- the Department has offered
 13 in testimony and exhibits -- exhibit from the U.S.
 14 Department of Labor that is technical planning
 15 guidance that clearly indicates that according to
 16 the U.S. Department of Labor, their interpretation
 17 of the law that the temporary and subsequent
 18 designation criteria ended when the initial state
 19 plan ended and is no longer operational.
 20 Therefore, it's not possible for the
 21 appellants to proffer any evidence to show that
 22 they are entitled to designation under that
 23 provision. The designations that were under the
 24 optional provision are not mandatory, and they are
 25 not the basis for appeal because they are not

1 this hearing can only be about two things; one is
 2 whether or not appellants have met their burden of
 3 proof that they are entitled to mandatory
 4 designation under the automatic designation
 5 provision or whether they have met their burden of
 6 proof as to whether or not they are entitled under
 7 the temporary and subsequent designation.
 8 Those are the only two things this
 9 hearing can be about. It's the defendant's
 10 position that appellants have not met their burden
 11 of proof. In fact, the only designating criteria
 12 that even remains operable at this point is the
 13 automatic designation criteria.
 14 The evidence that's been presented in
 15 this hearing is that Region III was initially
 16 designated under the temporary and subsequent
 17 designation criteria under the initial state plan.
 18 All of the other appellants were designated under
 19 the optional criteria, so therefore, they really
 20 don't even have a basis to appeal.
 21 But I would point out in all the
 22 notices of appeal, all of the appellants alleged
 23 entitlement under the temporary and subsequent
 24 designation criteria because they believe that
 25 criteria continues to exist from the 2000 plan and

1 covered under the grounds for appeal in the
 2 Section 116-A-5.
 3 So that leaves us really with the
 4 automatic designation, and the evidence on the
 5 automatic designation couldn't be more clear.
 6 First, there is no single political subdivision
 7 with authority to levy taxes and with police
 8 powers that has a population of over 500,000.
 9 In the state of Idaho, if you are going
 10 to be a political subdivision, which is something
 11 far different from an agency or a subagency, then
 12 there has to be some designation in the Idaho
 13 Constitution or in a state statute granting that
 14 authority because that is authority from the state
 15 to act to exercise police powers and to levy
 16 taxes.
 17 None of the appellants as an entity, as
 18 a non-profit entity, has been given authority to
 19 exercise police powers or levy taxes. The only
 20 entity in the State of Idaho under our
 21 constitution and state statute that has that
 22 authority are cities and counties. There is no
 23 city or county in Idaho that has a population of
 24 500,000 or more.
 25 Second, in order to qualify under

1 Subsection B of the automatic designation
2 provision, you had to be a Rural Concentrated
3 Employment Program grant recipient, and there's
4 never been one in the State of Idaho. And there's
5 been no proof offered during this hearing by any
6 of the appellants that they ever existed as one of
7 those entities, so they can't meet the criteria B.

8 If you look at Subsection C under the
9 automatic designation provision, they can't meet
10 that criteria rather because the population of the
11 state of Idaho is more than 1.1 million, and the
12 population density is significantly less than 900
13 persons per square mile.

14 So only -- under the only designation
15 criteria that they could possibly satisfy that
16 would obligate the Governor to appoint them to
17 designate them as local areas is the automatic
18 designation provision, and there's been a complete
19 absence of proof that they meet any of those
20 criteria.

21 HEARING OFFICER MCKEE: Mr. Kelso, if you
22 wish.

23 MR. KELSO: For the moment, I'll just defer
24 to Ms. Keefer, and I'll consider whether I want to
25 say something now or just put it in writing

1 because essentially, everything that I have
2 already submitted in writing would just be a
3 rehash of what I have to say at the moment.

4 HEARING OFFICER MCKEE: Ms. Keefer, do you
5 want to reply now or do you want to submit a
6 written paper?

7 MS. KEEFER: Written.

8 HEARING OFFICER MCKEE: Okay. By Friday, is
9 that okay?

10 MS. KEEFER: By Friday.

11 HEARING OFFICER MCKEE: Because I need to
12 keep this thing moving along.

13 MR. KELSO: I would just like to make one
14 brief comment.

15 HEARING OFFICER MCKEE: Go.

16 MR. KELSO: Is that -- and I'll try to
17 provide some sort of legal analysis for this, but
18 I think the law is that you cannot, regardless of
19 the status of the document setting forth the
20 appeal under the 2005 plan, recommend an approval
21 of an illegal plan that doesn't meet 116.

22 HEARING OFFICER MCKEE: I'm not sure I
23 understand what you are talking about.

24 MR. KELSO: Well, one of our positions is
25 that the plan as submitted is an illegal single

1 state entity plan.

2 HEARING OFFICER MCKEE: The 2005 plan?

3 MR. KELSO: Right. And regardless of
4 whatever that plan says, Hearing Officer and
5 ultimately the Council can't recommend approval of
6 an illegal plan.

7 The other point is that, that I'll just
8 make briefly, is that when we look at Subsection
9 2-B, the darn word "or" appears in there. And my
10 recollection of the testimony is because it says
11 of the area served by a Rural Concentrated
12 Employment Program grant recipient of demonstrated
13 effectiveness that has served as a Service
14 Delivery Area or sub-state area under the Job
15 Training Partnership Act.

16 And I believe the testimony is that the
17 region served as a sub-state area under the JTPA,
18 so there's that "or" in there. It's either or.

19 HEARING OFFICER MCKEE: What do you thinking
20 that that "or" --

21 MR. KELSO: It means it's different than a
22 Rural Concentrated Employment Program, which you
23 testifies, has never been used in Idaho.

24 HEARING OFFICER MCKEE: "Rural Concentrated
25 Employment Program grant recipient of demonstrated

1 effectiveness that has served as a Service
2 Delivery Area, or the" -- if I read that sentence,
3 doesn't it all relate to a Rural Concentrated
4 Employment Program grant recipient under the Job
5 Training Partnership Act?

6 MR. KELSO: That's your decision. Our
7 position is that it doesn't; that's why I'm
8 drawing it to your attention now. It's kind of
9 the like does 60 days mean 60 days or accept on
10 other days.

11 HEARING OFFICER MCKEE: Or when it doesn't.

12 MR. KELSO: Right. And the last quick point
13 was --

14 HEARING OFFICER MCKEE: I don't want to get
15 tangled up in this --

16 MR. KELSO: Temporary and subsequent
17 designation. I still fail to see anything that
18 indicates the Section 116-A-3 is no longer the law
19 of the land.

20 HEARING OFFICER MCKEE: Okay. I need some
21 technical help just to make sure I'm understanding
22 this. A Rural Concentrated Employment Program
23 grant recipient; what does that mean?

24 MR. KELSO: Well, I don't think this is
25 the -- I mean, the record's been closed, testimony

1 has been closed. Our position is that there are
 2 two separate things, and the testimony is that
 3 they were sub-state areas under the JTPA. And I
 4 guess that's the decision that you need to make
 5 based upon the record.
 6 HEARING OFFICER MCKEE: Yeah, but I don't
 7 understand this, and I'm going to open the record
 8 because I want this clarified, what a Rural
 9 Concentrated Employment Program grant recipient
 10 is. And is it different than a sub-state area
 11 under the Job Training Partnership Act?
 12 MR. BLEDSOE: Yes, they're different. But
 13 in order to qualify for this, you had to be,
 14 first, a Rural Concentrated Employment grant
 15 recipient that was either a Service Delivery Area
 16 or a sub-state area under JTPA.
 17 HEARING OFFICER MCKEE: So you are saying
 18 the "or" the first qualification, Rural
 19 Concentrated Employment Program grant, that is
 20 either a Service Delivery Area or a sub-state area
 21 under the JTPA?
 22 MR. BLEDSOE: Right.
 23 HEARING OFFICER MCKEE: And you are saying
 24 the other way of reading that is it's either a
 25 Rural Concentrated Employment Program grant and

1 MR. KELSO: And I guess I would object to
 2 that. I mean, they went to lengths to present the
 3 letter.
 4 HEARING OFFICER MCKEE: I know. I know.
 5 MR. KELSO: And now we are going to --
 6 HEARING OFFICER MCKEE: I know, but I'm
 7 curious.
 8 MR. KELSO: Well, that may be, but the
 9 record is the record and the testimony is the
 10 testimony.
 11 HEARING OFFICER MCKEE: Yeah. I can sort it
 12 out.
 13 What did she say?
 14 MR. BLEDSOE: It would -- I would represent
 15 that the testimony would be that her explanation
 16 was that this is an entity that has existed since,
 17 according to her recollection, 1968; that it was
 18 part of the prior job training programs; it was
 19 put in specifically by a prominent senator who
 20 wanted to create grant funds for an area of his
 21 state, and that there has only been five, that she
 22 was aware of, such areas in the entire
 23 United States.
 24 HEARING OFFICER MCKEE: So she is going to
 25 say that this Rural Concentrated Employment

1 demonstrated effective service of Service Delivery
 2 Area or it's a sub-state area under the JTPA?
 3 MR. KELSO: Right. And we have the
 4 acknowledgment that they're two different.
 5 There's a disagreement as to how you read that,
 6 and the testimony is all the regions were substate
 7 areas under the JTPA.
 8 MR. BLEDSOE: If you would like to take some
 9 testimony on that, I think Mr. Engstrom can
 10 address that.
 11 MR. KELSO: Well, when the Hearing Officer
 12 is done, I would like to make a response to that.
 13 HEARING OFFICER MCKEE: What is he going to
 14 testify to?
 15 MR. BLEDSOE: He has had a conversation with
 16 Chris Kulick, and has been given an explanation as
 17 to what a Rural Concentrated Employment Program is
 18 because we have never had one in Idaho and we
 19 wanted some clarification.
 20 HEARING OFFICER MCKEE: So I'm going to get,
 21 here's what Chris -- this is the Federal
 22 Coordinator that you have identified that wrote
 23 the letter. I don't know what I'm going to do
 24 with the answer, but I'm curious now.
 25 What did Chris say?

1 Program was stuck in to solve some senator's
 2 problem in his home state to protect a little
 3 enclave.
 4 MR. BLEDSOE: It's my understanding that
 5 they exist in Montana, Kentucky --
 6 HEARING OFFICER MCKEE: This is an example
 7 of the law of unintended consequences. You've
 8 still got this grammatical construction, and you
 9 have this argument from Mr. Kelso.
 10 MR. BLEDSOE: I think the answer to that is
 11 the use of the word "that" because then you set up
 12 alternatives. It's got to be A that was either B
 13 or C because if you interpret it his way, then all
 14 of the rest of the qualifications in the act don't
 15 make any sense. Because if somebody could just be
 16 a sub-state area and that would entitle them in
 17 and of itself designation, then that undermines --
 18 HEARING OFFICER MCKEE: So you are saying if
 19 you take a sub-state area Job Training Partnership
 20 Act, that opens up to all number of --
 21 MR. BLEDSOE: Challenge.
 22 HEARING OFFICER MCKEE: -- potential
 23 automatic designations under subpart 2 because
 24 there's all kinds of, quote, "sub-state area
 25 designees" under the job training -- or were under

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1 the --

2 MR. KELSO: In Idaho, there were six.

3 HEARING OFFICER MCKEE: There were just six?

4 MR. KELSO: The original regions.

5 HEARING OFFICER MCKEE: So those are the

6 sub-state; is that accurate?

7 THE WITNESS: Well, as I testified before,

8 that under JTPA Region III was and then there was

9 the rest of the state and five other areas.

10 HEARING OFFICER MCKEE: So there were two?

11 THE WITNESS: Yes.

12 HEARING OFFICER MCKEE: And then six?

13 THE WITNESS: Yes.

14 HEARING OFFICER MCKEE: Okay.

15 MR. BLEDSOE: Under JTPA, there were two

16 areas.

17 MR. KELSO: Maybe this is stuff that should

18 be argued in writing instead of -- because we are

19 pontificating as to what the law is. I'm not sure

20 what is argument, what is testimony. And I

21 think --

22 HEARING OFFICER MCKEE: Well, I gather that

23 there -- is it accurate? Because I seem to recall

24 there was testimony that all six of the regions

25 were sub-state areas under the JTPA.

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1 MR. KELSO: Right.

2 HEARING OFFICER MCKEE: You are saying they

3 were not.

4 THE WITNESS: There was two sub-state areas;

5 one was Region III, and the rest was the balance

6 of the state.

7 HEARING OFFICER MCKEE: All right. I

8 thought I heard Ms. Keefer explain that her

9 Council was a sub-state area under the JTPA.

10 MS. KEEFER: I believe I have an exhibit in

11 here that I'm trying to locate that was the

12 agreement between the Governor at the time and

13 the --

14 MR. KELSO: Actually, I think there is even

15 in here.

16 MS. KEEFER: It was the agreement between

17 the local elected officials.

18 MR. BLEDSOE: If this clarifies it, maybe it

19 will make it easier. What there was under JTPA

20 just prior to the initial WIA state plan was two

21 areas; one was Region III, and the rest was an

22 area that encompassed that balance of the state.

23 But that large area was subdivided into

24 sub-state areas. So it was one huge area that had

25 several sub-state areas in it.

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1 HEARING OFFICER MCKEE: Well, this says

2 sub-state under the Job Training Partnership Act,

3 so all the boards were sub-state -- or areas or

4 sub-state areas under the Job Training Partnership

5 Act?

6 MR. BLEDSOE: Yes.

7 HEARING OFFICER MCKEE: Is that accurate? I

8 don't know if it applies as an application or not.

9 I'm just trying to get the fact down because it

10 seems to me there shouldn't be a dispute over

11 this.

12 MR. BLEDSOE: Either they were or they

13 weren't.

14 MR. KELSO: Do I hear an agreement that that

15 is correct? If it is, we will leave it at that.

16 HEARING OFFICER MCKEE: I thought I saw a

17 slight nod of the head from Mr. Engstrom, just

18 kind of nodded and then Bledsoe said yes.

19 So I'm gathering, for the record, that

20 that's an acknowledgment that all six regions were

21 either areas or sub-state areas under the Job

22 Training Partnership Act just prior to the

23 inception of the 2000, the first plan. Okay.

24 I'll take that. Okay.

25 Last chance. Anybody?

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1 Now, I will deem everything closed. I

2 think I understand it. What I was looking for was

3 just because I'm not as technically competent in

4 some of these areas you all are, and I wanted the

5 last little aspect clarified for me.

6 I will hold everything open, not for

7 further evidence or further exhibits, but other

8 arguments, close of business Friday. Fax it to

9 me, please, maybe FedEx.

10 I'm going to suggest maybe fax it

11 directly to me. I better give you the line

12 because if you fax to Alice, she stays late, but I

13 don't want her to stay late enough to get this

14 stuff. Fax it to me at (208) 381-0083,

15 (208) 381-0083.

16 Written materials by the close of

17 business on Friday. Rebuttal only if there is

18 something to rebut to close of business Monday.

19 MR. KELSO: Just housekeeping so that the

20 file lodgings distinguishing what is evidence,

21 what is not evidence, what is record, what is not

22 record, what is filed, what is not, I would ask

23 that the clerk maintain possession of all the

24 documents that were offered so that they are in

25 one place.

1 HEARING OFFICER MCKEE: That's fine. We can
2 keep the whole shooting match.
3 MR. KELSO: Good, super.
4 (Proceedings concluded at 3:40 p.m.)
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1 REPORTER'S CERTIFICATE
2
3
4
5 I, ROXANNE K. PATCHELL, Certified Shorthand
6 Reporter, Registered Professional Reporter by testing, a
7 Notary Public, do hereby certify:
8 That I am the reporter who took the
9 proceedings had in the above-entitled action in machine
10 shorthand and thereafter the same was reduced into
11 typewriting under my direct supervision; and
12 That the foregoing reporter's transcript
13 contains a full, true, and accurate record of the
14 proceedings had in the above and foregoing cause, which
15 was heard at Boise, Idaho.
16 I further certify that I have no interest in
17 the event of the action.
18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this Wednesday of October, 2005.
20
21
22
23 ROXANNE K. PATCHELL, RPR, CSR
CSR No. 733
24
25

A				
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REPORTER'S CERTIFICATE

STATE OF IDAHO)
County of Ada)

I, Roxanne Patchell, Court Reporter Pro Tempore, County of Ada, State of Idaho, hereby certify:

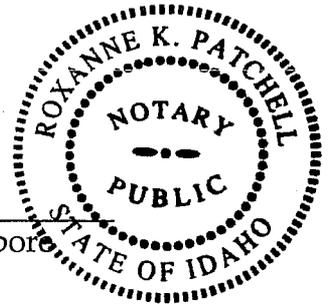
That I am the reporter who took the proceedings had in the above-entitled action in machine shorthand and thereafter the same was reduced into typewriting under my direct supervision; and

That the foregoing reporter's transcript contains a full, true, and accurate record of the proceedings had in the above and foregoing cause, which was heard at _____, Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th of October, 2005.



Roxanne Patchell, Court Reporter Pro Tempore
CSR No. 733



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