

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

NOTICE OF PUBLIC HEARING

PETITION OF EXTENSION OF TIME

PERMIT NO. 5882 (APPLICATION 10216)

OF THE CITY OF SAN LUIS OBISPO AND

THE UNITED STATES ARMY CORPS OF ENGINEERS

SALINAS RIVER IN SAN LUIS OBISPO COUNTY

PAUL R. BONDERSON BUILDING

FIRST FLOOR HEARING ROOM

SACRAMENTO, CALIFORNIA

TUESDAY, OCTOBER 12, 1999

9:00 A.M.

REPORTED BY:

ESTHER F. WIATRE
CSR NO. 1564

CAPITOL REPORTERS (916) 923-5447

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APPEARANCES

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JAMES STUBCHAER

STAFF:

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SACRAMENTO, CALIFORNIA

TUESDAY, OCTOBER 12, 1999, 9:00 A.M.

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HEARING OFFICER BROWN: Good morning, ladies and gentlemen.

This is the time and place for the hearing on the petition for extension of time filed by the City of San Luis Obispo for Permit No. 5882 on the Salinas River in San Luis Obispo County. The hearing is being held in accordance with the Notice of Hearing dated September 15, 1999.

I am John Brown, a member of the State Water Resources Control Board. I will be assisted today by staff members Erin Mahaney, counsel; Kathy Mrowka, engineer; and Jim Sutton on the far left, environmental specialist.

The purpose of this hearing is to afford the petitioner, the City of San Luis Obispo; the protestant, California Sportfishing Protection Alliance; and the City of Paso Robles an opportunity to present oral testimony, maps, charts, studies and other materials that address the key issues identified in this hearing notice. Those issues are:

Should the Board approve the City's petition for extension of time?

Has the City demonstrated good cause for an extension of time?

1 Has the City demonstrated that it has exercised due
2 diligence?

3 Has the City demonstrated that its failure to comply
4 with previous time requirements has been occasioned by
5 obstacles that could not be reasonably avoided?

6 Has the City demonstrated that satisfactory process
7 will be made if an extension of time is granted?

8 Has the City demonstrated conditions that are incident
9 to the project and not to the City itself as cause for
10 delay?

11 How does the City's status as a municipal appropriator
12 affect the determination whether an extension should be
13 approved?

14 As a responsible agency, what actions should the Board
15 take to review the City's petition consistent with the
16 requirements of CEQA?

17 If the Board grants an extension of time to the City,
18 what period of time is appropriate?

19 If the Board grants an extension of time to the City,
20 what conditions, if any, would be in the public interest?

21 Should the permit be modified to reflect the 42,000
22 acre-foot size of the City's proposed project?

23 Should there be a limit on the quantity beneficially
24 used each year under the permit?

25 If the Board does not grant an extension of time to the

1 City, should the Board find that there is cause to partially
2 revoke the City's permit?

3 Will approval of the petition result in adverse impacts
4 on public trust resources?

5 What conditions, if any, should the Board adopt to
6 avoid or mitigate any adverse impacts on public trust
7 resources that would otherwise occur as a result of approval
8 of the petition?

9 It merits noting that the City of San Luis Obispo has
10 filed a change petition seeking authorization to modify the
11 existing live stream condition of Permit 5882. Accordingly,
12 this hearing is limited to the consideration of the time
13 extension petition filed by the City, including
14 consideration of any bypass flow conditions a party contends
15 are necessary to avoid or mitigate any adverse impacts
16 resulting from the changes that result from approval of the
17 time conditions.

18 Proposed evidence that does not address the key issues
19 is not relevant and will not be admitted. Please limit
20 your testimony to the issues that I just read to you. I
21 also ask that the policy statements address the issues
22 noticed for hearing.

23 After the conclusions of this hearing the Board will
24 consider a draft decision at a Board meeting. After the
25 Board adopts a decision, any person who believes the

1 decision is in error has 30 days within which to submit a
2 written petition supporting evidence for reconsideration by
3 the Board.

4 The order of proceeding in which the parties will
5 present their cases is as follows: First will be the
6 petitioner, the City of San Luis Obispo. Second will be the
7 protestant, the California Sportfishing Protection Alliance,
8 and third will be the City of Paso Robles.

9 Before the parties present their cases, persons who
10 want to present policy statements may do so. The Board will
11 also accept written policy statements. A policy statement
12 is not evidence. It may include the policy views and
13 position of the speaker. Persons who wish to make only a
14 policy statement may do so subject to the following
15 provisions:

16 A person making a policy statement will not be sworn or
17 asked to affirm the truth of their statement. Persons
18 making policy statements must not attempt to use their
19 statements to present evidence of facts, either orally or by
20 introduction of written exhibits.

21 At my discretion, questions may be addressed to persons
22 making policy statements for the purpose of clarifying their
23 statements. However, they shall not be subject to
24 cross-examination.

25 After the policy statements we will hear testimony from

1 the City of San Luis Obispo and its witnesses, followed by
2 cross-examination by the California Sportfishing Protection
3 Alliance, the City of Paso Robles, the hearing team and
4 myself. There will be an opportunity for redirect and
5 recross. After completion of recross exhibits will then be
6 offered into evidence.

7 Following the City of San Luis Obispo's direct
8 testimony and cross-examination and redirect and recross,
9 California Sportfishing Protection Alliance may provide
10 direct and redirect testimony and be cross-examined and
11 recross in the order for presentation which I stated
12 earlier.

13 California Sportfishing Protection Alliance has
14 requested the Board to allow the witnesses served with a
15 subpoena to appear on Wednesday, and the Board will
16 accommodate that request. After all of the parties have
17 testified and been cross-examined there will be an
18 opportunity for rebuttal and cross-examination. Finally,
19 closing statements will be allowed.

20 Since written testimony has been submitted for all
21 witnesses, the oral testimony given today should be limited
22 to summarizing the important points in the written
23 testimony. To insure timely completion of the hearing, I am
24 posing a time limit of 20 minutes per witness for
25 summarizing your written during direct examination. Please

1 keep in mind that we have scheduled two days for this
2 hearing. If we do not finish by 4:00 p.m. tomorrow
3 afternoon, we will have to schedule additional days. So,
4 let's try to keep things moving and on track.

5 Parties with more than one witness have the option to
6 provide cross-examination of their witnesses as a panel. If
7 this option is selected, each witness will be given his or
8 her direct testimony before any witness is cross-examined.

9 Parties with multiple witnesses will then make all of
10 their witnesses available as a panel for cross-examination.
11 When cross-examining a panel, please identify the specific
12 witnesses to whom your question is directed. If you are not
13 sure to whom to direct a question, you may ask the question
14 generally of the panel. You may also direct a question to
15 more than one witness.

16 Appearance of the parties. At this time I would like
17 to invite appearances by the parties. Will those making
18 appearances, please state your name, address, and who you
19 represent so that the Court Reporter can enter this
20 information into the record.

21 Who is representing the City of San Luis Obispo?

22 MR. SLATER: Scott Slater from the law firm of Hatch
23 and Parent, 21 East Carrilla Street, Santa Barbara,
24 California. With me today is Stephanie Hastings, also of
25 Hatch and Parent.

1 H.O. BROWN: Scott, what was your last name?

2 MR. SLATER: Slater, S-l-a-t-e-r.

3 H.O. BROWN: Who is representing the California
4 Sportfishing Protection Alliance?

5 MR. BAIOCCHI: Mr. Brown, as I spoke to you about this
6 previously, Lorraine Scarpace is the attorney for CSPA.
7 Apparently she has had some problem getting here,
8 trafficwise or accidentwise. I don't know.

9 So, presently I am acting as an agent for CSPA. So
10 consequently I will give -- my first name is Bob. The last
11 name is Baiocchi. I live at Unit 98, Gray Eagle Meadows,
12 California 96103. That is Gray Eagle, pardon me.

13 H.O. BROWN: Can you spell Lorraine's last name?

14 MR. BAIOCCHI: S-c-a-r-p-a-c-e.

15 H.O. BROWN: Thank you, Mr. Baiocchi.

16 MR. BAIOCCHI: Thank you.

17 H.O. BROWN: Who is representing the City of Paso
18 Robles?

19 MS. CAHILL: Good morning. I am Virginia Cahill,
20 C-a-h-i-l-l, McDonough Holland & Allen, 555 Capitol Mall,
21 Sacramento 95814. With me today is Eric Robinson, and we
22 are representing the City of Paso Robles.

23 H.O. BROWN: Thank you, Ms. Cahill.

24 Esther is our Court Reporter today, and should you wish
25 a copy of the proceedings of this, please contact her and

1 she will make those available to you.

2 Staff, do you have any procedural items to be covered
3 before we proceed?

4 MS. MAHANEY: The Board's Division of Water Rights
5 served copies of the hearing notice on the parties and other
6 interested persons listed on Pages 6 and 7 of the notice.
7 In accordance with the provisions of Government Code Section
8 11440.20, a record of the service of notice is in the file
9 of the Division of Water Rights for this hearing.

10 Next, I will offer into evidence by reference the
11 documents listed in the staff exhibits. The list of staff
12 exhibits was included on Page 12 of the hearing notice. The
13 staff exhibits are Numbers 1 through 5. If no party has an
14 objection, I will dispense with reading the list of staff
15 exhibits into the hearing record.

16 H.O. BROWN: Any objections?

17 Mr. Baiocchi.

18 MR. BAIOCCHI: I would have to object. But, again,
19 Lorraine is not here.

20 H.O. BROWN: On what grounds?

21 MR. BAIOCCHI: The first cause of action is due
22 process, in my view, was not served with the public notice.
23 The water users in Salinas watershed were not given proper
24 notification by the Board and staff concerning the hearing.

25 In addition to that, we have no evidence, but your

1 record should show this, that the water users in the Salinas
2 River watershed below the dam were not given proper
3 notification of the Petition for Extension of Time when it
4 was noticed in 1991.

5 H.O. BROWN: Thank you, Mr. Baiocchi.

6 Anyone else?

7 I am going to note those objections and allow the --

8 MR. MALONEY: I haven't been called as a party.

9 THE COURT REPORTER: I need your name.

10 MR. MALONEY: I have not been called as a party, but I
11 am here to appear. Under the public comment area, I would
12 like to reinforce his objection and material facts have
13 changed since 1991 which require us to take a much more
14 active role with what was going on in Salinas River.

15 I represent about 75,000 acres in areas 3, 4 and 5 in
16 Paso Robles and Salinas Valley Groundwater Basin on that map
17 over there.

18 MS. MAHANEY: Right now we are looking at exhibits to
19 be offered by reference into the record. Does anyone have
20 any objection to entering those into the record?

21 MR. SLATER: The City has no objection.

22 MR. MALONEY: I haven't seen them since they weren't
23 served on me.

24 MS. MAHANEY: Mr. Baiocchi, you raised your hand?

25 MR. BAIOCCHI: Ms. Scarpace is here. She has arrived.

1 H.O. BROWN: Welcome.

2 MS. SCARPACE: Thank you.

3 H.O. BROWN: You wish to give your name and address
4 again for the record as representing California Sportfishing
5 Protection Alliance, Ms. Scarpace?

6 MS. SCARPACE: I am Lorraine Scarpace. I am
7 representing California Sportfishing Protection Alliance in
8 this matter. My address is Post Office Box 1981, Paso
9 Robles. My ZIP is 93447.

10 I subpoenaed some information which I would like to
11 make exhibits. Unfortunately, I haven't been able to copy
12 them because --

13 H.O. BROWN: We will get to those in just a minute.
14 Right now I am going to --

15 MS. CAHILL: Pardon me, before you do that, could I
16 indicate that we have no objection to the admission of
17 those exhibits, but we preserve any hearsay objections. In
18 other words, we don't object to their admissibility, but we
19 do not agree that everything in there has full evidentiary
20 value.

21 H.O. BROWN: So noted, Ms. Cahill. I am going to go
22 ahead and accept those into evidence with the objections
23 noted.

24 I will now administer the oath.

25 (Oath administered by Hearing Officer Brown.)

1 H.O. BROWN: Policy statements. Those wishing to make
2 policy statements on behalf of the appearance of the
3 parties, City of San Luis Obispo, do you have any?

4 MR. SLATER: No, sir, we do not.

5 H.O. BROWN: Policy statements from the California
6 Sportfishing Protection Alliance, Ms. Scarpace?

7 MS. SCARPACE: Pardon?

8 H.O. BROWN: Do you have any policy statements on
9 behalf of your client from anyone representing your client
10 that may wish to make a policy statement?

11 A policy statement is not evidence.

12 MS. SCARPACE: Pete Cagliero, but he would also like to
13 be a witness. Is there any conflict?

14 H.O. BROWN: No. If he has a policy statement, that
15 may be admitted into the hearing at this time.

16 MS. SCARPACE: Pete Cagliero.

17 H.O. BROWN: Mr. Cagliero.

18 MR. CAGLIERO: My name is Pete Cagliero,
19 C-a-g-l-i-e-r-o.

20 I wasn't planning on being first here. I'm just a
21 farmer. I am not a lawyer and I don't represent --

22 H.O. BROWN: You're doing fine. Go ahead.

23 MR. CAGLIERO: I am here just to speak for myself and
24 other people involved in agriculture on the Salinas River.
25 Just to give a little background, I've been farming since

1 1956 when we pumped from the Salinas River underflow, and my
2 wife's parents farmed there before us since the '40s. So we
3 are long-time residents of Paso Robles. And we also are --
4 I also represent my son and my grandson, which are following
5 in my steps taking over the operations. We will be
6 continued on forward for a long time, I hope.

7 H.O. BROWN: Can all of you hear Mr. Cagliero all
8 right? Is the audio okay? Can you hear me all right?

9 MR. SLATER: Yes, we can.

10 MR. CAGLIERO: I am a little nervous.

11 H.O. BROWN: Take your time. If you can talk as well
12 as you farm, you will do all right.

13 MR. CAGLIERO: We have been farming for a long time
14 and, you know, we are successful at it. And water is a real
15 important issue to us, and I came up here to take the time
16 to do this because it is really important to us. So I'm
17 going to try to present my case here as well as I can.

18 Anyway, you know what I really want to talk about is
19 the dry years and how they affect our farming operations.
20 We had a lot of dry years in the past: '59, '60, '61, 1970,
21 '71, '72, '73 and '74, '84 and '85, '89 and '90, '92 and
22 '93. And what I'm real concerned about is the expansion of
23 this dam and how it will affect us after dry years. Because
24 the situation is not -- we pump from the -- we have 18 wells
25 along the Salinas River. We irrigate about 1600 acres; and

1 we grow hay and grain and cattle and grapes. And the grapes
2 are a later venture to our farming practices.

3 As time changes you have to change with it. The hay
4 business is not as profitable as it used to be, so we
5 converted to production of grapes. Production of grapes
6 involves a lot more expenditure of capital than the hay
7 business did. So it is real important to us that we
8 maintain our water supply. We spend about \$10,000 an acre.
9 We have grape crops into production in three years.

10 We have 265 acres of grapes planted along where we use
11 water from the Salinas River. So as you can see, it is
12 quite an investment for us, and those are in the process of
13 four-year-olds, three-year-olds, and new plantings.

14 The dam has only spilled about 17 or 18 times in the 58
15 years. The wet years are not my concern. The dry years are
16 a real concern. After a dry year in our business the worst
17 years we had were in the '70s, the '71, '2, '3 period. The
18 river actually dried up for two years and didn't run at all
19 the third year. We had to shut all -- we pumped from wells
20 that are from underflow. I am sure you understand what that
21 is. We only drill down to the clay which is about a hundred
22 feet, which is the deepest well we have, from 50 to a
23 hundred foot deep.

24 Once that river drives up in the underflow, we have no
25 water. We had to shut the whole operation down after the

1 first cutting in the '70s because the river just dried up
2 and the wells dried up and we had to make a decision: Do we
3 pump? We have to drill deep wells. We have to go about 284
4 feet of clay to get into the Paso Robles Basin, the deeper
5 water, and that is a lot more expensive to pump and cost a
6 lot to drill these wells.

7 We have other parts of our ranch on the Estrella River,
8 which we have deep wells, but they are not along the
9 Salinas. We have all shallow wells on the Salinas. This
10 expansion would affect the underflow greatly. What happens
11 after the dry years, you can have a normal year and then the
12 river runs again and we get the storm and the underflow
13 comes back and our wells are just fine.

14 What I am concerned, if you double the size of that
15 dam, we can have a reasonably normal year after a dry year
16 and the north side would still have a dry year because the
17 dam expansion would take up the extra water, filling that
18 extra 19,000 acre-feet or whatever it is going to hold, and
19 we wouldn't get it down river. And the live stream concept
20 is not a sufficient amount of water to recharge the basin
21 and make our wells go. It is just a trickle down the river.
22 It really doesn't do the same thing.

23 And, you know, in 1989 they tried to stop the -- even
24 the live stream concept. And I filed a protest at that
25 time, in May of '89, and the City backed off and let the

1 water back down when the County was in charge. It directly
2 affects our wells.

3 And what I am concerned about, the EIR states it won't
4 have much effect on us and it will only make, like, 1 or 2
5 percent difference, whether the water spills in Monterey
6 County. I have been there a long time and that is not the
7 case in our area. In our area after a dry year it's never
8 done right. It affects us not 1 or 2 percent, but affects
9 us 100 percent. It's just -- this is really an important
10 thing to me, and I am really, really concerned about that
11 expansion.

12 The EIR doesn't answer a lot of questions. It is full
13 of a lot of holes. They used every chance they had to use a
14 comparison that was better for the EIR or better for the dam
15 expansion they did. They used calendar years than rainfall
16 years, which run from July to June which normal people use
17 in reporting. They didn't; they used calendar years, which
18 made less of an effect on us. They used averages of
19 averages. They do a lot of things that I don't consider
20 correct. If you are paying for the EIR, I guess you get the
21 best one you can. I don't agree with it at all. Just my
22 own thing.

23 I think that the live stream agreement, as far as I am
24 concerned, it sucks too. Before we had a live stream
25 agreement from 1943 to 1964, there was voluntary releases;

1 and the average release for all those years was 2300
2 acre-feet; 2303 acre-feet was the average release. In the
3 live stream agreement we get 1658 acre-feet average release,
4 so we are not doing as well with the live stream as we were
5 before. Even in that average of volume, since the two years
6 they were let out, 264 feet in one year. There is a big
7 difference. Okay.

8 H.O. BROWN: I am allowing five minutes for policy
9 statements, Mr. Cagliero.

10 MR. CAGLIERO: I better speed up. I have more than
11 five minutes.

12 I won't say any more on the EIR. I just think it is
13 flawed and it needs to be -- a lot more questions need to be
14 answered on that.

15 The expansion will let -- we'll have decrease flushing
16 in the river, which river flushings cleanses our water
17 quality, decreases the recharge of our groundwater. And I
18 don't agree with transfer of water out of our basin to
19 another basin. We have no other source of water. We only
20 have the Salinas River. The City of San Luis Obispo has
21 state water. They passed it up twice. They have Nacimiento
22 Water. We don't have those options in our business.

23 I am going to say a lot less than I was going to with
24 five minutes. I don't know how much time I have left.

25 H.O. BROWN: You have time if you are going to be

1 called as a witness later on to present direct testimony and
2 cross-examination.

3 MR. CAGLIERO: Thank you, I appreciate that.

4 H.O. BROWN: Thank you.

5 MR. CAGLIERO: I think this city hasn't stayed within
6 the time limits and asking for this expansion. I am not a
7 legal expert, but if I do a project and if I don't do it on
8 time, I don't get it done. I think they should have done
9 their things on time. Their process probably -- that is not
10 my field of expertise. I won't speak to that too much.
11 But I just think that they just need to use other sources
12 that aren't our county water for this expansion, and I don't
13 agree with this venture at all.

14 H.O. BROWN: If you can bring it to a conclusion, Mr.
15 Cagliero.

16 MR. CAGLIERO: The most serious thing about the dam
17 expansion, in my opinion, along with using our water is the
18 safety issue. If this dam were to break or something were
19 to happen downstream, the effects on San Luis Obispo would
20 be nothing. We in the downstream areas, the land that we
21 irrigate is low-lying land. If we had a flood or the dam
22 failure, we would lose. All the wells would be inundated.
23 We would be under water. Our fields would be lost. In
24 1969, we had a real wet year and they opened just the
25 floodgates at the bottom of the dam. We lost 14 acres of

1 land on one ranch and about 20 on another spot. It just
2 raises real havoc with us.

3 And I am really concerned with the future of my son and
4 my grandson who want to farm here. If the dam were to
5 break, we would lose everything we have invested. If they
6 take away our water, we lose all the investment that we have
7 in our crops and our grapes, and it is just a real important
8 thing to me. I think that it is not the right thing to do.
9 I sure would hope you would consider that in your decisions.

10 H.O. BROWN: Thank you.

11 MR. CAGLIERO: Thank you.

12 H.O. BROWN: Anyone else from California Sportfishing
13 Protection Alliance with a policy statement?

14 MR. BAIOCCHI: Mr. Brown, would it be pertinent to have
15 Pete testify to the fact that he did not receive notice of
16 the petition for extension of time in 1991, nor did he
17 receive a copy of the public notice?

18 H.O. BROWN: We will do that during the direct.

19 MR. BAIOCCHI: Thank you.

20 H.O. BROWN: Mr. Maloney.

21 MR. MALONEY: Patrick Maloney. I represent about
22 75,000 acres that is in highly intensive agriculture. And
23 it would be in that map in the -- all over there would be
24 Section 3, 4 and 5, and cover both Paso Robles and the
25 Salinas Groundwater Basin. We did not -- we have not

1 received any notice over the years about this project. We
2 followed the project. I prepared some written comments
3 which I've already submitted, some additional comments about
4 events that occurred in the last couple weeks or last week,
5 after the previous written comments were due.

6 What we are concerned about is that there is three
7 different demands being made or four different demands being
8 made. The first, of course, is this project. Secondly, is
9 the exportation project contemplated by the County of San
10 Luis Obispo to take water from Nacimiento and move it into
11 Southern San Luis Obispo County.

12 There is a new application pending on Nacimiento to
13 increase the size by about 40,000 acre-feet. Then there is
14 the fourth demand where the Public Utilities Commission has
15 required -- has hired somebody to go find water for the
16 Carmel Valley. And we are concerned about these four
17 different demands being made on potentially the Salinas
18 River and not having all the water for the vested rights
19 that already existed on the Salinas River.

20 We can trace our property rights to water all the way
21 back to premission times, pre-State of California, and those
22 rights are clearly superior to any diversions that the
23 County of -- the City of San Luis Obispo may have in taking
24 water out of the Salinas River. All these rights should be
25 considered and all the landowners in the Salinas River

1 should be noticed. Many of these comments, issues, are
2 covered in this letter, and I don't want to waste the
3 Board's time any more than we already have. Here is my
4 letter. I have some extra copies.

5 H.O. BROWN: Thank you, Mr. Maloney.

6 Any other policy statements from the California
7 Sportfishing Protection Alliance?

8 Okay. Policy statements from the City of Paso Robles?

9 MS. CAHILL: Yes. The City of Paso Robles has two
10 elected officials who would like to make policy statements.
11 I brought an original and six copies for the Board of the
12 written version, that they would like to summarize them
13 orally. And the first would be the City of Paso Robles
14 mayor, Duane Picanco.

15 MR. PICANCO: Good morning. I am Duane Picanco,
16 D-u-a-n-e P-i-c-a-n-c-o. I reside at 1230 Land Street in
17 the city of Paso Robles.

18 I want to thank you for the opportunity to appear
19 before you today, and you have a copy of my policy
20 statement, so I will try to be as brief as possible. I
21 originally located in Paso Robles in January of 1970 to open
22 a business and operate a business there for 27 years.

23 At that time I recall a lot of community discussion
24 concerning the Salinas River watershed and the discussion of
25 the live stream concept. Even back then it was something

1 that really I was concerned about because I moved from San
2 Joaquin Valley and water was certainly an issue in the San
3 Joaquin Valley as well.

4 The city of Paso Robles, more commonly referred to as
5 Paso Robles, as you know is located approximately 30 miles
6 downstream from the Salinas Reservoir. And Paso Robles and
7 the communities of Atascadero, Templeton are all in the
8 northern portion of the San Luis Obispo County, commonly
9 referred to as the North County. Paso Robles' water supply
10 is pumped from underflow of the Salinas River and
11 groundwater from the Paso Robles ground basin which is
12 replenished by the Salinas River.

13 We, therefore, are vitally -- we have vital interest in
14 any action that would reduce Salinas River underflow and
15 groundwater recharge as it would affect the water supply
16 available to Paso Robles.

17 Your hearing officially addresses a petition by the
18 City of San Luis Obispo for additional time to put water to
19 beneficial use and to construct a dam spillgate under Permit
20 5882. This is not merely a garden variety extension permit,
21 allowing San Luis Obispo more time to put water of the
22 existing Salinas Reservoir to beneficial use.

23 Instead, if the Board were to extend this permit as San
24 Luis Obispo has requested, it would facilitate a major new
25 construction resulting in doubling the capacity of the

1 Salinas Reservoir from approximately 24,000 to approximately
2 42,000. This is in effect of a whole new -- in effect is a
3 whole new reservoir.

4 The Salinas Reservoir was built in 1941 prior to the
5 United States entering into World War II. The dam was
6 intended to supply water for Camp San Luis Obispo, which was
7 an Army camp. Water was taken out of Salinas watershed
8 through a tunnel. The Army Corps obtained a permit and San
9 Luis Obispo obtained a permit as well. Paso Robles
10 participated in the 1941 hearings and did not oppose the
11 wartime needs of the Army but sought assurances that its own
12 prior rights would not be harmed.

13 Ultimately, permits for storage of water in Salinas
14 Reservoir were granted to Paso Robles, Permit No. 8471, and
15 to the County water districts on behalf of Santa Margarita
16 and Templeton. The permits for the Corps and San Luis
17 Obispo were for 45,000 acre-feet. This was based on the
18 original design of the dam.

19 When the dam was constructed, however, the Army Corps
20 determined that it would not be safe to install the gates in
21 the spillway as shown in the original design. Thus, the
22 capacity of the reservoir as constructed was only
23 approximately 24,000 acre-feet. During the 1950's and the
24 1960's the Corps, as owner of the dam and holder of the
25 senior water rights permit, provided a fixed amount of water

1 to San Luis Obispo as well as making releases to the benefit
2 of the downstream water users. At that time it was
3 anticipated that the reservoir would remain its existing
4 size and that the water would be provided to both San Luis
5 and the downstream permit holders.

6 For decades the Corps and the owner of the dam made no
7 attempt to enlarge the reservoir and consistently took the
8 position that construction was complete. The reservoir has
9 been at its existing size for over 50 years. For 30 years
10 prior to the Board's hearing in 1972, the Corps stated that
11 the construction was complete. San Luis did not disagree.
12 In the order following the 1972 hearing the State Board
13 extended time to complete beneficial use of water, but did
14 not extend the time to complete construction. The current
15 permits still contain a condition requiring construction to
16 be completed by 1970.

17 Meanwhile, downstream communities have grown and
18 developed based on reasonable expectation that the size of
19 the existing reservoir is a limitation on the amount of the
20 water that could be stored. Those downstream communities
21 are in the watershed of origin for the Salinas River. San
22 Luis Obispo is outside the watershed. The water diverted to
23 San Luis Obispo is irretrievably lost to the Salinas River
24 system.

25 Now San Luis Obispo wants to expand the reservoir,

1 nearly doubling its capacity and taking the entire yield and
2 denying watershed communities historical use of that water.
3 Given the history of the Salinas Reservoir with decades of
4 inaction, I urge the Board to require San Luis to obtain a
5 new water permit for additional water to be stored in
6 expanded Salinas Reservoir. In fact, if the Board allows
7 expansion of the reservoir, it should require that the new
8 water be shared with areas of origin interests between the
9 Salinas Dam and Nacimiento River and that San Luis be junior
10 to the water rights of downstream users.

11 And, finally, downstream water users, such as Paso
12 Robles, should be partners with San Luis Obispo in the
13 management of the dam to assure sufficient releases to the
14 Salinas River downstream so that the underflow and the
15 groundwater recharge are not diminished.

16 Thank you.

17 H.O. BROWN: Thank you, Mr. Mayor.

18 MS. CAHILL: Our second policy speaker is Councilman
19 Frank Meecham.

20 MR. MEECHAM: Morning, Mr. Brown, ladies and gentlemen.
21 My name is Frank Meecham. I am a council member for the
22 City of Paso Robles. I served on the planning commission as
23 well as other advisory bodies to the council. I am a fifth
24 generation San Luis Obispo County resident and ninth
25 generation Californian.

1 The matter before you encompasses an area that's always
2 been in an intimate part of my life. The headwaters of the
3 Salinas River are located just outside the community of
4 Santa Margarita. My great, great grandfather, Don Joaquin
5 Estrada, was the original land grant holder of the famed
6 Rancho Santa Margarita. His brother, Don Pedro Estrada,
7 held the land grant for what is now the City of Atascadero.
8 The Salinas watershed was the lifeblood for Dons Joaquin and
9 Pedro, which included all the holdings which included all
10 the present day Santa Margarita and Atascadero.

11 As Mayor Duane Picanco has informed the Board, Paso
12 Robles, which lies downstream of Santa Margarita and
13 Atascadero, relies heavily on the water pumped from the
14 Salinas River underflow as well as groundwater from the Paso
15 Robles groundwater basin. This basin has been historically
16 recharged in part by the Salinas River.

17 We believe that the proposed Salinas River Expansion
18 Project will reduce the Salinas River underflow,
19 groundwater recharge, and as a consequence, reduce the
20 water supply available to Paso Robles.

21 Expansion of the reservoir will greatly reduce the
22 spills that are a vital source of recharge to the Salinas
23 underflow and the groundwater basin. Our experts will point
24 out that the spills contribute far more to recharge than the
25 releases made under the so-called live stream condition.

1 This is a special concern to us as reports have alleged
2 that the groundwater basin may be in overdraft. In fact, a
3 study of the Paso Robles groundwater basin has been
4 commissioned and funded by the County of San Luis Obispo.
5 It is not yet underway, but may increase our understanding
6 of potential impacts on the North County.

7 San Luis Obispo suggested that very little impact will
8 result from expansion of the reservoir. Yet, studies have
9 not been concluded to substantiate that claim.

10 I must also emphasize that the underflow and the
11 groundwater basin are the major source of drinking water for
12 the City of Paso Robles.

13 The EIR states that the live stream condition in Permit
14 5882 will mitigate the reduction in flows from the dam, but
15 it will not. I trust that the Board understands that the
16 live stream condition does not require releases from the
17 Salinas Reservoir to maintain an active, running stream
18 throughout the year. In fact, the Salinas River is
19 typically dry for many months each year. This live stream
20 agreement merely requires release or bypass of inflow to the
21 reservoir when there is no water running all the way to the
22 Nacimiento River, which is 30 miles downstream of the dam.

23 During drought years, there is no surface flow the
24 entire year. No live stream releases reach Paso Robles at
25 these times. The live stream agreement cannot assure a

1 recharge aquifer if or when it is not running. Paso Robles
2 is not asking the State Board to reopen the live stream
3 condition with regard to the existing capacity of the
4 Salinas Reservoir. We recognize that the Board's hearing
5 notice states that it will not do so. However, the Board
6 should not and cannot rely on the dry stream condition to
7 mitigate the loss of recharge resulting from the reduced
8 spills that the enlarged reservoir will cause. Allocating
9 a portion of the new stored water for downstream spill
10 releases may mitigate those impacts.

11 San Luis Obispo has reminded the Board that the City
12 has an obligation to its citizens and to acquire adequate
13 water supplies to meet their needs. The City of Paso Robles
14 has the same obligation to its citizens, as do other North
15 County communities. The difference is that North County
16 communities seek only to use waters which originate in their
17 areas, not acquire from other areas for import. San
18 Luis has suggested that it's unfair to them to share Salinas
19 water to subsidize North County communities' growth. We
20 suggest it is unfair that our communities, which have
21 relied on San Luis Obispo throughout history, must export it
22 to subsidize San Luis Obispo's growth.

23 In many of your decisions you have recognized the
24 policy of protecting areas of origin against export. We
25 respectfully suggest that the State Board should not,

1 therefore, allow increased diversions out of the Salinas
2 River watershed which will cause harm to the downstream,
3 inbasin, area of origin users.

4 The City of San Luis Obispo suggests a cooperative
5 attitude in terms of alternate sources. The Nacimiento
6 Project, as has been referenced, is currently undergoing
7 design of the routing. Paso Robles has been a key player in
8 the determination of that route. Paso Robles continues to
9 review the possibilities of this alternate source of water
10 and gives it great consideration.

11 San Luis Obispo, however, continues to ignore the
12 possibilities of the State Water Project. The coastal
13 branch of the California Aqueduct runs right through the
14 town of San Luis Obispo.

15 California is an arid region. I can relate to the
16 drought years suggested by our neighbors. We would be
17 irresponsible to think for one minute that a drought will
18 not occur in the years to come. After all, it was 104 years
19 ago that a drought played devistating role in the lives of
20 my great, great grandfather's beloved Rancho San
21 Margarita.

22 I respectfully ask the Court not to grant this time
23 extension that would allow San Luis Obispo to take away what
24 has historically been the North County resource.

25 Thank you very much.

1 H.O. BROWN: Thank you, Councilman Meecham.

2 Does that conclude our policy statements?

3 Then we will go into the opening statement and the
4 testimony of the City of San Luis Obispo.

5 MS. CAHILL: Mr. Brown, I would note that the City of
6 Atascadero, or maybe it is the Atascadero Mutual Water
7 Company, did submit a written policy statement, and they
8 asked us to deliver that today, and it has been delivered.
9 I don't know if there are any other written ones.

10 H.O. BROWN: Thank you, Ms. Cahill. We will include
11 that.

12 MR. SLATER: Board Member Brown, Members of the Board,
13 staff, good morning. My name is Scott Slater. I am an
14 attorney with Hatch and Parent on behalf of the City of San
15 Luis Obispo. With me today is Stephanie Osler. From the
16 City is Mayor Settle; Gary Henderson, who is the water
17 manager; and John Moss, who is the utilities director.

18 The City has filed a written opening statement which
19 goes through our position in great detail. However, I did
20 want to take this opportunity to make a few salient points
21 and to provide a little preview of the testimony you are
22 about to hear. We intend to present our case in two
23 panels. The first panel consisting of the City
24 representatives and then the three gentlemen who assisted in
25 the preparation of the Environmental Impact Report and

1 examined both biological and downstream impacts associated
2 with the proposed project.

3 To put this request in context, I would like to make
4 reference to some facts that have been pointed out by some
5 of the earlier policy speakers, and that is that this permit
6 request for an extension arises out of the Corps' decision
7 to pursue a wartime project to construct the Salinas
8 Dam, and the City's decision along with the Corps' at that
9 time in 1941 to file an application with the State Board to
10 appropriate the water held behind the dam and divert it for
11 use, generally within the boundaries of the City of San Luis
12 Obispo.

13 The dam itself, as originally designed, would have
14 supported a capacity of approximately 45,000 acre-feet. The
15 dam, however, was not ultimately completed to its original
16 design and, in fact, the initial spillway design was not
17 carried forward. The balance of the dam, however, was
18 completed, and the City began almost immediately diverting
19 water to use for municipal/industrial purposes within city
20 boundaries. Between the time period of the mid '40s and
21 the 1970's, there existed some level of uncertainty,
22 remnants of which are still with us today. Specifically,
23 the downstream interests, as you heard in the policy
24 statements, contended that there ought to be some form of
25 downstream release regime to protect and satisfy vested

1 rights. In addition, the City's permit, 5882, was subject
2 to a level of uncertainty and insecurity arising from two
3 factors, in addition to the unstated downstream
4 requirement.

5 The first factor was the facility itself was owned by
6 the federal government. And although the City had a
7 contract with the federal government whereby it would divert
8 the water, the contract was subject to potential
9 termination. Secondly, the Corps itself held a permit,
10 5881; that permit, being prior in time, created the
11 possibility that at some point in the future the City's
12 contract might be terminated and the supply, which was being
13 captured by the federal government, rediverted to another
14 user. That possibility remained very real until 1995.

15 I would like to point out a couple of highlights along
16 the way. The issue about downstream vested rights continued
17 to be an issue and a problem until 1972 when most of the
18 parties who are here or some of the parties who are here and
19 filed statements appeared before this Board to discuss
20 whether or not extensions of time should be granted to the
21 City and others. And during that hearing a question was
22 raised about the satisfaction of downstream vested rights.

23 The Board at that time imposed a live stream condition,
24 which you will hear from witnesses from the City and its
25 consultants was designed to protect downstream interests.

1 It may not have been perfect, but it was the best effort of
2 the parties and the Board to develop a condition to satisfy
3 those claims.

4 On a petition for reconsideration the Board then
5 decided, after listening further, that the condition until
6 further order of this Board should be "conclusively
7 presumed" to satisfy the needs of downstream interests.
8 Based upon that decision by the Board, the City at that
9 point in time came to the reasonable belief that the
10 downstream needs and issues had been satisfied. It then
11 turned its attention, really, towards the issue of --
12 really, the two issues of uncertainty arising from the
13 Corps' prior permit and, secondly, the issue of the Corps'
14 ownership of facilities.

15 During the period of the late '70s and early '80s, the
16 City attempted to acquire or seek to transfer ownership from
17 the Corps to the City itself or to another local agency. In
18 1981 the City files a timely permit with this Board
19 requesting an extension of time. Five years later,
20 approximately five -- actually six years later, they receive
21 a notice from this Board indicating that the petition is
22 still timely on file, but that things have changed, things
23 have changed both in terms of substance and the law in the
24 sense that we now have the California Environmental Quality
25 Act, which the Board is, as a matter of course, applying to

1 extensions of time where there is some action required.

2 Hence, the Board suggests that there are really three
3 issues. A new issue has arisen. There is not only the
4 remnant issues of Corps' ownership and Corps' permit, but
5 there is also now a Board need to have an environmental
6 document before a hearing such as this one to go forward.
7 The City then went back to the drawing board, continue to
8 negotiate with the County and with the federal government,
9 and ultimately, in 1994 proceeded to prepare an
10 environmental document to examine the downstream impacts.
11 And, ultimately in 1995, its negotiations with the federal
12 government with the assistance of Board staff proved
13 successful. A stipulated agreement was reached between the
14 City and the federal government which provided for the
15 revocation, the revocation of Permit 5881 and announced it
16 recognized and acknowledged the City's primacy as to the
17 water to be diverted from the reservoir.

18 This is important. Because as of 1978, the County of
19 San Luis Obispo and others, as referenced in prior Board
20 decisions, was attempting to acquire ownership on its own of
21 the Corps' facilities and to take the water and to use it
22 for its own use. Its theory, as explained in the Board's
23 decision in 1978, is that the City had alternative sources
24 and could use the water. Therefore, if it acquired the
25 facilities or it reached its own agreement --

1 H.O. BROWN: Mr. Slater, will this be brought out on
2 direct so we can have cross on it?

3 MR. SLATER: Yes, it will.

4 H.O. BROWN: I will allow the other attorneys some time
5 for an opening statement, but let's keep the opening
6 statements to within five minutes, if you can, and bring
7 this out as much on direct as you can so it can be crossed
8 and put into evidence.

9 MR. SLATER: I am pleased to do that. I am sorry, the
10 notice indicated 20 minutes, so I will truncate my remarks.

11 H.O. BROWN: Twenty minutes for each witness.

12 MR. SLATER: I apologize.

13 In short summary and bringing this to a conclusion, the
14 primary issue of -- or two of the three primary issues that
15 were ultimately identified by the Board that needed to be
16 solved and obstacles to the City's ultimate completion of
17 this project were, one, the preparation of an environmental
18 document which testimony will reveal has been completed.
19 Secondly, solving the issue of the Corps' Permit 5881, which
20 has been completed. The third, which the City is making
21 every effort to solve, which is the transfer of ownership
22 either to a local agency or to the City itself.

23 Under provisions of the Water Code, good cause being
24 demonstrated, the City believes there is substantial
25 evidence in the record today that will suggest that good

1 cause exists.

2 Thank you.

3 H.O. BROWN: Thank you, Mr. Slater.

4 Your first witness.

5 ---oOo---

6 DIRECT EXAMINATION OF SAN LUIS OBISPO

7 BY MR. SLATER

8 MS. SLATER: Mr. Brown, we'd like to call a panel at
9 the same time, so I would ask the first panel to step up.
10 We would like to begin with Mayor Settle.

11 Mayor Settle, would you please state your name for the
12 record?

13 MR. SETTLE: Allen Settle, mayor of the City of San
14 Luis Obispo.

15 MR. SLATER: Mr. Settle, did you prepare a written
16 testimony in expectation of the hearing today?

17 MR. SETTLE: I did.

18 MR. SLATER: I am going to show you Exhibit 9 on the
19 City's submitted exhibit list. Do you have that in front of
20 you, a copy?

21 MR. SETTLE: I do.

22 MR. SLATER: Could you please examine the exhibit.

23 MR. SETTLE: This exhibit is mine and my signature in
24 the back.

25 MR. SLATER: It is a true and correct copy?

1 MR. SETTLE: That's correct.

2 MR. SLATER: Do you wish to make any changes to your
3 testimony?

4 MR. SETTLE: I do not; it's complete.

5 MR. SLATER: Can you please state how long you have
6 been or what your present position is with the City of San
7 Luis Obispo and how long you have been involved with the
8 City?

9 MR. SETTLE: I have been involved in the city of San
10 Luis Obispo some 18 years as either on the planning
11 commission, City Council and now the mayor.

12 MR. SLATER: Can you tell us what involvement you have
13 had in the development of water supplies for the City of San
14 Luis Obispo?

15 MR. SETTLE: It has been my primary objective to secure
16 a reliable water supply, to insure that we have emphasized
17 water conservation. We have a growth management plan for
18 the City and a water management plan for the City. And it
19 is particularly pertinent because in '89 I was the member
20 who helped to initiate a moratorium on all building and
21 construction in response to the drought. And, subsequently,
22 upon election as mayor, my primary goal since my election as
23 mayor in now my third term is to secure a reliable water
24 source from the Salinas Reservoir as our primary water
25 source for the City.

1 MR. SLATER: What in the way of conservation or demand
2 management has the City of San Luis Obispo pursued during
3 your tenure?

4 MR. SETTLE: We have modified by massive down zoning of
5 all land use within the city of San Luis Obispo so it is
6 consistent with the service capacity of water, fire, sewer
7 and public works, water in particular, so we do not exceed
8 our capacity.

9 As a result, as indicated earlier, we have the growth
10 management and water management plans and conservation
11 systems efforts to use water reclamation. And it is perhaps
12 recognized as one of our premier efforts, certainly in the
13 central coastal cities, the careful use of their water
14 resources.

15 MR. SLATER: What measures has the City taken during
16 your tenure to acquire supplemental water for the benefit of
17 the City of San Luis Obispo?

18 MR. SETTLE: We have specifically looked at the
19 two-to-one retrofitting internally in the City, water
20 reclamation, tertiary plant, and, as supplement, the Salinas
21 Reservoir as far as the expansion of that by means of
22 spillway gates and even looking into the possibility of
23 Nacimiento. We have had no response of positive commitment
24 since I have been mayor.

25 MR. SLATER: What is the present status of the City's

1 efforts to secure a supply from Nacimiento?

2 MR. SETTLE: We have spent \$2,000,000 in an
3 Environmental Impact Report for the specific Salinas
4 Reservoir expansion. Plus we have put \$830,000 more into
5 the study that looks into the mitigation efforts in the
6 expansion of the Salinas Reservoir, specifically the
7 environmental impacts. We have honored and continue to
8 honor the live stream operation, and basically recognized
9 that our reservoir is in jeopardy as the ownership issue has
10 been a point of question between the Army Corps of
11 Engineers.

12 At the same time we are dealing with the County
13 government that is more than happy to develop property
14 around our city boundaries.

15 MR. SLATER: Am I to understand your response was with
16 respect to the Salinas Expansion Project?

17 MR. SETTLE: Precisely.

18 MR. SLATER: What is the Nacimiento Project?

19 MR. SETTLE: We sought to go for Nacimiento. We are
20 looking for commitment from the County or North County water
21 users. We have, to date, not received such a commitment,
22 and that is why we went, proceed with the expenditure of
23 city funds to do the Environmental Impact Report and
24 subsequently voted, and by the way, unanimously on all
25 issues by City Council for the report and study for impacts

1 for mitigation. That is an 830,000 supplemental study.

2 MR. SLATER: Having been on the council on and off for
3 two decades, what obstacles, in your view, has the City
4 experienced with respect to trying to complete the Salinas
5 Dam Project?

6 MR. SETTLE: First, at this point I will emphasize to
7 the Board the Environmental Impact Report was performed.
8 Its standards are particularly precise and have to be
9 complied with; to comply with the law, the environmental
10 impacts, CEQA and the like has been accomplished.

11 Second is the whole issue here of the ownership. As
12 pointed out earlier, we have responsibility for water supply
13 to our residents. I might point out that we have roughly 20
14 percent of the population in the County and 50 percent of
15 the jobs; a population of 43,000 people but daytime
16 population of 67,000. And I emphasize, when you look at
17 this, the primary responsibility of the mayor is to secure
18 reliable water supply and that of the council and of the
19 staff.

20 But on the matter of the diligence, as far as the EIR
21 and the ownership, we have sought to save the County. We
22 would be happy to have the County serve as the operator so
23 long as they do not compete with our ability to put the
24 spillway gates in to achieve that supplemental water supply.
25 We have not been successful in doing that.

1 The other feature on this that is particularly
2 important to me is the whole matter of the County's
3 willingness to handle their own land use policies and the
4 affecting of our immediate surrounding areas. I emphasize
5 the City of San Luis Obispo has no reliable water aquifer
6 underneath it that it can utilize by drilling for wells.
7 And the one time we did exercise the option to seek
8 additional water supply from groundwater the record will
9 show that resulted in litigation that says any surface
10 subsidence from any community, whether ours or anywhere in
11 North County, anywhere in the state can be subject to
12 financial consequences. And ours was upwards of \$2,000,000.
13 So the groundwater is not an option like people might have
14 thought it was in the past.

15 MR. SLATER: Mr. Mayor, if the State Board were to
16 grant the requested expansion to the City, what commitment
17 or what demonstration of will is there to indicate to the
18 Board that the City is willing to complete this project?

19 MR. SETTLE: We have, in addition to the EIR and the
20 \$830,000 for the essential mitigation studies, we have a
21 unanimous council and we have adjusted our water rates,
22 which is not common in many cities, to where we can proceed
23 with this adjustment and the spillway gates to where the
24 water users are not going to be looking at a supplement
25 increase in the rates of any consequence.

1 In addition to that, this has been fit to our general
2 plan. We have agreements with a great number of other users
3 to say that within the City you must be annexed to the City
4 in order to receive our water supply from the City. We have
5 to meet a higher performance standard than most other types
6 of governments: water, sewer, fire, police, public works,
7 as I emphasized.

8 The other emphasis I will make to you with regard to
9 that is, ladies and gentlemen, we are basically seeking the
10 public health safety and welfare for our future. I am here
11 today to basically say that this is the protection of our
12 future of the largest city in San Luis Obispo. We have to
13 be responsible to the people who live there. For we will
14 have another drought and, when it comes, we had better have
15 a supplemental water supply on hand. Mother Nature plays no
16 favorites. And, basically, this is our survival.

17 MR. SLATER: Thank you, Mr. Mayor.

18 MS. HASTINGS: This is the direct examination of Mr.
19 Moss.

20 Good morning, Mr. Moss.

21 MR. MOSS: Good morning.

22 MS. HASTINGS: Can you state your name for the record.

23 MR. MOSS: John Ellsworth Moss.

24 MS. HASTINGS: Mr. Moss, did you prepare written
25 testimony in advance of this hearing?

1 MR. MOSS: Yes, I did.

2 MS. HASTINGS: I believe you have in front of you
3 Exhibit Number 10. Can you take a look at that and then
4 turn to the last page just before the exhibits.

5 Does your signature appear on that page?

6 MR. MOSS: Yes, it does.

7 MS. HASTINGS: Is this a complete and accurate copy of
8 your written testimony?

9 MR. MOSS: Yes, it is.

10 MS. HASTINGS: Do you swear and affirm this written
11 testimony, which has been marked for identification as San
12 Luis Obispo Exhibit Number 10, is true and correct?

13 MR. MOSS: Yes, I do.

14 MS. HASTINGS: Did you also submit in advance of this
15 hearing a statement of your qualifications?

16 MR. MOSS: Yes, I did.

17 MS. HASTINGS: I would like you to take a look at what
18 has been marked for identification as Exhibit Number 1 for
19 the City of San Luis Obispo. Is that your statement of
20 qualifications?

21 MR. MOSS: Yes, it is.

22 MS. HASTINGS: Is it a complete and accurate copy?

23 MS. MOSS: Yes, it is.

24 MS. HASTINGS: Do you also swear and affirm that this
25 statement of qualifications is true and correct?

1 MR. MOSS: Yes, I do.

2 MS. HASTINGS: With respect to your qualifications, can
3 you tell me what your occupation is?

4 MS. MOSS: I am the Utilities Director for the City of
5 San Luis Obispo.

6 MS. HASTINGS: Can you also briefly describe the
7 highlights of your professional experience.

8 MR. MOSS: As Utilities Director since 1993 for the
9 City of San Luis Obispo, I am responsible for all water and
10 wastewater related services, the administration and
11 management of those services and programs provided by the
12 City. My primary goals under those responsibilities has
13 been the acquisition and development of adequate water
14 resources for the City; assisting the City Council in the
15 development of policy and planning documents associated with
16 water supply and water management within the City of San
17 Luis Obispo, various programs associated with water
18 conservation, demand management for the City, as well.

19 Prior to my tenure as the Utilities Director for the
20 City of San Luis Obispo, I was the Wastewater Division
21 Manager for the City. During that time frame I was
22 responsible for all wastewater related services in the
23 City. I served as the owner's representative on our
24 \$25,000,000 wastewater treatment plant improvements project,
25 to bring that facility in o full compliance with our NPDES

1 permit and tertiary treatment levels. And prior to that I
2 was employed as a utility plant operator, chief operator, at
3 the wastewater facility.

4 MS. HASTINGS: How many total years have you been with
5 the City?

6 MR. MOSS: I've been with the City 19 years.

7 MS. HASTINGS: I'm now going to show you what has been
8 marked San Luis Obispo Exhibit 12B. Can you take a look at
9 that document.

10 Can you tell me what it is?

11 MR. MOSS: It is a figure out of the EIR, the revised
12 draft.

13 MS. HASTINGS: Who prepared this document?

14 MR. MOSS: Woodward-Clyde Consultants.

15 MS. HASTINGS: At the bottom I believe you will see a
16 figure number. Can you tell me what figure number is?

17 MR. MOSS: Figure 3.4-1.

18 MS. HASTINGS: This comes out of the final EIR?

19 MR. MOSS: That's correct.

20 MS. HASTINGS: I would like to now direct your
21 attention to the large poster board which is behind you.
22 Can you tell me what that is?

23 MR. MOSS: This is a representation of that figure
24 which I just referenced.

25 MS. HASTINGS: In fact, you will see that the same

1 figure number which you just called out for this document,
2 12B of the San Luis Obispo exhibit, is the same which
3 appears on the bottom of this poster board.

4 The purpose of this hearing today is to talk about the
5 Salinas Reservoir Expansion Project. With reference to this
6 poster board, which is also Exhibit 12B, can you describe
7 the project for us?

8 MR. MOSS: Sure. The Salinas Reservoir is located in
9 the Central Coast of California, approximately ten miles
10 east of San Luis Obispo, eight miles south of the town of
11 Santa Margarita. Previously stated by one of the policy
12 makers, the reservoir is -- the dam facilities are located
13 approximately 30 to 40 miles upstream of the confluence to
14 the Nacimiento River, and that does have some bearing on
15 this issue.

16 The dam project itself on the Salinas Reservoir
17 involves the installation of an operable spillway gate
18 which was originally envisioned with the construction of the
19 reservoir, but, however, was not installed in 1941, at that
20 time. There will be some associated structural
21 modifications and improvements made to the facility,
22 relocation of the recreational facilities at the reservoir
23 and extensive environmental mitigations to bring the impacts
24 of this project to less than significant.

25 MS. HASTINGS: Thank you.

1 Mr. Moss, as utilities director have you had
2 opportunity to take part in City's development of its water
3 resources?

4 MR. MOSS: Yes, I have.

5 MS. HASTINGS: In what manner?

6 MR. MOSS: Well, as -- in a number of fronts, actually.
7 I have been largely involved with the development of policy
8 and planning for the City's water resources and in helping
9 our City Council determine what processes and procedures to
10 pursue in developing water resources and how best to manage
11 those resources. We have developed a comprehensive water
12 conservation program. We are looking at a water recycling
13 program; I have been working on that project since 1993. I
14 have been integrally involved in the development of that
15 EIR and the Endangered Species Act consultations for that
16 project. Relative to the Nacimiento Project, I have been
17 the City's representative on the project with the
18 Participants Advisory Committee and I have helped steer the
19 Cooperative Use Committee, which was formed to address the
20 issue of the lakeside residents on the Nacimiento Project.

21 MS. HASTINGS: We'll get back to some of those again.

22 With respect to your day-to-day activities, what is
23 your particular role in directing or managing these efforts?

24 MR. MOSS: Well, I direct, manage and oversee the
25 preparation of all staff reports and discussions for the

1 City Council, attend council meetings on a regular basis,
2 provide technical as well as other official assistance to
3 the City Council in making determinations and judgments on
4 projects.

5 MS. HASTINGS: Are you involved in any manner in the
6 development of the City's policies with respect to the water
7 supply?

8 MR. MOSS: Yes. We do make policy recommendations to
9 the City of San Luis Obispo and our City Council. I have
10 been involved directly with the preparation and oversaw the
11 preparation of our Urban Water Management Plan, which was
12 adopted in 1994. That plan has been submitted as Exhibit A
13 to my testimony, and is really the foundation document for
14 much of the City's water supply development, water
15 management and water demand management efforts.

16 MS. HASTINGS: Given your participation of those
17 policies, can you tell us a little bit about what they are?

18 MR. MOSS: Certainly. As I said, the Urban Water
19 Management Plan is our founding document. It really defines
20 the policies relative to how the City will pursue
21 development of additional supplies, what sort of allocation
22 policies we will have relative to getting that water to new
23 development and how it will be shared throughout the City.

24 One of the key policies within that document is the
25 City's multisource water document. It identifies it as we

1 perceive what new water supplies we should try and develop,
2 those supplies coming from as many different sources as
3 possible. That provides additional reliability to our
4 overall system.

5 Also included is a key policy within this document
6 establishing a 145-gallon per person, per day planning use
7 rate. The importance and validity of that 145-gallon per
8 person, per day figure is that it represents roughly a 20
9 percent ongoing level of conservation with the City of San
10 Luis Obispo from historic high rates of 182. The rate is
11 dependent upon ongoing levels of water conservation, assumes
12 full development of hardware retrofit within the City of San
13 Luis Obispo. That was identified as providing us about 12
14 to 14 percent ongoing conservation. We are looking at
15 maintaining an ongoing education programs, et cetera, to
16 insure that we get the additional 6 to 8 percent necessary
17 to maintain our water use within the City at or below the
18 145-gallon per person, per day value.

19 MS. HASTINGS: Given the City's implementation of these
20 policies in its Urban Management Plan, what is your
21 understanding of the City's ability to satisfy its water
22 demands?

23 MR. MOSS: Based on the 145 per person, per day value,
24 we use that value to calculate what our present demand is by
25 multiplying that use times our population. I should

1 emphasize that that 145 figure is a general citywide value;
2 it doesn't represent just residential, but it's overall city
3 use. Based on that value, we are identified by multiplying
4 the current population times that 145 figure, identifies
5 what our total or present demand is. We subtract that from
6 our calculated safe annual yield to determine what water we
7 have available for allocation at this point in time.

8 When we compare this to our general plan build out
9 values, and using that same 145 figure, we are able to
10 determine what additional supplies we are going to need in
11 the future to meet the City's general plan build out goals
12 and requirements.

13 MS. HASTINGS: What is your analysis with respect to
14 the City's ability to meet those?

15 MR. MOSS: With respect to the City's ability to meet
16 those, we are going to need an additional 3860 acre-feet of
17 water to be developed; of that 1360 acre-feet is associated
18 with new development. We need, per our Urban Water
19 Management, to develop 500 acre-feet additional to satisfy
20 the changing safe annual yield associated with siltation of
21 our reservoirs, and we are looking to develop 2,000
22 acre-feet of reliability reserve to protect the City in case
23 of a new worse-case drought or should we lose the water
24 supply due to contamination or some other catastrophe.

25 MS. HASTINGS: Does the City have or has it calculated

1 a period out into the future at which it will be able to
2 satisfy its demands with the existing supplies?

3 MR. MOSS: Based on our analysis of looking at our
4 existing supplies with no additional supplies to augment
5 those supplies and a very restricted 1 percent growth rate,
6 which is within the City's growth plan, we will be out of
7 water for new allocation and essentially entering into a
8 moratorium situation by the year 2009.

9 MS. HASTINGS: You referenced restrictions on growth
10 rate. Where does that come from?

11 MR. MOSS: The general plan land use element, which is
12 included as Exhibit C to my testimony, identifies that the
13 City's residential and nonresidential growth restrictions
14 shall be held to 1 percent per year.

15 MS. HASTINGS: ` You have testified that by 2009 the City
16 expects to run out of water supplies or need additional
17 supplies. What measures has the City taken to date to
18 stretch its existing supplies?

19 MR. MOSS: Looking at the use of our existing supplies,
20 as I said we have initiated a comprehensive water
21 conservation program. Key features of that conservation
22 program include both mandatory and voluntary components. As
23 a voluntary component of the water conservation program, we
24 have a hardware retrofit rebate program that rebates \$100
25 per rest room or bathroom retrofit within the City. There

1 are two mandatory components of the program. One is a
2 mandatory retrofit upon sale requirement. Whereas, when a
3 house is sold or a business is sold, the owner of that
4 business or home has to retrofit the facilities before sale.
5 We verify and monitor that program with our staff.

6 There is another unique component, is our retrofit to
7 receive water allocation in San Luis Obispo. Even though
8 we've determined there is water, some water available for
9 allocation, to insure and accelerate our retrofit programs,
10 we require new development to retrofit existing facilities
11 to offset their demands at a rate of two to one.

12 Along with that, the retrofit programs, our water
13 conservation has an ongoing educational component directed
14 both at school-age children as well as adults, community
15 awareness. We have an inclining 100 percent commodity-based
16 two-tier rate structure. So the more water people use in
17 San Luis Obispo, the more they pay. If they don't use any
18 water, they don't pay. It's a structure that was put in
19 place to encourage and insure conservation.

20 MS. HASTINGS: In addition to these conservation
21 measures, is there anything else that the City has done to
22 actually maximize its existing water supplies?

23 MR. MOSS: The other thing we do to maximize use of our
24 water supplies, or looking at doing, as we are investing, I
25 have been working on for nearly ten years now is the

1 development of a water recycling program where it will take
2 the tertiary-treated wastewater from our wastewater
3 treatment plant and use it for irrigation on parks and
4 school grounds, highway medians along the freeways, et
5 cetera, maximize the use of that water.

6 MS. HASTINGS: Even with these efforts to maximize
7 existing supplies, is it true that the City has determined
8 it still requires additional or supplemental water resources
9 to meet its future demands?

10 MR. MOSS: Yes, it has.

11 MS. HASTINGS: What actions has the City taken to
12 secure those additional or supplemental supplies?

13 MR. MOSS: We worked on a number of different fronts
14 looking at various alternative projects. The Salinas
15 Reservoir Project has been one that we've been focusing on
16 and trying to deal with the numerous hurdles that face that
17 project for some time now.

18 Shall I get into a discussion of the alternatives at
19 this point?

20 MS. HASTINGS: Certainly.

21 MR. MOSS: I would like to point out, as we look at
22 alternatives and how the City looks to develop additional
23 supplies, if I may, in Exhibit A of my testimony on Page 25
24 is Policy 2.6.2. That policy essentially defines the
25 evaluation criteria that the City will use in determining

1 how we proceed to develop additional water supplies.

2 If I may quote from that policy:

3 In deciding appropriate sources of
4 supplemental water, the City will evaluate
5 impacts on other users of the water and other
6 environmental impacts. Total unit cost,
7 reliability, water quality, development time
8 and quantity available. (Reading.)

9 As I talk about the alternatives that we looked at, I
10 think you will see how we have considered these various
11 factors or how the alternatives weighed in. As I said
12 previously, we are working on developing a water reuse
13 program. Hopefully that project will be underway and on
14 line within the next several years. But we have another
15 issue with the State Board in about 15 days on that project,
16 to get our change in place of use permit.

17 We've been working with the Nacimiento or the County on
18 development of the Nacimiento water supply project. That
19 project is an extremely expensive project, cost estimated at
20 about a hundred million dollars. The City's participation
21 in that is -- would also require the participation of about
22 16 other agencies for that project to remain cost feasible.
23 To date we haven't seen real strong commitment relative to
24 that project.

25 In addition, as we look at our horizon of when we are

1 going to fall short on our available water supplies, in
2 experience on working on the Salinas Project now for nearly
3 ten years and knowing what my predecessors have done, my
4 experience on the water reuse project, which I thought was
5 going to be fairly straightforward and now the Nacimiento
6 Project, in the process of it turning into the development
7 of a revised draft EIR, I don't see that that project is
8 going to be able to proceed within our time frame, at least
9 not with the confidence that we would require to make that
10 project high on the list.

11 State Water Project was also considered by the City and
12 participation in the State Water Project was voted down by
13 our public in 1992. Part of the reason and the discussion
14 that was going on at that time when that project was voted
15 down was relative to the City's ability to develop local
16 resources rather than rely on imported waters from the
17 state.

18 MS. HASTINGS: In my reading of the exhibit that you
19 just referenced, I also saw another alternative project that
20 the City had considered, the Coastal Streams Project. What
21 is that?

22 MR. MOSS: That's correct. During the drought we
23 looked at what was called the Coastal Streams Project. It
24 would have been a project to install temporary diversion
25 structures on some of the streams along the coast north of

1 San Luis Obispo. That was a project that we were working on
2 and looking at in cooperation with the City of Morro Bay.
3 That project would have diverted water from those streams
4 for storage in the Whale Rock Reservoir. We decided not to
5 continue participation in that project because of the
6 environmental impacts associated with it.

7 We, also during the drought, did take a look at
8 desalination as an alternative for the City, but it has been
9 determined to be far too costly and not one of our superior
10 options at this point in time based on our analysis.

11 MS. HASTINGS: After reviewing all of these
12 alternatives and options, how is it that the City has
13 decided, or on what criteria, to pursue the Salinas
14 Reservoir Expansion Project?

15 MR. MOSS: Well, in looking at that criteria that is
16 contained within Urban Water Management Plan and reading
17 various studies and analyses that have gone on with all of
18 these projects over time, the Salinas Reservoir Project
19 continues to rise up as a project that is always at the top
20 of our list in terms of feasibility. It's a project that we
21 can do under an existing water right, and we have the
22 financial resources in place to complete the project. We
23 have identified what the environmental impacts are and the
24 associated mitigations for bringing those impacts to less
25 than significant, which is an important factor in our

1 Council's and our consideration of that project.

2 Our determinations are that it does not affect other
3 users of the water, and, therefore, the project just
4 continues to rise up as one that we need to pursue as our
5 top priority.

6 MS. HASTINGS: In your pursuit of that what kind of
7 financial measures has the City taken to pursue it?

8 MR. MOSS: Expenditures to date on the project for
9 preliminary feasibility studies and preparation of the
10 Environmental Impact Report have totaled nearly \$930,000.
11 The City recently entered into a contract with
12 Woodward-Clyde Associates to complete what we call Phase I,
13 additional studies for the project. Those additional
14 studies were related to the property transfer and doing the
15 NEPA, the National Environmental Policy Act, requirements,
16 document preparation, for transfer of ownership of the
17 project and some associated negotiations with that.
18 Completing our CEQA process, that is identifying specific
19 landowners and negotiating contracts with those landowners
20 to actually cite the mitigations that we have developed
21 within the comprehensive strategies of our EIR and to do
22 additional seismic safety analysis and dam structural
23 analysis of the facility itself. We are working closely
24 with the Corps of Engineers and the State Division of Safety
25 of Dams to insure that once the dam transfers to local

1 ownership, that it, indeed, satisfies the requirements of
2 the DSOD and will satisfy the requirements for the expanded
3 capacity.

4 MS. HASTINGS: You told us about the City's commitment
5 to the Phase I activities. Can you also tell us about the
6 City's long-term financial plans for completion of the
7 project?

8 MR. MOSS: Yes, I can.

9 Every year the City does a water rate fund analysis.
10 Within that fund analysis we take a look at a five-year
11 projection on our operating capital programs, et cetera,
12 look at what our debt service is going to be, et cetera.
13 And we put rates in place to support that.

14 Within our 1999 water fund rate analysis, we did
15 include the capital and debt service cost associated with
16 the full construction of the Salinas Project and our water
17 reuse project. Essentially, we have rates currently in
18 place to support the debt service requirement of both those
19 projects.

20 MS. HASTINGS: In your opinion, given that the City
21 faces shortages in its supply by the year 2009, have these
22 past and planned for expenditures been reasonable?

23 MR. MOSS: Well, I believe so, given the level of
24 certainty we have associated with the project. Our efforts
25 to address the needs and questions of the State Board and

1 others relative to property transfers, CEQA Compliance, et
2 cetera, I believe it has been.

3 As we look at the remaining work to be done under our
4 current contract and the subsequent phases that have been
5 identified and the scope of services provide by
6 Woodward-Clyde, it appears we are nearing the end of our
7 study phases on this project. Within the next few years we
8 should be able to move forward with construction.

9 MS. HASTINGS: ` Just to conclude, as director of the
10 utilities department, in your opinion, why is it that the
11 City will succeed in completing this project?

12 MR. MOSS: I believe time is of the essence for the
13 City at this point in time. We know and are very familiar
14 with how long it takes to complete these projects, and by
15 our own processes and our desire to cooperate and facilitate
16 regional consensus requirements. We have exhausted many of
17 our efforts relative to that and are now in a position where
18 we are willing to do whatever it takes with the issue of
19 property transfer with the Army Corps of Engineers and will
20 continue to negotiate. We will seek legislative relief if
21 that fails and beyond that we are willing to litigate, if
22 that is necessary.

23 MS. HASTINGS: Thank you very much, Mr. Moss.

24 H.O. BROWN: Thank you, Mr. Moss.

25 What we are going to do is take a break in just a

1 moment here. I would like to introduce Mr. Jim Stubchaer,
2 the Chairman of the State Water Resources Control Board and
3 who has a rich history in the issues in this hearing.

4 Welcome, Mr. Stubchaer. Thank you for coming.

5 BOARD MEMBER STUBCHAER: Thank you.

6 H.O. BROWN: Mr. Slater, you were correct, you do have
7 20 minutes set aside for an opening statement. If I shut
8 you off short, you're welcome to have an additional five
9 minutes after the break when we come back and add to your
10 opening statement if you would like.

11 And that applies to the other attorneys; that will be
12 20 minutes set aside for opening statements.

13 MR. SLATER: Let me ask a question for clarification.
14 I believe the notice said there would not be closing
15 arguments. Are there going to be oral closing arguments?
16 That will affect my decision.

17 H.O. BROWN: No closing arguments. Just written
18 briefs. No closing arguments. You may wish to go ahead and
19 use that additional time.

20 MR. SLATER: I would appreciate that extra five
21 minutes.

22 H.O. BROWN: I am going to allow drinks, coffee or
23 cold drinks, to be admitted into the room. Make sure you
24 have a lid on it. Don't spill it. If a charming redheaded
25 lady comes through the door that takes very serious the care

1 of this room, you hide that under your chair so I don't get
2 in trouble.

3 We'll take a ten-minute break.

4 (Break taken.)

5 H.O. BROWN: We will proceed.

6 Mr. Slater.

7 MR. SLATER: Mr. Brown, would you permit me to go
8 forward with my opening statement or would you prefer that I
9 finish this panel?

10 H.O. BROWN: Your choice.

11 MR. SLATER: I think I will conclude with the opening
12 statement and then come back with Mr. Henderson.

13 Thank you for allowing me the extra time to finish.

14 When we left off, I was indicating that under the Water
15 Code the essential determination that the Board is to make
16 has a prerequisite to allowing the City to go forward,
17 whether good cause exists, and to decide under the Board's
18 own regulations that the good cause exists there are
19 parameters which exist in the California Code of
20 Regulations, which are generally reflected in the staff or
21 hearing notice that was sent out in connection with this
22 hearing today.

23 Specifically, the first question is whether or not
24 there is -- the public interest supports the extension. And
25 to that I think the testimony today will demonstrate that it

1 does.

2 Why? Because the City of San Luis Obispo is home for
3 more than 40,000 people who rely on this source as their
4 primary water supply. It is a major employer within the
5 region. Third, it is a City which is entitled to some
6 accommodation. Because unlike other appropriators, its
7 needs are not always fixed and known at a given time. The
8 City is obliged to provide water for the future and for
9 future customers. The City has no ability to discriminate
10 among its users. Under the law a city is obliged to provide
11 water to all those who come and reside in the City.

12 There is a consistent threat in western water law and
13 as we have noted in our brief, that cities are entitled to
14 some deference with respect to due diligence and completion
15 of their projects. So, I also say that this city is not a
16 city that is looking to fuel growth with additional water.
17 It is responsibility attempted to plan for its future
18 through the adoption of growth control ordinances and has
19 sought to find a water supply commensurate with its
20 controlled demand.

21 Secondly, with respect to due diligence, the standard
22 of due diligence is often misunderstood or stated to create
23 some sort of abstract or pure standard. Due diligence
24 standard has developed under cases and defined by the courts
25 and even by the Black's Law Dictionary that it is due

1 diligence as exercised by a person under similar
2 circumstances.

3 So, if the inquiry in this case or the determination in
4 this case should be whether or not someone, an entity,
5 should be sitting in the shoes of the City of San Luis
6 Obispo has exercised due diligence given all the things that
7 the City was faced with -- and recall when we mentioned in
8 the initial statement and partially referenced in our
9 opening comments, the City of San Luis Obispo was faced with
10 a prior claim by the Corps of Engineers and continuing
11 references and attempts by others to acquire that prior
12 right and those facilities to take the water historically
13 diverted by the City of San Luis Obispo.

14 So there was a cloud on title, if you will, under
15 Permit 5881. There was Corps ownership, and nothing that
16 San Luis Obispo could do could require the Corps to transfer
17 that permit without short of seeking legislation through
18 Congress or potentially litigating. And I think that the
19 evidence will show that the City has had a long history of
20 attempted cooperation and regional partnerships, and it has
21 made every effort to attempt to satisfy the outstanding
22 issues and to secure regional support for its project. It
23 has achieved two of the three hurdles or overcome two of the
24 three hurdles that were identified by this Board in 1987 as
25 impediments to completing the project. It negotiated a deal

1 with the Corps which resulted in the revocation of Permit
2 5881. It has completed the CEQA process. It has spent
3 nearly a million dollars in studies examining impacts. It's
4 committed nearly a million more to completing the project in
5 the future, and it has attended countless meetings with
6 North County and environmental groups, regulatory agencies
7 in an effort to build consensus for this project. Clearly,
8 its efforts demonstrate due diligence.

9 Thirdly, as it relates to the question of whether the
10 obstacles to completion are within its control, consider
11 this: That the State Board has consistently recognized in
12 its correspondence to the City, to the third parties, that
13 the primary reason that this project has not come to
14 fruition is the fact that the Corps owns the facilities.
15 And the City has done everything in its power to attempt to
16 acquire those facilities or have them transferred to another
17 local agency. The Corps' policy has been it does not want
18 to intercede into intracounty politics.

19 So, again, the City has been exhausting every effort to
20 try to develop a local consensus for that transfer to
21 occur. Notably, it has solved through negotiation and the
22 Board's staff's intervention, has solved the issue of 5881
23 and the revocation of that permit.

24 And, finally, the question of whether the City is
25 likely to make sufficient progress or good progress if the

1 extension is granted, you have to consider the testimony of
2 the mayor and Mr. Moss that the City is committed. The
3 City's Urban Water Management Plan, the City Council is
4 unanimous behind the completion of this project. The City
5 has agreed to commit an additional million dollars toward
6 the next phase, and that commitment should be examined in
7 light of the fact that the City does not yet have a
8 resolution or an answer from the Corps whether the Corps
9 will, in fact, transfer to the City, or whether or not the
10 project ultimately will be completed, given the other
11 constraints or approvals that may be necessary.

12 Given the level of certainty for where the City is in
13 the process, given its commitment, there is a reasonable
14 amount of money and reasonable amount of effort under the
15 circumstances. And I believe there is substantial evidence
16 in the record that will show that.

17 Thank you.

18 H.O. BROWN: Thank you, Mr. Slater.

19 MR. BAIOCCHI: Mr. Brown.

20 H.O. BROWN: Mr. Baiocchi.

21 MR. BAIOCCHI: I want to object. CSPA wants to object.
22 To my knowledge, the Army Corps of Engineers is not
23 here. And yet their testimony and Mr. Slater in his opening
24 statement, they refer to the Army Corps of Engineers, as if
25 the Army Corps of Engineers did say this, did say that, are

1 doing this and are doing that.

2 In my view, that is hearsay, and there should have been
3 a representative of the Corps of Engineers here to support
4 claims that are being made by the City. I think it is very,
5 very important for you and the Board to find out exactly
6 what the Corps is saying and what are not saying.

7 H.O. BROWN: Thank you, Mr. Baiocchi.

8 Mr. Slater.

9 MR. SLATER: The City intends to produce evidence,
10 reliable, credible evidence which satisfies the exceptions
11 to hearsay rules. This will be introduced shortly through
12 testimony of Mr. Henderson.

13 To the extent that it satisfies the hearsay rules, it
14 can be admissible in any court. We ask the Board to
15 consider that evidence.

16 H.O. BROWN: We will do so, Mr. Slater.

17 Thank you, Mr. Baiocchi.

18 Proceed.

19 MR. SLATER: Mr. Henderson, good morning.

20 MR. HENDERSON: Good morning.

21 MR. SLATER: Would you please state your full name for
22 the record.

23 MR. HENDERSON: Gary Wayne Henderson.

24 MR. SLATER: Mr. Henderson, did you prepare written
25 testimony in expectation of the hearing today?

1 MR. HENDERSON: Yes, I did.

2 MR. SLATER: Do you have Exhibit Number 11 in front of
3 you?

4 MR. HENDERSON: Yes.

5 MR. SLATER: Take a moment to look at that testimony.
6 Did you sign it?

7 MR. HENDERSON: Yes, I did.

8 MR. SLATER: Is that testimony true and correct?

9 MR. HENDERSON: Yes, it is.

10 MR. SLATER: Do you wish to make any changes to that
11 testimony?

12 MR. HENDERSON: No.

13 MR. SLATER: Can you now take a second to look at
14 Exhibit 2 which purports to be a summary of your
15 qualifications.

16 Is that true and correct?

17 MR. HENDERSON: Yes, it is.

18 MR. SLATER: Would you like to make any additions?

19 MR. HENDERSON: No.

20 MR. SLATER: Thank you.
21 Would you please briefly summarize your qualifications
22 for the Board.

23 MR. HENDERSON: I am a registered civil engineer in the
24 State of California. I have been with the City for 15
25 years. Started with the City as a design engineer in the

1 public works engineering division. Worked in the
2 engineering division from approximately '84 to 1990,
3 designing multiple or various public works projects,
4 bridges, pipeline projects, hydraulic studies, street
5 projects, those type of projects.

6 I was subsequently promoted to utilities engineer in
7 the utilities department in 1990. This was the height of
8 the drought. At that point the City was scrambling for
9 water supplies. We were facing a water shortage for the
10 community. I was at that point the project manager on an
11 emergency desal project that Mr. Moss talked about. We were
12 looking to do the five-year emergency desal project to
13 prevent the City from running out of water. I was also
14 involved in multiple groundwater drilling programs to try to
15 identify additional sources for the City. About a year
16 after that I was promoted to water division manager, which
17 is my current position for the City. I'm responsible for
18 all water-related operations for the City, including
19 operation of water at Whale Rock Dam, water treatment plant,
20 our distribution system, customer service, water
21 conservation programs and our telemetry system.

22 I've been responsible for water supply development and
23 policy planning along with Mr. Moss, presenting our
24 recommendations to Council. I was also responsible in the
25 early '90s for a major upgrade of our water treatment plant,

1 a \$10,000,000 project. I was project manager for that
2 project. And I have been the City's project manager on this
3 project, the Salinas Reservoir Expansion Project, since
4 1991. I have been directly involved in the project since
5 '91-92 when the EIR work was undertaken. In that time
6 period I reviewed past reports that have been done, and it's
7 been part of my job to go back through our old files and
8 familiarize myself with the history behind this project --
9 it's quite complicated -- in an effort to try to resolve a
10 lot of the issues surrounding the project.

11 MR. SLATER: When did you -- when were you appointed to
12 your most recent position or present position at the City of
13 San Luis Obispo?

14 MR. HENDERSON: That was in August of 1991.

15 MR. SLATER: At what time did you begin or develop
16 contact with the Salinas Project?

17 MR. HENDERSON: It was fairly close to that time. It
18 was about 1992 that we actually, I believe, hired
19 Woodward-Clyde to do EIR work. When I took over actually as
20 utilities engineer, we were discussing what our other
21 options were.

22 During the height of the drought, putting a dam in the
23 spillway wasn't one of the options that was going to meet
24 our emergency needs at that point. So, at that point we
25 were dealing more with the desal project.

1 Following the miracle March rains, we began looking at
2 the Salinas Project as a long-term project.

3 MR. SLATER: In your present role and having contact
4 with the Salinas Project, did you have any occasion to
5 review the City files with respect to the project?

6 MR. HENDERSON: I spent extensive time going through
7 the files. There is some information dating as far back as
8 the late '30s. The information is not consistent. But what
9 information there was, I have gone through all of our files
10 in addition to information from the State Board that we have
11 obtained and also information from the County engineering
12 department that operates the dam and provides us monthly
13 information.

14 MR. SLATER: You have reviewed the State Board files
15 that were available?

16 MR. HENDERSON: Yes, I did.

17 MR. SLATER: And you reviewed County files, as well?

18 MR. HENDERSON: Yes.

19 MR. SLATER: I would like to start then with your
20 recollection of those documents that you reviewed. And to
21 begin with, can you explain the initial basis under which
22 the City permit was issued in 1941?

23 MR. HENDERSON: As was explained earlier, the Corps of
24 Engineers was looking to build the Salinas Dam to serve the
25 war efforts in Camp San Luis Obispo. Looking at the files,

1 at the same time the City recognized they had a need for
2 additional water supplies and their limited groundwater
3 resources weren't meeting their needs. At that point the
4 Corps of Engineers filed a permit, 5881, and subsequent to
5 that the City filed a permit, which was 5882 with the Board.
6 Those were dual permits, but not duplicative, not additive.
7 They were -- basically, both allowed storage up to 45,000
8 acre-feet in the reservoir.

9 MR. SLATER: Does that mean that what the Corps didn't
10 use was available for the City to appropriate for its use?

11 MR. HENDERSON: That's correct.

12 MR. SLATER: Did the Corps then precede to complete
13 construction of the reservoir?

14 MR. HENDERSON: At that time the construction of the
15 dam was a very quick process; took about ten months. During
16 construction they found a -- what they thought was a fault
17 in the right abutment. They had concerns on structural
18 adequacy of the dam. And at that point, even though the
19 gates had been delivered to the dam, they decided to leave
20 the gates out of the facility. Also, there was recognition
21 in the files that their needs for that water weren't as
22 great as they originally anticipated. They didn't see the
23 need for that expanded capacity, but it was essentially due
24 to concerns with that fault.

25 MR. SLATER: Did the City reach an agreement with the

1 Corps whereby the additional water or water surplus to the
2 Corps' needs could be transported to City's needs?

3 MR. HENDERSON: Yes.

4 MR. SLATER: Can you describe generally the condition
5 that existed between the construction of the reservoir and,
6 say, 1972?

7 MR. HENDERSON: Well, the City was utilizing the water
8 during that period. The agreements with the Corps allowed
9 the City so much use of water, and, as time went on, the
10 City used more and more water. And those amounts increased
11 over time. About 1972 there were concerns raised before the
12 Board relative to impacts to downstream water users, and the
13 State Board hearing at that time was held: one, to address
14 those concerns, the downstream impacts. Also to address
15 issues relative to other permits downstream, namely being
16 the City of Paso Robles; the two water districts, one that
17 serves the community of Templeton and one that serves the
18 community of Santa Margarita.

19 MR. SLATER: What happened in 1972?

20 MR. HENDERSON: In 1972 the main issue that was
21 resolved had to do with protecting downstream water rights.
22 The State Board made a decision; I believe it was Paragraph
23 2(A) of that decision that said until other studies or other
24 agreements are reached with the downstream water rights
25 holders and the City, that it will be presumed that the

1 downstream rights will be protected as long as there is a
2 visible stream. Or if there is not a visible stream from
3 the dam to the Nacimiento River, that all flow flowing into
4 the facility is bypassed and let out of the facility. That
5 is what's termed the live stream agreement, and those
6 conditions were imposed in 1972.

7 MR. SLATER: I am going to show you a document that I
8 am marking as San Luis Obispo Exhibit 14. It purports to be
9 an order granting extension of time on certain permits,
10 imposed clarifying terms and revoking certain permits to
11 appropriate water. I believe this is one of staff exhibits
12 that has been admitted previously. So I am marking it for
13 identification only.

14 Can you briefly thumb through that.

15 Does that look like the decision that you previously
16 read?

17 MR. HENDERSON: Yes, it does.

18 MR. SLATER: Can I call your attention to Page 6, on
19 the top of the page. Can you briefly review that.

20 Would you briefly summarize, and I will ask you to read
21 the statement.

22 MR. HENDERSON: Basically, it says that the Corps of
23 Engineers is not obligated to recognize the City's priority
24 as far as the City's permit and make a contract for water
25 delivery to other entities.

1 MR. SLATER: In your mind, did that mean that the
2 City's entitlement to the use of water was subject to the
3 Corps terminating its contract and delivering water
4 elsewhere?

5 MR. HENDERSON: Yeah. There was definitely
6 uncertainty.

7 MR. SLATER: Finally, will you look at Page 10, what
8 purports to be Item 6. Briefly review that.

9 And what does that language purport to do?

10 MR. HENDERSON: Basically, says until other studies are
11 performed, as referred to in our previous section, water
12 should be collected to storage in the reservoir only during
13 such time as a visible surface flow exists in the Salinas
14 River between the dam and confluence with Nacimiento.

15 MR. SLATER: Thank you.

16 To your knowledge, was the motion for reconsideration
17 filed in 19- -- in the earlier hearing in 1972?

18 MR. HENDERSON: Yes.

19 MR. SLATER: I am marking for identification only,
20 already moved into evidence as part of the staff's exhibits,
21 SLO 15. Could you review this order please.

22 Now, does this permit include language to the effect
23 that the live stream agreement is conclusively presumed to
24 satisfy downstream rights?

25 MR. HENDERSON: Yes, it does.

1 MS. CAHILL: What is the date of that order?

2 MR. SLATER: Sorry, it is undated. It is carried
3 forward in reference in the 1978 decision, verbatim.

4 Okay. After 1972 the City proceeded; what happened
5 next?

6 MR. HENDERSON: The City was discussing at that time
7 ownership transfer of the facilities with the County. The
8 files revealed that there was some work done, I believe,
9 late '70s, when the City and the County were trying to reach
10 agreement on transfer of ownership. Those agreements were
11 unsuccessful because the terms were deemed unacceptable to
12 the City because there was jeopardy to our water rights.
13 There was no protection of our rights in those agreements
14 from my reading of those files.

15 MR. SLATER: What happened in 1978?

16 MR. HENDERSON: '78 was the Board hearing relative to
17 the live stream agreement, and I believe it was condition --
18 Paragraph 2(C) of that agreement stipulated that the parties
19 would undergo studies and analysis to recommend new
20 operations for the facilities.

21 Study was performed in '75, I believe, by CH2MHill,
22 submitted as evidence, but the State Board found that it was
23 not adequate and did not act on the recommendations.
24 Therefore, the State Board imposed -- deleted that paragraph
25 and just imposed the live stream conditions as the condition

1 of our permit.

2 MR. SLATER: Why was that important to the City?

3 MR. HENDERSON: Well, with the live stream it imposed
4 restrictions on the City, which has impacts to the City's
5 ability to store water. But it also provided some certainty
6 on how the reservoir would be operated.

7 MR. SLATER: Given the certainty regarding downstream
8 obligations, what did the City proceed to do next? Did the
9 City construct studies of any kind?

10 MR. HENDERSON: In 1981 the City requested another time
11 extension to our water rights permit, which was --

12 MR. SLATER: So the City filed a request for an
13 extension of time with this Board in '81?

14 MR. HENDERSON: That's correct.

15 MR. SLATER: Did the City then proceed to conduct the
16 facilities studies?

17 MR. HENDERSON: Those were conducted in the '80s.
18 Actually, around 1987 I believe there was a State Board
19 correspondence that the City requested whether they could do
20 the expansion project under our existing permit. You should
21 realize in about '81 there was pretty much complete
22 management change in the City's offices. So the new
23 managers were requesting from the State Board
24 clarification.

25 State Board said, yes, from a quantity standpoint it is

1 covered under our permit, but there are basically three
2 areas that have to be addressed. One is the duplicate
3 permit of the Corps was at issue. One is the ownership of
4 the facility added a cloud to the issue. A third was that a
5 CEQA document had to be prepared for the project.

6 Shortly after that the City --

7 MR. SLATER: If I might, I am going to show you again
8 another letter which is part of the staff exhibit list. I
9 am going to mark it for identification as 16B. Can you take
10 a look at that letter.

11 MS. CAHILL: If Mr. Slater could make copies available
12 to the other parties, of the documents he's using in this
13 examination, it would be helpful.

14 MR. HENDERSON: This document is Exhibit A.

15 H.O. BROWN: One at a time.

16 Mr. Slater, do you have copies?

17 MR. SLATER: Yes, I believe I do.

18 H.O. BROWN: Take a moment and hand them out right
19 now.

20 MR. SLATER: This is also part of the City's exhibit
21 list. It is 11B.

22 THE COURT REPORTER: Mr. Slater, could you speak a
23 little louder?

24 MR. SLATER: The document that I am now showing to Mr.
25 Henderson is a part of Mr. Henderson's stated exhibit. It

1 is 11B. It is a letter to Bill Hetland, and I am providing
2 additional copies.

3 We are, just as a preview. I will pass out another
4 one which we are going to mark -- I guess this is 16.

5 First, I would like to call your attention to the
6 letter dated 1987, the letter to Mr. Hetland.

7 Who is Mr. Hetland?

8 MR. HENDERSON: Bill Hetland was the utilities director
9 at the time for the City of San Luis Obispo.

10 MR. SLATER: Have you seen this letter before?

11 MR. HENDERSON: Yes, I have.

12 MR. SLATER: Could you briefly summarize the contents
13 of the letter?

14 MR. HENDERSON: This was the correspondence I was
15 talking to relative to the City's petition for extension of
16 time, filed in '81. And it is the Corps -- the letter
17 states that it is pending before the State Water Resources
18 Control Board, still pending because of uncertainty with the
19 ultimate ownership of the half Salinas Reservoir under
20 duplicative companion Permit 5881 held by the Corps of
21 Engineers.

22 MR. SLATER: Can you read for us the last sentence of
23 the first full paragraph?

24 MR. HENDERSON: Yes.

25 City filled a petition in 19- -- a petition

1 for extension of time to complete
2 construction and beneficial use in November
3 of 1981. That petition is still pending
4 before the State Water Resources Control
5 Board because of the uncertainty of ultimate
6 ownership of the Salinas Reservoir under
7 duplicative companion Permit 5881 currently
8 held by the U.S. Corps of Engineers.

9 (Reading.)

10 MR. SLATER: Thank you.

11 Before we go on what you did with that testimony I
12 would like to -- or with that letter, I would like to fill
13 in some things.

14 In between the years 1981 and 1987 when you received
15 this letter, was San Luis Obispo studying alternative water
16 projects, such as the State Water Project?

17 MR. HENDERSON: Yes, they were. You want me to expand
18 on that?

19 MR. SLATER: Yes, please.

20 MR. HENDERSON: The utilities director, Bill Hetland,
21 came on in '81. His first charge was to look at development
22 of a City urban water management plan. That plan was going
23 to look at additional water supplies projects to be
24 pursued. Again, during these periods, we were looking at
25 alternate projects, such as State Water Project, the Coastal

1 streams, which Mr. Moss talked about. And the State Water
2 Project was actually gearing up because Santa Barbara County
3 was looking at initiating their entitlement to that project.
4 Things were starting to move forward. Those two projects
5 were being pursued at that time.

6 MR. SLATER: Was there a draft water management plan
7 being prepared by the City?

8 MR. HENDERSON: Yes, there was a draft, but it was
9 never officially adopted, but there is a draft in the files.

10 MR. SLATER: What about the County, were they also
11 pursuing a master water plan?

12 MR. HENDERSON: I haven't reviewed the County's master
13 plan extensively, but there were master plans that
14 identified Salinas Project as being a project that could
15 support City needs. There was other projects that were
16 being looked at for countywide water resources.

17 MR. SLATER: Following the City's receipt of the 1987
18 letter from the Board which identified the three issues,
19 what did the City do next?

20 MR. HENDERSON: The initiated preliminary studies as
21 far as the seismic safety of the dam, the ability to put the
22 gate in, hydrology or yield estimates for the
23 reservoir. There is a document, we were looking at
24 permitting: what permits would have to be received, what the
25 -- kind of looking at what the next phases were going to

1 have to be. Those were completed in 1989 and subsequently
2 revised in December of 1990.

3 MR. SLATER: Then what happened next?

4 MR. HENDERSON: About 1992 the City initiated the CEQA
5 process for the project. Woodward-Clyde Consultants were
6 contracted to do the studies and draft. The draft was
7 prepared and released for public comment in November of '93.
8 In January of '94 the comment period closed.

9 Numerous comments were received. There numerous -- a
10 number of public hearings were held, both in the City of San
11 Luis Obispo as well as up in the North County. A number of
12 concerns raised by individuals as to the adequacy of that
13 document.

14 Subsequent to that, in 19- -- I believe in 1995, staff
15 presented a phased approach for moving forward with the
16 project in recognition that there is a lot of work to be
17 done. We wanted to do it in linear fashion. We underwent
18 additional studies to address downstream impacts, impacts of
19 biological resources around the lake. And those studies
20 were completed and incorporated into the revised Draft EIR
21 that we released in May of '97 and subsequently certified in
22 June of 1998.

23 MR. SLATER: During this time period, did you have a
24 series of meetings with individuals and interest groups in
25 the North County?

1 MR. HENDERSON: Yes, we did. I believe in '95 we
2 started a North County Water Resources Forum, is the proper
3 term we use now. We continue our reforestation on that;
4 that includes all the agencies in the North County,
5 interested agricultural people, other people interested in
6 water. We continue our support and work on that, looking at
7 regional opportunities.

8 In addition, during the development of our mitigation
9 strategies, we developed a mitigation advisory committee.
10 This committee was represented by people from Fish and Game
11 Department, environmentalists, landowners, property owners
12 or just interested parties in the North County. And the
13 intent was to involve these people, not to support the
14 project, which many of them didn't, but if the project did
15 move forward what mitigation should be imposed to mitigate
16 the impacts of the project?

17 MR. SLATER: This is responsive to what the City's
18 efforts were to cure the issue of the Environmental Impact
19 Report. What did the City do with regard to the Corps'
20 Permit 5881?

21 MR. HENDERSON: Well, I think it was early 1995, City
22 staff, working with your Board staff and the Corps, began
23 discussions to resolve the issue of the Corps' permit. The
24 Corps has only put very little, if any, water to use under
25 their permit. State Board staff was seeking to resolve this

1 duplicate permit issue. And eventually, I believe it was in
2 mid 1995, Board staff, City staff and the Corps met to work
3 out the agreement that allowed for the Corps' permit to be
4 revoked.

5 MR. SLATER: I would like to call your attention to
6 Exhibit A to your testimony. Can you please review that.

7 Is that document familiar to you?

8 MR. HENDERSON: Yes, it is.

9 MR. SLATER: Can you read the title, please?

10 MR. HENDERSON: "Stipulated Agreement for Permit 5581
11 of the U.S. Army Corps of Engineers and Permit 5882 of the
12 City of San Luis Obispo."

13 MR. SLATER: Down at the bottom can you indicate
14 whether it is a signed document?

15 MR. HENDERSON: Yes, it is. It is signed by Al Settle,
16 our mayor, on behalf of the City.

17 MR. SLATER: Can you briefly summarize what this
18 agreement does, in your view?

19 MR. HENDERSON: Well, it does away with the duplicative
20 permits. It resolves some of the concerns that the City has
21 that ownership transfer could result in someone else
22 obtaining the rights to the Corps' permit and it added the
23 Corps as copermittee under our permit.

24 MR. SLATER: With respect to the City's historical
25 practice of diverting water, did the agreement acknowledge

1 that?

2 MR. HENDERSON: Yes, it does.

3 MR. SLATER: Did the agreement provide for a resolution
4 of whose control would be primary?

5 MR. HENDERSON: Yes, it does. The agreement states
6 that the primary use of the water will be the City of San
7 Luis Obispo.

8 MR. SLATER: Can you please read the second sentence in
9 the paragraph beginning with the word "upon."

10 MR. HENDERSON: Under the terms of any license
11 and licenses it so issued as between the
12 City and the Corps, the City shall be given
13 primary authorization to continue
14 appropriation, diversion and use of water
15 under the terms and conditions of Permit 5882.
16 (Reading.)

17 MR. SLATER: Did the State Board take any further
18 action based upon the City's excuse of this agreement with
19 the Corps?

20 MR. HENDERSON: The Corps' permit was revoked and a
21 permit was issued to the City which names the Corps as a
22 copermittee on our permit.

23 MR. SLATER: What's the City been doing with respect to
24 trying to secure the third issue of the trilogy which is to
25 secure ownership or to have the Corps transfer ownership to

1 another local agency?

2 MR. HENDERSON: As I stated, before my time there was
3 many actions of the City trying to get ownership, the County
4 trying to get ownership around each other's back. And in
5 1992 in an effort to resolve this issue, as staff, we took
6 to our Council a recommendation to support that the County
7 flood control district, who currently operates the dam, that
8 the ownership transfer to them.

9 Our council supported that. And shortly after that
10 action by council, we initiated negotiations or discussions
11 with the County, took over two years, and we have developed
12 draft agreements. Those agreements were subsequently
13 presented to our Council, I believe, in '95. But due to the
14 pending revision to the EIR, there were issues raised by
15 agencies and individuals and request that we defer actions
16 on those agreements until the EIR was certified.

17 MR. SLATER: I am going to show you another letter
18 which I previously passed out, which is part of the staff
19 exhibit list, I want you to examine that quickly.

20 Mark for identification as Exhibit 16.

21 Who is that letter addressed to?

22 MR. HENDERSON: That was addressed to Scott Slater at
23 Hatch and Parent.

24 MR. SLATER: Who is the letter signed by?

25 MR. HENDERSON: Signature block is Edward C. Anton,

1 Chief, Division of Water Rights.

2 MR. SLATER: Can you please review the last paragraph
3 and summarize it. Sorry, on the first page.

4 MR. HENDERSON: Summarize it?

5 MR. SLATER: Yes.

6 MR. HENDERSON: Basically, it says that our letter
7 indicated that the City would prefer to delay action on the
8 petition until the final EIR has been circulated.
9 Compliance with the CEQA is necessary prior to the Board's
10 action on approval of our petition. And the division was
11 currently investigating various options for processing the
12 petition.

13 MR. SLATER: Has the CEQA document that the City
14 authorized, has it been certified?

15 MR. HENDERSON: Yes, it has been certified.

16 MR. SLATER: Has the City approved the project?

17 MR. HENDERSON: The City has not filed a Notice of
18 Determination on the project. We have not made a commitment
19 at this point to move forward with the project. Basically,
20 we are looking for, before significant expenditures are
21 committed, which we have committed significant expenditures,
22 but we are looking to a Board action as far as whether we
23 have the right to the expanded capacity before we decide to
24 actually go forward with the project.

25 MR. SLATER: In terms of future significant

1 expenditures, can you provide a rough estimate of what the
2 project is expected to cost?

3 MR. HENDERSON: The total project costs are estimated
4 at about \$20,000,000. Of that, about 10,000,000 is actual
5 spillway gate installation, armoring and structural work as
6 well as relocation of rec facilities and roads around the
7 lake. In addition, there is about half of that, about
8 10,000,000 identified as biological mitigation for the
9 project.

10 MR. SLATER: Finally, the same question I asked the
11 mayor: If this Board were to grant an extension of time,
12 how can they be sure that the City is going to make
13 sufficient progress towards completion of the project?

14 MR. HENDERSON: Again, the City's committed to this
15 project. We've committed the funding. We have identified
16 the funding all the way out through construction. The City
17 does not have the liberty of additional supplies to fall
18 back on at this point. As John Moss stated, we are
19 projecting to run out of water for development around the
20 year 2009. The City Council is committed to moving forward
21 with this project in a timely manner.

22 MR. SLATER: Do you have any intention on how to deal
23 with the transfer of ownership issue?

24 MR. HENDERSON: We had some discussions. We are kind
25 of in a political stalemate with the County. We still have

1 to take those agreements before the Board. Those agreements
2 contain clauses that won't allow -- that would not allow the
3 County to unilaterally block our project, if they gained
4 ownership. The City needs some assurance that if we pay for
5 all the cost of transfer ownership that we are going to be
6 allowed to do our project, if we go through all the
7 hurdles.

8 If the County Board of Supervisors does not agree to
9 take ownership, the City will look at other options
10 available to us, including City ownership or executive order
11 or legislation.

12 MR. SLATER: I want to call your attention to Exhibit J
13 to your testimony. Can you take a look at that, please.

14 Can you tell us what it is.

15 MR. HENDERSON: A summary of our meeting with the Corps
16 of Engineers held this year in August of 1999, to discuss
17 specifically the issue of ownership transfer and kind of
18 catch-22 that the City finds itself in, where we've conceded
19 to allow the County to get ownership, and I should say that
20 is a major concession, considering the facilities are
21 primarily water supplies, but the Council has supported
22 that. We now find ourselves in a predicament. So, we were
23 asking the Corps for other options that may be available to
24 us.

25 MR. SLATER: Before I ask what the Corps' response was,

1 can you tell me if this memorandum was prepared in the
2 ordinary course of your duties?

3 MR. HENDERSON: Actually, this was prepared by John
4 Moss and kind of collaborative, John Moss and myself. John
5 was the main author.

6 MR. SLATER: So, the two of you prepared that document?

7 MR. HENDERSON: Yes.

8 MR. SLATER: And it was prepared in the ordinary course
9 of duties?

10 MR. HENDERSON: Yes.

11 MR. SLATER: You maintain custody of this and similar
12 memorandums?

13 MR. HENDERSON: Yes.

14 MR. SLATER: What was the Corps' response to your
15 meeting?

16 MR. HENDERSON: Well, there was an obvious
17 understanding, especially from the colonel that the City was
18 kind of in a situation beyond our control. He was going to
19 elevate that to higher-ups in Washington, to see, look at
20 other options that may be available. The problem with the
21 Corps is that one of their missions is not water supply
22 development. So they are in a Catch 22 of allowing us to do
23 it under their ownership. So, they are going to look at
24 other options that may be available; whether it be the City
25 or some legislative action.

1 MR. SLATER: We have no further questions.

2 MS. MROWKA: Mr. Brown, I would like to straighten out
3 a few of the exhibit issues.

4 H.O. BROWN: All right.

5 MS. MROWKA: Mr. Slater, during the course of the
6 presentation by Mr. Henderson it appeared that you were
7 adding additional exhibits to your exhibit list. Can you
8 please clarify that for us?

9 MR. SLATER: The intention was to reference the staff
10 exhibits, the ones that were within the staff files. And
11 so, therefore, we understood they are already in evidence,
12 and we were making reference to them and marking them for
13 discussion purposes only, for identification. So, if you
14 want to us to go through them, we will.

15 MS. MROWKA: Did you wish to have any of these as
16 separate exhibits that has now been entered by the City?

17 MR. SLATER: They are already part of evidence. It is
18 not necessary to do it twice.

19 MS. HASTINGS: If you will, we can clarify and give you
20 the titles of those documents once again. We have provided
21 copies of two of the documents, in addition to those that
22 already have been admitted into evidence.

23 Would you like me to walk through the four documents
24 right now?

25 MS. MROWKA: Yes.

1 MS. HASTINGS: The first document which we did provide
2 an additional copy of, which you will find at 11B of the
3 City of San Luis Obispo's exhibits, is the February 26th,
4 1987 letter from Mr. Walsh of the Division of Water Rights
5 to Mr. Hetland of the City of San Luis Obispo.

6 We then also provided a copy of what is now newly
7 marked for identification as Exhibit 16, that is the
8 November 22nd, 1994 letter from Mr. Anton of the Division of
9 Water Rights to Mr. Slater of Hatch and Parent.

10 We did not provide copies of the next two documents,
11 but if you would prefer we can get them for you. The first
12 one which Mr. Slater referred to is Exhibit 14, is the June
13 1, 1972 order of this Board. The next exhibit which he
14 referred to also is Exhibit 15. That is the order on
15 reconsideration and clarifying the June 1, 1972 order.

16 H.O. BROWN: Do you have a number for that one?

17 MS. HASTINGS: I don't other than the fact that I have
18 the order itself. But at the time I think this was -- I
19 believe they were issued order numbers. I can check the
20 record afterwards and get those numbers, provide them later
21 on if that would be helpful.

22 MS. CAHILL: Those are already in Paso Robles exhibits,
23 as well. The order of June 1st, 1972 is, Paso Robles 12 and
24 the order on consideration is Paso Robles 13.

25 MS. HASTINGS: However, I would make one clarification.

1 I believe that there are two separate orders following the
2 June 1st, 1972. One on reconsideration and clarification
3 and then a subsequent one on October 5th, which was simply
4 on reconsideration.

5 MS. CAHILL: Okay. So we don't have reconsideration
6 and clarification.

7 MS. SCARPACE: CSPA has a concern regarding those
8 orders. Although we would like them to be part of the
9 record, we also want all notices of the hearings on these
10 orders to be part of the record and to be furnished to the
11 parties, concerning every one of these orders. All the
12 notices that were sent out to interested persons, we would
13 like part of the record.

14 H.O. BROWN: Any objections?

15 MS. HASTINGS: No. We believe they are part of the
16 record.

17 H.O. BROWN: Mr. Baiocchi.

18 MR. BAIOCCHI: Mr. Brown, I got a problem. Mr. Slater
19 floated a balloon across my path, and I usually hit the
20 balloons pretty good. The balloon was invisible. Hearsay
21 rules, when I objected to his witnesses testifying on behalf
22 of the Corps and the Corps not being here, the hearsay rules
23 -- has the Board adopted hearsay rules? And if they have, I
24 would like to have a copy of them. I really would.

25 So that question, I guess, would go to your legal

1 counsel. What are the hearsay rules that Mr. Slater has so
2 cited?

3 MS. MAHANEY: As applies to the Board, under Government
4 Code Section 11513, Subdivision D: hearsay evidence may be
5 used for the purpose of supplementing or explaining other
6 evidence but over timely objections shall not be sufficient
7 in itself to support a finding unless it would be admissible
8 over objection in civil actions.

9 MR. SLATER: I would also add, when something qualifies
10 for an exception to the hearsay rule is not hearsay. And we
11 offer these documents as a stipulated agreement, which
12 speaks for itself, and entitled to proof and to sustain an
13 objection against a hearsay claim. And, secondly, the other
14 documents prepared and offered as a business record.

15 Mr. Henderson testified for all the prerequisites for
16 that memorandum coming in and all the contents, for the
17 truth of the matter asserted.

18 H.O. BROWN: We will get into the acceptance of the
19 exhibits into evidence after the recross. Let's get started
20 now with the cross-examination.

21 Mr. Baiocchi, you are up for cross.

22 How do you intend to do this, Mr. Baiocchi? Who will
23 be lead counsel?

24 MR. BAIOCCHI: Ms. Scarpace will be lead on
25 cross-examination, but I have a number of questions also,

1 Mr. Brown.

2 H.O. BROWN: Ms. Scarpace, you will take the lead and
3 at the appropriate time hand it over to Mr. Baiocchi.

4 MS. SCARPACE: Thank you.

5 MR. BAIOCCHI: Thank you.

6 H.O. BROWN: Speak into the mike so we can hear you.

7 ---oOo---

8 CROSS-EXAMINATION OF SAN LUIS OBISPO

9 BY CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

10 BY MS. SCARPACE

11 MS. SCARPACE: Mr. Henderson, directing your attention
12 to CSPA's Exhibit J, which is -- I think it was also
13 introduced by your counsel -- consisting of the June 1st,
14 1972 order by the State Water Resources Control Board --

15 H.O. BROWN: Pull the microphone directly in front of
16 you. You speak very softly.

17 MS. SCARPACE: Concerning the June 1st, 1972 order by
18 the State Water Resources Control Board, I would like to
19 direct your attention to Page 11 of that order, which states
20 in part that:

21 Until further order of the Board permittee
22 shall make or cause to be made suitable field
23 measurements and studies and shall provide
24 any measuring facilities necessary to
25 determine the amount of water, timing and

1 rates of releases of water into the Salinas
2 River Channel below Salinas Dam required to
3 comply with the proceeding condition and
4 shall report to the Board annually or at such
5 other time as the Board may require such
6 measurements and studies and cumulative
7 results. (Reading.)

8 These were conditions to the City's permit in order to
9 provide for the needs of downstream users. Can you tell us
10 what reports you have made to the Board, what annual reports
11 you have made to the Board, on measurements and studies?

12 H.O. BROWN: Can you hear Ms. Scarpace in the back of
13 the room?

14 MR. SLATER: Who is the question to?

15 MS. SCARPACE: To Mr. Henderson.

16 MR. SLATER: Do you want to see the document?

17 MR. HENDERSON: I am pretty familiar with what she is
18 talking about.

19 Again, I wasn't involved in the project in the 1970s.
20 But in review of the files there were reports done, I
21 believe in 1975 by CH2MHill, to look at the operation in the
22 live stream, and those were subsequently presented to the
23 State Board relative to the live stream. And I believe it
24 was '77 which we cited that the Board determined that since
25 we were not making progress in resolving operations and

1 agreements with the North County, as well as the City, that
2 the imposition of the live stream condition would remain in
3 effect and that section, I believe, or those conditions were
4 deleted under that time extension or under that Board
5 order.

6 MS. SCARPACE: Was that at your request that those
7 requirements were deleted? At the City's request?

8 MR. HENDERSON: I haven't ever reviewed the Board's
9 hearing minutes. All I have is the action of the Board
10 which deleted it.

11 MS. SCARPACE: Do you know what downstream users were
12 given notice that those requirements would be deleted?

13 MR. HENDERSON: No, I don't. I am assuming Paso Robles
14 because they were a party to that. But I don't know at the
15 time who was noticed.

16 MS. SCARPACE: Do you have any knowledge of what were
17 the results, cumulative results, and findings regarding
18 downstream needs?

19 MR. HENDERSON: I haven't reviewed that report in a
20 long time. The main finding that stuck out of that report
21 was a belief that one monitoring point would be sufficient
22 to determine the live stream which was identified as Paso
23 Robles, point of Paso Robles, and that if there was water
24 flowing at that point then all downstream water users would
25 be protected. The Board acted that there wasn't adequate

1 information to support that, so they didn't rule in that
2 manner.

3 MS. SCARPACE: Are you aware that the City's permit is
4 conditional upon meeting the needs of prior downstream
5 rights, water rights?

6 MR. HENDERSON: Yes. That is what was -- why the live
7 stream conditions were imposed.

8 MS. SCARPACE: Has there been any efforts by the City
9 to quantify those needs, other than live stream agreement?

10 MR. HENDERSON: Can you repeat that question?

11 MS. SCARPACE: Has there been any effort by the City of
12 San Luis Obispo to quantify the amount of the downstream
13 needs other than the live stream agreement?

14 MR. HENDERSON: The only additional studies that have
15 been referenced, there were studies done in the late '80s,
16 looking at the impacts to the live stream condition on the
17 City's water supplies. Those studies indicate that, and the
18 City understands that, as the water use downstream continues
19 to increase, the time of year will become earlier and
20 earlier that we have to begin releases. That study revealed
21 that, in fact, the live stream is protecting those
22 downstream water users and, as use increases, releases will
23 have to begin earlier and earlier in the year.

24 MS. SCARPACE: I'd also like to direct your attention
25 to Page 4 of the same Board Order of 1972, and that states

1 in part:

2 According to the Corps' operation and
3 maintenance manual for the Upper Salinas
4 River Dam, the depletion rate of the
5 underground reservoir between Salinas Dam and
6 the City of Paso Robles was estimated at 70
7 acre-feet per day in 1959. But may vary from
8 year to year. The Board estimates that
9 summer water requirements of the users along
10 that reach of river are about 30 cubic feet
11 per second. Most diversions are accomplished
12 by shallow wells located in the porous river
13 gravel adjacent to the river channels.

14 (Reading.)

15 Do you purport to state that the live stream agreement
16 satisfies that need of 70 acre-feet per day and 30 cubic
17 feet per second during the summer months?

18 MR. HENDERSON: I couldn't answer that question. I am
19 not an expert in that.

20 MS. SCARPACE: Have you -- do you know of any figures
21 calculating the amount -- the number of cubic feet per
22 second that flow down the Salinas River with live stream
23 releases?

24 MR. HENDERSON: Just the information that we have as
25 far as what our releases are; and there is a stream flow

1 gauge in Paso Robles that is monitored by the USGS, I
2 believe. So there is that historical information on what
3 the releases are and what the flows are down at their
4 gauging station.

5 MS. SCARPACE: Do you know, though, approximately how
6 many cubic feet per second are released with that live
7 stream agreement?

8 MR. HENDERSON: That could be calculated, but I don't
9 have that information before me. There are daily records
10 and monthly records kept for the release from the dam, and
11 from those records I assume you can calculate what the cubic
12 feet per second is released, but I don't have that
13 information.

14 MS. SCARPACE: We just subpoenaed some information from
15 the County of San Luis Obispo, which maintains the Salinas
16 Dam and its -- and I was wondering if looking at any of
17 those records of the flows would refresh your memory
18 regarding --

19 MR. HENDERSON: Again, I have records in my office of
20 all the monthly information. I don't have the daily
21 information. I don't believe that is in a computer format.
22 Monthly information, we have in our files, but, again, I
23 don't review that as far as how many cfs.

24 MS. SCARPACE: May I show these documents to you.
25 Since we just received them by subpoena, they were sent

1 directly to the State Water Resources Control Board. I
2 would like to have them introduced into evidence, and I
3 would like Mr. Henderson to take a look to see if he --

4 H.O. BROWN: Could you give the title and the number?

5 MS. SCARPACE: This was received October 8, 1999, from
6 Glenn Britton of the County of San Luis Obispo. And this
7 was pursuant to the subpoena that --

8 MR. SLATER: I am just going to offer an observation
9 and suggestion. Mr. Henderson was not offered as a witness
10 with expertise in downstream flow regimes. The City does
11 have a subsequent expert who is going to be testifying in
12 another panel. This is beyond the scope of his direct, and
13 we would suggest another opportunity to ask these questions
14 of the person who is being offered for that expertise.

15 H.O. BROWN: Would that be suitable?

16 MS. SCARPACE: That will be suitable.

17 H.O. BROWN: You may wish to give that a title and
18 number.

19 Ms. Mrowka, do you have a number for it?

20 MS. MROWKA: You subpoenaed a number of documents.
21 What number --

22 MR. BAIOCCHI: Can't hear you, your microphone is not
23 working.

24 MS. SCARPACE: I think we will give it CSPA's Exhibit
25 HH, I believe that is where --

1 MS. MROWKA: I believe I go through EE.

2 MR. BAIOCCHI: No, no. We have more stuff coming in.

3 I'm Italian and a little slow, I am sorry. This will be II.

4 H.O. BROWN: Which one?

5 MR. BAIOCCHI: II, Mr. Brown.

6 H.O. BROWN: On all your exhibits that you bring up

7 during the course of this hearing, make sure that Kathy

8 stays current with what you have. If it is an additional

9 exhibit, give it the next number in sequence. Make sure it

10 matches with staff here.

11 MR. BAIOCCHI: Would you like me to give her six copies

12 right now to help her?

13 H.O. BROWN: At the appropriate time. If you are going

14 to introduce it now, give it to her.

15 MR. BAIOCCHI: Thank you.

16 MS. SCARPACE: That is all the questions I have.

17 Thank you.

18 MR. BAIOCCHI: We may or may not be able to save some

19 time. You are going to put on a second panel?

20 MR. SLATER: That's correct.

21 MR. BAIOCCHI: Mr. Gray is part of that panel?

22 MR. SLATER: That's correct.

23 MR. BAIOCCHI: Thank you.

24 Is there anyone here who would be able to answer any

25 NEPA questions?

1 MR. SLATER: We are not offering anyone here as a NEPA
2 expert.

3 MR. BAIOCCHI: What panel would be more --

4 MR. SLATER: We have a subsequent panel who is
5 responsible for environmental documentation. If you have a
6 policy question --

7 MR. BAIOCCHI: It's not a policy question, it is a
8 question.

9 Okay. It will be the second panel.

10 Is there anyone here that can -- the gentleman right
11 here, Mr. Moss. I would like to know why there are no
12 mandatory stream flow requirements from Salinas Dam to
13 protect public resources, such as fish and aquatic
14 resources, in the river below the dam aside from the live
15 stream agreement?

16 MR. SLATER: I think the permits --

17 MR. BAIOCCHI: Do you know why there is no flow --

18 MR SLATER: The permits speak for themselves.

19 MR. BAIOCCHI: In other words, that is correct. In
20 other words, what you are saying, Mr. Moss, you are saying
21 that 5882 permit does not have any mandatory requirements to
22 protect public trust resources below the dam?

23 MR. SLATER: That is not his testimony.

24 MR. MOSS: That's correct.

25 MR. BAIOCCHI: It is a question. Forget it if it is

1 not his testimony; it's a question, very important.

2 MR. MOSS: To be quite honest, I have reviewed in depth
3 the details of that permit, so I can't respond what is or is
4 not within the contents of that document.

5 MR. BAIOCCHI: So, wouldn't it be true if that permit
6 didn't contain a specific permit condition to protect public
7 trust resources below the dam, if there is no condition in
8 there, then it doesn't have it, correct? Isn't that true?

9 MR. MOSS: You're proposing not a question, but an
10 answer to me. And, again, as I stated, I have not that
11 direct familiarity with the exact contents of that permit.

12 MR. BAIOCCHI: Who --

13 MR. SLATER: To the extent it calls for a legal
14 conclusion, if you are asking whether there are conditions
15 -- that there are conditions that provide for public trust
16 resources, you will need to define public trust resources
17 for this witness and then, perhaps, he can answer.

18 MR. BAIOCCHI: Either this panel or the next panel, who
19 has the expertise in addressing flows from the dam?

20 MR. SLATER: We will have an expert, Bill Hutchison who
21 will be in the next panel and will be discussing flows from
22 the dam.

23 MR. BAIOCCHI: Beautiful.

24 H.O. BROWN: I am going to interrupt here a moment. Do
25 you have one more panel to put on?

1 MR. SLATER: Yes.

2 H.O. BROWN: Would it be more helpful if we had the
3 other panel to go now, or do you want to do them separately?
4 Continue on, then.

5 MR. BAIOCCHI: Again, I have NEPA questions. What
6 about CEQA, is that the second panel?

7 MR. SLATER: You're welcome to poise the question. If
8 it is beyond their expertise, then they'll tell you.

9 MR. BAIOCCHI: What I will do is wait, then I'll catch
10 the other party later without you knowing. That's it.

11 MS. SCARPACE: I have a couple questions for Mayor
12 Settle.

13 MR. SETTLE: Go right ahead.

14 MS. SCARPACE: I have a document here entitled "The
15 City of San Luis Obispo Utilities Department Resource," and
16 dated summer 1999, and it states that San Luis Obispo water
17 rates are reduced by 10 percent.

18 Is that an incentive for conservation of water in your
19 City?

20 MR. SLATER: Can I respectfully request that the
21 witness be shown a copy of the exhibit and have an
22 opportunity to review it?

23 MR. SETTLE: I am familiar with this. That is --
24 basically, we have a water reserve fund in anticipation of
25 capital construction. We have a two-year budget. Because

1 of these delays, which some of the individuals in this room
2 have helped promote, we haven't been able to continue to
3 hold that amount of reserve. So we decided to give our
4 ratepayers a bit of a break.

5 MS. SCARPACE: The water that you're proposing to
6 increase in storage in the Salinas Dam, is that needed for
7 your present needs of the City or for your future?

8 MR. SETTLE: Both. We have an existing City, which we
9 have to support its existing needs. In addition, you have
10 the urban reserve line in which we have an obligation to
11 recognize its future urban uses. Because as it now stands
12 in this room at this very minute, supervisors of this
13 county, of San Luis Obispo, continue to approve urban uses
14 inside urban reserve line without respect to the proper
15 availability of services, specifically water and sewer
16 services.

17 I remind you that county and cities operate on a
18 different playing field. It is not level. We have a
19 performance standard in terms of a full class city sewer
20 system and water system. The county can operate with a well
21 and a septic tank.

22 MS. SCARPACE: Has the -- is this urban reserve line
23 beyond the City boundaries?

24 MR. SETTLE: It is essentially just beyond the City
25 boundaries and within the area of the general plan to

1 recognize our obligation under the State of California HCD
2 for housing and under city/county relations as far as the
3 use of circulation, any type of retail use of -- essentially
4 these are not areas we are pushing.

5 We are primarily looking at this source to conserve and
6 to maintain what we currently have. The urban reserve line
7 is a rather small area, but basically it is designed to
8 recognize that you are going to have future uses and if they
9 are not properly done we will have problems with those uses.
10 Because as a member of the court, you are well aware
11 yourself that if urbanization takes place outside the City,
12 inside the urban reserve line, and it has a major failure of
13 water or sewer system, it is not hard to get a court
14 judgment to require the City extended services.

15 I remind this group we have extended services to the
16 County airport and also to the mobile home park. They are
17 not in the City. It is not our choice. These are
18 requirements, as conditions of doing business. So in that
19 sense, I want to avoid any more of that than necessary. For
20 failure on part of one government can impact another
21 government. It's happened all throughout California. I
22 don't want to be another victim of that type of poor
23 management.

24 MS. SCARPACE: Is it true that there is a turnout for
25 the State Water Aqueduct, coastal aqueduct, that is in the

1 City of San Luis Obispo or within a short distance of the
2 City?

3 MR. SETTLE: There are turnouts within the area of the
4 state water line, sure. That is common knowledge. But,
5 basically, that is not the issue in front of us.

6 MR. HENDERSON: Let me answer that question. I am not
7 aware there is a turnout near the City. There is
8 discussions of a small private water company south of town
9 looking at getting an entitlement and putting a turnout at
10 that location. But I don't believe those turnouts have been
11 installed. So I don't believe there is an actual pipeline.
12 The pipeline runs through the area, but there is no turnout
13 facilities.

14 MR. SETTLE: Mr. Henderson is correct. I thought you
15 meant throughout the entire line.

16 MS. SCARPACE: Isn't turnout three within -- close to
17 the City of San Luis Obispo?

18 MR. HENDERSON: I am not aware there is a turnout
19 designed for deliveries to other agencies. If there is some
20 facility there, it is not for -- I know the small water
21 company is trying to figure out how it can pay to install a
22 turnout. So, obviously, if there is one there, it is not
23 for the purpose of delivering water. It's for some other
24 purposes. But I am not aware of any turnout facilities in
25 the vicinity of reach three.

1 MS. SCARPACE: Is it true that the residents of the
2 City of San Luis Obispo have turned down available state
3 water use?

4 MR. SETTLE: One was an advisory vote in the early
5 '90s. The second one, basically, was simply saying the
6 preference is for local control. And it is clear that as
7 one of the water folks from the State indicated, in time of
8 a drought you may not get what you think you have signed up
9 for.

10 MS. SCARPACE: Does the City of San Luis Obispo have
11 any power to override that advisory vote and to contract for
12 State water?

13 MR. SLATER: Objection. It calls for legal
14 conclusion.

15 MR. SETTLE: I agree.

16 H.O. BROWN: Sustained.

17 MS. SCARPACE: With respect to your ability to or the
18 City of San Luis Obispo's ability to obtain water from
19 Nacimiento Reservoir, are you aware of an oil pipeline that
20 goes from San Ardo close to Nacimiento and traverses close
21 to Whale Rock?

22 MR. SETTLE: I will let Gary or John answer.

23 MR. HENDERSON: Yeah. I've heard of that. We have not
24 heard of a specific location. That has been low analyzed as
25 a potential use and the -- I actually haven't fully reviewed

1 that analysis. But my understanding is that it would not
2 meet the needs of the project as defined, and there is some
3 questions on the ability to pump water, the cost of pumping
4 the water over there. And there is limitations if you are
5 going to move it over to Whale Rock. We have limitations on
6 storage at that facility, too. So, that's been looked at in
7 the past and is not being pursued at this time.

8 MS. SCARPACE: What is the capacity of Whale Rock for
9 storage of water?

10 MR. HENDERSON: Storage of water in Whale Rock is
11 40,662 acre-feet.

12 MS. SCARPACE: Have you attempted to see whether or not
13 the existing pipeline that we just referenced to would be
14 adequate for transporting water from Nacimiento to Whale
15 Rock?

16 MR. HENDERSON: Again, as I stated, that has been
17 reviewed by -- I believe Boyle Engineering did an analysis
18 on that as part of the Naci Project. I haven't thoroughly
19 reviewed that. My understanding is that there was issues
20 associated with that; that alternative was not being pursued
21 at part of Naci Project.

22 MS. SCARPACE: What prevents the City of San Luis
23 Obispo from pursuing that as an alternative?

24 MR. HENDERSON: The Nacimiento Project, the County of
25 San Luis Obispo has an entitlement to the water. Back in

1 '91 the City during the height of the drought requested
2 entitlement from the County. The county said they would not
3 give the City their own entitlement, that if they were going
4 to do the project, it was a regional project to serve
5 multiple agencies. At this point in time that is the
6 project that is being analyzed and looked at. It's
7 undergoing a revised Draft EIR as we talk. But the agencies
8 they are looking to serve are the cities of Paso Robles,
9 Templeton and Atascadero, up the 101 corridor to the City of
10 San Luis Obispo. There is already an existing pipeline that
11 was put in as part of the State Water Project through our
12 tunnel, available to us, sitting empty to go through the
13 tunnel to deliver this water to the City of San Luis. That
14 is the route that is being looked at, not the oil pipelines
15 that would only meet the City's needs.

16 MR. SETTLE: I might add to that, in the middle of the
17 crisis, water rationing and all, the County government chose
18 not to give us any assistance in terms of trying to get
19 access to Nacimiento water from any source. Thus, it is
20 even more of a case why I am here today arguing for Salinas.

21 MS. SCARPACE: I guess that is all the questions.

22 MR. BAIOCCHI: I have two questions.

23 What is the population of the County?

24 MR. SETTLE: The population of the County is well over
25 a quarter of a million people.

1 MR. BAIOCCHI: And the population, as I understand it,
2 based on your testimony, is 43,000 for the City of San Luis
3 Obispo?

4 MR. SETTLE: Basically, we have an evening population
5 of that number approximately. But daytime population, as I
6 indicated earlier, is substantially larger. We have a large
7 work-residence pattern. The university, I might add, is
8 adding, along with Questa College, several thousands of
9 students as they expand. As a professor there, I am well
10 aware.

11 MR. BAIOCCHI: What we have, I guess, is the County
12 representing a quarter of a million people fighting with the
13 City who represents 43,000 plus?

14 MR. SETTLE: A relative comparison. We are looking in
15 terms of the ability of the City to survive. Sir, you must
16 realize that I am looking in terms of economic as well as
17 environmental survival of an existing community. You don't
18 want to run out of water. I wouldn't do that to you. Don't
19 do it to us.

20 MR. BAIOCCHI: Wouldn't it be true that uses for the
21 County, the uses for the County, are different than the uses
22 for the City? An example, you have irrigation. You have
23 people that are farming and things like that there. Is that
24 true?

25 MR. SETTLE: We focus in the City on -- we focus in the

1 City of San Luis Obispo on reservoirs to meet or urban wells
2 and for ag. We don't compete in that sense of the word, and
3 so basically it is a different performance standard on your
4 question.

5 MR. BAIOCCHI: Thank you.

6 I have a second question, but I don't know if these
7 folks will be able to answer.

8 Maybe, Scott, you can. The CSPA filed a protest --

9 H.O. BROWN: Scott is not sworn.

10 MR. BAIOCCHI: I know that Scott is not sworn. I am
11 trying to pull it out.

12 H.O. BROWN: Go ahead and ask the question.

13 MR. BAIOCCHI: Back in 1991 CSPA filed a protest. How
14 many other protests were filed?

15 MR. HENDERSON: My understanding -- during the time?

16 MR. BAIOCCHI: Yes, during that time frame.

17 MR. HENDERSON: There was only CALSPA'S protest.

18 MR. BAIOCCHI: Thank you very much.

19 MS. SCARPACE: I have a couple questions for Mr. Moss.

20 Has the alternative of desalination been looked into as
21 far as the recent development in using fuel cells as the
22 energy source?

23 MR. MOSS: We have not commissioned any detail studies
24 on the desalination in recent history relative to any
25 potential new technology. We do stay current, generally,

1 with the trend of the technology as it pertains to different
2 water supply projects. And at this point in time
3 desalination still does not appear to fall in our radar
4 screen.

5 MS. SCARPACE: Also, with respect to alternatives, has
6 the City of San Luis Obispo looked into dredging the Salinas
7 Dam for silt to keep the level constant?

8 MR. MOSS: I believe that was a comment that was
9 received during the environmental impact review process, and
10 one member from the other panel would be able to respond to
11 that from a detailed technical analysis.

12 MS. SCARPACE: I believe that is all the questions I
13 have.

14 H.O. BROWN: We are going to adjourn for lunch. We
15 will come back at ten minutes after one, and, Ms. Cahill,
16 you will be up on cross.

17 MR. SLATER: Mr. Brown, if I might, the mayor is
18 prepared -- would love to catch another meeting in San Jose,
19 if he might be excused from the panelist, if Ginny has --

20 MS. CAHILL: I do have questions. If you prefer to go
21 another ten minutes now and then cut him loose.

22 H.O. BROWN: You have ten minutes of questions for the
23 mayor so we may send him back?

24 MS. CAHILL: If that would accommodate everybody.

25 H.O. BROWN: Anybody object to that?

1 All right, Ms. Cahill, take ten minutes and question
2 the mayor.

3 MS. CAHILL: It is not the order I would have planned,
4 but I think we all should accommodate each other.

5 MR. SLATER: Thank you.

6 H.O. BROWN: Thank you for accommodating.

7 Staff, do you have questions of the mayor?

8 MS. MROWKA: Not of the mayor.

9 MR. MALONEY: I would like to put on the record that we
10 have been told that we cannot cross-examine because we are
11 not a protestant in this hearing. We will take appropriate
12 actions at the appropriate time.

13 Thank you.

14 H.O. BROWN: Ms. Cahill.

15 MS. CAHILL: Thank you.

16 H.O. BROWN: Thank you.

17 ---oOo---

18 CROSS-EXAMINATION OF SAN LUIS OBISPO

19 BY PASO ROBLES

20 BY MS. CAHILL

21 MS. CAHILL: Good morning, gentlemen.

22 Mayor Settle, I understand that the City has a policy
23 against competing with ag for water; is that correct?

24 MR. SETTLE: That is my preference.

25 MS. CAHILL: During the drought when the City increased

1 its groundwater pumping, as a political matter it chose not
2 to purchase water from local farmers; is that correct?

3 MR. SETTLE: You will have to ask the staff specifics on
4 those agreements or arrangements.

5 MS. CAHILL: You have no remembrance of that?

6 MR. SETTLE: I didn't get into that aspect. We were
7 involved with some drilling for water within the urban
8 boundaries of the City, and as well as the urban reserve
9 line. And that was an emergency basis after the County
10 basically said we are not go to assist you in any
11 alternative water source. You are not going to get anything
12 from Salinas. You are not going to go after any other
13 source.

14 As that measure -- an emergency was declared. We went
15 after an appropriate amount of groundwater to make up that
16 difference. My testimony, as you are well aware, resulted
17 in a case where we had to pay some damages for a certain
18 amount of subsidence. One reason why groundwater is not an
19 option for us in the future.

20 MS. CAHILL: I would like to explore that because, in
21 fact, the court in that Los Osos Valley case didn't hold
22 that it was unreasonable for the City under any
23 circumstances to use groundwater, did it?

24 MR. SETTLE: The court was saying, in essence, any
25 consequence you pay. We did.

1 MS. CAHILL: Wasn't it true that the court mentioned
2 that you had failed to attempt to get water from local
3 farmers for political reasons?

4 MR. SETTLE: That is a judgment call on the part -- and
5 perhaps Hatch and Parent and other members might want to
6 respond to that. I didn't deal with that aspect of it
7 because specifically I was saying that I needed to insure
8 the health, safety and welfare as well as the existing
9 ability of the City to have water in this time of emergence.

10 MS. CAHILL: Were you aware of the court also pointed
11 out that part of the reason it didn't consider it to be such
12 an emergency was that the City had seen the shortage coming
13 and had failed to implement conservation early enough?

14 MR. SETTLE: Well, we basically had a growth management
15 plan as I was involved. Way back in '81 we had water
16 conservation. It didn't turn out to be enough because it
17 was very hard to calculate what was a safe annual yield of
18 some of these reservoirs. It's rather a slippery subject,
19 as it were.

20 As a result of that, basically this drought was pretty
21 nasty. And if it wasn't for that March miracle it would be
22 worse. Now, as a result of all of this, we had made as much
23 efforts, as you heard earlier this morning, to try to secure
24 additional water sources and anything to the contrary would
25 be an incorrect assumption.

1 MS. CAHILL: Let me get back to the City. The City
2 does have a policy, though, in its urban management plan not
3 to compete with agriculture for water; is that correct?

4 MR. SETTLE: It is my understanding that we don't wish
5 to compete with agriculture for water.

6 MS. CAHILL: You testified earlier that you consider
7 reservoirs to be for cities and wells to be for agriculture?

8 MR. SETTLE: As it related to North County, that is
9 what I was saying. By the way, may I point out to you, just
10 to show our diligence, my term of office, City of San Luis
11 Obispo City Council held for the first time in the history
12 of the City Council meeting in Paso Robles to try to work on
13 alternate water sources. No commitment so far.

14 MS. CAHILL: Do you understand that the Salinas
15 Reservoir Expansion Project, in fact, though, could reduce
16 the amount of water available to agriculture in the Salinas
17 Valley?

18 MR. SLATER: Assumes facts not in evidence.

19 MR. SETTLE: Not only that, you can argue the same for
20 Nacimiento. And Nacimiento, I might point out to you, is a
21 reservoir that basically is part of the 17,500 acre-feet
22 that belongs to San Luis Obispo County. But I can't get
23 access to it.

24 MS. CAHILL: Your Urban Water Management Plan also
25 provides that you won't -- unfortunately, I was not

1 expecting to do you first -- something to the effect that
2 it would not adversely affect habitat by reducing natural
3 stream flow.

4 Do you mean natural flow streams in the streams near
5 San Luis Obispo?

6 MR. SETTLE: The question is vague. It is not clear
7 what you are asking.

8 MS. CAHILL: Are you familiar with your Urban Water
9 Management Plan?

10 MR. SETTLE: Oh, yes.

11 MS. CAHILL: Perhaps Mr. Moss could show you the page
12 that addresses that policy.

13 MR. MOSS: Do you have that page number handy?

14 MS. CAHILL: I would in your examination.

15 Let me not take the time now.

16 Mayor, you are not aware of a policy of the City to
17 attempt to avoid reducing natural stream flow?

18 MR. SETTLE: We don't want to necessarily interfere
19 with a natural stream flow. Basically, I have to emphasize
20 this, as an attorney yourself you should be more than aware
21 that all waterways are federal. And in many cases I can't
22 do anything in that waterway without having as many as eight
23 different permits, including for maintenance or for anything
24 else. You can have a prescriptive easement. That means
25 nothing. You have to get the Army Corps. You have to get

1 water resources. You go down the list, Fish and Game. I
2 emphasize to you that we can have a water management plan,
3 stream management, all that type of situation.

4 However, I emphasize to you that waterways are
5 federally controlled, emphasize that point. Because if I
6 wanted to do anything on our waterways, I have to get all
7 those permits. If the agencies don't give them to you, we
8 can be held criminally and civilly liable, including myself
9 personally. Has a chilling effect on any local government
10 who wants to do a lot of this activity.

11 So, I think the free days of those things in our own
12 backyards, as far as waterways, are no longer under urban
13 controls as they once were.

14 MS. CAHILL: Do you admit that the city of Paso Robles
15 is also a city?

16 MR. SETTLE: Of course.

17 MS. CAHILL: Do you also admit that we have to provide
18 for our inhabitants?

19 MR. SETTLE: No question. There is a difference
20 between if you're over an aquifer. We are not.

21 MS. CAHILL: Do you admit that we have to provide for
22 our existing inhabitants?

23 MR. SETTLE: There is no question about providing for
24 your inhabitants. The question is we have put an emphasis
25 on growth management, water management, recycling water,

1 reclamation because we don't have any room for error. We
2 are not over any aquifer, that North County doesn't have
3 these kinds of restrictions and they are over a substantial
4 aquifer. I emphasize, we are not.

5 MS. CAHILL: Has the City of San Luis Obispo used up to
6 2,000 acre-feet of water in groundwater in the past?

7 MR. SETTLE: In an emergency, yes.

8 MS. CAHILL: In nonemergency situations?

9 MR. SETTLE: I don't believe we have.

10 MR. HENDERSON: No, we haven't. Our preference is the
11 reservoirs.

12 MS. CAHILL: With regard to desalination, is it true
13 that during the drought the City of Morro Bay built a
14 desalination plant?

15 MR. SETTLE: Yes.

16 MS. CAHILL: Is it located near the City of Morro Bay?

17 MR. SETTLE: Yes. I am not representing Morro Bay here.

18 MS. CAHILL: I know.

19 MR. SETTLE: Let me emphasize to you that they had big
20 problems. Desal is not a panacea. I emphasize that all
21 year long.

22 MS. CAHILL: Is there any possibility that you could
23 either acquire that or enter into an agreement with the City
24 of Morro Bay, use your existing pipeline from Whale Rock --

25 MR. SETTLE: I find the question --

1 THE COURT REPORTER: One at a time.

2 MS. CAHILL: -- in times of drought use that when push
3 came to shove as supplemental water supply?

4 MR. SETTLE: Unrealistic when you consider the
5 environmental requirements member that we have to go through
6 to do any of this. Plus our pipeline from Whale Rock to San
7 Luis has its own limits, and, essentially, it is unrealistic
8 judging from a person who is from Santa Barbara to see what
9 they had to deal with and the dilemmas they had with their
10 desal. It is not as easy as you might want to portray it to
11 be.

12 MS. CAHILL: I would assume that the pipeline from
13 Whale Rock would have capacity during the drought?

14 MR. SLATER: These questions are appropriate for staff
15 who do know the technical information and can respond, as
16 opposed to --

17 MR. SETTLE: I concur with Mr. Slater.

18 MS. CAHILL: This may have already have been asked and
19 answered. Let me understand. When the -- in the height of
20 the drought the voters of the City of San Luis Obispo
21 advised against taking State Water Project water, or did
22 they preclude it? What was the vote?

23 MR. SETTLE: It was an advisory ballot measure. Two
24 measures.

25 MR. HENDERSON: Let me clarify that. There was an

1 advisory vote and the advisory vote said that the majority
2 didn't want to participate. Very close. And then the City
3 Council directed participation in the State Water Project.
4 Subsequent to that City Council action, there was a
5 referendum in a binding vote of the public and they turned
6 down the council's action to participate in that action.

7 MR. SETTLE: That's correct.

8 MS. CAHILL: Did that vote preclude you from purchasing
9 water from other State Water Project contractors on the
10 coastal branch?

11 MR. SLATER: Calls for a legal conclusion.

12 MR. SETTLE: I concur with Mr. Slater.

13 MS. CAHILL: Has your staff informed you that that is a
14 possibility?

15 MR. SLATER: Ask Mr. Slater to respond.

16 MS. CAHILL: That is not a legal question.

17 Has your staff informed you that there is a possibility
18 of acquiring water from other State Water Project
19 contractors?

20 MR. SETTLE: There is always a possibility, but the
21 difficulty I would find is you will have to go through a
22 substantial complicated, protracted process that may take as
23 long as we are talking about to get Salinas on line. Why I
24 say that is the pipeline has been built and sized. There is
25 no turnouts, and you go from there.

1 MS. CAHILL: If someone further down the pipeline has
2 an unused entitlement, it would be possible to acquire it?

3 MR. SETTLE: That's speculation.

4 MR. SLATER: Also calls for legal conclusion.

5 MS. CAHILL: I said "if."

6 H.O. BROWN: You may answer if you have an opinion.

7 MS. CAHILL: You indicated that the City has met with
8 everyone and continues to offer concessions to all the
9 interested persons and entities?

10 MR. SETTLE: Yes.

11 MS. CAHILL: What have you done to address the concerns
12 of the cities downstream of Salinas Reservoir? What
13 concessions have you made to them to assure that they will
14 be made whole in the case of a drought?

15 MR. SETTLE: John, you want to respond to that.

16 MR. MOSS: Since I have been so heavily involved in the
17 majority of the meetings in North County relative to this
18 topic, probably the first concession that was made was the
19 decision not to proceed forward with the property transfer
20 agreements. That was at the request of County Board of
21 Supervisors and the North County water agencies. At the
22 time the North County Council formed what was called the
23 North County Water Task Force. That was led by Supervisor
24 Harry Olin or a portion of that task force and the request
25 was that we defer that action until such time as the task

1 force could take a look at the overall water supply
2 situation.

3 Beyond that, our efforts relative to supporting and
4 seeing the Nacimiento Project move forward as a regional
5 project with regional opportunities that could support the
6 future needs of the North County as well as the City of San
7 Luis Obispo, I think, have been extensive. Our staff or
8 utilities engineer chaired that Nacimiento participants
9 advisory committee on that project for in excess of two
10 years.

11 I myself chaired the cooperative use committee on the
12 Nacimiento Project for all interests on that project or
13 concerns on that project with people adjacent to Nacimiento
14 Lake and Heritage Ranch and other recreational areas. I
15 think to that regard additionally our efforts would be a
16 revised Draft EIR to respond to the questions and concerns
17 relative to downstream hydrologic impacts and biological
18 impacts on the project have been considerable.

19 And so we have tried to be a leader in resolving the
20 regional efforts. We have also been an ongoing participant
21 member for about the last four, five years, I think since
22 1995, on the North County task force which is now called the
23 North County Forum. To my knowledge we have only missed one
24 meeting in that five-year time frame.

25 MS. CAHILL: If I can come back to the Salinas

1 Reservoir, the revised Draft EIR mentioned a potential
2 mitigation measure of releasing some portion of the new
3 storage when it was needed downstream, and that was rejected
4 because it would reduce the amount City would get.

5 Isn't it true that the City wants every last drop of
6 the increased yield and has been unwilling to discuss
7 anything other than live stream agreement for getting any
8 part of that water under any circumstances to the downstream
9 entities?

10 MR. MOSS: Based on my knowledge of the environmental
11 document, the conclusions reached in that document were that
12 the live stream agreement does preclude the project from
13 having any significant adverse effects to downstream water
14 resources. Therefore, there was no reason for or rationale
15 behind the City providing mitigation for impacts that were
16 not determined to be significant.

17 MS. CAHILL: Let me ask the mayor a last question.
18 You said that -- at the very end you said you don't want to
19 run out of water. I wouldn't do it to you. Don't do it to
20 us.

21 If the evidence here shows that, in fact, the Salinas
22 Reservoir Project will cause impacts to entities such as
23 Paso Robles downstream, what would you do? Would you be
24 willing to back off part of it or to make sure that they are
25 not hurt, or are you going full speed ahead regardless?

1 MR. SETTLE: I have to emphasize to you that the City
2 of San Luis Obispo with its urban track record of
3 conservation and looking at alternative sources of water has
4 worked on this issue for over a decade. We've had dilemmas
5 with the Army Corps of Engineers on ownership. We've tried
6 with due diligence to get this clarified. We have tried to
7 work with North County communities.

8 I've met countless times with people like Ken Weathers
9 and other members. The same thing holds true, that, in
10 fact, we do not have any backup of consequence. And there
11 is where the difference comes. North County, as was pointed
12 out earlier in the opening comments, has several wells
13 available that they have installed. That changes the
14 capacity in terms of, I believe, the live stream judgment.
15 For the more straws in the soup the harder it is going to be
16 to keep that level up to where the reservoir is even
17 viable.

18 In the event any way you look at it, since I have no
19 real solid aquifer under the City, it is my intention to
20 preserve in high density urban use for the public health,
21 safety and welfare. Now we are into survival, not
22 convenience, is why I have taken the position I have this
23 morning and will continue to do so.

24 MS. CAHILL: Do you believe an overdrafted aquifer is
25 an adequate supplemental water supply?

1 MR. SETTLE: It is not what I prefer to do. But I do
2 not control the groundwater, and it is a judgment which is a
3 policy matter for the State and this Board and those city
4 governments that rely off of groundwater. We do not in the
5 future, we really cannot; therefore, reservoir is our only
6 serious option.

7 MS. CAHILL: Actually, I didn't mean to ask whether an
8 overdraft and aquifer was an option for you. I guess what I
9 was intending to ask was: Do you believe an overdrafted
10 groundwater aquifer is an option for other people?

11 MR. SETTLE: You need to ask the other people. I am
12 focusing on the preservation of community. The voters have
13 elected me to represent them.

14 MS. CAHILL: You do admit that the City of San Luis
15 Obispo is not in the watershed of the Salinas River, don't
16 you?

17 MR. SETTLE: Neither is the Nacimiento Project. I
18 emphasize, too --

19 MS. CAHILL: I am not asking --

20 MR. SETTLE: -- you don't have --

21 H.O. BROWN: Answer the question, Mr. Mayor. Answer
22 the question.

23 MR. SETTLE: Many of these water sources are in areas
24 outside the immediate use. However, it is similar to the
25 state pipeline and the State Water Project. We have

1 Northern California versus Southern California.

2 MS. CAHILL: Isn't it true, in fact, that one of the
3 rationales for the City of San Luis Obispo not accepting
4 state water was that you prefer to rely on "local sources"?

5 MR. SETTLE: That was a consideration. Yes, that is
6 true.

7 MS. CAHILL: You considered Salinas a "local source"
8 even though you are out of the watershed?

9 MR. SETTLE: Yes.

10 MS. CAHILL: Do you think it's a local source for those
11 people who are in the watershed?

12 MR. SETTLE: In fact, they are using groundwater. It
13 is part of, perhaps, an aquifer, but it is not directly
14 related necessarily always to the reservoir itself.

15 MS. CAHILL: We have no further questions.

16 Thank you.

17 H.O. BROWN: Thank you, Ms. Cahill. Thank you for
18 taking Mr. Mayor out of turn.

19 MR. SETTLE: I appreciate that, Counsel, as well.

20 H.O. BROWN: We'll reconvene at 20 after one.

21 (Luncheon break taken.)

22 ----oOo----

23

24

25

1 AFTERNOON SESSION

2 ---oOo---

3 H.O. BROWN: We will come back to order.

4 Mr. Slater, are we missing a witness?

5 MR. SLATER: Mr. Moss has taken the mayor to the
6 airport and has not yet returned. He left virtually at the
7 close of the hearing for the break. He has taken him to the
8 Executive, which is roughly 40 minutes round- trip. Did
9 expect him back.

10 H.O. BROWN: Executive Airport?

11 MR. SLATER: And there he is.

12 H.O. BROWN: Do we have counsel for all parties
13 present?

14 MR. SLATER: I believe Lorraine is still in the
15 cafeteria.

16 H.O. BROWN: One thing we were taking about, Mr.
17 Baiocchi and others, we had a meeting scheduled at 8:30 in
18 the morning, different from this hearing here; that has been
19 canceled, would allow us to start earlier if all parties
20 would like to do that. If it would be a convenience to all
21 of you, I am willing to come in at nine instead of 10:00
22 that was so noticed, but it would take a concurrence of
23 everybody, if that is what you want. I will let you think
24 that question over. You may wish to counsel with your
25 fellow counselor, Mr. Baiocchi. Then we will bring that

1 subject up before the end of the day.

2 Ms. Cahill, you're on.

3 MS. CAHILL: Thank you.

4 I thought I would go first with some sources with you,
5 Mr. Henderson. Have you had a chance to catch your breath?

6 MR. HENDERSON: I am trying to; go ahead.

7 MS. CAHILL: I am going to pass over to you some Paso
8 Robles exhibits because we will be referring to them and it
9 might help the Board and the staff to get those so that we
10 can refer to things by number.

11 You indicated, Mr. Henderson, that you have been
12 through both City records and State Water Board records with
13 regard to Permit 5882; is that correct?

14 MR. HENDERSON: That's correct.

15 MS. CAHILL: Did you go through any of the records for
16 the permit on 5881, the Corps of Engineers' permit?

17 MR. HENDERSON: Not extensively, but I have seen some
18 of the records.

19 MS. CAHILL: Are you aware that for almost every year
20 between 1940 and 1990 or so the Corps of Engineers filed
21 progress reports of permittee and indicated that
22 construction of the project was complete?

23 MR. HENDERSON: I have seen those reports in your
24 testimony here.

25 MS. CAHILL: And to your knowledge, did the City of San

1 Luis Obispo file reports between 1943 and 1950 that
2 indicated that construction was complete?

3 MR. HENDERSON: I'd have to look at those specifically.
4 But looking at your -- looking through the reports, there
5 are a number of times when that was indicated as complete.
6 I guess, the City's reaction is that the physical dam is
7 complete and the City was putting water to beneficial use at
8 that time.

9 MS. CAHILL: But the dam was complete?

10 MR. HENDERSON: The way it is existing in the bill,
11 yes.

12 MS. CAHILL: In 1943, maybe we should find that, in
13 your progress report for the City of San Luis Obispo -- this
14 would be in Paso Robles Exhibit 7, the second one, 1943.

15 MR. HENDERSON: I got it.

16 MS. CAHILL: Does it say that construction is
17 practically complete, on number four?

18 MR. HENDERSON: Yes. It says construction is
19 practically complete, but still a small amount of work needs
20 to be done for Stenner Creek Storage Reservoir.

21 MS. CAHILL: The next year in 1944 does the City of San
22 Luis Obispo indicate that construction is complete in
23 response to Item Number 3?

24 MR. HENDERSON: Yes.

25 MS. CAHILL: In going through the City's records did

1 you find any records between 1942 and 1970 that indicated
2 that the City had asked the Corps to install spillway gates
3 and increase the size of the reservoir?

4 MR. HENDERSON: I don't remember any.

5 MS. CAHILL: Going through the State Water Board
6 reports, did you find any documents between 1942 and 1970
7 that indicated that the City of San Luis Obispo had
8 encouraged the Corps to install a spillway gate or expand
9 the reservoir?

10 MR. HENDERSON: Not specifically, but I might add that
11 the City continued to acknowledge that as the City grew our
12 needs for additional water supply would increase.

13 MS. CAHILL: You indicated that you would be making
14 increased beneficial use of supplies?

15 MR. HENDERSON: Yes.

16 MS. CAHILL: But that would also be true, that you
17 would make increased beneficial use of supplies from the
18 existing reservoir?

19 MR. HENDERSON: Right.

20 MS. CAHILL: You talked before about the 1972 order,
21 which certainly is a key item here. If you would turn to
22 Paso Robles Exhibit 12, there were several things going on
23 in those hearings and that were resolved in that order, were
24 there not?

25 MR. HENDERSON: That's correct.

1 MS. CAHILL: There was an action on petition for
2 extension of time?

3 MR. HENDERSON: Correct.

4 MS. CAHILL: There was an action invoking -- clarifying
5 permit terms to protect downstream uses?

6 MR. HENDERSON: Correct.

7 MS. CAHILL: And there was revocation of certain
8 permits?

9 MR. HENDERSON: That's correct.

10 MS. CAHILL: All of those things happened --

11 MR. HENDERSON: Or portions of a permit.

12 MS. CAHILL: Right.

13 Prior to those hearings, did the City have Paso Robles
14 file a petition of extension of time for construction work
15 and application of the water to propose beneficial use?

16 MR. HENDERSON: I am not aware of any petitions filed.

17 MS. CAHILL: In 1965, it's Paso Robles Exhibit 8J, did
18 the City of San Luis Obispo file for an extension of time?

19 MR. HENDERSON: This looks like petition for extension
20 of time for Permit 5882.

21 MS. CAHILL: You asked for, at that time, an extension
22 of time both to -- well, the form says "for completion of
23 construction work and/or beneficial use of water"; is that
24 correct? That is in number four.

25 MR. HENDERSON: That is correct.

1 MS. CAHILL: Do you understand that there are different
2 deadlines in Water Board permits, that there is a deadline
3 to commence construction; is that right?

4 MR. HENDERSON: I do at this point in my career.

5 MS. CAHILL: And is there a deadline for completion of
6 construction?

7 MR. HENDERSON: Yes.

8 MS. CAHILL: Is there a deadline for putting water to
9 beneficial use?

10 MR. HENDERSON: Yes.

11 MS. CAHILL: Do you remember in your original permits
12 what the deadline for completion of construction was?

13 MR. HENDERSON: The 1941?

14 MS. CAHILL: Yes.

15 MR. HENDERSON: I have an idea. I don't know the exact
16 date.

17 MS. CAHILL: Was it perhaps two years for construction
18 and 25 years for beneficial use?

19 MR. HENDERSON: Something to that.

20 MS. CAHILL: If you will turn now to Paso Robles
21 Exhibit 8, and you will see an order approving new
22 development schedule. And at that time did the State Board
23 grant Paso Robles an extension of time to September 30,
24 1970, to complete construction work?

25 MR. HENDERSON: Not the City of Paso Robles, the City

1 of San Luis Obispo.

2 MS. CAHILL: I am sorry, the City of San Luis Obispo.

3 MR. HENDERSON: Yes.

4 MS. CAHILL: Did it grant an extension of time to put
5 the water to full beneficial use to September 30th, 1970,
6 application of water to the proposed use?

7 MR. HENDERSON: Yes.

8 MS. CAHILL: Did the City of San Luis Obispo file an
9 additional time extension permit on October 31st, 1968?

10 MR. HENDERSON: Yes, it appears by this document.

11 MS. CAHILL: So, at that time you had extensions to
12 1970, both for commencing construction and for putting water
13 to the proposed use; is that correct?

14 MR. HENDERSON: That appears to be correct.

15 MS. CAHILL: Did the Board put out a notice of hearing
16 dated October 6th, 1971, which is Paso Robles Exhibit 9,
17 that says the time allowed for completion of construction
18 work and to complete application of water to the proposed
19 use has expired? That would be the second paragraph.

20 MR. HENDERSON: For all five permits has expired.

21 MS. CAHILL: That would include 5881?

22 MR. HENDERSON: Yes.

23 MS. CAHILL: And then there was the hearing and the
24 transcript is Paso Robles Exhibit 10.

25 Have you reviewed that transcript?

1 MR. HENDERSON: Not in detail recently.

2 MS. CAHILL: Following that hearing the order was
3 issued, that is at Paso Robles Exhibit 12. And if you would
4 turn to Page 10 in the ordering paragraph and read the
5 first paragraph for us, please.

6 MR. HENDERSON: Under order?

7 MS. CAHILL: Yes.

8 MR. HENDERSON: Time to complete use of water
9 under Permit 5881 of the U.S. Army Corps
10 of Engineers and Permit 5882 of the City
11 of San Luis Obispo is extended to
12 December 1, 1981. (Reading.)

13 MS. CAHILL: That refers to the time to complete use of
14 the water, does it?

15 MR. HENDERSON: I believe so.

16 MS. CAHILL: It doesn't say anything about
17 construction, does it?

18 MR. HENDERSON: Not in that paragraph, no.

19 MS. CAHILL: Later, when you received your new permits
20 after the adjustments were made between the Corps of
21 Engineers and the City of San Luis Obispo, when in 1995 the
22 Corps permit was revoked and you received a new permit on
23 which they were copermitttee, would you turn to Paso Robles
24 Exhibit 23 -- that is not it, I am sorry. Paso Robles
25 Exhibit 25. This is the order granting that revised permit,

1 is it?

2 MR. HENDERSON: Yes, it is.

3 MS. CAHILL: Would you return to Paragraph 6, please?

4 MR. HENDERSON: Yes.

5 MS. CAHILL: Would you read the sentence that starts
6 with "Construction work"?

7 MR. HENDERSON: Construction work shall be completed
8 on or before September 30th, 1970. Application
9 of the water to the proposed use shall be
10 completed on or before December 1st, 1981.

11 (Reading.)

12 MS. CAHILL: So, there is a different deadline for
13 construction?

14 MR. HENDERSON: I should state that in 1981 we filed
15 for a time extension and that was pending before the State
16 Board, and they have not acted on that at that point.
17 This condition was still in there.

18 MS. CAHILL: Isn't it true that ten years before 1981
19 the Board issue its order in 1972 and did not extend time
20 for construction?

21 MR. SLATER: The order is silent.

22 MS. CAHILL: Following up on that order, this order
23 says that construction work shall be completed in 1970.
24 That was the date of your last extension, right, prior to
25 the '72 hearings?

1 MR. HENDERSON: That's correct.

2 MS. CAHILL: And nothing in the '72 hearings
3 specifically extended a construction deadline, did it?

4 MR. HENDERSON: No. But typically the City has
5 requested time extensions to our permit.

6 MS. CAHILL: But it did specifically extend the time to
7 put to the proposed use?

8 MR. HENDERSON: Correct.

9 MS. CAHILL: When you look at your new permit, which is
10 Paso Robles Exhibit 25, if you look at condition seven, what
11 does condition seven say?

12 MR. HENDERSON: Want me to read the whole thing or just
13 summary?

14 MS. CAHILL? Well, I think it is short. Isn't
15 condition seven construction work shall be completed?

16 Mr. HENDERSON: No.

17 MS. CAHILL: Are you on Exhibit 25 -- 26, sorry.

18 This is now Permit 5881 as it now exists; is that
19 correct -- 5882 as it now exists? Sorry.

20 MR. HENDERSON: Yes.

21 MS. CAHILL: What does condition seven state?

22 MR. HENDERSON: Construction work shall be completed by
23 September 30th, 1970.

24 MS. CAHILL: What does condition eight state?

25 MR. HENDERSON: Complete application of water to

1 authorized use shall be made by December 1, '81. Again,
2 this new permit was issued specifically for the revocation
3 of the Corps' permit, adding them to our permit and didn't
4 modify any of the other conditions in our permit.

5 MS. CAHILL: It did not modify the other conditions;
6 that's exactly correct.

7 Now let's look at the exhibit that Mr. Slater was
8 asking you about today, that is Exhibit 11B. This is a
9 letter from State Water Board staff, is it not?

10 MR. HENDERSON: That's correct.

11 MS. CAHILL: Who are the cc's on that letter?

12 MR. HENDERSON: The Army Corps of Engineers and County
13 Water Works District Number 6, which I believe is in Santa
14 Margarita.

15 MS. CAHILL: This letter doesn't reflect any further
16 action of the State Board extending any time deadlines, does
17 it?

18 MR. HENDERSON: No. It is acknowledgement that it is
19 still pending.

20 MS. CAHILL: This letter was not sent to those people
21 who were parties to the 1972 hearing?

22 MR. HENDERSON: I am assuming not.

23 MS. CAHILL: There is nothing in this letter that would
24 modify the 1972 Board order?

25 MR. SLATER: Calls for legal conclusion.

1 MS. CAHILL: In your lay opinion.

2 H.O. BROWN: Are you objecting?

3 MR. SLATER: Yes, objection.

4 MS. CAHILL: I am willing to reword it.

5 In your lay opinion, does anything in this letter
6 change the 1972 Board order?

7 MR. HENDERSON: No. It's still pending before the
8 Board.

9 MS. CAHILL: You were asked earlier today how many
10 protests were received within the time frame of the Notice
11 of Petition for Extension of Time, and I think you said just
12 one; is that correct?

13 MR. HENDERSON: That's correct.

14 MS. CAHILL: How many were received later?

15 MR. HENDERSON: I didn't physically count them, but I
16 would guess about half a dozen or six or eight, somewhere
17 around that number.

18 MS. CAHILL: Who were those people who wanted to
19 protest?

20 MR. HENDERSON: Downstream property owners. I don't
21 recognize all the names, but there was a point when we were
22 doing presentations to the North County on the project that
23 an individual Xeroxed copies of protests and told everyone
24 at meetings, "If you don't like this project, fill out one
25 of these forms and send it to the State and you will be a

1 party to the protest." So at that time there was a number
2 of protests that we sent into the Board.

3 MS. CAHILL: Are you confident that all of those
4 downstream landowners received the original notice of the
5 petition?

6 MR. HENDERSON: That is not my area of responsibility.

7 MS. CAHILL: You didn't go to look to check to see?

8 MR. HENDERSON: I believe that is Board's
9 responsibility.

10 MS. CAHILL: Do you think it's possible that those
11 people attempted to protest as soon as they knew about the
12 project?

13 MR. HENDERSON: I don't know.

14 MS. CAHILL: At any time in the last 50 years has San
15 Luis Obispo owned the Salinas Dam?

16 MR. HENDERSON: No.

17 MS. CAHILL: At any time in the last 50 years has San
18 Luis Obispo had an agreement with the Corps of Engineers
19 that would require the Corps to expand the reservoir so it
20 could store a full 45,000 acre-feet of water?

21 MR. HENDERSON: Not to my knowledge. Again, there was
22 discussions with the Corps that the City desired to move
23 forward, but the Corps said under their ownership they
24 weren't interested in expanding the capacity and needed to
25 transfer to a local agency. And that's the issue we had

1 before about the ownership transfer.

2 MS. CAHILL: At any time in the last 50 years have you
3 had an agreement with the Corps that would allow you to
4 expand -- to put the spillway gates in place?

5 MR. HENDERSON: No, but we are working on those.

6 MS. CAHILL: Let's go back to the 1972 order, in
7 addition to extending time to complete use of water and
8 installing the live stream agreement for the protection of
9 downstream interests, did that order also revoke certain
10 permits?

11 MR. HENDERSON: It is my understanding, if I remember
12 right, it revoked one permit and it revoked the storage term
13 of another one.

14 MS. CAHILL: What are the reasons that those permits
15 were revoked?

16 MR. HENDERSON: My understanding, just looking through,
17 is a lack of a storage capacity or somewhere to store that
18 water under that permit and the lack of actually storing
19 that water under the terms of the permit.

20 MS. CAHILL: Does the decision actually recite that it
21 was because those permittees -- well, first of all, let's
22 establish who those permittees were.

23 Who was the holder at the time of Permit Number 8471?

24 MR. SLATER: Counsel, do you have that exhibit number?

25 MS. CAHILL: Yes. This is Paso Robles Exhibit 12.

1 MR. HENDERSON: Number again? I'm sorry.

2 MS. CAHILL: Permit Number 8471.

3 MR. HENDERSON: It was the City of Paso Robles.

4 MS. CAHILL: And that was a permit for storage in
5 Salinas Reservoir held by Paso Robles?

6 MR. HENDERSON: I believe so. Can I look at that
7 permit?

8 MS. CAHILL: Surely.

9 MR. HENDERSON: Is it in here?

10 MS. CAHILL: No, the permit isn't in here. You have to
11 look at the caption of the order.

12 MR. HENDERSON: I don't know that the storage was in
13 the reservoir or not. I don't know where it identified the
14 storage from.

15 MS. CAHILL: With regard to Permit 8964 that was San
16 Luis Obispo County Water Works District Number 5, that was
17 for Templeton?

18 MR. HENDERSON: That's correct.

19 MS. CAHILL: It was revoked as to the storage component?

20 MR. HENDERSON: That's correct.

21 MS. CAHILL: Are you aware of a principle that a water
22 right holder must have control of the diversion facilities
23 either by ownership or agreement in order to exercise a
24 water right?

25 MR. HENDERSON: I am not specifically aware of that.

1 MS. CAHILL: Are you aware that those permits were
2 revoked because the permittees did not have contracts with
3 the Corps of Engineers that would allow them access to the
4 water under the permits?

5 MR. HENDERSON: That is what the records appear.

6 MS. CAHILL: You had an Exhibit F attached to your
7 testimony. Is it true that in 1988 the Corps of Engineers
8 said, "This effort," which was the effort to dispose of the
9 dam, "has been ongoing for 22 years"?

10 MR. HENDERSON: Yes. That is what the letter says.

11 MS. CAHILL: Has it been 11 more years since then?

12 MR. HENDERSON: That's correct.

13 MS. CAHILL: And that has not yet been accomplished?

14 MR. HENDERSON: That is correct. We've made some
15 significant hurdles in the last number of years, but it
16 still has not been accomplished.

17 MS. CAHILL: The City of San Luis Obispo filed a
18 petition for extension of time in 1981; is that correct?

19 MR. HENDERSON: That's correct.

20 MS. CAHILL: And between 1981 and 1991 did it prepare a
21 CEQA document?

22 MR. HENDERSON: No.

23 MS. CAHILL: Haven't all the actions that you describe
24 on Page 3 of your testimony taken place after 1970?

25 MR. HENDERSON: Based on that one page, it was all

1 after 1970.

2 MS. CAHILL: Hasn't all or almost all of the money
3 spent by the City of San Luis Obispo on planning the
4 expansion been spent since 1991?

5 MR. HENDERSON: There was a large sum spent in the late
6 '80s on the feasibility studies, and then we entered into
7 the CEQA documents.

8 MS. CAHILL: Did the City of San Luis Obispo City
9 Council actually adopt mitigation measures when it certified
10 the final EIR in June of 1998?

11 MR. HENDERSON: The council -- and it may be a question
12 better answered by our environmental panel, our consultants.
13 But they did not file a notice of determination. Therefore,
14 they did not make findings. They accepted the mitigation
15 that was outlined; and to implement that mitigation will
16 require that we work with private property owners and
17 acquire access to private properties. Prior to spending
18 large sums of money to acquire agreements and potentially
19 agreements that require up-front money to use private
20 properties, we need an answer from the State Board relative
21 to the water rights.

22 MS. CAHILL: What I really asked, specifically, was:
23 Did that resolution accomplish a binding adoption of the
24 mitigation measures or did it say they would be adopted
25 later?

1 MR. HENDERSON: Again, I am not a CEQA expert so I
2 think may be a better question for --

3 MS. CAHILL: Mr. Moss, do you know the answer to that?

4 MR. MOSS: I don't have the resolution.

5 MS. CAHILL: The resolution is Paso Robles Exhibit
6 Number 28. If you look at Section 2, there is a reference
7 to incorporation of the recommended mitigation measures
8 contained in the FEIR, including Appendix D, into the
9 project at the time approval at a subsequent meeting of the
10 City Council.

11 Is that what it says?

12 MR. MOSS: Yes.

13 MS. CAHILL: Has there been a subsequent meeting at
14 which those mitigation measures have been formally adopted?

15 MR. MOSS: No, there has not.

16 MR. HENDERSON: I would like to add that the State
17 Board and others requested that the hearing be postponed
18 until the EIR was certified. To make a finding to move
19 forward with the requirement requires that we have an
20 understanding that we have the right to the expanded
21 capacity. We are kind of in a Catch 22 again, asking us to
22 proceed with the project before we know whether we have a
23 right to expand.

24 MR. MOSS: And I would also like to clarify that the
25 resolution in discussion here discusses into the project

1 that the time of approval and the subsequent meeting of
2 City Council, it does not use the word "adopted" relative to
3 the mitigation measures. I don't want to get caught in a
4 semantic issue.

5 MS. CAHILL: Fair enough.

6 Do you understand, Mr. Moss, that the City of San Luis
7 Obispo will be unable to make its own CEQA findings until
8 after some of the studies that are now underway are
9 completed?

10 MR. MOSS: Yes.

11 MS. CAHILL: Mr. Henderson, there was a question
12 earlier about NEPA, and this panel sort of said that they
13 weren't the appropriate ones. Aren't you, in fact, pretty
14 much the City's contact with the Corps of Engineers for NEPA
15 purposes?

16 MR. HENDERSON: We haven't initiated NEPA work yet. We
17 are in the process of doing that with this next phase of
18 work. NEPA work, from a layperson's perspective, as I am on
19 the CEQA or NEPA stuff, is associated with the ownership
20 transfer itself and will fall under the Corps' jurisdiction
21 and they will be the lead agency for the NEPA work.

22 MS. CAHILL: If people who are interested in
23 participating in that process gave you their names, would
24 you assure that they are on any mailing lists to receive
25 notices of those documents?

1 MR. HENDERSON: I would say, yes, and there are a
2 number of people, most of whom are in this room, are on a
3 master mailing list. And so if they send me the
4 information, we can make them aware of those documents.

5 MS. CAHILL: It is not necessary to identify a contact
6 person of the Corps of Engineers.

7 MR. HENDERSON: This is a contact person at the Corps
8 of Engineers.

9 MS. CAHILL: Who is that?

10 MR. HENDERSON: Dave Compass.

11 MS. CAHILL: Speaking of the Corps of Engineers, one of
12 your exhibits is a memorandum recounting the meeting with
13 the Corps of Engineers. It mentions one colonel by name.
14 Could you give us the names of the other Corps people who
15 attend that meeting, please?

16 MR. HENDERSON: I believe it was George Beams, who is
17 the chief of the structural section. Dave Compass who is
18 the chief of the environmental section, and the third one
19 was the chief of the real estate division and his name
20 escapes me. This is the first time -- the second time that
21 I met him. His name escapes me now, I am sorry.

22 MS. CAHILL: One of you has stated that biological
23 mitigations alone will cost \$10,000,000.

24 Is it true that the total estimated cost of the project
25 is about \$20,000,000?

1 MR. HENDERSON: That's correct.

2 MS. CAHILL: When San Luis Obispo considered a
3 desalination plant in the last drought, what was the cost
4 for a plant that could produce 3,000 acre-feet of water?

5 MR. HENDERSON: About \$20,000,000.

6 MR. MOSS: Clarifying point to that. That was a
7 temporary desal facility under agreement with PG&E at the
8 time to utilize their intake and outfall structure at the
9 Morro Bay power plant. If the City were to do a permanent
10 installation on an ongoing basis, PG&E indicated they were
11 not interested in participating with it with us on that at
12 that time. We have to install intake and outfall facilities
13 and acquire properties, so the cost would be substantially
14 increased.

15 MS. CAHILL: PG&E is transferring or has transferred
16 that facility to Duke Power; is that correct?

17 MR. MOSS: That's correct.

18 MS. CAHILL: Have you contacted Duke Power to gauge
19 their willingness to cooperate with you in a desal plant?

20 MR. MOSS: No.

21 MR. HENDERSON: In addition, another limitation
22 concerning the question you asked the mayor of using Morro
23 Bay's desal plant, same location, same issue. There's
24 limited capacity in the Whale Rock pipeline. You said will
25 there be capacity there during drought.

1 What we are looking for is secured water supply for all
2 times, not just drought periods. We need to secure water
3 supply to meet our needs on an ongoing basis. We don't know
4 which source is going to be the source that we are drawing
5 from during a drought period.

6 So, if we were going to do desal plant, we would likely
7 require installation of about 15 miles of pipeline from the
8 city of Morro Bay or some other environs into the city of
9 San Luis Obispo.

10 MS. CAHILL: I am going to get into needs and
11 reliability reserves in a bit, but let me keep going down
12 here.

13 Is desalination an option for communities between the
14 Salinas Reservoir and the Nacimiento River?

15 MR. HENDERSON: They could do it just like the City
16 could, just how many miles of pipeline you want to run.

17 MS. CAHILL: But it would not be practical to take
18 water all the way from the ocean?

19 MR. HENDERSON: I would say it is probably not
20 practical running it 17 miles into the city of San Luis
21 either.

22 MS. CAHILL: Would desalination reduce the water -- if
23 you did do it, would it reduce the water available to uses
24 in the Salinas River watershed? If you did a desal plant,
25 would it have any impact on people in the Salinas River

1 watershed?

2 MR. HENDERSON: No.

3 MS. CAHILL: Would it result in the inundation of
4 approximately 400 acres of shoreline at Salinas Reservoir?

5 MR. HENDERSON: No, but it would have its own
6 environmental impacts.

7 MS. CAHILL: Has the city San Luis Obispo flatly
8 refused to share any part of the yield of the enlarged
9 reservoir with Salinas River watershed interests?

10 MR. HENDERSON: I don't know that a formal request has
11 ever been received or considered by our Council.

12 MS. CAHILL: Could you, each of you, tell me what your
13 role was in preparing the draft and final environmental
14 documents? Are either of you authors or were those totally
15 written by your consultants?

16 MR. HENDERSON: I was the project manager. I oversaw
17 the contracts. The actual consultant work was done by
18 Woodward-Clyde.

19 MS. CAHILL: Can I put up a transparency? This is
20 language from the revised Draft EIR. It says the only
21 practical mitigation to reduce downstream impacts during
22 high flow years would be to release a portion of the water
23 from the reservoir instead of allowing the reservoir to
24 fill.

25 Do you recall that language in the Draft EIR?

1 MR. HENDERSON: Not specifically. I do remember that
2 language. I don't know where in the text and how it was
3 taken out of text.

4 MS. CAHILL: Do you recall that language is still
5 present in the final EIR?

6 MR. HENDERSON: I believe so. But, again, I would like
7 to state the EIR found that there were not impacts
8 downstream. And again that is why there is no mitigations
9 proposed. Robert Ray can speak to this.

10 It did talk to conditions of overdraft, and if there
11 were, there could be potential impacts. But, again, our
12 analysis doesn't reveal that our project will have impacts
13 downstream.

14 MS. CAHILL: The FEIR did conclude, didn't it, that the
15 cumulative impacts on downstream groundwater basins could be
16 considered significant?

17 MR. HENDERSON: Could be.

18 MR. MOSS: And that was if the basin is determined to
19 be in overdraft.

20 MS. CAHILL: But under CEQA if you have to decide if
21 something is significant or not significant, isn't
22 potentially significant considered significant for purchases
23 of overriding consideration?

24 MR. HENDERSON: I guess you'd have to ask that of our
25 consultant.

1 MS. CAHILL: The FEIR didn't conclude that it would not
2 -- that the cumulative impacts would not be significant?

3 MR. HENDERSON: Can you state that again?

4 MS. CAHILL: If the FEIR concluded that the impacts
5 could be significant, it did not conclude that the impacts
6 were not significant?

7 MR. HENDERSON: The cumulative impacts?

8 MS. CAHILL: Right.

9 MR. HENDERSON: Right, yes.

10 MS. CAHILL: What is the capacity of Whale Rock
11 reservoir?

12 MR. HENDERSON: Total storage is the 40,660.

13 MS. CAHILL: And what is the total yield?

14 MR. HENDERSON: I don't have individual yields from our
15 two reservoirs. We operate the two reservoirs in a
16 coordinated manner. That actually increases the safe annual
17 yield from those two lakes operated in a conjunctive manner.
18 The total yield from those two lakes was 7,235. That is the
19 City's storage in Whale Rock. There is also the state
20 agencies that have the right to storage. We have about 55
21 percent of the storage and the state agencies have about
22 45.

23 MS. CAHILL: That is what I wanted to know.

24 MR. HENDERSON: So that amount, 7,235, is our portion
25 of Whale Rock totals.

1 MS. CAHILL: Who prepared the chronology that is
2 contained in Exhibit C to your testimony?

3 MR. HENDERSON: I did.

4 MS. CAHILL: On Exhibit D, is that your testimony? Did
5 you have an Exhibit D? Could you look at Page 5-11?

6 MR. HENDERSON: Yes.

7 MS. CAHILL: Does it say there that development of
8 detailed mitigation and monitoring plans required by CEQA
9 are not proposed to begin until the water rights permit
10 issues and transfer issues are "sufficiently assured of
11 success"?

12 MR. HENDERSON: That is true.

13 MS. CAHILL: Without such plans, that is the mitigation
14 and monitoring plans, can San Luis Obispo state whether the
15 effects will remain significant or whether overriding
16 considerations will be required?

17 MR. HENDERSON: We believe we have identified
18 sufficient sites and opportunities and if we can secure the
19 rights to do it, they will be insignificant. If we are
20 unable to do that, then there may need to be findings.

21 MS. CAHILL: If you are unable to do that, they may
22 remain significant?

23 MR. HENDERSON: (Witness nods head.)

24 MS. CAHILL: Thank you, Mr. Henderson. Those are my
25 questions for you, and now I have a series for Mr. Moss.

1 Thank you for being patient, Mr. Moss.

2 MR. MOSS: You are more than welcome.

3 MS. CAHILL: Let me just run down. Some of these are
4 somewhat technical and some we have already covered.

5 The existing safe yield of the city of San Luis
6 Obispo's water supplies is 7,735 acre-feet; is that correct?

7 MR. MOSS: That's correct. That is 7,235 from the two
8 reservoirs sources operated conjunctively and assume 500
9 foot pre acre yield from groundwater.

10 MS. CAHILL: The current safe yield from Salinas I
11 think Mr. Henderson just said you don't calculate it
12 separately?

13 MR. MOSS: That's correct.

14 MS. CAHILL: It would be roughly 5,000 acre-feet,
15 though?

16 MR. MOSS: We draw approximately that much from it on
17 average annual year. During drought period, for example, we
18 hit minimal pool.

19 MS. CAHILL: Safe annual yield is the amount that you
20 can reliably produce even in the worst drought of record?

21 MR. MOSS: Yes.

22 MS. CAHILL: This last drought was your worst drought
23 of record?

24 MR. MOSS: That's correct.

25 MS. CAHILL: So, that is the amount you can deliver,

1 the full amount even if it is the worst drought that you
2 ever had, with no reductions to your people, no rationing?

3 MR. MOSS: Our current per capita use rate subsumes a
4 20 percent ongoing water conservation level. Our per capita
5 use rate is down to 145 gallons per capita per day. I think
6 if you check the records of other agencies, that is a pretty
7 low figure for a city.

8 MS. CAHILL: But you are not counting on any additional
9 reductions in the drought?

10 MR. HENDERSON: I would say that we have a water
11 shortage contingency plan. We are updating that plan
12 currently. We do have plans because you never know if that
13 next drought is a new worse-case drought. I went through
14 the '87 and '91 drought that redefined our safe annual yield
15 from those two reservoirs, reduced the safe yield. We have
16 plans in place or we are developing updates of those plans
17 that will address when we are projecting. When we are going
18 to be low on water three years out, we will start
19 implementing additional conservation measures to stretch our
20 available supplies.

21 MS. CAHILL: In fact, though, you could supply, and if
22 you did that that 7,735 acre-feet could go further?

23 MR. HENDERSON: I wouldn't base the community's water
24 supply on projections of enforcing rationing measures
25 through the drought. John Moss and myself both experienced

1 it during the drought. The City of San Luis Obispo was very
2 hard hit. Other communities in the area with extensive
3 groundwater supplies weren't. And the City had to have --
4 at one point was cut back almost 50 percent on our water
5 use. Whole areas of town, landscaping died. I don't think
6 that is an appropriate way to plan your water resources for
7 a municipality.

8 MS. CAHILL: We are not necessarily talking about a
9 50-percent cut. But the concept is that safe yield is there
10 for you through that whole drought. On top of that you have
11 a 2,000 acre-feet reliability reserve; is that correct?

12 MR. HENDERSON: We have not developed that reserve. It
13 is a policy that is out there that has -- no water has been
14 allocated to that research.

15 MR. MOSS: I think it is also important to recognize
16 that with our current conservation programs, the easier
17 components of water rationing, if you will, have been taken
18 into account already. As you get into the 35 to 50 percent
19 ranges of water conservation, you are really talking ceasing
20 all outside watering, no washing of vehicles, et cetera.
21 And the impacts of cost to the community get rather severe
22 beyond what we are currently doing.

23 MS. CAHILL: How often does Whale Rock reservoir
24 spill?

25 MR. HENDERSON: I believe it's spilled six times or

1 seven times since it was built in 1961. And a lot of those
2 years are one year following the other because there is not
3 a lot of evaporation; and so one year it fills up and the
4 next year it draws down just as the one fills back up.

5 MS. CAHILL: When it does fill, how far is it to the
6 ocean?

7 MR. HENDERSON: It's about a half mile, three-quarters
8 of a mile.

9 MS. CAHILL: When Salinas Reservoir spills, how far
10 does that water travel before it gets to the ocean, if it
11 gets to the ocean?

12 MR. MOSS: I think it's about 130 miles.

13 MS. CAHILL: It is true, isn't it, that most water
14 purveyors have less than a full supply in the worst drought
15 going back to the drought again?

16 MR. MOSS: I suppose that's a conclusion that I don't
17 know that I could make for most other purveyors. I know it
18 is true for us.

19 MS. CAHILL: Have you investigated -- you have a policy
20 of having a reserve, reliability reserve, of 2,000
21 acre-feet. Have you seriously considered methods of meeting
22 that reserve with a requirement such as -- I assume that
23 that is really not intended to be needed all the time, but
24 it is needed if you have a drought or a failure of equipment
25 or something?

1 MR. MOSS: That's correct.

2 MS. CAHILL: You would meet that reliability reserve
3 with a project that doesn't necessarily have to be there all
4 the time?

5 MR. MOSS: That's correct.

6 MS. CAHILL: Desal actually might be a possibility for
7 those types of emergencies, even though expensive on an
8 ongoing basis?

9 MR. MOSS: The difficulty still is in establishing the
10 facility and the construction costs associated with a
11 facility that you don't intend to use. Desal facilities can
12 also be expensive to maintain while they just sit there
13 idly, waiting for use to occur.

14 MS. CAHILL: What about purchases from a drought water
15 bank such as happened in 1991 or '92? Have you investigated
16 that as a potential source of some of your reliability
17 reserve?

18 MR. MOSS: Since the source of that supply would come
19 from a State Water Project, and we are not a participant in
20 State Water Project, the San Luis residents -- denied by our
21 voters, we have not gone into any detailed investigations on
22 that.

23 MS. CAHILL: Was it your understanding that the drought
24 bank was only available to contractors?

25 MR. MOSS: It is my understanding that you have to have

1 a conveyance mechanism to get it to your facility. And
2 that's -- when we looked at what our local resources can
3 provide, we are tapped into those.

4 MS. CAHILL: We talked a bit earlier, you do have a
5 policy that you won't compete with local agriculture for
6 groundwater supplies. And that is a policy, isn't it, in
7 your Urban Water Management Plan?

8 MR. MOSS: That is correct.

9 MS. CAHILL: Have you considered entering agreements
10 with local farmers for purchases of their water during
11 extreme drought and pay them to fallow; it wouldn't take
12 land out of agriculture permanently, but it would get you
13 through those rough periods?

14 MR. MOSS: We haven't given detailed consideration of
15 that. We are somewhat familiar with the groundwater basins
16 in our area and have an understanding that they have limited
17 yield, particularly on the San Luis Obispo side of Questa
18 Creek. Additionally, the majority of the irrigated
19 agriculture in the San Luis Obispo area occurs in the Edna
20 Valley. That is all primarily vineyards at this point in
21 time. Vineyards do not like to go fallow.

22 MS. CAHILL: And you do have a policy that you won't
23 damage wildlife habitat through reduced natural stream flows
24 and obtaining long-term sources of water supplies?

25 MR. MOSS: That's correct.

1 MS. CAHILL: Do you mean just in the San Luis Obispo
2 area?

3 MR. MOSS: No, I don't think so. I think that policy
4 extends beyond that. And what those policies do is create
5 the balancing that our City Council must do in looking at
6 serving the public interest, which is promoting a water
7 supply for their citizens and protecting public trust
8 resources of the state. That policy recognizes that that
9 balancing has to be made.

10 MS. CAHILL: I read somewhere that City staff is
11 developing some sort of report on use of additional
12 groundwater. Can you get your 1999 status report, Exhibit
13 E says:

14 Staff will be preparing a preliminary
15 analysis of the potential increase that could
16 be anticipated under various scenarios.

17 (Reading.)

18 Has that been done?

19 MR. MOSS: No, that has not been completed.

20 MR. HENDERSON: It should be noted our groundwater
21 basin is contaminated, going to have to look at treatment
22 facilities to remove nitrates and PCE contamination.

23 MS. CAHILL: It seems to me that some of those
24 documents that were attached to your testimony indicated,
25 though, that it is feasible to treat some of those

1 groundwater wells?

2 MR. MOSS: Those can be treated, yes.

3 MS. CAHILL: So, you could perhaps treat groundwater
4 wells locally instead of going into another watershed for --

5 MR. MOSS: Perhaps. As I said, we don't have an idea
6 of what the yield of that would be. And, again, our basin
7 is very small. We'd have to look at completely different
8 means of operation of that basin to determine yield. And
9 that is what we propose to do.

10 MS. CAHILL: If you succeed with your water reuse
11 project, that would reduce the need from other sources?

12 MR. MOSS: Yes.

13 MS. CAHILL: If the Nacimiento Project goes forward,
14 could it supply all the water the City needs without the
15 Salinas Reservoir expansion?

16 MR. MOSS: Based on the current description of the
17 project, yes.

18 MS. CAHILL: And currently there is a study being done
19 of an alternate route?

20 MR. MOSS: There is a study being initiated of an
21 alternate route, which will basically redefine the project
22 and, therefore, there is a revised EIR being prepared for
23 the project.

24 MS. CAHILL: If the City's water reuse project is
25 approved, how much water would be applied to meeting your

1 9,000 acre-foot demand?

2 MR. MOSS: Well, a total yield from the water reuse
3 project of 1230 acre-feet is projected. We have policies
4 within the Urban Water Management Plan that state, when new
5 water supplies are developed, half of the yield from that
6 project will be available for new development and half of
7 the yield will go to the reliability reserve.

8 It is important to recognize we have not yet
9 established a reliability reserve, and, therefore, we have
10 no buffer in case of conditions of worse-case catastrophic
11 loss of a supply.

12 MR. HENDERSON: Can I add to that? The reliability
13 reserve was a real issue in our community. It was looking
14 at another worse-case drought, and that was actually put
15 before the voters and added to the City charter. So that
16 the reliability reserve wasn't created at some point and
17 then allowed to fuel additional growth. It is in the City
18 charter. Once it is developed it can only be used in
19 emergencies.

20 MS. CAHILL: Who drafted the responses in the final EIR
21 on hydrology and water resources?

22 MR. MOSS: Our consultants.

23 MS. CAHILL: Which consultant specifically on those
24 topics?

25 MR. MOSS: Woodward-Clyde Consultants.

1 MS. CAHILL: So, would Mr. Hutchison, who is going to
2 be your witness here, is he the one that drafted the EIR
3 sections?

4 MR. MOSS: On the hydrology and downstream effects,
5 yes.

6 MR. HENDERSON: He probably worked along with Robert
7 Ray in developing those.

8 MS. CAHILL: Isn't it true that some of the studies
9 that are currently being done require new analysis of
10 seismic issues?

11 MR. HENDERSON: Can you repeat that, please?

12 MS. CAHILL: Well, it appears that when you look at
13 Exhibit K to Mr. Moss' testimony, which was the proposal
14 from the consultants, it says, for example:

15 That there is potential for erosion along the
16 abutments and at the toe of the dam which
17 could lead dam safety issues that might
18 result from PMP or lesser flood overflow dam.

19 (Reading.)

20 That is being analyzed. Now, isn't that a potentially
21 significant impact?

22 MR. HENDERSON: No. There is concerns that have been
23 raised by a number of people in North County due to safety
24 of the dam. The dam is currently under federal control,
25 under their jurisdiction. If it transfers ownership, it

1 will all under Division of Safety of Dams, and their
2 requirements, and I am not a dam safety engineer, but my
3 understanding is that they are different or they have
4 different requirements.

5 We are currently working with the Corps and DSOD. We
6 have had the first two triad meetings with those two
7 agencies to look at the dam safety issues and to re-evaluate
8 it based on the earthquake standards that came out of, I
9 believe, the Northridge quake, and to assure that, one, the
10 existing facility is safe and can be certified by the state.
11 And, two, that the expanded capacity is safe and can be
12 certified by the state.

13 What I have often told people who are concerned about
14 dam safety, if they can't certify the existing dam is safe,
15 they will give us two options: make it safe or tear it
16 down. If the expanded capacity isn't safe, they won't allow
17 us to do it. The State Division of Safety of Dams has
18 complete authority once the transfer of ownership, and they
19 will not allow an unsafe structure.

20 MR. MOSS: I would like to say that it is also
21 important to remember that this is the City's most
22 significant, primary water source. The City has no interest
23 in doing anything to that facility which will jeopardize
24 our primary water source.

25 MS. CAHILL: In fact, one of you testified this morning

1 that part of the underlying water program for the City is to
2 do a multisource. When this reservoir expansion is
3 completed, what percent of your water supply will be from
4 the Salinas Reservoir?

5 MR. MOSS: Probably comparable to the yield that we
6 currently have which is 70 to 90 percent on the average
7 year.

8 MS. CAHILL: So, it is very heavy reliance on a single
9 source, in fact.

10 MR. MOSS: That's correct.

11 MS. CAHILL: Almost finished.

12 I didn't see anything in the FEIR about reservoir
13 induced seismicity. Do you know what I mean by that term?

14 MR. HENDERSON: I have heard individuals raise the
15 question. I haven't read articles on that.

16 MS. CAHILL: Do either of you have any knowledge of
17 when Oroville Dam went in and in layperson's terms triggered
18 an earthquake, that either the additional weight of the
19 water or the additional seepage into the rocks actually
20 facilitated an earthquake?

21 No. Okay.

22 Almost done.

23 Was the State Water Project technically viable before
24 the voters spoke?

25 MR. MOSS: Yes.

1 MS. CAHILL: If you did the water recycling project,
2 would that take you past 2009?

3 MR. MOSS: Yes, it would.

4 MS. CAHILL: How far?

5 MR. MOSS: I believe that is covered under my exhibit,
6 that would be Exhibit E, and the last page of Exhibit E
7 which is marked as Page 3-20, shows with water reuse and
8 presumed 600 acre-feet added to our available safe annual
9 yield based on our reserve requirements, would push us out
10 to the year 2017.

11 It is also important to note -- I may have covered this
12 in my prior testimony -- our Council, and we had a lot of
13 discussions on this matter, does considering recycled water
14 as something that can be added to City's safe annual yield
15 as a product of co-equal value in terms of its proposed
16 uses. And, therefore, will be offsetting the existing or
17 proposed use of potable water in the future. There is not
18 -- we are not creating projects for the use of reclaimed
19 water, but rather it is truly an offset.

20 MS. CAHILL: One last question. Most people understand
21 this, but to make it clear. The live stream agreement
22 doesn't require releases of water to maintain a live stream,
23 does it?

24 MR. MOSS: No.

25 MS. CAHILL: What it just means is that when there

1 isn't a live stream, then you can't store. You have to
2 bypass inflow?

3 MR. MOSS: Yes.

4 MS. CAHILL: Thank you very much.

5 H.O. BROWN: Thank you, Ms. Cahill.

6 Staff, do you have any questions?

7 MS. MROWKA: Yes, we do.

8 H.O. BROWN: Mr. Baiocchi, do you have a question?

9 MR. BAIOCCHI: We have one or two questions that Mr.
10 Felix would like to ask the witnesses. I think it is very
11 pertinent to the proceedings. Is that out of order?

12 MR. FELIX: Shall we wait until the environmental cats
13 get up there?

14 H.O. BROWN: We will cover that on, possibly,
15 redirect.

16 MR. BAIOCCHI: Thank you.

17 H.O. BROWN: Ms. Mrowka, go ahead.

18 ---oOo---

19 CROSS-EXAMINATION OF SAN LUIS OBISPO

20 BY STAFF

21 MS. MROWKA: Good afternoon, gentlemen.

22 I had a few questions regarding the proposed written
23 testimony of Mr. Felix Smith, and I would like to ask for
24 your opinions on behalf of the City regarding those items.

25 In Mr. Smith's testimony he suggests resolution to

1 protest. He suggests for one thing that we incorporate a
2 term to limit direct diversion and storage to the period
3 from December 15 through April 15th.

4 What is the City's position to that suggestion?

5 MR. HENDERSON: Well, I wouldn't be supportive of
6 restricting our storage, period. I guess I would look
7 toward there is other appropriators downstream that are
8 junior to our rights. And I guess if you are going to open
9 that issue, you may open up a bigger issue on other permits.
10 Because I believe there are some restrictions on junior
11 permits to ours, so the City wouldn't be supportive of
12 applying that condition to our permit.

13 MS. MROWKA: Mr. Smith also suggests that there should
14 be a steelhead and aquatic resource restoration and
15 protection plan for Salinas River watershed that is
16 developed and then implemented. What is your opinion on
17 that suggestion?

18 MR. MOSS: I don't know that we are opposed to such
19 watershed planning and protection of endangered species. I
20 don't know that it is within the jurisdiction purview, et
21 cetera, of the City to be responsible for that plan.

22 MS. MROWKA: Again Mr. Smith suggests a flow gauge be
23 installed to determine the amount, time and duration of
24 releases, spillage or other reservoirs releases.

25 For my edification can you please explain is there a

1 gauge or how is the amount of water collected through
2 storage calculated, and then how do you calculate your
3 releases?

4 MR. HENDERSON: As far as what is inflowing into the
5 lake, it is not measured. My understanding is a number of
6 years ago there were stream flow gauges in the rivers coming
7 in. The problem was there were tributaries besides the
8 Salinas River that flow into their Alamo Creek and a number
9 of other creeks. With the large amount of sediment load and
10 -- the watershed produces huge flows, and those facilities
11 were continually taken out by the large flows.

12 The way they calculate the inflows is a balance sheet.
13 We measure or the County who operates the facility measures
14 the evaporation, calculates through a meter what is diverted
15 to the City in a pipeline, measures the rainfall that falls
16 and basically looks at the levels of the lake. And if the
17 level came up, that additional amount was from inflow,
18 whether it be the Salinas River or other tributaries into
19 the lake. And that water is released downstream.

20 Releases downstream are made from valves at the base of
21 the dam. There is a concrete weir section downstream of the
22 dam that they use to gauge the low flows. High flow
23 events, spills, depths over the spillway, there is a rating
24 curve, I believe, that tells what the flows are. And as
25 they open up valves down below, they estimate from their

1 understanding how much is being released from those valves.
2 But that is during spill events. Otherwise, in the low flow
3 events it is measured at the V-notch weir section.

4 MS. MROWKA: If I understand your earlier testimony
5 today, Mr. Henderson, you testified that after the 1972
6 Water Board hearing there was a need to roll forward and
7 conduct further studies. And that one of the tasks was to
8 determine if you could set a certain flow number as a
9 certain stream gauge for purposes of measuring the live
10 stream agreement. My Board had found that the information
11 was inadequate for purposes of doing that.

12 Has there been any further information developed to
13 date that would address Mr. Smith's request that a flow
14 gauge should be installed for this kind of measurement?

15 MR. HENDERSON: Well, again, there is a flow gauge
16 downstream that is measuring what releases are under the
17 live stream agreement. I am not sure what flow gauges he is
18 talking about. There is a USGS flow gauge down in Paso
19 Robles. So I am not sure -- what we are trying to do is
20 measure, make sure we are releasing from the dam what is
21 coming in. You want to do that as close to the dam as
22 possible to assure you are not losing water as it proceeds.
23 Those measurements are made at the dam.

24 MS. MROWKA: Has the City -- does it rely on the
25 downstream flow gauge in any fashion for purposes of making

1 live stream releases?

2 MR. HENDERSON: The county is the one who operates it.
3 They'd really be a better one to ask. They try to balance
4 it on a monthly basis. It is hard to adjust the valves and
5 be exact on a day to day. What they do is over a month 30
6 acre-feet come in and 30 acre-feet went out. They try to
7 keep balance. If they are a little off, they try to adjust
8 it the other way. It is a balancing act. Again, valves
9 that control this type of flow, you crank them open and you
10 try to throttle the water. So they do the best they can to
11 release what comes in and out through those valves.

12 MS. MROWKA: To the best of your knowledge, has there
13 been fieldwork done, especially at the beginning of this
14 agreement to assure yourselves what type of releases are
15 necessary at the dam for purposes of making the live stream
16 term requirement downstream? Was a calibration done
17 downstream to assure yourself of the flow?

18 MR. HENDERSON: Again, that was back in the '70s and I
19 wasn't involved so I am not sure what studies were done.

20 MS. MROWKA: Mr. Smith also suggests that there should
21 be public access to the gauge facilities for purposes of
22 determining compliance. If I understand your testimony
23 correctly, you are saying that, basically, the measurement
24 of those releases is done by parameters up at the reservoir
25 itself.

1 Is this something that would be accessible to the
2 public or inaccessible?

3 MR. HENDERSON: It is not accessible to the public.
4 There is an egress and ingress type of easement that allows
5 County personnel to access through private property from
6 Pozo Road into the dam site. The private property owner
7 does not want public access in there. He has cattle and
8 runs ranching operations back there. And so it is limited.

9 We have taken the public up there when they have
10 contacted me and wanted to see how we did things. We don't
11 have tours of the facilities. We have taken them up
12 there. It would require working with either the County or
13 myself to gain access into there. And probably the County
14 flood control district because the dam tender, if you want
15 to call him that, lives right at the base of the dam with
16 his family.

17 MS. MROWKA: Does the County put their information on a
18 webpage or anything of that nature?

19 MR. HENDERSON: No. We have a -- the City has a
20 webpage that just indicates what the reservoir levels are at
21 any time, any point in time at both of our lakes. That
22 information is -- City gets it on a monthly basis from the
23 County. The county maintains those records. They are
24 public records. If someone wanted access to them, they are
25 available.

1 MS. MROWKA: Again in Mr. Smith's testimony, he states
2 that CALSPA would like the release of any stored water
3 collected whenever prior rights of downstream persons have
4 not been satisfied. Do you have any comments regarding
5 this?

6 MR. HENDERSON: From an engineering standpoint I don't
7 know how you do that, how you determine when someone's right
8 -- I don't know that anyone downstream is impacted, so I am
9 not sure how you are going to quantify that it was a result
10 of our operations of the dam.

11 MS. MROWKA: Has anybody ever contacted you with regard
12 to this type of issue?

13 MR. HENDERSON: There have been issues raised relative
14 to the live stream, more than I heard from some individuals
15 who we've worked with in the past few years up in the North
16 County.

17 My understanding was in the past there were several
18 points the County used to observe the live stream.
19 Typically live stream disappears just downstream of
20 Atascadero well field and that is a typical spot they look
21 for the water to go below surface. There have been times, I
22 think based on individuals' comments, that it goes dry first
23 in another location. If they call up the County or
24 ourselves, we'll notify the County and send them there. And
25 if it is dry, they'll open up the valves.

1 MS. MROWKA: Again to Mr. Smith's testimony. He
2 states that CALSPA would like to see a conjunctive surface
3 and groundwater conservation and management plan
4 implemented.

5 Have you developed a position regarding this issue?

6 MR. HENDERSON: The EIR identified as a mitigation,
7 looking at if the groundwater basins in Paso Robles is, in
8 fact, an overdraft, that probably the only way to mitigate
9 that would be like an AB-3030 type groundwater management
10 plan. And the document identifies that the City would be
11 willing to participate in that with other water users, but
12 you'd have to do it on a regional basis. You couldn't
13 expect just one of the water users to -- and, again, the
14 City doesn't have control of water users. We can't
15 implement that plan on our own. We have stated that we
16 would be willing to participate in that.

17 MS. MROWKA: Moving on to other matters now. In the
18 City's testimony, various testimony and exhibits, they
19 indicated that this project will not affect the live
20 stream-type flow regimes downstream of the dam, except for
21 during very high rainfall events when there would be
22 reduction in spills.

23 Did the City receive any comment letters on the EIR or
24 has the City reviewed any testimony in this proceeding
25 indicating that persons disagree with that conclusion, and I

1 am not talking about -- I am talking about the City's
2 statement that in normal and below normal water years that
3 this will not effect the ability to meet the live stream
4 condition or the flows that are associated with that
5 condition?

6 MR. MOSS: Not that I am aware of, that anybody has
7 contested during drought years we do have the impact. I
8 think the concern falls without potential impact after
9 drought years during wet seasons.

10 MR. HENDERSON: There have been comments by certain
11 individuals that they are concerned that during a drought it
12 is going to have impacts. We have often said during a
13 drought we are not capturing water. Those people who make
14 those comments, I am not sure of how the live stream is
15 operated.

16 MS. MROWKA: Have you seen any type of calculations or
17 other numbers that disagree with the City's analysis on that
18 topic?

19 MR. HENDERSON: On live stream?

20 MS. MROWKA: On live stream, yes.

21 MR. HENDERSON: Live stream particularly? No. But
22 additionally looking at the overall reductions and stuff.
23 But not particularly with the live stream releases. I think
24 they recognize that those wouldn't change. What those
25 releases are now are going to be similar in the future.

1 MS. MROWKA: One of the records that has been entered
2 in this proceeding on behalf of CALSPA is your monthly
3 reports with respect to reservoir releases. That is also
4 part of staff exhibit because they are part of that
5 petition, File 10216. And I note on those reports that
6 there were a few occasions when the City reported that it
7 did not -- or the County, they did not meet live stream
8 condition, albeit they were only a few times.

9 To the best of your knowledge, on those self-reporting
10 documents was it reported accurately every time that there
11 was a problem with making a live stream requirement?

12 MR. HENDERSON: I don't now oversee those. I know the
13 people who do that reporting at this point in time. I have
14 complete faith in their proper operation and proper
15 reporting, but I don't oversee that, so I couldn't answer
16 that.

17 MS. MROWKA: To the best of your knowledge, during the
18 time that you -- the 16 years that you say you have been
19 affiliated with the City, has the City at all times met the
20 live stream condition of its permit?

21 MR. HENDERSON: As far as I am aware, yes.

22 MS. MROWKA: Thank you.

23 H.O. BROWN: Jim.

24 MR. SUTTON: Jim Sutton.

25 Mr. Henderson, a couple questions for you, please.

1 I would like a little more detail on the live stream
2 and how it is measured. You mentioned, for example, I
3 believe you said the Atascadero well field is one of the
4 observation points and when it goes dry there, that the
5 gates are released to open -- more water is released?

6 MR. HENDERSON: Essentially, if there is any point from
7 the dam to the Nacimiento River that goes dry, then the
8 County -- when the County staff is made aware of that and
9 they typically start surveying it, they know when things are
10 going to start going dry.

11 Once it goes dry, all inflow is released from the base
12 of the dam.

13 MR. SUTTON: When you say it goes dry, so, therefore,
14 the live stream means that there actually has to be a
15 physical surface flow, continuous flow, from the dam to the
16 juncture with the Nacimiento River?

17 MR. HENDERSON: That's correct. Until that flow
18 between the dam and the confluence of Nacimiento, no water
19 could be added to storage. Once there is that flow -- and
20 it is almost easier to think of the reservoir being off
21 channel. If there is flow all the way, we can divert water
22 into storage. As soon as that condition ceases, we have to
23 close the valve and not divert any water to storage and
24 everything bypasses.

25 MR. SUTTON: When you are talking about flow here, are

1 you talking about the actual movement of the water or simply
2 the presence of surface water in a continuous stream? I
3 realize that is a fine semantic hold.

4 MR. HENDERSON: The area down there is so porous that
5 you have to have a physical flow going or it is just going
6 to go right down through the ground at Atascadero. But
7 there is the underflow, too, that is going on.

8 MR. SUTTON: Under average conditions, do you have an
9 estimate what the release from the dam would be in cubic
10 feet per second in order to maintain a live stream flow down
11 the Nacimiento?

12 MR. HENDERSON: If you are asking me what kind of flow
13 releases it would take to create, physically create, a live
14 stream, it would depend on what time of year, who's
15 pumping. There are so many things going on down there. In
16 fact, Atascadero's shallow wells, they hit those wells hard
17 during the summer. The river disappears. And the only
18 thing I could say, there were some releases made back after
19 the '72 that they released large quantities of water. That
20 water disappears very quickly when you don't have a live
21 stream. It basically didn't make it to Atascadero.

22 Our feeling on looking at that is when you got that
23 visible flow, the groundwater basins are essentially
24 recharged. When you don't, the water disappears very
25 quickly.

1 MR. SUTTON: Assuming that you have the basins
2 recharged, more or less -- what I am trying to get at is a
3 ballpark number here of what sort of releases from the dam
4 are we talking about. Are we talking about 2 cfs? Or are
5 we talking about 20 or are we talking 200?

6 MR. MOSS: Maybe I can offer a slightly different
7 answer to the question. During the times when there is a
8 live stream that exists, we actually have the valves shut to
9 the dam; that is how we put water in storage.

10 So, there are no releases from the dam while there is a
11 live stream in existence. The live stream nearest the dam
12 is maintained through bank storage and seepage under the dam
13 and valve leakage, et cetera, and it is enhanced as it goes
14 downstream through the tributary flows. So, there are
15 points in time when there are no releases from the dam and a
16 live stream condition does exist.

17 MR. SUTTON: Thank you. Another subject.

18 The City has not yet -- they have certified the EIR,
19 but they have not yet issued a Notice of Determination; is
20 that correct?

21 MR. HENDERSON: That's correct.

22 MR. SUTTON: As part of this entire process, the City
23 does have to issue at some point a Notice of Determination,
24 and in so doing they are then subject to challenge as to the
25 adequacy of the EIR; is that not correct?

1 MR. HENDERSON: That's correct.

2 MR. SUTTON: And the argument that has been put forth
3 here is the reason why the NOD has not been issued as yet is
4 in part because the City hasn't approved the project and it
5 hasn't made a final determination to go ahead; is that
6 correct?

7 MR. HENDERSON: That's correct.

8 MR. SUTTON: What I am trying to rectify here is that
9 statement versus the statements made by yourself and by your
10 mayor who said they have -- your mayor said no backup off
11 consequence, that the City is fully committed to the project
12 and you yourself said that you have to proceed with the
13 Salinas River Project.

14 And my question is: You're waiting on us in a sense to
15 say it's okay to go ahead. Yet, at the same time, we don't
16 know whether or not there is going to be a challenge of the
17 adequacy of your document on what we are in part basing our
18 decision.

19 It's the chicken and egg thing. How do we rectify
20 this?

21 MR. MOSS: That is a good question. That is one we
22 have been probably wondering about since 1987 when we
23 requested to do CEQA for this project. I think
24 additionally, while we say we are waiting for your decision,
25 you will note that the City has ordered that contract with

1 Woodward-Clyde Consultants for \$128,000 to proceed with the
2 detailed mitigation plans, to do the seismic analysis on the
3 dam and to answer those questions necessary to do the EIR.

4 While, in essence, we are hoping to have your answer
5 prior to actually completing all of that work and for
6 expenditure of those funds, we are committed and recognize
7 the timelines do not allow us to wait in a linear fashion to
8 that extent anymore.

9 MR. SUTTON: Thank you.

10 ----oOo----

11 CROSS-EXAMINATION OF SAN LUIS OBISPO

12 BY BOARD MEMBERS

13 H.O. BROWN: Mr. Chairman.

14 BOARD MEMBER STUBCHAER: Thank you, Mr. Brown. I do
15 have one question that came to mind during your discussion
16 of the safe yield of the Whale Rock and Salinas Reservoir.
17 You mentioned a figure, per se. Then you talked about
18 during the drought you got nothing from Salinas and you had
19 to refigure the safe yield, I think you said?

20 MR. HENDERSON: Yes. What happened is the City, in our
21 coordinated operation of two reservoirs, we use Salinas
22 first, Whale Rock as a backup. There is less evaporation at
23 Whale Rock because it is right by the ocean. It has a
24 watershed of about 20 square miles as compared to 120 square
25 miles for Salinas, so it doesn't fill up very often.

1 So operating them in that manner, we target most of our
2 supplies, like John mentioned earlier, about 70, 90 percent
3 of the City's supply came from Salinas when it is
4 available. During the height of the drought, Salinas
5 reached minimum pool which was 2,000 acre-feet and the City
6 stopped extractions from there and was taking all of our
7 water from Whale Rock.

8 In March of 1991 we had about 6,000 acre-feet left in
9 storage at Whale Rock, which represents under the
10 conservation programs and 50 percent rationing at the time
11 about 12 to 18 months' supply for the City. At that point
12 we had 12 or 18 months before those rains came.

13 BOARD MEMBER STUBCHAER: What was the total amount of
14 water you were able to extract in the worst year of the
15 drought from the two reservoirs combined?

16 MR. HENDERSON: I haven't analyzed that. Again, we
17 were in mandatory conservation. But we used -- the historic
18 information was for this new drought period is the defining
19 period for our safe annual yield estimates.

20 When I did it, some numbers -- we had an individual in
21 town who wanted to do simple -- he was an aeronautical
22 engineer and he wanted to do simple calculations. He said
23 the City used about 5,000 acre-foot through that drought
24 each year, and he said, "How can you claim you have 7200?"
25 I said, "You take 6000, divided by five years; that is 1200.

1 You add it to my figure, 5,000." But that is not how we do
2 it. The numbers kind of worked out that way. It was pretty
3 close to -- that real kind of back-of-the-napkin kind of
4 calculation verifies our computer model that we used.

5 H.O. BROWN: I like your -- I am thinking like that
6 aeronautical engineer. There is about 40,000 people in the
7 City.

8 MR. HENDERSON: About 43,000.

9 H.O. BROWN: 43,000, and I just roughly estimate that
10 it would take about 15,000 acre-feet of water total a year?

11 MR. HENDERSON: No. Based on 145, figure at 43,000 is
12 somewhere on the order of 7,000 acre-feet per year.

13 MR. MOSS: That calculation is included in Exhibit A to
14 my testimony.

15 H.O. BROWN: You had 7,235 acre-feet. I picked up
16 yield earlier; is that correct?

17 MR. MOSS: That's correct.

18 H.O. BROWN: That is pretty well capita per person per
19 day. Your reclaimed water, then, what is that about? Six,
20 seven mgd?

21 MR. MOSS: Our current discharge on reclaimed water is
22 about four and a half.

23 H.O. BROWN: Where does that water go now?

24 MR. MOSS: It's discharged to San Luis Obispo Creek,
25 approximate eight miles upstream of the Pacific Ocean.

1 H.O. BROWN: Does it percolate into the creek?

2 MR. MOSS: A majority of it flows to the Pacific
3 Ocean. There are some downstream agricultural uses and
4 significant number of wells. The wastewater treatment plant
5 is at the extreme western, southwestern edge of the San Luis
6 Obispo groundwater basin. So in terms of recharge from that
7 facility to the San Luis Obispo groundwater basin, would be
8 incidental.

9 H.O. BROWN: There is about 3-, 4,000 acre-feet of
10 water about a year?

11 MR. MOSS: About 4,000, I believe.

12 H.O. BROWN: Is that secondary treated?

13 MR. MOSS: No, it's tertiary.

14 H.O. BROWN: Is there any reuse put to it?

15 MR. MOSS: We have been working on developing a reuse
16 project since 1990. And currently are seeking our change in
17 place of use permit from this Board. We will be back here
18 on November 1st to discuss the protest by CALSPA.

19 H.O. BROWN: What is the quality of water?

20 MR. MOSS: From a general parameter standpoint, our BOD
21 removal is in excess of 99 percent on a usual basis.
22 Turbidities run anywhere from .5 to about one and half
23 NTUs. Suspended solids removal, again, in excess of 99
24 percent. We are talking about a four or five BOD and four
25 or five part suspended solids.

1 H.O. BROWN: What about TDS?

2 MR. MOSS: TDS is running right up in 850 and 900
3 milligrams per liter.

4 H.O. BROWN: That is pretty high for agricultural uses?

5 MR. MOSS: Yeah. It's at the upper end. You have to
6 do additional leaching to make that -- keep that suitable.

7 H.O. BROWN: What are you using it on?

8 MR. MOSS: We're actually not proposing it for use on
9 an agriculture. It is proposed for use on City parks,
10 landscaping along freeways, school grounds. We currently
11 use that effluent on our existing facility, the wastewater
12 treatment plant grounds and --

13 H.O. BROWN: Have you done cost estimates on pipeline
14 retrofit?

15 MR. MOSS: Yes, we have. All that's -- in fact, we are
16 in the design phase. Our consultants for that project are
17 Brown & Caldwell Engineers. They are completing the
18 engineering report for the project. At this time we have
19 cost estimates ranging -- they are right around \$8,000,000
20 for pipeline construction.

21 H.O. BROWN: Have you been able to run it out on cost
22 per acre-feet per use?

23 MR. MOSS: Yes, we have. It is someplace in the
24 neighborhood of between 700 to \$800 per acre-foot.

25 H.O. BROWN: Have you run a cost per acre-foot of what

1 you're proposing here?

2 MR. MOSS: Yes, we have.

3 H.O. BROWN: What is that?

4 MR. MOSS: It's right in that same ballpark, 700 to
5 \$800 an acre-foot. Largely depends on the extent of
6 mitigation measures required and what, if any, changes are
7 to construction resulted from our additional seismic
8 analysis, et cetera.

9 H.O. BROWN: You mind telling me again what your
10 anticipated yield is from the increment in storage?

11 MR. MOSS: 1650 acre-feet per year.

12 H.O. BROWN: 1650?

13 MR. MOSS: Yes.

14 H.O. BROWN: You have a potential of 3,000 acre-feet
15 with reclaimed water?

16 MR. MOSS: Just under 3,000. Pretty close, yeah.

17 H.O. BROWN: Your \$700 --

18 MR. MOSS: That was reclaimed, combined with Salinas.
19 We had 1230 acre-feet from reclaimed and 1650 from --

20 H.O. BROWN: What did you do -- you said it is 4 mgd?

21 MR. MOSS: I'm sorry. We defined the project based on
22 what our ET values would be and requirements for the
23 project, and they reasonably irrigated areas associated with
24 the project. Additionally, we've done considerable
25 environmental analysis on that project to determine what

1 potential impacts we may have on downstream fisheries
2 resources and riparian habitat, and part of our agreements
3 with that project has been defined as maintaining a minimum
4 1.7 cfs discharge to San Luis Obispo Creek. All water in
5 excess of our ET demands will also be discharged to San Luis
6 Obispo Creek. And an agreement that we just entered into
7 with the Department of Fish and Game, or are entering into
8 with Department of Fish and Game on their project, will
9 require us to seek a Section 1212 dedication of that 1.7 cfs
10 to this Board for public trust purposes.

11 H.O. BROWN: Of the 1200 acre-foot demand that you
12 could reasonably use at 700 to \$800 per acre-feet?

13 MR. MOSS: That's correct.

14 H.O. BROWN: Okay. That is all the questions I have.
15 Do you have redirect, Mr. Slater?

16 MR. SLATER: Yes, we do.

17 H.O. BROWN: The cafeteria closes at 3:00, so why don't
18 we take a break and be back here at five minutes to three.

19 (Break taken.)

20 H.O. BROWN: Back on the record.

21 Mr. Slater, you are up.

22 ----oOo----

23 REDIRECT EXAMINATION OF SAN LUIS OBISPO

24 BY MR. SLATER

25 MR. SLATER: Thank you, Mr. Brown. I would like to

1 start first with Mr. Moss.

2 Mr. Moss, you testified both on direct today and on
3 cross that the City has taken a look at some alternative
4 water projects; is that correct?

5 MR. MOSS: That's correct.

6 MR. SLATER: In response to a question regarding the
7 desalination you indicated that the City was -- the City had
8 done an investigation as to desal?

9 MR. MOSS: That's correct.

10 MR. SLATER: There were cost estimates for that
11 facility?

12 MR. MOSS: That's correct.

13 MR. SLATER: What were they?

14 MR. MOSS: Cost estimates, I think operating with
15 capital combined for that five year desal facility were in
16 the order of \$2800 per acre-foot.

17 MR. SLATER: \$2800 an acre-foot?

18 MR. MOSS: That's correct.

19 MR. SLATER: It would also involve significant
20 right-of-way, transmission issue to move the water?

21 MR. MOSS: That's correct.

22 MR. SLATER: How far would the water have to be moved?

23 MR. MOSS: Approximately 12 miles from the City of
24 Morro Bay, assuming we were about to site a facility there.
25 The next most logical location for siting a facility would

1 probably be near the Whale Rock Reservoir, assuming we can
2 get cooperation from the Whale Rock partners, and that would
3 be roughly 17 miles.

4 MR. SLATER: The City has also, from time to time,
5 investigated participation in the State Water Project?

6 MR. MOSS: That's correct.

7 MR. SLATER: You testified that there were two votes in
8 the City of San Luis Obispo on the State Water Project?

9 MR. MOSS: That's correct.

10 MR. SLATER: The second vote was a referendum?

11 MR. MOSS: That's correct.

12 MR. SLATER: Did the City bring a lawsuit to try to
13 invalidate the referendum?

14 MR. MOSS: Yes, the City did do that, and they lost.

15 MR. SLATER: So, the court ruled that the referendum
16 was binding on the City?

17 MR. MOSS: That's correct.

18 MR. SLATER: You have testified that there are several
19 City policies regarding development of water resources as
20 well as policies regarding the protection of agricultural
21 and instream uses?

22 MR. MOSS: That's correct.

23 MR. SLATER: How does the City reconcile conflicting
24 policies?

25 MR. MOSS: Policies, especially those within the

1 general plan, are guidance policies. Some say "shall"; some
2 say "will consider," et cetera. Basically, as we looked to
3 develop water supply projects or any other projects the
4 staff will take an analysis of the various policies and
5 apply that project to the City Council with the appropriate
6 balancing recommendation from staff. Our council will
7 ultimately decide how that balance needs to be laid out.

8 MR. SLATER: Mr. Moss, you also testified regarding the
9 pending application for a change in the point of discharge
10 on the wastewater project?

11 MR. MOSS: That's correct.

12 MR. SLATER: Have you determined whether or not the
13 yield from the wastewater project, given all the downstream
14 commitments, will be sufficient to satisfy the City's future
15 water needs?

16 MS. MROWKA: We do know what the yield from that
17 project will be, and it is not sufficient to satisfy all the
18 City's future needs.

19 MR. SLATER: What is your projected deficit?

20 MR. MOSS: Roughly 2600 acre-feet.

21 MR. SLATER: The City's target number, the City will
22 fall short of the target number by about 2600 acre-feet?

23 MR. MOSS: That's correct.

24 MR. SLATER: Do you have any information on what the
25 melded cost of water is for the City of San Luis Obispo?

1 MR. MOSS: I believe our cost to produce water at our
2 facilities, and that is at the head of the distribution
3 system, are \$500 an acre-foot.

4 MR. SLATER: Do you know how that compares with North
5 County in the watershed users?

6 MR. MOSS: Well, there are significant cost savings
7 generally associated with pumping of groundwater; it does
8 not require treatment. Generally located very near the
9 facility that it has to be put in for distribution. In a
10 public hearing or public meeting, I believe it was meeting
11 referenced by our mayor, joint council meeting with North
12 County, San Luis Obispo Public Works Director, I believe,
13 said that their water cost roughly 75 to \$150 per acre-feet
14 to produce.

15 MR. SLATER: Okay, Mr. Moss.

16 Mr. Henderson, you testified to the existence of a
17 nitrate contamination problem, PCE, in your groundwater
18 basin. Can you explain that.

19 MR. HENDERSON: Yeah. The San Luis Obispo basin is a
20 very small basin. The area that overlies the deeper part of
21 that has been used extensively for agriculture in the past.
22 Still is. City was utilizing those wells during the height
23 of the drought. There was a PCE contamination. We were
24 treating the wells for that using carbon. But in extracting
25 large quantities of water we drew the nitrate plume over

1 into our wells, and our major wells had to be shut down
2 right about the time when the state water vote was going to
3 the citizens. About the same time we had to shut down our
4 major well due to nitrate contamination.

5 MR. SLATER: Has the City done any analysis of what the
6 cost of treatment for those facilities might be?

7 MR. HENDERSON: We got some preliminary analysis. On
8 the order of about a million dollars for treatment. There
9 is some problems with trying to find siting for that and the
10 City doesn't have property. Also, just the sustained yield
11 from the basin -- it's a very, very small basin. We are
12 talking about a basin of about 25,000 acre-foot storage.
13 During the height of the drought we pumped 2,000 acre-foot
14 two years in a row, and along with the other water
15 extractors, essentially, drew the basin down significantly.
16 So there is not a significant yield possibility from that
17 basin. There may be an opportunity to increase our yield by
18 a small amount, but not significant amounts.

19 MR. SLATER: Would you please define a small amount?

20 MR. HENDERSON: We are guessing maybe -- targeting 500
21 acre-feet per year. Currently, we are only getting about
22 300 acre-feet. We think, maybe through some conjunctive use
23 or some other ways, we may be able to increase that by, you
24 know, on the order of hundreds of acre-feet, but not
25 thousands that we are looking at needed.

1 MR. SLATER: Can you please also explain the confining
2 nature of the land subsidence issue in San Luis Obispo?
3 Sorry, the extent of the land subsidence concerns in San
4 Luis Obispo.

5 MR. HENDERSON: Well, when we were pumping those
6 groundwater wells there was subsidence in the area of our
7 wells and also the agricultural operations, they were
8 extracting water. It caused some problems on private
9 properties in that area. We were taken to court and the
10 City paid a couple million dollars in claims.

11 MR. SLATER: Is it safe to say that the additional
12 storage that would be obtained through this permit extension
13 could be used in lieu of available groundwater?

14 MR. HENDERSON: Well, we have identified the continued
15 use of a limited amount of groundwater resources, what we
16 feel we can safely extract on an annual basis. This water
17 would be used in addition to that limited amount that we
18 used.

19 MR. SLATER: So if you don't have the ability to get
20 groundwater. The additional storage and Salinas becomes
21 very important?

22 MR. HENDERSON: That is correct.

23 MR. SLATER: Do you have any knowledge of whether or
24 not there is an existing groundwater management plan in
25 place in North San Luis Obispo County?

1 MR. HENDERSON: In northern being San Luis Obispo
2 County?

3 MR. SLATER: Yes.

4 MR. HENDERSON: No, there is not.

5 MR. SLATER: Do you know whether any groundwater basins
6 have been adjudicated?

7 MR. HENDERSON: No, there is not.

8 MR. SLATER: Do you know about whether or not any
9 special act groundwater management agency such as the Fox
10 Canyon or the Ojai Groundwater Management agencies exist?

11 MR. HENDERSON: No.

12 MR. SLATER: To your knowledge, did Paso Robles or
13 Templeton ever have contracts with the Corps of Engineers
14 for the delivery or storage of water behind Salinas Dam?

15 MR. HENDERSON: Not to my knowledge, no.

16 MR. SLATER: To the best of your knowledge, is the City
17 of San Luis Obispo the only entity that ever held a contract
18 with the Corps of Engineers for delivery of water from
19 Salinas Dam?

20 MR. HENDERSON: Yes.

21 MR. SLATER: Did the City construct facilities whereby
22 water diverted from Salinas Dam could be delivered to the
23 City of San Luis Obispo?

24 MR. HENDERSON: Yes.

25 MR. SLATER: How extensive are your pipelines

1 connecting Salinas to the City of San Luis Obispo?

2 MR. HENDERSON: Looking at the records, I think when
3 the Corps was constructing that, they also constructed some
4 of the facilities to get that water down to the City. The
5 City reimbursed those costs for those facilities. But they
6 were -- I can't remember the exact cost. They were on the
7 order of a million dollars or so back in those days.

8 MR. SLATER: You have no present value calculation of
9 what those City facilities are worth?

10 MR. HENDERSON: Overall City facilities? No, I don't.

11 MR. SLATER: I am going to show you a series of
12 exhibits which are attachments actually to the Paso Robles
13 submittal. They are contained within Exhibit 7, and they
14 are a series of what appears to be progress reports, and I
15 have actually tagged a couple of them for you. I am going
16 to call your attention to them.

17 I would like to call your attention to the item or the
18 box that references whether or not construction is complete
19 in the '51 progress report.

20 MR. HENDERSON: Okay.

21 MR. SLATER: What does it say?

22 MR. HENDERSON: No.

23 MR. SLATER: Construction is not complete.

24 What does it say with regard to the full use of water?

25 MR. HENDERSON: Due to the continual increase in

1 population and the construction of new homes and a continual
2 program of water line enlargements, an extension is
3 underway.

4 MR. SLATER: Carrying forward, can you take a look at
5 progress report filed in 1954.

6 MR. HENDERSON: Yes.

7 MR. SLATER: Can you take a look at the description of
8 whether it indicates construction is complete.

9 MR. HENDERSON: It states yes.

10 MR. SLATER: And what does it say with respect to
11 storage?

12 I might start by asking: Are the forms in every year
13 the same?

14 MR. HENDERSON: No, they are slightly different forms.
15 Appear to be filled out by different individuals.

16 MR. SLATER: And some of the forms have boxes and some
17 have lines; is that correct?

18 MR. HENDERSON: That's correct.

19 MR. SLATER: Can you take a look at '54 and read down
20 towards the bottom of the page? For completion, why don't
21 you read the question and the response?

22 MR. HENDERSON: Have you used as much water this
23 year as you expect to use under this permit?

24 (Reading.)

25 The answer is no.

1 If not, estimate the year in which the use
2 will be full and complete. Not known, yearly
3 consumption is increasing with population
4 growth. (Reading.)

5 MR. SLATER: Could you please read the Question 10 and
6 the response to Question 10?

7 MR. HENDERSON: Have you stored as much water in
8 your reservoir as you expect to store?

9 (Reading.)

10 The answer is no.

11 MR. SLATER: Again, in 1964 this appears to be a
12 different type form; is that correct?

13 MR. HENDERSON: That's correct.

14 MR. SLATER: Different lines, boxes, et cetera?

15 MR. HENDERSON: That's correct.

16 MR. SLATER: Can you please take a look at questions --
17 Items 3 and 4; read the questions and responses.

18 MR. HENDERSON: State approximate cost of
19 construction work on this project during
20 the last 12 months. \$764,460, added
21 filtration.

22 Describe briefly the portion of the project
23 upon which the above amount was expended.

24 Capacity and construction of new water mains
25 and pumping station.

1 Number 4: What construction remains to be done
2 to complete the project? Construction of
3 storage facilities, water mains and rehabilitation
4 of old filtration plant. (Reading.)

5 MR. SLATER: What year was that?

6 MR. HENDERSON: That was 1964.

7 MR. SLATER: Same question as it relates to the '65
8 permit, Item 4.

9 MR. HENDERSON: Item four.

10 What construction work remains to be done to
11 complete the project? Construction of
12 storage facilities, water mains and
13 rehabilitation of old filtration plant.
14 (Reading.)

15 MR. SLATER: Mr. Henderson, what year was the hearing,
16 the hearing revoking the various permits that you testified
17 to on cross-examination?

18 MR. HENDERSON: 1972.

19 MR. SLATER: Would you please look at the progress
20 report filed in 1973. Is that the -- it's a new type of
21 form, new boxes, new lines?

22 MR. HENDERSON: That's correct.

23 MR. SLATER: Will you please read Question 4 and what
24 the response is?

25 MR. HENDERSON: What percent of construction work

1 remains to be done to complete the project?
2 Corps of Engineers, owners of the diversion
3 works is presently considering modifications
4 of existing facilities. (Reading.)

5 MR. SLATER: Same question for the progress report
6 filed in 1975.

7 MR. HENDERSON: Corps of Engineers, owner of
8 diversion works is presently considering
9 modifications. (Reading.)

10 MR. SLATER: And to expedite this, in subsequent years
11 is that same basic explanation carried forward?

12 MR. HENDERSON: 1974 has the same statement.

13 MR. SLATER: In all these years does the amount of
14 direct diversion or the amount to be diverted to storage
15 change? Would you look at the top --

16 MR. HENDERSON: No.

17 MR. SLATER: I want to show you -- would you take a
18 look at Paso Exhibit 26? Can you describe what the document
19 is?

20 MR. HENDERSON: It's the latest permit issued by the
21 Corps of Engineers for the City and the Corps of Engineers
22 combined permit.

23 MR. SLATER: Will you please take a look at what
24 condition five says? Will you read that aloud?

25 MR. HENDERSON: The water appropriated shall be

1 limited to the quantity which can be
2 beneficially used and shall not exceed 12.4
3 cubic feet per second by direct diversion,
4 to be diverted from January 1 to December 31
5 of each year. And 45,000 acre-feet per annum by
6 storage to be collected from November 1st of
7 each year to June 30th of the succeeded year
8 (Reading.)

9 MR. SLATER: Would you also take a look at Paragraph 7?
10 What does Paragraph 7 say?

11 MR. HENDERSON: Paragraph 7?

12 MR. SLATER: Yes, construction.

13 MR. HENDERSON: Construction work shall be completed by
14 September 30th.

15 MR. SLATER: In your mind, is the construction of this
16 project complete?

17 MR. HENDERSON: No.

18 MR. SLATER: In your mind, are those terms inconsistent?

19 MR. HENDERSON: What I have seen through the permits is
20 that it depends on the person's perception of what is
21 construction complete. And there has been different
22 determinations or different looking at how they view that,
23 whether construction was complete.

24 MR. SLATER: No further questions.

25 H.O. BROWN: Recross, Mr. Baiocchi or Ms. Scarpace.

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RE CROSS-EXAMINATION OF SAN LUIS OBISPO
BY CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
BY MS. SCARPACE

MS. SCARPACE: Mr. Henderson, did the City of San Luis Obispo file an application to enlarge the --

H.O. BROWN: Pull the mike up closer.

MS. SCARPACE: Did the City of San Luis Obispo file an application to enlarge the Salinas Dam pursuant to Water Code Section 6002?

MR. HENDERSON: Not to my knowledge. I believe we are expanding the capacity under our current permit terms.

MS. SCARPACE: If you would refer to the Permit 822 -- your permit, the City's permit, 5882.

MR. HENDERSON: Okay.

MS. SCARPACE: What is the height that is specified for the dam, for the spillway?

MR. HENDERSON: I don't know that that is specified in the permit.

MS. SCARPACE: In the application for the permit, the permit itself?

MR. SLATER: I am sorry, Exhibit 26 is the permit which was issued. You want to reference the application? Do we know what number it is?

MS. SCARPACE: Well, it's the permit, 5882.

MR. HENDERSON: This says 5882. I don't know that we

1 reference the spillway.

2 MS. SCARPACE: We had it as an exhibit.

3 H.O. BROWN: Mr. Smith.

4 MR. SMITH: I am just reading your document and the
5 Phase I scope of service of Salinas Reservoir Expansion
6 Project. Spillway elevation from existing 1301 to 1320.

7 MR. HENDERSON: That is what the project will be. She
8 was asking me whether that was in our permit, and I don't
9 know that that is in the permit.

10 MR. SLATER: I think it is fair to the witness to see
11 the document that is being referenced.

12 MR. HENDERSON: As we explained, the project that we
13 are proposing is to install spillway gates which would raise
14 the maximum water surface by 19 feet. That is what the
15 project is.

16 MR. SMITH: That is what it says.

17 MS. SCARPACE: Doesn't the permit specify that the
18 spillway height is 125 feet?

19 MR. HENDERSON: I am not sure what you are referencing.

20 MS. SCARPACE: Permit 5882.

21 MR. HENDERSON: I don't see it in here.

22 MS. SCARPACE: It gives the specifications of the
23 capacity of the dam.

24 H.O. BROWN: You understand the question?

25 MR. HENDERSON: Yeah. She is referring me to 5882, and

1 I have the latest copy before me. But I can't find any
2 reference. Maybe she can point out where it is in this
3 document.

4 H.O. BROWN: Then that answer is no.

5 MR. HENDERSON: No. It doesn't quote the spillway
6 height. I think when they measure dams for, like, our Whale
7 Rock dam, it is height, the physical top of the dam, not
8 necessarily the spillway height that they are referencing.
9 So, I am not sure what she is referencing, so my answer is,
10 no, I don't see that.

11 H.O. BROWN: You may try to clarify your question. Are
12 you talking about elevation or height above ground?

13 MS. SCARPACE: The height of the spillway from my
14 recollection was 125 feet and the height specified in the
15 application for the dam as a whole is 600 feet, I believe.

16 MR. HENDERSON: That wouldn't sound right.

17 H.O. BROWN: Again, if you don't understand, the answer
18 is no.

19 MS. SCARPACE: Does the City of San Luis Obispo or the
20 County who operates the dam, check between these gauge
21 points for flows to see whether or not there is a live flow
22 existing?

23 MR. HENDERSON: My understanding is that County staff
24 monitors a number of points that typically go dry first. If
25 they're notified of any other points, a lot of them are

1 inaccessible or on private property. But if they are
2 notified there is a spot that is dry, they will confirm that
3 and open up the valves.

4 MS. SCARPACE: The fact that there is -- they may see
5 flow at the checkpoints doesn't mean that there is flow
6 between the checkpoints?

7 MR. HENDERSON: Again, look I said, if they are
8 notified and become aware there is not flow, they will open
9 up those valves. Again, just from our years of experience
10 that the Salinas River flows go dry just below typically the
11 well field for Atascadero Mutual, that is a huge, shallow
12 well field, and that pulls down the water. That is
13 typically the first place that goes dry. If in some years
14 it went dry somewhere else, they would monitor that.

15 MS. SCARPACE: Does the live stream agreement specify
16 that the releases only have to be made during the time of
17 year that typically that area of the County doesn't get
18 rain?

19 MR. HENDERSON: Again, the live stream only looks at it
20 -- basically the flows, bypass flows, have to be done
21 whenever there is not a visible flow from the dam to the
22 Nacimiento. It doesn't have to do with rainfall. There is
23 a correlation between rainfall and when you get a live
24 stream, but it doesn't talk to that. It just says if there
25 is not a visible flow along that whole stretch, whatever

1 flows in has to be released.

2 MS. SCARPACE: Do you know how much evaporation would
3 result from the increase in the level of the dam?

4 MR. HENDERSON: I don't have those exact figures. We
5 have done some of that modeling and projections. There is
6 considerable evap from the project as it exists. It is a
7 hot area over there, and with a greater surface area you
8 will expect greater evaluation.

9 It is built into the model. That information is there
10 in the EIR, but I don't have the specific numbers.

11 MR. SMITH: I would like to read some numbers from the
12 file into the record.

13 MR. SLATER: I am going to object on the basis that he
14 has an opportunity to testify as a witness.

15 H.O. BROWN: Yes. Mr. Smith, what is your position
16 here now?

17 MR. SMITH: What is my position?

18 H.O. BROWN: Are you an attorney representing the
19 client or what is your --

20 MR. SMITH: I am a biologist. I am with CALSPA. I
21 swore when I came in this morning.

22 H.O. BROWN: The questions are to be directed by
23 counsel to opposing parties.

24 MS. SCARPACE: Since there are two counsel with the
25 permittee --

1 H.O. BROWN: Please use the microphone.

2 MS. SCARPACE: Since the permittees have two counsel
3 present who have both asked questions in these proceedings,
4 I am requesting that CSPA also be allowed to use an
5 additional person to aid in questioning, even though the
6 person may not be an attorney.

7 H.O. BROWN: Mr. Baiocchi.

8 MR. BAIOCCHI: Mr. Brown, going back to 1992, I
9 prepared for and testified at five hearings before the Board
10 then down here, in this room. And also during that period
11 -- I was also a witness. I was allowed to cross-examine.
12 And in this case here I was doing it -- I am going to
13 testify and I was helping Lorraine in cross-examining the
14 witnesses. And I think what Felix did was simply, he came
15 in and took my place on a couple of questions that I wanted
16 to raise earlier, we wanted to raise earlier on evaporation.

17 The point is this, is that they have two counsel and
18 his questions are going to be very pertinent to the
19 proceedings, going to help the Board and staff.

20 MR. SLATER: Mr. Brown, in an effort to expedite the
21 process, we will concede, so long as the person who
22 questions doesn't testify now.

23 H.O. BROWN: Do you intend to testify Mr. Smith?

24 MR. SMITH: Yes.

25 MR. BAIOCCHI: I intend on testifying, also.

1 MR. SLATER: Contemporaneously. I'm just trying to
2 make sure that we don't get testimony at the same time he is
3 asking questions if he is going to testify. That's all. If
4 he is going to testify, he can testify.

5 H.O. BROWN: Is that clear, as to what he said?

6 MR. BAIOCCHI: He has to ask a question and not testify
7 while he is asking a question.

8 H.O. BROWN: That's correct.

9 MR. BAIOCCHI: That is agreeable to me.

10 H.O. BROWN: Ms. Scarpace, would you see, as the lead
11 counsel, that the gentlemen assisting you do ask questions,
12 make sure it is a question that is being asked and not
13 testimony that is being submitted?

14 MS. SCARPACE: Yes.

15 H.O. BROWN: I will permit you to proceed.

16 MS. SCARPACE: Thank you.

17 MR. SMITH: Could you bring evaporation data --

18 H.O. BROWN: Use the microphone when you switch back
19 and forth.

20 MR. SMITH: Could you bring the evaporation data for
21 both Salinas Reservoir and Whale Rock Reservoir tomorrow?
22 Is that possible?

23 MR. HENDERSON: I don't have those files with me. They
24 are huge binders that -- if you are talking about the
25 existing operations of those facilities, I don't have that

1 information with me up here. They are in our offices.

2 I will just state that, like I stated earlier, Whale
3 Rock's evap is significantly less than Salinas' evap. That
4 is just the nature of one is next to the coast and one is in
5 an arid, very hot area. You get more evap.

6 MS. SCARPACE: What is the safe annual yield that the
7 City of San Luis Obispo expects to receive by raising the
8 level of the dam; that is, the increase in the safe annual
9 yield?

10 MR. HENDERSON: The project identifies that it would
11 increase the safe annual yield by 1650 acre-feet per year.

12 MS. SCARPACE: Do you recall that the evaporation --
13 increase in the evaporation is roughly double that amount?

14 MR. HENDERSON: Again, I don't have those numbers in
15 front of me. We have seen evaps as high in the past when
16 the reservoir's as full as it is now. A real hot summer
17 month you can see evaps upward of 700 acre-feet in a month.
18 That is not unusual for a reservoir in that type of area.
19 Nacimiento has huge evap losses. That's just the nature of
20 operating a storage facility.

21 MS. SCARPACE: Thank you.

22 I have no further questions.

23 H.O. BROWN: Ms. Cahill, recross?

24 MS. CAHILL: Yes, thank you.

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RE CROSS-EXAMINATION OF SAN LUIS OBISPO

BY PASO ROBLES

BY MS. CAHILL

MS. CAHILL: You can relax, Mr. Moss. These are all for Mr. Henderson.

Mr. Slater asked you whether Paso Robles or Templeton had contracts with the Corps of Engineers for delivery of water, and you answered, not to your knowledge; is that correct?

MR. HENDERSON: I believe he asked whether it had contracts for storage of water.

MS. CAHILL: Your answer was?

MR. HENDERSON: No.

MS. CAHILL: No or not to your knowledge?

MR. HENDERSON: Not to my knowledge.

MS. CAHILL: To your knowledge. Did the Corps of Engineers, nonetheless, release water from Salinas Reservoir for the benefit of Paso Robles in the 1950s and the 1960s?

MR. HENDERSON: Again, I wasn't here at the time. But looking at the files, it looks like there were some releases made downstream from the reservoir from excess that was in storage.

MS. CAHILL: As late perhaps as 1966?

MR. HENDERSON: I don't know the exact dates.

MS. CAHILL: Some discussion of that is in the

1 transcripts of the 1972 hearings; is that correct?

2 MR. HENDERSON: Correct.

3 MS. CAHILL: Was the city of San Luis Obispo in the
4 1950s and '60s increasing its use of existing Salinas
5 Reservoir?

6 MR. HENDERSON: I believe so, yes.

7 MS. CAHILL: So, it could say, "We're going to expand
8 our use" even if it was only relying on the existing
9 reservoir?

10 MR. HENDERSON: Correct.

11 MS. CAHILL: In fact, you're probably still expanding
12 your use from the existing reservoir even now, aren't you?

13 MR. HENDERSON: We probably hit a peak use prior to
14 the drought when per capita use rates were significantly
15 higher. Right now our use rates are even below the 145
16 figure we talked about. Our usage is about 120 gallons per
17 person per day in the city. So, with those lower use rates
18 I don't know that we are using more water at this point.
19 Again, with increasing the population, we will continue to
20 grow.

21 MS. CAHILL: Say up through 1980, even assuming there
22 were going to be no expansion, you would still have said,
23 "We need more time to put our water to beneficial use,"
24 because you were still building up use of the existing
25 reservoir; is that right?

1 MR. HENDERSON: Yes.

2 MS. CAHILL: Let's look just briefly at some of those
3 years that Mr. Slater had you look at in the progress
4 reports. I am not sure I've got them all written down.

5 The first one was 1951.

6 MR. HENDERSON: Yes.

7 MS. CAHILL: It does say construction is completed,
8 says no. But the additional works that are required don't
9 mention a gate in the spillway, do they? These are more
10 distribution types works, aren't they?

11 MR. HENDERSON: It appears so, yes.

12 MS. CAHILL: In 1954 down to Number 9, yearly
13 consumption is increasing with population growth. That was
14 happening even though there wasn't an expansion at that
15 time; isn't that true?

16 MR. HENDERSON: I am sorry?

17 MS. CAHILL: Down in 1954, Question 8:

18 Estimate the year in which use will be full.

19 (Reading.)

20 You don't know, but you are increasing. You were
21 increasing at that time.

22 MR. HENDERSON: That is what communities do.

23 MS. CAHILL: Right.

24 In 1964, again, it indicates construction work has not
25 been completed, but the specific measures that are mentioned

1 in the response to Number 3, filtration capacity, water
2 mains and pumping station. That doesn't involve
3 installation of spillway gates, does it?

4 MR. HENDERSON: No, it doesn't.

5 MS. CAHILL: The report that was filed after, in 1973,
6 that was filed after the Board took its action in the 1972
7 order, wasn't it?

8 MR. HENDERSON: That's correct.

9 MS. CAHILL: That came after that order.

10 In 1976 did City of San Luis Obispo indicate that
11 construction was complete?

12 MR. HENDERSON: Yes.

13 MS. CAHILL: And in 1977 did it indicate that
14 construction was complete?

15 It is out of order. It is matter of evidence; you
16 don't need to confirm it.

17 You found it, so what does it say?

18 MR. HENDERSON: Yes.

19 MS. CAHILL: Are you aware that the Corps of Engineers
20 on two occasions filed requests for license?

21 MR. HENDERSON: I am aware of at least one time in the
22 '90s when I was in my position.

23 MS. CAHILL: Thank you very much.

24 H.O. BROWN: Thank you, Ms. Cahill.

25 Staff, do you have recross?

1 I have no recross, so that concludes the panel.
2 Mr. Slater.
3 MR. SLATER: Mr. Brown, we would like to know whether
4 or not you would like us to make our arguments regarding the
5 introduction of this evidence at this time?
6 H.O. BROWN: Let's wait until you complete the other
7 panel.
8 MR. SLATER: Fair enough.
9 H.O. BROWN: You can call your other panel, if you like
10 now.
11 While we have a little break, on starting at 9:00 in
12 the morning, is there any objections to doing that?
13 MS. CAHILL: We have no objections.
14 MR. SLATER: None for the City, your Honor.
15 H.O. BROWN: No objections?
16 MR. BAIOCCHI: No objection.
17 H.O. BROWN: We will get an extra hour tomorrow. We
18 will start at 9:00 a.m. in the morning, and this room will
19 be locked up over night. Is that correct?
20 MS. MROWKA: That is correct.
21 H.O. BROWN: If you wish to leave any of your files or
22 information here, the room will be locked.
23 Mr. Slater.
24 MR. SLATER: Ms. Osler --
25 MS. HASTINGS: Actually I will begin the direct

1 examination of Mr. Ray. My name is --

2 H.O. BROWN: Hastings.

3 MS. HASTINGS: -- Stephanie Hastings. Mr. Slater is a
4 little confused.

5 Good morning, Mr. Ray. Please state your name for the
6 record.

7 MR. RAY: My name is Robert Lewis Ray.

8 MS. HASTINGS: Do you have a copy of what has been
9 marked previously as Exhibit 8?

10 MR. RAY: Yes, I do.

11 MS. HASTINGS: Did you prepare written testimony in
12 advance of this hearing?

13 MR. RAY: Yes, I did.

14 MS. HASTINGS: Can you take a look at Exhibit Number 8
15 and then flip to the last page. Is that your signature on
16 the last page?

17 MR. RAY: Yes, it is.

18 MS. HASTINGS: Is this a complete and accurate copy of
19 your written testimony?

20 MR. RAY: Yes, it is.

21 MS. HASTINGS: Do you swear or affirm that your written
22 testimony, which has been marked for identification as San
23 Luis Obispo Exhibit Number 8, is true and correct?

24 MR. RAY: Yes, I do.

25 MS. HASTINGS: Did you also submit in advance of this

1 hearing a statement of your qualifications?

2 MR. RAY: Yes, I did.

3 MS. HASTINGS: I am handing you what has been
4 previously marked for identification as San Luis Obispo
5 Exhibit Number 3. Can you take a look at that.

6 MR. RAY: Okay.

7 MS. HASTINGS: Does that appear to be a complete and
8 accurate copy of your statement of qualifications?

9 MR. RAY: Yes, it is.

10 MS. HASTINGS: Do you swear or affirm that the
11 statement of qualifications, which has been identified as
12 Exhibit Number 3, is true and correct?

13 MR. RAY: Yes, I do.

14 MS. HASTINGS: Thank you very much.

15 With respect to those qualifications, what is your
16 present occupation?

17 MR. RAY: I am a senior project manager for URS Greiner
18 Woodward Clyde in our Santa Barbara office.

19 MS. HASTINGS: Can you briefly describe some of the
20 highlights of your professional experience for us.

21 MR. RAY: Sure. In addition to being the project
22 manager for the Salinas Reservoir Expansion Project, which I
23 have been working on since 1988, '89, I started work on the
24 EIR in 1991, 1992. I have always managed a variety of
25 California Environmental Quality Act and National

1 Environmental Policy Act projects over the years.

2 I've been -- I have a degree in natural resources
3 management from Cal Poly in 1977. I've been working for
4 Woodward-Clyde for the last 22 years. Some of my
5 representative project experience at Woodward-Clyde includes
6 I was the project manager for the EIR that was prepared for
7 the City of Santa Barbara desalination project. I was the
8 project manager that was prepared for the EIR for joint
9 agency water supply project in Ventura and Los Angeles
10 Counties. I was the project manager for the Cajalco Creek
11 Dam and Detention Basin Project upstream of Lake Matthews in
12 Riverside County for the Metropolitan Water District, and I
13 also worked on the permitting and environmental compliance
14 for City of San Barbara's Gibraltar Dam strengthening
15 Project in Los Padres National Forest in Santa Barbara
16 County.

17 In addition I am also a registered assessor in the
18 State of California.

19 MS. HASTINGS: What has your role been with respect to
20 this project, the Salinas Reservoir Expansion Project?

21 MR. RAY: Again, I have been the project manager since
22 we started working on the EIR back in 1991, '92. In that
23 role I have been responsible for overseeing, directing,
24 supervising preparation of the EIR by our staff and various
25 subcontractors.

1 MS. HASTINGS: Approximately how many hours have you
2 contributed to this project?

3 MR. RAY: Not counting the work I did in the late
4 1980s, I have put in over 1,500 hours on this project.

5 MS. HASTINGS: The EIR for this project has been
6 certified by the City; you know that?

7 MR. RAY: That's correct.

8 MS. HASTINGS: In your opinion, is the EIR for this
9 project a complete, thorough and professionally prepared
10 document?

11 MR. RAY: Yes, it is.

12 MS. HASTINGS: From an engineering and design
13 perspective, can you tell us a little bit about the proposed
14 project?

15 MR. RAY: To summarize and recap what has already been
16 testified to here previously today, the primary component of
17 the proposed project is to install an operable gate in the
18 existing spillway of Salinas Dam to complete the original
19 design, thereby raise the water level by approximately 19
20 feet and increase the storage capacity by about 19,000
21 acre-feet.

22 MS. HASTINGS: Two draft environmental impact reports
23 were prepared prior to the final impact report, which we
24 have here today. Can you tell us why that was?

25 MR. RAY: When the initial draft EIR was prepared and

1 issued in November of 1993, we held public hearings and
2 received public and agency comment on the initial draft.
3 The City made a decision not to issue the final EIR and to
4 certify the project at that point. Instead, deciding to
5 contract with Woodward-Clyde to do additional studies to
6 address the public and agency concerns raised about the
7 project. And those related primarily to issues related to
8 biological impacts, the inundation zone regarding the
9 perimeter of the reservoir, as well as downstream flow
10 effects.

11 MS. HASTINGS: You referenced regulatory agencies.
12 During the course of the preparation of these documents did
13 you consult with various regulatory agencies that might be
14 involved?

15 MR. RAY: We did. And some of the more notable
16 agencies that we were consulting with included the U.S. Fish
17 and Wildlife Service, the California Department of Fish and
18 Game and the County of San Luis Obispo.

19 MS. HASTINGS: Can you describe the results of the
20 City's environmental analysis in general terms? In other
21 words, what are the environmental impacts, if any, that the
22 final environmental impact identifies?

23 MR. RAY: Yes, I can do that.

24 In general, I would refer you to the executive summary
25 in the Final EIR for a more detailed description of what the

1 impacts, mitigation measures and residual impacts are. I'll
2 go ahead here and focus on the more substantial impact
3 findings in the document.

4 We have identified significant impacts in the
5 short-term to biological resources in the perimeter of the
6 rest that would be inundated on a periodic basis by the
7 expansion of the reservoir. With implementation of the
8 mitigation measures specified in the document, we believe
9 that those impacts are mitigable over time. They will be
10 significant in the short time.

11 We have also identified short-term significant impacts
12 during the construction phase for lost recreational
13 opportunities at the County park. It is primarily a safety
14 concern due to the amount of work that needs to be done at
15 the County park to relocate recreational facilities and the
16 presence of heavy equipment, and there will be a need to
17 restrict public access to the County, or at least during
18 construction season. Again, that is a short-term impact.

19 In the long term it is expected that actually the
20 recreational facilities will be improved by rebuilding and
21 relocating them.

22 Additionally, we have identified that the project will
23 contribute along with other downstream water users to the
24 potential overdraft of the Paso Robles groundwater basin. I
25 would like to point out that we are -- that the Paso Robles

1 groundwater basin is in a state of overdraft, based on
2 information that we have at hand. To the extent that the
3 groundwater basin is in a state of overdraft, technically
4 under CEQA, if we contribute any amount to that overdraft
5 situation, we could be considered to be contributing to a
6 significant cumulative impact. That impact is not pertained
7 in terms of our findings to the stretch of river 14 miles
8 downstream from the dam and the Atascadero area. It
9 pertains to an area further downstream and the main basin of
10 Paso Robles basin.

11 That summarizes the impact findings.

12 MS. HASTINGS: Thank you.

13 Some of the comments that have been made earlier,
14 during the last panel of witnesses, were regarding potential
15 safety impacts of the installation of the spillway. Can you
16 address that issue?

17 MR. RAY: Sure. I will start with the upstream issues
18 and then work to the downstream issues. One of the items
19 that was identified long ago, and it is addressed in the
20 geotechnical study we did as well as in the EIR, is the
21 possibility that raising the reservoir level would
22 reinitiate several historic land site areas around the
23 perimeter of the reservoir. There is mitigation measures
24 that are presented in the EIR that would reduce that risk to
25 an acceptable level.

1 Additionally, there are, as was brought up previously,
2 issues related to dam safety associated with seismic shaking
3 of the dam. And, again, there are mitigation measures
4 presented in the EIR to address that. The Division of
5 Safety of Dams will theoretically take over jurisdiction for
6 this facility. In order for the expansion project to go
7 forward, it must be transferred from federal to local
8 control, and, thus, DSOD will have jurisdiction. There is
9 already coordination going with the Army Corps of Engineers
10 and the DSOD, and we are in the process as we speak of
11 performing additional damage and engineer-related studies to
12 determine the adequacy of the previously identified
13 mitigation measures: dam strengthening activities, abutment
14 armoring, et cetera, et cetera. That process will help
15 insure that the dam is retrofitted as necessary to reduce
16 the risk to an acceptable level in accordance with state
17 standards.

18 MS. HASTINGS: Earlier Mr. Moss, I believe, testified
19 to the fact that the City has recently contracted with your
20 company for the Phase I activities. Are these additional
21 dam safety engineering studies that you are referencing
22 part of those Phase I --

23 MR. RAY: Yes, they are.

24 MS. HASTINGS: Now that the CEQA document has been
25 certified, what additional CEQA work will be done?

1 MR. RAY: The additional CEQA work that needs to be
2 done is primarily to flush out the site-specific details of
3 the biological mitigation plan, and that is going to entail
4 contacting landowners and identifying specific parcels.
5 Once specific parcels are identified, assuming that can be
6 done, then we would then develop more site-specific
7 plans.

8 There are eight candidate areas identified in the EIR.
9 We will speak more to this later, but there is approximately
10 2500 acres which give us, we believe, abundant opportunity
11 for mitigation implementation. We need about 400 acres,
12 including consideration of replacement ratios in excess of
13 what would be impacted, so that there is basically more than
14 six times as much acreage as we need. The key is going to
15 be finding willing landowners that we can then go in and
16 develop the site-specific mitigation plans in accordance
17 with the approach and strategy that is laid out in the EIR.

18 And once that is done, the City will be able to
19 complete the CEQA findings and determinations of residual
20 impacts significance, assuming the City decides to approve
21 the project, and move forward. Then they would need to
22 issue an order of determination. And right now we believe
23 that that could all be completed in approximately a year
24 from now.

25 MS. HASTINGS: Thank you.

1 As you heard Mr. Moss and Mr. Henderson testify, that
2 additional work outside of the CEQA work that you just
3 described also needs to be done. Can you describe for us
4 what that is?

5 MR. RAY: Yes, I can. One of the key items is related
6 to the property transfer, and that is going to require NEPA
7 compliance. We have been coordinating with the Army Corps
8 of Engineers. When I say "we," Woodward-Clyde, together
9 with the City, has been coordinating with the Army Corps
10 since approximately 1992. We submitted a work plan to the
11 Corps of Engineers in 1994, based on previous consultations
12 with them, that laid out a work plan for NEPA compliance, as
13 well as other related studies which include a hazardous
14 material evaluation and clearances for 4400-acre property,
15 cultural resources compliance, Section 106 compliance, as
16 well as a boundary line survey.

17 So, we've gotten tentative feedback and approval from
18 the Corps on those scopes in the past. It is generally
19 believed that we could proceed with the NEPA compliance
20 through EA for the property transfer, and one of the basic
21 premises is that the land use would remain the same after
22 the property transfer, basically maintain the status quo
23 with the minimal impact associated with the property
24 transfer.

25 Additionally, there is the issue of getting through the

1 permitting with the DSOD.

2 MS. HASTINGS: Thanks.

3 To conclude, in your professional experience and in
4 your knowledge of this project, as you developed that over
5 ten years being project manager, is there anything that
6 would make this project infeasible?

7 MR. RAY: No.

8 MS. HASTINGS: Thanks very much.

9 MR. SLATER: Would you please state your full name for
10 the record.

11 MR. HUTCHISON: William Ray Hutchison.

12 MR. SLATER: Mr. Hutchison, I put before you a document
13 which is marked Exhibit Number 12 for the City of San Luis
14 Obispo. Could you please take a moment and review it.

15 Is that the testimony that you submitted in preparation
16 for this hearing?

17 MR. HUTCHISON: Yes, it is.

18 MR. SLATER: Is it accurate, true and correct?

19 MR. HUTCHISON: Yes.

20 MR. SLATER: Would you like to make any corrections to
21 it now?

22 MR. HUTCHISON: I just noticed there is a double page,
23 so there is a duplicate page in the pack.

24 MR. SLATER: Other than that, no?

25 MR. HUTCHISON: No.

1 MR. SLATER: I am also going to hand you now a document
2 which has been submitted as San Luis Obispo Number 4, which
3 purports to be a CV. Can you briefly review that.

4 Is it accurate?

5 MR. HUTCHISON: Yes, it is.

6 MR. SLATER: Could you take a couple moments and
7 highlight your experience for the Board?

8 MR. HUTCHISON: I have a Bachelor's degree from U.C.
9 Davis in soil water science. I also have a Master's degree
10 in hydrology from the University of Arizona. I have over 18
11 years of experience working with counties, cities, water
12 districts, consulting on a variety of groundwater and
13 surface water resource management modeling-type studies.
14 Particular emphasis has been on environmental impact of
15 water resources development.

16 One of the more significant things I did was back in
17 the early '90s, I was the one that developed LAMP, the Los
18 Angeles Aqueduct Management Program which is used by the
19 State Water Resources Control Board in the Mono Lake
20 decision. I did that work for the State Board.

21 I have been working on projects in San Luis Obispo
22 County since 1983. I began working on this particular
23 project in 1996 as part of the -- when the revised Draft EIR
24 was -- preparation of that was begun.

25 MR. SLATER: Can you tell us very briefly what was the

1 other type of work that you did in San Luis Obispo County.

2 MR. HUTCHISON: I was involved in the siting of a well
3 on one of the first vineyards in the eastern part, east of
4 Paso Robles. I did a -- I was involved in a project in Paso
5 Robles, working on, evaluating geothermal potential of
6 groundwater. I have always been involved since 1995 -- it
7 was '95 -- in the Los Osos area redoing a groundwater model
8 in that area.

9 MR. SLATER: What was the purpose of that groundwater
10 model? How was that going to be used?

11 MR. HUTCHISON: There are three water purveyors in the
12 Los Osos area, and they're completely reliant on
13 groundwater. And as part of the Nacimiento Project that is
14 one of the candidate areas where water could be brought in.
15 So, the three water purveyors had at one point -- this
16 groundwater model had been developed by the USGS back in the
17 1980s. They felt it was time to update that in anticipation
18 of possibly participating in the Naci Project. There was
19 also an order from the Regional Board to sewer their area.
20 There was no sewers in the area. They were concerned that
21 there was some potential groundwater resource impacts
22 associated with, in essence, moving the recharge from a
23 distributed area through septic tanks to concentrating it in
24 one place after as treated effluent.

25 MR. SLATER: Was there any effort to institute a

1 groundwater management plan in that zone?

2 MR. HUTCHISON: In terms of a AB-3030-type process, no.
3 It is a more cooperative effort between the water purveyors
4 in the area.

5 MR. SLATER: In terms of the number of hours you spent
6 on this project, meaning the Salinas Expansion Project, can
7 you tell us how many that would be?

8 MR. HUTCHISON: Approximately 400 hours since 1996.

9 MR. SLATER: Did you work independently, on your own,
10 or as part of a team?

11 MR. HUTCHISON: At the time I did the work I was an
12 employee of Woodward-Clyde. I worked closely with Robert
13 Ray who was managing the project in terms of defining or
14 understanding what the scope of the project was and the
15 approach taken to impact analysis. I worked closely with
16 Gary Henderson of the City staff in terms of using the
17 simulation model that had been developed previously for the
18 City. I worked very closely with John Gray, a biologist, in
19 terms of getting information related to flows that he would
20 be needing for his impact analysis.

21 I also worked with the Atascadero Mutual Water Company.
22 They had been one of the commenters on the Draft EIR, the
23 initial one in 1993, and made substantial comments regarding
24 potential impacts on their well field. So, as part of my
25 work I worked with them to get data on their wells, water

1 levels, pumping amounts, that we then used in our analysis
2 for the revised EIR.

3 MR. SLATER: It would be helpful if you could briefly
4 describe the hydrology in the vicinity of the Salinas
5 Reservoir, maybe on the map.

6 MR. HUTCHISON: Yeah.

7 MS. MROWKA: Could you please tell what figure you are
8 referring to?

9 MR. HUTCHISON: Yes. This is a reproduction or blowup
10 of Figure 3.4-1 in Final EIR.

11 MR. SLATER: Exhibit 12B.

12 MR. HUTCHISON: Thanks.

13 The Salinas River rises in the hills above the Salinas
14 Reservoir. The water -- the river then flows through the
15 canyon for about 14 miles or so, once it leaves the
16 reservoir, and enters into the area of Atascadero, which is
17 a small groundwater subbasin that is highly reliant on
18 Salinas River flow for recharge.

19 As it leaves Atascadero, it flows north and enters into
20 the main part of the Paso Robles groundwater basin. It
21 actually lies on the western edge of the groundwater basin.
22 From there it -- the Nacimiento River -- crosses the County
23 line. The Nacimiento River flows into the main stem of the
24 Salinas. The Nacimiento is the major tributary along the
25 way.

1 Then the river continues to flow north and into the
2 Salinas groundwater basin, Salinas Valley groundwater basin,
3 and ultimately heads into Monterey Bay.

4 MR. SLATER: Can you briefly explain how the dam
5 operation works in connection with the river hydrology?

6 MR. HUTCHISON: In essence, in terms of the hydrology
7 and in terms of the live stream agreement, water is stored
8 in the reservoir. During the wintertime, inflow increases
9 and rainfall and other tributary inflows contribute flow to
10 the Salinas River. As long as there is flow in the river
11 from the base of the dam to the Nacimiento River, storage
12 builds.

13 The City then diverts water out of the reservoir
14 through a pipeline. And other outflows include later on in
15 the season when the river dries up and the live stream is
16 not present anymore, diversions into storage -- storage
17 increases stop, diversions continue, and the inflow has been
18 bypassed through the river, or through the reservoir into
19 the river.

20 MR. SLATER: Does downstream tributary inflow play an
21 importance in the hydrology?

22 MR. HUTCHISON: Absolutely. There are gauges at Paso
23 Robles, just below the confluence of the Nacimiento at
24 Bradley and at Soledad and Chualar or up in Monterey County.
25 There is also estimates of inflows that are maintained by

1 the County, as Gary described, a water balance calculation
2 to figure out what the inflow is. We have estimates of
3 flow, inflow, here at the reservoir on the main stem and
4 then there is tributary inflow, comes into the main stem,
5 there is a higher flow at Paso Robles, a higher flow at
6 Bradley, largely owing to the Nacimiento River flowing in
7 and so on and so forth as you get out. Water flow in the
8 main stem increases as you move downstream.

9 Now, Atascadero, there is no gauge. But there was a
10 study done by Don Asquith [phonetic] of the Morro group
11 which was referenced in the original Draft EIR which we then
12 used to develop estimates or updated that study and
13 developed estimates of flow at Atascadero which became
14 important to our analysis later on.

15 MR. SLATER: What issues did you look at in connection
16 with the Expansion Project?

17 MR. HUTCHISON: Issues that I was involved in were
18 downstream impacts. In other words, by raising -- by
19 installing the gate and raising the effective size of the
20 reservoir, that was going to cause reduced spills, not
21 changes in the live stream outflow, but changes in the spill
22 characteristics of the reservoir.

23 We were primarily interested in how those reduced flows
24 would reduce spills which translate to reduced flows in the
25 river and ultimately how those reduced flows would affect

1 wells in Atascadero and places further downstream.

2 MR. SLATER: Did you look at impacts for upstream or
3 downstream at Paso Robles?

4 MR. HUTCHISON: Yes, we did.

5 MR. SLATER: How did you ultimately respond to the
6 questions in the methodology that you employed?

7 MR. HUTCHISON: Well, we took basically a three-step
8 process in our evaluation. The first step was to, using the
9 model, the City simulation, operational model, estimate the
10 reduced spills. The second step was to translate those
11 reduced spills into impacts to groundwater levels in
12 production wells in the Atascadero area, from the Atascadero
13 Mutual Water Company. Finally, we took a look at the
14 overall flow reductions that would occur in the Paso Robles
15 area and looked at that in the context of the report of
16 overdraft in the basin.

17 MR. SLATER: In considering the issues that you
18 identified, what data and information did you consider?

19 MR. HUTCHISON: As far as the first step, we used the
20 simulation model previously developed for the City. That
21 generated spill reduction estimates, or, actually, they were
22 spill estimates and then ultimately flow estimates at each
23 point along the way where he had data.

24 MR. SLATER: Can you briefly explain the model?

25 MR. HUTCHISON: The model is basically a simple water

1 budget type calculation tool that you work at a spreadsheet
2 format. Input to the model includes inflow, which is
3 obtained from the historic records; live stream releases,
4 which from 1972 are actual data, from pre '72 there have
5 been estimates developed on what the live stream release,
6 quote-unquote, would have been. Evaporation -- I'm sorry,
7 precipitation input or precipitation is an input based on
8 the gauges times the surface area of the reservoir. Outflow
9 to the system is City diversion, which is capped, based on
10 the pipeline capacity and the total water right or the total
11 diversion water right. And outflow includes the live stream
12 releases, and outflow is the spill.

13 The model basically works by taking the rainfall,
14 multiplying it by the initial storage or monthly, first of
15 month storage surface area, adding the reservoir inflow to
16 that, and then, based on a demand schedule, moving water out
17 of the system towards the City, and then making whatever
18 live stream releases are needed.

19 If the ending storage after you do all of that is above
20 the maximum level, the difference is spill. And if it is
21 not, then the new storage is calculated and you move on to
22 the next one.

23 MR. SLATER: I'm sorry, I interrupted you in the middle
24 of your three examples. I believe you testified that the
25 second thing you were looking at is the impact at

1 Atascadero?

2 MR. HUTCHISON: Right. So we ran the model essentially
3 two ways; one with current reservoir and the second with the
4 expanded reservoir, the larger reservoir. And we compared
5 those two spill estimates. Those spill estimates then were
6 conservatively assumed to transmit completely downstream.
7 In other words, if there was an acre-foot reduction in
8 spill, that translated to a acre-foot reduction in flow at
9 Atascadero and acre-foot flow reduction in Paso Robles,
10 which is a rather conservative assumption by carrying that
11 impact all the way through on a one-for-one basis.

12 In Atascadero what we wound up doing is taking those
13 flow -- the estimated flows that had been developed by the
14 Morro group and associated those or related those to water
15 level data that we obtained from the Atascadero Mutual Water
16 Company. Given the size of the basin and the importance of
17 Salinas River flow in the recharge of that basin, it was
18 pretty evident that water would flow into the Atascadero
19 area, recharge the groundwater basin till the basin is full
20 and be able to move on. Atascadero will turn the pumps on
21 and essentially drain the basin every year.

22 So we were able to develop a nice relationship on a
23 well-by-well basis between Salinas River flow and water
24 levels in specific wells in Atascadero. So when we have
25 reduced flows, we can then relate that to different or lower

1 groundwater levels as a result of the project. Since the
2 changes or impacts, quote-unquote, as a result of the
3 project are in wet years when there are spills, we saw
4 changes in groundwater levels when the basins was already
5 basically full. In dry years when the groundwater levels
6 are very low, there isn't any spill. Therefore, there isn't
7 any impact.

8 MR. SLATER: In general, was the methodology you
9 employed, in your opinion, conservative or was it -- in
10 other words, did you leave plenty of margin for error?

11 MR. HUTCHISON: Yes. Typically, what we do in these
12 kinds of evaluations is start off with a somewhat simple,
13 but very conservative, approach as opposed to what you might
14 classify as a more realistic approach.

15 The more realistic means you are adding in more of the
16 real aspects of the system. If you can keep the system or
17 the analysis fairly simple, yet very conservative and it
18 doesn't appear that there is going to be any impacts, you
19 leave plenty of margin for error. A good example is
20 transmitting that acre-foot reduction in flow all the way
21 through. When there is plenty of opportunities for
22 evaporation and infiltration are used elsewhere in the -- or
23 transpiration by riparian vegetation through the system.

24 MR. SLATER: With respect to -- you've identified three
25 issues that you were going to look at with regard to

1 potential downstream impacts. What did you find?

2 MR. HUTCHISON: We defined reduced spills that would
3 occur, obviously, in wet years. Those then translated to no
4 significant impacts associated with groundwater levels in
5 the Atascadero area. So, therefore, there would be no
6 impact on Atascadero's ability to pump in the Paso Robles
7 area. We saw that if you transmit that entire reduction in
8 flow and apply it completely to the stated overdraft in the
9 basin, it worked out to about four percent of the total
10 overdraft.

11 Recognize that that assumes that the entire flow that
12 would be reduced would have been recharge. When, in fact,
13 only a percentage of the total flow of the river at that
14 point actually becomes recharge. In fact, the Salinas
15 river only supplies about 20 percent of the total recharge
16 in the entire groundwater basin. And most of the problem
17 areas in the Paso Robles groundwater basin are on the
18 eastern side, which is pretty well removed from the river.

19 MR. SLATER: In light of the nearly 400 hours that you
20 spent working on this project, the information that you
21 reviewed, your testimony, written testimony submitted here
22 today, and your comments as well, in your expert opinion,
23 will this project result in a significant impact on present
24 uses downstream from the reservoir?

25 MR. HUTCHISON: No, it won't.

1 MR. SLATER: Thank you.
2 Which brings us to Mr. Gray. How are you doing, John?
3 DR. GRAY: Fine.
4 MR. SLATER: Can you please state your name for the
5 record?
6 DR. GRAY: John Timothy Gray.
7 MR. SLATER: Do you have Exhibit Number 13 in front of
8 you?
9 DR. GRAY: No, I don't.
10 MR. SLATER: Pass that down.
11 Did you prepare testimony in expectation of the hearing
12 today?
13 DR. GRAY: Yes, I did.
14 MR. SLATER: Would you briefly review -- was that
15 Exhibit 13?
16 DR. GRAY: Correct.
17 MR. SLATER: Does that look like the testimony you
18 prepared?
19 DR. GRAY: Yes.
20 MR. SLATER: Did you sign it?
21 DR. GRAY: Yes, I did.
22 MR. SLATER: Is it complete, true and accurate?
23 DR. GRAY: It is.
24 MR. SLATER: Do you want to make any changes?
25 DR. GRAY: No.

1 MR. SLATER: Let's start with your CV, which --
2 passing that down to you. I believe that is Exhibit 5.

3 Could you take a second and review that, please.

4 Does that look like your CV?

5 DR. GRAY: It is.

6 MR. SLATER: Truthful and accurate?

7 DR. GRAY: It is.

8 MR. SLATER: Could you take a couple seconds and --
9 moments, and briefly describe your professional
10 qualifications?

11 DR. GRAY: I am the manager of the environmental
12 planning and permitting at URS Greiner Woodward Clyde. I
13 have been an environmental consultant for 18 years. I have
14 a Bachelor's of Science and a Doctorate in ecology from the
15 University of California. I'm a practicing environmental
16 consultant. Most of my work is on the Central Coast. Most
17 of my clients are public agencies, and most of my projects
18 are water resource projects.

19 I prepare environmental documents. I supervise a staff
20 that also prepares environmental documents. The type of
21 work that I've mostly engaged in in my career has been
22 EIR/EIS documents, preparation of wetland restoration plans,
23 threatened and endangered species studies and water quality
24 assessments. I worked on water resource projects throughout
25 the Central Coast, in particular on reservoir projects, and

1 have worked on most of the reservoirs on the Central Coast
2 preparing environmental reports, special studies on projects
3 such as Twitchell Reservoir, Cachuma, Gibraltar, Matilija,
4 Casitas and Freeman Diversion, just to name an example of
5 different projects that involve reservoirs.

6 MR. SLATER: By the way, would you prefer that I call
7 you Doctor?

8 DR. GRAY: John is fine.

9 MR. SLATER: Can you tell us very Briefly in what
10 manner you have been involved in the Salinas Expansion
11 Project?

12 DR. GRAY: I'm managing biological
13 resource investigations for revised, draft and the final
14 EIR. I was brought onto the team working under Robert's
15 supervision in 1995. I was not party to the original Draft
16 EIR, but I oversee and manage the biological resource
17 investigations for the revised draft and for the final
18 draft. I supervise a staff of field biologists who
19 conducted fieldwork. I reviewed their work. I participated
20 in field investigations. I edited and prepared the final
21 documentation in the reports and stand behind those
22 conclusions.

23 MR. SLATER: Did you beat Bill in terms of the number
24 of hours you spent?

25 DR. GRAY: I think by a small margin. I've worked 400,
450 hours on the project to date.

1 MR. SLATER: Can you briefly explain the methodologies
2 that you and your team employed in investigating the
3 biological impacts?

4 DR. GRAY: I can. When I was brought onto the project
5 we had received some comments from Department Fish and Game
6 about the original Draft EIR. They made a request that
7 certain types of methodologies be utilized for the revised
8 draft. So we tailored our biological resource
9 investigations for the revised draft in response to comments
10 by Fish and Game, and we also invited Fish and Wildlife to
11 help us scope out those investigations.

12 In 1995 we convened a field meeting with Fish and Game
13 and Fish and Wildlife. Gave them a field tour and asked
14 them what would be appropriate studies for the revised
15 draft. Based on their input, we conducted a large number of
16 different field investigations to determine what would be
17 the impacts of this project. Those investigations included
18 studies on riparian vegetation, studies on rare plants,
19 studies on threatened and endangered wildlife species,
20 studies on aquatic species, including fish. And I can
21 elaborate on those if there is anything in particular you
22 would like to explore.

23 MR. SLATER: I think you covered it for this moment.

24 Can you also tell me whether or not -- tell us whether
25 or not you also solicited input from the community at large?

1 DR. GRAY: We did. One of the major aspects of our
2 investigations was to determine what would be appropriate
3 mitigation for the loss of habitat due to inundation from a
4 higher reservoir level.

5 We realized that that would be a challenge because of
6 there was a large acreage of habitat that could be affected.
7 So we invited agencies and North County landowners and
8 interested parties to help us identify opportunities for
9 habitat restoration in the North County. As Mr. Henderson
10 mentioned this morning, the City convened what was called a
11 Mitigation Visionary Committee process. That was by
12 invitation to the public and interested parties that could
13 attend four meetings that we conducted in the North County
14 to discuss how you might mitigate the loss of habitat, where
15 might there be appropriate properties or landowners, what
16 would be appropriate technologies and techniques to restore
17 habitat.

18 Through that process we came away with a lot of good
19 ideas and input about the challenges and opportunities for
20 habitat restoration in the North County. Using that input
21 from the community, we designed a mitigation program that is
22 documented in the Final EIR.

23 MR. SLATER: Can you describe, if you will, what are
24 the potential impacts on biological resources associated
25 with this project?

1 DR. GRAY: I will make this brief, but realize there
2 are a variety of biological resources that could be affected
3 by the project.

4 Probably the single most largest impact is what I
5 alluded to earlier. And that is with higher reservoir level
6 there will be areas around the perimeter of the reservoir
7 and the back of the reservoir that would be inundated. That
8 would convert upland habitats to wetland or open water
9 habitat. It would also change the composition of some of
10 the wetland riparian habitat. In essence, make the
11 transition further up the river, moving some of that habitat
12 over time.

13 We looked at the acreage that might be affected. There
14 was on the order of 200 acres of grassland, 80 acres of old
15 wood land and 50 acres of riparian habitat that would be
16 affected in the new inundation zone. In addition, there
17 would be a large number of oak trees and pine trees around
18 the perimeter of the reservoir that would be inundated and
19 lost. We went out, counted all those trees individually and
20 sized them. It is on the order of 2700 trees that would be
21 lost as a consequence of a higher reservoir.

22 We also looked at potential affects on sensitive
23 plants. There are a number of plants in the surrounding
24 area, although they are not threatened or endangered by any
25 government agency, they are considered rare in the region.

1 We located those and determined how many would be affected
2 and how they might be relocated to minimize the impact to
3 those plants.

4 We also looked at threatened species, wildlife species.
5 With a higher reservoir level that would alter the riparian
6 habitat behind the reservoir, which is a very rich and
7 productive habitat. We looked at the type of waterfowl and
8 breeding birds that might be affected. The only endangered
9 species that we discovered in the area that could be
10 directly affected was the red-legged frog, which resides on
11 Alamo Creek which is tributary to the reservoir. We were
12 unsuccessful in locating it in 1996 and '97, but we did see
13 it in 1992. We think there is population there, but it is a
14 very small one and hard to detect. A higher reservoir could
15 introduce predators into that tributary and harm that
16 population. We identified mitigation to avoid that impact.

17 The last thing we looked at, downstream impacts. And
18 this has been alluded to, there is a potential to reduce the
19 number and size of spills, and we looked downstream to see
20 what resources might be affected. And looking at both fish,
21 riparian habitat, other aquatic species and wildlife, we
22 came to the conclusion that the change in the hydrologic
23 regime would be insignificant and would not change or affect
24 any resources downstream of the dam.

25 MR. SUTTON: Just out of curiosity, you mentioned

1 predators behind the dam. What are those, specifically?

2 DR. GRAY: The reservoir is, obviously, man-made. It
3 is a warm water body. It has gained fish in it; and it also
4 has bullfrogs. Bullfrogs prey on many native fish species
5 and amphibian species.

6 MR. SLATER: Are there a great many native and
7 non-native fish located in the reservoir?

8 DR. GRAY: The reservoir is stocked with trout for
9 sportfishing. It has a lot of non-native sport fish in it.
10 As you go up the reservoir into the river, you come to --
11 get to a cold water fishery, which is native.

12 MR. SLATER: With respect to the impacts that you
13 found, what was the proposed mitigation?

14 DR. GRAY: With regard to loss of habitat around the
15 reservoir, through the Mitigation Advisory Committee process
16 we identified eight areas surrounding reservoir. These are
17 private landowned, land parcels, encompassing over 2500
18 acres. We were proposing that there would be a replacement
19 of lost habitat of varying ratios, depending on the
20 sensitivity of the habitat and recommended that at least 400
21 acres be restored on graze land or otherwise degraded land
22 that is near the reservoir.

23 We have a set of 2500 acres in different blocks
24 surrounding the reservoir that we think are feasible for
25 habitat restoration. It is now a matter of determining if

1 there are willing landowners in configuring those habitat
2 compensation areas.

3 MR. SLATER: So, in your view, there are abundant
4 opportunities in the area?

5 DR. GRAY: There are abundant opportunities. The land
6 that we have identified is suitable for oak and riparian
7 restoration.

8 MR. SLATER: What about riparian habitat below the dam?

9 DR. GRAY: Through our analysis in the EIR we
10 determined there would not be significant change in riparian
11 habitat below the dam, and, therefore, no mitigation was
12 recommended.

13 MR. SLATER: Any impacts on wildlife?

14 DR. GRAY: The wildlife depends on the riparian and
15 aquatic habitat, and we did not determine any significant
16 impact to those resources. So there would be no impact to
17 wildlife, in my estimation.

18 MR. SLATER: What about aquatic resources?

19 DR. GRAY: Same conclusion, no significant adverse
20 impact to aquatic resources.

21 MR. SLATER: So your opinion is not significant impact?

22 DR. GRAY: That's right.

23 MR. SLATER: In your opinion, did the physical
24 conditions and riparian habitat presently downstream support
25 both native and non-native fishery?

1 DR. GRAY: It does.

2 MR. SLATER: Can you explain that?

3 DR. GRAY: Downstream of the dam there is a canyon
4 which has been alluded to in earlier testimony, about 10 or
5 12 miles of step canyon and with bedrock in the river. That
6 area has water for a long period of time. It has substrat.
7 It has riparian vegetation that is suitable for native fish
8 when there are flows in the river. That area also has five
9 manmade impoundments, ranging from several thousand feet to
10 over a mile in length with manmade dams ranging up to 15
11 feet in height. Those dams are managed by the landowners
12 for recreation purposes, including fishing, sport fishing by
13 the landowners. And we observed and are knowledgeable that
14 there are game fish in those reservoirs and those reservoirs
15 in most years have water year-round. So, therefore, non-
16 native fisheries is also present downstream.

17 MR. SLATER: In your opinion, will the project have any
18 impact on these contributors to the downstream fishery?

19 DR. GRAY: It would have no significant affect.

20 MR. SLATER: I don't know if I asked this. What, if
21 any, impact is the project going to have on above or aquatic
22 resources above the dam?

23 DR. GRAY: There would be inundation of riparian
24 habitat that would be mitigated by replacement habitat. In
25 terms of aquatic habitat the project would shift the

1 reservoir to a higher level and basically introduce water
2 further upstream of the reservoir into a portion of the
3 Salinas River that is now just intermittent. In essence, we
4 are just seeing a movement of aquatic habitat types further
5 up river.

6 The upper river portion of the Salinas, of the
7 reservoir, is grazed. Much of it's under private ownership,
8 and in degraded condition; and having additional water, more
9 frequent basis would probably enrich that habitat.

10 MR. SLATER: Now turning our focus to a specific
11 fishery, the steelhead fishery, what, if anything, did you
12 do to examine the possibility of a steelhead fishery?

13 DR. GRAY: We were aware that steelhead are present on
14 the Salinas River watershed. So we looked at the literature
15 about the occurrence of the southern steelhead. There has
16 been studies back to the '50s about the condition of the
17 fishery in the watershed. That information is summarized in
18 the Final EIR. Basically, there was a conclusion that there
19 is poor habitat on the main stem of the Salinas River, in
20 general, due to many factors.

21 There is significant groundwater pumping in the Salinas
22 Valley. There are impediments to passage so that the
23 fisheries of the southern steelhead fishery was degraded by
24 the '50s. At one time steelhead were running all the way up
25 to above the dam. Once the dam was installed, the spawning

1 areas were no longer available. But subsequent to the
2 construction of the dam and further development of the
3 watershed, the steelhead fisheries has become degraded and
4 is in very poor condition. That was documented by Fish and
5 Game in several studies in the '50s and also in recent
6 studies by researchers.

7 After looking at literature we came to the conclusion
8 that most, if any, spawning and rearing by the southern
9 steelhead occurs in tributaries and not in the main stem.
10 The closest tributaries which the spawning and rearing
11 occurs is in trout in Santa Margarita Creeks, which are
12 about 12 miles downstream of the dam. There is also some
13 documented spawning and rearing in Paso Robles Creek,
14 Atascadero Creek and Jack Creek.

15 To further investigate, we constructed a reconnaissance
16 survey, walking from the dam downstream with a
17 representative of Fish and Game, with another steelhead
18 fishery biologist and other parties from EIR to take a look
19 at the condition of the habitat from the dam downstream to
20 the private properties. We documented the first three miles
21 below the dam. Habitat conditions there were very poor for
22 steelhead. It is a cattle grazing operation. It is a
23 braided stream. Riparian habitat is sparse and gravels are
24 sparse.

25 Below that point, which is near Palitas Road, you enter

1 the canyon. We found there is suitable habitat for
2 steelhead. But intermixed in that habitat are these five
3 manmade impoundments. We were able to visit two of them.
4 Two others I could not visit; they were on private property
5 and I had to get information from others who had visited
6 this impoundment. As I mentioned, they range from 10 to 12,
7 up to 15 feet in height. They represent significant
8 barriers to steelhead. But they are probably conditions in
9 which steelhead could pass over the barriers if there are
10 suitable flows, and realize that also means there has to be
11 mean continuous flows for 120 miles out to the ocean. So,
12 probably it is a rare occasion when steelhead can make it
13 all the way up, close to the dam.

14 While we were conducting that reconnaissance survey, it
15 was brought to our attention that a landowner downstream of
16 Las Palitas Road had a fish he kept in his freezer for
17 several years. He caught, I believe, in 1995 below his dam.
18 We examined the fish. It looked like an adult steelhead.
19 We couldn't make an official determination. But certainly
20 from superficial examination we felt that it is high
21 likelihood that it is an adult steelhead. We had heard of
22 other anecdotal observations of steelhead by a property
23 owner named Otto Schmidt downstream. We were not able to
24 confirm that, but we heard from him directly that he had
25 observed steelhead too on the main stem of the river

1 occasionally.

2 MR. SLATER: Given the work that was prepared by Mr.
3 Hutchison, did you come to any conclusions about whether the
4 project would have any impact on the ability of steelhead to
5 migrate up and down the main stem?

6 DR. GRAY: Yes. In order to determine the impacts, we
7 utilized the results of Bill Hutchison's modeling,
8 simulation model, to look at flows. We came to the
9 conclusion that there would be no significant impact to
10 southern steelhead for several reasons.

11 First of all, the only affect that would occur during
12 spill years, if you look at the number of months and
13 determine when spills occur, that is only about 8 percent of
14 the time in which there are spills, on a monthly basis.
15 Looking at spill conditions themselves, there would only be
16 a reduction about 20 percent in the frequency of spills. So
17 we are talking about a rare occasion when there is actually
18 an impact on the hydrologic regime.

19 Then we went to a third level analysis. We said if
20 there is an affect on spills, how large is that? So, we
21 looked at all the spills that occurred during the historic
22 period, from 1945 to 1995; and Bill modeled the type of
23 spill, the duration with the existing project and with the
24 proposed project. We took cross-sections of the downstream
25 area to see how flows might change with an altered spill.

1 And we came to the conclusion that the actual water depth,
2 change in water depth, would be trivial.

3 The peak flows from these spills, there would be a
4 trivial difference between them. And the velocity of the
5 spills under existing and proposed conditions would not
6 change. And that simply because when the dam spills,
7 whether it is a large reservoir or small reservoir, it is
8 going to be very high flows. As a consequence, the
9 scouring affect that is necessary to clear out the substrat
10 in that channel would still occur. The scouring affect to
11 replenish riparian vegetation would continue and basically
12 there would be very small change in the amount of water
13 going downstream, which would still allow fish to migrate up
14 to this portion of the watershed.

15 MR. SLATER: Mr. Gray, you've recounted your
16 conclusions that you came in providing, preparing, your
17 analysis in the CEQA process in preparing for this
18 testimony. Are the conclusions that you come to reasonable
19 and within the parameters of accepted scientific and
20 technical practices?

21 DR. GRAY: Yes, they are.

22 MR. SLATER: Thank you.

23 No further questions.

24 H.O. BROWN: Thank you, Mr. Slater.

25 CALSPA, redirect -- or cross, rather.

1 MR. BAIOCCHI: Yeah. There is cross, big-time cross.

2 ---oOo---

3 CROSS-EXAMINATION OF SAN LUIS OBISPO

4 BY CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

5 BY MS. SCARPACE

6 MS. SCARPACE: Mr. Hutchison, do you do hourly, daily,
7 weekly and monthly flow analysis in the river in the 14-mile
8 canyon area below the dam at critical points above and below
9 Palitas, Rincinada, Camp Canyon Creeks at the mouth of the
10 canyon?

11 MR. SLATER: Do you understand the question?

12 MR. HUTCHISON: Yes, I do. The only miles we looked at
13 flows were at, in essence, the outflow of the dam, which
14 consisted of two parts: live stream releases and spills.
15 The next point we considered in terms of developing any
16 estimates were at Atascadero.

17 So through the canyon we didn't make any evaluations
18 except for the two or three cross-sectional points that John
19 had developed. We assumed no additional tributary inflow;
20 we simply used the dam outflow estimates to make velocity
21 estimates at those two or three points.

22 MS. SCARPACE: Why didn't you do an analysis from any
23 other checkpoints?

24 MR. HUTCHISON: There was no need to. Based on the
25 objectives of our analysis, we had no need to do any other

1 intermediate points.

2 MS. SCARPACE: You stated that it is recognized that
3 the Paso Robles water basin is in overdraft; is that correct?

4 MR. HUTCHISON: That is based on information from --
5 first report is 1979. It is California Department of Water
6 Resources' report on the Paso Robles groundwater basin.
7 That estimate of overdraft back then was 30,300 acre-feet.
8 Since then there have been a couple other estimates more
9 recently which have the figure somewhat higher, the
10 overdraft figure somewhat higher.

11 MS. SCARPACE: Has there been any calculations on
12 actual tributary flows at the various tributaries, any
13 recent flow data from these tributaries?

14 MR. HUTCHISON: Specifically which tributaries?

15 MS. SCARPACE: All of them below the Salinas Dam.

16 MR. HUTCHISON: If I recall correctly, there were some
17 older records of some older gauges on some of the
18 tributaries, and that was used in part by Don Asquith in his
19 estimate of flow on the main stem in the Atascadero area.

20 We were interested because we were dealing with
21 downstream flow impacts from the reservoir, we were focused
22 more on the main stem and not so much on the tributary
23 flows, because, obviously, they wouldn't have been affected
24 one way or the other by the project.

25 MS. SCARPACE: But aren't your figures assuming that

1 the tributary flows are what is contributing to most of the
2 downstream flows in the Salinas River?

3 MR. HUTCHISON: I don't think I understand what you are
4 saying.

5 MS. SCARPACE: Aren't your conclusions about having as
6 minimal impact in the Paso Robles groundwater basin
7 predicated on your estimates of tributary flows that are
8 recharging the groundwater basin?

9 MR. HUTCHISON: What we did in terms of that
10 conclusion was that the DWR report identifies five major --
11 five components of recharge: Salinas River; two specific
12 tributaries, San Joaquin and Estrella Creeks; agricultural
13 and return water; urban return water; and subsurface
14 inflow. Those total up to 47,000 acre-feet. 11,000
15 acre-feet is from the Salinas River.

16 MS. SCARPACE: Have you calculated the recent use or
17 underflow pumping of these tributaries by vineyard use,
18 which has dramatically increased in the past five years in
19 that area?

20 MR. HUTCHISON: Based on my review of the DWR report
21 and the more recent report that was done by Food Grow
22 [phonetic], the vineyard expansion has been on the east side
23 of the basin. The Salinas River is on the west side of the
24 basin. Based on contours of groundwater elevations in that
25 area and the cones of depressions that have been developed

1 over the last several years, the vineyards and the other
2 irrigation that is going on on the other side of the basin
3 has little to do with the Salinas River. In other words,
4 even though it is one basin, the way the pumping patterns
5 have been set up, one has very little to do with the
6 other. In other words, the pumping on the east side isn't
7 inducing any more flow out of the Salinas.

8 MS. SCARPACE: You stated that Atascadero relies
9 substantially on the Salinas River flow recharge; isn't that
10 correct?

11 MR. HUTCHISON: That's correct.

12 MS. SCARPACE: Now, how much of this spill contributes
13 to the recharge?

14 MR. HUTCHISON: If I can refer to the EIR, Table 3.2-14
15 of the Final EIR outlines the flows, the estimated flow
16 reductions at Atascadero that was based on the Morro group
17 method to estimate the flow at Atascadero. There is no
18 gauge there. These are estimated flows.

19 The average historic flow at Atascadero based from 1972
20 to 1994 is 29,829. Flipping back to Table 3.4-14, historic
21 spill has been 16,175 acre-feet per year. So, historically,
22 54 percent of the estimated flow at Atascadero comes from
23 the spills.

24 MS. SCARPACE: I would like you to refer to the Final
25 EIR, Table 3.4-13 and Figure 3.4-2.

1 MR. HUTCHISON: Okay.

2 MS. SCARPACE: Does that indicate that spill reductions
3 would occur in 11 years out of 24 years analyzed?

4 MR. HUTCHISON: Based on Table 3.4-13, I count 11 years
5 between 1972 and 1995 where spill reductions that range from
6 very, very small, like, on the order of 161 acre-feet in
7 1984 all the way up to 17,758 acre-feet in 1993.

8 So in all those years -- in those years there would be
9 11 periods or 11 times when there would be a spill
10 reduction.

11 MS. SCARPACE: Well, that is nearly half. How do you
12 find on that basis that there is only a 20-percent reduction
13 in frequency of spills?

14 MR. HUTCHISON: What we are saying is that, if -- a lot
15 of these things depends on how you look at it. There is 22
16 years of records in this, on this table. What this tells me
17 is that half the time there is -- almost half the time there
18 is a spill on the reservoir, whether it is the size it is
19 now or larger. And what would happen is that if the
20 reservoir were expanded, the spill reduction would occur
21 maybe a little later, or the spill would actually occur a
22 little later when the reservoir is filled up. John talked
23 about the reduction.

24 DR. GRAY: When I was talking about the reduction in
25 spills, I was referring to a 50-year period, from 1945 to

1 1995, which is a more complete record, taking into account
2 several drought cycles and several wet cycles.

3 The '72 to '95 is a primarily very wet cycle in the
4 range of hydrologic records.

5 MS. SCARPACE: In the Final EIR, on Page 3.4-19, it
6 states the largest project-related effects on downstream
7 flows would occur in wet years following drought periods
8 when the reservoir had below average storage.

9 So, during the wet years, following these dry periods,
10 the reservoir is refilling; is that correct?

11 MR. HUTCHISON: That's correct.

12 MS. SCARPACE: Isn't it true that sometimes the weather
13 patterns are such that that wet year may be the only wet
14 year in a drought situation that there is spills? That is a
15 spill?

16 MR. HUTCHISON: Again, going back to Table 3.4-13, the
17 spill reduction summary, that single biggest year of spill
18 was 1993, which is indeed a wet year that has been preceded
19 by several dry years. Even under the expanded reservoir,
20 the simulation shows that there would be a spill even in
21 that year, even though it would be less of a spill than in
22 the present reservoir because, in essence, the difference
23 being the difference in storage space. But there would be a
24 spill in that year.

25 MS. SCARPACE: Now, when you relate the decrease in

1 frequency of spills to fish and wildlife, their survival
2 depends upon spills. They can't store water themselves.

3 Wouldn't that effectively kill native fish below the
4 dam, reducing those spill figures?

5 MR. HUTCHISON: That is a John question.

6 DR. GRAY: I can answer that. Water in the river below
7 the dam also comes from tributaries. Even if the dam is not
8 spilling, there is still water in the river that is creating
9 habitat, maintaining habitats.

10 The fact that there is no spill doesn't meant that the
11 river will be dry below the dam.

12 MR. HUTCHISON: I think it is important to note that
13 above the reservoir the watershed areas is on the order of
14 120 square miles. Between the dam and the, what you kind of
15 consider the mouth of the canyon, that watershed area is
16 about 50 square miles. So you have substantial watershed
17 area contributing flow to the canyon in wet years when there
18 is no spill.

19 MS. SCARPACE: But you have never done any measurements
20 of what flows are in the canyons; isn't that correct?

21 MR. HUTCHISON: All we were interested in is what the
22 spill reduction would be. And we used gauge records at Paso
23 Robles, and we used estimated flows that were suggested to
24 us by Atascadero for the Atascadero area. The analysis that
25 we completed in terms of the reduced spill suggested

1 strongly that the impacts would be occurring during wet
2 periods when there would already be plenty of water flowing
3 in that section, anyway.

4 So what -- we didn't do a quantitative estimate because
5 we were focused mainly on addressing specific downstream
6 impact issues, specifically at Atascadero and at Paso
7 Robles. And the analysis that we did through that canyon
8 was related to what the change in flow would be. And for
9 purposes of John's biological analysis, that was all we
10 needed.

11 MS. SCARPACE: Do you -- are you familiar with the
12 study on the Paso Robles groundwater basin done by the --
13 for the Regional Water Quality Control Board by a group of
14 Cal Poly professors? Have you reviewed that?

15 MR. HUTCHISON: I am aware that it exists. I have
16 glanced at it.

17 MS. SCARPACE: That showed a concern about the affect
18 of the overdraft in the groundwater basin and that it could
19 result in lower quality waters. Would that situation --
20 well, I think it was part of our Exhibit F --

21 MR. SLATER: I am going to object. Is there a question
22 there?

23 MS. SCARPACE: Yes.

24 H.O. BROWN: Restate the question, please.

25 MS. SCARPACE: I want to know what effect that the

1 reduction in spills and flows in the reservoir is going to
2 have on the groundwater quality in the Paso Robles water
3 basin.

4 MR. HUTCHISON: Could you show me the exhibit and the
5 part of it where it talks about this specifically?

6 MS. SCARPACE: It was Page 5-1 of our exhibit, Exhibit
7 F, Paso Robles groundwater -- the study of the Paso Robles
8 groundwater basin final report for California Water Quality
9 Control Board, dated June 25th, 1993.

10 MR. HUTCHISON: Which exhibit?

11 MS. SCARPACE: Exhibit F, Page 5-1.

12 MR. HUTCHISON: It's not Exhibit F. There is no --
13 Exhibit F has some letters from Fish and Game.

14 H.O. BROWN: Ms. Scarpace --

15 MR. HUTCHISON: It is the public trust complaint by
16 CALSPA against Santa Margarita Ranch, is Exhibit F.

17 MS. SCARPACE: Maybe I have the wrong exhibit
18 number. I want to quote it. It says:

19 Water quality may deteriorate during
20 overdraft conditions as users may be forced
21 to utilize the lower quality, deeper waters
22 of the basin. In the Paso Robles area these
23 are known to be both salty and sulfurous.

24 (Reading.)

25 I want to know if you did any analysis of the effects

1 of the reduced spills on that water quality.

2 MR. HUTCHISON: Again, I would like to see in what
3 context they were talking about that, if they were referring
4 to a specific area. The Paso Robles groundwater basin, as
5 you know, is rather large. I am aware, generally, through
6 some of my previous work, not associated with this project,
7 that the deeper water is not -- the water quality of the
8 deeper zones is not as good as the upper zones and that
9 there is significant differences in water quality between
10 the west side and the east side of the basin. I would be
11 curious as to in what context that statement was made before
12 I can tell you how it affects or how it would be influenced
13 by changes in the Salinas River flow.

14 MS. SCARPACE: I did have the exhibit number wrong. It
15 is Exhibit U.

16 H.O. BROWN: Ms. Scarpance, what I am going to do is
17 knock off about 10 minutes early. I can give people a
18 chance to check their telephone calls.

19 We will start with you first thing in the morning on
20 this question. And, Esther, if you can highlight that
21 question so we can have it first thing.

22 Keep in mind, ladies and gentlemen, that we are
23 starting at 9:00 in the morning, and we are scheduled to run
24 till 4:00 p.m. tomorrow afternoon. I am going to ask all of
25 you to have your questions and answers as crisp as you can

1 because we are not going to make it by 4:00 tomorrow the way
2 we are going.

3 I have been very tolerant and lenient today, but I am
4 going to be a little more persuasive tomorrow to see if we
5 can get our questions and answers completed by 4:00
6 tomorrow. I ask you to prepare your questions in advance,
7 and let's be crisp tomorrow.

8 And is there any other business for this evening before
9 we adjourn until tomorrow morning?

10 MR. SLATER: No, your Honor.

11 H.O. BROWN: Stand adjourned.

12 (Hearing adjourned at 4:55 p.m.)

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