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

MONDAY, OCTOBER 18, 1999

9:00 A.M.

REPORTED BY: ESTHER F. WIATRE
CSR NO. 1564

APPEARANCES

BOARD MEMBERS:

JOHN BROWN, HEARING OFFICER
JAMES STUBCHAER

STAFF:

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KATHY MROWKA, SENIOR ENGINEER
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ALSO PRESENT:

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SACRAMENTO, CALIFORNIA

MONDAY, OCTOBER 18, 1999, 9:00 A.M.

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H.O. BROWN: Good morning, ladies and gentlemen.

Call to order.

Ms. Scarpace, you are up with your second panel.

MS. SCARPACE: Good morning. I would like to bring up one issue concerning the live stream agreement, and that is the fact that it was used as the only mitigation measure for this project in raising the level of the Salinas Dam. That could be found in the EIR on page -- Executive Summary, ES-17. And that lists the potentially significant impacts of the project. Says in part, potential adverse hydrologic or hydrogeologic effects for Salinas River area downstream from the reservoir are due to decreases in downstream flows during winter months of above normal rainfall years. Then it lists --

H.O. BROWN: You are just reading from that?

MS. SCARPACE: From that.

H.O. BROWN: It will be helpful if you can have your witness -- go ahead and ask the questions of your witness. He will be sworn, and that may be more meaningful in your total testimony.

MS. SCARPACE: Okay. I agree to that way.

Thank you.

H.O. BROWN: Assemble your panel.

While she is doing that, I am going to ask you, remind all of you here today this is scheduled to be the last day of the hearing. We have gone on an extra day. And to assure timely completion, your direct testimony is limited to 20 minutes per witness and not to exceed two hours total.

So their testimony should merely summarize the important points in the written testimony. And please limit the testimony to key issues identified in the hearing notice. And I, and I think the rest of everybody here, would really appreciate full cooperation by those that are here today. Let's get finished with this today, if we possibly can.

Mr. Baiocchi, I don't think you have been sworn. Is there anybody else in the audience who hasn't taken the oath?

Stand and take the oath all together.

(Oath administered by Hearing Officer Brown.)

H.O. BROWN: Ms. Scarpace, you are up.

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DIRECT EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY MS. SCARPACE

MS. SCARPACE: The first witness is Mr. Joel Baiocchi.

Mr. Baiocchi, did you submit to us Exhibit A, entitled "Use It or Lose It"? It's a law review article regarding the California Fish and Game Code, Section 5937?

MR. J. BAIOCCHI: Yes, I did.

MS. SCARPACE: Is that a true and correct copy of that law review article?

MR. J. BAIOCCHI: Yes, it is.

MS. SCARPACE: Have the courts cited this article in their opinions?

MR. J. BAIOCCHI: There is at least one appellate opinion that I am aware of. That is one of the Cal Trout cases. Other than that, I am really not sure.

MS. SCARPACE: Have the factual underpinnings of the law review article regarding the declining resources changed?

MR. J. BAIOCCHI: I am not a biologist. But as a matter of common knowledge I think the things have gotten worse. We have seen -- you can read the headlines. There are more endangered species listing, and there is continuously fights over water.

I would say that if the articles -- if the issue was timely then, it is crucial now.

H.O. BROWN: Please pull the microphone closer to you.

MR. J. BAIOCCHI: Certainly.

MS. SCARPACE: Can you present to us the essential facts of this matter as it relates to Fish and Game Code

Section 5937?

MR. J. BAIOCCHI: Sure. The facts that I have assumed to be true are as follows: That you have a dam on the Salinas River; that it is owned and operated by the applicants or licensees, permittees in this proceeding; that the historical flows emanating from that dam have been insufficient to keep fish below in good condition and specifically, I believe, there are some southern steelhead that may have been in the stream. I think your biologist will testify to that.

And I have assumed all that to be true. And based on that, I conclude that Section 5937 of the Fish and Game Code has not been complied with.

I have also considered whether there are any possible exemptions or exceptions. And the language of the statute is pretty simple, so I don't think that gets you anywhere. So the bottom line is I don't think there is, based on those assumed facts, that statute has not been complied with.

MS. SCARPACE: Would it be appropriate for -- well, assuming the fact that the Board has never issued an order to provide for the needs of fish below the dam, would it be appropriate in this proceeding for the Board to issue an in-stream flow allowance for fish, to protect fish under 5937?

MR. SLATER: Mr. Brown, I am going to object on the

basis these questions are all calling for legal conclusions regarding a public trust, perhaps a public trust complaint or a 5937 complaint which has never been filed. And the Notice of Hearing that went out identifying issues regarding this process indicated that -- nowhere did it indicate that a 5937 complaint was subject of this proceeding.

H.O. BROWN: Ms. Scarpace.

MS. SCARPACE: The protest in itself explicitly requests in-stream flow allowances to comport with the requirements of 5937 and it explicitly alleges violations of 5937. So that issue has been part of the process from the outset.

H.O. BROWN: Overruled.

Proceed.

MR. J. BAIOCCHI: I think I have the thread of your question in mind. I may not fully understand it, because of one aspect that I would disagree with that this Board has conditioned permits or permit on releasing water pursuant to 5937. That is water that the applicant had actually purchased and conveyed downstream and wanted to sell via a dam. That exact -- that decision is a footnote in my article. I don't have it memorized.

Your more specific question is what should be done here. And I think the Legislature made it very clear in the section what has to happen here. There has to be sufficient

water to keep downstream fish in good condition. Good condition, I can't speak to I am not a biologist.

MS. SCARPACE: Thank you.

Is this project exempt from Fish and Game Code Section 5937?

MR. J. BAIOCCHI: I don't believe it is. What I have seen in the opinions that have been published that construe 5937 and the water users and this Board's actions is there are two questions. One is: Is it applicable to 5937? The the second question is: How much?

I haven't seen a lot of success on the part of dam owners in getting entirely free of the requirements of 5937. So, I can't conclude that there is some kind of exemption or exception on this project.

MS. SCARPACE: Thank you, Mr. Baiocchi.

MR. J. BAIOCCHI: You're welcome.

MS. SCARPACE: Are there any cross-examination?

MR. SLATER: Just one question.

H.O. BROWN: Is that -- is this all?

MR. J. BAIOCCHI: That is all of my direct for this witness.

H.O. BROWN: We will go to cross, then. I have cross set up a little bit different. Starting with the City of Paso Robles.

Mr. Robinson, do you have cross?

MR. ROBINSON: Mr. Hearing Officer, the City has no cross.

H.O. BROWN: Mr. Slater.

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CROSS-EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY THE CITY OF SAN LUIS OBISPO

BY MR. SLATER

MR. SLATER: Good morning.

MR. J. BAIOCCHI: Good morning, Counselor.

MR. SLATER: You do not have any specific training as a biologist, correct?

MR. J. BAIOCCHI: That's correct.

MR. SLATER: And you have no opinion on whether fish are in good condition downstream from the reservoir, correct?

MR. J. BAIOCCHI: I assume that fact to be true.

MR. SLATER: And in implementing provisions of 5937, are you aware that the Board has adopted regulations?

MR. J. BAIOCCHI: Sure, yes.

MR. SLATER: Should the Board comply with its own regulations concerning the implementation of 5937?

MR. J. BAIOCCHI: As long as it is consistent with the statute, yes.

MR. SLATER: No further questions.

H.O. BROWN: Thank you.

Redirect, Ms. Scarpace?

MS. SCARPACE: I don't have any redirect.

H.O. BROWN: No redirect. I suspect this panel is excused, then. Or staff, I am sorry. You are not excused. Go ahead.

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CROSS-EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY STAFF

MR. SUTTON: Jim Sutton.

Mr. Baiocchi, 5937 says that the owner of the dam is responsible for compliance. The owner of the dam is Corps of Engineers, is it not?

MR. J. BAIOCCHI: I believe so.

MR. SUTTON: Does the state statute, in your opinion, apply to a federal entity, a federally owned dam?

MR. J. BAIOCCHI: Yes, it does. I will oversimplify it, but the analysis is does the federal statute expressly conflict with the state law? In other words, are they just irreconcilable?

In that case -- that case has not been factually presented to the court, let me put it that way. Under the Reclamation Act they found that the Reclamation Act was not completely inconsistent with state law.

So, if there is a case out there, a statute that

overrides 5937, I haven't heard of it.

MR. SUTTON: We have received testimony that there are below Salinas Dam several, perhaps as many as five, smaller dams located in the first few miles below Salinas Reservoir, Salinas Dam. CALSPA has been silent in their testimony so far concerning any requirement in terms of 5937 or any other action regarding those dams and the possible impact they might have on the fisheries.

Has CALSPA any opinion or recommendation concerning what action, if any, the Board should take on those dams?

MR. J. BAIOCCHI: I have not been involved in those downstream dams, and I am here on behalf of myself, not -- called by CALSPA so I don't know their position. I would say that the statute should apply to every dam owner.

MR. SUTTON: Thank you.

H.O. BROWN: And no redirect.

MS. SCARPACE: No.

H.O. BROWN: You may excuse this panel, then.

MS. SCARPACE: Yes.

H.O. BROWN: Do you have another panel you wish to bring forward now?

MS. SCARPACE: I will call my next panel.

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

MR. J. BAIOCCHI: Thank you.

MS. SCARPACE: I would like to call Felix Smith.

Mr. Smith, did you submit a statement, written statement, that we submitted to the Board?

MR. SMITH: Yes.

MS. SCARPACE: Do you have any changes that you want to make to that statement?

MR. SMITH: I have no changes, but I would like to clarify or expand on a couple of things that were brought up by others in commenting on my statement.

MS. SCARPACE: Perhaps I could then just ask you a question concerning that. First of all, is that statement that you submitted true and correct?

MR. SMITH: Yes.

MS. SCARPACE: What comments, then, do you have to make regarding the proceeding before as it relates to your statement?

MR. SMITH: Well, the question was up earlier as to a -- question was asked. I believe by Ms. Mrowka of the San Luis Obispo folks, whether or not they went along with my condition number two of recommended action. I want to expand on that.

First thing I said is that there should be a steelhead restoration plan in conjunction with this project. It should be developed by the trustees in this particular case, which would be California Department of Fish and Game and National Marine Fish Service. They should enter into a

biological opinion concerning the Salinas Dam and Reservoir.

The second aspect dealt with the planning for water only at Salinas Reservoir. I asked that the area be looked at in a comprehensive way, not just the needs of the City of San Luis Obispo. But for them, for this group, to get together, to look at it comprehensively, to look at the needs of San Luis Obispo, yes. But what are the needs of the North County? What are the needs of Atascadero? What are the needs of Paso Robles?

Those have got to be brought together in some kind of comprehensive plan. To move forward with the supplying the water for one organization and fighting with another, I think is kind of crazy. I have also said that there was two coequal objectives.

One to keep the fish in good condition, basically, and the second to provide water for the health and economic viability of both San Luis Obispo and the North County. That was not mentioned or did not come across in the questioning that Ms. Mrowka put forward.

It has come out in this hearing that there is a connection between the San Luis Obispo water supply and Whale Rock Reservoir. I asked a question earlier to one of the SLO guys, City of San Luis Obispo folks, pardon me, what the evaporation rate was on Salinas Reservoir compared to

Whale Rock. Data from the Department of Water Resources indicates that the evaporation rate at Whale Rock Reservoir is probably half or two-thirds that of Salinas Reservoir. There are pipelines that can connect the two.

It seems to me if they want to conserve water, and one way to conserve water is take it away from a place where it is going to evaporate at 70 to 85 inches a year and move it to a location, another reservoir, and since apparently the City of San Luis Obispo likes reservoirs for domestic water supply, Whale Rock reservoir probably evaporates probably 42, somewhere around 40 to 50 inches a year. Just moving the same amount of water with the same service area is going to save a considerable amount of water without raising Salinas Reservoir. And I think that should be brought together.

This will help bring together the needs -- by the way, when I said North County, it's water in the river the needs of Paso Robles, the needs of Atascadero and downstream. The City of San Luis Obispo has that recognized that there are other people that are going to have to share the water.

I think it also would be remiss for me or this Board not to bring out the needs to meet Fish and Game Code 5937. This Board, if it does not include that as a recommendation or an action, action can be taken through the courts to bring the City and the owner of the dam -- they want to

become the owner of the dam, to release and keep water in the stream, to keep the fish in good condition.

Now, the comment was made that a evaporation is a cost of a reservoir doing business. Let me state that the need to keep fish in good condition and aquatic life is a cost of doing business when you operate a reservoir. And this was brought out very clearly just a couple -- maybe only a year ago where NRDC won the lawsuit on Friant that 5937 applies to the Bureau of Reclamation and Friant.

Salinas Reservoir has a water right dating back to around 1941. Happens to be about the same time that Mono Lake's first water rights were adjudicated. Friant Dam was built during that period. Friant Dam was part of the war effort. Salinas Reservoir was part of the war effort. I don't believe there were any public trust evaluations taken at that time.

We have gone 45, almost 50 years, without a relook at that. This Board has the affirmative duty to look at that periodically. To my knowledge, it hasn't.

So, an individual can bring suit. A group in standing can bring suit. Or this Board can act and call for studies as I recommend under number one, to help restore steelhead to the Upper Salinas River below Salinas Dam.

MS. SCARPACE: Before we get on to the rest of your -- of my questions, can you state very briefly your

qualifications to give this testimony?

MR. SMITH: Yes. I worked for the Fish and Wildlife Service for 35 years as a professional biologist. I worked in the area of environmental impact and water project analysis for that period. Retired in 1990. Since 1990 I've participated in several things in front of this Board. I also have two petitions in front of this Board. A petition on a 5937 public trust lawsuit on Friant Dam. One-half of that I don't have to worry about now because NRDC won it. Now we are going to argue about the water, how much water.

The second one is a waste and unreasonable use in violation of public trust petition on the irrigation of Salinas soils on the west side of the Salinas Valley. So, I have taken my professional knowledge, my citizen advocate and what a citizen is supposed to do to try to get correction of couple things that I think are wrong.

MS. SCARPACE: Thank you.

Do you believe that the traditional stream flow methodology to determine the in-stream flow needs of the Salinas River can be applied to the reach between the Salinas Dam and the Paso Robles groundwater basin?

MR. SMITH: IFIM was mentioned earlier. Parts of it may be applied. I think you also have to look at the stream. It is very flashy. The reservoir up there provides some stability to that. Unfortunately, when the reservoir

spills, there is a gush of water that comes down. And when the reservoir stops spilling, the flows drop out rather precipitately. In some cases to almost zero in just a matter of a few days.

So, it is going to be very difficult to do that. In my estimation it will take a combination of IFIM, observations, reservoir storage, including what is the temperature of water when steelhead are up there. It is probably going to be in January, February and March; coming up on the freshets. And if the condition comes out, I am sure that the people working on the steelhead management plan will come up with a in-stream flow standard that will be a base condition to provide for fish in the canyon, particularly in the nursery area, for steelhead, to keep them in good condition so they may go two years, three years, four years later on a following freshet.

MS. SCARPACE: Are there methodologies that can be used, then, to determine proper in-stream flows for the Salinas River?

MR. SMITH: There are methodologies. It won't be nailed to one. It will probably be three or four different methods that will be used, all the way from looking at water records, looking at gauge heights, how much water flows by a given point. The IFIM may do it under certain conditions. It sure as hell would do it under others, where you have

flashy steam conditions.

MS. SCARPACE: Would you recommend that the Board order such stream flow studies to be conducted so that it could make an order providing for the --

MR. SMITH: I would recommend that the Board order the Department of Fish and Game to prepare a steelhead and aquatic resource restoration management plan, as I stated in my statement.

MS. SCARPACE: Thank you.

What are your concerns -- how is the public trust -- how does the public trust doctrine apply to the Salinas River and the downstream releases that are required in this instance?

MR. SMITH: The public trust doctrine gives, of course, the opportunity for the people to seek a legal remedy through a court regarding state action.

Fish are public trust resources of the state. Water is a public trust resource of this state. The public trust in fish is in, lives in, the public trust resource of water. So, therefore, they are tied together.

If you take away the water, you sure as hell are going to take away the fish. If you deny that water, you will deny fish in good condition. They go hand and glove in this particular case.

MS. SCARPACE: Do steelhead have any particular

requirements for flows that are maybe not -- that are not being met currently?

MR. SMITH: If you look at water records, you will see that much of the river downstream of Salinas Dam, particularly in the canyon, there are minimum flows. What I mean by minimum flows, I looked at one water record that had it down at .01 cubic feet per second. I don't think that that is much of a flow in the stream, particularly if you are going to try to keep fish in good condition.

MS. SCARPACE: So, would you recommend an interim order be made to provide for additional stream flows to keep fish in good condition?

MR. SMITH: Yes. Yes, I would; let me put it that way.

MS. SCARPACE: Do you have anything else you wanted to add?

MR. SMITH: There were several things that came up the other day in cross of the San Luis Obispo folks. I did a little work into the evaporation on the model that was in some of the documents that I received. And the evaporation appears to be consistently understated in the document, in the comments that I received.

I looked at several years --

MS. MROWKA: Could you provide a reference for us, what document or witness you are referring to?

MR. SMITH: Yes. Just a second. I have so much damn stuff in this binder now -- I think it was Appendix A, Salinas Reservoir Operation Model, summary of results. Scenario one, reservoir capacity. Come out of -- that is the reference.

MS. MROWKA: Thank you.

MR. SMITH: The years I looked at were, in case you need those, I looked at '92, '85, '82, '83, October '82, September '83, '76, and October '74 through '75, and then October '73, '74.

If you want the reference for the amount of evaporation that occurs there, based on state water studies, I can give you that if you like.

MS. MROWKA: I was primarily concerned about the reference, who you were talking about in your testimony.

MR. SMITH: You don't want the reference?

MS. MROWKA: I always welcome references.

MR. SMITH: As I see the live stream agreement, the live stream agreement, as measured down by Atascadero would be taking advantage of all tributaries that are downstream from Salinas Dam. And all tributaries upstream of Salinas or Paso Robles to the dam and the tributary watersheds have a responsibility to contribute to the in-stream flow. If one of the other streams, Trout Creek or one of the other ones, contributes a sufficient amount of water to keep that

stretch of the Salinas alive, it is really -- puts an undue onus on them and not sufficient on the total watershed.

MR. SUTTON: Mr. Smith, just a point of clarification. You said "undue onus on them." Do you mean the City of San Luis Obispo or the Salinas Reservoir?

MR. SMITH: No. If you have five tributaries, shall we say, that are flowing naturally and you arbitrarily cut off one, that means in the live stream agreement, which is responsibility for the reservoir, does not contribute much when the other streams are flowing. It is not any different than in the Central Valley where all streams have to contribute.

MR. SUTTON: "Them" refers to any of the remaining tributaries, not just the Salinas Reservoir?

MR. SMITH: Correct.

MR. SUTTON: Thank you.

MR. SMITH: What will happen is, if somebody wants to go in and take water out of a tributary that is presently, shall we say, without a water right, and somebody wants to take water out of it, and they take water out of it, someone else takes water out of another. Then who -- each tributary has to contribute water to the downstream. Not only to just keep fish in good condition, but, in my estimation, in order to keep any vested downstream water rights in good condition.

H.O. BROWN: Proceed, Ms. Scarpace, and any staff questioning on this does not count against your time. We've taken that into account. You have five minutes left with this witness.

MS. SCARPACE: Can you explain the needs of steelhead, adult steelhead, in their migration paths, what type of flows they need to get to their spawning areas and return?

MR. SMITH: In the Salinas River they're probably migrating on the good fall or winter freshet. When the drainage is probably pretty wet, move upstream to the small tributaries and spawn. The young will probably -- they may summerover for one or two years. The adults may go to the ocean. Even though steelhead can survive that particular trip, a large percentage of the steelhead do not make it to spawn a second year or third year.

Looking at the conditions of the Salinas when they can get out, any fish that makes it up the Salinas River to spawn in the canyon has maybe a 60- or 75-day window in order to get out. They may make it; they may not. I have no evidence that there has been a significant number of returning fishing accumulating in the Lower Salinas River.

MS. SCARPACE: So, in order to aid the migration of the adult steelhead, is it necessary to have a fairly lengthy, at least two months, two to three months, of continuous large flows which would be spills from the reservoir?

MR. SMITH: It would be difficult to have flows of 2- to 3,000 come down through the canyon, but it wouldn't be a bad idea to have flows that would keep the stream wet of 25 to 30 second-feet once the reservoir spills.

The idea that we can dry up a river after it's been flowing 200 or 2,000, and then after three or four days of spilling goes down to almost zero, doesn't sound to be too fair to me. In some years, if the reservoir is high, then it will spill frequently, over a long duration. If the reservoir is low, it is going to take a lot of water in order for it to -- before it gets up to the spillway to spill.

The more capacity there is in the reservoir the less frequently it is going to spill, the less amount of water it is going to spill.

MS. SCARPACE: What is the length of time between when a juvenile steelhead emerges from its egg and when it needs to migrate back to the ocean?

MR. SMITH: When it needs or when it can. There are two different things.

MS. SCARPACE: Well, first of all, needs.

MR. SMITH: Steelhead have a tendency to summerover two, three, four years in a stream. That may be a very valuable biological asset to them. So they can -- if their native stream has a sufficient amount of water to keep them

alive and in a good condition, they can go out on the following year or two years or three years with heavy winter flows.

In the South Coast that is common. In the North Coast it would be entirely different. That is a question really directed toward the Fish and Game experts.

MS. SCARPACE: In this particular case with the Salinas River what would be the ideal time period to allow for migration of juvenile steelhead back to the ocean?

MR. SMITH: Well, if they can summerover, they would probably go out on the first or second heavy winter freshet, which may occur, according to some of the records, as early as the middle of December and maybe as late as March.

MS. SCARPACE: Would it be important that they receive spills from the reservoir every other year, or at least every two years, in your opinion?

MR. SMITH: I would like to see spills as often -- as frequently as possible from a management standpoint. Now, I recognize that during drought conditions the reservoir might not spill. But there will be other impacts to aquatic resources during the drought, as well.

MS. SCARPACE: Would increasing the level of the Salinas Reservoir prevent such frequent spills that are necessary for the survival of steelhead?

MR. SMITH: It will reduce the amount of water that is

passed downstream.

MS. SCARPACE: Does that have a possibility of eliminating much of the steelhead population?

MR. SMITH: It has a potential of impacting the downstream population and movement, correct.

MS. SCARPACE: That concludes my questions.

H.O. BROWN: Mr. Ashley, you want to go direct with him and cross as a panel?

MS. SCARPACE: Okay.

Can we have cross-examination of Mr. Smith before I --

H.O. BROWN: I will allow that.

Mr. Robinson, do you have cross?

MR. ROBINSON: The City doesn't have any questions.

H.O. BROWN: Mr. Slater.

MR. SLATER: Yes, the City has cross.

If I might have just one moment with Mr. Baiocchi.

H.O. BROWN: You may.

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CROSS-EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY THE CITY OF SAN LUIS OBISPO

BY MR. SLATER

MR. SLATER: Morning, Mr. Smith. How are you?

MR. SMITH: Pretty good.

MR. SLATER: It is your testimony that there are two

coequal objectives for the Salinas River and those are provision of reliable water supply and also taking care of in-stream uses of fish and wildlife?

MR. SMITH: What I said was that would be the objective of the following, getting together. If you look at my number one or two. The plan would have two coequal objectives.

MR. SLATER: That is not your objective, as an individual?

MR. SMITH: As opposed to what?

MR. SLATER: Would you agree that, as you stated in your direct testimony, that such a comprehensive plan ought to have two coequal objectives?

MR. SMITH: Yes. And they are stated here.

MR. SLATER: And are you of the opinion that there is a present connection between Whale Rock and Salinas Reservoirs?

MR. SMITH: Yes.

Direct connection. You people, San Luis Obispo takes water from Whale Rock over to the City.

MR. SLATER: That is your opinion?

MR. SMITH: That is what I heard. And they take water from Salinas Reservoir. What I suggested was that there is a right-of-way and a pipeline that can be laid along that, so that water can be taken from Salinas Reservoir all the way into Whale Rock to reduce the amount of evaporation that

is lost in this whole process.

MR. SLATER: Is it your impression that there is an existing facility which connects the two reservoirs, existing pipeline?

MR. SMITH: Not directly.

MR. SLATER: Indirectly?

MR. SMITH: The fact that the City is taking water out of both them, obviously, they can put a U joint in or a valve or some kind of connection to make water flow both ways.

MR. SLATER: Have you done any analysis on what that might cost or whether or not it is engineeringly feasible?

MR. SMITH: No, I did not make that analysis.

MR. SLATER: Have you reviewed anybody's analysis on that issue?

MR. SMITH: No.

MR. SLATER: Is it your contention that the Corps of Engineers has the same federal status as the Bureau of Reclamation? Might help you. Are you aware of Section 8 of the Reclamation Act of 1902?

MR. SMITH: Yes.

MR. SLATER: Are you aware of whether or not there is a comparable waiver of sovereign immunity anywhere in Corps' authorizing act?

MR. SMITH: No. I would like to clarify that it is

very unusual for Corps of Engineers to obtain a water right on its operations.

MR. SLATER: I agree.

MR. SMITH: So, therefore, this is out of the box, so to speak, and that the -- since the City of San Luis is trying to obtain ownership to the property, I can understand why. You would be the owner and then would fall under 5937 in the lawsuit that can be brought by anyone in good standing. And since the same type of lawsuit was brought at Friant, I think it is most important that the City of San Luis be aware that what may be their yield under the existing condition may be far different if 5937 is applied to meet in good conditions.

MR. SLATER: But you are aware of the fact that the City does not presently own the reservoir, correct?

MR. SMITH: That was stated here. Yes, sir.

MS. SCARPACE: I would like to interject an objection here, that the previous question asked for a legal conclusion and there was already testimony given on that by Joel Baiocchi in which he said that to his knowledge there was no conflicting federal statute that would preclude the application of Fish and Game Code Section 5937 to this situation.

H.O. BROWN: Mr. Slater.

MR. SLATER: This witness offered testimony on the

application of 5937, its legal implications, prior experience applying the statute. So, question was asked on direct. Entitled to cross.

H.O. BROWN: Overruled.

Proceed, Mr. Slater.

MR. SLATER: Do you have any experience with the National Marine Fishery Service evaluating the impacts of proposed water projects on fisheries?

MR. SMITH: Do I? I have worked with them over the years, but not on this particular project.

MR. SLATER: Do you have general confidence in their ability to perform a Section 7 consultation under the Federal Endangered Species Act?

MR. SMITH: Yes.

MR. SLATER: Now, your testimony on direct was directed, I believe, to primarily the area more than three miles downstream from the dam, correct?

MR. SMITH: Well, we are looking at the canyon, so the water would flow from the canyon or from the dam downstream through the reach through Atascadero and so forth into the Paso Robles gauge. Yes, that is the reach that I am talking about.

Probably has the best conditions for steelhead. When you get into the open, sand bottom area, that is not steelhead or steelhead young habitat, in my opinion.

MR. SLATER: In your opinion, where does that area, being the open area, begin on the Salinas River?

MR. SMITH: It starts really coming into around Templeton. The recharge probably really gets underway at Templeton and is probably well underway as it gets to Paso Robles.

MR. SLATER: Have you conducted any independent analysis regarding the impacts of downstream pumping on stream flow in the main stem?

MR. SMITH: No.

MR. SLATER: Are you aware of how much Atascadero Mutual Water Company pumps from the underflow?

MR. SMITH: Not directly, no.

MR. SLATER: Are you aware of what quantity of water any intervening water user produces from the underflow of the Salinas River between Atascadero and Paso Robles?

MR. SMITH: Just what was testified to by some farmers the other day.

MR. SLATER: And do steelhead that spawn in the tributaries downstream from the dam need to have migratory flows in every summer to get out, assuming --

MR. SMITH: I did not say summer. I said that they would probably go out on winter and spring freshets. And they would go down.

MR. SLATER: Do they need to have migratory flows every

year to survive?

MR. SMITH: To survive, no. To maintain a reasonable population I would say they would be beneficial to it. It's impossible in that particular area. The records indicate that the stream has been dry several times when there probably wasn't a dam there.

MR. SLATER: I think in your written testimony you stated that the Salinas River now supports numerous beneficial uses; is that correct?

MR. SMITH: Yes.

MR. SLATER: You further state that a mix of warm water and cold water species are found in the watershed, correct?

MR. SMITH: Right.

MR. SLATER: Some of those warm water species are nonnative, correct?

MR. SMITH: Yes.

MR. SLATER: Some are predators, correct?

MR. SMITH: Oh, yeah.

MR. SLATER: Do you have your written testimony in front of you?

MR. SMITH: Yes.

MR. SLATER: Perhaps you can walk me through a couple of items. I think -- on Page 5 of your testimony I believe you testify as to noncompliance with the live stream agreement. That is it. Third full paragraph down.

MR. SMITH: Okay.

MR. SLATER: Can you first explain how the live stream condition works, in your view?

MR. SMITH: How it's enforced or how somebody sees it? I think it was testified the other day that they look at it in a couple places. And if it looks like the river or stream was flowing, that was good enough.

The water records indicate that frequently -- that it says no flow for long periods of time at Paso Robles. If you look at the conditions at the other locations, I can't think of it right offhand, the tributary stream below the dam, it also says the same thing. In the geological survival records, no flow for several months. Pilitas Creek in Margarita.

MR. SLATER: Is it your view that the Salinas Dam can capture inflow when there is not a continuous live stream between the base of the dam and the Paso Robles area?

MR. SMITH: My understanding is that they have diversion rights for about 12.4 and diversion of storage of a fantastic amount of water, of around 45,000 acre-feet.

MR. SLATER: Is it your opinion that the City can divert water to storage when there is no continuous visible live stream between the base of the dam and the Paso Robles area?

MR. SMITH: I am not sure on that.

MS. SCARPACE: Perhaps you can clarify that question. When you say "can," do you mean, you know, able or legally able?

MR. SLATER: Counsel will have an opportunity on redirect.

Can I call your attention to Exhibit E to your -- I believe it is referenced in your testimony, entitled Salinas Dam Downstream Releases to Protect Public Trust Fishery --

H.O. BROWN: Just a moment. When you have a question, if you will direct it towards me and the answer towards me. Then I can maybe help better mitigate.

MR. SLATER: I apologize, your Honor.

H.O. BROWN: Please proceed.

MR. SLATER: Mr. Smith, I believe it is CALSPA Exhibit E, and it was entitled Salinas Dam Downstream Releases to Protect Public Trust Fishery and Aquatic Resources, Salinas River October 1943 to December 1995.

MR. SMITH: I have looked at a ton of water data.

MR. SLATER: I will help you.

MR. SMITH: I have this from Exhibit K. It was sent to me. I have looked at a lot of the data in here.

MR. SLATER: Perhaps Mr. Baiocchi has a copy.

MR. BAIOCCHI: I believe this is the document here.

MR. SLATER: No. It is entitled CALSPA Exhibit E, Salinas Dam Downstream Release to Protect Public Trust

Fishery. It carries a footer on the last page --

MR. BAIOCCHI: I prepared that document.

MR. SLATER: You did?

MR. BAIOCCHI: Yes.

MR. SMITH: I didn't prepare that; he did. I might have looked at data from it.

MR. SLATER: So you didn't reference that document in coming to your conclusions about whether or not there had been compliance with the live stream agreement?

MR. SMITH: No. Most of my data was used -- I used geological survey records.

MR. SLATER: Mr. Smith, is it possible that there could be flow downstream from the Salinas Dam even though there wasn't a live stream release or spill occurring?

MR. SMITH: Oh, sure, if it is a leaker.

MR. SLATER: Assuming that there wasn't a leak, is it possible that there would be plenty of water in the main stem even though there were no spills or no releases?

MR. SMITH: If there was no tributary inflow, and I think Pilitas is about two miles downstream from the dam, there may be some ponding, water in there. There may be some springs. There may be a leak in the reservoir, in the abutments. That would be considered, I would assume, a faulty diversion.

MR. SLATER: Maybe my chart will help you by

sharpening. Do you have any reason to disagree with Mr. Schmidt's testimony from last week in which he suggested that there was always water at least down as far as his property?

MR. SMITH: There could be water in the creek as standing in pool. But when you look at the conditions of one-tenth to one-hundredth of a second of a foot, that is not a lot of flow in a stream. So streams have a tendency to pond water in the deeper pools.

MR. SLATER: If we move down below Mr. Schmidt's property, is it possible that if there are no spills and no live stream releases, that there could still be water in the main stem?

MR. SMITH: There could be ponded water in the main stem, yes.

MR. SLATER: Is it possible that there could be plenty of water for the purposes of fishery migration?

MR. SMITH: Plenty? No.

MR. SLATER: Plenty?

MR. SMITH: No.

MR. SLATER: Have you done any analysis on what the contribution of the downstream tributaries is to the main stem of the Salinas River?

MR. SMITH: I have seen some reference to that, but I have not studied it.

MR. SLATER: Would it surprise you that more than 50 percent of the total flow comes from downstream tributaries?

MR. SMITH: No, it wouldn't surprise me.

MR. SLATER: Have you done any analysis on whether or not volumes in excess of 70,000 acre-feet of water at Paso Robles would be sufficient to support a migratory flow?

MR. SMITH: In excess of 70,000?

MR. SLATER: 70,000 acre-feet at Paso Robles. Strike that.

I'll sharpen that for you.

MR. SMITH: 70,000 acre-feet is volume. Put it in cubic feet per second. I've got some records here that indicate that -- most of the stuff that I have been given, that I looked at has got the --

MR. SLATER: You discovered my weakness. Hang on while I have somebody do the conversion for me.

MR. SMITH: Just multiply by two or divide by four.

MR. BAIOCCHI: 70,000 acre-feet is about 30-, 35,000.

H.O. BROWN: What is the question?

MR. SLATER: The question was -- the question pending is: Does he have any opinion on whether volumes of water in excess of 70,000 acre-feet at Paso Robles are sufficient to support steelhead migration in the main channel? And his response was he was unable to convert acre-feet to cfs, and so we are trying to do that.

MR. SMITH: I was able to convert. I want to get clarification. Acre-feet to me is a standing measure. Cubic feet per second is a flow. You asked for a flow. An acre-foot determination is stretched over 90 days. 120 days? Six hours?

MR. SLATER: Fair question.

MR. SMITH: That is all I am asking.

MR. SLATER: 70,000 acre-feet over a year, 70,000 acre-feet occurring at Paso Robles over a one-year period.

H.O. BROWN: Wait a minute. I don't understand the question. Perhaps you would concur. I'll give you a moment to concur with your engineer to rearrange the question.

(Discussion held off the record.)

H.O. BROWN: We are back on the record.

MR. SLATER: Thank you.

The first question would be: Are you aware of what the annual stream flow at Paso Robles is on a historical record of the last 20, 25 years?

MR. SMITH: I recall seeing some data on that, and I do have some of it here in my mass of stuff, regarding the data, but I don't have it on the top of my head. Let me put it that way.

MR. SLATER: Would 70,000 acre-feet a year sound about right?

MR. SMITH: I have no way of knowing. I am just

looking at this thing. But even at 70,000 acre-feet, it may all be occurring in a matter of days. And because the stream is flashy, that is when it occurs.

MR. SLATER: Assuming that 70,000 acre-feet was roughly 96 cfs per year on an annual average basis, your answer is the same, it depends on when it comes?

MR. SMITH: Oh, yeah.

MR. SLATER: Are you of the opinion that there are impediments to migration of steelhead on the main stem?

MR. SMITH: Impediments?

MR. SLATER: Such as barriers, physical barriers.

MR. SMITH: The words come out with that the other day that there was, quote, dams. The fellow was saying he drove a tractor across it. I don't think it is a dam as you and I see it. It sounds like a rock outcropping in that particular area. That would not surprise me.

Under a program where the steelhead resource would be looked at, there is no reason that if there are impediments, such as a facility or rockfall or barrier, it could not be removed or laddered as part of the overall program to restore steelhead to the Salinas River, the upper Salinas River.

MR. SLATER: Did you hear Mr. Schmidt's testimony to the effect that there was a natural, but nonetheless, barrier in excess of ten feet in the vicinity of his

property?

MR. SMITH: Yes. I heard that.

MR SLATER: Would it surprise you that it was greater or taller than ten feet?

MR. SMITH: No.

MR. SLATER: Did you view the warm water species on the main stem of Salinas River in the ponded areas to be a natural predator or a threat to the survival of steelhead in the main stem?

MR. SMITH: As part of the biological diversity of the stream.

MR. SLATER: In your view do some of the tributary areas downstream from the dam provide appropriate habitat for rearing?

MR. SMITH: Yes. And I think it was testified to by Mr. Frank, if I am not mistaken, a fellow from Atascadero.

MS. SCARPACE: Fred Frank.

MR. SMITH: Yeah.

MR. SLATER: You agree that predation is -- I am sorry, go ahead.

MR. SMITH: No. You asked something, do I agree predation, and I am listening to what I agreed to that I don't know that I agreed to.

MR. SLATER: Could you read back the question, please?

(Record read as requested.)

MR. SLATER: In addition to predation and physical barriers in the stream, do land use activities have any bearing on the suitability of the main stem for steelhead rearing?

MR. SMITH: Land use would have an impact, particularly if there's been a significant amount of sediment entering the river. Also, with the operation of the reservoir, which operates -- that has ramping rates shall we say in the system that fluctuate a stream that would be detrimental. The reason to understand how much water is in the reservoir, to one of your biologists, is to find out how much cold water is in the reservoir so that when water is released from the dam it will keep the cold water and put cold water to the downstream reaches rather than release surface water which may be a lot warmer.

Temperature is a factor. Land use always has been a factor and probably always will be a factor.

MR. SLATER: Thank you. You saved me my next question.

I would like to turn to your recommendations on -- I believe they start to Page 7 and they spill over onto Page 8.

MR. SMITH: Yes.

MR. SLATER: I would like to take first things, if we could, under recommendation one. Are you aware that the

City expects and intends that there will be a consultation between the Corps of Engineers and the National Marine Fishery Service in connection with any transfer of the dam from either the Corps to the County or the Corps to the City?

MR. SMITH: I would hope.

MR. SLATER: But were you aware of that when you prepared your testimony?

MR. SMITH: I was aware, but there was -- if there is going to be federal action, and that may be a federal action, it may stimulate a biological opinion. What I have asked for here under one is steelhead and aquatic resource restoration plan for the Salinas. When it is done, then -- since NMFS would be part of the action, they could go along with it, and I assume they would.

And then you move to step number two which is the comprehensive plan for the entire valley in the north part of the County, including the San Luis Obispo and the other folks.

MR. SLATER: Your recommendation is the comprehensive plan. That wouldn't just include the City of San Luis Obispo as a water supplier, would it?

MR. SMITH: You are the major actor. I would have to assume, though, that the upstream cities of Atascadero, Templeton, Paso Robles and everybody else, including private landowners, would have an interest here.

MR. SLATER: Would you have any knowledge or opinion on whether Paso Robles and Atascadero and Templeton, cumulatively, use more water from the Salinas watershed than the City of San Luis Obispo?

MR. SMITH: I have no idea.

MR. SLATER: Would their total water use have some bearing on whether they ought to be included?

MR. SMITH: We're looking at this -- I am looking at this as to how much water is available and other sources of water are available to the communities.

MR. SLATER: I believe your second recommendation includes various components. Just wanted to ask you a couple questions in that regard.

Are you aware that the San Luis Obispo has a 1 percent growth limitation?

MR. SMITH: No. I heard it testified to here, but I haven't read any documents on it.

MR. SLATER: Are you aware that the City already has in place aggressive water conservation programs?

MR. SMITH: I would hope.

MR. SLATER: Do you know whether the communities of Templeton, Atascadero or Paso Robles have such conservation programs?

MR. SMITH: No. That would be part of the program.

MR. SLATER: Are you aware that the City presently

conjunctively manages its Whale Rock and Salinas Reservoirs?

MR. SMITH: It was testified to, correct, by you folks.

MR. SLATER: Are you aware that the City presently has a water reuse proposal now before this State Water Resources Control Board for reclamation project related to San Luis Obispo Creek?

MR. SMITH: That is my understanding. I don't know all the facts about it.

MR. SLATER: Have you done any -- Strike that.

In your recommendations on Page 8, you have a couple of points. In regards to the first one, have you done any analysis on what quantity of water is necessary to satisfy downstream interests, both -- let's start, unpack. Sorry.

Have you done any analysis on what quantity of water is necessary to satisfy downstream appropriative and riparian uses?

MR. SMITH: No. That would be part of the original study.

MR. SLATER: Have you done any analysis on what quantity of water is necessary to keep fish in good condition downstream from the reservoir?

MR. SMITH: No. That would also be part of the cooperative study.

MR. SLATER: Your item number two on Page 8 requests that there has been the installation and maintenance of an

outlet device at the bottom of the dam.

Are you aware that there presently is an outlet device at the bottom of the dam?

MR. SMITH: I am aware and there was information said that it was a V-notch affair, that they go down and measure it as the dam spills over.

MR. SLATER: As to item three, are you aware that there is presently a weir which does measure the flow and the bypasses from the reservoir?

MR. SMITH: From the Corps data I understand that. It is important the way this particular project is being operated that it may be necessary to augment that particular flow with readings taken by the day and reported by the hour. Because there is a tremendous amount of fluctuations in the releases from the facility.

MR. SLATER: So your testimony is that you would desire different measuring?

MR. SMITH: I would like to see some of the stuff by the hour. When you look at flows that go from 65 to a thousand in 24 hours, that is quite a bit.

MR. SLATER: Are you of the opinion that the City takes those measurements?

MR. SMITH: There is something that I looked at which indicated that -- the stuff that I read from was from the Geological Survey.

MR. SLATER: Item four, you say that the permittee shall allow downstream water right holders and interested stakeholders reasonable access to the gauge facilities. To the best of your knowledge, has the City ever denied anybody access to those facilities?

MR. SMITH: No. I just don't want it to happen, to deny it.

MR. SLATER: And, again, as to item five, you don't have a specific flow recommendation to make at this time, correct?

MR. SMITH: I could make something off the top of my head, but that won't really do much from the standpoint. I believe that the way the water right adjudication is going on in this state that a lot of rights, quote, are going to be interim until changed to meet other demands. I think the Mono Lake decision brings that to the forefront.

I think that there were other decisions that were made, like La Canitas Creek, also bring that to forefront. That as public trust interests become more aware of what is involved, as the impacts continue on for 40 to 50 years, there will be changes made. There will probably be interim for maybe 20 years or 30 years and be reviewed again under the State Board's continuing authority.

MR. SLATER: I think that is it, Mr. Smith.

Thank you very much.

H.O. BROWN: Staff.

Do you have redirect?

MS. SCARPACE: Yes, I do. Couple questions.

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REDIRECT EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY MS. SCARPACE

MS. SCARPACE: Isn't it true there are tributaries south of Paso Robles that are good for steelhead rearing?

MR. SMITH: Yes. It has to be one -- if you look at Trout Creek, must have got its name from something.

MS. SCARPACE: Fred Frank had testified as to steelhead found just this year in Atascadero Creek establishes that there are steelhead.

You recall that.

MR. SMITH: Yes. The fact that it was done in the company with Jennifer Nelson, who is a top-notch DNA expert regarding fisheries, is also very important.

MS. SCARPACE: So, in light of that, isn't it important that there is flow not just measured at Paso Robles but that there is adequate flow extending all the way south to these important tributaries to maintain the migration of adults and juveniles from the ocean to the tributaries and back?

MR. SMITH: It would be nice to have it historically. I was reading something where there was flows in the Salinas

all the way down.

It may be illogical with the present demands on the river to try to keep, quote, a steelhead or trout stream in the middle of summer in Bradley, but there is sure reason to keep a trout stream alive and the young of steelhead in the canyon reach.

MS. SCARPACE: Thank you.

Also, in regards to the small barriers that were referred to, is it possible for steelhead to -- adult steelhead to cross barriers if they are not absolutely -- prefer the water that in certain areas that allow them to jump?

MR. SMITH: Yes. Steelhead have a tremendous ability to scale facilities under the right water conditions. I don't think they will go up a wall. But they will go up something that looks pretty close to it.

MS. SCARPACE: Thank you.

H.O. BROWN: Recross, Mr. Robinson?

MR. ROBINSON: The City doesn't have any recross.

H.O. BROWN: Mr. Slater?

MR. SLATER: No.

H.O. BROWN: Staff?

Okay. This witness then may be excused, and we will take a 12-minute break. Be back at 20 till.

(Break taken.)

H.O. BROWN: Call the hearing back to order.

MS. SCARPACE: Mr. Ashley, can you can you briefly state your qualifications.

MR. ASHLEY: Yes.

H.O. BROWN: You have taken the oath, Mr. Ashley?

MR. ASHLEY: I did when we started, when you had us all stand up as one.

A B.S. in biology '68 from Cal Poly. A Master of Science in fishery from Humboldt University in '73. Thereafter I worked for the Fish and Wildlife Service for almost three years, till '75, as a career fisheries biologist. And ever since that time I've worked at Cal Poly as a plant and animal specialist technician in the biology department at Cal Poly.

During that time, I've worked as a public advocate for fish and wildlife, for organizations such as CALSPA, Canyons and Streams Alliance and various other groups on projects that have required environmental impact statements and so on.

MS. SCARPACE: Did you submit a written statement that has been made into an exhibit for the State Water Resources Control Board?

MR. ASHLEY: Yes.

MS. SCARPACE: Is that statement true and correct?

MR. ASHLEY: I have a number of corrections that I

would like to make. They are more or less typos or words that I left out, and I would like to correct that at this time.

On Page 3, last paragraph, first sentence --

Mr. Chairman, should I read the whole sentence or insert --

MS. SCARPACE: Can you supply the corrected pages?

H.O. BROWN: Go ahead. If you need to correct it, read it aloud into the record.

MR. ASHLEY: That sentence reads:

> Similarly, the Final EIR states on Page 3.16-36 for the proposed Nacimiento Water Supply Project that this project -- (Reading.)

Cross out "this project" and add "the city." That is the only change there.

On Page 7, fifth paragraph down, first sentence:

> Consistently throughout my oral testimony on the proposed subject -- (Reading.)

Add "project" immediately after the word "subject."

Page 8, the fourth paragraph down, I believe it is the last sentence. It is a rather long sentence. I will read just part of it.

> The only factor needed for calculating this 1.7 cubic feet per second amount from the

downstream releases in the acre-feet column and Appendix K of the Final EIR is the conversion factor of two acre-feet per day -- (Reading.)

H.O. BROWN: A little slower.

MR. ASHLEY: Excuse me. Should I start that --

H.O. BROWN: You're okay.

MR. ASHLEY: The factor of two acre-feet per day is equivalent to one cubic feet per day (Therefore, total -- (Reading.)

Cross out "inflow" and add "downstream releases." That correct that.

Just a couple more. There were some typos that didn't make any difference. I'm only correcting the ones that make a difference in context.

H.O. BROWN: That is fine.

MR. ASHLEY: Or meaning of some sort.

Page 17, the fourth paragraph down. Again the last sentence:

However, the two photos labeled one and two previously discussed herein, taken on April 23rd, '99, and provided to you in Exhibit 2 of my May 5th, '99 letter to the State Water Resources Control Board and the two additional photos being provided to you on

Page 2 of CALSPA's Exhibit CC for the October 12th hearing, show the herein discussed -- (Reading.)

Cross out "0.13" cubic feet per second -- don't cross out the cubic feet per second. And for "0.13" put "0.07."

Page 21, all the way at the bottom, the bottom line. I am not going to read that whole sentence since it is the bottom line. I have "the river." Cross out "river" and put "canyon." And immediately after it says "stretch of the canyon." Cross out "canyon" and put "river."

And to the end of it, Page 22, second paragraph. I would like to get around reading all of these. The second paragraph, the third line from the bottom in that paragraph, says:

On Pages 4 and Page -- (Reading.)

Add in "5" immediately after "Page."

And in the second to the last paragraph, I am not going to read that whole sentence again, but the third line down says "impact"; right after the word "impact" put "upstream of the dam."

I think there is just one more here.

On Page 24, fourth paragraph, fourth line from the bottom of that paragraph:

Seedlings for the thousands of large, old oaks, willows and -- (Reading.)

Cross out the word "riparian trees" and put "pine." Just cross out "riparian" and put "pine."

The next paragraph, it's the third line from the bottom of that paragraph. It reads:

> Be replaced by many smaller restoration and enhancement -- (Reading.)

Right after "enhancement" add the word "areas."

That's it.

MS. SCARPACE: With regard to the Final Environmental Impact Report, I would like you to refer to page -- Executive Summary page dash 17, and can you tell us how the proposed mitigation measures relate to the live stream agreement?

MR. ASHLEY: Okay. The proposed mitigation measures column, which is the second column from the right, there is a bullet there that says:

> Continuation of the live stream agreement to protect downstream water users and aquatic resources during periods of low flow. (Reading.)

In other words, the mitigation proposed to reduce impacts to aquatic resources, fish and other aquatic resources, the mitigation proposed, the only mitigation proposed, is continuation of the live stream agreement to protect downstream water users and aquatic resources during

periods of low flow. There is another -- I don't know what you'd call it. It is not mitigation. Immediately after it says:

> Consider participation in a basinwide management plan. (Reading.)

And then it goes on, and I am not going to read all that. After that it says:

> This recommended measure is not currently considered to be feasible. (Reading.)

A mitigation that is not feasible is not mitigation under CEQA. But it was presented last week in CALSPA's testimony that the -- that CALSPA had misrepresented the EIR when we said that the live stream agreement was the only mitigation proposed for downstream impacts from this proposed project.

MS. SCARPACE: Thank you. That is what I wanted clarified.

Did the Final EIR assess the impacts and cumulative impacts of the proposed expansion project on river and riparian species downstream of the dam with respect to common species, those of special concern, threatened and endangered species?

MR. ASHLEY: Except for steelhead, which I believe was inadequate, they did not address those species downstream of the dam. And I will get into that with my testimony later.

But there are a number of species that are threatened and endangered. Willow flycatcher, Bells Vireo and the Arroyo toad are federally endangered. The Red-legged frog and the steelhead in the Salinas River are threatened. And the Final EIR did not address the impacts downstream of the dam on those species. They did upstream. Likewise on common species and quite a number of species of special concern.

MS. SCARPACE: Do you have any exhibits that refer to that, any photographs?

MR. ASHLEY: I have a clarifying exhibit that -- on the Arroyo toad, which is listed as endangered by the federal government, we have already -- it is Exhibit CC. And I had taken two pictures of a toad. I don't know exactly how to present this, but two pictures of a toad that I have not positively been able to identify. But it can only be one of two, either the western toad or the Arroyo toad which is endangered. So, there is a possibility that there are Arroyo toads. And this particular specimen was taken out of the canyon that we have been talking about, the 14 mile canyon below the dam. There is that possibility of Arroyo toads in there.

MS. SCARPACE: What was the date that that picture was taken?

MR. ASHLEY: The date was April 10th of this year.

MS. SCARPACE: What has been the Salinas River

downstream flow reductions from the existing dam project, and what would be the downstream flow reductions from the proposed project?

MR. ASHLEY: The downstream reduction from the existing dam has been 43 percent. That is annual average figure, 43 percent. And from the -- added to that, the existing dam would reduce flows an extra 10 percent, for a combined total of 53 percent reduction inflows.

H.O. BROWN: You said the existing dam. Did you mean the proposed dam?

MR. ASHLEY: The one that was built in '41, the one that is in there now, before the proposed 19 feet would be added to that. The existing dam reduces flows 43 percent from historical flows.

H.O. BROWN: What is the 10 percent?

MR. ASHLEY: The 10 percent is how much the proposed project; that is the proposed project would reduce flows below the dam.

H.O. BROWN: Thank you.

MS. SCARPACE: Are the flow reductions that you have just referred to cumulatively significant and individually significant?

MR. ASHLEY: On the 43 percent from the existing dam, absolutely. Anytime you reduce the flows to a stream 43 percent, that is significant to the biota in that stream,

plants and animals.

The 10 percent reduction I consider significant, but certainly it would have to be when added to the 43 percent cumulatively significant, again to the biota of the river downstream of the dam.

MS. SCARPACE: What are the impacts of the existing dam and the proposed dam project in the 14-mile Salinas River canyon area below the dam?

MR. ASHLEY: Okay. I have a couple of exhibits, Exhibit J and GG. J is the 1972 order which established the live stream agreement. And anytime you reduce the flows as much as I talked about before, you are going to have a significant impact and the only mitigation in this order is the live stream agreement. And the live stream agreement does not assess at all, when it was done, the biological impacts to the river below the dam. So, again, it relates back to the original question or the question before, the impacts are significant in that canyon.

And part of the question is why did I focus on those impacts. The problem is a lot of the focus has been by the North County cities below the canyon area where they're doing pumping, where the river widens out into a more sandy area. It is the canyon area that's 14 miles long that has good steelhead habitat. That is why I primarily focused on that stretch of the river.

MS. SCARPACE: Do you have any photographs or exhibits that show that canyon area?

MR. ASHLEY: Well, I do, but we'll get to that in my testimony later.

MS. SCARPACE: You've referred to Exhibit GG, which is the operation maintenance manual for Upper Salinas River Dam, dated July 1963. How is the operation of the dam -- was it better or worse than the present operation?

MR. ASHLEY: Well, we already mentioned that -- Mr. Smith mentioned that and stated in his testimony that they do not have to release flows from the dam under the live stream agreement until a visible flow cannot be seen in the area from the dam down to the confluence with the Nacimiento River. So, you don't have to release any flows as long as you can -- from the dam as long as you can see that visible flow.

There is that problem; you need flows from a dam, also. In this Exhibit GG there is an example of a flow release regime that shows 400 acre-feet per day being released, which would be 200 cubic foot per second. They are talking about holding back flows to storage and then releasing that in a surge. That would be very detrimental, especially in the summertime. They are talking about a May 1 release. I am using that as an example of tiering of flows that would be detrimental. It may benefit downstream

users, but it would be detrimental to steelhead, certainly in the summertime, to release that kind of surge. That was what the reference was to GG.

H.O. BROWN: Ms. Scarpace, you have about three minutes left.

MR. ASHLEY: Three minutes with my testimony?

H.O. BROWN: Yes.

MS. SCARPACE: Since I didn't use up all of my time for presenting my oral statement, can I give some of that time to this witness?

H.O. BROWN: How much more time do you need, Ms. Scarpace?

MS. SCARPACE: I would say another 15 minutes.

H.O. BROWN: I can't give that to you. I will give you another five.

MS. SCARPACE: What do you consider to be the most detrimental aspects of the proposed project on downstream riparian resources?

MR. ASHLEY: Again, when you are reducing the flows, 43 percent with the existing project and approximately another 10 percent with the proposed project, you are going to have a significant impact on riparian resources as well as aquatic resources.

MS. SCARPACE: Can you please go through some of your photographs here in your exhibits and explain them? You

have some on observation of flows.

MR. ASHLEY: What I would like to do, these photographs have a set. They were turned in with my letter to the Board May 5th. There was a set of color photographs, two sets; one with my Exhibit 1 of that letter and one with my -- some more photographs with my Exhibit 2 of that letter. I have made copies for the Board so the Board would have -- if you would like to see these, would have sets to look at as we go through them.

MS. SCARPACE: Perhaps explain some of them to us.

H.O. BROWN: Do you have copies here for everybody?

MS. SCARPACE: Yes. They were previously given. They were -- the photographs were labeled Exhibit CC and then there were photographs contained in Exhibit Y and the photograph of the steelhead caught by Otto Schmidt was Exhibit Z.

MR. ASHLEY: Those are photographs that I turned in with my written testimony for this hearing. The photographs I just gave you were photographs that I turned in with my written testimony or my letter to the Board on May 5th to preserve the CALSPA protection.

The photographs I am going to be showing you now are not those photographs, and we sent adequate numbers of sets of Exhibit CC, also. I am going to go through real quick.

Page 1 were the toads that I have not -- I suspect that

is the western toad which is not endangered, but it could be the Arroyo toad. An expert needs to make that determination.

Page 2, there are two photographs there, and those photographs --

Do you people have these photographs?

MS. SCARPACE: They have them.

MR. ASHLEY: I was on the river on April 23rd, and the live stream agreement is supposed to be in effect. And what I am showing there, this is the upper -- we have been talking about primarily two private dams on the river. This is the upper one just above Otto Schmidt's property. There is less than one cubic feet per second flow, and this is April when we should have significant flows. That same day there is approximately 12 cubic feet per second coming into the river, and here we have less than cubic feet per second going over that spillway.

And I will just add that that spillway, in my opinion, would have adequate flows, which is certainly more than you have here, with around ten cubic feet per second or so, spawning adult steelhead would have no problem getting over that spillway. It is a cascade and not a waterfall.

Page 3 is two photographs. We were talking about a second primary private dam in the canyon area. And the first photograph shows a man standing by -- the spillway's

over on the -- kind of the right side of the photograph. And this time you see several cubic feet per second spilling over that spillway. In my opinion, steelhead could not traverse that spillway under these conditions, But, again, with approximately ten cubic feet per second or move, they could get over that. It looks like a little waterfall, but it is only about six foot high and steelhead could easily jump and then swim over the last couple of feet which is at an angle.

The lower photograph just simply shows that dam. It's been talked about at different heights, but you can see a man standing on top of it. He is about six foot tall, so that shows you the dam itself is around, maybe, 12 feet high. But it is the spillway that is the issue, not the dam. It is the spillway that the fish would get over.

Page 4, there is two photographs at the top that show a non-steelhead. I just wanted to add some photographs to just show what a trout, that probably washed over from the dam during high water, looks like. It is in poor condition. The tail, the fins are in poor condition; some of them clipped off, some missing. Coloration poor and so on. It's just in generally bad condition.

Whereas, in Exhibit Z, which Mr. Otto referred to, this is a picture of an approximately 20-inch steelhead he caught in '97 before it was listed, in good condition, good fins.

So the point here is steelhead move into that canyon and adult spawners move into that canyon, and with adequate habitat they will spawn. Clearly, this one got over. This steelhead he caught on this property, which is above the lower private dam and just below the second private dam. So, they do move into the canyon.

Page 5, I've taken several photographs here that show the canyon habitat. And what I was slowing here is, the photographs show adequate gravels for spawning, for rearing, for aquatic insects, various aquatic insects. Shows adequate ripples, runs and so on. So it is good steelhead habitat in that canyon.

H.O. BROWN: Ms. Scarpace, if you would finish up, please. This information is in the record, and the Board Members will read it. We do have it. So what you are -- the objective here is to summarize what you have and not to represent the whole testimony all over again.

I will give you 60 seconds to summarize.

MS. SCARPACE: Can you tell us what type of release are needed to help steelhead in their migration patterns?

MR. ASHLEY: Not only for migration, but the critical thing is you have to get the adult steelhead up into the good habitat for spawning, which would be the tributary streams and this 14 miles of canyon which has good spawning steelhead habitat, if you have adequate flows.

You have streams that contribute to the flows, but to get them to the canyon you are going to need substantial flows, well over, probably, a hundred cubic feet per second. In the summertime the -- this Exhibit J, again, it is the Board's '72 order. In there was a Corps of Engineer's study that the Board rejected. But it said that the use of the summertime daily use of water was approximately 30 cubic feet per second.

Now, I believe that would be more than adequate for flows in the summer. But, in fact, that amount of flow could be somewhat of a detriment. But somewhere in the nature of 15 cubic feet per second that wouldn't wash small fingerling steelhead out of the ripples and so on. I would say in summertime our 15 cubic feet per second.

MS. SCARPACE: That would be all.

MS. MROWKA: I would like to just clarify a bookkeeping matter.

H.O. BROWN: Please do.

MS. MROWKA: I believe you referred to CALSPA Exhibit GG, and I am not showing that you have submitted that.

MR. ASHLEY: Ms. Mrowka, would you read me again what Exhibit GG is. I stacked stuff up and I might have covered it.

Here it is.

MS. SCARPACE: Let me give that to you. That is the

operation manual of 1963. I have it here in these boxes.

MS. MROWKA: That is all.

H.O. BROWN: Mr. Robinson, do you have cross of this witness?

MR. ROBINSON: The City of Paso Robles doesn't have any questions.

H.O. BROWN: Mr. Slater.

MR. SLATER: Yes, the City of San Luis Obispo does.

Waiting for counsel.

H.O. BROWN: Ms. Scarpace, Mr. Baiocchi can pass that out, and we can keep moving here.

All right, Mr. Slater.

MR. SLATER: Thank you.

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CROSS-EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY THE CITY OF SAN LUIS OBISPO

BY MR. SLATER

MR. SLATER: Good morning, Mr. Ashley.

MR. ASHLEY: Morning, Mr. Slater.

MR. SLATER: Couple things. One, is it your contention that mitigation is required where a project has no significant adverse impact?

MR. ASHLEY: Not under CEQA.

Wait a minute. Can I qualify that? If there is

cumulative, absolutely.

H.O. BROWN: Wait a minute.

He asked a question and you answer. Go ahead, Mr. Slater.

MR. SLATER: Did you present your comments and concerns regarding the adequacy of the EIR to the City of San Luis Obispo?

MR. ASHLEY: Yes, I did.

MR. SLATER: In fact, didn't the City of San Luis Obispo request you to be part of the Mitigation Advisory Committee?

MR. ASHLEY: No, they didn't. I volunteered.

MR. SLATER: Did you participate?

MR. ASHLEY: Yes.

MR. SLATER: On how many occasions?

MR. ASHLEY: I think they had four meetings. I participated in two that I recall.

MR. SLATER: Did you let your concerns be known to the City at those meetings?

MR. ASHLEY: You want just a one-word answer?

MR. SLATER: Yes or no.

MR. ASHLEY: Yes.

MR. SLATER: Is it your testimony that any time, and I stress anytime, you reduce flow 43 percent that there will be significant adverse impact?

MR. ASHLEY: Yes. To a stream.

MR. SLATER: Does your testimony take into account all types of flow or specific types of flow?

MR. ASHLEY: I would say summer and winter flows when you are talking 43 percent.

MR. SLATER: Did you consider the impact of the raised dam on flows downstream from the dam taking into account tributary inflow?

MR. ASHLEY: Since I focused on the canyon area, yes, the tributaries in the canyon.

MR. SLATER: That would be the first 14 miles; is that correct?

MR. ASHLEY: Right, approximately 14.3 miles.

MR. SLATER: Within that first 14 miles there are barriers, are there not?

MR. ASHLEY: Yes.

MR. SLATER: Can fish -- can steelhead jump 15 feet, Mr. Ashley?

MR. ASHLEY: No, they can't. That is the dam, not the spillway.

MR. SLATER: Can they get over a 15-foot obstruction?

MR. ASHLEY: If it is a cascade, they can. If it's a straight waterfall, that, in my opinion, could not.

MR. SLATER: So, your testimony is only if it's a cascade, correct?

MR. ASHLEY: For 15 feet?

MR. SLATER: Yes.

MR. ASHLEY: It depends how the water flows over the top of it. If it is a large amount of water that has a rather mild angle on the top, maybe the steep -- maybe the vertical part's only eight feet. Salmonids are known to be able to jump over ten feet high. Fifteen feet straight up and down, unlikely.

MR. SLATER: So your answer is 15 feet unlikely?

MR. ASHLEY: If it is vertical.

MR. SLATER: Did you have an opportunity to investigate on what was behind any of these impoundments ten feet or over?

MR. ASHLEY: I only looked at them briefly when I was in -- they're in private property and I don't know what the use of them is. I question why they are there at all.

MR. SLATER: Do you know what type of biological resource was behind the reservoir and in the water?

MR. ASHLEY: I didn't -- I didn't see -- I didn't have enough time to investigate those reservoirs, those small reservoirs.

MR. SLATER: Is it likely that there is warm water fish behind those?

MR. ASHLEY: Yes.

MR. SLATER: And you would agree that those fish are

natural predators of trout, would you not?

MR. ASHLEY: Yes. Just like large trout are natural predators of small trout.

MR. SLATER: You don't disagree with Mr. Schmidt's testimony from last week that there have always been a flow from the base of the dam down to Otto Schmidt's property, do you?

MR. ASHLEY: I do disagree with it, absolutely.

Is that the answer you want on that?

MR. SLATER: That is quite all right. Thank you.

Do you believe that the Final Environmental Impact Report that is prepared for the City relied upon the live stream agreement to mitigate significant cumulative impacts?

MR. ASHLEY: Yes, it did.

MR. SLATER: That is your belief?

MR. ASHLEY: That is my interpretation of it.

MR. SLATER: Thank you.

Are you aware that the project, as proposed, would only capture flows when there is a visible stream between the base of the dam and the Paso Robles area?

MR. ASHLEY: State that one again. You went a little fast. There are several things in that.

MR. SLATER: Do you believe, is it your view, is it your understanding that the proposed project by the City of San Luis Obispo would only capture flows and divert to

storage where there is a live visible stream between the base of the dam and the area of Paso Robles?

MR. ASHLEY: That is the way it is worded.

MR. SLATER: So the answer is yes?

MR. ASHLEY: Yes.

MR. SLATER: Do you believe that the groundwater pumping conducted by the Atascadero Mutual Water Company has any impact on the flow of water on the main stem of the Salinas River?

MR. ASHLEY: I don't have any data on that, but as you pump the groundwater out, when you get out to the sides of the water basin, it's buoying up the surface flows. It could --

MR. SLATER: It could?

MR. ASHLEY: -- have.

MR. SLATER: So you would say it could?

MR. ASHLEY: It could, but I don't have any evidence on it. I don't have any information.

MR. SLATER: If those numbers were significant, more than a thousand acre-feet of water was being taken from that spot, is it more likely that there would be such an impact?

MR. ASHLEY: I don't want to talk about any numbers because I don't have any that I can talk about.

MR. SLATER: So you have no opinion?

MR. ASHLEY: If it is a significant amount in terms of

impact on the river flow, surface flow, certainly.

MR. SLATER: Would you have an opinion on what is significant?

MR. ASHLEY: No, I don't. I am not a groundwater pumping person.

MR. SLATER: Have you done any analysis on what Paso Robles takes from the groundwater basin?

MR. ASHLEY: No.

MR. SLATER: So you have no knowledge; is that correct?

MR. ASHLEY: No knowledge.

MR. SLATER: Downstream from the reservoir, the existing impoundments contribute to an increase in temperature of the water in the main stem, correct?

MR. ASHLEY: They don't if there is no flow. All they are doing is increasing the water temperature within the little reservoir itself. There is no flow.

MR. SLATER: So within the reservoir, however, the water temperature is inclined to increase, correct?

MR. ASHLEY: Yes, it would increase, depending on how deep they are. If it is deep enough to set up a thermal plane, then the bottom temperatures could be as cool as the stream.

MR. SLATER: Warm temperatures can be lethal to trout, correct?

MR. ASHLEY: Yeah. Steelhead have to deal with that.

MR. SLATER: Is a shallow, braided stream generally conducive to cool temperatures for trout?

MR. ASHLEY: It depends on what the underflows are. There are artesian flows and so on that might resurface and go through gravel and tend to cool. You can have little areas or pockets that are totally conducive to salmonids, steelhead.

MR. SLATER: So it is your testimony that shallow, braided streams are conducive to cool temperatures?

MR. ASHLEY: Conducive? Not in general.

MR. SLATER: So the answer is no?

MR. ASHLEY: In general, no.

MR. SLATER: Are steelhead lake dwellers, generally?

MR. ASHLEY: No, they are not.

MR. SLATER: And in your testimony you made reference to the Montana Method as a potential methodology to be used; is that correct?

MR. ASHLEY: Yes.

MR. SLATER: Does the Montana Method address itself to base flows?

MR. ASHLEY: If you are talking about average flows?

MR. SLATER: A continuous base flow.

MR. ASHLEY: Historical flows?

MR. SLATER: Yes.

MR. ASHLEY: Yes, it does.

MR. SLATER: Is it true that your testimony is that much of the adverse impacts are attributable to the existing project?

MR. ASHLEY: Yes.

MR. SLATER: And the operation of the live stream agreement; is that correct?

MR. ASHLEY: State that --

MR. SLATER: The operation of the live stream condition has resulted in adverse impacts downstream?

MR. ASHLEY: Yes.

MR. SLATER: Is it true that there are -- that steelhead could possibly use the downstream tributaries for rearing?

MR. ASHLEY: Yes.

MR. SLATER: And during significant flow events steelhead could migrate, use the main corridor to migrate, could they not?

MR. ASHLEY: You need to define significant flow because in certain years the Salinas Reservoir entraps all of the significant flows, and the only flows coming down the stream are tributary flows, which may not be enough.

MR. SLATER: Could you define significant for me?

MR. ASHLEY: Well, again, significant for adult steelhead to migrate upstream, to get into those tributaries and into the canyon reaches for spawning?

MR. SLATER: Yes.

MR. ASHLEY: The 14-mile canyon?

MR. SLATER: Yes. Could you define that for me?

MR. ASHLEY: I don't have any data on -- the historical data of flows that I reviewed doesn't really give a handle on what the flows -- that's the flow studies that need to be done that Felix was talking about. We're talking hundreds of cubic feet per second, potentially thousands of cubic feet per second in the winter to move spawning steelhead upstream for those tributaries.

MR. SLATER: Do you have a rough idea or can you tell me what the annual average flow is in Salinas Dam?

MR. ASHLEY: The annual average? Actually, I had a figure in here. I don't think it was annual average. It was the flow during the rainy season, and I define the rainy season, which is April -- not April, but typically November through April, six months. Straight out of the EIR tables was -- I think it was the average was, during that rainy season, 57 cubic feet per second for that whole six-month period.

MR. SLATER: That is your testimony, that that is what the annual average inflow is?

MR. ASHLEY: I don't have the annual average. Again, it is for the -- what I define -- I didn't have data on that. For the rainy season, those six months I defined, the

average is 52.7 cubic feet per second during the rainy season. I didn't do a figure for that.

MR. SLATER: So, you're saying, it's your opinion, then, as referenced on Page 10, that the -- that 52.7 cfs represents a reasonably average flow in the river during the six-month rainy season?

MR. ASHLEY: Yes.

MR. SLATER: That is your testimony, that that is the inflow into the dam?

MR. ASHLEY: Directly from the EIR flow data.

MR. SLATER: During the six-month period, that is the annual average inflow?

MR. ASHLEY: Yes. I didn't do it for the entire year. Ran out of time.

MR. SLATER: So that is where the point of measurement would be is then at the inflow location to the dam, according to you?

MR. ASHLEY: In terms of -- comparing what should come out of that reservoir. Then I need to qualify that by there are tributaries coming into the reservoir, too, that would add to that, 52.7. That was just inflow from their methodology.

H.O. BROWN: You said tributaries to the reservoir. Do you mean tributaries to the Salinas?

MR. ASHLEY: No, tributaries to the reservoir itself.

If we talk about inflow to Salinas Reservoir, then the river itself coming has a certain flow and there are various tributaries, Alamo Creek, Toro Creek and a couple other major ones and quite a few smaller as they come trickling down. Quite a watershed, over 20 square miles for the reservoir itself.

MR. SLATER: Have you done any investigation into or do you have any knowledge of the downstream contribution of the tributary inflow to the main stem?

MR. ASHLEY: I do not have any solid information on that.

MR. SLATER: So the answer is no?

MR. ASHLEY: No.

MR. SLATER: Isn't it true that the City has not proposed to modify the live stream agreement?

MR. ASHLEY: That's true.

MR. SLATER: How many miles are there between the main stem or -- sorry, between the base of the dam and the Pacific Ocean?

MR. ASHLEY: That is, I think, about 130 miles. You get different figures. I have seen different figures in documents and so on, about 130 miles.

MR. SLATER: Along that corridor are there warm water fisheries?

MR. ASHLEY: Yes, there is.

MR. SLATER: Are there impoundments in the stream channel?

MR. ASHLEY: I know of the two behind the two private dams.

MR. SLATER: So the answer is at least two?

MR. ASHLEY: At least two.

MR. SLATER: Are their land use -- Strike that.

Do land use practices downstream from the 14-mile corridor that you mentioned have any impact on the suitability of the main stem for steelhead?

MR. ASHLEY: Yes.

MR. SLATER: Is the -- in your opinion, is the main stem of the Salinas River downstream from that 14-mile corridor appropriate for steelhead rearing?

MR. ASHLEY: What I've seen, it's sandy, it is not gravel. Doesn't generate the variety of invertebrates. But I would qualify that. There is much in that stream I haven't seen. And, again, in a drought situation steelhead will move out of tributaries if those are drying up, look for water. They can over summer if they find the right -- and even on a sandy bottom they find ways to survive. But over all --

MR. SLATER: Is the answer you have no opinion?

MR. ASHLEY: Overall it is not good habitat for what you typically expect to be rearing habitat.

MR. SLATER: I think that is it.

Thank you.

H.O. BROWN: Staff?

Jim.

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CROSS-EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY STAFF

MR. SUTTON: Morning, Mr. Ashley.

MR. ASHLEY: Morning.

MR. SUTTON: You concentrated your testimony primarily on the 14-mile canyon immediately below Salinas Reservoir; is that correct?

MR. ASHLEY: Yes, sir.

MR. SUTTON: Do you have any information or knowledge as to what percent of the total steelhead spawning and rearing activities that goes on in the upper Salinas River occurs in that 14-mile canyon stretch?

MR. ASHLEY: Are you talking just the main stem and not the tributaries?

MR. SUTTON: The main stem and the tributaries which go into that canyon area.

MR. ASHLEY: Into the canyon area. There are three tributaries. And so, that 14 miles -- and one of those tributaries I -- actually, two of them I haven't walked.

One I have seen, Calf Canyon; Rinconada and Pilitas are private properties, so it is very hard to get on to them.

I would say, certainly, more than 50 percent, if you are adding those tributaries. And if you add the Santa Margarita Creek, which Trout Creek runs into, has a confluence just a few hundred yards, if that, below the mouth of the canyon. The mouth of the canyon is very distinct.

If you are only talking upstream of the mouth and not including Santa Margarita Creek --

MR. SLATER: That is correct.

MR. ASHLEY: -- that would be -- it'd certainly be more than 60 percent. A person told me that Pilitas Creek has, in their opinion, a barrier, a non-fisheries person, close to it its confluence with the Salinas River. I have not seen that area; I don't know. Sometimes people call barriers the cascades that steelhead would have no problem getting over in higher flows, winter flows.

I do not know that Pilitas is not good steelhead habitat. But I would say even if those three creeks were, you are talking probably less than 50 percent of the habitat. The spawning and the rearing habitat would be in the those three tributaries. Kind of difficult to get a handle on because so much of it is private property.

MR. SUTTON: Let me clarify your testimony. Are you

saying that from the mouth of the canyon up to the Salinas Dam, including the potential of spawning habitat, spawning and rearing habitat, in those three tributaries, but not including Santa Margarita and Trout Creek?

MR. ASHLEY: Right.

MR. SUTTON: Constitutes in your opinion or your estimate what percentage of the total spawning and rearing habitat in the Upper Salinas basin? Would you say about 50 percent?

MR. ASHLEY: Defining Upper Salinas basin from what point on the river? Paso Robles? Nacimiento?

MR. SUTTON: Let me rephrase it.

Of the total steelhead spawning and rearing activity in the Salinas River, what percent of it occurs in the 14-mile canyon below Salinas Reservoir?

MR. ASHLEY: That is a different question because now you are taking the lower tributaries into account.

MR. SUTTON: That is correct.

MR. ASHLEY: That would be hard to give a figure on. You have the Arroyo Seco River down around King City. You've got Nacimiento. They are blocked off by dams. San Antonio River, they are both blocked off by dams. So you have a similar situation there. Various creeks as you get up into this county. I would say maybe -- that 14-mile canyon itself has such tremendous potential. I would have

to say that 30 percent would be in that canyon.

MR. SUTTON: That is 30 percent potential or 30 percent actual?

MR. ASHLEY: I think it's potential, if we can get the flows.

MR. SUTTON: Do you have any idea what the actual percentage is now?

MR. ASHLEY: It is hard to get much testimony on that because the trust agencies have not spent a lot of time in that canyon. There is no reason in the future we couldn't focus more on it; that is what this is all about.

We've got a species that is threatened, needs a recovery plan, and certainly that canyon is critical, absolutely critical.

MR. SUTTON: I understand your testimony in that regard. My question specifically is: Do you have any information as to what percentage of actual spawning and rearing activities at present occurs in that 14-mile canyon reach?

MR. ASHLEY: No, I don't have a specific -- a specific percent I don't have.

MR. SUTTON: Thank you.

One other question: You said under cross-examination that you disagreed with Mr. Schmidt's testimony that he had a continuous flow past his property. And my question is:

On what basis are you making that assertion that you disagree?

MR. ASHLEY: I have been on his site with him and he's told me during the drought periods, which happen fairly frequently, that when those droughts occur, they ripple between the pools.

And I have since talked to him, and he misunderstood. He thought there was water on the property --

MR. SLATER: Objection. Hearsay.

H.O. BROWN: Sustained.

MS. SCARPACE: Limited to what you observed.

MR. ASHLEY: The day I was -- April 23rd. On April 23rd when I took those pictures that showed a small trickle in the stream. That is not dry. It is not dry. But that is so grossly inadequate from what is being -- that day showed .07 cubic feet per second being released from the dam.

MR. SUTTON: I understand that. My question was --

MR. ASHLEY: If you are talking about the ripples are dry --

H.O. BROWN: Wait a minute. Wait.

MR. SUTTON: My question --

H.O. BROWN: Wait. When I speak, nobody else talks, except the reporter.

Ask the question again.

MR. SUTTON: Do you have any of your own observations

or data to show that Mr. Schmidt's assertion and based on his observations that he always had water flowing past his property are, in fact -- that assertion is incorrect?

MR. ASHLEY: Real difficult to answer that one. I had him tell me that ripples dry up. That's the only data I have.

MR. SLATER: Objection. Hearsay.

MR. ASHLEY: All I have is those photographs I gave you.

H.O. BROWN: The answer is I don't know if that is the case.

MR. ASHLEY: Well, it's a real hard one for me to say that.

MR. SUTTON: Thank you.

H.O. BROWN: Kathy.

MS. MROWKA: Thank you.

We heard Mr. Chaulet testify on behalf of California Sportfishing Protection Alliance that he had done modeling work, and he provided us with numbers to demonstrate his conclusions. And what he said was that he had different values for the quantity of water that he believed the reduction in spill flow from the Salinas Reservoir that he believed occurred. I also heard him testify that he concurred with the City that that would be the primary impact of the enlargement project.

Do you reach any different conclusions based on your numbers that you are presenting here today?

MR. ASHLEY: With the proposed project?

MR. MROWKA: Yes.

MR. ASHLEY: That the reduction in flows or spills?

MR. MROWKA: That the primary impact of the City's project is a reduction in spill flow from the reservoir.

MR. ASHLEY: Yes. Because the live stream agreement is not being altered. That's what CALSPA is asking, that the live stream agreement be altered; it's inadequate.

MS. MROWKA: If you would clarify for me, what you are saying yes to. Are you saying, yes, you concur with Mr. Chaulet's testimony or, no, you don't concur with it?

MR. ASHLEY: Well, reduction in spills is going to be significant to that river. I agree with that.

MR. MROWKA: Do you, based on your work, find that there are any other flow reductions occurring other than the reductions in spill?

MR. ASHLEY: From the proposed project?

MR. MROWKA: Yes.

MR. ASHLEY: No. Because that's all that's been analyzed. They didn't analyze daily flows, downstream flows.

MR. MROWKA: Mr. Chaulet provided data on an annual basis, as has the City. You have provided data which is

one single value for either 51-year period of record or a 52-year period of record, depending on which calculation you've done.

How would you have me weight that data between these parties?

MR. ASHLEY: Weighting my data against whose?

MS. MROWKA: Against these other persons who submitted data presented on an annual format.

MR. ASHLEY: The EIR people at the City and so on?

MS. MROWKA: And I would also like you to comment with respect to Mr. Chaulet's annual data.

MR. ASHLEY: I think based on the calculations I showed, they aren't that complicated, I would rate them equivalent.

MS. MROWKA: You would rate your single value data as equivalent to the annual reports?

MR. ASHLEY: Well, they were meant to show specific flows that weren't shown. They are all from the data. They are all from the EIR data. Or from Mr. Chaulet's data on watershed areas.

So, based on the data I worked with, I would rate that equivalent, yes.

MR. MROWKA: Could I use any of your results to ascertain impacts on public trust resources, given that they're single values reported for the entire period of

record?

MR. ASHLEY: Well, I guess I am having a little trouble with what you are saying, single value. I show figures for a 51-year period. Those do represent averages.

Is that what you are talking about?

MS. MROWKA: I am simply asking if I take your numbers, such as a cumulative total reduction X percent and use that to make an evaluation of impacts on public trust resources.

MR. ASHLEY: Yes, yes. Because that is what the EIR did, used average figures over a period of time. And that is what mine did. So annual average figures, that is what mine are basically showing.

MR. MROWKA: Will your data provide good information for me on the impacts on public trust resources or other aspects that are influenced by this project for different water year types?

MR. ASHLEY: Well, when you are doing averages, it's no better than what they supply in terms of averages. Their final conclusion in the EIR was based on average flows versus the existing project versus the proposed project. They gave an average annual flow. My data is no different from that.

MR. MROWKA: When I went to compare a specific year from your testimony to Mr. Chaulet's testimony, and Mr. Chaulet is using specific data for that year, how would you

have me make the evaluation to evaluate his testimony to yours?

MR. ASHLEY: Because mine, like the EIR, is based on averages. I would default and use his data.

MS. MROWKA: Thank you.

MR. ASHLEY: Or you should.

MR. MROWKA: So you're in essence telling me I should probably give more weight to Mr. Chaulet's testimony if I am looking at specific water years?

MR. ASHLEY: Yes.

MR. MROWKA: Thank you.

H.O. BROWN: Counselor.

MS. MAHANEY: No.

H.O. BROWN: Redirect, Ms. Scarpace.

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REDIRECT EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY MS. SCARPACE

MS. SCARPACE: Would you say that spills over the dam are important to maintain steelhead propagation in the Salinas River and its tributaries?

MR. ASHLEY: Yes. They are very important. They occur in wintertime when the adult steelhead are moving upstream. It's very pertinent that they have adequate spills from the dam and the tributaries, flows from the

tributaries, so they can move upstream for spawning purposes.

MS. SCARPACE: Would you be willing to say that the live stream agreement alone would not be capable of maintaining steelhead population in the Salinas River and its tributaries?

MR. ASHLEY: No. That was some of my data. The data that I had comprised in here from the EIR data showed that there are few months, less than 10 percent of the months since the dam was built, that have spills. More than 90 percent of the time we're relying on the flows that are released from the dam, that at least in that canyon area, that 14-mile stretch for steelhead, and there are entirely too many months when no releases, there are no spills, obviously, and no releases from the dam.

So spills are entirely inadequate to keep steelhead in good condition.

MS. SCARPACE: The present spills, is that what you are talking --

MR. ASHLEY: The present spills. Well, the present spills when combined with the proposed spills, both cumulatively are not adequate to keep steelhead in good condition. Those spills only represent migratory flows.

And it is my belief that a significant -- 43 percent of the flows with the current project, over 50 percent

cumulative with the current project and the existing dam and proposed dam -- when you have over 50 percent reduction, and those are spills wintertime, it is going to be difficult for some years for spawning steelhead to move upstream.

For juvenile steelhead, for hatching and rearing in the summer, the spills aren't even a factor because they happen in the winter. There you need summer flows released from the dam, and too many months we have spills in the nature of anywhere from zero to just a few cubic feet per second. That is not adequate for rearing of juvenile.

MS. SCARPACE: Would you recommend that the Board make a order requiring an increase in releases from the dam to keep fish in good condition below the dam?

MR. ASHLEY: Yes.

MS. SCARPACE: That is all my questions.

H.O. BROWN: Ms. Cahill, do you have recross?

MS. CAHILL: No, we don't.

H.O. BROWN: Mr. Slater.

MR. SLATER: Very brief.

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RECROSS-EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY THE CITY OF SAN LUIS OBISPO

BY MR. SLATER

MR. SLATER: Mr. Ashley, I just wanted to make sure I

heard you accurately. It is your opinion that the final conclusions in the EIR regarding impacts on flows is based upon annual averages; is that correct?

MR. ASHLEY: That was in summary, Page ES-17, Page ES-17. The summary page comes to that conclusion.

MR. SLATER: The answer is yes?

MR. ASHLEY: Yes.

MR. SLATER: And could you tell me how many -- have you kept a log of how many hours you spent regarding your investigations of the 14-mile canyon area?

MR. ASHLEY: In the field?

MR. SLATER: In the field.

MR. ASHLEY: I haven't kept a log.

MR. SLATER: Can you estimate how many hours you spent in the field in that 14-mile area?

MR. ASHLEY: If we are talking about on private property where I have had to request getting on there, that is one thing. If you are talking about my experience about Bridge 58, and trying to total it all up, it could be hundreds of hours over the years.

But specifically in private land, I haven't kept a log, but it's somewhere around --

MR. SLATER: Specifically private land, you don't have an estimate. That is okay.

MR. ASHLEY: I really don't.

MR. SLATER: You don't have an opinion?

MR. ASHLEY: Not in the areas that -- I have pictures on that; is private areas.

MR. SLATER: In the areas in which you took pictures, you have no opinion of how many hours you spent; is that correct?

MR. ASHLEY: The day I took the pictures?

MR. SLATER: Is it just the day you took the picture?

MR. ASHLEY: I have only been invited on the river a certain number of days.

MR. SLATER: How many days?

MR. ASHLEY: I would say I have been on the river since '97 probably seven days, based on private property.

MR. SLATER: Can you tell us what your present employment is, specifically?

MR. ASHLEY: I am a plant and animal technician at Cal Poly in the biology department.

MR. SLATER: What do those duties entail?

MR. ASHLEY: I take care of animal rooms. I collect native plants and so on for the laboratories, for students, and then take care of reptiles, amphibians, mammals and so on. We have a couple different animal rooms. Basically, it is setting up labs and so on.

MR. SLATER: Thank you, Mr. Ashley.

No more.

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

Staff, any recross?

MS. SCARPACE: I would like to call another panel.

H.O. BROWN: Thank you, Mr. Ashley.

MR. ASHLEY: Thank you.

H.O. BROWN: Go ahead and call your other panel.

MS. SCARPACE: I would like to call Robert Titus and Dennis McEwan.

H.O. BROWN: Mr. McEwan, have you been sworn?

MR. MCEWAN: No, I have not.

(Oath administered by H.O. Brown.)

H.O. BROWN: Mr. Baiocchi, you had a question for me?

MR. BAIOCCHI: This is going to go well beyond 12:00. That is what I wanted to mention to you, Mr. Brown. It is up to you.

H.O. BROWN: Let's get one of the witnesses. We have 20 minutes. Go ahead.

MR. BAIOCCHI: Thank you.

Mr. Brown, I would like to question Dennis McEwan.

H.O. BROWN: Permitted, go ahead.

MR. BAIOCCHI: Thank you.

Please state your position or responsibilities with the Department of Fish and Game.

MR. MCEWAN: I am a senior biologist specialist, currently working as a steelhead specialist for the

Department of Fish and Game. I have been since 1991.

MR. BAIOCCHI: Did you assist in the development and finalization of the State of California, California Resource Agency and the Department of Fish and Game Steelhead Restoration and Management Plan for California?

MR. MCEWAN: Yes, I did.

MR. BAIOCCHI: Did you bring with you a copy or copies of the State of California, California Resource Agency and the Department of Fish and Game Steelhead Restoration and Management Plan for California?

MR. MCEWAN: Yes, I did.

MR. BAIOCCHI: Mr. Brown, what I want to do, if I can, is on CSPA Exhibit B I would like to supplement the entire document. This would be the Steelhead restoration Management Plan, rather than I took bits and pieces out of it. And I have copies here for the City of San Luis Obispo, Scott Slater, if he would like a copy, and I have a couple copies for you folks, not the required six.

And I believe I talked to Katherine. Did I talk to you about this, that we are just going to give you one or two?

H.O. BROWN: Give us two and then you can follow up with the other four later.

Do you have a number for that, Kathy?

MR. BAIOCCHI: This would be our Exhibit B; this would supplement Exhibit B.

H.O. BROWN: Want to give it a new number, Kathy?

MR. MROWKA: Let's call that B sub b. And your other one would be B sub A.

MR. SLATER: I actually have it.

MR. BAIOCCHI: City of Paso Robles.

H.O. BROWN: Staff have a couple up here?

MR. BAIOCCHI: Yes.

H.O. BROWN: Let's don't forget the staff.

MR. BAIOCCHI: Dennis, in general, please explain the purposes, objectives and management goals of the Steelhead Restoration and Management Plan for California.

MR. MCEWAN: Well, in general, the purpose of the plan was to put a plan together to guide restoration and management of steelhead in the state. The objectives are primarily on restoration because of the severe declines that have occurred. And that is essentially -- the essentials of the document is it is mostly a programmatic document dealing with some of the more significant impacts that are occurring statewide on general terms. And, also, to make the document useful, I wanted to put in certain specifics, stream-specific recommended measures and discuss the issues on specific streams for a few of the streams in the state.

There is no way I could include all of them, so I generally took the, at the time, the really hot button issues that were occurring and the things that were

basically on my radar screen at the time.

MR. BAIOCCHI: Thank you.

Is the Salinas River watershed and also are the Salinas River threatened southern steelhead species and their habitat included in the State of California Steelhead Restoration and Management Plan? And please explain.

MR. MCEWAN: Yes. I think they are included in a programatic nature of the plan. The plan discusses some of the more significant issues facing steelhead stocks on a statewide basis. Such as water development, timber harvest land use, grazing issues, such as that. So I think it is included in that respect. There is no specific stream mentioned or mention of it as a specific stream. And I said that is mainly because it wasn't on my radar screen at the time. That is not a reflection as I stated earlier that it is low priority.

MR. BAIOCCHI: Were the southern steelhead species of the Salinas River and watershed included in the Salmon, Steelhead and Anadromous Fisheries Program Act of 1988, also know as SB 2261? Please explain.

MR. MCEWAN: It is my understanding that it is, yes.

MR. BAIOCCHI: Thank you.

Now, going to the plan, commencing on Page V, in the front part of the document, it is right under Ray Brooks' name, et cetera. That is the page, anyway. Please read

into the record the statements commencing with "Steelhead are important components of the state's"; that would be the fourth paragraph. If we are on the same page.

MR. MCEWAN: You want me to start on the top of it?

MR. BAIOCCHI: Start with the fourth paragraph. Let me show you.

MR. MCEWAN: I got it.

> Steelhead are an important component of the state's diverse wildlife heritage. They are a good indicator of the health of the aquatic environment because they require clear, clean water and they use all portions of a river system. As such they provide an important benefit to the quality of life for all California citizens.
>
> (Reading.)

MR. BAIOCCHI: Thank you very much.

Dr. John Gray, representing the City of San Luis Obispo, testified at this hearing that he had consulted with you and that you had advised him that the Salinas River watershed is a low priority for southern steelhead management and restoration.

Is that true? Please explain.

MR. MCEWAN: No, I don't think so. I remember talking to Dr. Gray, and I apologize to Dr. Gray if I led him to

believe that they were low priority. But that is not my opinion.

The priorities of these are mostly of water rights and specific issues that are mostly set by the director and in consultation with a particular region which the stream, said stream, is in. I don't set priorities. But from a restoration perspective I would not -- for myself would not consider it a low priority.

As I said, I don't think -- that cannot be inferred because it is not specifically mentioned in the plan.

MR. BAIOCCHI: Thank you.

Now please go to Page 183 under South Coast. Commencing with what the objectives for the management recovery of southern steelhead populations are, could you read that sentence there then move through the next four lines and finish up at top of Page 184. Read that into the record, please.

MR. MCEWAN: The objectives for management recovery of southern steelhead populations are halt declines and increase populations, protect spawning and rearing areas, including estuaries, remove and/or modify barriers to migration, restore stream flows, reintroduce fish into the stream where the run has been extirpated using the most genetically similar donor population,

increase populations to a level that will support angular use. (Reading.)

MR. BAIOCCHI: That is fine. Thank you.

I have a basic biological question that I have asked a few biologists here at this hearing.

Do fish need water to survive?

MR. MCEWAN: Yes.

MR. BAIOCCHI: Do all live stages of steelhead need water to survive?

MR. MCEWAN: Yes, they do.

MR. BAIOCCHI: Thank you.

Please briefly explain all of the life stages of steelhead, such as spawning habitat, rearing habitat, food producing habitat, cold water conditions and migration flows for adults and juvenile steelhead.

I realize that that is an awful big plate, but briefly.

MR. MCEWAN: You are asking for habitat?

MR. BAIOCCHI: Let's start off with spawning. Need spawning gravel and adequate spawning habitat, et cetera?

MR. MCEWAN: Well, first of all, fish have to be able to migrate to spawning habitat. For steelhead that is generally farther upstream than other anadromous salmonids. They have usually a fairly long -- depending on the river system, but it can be quite lengthy migration to get to the

spawning areas.

When they arrive at the spawning areas, it needs to be, of course, a sufficient flow of cold water. There has to be the sufficient type of gravel and quantity and quality that they need to utilize for spawning.

That's it. That's it basically.

MR. BAIOCCHI: That is basic spawning, and then, naturally, rearing habitat for the juvenile fish?

MR. MCEWAN: Yes. For the juvenile fish, after they come out of the -- after they're hatched and after incubation period in gravel, they come out, and there needs to be, again, sufficient flow and water sufficient and temperature, the cold temperature that they need to survive.

And unlike other Pacific salmonids, anadromous salmonids, steelhead have a rearing period anywhere between one -- usually one to three years in California. They must remain in freshwater from one to three years.

MR. BAIOCCHI: What about food producing habitat, so they have to, you know, eat, et cetera? And what do they normally eat?

MR. MCEWAN: Well, it depends on the life stage. Very small juvenile fish, after they have absorbed their yolk sac, will eat very small microcrustaceans, other small organisms, insects, things of that nature. Of course, when

they get to a much larger size their food prey will change.

MR. BAIOCCHI: Thank you.

And actually they need cold water conditions?

MR. MCEWAN: Yeah.

MR. BAIOCCHI: And migration flows for upstream migration of the adults and downstream migration of the juvenile fish, plus adult fish that may want to go back to sea?

MR. MCEWAN: Yeah.

MR. BAIOCCHI: Thank you.

You may not have this information, but I will ask it anyway.

Dr. John Gray testified at this hearing that steelhead populations in the Salinas River are fewer than 500 fish. I presume that to be adults of steelhead.

Are you specifically aware of the annual population number of adult steelhead in the Salinas River watershed?

MR. MCEWAN: No, I am not.

MR. BAIOCCHI: Thank you.

Are there different in-stream flow methodologies that are used by the Department and private fishery consultants determine daily flow conditions and requirements for steelhead and other fish species?

MR. MCEWAN: Yes, I believe there are.

MR. BAIOCCHI: Today they discussed at this hearing, I

think you were here, the Montana Methodology and the IFIM Methodology. And there is also being a biologist and going into the field and making reasonable estimates; isn't that true?

MR. MCEWAN: Yes.

MR. BAIOCCHI: Please briefly explain what conjunctive uses mean when applied to dam downstream water uses such as irrigation purposes and also fishery flow protection purposes.

Mr. Brown, I have an example here that would help, but would you deem that as testifying?

H.O. BROWN: No, sir.

MR. BAIOCCHI: May I say it?

H.O. BROWN: No. I will let your witness say it. You are not sworn.

MR. MCEWAN: Can you repeat that question?

MR. BAIOCCHI: Please briefly explain what conjunctive uses mean when applied to dam downstream water uses, such as irrigation purposes, and also fishery flow protection purposes. An example, Sacramento River.

MR. MCEWAN: It is my understanding that conjunctive use is multiple use of the water resource.

MR. BAIOCCHI: So, consequently, like Shasta Dam, water is being diverted for downstream water uses in conjunction with that, the fish and the chinook salmon, the steelhead

benefit from that?

MR. MCEWAN: Yes.

MR. BAIOCCHI: If you have this information or a ballpark figure, briefly please estimate the cost of preparing the steelhead restoration and management plan for California.

MR. MCEWAN: Oh, boy.

MR. BAIOCCHI: You know what I am talking about, a biologist's time?

MR. MCEWAN: I would -- somewhere in the neighborhood of -- I would have to guess $100,000. I will qualify that, and say 50- to $100,000.

MR. BAIOCCHI: That includes not only reproduction of the document, but all the time that has been put in?

MR. MCEWAN: That is probably mostly the time.

MR. BAIOCCHI: I want to take this time to thank you for the hundreds of hours of time you and the Department staff have spent in preparing California's Steelhead Restoration and Management Plan. I greatly appreciate it.

12:00.

H.O. BROWN: Good timing.

MR. BAIOCCHI: Did a good job.

H.O. BROWN: Adjourned until 1:00.

(Luncheon break.)

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AFTERNOON SESSION

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H.O. BROWN: We are back in session.

Mr. Baiocchi.

MR. BAIOCCHI: Continue the direct. These questions are for Robert Titus.

Mr. Titus, is it all right if I call you Bob?

MR. TITUS: That is fine.

MR. BAIOCCHI: Thank you very much.

Please state your position and responsibilities with the Department of Fish and Game.

MR. TITUS: I am an environmental specialist with the Department of Fish and Game Stream Evaluation Program. I serve as a lead on a variety of investigations that deal with fish habitat relationships, in particular with the salmon and steelhead.

MR. BAIOCCHI: Prior to becoming a staff person with the Department of Fish and Game, did you prepare a report entitled "Historical Review and Current Status of California Steelhead in Coastal Drainages south of San Francisco Bay"?

MR. TITUS: Yes, I did. I began that project in a postdoctoral job at U.C. Berkeley before bringing the project with me to the Department of Fish and Game. It was a department-funded project.

MR. BAIOCCHI: Mr. Brown, I would like to supplement

CSPA Exhibit D which is a part of this document, a former document, but it is the same and supplement this document, one in the same, but this is the entirety of it.

H.O. BROWN: Would you read the title of the document in which you have the supplement?

MR. BAIOCCHI: Title here is "History and Status of Steelhead in California Coastal Drainages South of San Francisco Bay." It is by Robert G. Titus, Don C. Erman, and William M. Snider. Snider is with the Department of Fish and Game, and Don Erman is a professor at University California at Berkeley.

H.O. BROWN: Do you have a number on that, Kathy?

MS. MROWKA: Yes. Mr. Baiocchi is adding to his Exhibit D, so we will call the original D Sub (a) and this D Sub (b).

MR. BAIOCCHI: Thank you Mr. Brown.

H.O. BROWN: Yes, sir.

MR. BAIOCCHI: Briefly describe the study area in your report.

MR. TITUS: The study area includes all coastal drainages from just south of San Francisco, that is San Mateo County, south through San Diego County and Northern Baja.

MR. BAIOCCHI: Briefly please describe the material and methods used by you in preparing the information in the

report.

MR. TITUS: Basically reviewed all available information on each drainage, including tributaries. I relied most heavily on Department of Fish and Game stream survey files, which date back to -- most of them date back to circa 1930 and contain material that the Department has put together on each drainage since that time. I also included other published reports in the peer review literature as available, consultant reports, Master's thesis, whatever was available on each drainage.

MR. BAIOCCHI: Thank you.

Under Salinas River drainage, including portions in San Luis Obispo County, you prepared please read into the record your written statement and findings commencing with San Luis Dam which forms Santa Margarita Lake, formerly Salinas Reservoir in the Upper Salinas River.

MR. SLATER: Mr. Brown, we will stipulate to the content, if you want to avoid --

H.O. BROWN: Mr. Baiocchi, he will stipulate to the contents.

MR. BAIOCCHI: Well, the contents is simply a finding and comments by Mr. Titus concerning -- he hits on the Salinas Reservoir.

In my document it commences on Page 96, but it is -- I don't know if it's changed in that document there. I wonder

if you can read it in? "Salinas River drainage including portions in San Luis Obispo County."

MR. TITUS: You want me to read the entire account?

MR. BAIOCCHI: What page is it on so I can look at it right now?

MR. TITUS: Starts on Page 113.

MR. BAIOCCHI: Thank you.

What about -- I realize it is a lot longer in the former report. What if you just briefly describe what you so stated in the document concerning Salinas Dam and the historical habitat that was up in that reach of the Salinas River, please?

MR. TITUS: Basically this account identifies the Lower Salinas river as serving primarily as a migration corridor to and from the Pacific Ocean for steelhead. Identifies that early surveyors, ichthyological surveyors, recognized that steelhead used the Salinas drainage as a spawning and rearing area, including all the tributaries.

There is reference to a Fish and Game document, a field correspondence from 1947 from local wildlife protection personnel, which stated that before Salinas Dam was built adult steelhead had migrated as far upstream as Pozo and occasionally farther during winters of exceptionally high rainfall. The number of steelhead reaching the drainage here varied greatly and was a positive function of the

amount of rainfall, and they had observed that no steelhead had reached the dam in the winter of 1946-47.

By the 1950s or mid 1950s the Department of Fish and Game recognized the decline in the steelhead stock in the Salinas drainage and which, by that time, supported only a, what they referred to as a, meager fishery. The Department in its 1965 Fish and Wildlife Plan estimated the total spawning run in the Salinas drainage at about 500 fish, based on observations and local field personnel.

Barkley, who was a professor in the department of biology at Cal Poly, San Luis Obispo, in 1975 found that viable rainbow trout habitat still existed in the upper main stem above the Highway 58 bridge. Thus indicating that there -- that area was suitable for the species. Including steelhead.

And bottom line statements here that I wrote as a result of complying and synthesizing this available information was as follows:

Impoundment and diversion of surficial stream flow, groundwater pumping and blocked access to perennial headwaters had caused the decline of Salinas River steelhead. The integrity of the natural streambed had also been compromised by extensive extraction of streambed materials as witnessed through the documentation in the Department of Fish and Game files. And this is making

reference to streambed alteration agreements that I observed in the files.

As a result of these negative impacts, the Salinas River steelhead was classified as having a moderate risk of extinction by Nelson, et al., 1991, which was a publication in fisheries, a publication of the American Fishery Society that included a review of the status of some salmon and steelhead stocks along the entire West Coast.

MR. BAIOCCHI: Thank you.

As an environmental specialist for the Department of Fish and Game, do steelhead and other fish species need water to survive?

MR. TITUS: Yes, they do.

MR. BAIOCCHI: I want to take this time to thank you for the hundreds of hours and time you spent preparing said document, and I really appreciate it. For me it is a bible.

Thank you.

(Oath administered by H.O. Brown.)

MR. BAIOCCHI: Your name is Steve Edmundson?

MR. EDMUNDSON: That is correct.

MR. BAIOCCHI: May I please call you Steve?

MR. EDMUNDSON: Yes.

MR. BAIOCCHI: Please state your position and responsibilities with the U.S. National Marine Fisheries

Service.

MR. EDMUNDSON: I am a fisheries biologist, Level 4, with the National Fisheries Services. That means I'm a senior fisheries biologist with supervisory responsibilities.

MR. BAIOCCHI: Are you heavily involved in dealing with steelhead on coastal streams?

MR. EDMUNDSON: Yes.

MR. BAIOCCHI: Is it true when you write letters on behalf of NMFS that you and other biologists working for NMFS need not be attorneys to cite the provisions of the Federal Endangered Species Act?

MR. EDMUNDSON: That's correct.

MR. BAIOCCHI: Thank you.

Do the provisions of the Federal Endangered Species Act apply to Salinas River southern steelhead as a listed threatened species?

MR. EDMUNDSON: Yes, sir, they do.

MR. BAIOCCHI: Thank you.

Has NMFS recommended as critical habitat that Salinas River commencing at Salinas Dam downstream?

MR. EDMUNDSON: Recommended? I assume you are referring to critical habitat?

MR. BAIOCCHI: Yes.

MR. EDMUNDSON: Critical habitat has been proposed for

that area, yes.

MR. BAIOCCHI: It's true that the U.S. National Marine Fisheries Service has not adopted critical habitat at this time?

MR. EDMUNDSON: That's correct.

MR. BAIOCCHI: NMFS has made that recommendation?

MR. EDMUNDSON: The status is as proposed.

MR. BAIOCCHI: Do you know when the period will be when they finally adopt that?

MR. EDMUNDSON: No, I do not.

MR. BAIOCCHI: Has NMFS consulted with the U.S. Army Corps of Engineers regarding the enlargement of Salinas Dam?

MR. EDMUNDSON: Not to my knowledge.

MR. BAIOCCHI: That hasn't got started yet. Okay.

I want to refer you to CSPA Exhibit C. CSPA Exhibit C was taken from the CalFed Bay-Delta program and it shows various provisions of California and Federal Endangered Species Act concerning compliance in its document dated March 1998.

I wonder if you can briefly describe the take definition.

MR. EDMUNDSON: Take?

MR. BAIOCCHI: With respect to the steelhead.

MR. EDMUNDSON: As it is described in act --

MR. BAIOCCHI: Yes, sir.

MR. EDMUNDSON: -- take is defined as harm, harass, kill, hunt, pursue or to engage in activities as such. Little bit longer, based on my recollection.

MR. BAIOCCHI: Thank you.

Briefly please explain the components of the habitat conservation plan under Section 10(A)(2)(a) as shown on Page 4 of CSPA Exhibit C. If you go to Page 4, kind of help guide you.

MR. EDMUNDSON: Okay. A complete description of the activity or activities sought to be authorized, common and scientific names of the species sought to be covered by the permit, as well as the number, age and sex of such species, if known, the impacts which will likely result from the proposed taking, what terms the applicant will take to monitor, minimize and mitigate such impacts, the funding that will be made available to implement such steps, the procedures to be used to deal with unforseen circumstances, what alternative actions to such taking the applicant considered, and the reasons why such alternatives are not proposed to be utilized, such other measures that the U.S. Fish and Wildlife Service or National Marine Fisheries Service may require as necessary or appropriate for purposes of a conservation plan, such as an implementing agreement that spells out the roles and responsibilities of all parties.

MR. BAIOCCHI: Thank you.

Without reciting it, could you briefly, if you can, describe the contents of an HCP, which is a Habitat Conservation Plan. It commences on the bottom of Page 7 of this document, but it goes on for a spell?

MR. EDMUNDSON: Of the habitat conservation plan?

MR. BAIOCCHI: The contents under (D) on Page 7 (D). HCP contents.

Could you describe it briefly as opposed to reading it?

MR. EDMUNDSON: Okay. It is very similar to my last recitation that I read from this document. It includes the full description of the activity, species to be affected, the action area, the impact area, level of impact, and mitigation or alternatives considered to minimize that impact. And there should be some kind of intent to estimate take from the impact.

MR. BAIOCCHI: To the best of your knowledge, has the U.S. Army Corps of Engineers recommended a habitat conservation plan for the Salinas River directly below the Salinas Dam?

MR. EDMUNDSON: Not to my knowledge.

MR. BAIOCCHI: That is because you have not consulted with them yet?

MR. EDMUNDSON: That's right.

MR. BAIOCCHI: The last question, which is a very

fundamental question, as a biologist for NMFS do steelhead and other fish species need water to survive?

MR. EDMUNDSON: Yes. Yes, they do.

MR. BAIOCCHI: I want to thank you very, very much for traveling all the way down from Santa Rosa on two days and to testify at this hearing.

That concludes the direct questions, Mr. Brown.

H.O. BROWN: Okay, Mr. Baiocchi.

Cross-examination, Mrs. Cahill; you are up.

MS. CAHILL: No questions. Thank you.

H.O. BROWN: Mr. Slater.

MR. SLATER: Just a couple.

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CROSS-EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY THE CITY OF SAN LUIS OBISPO

BY MR. SLATER

MR. SLATER: Mr. McEwan, is it your testimony that the director establishes priorities for steelhead restoration?

MR. MCEWAN: In the sense that the director, of course, is the top person in the Department. Yeah, the director establishes priorities for all aspects of the Department.

MR. SLATER: In other words, that wouldn't be your responsibility, correct?

MR. MCEWAN: Not to have the final say, no.

MR. SLATER: And you testified that the Salinas River had not been specifically included within your report.

MR. MCEWAN: That's correct, as specifically included as a stream specific issue or measures.

MR. SLATER: Thanks.

Has the director specifically identified the Salinas River as a priority stream system?

MR. MCEWAN: Not to my knowledge, there has been no mention of prioritization at all.

MR. SLATER: Did the Department of Fish and Game protest the City's application for an extension of time?

MR. MCEWAN: I don't know the answer to that.

MR. SLATER: Are you aware that representatives from City met with both representatives from U.S. Fish and Wildlife and the California Department of Fish and Game in establishing survey protocols for this project?

MR. MCEWAN: No, I am not.

MR. SLATER: And did you bring any written evidence with you today or can you cite us to any written evidence that would suggest that the Department presently considers the Salinas River as a priority stream system for steelhead restoration?

MR. MCEWAN: Can you repeat that, please?

MR. SLATER: Did you bring any evidence with you today or can you cite us to any evidence somewhere else that we

might go and look up which would suggest that the Salinas River system, in particular, is a priority for steelhead restoration?

MR. MCEWAN: No, I can't.

MR. SLATER: Do you have any personal knowledge of the Salinas River system?

MR. MCEWAN: Not a lot, no. But to a certain degree. Mostly as the Salinas River as a whole.

MR. SLATER: Would you know whether or not the Department presently stocks striped bass behind the Salinas Dam?

MR. MCEWAN: Striped bass behind Salinas Dam?

MR. SLATER: Yes.

MR. MCEWAN: I am not aware of that activity, no.

MR. SLATER: Mr. Titus, same question. Are you aware of or do you have any knowledge of whether the California Department of Fish and Game presently stocks Salinas Dam with non-native striped bass?

MR. TITUS: I do not know.

MR. SLATER: They are natural predators of steelhead, aren't they?

MR. TITUS: They can be a predator, yes.

MR. MCEWAN: Can I clarify that? You said natural --

MR. SLATER: Thank you for correcting me. They are a predator and they are a non-native species?

MR. MCEWAN: Yes.

MR. SLATER: And Mr. Edmundson, how long have you been with the National Marine Fisheries Service?

MR. EDMUNDSON: About a year.

MR. SLATER: What was your prior job responsibility or prior employment before coming to NMFS?

MR. EDMUNDSON: I was environmental specialist for the Bureau of Reclamation South Central California area office.

MR. SLATER: In that capacity did you have an opportunity to engage in Section 7 consultations on behalf of the Bureau with NMFS?

MR. EDMUNDSON: Yes.

MR. SLATER: While you have been employed at NMFS have you had the opportunity to engage in Section 7 consultations?

MR. EDMUNDSON: Yes.

MR. SLATER: And based upon your prior experience, if you will assume that a federal project to be carried out by the Corps of Engineers would constitute both major, unquote, federal action, could you briefly describe the process that would be undertaken in connection with a Section 7 consultation?

MR. EDMUNDSON: Okay. Well, the Corps would make a determination whether that action surpassed the may affect threshold for the species under the Endangered Species Act If the may affect threshold had been surpassed, the Corps

would initiate consultation with National Marine Fishery Service.

At that time if it was an informal consultation we may be able to determine, working with the Corps, the action would not likely adversely affect steelhead, in which case the Corps would make that determination along with a biological assessment and file that with National Marine Fishery Service and request their concurrence.

If at that time the National Marine Fishery Service concurred with the not likely to adversely affect determination, that would end consultation.

If the Corps of Engineers did not conclude that the action was not likely to adversely affect or if they did conclude that it was not likely to adversely affect and National Marine Fishery Service did not concur, then we would move into what is referred to as formal consultation.

A formal consultation includes a biological opinion with an incidental take statement.

MR. SLATER: That concludes the process?

MR. EDMUNDSON: Under the Endangered Species Act. That is assuming that after receiving the Corps' biological opinion the National Marine Fishery Service made a conclusion that the action with the incidental take was not likely to jeopardize the continued existence of the ESU.

MR. SLATER: And assume with me for a second, that the

opinion came back to the effect that there would be jeopardy. What would happen in that instance?

MR. EDMUNDSON: The National Marine Fishery Service would recommend reasonable and prudent alternatives to the action that would not result in jeopardy or not result in jeopardy.

MR. SLATER: Pardon me, but it seems to me that there are three potential impacts or possibilities. One, no impact. Two, formal consultation, in which case an incidental take permit is granted. Or three, a potential jeopardy in which case there may be alternatives suggested.

Correct?

MR. EDMUNDSON: That is a simplification that is roughly correct.

MR. SLATER: Thank you.

No further questions.

H.O. BROWN: Staff?

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CROSS-EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY STAFF

MR. SUTTON: Mr. Titus, do you have any additional estimates of the population of steelhead in the Salinas River drainage beyond the 1965 estimate of approximately 500 adults?

MR. TITUS: No, I don't.

MR. SUTTON: Are you personally familiar with the Upper Salinas River habitat area in the drainage?

MR. TITUS: Not personally, no.

MR. SUTTON: Do you have any information on the present contribution -- let me back up.

You heard description this morning of what is called the canyon area below the Salinas River Dam?

MR. TITUS: Yes, I did.

MR. SUTTON: Do you have any information on the present contribution of that area to the present spawning or rearing habitat or activity in the Salinas River drainage?

MR. TITUS: No, I don't.

MR. SUTTON: Thank you.

Mr. Edmundson, you indicated that the Salinas River had been proposed as critical habitat. Can you be more specific in that regard, what areas? Has the entire drainage been proposed as critical habitat? Or what subareas within that have been proposed?

MR. EDMUNDSON: The entire drainage that has anadromous access or the anadromous portions of the stream, such as the main stem from the dam downstream and those portions or tributaries that still have anadromous access.

MR. SUTTON: In designating that as critical habitat is that recognized that the activity concerning steelhead is

a seasonal activity or is it a year-round activity? How is it viewed in terms of access?

MR. EDMUNDSON: In terms of whether or not it is included in the critical habitat?

MR. SUTTON: In terms of -- let me throw an example and see if I understand. Steelhead do not normally migrate up or downstream in mid summer; is that correct?

MR. EDMUNDSON: Not what we would term anadromous migration.

MR. SUTTON: Would the designation of critical habitat require minimum -- for example, minimum flows or minimum temperature conditions or other environmental conditions to be present during those periods of the year when you would not expect anadromous migratory activity?

MR. EDMUNDSON: The critical habitat designation includes the substrate, the water column and riparian area. To the extent that water temperature and flow are a component of habitat, and the adverse modification of that habitat would be considered as adverse modification of critical habitat.

MR. SUTTON: My question is: Does that condition apply all year round or is critical habitat viewed as during the time when the fish are present or likely to be present in a particular stream reach?

MR. EDMUNDSON: I will give you a general answer. For

instance, if you made or someone made the argument that fish do not reside in the stream during a certain period from, say, X month to Y month, therefore, there is no need for maintaining a wetted habitat. If the water in the stream was necessary to maintaining the riparian area, however, then that would be a component of critical habitat and would be an effect on critical habitat.

MR. SUTTON: Thank you.

H.O. BROWN: Kathy.

Counselor.

MS. MAHANEY: Mr. McEwan, are you personally familiar with the canyon stretch below the Salinas Dam?

MR. MCEWAN: No.

MS. MAHANEY: Are you aware of any management recovery activities that Fish and Game has actively engaged in along the Salinas River or may be engaged in?

MR. MCEWAN: For steelhead, specifically?

MS. MAHANEY: Yes.

MR. MCEWAN: No, I am not aware of, other than fish that were being planted in the Arroyo Seco River, which is a tributary to the Lower Salinas.

MS. MAHANEY: Mr. Titus, the same question: Are you aware of any activity?

MR. TITUS: I am not aware of any management activities, no, other than what Dennis mentioned in the

Arroyo Seco.

H.O. BROWN: Redirect.

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REDIRECT EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY MR. BAIOCCHI

MR. BAIOCCHI: Dennis, there was discussion here about barriers, various that allegedly prevent upstream migration. Could you please comment on barriers and how steelhead can migrate upstream, please?

MR. MCEWAN: Yeah. There was testimony earlier that 15 feet was a barrier for steelhead. There is really -- there are two things that you have to look at when you assess a barrier. In my experience I found that most people overestimate barriers. In other words, they underestimate the ability of steelhead to surmount barriers.

The two major things that need to be addressed in determining whether a particular impediment may be a barrier, whether it is natural or artificial. Number one is that the barrier needs to be looked -- the protection barrier needs to be looked at over a variety of flow regimes.

For example, I was on a field trip with a few of our -- two of our fisheries engineers. This was on the Arroyo Seco, as I mentioned, a tributary to the Lower Salinas. We

were looking at potential barriers. In this case these were low flow crossings in the Arroyo Seco drainage. We were out there in the middle of the river at a really significant storm event, and the river was flooding. This particular barrier that they were assessing was non-visible. You couldn't even see it. There was just a rolling wave over the top of this barrier, quote-unquote, barrier. However, if you were to go out there in the middle of the summer with minimal flow and see a drop structure where the road crosses that may be ten foot high and no pool below it, then you would assess that, yes, that is a definite barrier. But you need to see it during the opposite extremes. High flows have a tendency of smoothing out barriers. The additional volume of water makes the drop less and in some cases completely eliminates the drop.

Barriers need to be looked at over a variety of flow regimes. And, also, I should add to that that during the migration period of steelhead, which is primarily in that part of the world winter and spring, when those heavy flow events occur, which is when they are actively migrating, a lot of these so-called barriers are not barriers at all.

The second thing is that barriers have -- there are many attributes, factors that go into a structure as to whether or not it is a barrier. It is not just the elevation, gain or loss in this case. Not just how high the

barrier is. The configuration of the pool below the barrier, below the falls, if it is a falls or cascade, is very important, and also the geometry of the barrier itself.

If it is just a straight drop or if it has any sort of horizontal component to it as well. For example, a lot of artificial barriers, small dams, they may not be very high, but they have an apron, a concrete apron that extends downstream so that the fish not only have to jump high enough, they have to jump a vertical component as well -- excuse me, a horizontal component as well.

So in the case of you may have a six-foot high artificial dam, if there is a long concrete apron, that could be a very significant or complete barrier.

The conditions that occur that allow steelhead to surmount a barrier, and I should add also that for the anadromous salmonids, steelhead are probably the greatest leapers and have the greatest ability to surmount barriers than any of the other salmonids, anadromous salmonids.

If you have a pool depth that is approximately 1.25 times the length of the drop, in other words, if you have a pool depth that is one and a quarter -- excuse me, one and a quarter of the existing drop in depth of that pool, then that is -- it is at least that, then that is an ideal condition because steelhead have to be able to gain enough

velocity on their upward thrusting as they are moving through the water column straight up before they break the water. So, you have to have sufficient pool depth. As I mentioned, if the geometry of the structure is straight up and down then that is an ideal condition for them to surmount a barrier.

It is my understanding, looking at various references, two references that I have seen, that if conditions are ideal, steelhead can surmount barriers 14 to 15 feet high. That seems to be about the max. Anything over that, they probably cannot get over, irrespective of the other conditions. But I think it was testified that ten foot was a maximum for steelhead. If the conditions are right, steelhead can jump higher than ten feet. It appears to be 14 or 15 feet high.

MR. BAIOCCHI: Mr. Titus, do you agree with Dennis' conclusion?

MR. TITUS: Yes, I do.

MR. BAIOCCHI: Mr. Edmundson, do you agree with that conclusion?

MR. EDMUNDSON: Yes, I do.

MR. BAIOCCHI: Thank you.

I have one more, and that is: When we were talking about the various habitats for steelhead, spawning habitat and rearing habitat, one of the things we didn't get into

was the flows into the lagoon areas, Salinas River lagoon.

I wonder if you can kind of tell us a little bit about the lagoon and what it does for the steelhead?

MR. MCEWAN: The lagoons --

MR. SLATER: Mr. Brown, this exceeds the scope of cross.

H.O. BROWN: Mr. Baiocchi.

MR. BAIOCCHI: You are the commander.

H.O. BROWN: Can you point out where you have that in direct?

MR. BAIOCCHI: Well, yeah. I can read it to you. It depends on your interpretation.

I think this really takes care of it. I said, please briefly explain all of the life stages of steelhead such as spawning habitat, rearing habitat. And one -- I don't know that I want to go too far with this. I want him to put it on the record.

When steelhead, the little guys, migrate out of the system and into the lagoon area, the lagoon has a purpose. And that is what I wanted Dennis to testify to.

H.O. BROWN: Mr. Slater?

MR. SLATER: I don't remember asking any questions or any of the staff members asking any questions related to this subject on cross. The subject is redirect, I thought.

H.O. BROWN: I stated it has to be on cross, so I am

going to sustain the objection.

MR. BAIOCCHI: Okay. Thank you.

I have one more, please.

Steve Edmundson, before coming to NMFS you were at the Bureau of Reclamation, right?

MR. EDMUNDSON: Right.

MR. BAIOCCHI: Prior to the Bureau of Reclamation, where did you work as a fishery biologist?

MR. EDMUNDSON: I worked as a fishery biologist for eight years for the Federal Energy Regulatory Commission as a senior project analyst specializing in instream flows and fish mortality issues.

Before that I worked five years for the EPA as a specialist on anadromous and resident fish in the Upper Potomac and Anacostia watershed. And before that I had an appointment with the Department of Agriculture and National Oceanic and Atmospheric Administration. A total of 15 years as a biologist.

MR. BAIOCCHI: Thank you very much.

That concludes my redirect.

H.O. BROWN: Recross.

MS. CAHILL. No questions.

H.O. BROWN: Mr. Slater.

MR. SLATER: Yes. Just one second.

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RECROSS-EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY THE CITY OF SAN LUIS OBISPO

BY MR. SLATER

MR. SLATER: This is directed to Mr. McEwan.

Testifying about barriers, I thought I would try to put some context to this discussion. CALSPA Exhibit, I believe it is BB -- actually it is CC, the foundation for this was laid by Mr. Ashley. I show you a picture, actually two photographs.

Can you describe those photographs for the record?

MR. MCEWAN: They appear to be -- it is difficult to tell on the top one. It appears to either be a fill-type structure, a dam, or it could possibly be a natural structure. I can't tell.

MR. SLATER: Would you look at the bottom photograph and, assuming that purports to be the same structure, can you tell us about the girth or breadth of that structure?

MR. MCEWAN: Well, it spans the entire stream. Judging by the photograph, it looks to be a hundred to 200 feet wide.

MR. SLATER: What about in the other direction, in other words --

MR. MCEWAN: It is difficult to tell. It's looking five, ten foot, anyway, possibly even 20. I can't see the

toe on the upstream side. So I can't tell if it slopes both ways or a structure that is straight across and has an apron fill.

MR. SLATER: Assuming that that is an accurate depiction of the present circumstances, at the time that the photograph was taken, would that structure be a substantial impediment to upward steelhead migration?

MR. MCEWAN: It would be an impediment. I think I can say that. Now, whether or not it is a complete meet barrier, I would have to know -- I would have to know other factors. I have to -- I can't tell what the pool depth is. It looks shallow, but I can't tell.

MR. SLATER: The answer to the question is, yes, it is a substantial impediment?

MR. MCEWAN: Could you ask the question?

MR. SLATER: Do you believe that that structure at that time constitutes a substantial impediment to upward steelhead migration?

MR. MCEWAN: To say substantial, I would have to know more information about it.

MR. SLATER: Do you agree that it is an impediment?

MR. MCEWAN: Yes. I think I can say it is an impediment.

MR. SLATER: Thank you.

H.O. BROWN: Staff.

MR. EDMUNDSON: Mr. Brown, can I clarify an answer to a question raised by Mr. Sutton?

H.O. BROWN: Yes, you may.

MR. EDMUNDSON: I probably didn't give you a very good answer to your question, which was an excellent question regarding how the National Marine Fisheries Service under ESA would regard a section of river that wasn't presently containing listed species.

In the implemented regulation it refers to impacts that interfere with the listed species essential behavior requirements to feed, breed or seek shelter. So, to the extent that the action, either flow or no flow, whatever the action may be affected, those essential behavioral requirements to feed, breed or provide shelter, it would be an impact.

H.O. BROWN: Mr. Baiocchi, does this conclude your panel and your direct testimony?

MR. BAIOCCHI: Yes, Mr. Brown.

H.O. BROWN: Ms. Scarpace, do you have some exhibits you would like to offer into evidence?

MS. SCARPACE: We have one more witness after this panel.

H.O. BROWN: You have one more witness.

MS. SCARPACE: That doesn't fit into this panel. I wanted to excuse this panel.

H.O. BROWN: This panel is excused.

MS. SCARPACE: Call Robert Baiocchi.

H.O. BROWN: Okay.

Mr. Baiocchi, you have taken the oath, I believe.

MR. BAIOCCHI: How much time do we have?

H.O. BROWN: You have two hours for your total direct. So you are at about three and half hours right now total.

MR. BAIOCCHI: It is two hours?

H.O. BROWN: You have two hours total right now for your direct.

MR. BAIOCCHI: Do you know how much time has been taken up?

H.O. BROWN: About three and a half hours. So we will give you an additional 20 minutes to complete yours.

MR. BAIOCCHI: What I will try to do is I will try to be as brief as I can.

H.O. BROWN: That would be helpful.

MR. BAIOCCHI: Even though I did spend a lot of time on the oral, on my oral testimony.

H.O. BROWN: You have taken the oath; is that correct?

MR. BAIOCCHI: Yes, I have. Yes, sir.

H.O. BROWN: Please proceed.

MS. SCARPACE: Mr. Baiocchi, could you briefly state your qualifications.

MR. BAIOCCHI: I am a water rights expert. I qualified

at Bay-Delta hearing in 1992 as water rights expert, and I have spent a lot of time in preparing for hearings and doing things like that, filing protests, filing complaints, and using the water right process in attempting to get adequate mitigation measures for fish, water quality, et cetera.

MS. SCARPACE: Did you submit a written statement for the Board as an exhibit?

MR. BAIOCCHI: Yes, I did.

MS. SCARPACE: Is that statement true and correct?

MR. BAIOCCHI: Yes, it is.

MS. SCARPACE: What is your opinion as a water rights expert about the Board's hearing process in this hearing?

MR. BAIOCCHI: Well, to begin with, particularly in 1992, I prepared for a lot of hearings before this Board. That is when Chairman Don Maughn was chairman, the late Don Maughn, and Walt Petit at that time -- I'm trying to remember. He was chief of the division of water rights.

We were given a lot of, what I believe, sufficient and reasonable time to prepare for a hearing, 25 or 30 days. And I was the guy that was -- that was doing, bringing together -- I was like a clearing house, bringing together the expert witnesses, bringing together the exhibits, making copies of all those documents and getting it off to staff.

In this process here, I could not believe it. I am really offended. We were given from the time I submitted

the -- I mailed the exhibits and testimony and et cetera, it was 14 days of which seven days were either weekends and one holiday, which -- what happened was so unreasonable. I was working -- I am a one-man staff. I have no help. I was working late hours. I was working weekends, and I was working -- anyway.

In my view the process and time frame for submittal of expert witness testimony was unreasonable.

MS. SCARPACE: Based on your opinion as a water rights expert, can the Board order mandatory daily flow requirements from the existing Salinas Dam to protect the southern steelhead species and other fishery and aquatic resources of the Salinas River directly downstream below the existing doom?

MR. BAIOCCHI: Yes, they can.

MS. SCARPACE: Can you describe the public trust duties of the Board in this regard?

MR. BAIOCCHI: The Board has a responsibility, in my opinion, to protect the public trust assets. And what are the public trust assets? Those public trust assets are the fish, wildlife, water quality for the people, et cetera.

MS. SCARPACE: Based on your opinion as a water rights expert, did the Board order mandatory daily flow requirements from the existing Salinas Dam to protect the southern steelhead resources and other fishery resources of

the Salinas River downstream below the dam?

MR. BAIOCCHI: No, they did not.

MS. SCARPACE: Do you -- can you give an opinion as to how these resources should be protected?

MR. BAIOCCHI: Well, I was heavily involved in small hydros, and we filed a number of water rights applications. And during that period of time, the applicants for water rights would come in and they would have hydrology records. They would have done instream flow studies to determine the amount of water to be released below the dam to protect fisheries.

In this case here I was amazed where the stream flow releases from Salinas Dam are being ignored by the City of San Luis Obispo.

MS. SCARPACE: Would you -- do you have any opinion as to whether the approval of this expansion of the dam would constitute unreasonable use of the state's water?

MR. BAIOCCHI: Yes. In my view without having any release -- water being released from the dam to protect downstream fishery, public trust fishery resources, that would constitute the unreasonable use and diversion of use of the state's water.

MS. SCARPACE: I would like to direct your attention to CSPA Exhibit HH. I believe that it is the Salinas River Project Standing Operation Procedures dated 1997, and

specifically Page IV-4.

And can you tell me what is the first gauging station where they check for downstream flows?

MR. BAIOCCHI: Based on the document it is Highway 58 bridge. Based on my information that bridge is nine miles downstream from Salinas Dam.

MS. SCARPACE: The first nine miles there is no gauging station?

MR. BAIOCCHI: According to this document, yes, ma'am.

MS. SCARPACE: Do you feel that there should be other gauging stages or at least checkpoints?

MR. BAIOCCHI: Well, I would say this, based on my experience in dealing with water rights: The Board on many, many occasions has required full-time gauging devices below dams to record flows in the river. And why full-time? Because in one situation on the North Fork Feather River PG&E had a staff gauge. And the operator, dam tender, would go out and take a reading at 10:00 in the morning and go back and drop the flows down. The flows that were reported was the flows that were reported at 10:00 a.m.

In that case there I filed a complaint with FERC, and we got full-time gauging devices on the North Fork Feather River, PG&E's Rock Creek Cresta Project.

MS. SCARPACE: Can you summarize your additional comments?

MR. BAIOCCHI: Yes. Very briefly, in my testimony I hit on the due diligence argument by the City of San Luis Obispo. I find it hard to believe -- I think that the due diligence argument by the City flies in the face of Section 1241 of the California Water Code, and that gives the Board -- if someone does not put to beneficial use water that they have a vested right within five years, you can say, "That is it. This has been going on for 58 years." As I understand, the testimony that I have read for the San Luis Obispo, the San Luis Obispo experts, they want another ten years of extension of time. I could be wrong. That is stuck in my head, and so I questioned that.

Finally, under key issues, number seven, the approval of the City of San Luis Obispo's position would result in adverse impacts on public trust resources on the Salinas River in the event the Board does not order mandatory daily flow requirements at the existing dam to protect the public trust southern steelhead species and their habitat, including other fish and aquatic species and their habitat directly below the dam.

And under key issue number seven, the question is raised, "What conditions, if any, should the State Board adopt to avoid or mitigate any adverse impacts on public trust resources that would otherwise occur as result of the approval of the projects?"

As stated beforehand, the Board could order mandatory daily flow requirements at the existing dam to protect the public trust southern steelhead species and their habitat, including other fish and aquatic species and their habitat directly below Salinas Dam.

That concludes my oral testimony.

MS. SCARPACE: One more question. Would you request the Board to issue an interim stream flow requirement since this process may involve protracted litigation?

MR. BAIOCCHI: Yes, most definitely. I believe it'd be reasonable on the Board's part to order interim instream flow requirements from Salinas Dam to protect the public trust assets.

MS. SCARPACE: As an interim measure?

MR. BAIOCCHI: As an interim measure until we get through this entire process and permanent instream flow conditions are ordered by the Board.

MS. SCARPACE: Thank you.

H.O. BROWN: Ms. Cahill, do you have cross?

MS. CAHILL: Just a very few.

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CROSS-EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY THE CITY OF PASO ROBLES

BY MS. CAHILL

MS. CAHILL: Good afternoon, Mr. Baiocchi.

MR. BAIOCCHI: Good afternoon. How are you?

MS. CAHILL: Fine, thank you.

Do you remember when the hearing notice that first specified the hearing issues did issue in this matter?

MR. BAIOCCHI: Yeah. I got it faxed from Katherine Mrowka on the 17th, but it is my understanding that it was issued on the 15th. I did not receive it on the 15th.

MS. CAHILL: At that time it required -- it originally required people to submit the names of their experts by September 24th; is that correct?

MR. BAIOCCHI: Yes, ma'am.

MS. CAHILL: That was just a week after you received the notice?

MR. BAIOCCHI: Yes.

MS. CAHILL: In fact, that date was later extended to the following Monday because the NOI form had not been sent with the notice; is that correct?

MR. BAIOCCHI: That's correct.

MS. CAHILL: So, in other words, in slightly over a week from first seeing the issues, the issues in the hearing

notice, you were required to list all your experts?

MR. BAIOCCHI: Yes.

MS. CAHILL: Then in the following week, it was approximately one week later, then in that deadline that you were required to submit all of your written testimony of your experts and other exhibits?

MR. BAIOCCHI: Yes.

MS. CAHILL: That gave you only one week from the time you received other parties' testimony to go over their testimony and prepare for this hearing?

MR. BAIOCCHI: Yes.

MS. CAHILL: In your experience are those unusually short time frames for Board hearings?

MR. BAIOCCHI: Very, very unusual.

MS. CAHILL: Thank you.

H.O. BROWN: Mr. Slater.

MR. SLATER: Yes. We do have cross-examination.

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CROSS-EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY THE CITY OF SAN LUIS OBISPO

BY MR. SLATER

MR. SLATER: Mr. Baiocchi, do you -- CALSPA filed a process in opposition to the City's request for an extension of time, correct?

MR. BAIOCCHI: That's correct, in 1991.

MR. SLATER: In 1991?

MR. BAIOCCHI: Yes, sir.

MR. SLATER: Did you -- do you recall seeing a copy of this letter?

MS. CAHILL: Mr. Slater might provide copies of that letter to other parties.

MS. SCARPACE: Perhaps identify it for the record.

MR. SLATER: I'm sorry, was just -- your Honor --

H.O. BROWN: Address your questions to me, please.

MR. SLATER: It just came to our attention by virtue of Mr. Baiocchi's testimony, and so I have not had the opportunity to make a copy of it. It is part of the record. It is a Board letter to Mr. Baiocchi regarding the content of their protest and the issues to be heard at this hearing, and it is dated March --

MR. BAIOCCHI: I am reading this real fast, Mr. Slater.

H.O. BROWN: Just a minute.

MR. SLATER: I will be happy to make copies.

H.O. BROWN: Copies to the parties and then we will talk about the letter.

MR. BAIOCCHI: May I ask a question?

H.O. BROWN: Do you have -- not yet.

Do you need any assistance on those copies?

MR. SLATER: I think we do.

H.O. BROWN: Jim, can you help or Kathy.

MR. BAIOCCHI: In reference to that letter --

MR. SLATER: There is no question pending.

MR. BAIOCCHI: In other words, we can't address that until the letter comes back?

H.O. BROWN: Not until you are asked a question.

Go ahead, ask the question around the letter. We will try to get copies. We'll come back to the letter.

MR. SLATER: Mr. Baiocchi, you have appeared before the State Water Resources Control Board before, correct?

MR. BAIOCCHI: Yes, sir.

MR. SLATER: On a number of occasions.

MR. BAIOCCHI: Yes, sir.

MR. SLATER: Do you consider yourself to be a vigilant advocate of fishery interest?

MR. BAIOCCHI: Yes, sir.

MR. SLATER: And --

MR. BAIOCCHI: May I explain?

H.O. BROWN: Up to you, Counselor.

MR. SLATER: I am satisfied with the answer.

You have personally participated in a number of State Board hearings, correct?

MR. BAIOCCHI: Yes, sir.

MR. SLATER: And you have prepared a number of protests raising fishery interests, correct?

MR. BAIOCCHI: Yes, sir.

MR. SLATER: Would you estimate how many protests you have filed against water projects in the state of California?

MR. BAIOCCHI: Pretty hard. I would say hundreds.

MR. SLATER: Hundreds?

MR. BAIOCCHI: Yes. From day one, yes, sir.

MR. SLATER: Have you either personally prepared or participated in the filling of public trust complaints against water projects in California?

MR. BAIOCCHI: Yes, I have.

MR. SLATER: Could you estimate how many?

MR. BAIOCCHI: Dozens, perhaps. A dozen or two or three.

MR. SLATER: Dozens or --

MR. BAIOCCHI: A dozen or two, put it that way.

MR. SLATER: Have you also filed complaints regarding Fish and Game Code Section 5937?

MR. BAIOCCHI: Well, I utilized California Fish and Game Code 5937 in protests that I filed and also perhaps in some complaints that I've filed. And the point being is that I am an advocate of the law.

MR. SLATER: So the answer is yes or no?

MR. BAIOCCHI: Repeat the question.

MR. SLATER: Have you filed complaints raising the

issue of the application 5937?

MR. BAIOCCHI: Yes, I have.

MR. SLATER: Could you estimate how many?

MR. BAIOCCHI: Sorry, I can't count them.

MR. SLATER: Too many to count?

MR. BAIOCCHI: A lot. A lot.

MR. SLATER: Have you -- has CALSPA, sorry, filed a protest against the City of San Luis Obispo's wastewater reuse project on the San Luis Obispo Creek?

MR. BAIOCCHI: I am glad you brought that up. Yes, we have.

MR. SLATER: Has CALSPA filed protests against the Monterey County Water Resources Agency in its recent request regarding the Nacimiento Project?

MR. BAIOCCHI: Yes, we have. I prepared that document. I also filed a complaint -- I am sorry, I am out of order.

MR. SLATER: Should the Board comply with its own regulations regarding the implementation of Fish and Game Code Section 5937?

MR. BAIOCCHI: Of course, provided it's consistent with 5937, because 5937 is very clear.

MR. SLATER: The answer is yes or no?

MR. BAIOCCHI: Again, the answer should they comply to 5937? Of course.

MR. SLATER: Do you contend that the Board's

regulations are inconsistent with 5937?

MR. BAIOCCHI: They could because they -- they might have been. Based on my understanding or lack of understanding, they may have been amended whereby I have not seen the amendments to that provision.

MR. SLATER: So you have no opinion?

MR. BAIOCCHI: I have no opinion. It appears to me, based on -- when I submitted my written testimony, I had a booklet dated 1997. I utilized that booklet. Okay. And I had been calling down to the State Board requesting when is the new publication going to be published, the new regulations. And I kept getting a no. So I utilize that 1987 document that they were distributing to the public, they being the State Board and their staff.

MR. SLATER: The answer is you have no opinion?

MR. BAIOCCHI: Fine.

MR. SLATER: Do you believe that the City of San Luis Obispo is the owner of Salinas Dam?

MR. BAIOCCHI: The owner of the Salinas Dam is the Army Corps of Engineers.

MR. SLATER: And is it your contention that the listing of steelhead as federally threatened species is important information, new information, that is not considered by the EIR?

MR. BAIOCCHI: Well, I can't really say if it was

considered or not considered in the EIR, but it is new information based on my 1991 protest.

MR. SLATER: Are you aware that the City intends that any transfer of the dam facilities from the Corps to either the County or to the City would be subject to a Section 7 consultation between NMFS and the Corps?

MR. BAIOCCHI: I would presume that to be true.

MR. SLATER: Do you have any -- Strike that.

Here today do you have any recommendations for flow release as a condition of the Board granting this extension?

MR. BAIOCCHI: I would refer that flow release to Felix Smith.

MR. SLATER: Which is?

MR. BAIOCCHI: I don't know. Felix and I have talked about it.

MR. SLATER: But you have no individual opinion?

MR. BAIOCCHI: No, I am not s fishery expert.

MR. SLATER: A water rights expert?

MR. BAIOCCHI: Yes. But I deal with fish every day.

MR. SLATER: In the event that there were releases -- Strike that.

Do downstream pumpers have any impact on the amount of water which is contained within the main stem?

MR. BAIOCCHI: I have not reviewed any analysis on that. I just analyzed Salinas Dam.

MR. SLATER: So you have no knowledge of whether Atascadero Mutual Water Company's pumping activities have any effect on the main stem, flow in the main stem?

MR. BAIOCCHI: No, sir. But I might add one thing, this material here was subpoenaed by Lorraine from the State Board, and I haven't had the opportunity to go through it. I have gone through a little bit, two or three, four documents. And that would give me the insight that I need to understand how the Salinas River works, water rightswise.

MR. SLATER: You have no opinion as you sit here today about whether groundwater pumping in the Atascadero and Paso Robles area would have any impact on the flow of water in the main stem?

MR. BAIOCCHI: You mean surface flows?

MR. SLATER: Both.

MR. BAIOCCHI: I would refrain from using the word "impact." They may have a -- some kind -- of course, they are going to have a reduction on flows.

MR. SLATER: So you agree --

MR. BAIOCCHI: Impact is like, bing. Reduction is this.

MR. SLATER: Do you agree that downstream pumping could affect the quantity of flow in the main stem?

MR. BAIOCCHI: Yes. I would presume, but I have not

seen any data on that. There is no analysis, nothing.

MR. SLATER: If the Board were to require a release, how would it insure that water which was released for instream purposes could be made available for fish and not been pumped by downstream users?

MR. BAIOCCHI: Now, what I would say is that here the Board has an opportunity for conjunctive uses. By releasing water from the dam at all times, daily, all times, 24 hours a day, some kind of management plan could be put together where the City of San Luis Obispo is meeting the flow requirements for the trust assets and is also meeting downstream water needs.

MR. SLATER: But you are not aware of any present Board order or investigation regarding downstream pumping on the Salinas River?

MR. BAIOCCHI: Like I said, I have gone -- I have not put it into evidence yet, but I have gone through a few of these, and it's really opened my eyes. I can't -- I read them briefly last night. And I think this is very, very important. This gives the historical information concerning decisions made by the State Board on the Salinas River. But I don't have that kind of memory where I read something once and I can remember it the next day.

MR. SLATER: Your answer is as you sit here today you have no opinion, correct?

MR. BAIOCCHI: Fine.

MR. SLATER: Are you aware -- do you have any knowledge of whether the City of San Luis Obispo has adopted a water conservation plan?

MR. BAIOCCHI: I heard that in testimony.

MR. SLATER: You have no personal knowledge?

MR. BAIOCCHI: No, I have not reviewed that.

MR. SLATER: Do you have any knowledge whether the City of Paso Robles and the City of Atascadero have water conservation plans?

MR. BAIOCCHI: I have no knowledge.

MR. SLATER: Mr. Baiocchi, is it your testimony that CALSPA and members of the public have inadequate notice of this project?

MR. BAIOCCHI: I am glad you brought that up. Due process. Due process was not served by the Board in this manner.

MR. SLATER: So the answer is yes?

MR. BAIOCCHI: I have a letter that I want to submit as an exhibit. Your office -- I've got a copy of it. I sent it to Walt Petit, is dated October 7th. I made a number of copies. I have them in my file which I would like to include in the record. But due process was not served. That is based on my opinion.

And how did I reach that opinion? I looked at the

public notice. I looked at the parties that were copied. I then went to CSPA Exhibit H and I saw all the water rights, names of the water rights used. I said, "Oh, my God. Wait a minute."

MR. SLATER: Mr. Baiocchi, when did you first file your complaint on behalf of CALSPA?

MR. BAIOCCHI: I didn't file a complaint. I filed a formal protest in 1991.

MR. SLATER: Thank you for the correction.

When did you first file your protest?

MR. BAIOCCHI: It was in 1991. I can't give you the day.

MR. SLATER: What year is it now?

MR BAIOCCHI: 1999.

MR. SLATER: Were there a series of letters that went back and forth between you and the State Water Resources Control Board between 1991 and 1999?

MR. BAIOCCHI: There certainly was. There were several letters, and based on my opinion the State Board, Division of Waters Rights was attempting to dismiss the CSPA protest. And I had a difficult time in trying to preserve the protest standings. It was very, very difficult.

MR. SLATER: Mr. Brown, I would like to mark a letter for identification. I am not sure, Kathy, what the exhibit number is. It would be a City exhibit.

H.O. BROWN: Is that the March 24th letter?

MR. SLATER: Yes, it is.

MS. MROWKA You proceed, and I will give you that number in a moment.

MR. SLATER: Mr. Baiocchi, do you have a copy of this letter in front of you?

MR. BAIOCCHI: It is -- I am sorry.

Without having to go through all this thing --

MR. SLATER: I will help you, Mr. Baiocchi.

Do you recall receiving -- is that your name on the first page?

MR. BAIOCCHI: It certainly is.

MR. SLATER: Can you tell us who the letter is signed by on Page 3?

MR. BAIOCCHI: Chief of Division of Water Rights.

MR. SLATER: Does the letter carry a date stamped on Page 2 and 3?

MR. BAIOCCHI: March 24, 1999.

MR. SLATER: I call your attention to Page 2, second paragraph.

MR. BAIOCCHI: Yes, sir.

MR. SLATER: Can you take a second and read the contents of the second paragraph.

MR. BAIOCCHI: It is a bunch of claims by the Division of Water Rights.

MR. SLATER: Do you recall receiving this letter?

MR. BAIOCCHI: If this is the letter that advised me that we had to provide evidence or the protest would be dismissed, yes, I really remember the letter.

MR. SLATER: So the answer is you recall receiving the letter?

MR. BAIOCCHI: I have to read this thing thoroughly to find out if maybe -- maybe Katherine who wrote the letter --

Do you know, is this the letter of which you were -- you wanted evidence?

MR. SLATER: I am sorry.

MS. MROWKA: I can't testify.

MR. BAIOCCHI: Yeah. I just got informed this was the letter and this -- this Italian was a little bit unhappy because I had -- and I provided the evidence to the Division of Water Rights which preserved our protest.

MR. SLATER: You recall receiving the letter, correct?

MR. BAIOCCHI: Yes, sir.

MR. SLATER: No further questions.

MS. MROWKA: Mr. Slater, if you would, I would like to mark that City of San Luis Obispo Exhibit 17 and that is the March 24th, 1999 letter from Harry M. Schueller, Chief of the Division of Waters Rights, to Robert Baiocchi, California Sportfishing Protection Alliance.

MR. SLATER: Thank you.

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

Staff have cross-examination?

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CROSS-EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY STAFF

MR. SUTTON: Just very briefly, Mr. Baiocchi.

You have indicated that you did not have any personal recommendation as to what the minimum daily flow from Salinas Dam should be; is that correct?

MR. BAIOCCHI: I personally do not. But I believe that matter should be deferred to Felix Smith, our CSPA biologist.

MR. SUTTON: Mr. Smith has already completed --

MR. BAIOCCHI: I understand that.

MR. SUTTON: -- his testimony.

MR. BAIOCCHI: I understand that.

MR. SUTTON: Should the State Board require that some studies be done to evaluate what the minimum stream flow requirements should be before it should impose any requirements on the permittee?

MR. BAIOCCHI: Yes. Study should be conducted. However, the studies should be conducted to the permanent flows. However, in the interim period, the Board needs to order a bypass flow so that the Board can stay in compliance

with 5937. It just makes sense.

MR. SUTTON: And what basis should the Board use in making that determination for the interim flows?

MR. BAIOCCHI: Yes. Again, you can get a recommendation from Felix Smith, because we have spoken about it. But I would rather him -- he is a biologist -- speak to that point there. We can get recommendations from the City. We could sit down and try to reach some kind of a resolve on the interim flows.

MR. SUTTON: Thank you.

H.O. BROWN: Ms. Mrowka.

MS. MROWKA: Mr. Baiocchi, would you turn your attention to your Exhibit E, please?

MR. BAIOCCHI: I don't have it in front of me. Let me get my list.

MS. MROWKA: It is a calculation of violations of the live stream permit.

MR. BAIOCCHI: Yes. I recall the document. I don't have it in front of me, but anyway, go for it.

MS. MROWKA: I have a few questions for you on this document. It is my understanding, based on the testimony I heard today and other days of this hearing that it was a 1972 order of this Board that established this permit condition.

Is that also your understanding?

MR. BAIOCCHI: Ms. Mrowka, I have a hard time hearing you, I am sorry. I am hard of hearing. It is not your fault; it is my fault.

Could you say it a little bit louder?

MS. MROWKA: It is my understanding that it was a 1972 order of this Board that established the live stream condition in Permit 5882.

Is that also your understanding?

MR. BAIOCCHI: Until I review all those records that we subpoenaed, I can't speak to that. I don't know.

MS. MROWKA: So you are not aware of the fact that originally this permit did not contain that condition?

MR. BAIOCCHI: Again, I would have to read all that documentation there in order to find that out.

MS. MROWKA: Let me ask you this, then, Mr. Baiocchi: When you calculated the dates of violation, did you calculate that after taking into consideration whether or not there was flows at the confluence of the Salinas River and Nacimiento River?

MR. BAIOCCHI: What I did was, first of all, this is the Appendix K and L of the Final EIR. I got this document here. I went to Page 1 of Appendix A, and I start looking at items like the inflow, downstream releases and spill. And based on that, that is where I come up with monthly zero flows. No, I did not look at tributary inflow.

MR. MROWKA: Thank you.

When you did these calculations, did you determine the number of days per month when the City was releasing water or did you assume if there was no release on a particular day there was no release for the month?

MR. BAIOCCHI: I based it on the information in this document that shows downstream releases, that shows spill, and it shows inflow. That was --

MS. MROWKA: Was that monthly?

MR. BAIOCCHI: The criteria I used was inflow, because I have it checked right here, that is on this document. And downstream releases and spills, and that is in acre-feet.

MS. MROWKA: If you can give me a page number?

MR. BAIOCCHI: That is Page 1, Appendix A, Salinas River Operations Model Summary of Results, Scenario Number One, Reservoir Capacity 23,843 acre-feet. That is Page 1 of, apparently of -- let me go back one page -- of monthly model calculations. Appendix K-A, 1945 to 1996.

MS. MROWKA: You used one criteria throughout this calculation? You established a set of tests and that is what you used throughout them, and they did not change from the beginning of the exhibit throughout the end of the exhibit; is that correct?

MR. BAIOCCHI: What I used was this monthly data. This was monthly data, and I used the inflow data. I checked

that. I checked the downstream releases and I checked the spill.

MS. MROWKA: Thank you. That is all.

MR. BAIOCCHI: Thank you.

H.O. BROWN: Do you have any redirect?

MS. SCARPACE: Just on the matter of due process.

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REDIRECT EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY MS. SCARPACE

MS. SCARPACE: Was enough time given to the parties to subpoena documents and witnesses, that is, adequate time in order to prepare for this hearing?

MR. BAIOCCHI: No. There wasn't adequate time given. In the past, hearings have been out here when different folks were running it, as I remember, 25 to 30 days. And I am not Superman, and 14 days really stressed it for me.

MS. SCARPACE: That is all.

H.O. BROWN: Any recross?

MS. CAHILL: No recross.

MR. SLATER: Just for clarification.

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RECROSS-EXAMINATION OF

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY THE CITY OF SAN LUIS OBISPO

BY MR. SLATER

MR. SLATER: Mr. Baiocchi gave some answers to Ms. Mrowka. I believe this relates to Exhibit E.

MS. CAHILL: Objection. That goes beyond the scope of the redirect. Mr. Slater is not allowed to ask questions that came up on recross, only redirect. The redirect was limited specifically to the due process issue.

H.O. BROWN: Mr. Slater.

MR. SLATER: I think that when it goes to clarification of an exhibit that CALSPA has submitted, and testimony offered by Mr. Baiocchi on recross which we haven't had an opportunity to discuss.

MS. CAHILL: If we are going to open recross I would have more questions.

H.O. BROWN: I sustain the objection.

Staff, do you have any questions?

Counsel has advised me the March 24th, 1999 letter from Mr. Schueller to Mr. Baiocchi, California Sportfishing Protection Alliance, is already in the record.

MS. MAHANEY: Right.

H.O. BROWN: It's been accepted in the record.

Now, Ms. Scarpace, your exhibits.

MS. MROWKA: Mr. Brown, if we might do a little housekeeping before she does her list. The State Board staff has not yet received CALSPA Exhibits HH, II, JJ, KK, LL or MM. Unfortunately, we need a copy for our record keeping.

MS. SCARPACE: We will furnish them right now if we can.

H.O. BROWN: You will furnish them?

MS. SCARPACE: They are in these boxes.

H.O. BROWN: Go ahead and offer your exhibits into the record and lets check and make sure that we have the same numbers as what Ms. Mrowka has. Offer them one at a time, if you would please. Name them all.

MS. SCARPACE: You mean starting from Exhibit A?

H.O. BROWN: Yes.

MS. SCARPACE: Exhibit A was Use It or Lose It, the Law Review Article that was referred to today.

H.O. BROWN: Do you have that?

MS. MROWKA: Yes.

H.O. BROWN: Go ahead.

MS. SCARPACE: Exhibit B, the Steelhead and Restoration and Management Plan for California by Dennis McEwan.

MR. BAIOCCHI: That is with --

MS. MROWKA: If I might clarify that. Exhibit B Sub (a) is portions of that. B Sub (b) is the entire document.

MS. SCARPACE: Entire document.

Exhibit C is California and Federal Endangered Species Act compliance, dated 1998.

The California Bay-Delta Program, that was referred to by Mr. Baiocchi in his testimony.

H.O. BROWN: Let's have quiet in the room, if you would please. It is difficult to hear these exhibits.

MS. SCARPACE: Did you hear that one, Exhibit C?

MS. MROWKA: Yes.

MS. SCARPACE: Exhibit D, Historical Review and Current Status of California Steelhead in Coastal Drainages South of San Francisco by Robert Titus.

MS. MROWKA: I might clarify that one. That has two portions now. Exhibit D Sub (a) portions of that document, and Exhibit D Sub (b) is the whole document.

MS. SCARPACE: Yes, we would like the full document.

MS. MROWKA: You have both entered in our record.

MS. SCARPACE: Exhibit E, Salinas Dam downstream releases to protect public trust fishery and aquatic resources, Salinas River, October 1943 through December 1995.

MR. BAIOCCHI: That is the document that you and I were talking about.

MS. MROWKA: Yes.

MS. SCARPACE: Exhibit F, public trust compliant by

California Sportfishing Protection Alliance complaint against Santa Margarita Ranch.

That I believe was referred to by Mr. Baiocchi.

MR. MROWKA: All we need is the listing right now.

MS. SCARPACE: Exhibit G, a public protest by California Sportfishing Protection Alliance, dated January 13, 1999.

Exhibit H, Water Right Information, Salinas River WRIMS Summary/Query Report, Division of Water Rights, dated September 16, 1999.

Exhibit I, Inflow Regimens for Fish, Wildlife, Recreation and Related Environmental Resources by Donald Leroy Tennant, dated July, August 1976.

Exhibit J, Order for Reconsideration of Order Granting Extension of Time on Certain Permits, Imposing Clarifying Permits and Revoking Permits to Appropriate Water, dated June 1, 1972.

Exhibit K, daily water use data of the Salinas Reservoir.

Exhibit L, 100 Years of Rainfall Trends in California by Jim Goodridge.

Exhibit M, San Luis Obispo County monthly precipitation sorted by year from the San Luis Obispo County Farm Bureau, dated January 7, 1999.

Exhibit N, photos dated 9/2/99, Salinas Dam water being

released to North San Luis Obispo County, Salinas River flowing north coming through the dam.

Exhibit O, Letter to Interested Parties from the Division of Water Rights, R.L. Rosenberg, Chief, dated June 7th, 1977, on Permit 5881, and 5882.

Exhibit P, Application 10616, Permit 5882 and Application 10211, Permit 5881, both dated October 9th, 1941.

Exhibit Q, Atascadero Mutual Water Company, 1993 water system master plan, final report, prepared by Boyle Engineer Corporation, dated October 5th, 1993.

Exhibit R, basic data of surface water flow diversion, surface water quality, groundwater management, groundwater quality 1977. Memorandum report dated October 1978 by San Joaquin District, California Department of Water Resources.

Exhibit S, Long-term viability of water supply for the City of Atascadero prepared for City of Atascadero Department of Water Works, prepared by The Morro Group, dated April 1991.

Exhibit T, State of California, the Resource Agency, Department of Water Resources Southern District Groundwater in Paso Robles basin, dated March 1979.

Exhibit U, a Study of Paso Robles Groundwater Basin to Establish Best Management Practices and Establish Salt Objectives, Final Report dated June 25th, 1993.

Exhibit V, San Luis Obispo County Master Water Plan Update, Phase I, data compilation for, dated August, 1998.

Exhibit W, Water Supply Yield Study, Salinas Dam, San Margarita Reservoir River Project, prepared for the Army Corps of Engineers, dated April 1973.

Exhibit X, Phase I Scope of Services for Salinas Reservoir Expansion Project proposal by City of San Luis Obispo, dated June 25th, 1999.

Exhibit Y, photographs of Salinas Dam and Salinas River of the dam downstream.

Example Z, photograph of a steelhead from below the Salinas Dam.

Exhibit AA, letter dated February 12, 1999, from Gary Henderson to Mark Hutchinson, San Luis Obispo County Environmental Specialist, regarding impacts of proposed Spanish Oaks development on the live stream agreement.

Exhibit BB, written testimony of Phil Ashley, biology.

Exhibit CC, photographs by Phil Ashley.

Exhibit DD, Phil Ashley's May 5th, 1999 letter to State Water Resources Control Board.

Exhibit EE, Phil Ashley's June 2nd, 1998 comment letter of the Final EIR.

Exhibit FF -- I think we have this misnumbered.

MS. MROWKA: Yes. I am listing Exhibit FF as inflow data into the Salinas Reservoir and to return flows. The

Exhibit FF listed on our sheet has become Exhibit MM, the duplicate of numbering.

MR. BAIOCCHI: MM?

MS. MROWKA: MM.

MS. SCARPACE: Exhibit MM is the final monitoring report, Coastal Branch Phase 2, Department of Water Resources, dated June 5th, 1998.

Exhibit GG, Operation and Maintenance Manual for Upper Salinas River, dated 1963.

Exhibit HH, Salinas River Project, San Luis County, California, standing operation procedures, Upper Salinas River Dam, dated June 1997.

Exhibit JJ, letter of October 7, 1999, from Bob Baiocchi, consultant to CSPA, to Walter Petit.

Exhibit KK, Declaration of Glenn Britton, County engineering department, San Luis Obispo County, and material submitted by Mr. Glenn Britton, dated October 8, 1999, material requested by subpoena.

Exhibit LL, Phil Ashley water supply data.

MS. MROWKA: I am showing Exhibit LL as Salinas Reservoir Monthly Operation Report, March and April, 1999, based on Mr. Baiocchi's revision to us or vision to the list.

I also need -- you skipped the explanation of II.

MS. SCARPACE: I was just -- I think it was just a

typo. It was a repeat.

MS. MROWKA: So you are not entering Exhibit II?

MS. SCARPACE: I don't think so.

MS. MROWKA: Thank you.

MS. SCARPACE: It was just a repeat of HH.

H.O. BROWN: Does that conclude the exhibits?

MR. MROWKA: No, Mr. Brown. I have an extensive list of additionally tabbed exhibits for CALSPA which I think we have had experts testify to. I will read this list. I am going to provide written copy of this list for the convenience of counsel here in this room. I made a point to do that by the end of this week.

If this is all qualifications and expert statements and testimony, this whole list. I will list for you how I have this down.

CALSPA has used five exhibits by reference that are on their exhibit sheet, so these are beginning with Exhibit 6.

Exhibit 6A is qualifications and experience statement of Fred Collins.

6B, testimony of Fred Collins.

Exhibit 7, qualifications and experience statement by Otto Schmidt.

8, testimony of Otto Schmidt.

9, qualifications and experience statement by Pete Cagliero.

10, testimony of Pete Cagliero.

11, qualifications and experience statement by Bob Baiocchi.

12, testimony of Bob Baiocchi.

13, qualifications and experience statement by Joel Baiocchi.

14, testimony of Joel Baiocchi.

15, qualifications and experience statement by Felix Smith.

16, testimony of Felix Smith.

17, qualifications and experience statement by Tom Mora.

18, testimony of Tom Mora.

19, qualifications and experience statement by Fred Frank.

20, testimony of Fred Frank.

21, qualifications and experience statement by Leon Chaulet.

22, testimony of Leon Chaulet.

H.O. BROWN: Does that conclude the exhibits?

MS. SCARPACE: I think Mr. Baiocchi wanted to make a comment.

MR. BAIOCCHI: There are two exhibits that should be included that I have in my possession, should be distributed to the Board and to the City of San Luis Obispo and the City

of Paso Robles. And they are CSPA Exhibit LL and CSPA Exhibit JJ. And I can -- if you will allow me, I will pass it out.

H.O. BROWN: Have we had testimony on these exhibits?

MR. BAIOCCHI: Pardon me, sir?

H.O. BROWN: Have you had testimony on those exhibits?

MR. BAIOCCHI: On LL, the testimony was Mr. Ashley. This relates to his testimony.

H.O. BROWN: We will include those for consideration, and you may pass them out.

MR. BAIOCCHI: On JJ, I don't know if it was through direct or cross-examination with you, it was the letter of October 7 that I sent to Mr. Petit.

H.O. BROWN: It is probably in the record.

MR. BAIOCCHI: Is that part of the record or do I have to submit it?

MS. MROWKA: We have received it for our files.

H.O. BROWN: You may pass it out.

And do we need to give that a number, Kathy?

MS. MROWKA: He has it already numbered. He has that one as Exhibit JJ on the list.

H.O. BROWN: Go ahead and pass those out.

You have heard the exhibits that have been offered into evidence. Are there any objections to the acceptance of these exhibits?

MR. SLATER: Yes, Mr. Brown, there are.

H.O. BROWN: Mr. Slater.

MR. SLATER: With respect to CALSPA Exhibit Z, purports to be a 1997 steelhead from below the Salinas Dam. We don't believe there is an adequate foundation for identification of this fish as a steelhead, and consequently on that basis would argue that this exhibit should not be admitted.

H.O. BROWN: Insufficient foundation?

MR. SLATER: Yes.

H.O. BROWN: Ms. Scarpace.

MS. SCARPACE: The biologist, Phil Ashley, testified specifically that he believed by the fins and other appearance of that fish that it was a steelhead. So I think we have adequately identified it.

H.O. BROWN: Mr. Slater.

MR. SLATER: No personal knowledge of where it was caught, no personal knowledge of when it was caught, whether the fish was transported. On that basis we move that it not been admitted.

H.O. BROWN: Your objections are noted. Your concerns are noted. And I will admit that into evidence based upon the weight of the evidence.

MR. SLATER: We have one more objection which is to Exhibit E.

H.O. BROWN: Exhibit E.

MR. SLATER: On the basis that Mr. Smith indicated that he did not prepare this document, which is the one entitled Salinas Dam Downstream Releases. It purports to suggest that there are days of violation of the live stream agreement before the live stream agreement is in existence. We are curious as to how it was prepared and who prepared it.

H.O. BROWN: Mr. Scarpace.

MS. SCARPACE: Mr. Baiocchi did testify regarding that. And it certainly would apply as to the violations of the live stream agreement from the time that it was enacted in '72. He covers the entire time period. So if you wanted, we could note your objection to the prior time period, but certainly it's properly labeled as to the years from '72 to the present.

H.O. BROWN: Mr. Slater.

MR. SLATER: I think we are entitled to know if Mr. Baiocchi prepared the document, or, if not, where it came from.

MS. SCARPACE: I believe he testified that he prepared it.

MR. BAIOCCHI: I prepared the document. Yes, sir.

H.O. BROWN: Speak to me.

MR. BAIOCCHI: On the bottom of it will be my initials. BB/and the date I did it.

H.O. BROWN: You prepared the document?

MR. BAIOCCHI: Yes, that exhibit. Yes, sir, on the last page. I normally do that.

MR. SLATER: We withdraw our objection.

H.O. BROWN: Are there any other objections to the acceptance of these exhibits as being offered into evidence?

MS. CAHILL: The City of Paso Robles has no objections.

H.O. BROWN: With the concerns noted, the exhibits will be accepted into evidence.

We are going to take a 12-minute break for the afternoon.

(Break taken.)

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

Mr. Maloney, you had a request?

MR. MALONEY: I have a couple of letters I would like to get into the record.

H.O. BROWN: Hold your talk until you come up to the microphone, Mr. Maloney.

MR. MALONEY: Patrick Maloney. There were a couple of letters I would like to get into the record.

The first is a letter that we received in our office as of Saturday, the 16th of October, indicating certain rules. It was -- the letter that we received from the State Board was mailed on the 15th of October and it was dated the 9th of October. I would like the record to show that.

The second thing I would like to put in the record is a letter from Hatch and Parent, dated April 17th, 1999, protesting Application 30532. I had extra copies, but I don't have copies with me. I will make them available. And what -- this is the application in connection with Nacimiento.

I also would like to put the protest that we filed on behalf of numerous landowner interests in the record. I would also like copies of that.

H.O. BROWN: Mr. Maloney has two documents that he wants to admit into evidence. I have not designated him as a party to present evidence during this hearing.

MR. SLATER: No objection.

H.O. BROWN: Are there objections to the admission of this evidence? No objections?

MS. CAHILL: No objection.

H.O. BROWN: Since there are no objections, Mr. Maloney, I will admit those.

MR. MALONEY: Thank you.

MS. MROWKA: A bookkeeping matter. Mr. Maloney, you provided one with one. Are you providing the second?

MR. MALONEY: Yes.

H.O. BROWN: All parties would like to receive copies of that.

MR. MALONEY: The second one.

H.O. BROWN: Do you need a number or anything on those?

MS. MROWKA: I will just assign them numbers.

MR. MALONEY: I have not provided you with the protest that we filed in connection with Application 30532. It is in that particular file, and I only have one copy and I will provide that to all counsel by mail after the hearing.

MS. MROWKA: Mr. Brown, as a matter of clarification, the letter dated February 17th, 1999, protest to Application 30532 will be Maloney Exhibit 1.

The letter dated October 8, 1999, which is a letter from the Division of Water Rights to Mr. Maloney on the petition for extension of time, Permit 5882 will be Maloney

Exhibit 2.

MR. MALONEY: That has attached to it a copy of the envelope that came from the State Board on October 15th, 1999.

H.O. BROWN: All right.

MR. MALONEY: I will supply a copy of the protest which can be found in file 30532 to all parties. I don't have extra copies with me.

Would you like a copy of that protest for this record as well?

MS. MROWKA: Anything which is an exhibit must be submitted to me.

H.O. BROWN: Yes, we do.

MR. MALONEY: I will file -- I have one copy. I will make another copy and submit it to the Board.

H.O. BROWN: Ms. Cahill, you are up.

MS. CAHILL: Thank you. Good afternoon, Mr. Brown and Board staff. The City of Paso Robles respectfully offers this opening statement. We submitted it in writing at the close of the hearing last week, and we do have some extra copies here if anyone doesn't have one and wants to follow along. And I see that the Court Reporter is nodding her head yes.

The City of Paso Robles has vital interest in the Salinas River and in the Paso Robles groundwater basin. The

City of Paso Robles is located on the Salinas River, approximately 30 miles downstream of Salinas Reservoir. Paso Robles diverted water from wells in or near the river system since 1889. It supplies its habitats from wells drilled in the Paso Robles groundwater basin, which is recharged in part from the Salinas River.

Paso Robles has been involved in matters related to the Salinas Reservoir permits since 1941. Paso protested the original application by the Corps of Engineers and participated in the 1941 hearings. In addition, Paso Robles participated in trustee hearings in the 1970's, including the hearing leading to the live stream agreement and other hearings on other applications on tributaries to the Salinas that might affect the flows in the Paso Robles area.

In addition, Paso Robles itself ultimately maintained a permit for storage in the Salinas Reservoir, and it was Permit Number 8471. In the '50s and the '60s the Corps of Engineers, which was the primary water right holder, occasionally released water for Paso Robles and other downstream users. At that time the Corps had an agreement with the City of San Luis Obispo that obligated it to deliver 3,000 acre-feet of the yield to San Luis, and from time to time it made releases for the benefit of Paso Robles and other North County interests who also had permits allowing storage in the Salinas Reservoir.

In the 1990's we filed a protest when the Corps of Engineers petitioned to modify the live stream agreement, and that petition was ultimately withdrawn. So we have long participated and shown consistent interest in matters related to the Salinas Reservoir, with a constant concern to protect downstream in-basin water users.

The first key hearing issue is whether the extension of time should be granted. And the second key hearing issue raises the issue of diligence. I want to go into those because those are primarily legal issues.

Despite the fact that the original plans of the Corps of Engineers anticipated greater storage, the Salinas Dam, as constructed, had a capacity of only 26,000 acre-feet, and it was considered complete at that size. On its face, Permit 5882 of the City of San Luis Obispo allows 45,000 acre-feet of storage, and San Luis Obispo would suggest to the Board that they are simply seeking to exercise their existing water right, they are merely completing a dam which it was always intended to complete.

In fact, however, the 45,000 acre-foot number was determined at a time when the plans called for Salinas Reservoir to have that capacity. Those plans were done in haste. I encourage you to read the final impact report, Appendix G, Pages 6 to 11, that give the history of the project. It would amaze many of us who are involved now.

The conceptual design was completed in April and the permit applied for in May. Simultaneously, design and construction contracts issued in May and construction started in June. In December the reservoir was closed and it began to fill.

After all that was done, then seismic studies and structural studies that ordinarily precede construction were carried out. We just don't get water rights like that anymore.

As constructed, however, or after they did those studies the Corps determined that it was not safe seismically and structurally to put in gates that were originally designed in the spillway. And so they sent that gate off to Friant Dam, which is another interesting historic footnote.

At that point the Corps considered the dam to be completed. It did not intend all along to raise the dam. It didn't intend at that time to go back and get another spillway gate or eventually put in a spillway gate. In its 1942 progress report the Corps stated that the construction wasn't complete because it hadn't put in the spillway gate. In its 1943 progress report the Corps stated construction was complete and that it had eliminated the 100-foot spillway drum gate date by filling of the gate recess to form a concrete ogee crest on the spillway.

For decades the Corps filed permittee reports

indicating that construction was complete, and the only conclusion was that the Corps did consider it to be complete.

The City of San Luis Obispo, which had the following water right, also stated early on in its progress report that construction was complete. In some years it says construction wasn't complete, but it identified features that had nothing to do with installing spillway gates and raising the dam. It was dealing more with distribution-type facilities.

For 30 years following completion neither the Corps of Engineers nor the City of San Luis Obispo exercised one shred of diligence to expand the dam. In 30 years there is nothing in the Board's records and nothing in San Luis' records that indicates there was an attempt to raise the dam.

We believe that there was no diligence and that downstream people came to consider that dam as permanent because that was the way the owner was treating it. We believe that the Board should not agree with a letter that its staff may have written stating that the expansion project can be approved as merely an extension of time to exercise the full face amount of the permit.

The full face amount was based on hastily drawn, overly optimistic plans drawn that were abandoned. The expansion

project is a new project. It is requiring new design, new seismic study, new structural measures. The new storage should require new application just as the raising of Friant Dam and the raising of Shasta would require a new application.

There is a second reason why this extension of time cannot be granted, and that is that the time to complete construction under Permit 5882 expired in 1970 and it was not extended by the Board in 1972. After 30 years of no diligence we went into the 1972 hearings. That hearing notice indicated that this would be consideration of both extensions of construction and for putting water to beneficial use, to full use, under the permits.

During the hearing there was some discussion that the Corps would perhaps -- was perhaps considering using more of the water, but they were very vague plans. There was discussion of perhaps an earthen dam upstream or downstream, very vague, and the then head of the Division of Water Rights characterized those plans as remote.

If you would go to those transcripts, and I would direct you to particularly to the testimony of Kenneth Woodward who was then the Chief of the Division of Water Rights. I believe that testimony will show that he considered that an expansion or a -- not necessarily expansion, because they were talking upstream or downstream.

Whatever the Corps' plans were at that time were remote and would likely require a new application.

In the end when the Board issued its order in June 1972, it extended the time to put water to beneficial use, but it did not extend the time to complete construction. The last expansion to complete construction expired in 1970.

So, we have now permits where the deadline for construction expired in 1972. San Luis Obispo did not meet that deadline and still has not met that deadline. Whereas, expanded use of the existing reservoir has been subject of a series of time extensions.

San Luis Obispo ought not to be allowed to revive a construction deadline that expired in 1970 by means of a petition for extension of time that was filed in 1981. The Board had this matter before them in 1972. They could have extended time for construction and they did not. And the current permits reflect that. The current permits show 1970 for construction and 1981, which was a result of the '72 order, for putting the water to full use.

There is a third reason why you shouldn't grant this extension. In the letter that was just handed out today, apparently the current Chief of the Division of Water Rights said San Luis' ability was due to factors beyond its control. That is the fact that the Corps of Engineers owns

the project.

Well, apart from the fact that there were 30 years of total non-diligence, where there is no thread of evidence that San Luis attempted to get the Corps to expand the reservoir, we now have another fact of evidence of water rights which is a permittee has to have sufficient control of the diversion facilities to store the water under the permit. And it is clear here that San Luis Obispo has never had either ownership or control over the diversion facility sufficient to store the additional 19,000 acre-feet of water. They have an agreement with the Corps that let them have water from the existing reservoir, but they have never exercised that basic control of a water right holder as to that new increment of water, the additional 18,000 or so that the expanded reservoir would store.

This is really not a matter of diligence; it is a different matter. It is a matter of controlling diversion. It is an old Cal trout case, control of the water being necessary to a water right. But there is also an equity issue. The equity is in addition to the Corps and San Luis.

There were originally three other North County permittees in the San Luis Reservoir. Two of them had their storage permits revoked in the 1972 hearings provisionally because they didn't have an agreement with the Corps of Engineers for the delivery of water.

In the case of Paso Robles the Corps of Engineers had released water for Paso in the '50s and the '60s, probably as late as 1966. So after only six years of no controllable entitlement, Paso's permit was revoked. At that same hearing the permit on behalf of Templeton was revoked because they had no control over the reservoir. They had no way to get the water. And I believe just recently the Board has done that to the final permit which was for the benefit of Santa Margarita.

So, in equity it is unfair to have the other North County interests have their permits revoked because they didn't have an agreement with the Corps and to allow the City of San Luis Obispo for 50 years more than any others to fail to have an agreement for the diversion of that additional water.

As we are running late, I don't want to take your time to go over everything that is in the written opening. I would hope you would look at it. Just very briefly I would want to mention that San Luis cites to you municipal preferences, and I would want you to recognize that the City of Paso Robles is also a city, a municipality, and that this matter is not going to be the sole determining factor where you have cities on both sides. There are other cities as well on the Salinas River downstream.

Should the Board, despite those reasons, in other

words, grant this extension, at a minimum it should reprioritize the new water. And the Board has ample ability to do that, and we will provide additional authorities to that effect in our closing brief.

We note also the Board's traditional protection of areas of origin, and we would note that this water being taken out of the Bay-Delta, out of the Salinas River. And the cities of Paso Robles, Atascadero, Templeton are downstream; they are in the watershed. They don't have quite as many options as the City of San Luis Obispo has.

We expect our experts who are about to testify that the expansion will cause significant reductions in spills from the Salinas River and that these spills, these spill reductions, will effect infiltration to the alluvium of the Salinas River and recharge to Paso Robles groundwater basin. In just the last minute or two I would like to address CEQA.

We cite in our written version of this the Board's own water rights order, 97-05, which gives a good summary of what your obligations are as a responsible agency. You have to review and consider the environmental impacts to the project as revealed in the EIR and the evidence of the hearing. We agree with that.

As a responsible agency, the Board is responsible for mitigating or avoiding the significant environmental effects

of the parts of the project which are subject to your jurisdiction, which would certainly be surface water and groundwater impacts. And thirdly, you must make findings of overriding consideration if there are environmental effects within your responsibility that you cannot avoid or mitigate.

We would have you note that there was a mitigation measure in the revised Draft EIR. It was rejected in the revised draft because it would interfere with the yield of the project. We believe that the Board must examine that measure because it has to make its own determination with regard to impacts. And should you reject a mitigation measure that would reduce impacts, you would have some overriding considerations.

We note that this and all of your hearings presents serious issues. San Luis Obispo has argued that the public interest favors granting the extension because they need the water. I think you need to realize that the public interest also involves the needs of downstream entities and is within the area of origin. And I ask you to take that into account as well. So now I would like to go ahead and put on my first panel.

H.O. BROWN: Proceed.

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DIRECT TESTIMONY BY THE CITY OF PASO ROBLES

BY MS. CAHILL

MS. CAHILL: I would like to begin with Dr. Priestaf.

Dr. Priestaf, would you please state your name and spell it for the record.

DR. PRIESTAF: I am Dr. Iris Priestaf, I-r-i-s P-r-i-e-s-t-a-f.

MS. CAHILL: Dr. Priestaf, I have just handed you a copy of the exhibits submitted by the City of Paso Robles. Would you look at Exhibit 3, please. Is that a copy of your qualifications?

DR. PRIESTAF: Yes, it is.

MS. CAHILL: Is it correct and accurate?

DR. PRIESTAF: Yes, it is.

MS. CAHILL: I would call your attention to Exhibit 1. Is that testimony prepared by you and by Dr. Todd?

DR. PRIESTAF: Yes, it is.

MS. CAHILL: Have you either written or reviewed that entire exhibit?

DR. PRIESTAF: Yes, I have.

MS. CAHILL: Is it correct and accurate?

DR. PRIESTAF: Yes, it is.

MS. CAHILL: Would you summarize for the Board, please, your portion of that testimony.

We are going to be using overheads that are mostly just

summaries and larger versions of materials that are in the exhibits. Have we passed these out?

If we don't need to make these exhibits, but if we want to, I suggest that we just give the whole package one number.

H.O. BROWN: That might be the easiest. What is the next number, Kathy?

MS. CAHILL: I think it would be 32.

MR. SLATER: Mr. Brown, if counsel would identify what portions of the material are not covered by their written testimony or did I misunderstand?

H.O. BROWN: I think they are all going to go up on the overhead pretty soon. Aren't they? Would that be helpful?

MS. CAHILL: I think that they are all with the exception of the first one that is taken from Exhibit 30. It is a slightly modified version of a figure that is in Exhibit 30.

MR. SLATER: In Exhibit 30?

MS. CAHILL: Yes.

Dr. Priestaf, do you have the exact figure number?

It's actually Figure 6 in Exhibit 30.

DR. PRIESTAF: That is correct.

H.O. BROWN: Do all counsel have a copy of this?

MS. CAHILL: Yes, they do.

MR. SLATER: Counsel, Exhibit 30 appears to be

groundwater in the Paso Robles basin?

MS. CAHILL: Yes. And this is taken from Figure 6.

MR. SLATER: I am sorry, counsel -- okay. You are talking about that?

MS. CAHILL: Yes.

MR. SLATER: Thank you.

MS. CAHILL: Dr. Priestaf, would you begin.

DR. PRIESTAF: Thank you. If I may, I would like to use the overhead projector. Is that sufficiently visible?

H.O. BROWN: That is fine. We can turn off the lights.

DR. PRIESTAF: I appreciate the opportunity to be here. This is my first slide, the Salinas River and the Paso Robles groundwater basin. I put this up as a background map for you.

As was discussed previously, this map was taken from Figure 6 of the DWR 1979 report of groundwater in the Paso Robles Basin, which is Paso Robles Exhibit 30, I believe.

Just to point out a very few characteristics here. You are going to notice the Salinas River coursing from south to north through here from the Salinas River and then past the communities of Santa Margarita, Atascadero, Templeton, Paso Robles and San Miguel. Then it proceeds on to the confluence with the Nacimiento River which is just over the top of the map there.

Now the gray area that is shown here indicates hard

rock. While the dark blue area here shows a portion of the Paso Robles groundwater basin as it is indicated there.

I would like to point out two background basic facts. First of all, the river is a significant source of recharge to the Paso Robles groundwater basin. And second, DWR reports conclude that the Paso Robles groundwater basin is in a state of overdraft.

The basic document looking at potential impacts of the proposed Salinas Reservoir Expansion Project is the FEIR, the Final Environmental Impact Report. And in brief, this slide shows three of the basic conclusions of that FEIR. First, that the Salinas Reservoir Expansion Project will have no project-specific significant impact on the downstream water resources. Second, assuming an overdraft condition in the basin, cumulative impact on groundwater recharge may be significant. And third, continuation of the live stream condition is a mitigation to protect downstream water resources.

Dr. Todd and I have analyzed the FEIR and other documents in some depth, and we conclude that the following:

We see these as impacts of the Salinas Reservoir Expansion Project on downstream water resources. First, that the FEIR significantly understates the downstream impacts of the project on downstream water resources. The

reduction of downstream flows will reduce groundwater recharge to the Paso Robles groundwater basin. And third, the live stream, so-called releases are inadequate mitigation to protect downstream water resources.

Since the FEIR is the basic document looking at and analyzing these downstream impacts, we did look at it at some extent. And it based its conclusion on downstream impacts on the application of a spreadsheet model of reservoir operations. And what this model did was it looked at the water balance of the reservoir, and that took into account inflows, such as runoff coming into the reservoir and rainfall. It looked at outflows that include, for example, live stream releases, diversions to the city of San Luis Obispo, evaporation, and spills and then the live stream releases also. Then it also looked at change in storage. So that rounds out the water balance.

Two basic scenarios were run. One was the present dam with 10,000 acre-feet per year, San Luis Obispo demand, SLO demand, and the second one was with the raised dam with the same SLO demand.

Now this demand is stated in the FEIR as including 1000 acre-feet per year of conjunctive use with Whale Rock Reservoir, 500 acre-feet per year of local groundwater in the South County, plus 8,500 acre-feet per year of the yield of Salinas Reservoir in the North County.

The study period was 1972 to 1985. That was the base period, some 24 years beginning when the live stream condition was first put into effect in June of 1972.

What I would like to do in this presentation is use the FEIR's own summary table to show that, in fact, the downstream impacts on water resources will be significant. So let me put it up.

This is Table 1 of our testimony, and it's taken from the FEIR Table 3.4-13, Spill Reduction Summary. Now I apologize for the quality of this slide. There is just simply too many numbers up here to make a good presentation visually. But what I would like to do very quickly is instead of focusing on individual numbers, we don't really need to look at individual numbers. I would like to walk through the structure of the table to show what it means.

So the years here are the various rows from 1972 down to 1995. The bottom row contains averages of the values up above in that column in the respective columns. Then what I have done is numbered the various columns so that we can walk through and see what each one of them means.

Starting over here in Column 1, that is simply the live stream releases. Column 2 contains historic spills from the reservoir. And then Column 3 is the historic flow below the dam. That's simply taking the live stream releases and historic spill and adding them. So Column 4

is the sum of Column 1 and Column 2.

Looking at this part of the columns, it reflects the simulations that were done with the spreadsheet for the existing dam and the 10,000 acre-feet per year total demand.

Column 4 shows the spill that would occur under these conditions. And then Column 5 is the total flow below the dam with these conditions. And that total flow includes the spill that it would have occurred plus the live stream releases which are unchanged. So Column 5 actually is Column 1 plus Column 4.

Similarly, the next two columns, Column 6 is the spill that would have occurred with the raised dam and the same demand, 10,000 acre-feet per year.

Column 7 then is the total flow below the dam that would occur under these conditions; and that is the spill that would occur with the raised dam. Again, added to the live stream releases. So, in this case Column 1 plus Column 6 is Column 7.

Let me pause here very briefly and just point out these bottom row averages, which are very difficult to see, so I hope you would look at your handout. I would like you to note that the historic spill average at the bottom of Column 2 is 16,175 acre-feet per year. So that is what occurred historically.

Now with the existing dam, but the increased demand, that historic spill is going to decrease to 13,474 acre-feet per year. That is a decline of about 2,700 acre-feet per year that is going to occur even if the existing dam stays the same but demand increases. With the raised dam and the increased demand, then the change from historic spill to this spill is a decrease to 11,434 acre-feet, or a decline of some 4,700 acre-feet per year. So, with either scenario spills are going to decrease because there is going to be more diversions to the city of San Luis Obispo.

I would like to point out that in this analysis live stream releases remain the same. That is a premise of this analysis. So, basically, we don't need to look at that. It is a constant condition for this analysis. For that matter, we don't really need to look at total flows either. Because total flows are simply the spills added up with the live stream releases.

What really matters here, again, are the spills in Column 4 and Column 6. So, moving on, and this is getting to the dark part of the slide, moving on, Column 8 is the calculated downstream flow reduction at the dam with the historic existing dam. And this Column 8 is simply the difference between Column 3, which was the historic flow and then Column 5, which is the flow with the existing dam raised demand. Similarly, that is just eight equals three

minus five. Similarly, Column 9 is the difference between the historic flow below the dam and then the total flow with the raised dam and the increased demand.

The difference between Columns 9 and 8, comparing the two, is shown in Column 10 as project impact. Again, that is just the difference between the flow reductions with and without the raised dam. And then Column 11 shows that project impact as a percentage.

Essentially, this interpretation of the data is misleading in that it makes a comparison back to historic flow conditions. And those historic flow conditions are never going to happen again. We are never going to go back and have demands, say, from 1972 for the city of San Luis Obispo. So historical flow conditions really are irrelevant to this analysis. And the appropriate comparison that should be made is simply between the spills with the raised dam and without the raised dam.

MS. CAHILL: Dr. Priestaf, you might explain that when you are talking about historic conditions you were focused on that last column?

DR. PRIESTAF: Yes, ma'am.

MS. CAHILL: That is where there was a division made using historic flows?

DR. PRIESTAF: That's correct. So if you look at the last Column 11, it does include a reference back to historic

conditions. So if you get down to the bottom line of project impact of Column 11, it comes out to impact of 6.71 percent, according to these calculations.

This is Table 2 from our written testimony, a revised spill reduction summary. And the columns that you see, Columns 4, 6 and 10 were just brought over from the previous table and remain unchanged. And all I've done here is I've subtracted out any comparison or reference to the historic conditions.

So here we have the comparison of -- this is the project impact comparison with the raised dam relative to the existing dam and the project impact. It is simply the difference of those two.

Then Column 11 is looking at the revised project impact in terms of the percent difference, project impact divided by the existing dam conditions. What I would like you to note is that now all of the other conditions are held constant. And looking at the bottom line of this revised project impact, it is 14.3 percent. So it's more than doubled by taking out the irrelevant historic comparison.

But we are still not quite there. Because it's already been noted that the only impacts are going to occur in spill years. In years with zero spill, there is by definition no impact. So all of the years that have no spill, also are irrelevant to this analysis.

And that brings us to the third table, Table 3, Spill Reduction Summary. Again, I have brought through the same columns that I had before, calculated as before. And in this case we can see that the average impact, now that we have removed all of those rows with zero impact anyhow, is now 31.2 percent. What I would like to point out is that in working through these tables, I have had a systematic and consistent methodology that the averages are of the values above and that is what this 31.2 percent is. And it has some meaning.

And what it means is that in your average or typical spill year that flows are going to be reduced by almost one-third. So, for example, you can take 1984. If there is going to be tremendous range, because again this is an average, in 1984 there is a hundred percent reduction. All of the spill is gone. Now that, of course, amounts only to 161 acre-feet.

Looking at another year, 1973 in the top row, with the existing dam the spill would have been 11,000 acre-feet. With the raised dam it is decreased about 4,200 acre-feet. In other words, the project impact is 6,800 acre-feet or nearly 62 percent.

Another year to look at would be 1993, where with the existing dam spill would amount to over 30,000 acre-feet. With the raised dam it drops by nearly 18,000 acre-feet to

12,500 acre-feet per year or a revised project impact of nearly 59 percent.

What I would also like to point out is you do have to look at these volumes to understand what the averages mean. So, if we looked at the average volume of decrease, it would be 4,453 acre-feet per year. Relating that back in the comparison to the spills with the existing dam, or 29,309 acre-feet per year, then that proportion is a reduction of 15 percent if you are looking at the volumes.

So, again, using the information presented to us in the FEIR and its summary tables, I then conclude that the reduction of spills expressed in this table is a significant impact on downstream water resources in the Paso Robles basin.

H.O. BROWN: Clarification, if I may?

MS. CAHILL: Certainly.

H.O. BROWN: You said impact is 4,453 per year. You mean per spill year?

DR. PRIESTAF: In a spill year; that is correct, because there are no impacts in nonspill years.

Thank you, and that concludes my testimony.

MS. CAHILL: Thank you, Dr. Priestaf.

Dr. Todd, could you please state your name for the record.

DR. TODD: David Keith Todd, T-o-d-d.

MS. CAHILL: Dr. Todd, would you look at Paso Robles Exhibit 2.

DR. TODD: Yes, I have.

MS. CAHILL: Is that a summary of your qualifications?

DR. TODD: It is.

MS. CAHILL: Is it true and accurate?

DR. TODD: Yes, it is.

MS. CAHILL: Could you very briefly summarize your qualifications for us.

DR. TODD: My background is in the field of hydrology. I have a Bachelor's degree in civil engineering from Purdue University, a Master's degree in meteorology from New York University and a Doctorate in civil engineering from the University of California, Berkeley. I have taught at University of California for more than 30 years and was in charge of the water resources program. Subsequent to my retirement, I've organized a small consulting firm specializing in the planning, development and management of water resources particularly focusing on groundwater. We are located in Emeryville, California, and we have worked on a variety of water projects involving planning and management.

MS. CAHILL: Dr. Todd, have you written a book on groundwater hydrology?

DR. TODD: Yes, I have.

MS. CAHILL: What is the title of that book?

DR. TODD: The second edition of the book is entitled Groundwater Hydrology.

MS. CAHILL: Thank you.

Would you look at Paso Robles Exhibit 1, please. Is that testimony which you and Dr. Priestaf prepared for this Board?

DR. TODD: It is.

MS. CAHILL: Did you either write that testimony or review it with Dr. Priestaf?

DR. TODD: I did.

MS. CAHILL: And is it accurate and true to the best of your knowledge?

DR. TODD: It is.

MS. CAHILL: Would you please summarize your testimony.

DR. TODD: Mr. Brown, members of the staff, I would like to focus on the subject of spills. I would like to focus on the subject of spills that Dr. Priestaf has just been talking about and particularly the relationship to groundwater recharge with regard to the Paso Robles groundwater basin which Dr. Priestaf showed on an earlier illustration.

The first thing to start with is to look at the numbers which she mentioned in the Table 1 that we talked about,

and that was she showed on the table that the average flow, historically from '72 to '95, was 17,600 acre-feet.

That water is divided in two components, either in the live stream releases, which were authorized by the 1972 agreement, and that amounts to some 1,450 acre-feet per year, which represents 8 percent of the total water released from the dam.

Most of it, however, some 92 percent, comes as spills, which is some 16,175 acre-feet per year. On a time basis these percentages also apply remarkably closely. In other words, the spills which occupy 92 percent of the water, occur in 8 percent of the time and the live stream releases occur in more than 92 percent of the time.

So what we have then is a highly variable stream which exists here with terms of high flows and very low flows and that, of course, is the source of one of our problems.

A reduction in spills takes place. With a reduction in spills we are going to have a reduction in recharge downstream, as Dr. Priestaf has already pointed out. Basically what is going to happen is that the amount of water that will be traveling below the dam is going to be a smaller amount, and, therefore, it will travel, because it will be percolating, infiltrating into the ground, it will travel a shorter distance. It will, if it is a smaller amount, not involve as wide a stream, as wet a channel in

terms of its water going into the ground because the infiltration of water into the ground depends upon the wetted area. So if you have a shorter length and a narrower width, you are going to have a smaller amount of water going into the ground.

Also, because we are reducing the number of spills by some 20 percent, in terms of the total number that have occurred in the last 24 years, we will have a shortened period of time in which flow will be going into the ground. As a result of this, total infiltration is going to be considerably less than what it was before.

The location of this downstream is an important factor because the factor of where this water goes makes a big difference. One of the problems with the EIR, in my opinion, is the fact that we are comparing two hypothetical situations. One, a large release from an existing dam and a large release from a future dam. And they are not comparing with what is actually taking place now. The impact of what is taking place now is something different, and that is not determined and not analyzed by the EIR.

For example, the diversions by the City of San Luis Obispo in the last 25 years have averaged something like 3600 acre-feet. The future diversions which the city of San Luis Obispo hopes to obtain is the order of 9,000 acre-feet. And if you add evaporation on top of that, the

amount of water that will be taken from the Salinas River will be something like three times as great as it has been in the recent period.

So that we are talking about a dramatic difference in terms of the total amount of water that is going to be flowing in that river as a result of the charge that we are getting into.

Now talking about the groundwater basin, which again was shown on the map by Dr. Priestaf, we have a DWR report which was done in 1979, that is 20 years ago, that estimated that there was an overdraft in the basin of something like 30,300 acre-feet per year. That number has been updated by various investigators into the 40,000s. It is now in the mid 50,000s. We are approaching, if we build a higher dam at this level, we are approaching an overdraft condition on the order of 60,000 acre-feet per year. To me this is a significant loss of water in terms of that groundwater basin.

The water that recharges the basin, according to the Department of Water Resources, is some 11,000 acre-feet per year from the Salinas River. That represents 58 percent of the total natural surface water recharge to the basin itself. Figures have been mentioned before that a smaller amount was taking place, but a lot of the water is simply returned flow from municipal water use and from

nonconsumptive agricultural use. So the actual new water that is going into the ground from surface streams is coming from either the Salinas River or from other tributaries on downstream.

So, therefore, the Salinas River by itself represents the major source of natural water that is going into the groundwater recharge at that particular location.

The flow that is taking place from the -- of the Salinas River at Paso Robles has been estimated averaging some 70,000 acre-feet per year. But those numbers need to be looked at carefully again because of their variability. The median flow is about 35,000 acre-feet, essentially half of what the average flow is. Because during the very wet years, obviously, the average gets skewed. And if you look at a typical dry year, which would be the nonspill years in that half the time, because we only spill about every other year on the average, we are talking an average flow of about 5,000 acre-feet. So that the spills become the all important aspect in terms of recharging the basin.

If we are going to get an average of 11,000 acre-feet in and in the dry years, the nonspill years, we are only getting about 5,000 acre-feet in at Paso Robles, clearly we've got a shortage of water in terms of what is going to maintain the subsurface reservoir of the Paso Robles groundwater basin.

As a result of this, we do have an overdraft situation which exists at the present time and seems to be increasing from what we know about the data available.

Again, just pointing out, the groundwater basin, again, covers much of this large blue area that is located right here.

MS. MROWKA: For the reporter's sake would you identify what exhibit you are pointing to or the title of that sheet.

DR. TODD: I am pointing to the exhibit entitled Salinas River and Paso Robles groundwater basin. It is a map showing the location of it and I simply am trying to indicate the general area of the location of the basin itself. It is important to locate where it is in relation to the dam, which we are sitting down here at the very bottom of the illustration in relation to Templeton, Atascadero and Paso Robles.

MS. CAHILL: That exhibit is the first of the overheads that are contained in Paso Robles Exhibit 32.

DR. TODD: Thank you.

Another point that needs to be emphasized here is the subject of evaporation. It is mentioned in the FEIR, that the raised dam will have a larger water surface area and consequently there will be a larger evaporation. The figure that is quoted in there specifically for average conditions

is 1,537 acre-feet per year more than what exists right now. The existing loss is on the order of 3,000. So this represents an increase of roughly 50 percent in terms of the evaporative loss that will be taking place.

The safe yield, as calculated by the FEIR, for San Luis Obispo is some 1,650 acre-feet per year of water. What this amounts to is that the loss in terms of water from the basin itself represents both the evaporative loss as well as the guaranteed safe yield that is taking place. So, essentially, both of these are losses to the Salinas basin. And because these numbers are very close to being comparable, what this amounts to is that for every acre-foot of water that San Luis Obispo is taking and with this raised dam we will be losing two acre-feet of water in terms of the basin downstream. So, one gain is a loss of two in terms of the North County people.

The live stream condition has been discussed in great length, and I don't need to elaborate on it, just to point out that the release of water as specified by the live stream agreement requires that flows be made when there is water coming into the rest above the dam itself. What this does is guarantees essentially if there is a release there is a dry channel someplace below. It does not guarantee that there will be water all the way down to the confluence with the Nacimiento. It simply says there will be a release

and that release takes place when there is a dry stream. So I make the point that it stays dry even though water is being released.

I call the live stream a misnomer for the simple reason that what we are getting is a dry stream channel, which does not produce a live stream passing on down through it.

The channel of the Salinas River after it comes out of the upstream rock area that has been discussed here this morning in some detail infiltrates into the ground. You can think of the channel as a sieve that you are pouring into and it goes directly down into the ground. These are permeable sands and gravel formations. And as a result of that, this water migrates down to the water table which becomes a part of the underflow, and some of it goes on into the groundwater basin itself.

The EIR -- the FEIR focuses on the Atascadero area because it was stated that this represented the most critical condition because it was directly below the dam. The Atascadero area is closest to the dam, and it really is not the one that is suffering the most because the live stream releases are closest to that and, therefore, provide benefit to the Atascadero area. And in addition, when there is spills taking place, the water immediately goes into the ground downstream from the dam and as a result benefits Atascadero as a result of that. So actually they are in a

better situation than, say, Paso Robles downstream because they represent a distance farther away where there is going to be less recharge taking place.

It is also worth noting, as discussed in the FEIR, that there is a subbasin of groundwater in the Atascadero area, extending up towards Templeton, which really represents sort of a pocket basin, if you want to think of it, and as a result of that, water fills up rapidly into that area so that it obtains benefits with relatively small amounts of water.

So, what we are talking about in terms of the dam and the reservoir operation are really one of three choices. We don't have any others. First of all, we either have a spill, and a spill takes place, obviously by definition, when we are up to the spillway elevation, which means that the reservoir is full. According to the data for the last 24 years, the spills occur on the average about every other year, roughly 12 out of the last 24 years. The spills last for only a small portion of the time during each one of those years, but we only have them there for a short time and the rest of the time we have minimal amounts of flow.

The live stream release, as just talked about, occur when we have a dry stream channel. And this occurs in most of the months when we have base flow of groundwater coming into the reservoir above the dam itself. The reservoir is

draining, hilly country above the dam and as a result of that that water comes down and is passed on through the dam to the downstream benefits.

Third, we have a no release time, and we have a no release time, obviously, when it doesn't fit category one or category two, and that is when we have a wetted channel. This will typically occur two or three months during the rainy season when there is sufficient water from tributary water draining through the area that will wet the channel all the way down to the Nacimiento River confluence. We are working in one of those three categories.

What happens to the water that travels downstream? We have a potential pathway for the live stream releases which can be shown in terms of the geology that I have summarized very briefly on this next slide. This is the channel operation below the Salinas Dam. The first 14 miles as was discussed this morning in connection with fisheries, represents water flowing on essentially granitic bedrock and, therefore, there is little or no aquifer and there is little or no recharge taking place. It simply is a pass-through lined canal, if you want to think of it in the simplest terms.

But after it comes out of those 14 miles we then have five miles of this very highly permeable alluvium before we get to Atascadero. Beyond that we have four miles to

Templeton, again of aluvium, and finally beyond that we have seven more miles of alluvium to get to Paso Robles. So, the total distance then is 30 miles down to Paso Robles from the dam and percolation takes place in those last, five and four and seven, 16 miles that we have right there.

What happens to a live stream release? It is difficult to get data on this because it is hard to document where the water goes. But there are two or three ways that we can look at it, direct or indirect evidence. One is that I have made a calculation, assuming a release of 200 acre-feet a month. The average release as we talked about earlier was about 1500 acre-feet a month. If you assume that --

MS. CAHILL: Dr. Todd, do you mean per year?

DR. TODD: Well, 200 acre-feet per month or 1,500 acre-feet in a year is a release, I beg your pardon. If we assume that takes place usually in about ten months of the year, that is 150 acre-feet. So I have rounded that up to, just to be conservative to 200 acre-feet per month, assuming a wetted channel, that water coming down of 20 feet. That's an approximation; that's an assumption. It could be less; it could be more, obviously. But I wanted a realistic number, and I think that is a reasonable number.

Thirdly, I've assumed an infiltration rate of one foot per day. That is, basically, a very conservative number. Working on the Santa Ana River between San Bernardino and

Orange County, we get percolation rates in the alluvium there from five to ten feet during initial applications, dropping down to three and four. So one is certainly a reasonable sort of a number to assume.

If we do that, knowing the amount of water that is coming down, we know the width. We know the infiltration rate, then we can calculate the distance at which water disappears into the ground and you will have a dry channel. That comes out to be, for these assumptions, something like three miles of alluvial channel.

We just mentioned in the last slide that we have five miles between the edge of the bedrock condition and Atascadero. So this says that in above average flow from the dam release or live stream release never get to Atascadero. What it does do is it does go into the Atascadero sub basin and, of course, is eventually gobbled up by pumping from the shallow and some of the deep wells, but it is in the Atascadero area.

Another approach to that is information which we found from data that was in the files of the State Water Resources Control Board which shows that in June, June 28th and 29th of 1972, it was decided to run an experiment to see what happens to water when it is released from the dam. And to do that the valves of the dam were deliberately opened and 1,000 acre-feet were dumped into the river dramatically in

36 hours. A very large slug of water was suddenly released at that time into the river. And with that the water was measured in terms of water levels in terms of what happened downstream, and all of that water was gone before it reached Atascadero.

Now, 1,000 acre-feet in 36 hours is a lot more than 200 acre-feet in a month. In fact, it is a hundred times more. So my calculations here saying it doesn't get to Atascadero was verified a hundred times over by this calculation right here.

A third piece of evidence to make at this point is that a study that was done for the Corps of Engineers in 1975 with regard to percolation rates in the channel estimated that 2,000 acre-feet per day, now we are talking about even bigger amounts, 2,000 feet in a day that this water under normal conditions would never get to Paso Robles. That is 300 times what I have talked about right here. So the point I want to make is that we are getting water from the dam, but it doesn't go very far. It is going down, much of it is going into the Atascadero sub basin and only in the very big flows do we get it far enough down to benefit the Paso Robles groundwater basin.

H.O. BROWN: Ms. Cahill, that is 25 minutes.

MS. CAHILL: Could we have, like, two minutes to wrap up?

Dr. Todd, could you just take two minutes and --

DR. TODD: I will.

MS. CAHILL: -- and summarize your conclusion.

DR. TODD: I apologize.

The table I want to show here is showing what actually happens in terms of the last 24 years of live stream releases. The average amount of months of flow is ten months of a year. Whereas, the months of flow at Paso Robles is only five months a year. So that we are getting a very small fraction. So water being released from the dam has very little, if anything, to do with flow at Paso Robles.

The next point is with regard to -- we have talked about the figure of 1,453 live stream releases. And Dr. Priestaf showed that 4,453 acre-feet, what we would be losing with the new dam at that point. I would point out that that number might even be smaller because the entitlement of the City of Paso Robles is 9,000 acre-feet and they only use 8,000 feet in the model. So that actually that number could, if the City needs the water, go even higher than what is shown right there.

A conclusion then is that the live stream release provides very little, if any, recharge benefit to the downstream basins, and spills are absolutely essential to maintain these downstream resources.

And finally my last slide, the subject of mitigation, which was talked about only very briefly in terms of live stream release, is that we need a reservoir operation criteria which will supplement live stream release. The live stream release is fine for what it is, but it by itself cannot provide the answer that we need on it. And what we need is some sort of a study which hopefully will be done as a result of the Paso Robles Groundwater Basin Study which has been approved by the county and a half million dollars is set aside to initiate that study.

Once we have that information we will know more about how water moves into and out of the basin and with that guidance we can make decisions that will help us operate the reservoir more fairly and productively and more efficiently, optimizing it into the future.

Thank you very much.

MS. CAHILL: Dr. Todd, one last question. In summary do you conclude that the impacts of these reduced spills are significant on the Paso Robles groundwater basin?

DR. TODD: I definitely do.

MS. CAHILL: Thank you.

H.O. BROWN: We will go off the record for just a moment.

(Reporter changes paper.)

H.O. BROWN: Mr. Slater, you are up first.

MR. SLATER: It will take me just a second.

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CROSS-EXAMINATION OF THE CITY OF PASO ROBLES

BY THE CITY OF SAN LUIS OBISPO

BY MR. SLATER

MR. SLATER: Good afternoon, Doctors. I would like to start with Dr. Todd.

Have you ever testified before the State Water Resources Control Board before?

DR. TODD: Yes.

MR. SLATER: Do you remember on what?

DR. TODD: I don't recall the matter right now. This it at least 15 years ago.

MR. SLATER: Have you ever testified as an expert witness in court before?

DR. TODD: Yes.

MR. SLATER: In fact, I assume it was you. Didn't you qualify as an expert in the San Fernando Decision?

DR. TODD: Yes, I did.

MR. SLATER: Do you recall what your testimony was in the San Fernando decision?

DR. TODD: Yes. We were talking about conditions of overdraft in San Fernando Valley and the relationship of the control or management of the water resources within the basin.

MR. SLATER: Did you offer an opinion in that case about basin operation or perennial yield?

DR. TODD: I did.

MR. SLATER: Did you offer an opinion in that case that a groundwater basin ought not to be operated at a level that was so high that it created rejected recharge and reduced overall yield?

DR. TODD: That was part of the discussion of that testimony, yes.

MR. SLATER: And is it your opinion that high groundwater levels could cause waste of water?

DR. TODD: That is possible, yes.

MR. SLATER: Could you explain how that might happen?

DR. TODD: In the situation of the San Fernando groundwater basin, which is the location that you are referring to, if you have a water table that is maintained at a level that is sufficiently high that you're not able to recharge water into the ground, then as a result of that water will be released by drainage into the stream channel. And in the case of San Fernando at that time it would have been wasted to the ocean and, therefore, we would not have any beneficial use from the water.

MR. SLATER: In your book I think, actually I have the second edition, my holdover from college, you defined a concept called deferred perennial yield; is that correct?

DR. TODD: Could you show what page we are on?

MR. SLATER: Page 364. I only have the second edition. I am sure you must have updated it by now.

DR. TODD: There are only two editions.

MR. SLATER: Only two, okay. Page 364.

DR. TODD: Yes, I have the page.

MR. SLATER: There is a discussion there of deferred perennial yield, correct?

DR. TODD: Yes, there is.

MR. SLATER: Can you please describe what that concept is?

DR. TODD: Well, the concept of deferred perennial yield, as indicated here on Page 364, is simply a way of stating that you will take more water out of a basin at a beginning time in order to control on the water levels such that at a future time you will be able to manage the reservoir such that you will get a greater benefit from it.

In other words, I like to describe a groundwater basin as being like a surface reservoir back of a dam. If you keep the dam full all the time, you obviously aren't going to get benefits in term of door storage and flood protection. If you keep it empty, obviously, there is no benefit in having the dam at all. What you want to do is to be able to operate the water level up and down within some range between the maximum and minimum of the reservoir

itself. That same concept applies here.

If we have it too full and we are losing the water, then we don't get a benefit from it. So we do need to protect it by essentially pulling that down to a certain level and getting it. And that is known as a deferral.

MR. SLATER: Coincident with the deferral, it is actually possible, is it not, to increase the yield of the groundwater basin?

DR. TODD: Yes, it is.

MR. SLATER: Dr. Todd, do you know how large the Paso Robles groundwater basin is?

DR. TODD: I've seen the figure. It's on the order of 25,000,000 acre-feet.

MR. SLATER: Do you have any reason to disagree with that size?

DR. TODD: That was a number I believe that the Department of Water Resources developed, and I have no reason to question it because I have not done a study of the basin.

MR. SLATER: Do you know what the total dewatered storage is in that basin today?

DR. TODD: I don't know the total volume. Again, I have not made a study of how much water has been taken from the basin.

MR. SLATER: It is possible, is it not, that the Paso

Robles basin would have a deferred perennial yield number associated with it, isn't it?

DR. TODD: Well, I wouldn't think of it in the case from what I understand about the Paso Robles groundwater basin. We have extensive pumping and development going on at the present time. We do have, according to all the data that I have seen, an overdraft, which is significant as I think I've already testified to. And as a result we are not wasting much water going out of the basin because of high water levels at the present time. In fact, if we have the overdraft of the magnitude that has been calculated, we are talking about very large amounts of water that are being depleted from the basin on a continuing cumulative basis.

MR. SLATER: It is your testimony that even though you don't know what the total amount of dewatered storage is, that there is no possibility that we are in a situation of deferred perennial yield; is that correct?

DR. TODD: In terms of groundwater basin, I believe that is correct, yes.

MR. SLATER: In your view the basin is operating in a condition where it will receive all it can get; is that correct?

DR. TODD: No, that is not correct.

MR. SLATER: What are the impediments to it continuing to receive more waters or water levels as an impediment?

DR. TODD: No, I was not thinking water levels.

MR. SLATER: Dr. Todd, can changes in the purpose of overlying uses affect the perennial yield of a groundwater basin?

DR. TODD: If the change is in purpose of use affects the magnitudes of use and locations of use, the answer is yes.

MR. SLATER: So the answer is yes. So, for example, if I shifted from alfalfa to municipal use, there might be an impact, correct?

DR. TODD: It's possible, yes.

MR. SLATER: Does the perennial yield of a basin include artificial recharge?

DR. TODD: It depends on the basin and how it is operated. Perennial yield represents, hopefully, an ongoing balance between water in and water out. And many basins are operated with a great deal of artificial recharge, particularly here in Central and Southern California. But there are also basins operated without any artificial recharge.

MR. SLATER: To the extent that a basin has artificial recharge, is it prudent to include the artificial recharge calculation in the perennial yield?

DR. TODD: If one is trying to optimize a basin and get the most out of the storage, analogy again to the dam

storage that I was just talking about, if you can put more water in, like putting more money into a bank, you can take more money out again.

MR. SLATER: Are applied water demands artificial recharge -- sorry, strike that.

Are return flows from applied water demands artificial recharge?

DR. TODD: I don't normally think of them as artificial recharge. To me artificial recharge are manmade actions or structures which are putting water back into the ground.

MR. SLATER: I'll come back to that.

Dr. Todd, who is paying you to testify today?

DR. TODD: I am representing the City of Paso Robles.

MR. SLATER: So that is the City of Paso Robles is paying you?

DR. TODD: Yes.

MR. SLATER: And, Dr. Priestaf, you as well?

DR. PRIESTAF: Yes.

MR. SLATER: Were you hired by Ms. Cahill or the City of Paso Robles?

DR. TODD: Who is the question directed to?

MR. SLATER: Each of you individually, sorry.

DR. TODD: I was retained by the City of Paso Robles.

MR. SLATER: Not by Ms. Cahill?

DR. TODD: No.

DR. PRIESTAF: That is correct.

MR. SLATER: Who first contacted you regarding this assignment?

DR. TODD: This was Mr. John McCarthy.

MR. SLATER: Same for you?

DR. PRIESTAF: Yes.

MR. SLATER: Who is Mr. John McCarthy?

DR. TODD: Director of Public Works of the City of Paso Robles.

MR. SLATER: And did he give you any specific background about this project, Dr. Todd?

DR. TODD: Yes, he did give us background.

MR. SLATER: What did he tell you?

DR. TODD: He told us that there were plans to raise the dam in order to increase the yield of the Salinas River back of the Salinas Dam for the benefit of San Luis Obispo.

MR. SLATER: Did he happen to give you any written documentation?

DR. PRIESTAF: We were provided with the FEIR.

MR. SLATER: Did he provide you with anything else, Dr. Todd?

DR. TODD: I'm trying to think. We were given a large amount of documentation, and it came from various sources. He did give us other information with regard to pumping traits and stream flow data.

MR. SLATER: Do you know if you have that with you here today?

DR. PRIESTAF: No, we don't.

MR. SLATER: Did either of you, first Dr. Todd, did you take any notes in connection with your initial conversation with Mr. McCarthy?

DR. TODD: I did not.

MR. SLATER: Dr. Priestaf.

DR. PRIESTAF: I did take notes.

MR. SLATER: Did you bring those notes with you here today?

DR. PRIESTAF: I don't know offhand.

MR. SLATER: Can you tell us -- Strike that.

How many times did you talk to Mr. McCarthy, Dr. Todd?

DR. TODD: Perhaps 10 or 15 times.

MR. SLATER: Dr. Priestaf?

DR. PRIESTAF: It is probably about the same, including telephone conversations.

MR. SLATER: Did Mr. McCarthy review your testimony before you submitted it to this Board, Dr. Todd?

DR. TODD: I sent copies of my testimony to Mr. McCarthy.

MR. SLATER: Did he make changes to it?

DR. TODD: He did not.

MR. SLATER: No edits?

DR. TODD: No.

MR. SLATER: Dr. Priestaf?

DR. PRIESTAF: There were no changes by John McCarthy.

MR. SLATER: Same question for Ms. Cahill. Dr. Todd, sorry, did Ms. Cahill make any corrections in your testimony?

DR. TODD: Not that I recall, no.

MR. SLATER: Dr. Priestaf?

DR. PRIESTAF: Only indication I can recall was wanting to include an exhibit number for that DWR 1979 report.

MR. SLATER: About how many hours, Dr. Todd, have you spent on this project in total?

DR. TODD: It would have to be an estimate because I didn't have a breakdown of my time here. It's -- I would say a range of 60 to 90 hours something like that.

MR. SLATER: And Dr. Priestaf, about how many hours did you spend on this project?

DR. PRIESTAF: Looking at Salinas Dam, approximately a hundred.

MR. SLATER: A hundred hours.

And on Page 1 of your testimony, I believe this is you, Dr. Priestaf, you come to three conclusions.

DR. PRIESTAF: There are three conclusions as bulleted items.

MR. SLATER: How long did you have to spend on this project before you came to those conclusions?

DR. PRIESTAF: Well, let me have a look at them here.

Bullet number one came pretty fast as Dr. Todd mentioned.

MR. SLATER: Could you please define "fast"?

DR. PRIESTAF: Probably within one week of work. The other conclusions probably came within two weeks.

MR. SLATER: So you had your initial three conclusions within a total of three weeks of work; is that correct?

DR. PRIESTAF: Of working hours, yes.

MR. SLATER: Let's see, on Page 1 of your testimony you state that a key mitigation measure presented in the FEIR is continuation of a live stream condition; is that correct? And I guess that would be Dr. Priestaf.

DR. PRIESTAF: Yes.

MR. SLATER: And could you define "key" for me?

DR. PRIESTAF: In looking at the FEIR and reviewing the executive summary, the executive summary presents what the water resource impacts are, what the mitigations are and then whether or not there is significant impact. And the first line under mitigation measures was continuation of the live stream condition.

MR. SLATER: Have you reviewed the entire EIR?

DR. PRIESTAF: I looked at the FEIR and focused on the

hydrology section.

MR. SLATER: Did you see any reliance on the live stream condition within the text of the EIR other than the executive summary?

THE COURT REPORTER: Would you state that again.

MR. SLATER: In your review of the resources section, the water resources section of the EIR, the text, did you find any reliance on the live stream condition as a mitigating measure?

DR. PRIESTAF: It is mentioned later in the water resources section explaining that the live stream releases help protect downstream water resources, and it is part of the discussion where they are talking about what the impacts are and then it talked about the live stream as protecting water resources.

MR. SLATER: Anywhere in the text, other than the executive summary, are the words used to the effect that the live stream condition provides mitigation?

MS. CAHILL: If we can have Dr. Priestaf have a copy to review.

MR. SLATER: I have no problem with that.

H.O. BROWN: Off the record for a moment.

(Discussion held off the record.)

H.O. BROWN: Back on the record.

DR. PRIESTAF: I am not finding it, so --

MR. SLATER: I would like then to call your attention further on Page 1 and where you state that the only releases from the dam are to satisfy the live stream condition. Is that correct?

DR. PRIESTAF: Based on looking at the FEIR and their analysis, they divided the water below the dam as being either a spill or live stream releases. And I understood that this pertains to the post 1972 period that we are interested in.

MR. SLATER: Dr. Priestaf, is there something -- Strike that.

Is it your testimony that all of the flow in the Salinas River past the dam is either live stream release or spill?

DR. PRIESTAF: Yes. That is correct for the 1972 to '95 period.

MR. SLATER: Would you please define below the dam for me?

DR. PRIESTAF: Below the dam, the spills are through the spillway and the releases are out of the dam, also.

MR. SLATER: Dr. Priestaf, don't tributary inflows contribute to the flows in the main stem?

DR. PRIESTAF: Yes, they do.

MR. SLATER: Which is it, is it spill releases and tributary inflows or is it just spill and releases?

DR. PRIESTAF: Water right below the dam includes spills and releases. And as you go further down, there will be tributary inflow.

MR. SLATER: Thank you.

At what point on the Salinas below the dam does tributary inflow start, Dr. Priestaf?

DR. PRIESTAF: The first major tributary that I can think of is -- well, there is, I think, Rocky Canyon is a tributary in the canyon area, and there are others.

MR. SLATER: About how far from the base of the dam is that?

DR. PRIESTAF: I don't know offhand.

MR. SLATER: Have you visited the site, Dr. Priestaf?

DR. PRIESTAF: I have not.

MR. SLATER: Dr. Todd, have you visited the site?

DR. TODD: No.

MR. SLATER: On Page 2 of your testimony, I believe again this is Dr. Priestaf, you state that high flow periods are most significant to recharge of the Paso Robles groundwater basin; is that correct?

DR. PRIESTAF: That is correct.

MR. SLATER: Most significant as compared to what, Dr. Priestaf?

DR. PRIESTAF: As compared to the releases for the live stream condition.

MR. SLATER: You didn't mean to compare that to tributary inflow, did you?

DR. PRIESTAF: Comparison was focusing on the operation of the reservoir and looking at the high flows as spills from the dam and the live stream releases.

MR. SLATER: Can I see the -- sorry. Can we go off the record for just a second?

H.O. BROWN: All right. Off the record.

MR. SLATER: Could I call your attention to the final impact report for the proposed Salinas Reservoir Expansion Project, May 1998, Page 3.4-48.

DR. PRIESTAF: Okay.

MR. SLATER: Have you seen that before?

DR. PRIESTAF: Yes.

MR. SLATER: And you will notice the first column under historic flow, acre-feet?

DR. PRIESTAF: Yes.

MR. SLATER: You see the bottom number which says 74,762, correct?

DR. PRIESTAF: Yes.

MR. SLATER: What does that represent?

DR. PRIESTAF: That is historic flow in acre-feet at Paso Robles from the period '72 to '94.

MR. SLATER: Have you done any analysis on what percentage spill from the dam comprises that historic flow?

DR. PRIESTAF: We could do a comparison here. What is the spill average?

DR. TODD: The spill average is 17-, 16-.

DR. PRIESTAF: Spill is about 16,000 acre-feet per year.

MR. SLATER: So we can basically do a mathematical calculation and find out what 16 is of 74?

DR. PRIESTAF: Indeed.

MR. SLATER: What would the -- sorry.

Do we know, have you done any analysis of what percentage the live stream releases comprise of that 74,762?

DR. PRIESTAF: The live stream releases are about 1,453 acre-feet per year compared to that number.

MR. SLATER: So if we add 1,000 -- what was that number?

DR. PRIESTAF: 1,453 live stream releases.

MR. SLATER: 1,453 live stream, and I am sorry, I didn't write this down, the previous number was for --

DR. PRIESTAF: Average spill, 16,175.

MR. SLATER: So, pardon my math, ballpark, that is roughly 17- to 18,000 acre-feet, correct?

DR. PRIESTAF: Correct.

MR. SLATER: And have you done any calculations concerning what percentage of the flow at Paso Robles inflow

to the Salinas Dam comprises?

DR. PRIESTAF: I have not calculated that number.

MR. SLATER: I am going to show you a document which I will offer proof on to authenticate, Mr. Brown, as --

Sorry, Kathy. City exhibit number?

MS. MROWKA: I will give you the number in a moment.

MR. SLATER: Sure.

MS. MROWKA: I am sorry, it is 18.

MR. SLATER: I apologize to everybody. I will have copies made at the first opportunity.

MS. MROWKA: Can you please list what that exhibit will be titled.

MR. SLATER: Could you -- sorry, Dr. Priestaf. Could you read the cover page of that report?

DR. PRIESTAF: The title is Impact of Downstream Water Use on Salinas Reservoir Live Stream Releases, August 1990, Leedshill-Herkenhoff.

MS. MROWKA: It is 18.

MR. SLATER: Dr. Priestaf, I believe in the first column there is a historical period that is a study. Can you tell us what that historical period is?

DR. PRIESTAF: The water years extend from 1930 to 1988.

MR. SLATER: Are there inflow calculations for the Salinas Reservoir beginning, I believe, in 1933?

DR. PRIESTAF: That is correct.

MR. SLATER: Are there gauge readings for the Salinas River at Paso Robles about midway over?

DR. PRIESTAF: Correct.

MR. SLATER: Can you briefly peruse column one, which is the inflow to the dam, and peruse the bill column regarding flows at Paso Robles?

Can you tell me how those two numbers roughly compare? Is the Paso Robles number typically larger than the inflow?

DR. PRIESTAF: Yes, it is.

MR. SLATER: Are there any years -- Strike that.

Are there three years, only three years, in which flow at Paso Robles is less than inflow?

DR. PRIESTAF: Would you like to tell me which three?

MR. SLATER: I will withdraw the question.

DR. PRIESTAF: Thank you.

H.O. BROWN: We are going to take a ten-minute break at this time and be back at eight minutes till.

(Break taken.)

H.O. BROWN: Back on the record.

MR. SLATER: Dr. Priestaf, I am handing you again what I believe what is San Luis Obispo Exhibit 16.

MS. MROWKA: Yes.

MR. SLATER: Which appears to be, I guess, Figure 61.

Dr. Priestaf, what does that -- I have just handed you

61 of San Luis Obispo 18, can you briefly describe what that document purports to show?

DR. PRIESTAF: This is a chart entitled Annual Stream Flow for Salinas River, Dam inflow versus Paso Robles Gauge. And it shows the inflow to the Salinas Reservoir in acre-feet per year plotted against flow of Salinas at Paso Robles.

MR. SLATER: What does it show with respect to inflow to the dam as compared to flow at Paso Robles?

DR. PRIESTAF: Well, it essentially shows relationship between the two; and most of the values say for the inflow to Salinas River are greater than a thousand acre-feet per year. The Salinas River at Paso Robles, again most of the values are above 10,000 acre-feet per year.

MR. SLATER: Isn't it true that the table shows that flow at Paso Robles is typically greater than inflow to the dam?

DR. PRIESTAF: Yes.

MR. SLATER: Thank you.

I guess, Dr. Priestaf or Dr. Todd, have you done any analysis on annual municipal and industrial water production in the Paso area?

DR. TODD: Yes. We were given data on municipal use in the Paso Robles area.

MR. SLATER: Do you have an opinion about how much

water Paso is presently producing from, one, underflow and, two, percolating groundwater?

DR. PRIESTAF: The total pumping by Paso Robles is on the order of 5,000 acre-feet per year.

MR. SLATER: Do you have any knowledge about the breakdown of that pumping?

DR. PRIESTAF: Most of it was out of underflow, perhaps one-third if I recall, and the remainder from the groundwater -- no, it was two-thirds of the underflow and one-third from the groundwater basin.

DR. TODD: That's right.

MR. SLATER: I am sorry, that is one-third from the groundwater basin and two-thirds from underflow?

DR. PRIESTAF: Yes.

MR. SLATER: Does that 4,000 acre-feet from underflow sound right?

DR. PRIESTAF: It actually sounds a little high.

DR. TODD: Our estimate, I mentioned, was 5,000 as a total. I don't have the breakdown beyond that.

MR. SLATER: I hate to create another copy. I am going to make an offer to refresh recollection rather than make it an exhibit to get something on the record.

Is that okay?

MS. CAHILL: That would be fine.

MR. SLATER: Let the record reflect I am showing a

document which purports to be a progress report filed by the City of Paso Robles on its diversion, indicating the total quantity of water used by the City of Paso Robles.

H.O. BROWN: Mr. Maloney, if you want, you may come up and review the document.

Ms. Cahill, is that okay?

MS. CAHILL: That they look at that?

H.O. BROWN: Yes.

MS. CAHILL: Yes.

MR. SLATER: Having reviewed those documents, do you wish to testify as to how much Paso Robles produces from underflow?

DR. TODD: I don't see, offhand, the breakdown between deep wells and shallow wells on this. All I see is a total annual figure.

MR. SLATER: Dr. Todd, would Paso Robles be filing a statement regarding percolating groundwater -- Strike that.

To the best of your knowledge, does a user of groundwater have to file a progress report with the State Water Resources Control Board?

DR. TODD: I don't know.

MR. SLATER: Do you, Dr. Priestaf?

DR. PRIESTAF: I don't know.

MR. SLATER: I guess I am going to have to do it the hard way, then. We offer the series of progress reports

which purport to be filed by the City of Paso Robles with the State Water Resources Control Board for years 1997, 1996, 1995, 1994, and attached Board memoranda as San Luis Obispo Exhibit 19.

MS. CAHILL: Could I see the whole package, Scott?

MR. SLATER: Sure.

H.O. BROWN: Are you going to make that an exhibit now?

MS. SCARPACE: I don't believe we received a copy.

MR. SLATER: We will make the copies.

H.O. BROWN: If Mr. Slater makes copies and mails those out, would that suffice?

MS. SCARPACE: As long as they are authenticated by the City of Paso Robles.

MS. CAHILL: If these are copies of documents in the Board's files, we have no objection to their admission. But to the extent these witnesses have no knowledge of these documents --

MR. SLATER: Well, it affects the credibility of the opinions --

H.O. BROWN: Talk to me.

MR. SLATER: It affects the credibility of opinions of the witnesses regarding subjects, particularly impacts, where there are pumpers -- sorry.

The City of Paso Robles has claimed that the proposed project is going to create an impact on its wells. So in

order to know whether or not there is going to be an impact, we need to know what baseline use is and what their own demand is, how much water they have used in the past. It has also been claimed that from a public interest standpoint we ought to protect uses within the watershed. And I am trying to lay a foundation regarding what those uses in the watershed are.

H.O. BROWN: You had the opportunity to put this on in direct.

MR. SLATER: The --

H.O. BROWN: How are you going to get it on now with these witnesses here?

MR. SLATER: I plan to authenticate the documents itself as part of -- well, if the witnesses don't have any knowledge of how much water the City Paso Robles uses, then we will let the record stand. We will withdraw the exhibit.

H.O. BROWN: All right.

MR. SLATER: Do you have -- Dr. Priestaf, do you have any knowledge of how much the applied water demand is in the Paso Robles groundwater basin?

DR. PRIESTAF: No, I don't.

MR. SLATER: Do you know -- do you, Dr. Todd?

DR. TODD: Applied water, you mean the total pumpage that is taking place?

MR. SLATER: Yes.

MS. CAHILL: If you want to see any of the exhibits, you can.

DR. TODD: That was stated in the DWR report, and I don't have those numbers memorized. Is that one of our exhibits?

MS. CAHILL: It is. That's all right.

MR. SLATER: Do you happen to know where the majority of the groundwater production in the Paso Robles basin is occurring? East? West? Is it disbursed throughout the entire basin?

DR. TODD: I do know there is a pumping for M&I water in the western corridor, and there is ag pumping scattered throughout the Paso Robles groundwater basin.

MR. SLATER: Do you know how large the surface area is for the Paso Robles basin?

DR. TODD: Not offhand, no.

MR. SLATER: Do you, Dr. Priestaf?

DR. PRIESTAF: No.

MR. SLATER: I will try to hurry this along.

H.O. BROWN: You are doing fine.

MR. SLATER: On Page 2 of your testimony you state that, quote, examination of the data indicates that downstream flow will be significantly reduced because of the project; is that correct?

DR. PRIESTAF: Yes.

MR. SLATER: But the project won't affect tributary inflow, will it?

DR. PRIESTAF: The project is going to affect the water coming into the reservoir and diminish that.

MR. SLATER: Will the project affect the tributary inflow from the tributaries downstream from the dam?

DR. PRIESTAF: It will not.

MR. SLATER: But it is nonetheless your testimony that the project will have a significant adverse impact on recharge; is that correct?

DR. PRIESTAF: That's correct.

MR. SLATER: Have you -- Strike that.

You haven't determined what percentage of the water released from -- released bypass spilled from the Salinas Dam, what percentage of that water actually percolates into the Paso Robles basin, have you?

DR. PRIESTAF: I have not calculated that.

MR. SLATER: So is it your testimony that you have no idea how much water at the base of the dam will ultimately infiltrate the Paso Robles groundwater basin?

DR. PRIESTAF: What we looked at here was the impact of the dam and looking at its effect on spills which will reduce recharge. We are looking at the relative difference.

MR. SLATER: The relative difference, I see.

Do you have any opinion on how much of the water that will be captured by the proposed project would actually infiltrate the Paso Robles groundwater basin?

DR. PRIESTAF: We haven't calculated that.

MR. SLATER: So you have no idea? You have no opinion?

DR. PRIESTAF: My opinion is that the Salinas Dam is going to reduce spills. That spills are the most important source of recharge down the river. I recognize that there is tributary inflow, but the Salinas Dam controls considerable watershed of the river above Paso Robles, the largest portion of that watershed. And the water coming out of the dam also is susceptible in its migration pathway to going down many miles of river channel that is characterized by extremely permeable sediments that have a huge capacity for recharge. So the diminution in spills from Salinas Dam does make a difference.

MR. SLATER: I am going to ask the question again. You have not -- you have no opinion on how much water released or bypassed of the dam will actually infiltrate into the Paso Robles groundwater basin?

DR. TODD: We cannot give you a number on that. I think the testimony that we have here is that with a smaller area that water is lost closer to the dam and less of it gets down into the Paso Robles groundwater basin because the

Atascadero sub basin has first call on that water. So the less that comes out of the dam and less is going infiltrate into the Paso Robles basin itself on downstream.

MR. SLATER: Is it your testimony, Dr. Priestaf, that tributary inflow percolates at a lesser rate than spill or releases from the dam?

DR. PRIESTAF: Tributary inflow, once it reaches the Salinas River channel, would have the same probability of recharge.

MR. SLATER: So there wouldn't be any difference, is that your testimony?

DR. PRIESTAF: The difference is that the -- within those small watersheds themselves that there is very little percolation capacity. The real percolation capacity is along the river itself. Again, it is a broad, sandy channel characterized by river wash and water that enters there.

MR. SLATER: Once the water leaves the tributary, it is the main stem, commingles with the water which might otherwise be coming from the dam or other upstream tributaries, it's indistinguishable; isn't it?

DR. PRIESTAF: It would be indistinguishable. It matters where it enters the channel.

MR. SLATER: If there is 74,000 acre-feet of water at Paso Robles on a long-term average annual basis, there is no basis to distinguish where the water came from, is there, in

terms of recharge?

DR. PRIESTAF: Some of the water is spilled from the dam and some comes from other tributaries. But once it is in the channel --

MR. SLATER: But spill and tributary inflow both percolate, correct?

DR. PRIESTAF: That's correct.

MR. SLATER: Dr. Todd, I believe on Page 3 you testify or you state that it is your opinion that reduction on downstream releases by one-third is a significant impact on surface water resources. Is that your testimony? If I am misstating, please tell me.

DR. TODD: You are talking about the first paragraph here and we state that the increased demand by San Luis Obispo will reduce downstream releases by almost one-third. Certainly a significant impact on surface water resources.

MR. SLATER: Doesn't percentage have something to do with the total volume that is involved? Doesn't percentage assume a relationship?

DR. TODD: I am not sure I understand the question.

MR. SLATER: Well, it's an old adage, Doctor, that a large percentage of a small number is quantitatively not that big and a small percentage of a large number might be. Do you generally agree with that?

DR. TODD: I think you are referring to the percentages

that Dr. Priestaf presented on her table where she was talking about actual percentages of impact that were involved there and pointed out that these would vary depending on a large water year or a low water year.

MR. SLATER: That is a good segue for me. And again I believe this is Dr. Priestaf. You have Table 1 and Table 2, Table 3 that were used in your overhead. And I will try to focus my comments on that.

Is it possible for me to use your Table 2 and come to a conclusion about what the acre-foot, not a percentage, but the acre-foot impact on the project will be below the dam?

DR. PRIESTAF: Okay. In Table 2, if you wanted to look at the project impact below the dam, then you could look at Column 10. So for example, if you use an example I did, 1993, that the project impact is a diminution in the spill of 17,758 acre-feet.

MR. SLATER: In 1993?

DR. PRIESTAF: That's correct.

MR. SLATER: If we look over this exhibit, at the bottom of that, we see 2,041 acre-feet, correct?

DR. PRIESTAF: Correct.

MR. SLATER: That would represent what the impact is as spread over every year, correct?

DR. PRIESTAF: Correct.

MR. SLATER: So the impact is 2,041. Have you done any

analysis to determine what percentage of that 2,041 would ultimately make it to the Paso Robles basin?

DR. PRIESTAF: Could you rephrase that?

MR. SLATER: Sure. The project has, according to this chart, the project has an acre-foot impact of 2,041?

DR. PRIESTAF: Right.

MR. SLATER: Average basis?

DR. PRIESTAF: Right.

MR. SLATER: It is going to be chopping off 2,000 acre-feet of water, and my question is: Do you have any opinion about how much of that water will ultimately make it to the Paso Robles groundwater basin, how much of that water will get there?

DR. TODD: That depends on the particular year. If we have a dry year, essentially none of that will get there. For example, 1976-77 drought, there was no water at Paso Robles for 31 months, consecutive. So that --

MR. SLATER: Would it be a conservative assumption to guess, then, that that amount -- all that water was actually going --

MS. SCARPACE: I object to the question. What you are giving the witness is a total fiction. This witness previously said that the water flows down, like in 1993, at the volume of 17,000 acre-feet. You are averaging this through, maybe, a 25-year period, as an average, and saying

that comes down the river at 2,000 acre-feet a year where, in fact, it doesn't. So what you are asking for is total fiction and, naturally, the witness can't answer it.

H.O. BROWN: Mr. Slater.

MR. SLATER: I don't understand the objection, Mr. Brown.

H.O. BROWN: I don't either. I think it is a good question. Answer if you know the answer.

MR. SLATER: Could you read it back for me, please?

I believe my question was: Have done any analysis on what percentage -- Strike that.

Have you -- do you have any opinion on what portion of the 2,041 actually makes it to the Paso Robles basin?

DR. PRIESTAF: The portion of the project impacted that is going to make it to the Paso Robles basin is going to depend on the year and the conditions in that year.

MR. SLATER: It depends and then, therefore, it would be conservative then to assume that every drop of that actually gets there, correct?

DR. PRIESTAF: That would be conservative.

MR. SLATER: Do you have any opinion about how much of that 2,041 would actually percolate if it got there?

DR. TODD: There again what we are talking about is a variable factor which varies tremendously. We have sometimes 200,000 acre-feet of water going down the river,

which gives us these very high numbers in there. The amount that is going to go sometimes, as we just said, '76-77, there is zero, nothing getting there at all. In other years there is going to be water that is going to be wet all the way to San Miguel, and you will have a large amount of percolation taking place; and that happens in only a few years. Other years you're going to get a little bit. Sometimes the Atascadero sub basin gobbles all of it up.

MR. SLATER: Then it is safe to assume, isn't it, Doctor, that of the 2041 not all of it is going to percolate, correct?

DR. TODD: In very wet years there will be water going on by, yes.

MR. SLATER: That is if it gets there, correct?

DR. TODD: Well, in the very wet years it's going to go clear on down to Monterey County.

MR. SLATER: In which case we need not worry, correct?

DR. TODD: From the standpoint of management of the basin I am more concerned about San Luis Obispo County than I am Monterey County.

MR. SLATER: I would like to call your attention to Table 3. Am I to understand on this chart -- what is 31 percent? Dr. Priestaf, can you explain that to me?

DR. PRIESTAF: That is an average of the values above it. So it's the average of all those 12 odd numbers there

in Column 11.

MR. SLATER: Basically, this compares to Table 2 and that you've eliminated the dry years or the years in which there was zero, correct?

DR. PRIESTAF: Correct.

MR. SLATER: You didn't mean to portray that 31 percent was what 44 is of the long-term average, did you?

DR. PRIESTAF: It is simply the average of the numbers above it consistent with the other columns.

MR. SLATER: Do you know what -- do you have a calculator -- what the project impact of 4,453 is of the average spill of 29,399?

DR. PRIESTAF: About 17 percent.

MR. SLATER: I assume the answer is again correct that you haven't done any analysis about how much of this water would actually percolate, reach, the Paso basin and then ultimately percolate, correct?

DR. PRIESTAF: That would depend on the year.

MR. SLATER: The answer is you haven't done any analysis, though, correct?

DR. PRIESTAF: We've looked at spreadsheets, Appendix K, to see what the impact looks like in terms of the diminution of the spill. What it looks like in some years is that there would be a spill with the existing dam. With the raised dam the entire spill, say, for a particular month

is held back and would not go downstream at all.

MR. SLATER: Year by year, if I sat down with your Table 3 and the Draft Environmental Impact Report. Not looking at percentages, year by year, would I conclude that the project impacts were going to be any different in terms of acre-feet?

DR. PRIESTAF: Okay. You're looking at the Final EIR and you're looking at this table which comes out of the final. Would there be any difference in the numbers?

MR. SLATER: Is it your testimony that the acre-foot impact of this project is any -- do you -- Strike that.

Do you contend that the acre-foot impact of this project is any different than represented in the Final Environmental Impact Report?

DR. TODD: The answer is yes.

MR. SLATER: Would you please explain?

DR. TODD: Yes. Because, again, we are going back to impacts and what it means here. What we are comparing is two hypothetical situations. We are assuming a historic distribution of water with a 10,000 acre-feet demand compared with another 10,000 acre-foot demand with a raised dam.

The actual impacts, as I think I included in my testimony, are substantially larger, with two and a half times. With evaporation it is about three times as much

water will be taken out as a result of that. Those are the true impacts.

The way the FEIR was written is misleading, as I think Dr. Priestaf said at the beginning because it's talking about two hypothetical situations that doesn't tell you what is actually happening to the water downstream that Paso Robles is going to have taken away.

MR. SLATER: So, aside from the evaporation, aside from evaporation, does your analysis conclude that the per acre-foot impact of the project is any different at the base of the dam than in the Final Environmental Impact Report?

DR. TODD: Would you say that again, please?

MR. SLATER: Is it your opinion -- Strike that.

Do you contend that the impact of the proposed project on a per acre-foot basis, excluding evaporation, is any different at the base of the dam than it is presented in the Final Environmental Impact Report?

DR. TODD: The impact, as I have defined it, in terms of what exists today and what has existed and what they are talking about in terms of the raised dam and the increased pumpage is different than what is presented in the FEIR. It's much less than the actual impact.

MR. SLATER: It is much less than the actual impact. Let's see, Table 1 in the chart that you put up is from the Final Environmental Impact Report, correct?

DR. PRIESTAF: That's correct.

MR. SLATER: And if we were going to calculate the impact of the project as considered in the EIR, what will we conclude the impact is, Dr. Todd?

DR. TODD: The impact, as given in the FEIR, is what is presented on the Table 3.4-13.

MR. SLATER: The bottom of project impact, the long-term annual average is what, sir? 2,441, is it not?

DR. TODD: 2,041 under Column 10 of Table 1.

MR. SLATER: Table 3 which -- Table 2 which is just another version of the same representation, I believe, it shows again 2041, does it not?

DR. TODD: Yes, it simply is a condensation of Table 1.

MR. SLATER: And is it your testimony, then, that based upon the removal of the nonflow years that the total potential impact in acre-feet is 4,453?

DR. TODD: Using the assumptions made by the FEIR, which our testimony is, is not representative of the true impact that will be suffered at Paso Robles.

MR. SLATER: Do you have any opinion about how much water needs to be released -- Strike that.

Are you under the impression, Dr. Todd, that the percentage analysis employed on Page 3 and Page 4 of your testimony was relied upon or used in any way in the Final

Environmental Impact Report in examining potential significance?

DR. TODD: Could you repeat that, please?

MR. SLATER: Is it your opinion that the percentages, the percentage analysis, really, that is on Page 3 and 4 of your testimony was relied upon in any way by or in the Final Environmental Impact Report?

DR. TODD: Well, looking at Page 3 of our written testimony, the numbers that I see here are the 30,300 acre-feet that is given in the FEIR. The 58 percent and the 11,000 acre-feet are taken directly from the FEIR. The evaporation of 1,537 acre-feet is taken directly from the FEIR. So is the 1,650 safe yield for the City.

I believe all those numbers are in the FEIR.

MR. SLATER: I am sorry, Doctor, is it your testimony that the Final Environmental Impact Report made any reference to natural recharge as opposed to total recharge?

DR. TODD: It gave the figure of 11,000, and it stated that that was river recharge. And it gave the other natural recharge. And I have simply made a calculation from the reference that is referred to in the FEIR.

MR. SLATER: So you took the analysis in the FEIR, and backed out, if you will, what was natural and what was artificial?

DR. TODD: Which is non-consumptive, yes.

MR. SLATER: That other form of recharge would be what, sir?

DR. TODD: That's downstream water below. That would be Estrella, Arroyo and other tributaries on down towards San Miguel.

MR. SLATER: Did the 1979 DWR report give a value for return flows from agricultural water?

DR. TODD: Yes.

MR. SLATER: Do you remember with that value was?

DR. TODD: Not offhand.

MS. CAHILL: If the witness doesn't know, he can just say so.

MR. SLATER: If you don't recall, Dr. Todd, that is fine.

DR. TODD: The return flows in ag are 16,000 acre-feet a year, and the urban return is 4,700. So that is a total of 20,700.

MR. SLATER: Isn't it true, Dr. Todd, if I exclude those other forms of recharge to the basin that the percentage of impact on your analysis would increase?

DR. TODD: The percentage that I have calculated, the 58 percent, is on Page 3 of our testimony, is based upon the river recharge as a fraction of the total surface recharge. So it is, obviously, larger than taking 11,000 divided by 47,000, which is the total.

MR. SLATER: You examined only impact as it related to natural forms of recharge, correct?

DR. TODD: Yes. We are concerned with surface water impact, and we are talking about the surface. Return flows represents simply recirculation. That is water out, water in.

MR. SLATER: In all circumstances, Dr. Todd?

DR. TODD: I don't know what you're referring to specifically.

MR. SLATER: That is all right.

You make reference to the evaporation losses on Page 3 of your testimony, correct?

DR. TODD: Yes, I do.

MR. SLATER: Do you know how that evaporation loss compares to releasing water downstream, to move water to Paso?

DR. TODD: I think my testimony pointed out the fact that the releases for the live stream are 1,453, which is almost exactly the same as increase in evaporation with the raised dam.

MR. SLATER: But, Doctor, have you performed any analysis or do you have any opinion of what the evapo and other channel losses would be in the event that the water was not evaporated behind the dam but released?

DR. TODD: You mean released from evaporation from the

channel itself?

MR. SLATER: Released from the reservoir into the main channel.

DR. TODD: There would obviously be evaporation if there is water flowing in the channel. However, the surface area is going to be much, much smaller than what we are talking about, a great big reservoir of hundreds of acre-feet.

MR. SLATER: In any event, the evapo number is included within the spill impacts of your analysis, correct?

DR. TODD: Water will evaporate from spills, if that is what you mean.

MR. SLATER: I mean, when you are examining project impacts associated with raising the dam, you have taken into account the evapo losses when you calculated the impacts of the project, correct?

DR. TODD: In the spreadsheet model there is a column for evaporation, and that is calculated on a monthly basis, based on the water level in the reservoir at the time. So that it is a variable that depends upon you have 10,000 or 40,000 acre-feet of water in the reservoir.

MR. SLATER: So the answer is yes?

DR. TODD: It is a variable that depends upon the water level in the reservoir.

MR. SLATER: It's not additive, is it, Doctor? You

don't add evapo losses on top of spill impacts, do you?

DR. TODD: In the model it is not separated; it is part of the model analysis.

MR. SLATER: Dr. Todd, are you aware of any groundwater management that is presently taking place in the Paso Robles basin?

DR. TODD: The only management that I am familiar with right now is the study that I mentioned in my testimony that is presumably going to be starting very shortly and will provide an analysis of the water balance and the extent of the overdraft, whatever it may be under these conditions so that we will have a better figure with regard to how water is entering, when and where.

MR. SLATER: If I can just take a quick second.

H.O. BROWN: We will go off the record.

(Discussion held off the record.)

H.O. BROWN: Back on.

MR. SLATER: Thank you.

Do you know who's participating in the study that you mentioned?

DR. TODD: It is my understanding that the study will be funded or has been funded by the County of San Luis Obispo and that it will involve participation by the City, representatives of County and a group that I have heard referred to as the North County Forum, which is

representatives of, I believe, agricultural interests and municipal interests.

MR. SLATER: When you said "City," Doctor, which city were you are referring to?

DR. TODD: The City of San Luis Obispo.

MR. SLATER: Were you aware that the City of San Luis Obispo had offered to participate?

DR. TODD: Yes. That is stated in the FEIR. They've indicated that they were interested and willing to participate in such an investigation.

MR. SLATER: I believe this document is a CALSPA exhibit. It may have come in, but I am not sure of the exact number.

It is a study of the Paso Robles Groundwater Basin to Establish Best Management Practice and Establish Salt Objectives, Final Report, Exhibit U.

Let me ask a question. Did you review this document?

DR. TODD: Yes.

DR. PRIESTAF: Yes.

MR. SLATER: Could I ask to you look at Page 3-2.

DR. TODD: We have it.

MR. SLATER: Down about the -- three-quarters down, the middle of the page, there is a reference that seems to suggest that there were studies done concerning monitoring wells and water wells, correct?

DR. PRIESTAF: Yes.

MR. SLATER: Do you have -- would you happen to know what the identified location of the second entry, the final one at the bottom of the page is, or where it is on the Salinas River?

MS. PRIESTAF: Township 26 south, R 12 east.

MR. SLATER: Do you know specifically whether that is in Paso Robles, Atascadero? It states simply that it is located in Section 15, which is the -- which is the location -- it says between Arroyo Creek and the Salinas River and west of Buena Vista Road, correct?

DR. TODD: Yes.

MR. SLATER: And between Highway 46 east and Gold Hill Road, correct?

DR. PRIESTAF: Yes.

MR. SLATER: What does it say regarding the trends of water levels in that area?

DR. TODD: It says water levels seem to be -- says seem to fluctuate, but show no definitive trend and are raising in Section 15.

MR. SLATER: Thank you very much. Sorry to take all your time.

H.O. BROWN: Ms. Scarpace.

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CROSS-EXAMINATION OF THE CITY OF PASO ROBLES

BY CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY MS. SCARPACE

MS. SCARPACE: Either of you could answer this question.

I believe your testimony indicated that the absorption of flow from the Salinas River from the tributaries would depend upon where they were absorbed as to their affect on the groundwater. Is that a correct interpretation of your statement?

DR. PRIESTAF: That the importance of the tributaries with regard to recharge, one of the factors is where does that tributary enter the river?

MS. SCARPACE: Right.

DR. PRIESTAF: That's correct.

MS. SCARPACE: Wouldn't you say that that area that was just referred to showing fluctuations in groundwater recharge, isn't that near some main tributaries, the Estrella River and --

DR. PRIESTAF: It mentioned Arroyo Creek.

MS. SCARPACE: Aren't those main tributaries to the Salinas River -- I mean, yes, to the Salinas River?

DR. PRIESTAF: They are the two major tributaries that come from the east in the Paso Robles groundwater basin.

MS. SCARPACE: Aren't they located east of the city of

Paso Robles?

DR. PRIESTAF: Yes.

MS. SCARPACE: So the benefit mainly would be benefiting San Miguel and areas north of those tributaries?

DR. PRIESTAF: Correct.

MS. SCARPACE: Isn't it also true that the Paso Robles groundwater basin isn't just a big lake, it has various levels of groundwater and slight divisions?

DR. TODD: Yes. The groundwater basin, any groundwater basin is -- you can think of it as a reservoir. I have used the term "reservoir," but that doesn't mean it has a flat surface. Because, obviously, the water is going to be entering in certain locations where it can have adequate recharge or where the permeability is sufficient and the geology is appropriate. Water will go in. And pumping will occur in another location. So when you see a map, and there have been contour maps prepared by the Department of Water Resources, you see the water table fluctuates and moves up and down, sort of like waves, depending on where it is.

The recharge will tend to raise it and the pumping will tend to lower it down. So that these things will vary, and what we are concerned about is the amount coming in is decreasing in comparison to the amount that is going out. And so the net effect, even with these waves, is that it is going down. And that is the significance that we have been

trying to emphasize here.

DR. SCARPACE: That is all I wanted to ask.

Thank you.

H.O. BROWN: Staff?

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CROSS-EXAMINATION OF THE CITY OF PASO ROBLES

BY STAFF

MS. MROWKA: I just have one question.

When I look at Table 2 and I compare it to Table 3, it strikes me that the only difference in these tables is that you have simply eliminated the years when no spill occurred for purposes of illustration on Table 3, and so that is the difference between the two tables, and then calculated an average not based on the full historic record, but simply based on the years when spill did occur.

Am I correct in that assumption?

DR. PRIESTAF: That's correct because there is no impact in spill years. So they're irrelevant and having them as part of the average dilutes it -- it gives a credit, sorry.

MS. MROWKA: I am sorry, that was funny.

DR. PRIESTAF: It gives credit to minimizing the impact when, in fact, there wouldn't be any impact there, anyhow.

MS. MROWKA: So there would not be a difference in any of the other numbers, other than bottom line average and

simply due to deducting out those years?

DR. PRIESTAF: The point was to go through Table 1 and clarify it so that we can see what the FEIR shows in the way of numbers.

MS. MROWKA: Thank you.

H.O. BROWN: Jim.

MR. SUTTON: Dr. Todd, if I might, I would like to get a clarification on your discussion of the live stream releases that you characterized as a dry channel condition, and you indicated that with the dry channel condition that the making -- the City makes -- actually the County is responsible for it, but releases are made from the dam to compensate, if you will, for the fact that somewhere at one of the observation points downstream the channel is dry. Is that correct?

DR. TODD: Yes, that is correct. As I'm sure you know, there are, I believe, seven different locations below the dam, extending on down to the confluence with the Nacimiento River which are used as sort of reporting points. And if any one of those seven is dry, water, according to the agreement, must be released in terms of the amount inflow upstream of the dam itself.

So whenever there is water coming as a live stream release by definition there is some portion of the channel down in the Paso Robles groundwater basin that is dry.

MR. SUTTON: Let me set you a hypothetical and envisioning these seven points as seven consecutive boxes as in an ice cube tray.

DR. TODD: All right.

MR. SUTTON: And in an ice cube tray you start filling at one end. It fills up and then it trips over to the next one and that fills up and stepwise on down. For purposes of our analysis here, may we make an analogous assumption relative to the live stream condition and the condition of groundwater in the Salinas River basin; that is, if the observation is made at the last point, the seventh point downstream, that that is dry, that the other six points above it, upstream of it, are wet? May we assume that those cubes, those sub portions of the groundwater system, are, in fact, full?

DR. TODD: The simple answer to that is no. And the basis for it is your seventh point is your most northern or downstream point that you are referring to here. There is water flowing in the other six points, is the assumption that you are making here. But what happens during that time is that water is percolating as it comes down through there. If there is sufficient volume coming through, it will be percolating in all those other six points going through there.

But it does not necessarily mean that it is completely

full. Remember, the spills only come, what is it, about 8 percent of the time. So you have a big slug of water that comes down. And for some time it goes all the way down to the Nacimiento. But the times we are talking about here, it's percolating. And as I pointed out in my testimony, some of these are in terms of thousands of acre-feet a day. You multiply that out on a monthly basis that we are talking about, we are talking about 40-, 50-, 60,000 acre-feet. We don't get that very often. But in a wet year we do get that chance to put it in there. The rest of the time it is still going in. I don't think you can say that the ice cubes are full upstream from that. It may be on in the closest area, certainly in the Atascadero area because, as the FEIR points out, they are compensated in the wet years. It does fill up in that sub basin.

When you get down into the big basin, which is much larger, you are beginning to put water in, and as you cut off the size of the spills, you are cutting off the distance it travels and, therefore, the opportunity to put water into the ground.

MR. SUTTON: There you are talking about spill, and I understand that. My hypothesis was the dam is not spilling. There are releases coming out of the dam because the last point of the downstream observation points was shown to be dry. The other six points are wet.

Under those conditions where you are not talking about spill, you are talking about releases from the dam, under those conditions may you assume that the intervening sections of the groundwater basin are full?

DR. TODD: Again, my answer is no. I think the way that could happen, just try to think of your hypothetical in terms of real terms, is after a normal year, let's say, where we have water coming down and there has been spill water and we don't -- do not have any live stream releases, then as the spill begins to dry up, let's say we are into the months of April, something like this, what happens is maybe the first one to go dry is an observation point down at San Miguel, assuming that is the seventh one. I don't know that exactly. If it is, then water is still flowing in there because of have the spill that is taking place. And that water is infiltrating. It's soaking into the ground all the way down through there.

It does not necessarily mean that we have filled up the whole reservoir clear to the surface. It takes time to put water down into the ground.

MR. SUTTON: You also indicated that there are three reservoir conditions. One, the reservoir is full and it is spilling. I am going to put these in a different order. Two, there are no releases from the dam but you have a wetted channel, and you said this was two or three months

in rainy season. And three, the live stream conditions were -- and those are the three categories that you gave.

Isn't there also a fourth condition, and let me define it for you. I want to get your understanding of the live stream. The reservoir is not full. The project is not allowed to divert water to storage because it is outside of their storage season. And they are passing through the inflow as they are required to do.

Are you including those conditions in your definition of a live stream release?

DR. TODD: The way that I understand the operation of the dam, based upon on the FEIR, is that we have only those three possibilities. And those are based upon either there is more than enough water so it is spilling or everything is wet all the way down. So there is no need to do that or there is no release at all.

MR. SUTTON: Thank you.

H.O. BROWN: Counselor.

Ms. Cahill, do you have any redirect?

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REDIRECT EXAMINATION OF THE CITY OF PASO ROBLES

BY MR. CAHILL

MS. CAHILL: Very little. I would just like to start by following up on Mr. Sutton's question, and either of you can answer it.

Isn't it true that the FEIR and the model it presented divided downstream flow into either live stream release or spill? Is that true?

DR. TODD: The answer is yes.

MS. CAHILL: Is your understanding of the FEIR that the circumstance that Mr. Sutton just asked about, where there was nonspill flow in the summer months, the purpose of that modeling have been considered a live stream release?

DR. TODD: It would have been considered a live stream release, yes.

MS. CAHILL: There is one I would like to follow.

Dr. Priestaf, I may have misheard or you may have misspoken, and I am not sure, when you were being questioned by Ms. Mrowka. I want to make sure that we had a clean record.

I thought I heard you say there was no impact in spill years. Did you say that or intend to say that?

DR. PRIESTAF: Nonspill years?

MS. CAHILL: Well, tell us again what years -- what type of years are there no impacts in.

DR. PRIESTAF: There are no impact in years with zero spill. Did I get it right that time?

MS. CAHILL: I think so.

Are there -- is there a possibility there are some carryover impacts, that if you have a reduction in spill one

year there might in future years be carryover impacts from that reduction?

DR. TODD: In terms of the amounts of water being released?

MS. CAHILL: In terms of storage in the groundwater basin.

DR. TODD: The reservoir operation, as it is stated in the FEIR, it is either spilling or not spilling, in terms of what is taking place. And on an analyzed basis the entitlement that the city has is to a certain amount of water, and they will take, presumably, when they can the maximum amount they are entitled to from that. And that will be on a water year basis because they are allowed 12.4 cfs, I think it is, annually. It is the entitlement they have a right to.

MS. CAHILL: Thank you. That is all I have.

H.O. BROWN: Redirect or recross, Mr. Slater?

MR. SLATER: No, Mr. Brown.

H.O. BROWN: Ms. Scarpace.

MS. SCARPACE: No.

H.O. BROWN: Staff?

You have some exhibits?

MS. CAHILL: We would move Paso Robles Exhibit 1 through 32 as listed on our exhibit list and supplemented by Exhibit 32 that is the packet of overheads from today's

testimony.

H.O. BROWN: Are there any objections to the acceptance of those exhibits into evidence?

MR. SLATER: No objection.

MS. SCARPACE: No objection.

H.O. BROWN: We will accept those exhibits into evidence.

Rebuttal?

And I thank the panel for a long afternoon and your participation. And you may be excused.

Any rebuttal, Mr. Slater?

MR. SLATER: Four questions for two witnesses, very quickly.

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REBUTTAL TESTIMONY BY THE CITY OF SAN LUIS OBISPO

BY MR. SLATER

MR. SLATER: Please state your name for the record.

MR. HENDERSON: Gary Henderson.

MR. SLATER: You have in front of you a document that has been referred to as San Luis Obispo Exhibit 18. Can you briefly explain the origin of the document?

MR. HENDERSON: This document was created by consultants that were hired by the City under my previous director, when he was working for the City. These are contained in our library, in the City offices.

MR. SLATER: Who was your prior director?

MR. HENDERSON: That was Bill Hetland.

MR. SLATER: What was his position?

MR. HENDERSON: Utilities director.

MR. SLATER: Is such report prepared in the routine businesses of the City of San Luis Obispo?

MR. HENDERSON: Yes, it is.

MR. SLATER: Do you maintain custody of that document?

MR. HENDERSON: Yes, we do.

MR. SLATER: Secondly, have you any information on the per capita water use by the City of Paso Robles, Templeton and Atascadero?

MR. HENDERSON: Yes. I contacted some of the individuals in the North County. The general manager of Templeton was the first one I contacted about their per capita use rate.

MR. SLATER: Who did you speak to?

MR. HENDERSON: It was Bill Van Order.

MR. SLATER: What is his position?

MR. HENDERSON: He is the general manager.

MR. SLATER: What did he tell you?

MR. HENDERSON: What he did, he gave me some numbers of their use of different periods in 1998. And based on the population estimates for the community of Templeton, they are using, last year, about 270 gallons per person per day.

MR. SLATER: Do you have any information for Paso Robles?

MR. HENDERSON: Yes. I talked with John McCarthy. He didn't have the exact numbers. He thought somewhere on the order of 250 gallons per person per day. Actually, it is slightly lower than that. I pulled some of their -- all of us supply information to the County annually on our water use productions. And using that information and comparing it to the state projections for population in Paso Robles, their use has actually fluctuated in the last three years between about 205 gallons per person per day up to about 243 gallons per person per day.

MR. SLATER: I have no further questions for this witness.

H.O. BROWN: Any cross of this witness, Ms. Cahill?

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CROSS-EXAMINATION OF THE CITY OF SAN LUIS OBISPO

BY THE CITY OF PASO ROBLES

BY MS. CAHILL

MS. CAHILL: Mr. Henderson, in general, is Paso Robles hotter in the summertime than the city of San Luis Obispo?

MR. HENDERSON: Yes, they are.

H.O. BROWN: Ms. Scarpace.

MS. SCARPACE: No, none.

H.O. BROWN: Any redirect, Mr. Slater?

MR. SLATER: No, Mr. Brown. Last witness is Mr. Chuck Hanson.

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REBUTTAL TESTIMONY BY THE CITY OF SAN LUIS OBISPO

BY MR. SLATER

MR. SLATER: Dr. Hanson, could you please state your name for the record.

DR. HANSON: My name is Charles Howard Hanson.

MR. SLATER: What is your occupation?

DR. HANSON: I am a professional fisheries biologist and fisheries consultant.

MR. SLATER: I am handing to you what appears to be San Luis Obispo Exhibit Number 6. Could you briefly peruse that document.

Does that appear to be a statement of your qualifications?

DR. HANSON: That is a statement of my qualifications.

MR. SLATER: Can you briefly summarize -- I mean, briefly summarize your recent experience regarding steelhead?

DR. HANSON: I have a Bachelor's and Master's in fisheries from the University of Washington, a Ph.D. in fisheries from the University of California. I have been a professional biologist in the San Francisco Bay, California area for approximately 23 years, during which time I have

had an opportunity to become involved in Section 7 consultations directly or indirectly with the U.S. Bureau of Reclamation regarding the Sante Ynez River-Bradberry Dam issues; the Reclamation District 108-Wilkin Slough winter run consultation with the National Marine Fisheries Service; the Reclamation District 1004-Princeton Pumping Plant consultation; a number of Bay-Delta projects. As well as participated in the preparation of habitat conservation plans for fisheries issues under Section 10 of the Federal Endangered Species Act with Reclamation 108, the Pacific Gas & Electric Company, and I am the senior project biologist for preparation of a habitat conservation plan for Arroyo Grande Creek downstream of Lopez Reservoir in San Luis Obispo County.

MR. SLATER: I want to be very careful so we expedite this and limit the scope of your testimony here.

Can you -- I will offer a hypothetical which is you have been here for most of the testimony today, correct?

DR. HANSON: Correct.

MR. SLATER: You are familiar with the Section 7 consultation process under ESA?

DR. HANSON: I am, yes.

MR. SLATER: Could you briefly describe what will happen in the event that the Corps elects to transfer the property to either the County of San Luis Obispo or the City

of San Luis Obispo regarding the existence of major federal action and the potential for an impact on steelhead?

DR. HANSON: The action agency, in this case the Corps, would evaluate the proposed transfer in terms of its potential for impacting listed species, in this particular example steelhead. They may do that as part of direct internal review of the project or they may also involve the federal agency, in this case the National Marine Fisheries Service, in an informal conference or consultation.

They would then determine whether or not that transfer of the project had a potential to adversely impact steelhead. And as a major action, would then file a formal request with NMFS for a consultation under Section 7. A biological assessment would then be prepared, which would compile and summarize information on the project, on the habitat conditions, on the hydrology, on the life cycle of steelhead and the potential impacts that may occur from a variety of factors associated with the project on steelhead populations.

The National Marine Fisheries Service would then take that biological assessment and additional information that they would gather from various sources and perform a review of that information that would culminate in the issuance of a draft biological opinion which would then be discussed with the action agency, in this case the Corps, and would

subsequently, finally be finalized as a final biological opinion that would come to specific conclusions with regard to the impact of the proposed action as it pertains to steelhead.

That biological opinion could come to a conclusion that the action would result in no jeopardy to steelhead and an incidental take could be issued. The evaluation could come to the conclusion that the proposed action would result in jeopardy to the steelhead within the CSU and reasonable and prudent alternatives would be issued as part of the consultation process, which would be designed to reduce those potential impacts to a non-jeopardy status.

MR. SLATER: In your opinion, is there any prejudice that would be caused to the Section 7 consultant process by this Board making a condition of the future expansion a NMFS consultation?

DR. HANSON: I don't believe that there would be.

MR. SLATER: No further questions of this witness.

H.O. BROWN: Cross, Mr. Cahill?

MS. CAHILL: No questions.

H.O. BROWN: Ms. Scarpace.

MS. SCARPACE: Mr. Baiocchi will.

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CROSS-EXAMINATION OF THE CITY OF SAN LUIS OBISPO

BY CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

BY MR. BAIOCCHI

MR. BAIOCCHI: How you doing, Chuck?

DR. HANSON: Good, Bob.

MR. BAIOCCHI: As I recall, you testified at the Santa Ynez River hearing?

DR. HANSON: I did.

MR. BAIOCCHI: We were there.

One silly question or simple question. Do all life stages of steelhead need water and habitat to survive?

DR. HANSON: Yes, they do.

MR. BAIOCCHI: Thank you.

H.O. BROWN: Redirect.

MR. SLATER: No.

I do have a stipulation to offer CALSPA on the basis of the conditions and recommendations that have been made by Mr. Smith.

The City of San Luis Obispo would like to offer, one, that any raising project, expansion project, be subject to a consultation with NMFS, either in the at -- coincident with the transfer of the dam from federal ownership to either the County or the City; and, secondly, an offer of best efforts to try to provide reasonable access to all interested parties to the gauging and measurement stations at the dam.

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

I think that concludes this panel.

Dr. Hanson, thank you.

MR. MROWKA: Mr. Brown, if I might clarify one matter on an exhibit.

Mr. Slater, when you offered Exhibit 18, which is the Impact of Downstream Water Users Live Stream Analysis, did you intend to offer the entire document or just 6-1?

MR. SLATER: I intended to offer the entire document.

MR. MROWKA: Thank you.

MR. SLATER: I believe Ms. Mrowka has the disks of the model.

MS. SCARPACE: We didn't receive a copy.

MS. MROWKA: I have those. I did not know if you included those as an exhibit.

MR. SLATER: I was trying to comply with the request to produce the disk of the model for the various parties. So I deposited --

MS. MROWKA: I have those.

H.O. BROWN: Those of you who want those disks, get those from Ms. Mrowka. Let's see a show of hands, who wants a disk?

There is three; we have three disks.

In closing, before I close this hearing, any other business to bring before this hearing?

MS. CAHILL: Mr. Brown, I am assuming you will be setting time for closing briefs.

H.O. BROWN: I am just about to do that.

MS. CAHILL: Before you do that, may I remind you that I am out of the country for the month of November, so I would much appreciate it, given some time for the transcripts to come out anyway, that we have a date no sooner than mid December.

MS. MROWKA: How about December 17th for briefs, and that is a holiday. I don't know how much you want to intrude into that.

H.O. BROWN: January what?

MS. MROWKA: How about January the 7th, Friday.

MS. CAHILL: For?

MR. MROWKA: Reply briefs?

H.O. BROWN: The parties may submit legal briefs. Six copies of legal briefs must be received by the Board by 4:00 p.m. December 17th. Six copies of any reply briefs must be received by the Board by 4:00 p.m., January 7th, year 2000. A party submitting a brief must serve a copy of the brief on each of the parties required to exchange information for this hearing on those dates.

MS. CAHILL: Mr. Brown, can we move it to the following Monday? If they come in at 4:00 on Friday, it is not going to do you much good.

H.O. BROWN: Give me a date.

MS. MROWKA: January the 10th.

H.O. BROWN: December the 20th and January the 10th.

This may make up for some of the short time you had, Mr. Baiocchi.

We do appreciate your efforts. We know that it was a problem, all of you. Time is short. Usually it is criticized for going too slow. Hopefully, you will find some stock for us for going a little too fast on this one.

The exhibits are all in place.

Any problem with the exhibits, Ms. Mrowka?

MS. MROWKA: No, sir.

H.O. BROWN: The Board will take this matter under submission. All persons who participated in this hearing will be sent notice of the Board's decision of this matter and any forthcoming Board meeting in which the matter would be considered.

I would like to thank all of you for your professional participation, and we will try and give you the best decision we can.

MR. SLATER: Thank you, Mr. Brown.

H.O. BROWN: The hearing is adjourned and record will close now at 4:00 p.m. on January the 10th.

Thank you, all. This hearing is adjourned.

(Hearing adjourned at 5:30 p.m.)

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, ESTHER F. WIATRE, certify that I was the official Court Reporter for the proceedings named herein, and that as such reporter, I reported in verbatim shorthand writing those proceedings;

That I thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 525 through 792 herein constitute a complete, true and correct record of the proceedings.

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 2nd day of November 1999.

_____
ESTHER F. WIATRE
CSR NO. 1564

``