

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ACL ORDER NO. 5R-2004-

ADMINISTRATIVE CIVIL LIABILITY ORDER  
IN THE MATTER OF

WILLIAM ISAAC  
AND  
LINKSIDE PLACE, LLC.  
LINKSIDE PLACE SUBDIVISION  
BUTTE COUNTY

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TUESDAY, JULY 12, 2005

2:01 P.M.

DEPOSITION OF SCOTT A. ZAITZ

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STACY A. SHORT

LICENSE NO. 7446

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I N D E X

WITNESS: SCOTT A. ZAITZ Page

Examination by Mr. O'Laughlin. . . . . 4

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E X H I B I T S

DEPOSITION EXHIBITS Page

- 1 Photocopy of California Regional Water Quality Control Board Notice of Violation dated 7 April 2004; Inspection Report dated 5 March 2004; Inspection Report dated 7 April 2004; Attachment 1 photos 4
- 2 Photocopy of Item 17, Board Action: Consideration of an Administrative Civil Liability Order, dated 24 June 2005; Administrative Civil Liability Order 4
- 3 Photocopy of Staff Report; Figure 1 sample locations map dated 18 Feb 2004; Figure 2 sample locations map dated 25 Feb 2004 4

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1 APPEARANCES:

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For the State STATE WATER RESOURCES  
CALIFORNIA REGIONAL CONTROL BOARD  
WATER QUALITY CONTROL Office of Chief Counsel  
BOARD: 1001 I Street  
P.O. Box 100  
Sacramento, CA 95812  
BY: DAVID P. COUPE

For the Defendants O'LAUGHLIN & PARIS  
LINKSIDE PLACE, LLC. Attorneys at Law  
and WILLIAM ISAAC: 2571 California Park Drive  
Suite 210  
Chico, CA 95928  
BY: TIM O'LAUGHLIN  
KEN PETRUZZELLI

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DEPOSITION OF SCOTT A. ZAITZ, taken on  
behalf of the Defendants, Linkside Place, LLC. and  
William Isaac, at the offices of Challe & Fisher,  
Certified Court Reporters, 1828 South Street, Redding,  
California, on Tuesday, the 12th day of July, 2005,  
commencing at the hour of 2:01 p.m., before STACY A.  
SHORT, a Certified Court Reporter of the State of  
California, taken pursuant to Subpoena.

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(Deposition Exhibits 1, 2 and 3  
marked for identification.)

SCOTT A. ZAITZ

being first duly sworn, testified as follows:

EXAMINATION BY MR. O'LAUGHLIN

MR. O'LAUGHLIN: Q. Hello, Mr. Zaitz. My name's Tim O'Laughlin. I represent the defendants in this matter, Linkside Place, LLC. and William Isaac. Have you ever had your deposition taken before?

A. This is the first.

Q. I'm going to go over some ground rules of a deposition with you. I'm sure you've had an opportunity to talk with your counsel ahead of time, but just so we're clear about what we're going to try to do here today and the manner in which we do it.

I will be asking you questions today, and you will be responding to my questions. The court reporter is here to take down everything that you say and I say, so in order to do that and make things work in an efficient manner, we have to follow certain ground rules. A: Wait until I finish asking my question, and then you respond to my question after I'm done. Do you understand that?

1 A. Yes, I do.

2 Q. Okay. Because if we both -- and this happens all  
3 the time, Scott, is that what we -- what happens is we  
4 start a conversational manner, mode of talking, and it  
5 makes it very difficult for the court reporter to take it  
6 down. I'll extend to you that same courtesy in your  
7 responses. I will try not to interrupt you. I will wait  
8 until you're finished. If you're not finished just say,  
9 "I'm not done. I'd like to finish my response," so that  
10 you get a complete and full answer. Do you understand  
11 that?

12 A. I do.

13 Q. Also, there are times when we may be talking  
14 about terminology or I will state something in a rather  
15 strange fashion or befuddling way to you, and if you  
16 don't understand it don't -- don't respond to the  
17 question. It's perfectly fine to say, "I don't  
18 understand what you're talking about. I don't get the  
19 question. Can you please restate it," and it's my job to  
20 try to restate the question so that you understand it and  
21 can give me a response. Do you understand that?

22 A. I do.

23 Q. Okay. Because my assumption is if I ask you a  
24 question, you respond to a question, that you've  
25 understood the question that I've asked you.

1           The other thing is there's no rush here. I  
2 sometimes get talking rather fast. Don't feel like we're  
3 pushing towards a time limit or goal or anything. Take  
4 your time in responding to our questions. Think about  
5 your answer.

6           You will have a chance though when we're all done  
7 with this that -- the court reporter will take everything  
8 down. She'll provide it in a transcript form to you.  
9 You can review the transcript at that time and make  
10 changes in the transcript at that time. Do you  
11 understand that?

12         A.       I do.

13         Q.       Okay. Now, if we proceed forward with this  
14 matter, I can comment on those changes if you make  
15 substantive changes as we move forward at the time of the  
16 hearing. Do you understand that?

17         A.       I do.

18         Q.       Okay. The other thing is try to speak like you  
19 are right now. You're doing an excellent job. You're  
20 very direct, articulate, short, concise and to the point,  
21 and that makes her job easier, and that makes my job  
22 easier. Okay?

23         A.       (Nods head.)

24         Q.       The other thing is if you need to take a break or  
25 you want to talk to your counsel, do so at any time.

1 Just say, "I'd like to take a short break." We're going  
2 to be here for about three hours. We'll try to take  
3 scheduled breaks so the court reporter's fingers don't  
4 wear out, but if those don't coincide with you, just let  
5 us know and we'll take a break at any time that you  
6 want.

7 Are you on any medication or anything in which  
8 would inhibit your ability to give your testimony freely  
9 and clearly?

10 A. No medication.

11 Q. Great. All right. Are you sick or under the  
12 weather?

13 A. No. I just had a Mountain Dew so --

14 Q. Oh, yeah. Do the Dew. Okay.

15 A. -- may be a bathroom situation.

16 Q. I'm going to go back -- depositions -- I'm going  
17 to try to break it down into three areas for you.

18 Basically we're going to get some background history from  
19 you. That will be fairly short. Then we're going to go  
20 through about three exhibits that I've previously marked.  
21 Then we'll take a break. I'll go through the subpoena  
22 duces tecum documents that you brought, review those, and  
23 if we have further questions about those, we'll go  
24 through those last. Okay?

25 A. Yeah.

1 Q. Where did you go to college?

2 A. I went to college at Chico State University,  
3 Chico, California.

4 Q. Okay. And did you graduate?

5 A. Yes, I did.

6 Q. And your degree was in what?

7 A. I have a BS in biological sciences.

8 Q. And when did you obtain your degree? What year?

9 A. 1987.

10 Q. Okay. Have you done any postgraduate work?

11 A. No. You mean a doctoral or master's?

12 Q. Yes. Correct.

13 A. Okay. No.

14 Q. Okay. And after you graduated in 1987 did you  
15 get a job?

16 A. I took a year off --

17 Q. Okay.

18 A. -- and was a ski bum.

19 Q. And what was your first job of employment after  
20 you graduated from Chico State?

21 A. My first job of employment was as chief chemist  
22 of Shasta Circuits, Incorporated in Redding. That job  
23 was in 1988, and I was there for about nine months.

24 Q. Okay. Next?

25 A. I was able to gain employment at Shasta County



1 Environmental Health Department in 1989. I believe it  
2 was August.

3 Q. Don't worry. Okay.

4 A. And I stayed employed there for seven years.

5 Q. And what did you do for them mainly, for the most  
6 part?

7 A. I was a health inspector. In 1992 I believe I  
8 was elevated to a Senior Environmental Health Specialist,  
9 and I was in charge of the Hazardous Materials Business  
10 Plan Program until my -- until I took another job.

11 Q. When you said -- what was that? Was that for  
12 hazmat stuff?

13 A. Yeah. One of the county's programs was the  
14 Hazardous Materials Business Plan Program under Chapter  
15 6.95 of the Health and Safety Code. These days they're  
16 called CUPAs or administering agencies, but this was, you  
17 know, in the infancy of the program.

18 Q. So that lasted until about 1986?

19 A. 1996.

20 Q. 1996. Sorry. Can't add. Okay.

21 And then your next area of employment?

22 A. 1996 I took a job with the Department of Health  
23 Services, local Public Health Services section as an  
24 Environmental Health Specialist 3, and I was in charge of  
25 environmental health programs for Lassen and Modoc

1 Counties.

2 Q. Can you give me a description of environmental  
3 health services programs that would be entailed under  
4 that?

5 A. Once again, I headed up the underground storage  
6 tank removal program. I was the foods program --

7 Q. Okay.

8 A. -- lead, also wrote permits for septic systems,  
9 water wells. And environmental health encompasses about  
10 14 different programs, so you're a jack-of-all-trades,  
11 so, you know, wherever I was needed, you know. I -- I  
12 ran the swimming pool program, the recreational bathing  
13 program also for them.

14 Q. All right. And that lasted until approximately  
15 when?

16 A. Valentine's Day 2000 was my first day on the job  
17 at the Regional Board.

18 Q. Okay. And what was your initial position at the  
19 Regional Board?

20 A. I was working in an NPDES permit writers  
21 section.

22 Q. Here in Redding?

23 A. Yes. Pardon me.

24 Q. That's all right.

25 A. Redding office.

1 Q. Okay. And how long were you doing that job for?

2 A. I believe I did that for about a year.

3 Q. Okay.

4 A. Kind of figured out that I didn't like writing  
5 NPDES permits. It's kind of mundane. So there was an  
6 opening for storm water, and I transferred into that  
7 program.

8 Q. Okay. And what were your initial job duties in  
9 the storm water?

10 A. In charge of construction storm water, industrial  
11 storm water, municipal storm water for four counties.  
12 Pardon me. At that time it was three counties. We got  
13 Glenn County a little later on after I'd been in the  
14 program for a couple of years.

15 Also I was -- I am the program manager for the  
16 401 Water Quality Certification Program, and I do  
17 hazardous materials response for all eight counties that  
18 we regulate.

19 I may add that I have been a hazardous materials  
20 specialist through the State of California since August  
21 of 1990 and have held that current.

22 Q. Great. In your job duties at -- in the storm  
23 water section, how many -- on an average year basis, how  
24 many inspections do you do of construction SWPPPs?

25 A. I don't inspect construction SWPPPs. The Storm

1 Water Pollution Prevention Plan is a document that the  
2 discharger has to put together and implement. The  
3 SWPPPs -- I will ask for them to be submitted to my  
4 office, but I do not formally review, approve or  
5 disapprove them.

6 Q. Let me ask it a different way. You're correct.  
7 My phraseology was poor.

8 How many sites do you inspect on an average  
9 annual basis that have SWPPPs for construction?

10 A. Those numbers would be attainable by going to our  
11 Storm Water Information Management System or SWIM. Right  
12 off the top of my head, I couldn't tell you if it was  
13 20-plus, 30-plus because I also respond to complaints  
14 where there may not be an actual permit at the time of  
15 the complaint inspection.

16 But, you know, if you're talking about just  
17 sites -- permitted sites and inspections --

18 Q. Well, let's do the -- can you give me a ballpark  
19 on the permitted sites? Then we can talk about the  
20 unpermitted sites.

21 A. Okay.

22 Q. Or just generally how many sites? I mean, do you  
23 go out to ten sites in a year total, or is it like you're  
24 out there 40 or 50 sites in a year?

25 A. I would say 40 to 50 sites in a year.

1 Q. Okay. Now, and that's on average. Now, did that  
2 start as soon as you came into the program in 2001?

3 A. No. I had to get up to speed learning the  
4 program, so the number of inspections early on was  
5 considerably less. Basically just getting up to speed  
6 with the terminology, what was expected from the  
7 discharger as far as, you know, what's a good site,  
8 what's a bad site --

9 Q. Right.

10 A. -- the different types of BMPs, erosion and  
11 sediment control that could be deployed at a site.  
12 That's the interesting thing about the Storm Water --

13 THE REPORTER: Hold it. Storm Water --

14 THE WITNESS: Storm Water Pollution Prevention  
15 plans.

16 MR. O'LAUGHLIN: Those are going to be called  
17 SWPPPs.

18 THE WITNESS: That each one is unique. Each  
19 site is unique dependent upon topography, soil type,  
20 rainfall averages, internal water courses that may be  
21 incorporated with the site, so -- there's, you know,  
22 obviously additional protections, any endangered  
23 species.

24 MR. O'LAUGHLIN: Q. Okay. So can we -- when  
25 you start out in 2001, you're ramping up, how many

1 inspections would you say by 2004 you were doing on an  
2 average basis?

3 A. I think I had gotten up to the current level that  
4 I'm at now.

5 Q. And on average how many notices of violation  
6 have you drafted for violation of SWPPPs for  
7 construction, realizing it may have changed over the  
8 years starting out and ramping up?

9 A. How many NOV's have I written?

10 Q. Mm-hmm. On average.

11 A. Well, that's an interesting question, and I'd  
12 like to -- I'd like to expand --

13 Q. Okay. Go right ahead.

14 A. -- in that each notice of violation is different  
15 in and of itself, depending upon the complexity of the  
16 site. Some sites become compliant after, you know, first  
17 notice of violation, or some sites require repeated  
18 inspections, repeated consultations, repeated -- you  
19 know. You may spend a lot of time on one site and not  
20 much time on another site. You may get remedy right off  
21 the top of the bat on the one site. So, you know, with  
22 respect to this site, it's taken a lot of time and  
23 effort, but it's only one notice of violation.

24 Q. Right. So but just -- I'm trying to get a handle  
25 on your work and how it's kind of broken up. So on

1 average though, how many notices of violation do you  
2 actually sit down and draft to send out ballpark?  
3 A. Ballpark. I would temper my comment by saying  
4 once again looking back into the SWIM module where it's  
5 actually the beans are counted, I would say -- per year?  
6 Q. Yeah. Per year.  
7 A. Half a dozen.  
8 Q. Okay. And would it be safe to say then that if  
9 we could draw a correlation, that not every inspection  
10 draws an NOV?  
11 A. No. There's an enforcement ladder.  
12 Q. Yeah. Right. Okay. Now, at the -- how many  
13 projects have you worked on construction SWPPPs that have  
14 gone to administrative civil liability?  
15 A. This is my third ACL.  
16 Q. Okay. And can you tell me what the other two  
17 ACLs were, please?  
18 A. And I was partial part to another ACL. There was  
19 a fourth.  
20 Q. Oh, okay.  
21 A. I started that, but there was another staff  
22 member who finished running with it, if you will.  
23 Q. Okay.  
24 A. The two construction storm water ACLs were both  
25 \$10,000 ACLs for one violation of the construction storm

1 water permit.

2 Q. And were they -- where were they located?

3 A. Both in Chico.

4 Q. Okay. Do you remember the names on those?

5 A. Yes.

6 Q. Okay. And what were they?

7 A. Yosemite Place and Lake Vista.

8 Q. Okay. And the third one that you worked on?

9 A. Was Table Mountain Quarry, also known as

10 Martin -- Martin Marietta -- Martin Marietta Materials, I

11 believe.

12 Q. Right.

13 A. It's a -- it's a quarry in the Oroville area by

14 Tabletop Mountain.

15 Q. And the amount of that?

16 A. Was \$40,000.

17 Q. Okay. I'm assuming the one -- both of the ones

18 in Chico paid?

19 A. All three paid.

20 Q. Okay.

21 A. And I'd like to qualify that the two 10,000s

22 were in the middle of summer, and those were for

23 inappropriate use of a water tender, making muddy water,

24 discharging it directly into a stream. And the other one

25 was for actually physically washing down the street.



1           That was sediment-laden.

2           Q.           That sounds like John Lucciano.

3                        When you go out on your site inspections do you

4           have a standard way that you perform a site inspection,

5           or is each one different?

6           A.           Each one can be different. It really depends

7           upon what's happening at the site.

8           Q.           Now, do you normally take a camera with you when

9           you do a site inspection?

10          A.           Every time.

11          Q.           Do you usually carry a notebook with you to take

12          down notes?

13          A.           I have a journal.

14          Q.           You have a journal?

15          A.           Yeah.

16          Q.           Okay. Do you bring a cassette or a recorder to

17          record notes in as well or just use your journal?

18          A.           In the beginning I did that, but I've stopped

19          that practice.

20          Q.           Okay. So you -- on the site inspection for

21          Linkside Place did you have a -- did you use a journal?

22          A.           I used a journal.

23          Q.           Okay. Now, when you normally go out and do a

24          site inspection and you use your journal, do you

25          contemporaneously write your notes down when you're at

1 the site, or do you make notes and then go back and write  
2 up a report?

3 A. I will make notes --

4 Q. Okay.

5 A. -- of -- of potential violations, but obviously I  
6 write my reports back at the office.

7 Q. Okay. So when you're out at the site, you're  
8 making observations about things you see, and you record  
9 them in your journal?

10 A. Or record them through digital photography.

11 Q. Okay.

12 A. I take lots of pictures.

13 Q. Right. So if you think you see a potential  
14 violation, you may take a picture of it; you may write a  
15 note saying northeast corner blah, blah, blah so you know  
16 where the picture was taken, record it contemporaneously,  
17 and then when you get back to your office review that in  
18 preparation for writing your report?

19 A. I would say that's pretty representative of how I  
20 operate, yeah.

21 Q. Now, do you -- over the course of time in doing  
22 this for the last four years, do you think you've become  
23 a very good note taker in regards to taking down your  
24 notes in the field and having them accurately represented  
25 in your reports?

1           A.           I would say that I've got a very good memory,  
2           and the pictures are able to stimulate a lot of my memory  
3           of the inspection, and I routinely will work at home the  
4           same night of the inspection and work up my preliminary  
5           draft.

6           Q.           Okay. Do you -- when you go out for your site  
7           inspections, do you take any other tools to assist you in  
8           a site inspection other than your camera and your  
9           journal?

10          A.           Yeah. I have a duffel bag, and I have all sorts  
11          of equipment in there: Boots, gloves, pens, tape  
12          measures, binoculars, pH paper, sample bottles, rain  
13          jacket.

14          Q.           Okay. And all those tools are there to assist  
15          you in trying to measure, quantify and record accurately  
16          in your journal what you're seeing out there; correct?

17          A.           In my journal or in my mind as I go back home and  
18          start to build the recreation of the findings of my  
19          inspection.

20          Q.           Okay. Let's turn to -- we've had marked as  
21          Exhibit 1 a -- the front page is a notice of violation,  
22          and it's dated April 7th, 2004. You can skip the first  
23          couple pages there, and you can skip the site inspection  
24          of February 23rd, 2004, and we're going to talk about an  
25          inspection report dated April 7th, 2004 for inspection

1 date of 18th and 25th of February 2004, and it says that  
2 you were the inspector. Do you see that?

3 A. Yes.

4 Q. Okay. And is this your inspection report that  
5 you did after your inspection at Linkside Place?

6 A. Yes.

7 Q. Turn to the second page of your report, please,  
8 and go down to the February 18th, 2004 inspection. It's  
9 stated here that there's numerous rainfall gauges that  
10 you looked at. There wasn't a rainfall gauge at the  
11 site; correct?

12 A. No, there is no rainfall gauge at the site. I  
13 found out that the airport does report rain, and it is in  
14 close proximity to the construction site, but upon  
15 further investigations I've found out that they actually  
16 use the Oroville Fish Hatchery rainfall data to report as  
17 the airport data.

18 Q. Now, would you say that given your background,  
19 experience and expertise that probably the Feather River  
20 Fish Hatchery is probably the best indicator of rainfall  
21 conditions on the site given its close proximity?

22 A. There's -- there's three rain gauges that I  
23 used, and I looked at all three. I believe that the  
24 Oroville Fish Hatchery and SC-OR which is Sewerage  
25 Commission-Oroville Region -- their sewage treatment

1 plant are closest, I think three-and-a-half,  
2 four-and-a-half miles away.

3 Also there's the Oroville Dam which is a CDEC,  
4 California Department of Data Exchange site, that I  
5 looked at their rainfall data also, but those are the  
6 three available sites that I could use.

7 Q. But looking at the three sites, it's probably  
8 Feather River is the -- given its proximity, topography  
9 and location is the one that closest -- would closest  
10 approximate the site conditions?

11 MR. COUPE: Objection. Would you -- I think  
12 you're asking a leading question.

13 MR. O'LAUGHLIN: Please. Yeah. I -- I just  
14 want to know in your opinion which one probably best  
15 approximates the conditions at the site.

16 THE WITNESS: In my opinion, I think that either  
17 one of them could best approximate conditions at the site  
18 because the conditions are variable.

19 MR. O'LAUGHLIN: Q. Okay. Now, when you got  
20 out to the site at 12:30 in the afternoon, it states that  
21 it wasn't raining.

22 A. 2:30. 1430 hours.

23 Q. Oh, sorry. 2:30. Sorry. 2:30 in the afternoon  
24 it wasn't raining. What -- how long were you at the site  
25 for? And feel free -- I don't -- if you have other

1 documents that will refresh your memories and they've  
2 been produced --

3 MR. COUPE: Yeah.

4 MR. O'LAUGHLIN: -- you don't have to just stick  
5 to what I'm showing you here.

6 THE WITNESS: Okay. And that's going to be  
7 I was there for one-and-a-half hours.

8 MR. O'LAUGHLIN: Q. Now, during the time  
9 period that I asked the question, you referred to some  
10 notes. What document did you refer to to refresh your  
11 recollection that you were there for one-and-a-half  
12 hours?

13 A. I referred back to the June 7, 2005 William  
14 Isaac, Linkside Place LLC., Linkside Place Subdivision,  
15 Butte County, Administration of Civil Liability --

16 Q. Okay.

17 A. -- under "Extent."

18 Q. Okay. Let me find that.

19 Oh, okay. So on February 18th, 2004 Regional  
20 Board staff observed sediment-laden storm water  
21 discharging offsite from culverts. Flow from one culvert  
22 was conservatively estimated at 2430 gallons or 27 gpm  
23 for 1.5 hours.

24 A. Mm-hmm.

25 Q. Is that correct?

1           A.           That's correct.

2           Q.           Okay.  And so you're saying that you know you  
3           were there for 1.5 hours because of the 1.5 hours for the  
4           second half of the equation?

5           A.           Yes.

6           Q.           Okay.  Well, since we're there I was going to ask  
7           you that question, so we might as well just kind of jump  
8           to another document which has been marked as Exhibit 3  
9           which is the staff report, And it says under "Extent" --  
10          it said, "Flow from one culvert was conservatively  
11          estimated..."  Can you tell me how the flow at the one  
12          culvert was estimated?

13          A.           That work was done by a senior engineer.  I'm not  
14          an engineer, so I was not able to do any of the  
15          computations.

16          Q.           Okay.

17          A.           But I have -- in the documents presented there is  
18          flow calc -- her -- the flow calcs that was done for  
19          that, so that information is in here.

20          Q.           So what did you -- what information did you  
21          acquire in the field to give her -- is it -- it sounded  
22          like it was a her --

23          A.           (Nods head.)

24          Q.           -- I'm sorry -- it was to her to perform the flow  
25          calculations?

1 A. She was given all of the finding material that I  
2 accumulated during that inspection, pictures. In  
3 addition, I did go to the site and took measurements of  
4 the pipe.

5 Q. Is this on the 18th?

6 A. No.

7 Q. Okay. So 2-18 -- well, let's -- let's stick  
8 with the 2-18-04 --

9 A. All right.

10 Q. -- one culvert computation of the amount of flow.  
11 On the 18th did you measure the pipe?

12 A. No.

13 Q. Did you measure the elevation of the water  
14 surface in the pipe?

15 A. Not on the 18th.

16 Q. Take your time.

17 A. Yeah. I've been to the site so many times. No.  
18 I went back to the site and physically measured it with a  
19 student, and we measured the pipe dimensions of those  
20 culverts, and we mentioned -- or measured the length of  
21 the culvert. We measured the slope of the culvert.

22 Q. Okay. And when did you do that?

23 A. I did that on November 4th, 2004.

24 Q. Okay. Do you know how this engineer arrived at  
25 what the water surface elevation was in the pipe?



1 A. No, I don't.

2 Q. Do you know what head the water surface engineer  
3 used to come up with a flow through the pipe?

4 A. No, I don't.

5 Q. Would it be safe to say that in looking at the  
6 number that was arrived at of 2430 gallons that that was  
7 entirely derived from what your engineer did, and  
8 basically you don't know how that number was arrived at?

9 A. That's -- I don't know how that number was  
10 arrived at.

11 Q. Okay. I'm assuming that that number -- it says  
12 27 gpm for 1.5 hours. The 1.5 hours is the amount of  
13 time that you spent out there?

14 A. That's when I actually physically saw it.

15 Q. You saw water moving through the pipe?

16 A. Yes.

17 Q. So I'm assuming that for the calculation, your  
18 engineer assumed a steady state of flow through the  
19 pipe. It's 27 gpm for 1.5 hours; right?

20 A. I would -- I would say that whatever equation  
21 that was used accounted for the raw data that was  
22 provided.

23 Q. Okay. Now, on this -- this is interesting to me,  
24 and it's a matter of terminology. It says on the -- on  
25 February -- 18th of February, "...staff observed

1 sediment-laden storm water discharging offsite from  
2 culverts." See that?

3 A. Mm-hmm.

4 Q. Then it says, "Flow from one culvert was  
5 conservatively estimated at 2430 gallons." Now, is that  
6 a typo?

7 In other words, what I'm trying to get at --

8 A. There -- there was -- I'm sorry.

9 Q. It's all right. Let me explain.

10 I'm just trying to get the grammatics right here  
11 because when I read this, being out to the site I know  
12 there's numerous culverts, so is this flow from all the  
13 culverts, or was this focused in on one particular  
14 culvert that was discharging sediment-laden water?

15 A. I believe that the statement here says that there  
16 was sediment-laden storm water discharging offsite from  
17 culverts plural.

18 Q. Right. Got that.

19 A. There are dual culverts at that location, and  
20 there is a picture representation of that actually. I  
21 gave you guys color pictures.

22 Q. Now, is that -- is that the two culverts that  
23 cross the NEXRAD road?

24 A. Yes, sir.

25 THE REPORTER: Did you say Nexad Road?

1                   MR. O'LAUGHLIN: It's N -- capital N, capital E,  
2                   capital X, capital R, capital A, capital D. Test comes  
3                   later.

4                   Q.           Okay. Now, there are -- and you and I have both  
5                   been out to the site, so we're aware there's culverts  
6                   there, so what I'm trying to understand is now that we've  
7                   established there's multiple culverts, what I'm trying to  
8                   understand is the flow measurement only from one culvert,  
9                   or should -- in other words, is it an -- is 2430 gallons  
10                  an amalgamation of the two culverts, or is it looking at  
11                  one culvert or the other culvert didn't have flow? I'm  
12                  kind of confused.

13                  A.           Both culverts had flow.

14                  Q.           Okay.

15                  A.           But the computation I believe is just for one  
16                  culvert which would probably underline the,  
17                  quote/unquote, the "conservative estimate."

18                  Q.           Okay. Did -- now, did you -- when you went back  
19                  out to measure the pipes, did you measure just the one  
20                  pipe for which the calculation was made, or did you  
21                  measure both pipes?

22                  A.           Both pipes were measured.

23                  Q.           Okay. Do you know who or why the decision was  
24                  made to only put the calculation in for the one culvert  
25                  as opposed to the two culverts?

1 A. I believe that that was a management decision.

2 Q. Were you part of the discussion that lead to the  
3 decision as to why the management only wanted to include  
4 one culvert?

5 A. No.

6 Q. You had pictures going through both -- of water  
7 going through both culverts, didn't you?

8 MR. COUPE: Objection. Argumentative.

9 MR. O'LAUGHLIN: Q. You know -- oh, I didn't  
10 explain this to you. Your attorney's here, and he's  
11 doing an excellent job, so he can make objections off the  
12 record and --

13 MR. COUPE: Unless -- unless it's privileged,  
14 unless it's a matter of attorney/client privilege or  
15 attorney work product or something of that nature --

16 MR. O'LAUGHLIN: Right.

17 MR. COUPE: -- you still need to go ahead and  
18 answer the question. I'm just trying to preserve the  
19 record for the court reporter.

20 MR. O'LAUGHLIN: Right.

21 THE WITNESS: Would you repeat the question?

22 MR. O'LAUGHLIN: There you go. You're  
23 learning. Very good.

24 Q. Did you have pictures of water going through both  
25 of the culverts on February 18th, 2004?

1 A. No clear picture depicting both culverts on that  
2 inspection day, but there is one very clear picture of  
3 one of the two culverts discharging on that day. And  
4 then this -- this is where it's flowing in (indicating).  
5 Both the culverts are right here flowing into this  
6 ephemeral (indicating).

7 Q. Okay. So that's Page 10 of Attachment B of your  
8 February 18th, 2004 showing a Sample Number 2 being  
9 taken, and it has a water bottle above a culvert showing  
10 a discharge of water through the culvert.

11 A. I agree.

12 Q. Okay. Perfect. Thank you.

13 Well, since we're on this "Extent" page, I have  
14 some other questions about calculations. On -- and this  
15 is in reference to Exhibit 3 still, Page 12. You're  
16 still -- you're still on the same page.

17 In your staff report -- and we can refer back to  
18 your inspection which is Exhibit 1 -- you go through a  
19 very detailed analysis on Page 3 at the bottom of the  
20 page of coming up with the amount of discharge from the  
21 dewatering operations. Do you see that on Page 3, April  
22 7th, 2004? It's your last paragraph. It says, "To  
23 determine the flow quantity -- "

24 A. Thank you. Yes.

25 Q. " -- from the dewatering..."

1 A. Yes.

2 Q. So when you're out there, you go through this  
3 very detailed calculation and come up with an estimate of  
4 six gallons per minute. You see that down at the  
5 bottom?

6 A. Yes, I see the paragraph you're referring to.

7 Q. Okay. You see the six gallons per minute is a  
8 conservative estimate of the flow?

9 A. Correct.

10 Q. Okay. Now -- and you wrote that; correct?

11 A. Yes, I did.

12 Q. Okay. Now, in the Exhibit Number 3 under  
13 "Extent" it says, "Regional...staff conservatively  
14 estimated the flow from the dewatering operations at 16  
15 gallons per minute."

16 A. Mm-hmm.

17 Q. So how did we go from your site inspection report  
18 of six gallons per minute to an ACL of 16 gallons per  
19 minute?

20 A. While I was on site I did not have any flow  
21 meter. I simply had a sample jar, my watch and a camera,  
22 and I did my best to capture -- pardon me. I need to go  
23 back. I'm discussing the dewatering.

24 Q. Yes.

25 A. And that's -- that's what we're talking about

1 here, not the Number 1 culvert.

2 Q. That's correct. We're talking about dewatering.

3 A. Dewatering. Okay. I used what I had at the time

4 of the inspection and tried to get some sort of flow,

5 and I did that by using this one-half-gallon plastic

6 container with a small neck top and just stuck it in the

7 flow, and of course a lot of the flow wasn't going into

8 the -- into the jar, and I -- you know. With my hand

9 looking at the -- the sweep of my watch here, I did that

10 and tried to get a determination of how much was coming

11 out of the pipe. I wasn't capturing it all. It was very

12 nonscientific.

13 Q. Okay. So you did a nonscientific way of trying

14 to get a handle on the amount of flow coming out from the

15 dewatering operation. You write that in your report

16 that's your staff -- your site inspection report --

17 A. Mm-hmm.

18 Q. -- which is the basis of the notice of violation

19 that's then sent to Linkside Place. So when and why did

20 the number change from 16 to -- from six to 16 gpm?

21 A. When an actual engineer took a look at my

22 findings. They were able to apply engineering principles

23 to come up with a more representative flow --

24 Q. Okay.

25 A. -- calculation.

1 Q. And how did they -- what did they rely upon to  
2 come up with their calculation?

3 A. Once again, I -- I don't know.

4 Q. Is that included in your documents that you've  
5 produced, the flow calculations for the dewatering?

6 A. You have this also (indicating).

7 Q. Okay. I'm looking now at a document that at the  
8 top has "Linkside Place Flow Estimate." It's a two-page  
9 document. One is -- on the front is the amount of flow  
10 and duration and gallons times a dollar value, and the  
11 second page is the equations -- the Manning's equations  
12 for the culverts in the dewatering. Thanks. And you've  
13 produced that?

14 A. Yes, sir.

15 Q. Thank you.

16 And since we're on the same page of Exhibit 3,  
17 let's just finish it up. I'm going to probably ask you  
18 the questions. I know they'll sound redundant, but bear  
19 with me.

20 There is an estimate down on -- it says, "On 25th  
21 February 2004, the discharge flow of sediment-laden storm  
22 water from two culverts on the east side...was  
23 conservatively estimated at 9450 gallons." You see  
24 that?

25 A. Yes.



1 Q. Okay. And would your engineer have made that  
2 same estimate?

3 A. Yes.

4 Q. Okay. And I'm assuming the 2.5 hours is for the  
5 amount of time that you were there?

6 A. Yes.

7 Q. Okay. And the two culverts that we're talking  
8 about on the 25th of February are the same two culverts  
9 that go under the NEXRAD road to the east and then onto  
10 the golf course?

11 A. Yes.

12 Q. Okay.

13 A. And that would be depicted here on Page 9  
14 (indicating). These are the two culverts on the western  
15 side of the NEXRAD road (indicating), and then this would  
16 be on the eastern side (indicating) --

17 Q. Okay.

18 A. -- where the sample was taken.

19 Q. And those are Pages 9 and 10 of Attachment D,  
20 25th February 2004. Thank you.

21 A. Mm-hmm.

22 Q. Now let's go back -- sorry we got -- in these  
23 depositions you start one place and go someplace else  
24 which is -- we'll go back to Exhibit 1 again.

25 On Page 2 of your site inspection -- or Page 2,

1 but your February 18th, 2004 inspection. Would you --  
2 the first sentence of the second paragraph of your  
3 inspection says, "LP," which is Linkside Place, "runoff  
4 drains generally from the west to the east and  
5 southeast." You see that?

6 A. Yes, sir.

7 Q. Do you still agree with that statement?

8 A. As of 18 February 2004 those were the conditions  
9 I saw.

10 Q. Okay. And at the time that the violation  
11 occurred, that was the general direction of the drainage;  
12 correct --

13 A. Yes.

14 Q. -- off the property? I see.

15 You use a terminology here on the second -- the  
16 third sentence, "On the eastern boundary is an ephemeral  
17 drainage that bisects LP and the golf course." Do you --  
18 and what I'm focusing in on is "ephemeral drainage." Do  
19 you have a definition for ephemeral drainage?

20 A. Not at this time. Technically speaking one could  
21 be gotten. I have a general feel for what it means, and  
22 I believe that it means something that flows at least  
23 five times out of the year.

24 Q. Do you have an understanding as to whether  
25 ephemeral drainage has a discharge point or an ending

1 point or a headwaters? How do you define a beginning and  
2 ending point for ephemeral drainage?

3 A. Once again, with the topography.

4 Q. Okay.

5 A. The topography dictates.

6 Q. So would it be safe to say looking at the  
7 topography in the area around Linkside Place that much  
8 like the eastern slopes of the Sierras and the lowlands,  
9 when rainfall occurs water collects in certain areas,  
10 runs down the gullies or washes during the winters, and  
11 then like now during the summertime it's basically dry?

12 A. I think that's a fair representation.

13 Q. Okay. All right. Now, when you were looking at  
14 the -- when you wrote this site inspection report up on  
15 this ephemeral drain, did you have an understanding of  
16 where the ephemeral drainage that was on the eastern  
17 boundary discharged to?

18 A. Generally speaking, looking at the actual flows  
19 that were occurring at that time, you could see that it  
20 was flowing from the north to the south in between the  
21 Linkside Place, NEXRAD and the golf course.

22 Q. So let's -- let's get this straight. And I  
23 just -- we're going to -- my understanding from your  
24 report and reading your document here is that the water  
25 discharged through the -- let's focus on the two

1 culverts --

2 A. Yes.

3 Q. -- because this is where we're talking about this

4 one.

5 The water discharged through the two culverts

6 underneath the NEXRAD road and entered the golf course

7 property; correct?

8 A. Mm-hmm. Correct.

9 Q. Now, once it entered the golf course property,

10 where did that water go?

11 A. Traveled to the south --

12 Q. Okay.

13 A. -- on the western boundary of the golf course --

14 Q. Okay.

15 A. -- and then would travel to the south and east

16 underneath the Oroville Airport runway.

17 Q. Underneath. When you say underneath, do you mean

18 on the south side of the airport, or do you mean actually

19 underneath the ground and underneath the runway?

20 A. It's -- it's culvertized at the airport runway

21 and travels underneath and eventually then discharges to

22 the Feather River.

23 Q. Now, from where the culverts are located on the

24 airport to the Feather River, how far is it?

25 A. I don't know at this time.

1 Q. Okay. And in February of 2004 you could clearly  
2 see sediment-laden discharged water coming off the  
3 Linkside Place property; correct?

4 A. Correct.

5 Q. Okay. Did you ascertain or try to ascertain by  
6 either walking the water course, this ephemeral drain,  
7 where that water actually ended up?

8 A. I walked it for quite some time down the golf  
9 course property --

10 Q. Okay.

11 A. -- and I got to the end of the golf course  
12 property and then came back. And what I did after that  
13 is I looked at aerial photography and consulted with the  
14 Army Corps of Engineers.

15 Q. Okay. Let's talk then -- okay. So when you did  
16 your site inspection on February 18th, you walked the  
17 fence line all the way down to the southwestern corner of  
18 the golf course, at which point in time you lost track of  
19 this sediment-laden water?

20 A. No. It was still there.

21 Q. It was still there. You could still see it, but  
22 you stopped your walk, went back?

23 A. Yes.

24 Q. Okay. Then -- now, you said you consulted the  
25 Army Corps of Engineers, aerial photography.

1 A. Mm-hmm.

2 Q. Anything else?

3 A. I believe that I also spoke to City of Oroville  
4 officials.

5 Q. Okay. Okay. What did the -- what did the Army  
6 Corps of Engineers give you that helped you determine  
7 that the water that you had seen leaving Linkside Place  
8 went through where you've described it and ended up in  
9 the Feather River?

10 A. Yeah. The Army Corps's official had been working  
11 on the site for a Clean Water Act 404 permit and told me  
12 unequivocally that it discharged in that route to the  
13 Feather River, and therefore he was saying that it was a  
14 jurisdictional waterway.

15 Q. Okay. So who is this person at the Army Corps of  
16 Engineers?

17 A. Matthew Kelley.

18 Q. Okay. So Matthew -- Mr. Kelley, excuse me, tells  
19 you -- was this a telephone conversation or an in-person  
20 conversation?

21 A. I don't recall.

22 Q. Okay. Did --

23 A. I've spoke to the man many, many, many, many,  
24 many times on many, many, many, many different issues.

25 Q. Right. What -- other than a statement from him

1           that it unequivocally drains to the Feather River, did he  
2           provide you with any written documentation to support his  
3           verbal statement to you?

4           A.           I do not have any written documentation in my  
5           file. From what I understand, the Army Corps is still  
6           involved with this site, and they're still making  
7           determinations. They're still working on this site to  
8           this date.

9           Q.           Okay. But just so we're clear, do you -- did you  
10          receive any document from him supporting his statement  
11          that the water that left this property would discharge  
12          into the Feather River?

13          A.           Other than his verbal acknowledgment?

14          Q.           Right. Other than his verbal acknowledgment.

15          A.           No.

16          Q.           All right. Next you said you looked at aerial  
17          photography.

18          A.           Mm-hmm.

19          Q.           What aerial photography did you look at?

20          A.           I believe that there was some web sites where you  
21          can look at, you know, aerial photography, GIS maps.

22          Q.           Are those in your file?

23          A.           No.

24          Q.           Okay. Would you know what web sites those were?

25          A.           Off the top of my head at this time, no. I'd

1 have to go back and research.

2 Q. Are those in your notes do you think?

3 A. I'd have to look.

4 Q. Okay.

5 A. I'd have to look.

6 Q. And then finally you said you talked to the City  
7 of Oroville.

8 A. Mm-hmm.

9 Q. Who did you talk to at the city of Oroville?

10 A. I've spoke to Jo Sherman.

11 Q. And who is Mr. Sherman?

12 A. Mrs. Sherman, Jo, J-o --

13 Q. Oh, J-o. Sorry.

14 A. -- is I believe -- I want to say planning  
15 director, but I'm not for sure.

16 Q. In the Planning Department?

17 A. Yeah.

18 Q. Okay. And what did Mrs. Sherman say?

19 A. She confirmed that there was a conveyance that  
20 went underneath the city of airport -- City of Oroville  
21 Airport runway lanes.

22 Q. Anything else?

23 A. Not that I can recall right -- right now.

24 Q. Okay. Did she render any statement that that  
25 drainage would end up in the Feather River?



1 A. I based that upon the Army Corps representative's  
2 statement. That's his job.

3 Q. Okay. Now, since February 18th, 2004, other than  
4 the Army Corps of Engineer discussion that you had, the  
5 aerial photography of web sites that you visited and your  
6 discussions with the City of Oroville, Ms. Sherman, in  
7 the Planning Department, have you done anything else to  
8 ascertain whether or not property that discharged in the  
9 two culverts underneath the NEXRAD road entered the  
10 Feather River?

11 A. Rephrase that, please.

12 Q. Sure. What I want to know is in your report you  
13 say that the water discharges to the Feather River.

14 A. Mm-hmm.

15 Q. Correct?

16 A. Correct.

17 Q. Okay. And then in your site inspection to  
18 ascertain that it did in fact discharge to the Feather  
19 River, you followed it down the southwestern boundary on  
20 February 18th to the golf course where you still saw the  
21 sediment-laden discharge water. You stopped your walk at  
22 that time and went back, left the property, and then  
23 subsequently you've talked to the Army Corps of  
24 Engineers, Matthew Kelley, you've looked at aerial  
25 photography, and you've talked to the city.

1 A. Mm-hmm.

2 Q. Okay. Have you done anything else to ascertain  
3 if that water that left the property through the two  
4 culverts underneath the NEXRAD road actually enters the  
5 Feather River?

6 A. In the compilation -- in putting -- in putting  
7 the inspection report together, I felt that with the  
8 information that I had obtained, that was sufficient  
9 enough, especially with the Army Corps --

10 Q. No. I know that. I'm not -- don't -- don't take  
11 it as an insult to what you've done. Okay? I'm not  
12 doing that. I just want to know if you've done anything  
13 else. And if you have, you can just say, "Yes, I've done  
14 something else," or, "No, I haven't done anything else,"  
15 and we'll move on.

16 A. I haven't talked to any other people. I -- I  
17 was -- I was satisfied that the answer was true and  
18 correct.

19 Q. Okay.

20 A. I didn't feel that there was a need to get  
21 permission from the airport to go on their property and  
22 walk it.

23 MR. O'LAUGHLIN: Can we go off the record for a  
24 second? It's a good time to take a break anyway.

25 MR. COUPE: Yeah.

1 (Recess taken from 3:03 to 3:12 p.m.)

2 MR. O'LAUGHLIN: Q. Let's turn -- actually,

3 since I have the pictures in front of me --

4 MR. COUPE: Are we going back on the record?

5 MR. O'LAUGHLIN: Oh, yeah. I'm sorry. Back on

6 the record. Yeah. Sorry.

7 Q. Let's turn to -- you provided to me your report

8 from your site inspection with the attachments which have

9 the photographs on them, and let's turn to Attachment B,

10 Page 9 of February 18, 2004.

11 A. I'm there.

12 Q. Okay. Great. All right. The -- the top picture

13 depicts the NEXRAD facility and the gravel road leading

14 out to that; correct?

15 A. Correct. Looking --

16 Q. South?

17 A. -- from north to south. Yes.

18 Q. We're in agreement. Great.

19 And the LP development as you've noted in your

20 picture is on the right-hand side, and the Table Mountain

21 Golf Course is on the left-hand side; correct?

22 A. Correct.

23 Q. Now, the next picture is Picture Number 18

24 which is shooting in a direction now from south to north

25 along the same access road to the NEXRAD facility;

1 correct?

2 A. Correct.

3 Q. And on the south side of the picture is turbid  
4 sediment drainage water coming through two culverts  
5 underneath the NEXRAD facility?

6 A. I would say that that's on the east side of the  
7 NEXRAD road.

8 Q. I would agree with that. Okay.

9 And the two culverts that we had been talking  
10 about previously under the NEXRAD road are hidden in the  
11 grass, but they're underneath the road; correct?  
12 They're kind of hard to see?

13 A. They're obscured in this particular photo.

14 Q. Yeah. Right. But then on -- turn to Page 10 of  
15 Attachment B, February 18th, 2004 report. We have a very  
16 clear picture of one of those culverts discharging  
17 sediment-laden water; correct?

18 A. Correct.

19 Q. Okay. Now, these pictures are -- the pictures  
20 that have been depicted in Pictures 17, 18 and 19 are all  
21 north of the NEXRAD facility; correct?

22 A. Correct.

23 Q. Okay. Now, the next one -- the next photo is  
24 Picture Number 20, and it's a -- it's a culvert again,  
25 and it's a -- it says, "Sample of water immediately north

1 of the radar facility and south of the LP development."  
2 You see that?  
3 A. Yes.  
4 Q. Okay. So there's -- there is one culvert right  
5 before the NEXRAD facility; correct?  
6 A. Yes.  
7 Q. I mean, it's just like right there. Okay.  
8 Now, and you took a water sample from there;  
9 correct?  
10 A. Yes.  
11 Q. Okay. Now, moving on down the line --  
12 A. Picture 21 represents the distance between those  
13 culverts. I took the sample bottles out onto the road in  
14 the location adjacent to where the culverts were  
15 discharging and then walked that distance. It was 90 to  
16 a hundred feet between the two sample locations.  
17 Q. Okay. Okay. Now let's turn to Page 12 of  
18 Attachment B, and we have Picture Number 24. It says --  
19 Picture 24 says, "Sediment-laden storm water accumulating  
20 in grassy wetland on the west side of the NEXRAD Radar  
21 access road, south of the Linkside Place." So is all  
22 this -- this water hasn't crossed through NEXRAD road --  
23 through the NEXRAD culverts to get to the east side yet;  
24 correct?  
25 A. Yeah. It's pooled up on the western side of the

1 NEXRAD road.

2 Q. But it hasn't --

3 A. But, you know, as we stand here it was  
4 discharging.

5 Q. Right. And so this is the water that's on the  
6 west side though, and it hasn't gone through the  
7 culverts --

8 A. Culvert yet.

9 Q. -- yet.

10 So this eventually -- depending on the height of  
11 the water and the duration, some of this water or some  
12 quantity of this water would go through the culverts;  
13 correct?

14 A. Correct. If there was a subsequent storm --

15 Q. Okay.

16 A. -- of sufficient intensity, by displacement this  
17 would move as the new water came into this lower lying  
18 area.

19 Q. Okay. Did you ever measure or try to get a  
20 handle on the elevation of the invert of the culvert on  
21 the west side of the NEXRAD facilities to the ground  
22 surface elevation?

23 A. Re- -- rephrase that, please.

24 Q. Well, I'll give you an idea of what I'm trying to  
25 accomplish here first.

1           In other words, a culvert could be set two feet  
2           above the ground surface elevation, three feet. It might  
3           be right at the ground surface elevation. So I see a  
4           certain amount of ponding here which leads me to believe  
5           that given the size of the culvert that there was some  
6           elevation change between the invert of the culvert and  
7           the ground surface elevation.

8           A.           To the best --

9                       MR. COUPE: Is that a question?

10           MR. O'LAUGHLIN: Q.       Well, is there one? Is  
11           there a difference between the invert and the ground  
12           surface elevation?

13           A.           There is -- at this time you could not see the  
14           ground because of course it was inundated. When we came  
15           back on the 4th of November 2004 it was dry, and you can  
16           see in the photo documentation that the pipe is pretty  
17           much right at ground level.

18           Q.           Okay. I'm curious on Picture Number 23, did you  
19           ever figure out how water was bubbling up in the wetlands  
20           area?

21           A.           I took that picture because it was unique. I had  
22           never seen anything quite like that, and I saw it again  
23           on the 25 February inspection and took a picture of it a  
24           second time. What was the conveyance of this water?  
25           Could have been -- and this I'm simply guessing here. It

1           could have been some sort of animal that had built a  
2           tunnel or something, and, you know, water follows the  
3           path of least resistance, but it was definitely bubbling  
4           up.

5           Q.           Okay. Turn to Page 13 of Attachment B, 18  
6           February 2004. Both Picture 25 and 26 appear to depict  
7           looking in a northerly to southeasterly direction, the  
8           travel of water that has gone through the culverts next  
9           to the NEXRAD facility, and out toward and across the  
10          golf course or adjacent to the golf course; correct?

11          A.           Correct.

12          Q.           Okay. And those -- is that part of when you were  
13          walking that site to see where that water was traveling,  
14          you took those pictures; correct --

15          A.           Yeah.

16          Q.           -- that we talked about previously?

17          A.           Yes.

18          Q.           Great. On Page 14, Attachment B, Picture 27 and  
19          28, and those are pictures that you took of the  
20          dewatering that was occurring at the site?

21          A.           Correct.

22          Q.           And I see one of your tools is your measuring  
23          tape, and you're trying to measure the pipe and the  
24          amount of flow through the pipe?

25          A.           Not being an engineer, I thought it was a good



1 idea to get some sort of representation of how big that  
2 discharge was.

3 Q. Okay. Now, the discharge from the dewatering,  
4 let's talk about that a little bit.

5 You have it depicted on Page 14, the actual  
6 discharge coming out of the pipe. On Page -- the next  
7 page which is Attachment C, where -- my -- where was the  
8 dis- -- where was the pumping occurring and the discharge  
9 going to from the dewatering?

10 A. As you see on Attachment C, Sample Number --  
11 Sample Number 1 is on the northern side of the  
12 development adjacent to the northernmost cul-de-sac that  
13 was being used as a detention pond.

14 Q. We have a name for that. Isn't it Logan Court?

15 A. I believe it's Logan Court. It might be Zachary  
16 Court.

17 Q. Okay. One of them.

18 A. Okay. This whole area was totally inundated  
19 (indicating).

20 Q. When you say whole area can you --

21 A. Maybe I can --

22 Q. Do you have a picture?

23 A. Yeah.

24 Q. I see one on Page 6.

25 A. Yeah. That's -- that's actually the cul-de-sac,

1 and on the right-hand side of that photograph you can see  
2 the dewatering pump.

3 Q. Okay.

4 A. And then in Picture 12 it's a close-up of the  
5 dewatering pump.

6 Q. Now, is that -- this had been graded. Was  
7 asphalt actually in place on the site yet?

8 A. No.

9 Q. Okay. So was there a general depression where  
10 the street was where it had been graded for the street?

11 A. It was under water.

12 Q. Okay. So the -- would it be safe to say then  
13 that the whole Logan Court was under water and not the  
14 building pads?

15 A. At this time I don't think there was any building  
16 pads. This was rough grade.

17 Q. Okay.

18 A. And you could say that the entire court was  
19 inundated, full.

20 Q. 15 looks like a good picture.

21 A. Also, yeah, 15, Page 8. That's the discharge,  
22 and the ground all around here -- I mean, I was almost  
23 getting stuck just trying to negotiate in this area. It  
24 was totally saturated, totally muddy. There was -- the  
25 soil absorption capabilities had been exhausted.

1 Q. Okay. Now, this pipe -- I don't know. It looks  
2 like it runs for, what, 15 feet maybe, ten, 15 feet?  
3 A. It could be a 20-foot length of pipe. I don't  
4 know.  
5 Q. Okay. And either do I. All right. But it  
6 doesn't take the water very far is what I'm trying to get  
7 at.  
8 A. Mm-hmm.  
9 Q. Okay. So we're in agreement with that.  
10 So now let's go back to Exhibit C and which is a  
11 nice little plot map that you had for Attachment C.  
12 A. And that is an approximation.  
13 Q. Yeah. No. I got it. So Sample -- we're  
14 discharging water, and you -- Sample Number 1 you have a  
15 red arrow on Exhibit Number C. And is -- the sample was  
16 taken at the end of where that water was discharging;  
17 right?  
18 A. At the end of the pipe.  
19 Q. At the dewatering facility. Okay.  
20 Now, where -- once that water got over that,  
21 through the 20-foot pipe or ten-foot pipe or whatever the  
22 hell it was, where did it go?  
23 A. There was just a general surface flow in this  
24 direction (indicating) going towards the -- these are  
25 actually delineated wetlands right here (indicating).

1 Q. Okay.

2 A. And the pictures that you saw with the culverts,  
3 the culverts are right here (indicating), and this is the  
4 NEXRAD road here (indicating).

5 Q. The culverts are right here is where? Sample  
6 Number 2?

7 A. Sample Number 2. Exactly. Right.

8 Q. And Sample Number 3 is where the one culvert is  
9 nearest the NEXRAD facility?

10 A. Yes.

11 Q. So the water that was discharged from where you  
12 took Sample Number 1 through the discharge through the  
13 pipe comes across -- how does it get across the road?

14 A. How does it get across the road? Go ahead and  
15 rephrase that.

16 Q. Yeah. In other words, from my understanding is  
17 we still -- we still have the -- on this exhibit,  
18 Attachment C -- sorry. It's not Exhibit C. The dotted  
19 line is what I understand to be the road going to the  
20 NEXRAD facility.

21 A. I agree.

22 Q. Okay. Now, water is discharged off of I'll call  
23 it Logan Court, over the hump, and generally enters the  
24 property between Linkside Place and the NEXRAD road;  
25 correct?

1 A. I would agree with that.

2 Q. Okay. Now, does the water that was discharged  
3 from there end up in those two culverts that we talked  
4 about?

5 A. Yes.

6 Q. Oh, okay. So the water goes through the  
7 discharge pipe off the easternmost portion of Linkside  
8 Place, into a swale between the NEXRAD road, Linkside,  
9 discharges through the two culverts, and then goes  
10 through that water course that we had been talking about  
11 previously?

12 A. Yes.

13 MR. COUPE: What do you mean by talking about  
14 that water course previously? Let's specifically  
15 reference it.

16 MR. O'LAUGHLIN: Sure. That makes better sense.  
17 That would be Pictures Number 25 and 26 heading in a  
18 southeasterly direction along the golf course.

19 THE WITNESS: I'm standing on the south side of  
20 the NEXRAD facility in these two pictures.

21 MR. O'LAUGHLIN: Right.

22 THE WITNESS: And the clear water that you see  
23 is water that's coming from the undeveloped parcel to the  
24 south of the active construction site, Linkside Place  
25 Phase I.

1 MR. O'LAUGHLIN: Right.

2 THE WITNESS: Okay. The turbid water that you  
3 see was going through that dual culvert --

4 MR. O'LAUGHLIN: Right.

5 THE WITNESS: -- due east, and then kind of  
6 taking a swooping southerly turn around the eastern side  
7 of the NEXRAD facility --

8 MR. O'LAUGHLIN: Right.

9 THE WITNESS: -- and then going down, traveling  
10 from north to south in between the golf course and, you  
11 know, Linkside Place.

12 MR. O'LAUGHLIN: Right.

13 THE WITNESS: Okay.

14 MR. O'LAUGHLIN: Q. But that -- that water  
15 that's depicted in Pages 25 and 26 that is brown --

16 MR. COUPE: That picture is 25 and 26. Right?  
17 Pictures 25 and 26. I thought you said pages.

18 MR. O'LAUGHLIN: Oh, no. Pictures 25 and 26.  
19 Sorry if I did.

20 Q. Pictures 25 and 26 is the water that was pumped  
21 out of Logan Court and then went through the two culverts  
22 and out this way (indicating); correct?

23 A. Yes. That -- that would be the route of  
24 discharge.

25 Q. Okay.

1           A.           Just for further clarifications, it would come  
2           this way (indicating), surface flow. It was ponding here  
3           in these wetlands (indicating), discharging through the  
4           dual culverts, and then you have this as your ephemeral  
5           drainageway (indicating), and it went around the east  
6           side of the NEXRAD facility, and I'm standing in those  
7           pictures right about here (indicating).

8           Q.           Just on the south side of the NEXRAD facility?

9           A.           Exactly. It's a barbwire fence facility, so I  
10          was pretty much right up against it and trying to get,  
11          you know, a panoramic shot of the discharge,  
12          sediment-laden, and then the background water that was  
13          coming in off of this undeveloped property which is going  
14          to be Linkside Place Phase II and then III and then IV  
15          eventually.

16          Q.           Okay. Let's go back to -- actually, it's in this  
17          report as well. On the Page 2 of your site inspection,  
18          February 18th, 2004, the last sentence it says, "The  
19          northeast corner of LP drains to a roadside culvert that  
20          flows to the east under the NEXRAD Radar Facility access  
21          road...and discharges to the northwest corner of the golf  
22          course." You see that sentence?

23          A.           Yes.

24          Q.           All right. Do we have pictures of that depicting  
25          that?

1 A. In --

2 Q. It says -- you refer to Attachment A on the  
3 second -- on the next page, Scott. It says "drainage,"  
4 and then you say, "Refer to Attachment A."

5 A. I'm lost a little bit, Tim. Let's --

6 Q. Yeah. Keep reading. I don't want to cut you off  
7 because it goes there, and then you said, "Refer to  
8 Attachment A."

9 A. Oh, for the big picture.

10 Q. Yeah, for the pictures.

11 A. Okay. I'm at Attachment A.

12 Q. Okay. So the northeast corner you've -- you've  
13 depicted Logan Court.

14 A. Logan Court would be adjacent to the northwest  
15 corner.

16 Q. Okay. What -- where -- what water or where is  
17 water coming from? If I understood correctly, Logan  
18 Court was flooded on February 18th, so water is being  
19 pumped out of there and is going toward the golf course  
20 and the NEXRAD facility. What water is coming to drain  
21 across the -- it says flows east under the NEXRAD access  
22 road and discharges to the northwest corner of the golf  
23 course.

24 A. Okay. The way this facility was graded --

25 Q. Okay.



1           A.        -- the drainage generally went from west to  
2           east.  Okay?

3           Q.        Okay.

4           A.        But there is probably a -- let's see.  This is 18  
5           acres.  I would say maybe -- oh, I'm not really good with  
6           guesstimating, but there is a portion, a sliver of the  
7           northern side of this development that did discharge to  
8           the north.  One culvert went underneath the road and into  
9           this golf course wetland, and then there was three  
10          under-the-road culverts here, here and here (indicating)  
11          that discharged and took the water from this very  
12          northern part of the development.  The majority of the  
13          water went from west to east and eventually into these  
14          ephemeral drainages going in between the golf course and  
15          Linkside Place.  There was a percentage of the runoff  
16          that went all due north underneath Highway 162 and into  
17          the northwest corner of the golf course.

18          Q.        Okay.  Let's go back.  Okay.  I understand that  
19          now.

20          A.        Okay.

21          Q.        Okay.

22          A.        It's -- and it's really well depicted in the next  
23          inspection on 2-25, the 2-25 inspection where I actually  
24          sampled at that location.

25          Q.        Okay.  So and then that water crosses Highway 162

1 and goes where?

2 A. Into what I -- I just simply called pasture  
3 land.

4 Q. Okay. All right.

5 A. And then meanders through this pasture land going  
6 due north and west and eventually discharges into the  
7 tail race of the Thermalito Afterbay or the -- the arm  
8 that connects the forebay and the afterbay. I think it's  
9 called a tail race.

10 Q. Now, if I understand all this correctly -- well,  
11 maybe you can help me here. I'm getting confused. Let's  
12 go back to Page 12 under "Extent" which is the staff  
13 report. You have that?

14 MR. COUPE: Yeah.

15 THE WITNESS: Yes, sir.

16 MR. O'LAUGHLIN: Q. Okay. So there's a  
17 number. It says, "Regional Board staff calculated that  
18 approximately 20,040 gallons of polluted discharge  
19 occurred from the site from the dewatering operations and  
20 from one culvert on 18 February 2004 and from two  
21 culverts on 25 February 2004."

22 A. Yes.

23 Q. Correct?

24 A. Correct.

25 Q. Now, let -- and I -- we got to -- I'm not very

1 good with -- I'm an attorney, not an accountant. Okay?  
2 So with that disclaimer I want to walk through this and  
3 see how we do here.

4 I'm very clear in my mind now of how we got to  
5 the 8160 gallons of discharge and that depicted under  
6 "Extent." That's actually coming out of the discharge  
7 from the pipe on Logan Court.

8 A. From the dewatering operations.

9 Q. From the dewatering operation?

10 A. Yes.

11 Q. Okay. So we have 8160 gallons there. And then  
12 as you've handed to me, your engineer went back and based  
13 on the one culvert -- there's two culverts, but there was  
14 one culvert that actually had a picture and a sample.  
15 Your engineer did a sample -- a calculation to estimate  
16 that 2430 gallons went through that one culvert on  
17 February 18th, 2004; correct?

18 A. During the 1.5 hours that I was there.

19 Q. That you were there --

20 A. Correct.

21 Q. -- correct? Okay.

22 And now, based on our discussion, my  
23 understanding is the water that's discharged from the  
24 pipe, the dewatering operation, also goes through the  
25 culvert; correct?

1 A. Correct.

2 Q. Okay. So are we counting water twice?

3 A. Well, you have apples and oranges.

4 Q. Okay.

5 A. If I may --

6 Q. Yeah. Absolutely.

7 MR. COUPE: Go right ahead.

8 THE WITNESS: You're talking about a dewatering  
9 discharge, and you're talking about a storm water  
10 discharge. Dewatering discharge is allowable if BAT/BCT  
11 is employed.

12 In other words, you can't just dewater  
13 sediment-laden water. You have to treat it so that you  
14 do not exceed water quality objectives.

15 MR. O'LAUGHLIN: Right.

16 THE WITNESS: And that's -- that's in the  
17 permit. So they were not -- they were in violation of  
18 the permit because they didn't do filtration or, you  
19 know, chemical addition to the dewatering discharge.  
20 That's one violation of the permit, and the gallonage  
21 associated with that discharge.

22 The other discharge is from the site not  
23 being stabilized and having sediment-laden water  
24 generated and that water discharging out through those  
25 culverts.

1                   MR. O'LAUGHLIN: Q.        But let me ask a  
2                   hypothetical question here just so -- let's say  
3                   hypothetically that in your mind that no water ever left  
4                   the property except the dewatering discharge from Logan  
5                   Court. Okay? And the calculation was 8160 gallons of  
6                   discharged water from the court. And let's say that the  
7                   calculation going through the drain was 2430 gallons, and  
8                   we knew that all that 2430 gallons was from Logan Court.  
9                   Is that two separate incidents in your mind or one?

10                  A.        Well, there was discharge coming --

11                  Q.        No. I know. But hypothetically. Just assume  
12                  that no discharge is coming from anywhere else.

13                         MR. COUPE: Well, feel free to explain your  
14                         answer.

15                         MR. O'LAUGHLIN: Q.        Yes, but just bear in  
16                         mind no discharge is coming from anywhere else. We have  
17                         a hermetically-sealed property. The only discharge is  
18                         coming from the dewatering at Logan Court. Okay? In  
19                         your mind is that one violation or two when it went  
20                         through that pipe?

21                  A.        Hypothetically there had been no rain events for  
22                  a month, the place was bone dry?

23                  Q.        Yeah. Water is being discharged off Logan  
24                  Court. It's coming through the ponded area and through  
25                  the culvert, and we know that all of that water is coming

1 from Logan Court. Is that one violation or two  
2 violations in your mind?

3 A. There's a violation of the Construction Storm  
4 Water Permit for discharging dewater and not utilizing  
5 BAT/BCT. There is a violation.

6 Q. Okay. I agree with that one.

7 A. Okay. And that --

8 Q. But since you've --

9 A. The discharge of the dewatering operation since  
10 there was petroleum hydrocarbon leaking at the site is  
11 discharge materials other than storm water, not permitted  
12 by an NPDES permit. That's a second violation.

13 Q. Okay. I want you to focus on the hypothetical.  
14 Okay? Don't focus on the facts. Focus on the  
15 hypothetical. The hypothetical is nothing else is coming  
16 off that property except through the discharge from Logan  
17 Court, and that leaves the property and runs through the  
18 culvert. Is that one violation or two violations in your  
19 mind?

20 A. In my mind it's two violations.

21 Q. Okay. And what's the second? The first one I  
22 got, discharge of water. What's the second one?

23 A. Well, it's discharge of dewater --

24 Q. Dewatering; right?

25 A. -- not meeting BAT/BCT, and then the discharge of

1 sediment-laden water offsite --

2 Q. But you could --

3 A. -- that causes or threatens to cause pollution,  
4 contamination or nuisance.

5 Q. Can you dewater on your site under a SWPPP and  
6 still be -- and be on site when you dewater and still be  
7 in compliance with your SWPPP?

8 In other words, let's say they had taken all the  
9 water on Logan Court and pumped it onto Zachary Court,  
10 and none of the water left the site. Would that be a  
11 violation? Would that be a discharge?

12 A. It's a dewatering discharge.

13 Q. Okay. Where is the -- where -- where did the  
14 water leave the property? If it went from Logan -- no.  
15 No. No.

16 Just assume this: It never -- it gets pumped  
17 from Logan Court to Zachary Court, never leaves the  
18 property. Where's the discharge?

19 A. It may be discharging into ground water, and  
20 that's a water of the state also.

21 THE REPORTER: That's a water of what?

22 THE WITNESS: Of the state. Ground water and  
23 surface water are both waters of the state.

24 MR. O'LAUGHLIN: Q. So for a lay person not  
25 looking at this in a legal fashion, it would be safe to

1 say that water that had been discharged from Logan Court  
2 dewatering was also being measured in the water going  
3 through the pipe on April -- on February 18th?

4 A. I would say at some point those waters  
5 commingled.

6 Q. Correct. And it went through the pipe.

7 A. But I would also say that there was massive  
8 amounts of water that was generated away from the  
9 dewatering operations, and that was from the 18 acres  
10 that was not properly controlled with -- with erosion  
11 control BMPs, so we're making muddy water over here  
12 without dewatering operations, but we're also making  
13 muddy water over here with dewatering operations. Apple,  
14 orange. Two violations.

15 Q. Okay. How much -- you said, you know, there's 18  
16 acres, and you said massive amounts of sediment-laden  
17 water. Have you done an analysis of how much water that  
18 would have been or could be?

19 A. Yeah, sure did. This is in your packet. What --  
20 what we do, Tim, when we have a site -- and I'll use the  
21 City of Redding sports park as an example. It was  
22 basically 50 acres of denuded area. You have a storm  
23 that drops X amount of precipitation. You have what's  
24 called a runoff coefficient, and the runoff coefficient  
25 basically is a number -- a fraction of a number that is



1 representative of how much is going to run off that site  
2 after infiltration and saturation of the ground that's  
3 there.

4 A runoff coefficient for a single-family  
5 resident -- and this once again is published  
6 information -- is .3 to .5, and what they're saying there  
7 is 70 percent of the water to 50 percent of the water's  
8 going to infiltrate and not go offsite, so if you have a  
9 .3 coefficient, 30 percent of that water's not going to  
10 infiltrate, and it's going to run off. This is called  
11 a rational method represented by  $Q$  equals  $C$  times  $I$   
12 times  $A$ .

13 And for the Linkside Place site we had rainfall  
14 events on the -- on the 16th of February all three of the  
15 rain gauges that I looked at had measurable amounts of  
16 rain, two of them over 1.4 inches. On the 17th of  
17 February all three rain gauges had at least 1.37 inches  
18 of rain. Two of the gauges had two inches or greater.  
19 Big storms. On the 18th when I went out to the site the  
20 Oroville Dam had .92 on that date, and the Oroville Fish  
21 Hatchery had 1.48 inches of rain.

22 Using 1.48 inches and the rational method of  
23 figuring out how much runoff you're going to have, taking  
24 into the factors of the runoff coefficient, rainfall  
25 intensity, and then correlating that to Porter-Cologne

1           where Porter-Cologne allows us to charge \$10 per gallon  
2           for every gallon over a thousand gallons discharged but  
3           not cleaned up --

4                       MR. COUPE: I think it's a thousand.

5                       THE WITNESS: Thousand gallons. Right. Penalty  
6           is calculated by subtracting a thousand gallons from  
7           runoff and multiplying the result by \$10. And you have  
8           this stuff. That would have been a potential fine for  
9           1.4 -- or 1.5 inch rain event.

10                      MR. O'LAUGHLIN: Q.       Okay. When you were out  
11           there on the 18th -- and rainfall is measured in 24-hour  
12           periods, so to the best of your recollection had -- on  
13           that day had most of the rainfall already occurred by the  
14           time you were out at the site at 2:30, or did it rain  
15           later on that evening, or do you know?

16           A.        I don't know if it rained later on that evening,  
17           but while I was there it was not raining, but there was  
18           runoff which suggested to me that it had rained prior to  
19           my arrival there.

20           Q.        So in this calculation it estimates that 224,265  
21           gallons of runoff would have occurred with a rainfall  
22           event of 1.5 inches?

23           A.        And a runoff coefficient of .3 --

24           Q.        Right.

25           A.        -- which is as generous as you can get. Where

1 did I put that? This is out of the Erosion and Sediment  
2 Control Handbook. It's a document that, you know, most  
3 everybody uses that's in with storm water.

4 Q. Right.

5 A. This is the equation  $Q$  equals  $C, I, A$  and then is  
6 the table of runoff coefficients, and here residential  
7 single-family areas have a runoff coefficient of .3 to  
8 .5, and using the most generous -- what's the word I  
9 want -- conservative number, that would be the fine that  
10 could be levied to the discharger for a 1.5 inch storm, a  
11 runoff coefficient of .3.

12 Q. Okay. I'm a little bit perplexed though because  
13 you're out there on the 18th --

14 A. Mm-hmm.

15 Q. -- and we got one area of the site where we can  
16 account for maybe 8160 gallons of discharge for an  
17 eight-hour period.

18 A. Mm-hmm.

19 Q. And then we got another area that we can account  
20 for 2430 gallons.

21 A. Mm hmm.

22 Q. So we come up with 10,000 gallons ballpark.

23 A. Mm-hmm.

24 Q. Agree?

25 A. I would say that we only looked at one culvert of

1 the many culverts that are on the site, so those  
2 gallonages are incredibly conservative numbers.

3 Q. Well, let me ask it a different way. If -- when  
4 you were out there focusing on the discharges from the  
5 property, were you focusing on the major discharges from  
6 the property or the minor discharges from the property on  
7 the 18th of February?

8 A. On the 18th? I simply was on the eastern side of  
9 the development.

10 Q. Okay. Now, if you had -- if you were out on the  
11 site and had noticed something where there was a major  
12 discharge occurring on the west side, your site  
13 inspection would have picked that up; correct?

14 A. Yeah. And because of the topography and the  
15 gradual slope, there was really no appreciable discharge  
16 of the west side because that was kind of the highest  
17 part of the facility.

18 Q. Right. Because like your report stated, it  
19 slopes from west to the east --

20 A. Correct.

21 Q. -- generally?

22 A. Yeah.

23 Q. Okay. So I have in my notes that we have the  
24 dewatering that's occurring. We have the two culverts  
25 underneath the NEXRAD facility. We have the one culvert

1 going from the northwestern corner of the -- no.  
2 Sorry. The northeastern corner of the property to the  
3 northwestern corner of the golf course underneath the  
4 NEXRAD facility, one culvert. What other discharges were  
5 occurring on the property that you -- that we could talk  
6 about in an appreciable manner?  
7 A. On the 18th?  
8 Q. On the 18th.  
9 A. I wouldn't be able to talk about any other  
10 because I was totally focused on that side of the  
11 development at that time. It was my first time at that  
12 facility, so basically that was where the biggest problem  
13 was. That's where I put my efforts. I was there for an  
14 hour-and-a-half.  
15 Q. Right. And that's exactly what I was getting  
16 at. You went to the -- you went and saw the big  
17 problem. You focused in on it. You documented it;  
18 correct?  
19 A. Yeah.  
20 Q. Okay. Well, here's where I'm kind of perplexed  
21 is if the equation's right that 220,000 gallons of runoff  
22 occurs from the property, we can account for about 8000  
23 for an eight-hour period, even if you had 24 hours you  
24 still don't get to the number.  
25 A. Well, we -- we didn't even -- we didn't -- no.

1 We didn't use that because we wanted to say with  
2 certainty I was there for an hour-and-a-half. We're  
3 looking only at this one culvert instead of the two  
4 culverts.

5 Q. Oh, okay. All right. Perfect. Okay.

6 So now I want to get back to one more thing on  
7 "Extent." On -- to get to the 20,000 gallons, 20,040  
8 gallons that are the two culverts on Linkside on the  
9 25th, does that include any dewatering, or is that just  
10 solely runoff from the property?

11 A. Solely runoff from the property. I -- I  
12 requested that Mr. Montgomery cease the dewatering  
13 operations because he was doing it in such a manner not  
14 in compliance with the permit.

15 Q. Okay. Why don't we take another quick break.  
16 Let me run through my notes real quick and take another  
17 look at a couple documents. We'll take five or ten, and  
18 I think we're pretty close to being done. Not probably  
19 more than ten or 15 more minutes.

20 A. Okay.

21 Q. Perfect. Thank you for copying this. This had  
22 been very helpful.

23 A. Oh, gosh darn. I'm a public servant. That's  
24 what I'm supposed to do.

25 MR. COUPE: That's right.

1 (Recess taken from 3:53 to 4:04 p.m.)

2 MR. O'LAUGHLIN: All right. Back on the  
3 record.

4 THE WITNESS: Okay.

5 MR. O'LAUGHLIN: I have a couple just quick  
6 follow-up questions.

7 THE WITNESS: Yes, sir.

8 MR. O'LAUGHLIN: Q. On the Item Number 17,  
9 this one that's been marked Exhibit Number 2, I  
10 believe --

11 A. Okay. Gotcha. Okay.

12 Q. -- on Page 5 --

13 A. Yes, sir.

14 Q. -- Item Number 13.

15 A. Lucky Number 13.

16 Q. "Regional Board staff spent a total of 210 hours  
17 investigating this incident and preparing the enforcement  
18 items. The total cost for staff time is \$16,800, based  
19 on the rate of \$80 per hour including overhead costs."  
20 You see that?

21 A. I do.

22 Q. Okay. Now, the 210 hours, what day did that  
23 start and what day did that end?

24 MR. COUPE: Don't speculate.

25 THE WITNESS: Yeah. Yeah. That was a line item

1 put in by my supervisor.

2 MR. O'LAUGHLIN: Okay.

3 THE WITNESS: And I can only speculate.

4 MR. O'LAUGHLIN: No, don't speculate.

5 MR. COUPE: Don't speculate.

6 MR. O'LAUGHLIN: I have some follow-up  
7 questions.

8 Q. You went out to the site the first time on 2-18?

9 A. That's correct.

10 Q. Okay.

11 A. 2-18-04.

12 Q. All right. Did you make a special trip from  
13 Redding to Oroville specifically for that site  
14 inspection?

15 A. I had received a citizen complaint.

16 Q. Right.

17 A. But I did other things that day also.

18 Q. Okay. Can you give me a rough ballpark of how  
19 much time you think you would have allocated that day to  
20 a site inspection for Linkside Place?

21 A. Well, I believe that the extent says I was there  
22 for 1.5 hours.

23 Q. Okay. All right. And then your supervisor came  
24 out to the property on 2-23?

25 A. There is two individuals from the board that came



1 out on 2-23.

2 Q. Right. And then on 2-25 you came out again?

3 A. Mm-hmm.

4 Q. For 2.5 hours?

5 A. Mm-hmm.

6 Q. All right. So at that point in time had the  
7 in-site -- on-site site inspections for the property been  
8 completed for this ACL?

9 A. For this ACL?

10 Q. This ACL. Don't confuse it with other things  
11 that you did, but for this ACL.

12 A. I made a physical inspection on the 20th of  
13 April, meeting with the discharger's agent, Bert Garlund,  
14 the environmental consultant, Hanover, and E-Ticket  
15 Construction.

16 Q. Okay.

17 A. And we walked that site. I didn't write up a  
18 formal inspection report.

19 Q. So what? About four hours?

20 A. Travel time plus, yeah.

21 Q. I'll give you eight. Okay. How long did it take  
22 you to write your site inspection report?

23 A. A lot of hours.

24 Q. Okay.

25 A. As you can see --

1 Q. Yes.

2 A. -- with 30 or so pages of picture documentation,  
3 I had to go through the pictures; I had to do addition of  
4 graphics to those pictures. I'm not exactly computer  
5 savvy, you know. I learned as I went. This was, you  
6 know, a real big inspection. It had a lot of findings to  
7 it. It took me until I believe the 7th of April to  
8 finally get it out, but there was other time spent  
9 speaking to the dis- -- or I never got to speak to the  
10 discharger -- speaking to the discharger's  
11 representative, speaking to E-Ticket Construction. I  
12 have numerous records of communication, and preparing  
13 supplemental educational material for those folks to help  
14 them try to be compliant in the permit and to understand  
15 what the violations were that I saw on those two  
16 inspection dates that comprise the majority of this  
17 inspection report.

18 Q. Okay. Here's what I'm trying to get at --

19 MR. COUPE: Yeah. How --

20 MR. O'LAUGHLIN: Q. I'll just be blunt about  
21 this. Okay? The violations occur 18th through the 25th  
22 of February. You get your report out April 7th of 2004.

23 A. Mm-hmm.

24 Q. So that's five weeks, ballparkish five or six  
25 weeks give or take.

1 A. Mm-hmm.

2 Q. Okay. It says 210 hours. Well, if a workweek is  
3 40 hours a workweek, then basically that's five work  
4 weeks of somebody doing nothing but this.

5 MR. COUPE: Objection. I -- I don't understand  
6 how this is relevant or reasonably calculated to lead to  
7 the discovery of admissible evidence.

8 MR. O'LAUGHLIN: Well, what I'm trying to do --

9 MR. COUPE: This has got nothing to do with the  
10 ACL calculation amount.

11 MR. O'LAUGHLIN: Yes, it does because it's  
12 included within the fine. The 16,800 is recoverable  
13 under the ACL.

14 MR. COUPE: Well, the 16,800 my understanding is  
15 not part of the 100,000. Is that -- is that a component  
16 of the 100,000?

17 THE WITNESS: No, it's not.

18 MR. COUPE: Yeah. So I don't understand how it  
19 would be relevant.

20 MR. O'LAUGHLIN: Okay. So --

21 MR. COUPE: The \$16,800 has absolutely  
22 nothing to do -- it's not a component of the \$100,000  
23 ACL penalty. That's why I made the objection.

24 MR. O'LAUGHLIN: Well, maybe I should ask it a  
25 different way.

1                   MR. COUPE: Let's go off the record for a  
2 minute.

3                   MR. O'LAUGHLIN: Okay. Let me ask it a  
4 different way because it says --

5                   MR. PETRUZZELLI: Are we on the record?

6                   MR. COUPE: Are we off the record?

7                   MR. O'LAUGHLIN: Yeah. Go off the record.

8                   (Discussion off the record.)

9                   MR. O'LAUGHLIN: Let's go on the record for  
10 just a second. I have one follow-up question.

11 Q.           As far as you know in the 210 hours investigating  
12 and preparing the enforcement items, is that strictly for  
13 the ACL, or were the other follow-up site inspections and  
14 work that was done on the site by staff included in the  
15 210?

16 A.           The 210 is reflective of the time spent by all  
17 staff members that were there at the site, staff.

18                   MR. COUPE: Well again, I'm sorry. I have to  
19 raise an objection again. How do you know the basis for  
20 what the 210 hours were? You told me earlier that this  
21 was based on a number that your supervisor had come up  
22 with, so I don't want you to speculate as to where you  
23 think that --

24                   MR. O'LAUGHLIN: Yeah. I don't either.

25                   MR. COUPE: -- those 210 hours came from.

1                   MR. O'LAUGHLIN: I asked him if he knew -- if  
2                   you know if there was a differentiation made between the  
3                   hours spent preparing for the ACL versus the other work  
4                   that was follow-up.

5                   THE WITNESS: Oh.

6                   MR. COUPE: Fair enough. Okay.

7                   MR. O'LAUGHLIN: That's what I'm asking. If you  
8                   know.

9                   THE WITNESS: I do not know.

10                  MR. O'LAUGHLIN: Great. Perfect. Good answer.  
11                  See how easy that is?

12                  Q.           On Item Number 14 --

13                  A.           Yes, sir.

14                  Q.           -- on Exhibit Number 2, Page 5, do you know who  
15                  performed the analysis for this paragraph?

16                  A.           We as line staff go out, do inspections, gather  
17                  findings, do some research, and when I say research I'm  
18                  talking specifically about 14 here, and you would look at  
19                  other ACLs that had similar conditions associated with  
20                  them such as flat topography, high clay content soils,  
21                  and you would look at what number was used per acre that  
22                  would -- that would have gotten the site stabilized  
23                  either before -- either early season which would be, you  
24                  know, well before the oncoming of the rainy season, such  
25                  as putting out hydroseed and getting a vegetative growth

1 going --

2 Q. Yeah, but let me go back to my question.

3 Who prepared it? Who did the calculations for  
4 that section? That's all I want to know. Did you do  
5 that, or did somebody in management do that?

6 A. Somebody in management did that.

7 Q. Perfect.

8 A. I do have support documentation in here that will  
9 give you a better understanding of how these numbers come  
10 about, and that's been provided for you.

11 Q. I saw those. Thank you.

12 What -- does the -- do you as a staff member --  
13 does the Regional Board have rules, policies or  
14 regulations regarding discharges of water and enforcement  
15 actions and how ACLs are supposed to be written up,  
16 guidelines for you to follow so when you're drafting  
17 documents for site inspections or notices of violations?  
18 Is it -- do you have like a manual?

19 MR. COUPE: Can we go off the record for a  
20 minute?

21 MR. O'LAUGHLIN: Yeah. That's fine with me.

22 (Discussion off the record.)

23 MR. O'LAUGHLIN: Back on the record.

24 Q. So is there a manual or a guideline or a policy  
25 that you look at when you're drafting notices of

1 violations or ACLs?

2 A. Yes.

3 Q. And what is that?

4 A. It's the Administrative Enforcement Policy

5 Manual.

6 Q. Okay. And you have a copy of that at your

7 office; correct?

8 A. In -- in the Regional Board office, normally the

9 supervisors have a copy of that document.

10 Q. Okay. Do you have a copy of that document?

11 A. I personally do not have a copy at my desk of

12 that document. I would go to my supervisor as we were

13 working a draft document, and she would help me along.

14 Q. Okay. And who was your supervisor?

15 A. Mary Randall.

16 Q. When -- did you ask Mary how many violations of

17 discharge could occur on a particular day when you

18 arrived at the number 12?

19 A. Through my inspection findings and reviewing the

20 permit, it was obvious what the violations of the permit

21 were.

22 Q. Okay.

23 A. There was eight on the first day and four on

24 the -- on the second inspection date.

25 Q. Okay. If -- let's say hypothetically you had one

1 body of water that caused four violations, and there was  
2 only one discharge from the property. Think of like a  
3 spigot, but four different things. One was he dewatered  
4 it, sediment-laden. Name two others. All went through  
5 the same spigot and left the property and discharged onto  
6 an adjacent property. Would that be one violation in  
7 your mind or four --

8 MR. COUPE: Objection.

9 MR. O'LAUGHLIN: Q. -- separate violations?

10 MR. COUPE: Objection. I -- it's speculation.  
11 I don't understand the factual basis. Are we dealing in  
12 specific facts that are --

13 MR. O'LAUGHLIN: Yeah. I'm trying to find out  
14 what is the basis for the 12 violations. I'm trying to  
15 understand how --

16 MR. COUPE: Okay. Great.

17 MR. O'LAUGHLIN: -- violations come up to --

18 MR. COUPE: Okay. Great. Then let's  
19 focus on that instead of asking, quote/unquote,  
20 "hypotheticals."

21 THE WITNESS: I included a copy of the permit in  
22 your package --

23 MR. O'LAUGHLIN: Mm-hmm.

24 THE WITNESS: -- for reference. The permit has  
25 discharge prohibitions, receiving water limitations,



1 special provisions for construction activity. It also  
2 has the Section A, Storm Water Pollution Prevention Plan,  
3 and Section B, the monitoring and reporting -- pardon  
4 me -- Monitoring Program and Reporting Requirements,  
5 MPRR.

6 MR. O'LAUGHLIN: Q. Do you know if  
7 violations under -- that are set forth in the Water  
8 Quality Enforcement Policy are \$10,000 a day or \$10,000  
9 for violation?

10 MR. COUPE: Objection. I think it calls for a  
11 legal conclusion, but you can go ahead and answer the  
12 question, Scott.

13 THE WITNESS: It's my understanding that if  
14 someone violates a condition of the permit then that  
15 violation can be subject to a \$10,000 fine. If the  
16 discharger violates multiple sections of the permit on  
17 the same day, each of those are subject to a \$10,000 fine  
18 maximum.

19 MR. O'LAUGHLIN: Q. Do you based on your  
20 reading of your Water Quality Enforcement Policy -- is it  
21 your understanding that a violation of the permit is  
22 premised on the condition that water has to be discharged  
23 from the property?

24 A. Water does not have to be discharged from the  
25 property to be in violation of the permit.

1 Q. So you could charge somebody 10,000 -- under your  
2 understanding, the Regional Board could charge somebody  
3 \$10,000 for a violation of their permit even if water was  
4 not discharged from the property?

5 MR. COUPE: Objection. Calls for a legal  
6 conclusion. Go ahead.

7 THE WITNESS: Rephrase -- rephrase, please.

8 MR. O'LAUGHLIN: Q. Sure. Is it your  
9 understanding then that if water is not discharged from  
10 the property and there was a violation of the permit,  
11 that the Central Valley Regional Water Quality Control  
12 Board could still levy a \$10,000 fine?

13 A. Yes. There's a threatened -- a threat of  
14 pollution.

15 MR. O'LAUGHLIN: Okay. Perfect. We're done.  
16 You're going to notify the witness, make arrangements for  
17 him to come in and have -- and read his deposition, and  
18 that should be sometime next Monday or Tuesday.

19 MR. COUPE: Okay.

20 MR. O'LAUGHLIN: We'll get an expedited copy  
21 out.

22 MR. COUPE: Could I get cc'd on that just so  
23 that he can call me when he gets that?

24 THE REPORTER: Yes.

25 MR. O'LAUGHLIN: Perfect. And then we're done.

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MR. COUPE: Great.

(Deposition was concluded at 4:22 p.m.)

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PENALTY OF PERJURY

I, the undersigned, hereby certify that I have read the foregoing deposition, that I know the contents thereof, and I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2005.

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SCOTT A. ZAITZ

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CERTIFICATE OF REPORTER

I, STACY A. SHORT, a Certified Shorthand Reporter, licensed by the State of California, License No. 7446, being empowered to administer oaths and affirmations pursuant to Section 2093(b) of the Code of Civil Procedure, do hereby certify:

That the witness in the foregoing deposition, SCOTT A. ZAITZ, was present at the time and place specified and was by me sworn to testify to the truth, the whole truth, and nothing but the truth;

That said proceeding was taken before me in shorthand writing, and was thereafter transcribed under my direction by computer-aided transcription;

That the foregoing transcript constitutes a full, true, and accurate record of the proceedings which took place;

That I am not of counsel or attorney for any of the parties hereto, or in any way interested in the event of this cause, and that I am not related to any of the parties hereto.

IN WITNESS WHEREOF, I have hereunto subscribed my signature on this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
STACY A. SHORT

