

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

In the Matter of: )  
 )  
 )  
PUBLIC HEARING TO DETERMINE )  
WHETHER TO ADOPT A DRAFT CEASE )  
AND DESIST ORDER AGAINST )  
CALIFORNIA AMERICAN WATER. )  
 )  
~~~~~ )

JOE SERNA JR./CALEPA BUILDING  
1001 I STREET  
COASTAL HEARING ROOM  
SACRAMENTO, CALIFORNIA

HEARING PHASE 2, VOLUME II  
THURSDAY, JULY 24, 2008  
9:04 A.M.

LINDA KAY RIGEL, CSR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13196

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

CO-HEARING OFFICERS

Mr. Arthur Baggett

Dr. Gary Wolff

STAFF

Ms. Jane Farwell, Environmental Scientist

Mr. Larry Lindsay, Chief, Hearings Unit, Division of  
Water Rights

Mr. Ernest Mona, Water Resource Control Engineer

Mr. Paul Murphey, Engineering Geologist

Mr. Buck Taylor, Staff Counsel

PROSECUTION TEAM:

Division of Water Rights, Office of Enforcement

BY: Mr. Reed Sato  
Ms. Mayumi Okamoto

1001 I Street  
Sacramento, CA 95814

CALIFORNIA AMERICAN WATER COMPANY:

Diepenbrock, Harrison

BY: Mr. Jon D. Rubin  
Ms. Valerie Kincaid

400 Capitol Mall, Suite 1800  
Sacramento, CA 95814

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT:

De Lay & Laredo

BY: Mr. David C. Laredo  
Ms. Heidi A. Quinn

606 Forest Avenue  
Pacific Grove, CA 93950

APPEARANCES continued

CITY OF CARMEL-BY-THE-SEA, CITY OF SEASIDE, SEASIDE  
BASIN WATERMASTER:

Perry & Freeman  
BY: Mr. Donald G. Freeman  
San Carlos at 8th Avenue  
P.O. BOX 805  
Carmel-by-the-Sea, CA 93921

CITY OF SEASIDE and SEASIDE BASIN WATERMASTER:

Brownstein, Hyatt, Farber, Schreck  
BY: Mr. Michael Fife  
Ms. Jocelyn Pease  
21 East Carrillo Street  
Santa Barbara, CA 93101-2706

CITY OF SAND CITY:

Mr. James Heisinger, City Attorney  
Delores and 6th Streets  
P.O. Box 5427  
Carmel, CA 93921

PEBBLE BEACH COMPANY:

Fenton & Keller  
BY: Mr. Thomas H. Jamison  
2801 Monterey Salinas Highway  
P.O. Box 791  
Monterey, CA 93942

MONTEREY COUNTY HOSPITALITY ASSOCIATION:

Noland, Hamerly, Etienne, Hoss  
BY: Mr. Lloyd W. Lowrey, Jr.  
333 Salinas Street  
Salinas, CA 93901

APPEARANCES continued

PLANNING AND CONSERVATION LEAGUE:

Mr. Jonas Minton  
1107 9th Street, Suite 360  
Sacramento, CA 95814

SIERRA CLUB (VENTANA CHAPTER)

California Environmental Law Project  
BY: Mr. Laurens H. Silver  
P.O. Box 667  
Mill Valley, CA 94942

CARMEL RIVER STEELHEAD ASSOCIATION:

Law Offices of Michael Jackson  
BY: Mr. Michael B. Jackson  
P.O. Box 207  
Quincy, CA 95971

PUBLIC TRUST ALLIANCE:

Mr. Michael Warburton  
Ms. Patricia Nelson  
Resource Renewal Institute  
Room 290, Building D  
Fort Mason Center  
San Francisco, CA 94123

PUBLIC UTILITIES COMMISSION, DIVISION OF RATEPAYER  
ADVOCATES:

Mr. Max Gomberg  
505 Van Ness Avenue  
4th Floor, Room 4101  
San Francisco, CA 94102

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

ALSO PRESENT

Mr. Ralph Rubio, Mayor, City of Seaside

Mr. Ray Corpuz, City Manager, City of Seaside

Mr. David Pendergrass, Mayor, City of Sand City

Mr. Steve Matarazzo, City Administrator, City of Sand City

Mr. George Riley, Resident of Monterey

Mr. Mark Stilwell, Pebble Beach Company

Mr. Michael Miccum, Pebble Beach Company

Dr. Roy Thomas, Carmel River Steelhead Association

Mr. Brian LeNeve, Resident of Monterey Peninsula

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## 1 P R O C E E D I N G S

2 --o0o--

3 CO-HEARING OFFICER BAGGETT: Good morning.  
4 Apologize for the lateness here. We are also joined by  
5 Jane Farwell, our biologist, for this proceeding today,  
6 the environmental side.

7 With that, we are back with the cities, as I  
8 recall, and welcome.

9 MR. FIFE: I think it's appropriate we simply  
10 start out this way --

11 CO-HEARING OFFICER BAGGETT: We should do the  
12 oath of office -- not oath of office -- the oath.  
13 Anybody planning to testify today who didn't take the  
14 oath yesterday, please stand and raise your hand.

15 (Potential witnesses complying)

16 CO-HEARING OFFICER BAGGETT: Do you swear to  
17 tell the truth in these proceedings?

18 THE WITNESSES (collectively): I do.

19 CO-HEARING OFFICER BAGGETT: Thank you.

20 Mr. Fife?

21 MR. FIFE: There was a little bit of  
22 discussion yesterday that this panel was a little bit  
23 out of order because of the sequence with people's  
24 schedules, but it actually turns out to be completely  
25 appropriate given the discussion that we left off with

1 at the end of yesterday that this panel goes on right  
2 now; and I am going to harken back to a couple of  
3 things that were said at the end of the day yesterday  
4 because I think they put this panel into the  
5 appropriate context.

6 One of the points that was raised very late in  
7 the day yesterday is that this proceeding has a strange  
8 nature because it's -- the sentiment went that it's  
9 really just an issue between the Prosecution Team and  
10 Cal Am, and a lot of sort of interveners are being  
11 allowed to be in this case.

12 And respectfully, but strongly, we disagree  
13 with that. And the purpose of this panel, I hope, is  
14 to change that view.

15 As we heard from Mr. Kasower in his testimony  
16 yesterday, the solution on the Monterey Peninsula is  
17 not a matter of Cal Am going out and doing a project or  
18 fixing the problem. The only solution that is going to  
19 work on the Monterey Peninsula is a regional solution  
20 that involves everybody. And that means these people  
21 and the people they represent.

22 Now, with the admonitions of the Hearing  
23 Officers, we have made our testimony very short, and  
24 each of these people is only going to testify for a  
25 couple of minutes. But we don't want you to be led

1 astray by the shortness of their testimony. It's very  
2 important testimony.

3 One of the panels that's mixed in with all  
4 this is from the Seaside Basin Watermaster. And now  
5 part of that testimony is to familiarize you with the  
6 dynamics of the Seaside Basin and the issues that it  
7 faces with seawater intrusion.

8 But a big focus of the testimony from the  
9 Watermaster today is going to be that what the  
10 Watermaster represents and one of the things that's  
11 grown out of the Watermaster process is regional  
12 cooperation.

13 And it's an example of the way that all of the  
14 stakeholders on the Peninsula, these people, have  
15 started to work together, are successfully working  
16 together to bring about the projects that are going to  
17 solve this problem.

18 The other issue that was touched on yesterday  
19 was the Public Trust Doctrine and the role that plays  
20 in this hearing. This Board has a duty to protect  
21 Public Trust resources. Nobody argues with that.

22 But the Board also has a duty to protect the  
23 public interest. And where those two things, the  
24 Public Trust Doctrine and the public interest, don't  
25 necessarily match, this Board has a duty to balance.

1           Both of these issues, the issue of the  
2 regional cooperation that you heard about yesterday  
3 through the REPOG group, which you're going to hear  
4 about today through the Watermaster, and the balancing  
5 that this Board has to do, these form the backdrop for  
6 this testimony.

7           There are processes in place. They are moving  
8 forward. And out of all this, the people who are  
9 involved, the real parties in interest, are curious.  
10 And they are curious about why we are doing this, and  
11 why we're doing this now? With everything in place,  
12 everything that's happening, why are we talking about  
13 these issues now rather than just letting the solutions  
14 that are in process play themselves out?

15           In particular, the City of Seaside is asking  
16 this question, and that's going to be the focus of  
17 where my direct testimony is, and then you're going to  
18 hear from a couple of the other attorneys.

19           But the City of Seaside has participated in  
20 all these efforts. It's invested heavily in a regional  
21 solution. And the reason is that the City of Seaside  
22 is not one of the affluent cities on the Peninsula.

23           The City of Seaside is a blue collar city.  
24 It's where, really, the workers on the Peninsula live.  
25 It was heavily impacted by the closure of Fort Ord a

1 decade ago. Its population dropped. It had very hard  
2 economic times.

3           Recently, it has begun to recover from that.  
4 It depends on the water that's been allocated to it  
5 through the Monterey Peninsula Water Management  
6 District's water allocation program in order to fuel  
7 this economic growth and this economic development.

8           It is on the verge of being able to really  
9 take strong steps forward, recover from the hardship  
10 that was caused by the closure of Fort Ord, and make  
11 use of its small increment. And really, the testimony  
12 we're going to present is that this is 56 acre feet for  
13 the City of Seaside that we're talking about.

14           It's about to make use of this. It's got  
15 projects in the pipeline. And if it cannot make use of  
16 that water, economic impact on the city is going to be  
17 tremendous. And we'll offer testimony on all these  
18 things.

19           So this is not a matter of Cal Am versus the  
20 Prosecution Team. This hearing, the issues associated  
21 with the CDO, are much more nuanced than that.

22           Whatever the Board decides to do with the CDO,  
23 balance -- and balance is the public interest versus  
24 the public trust -- the balance cannot favor a small  
25 unquantified benefit to Public Trust resources versus a

1 devastating impact on a lower income community  
2 struggling to recover.

3 Thank you.

4 MR. FREEMAN: Good morning. My name is Don  
5 Freeman speaking on behalf of the City of Carmel as  
6 well as other panel members up here again today.

7 Just to follow on what you've heard so far, I  
8 think it is important in terms of the balance, but I  
9 think what we heard in all the testimony so far to this  
10 point in time, which you're going to hear again this  
11 afternoon and this morning, deals with the frustration,  
12 the frustration of the order which says we'd like you  
13 to get out of the river, the frustration with Cal Am  
14 saying we'd like to get out of the river, but what is  
15 the project people would like to have us do in order to  
16 replace the water from the river?

17 The reality of it is the frustration stands  
18 with the public process. That's our process. It's a  
19 long process. It's not where it's a business decision.  
20 We have a lot of interests out there we have to relate  
21 to, all of the jurisdictions, all the different  
22 agencies that are involved, also all of the residents  
23 that are involved.

24 So when you look at each of the people that  
25 are about to testify from each of the cities this

1 morning, don't look at them as just individuals or just  
2 the mayor or just a councilmember from a jurisdiction.

3           Look at the entire population of the city  
4 itself or the jurisdiction itself. Because any  
5 decision this Board makes is going to affect the daily  
6 lives of each and every person that lives on the  
7 Monterey Peninsula or visits the Monterey Peninsula.

8           You heard testimony yesterday in terms of the  
9 water that Cal Am is taking out of the river and the  
10 diversions, and you heard round numbers. You heard 300  
11 acre feet for Sand City. You heard a number that, in  
12 terms of an ASR project, 920 feet, but that that was  
13 constant throughout this process when in fact it does  
14 fluctuate.

15           The really of it is, when you hear the  
16 testimony today, you're going to hear Seaside say it's  
17 not just 56 feet, acre feet of water, that we have.  
18 It's 56.4. We're getting down to decimal points.

19           Next you're going to hear from Carmel. Carmel  
20 is going to tell you they have water left: 3.151.  
21 That's how we're measuring water on the Monterey  
22 Peninsula.

23           One of the cities not present here today is  
24 Del Rey Oaks. Del Rey Oaks has no water left to it at  
25 this point in time. They didn't have the resources to

1 send someone up here and participate in this hearing  
2 today.

3           The economic -- if that water is, by the  
4 effect of your decision -- and I feel certain you're  
5 not going to have a moratorium placed on the District,  
6 but the -- or the Peninsula -- but the reality of it is  
7 it's a de facto moratorium. We already have that in  
8 place now. So all you would be doing is compounding  
9 something we already have in place.

10           Once the water issues for each of those  
11 jurisdictions, there is no more water available until a  
12 new water source comes online.

13           There is a total for all of the jurisdictions  
14 of 119 acre feet of water still remaining unused in the  
15 Cal Am service area on the Monterey Peninsula. That  
16 water was allocated by the Monterey Peninsula Water  
17 Management District prior to 95-10. Once that water is  
18 gone, it's gone forever.

19           If a moratorium or the effect of any decision  
20 you have places a moratorium or forces the Monterey  
21 Peninsula Water Management District to place a  
22 moratorium on the Cal Am service area and water  
23 rationing, that's going to affect the economic  
24 viability of each one of the jurisdictions. You'll  
25 hear testimony about that today.



1           The net effect of that is, if it affects their  
2 economic viability, then who is left to pay for any of  
3 the projects in order to solve the long-term water  
4 supply problem on the Monterey Peninsula, including the  
5 Carmel River problems?

6           You're going to hear later today -- not from  
7 this panel but from other people that will be  
8 testifying -- as to what potential solutions you may  
9 wish to consider, setting aside the draft cease and  
10 desist order, because there are a number of other  
11 options that wouldn't be as draconian in effect yet  
12 would have the ability of getting people together and  
13 keeping us focused on the main mission.

14           That main mission is to certainly get out of  
15 the river but at the same time provide for a reliable  
16 water supply source for the Monterey Peninsula in order  
17 to protect its economic viability as well as its health  
18 and safety needs.

19           So I think that it's very important when  
20 you're looking at the people and you hear them today,  
21 it's not just these individuals here, but they  
22 represent a tremendous number of individuals. And the  
23 effect on their quality of life is going to be  
24 devastating unless you do that balancing act which was  
25 talked about earlier today.

1           Thank you.

2           MR. HEISINGER: Good morning, my name is James  
3 Heisinger. I'm the city attorney for Sand City, and  
4 I'll be helping out with some of the direct this  
5 morning.

6           The panel that sits before you today is  
7 composed of mayors and city administrators from  
8 Peninsula cities, some of the Peninsula cities.

9           Collectively, these people represent -- and  
10 their counsel -- represent more than 200 years of  
11 public service. They are used to hard decisions,  
12 decisions that require balancing, and they understand  
13 where you sit.

14           These public officials are representing, as  
15 the comment has already been made, the real parties in  
16 interest in this case. The real parties in interest in  
17 this case are the people who live and work on the  
18 Monterey Peninsula and the millions of people who visit  
19 the Monterey Peninsula every year.

20           Like you, this panel, the people on this  
21 panel, are charged with the duty of protecting the  
22 health safety and general welfare of citizens. The  
23 purpose of their testimony today is to show you what is  
24 necessary to maintain the health, safety, and welfare  
25 of the citizens and visitors to the Monterey Peninsula.

1 Thank you.

2 MR. FIFE: So in accordance with the order we  
3 set out yesterday, we're going to start with the City  
4 of Seaside, and just for continuity we'll go to Seaside  
5 Basin Watermaster then march through the rest.

6 CO-HEARING OFFICER BAGGETT: Great.

7 MR. FIFE: And I assume since this is all one  
8 panel, we'll save cross-examination for the completion  
9 of the entire panel.

10 CO-HEARING OFFICER BAGGETT: That would be my  
11 preference. More efficient.

12 RALPH RUBIO

13 Called by CITY OF SEASIDE, SEASIDE BASIN WATERMASTER,  
14 CITY OF CARMEL-BY-THE-SEA, and CITY OF SAND CITY

15 DIRECT EXAMINATION BY MR. FIFE

16 MR. FIFE: Mayor Rubio, good morning. Could  
17 you please state and spell your name for the record.

18 MR. RUBIO: My name is Ralph Rubio, R-a-l-p-h  
19 R-u-b-i-o.

20 MR. FIFE: And you earlier took the oath for  
21 this hearing?

22 MR. RUBIO: Yes, I did.

23 MR. FIFE: In front of you is a document  
24 labeled Seaside Exhibit No. 1. You are you familiar  
25 with this document?

1           MR. RUBIO: Yes, I am. I drafted, oversaw its  
2 editing, and executed it on July 9, 2008.

3           MR. FIFE: So Exhibit 1 is a copy your  
4 testimony?

5           MR. RUBIO: Yes.

6           MR. FIFE: What is your role with the City of  
7 Seaside?

8           MR. RUBIO: I am the mayor of the City of  
9 Seaside.

10          MR. FIFE: How long have you been the mayor?

11          MR. RUBIO: Four years.

12          MR. FIFE: Have you served the city in any  
13 other capacity other than mayor?

14          MR. RUBIO: Yes, prior to being mayor I was a  
15 councilmember for four years, total of eight years of  
16 service to the city.

17          MR. FIFE: And how long have you been a  
18 resident of the city?

19          MR. RUBIO: 57 years.

20          MR. FIFE: And so based on your public service  
21 with the city and the length of your residency, do you  
22 feel you have personal knowledge of the history of the  
23 city, the demographics and economic influences on the  
24 city and future plans for the city?

25          MR. RUBIO: Yes, I would say I have an

1 intimate knowledge of all those factors. My parents  
2 live in Seaside. My brothers and sisters live in  
3 Seaside, my children and my grandchildren, so I  
4 consider myself a major stakeholder in the future of  
5 Seaside.

6 MR. FIFE: So can you tell us about the  
7 demographic composition of the City of Seaside as it  
8 relates to water issues and the subjects of this  
9 hearing?

10 MR. RUBIO: The City of Seaside is a very  
11 ethnically diverse city, culturally diverse, and I  
12 would argue probably the most diverse in the state of  
13 California.

14 The impacts on a working class city of the  
15 ability to find new revenues and provide public  
16 services to the city are huge. The city has always  
17 been a working class community. It was incorporated in  
18 1954 and has since that time struggled to find its  
19 economic legs, so to speak, in the Peninsula.

20 And with the closure of Fort Ord, we lost  
21 population, we lost tax revenues, and the city went  
22 through very, very bad economic times. We again went  
23 through those bad economic times in the early 2000s  
24 with budget deficits in the 1.5 million area.

25 And we've worked out of that. Right now, we

1 have a balanced budget, but it's balanced by less than  
2 \$100,000. So we are always looking for ways to enhance  
3 our revenues.

4 And we have a very robust economic development  
5 plan for our city, revitalization of our downtown,  
6 in-fill which is very dependent on this 56.4 acre feet  
7 of water. We're very precise in our calculations; it's  
8 that important to us.

9 We've been very judicious in the use of the  
10 water allocated to us over the time because we wanted  
11 to make sure we got the most impact of revenue lines  
12 for every drop of water we're allocated.

13 This allocation we have left is all we have  
14 left. We have dedicated two commercial developments so  
15 we can enhance that revenue stream and provide services  
16 for our citizens.

17 If we were not able to use that water, we  
18 would be, I think, unfairly punished as a result of  
19 being judicious of our use of water. While all the  
20 other cities have mostly used up their allocations,  
21 we've been planning for ours very, very wisely.

22 We do strategic planning of our city every six  
23 months. We review our programs, and we are very  
24 cognizant of which elements of our city planning will  
25 provide that revenue, and we'll apply the water to

1 those elements.

2 Some of them are in exclusive negotiating  
3 agreements already. Some of them are working towards  
4 development disposition agreements, and others are in  
5 the planning process. So there's a very robust plan.

6 We also have the redevelopment on Fort Ord  
7 which is very important to us. But we have to make  
8 sure that our city is balanced, that we don't send  
9 everything outside to the newer areas and maintain our  
10 vital core. So those are the very important things for  
11 the City of Seaside.

12 MR. FIFE: You talked about the planning and  
13 the allocation of this water. Are the projects that  
14 you have slated for development through the use of this  
15 56.4 acre feet, are those already projects that are in  
16 the pipeline for development?

17 MR. RUBIO: Yes, they are. We have a West  
18 Broadway Urban Village concept plan working through.  
19 We have some interest from developers. We have  
20 different projects in different phases of approval  
21 process. So yes, they are in the pipeline and, of  
22 course, they are contingent upon the viability of  
23 water.

24 MR. FIFE: And when you talk about the revenue  
25 that's going to be lost to the city if you can't

1 complete these projects, what are some of the uses that  
2 that revenue would be put to?

3 MR. RUBIO: Well, that revenue would be used  
4 for, of course number one, public safety. As we  
5 received our lands from Fort Ord, our city grew by  
6 300 percent. We do not have the police and fire to  
7 cover that. We still have the same staffing we had  
8 30 years ago in terms of police and fire. That has to  
9 be expanded to cover that new area.

10 We have a whole new beat that has to be  
11 generated. That means policemen, police cars,  
12 sergeants, and all the support staff that go along with  
13 that. That includes the fire service that has to be  
14 instituted out there. And there is a large wild lands  
15 portion of that that has to be maintained and protected  
16 by the City.

17 We have our streets and roads that have to be  
18 built, that have to be maintained, our public works.  
19 We have our parks and rec. As we expand, we need to  
20 provide parks and recreation for our folks for quality  
21 of life.

22 We also have to make sure that we are able to  
23 provide the affordable housing and senior housing for  
24 our citizens.

25 All those things are dependent on new



1 revenues. We have a stable budget at this point for  
2 this finite point in time; but as things move forward,  
3 we need to have enhanced revenues to accomplish those  
4 goals.

5 MR. FIFE: Thank you.

6 DAVID ZEHNDER

7 Called by CITY OF SEASIDE, SEASIDE BASIN WATERMASTER,  
8 CITY OF CARMEL-BY-THE-SEA, and CITY OF SAND CITY

9 DIRECT EXAMINATION BY MR. FIFE

10 MR. FIFE: Mr. Zehnder.

11 MR. ZEHNDER: Yes.

12 MR. FIFE: Are you ready.

13 MR. ZEHNDER: I am.

14 MR. FIFE: Could you please state and spell  
15 your name for the record?

16 MR. ZEHNDER: David Zehnder, D-a-v-i-d,  
17 Z-e-h-n-d-e-r.

18 MR. FIFE: And did you take the oath for this  
19 hearing?

20 MR. ZEHNDER: Yes, I did.

21 MR. FIFE: And in front of you is a copy of  
22 City of Seaside Exhibit number 7. Are you familiar  
23 with this document?

24 MR. ZEHNDER: Yes, I am.

25 MR. FIFE: And what is it?

1           MR. ZEHNDER: This is a declaration in support  
2 of modification to the CDO.

3           MR. FIFE: And did you prepare this document?

4           MR. ZEHNDER: Yes, with support of staff.

5           MR. FIFE: Also in front of you is a copy of  
6 Seaside Exhibit number 8. Are you familiar with this  
7 document?

8           MR. ZEHNDER: Yes, I am.

9           MR. FIFE: And what is it?

10          MR. ZEHNDER: This is my c.v. outlining my  
11 professional experience.

12          MR. FIFE: And finally, in front of you is a  
13 copy of Seaside Exhibit 9. Are you familiar with this  
14 document?

15          MR. ZEHNDER: Yes, I am.

16          MR. FIFE: And what is it?

17          MR. ZEHNDER: This is a report prepared by EPS  
18 looking at the fiscal and economic impacts of the  
19 proposed CDO.

20          MR. FIFE: So this report was prepared by you  
21 or under your direction?

22          MR. ZEHNDER: Yes. This report was prepared  
23 by me and my staff. I oversaw all aspects of its  
24 preparation.

25          MR. FIFE: Could you summarize your

1 educational and professional background as it's  
2 relevant to your testimony in this hearing?

3 MR. ZEHNDER: Certainly. Educational  
4 background, dual BAs in economics and geography from  
5 San Francisco State University. Master's degree in  
6 city and regional planning from UC Berkeley with  
7 concentration in regional economics.

8 I am a managing principal of EPS, a company  
9 with 70 professionals and three offices, Berkeley,  
10 Sacramento, Denver. EPS specializes in urban  
11 economics, so we routinely conduct market studies,  
12 perform feasibility, redevelopment analysis, and public  
13 finance.

14 MR. FIFE: What were you asked to do for this  
15 hearing?

16 MR. ZEHNDER: We were asked to evaluate the  
17 prospective development in the pipeline for the City of  
18 Seaside and to evaluate the potential fiscal and  
19 economic impacts associated with the loss of this  
20 development capacity.

21 MR. FIFE: And are the methodologies and  
22 conclusions of your analysis summarized in your  
23 declaration and in your report?

24 MR. ZEHNDER: Yes, they are.

25 MR. FIFE: Could you summarize your

1 methodologies?

2 MR. ZEHNDER: Sure. Two primary  
3 methodologies.

4 First, on the fiscal side we conducted an  
5 analysis of the proposed development slated for the  
6 city, and we looked at the impact that the loss of that  
7 development capacity would have on the city's general  
8 fund revenues.

9 The second analysis is what we call an  
10 economic impact analysis, looking at the total output  
11 and employment associated with this proposed  
12 development.

13 MR. FIFE: And what conclusions did you arrive  
14 at as a result of this analysis?

15 MR. ZEHNDER: Overall, we looked at proposed  
16 housing units of 334 units and nearly 500,000 square  
17 feet of commercial development that is currently in the  
18 proposal stages for the city. This includes both  
19 projects that are approved by City as well projects  
20 that have been proposed.

21 And in that latter category, we have the West  
22 Broadway Specific Plan which is a very important piece  
23 of the city's redevelopment, revitalization efforts.

24 Looking at the fiscal analysis, we determined  
25 that the loss of this development would result in

1 annual general funds reduction in revenues of  
2 2.7 million per year once this development is built.

3 Looking at the economic impact analysis, we  
4 separated that into two components. First is the  
5 construction component, and the other is permanent jobs  
6 and economic activity.

7 Under the construction side, we're looking at  
8 a total impact of \$200 million in 1600, approximately,  
9 construction jobs that would be lost. Under the  
10 permanent economic activity, we're looking at 900 jobs  
11 and \$115 million in total output associated with this,  
12 with these projects.

13 I would also add that, in addition to these  
14 quantifiable impacts, we would like to express that a  
15 delay in this project would have other land use impacts  
16 to the city including failure to satisfy the  
17 state-imposed housing element, failure to achieve  
18 targeted new affordable housing, and overall failure to  
19 achieve the redevelopment goals set forth by the city's  
20 general fund which is critical to revitalizing the city  
21 in terms of economic social, cultural, and recreational  
22 attributes.

23 As germane to the provision of low and  
24 moderate housing in the city of Seaside, one impact  
25 here is redevelopment tax increment. And in

1 particular, the housing set-aside portion of that tax  
2 increment amounts to over half a million per year that  
3 could be applied to the development of affordable  
4 housing in the city, so we considered that to be a  
5 significant impact.

6 MR. FIFE: Thank you.

7 RAY CORPUZ

8 Called by CITY OF SEASIDE, SEASIDE BASIN WATERMASTER,  
9 CITY OF CARMEL-BY-THE-SEA, and CITY OF SAND CITY

10 DIRECT EXAMINATION BY MR. FIFE

11 MR. FIFE: Mr. Corpuz, could you state and  
12 spell your name please.

13 MR. CORPUZ: My name is Ray Corpuz R-a-y,  
14 C-o-r-p-u-z.

15 MR. FIFE: And have you taken the oath for  
16 hearing?

17 MR. CORPUZ: Yes, I have.

18 MR. FIFE: In front of you is a copy of City  
19 of Seaside Exhibit No. 4. Are you familiar with this  
20 document?

21 MR. CORPUZ: Yes, I'm familiar with this  
22 document. It's a declaration on behalf of myself, and  
23 I've reviewed it and overseen it.

24 MR. FIFE: And do you have any corrections to  
25 this document?

1           MR. CORPUZ: On the first page, where it  
2 refers to potable water service and percentage is left  
3 blank, that should be 89 percent.

4           MR. FIFE: And just for the record, we did  
5 correct this typographical error and distributed a copy  
6 of the corrected testimony, I think on Tuesday.

7           What is your position with the City of  
8 Seaside?

9           MR. CORPUZ: I am the city manager for the  
10 City of Seaside.

11          MR. FIFE: And how long have you held this  
12 position?

13          MR. CORPUZ: Approximately three years.

14          MR. FIFE: Have you held any similar positions  
15 in other cities?

16          MR. CORPUZ: Yes. I have been the city  
17 manager for Tacoma, Washington which has a population  
18 close to 200,000 for 13 and a half years and spent  
19 36 years in public service at the local level.

20          MR. FIFE: So based on this experience, do you  
21 have you direct knowledge of development patterns  
22 within cities, and specifically within the city of  
23 Seaside?

24          MR. CORPUZ: Yes. I believe I have extensive  
25 experience and knowledge about patterns of

1 redevelopment and economic development.

2 MR. FIFE: In earlier testimony, we heard from  
3 Mayor Rubio a little bit about the impact of the loss  
4 of the 56.4 acre feet under the Monterey Peninsula  
5 Water Management District's water allocation program.  
6 Can you provide more detail about the loss of this  
7 water to the city?

8 MR. CORPUZ: Yes. Those -- that water, as the  
9 mayor pointed out, is allocated or designated for  
10 several projects we have either approved pending or  
11 future projects we designated as priorities; and one  
12 that was mentioned was the Specific Plan for West  
13 Broadway Village which is also a green sustainable  
14 project involving over 400 housing units as well as  
15 retail/commercial to support a pedestrian-friendly,  
16 transit-oriented development.

17 This is a major issue for the city since it is  
18 the core of the city's heart.

19 We also have a variety of commercial and  
20 retail projects and residential projects that would be  
21 taking this water to accrue to the overall benefit of  
22 the city, its quality of life, and health and safety.

23 So those projects, we believe, are very  
24 important. We think that in addition to that, once you  
25 are not able to sustain the current economic platform



1 or basis, it's very difficult to attract new  
2 opportunity.

3 As we've seen in the past, if a city could not  
4 be a good partner, provide basic community services,  
5 basic city services, and also not be able to provide  
6 redevelopment or economic services and opportunities,  
7 that city will die. It will not fulfill its economic  
8 potential. It will be a burden on the citizens of that  
9 community, that region of the state. So it's very  
10 important these projects go forward.

11 MR. FIFE: Now we also heard from Mr. Zehnder  
12 about the economic costs if these projects don't go  
13 forward. Can you tell us in more detail how the loss  
14 of revenue will impact the city and city services?

15 MR. CORPUZ: Mr. Zehnder identified 2.7 in  
16 lost annual general fund revenue, as we know. We're  
17 basically a full-service city. We don't provide some  
18 utilities, like gas and electric.

19 But we provide all the basic city services  
20 including police, law enforcement, fire and emergency  
21 services, specific programs to help our elderly,  
22 specific programs for recreation for our youth, the  
23 maintenance of our streets and parks, and the overall  
24 benefit of code enforcement in our city.

25 So we have many services that rely on our

1 general fund. This is the safety net, health and  
2 safety net, of our community. Without that, we cannot  
3 ensure that we are protecting people's property, their  
4 lives, or ensuring the quality of life that is good for  
5 the overall community and would benefit not only us but  
6 the region.

7 MR. FIFE: Thank you.

8 That concludes the testimony from the City of  
9 Seaside, and we'll now move on to the testimony for the  
10 Seaside Basin Watermaster.

11 Mr. Rubio, back to you. In front of you is a  
12 copy of Watermaster Exhibit No. 1. Are you familiar  
13 with this?

14 MR. RUBIO: Yes, I am.

15 MR. FIFE: Is it a true and correct copy of  
16 your testimony in this hearing?

17 MR. RUBIO: It is.

18 MR. FIFE: What is your role with regard to  
19 Seaside Basin Watermaster?

20 MR. RUBIO: I sit on the Board of Directors as  
21 the representative for the City of Seaside and am  
22 currently the Chair of the Board.

23 MR. FIFE: What is the Watermaster?

24 MR. RUBIO: The Watermaster is an  
25 implementation tool of the court, a board that oversees

1 the adjudication and the implementation of the court's  
2 orders.

3           It is -- the Basin is adjudicated and  
4 currently in overdraft condition. We also are under  
5 the judge's order to provide new waters within three  
6 years of his judgment or experience a 10 percent  
7 reduction in our water allocations.

8           The effect of these reductions will be to  
9 reduce the water supply available to the Basin to the  
10 producers; and of the standard production usage, Cal Am  
11 is the largest, fully 89 percent of that production.

12           So a 10 percent reduction would be mostly  
13 borne by Cal Am. That would occur every year  
14 thereafter for three years, ending up with 30 percent  
15 reduction.

16           Now one of the things that this adjudication  
17 does is monitor seawater intrusion. The Watermaster is  
18 tasked with monitoring, putting in as well as  
19 implementing a monitoring program. And should such a  
20 seawater intrusion be detected, the reduction would be  
21 implemented immediately.

22           MR. FIFE: Now you mentioned the development  
23 of new supplies. Can you tell us how the Watermaster  
24 and the adjudication generally are relevant to the  
25 development of new supplies on the Peninsula?

1           MR. RUBIO: Well, it is the first time that  
2 the cities each have taken a very active role in  
3 looking for those solutions. The adjudication of the  
4 Basin made very clear what those steps are going to  
5 need to be.

6           Over time, water has been a very contentious  
7 issue along the Peninsula, and this is the time the  
8 cities have taken it in their grasp and not relying on  
9 agencies out of their jurisdictions or multifaceted  
10 agencies to take care of our water problem.

11           So we've taken the lead in this effort. And I  
12 think, in my view, it is an important first step for  
13 cities to learn to work together in the water world to  
14 achieve those solutions.

15           We also do participate in all forums as  
16 Watermaster. We do understand the technicalities and  
17 the implementation process for the projects that are  
18 being proposed and have studied them very closely. So  
19 it's a very good forum for the cities to work  
20 cooperatively toward water solutions.

21           MR. FIFE: Thank you.

22                           DEWEY EVANS

23           Called by CITY OF SEASIDE, SEASIDE BASIN WATERMASTER,  
24           CITY OF CARMEL-BY-THE-SEA, and CITY OF SAND CITY

25                           DIRECT EXAMINATION BY MR. FIFE

1 MR. FIFE: Mr. Dewey Evans?

2 MR. EVANS: Yes, my name is Dewey Evans,  
3 D-e-w-e-y, E-v-a-n-s.

4 MR. FIFE: Mr. Evans, have you taken the oath  
5 for this hearing?

6 MR. EVANS: Yes, I have.

7 MR. FIFE: And what is your occupation?

8 MR. EVANS: I am currently the Chief Executive  
9 Officer of the Seaside Groundwater Basin.

10 MR. FIFE: And what are your duties in  
11 connection with being the Chief Executive Officer?

12 MR. EVANS: Well, actually Mayor Rubio did a  
13 good job of summarizing, but my duties are primarily to  
14 help coordinate the nine member board that we have. I  
15 might add that nine member board consists of four  
16 cities, the county, two local landowner combinations of  
17 the water district -- the Monterey Peninsula Water  
18 Management District, and California American Water  
19 Company.

20 That nine member board determines the policies  
21 and procedures which I, as Chief Executive Officer,  
22 follow. Those policies and procedures are of course  
23 responsible for -- are set guidelines that are set down  
24 by the judge, by the court.

25 MR. FIFE: And so are you familiar with the

1 judgment in the Seaside Basin adjudication?

2 MR. EVANS: Yes, I am.

3 MR. FIFE: And are you familiar with those  
4 portions of the judgment associated with seawater  
5 intrusion?

6 MR. EVANS: Yes, I am.

7 MR. FIFE: Could you summarize for us the  
8 issues for the Basin with respect to seawater  
9 intrusion?

10 MR. EVANS: Yes, I can.

11 The primary issue that we're dealing with is  
12 the overdraft situation of the Basin itself. The Basin  
13 has been determined that it's been overdrafted now for  
14 a number of years.

15 Unfortunately, we are in a position where  
16 we're -- through the court action, we're actually  
17 monitoring the possibilities of potential of seawater  
18 intrusion with ten of our monitoring wells. In fact,  
19 the Watermaster within the last couple of years  
20 actually drilled -- put in four of those wells itself.

21 And we have not yet detected any seawater  
22 intrusion, but there are certain aspects of the Basin  
23 that show 20 to 50 feet below seawater -- sea level  
24 water.

25 MR. FIFE: So what does the judgment do in

1 order to safeguard the Basin from seawater intrusion?

2 MR. EVANS: As I've indicated, the monitoring,  
3 the wells, the ten wells that we have on the coast that  
4 are actually monitoring the basin, the judgment also  
5 requires us to on a monthly and quarterly basis get  
6 water production records from all of the wells that are  
7 pumping from the basin.

8 We gather that information as well as water  
9 level from each of those wells, and on an annual basis  
10 we also have a requirement for the water quality  
11 testing of the water from those wells. And that  
12 information is gathered by my office.

13 MR. FIFE: And how do these provisions of the  
14 judgment relate to Cal Am and the use of the basin by  
15 Cal Am as a water supply source?

16 MR. EVANS: Well, Cal Am, as Mayor Rubio  
17 indicated, is the primary pumper, if I can use that  
18 term for a moment, the pumper probably responsible for  
19 85 to 89 percent of the water that's being extracted  
20 from the Basin. They are using that to offset a great  
21 deal of the water normally coming out of the Carmel  
22 River.

23 MR. FIFE: And if seawater intrusion were  
24 detected, what would happen to this as a water supply?

25 MR. EVANS: It would be disastrous, if I could

1 use that term for a moment, disastrous in the sense  
2 that we would have to curtail a lot of the pumping,  
3 especially those wells that are pumping close to the  
4 coast.

5 We would have to back up and try to do as much  
6 pumping as we could by some of the more interior wells;  
7 and if the seawater intrusion continued to invade the  
8 land area, then of course we would just have to stop  
9 pumping entirely the seawater from the Seaside Basin.  
10 It would have a disastrous effect on the management.

11 MR. FIFE: Thank you. And that concludes the  
12 testimony from the Watermaster.

13 CO-HEARING OFFICER BAGGETT: Thank you.

14 MR. HEISINGER: Board Members, again my name  
15 is James Heisinger, and I'll be starting out with Mayor  
16 Della Sala of Monterey.

17 CHUCK DELLA SALA

18 Called by CITY OF SEASIDE, SEASIDE BASIN WATERMASTER,  
19 CITY OF CARMEL-BY-THE-SEA, and CITY OF SAND CITY

20 DIRECT EXAMINATION BY MR. HEISINGER

21 MR. HEISINGER: Mayor Della Sala, have you  
22 taken the oath earlier today?

23 MR. DELLA SALA: Yes, I have.

24 MR. HEISINGER: Have you read the declaration  
25 you submitted in this proceeding which has been marked



1 Monterey 1?

2 MR. DELLA SALA: Yes, I have. And it was  
3 executed July 8, 2008.

4 MR. HEISINGER: And that declaration is true  
5 and correct?

6 MR. DELLA SALA: It is.

7 MR. HEISINGER: Mayor, I'm going to ask you  
8 just to summarize a couple of pertinent points from  
9 your declaration. What is the present population of  
10 Monterey, roughly?

11 MR. DELLA SALA: Just under 30,000 residents.

12 MR. HEISINGER: And how many visitors does  
13 Monterey play host to on an annual basis?

14 MR. DELLA SALA: Annual average, approximately  
15 two million visitors.

16 MR. HEISINGER: In addition to those residents  
17 and -- 30,000 residents and two million visitors, is  
18 Monterey the workforce center on the Monterey Peninsula  
19 job center?

20 MR. DELLA SALA: The City of Monterey is a  
21 business hub of the Monterey Peninsula. And as such,  
22 instead of having on a typical day 30,000 residents in  
23 Monterey, we have in addition to the 30,000 residents  
24 almost an equal number of folks coming to the city of  
25 Monterey to work.

1           MR. HEISINGER: On page 2 of your declaration,  
2 you talk about some of the impacts which would occur if  
3 there was some sort of moratorium imposed by this Board  
4 on new water connections in Monterey. Can you expand  
5 on that a little bit?

6           MR. DELLA SALA: Certainly.

7           In February 2007, we had a major structure in  
8 our downtown burn to the ground. Within that structure  
9 was 21 businesses. That site lays vacant today.

10           There is a lack of water for the redevelopment  
11 of that vacant site on Alvarado Street. We had a very  
12 small amount of water that we were able to commit to  
13 the affordable housing component of a new development  
14 on that now-vacant site.

15           If the cease and desist order were to go  
16 forward, that project would not be developable. That  
17 project does not have its building permit yet. We have  
18 a concept plan from the owner of that property. We  
19 need that property to be developed to gain vitality in  
20 our downtown.

21           As a result of not having 21 businesses on  
22 that site, many businesses on Alvarado Street have  
23 suffered from lack of business, from a lack of activity  
24 that once was centered on this particular project.

25           The City of Monterey owns a site a couple

1 blocks away, also considered in our downtown, where we  
2 have a mixed-use development that has been proposed and  
3 has been approved by the City of Monterey. That mixed  
4 housing project also has an affordable housing  
5 component. If it were not for the .4 acre feet that  
6 the City had in water, that project would not be  
7 doable. That project, again, does not have a building  
8 permit yet. If the cease and desist order were to  
9 pass, we would be unable to have that property  
10 developed.

11 There is a mixed-use development on Lighthouse  
12 Avenue in Monterey. Similar situation. Property is  
13 privately owned in this case. 14 units of affordable  
14 housing. Again, doesn't have a building permit yet.

15 These are three significant projects that we  
16 were looking forward to having constructed in order to  
17 provide the economic vitality that we need to have in  
18 our city and to be able to provide affordable housing  
19 for our workforce.

20 Housing prices in the City of Monterey are  
21 very high, averaging more than \$750,000 for a very,  
22 very modest house. The only way that we can see to  
23 provide housing for our workforce is to provide it  
24 through mixed-use projects. We need the water. We  
25 need these projects.

1           With the transient occupancy tax, some  
2 27 percent of our general fund budget is funded through  
3 our transient occupancy tax, or bed tax. If you take a  
4 look at the sales tax, at the property tax that are  
5 generated as a result of visitors to the city of  
6 Monterey, that 27 percent grows to close to 50 percent  
7 of the funding of our general fund budget attributable  
8 to tourism.

9           Frankly, we could not afford a major reduction  
10 in our visitors coming to Monterey.

11           One thing that was not mentioned in my  
12 declaration, sir, was the fact that the City of  
13 Monterey has a regional sports center that attracts one  
14 million visitors each year to that facility. Those  
15 folks working out in our sports center use our toilets  
16 and our showers.

17           We have done a lot in the City of Monterey in  
18 order to use water wisely and energy in general wisely.  
19 We have waterless urinals in our sports center, in our  
20 city hall complex. We've done just about everything  
21 that we can do from a water-saving measure. We have  
22 all the latest technology, and we feel that we have  
23 been excellent stewards of our environment.

24           And we're always trying to achieve that  
25 balance, that balance of economic vitality in a great,

1 great community. And we look forward to continuing  
2 that. But with this cease and desist order, it will  
3 certainly set us back on our vision for a better  
4 Monterey.

5 MR. HEISINGER: Thank you, mayor. That's all  
6 I have.

7 MR. DELLA SALA: You're welcome.

8 SUE McCLOUD

9 Called by CITY OF SEASIDE, SEASIDE BASIN WATERMASTER,  
10 CITY OF CARMEL-BY-THE-SEA, and CITY OF SAND CITY

11 DIRECT EXAMINATION BY MR. FREEMAN

12 MR. FREEMAN: Mayor McCloud, would you state  
13 your name and spell it for the record please.

14 MS. McCLOUD: My name is Sue McCloud,  
15 M-c-C-l-o-u-d.

16 MR. FREEMAN: Excuse me. Do you have in front  
17 of you a declaration of Sue McCloud in support of  
18 proposed modifications to the draft cease and disorder,  
19 which is Carmel Exhibit 1?

20 MS. McCLOUD: Yes, I do.

21 MR. FREEMAN: And have you read and approved  
22 that declaration?

23 MS. McCLOUD: Yes, I have.

24 MR. FREEMAN: And in fact, did you assist in  
25 preparation with staff in preparing this declaration?

1 MS. McCLOUD: Yes, I did.

2 MR. FREEMAN: And is this a true and correct  
3 copy of the testimony that you provided to this Board?

4 MS. McCLOUD: Yes, it is.

5 MR. FREEMAN: Would you please take a moment  
6 and sort of describe what your role is for the City and  
7 how long you've been in this position?

8 MS. McCLOUD: Yes. I have -- this is my fifth  
9 term as mayor of Carmel-by-the-Sea. I grew up in  
10 Carmel. My family was in business there for some  
11 30 years. My parents lived in Carmel. They're both  
12 gone now. My sister is there. I went to school --  
13 obviously, since I grew up there, I went to school  
14 there. And I have -- prior to being elected mayor, I  
15 was elected to the city council, and prior to that I  
16 was on the planning commission.

17 MR. FREEMAN: So are you intimately familiar  
18 with the workings of the city and especially in regard  
19 to the matter before this Board today in terms of  
20 water?

21 MS. McCLOUD: I believe so.

22 MR. FREEMAN: Can you describe briefly the  
23 demographics of the city of Carmel?

24 MS. McCLOUD: We're one of the smaller cities  
25 on the Peninsula. We have a population according to

1 the 2000 census of 4,081 residents. We're 1.1 mile  
2 square.

3 Obviously, we're bordered by Carmel Bay on one  
4 side and greenbelt all around the other three sides.  
5 We have about 2800 homes. We have very few undeveloped  
6 lots. The development that's taking place in town is  
7 primarily upgrading, and that includes conservation  
8 measures.

9 But trying to get a second bathroom for people  
10 who are now aging, because one of the key points about  
11 our population, the median age is 55. So you can  
12 imagine that there are needs that they have if there's  
13 only a tub in the house in the bathroom that to convert  
14 it to a shower or put a shower someplace else, if  
15 water's not available, we've had people very adversely  
16 affected.

17 So we -- again, we think we have about the  
18 same amount of visitors in our town as Chuck Della Sala  
19 mentioned for Monterey, around two million. Those are  
20 figures from Monterey County Convention and Visitors  
21 Bureau.

22 But we have to provide for them as well, not  
23 only our infrastructure but the services they expect,  
24 whether it's restrooms on our one-mile-long beach --  
25 just the other day, June 21st to be exact, we counted

1 2500 people on the beach. And we essentially have one  
2 permanent restroom on the beach. So that you can  
3 compute the problems right there.

4 MR. FREEMAN: Are you familiar with the amount  
5 of water Carmel has unallocated --

6 MS. McCLOUD: Yes.

7 MR. FREEMAN: -- at this point in time?

8 MS. McCLOUD: At the present time, our 3.151  
9 is all we're faced with. And of that amount, we have  
10 pledged 1.9 for new affordable housing, about 14 units,  
11 which would increase our affordable housing by 10  
12 percent in the city. That's due to go to construction  
13 in -- well, this fall.

14 So the trickle-down effect, if you'll pardon  
15 the pun, of not having water pervades the hotels and  
16 visitors, certainly business, and those who could count  
17 on jobs to -- you know, for their livelihood.

18 So if you're looking at the fact that if there  
19 were some sort of moratorium or rationing we had to  
20 close off hotel rooms -- we have a cap on our hotel  
21 rooms of just under a thousand -- you can imagine that  
22 would also, as I said, trickle down to those who are  
23 employed at those establishments or if we -- we have  
24 small, many restaurants -- I don't know if you'd call  
25 it many, but we have a number of restaurants, but



1 they're all rather small. We don't have any large  
2 restaurants that you find in other places just because  
3 of the size of our properties.

4 MR. FREEMAN: If you had -- if there was a  
5 moratorium and/or water rationing, would it have an  
6 impact on the economic viability of Carmel and the  
7 services provided to the residents as well as the  
8 visitors?

9 MS. McCLOUD: It would have a huge impact.  
10 Our three biggest -- as you heard from the mayor of  
11 Monterey, our three biggest revenue sources are the TOT  
12 or the bed tax, as he called it, the sales taxes and  
13 property taxes. And that accounts for about 63 percent  
14 of our revenues coming into the city. So a loss of  
15 that would obviously scale back everything else.

16 We've scaled back -- and in the headlines in  
17 the Sacramento Bee this morning, we've already scaled  
18 back our staff as much as we can and tightened our  
19 belts over the years.

20 So we're -- we have done all we think we can  
21 to conserve. But as visitors continue to come, and  
22 unmandated -- unfunded mandates that come to us cause  
23 us to have to dip further and further into, you know,  
24 our imagination for how to solve some of these problems  
25 for visitors and for our residents.

1           MR. FREEMAN: I notice in your declaration on  
2 page 4 you mentioned the fact that if there were a  
3 moratorium it may have some detrimental effect to  
4 visitors actually coming to the Carmel area as opposed  
5 to going to other destinations. Is that --

6           MS. McCLOUD: That's an interesting point.  
7 Because you have to discuss this in the context of what  
8 our competition is. Our competition is obviously San  
9 Francisco, Napa, Sonoma, who do not have these  
10 constraints on their water supply; and therefore, we  
11 obviously would not be able to compete with them.

12           And we have also, in order to become more  
13 green, we have been converting -- some of our hotels  
14 were built a hundred years ago, and we're trying to  
15 upgrade them and make them more sustainable. And  
16 that -- if we are not able to do that, obviously our  
17 rooms and the expense of the rooms is not going to  
18 compete favorably with those who have done that type of  
19 upgrading in some of the other areas that compete  
20 directly with us.

21           One thing I would like to stress, going back  
22 to the water supply if I may, is the fact that the  
23 recent memories of the fires that we've just sustained  
24 on our south and east borders, our boundaries of Carmel  
25 in particular, is that 250,000 acres that were burned,

1 and it is still not fully contained and may not be till  
2 the end of next week. Tens of millions of dollars were  
3 spent, and it came very close. And I looked out the  
4 window of my home and could see the fires, and I'm on  
5 the south end of the city.

6 So if people are going to use water -- you  
7 know, if you live near a forest -- we have 40,000 trees  
8 in our one-mile-square city of Carmel, and people are  
9 very concerned about their safety and health.

10 MR. FREEMAN: Would a moratorium have any  
11 effect on the number of fire hydrants that may not be  
12 working in the city of Carmel? I know some work was  
13 done on those recently. Can you elaborate on that?

14 MS. McCLOUD: Yes. We discovered that we had  
15 a number, like about 30 almost, fire hydrants that were  
16 nonfunctioning. I must thank Cal Am for working very  
17 diligently with our police chief and public safety  
18 director to upgrade those.

19 But then putting new mains in, and we still  
20 have -- I'm not sure of the exact number at this  
21 moment, but I think it's nine have not been upgraded.  
22 They made other arrangements providing more than  
23 adequate fire prevention, but we still need to bring  
24 those back into service and replace the mains, get --  
25 the pipes are a hundred years old and have

1 disintegrated, so that is in process as we speak. So  
2 we would not want to see that impeded, obviously.

3 MR. FREEMAN: Thank you.

4 MS. McCLOUD: Thank you.

5 MR. FREEMAN: That concludes the City of  
6 Carmel-by-the-Sea.

7 MR. HEISINGER: Chairman Baggett, again James  
8 Heisenger. I'd like to ask Mayor Pendergrass some  
9 questions.

10 DAVID PENDERGRASS

11 Called by CITY OF SEASIDE, SEASIDE BASIN WATERMASTER,

12 CITY OF CARMEL-BY-THE-SEA, and CITY OF SAND CITY

13 DIRECT EXAMINATION BY MR. HEISINGER

14 MR. HEISINGER: Mayor Pendergrass, have you  
15 taken the oath today?

16 MR. PENDERGRASS: Yes.

17 MR. HEISINGER: Have you read the declaration  
18 that you submitted in this hearing marked Sand City 1?

19 MR. PENDERGRASS: Many times over.

20 MR. HEISINGER: And is that declaration true  
21 and correct?

22 MR. PENDERGRASS: Yes, it is.

23 MR. HEISINGER: Mr. Pendergrass, how long have  
24 you been mayor of Sand City?

25 MR. PENDERGRASS: It would be 30 years this

1 November.

2 MR. HEISINGER: And how long have you lived in  
3 Sand City?

4 MR. PENDERGRASS: Well, that would reveal my  
5 age. About 65.

6 MR. HEISINGER: I won't ask you to do that  
7 exactly. You also serve as a representative of the  
8 Peninsula mayors on the Monterey Peninsula Water  
9 Management District?

10 MR. PENDERGRASS: Yes, I do. I serve these  
11 great mayors and also our city. I don't know if I'm a  
12 great mayor or not. But I do serve our city on that  
13 board, for almost 20 years.

14 MR. HEISINGER: Do you feel that you're  
15 qualified to speak with regard to water issues on the  
16 Monterey Peninsula and Sand City?

17 (Interruption by the reporter)

18 MR. PENDERGRASS: You might say that, yes.

19 CO-HEARING OFFICER WOLFF: I need you to speak  
20 a little louder into your microphone. It's hard for me  
21 to hear you.

22 MR. PENDERGRASS: Can you hear me now?

23 CO-HEARING OFFICER WOLFF: I can now, thank  
24 you.

25 MR. PENDERGRASS: I have a habit of doing

1 that.

2 MR. HEISINGER: Mr. Mayor, attached to your  
3 declaration is an exhibit marked Exhibit A. Can you  
4 please turn to that. This is the exhibit regarding Cal  
5 Am's water demand. Do you have a copy of that front of  
6 you?

7 MR. PENDERGRASS: Yes.

8 MR. HEISINGER: Can you explain to us what  
9 that exhibit is?

10 MR. PENDERGRASS: Well, I'll do a little --  
11 can you hear me all right?

12 I'll do a little background. I come on board  
13 in 1986, so I saw a lot of activity where conservation  
14 was taking ground, and we talked about -- you were  
15 talking about, Mr. Chairman and Mr. Commissioner, and  
16 Mr. Wolff was not there yet.

17 You talked about remedy situation. And I  
18 think the point is the remedy has been going on on the  
19 Peninsula since 1988. We had an Environmental Impact  
20 Report on water allocation, EIR, and there was seven  
21 levels of total amount of water we could use.

22 So we have had different boards, some more  
23 radical than other boards, which have come and gone and  
24 I'm still here. And they chose a higher figure, at  
25 that time was almost 18,000 acre feet a year. To be

1 exact, in 1988 the water use was 17,279 acre feet. I  
2 get the figures from the district, and it be verified.  
3 I guess one of the bosses is sitting behind me.

4 Since 1988 we -- to the year 2007, we have  
5 reduced from 17,279 acre foot of water, feet of water  
6 used a year, down to the year 2007 12,375 acre feet, a  
7 reduction of 4,904 acre feet, percentages 28 percent  
8 reduction.

9 I think that's commendable. And again, talk  
10 about remedy, we've been doing that for a long time.

11 MR. HEISINGER: Mr. Mayor, just asking a  
12 couple more questions about the categorization of water  
13 uses on that table. Yesterday we heard testimony from  
14 the State concerning an average gallon per day per  
15 resident, but can you please explain to us how  
16 different types of users are broken down on this table?

17 MR. PENDERGRASS: Yes. I'm glad I came. It  
18 was an eye-opener to hear some things I thought were  
19 preposterous, especially the statement that the average  
20 resident uses 75 acre feet.

21 And then to equate that part of that is when  
22 he goes to the job and she goes to the job, that's  
23 ridiculous. The jobs are different. They use  
24 different water figures. You can't do that. Those  
25 figures is what happens in the house.

1           On the Peninsula, we have to watch our  
2 showers. We make sure the water doesn't drip. We're  
3 retrofitted. The hotels have been retrofitted for a  
4 long time. Most all of them -- I think all of them are  
5 retrofitted. The homes when they are sold, or  
6 businesses on the Peninsula, it's mandatory to  
7 retrofit.

8           So we have been doing our part. So you have  
9 the residential population which in 1995 was about  
10 103,000 and in 19 -- 2007, we have 111,400-some-odd  
11 people. So a total I think about 8800 people have  
12 moved to the Peninsula, and yet we keep our water use  
13 down. Figure that out.

14           It's because we have been conserving water,  
15 anyone that comes here must do it. Nobody objects to  
16 doing it. I think we've been stewards, as I heard the  
17 statement there, stewards of our water.

18           So there is those who live there, there is  
19 those who work there, there is those who visit us. And  
20 not only that, if you institute this CDO, I have a  
21 letter here that was -- the mayors that are here and  
22 mayors of all the 12 Monterey cities signed this. You  
23 have a copy of it. That if you institute this CDO, we  
24 believe, you're going to drastically reduce the  
25 Peninsula jobs and what we can do.



1           And these people, these other mayors, their  
2 citizens, a lot of them, drive to the Monterey  
3 Peninsula to work. And they don't just come from  
4 there. They come from San Francisco, San Jose. And I  
5 say, they say, you can't do this. You wouldn't do it  
6 in Sacramento.

7           So I don't want to offend Sacramento here, but  
8 I know you have your water problems.

9           And in a time of economic downturn, this is  
10 just not the thing to do. Our legislator, John Laird,  
11 sends you a letter opposing this. He's the Chair of  
12 the Budget Committee of the Assembly. And also Senator  
13 Abel Maldonado sent a letter.

14           So we're doing our homework to let you know  
15 just this could be a problem.

16           MR. HEISINGER: Mr. Mayor, just to clarify one  
17 misstatement. I think when you said 75 acre feet per  
18 year, you actually meant 75 gallons per day; is that  
19 correct.

20           MR. PENDERGRASS: Did I say that? Yes.

21           MR. HEISINGER: Thank you. Those are all the  
22 questions I have for this witness.

23           I'd like to ask Mr. Matarazzo a few questions.  
24  
25

1                   STEVE MATARAZZO

2       Called by CITY OF SEASIDE, SEASIDE BASIN WATERMASTER,

3           CITY OF CARMEL-BY-THE-SEA, and CITY OF SAND CITY

4           DIRECT EXAMINATION BY MR. HEISINGER

5           MR. HEISINGER: Mr. Matarazzo, have you taken

6       the oath today?

7           MR. MATARAZZO: I took it yesterday.

8           MR. HEISINGER: And have you reviewed the

9       declaration you signed July 9th of this year which has

10       been submitted in this proceeding as Sand City 2?

11          MR. MATARAZZO: Yes.

12          MR. HEISINGER: And is that declaration true

13       and correct?

14          MR. MATARAZZO: Yes.

15          MR. HEISINGER: Mr. Matarazzo, what is your

16       position with the City?

17          MR. MATARAZZO: I am the City Administrator,

18       Community Development Director, and also importantly

19       the Executive Director of the Sand City Redevelopment

20       Agency.

21          MR. HEISINGER: Mr. Matarazzo, your

22       declaration focuses on facts concerning what's been

23       called in this proceeding the Sand City desalination

24       facility.

25          I'd like you to take -- there's been some

1 misunderstandings with respect to how that desalination  
2 facility has been -- is being constructed and how it  
3 will operate. Would you please take a moment to  
4 summarize your declaration for the Board so we can have  
5 some clarity on those issues?

6 MR. MATARAZZO: Yes. The city council and  
7 administration of Sand City is quite proud of this  
8 project. We started back in probably the year 2000  
9 because we were running out of water in our  
10 redevelopment area. We have a small city, but it's  
11 entirely in a redevelopment project area.

12 And if you came to Sand City, you'd realize  
13 why. There's still a lot of urban blight on the  
14 Monterey Peninsula, particularly Sand City. We have a  
15 lot of old warehouses that need to be redeveloped, and  
16 most of our projects are redevelopment projects or  
17 in-fill development.

18 So we embarked on that process, like I said,  
19 about 2000. We have five years of testing the brackish  
20 aquifer and the sands of the Seaside Basin. Our  
21 hydrogeologist was particularly proud of the fact that  
22 he didn't have to do any hydrologic modeling, that it  
23 was all backed on empirical evidence. We embarked on  
24 an EIR that our design goal was called design --  
25 benign by design.

1           About the same time, the Coastal Commission  
2 got very concerned about desalination projects in  
3 California. Everybody was popping up with one. So  
4 that was our first obstacle. We thought oh, my gosh,  
5 we're going to do a little project, 300 acre feet a  
6 year, and now the Coastal Commission gets very  
7 concerned about this sort of thing.

8           So in 2004, about a year prior to our putting  
9 out the Environmental Impact Report, they came out with  
10 about 45 criteria on what they would consider good  
11 desal projects.

12           We looked at that very carefully. They highly  
13 recommend brackish, not seawater. Intake, no direct  
14 intake from the ocean, no direct outfall to the ocean.  
15 Our plant complies with all of that. We don't even  
16 call our bypass water prime. It's the same salinity as  
17 the Monterey Bay, and it goes into the beach well  
18 before it slowly goes into the Monterey Bay.

19           So in 2005, based on us meeting those criteria  
20 that were developed by the Coastal Commission in 2004,  
21 we got unanimous approval in front of the California  
22 Coastal Commission for our small, 300-acre-foot-per-year  
23 desal plant. They usually reserve those sorts of  
24 approvals by acclamation to open space projects and  
25 rehabilitation projects, so we were real proud of that.

1           About that same -- we had been in constant  
2 contact, by the way, with Cal Am; and I'd say prior to  
3 Coastal Commission approval, Cal Am had a wait-and-see  
4 attitude to see how we would go.

5           So our initial plans developed a stand-alone  
6 plan, disconnect from Cal Am, thereby saving 94 acre  
7 feet that could go back to either the overdrafted  
8 Seaside Basin or the overdrafted Carmel River aquifer.

9           Cal Am came along and said hey, you did a  
10 great job in front of the Coastal Commission. We'd  
11 like to join you. And the Coastal Commission also  
12 favored that approach, a more regional, integrated  
13 approach.

14           So we tried to do our homework some more and  
15 said okay, well, we have to go back to the State Water  
16 Resources Control Board and get their permission to do  
17 that.

18           So in January of 2006, a letter from the  
19 Executive Director of the State Water Resources Control  
20 Board said yes, you can do that. 95-10 does apply, but  
21 there's an exception to 95-10 that says if you take  
22 water from the Seaside Basin, you can do this without  
23 affecting the Carmel River, then you don't have to do a  
24 one-for-one replacement.

25           However, they also recognized that at least

1 for the interim there'd be a 300 acre foot pumping  
2 reduction because Sand City would not need all that  
3 water immediately. And they recognized the potential  
4 to come back to the Board and get some credit for the  
5 reduced pumping our plant would allow.

6 As one of your staff members notes in their  
7 declaration, initially from day one we'll be producing  
8 300 acre feet of water, Cal Am can reduce pumping by  
9 that amount, and then we slowly reduce over time as we  
10 need redevelopment to 94 acre feet.

11 And that's acknowledged in Mr. Stretars'  
12 testimony, so we were a little surprised yesterday when  
13 your counsel mentioned a moratorium, that it does not  
14 affect our plant.

15 We went through the Monterey Peninsula Water  
16 Management District. We received a water use  
17 entitlement, also an ordinance of a similar nature so  
18 we're given an entitlement. We are subject to  
19 rationing, should that become part of the District's  
20 plans, but we are not subject to moratorium provisions.

21 I would be remiss in my job as Community  
22 Development Director and City Administrator, and prior  
23 working with the former City Administrator, to  
24 recommend a project to the city council that does not  
25 benefit Sand City.

1           We really thought this was a win/win  
2 situation. It's mutually beneficial for all parties.  
3 It allows us to slowly develop, redevelop, eliminate  
4 blight on the Monterey Peninsula, and at the same time  
5 help with the overdraft in aquifers.

6           MR. HEISINGER: So in essence, Mr. Matarazzo,  
7 this -- following the Coastal Commission's approval of  
8 this project in 2005 as a stand-alone project at that  
9 point, in order to give further relief to our regional  
10 problems, Sand City agreed to hook the project up to  
11 the Cal Am water supply; is that correct?

12          MR. MATARAZZO: That's correct.

13          Then we had to go back to the Coastal  
14 Commission for a reapproval. We did an addendum to the  
15 EIR based on that operational change, and their staff  
16 acknowledged that this was indeed a better project; and  
17 again, we got unanimous approval from the California  
18 Coastal Commission.

19          MR. HEISINGER: So is it true that the net  
20 effect of this is when this project comes online it  
21 will be 300 acre feet of new water put into the Cal Am  
22 system that day?

23          MR. MATARAZZO: That's correct.

24          MR. HEISINGER: And over time, the City will  
25 be taking -- have 206 acre feet available for new

1 connections in Sand City only; is that correct?

2 MR. MATARAZZO: That's correct.

3 MR. HEISINGER: And I know your time estimates  
4 have been "long," but I heard -- is it correct that  
5 we're looking at a time frame of a couple of decades  
6 here to use up that much water in Sand City?

7 MR. MATARAZZO: It could take that long.

8 MR. HEISINGER: Thank you.

9 CO-HEARING OFFICER BAGGETT: Thank you.

10 MR. HEISINGER: That's all I've got.

11 CO-HEARING OFFICER BAGGETT: All the witnesses  
12 let's go off the record a minute.

13 (Discussion off the record)

14 CO-HEARING OFFICER BAGGETT: Let's take a  
15 ten-minute recess and come back with cross-examination  
16 so you can all stretch.

17 (Recess)

18 CO-HEARING OFFICER BAGGETT: Let's go back on  
19 the record and begin cross-examination. Just do all  
20 four parties at once. Prosecution Team, do you have  
21 any cross?

22 MR. SATO: Yes.

23 CROSS-EXAMINATION BY MR. SATO

24 FOR THE PROSECUTION TEAM

25 MR. SATO: Good morning, members of the panel.



1 My name is Reed Sato. I'm an attorney representing the  
2 Prosecution Team in this matter. I'm not used to  
3 cross-examining nine-plus folks, so you'll have to bear  
4 with me as I jump between your various written  
5 testimony to ask you questions about these documents.

6 First of all, let me turn to City of Seaside.  
7 Mr. Corpuz, you have some testimony about the water  
8 allocation program that took place in 1993. Do you  
9 recall that testimony?

10 MR. CORPUZ: Yes, I do.

11 MR. SATO: Can you give me the background?  
12 How exactly did that allocation come to take place?

13 MR. CORPUZ: My understanding is the Monterey  
14 Peninsula Water Management District had the authority  
15 to allocate that water.

16 MR. SATO: And you testified that this  
17 allocation took place based upon development of the  
18 Peralta Well in the Seaside Groundwater Basin.

19 MR. CORPUZ: That's correct.

20 MR. SATO: Do you have an understanding as to  
21 why the development of the Peralta Well in the Seaside  
22 Groundwater Basin was a triggering event to this  
23 allocation?

24 MR. CORPUZ: No, I don't know specifically the  
25 answer to that question.

1 MR. SATO: Okay. But the allocation is for  
2 water not just from the Peralta well; is that correct?

3 MR. CORPUZ: It's mainly from the Peralta.

4 MR. SATO: Mainly from the Peralta well. And  
5 what are the other sources with regard to allocation?

6 MR. CORPUZ: I think that can best be answered  
7 by the Water Management District specifically.

8 MR. SATO: You don't know.

9 MR. CORPUZ: No.

10 MR. SATO: So is it correct that the  
11 allocation that took place in 1993 did not allocate  
12 water that came from the Carmel River?

13 MR. CORPUZ: I don't know the answer to that  
14 question. The allocation was based upon the decision  
15 by the Monterey Peninsula Water Management District to  
16 allocate that water available to it. I don't know the  
17 make up -- the answer to that specific question.

18 MR. SATO: All right. I have a couple  
19 questions for Mr. Zehnder.

20 Mr. Zehnder, turning to your Exhibit 8 --  
21 actually Exhibit 9 which is your memorandum.

22 I don't know if this is a document you want to  
23 put on the screen.

24 And directing your attention to page 2 of your  
25 report, right there under background. Now I just

1 wanted to ask you what assumptions did you make in  
2 preparing the memorandum in terms of the range of  
3 remedies for the unauthorized diversions?

4 MR. ZEHNDER: The scope of work that we  
5 engaged in was essentially an economic analysis of a  
6 determined amount of development that is proposed to  
7 occur in the City of Seaside.

8 The information contained in the background  
9 report, or background section here, was provided to us  
10 by other experts, mainly folks from the City as well as  
11 our other folks on our team. So this was just  
12 background to allow the report to stand on its own and  
13 provide full information to the readers. So I would  
14 not be able to go into detail.

15 As I said, the crux of the analysis is really  
16 what occurs if the amount of development that is  
17 identified in this memo does not transpire? And so  
18 what are the impacts associated with that? And so we  
19 didn't specifically work in specific assumptions about  
20 water remedies and so forth.

21 MR. SATO: All right. So did you -- was it  
22 based upon the belief that there would be a moratorium  
23 on new development because of the draft cease and  
24 desist order?

25 MR. ZEHNDER: Yes. I think if you look at the

1 introduction paragraph, the last sentence, that  
2 basically said it, which is:

3           The Impact Analysis is based on the  
4           assumption that mandatory reductions to  
5           Cal Am's diversions will cause a  
6           moratorium on new or expanded water  
7           service connections within the Cal Am  
8           service area which in turn will cause a  
9           delay or absence of real property  
10          development in the city over a  
11          seven-year period, 2009 through 2016.

12          MR. SATO: Okay. So now with that testimony,  
13 can I direct your attention to the last paragraph  
14 that's on the screen here, and the second sentence  
15 starts:

16           Based on evidence presented during Phase  
17           II of the State Board hearings  
18           commencing on July 23rd, the State Board  
19           may consider a range of remedies for the  
20           unauthorized diversions.

21          Do you see that?

22          MR. ZEHNDER: Mm-hmm.

23          MR. SATO: So -- and the first parenthetical  
24 says: A ban on new service connections. Do you see  
25 that?

1 MR. ZEHNDER: Mm-hmm.

2 MR. SATO: So is a ban on new service  
3 connections one of the things that were evaluated in  
4 your memorandum?

5 MR. ZEHNDER: If the ban on new service  
6 connections resulted in the delay or absence of real  
7 property development, then the answer would be yes.

8 MR. SATO: Did you make an analysis to whether  
9 a ban on new service connections would have that direct  
10 impact?

11 MR. ZEHNDER: No. We provided -- we looked  
12 at -- no, we didn't specifically look at a ban.

13 We essentially looked at the City's proposed  
14 development that would be in the area affected by the  
15 potential moratorium and evaluated economic impacts of  
16 that.

17 MR. SATO: Okay. So let me ask the following  
18 question then. So you see the next parenthetical says:  
19 A ban on increased water deliveries to existing service  
20 addresses. Did you make any specific analysis of that  
21 impact?

22 MR. ZEHNDER: No.

23 MR. SATO: Following on: A ban or limit on  
24 landscape irrigation. Did you make a specific impact  
25 analysis of that factor?

1 MR. ZEHNDER: No.

2 MR. SATO: Additional water conservation  
3 measures. Did you make a specific analysis of that --  
4 impact of that factor?

5 MR. ZEHNDER: No. Again, only to the extent  
6 that if any of these measures would affect the  
7 development of real property were they considered. And  
8 I didn't pass judgment in terms of specifically which  
9 of these items would do that.

10 MR. SATO: Okay. So you don't know which of  
11 these items would have an impact on the development of  
12 real property; is that correct?

13 MR. ZEHNDER: That's correct.

14 MR. SATO: So that would be for all of the  
15 things identified in this paragraph starting with:  
16 Based on evidence presented in any draft CDO?

17 MR. ZEHNDER: That is correct.

18 MR. SATO: Now turning your attention to -- I  
19 think it is page 6 of your exhibit, in the same  
20 exhibit. That's it. The one with the list of  
21 potential and future projects.

22 CHIEF LINDSAY: The map?

23 MR. SATO: Yes, thank you.

24 Do you see that?

25 MR. ZEHNDER: Yes, I do.

1           MR. SATO: Mr. Zehnder, I think you stated in  
2 your testimony that while you were listing potential  
3 future projects that were kind of in the pipeline, you  
4 weren't certain that all these projects were actually  
5 going to go forward; is that correct?

6           MR. ZEHNDER: That's correct. We looked at  
7 the various projects in two major categories, those  
8 which had been approved and then others which had been  
9 proposed.

10          MR. SATO: And it looks like at some point  
11 this document was -- this key that explains what each  
12 of these items are was in color at some point in time;  
13 is that correct?

14          MR. ZEHNDER: That may be true.

15          MR. SATO: So do you have any -- can you see  
16 there is different gradations of shading for the  
17 numbers on the exhibit?

18          THE WITNESS: Mm-hmm.

19          MR. SATO: Do you know what those gradations  
20 in shading --

21          MR. ZEHNDER: I'm not aware of any  
22 significance associated with the gradations.

23          MR. SATO: Do you have an idea based upon this  
24 list of which ones are likely to go forward and which  
25 ones are not?

1           MR. ZEHNDER: Yes. We have a detailed list of  
2 projects in the appendix.

3           MR. SATO: Would you direct me to which part  
4 of the appendix you are referring to?

5           MR. ZEHNDER: Yes. Okay. This is Table A-2.  
6 You can see that -- there we go. A large table. It  
7 actually goes on to two pages, so that's the two-page  
8 table.

9           And basically what you see is the top rows are  
10 under the category Approved Projects. You can see the  
11 description of what type of project that is. And then  
12 we identify the specific name of the project in the  
13 second column or third column under project  
14 description.

15           So for example, under Approved Projects, we  
16 have mixed-use project called The Pointe. We also have  
17 a First National Bank falls under the category of  
18 financial services. Under auto dealership, we have the  
19 Audi car dealership. So those are the approved  
20 projects.

21           Then we have in the second section Pending  
22 Projects. So for retail, we have -- you can see a  
23 68-seat restaurant. Under office, we have Laguna  
24 Grande Plaza, so forth and so on.

25           MR. SATO: All right. When you did your



1 analysis of the impact on some of these potential and  
2 future projects -- for example, the Toyota car  
3 dealership, number seven -- how did you analyze whether  
4 or not that project would be jeopardized by the draft  
5 CDO?

6 MR. ZEHNDER: The analysis does not -- we did  
7 not conduct a separate market analysis of each of these  
8 projects. That was to -- outside of the scope that we  
9 were assigned here.

10 So the implicit assumption in this impact  
11 analysis is that all of these projects move forward.  
12 So it's possible that, due to other conditions such as  
13 market, that some of these may be delayed. And that's  
14 not something we analyzed specifically.

15 MR. SATO: But you're saying that -- your  
16 analysis is that this project would not move forward if  
17 the --

18 MR. ZEHNDER: The analysis assumes that all  
19 these projects in the three categories do move forward  
20 within this period of this time frame we established.

21 MR. SATO: All right. You're also -- you're  
22 analyzing the impacts if this project does not move  
23 forward as a result of the proposed cease and desist  
24 order; is that correct?

25 MR. ZEHNDER: Yeah, that's correct. If you

1 look at page 4, we offer some caveats. And this is two  
2 bulleted items. And the second -- catch up there. You  
3 see those two bullets? In the second bullet, we  
4 identify:

5           It's possible that some or all of the  
6           projects identified in this analysis may  
7           not develop because of other constraints  
8           including market, financial  
9           infrastructure, environmental, and  
10          community opposition.

11          So we try to make that very clear up front in  
12 terms of what we're assuming about the analysis, and so  
13 that's the situation.

14          MR. SATO: I'll go back to the Toyota car  
15 dealership project. So you didn't do an analysis as to  
16 whether or not, if there were no water for the City of  
17 Seaside, whether the Toyota car dealership would go  
18 someplace else? Or is that your assumption that it  
19 would go someplace else? Strike that; I'll ask it  
20 again.

21          When you were evaluating the impact of the  
22 draft CDO on the potential Toyota car dealership to be  
23 completed, did you evaluate whether or not the Toyota  
24 car dealership would go somewhere else?

25          MR. ZEHNDER: We did not make any specific

1 analysis of the market conditions underlying the car  
2 sales industry. So it's possible that some other  
3 factor could come into play that would undermine the  
4 project, but that's not something that we were scoped  
5 to analyze on this project.

6 MR. SATO: All right. And you didn't evaluate  
7 whether or not if there was kind of a regionwide  
8 moratorium in the area of service by Cal Am whether  
9 that project would be built anyplace else?

10 MR. ZEHNDER: No.

11 The likelihood, based on -- and this is  
12 outside of my testimony -- but the likelihood, as I  
13 understand it, is the most likely other area for that  
14 car dealership would be in a place like Salinas,  
15 outside of the City of Seaside. That seems to be the  
16 major concentration of car sales in the county.

17 MR. SATO: Okay. You don't know whether the  
18 Toyota car dealership would be targeted for some other  
19 location within the Cal Am service area?

20 MR. ZEHNDER: No knowledge of that.

21 MR. SATO: Mayor Rubio, I have a few questions  
22 for you.

23 Am I to take it from your testimony that  
24 you're saying if there's going to be some reduction  
25 imposed upon customers of Cal Am that those burdens

1 should not fall on the City of Seaside, but it should  
2 fall on other entities served in the Cal Am area?

3 MR. RUBIO: No, that's not what I'm saying.  
4 What I'm saying is that the full region as a whole will  
5 suffer from the cease and desist order.

6 What I'm saying, though, is that the City of  
7 Seaside would be impacted I think inordinately because  
8 of our water conservation efforts. We've been able to  
9 hold that water in anticipation of future projects that  
10 would benefit the City more through the water, you  
11 know, more judicious use of that water.

12 So since we conserved -- we hold the largest  
13 pocket of water, we would be punished more than anybody  
14 else.

15 MR. SATO: In other words, it would have  
16 a disparate impact on the City of Seaside as opposed to  
17 one of other communities, right?

18 MR. RUBIO: Right, in terms of our ability to  
19 maintain, be economically viable.

20 MR. SATO: Does the City of Seaside have a  
21 recommendation to be made to alleviate that hardship?

22 MR. RUBIO: Well, I'm sure that those are  
23 being developed. I, myself, don't -- that's not part  
24 my testimony in terms of providing remedies to this  
25 Board. I think the Board is very intelligent and can,

1 along with info from this panel here, develop those  
2 remedies. I wouldn't be so egotistical as to tell them  
3 how they should do it.

4 MR. SATO: Well, I don't think anyone would  
5 think it would be egotistical. It's just that I think  
6 the Board welcomes input on all of the issues that are  
7 the subject of the cease and desist order.

8 And my question to you was, you know, besides  
9 the testimony you provided, whether or not you on  
10 behalf of the City of Seaside have any other  
11 recommendations for the Board with regard to crafting a  
12 cease and desist order in this matter.

13 MR. FIFE: I think Mayor Rubio correctly  
14 pointed out that that's beyond the scope of his  
15 testimony the last time you asked that question.

16 MR. SATO: I understand. And I can ask  
17 questions that are beyond the scope of his testimony.

18 MR. FIFE: This is cross-examination.

19 CO-HEARING OFFICER WOLFF: Mr. Sato is correct  
20 under our rules.

21 MR. RUBIO: What I know is that there are  
22 various remedies that have been identified. And the  
23 City of Seaside is always willing to work with the  
24 Board, the Monterey Peninsula Water Management  
25 District, the Watermaster board, and our sister cities

1 to develop those remedies.

2 And what I would say is that the City of  
3 Seaside would ask the Board to please engage with us in  
4 developing and determining what those remedies might be  
5 in absence of a cease and desist order.

6 MR. SATO: Let me just ask this to the panel  
7 of the City of Seaside. Any one of you could feel free  
8 to answer.

9 I believe that your counsel in the opening  
10 statement talked about the efforts now by the cities to  
11 try to address the water supply issues within their  
12 communities. Do you recall the opening statement by  
13 your counsel on that issue?

14 DR. THOMAS: I know he made some comments to  
15 that respect. I don't recall the exact words.

16 MR. SATO: So in that regard, what is it that  
17 the City of Seaside is now doing to address water  
18 supply issues that it wasn't doing let's say a few  
19 years ago?

20 MR. RUBIO: The City of Seaside has been  
21 consistently, since -- well, for 30 years, working on  
22 water problems. We had a moratorium. We had rationing  
23 back in the '70s. The City of Seaside has been very  
24 active in a recycling program. We have got purple pipe  
25 out everywhere. All we need is somewhere to hook it up

1 to.

2 We've been present at every opportunity, with  
3 the Water Management District, with the REPOG group,  
4 the Ratepayers. With every possible imaginable project  
5 that's come forward, the City of Seaside has been up  
6 front, working hard and diligently to make it happen.

7 So when you say that the City of Seaside is  
8 now working on it, we've always been working on it.  
9 The City of Seaside and its citizens have ratcheted  
10 down their water use beyond most areas in the state.

11 When you have a growing population and you  
12 have water use going down, that tells you that there is  
13 something going on. And that means there is a  
14 dedicated -- well, it is a policy, a dedicated policy  
15 in our city to conserve water, and amongst our  
16 citizens.

17 They're the ones bearing the brunt of all of  
18 this. While we sit here and talk about cities and  
19 management and numbers and who did what, the people of  
20 our area have been doing the work. And they're the  
21 ones that are going to get punished by this. Not me --  
22 well, yeah, me; I live there.

23 But Cal Am will have some effect, but it's the  
24 people that are turning those faucets on and conserving  
25 the water that are going to be punished for this

1 action.

2 MR. CORPUZ: If I could just add to the  
3 mayor's comments.

4 We specifically have endorsed the alternative  
5 to the coastal regional project of Cal Am, the  
6 alternative which is a suite of different options for  
7 increasing the supply. We think it's a better approach  
8 to look at this regionally and not limit the solution  
9 to just the Carmel River, but we have a real problem  
10 regionwide.

11 We participate, and we've been an active  
12 leader in engaging all the District and the other  
13 cities to come to a solution, to sit at the table.

14 And I think that's working. I think we would  
15 like to see the Water Board, as the mayor said, help us  
16 with that and foster an overall solution that would be  
17 more permanent and better for everybody that's  
18 involved.

19 MR. RUBIO: And a comment, that's not just,  
20 you know, we're not just involved in the City of  
21 Seaside and the management district.

22 We also are involved in the Association of  
23 Monterey Bay Area Governments which I chaired for two  
24 years in bringing water education to the public with  
25 several forums that outlined all the water projects in



1 the area, the possibilities, what was out there, the  
2 new technologies, and all the cities who were present.

3 Also at the Fort Ord Reuse Authority, looking  
4 over the hybrid projects, recycled water projects,  
5 the -- well, all the projects that pass through  
6 Seaside, from the regional agencies to the other  
7 cities, all have to come through Seaside.

8 So we have been very, very active in looking  
9 for solutions.

10 MR. SATO: Let me just ask Mr. Corpuz. You  
11 just mentioned the alternative to the Coastal Water  
12 Project. Could you just explain in your own words what  
13 you think that alternative is?

14 MR. CORPUZ: My understanding is that the  
15 alternative is required by the Division of Ratepayer  
16 Advocates as part of the Environmental Impact Report on  
17 the coastal project, and there had to be an alternative  
18 or set of alternatives to consider; and what I was  
19 talking about was that effort by that group to provide  
20 a set of solutions, suite of solutions alternative to  
21 the regional desalination plant.

22 MR. SATO: And do you have an understanding  
23 what that alternative consists of?

24 MR. CORPUZ: I have a basic understanding. It  
25 has been somewhat of a moving target, but it's lasted

1 many discussions. I'm sure you heard Mr. Kasower  
2 explain his viewpoint in the progress of that effort.

3 MR. SATO: So is it fair to say that it is the  
4 City of Seaside's position that they favor this  
5 regional alternative over the Coastal Water Project?

6 MR. CORPUZ: We believe -- the Coastal Water  
7 Project, we believe, solves perhaps a portion of the  
8 Peninsula problem; that is the Carmel River issue,  
9 issue 95-10.

10 We think it's a better solution, a more  
11 beneficial solution regionwide to look at a regionwide  
12 solution involving all the parties, all our sister  
13 cities, the agencies, and the State.

14 MR. SATO: Question to the City of Seaside  
15 panel again. Did you do an analysis as to what would  
16 be the impact to the community if the State Board were  
17 to order a 15 percent reduction in water from the Cal  
18 Am supply?

19 MR. CORPUZ: No, we did not.

20 MR. SATO: Did you do any kind of analysis as  
21 to the impact on the City from any reduction in the  
22 current amount of water supplied by Cal Am to the City  
23 of Seaside?

24 MR. CORPUZ: We asked Mr. Zehnder to look at  
25 the full scope of the seven-year reduction.

1           MR. SATO: So aside from the report that  
2 Mr. Zehnder did, and you explained the limitations on  
3 that report -- aside from that report, any other  
4 analysis conducted by the City of Seaside?

5           MR. CORPUZ: Not specifically to the questions  
6 you asked.

7           MR. SATO: Anything indirectly to the  
8 questions that I asked?

9           MR. CORPUZ: I don't believe we conducted a  
10 formal study. We know that in the development and  
11 economic development transactions occurring, water is a  
12 very important issue; and it comes at the forefront of  
13 any developer or investor to ask that question, to make  
14 sure that there is a certainty they can count on as far  
15 as water.

16           But we haven't I think specifically analyzed  
17 each and every project regarding reduction of water.

18           MR. RUBIO: In regards to studying the  
19 effects, we do know water is tied to our economic  
20 development. That is very obvious. Because without  
21 the water, the projects don't happen. In that view,  
22 that's why we asked for the financial analysis.

23           In my mind, I think that the State Board, if  
24 it was going to impose a 15 percent reduction on any  
25 population it would do its due diligence also and study

1 the effect on the population.

2 MR. SATO: Do you recall -- Mayor Rubio, do  
3 you recall Order 95-10 issued by the State Board?

4 MR. RUBIO: Yes.

5 MR. SATO: And do you recall that there was a  
6 reduction in the amount of water to be taken by Cal Am  
7 from the Carmel River as a result of that order?

8 MR. RUBIO: That's the way the order reads.

9 MR. SATO: And did that reduction result in an  
10 impact on the City of Seaside?

11 MR. RUBIO: Yes.

12 MR. SATO: Can you tell me what those impacts  
13 were?

14 MR. RUBIO: Well, the -- many of the meters in  
15 the Cal Am area were reduced in size. There was more  
16 conservation efforts put in. I do know that many  
17 people in the City of Seaside no longer have gardens.

18 I do know that it's added to the blight of our  
19 city. We do not have the wonderful gardens that we  
20 used to have. People have gone to more of a hardscape.

21 The -- what impacts are happening inside each  
22 individual home, I do not know. But I know that there  
23 have been impacts that have affected the cityscapes as  
24 well, our ability to maintain our parks. They're in  
25 great disrepair from lack of water.

1           So yes, there have been impacts.

2           MR. SATO: And those conservation measures  
3 that you just described, were those voluntary  
4 conservation measures taken by citizens of your  
5 community?

6           MR. RUBIO: Some were, some weren't. Ones  
7 that were easily done by citizens in their homes were  
8 done by those individuals. So retrofitting, you know,  
9 voluntarily.

10           The others that weren't were those that were  
11 implemented by the City to take care of remodels and  
12 new construction.

13           MR. SATO: Okay. If you could, anybody on the  
14 panel, could you tell me what mandatory conservation  
15 measures are currently in place for the City of Seaside  
16 with regard to water?

17           MR. RUBIO: Any mandatory conservation  
18 measures would be Cal Am-wide and District-wide.

19           MR. SATO: There are no specific ones for the  
20 City of Seaside?

21           MR. CORPUZ: No, there aren't.

22           MR. SATO: I probably asked this question  
23 previously in a slightly different way. Have you done  
24 any professional analysis of how the City could reduce  
25 its use of water and still maintain a level of economic

1 viability?

2 MR. CORPUZ? We have not been able to provide  
3 a specific analysis. I mentioned each project is  
4 slightly different, requires different water needs.

5 The current plans we do have, for example, in  
6 an area that's not covered by Cal Am, as the mayor  
7 mentioned, has purple pipe on the golf course and in  
8 the relatively new residential development.

9 So where we have had the impacts, we have  
10 tried to include that in the agreements with the  
11 developers. But if there is no water or very little  
12 water to carry out the project, then the cost benefit  
13 to that developer as well as the City, that may mean  
14 termination of their effort or significant delay in the  
15 effort to develop the project.

16 MR. SATO: Mayor Rubio, I'm going to ask you a  
17 few questions in your capacity related to the  
18 Watermaster -- and actually, either you or Mr. Evans  
19 can answer these questions.

20 I believe you indicated that the Seaside  
21 adjudication was ordered in March of 2006; is that  
22 correct?

23 MR. RUBIO: That's correct.

24 MR. SATO: Are the allocations to the parties  
25 provided in a calendar year or water year?

1           MR. RUBIO: The allocations are calendar year.  
2 But -- or did we change that to a water year? I know  
3 there was a switch to accommodate the Cal Am reduction.

4           MR. EVANS: Yes. I believe we switched it,  
5 and it was actually on the water year. That would be  
6 from October 1st through September 30th on the  
7 water-year basis.

8           MR. SATO: Do you know what Cal Am's total  
9 allocation is from the Seaside adjudication?

10          MR. RUBIO: It's 90 percent of 5,600 acre  
11 feet?

12          MR. EVANS: I can't give you the specific  
13 numbers. I think we'd have to defer that to one of the  
14 hydrologists. Perhaps Mr. Oliver can answer that  
15 question for you this afternoon from the Water  
16 Management District. But it's somewhere in the  
17 neighborhood of -- the total is something in the  
18 neighborhood of about 5,600 acre feet.

19          MR. SATO: What is the first year of the  
20 Watermaster regulation, of the adjudication?

21          MR. EVANS: What is the what?

22          MR. SATO: When does it take effect?

23          MR. EVANS: When --

24          MR. SATO: In terms of affecting Cal Am's use  
25 of the Seaside Basin.

1           MR. EVANS: Initially, when the order was  
2 issued, that would have been in March of 2006 when the  
3 judge created the Watermaster, best of my recollection.

4           MR. SATO: There's no grace period for how Cal  
5 Am begins to be limited by that particular  
6 adjudication?

7           MR. EVANS: Grace period? Is that what you're  
8 asking.

9           MR. SATO: Correct.

10          MR. EVANS: Not that I know of. I didn't come  
11 on board till later. To the best of my recollection,  
12 it went into effect almost immediately.

13          MR. RUBIN: It went into effect immediately.

14          MR. SATO: Do you know during the first year  
15 how much Cal Am diverted? If you know.

16          MR. RUBIN: Could I object to the question?

17          MR. SATO: I'll withdraw.

18          CO-HEARING OFFICER BAGGETT: Thank you. I  
19 think we'll -- we'll probably have a lot more technical  
20 experts, it appears, from the Water District, and Cal  
21 Am also.

22          MR. SATO: I understand.

23          Couple more questions for Mr. Corpuz. Just  
24 looking at Exhibit 26-A in your testimony that's  
25 Exhibit 5. Looking for Exhibit numbers. That table.



1           Mr. Corpuz, could you just explain to me how  
2 I'm supposed to read this table? Looking at the  
3 indication where it says jurisdiction Seaside, the  
4 first column over says Peralta allocation, and there's  
5 a number 65.450? So that's the acre feet from the  
6 allocation?

7           MR. CORPUZ: Right.

8           MR. SATO: And that's the annual basis or a  
9 total basis?

10          MR. CORPUZ: I believe that's the total basis,  
11 but I'd have to check with the experts on that one.

12          MR. SATO: Okay. Then there's -- in the next  
13 column, it says changes. And it's .043. What are  
14 those changes?

15          MR. CORPUZ: I don't know specifically what  
16 those changes are.

17          MR. SATO: Then it says remaining, 20.579. Do  
18 you see that?

19          MR. CORPUZ: Yes.

20          MR. SATO: What does remaining mean?

21          MR. CORPUZ: Again, I'm not sure of the  
22 definition of that. I do know the total available to  
23 the jurisdiction is 119.32 acre feet that's available  
24 to the jurisdiction through the Cal Am service area,  
25 and that's why this table was attached.

1           MR. SATO: Okay. So you wouldn't be able to  
2 tell me what each of those column headings mean then?

3           MR. CORPUZ: You might be able to obtain that  
4 information from the Monterey Peninsula Water  
5 Management District. Mr. Oliver, or someone of that  
6 nature, will understand in detail this matrix.

7           MR. SATO: All right. But you don't have the  
8 information to tell me that?

9           MR. CORPUZ: No.

10          MR. SATO: All right. Questions, again, for  
11 Mr. Rubio or Mr. Evans.

12                    What happens if Cal Am takes water from the  
13 Seaside Basin in excess of their authorized amount?

14          MR. RUBIO: Then they have to pay for it in  
15 the replenishment fee.

16          CO-HEARING OFFICER BAGGETT: Is your  
17 microphone on?

18          MR. RUBIO: There is a replenishment fee in  
19 the order for any waters that are used that are not  
20 authorized.

21          MR. SATO: So as long as Cal Am pays the  
22 replenishment fee, is it free basically to exceed the  
23 allocation amount provided to it?

24          MR. RUBIN: I'm going to object to the  
25 question. I'm trying to be relaxed with my objections

1 today, particularly since Mr. Jackson isn't here to  
2 counterbalance me.

3 But the document does speak for itself. It's  
4 a document that's been marked and admitted into  
5 evidence; and again, I think the document is a legal  
6 document, it speaks for itself, and presumably has all  
7 of the terms and conditions that apply to use within  
8 the Basin.

9 CO-HEARING OFFICER BAGGETT: I would sustain  
10 the objection.

11 MR. SATO: So you understand that there are  
12 some consequences to Cal Am if they were to take water  
13 in excess of their allocated amount in the  
14 adjudication; is that correct?

15 MR. RUBIO: That's correct. It's my  
16 understanding the judge has a very hands-on approach,  
17 and I think he would not take very lightly if anybody  
18 was to go against his orders.

19 MR. SATO: Okay. So it's your expectation Cal  
20 Am would try to abide with the limits set forth in the  
21 Seaside adjudication?

22 MR. RUBIO: Yes, that was the purpose of the  
23 adjudication.

24 MR. SATO: And is it your expectation as  
25 somebody associated with Watermaster that Cal Am would

1 abide by those limitations?

2 MR. RUBIO: Yes.

3 MR. SATO: And that's because it's a -- would  
4 you characterize Cal Am going beyond the limits set  
5 forth in the adjudication as something that would be  
6 illegal in your mind?

7 MR. RUBIN: I'm going to object to the  
8 question. It's asking for speculation beyond the  
9 witness's expertise.

10 MR. SATO: I'm asking him whether in his own  
11 mind he would consider those kinds of excess takings to  
12 be illegal.

13 CO-HEARING OFFICER BAGGETT: I would sustain  
14 the objection. He's not an attorney. You're asking  
15 him for an interpretation of a legal document and  
16 sanctions.

17 MR. SATO: Well, do you think it would be  
18 improper, then, for Cal Am to be taking water in excess  
19 of this amount?

20 MR. RUBIN: I'm going to object again.  
21 "Characterization," "improper" -- it's ambiguous.

22 CO-HEARING OFFICER BAGGETT: Please rephrase.

23 MR. SATO: "Illegal" would have been better.

24 (Laughter)

25 MR. SATO: But apparently I can't say that.

1           MR. RUBIN: There is a general objection here.  
2 You have a panel of elected officials, councilmembers,  
3 and a lot of technical questions are being asked. You  
4 have a lot of witnesses that have been called, will be  
5 called, that are capable of answering technical  
6 questions.

7           I understand there is a lot of leniency in  
8 terms of cross-examination, but in terms of preserving  
9 the record and giving the Hearing Officers and the  
10 State Board adequate information to render a  
11 decision --

12           CO-HEARING OFFICER BAGGETT: I would concur.  
13 If you could ask -- these are elected officials.  
14 They're here for policy more than --

15           MR. SATO: In this case, we're talking about  
16 persons associated with the Watermaster. And I'm  
17 talking about their views of people to comply with the  
18 adjudication made by that Watermaster. And I'm asking  
19 him to characterize what his views are for people who  
20 exceed the allocated amount set forth in the  
21 Watermaster order.

22           CO-HEARING OFFICER BAGGETT: I think he  
23 answered those questions.

24           MR. SATO: Actually, he didn't. I didn't get  
25 a chance to have him answer a question related to that.

1 CO-HEARING OFFICER BAGGETT: Mr. Silver?

2 MR. SILVER: I would just want to point out,  
3 as Mr. Sato has, Mr. Rubio is the Chair of the  
4 Watermaster board. Mr. Evans is the Executive Officer.  
5 If they can't answer these questions, I'm not sure who  
6 can.

7 CO-HEARING OFFICER BAGGETT: Mr. Fife?

8 MR. FIFE: Mr. Baggett, it's true he testified  
9 as the Chair of the Watermaster board. He testified  
10 from a policy perspective about the collaboration  
11 that's come out of the Watermaster.

12 He wasn't presented this as a technical person  
13 associated with the Watermaster. Those people will be  
14 provided later.

15 CO-HEARING OFFICER BAGGETT: Mr. Laredo?

16 MR. LAREDO: David Laredo, on behalf of the  
17 Water Management District.

18 I'd like to point out that if in fact Cal Am  
19 were to exceed its increment of water available under  
20 Judge Randall's decision, that that would be an issue  
21 that would then come before the Watermaster board. And  
22 therefore, if Mr. Rubio or any other Member of the  
23 Board were to take a position on that at this time,  
24 they would not be able to then participate on this when  
25 the matter came before the Board. So the question is

1 improper against a Board Member at this time.

2 CO-HEARING OFFICER BAGGETT: I appreciate  
3 that. And you will have the opportunity to ask those  
4 questions of experts later. So continue the cross,  
5 but --

6 MR. SATO: I'll move on.

7 CO-HEARING OFFICER BAGGETT: Thank you.

8 MR. SATO: Just, the Watermaster again: Do  
9 you recall what the considerations were in setting the  
10 natural safe yield for the adjudication?

11 MR. EVANS: The question, again -- would you  
12 rephrase it? I don't quite understand the question.

13 MR. SATO: Do you recall what the  
14 considerations were in setting the safe, natural safe  
15 yield?

16 MR. EVANS: I -- again, I would -- in this  
17 particular case, I'd have to refer to some technical  
18 person because the natural safe yield that we were told  
19 was the natural safe yield to the basin is 3,000 acre  
20 feet. And how that -- how that figure was derived, I  
21 have no idea.

22 MR. SATO: Let me move on to another panel  
23 member, Mr. Pendergrass.

24 MR. PENDERGRASS: Yes.

25 MR. SATO: Have to give me a moment to find

1 your testimony. Mr. Pendergrass, I'm not even sure  
2 your full name was identified for the record, so could  
3 you state your full name for the record please?

4 MR. PENDERGRASS: Yes. David K. Pendergrass.

5 MR. SATO: Thank you. Could you spell it,  
6 please?

7 MR. PENDERGRASS: How old am I?

8 MR. SATO: Could you spell it, please.

9 MR. PENDERGRASS: Okay. I gave her my card.  
10 P-e-n-d-e-r-g-r-a-s-s.

11 MR. SATO: And now I'll direct your attention  
12 to the exhibit, to your declaration exhibit attached to  
13 the declaration. That's it. Mr. Pendergrass, do you  
14 recognize that table?

15 MR. PENDERGRASS: Yes. I have it right here.

16 MR. SATO: Now you indicated that this shows a  
17 decrease of 28 percent since 1988, and you said that  
18 this occurs notwithstanding the fact that the number of  
19 persons living and visiting here has increased during  
20 that same period of time. Do you recall that  
21 testimony?

22 MR. PENDERGRASS: I stated that back in --  
23 maybe I didn't say 1995. In 1995, there was 103,000  
24 people in the district. In 2007, there was 111,483  
25 persons who lived in our water district area.



1           These numbers are from the AMBAG population  
2 forecast. Association of Monterey Bay Area  
3 Governments, which I serve on.

4           MR. SATO: And then you also indicated that  
5 the number of persons visiting here increased during  
6 that same period of time. How did you determine that  
7 the number of persons visiting had increased during  
8 that period of time?

9           MR. PENDERGRASS: Visitors to the area?

10          MR. SATO: Yes.

11          MR. PENDERGRASS: I take the testimony from  
12 the mayor of Monterey, mayor of Carmel, and mayor of  
13 Seaside. I didn't mention numbers.

14          MR. SATO: Right. No, but I mean here in  
15 this -- in your documents, you just said that people  
16 had increased during that time period.

17          MR. PENDERGRASS: Right. These are residents.  
18 They live there.

19          MR. SATO: I'm just trying to find out whether  
20 or not you have specific factual information regarding  
21 the increase of visitors during that period of time.

22          MR. PENDERGRASS: I don't have that. As I  
23 stated, it was from the cities that are present, some  
24 numbers. I think Monterey mentioned factual numbers.  
25 I think City of caramel mentioned factual numbers from

1 their own studies.

2 MR. SATO: All right. Directing your  
3 attention now to Exhibit A, and you see the customer  
4 types there. Just for your own city, do you -- can you  
5 tell me what steps were taken to cause a reduction in  
6 demand for residential?

7 MR. PENDERGRASS: Well, what we do, we have  
8 done as any other city here. We're all within the  
9 Water Management District, the mandatory retrofit. So  
10 when houses are sold -- we have a lot of older homes.  
11 A few of them are left. They would be retrofitted.  
12 What has happened, these homes have been removed and  
13 been replaced by mixed use. We have apartments above,  
14 businesses below, all built with conservation plumbing.  
15 As well as the commercial. We have 90 residents. 80  
16 residents? Is that correct?

17 MR. SATO: Do you have a sense of how you  
18 achieved reductions for multiresidential customer type?

19 MR. PENDERGRASS: We just follow the  
20 guidelines of the Monterey Peninsula Water Management  
21 District, which I was a part of over the years,  
22 experiencing that, that conservation, incremental  
23 conservation pipes, and things involve retrofit that  
24 would achieve that. We followed the same.

25 MR. SATO: Do you have any understanding as to

1 why the reductions for multiresidential were  
2 significantly higher percentagewise than for  
3 residential?

4 MR. PENDERGRASS: Lot of people live there.  
5 You're talking about apartments, and that's what  
6 multiresidential means. Apartments. Some are smaller  
7 units of apartments, some are larger -- how many units,  
8 I mean, combinations.

9 So those numbers can give you -- those numbers  
10 can be verified with Water Management District staff  
11 behind me. They can give you details on that. I can't  
12 give you details. But these numbers are factual and  
13 can be supported. They would tell you that. I'm not  
14 the technician.

15 MR. SATO: I understand. I was just wondering  
16 whether you had any understanding as to why that  
17 percentage was so much higher in terms of reduction  
18 than for residential. That's all right, sir, if you  
19 don't have --

20 MR. PENDERGRASS: I defer to them. I just  
21 stated they were apartments.

22 MR. SATO: Do you know whether for your city  
23 of Sand City whether you have a breakdown of customer  
24 types and their water usage with the same kinds of  
25 categories? Strike that; let me ask that again.

1           For the chart that you provided in your  
2 exhibit, does Sand City have anything similar to that  
3 specifically related to Sand City?

4           MR. PENDERGRASS: Say that again please.

5           MR. SATO: This chart shows Cal Am water  
6 demand for all customers, and I was wondering whether  
7 you have something that's specific to Sand City.

8           MR. PENDERGRASS: Well, we don't have golf  
9 courses. And we can identify residential,  
10 multiresidential, commercial, and industrial. Public  
11 authority is, I believe, regards the public parks and  
12 public buildings. We have that.

13          MR. SATO: All right. But you don't have  
14 anything specific for Sand City?

15          MR. PENDERGRASS: I don't have specifics. We  
16 do use 94 acre feet of water which was mentioned  
17 yesterday quite often, and it was referred to today by  
18 our city administrator. That's all the water we use of  
19 the entire Monterey Peninsula system, Cal Am system.

20          MR. SATO: Now you just heard the City of  
21 Seaside present information about a fiscal or economic  
22 analysis they had prepared by Mr. Zehnder. Do you  
23 recall that testimony?

24          MR. PENDERGRASS: Very well. I was sitting  
25 right here.

1           MR. SATO: And have you -- has the City of  
2 Seaside -- excuse me. Has the City of Sand City done  
3 anything similar in terms of fiscal or financial  
4 analysis of the impact of the CDO?

5           MR. PENDERGRASS: In regard to the CDO, no,  
6 we've not done any in regard to the CDO. But we have  
7 information that was very relevant to the planning  
8 purposes of the desal plant and the general plan. That  
9 was the amount of water we would need, the general  
10 plan, 15, 16 years, beyond. So we do have that  
11 information.

12           Is that correct, Chief? Don't have it here.

13           MR. SATO: And have you done any analysis as  
14 to what the minimal amount of water your community  
15 would need and still remain economically viable?

16           MR. PENDERGRASS: Well, we -- again, we have  
17 not figured in why we did the -- we are under  
18 construction of our desal plant. And that figure would  
19 be 300 acre feet. You want a breakdown what that  
20 composed, I don't have it. Staff has it. So I did not  
21 bring it today.

22           MR. SATO: Let me just ask you quickly. Your  
23 testimony on page 2, you say that -- it's your  
24 conclusion:

25           No replacement water supply can be

1           developed in sufficient time to meet the  
2           schedule of diversion reductions  
3           proposed in the draft CDO.

4           Do you recall that testimony?

5           MR. PENDERGRASS: Yes.

6           MR. SATO: Do you have any replacement water  
7           supply project in mind when you made that statement?

8           MR. PENDERGRASS: I had in mind because I'm  
9           very involved in the water projects. I believe -- I  
10          represent our city at the Monterey Regional Water  
11          Pollution Control Agency which proposes a replenishment  
12          project specifically for the Seaside Basin.

13          I was involved for a whole year in the  
14          so-called REPOG Mr. Kasower mentioned. And the REPOG  
15          did not have any, except the business once in a while,  
16          public officials, except for a few while I was there.  
17          Most of the time, I was the only one who was there,  
18          decision-makers. Most of the REPOG are people of  
19          opposition groups, no-growth, quite a disturbing mix at  
20          times.

21          And I sat through a whole year meeting where  
22          what happened, because the DRA wanted to look at an  
23          alternative to compare, not necessarily the right  
24          selection, to the Coastal Water Project if there was a  
25          cheaper alternative. That has not been decided.

1           So what the REPOG did, a number of projects  
2   that Mr. Kasower tried to describe, that are being  
3   considered by the Public Utilities Commission under the  
4   EIR study, supposed to be presented by the end of the  
5   year. And I know with the facts and figures that  
6   nothing will happen except our Sand City project,  
7   probably not till the year 2014. Hopefully sooner.  
8   That's why I said that.

9           MR. SATO: All right. And can you tell me,  
10   you heard the Seaside folks testify that they favored  
11   the regional project over the Coastal Water Project.  
12   What is the Sand City position, if you know?

13           MR. PENDERGRASS: Well, we support the  
14   regional project, whatever that is.

15           Our project is to be -- REPOG was considering  
16   all the projects that were on the drawing board,  
17   projects proposed. And the REPOG as of December went  
18   differently. I won't go into that controversy. Don't  
19   want to go into that discussion. Don't want to go  
20   there. Very disturbed about that.

21           But anyway, they were studying a different  
22   projects online or about to be online, proposed, and  
23   what would really be viable. So those that were viable  
24   went to the top. And ours was at the top because of  
25   planning stage, now it's being built.

1           And this was a replenishment, MRWPCA  
2 replenishment project. And obviously the Coastal Water  
3 Project, which Cal Am also processed, and the REPOG  
4 stated that has not stopped. The train has left the  
5 station, so to speak. It's still ongoing, not  
6 stopping, because it's their obligation to show the  
7 Public Utilities Commission that Cal Am is moving  
8 forward.

9           So then the PUC, the DRA stepped in and said  
10 let's look -- not to be repetitive -- but let's look  
11 and see if there is a viable cheaper alternative.

12           So that's where this REPOG and Mr. Kasower was  
13 hired to -- supposedly to facilitate all of these  
14 different points of view and see if they could come to  
15 a community spirit about it. That really to me didn't  
16 exactly happen.

17           So they have these proposals that are being  
18 ironed out, one of which is the replenishment project  
19 from MRWPCA. So that's how I why -- I wanted to made  
20 that statement. I do support a regional project which  
21 could mean a component of -- and certainly includes  
22 ours. We offered ours to help to plug in to help the  
23 95-10 situation. For the record.

24           MR. SATO: Does your city have any  
25 recommendations for an alternative to the draft CDO



1 proposed by the Prosecution Team?

2 MR. PENDERGRASS: Yes. Don't do it.

3 MR. SATO: Your position --

4 MR. PENDERGRASS: After testimony yesterday  
5 from you and your staff, excuse me, but I said -- I  
6 asked my staff don't say that, what I say: What were  
7 you thinking? After all we've been through, and gave  
8 you the records. You referred to it. On conservation,  
9 we've been doing the remedy for a long time. You heard  
10 the mayor say, we just can't do any more. That kind of  
11 reduction, five percent is just ridiculous. You  
12 wouldn't do that in Sacramento.

13 MR. SATO: Well, let me ask you: Have you  
14 done an analysis as to whether or not a five percent  
15 reduction of water supply to Sand City would have --

16 MR. PENDERGRASS: No --

17 MR. SATO: -- impact?

18 MR. PENDERGRASS: -- analysis, but five  
19 percent would mean five percent less water. And I just  
20 told you, given the conservation that not only my city  
21 but across the entire Peninsula Water Management  
22 District area, which includes Carmel Valley, Big Sur,  
23 we have all contributed to these figures that came out.  
24 So I can't give you a breakdown as to our impact.

25 MR. SATO: So it's Sand City's position that

1 no cease and desist order should be issued in any form?

2 MR. PENDERGRASS: I would think, considering  
3 what I just told you for the record, I don't think it's  
4 proper. I don't think it's fair. I don't think you  
5 need to do that.

6 If you are punishing Cal Am -- remember, Cal  
7 Am is not who you are punishing. You are punishing us  
8 and our constituents. That is simply not right.

9 MR. SATO: I have some questions now for the  
10 City of Monterey. Mr. Della Sala.

11 MR. DELLA SALA: How are you.

12 MR. SATO: Similar set of questions I've asked  
13 that I asked to Seaside and Sand City. You heard that  
14 Seaside had done a fiscal analysis of potential impacts  
15 from the proposed cease and desist order. Has Monterey  
16 done any type of similar fiscal analysis?

17 MR. DELLA SALA: We have not. But anecdotally  
18 and from a common sense standpoint, you can imagine  
19 that a reduction in a water allocation on any community  
20 is going to have a negative impact on economic  
21 development and quality of life the residents currently  
22 enjoy in that community.

23 MR. SATO: And you haven't done any kind of  
24 analysis as to what it would be in terms of dollars or  
25 other social values?

1 MR. DELLA SALA: We have not.

2 MR. SATO: And you saw the exhibit that I --  
3 that Mr. Pendergrass attached to his testimony, and  
4 there were a number of categories of water use there.  
5 Do you recall that?

6 THE WITNESS: I do.

7 MR. SATO: Do you know whether Monterey has  
8 any specific analysis of -- strike that.

9 Do you know whether there is a table like the  
10 one that Mr. Pendergrass testified to specific to the  
11 use of water by Monterey county -- or excuse me, within  
12 the City of Monterey?

13 MR. DELLA SALA: Specifically referring to  
14 categories of use and the reduction of water thereto?  
15 That's what your referring to?

16 MR. SATO: Yes.

17 MR. DELLA SALA: Yeah. I don't know that we  
18 have a chart such as this. We may. I am not aware  
19 that we have one.

20 But I can tell you, following up on some of  
21 the questions that you asked of Mayor Pendergrass, that  
22 that multiresidential figure that is shown for -- I  
23 guess that's Sand City -- reduction of 42 percent, I  
24 would say is attributable to retrofit of toilets,  
25 showerheads, and reduction in outside water use.

1           And you may know, at the time of sale, whether  
2 it is a single-family dwelling or multiresidential  
3 structure, it's a requirement in the Monterey Peninsula  
4 Water Management District area to retrofit to  
5 water-saving fixtures, 1.6 gallon flush toilets, 2.5  
6 gallons a minute showerheads. So every time there is a  
7 sale, there is at least a review of the water fixtures  
8 in the units.

9           In addition to that, because of the high cost  
10 of water on the Monterey Peninsula, many owners of  
11 residential units have taken it upon themselves to  
12 retrofit their plumbing fixtures, not waiting for the  
13 time of sale. So that would be my assumption as to why  
14 that reduction in water usage for the category  
15 multiresidential is combined.

16           MR. SATO: All right. Thank you.

17           MR. DELLA SALA: I stand corrected on that  
18 chart. It appears it is a districtwide table rather  
19 than Sand City only. Is that correct?

20           MR. SATO: That would be my understanding from  
21 Mr. Pendergrass's testimony.

22           MR. DELLA SALA: All right. Thank you.

23           MR. SATO: Mayor Della Sala, you don't know  
24 whether the City of Monterey has ever done any kind of  
25 analysis to see what the minimum amount of water it

1 needs in order to remain economically viable?

2 MR. DELLA SALA: I know of no such study.

3 However, when we look at the economy, it is not a  
4 stagnant entity. We must be able to adapt to change,  
5 to adapt to the changing marketplace, and to pretend  
6 that we are on a straight-line, economic path and we  
7 can just connect the dots 1, 2, and 3, I don't think  
8 does this Board or any other body a service.

9 We must have water so that we can change with  
10 the changing needs of our community.

11 I refer you again to the building that was  
12 burned on Alvarado Street in downtown Monterey last  
13 year. That structure had some 21 business, no  
14 residential units in our downtown on that site. The  
15 new development, we are hopeful, will contain 20 to 30  
16 residential affordable housing units on that site.

17 The water demand for housing is obviously much  
18 higher than it is for offices. But that is a need we  
19 have in our community in particular in our downtown  
20 area so that we can continue with our progress on  
21 becoming a green community to use energy and water more  
22 efficiently.

23 So please do not look at this as a stagnant  
24 situation. We need the flexibility to develop those  
25 projects that we need in the future; and with that, we

1 need more water.

2 MR. SATO: Going back to that -- the exhibit  
3 from Mr. Pendergrass.

4 MR. DELLA SALA: Mm-hmm.

5 MR. SATO: Mr. Mayor, do you know where the  
6 hospitality industry would fit in terms of customer  
7 type in that category?

8 MR. DELLA SALA: I would say commercial.

9 MR. SATO: Mr. Pendergrass, do you know where  
10 the hospitality industry fits within the customer type.

11 MR. PENDERGRASS: Commercial.

12 MR. SATO: Questions for the City of Carmel,  
13 Mayor McCloud. You heard my questions to the other  
14 cities. I'm going to ask you very similar questions as  
15 well. So that my first question is: You heard the  
16 City of Seaside had done a fiscal analysis of the  
17 potential impacts of the cease and desist order on the  
18 City of Seaside and projects that would be developed in  
19 the City of Seaside. Has your community done a similar  
20 analysis?

21 MS. McCLOUD: We have done it informally with  
22 staff and the Vice Mayor and myself and in some of our  
23 discussions in council meetings. But we don't have  
24 a -- like Don Quixote tilting at windmills, we don't  
25 have anything firm to point you to.

1           But I think I stated it rather clearly when I  
2 spoke earlier, we have a project right now for 14 units  
3 of senior housing, and when your population ages and  
4 they outrun their income, we have some -- even though  
5 Carmel is known as a wealthy community, we have sad  
6 cases of impoverished elders in our community. So  
7 we're trying to get 14 affordable units they would  
8 qualify for and would not be built. And that would  
9 increase our affordable housing by ten percent, as I  
10 mentioned, and obviously we'd also be in violation of  
11 the HCD requirement, so it would be a definitive impact  
12 on the population.

13           MR. SATO: You are saying that it would not be  
14 built if a moratorium was ordered by the State Board.

15           MS. McCLOUD: Yeah.

16           MR. SATO: Have you --

17           MS. McCLOUD: Or rationing.

18           MR. SATO: Pardon me?

19           THE WITNESS: Moratorium or rationing.

20           MR. SATO: How would the rationing affect it?

21           MS. McCLOUD: Depends on what the rationing  
22 is.

23           MR. SATO: What rationing requirement would  
24 not affect it?

25           MS. McCLOUD: You said it.

1           MR. SATO: No, what -- you said it. You said  
2 or rationing --

3           MS. McCLOUD: If you put a rationing, you  
4 know, cap on it somewhere along the line, rationing the  
5 water, it would be just as effective in some ways for  
6 us. We're down to 3.151 acre feet of water. And with  
7 the amount of money that we -- I mean with the amount  
8 of water we have already pledged this project, we get  
9 down to like I think 1.25 last, so we're talking about  
10 zero times zero is zero.

11           MR. SATO: Have you done an -- or has the City  
12 of Carmel done an analysis as to how much water it  
13 would need at a minimum to maintain an economically  
14 viable community?

15           MS. McCLOUD: I think we could come up with  
16 that figure. We have about 30 -- for example, we have  
17 about 30 vacant lots that have no water so they can't  
18 be developed.

19           I'm not sure how they define, they define  
20 between pure residential and residential/commercial or  
21 service/commercial. So I can't give you that breakdown  
22 down off the top of my head.

23           But I think Mayor Della Sala said it very  
24 clearly, that you have to be able to move with what the  
25 trends are. What we are seeing in our inns in Carmel



1 is that they want to convert to condo apartments, and  
2 there isn't water to do this. These units have  
3 bathrooms because they were rooms at an inn but they  
4 can't have any kind of a full kitchen even because  
5 there isn't the water to apply to that. That is a  
6 demand that we're seeing in development, and we can't  
7 roll with it. Developing other places right on our  
8 border, the Highlands Inn, and we can't match it.

9 MR. SATO: You saw the exhibit that I  
10 showed -- that was attached to Mr. Pendergrass's  
11 testimony and that I asked Mayor Della Sala about. Do  
12 you know whether Carmel has any kind of chart similar  
13 to that just for use of water within the City of  
14 Carmel?

15 MS. McCLOUD: Well, when we had our water  
16 allocation which, clear back when, '95, was 20-some  
17 acre feet, we divided -- we had -- the City had a right  
18 to allocate that amount. So we allocated that  
19 primarily between three categories: Residential,  
20 commercial, and public.

21 And I can't tell you what the balance of, you  
22 know, 1.25 is among those three categories, but that's  
23 how we divide it. But that's a Cal Am figure, so Cal  
24 Am should have that.

25 MR. SATO: You don't have any figures for the

1 reduction demand for any particular period of time for  
2 the City of Monterey -- excuse me, the City of Carmel?

3 MS. McCLOUD: We may have. It just wasn't  
4 something that I would have with me. Staff probably  
5 has it back in our planning department. But I want to  
6 emphasize, what we would have would be among the three  
7 categories I mentioned, not as it is up there.

8 MR. SATO: Could you please say that again?

9 MS. McCLOUD: Yes. I said if -- those figures  
10 that staff would have to show what the categories, I  
11 think it's mostly in the categories would just be the  
12 three I mentioned: Residential, commercial, and  
13 public. It wouldn't be broken down the way you have  
14 it. That's not the way we do it.

15 MR. SATO: I'm sorry. For Sand City folks,  
16 what year will the Sand City desalination project go  
17 online?

18 MR. MATARAZZO: We're hoping this coming water  
19 year, so '08-09. I use the word hoping because you  
20 never know.

21 We had several conditions, major conditions,  
22 on our plans. And one of them, for instance, was  
23 making sure that if there were any nesting snowy  
24 plover, an endangered bird, on our shore when we're  
25 taking some of the water, that we had to stay 500 feet

1 away from any nests. Well, we weren't worried about  
2 that because we haven't had nests on the shore for ten  
3 years. Well, guess what? This year we had two. And  
4 one of our operations was 530 feet away. So we were  
5 allowed to continue, and the US Fish and Wildlife  
6 Service was satisfied.

7 So you never know what might get in the way  
8 but it looks very promising that this October -- this  
9 spring we'll have water online.

10 MR. SATO: All right. Just some general last  
11 few questions I'll ask for each of the elected  
12 officials.

13 Mayor McCloud, so are you aware of Order  
14 95-10?

15 MS. McCLOUD: Yes.

16 MR. SATO: Do you know when you first became  
17 aware of Order 95-10?

18 MS. McCLOUD: When I probably got involved  
19 with the planning commission. I was -- I retired back  
20 to Carmel. I had been away 31 years. I kept in touch  
21 because my family was here, so I wasn't here for a  
22 period of time when it was passed. I retired and came  
23 back to Carmel about 1995.

24 MR. SATO: And you were aware that in Order  
25 95-10 that the determination that diversions -- that

1 Cal Am has no legal authority for diversions above  
2 3,376 acre feet?

3 MR. RUBIN: I'm going to object to the  
4 question. Again, the document speaks for itself.

5 MR. SATO: It's a foundational question. I  
6 just want to know if she's aware of that number.

7 MR. RUBIN: And that's -- if that's the  
8 intent, I would prefer that Mr. Sato quote the section  
9 of 95-10 to lay the foundation rather than characterize  
10 as he has in his own words.

11 MR. SATO: I mean it's pretty clear that that  
12 number is --

13 CO-HEARING OFFICER BAGGETT: I'll overrule.  
14 Just continue and get to the point.

15 MS. McCLOUD: I don't have 95-10 in front of  
16 me, so I'm not sure if the figure is correct or not.

17 MR. SATO: Are you aware that there is a  
18 figure above which Cal Am does not have legal rights to  
19 divert water from the Carmel River?

20 MS. McCLOUD: I think that's the point of  
21 95-10.

22 MR. SATO: Now do you have any knowledge or  
23 understanding of whether employees of the City of  
24 Carmel have made any contingency plan to what the City  
25 would do if Cal Am is required to limit its diversions

1 in the Carmel River to 3,376 acre feet?

2 MS. McCLOUD: Well, since I and the council  
3 are responsible for policy and not the day-to-day  
4 contact with our employees, I would have to defer to  
5 our City Administrator, if he wishes to comment on  
6 that. He's not sworn in.

7 MR. SATO: So you don't know.

8 MS. McCLOUD: Well, it's not -- beyond my ken,  
9 so to speak. I don't talk to the employees on a  
10 day-to-day basis, so I don't know what they've done.  
11 They have team meetings every Monday, and I don't know  
12 what they've done in those meetings.

13 MR. SATO: And in terms of the draft cease and  
14 desist order that is currently before the Board, does  
15 the City of Carmel have a position as to what the Board  
16 should be doing in this regard?

17 MS. McCLOUD: Well, as far as the cease and  
18 desist order -- I would not presume to tell the Board  
19 what it should be doing.

20 But as far as the cease and desist order is  
21 concerned, I think it's counterproductive in terms of  
22 achieving the goal which is to find a new water source.  
23 To divert our energy to what's going to be even a  
24 greater crisis if we have any reduction in our  
25 respective water supplies to try to figure out how

1 we're going to get through that. We're not going to  
2 have any energy and resources to devote to finding the  
3 solution which is what we all want.

4 MR. SATO: Are there any specific  
5 modifications that you would recommend --

6 MS. McCLOUD: Specific what?

7 MR. SATO: Modifications or changes to the  
8 language of the draft cease and desist order that you  
9 would recommend to the State Board?

10 MS. McCLOUD: I think David Pendergrass said  
11 it, and that's to not go forward with it.

12 MR. SATO: All right.

13 Mayor Della Sala, do you know whether -- well,  
14 are you aware of Order 95-10?

15 MR. DELLA SALA: I am.

16 MR. SATO: Do you know whether the -- do you  
17 know whether the City of Monterey has made any  
18 contingency plans as to what it would do in the event  
19 Cal Am were limited to diverting water from the Cal  
20 American -- excuse me -- from the Carmel River at  
21 3,376 acre feet per annum?

22 MR. RUBIN: I'm going to object; calls for  
23 speculation.

24 MR. SATO: Does he know?

25 MR. RUBIN: I can explain why I think it calls

1 for speculation, if that would help.

2 CO-HEARING OFFICER BAGGETT: Probably would,  
3 because I think it seems an appropriate line of  
4 questions if they have a contingency.

5 MR. RUBIN: The municipality uses water  
6 directly. It's concerned about the supply of water to  
7 the citizens that live within the municipality. So I'm  
8 not sure if Mr. Sato is asking how the City will  
9 address its own individual water use or the use by its  
10 citizens.

11 CO-HEARING OFFICER BAGGETT: Can you clarify  
12 your question to the witness.

13 MR. SATO: Any water use within the city of  
14 Monterey: Do you know whether the City has come up  
15 with any contingency plan for addressing a situation in  
16 which Cal Am is limited to diversions from the Carmel  
17 River at 3,376 acre feet?

18 MR. DELLA SALA: No.

19 I would say to that that, as I've mentioned  
20 before, we have already installed low flow water  
21 fixtures throughout the city. We've installed  
22 drought-tolerant landscaping. We have drip irrigation.

23 We have an ongoing program of educating the  
24 community on conserving water. We have a TV station  
25 that regularly runs ads promoting water conservation.

1           We have been active in the various agencies  
2 here or various groups that are interested in providing  
3 for a regional solution to our water program.

4           The cease and desist order is not right.  
5 Simply is not. If I were in this Board's shoes, I  
6 would be talking, again with Cal Am water, working out  
7 a plan for progress to come up with a solution.

8           But the cease and desist order being imposed  
9 upon our Monterey Peninsula, Monterey Peninsula Water  
10 Management District, I think is not right.

11           MR. SATO: So you don't think there should be  
12 an order that prevents Cal Am from -- if the Board  
13 finds that this is a trespass, that Cal Am shouldn't be  
14 implemented from continuing that trespass?

15           MR. DELLA SALA: I'll repeat again: I think  
16 what this Board should do is meet with Cal Am and work  
17 out a program for a solution in a very specific in time  
18 manner.

19           MR. SATO: That resolution could be ordered by  
20 the Board? Would you have any objection to that, that  
21 it ultimately be something that's enforceable by the  
22 Board?

23           MR. DELLA SALA: Again, the parties need to  
24 get together and work it out. I am not going to  
25 speculate on what that order might be.



1 MR. SATO: I have no further questions.

2 CO-HEARING OFFICER BAGGETT: Thank you. We've  
3 got five minutes, so I don't know that we have time for  
4 the -- is Mr. Jackson not here? Let's go off the  
5 record.

6 (Discussion off the record)

7 MR. SILVER: I just have a few questions.

8 CROSS-EXAMINATION BY MR. SILVER

9 FOR SIERRA CLUB

10 MR. SILVER: I'm Larry Silver representing the  
11 Sierra Club in this proceeding, and I have a few  
12 questions for Mayor Rubio and perhaps Mr. Evans as  
13 well.

14 With respect to -- I heard you mention in your  
15 testimony, Mayor Rubio, the situation with respect to  
16 Fort Ord. And I think you mentioned there is some  
17 development plans the City has with respect to Fort  
18 Ord; is that correct?

19 MR. RUBIO: That's correct.

20 MR. SILVER: And is Fort Ord basically some of  
21 it within the city limits and some of it without?

22 MR. RUBIO: The Fort Ord jurisdiction is  
23 actually split between Monterey, Del Rey Oaks, Seaside,  
24 Marina, and the county -- and Cal State.

25 MR. SILVER: And I just wanted to clarify for

1 the record: With respect to Fort Ord, was there a  
2 water allocation that pertained to Fort Ord?

3 MR. RUBIO: Yes, there's a water allocation  
4 that pertains to Fort Ord that cannot be used outside  
5 the boundaries of Fort Ord.

6 MR. SILVER: But it can be used within the  
7 boundaries of Fort Ord; is that correct?

8 MR. RUBIO: Yes.

9 MR. SILVER: How much is that water  
10 allocation?

11 MR. RUBIO: Oh, gosh.

12 MR. SILVER: Just in general, if you have some  
13 idea of a figure.

14 MR. RUBIO: I don't remember that figure.

15 MR. SILVER: Could it be around 6600 acre  
16 feet; do you know?

17 MR. RUBIO: I think that was the total for the  
18 whole Fort Ord footprint, yes.

19 MR. SILVER: And so I take it that -- that  
20 with respect to development that was in Fort Ord  
21 itself, that portion that pertains to that allocation,  
22 that that water in some way would be available to  
23 development in Fort Ord; is that correct?

24 MR. RUBIO: Perhaps.

25 MR. SILVER: So that it would not necessarily

1 be necessary in that instance to use allocated water  
2 that belongs to the City of Seaside that comes from Cal  
3 Am for development of Fort Ord; is that correct?

4 MR. RUBIO: Unless it's in the Cal Am service  
5 area.

6 MR. SILVER: Unless it's in the Cal Am service  
7 area. And with respect to the City's plans for Fort  
8 Ord, is there a specific plan at this point in time for  
9 development with respect to Fort Ord?

10 MR. RUBIO: We have quite a few development  
11 plans for the Fort Ord area. We have a general plan  
12 that's been approved by the Fort Ord Reuse Authority  
13 which identifies four basic development areas. Each  
14 will require its own specific plan.

15 MR. SILVER: And so can you describe just very  
16 generally what portion of those areas are within the  
17 Cal Am service area?

18 MR. RUBIO: I'm not aware that any of them  
19 are.

20 MR. SILVER: Thank you, Mayor.

21 And I have just a couple questions to clarify  
22 the record that I think I can address to Mr. Evans or  
23 perhaps Mayor Rubio.

24 With respect to the first reduction under the  
25 superior court's Seaside adjudication, I take it that

1 testimony that the first reduction of ten percent in  
2 the event that no new water supplies are located would  
3 occur at the end of three years from the date of the  
4 entry of the order; is that your understanding?

5 MR. EVANS: That's correct.

6 MR. SILVER: What is your understanding with  
7 regard to the reductions in subsequent years?

8 MR. EVANS: There's an additional ten percent  
9 is added on each year after that for I think a period  
10 of five years -- three years; I'm sorry.

11 So that would be ten percent go into effect in  
12 January 2009, then January 2010 an additional ten  
13 percent, and then January 2011 an additional ten  
14 percent reduction.

15 MR. SILVER: So then -- just with the last  
16 question -- so the first reduction that would be  
17 required would be sometime in '09?

18 MR. RUBIN: I'm going to object to the  
19 question.

20 MR. SILVER: I'm just trying to confirm his  
21 testimony right now, and he's just basing it -- we're  
22 just asking questions about the provisions of the  
23 adjudication.

24 MR. RUBIN: That's the basis of my objection.  
25 Obviously, the purpose of the hearing today is to give

1 you the correct information to base a decision. The  
2 document --

3 MR. SILVER: Excuse me, sir, but I think he's  
4 already answered the question. I'm just trying to  
5 clarify the record.

6 CO-HEARING OFFICER BAGGETT: What are you --

7 MR. SILVER: I'm just asking Mr. Evans to  
8 confirm the first reduction, if it were required, in  
9 the event that no new production came online, would  
10 occur in 2009.

11 MR. RUBIN: Okay. But again, I'm going to  
12 object to the question. If I understand it, you're  
13 asking for his opinion as to what the judgment says,  
14 trying to confirm that. And frankly, the opinion may  
15 be accurate; it may not be and --

16 CO-HEARING OFFICER BAGGETT: Sustained. The  
17 judgment speaks for itself on its face. I don't --  
18 having him confirm? You've got the judgment in the  
19 record.

20 MR. SILVER: I'll not ask any further  
21 questions. I think he answered on the record anyway.

22 CO-HEARING OFFICER WOLFF: I'll take over for  
23 a while. Mr. Warburton, you had just a few questions?  
24 We'll push on a little bit further here. And the court  
25 reporter, can you go on another 15 minutes?

1 THE REPORTER: You bet.

2 CO-HEARING OFFICER WOLFF: All right.

3 Mr. Warburton?

4 CROSS-EXAMINATION BY MR. WARBURTON

5 FOR THE PUBLIC TRUST ALLIANCE

6 MR. WARBURTON: I'm Michael Warburton, and I'm  
7 Executive Director of a group called the Public Trust  
8 Alliance. And first off, I want to thank this panel  
9 for coming because it's a really important one in  
10 resolving regional issues like this, so I'm very  
11 grateful that mayors have come, and I have a couple of  
12 questions on that.

13 So I'll start with Mr. Rubio. I guess the  
14 sense of your testimony was that if this draft CDO were  
15 adopted you'd have a lot harder time serving the needs  
16 of your community. My question is: Really doesn't it  
17 make sense to put enhanced energy into developing  
18 alternative water sources? And what was it, ten years  
19 ago, the Water Board came out and said, you know, hey,  
20 we've got a problem, and the cities have to start  
21 figuring out where water's going to come from, and  
22 almost no progress has been made. And my question is:  
23 Would a CDO perhaps help you to move toward a viable  
24 alternative supply?

25 MR. RUBIO: Well, in my opinion, the CDO would

1 not accomplish that. As the mayor of Carmel testified,  
2 that would divert the energies that we're using now.  
3 As you may realize, cities don't have unlimited  
4 resources that we can have multiple priorities and  
5 multiple staffs working on all these different issues.

6 We would rather our staffs work on the  
7 solution rather than trying to come up with the  
8 necessary adjustments that we have to make for the CDO.

9 I also want to say that the main purpose of a  
10 city is to serve its citizens, and that's through  
11 public safety, the roads, and all the other  
12 requirements that every citizen expects from their  
13 city. To do that, we have to have revenue.

14 And it's not a static world where you can say  
15 okay, we've got enough revenue today for things we need  
16 today. Because there is things called inflation. The  
17 rising cost of fuel, the rising cost of all our  
18 material goods, change every year. So we have to keep  
19 pace with the expenses.

20 I once heard someone say that inflation was  
21 equal on revenue and expenditures. I beg to differ.  
22 How many of you have your paycheck automatically keep  
23 up with your expenses? So that is the situation the  
24 cities are in.

25 We have another little caveat that affects our

1 existence and our ability to do that called state  
2 mandates. Unfunded state mandates come down from the  
3 Legislature and say you, City, will do this, and you'll  
4 pay for it yourself.

5 Then there's other things like state budgets  
6 that get balanced on the backs of our cities. And we  
7 have no recourse in those kinds of expenditures.

8 So it's really critical for the cities to be  
9 flexible in their response to the needs for the  
10 revenues. And water, in our case, is the linchpin for  
11 that.

12 MR. WARBURTON: I appreciate all of that.  
13 That's why we have city managers and the expertise of  
14 people involved. But wouldn't it make sense to  
15 concentrate on viable projects rather than unviable  
16 ones?

17 MR. RUBIO: That is our duty, yes. Are we  
18 having a questioning?

19 CO-HEARING OFFICER WOLFF: Mr. Warburton, you  
20 are engaging in a conversation with one member of the  
21 panel. Do you have specific questions or Mr Rubio?

22 MR. WARBURTON: Each of the mayors.

23 CO-HEARING OFFICER WOLFF: Do you have a  
24 specific question for each of the mayors? Restate it.

25 MR. WARBURTON: The specific question is:



1 Having heard about the regional solutions developed,  
2 and you spoke of them at the REPOG, a suite of projects  
3 that could be implemented incrementally, wouldn't  
4 support of some of those projects, you know, if the CDO  
5 was tailored to supplies coming online with some of  
6 those projects, wouldn't that make more sense than  
7 fighting dog and tooth for larger projects?

8 CO-HEARING OFFICER WOLFF: Is the question  
9 understood by the mayors, or should I ask him to  
10 restate it?

11 MS. McCLOUD: I think he's leading our answer.

12 CO-HEARING OFFICER WOLFF: Are you prepared to  
13 answer the question?

14 MR. WARBURTON: What is your --

15 MS. McCLOUD: I think clearly I spoke before  
16 about the fact we have a total of 66 employees in the  
17 City of Carmel to deal with what is potentially two  
18 million plus, either residents or visitors or what have  
19 you.

20 And that's public safety, administration,  
21 planning, streets, public works, forestry, 40,000  
22 trees. There's just no depth there to do any of that  
23 internally. You'd have to give business to EPS here,  
24 to have somebody plan it.

25 But there is a huge gap. The CDO is being

1 discussed here today. There isn't -- it's still a  
2 moving target as far as REPOG or any of these things  
3 are. There's no definitive plan.

4 We have them come for each council. We keep  
5 up with what's going on. But we don't yet have a  
6 formula. And that is years away from what we're  
7 dealing with right today so if you take -- if you enact  
8 the CDO, there's going to be a big gap between that and  
9 whatever all the rest of it is planned.

10 And you are absolutely correct. We are  
11 looking, and we're doing it, we're looking at what in  
12 the sustainable community there is that we can apply  
13 here. We can't put windmills in Carmel. We're one  
14 mile square. There is no property to put it on.

15 So you have options that aren't available.  
16 Monterey county mayors meet once a month, and we  
17 discuss these questions among ourselves on a regular  
18 basis and try to find a light at the end of the tunnel,  
19 and it isn't so easy.

20 MR. DELLA SALA: I appreciate your question  
21 because what it says to me is that you're looking at  
22 solutions for the water, for a sustainable water supply  
23 for our respective communities rather than going  
24 through a CDO and imposing a punishment.

25 So as has been stated before, the energy

1 really needs to be directed toward the solution. And  
2 again, it is my contention that the State Water  
3 Resources Control Board and Cal Am get together and  
4 develop a plan. The CDO is not -- is not the answer to  
5 our question; it is not the solution to our problem.

6 MR. WARBURTON: And a further question, do you  
7 see the -- a staged reduction in usage as an incentive  
8 for more, you know, a constructive solution and  
9 finding? Because what you saw in 95-10 is something,  
10 I'm not sure --

11 CO-HEARING OFFICER WOLFF: Mr. Warburton,  
12 could you state the question for him?

13 MR. WARBURTON: Well, after ten years of  
14 nothing from 95-10, is it possible for the pressure of  
15 the CDO to be perceived as a constructive process?

16 MR. RUBIN: I'm going to object to the  
17 question. I apologize for interrupting you. But the  
18 question assumes facts not in evidence.

19 MR. DELLA SALA: And that's precisely what I  
20 was going to say. I disagree with your premise that  
21 nothing has been done since 95-10 has been imposed  
22 because the communities have taken on rather  
23 significant measures in order to reduce water  
24 consumption per capita.

25 CO-HEARING OFFICER WOLFF: Let's not retry the

1 liability portion.

2 If you'd like to respond to the portion about  
3 moving forward with the remedy, I think Mr. Warburton  
4 is --

5 MR. WARBURTON: That's exactly the -- the --

6 CO-HEARING OFFICER WOLFF: He's asking if you  
7 see any value whatsoever in the CDO of any form  
8 whatsoever. I believe I know your answer, but I think  
9 that's the question. Is that correct, Mr. Warburton?

10 MR. WARBURTON: Yes. That is the question.

11 MR. DELLA SALA: I am not one to look at a  
12 patchwork quilt type of solution. Let's get the whole  
13 plan in place, get agreement on the plan, then let's  
14 implement those steps that we need to take in order to  
15 accomplish our goal. That's my answer to your  
16 question.

17 CO-HEARING OFFICER WOLFF: Any further  
18 questions, Mr. Warburton?

19 MR. WARBURTON: Have there been large projects  
20 since 95-10 that the public has turned down?

21 CO-HEARING OFFICER WOLFF: Mr. Warburton, whom  
22 are you directing the question to?

23 MR. WARBURTON: Mr. Della Sala.

24 CO-HEARING OFFICER WOLFF: And what's the  
25 relevance to the remedy phase now, since you're asking

1 a question about the past?

2 MR. WARBURTON: I'm saying in moving forward,  
3 and in the possible envisioning of a CDO as a  
4 constructive force, Mr. Della Sala says let's do a  
5 plan, the project, and implement it.

6 And I'm saying that, you know, there have been  
7 these -- have there been any problems in the past with,  
8 you know, that approach?

9 MR. DELLA SALA: I don't really understand  
10 that question.

11 CO-HEARING OFFICER WOLFF: All right.

12 Mr. Warburton, I'll give you one more chance  
13 to state your question in short form directly. You are  
14 asking a question with a lot of elaborations. It makes  
15 it difficult for people to answer.

16 MR. WARBURTON: Okay. Taking a look, ten  
17 years ago there was an order from the Water Board to  
18 hopefully move people in constructive directions. 10  
19 years, 14 years later, we're working now forward. And  
20 is there a division between, you know -- well, strike  
21 that; this is not going to. It's --

22 CO-HEARING OFFICER WOLFF: Do you have any  
23 specific questions to ask any of the panel members?

24 MR. WARBURTON: Just wondering, has a large --  
25 Mr. Rubio, has a large dam proposal been rejected since

1 95-10?

2 MR. FIFE: Same objection we've been  
3 articulating.

4 CO-HEARING OFFICER WOLFF: State the objection  
5 please.

6 MR. FIFE: It doesn't go to the remedy portion  
7 of this phase.

8 CO-HEARING OFFICER WOLFF: Sustained.

9 MR. WARBURTON: Okay. Anyway, thank you very  
10 much for your time.

11 CO-HEARING OFFICER WOLFF: Thank you.

12 Is there anyone else with just a very few  
13 questions? If not, we'll take a lunch break till 1:15.  
14 And I remind people we're going after 5:00 if you need  
15 to arrange to park your car or make a phone call to let  
16 people know.

17 Thank you very much.

18 (Lunch recess)

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1                                   AFTERNOON SESSION

2                                   --o0o--

3                   CO-HEARING OFFICER WOLFF: I'll call us back  
4 in session. We'll reconvene back on the record. I see  
5 Mr. Jackson is not present.

6                   MR. SILVER: I'm standing in for Mr. Jackson.

7                   CO-HEARING OFFICER WOLFF: And Mr. Jackson,  
8 would you like to proceed? That's fine.

9                   CHIEF COUNSEL TAYLOR: We can't hear you.  
10 Come forward to a microphone.

11                  DR. THOMAS: Mr. Jackson told me that I should  
12 ask the questions because he hasn't been here. I'm  
13 Dr. Roy Thomas, the President of the Carmel River  
14 Steelhead Association, and I have some questions for  
15 some of the mayors.

16                  CROSS-EXAMINATION BY DR. THOMAS

17                  FOR CARMEL RIVER STEELHEAD ASSOCIATION

18                  DR. THOMAS: I'll start with the well-spoken  
19 Sue McCloud.

20                  By the way, this is motivated in the spirit of  
21 a fellow named Woody Woodward that spent a lot of time  
22 trying to find water for the community.

23                  My first question -- most of them are yes or  
24 no, but you can elaborate I'm sure. Is your city,  
25 Mayor McCloud, on water rations now?

1 MS. McCLOUD: No.

2 DR. THOMAS: When do you think it might be on  
3 water rationing?

4 MS. McCLOUD: That's for the Monterey  
5 Peninsula Water Management District to decide.

6 DR. THOMAS: I believe they're on  
7 every-other-day water.

8 MS. McCLOUD: That's, the one-for-one --

9 DR. THOMAS: So they're not on Stage 1 as far  
10 as you are concerned. So as far as you understand,  
11 nobody in the city is on any forced rationing?

12 MS. McCLOUD: Roy, the stages that the --  
13 Water Management District issues, I don't consider  
14 rationing. I consider that conservation. So our  
15 guidelines are drought tolerant, and we're supposed to  
16 be watering at different times. We're not supposed  
17 to -- there's pages of what we're not supposed to do.

18 DR. THOMAS: Do you think anybody's following  
19 that in your city to any degree?

20 MS. McCLOUD: The City is. And I know my  
21 neighbors are. I can see it.

22 DR. THOMAS: Do you know if there is a trigger  
23 for -- environmental trigger for water rationing?

24 MS. McCLOUD: I do not, no.

25 DR. THOMAS: Does your City require waterless



1 urinals in public and commercial buildings?

2 MS. McCLOUD: I don't know. I don't go into  
3 men's rooms.

4 DR. THOMAS: I mean if you knew if there was a  
5 rule that the City had passed.

6 MS. McCLOUD: We're -- we actually are looking  
7 into that. And we're looking into putting two new  
8 restrooms down on the beach, and one of those would  
9 be -- both of those would be facilitated by waterless  
10 urinals.

11 DR. THOMAS: They have them here. I recommend  
12 you go visit. Are all the toilets in your city low or  
13 ultralow flush toilets?

14 MS. McCLOUD: When you buy a home they  
15 retrofit it. They have to conform that. It -- some of  
16 the ones that might be like across the street from any  
17 1920s house, I doubt very much that -- they do have  
18 indoor plumbing, but very much if they have low flow.

19 DR. THOMAS: Does the city have any idea how  
20 much savings they might get if they had an ordinance  
21 requiring low-flush toilets in all houses?

22 MS. McCLOUD: Are you talking about how much  
23 they might get in the way of water?

24 DR. THOMAS: Water savings.

25 MS. McCLOUD: I don't know. I'm sure the

1 Water Management District can tell you what that  
2 translates into.

3 DR. THOMAS: What is the percent of houses  
4 with full-time residents in the city of Carmel  
5 approximately?

6 MS. McCLOUD: Our guesstimate is somewhere  
7 between 50 and 60 percent. When they did the 2000  
8 census, the census bureau told us they couldn't give us  
9 that answer. So we didn't get what we hoped to have.  
10 But you can just tell by driving around town, as you  
11 know.

12 DR. THOMAS: Well, I'm just asking for your  
13 opinion.

14 MS. McCLOUD: We say somewhere between 50 and  
15 60.

16 DR. THOMAS: What percent do you believe is --  
17 of these unoccupied houses have automatic irrigation  
18 systems?

19 MS. McCLOUD: A goodly portion these days.  
20 They have drip systems.

21 DR. THOMAS: Do you require drought-tolerant  
22 landscaping on new construction?

23 MS. McCLOUD: We require drought tolerant  
24 landscaping no matter what landscaping it is. That's  
25 in our general plan and in our design guidelines.

1 DR. THOMAS: Do you allow lawns to be created  
2 in the new construction?

3 MS. McCLOUD: I don't know. I don't know if  
4 we're permitting that or not. I mean I saw one  
5 installed the other day.

6 DR. THOMAS: I have one next to me too.

7 MS. McCLOUD: We don't permit artificial turf.  
8 The City has looked into that to see if there's some  
9 savings in that.

10 DR. THOMAS: Water-saving artificial turf?  
11 Forget it.

12 Do you have a storm runoff cistern recycling  
13 program in the City of Carmel? In other words, the  
14 stormwater that washes down the hill, do you have any  
15 plans or do you have any system in place that would  
16 store that and reuse it?

17 MS. McCLOUD: Well, I think you probably know  
18 the ASBS system is very demanding on what we do with  
19 these cisterns. I think Rich who is here can correct  
20 me, but I think it's like about 150,000 cisterns or  
21 basins that we've put in, and we do it as the budget  
22 permits, yes, and we've done a number of them. I can't  
23 tell you the exact number. We could get that for you.

24 DR. THOMAS: Does your city use the recycled  
25 water now?

1 MS. McCLOUD: Well, we have nonpotable water.  
2 We have two wells for nonpotable water at Ocean Avenue.  
3 And that water is used by the City to water all City  
4 property that they -- you know, even replacing it can  
5 make it more efficient.

6 DR. THOMAS: Does your city allow cisterns,  
7 private cisterns, from -- from -- for the use of roof  
8 runoff?

9 MS. McCLOUD: There are bladders that you can  
10 put in. Yes, we condone that very strongly.

11 DR. THOMAS: Do you allow the storage and use  
12 of gray water?

13 MS. McCLOUD: I can't answer that. I don't  
14 know the definitive answer on it.

15 DR. THOMAS: Do you assist citizens with the  
16 technology needed to create safe and usable cisterns  
17 for both the roof water and gray water?

18 MS. McCLOUD: Yes. And in fact, we have one  
19 member of our council who goes to a lot of meetings on  
20 this.

21 DR. THOMAS: All right. My last question for  
22 you, I think it is, is: In the spirit of all the tens  
23 of thousands of steelhead that have died each year  
24 because of overpumping in the last 13 years, why has  
25 not one acre foot of new relief been provided for the

1 Carmel River?

2 MR. RUBIN: I'm going to object to the  
3 question. States -- assumes facts that are not in  
4 evidence.

5 DR. THOMAS: Which are those?

6 MR. RUBIN: Everything that led up to your  
7 question mark.

8 DR. THOMAS: There's tens of thousands of  
9 fish. I read it in testimonies and --

10 CO-HEARING OFFICER WOLFF: Mr. Williams --

11 DR. THOMAS: Oh, I'm not supposed to be  
12 argumentative.

13 CO-HEARING OFFICER WOLFF: Well, argue with  
14 him. He's objected. Now what's your defense against  
15 the objection?

16 DR. THOMAS: My defense is it's literally one  
17 of the main purposes of this hearing is what happened  
18 and why? And the -- Mayor McCloud is very active in  
19 all these things. So her opinion --

20 CO-HEARING OFFICER WOLFF: Are you speaking to  
21 as we go forward or attempting to find some  
22 liability --

23 DR. THOMAS: What I'm hoping to find is some  
24 indication on why nobody provided one acre foot of  
25 replacement water in 13 years, as you -- as you have

1 asked them to do. And they -- you heard there was  
2 water in Seaside but that's only -- no, not Seaside,  
3 Ford Ord but it only can be used in Fort Ord. There is  
4 a reason why they've never replaced one acre foot of  
5 water. I want to see if the mayor has an opinion about  
6 that.

7 CO-HEARING OFFICER WOLFF: I'm going to let  
8 you continue, but try to ask the question directly  
9 rather than stating facts. So ask the question --

10 DR. THOMAS: Well, to let people know that  
11 there are things -- there's a reason that I'm asking  
12 the question.

13 Do you have any idea why not -- in 13 years of  
14 trespass on the State's water not one acre foot has  
15 been found to put forward?

16 MR. RUBIN: I'm going to object to the  
17 question --

18 CO-HEARING OFFICER WOLFF: Sustain the  
19 objection.

20 Could you rephrase the question as a question  
21 without stating facts she may or may not agree with.

22 DR. THOMAS: Do you know why we don't have any  
23 replacement water for the trespass water?

24

25

1           MR. RUBIN: Again, I'm going to object to the  
2 question.

3           DR. THOMAS: I'm --

4           CO-HEARING OFFICER WOLFF: I think the  
5 question was fair.

6           MR. RUBIN: There isn't a finding of trespass.

7           CO-HEARING OFFICER WOLFF: I understand.

8           MR. RUBIN: It's also ambiguous to what water  
9 is --

10          CO-HEARING OFFICER WOLFF: I understand, but I  
11 think the mayor understands the question. We won't  
12 take the word trespass too seriously at this moment.

13          MS. McCLOUD: It does mean I can walk on  
14 water, right? Roy, I think we have replaced some of  
15 that water by the fact that we saved over 4,000 acre  
16 feet that were coming out of the river. So I think  
17 4,000 acre feet are available for the fish that weren't  
18 available before 95-10.

19          DR. THOMAS: In 95-10, they state a number  
20 of -- certain amount of water that was -- did not have  
21 a legal right, if you like that wording better, and  
22 that number has not changed in 13 years as far as I'm  
23 concerned, as far as I know. Has it changed?

24          CO-HEARING OFFICER WOLFF: Mr. Williams, are  
25 you asking the mayor a question?

1 DR. WILLIAMS: Excuse me. I am Mr. Williams.

2 He is Mr. Thomas.

3 CO-HEARING OFFICER WOLFF: That's right.

4 Thank you.

5 DR. THOMAS: The question is: There is a

6 number --

7 CO-HEARING OFFICER WOLFF: That won't be the

8 last mistake I make either.

9 DR. THOMAS: There is a number that the Board

10 determined it had no right and need to be replaced.

11 And I have never seen in any statistic that that number

12 has changed in 13 years.

13 CO-HEARING OFFICER WOLFF: I understand. You

14 have your beliefs and opinions but --

15 DR. THOMAS: It's not a belief. It's a fact.

16 CO-HEARING OFFICER WOLFF: Well, it may or may

17 not be a fact, but you're asking the mayor a question

18 that --

19 DR. THOMAS: I'm asking the mayor because

20 she's involved in City activities, she's very

21 interested in the water system, and I'm sure she has

22 some idea of why nothing has happened successfully.

23 Do you have any idea? Maybe you don't.

24 MS. McCLOUD: I will simply say what I said

25 before, Roy, that there are 4,000-plus more acre feet



1 available for the steelhead than there were. We are  
2 certainly working on solutions. You know very well the  
3 history of the dam and other things that have been  
4 tried, and I think we're getting there. Everything  
5 takes time.

6 DR. THOMAS: Okay. I have a question for  
7 Mr. Evans. What new water -- do I need to preface it?

8 Anyway, you announced that you were head of  
9 the board of the -- that deals with the Watermaster in  
10 Seaside. And you stated that there was going to be  
11 reduction in production from Seaside unless new water  
12 was found and placed in the ground from Seaside.

13 My question for you is what new water have you  
14 found to date, your board for the overdraft in Seaside.

15 MR. EVANS: Actually, I'm not head of the  
16 board. I work for the board. I'm their Chief  
17 Executive Officer.

18 DR. THOMAS: But you would know if you found  
19 water; is that correct?

20 MR. EVANS: We're searching out as many  
21 possibilities as we can right now. And we have been  
22 working with the Monterey Peninsula Water Pollution  
23 Control Agency on the possibility of using some of the  
24 water that reclamation from that particular -- for  
25 injection into the Seaside Basin, that --

1 DR. THOMAS: Can you quantify that?

2 MR. EVANS: I'm sorry?

3 DR. THOMAS: Can you quantify that amount of  
4 water you talked to them about?

5 MR. EVANS: I believe that would be a good  
6 question to ask perhaps some of the technical people  
7 later on in the next group. I don't -- the number, I  
8 think, is somewhere in the vicinity of 3,000 acre feet.

9 DR. THOMAS: Do you think from your  
10 understanding of these negotiations, do you think  
11 there's other sources you could tap?

12 MR. EVANS: There is some possibilities we're  
13 looking into, but I'm not at liberty right now to talk  
14 about those because they're under negotiation in some  
15 cases --

16 DR. THOMAS: And --

17 MR. EVANS: -- for me to answer that.

18 DR. THOMAS: If that water is found and  
19 injected in Seaside, does Cal Am have a right to use  
20 some of it?

21 MR. EVANS: That's to be determined by the  
22 Board. I just make recommendations to the Board.

23 DR. THOMAS: Mr. Rubio, I have a question for  
24 you. You made a statement that concerning the  
25 Watermaster and the adjudication of Seaside

1 groundwater, you said it's the first time cities have  
2 taken action. And I think you were referring to doing  
3 something about the water shortage; was that correct?

4 MR. RUBIO: What I was referring to was the  
5 cities working together in a concerted action to  
6 accomplish the goals of the adjudication.

7 DR. THOMAS: Now, do you think this might have  
8 been brought about by the austere nature of the  
9 Watermaster's prediction of -- this predicament of  
10 seawater intrusion? Was it something kind of like, I  
11 would classify, say, something like a CDO?

12 MR. RUBIO: No, I don't. I don't think that  
13 that's what happened.

14 What happened was the Seaside water users want  
15 to protect their rights in that basin because the basin  
16 was used as a relief valve for the Carmel River without  
17 any study what effect that would have on the Seaside  
18 Basin.

19 Now when you put too many straws in the basin  
20 to protect the steelhead, you have impacted people who  
21 need to make a living. You've impacted people who need  
22 to survive and have a quality of life. So the cities  
23 have come together to make sure that that adjudicated  
24 basin does not come into further overdraft.

25 DR. THOMAS: But doesn't the adjudication

1 requirement sound very much like what the State Water  
2 Resources Control Board has been proposed as the CDO?  
3 I mean, does it? It sounds like it to me. I want to  
4 know what you think.

5 MR. RUBIO: No, I don't think they're the  
6 same.

7 DR. THOMAS: Do you think the State Water  
8 Board has more right to protect the Carmel River water  
9 than the purveyors of water out of the Sand City or  
10 Seaside aquifer have rights to protect that water? Do  
11 you think somehow the water is easy to get, doesn't  
12 really need protection, or is not protectable?

13 MR. RUBIO: I think that the Water Resource  
14 Board has their own mission and vision and statement  
15 which has something to do with the health and safety of  
16 the citizens of this state. So I think they will take  
17 that into consideration whenever they make their  
18 judgment on this.

19 DR. THOMAS: You don't think the Water Board  
20 could put somebody in jail if they took water out of  
21 the Carmel River and they decide that wasn't a good  
22 thing?

23 MR. RUBIO: I don't know.

24 MR. RUBIN: I'm going to object to the  
25 question.

1 CO-HEARING OFFICER WOLFF: Sustained. Ask  
2 questions with respect to the remedy phase, please.

3 DR. THOMAS: You testified to the price Cal Am  
4 would have to pay if they used more water than they're  
5 supposed to; is that correct?

6 MR. RUBIO: I didn't. I did not testify to  
7 the price.

8 DR. THOMAS: What is the price?

9 MR. RUBIO: The --

10 MR. RUBIN: I'm going to object to the  
11 question. Hearing Officer Wolff, the question went to  
12 the price of water that California American Water --

13 CO-HEARING OFFICER WOLFF: I'm sorry. Would  
14 you reread the question please.

15 (Record read)

16 CO-HEARING OFFICER WOLFF: And you object to  
17 the question on the price of water.

18 MR. RUBIN: The question is the price of water  
19 from the Seaside Basin. I don't see the relevance of  
20 that to a remedy here.

21 CO-HEARING OFFICER WOLFF: Mr. Thomas?

22 DR. THOMAS: I think the remedy is more water,  
23 and if you can buy it from the Seaside Basin, that's  
24 more water.

25 MR. RUBIN: Appropriative right doesn't

1 determine the quantity of water that might be  
2 available.

3 DR. THOMAS: I didn't get to that part.

4 CO-HEARING OFFICER WOLFF: I view the question  
5 as relevant. Objection is overruled.

6 DR. THOMAS: How much water could Cal Am buy?

7 CO-HEARING OFFICER WOLFF: That's another  
8 question. We're still on the previous question.

9 DR. THOMAS: I answered it myself.

10 MR. EVANS: Mr. Chairman, could I attempt to  
11 answer that question?

12 We -- the Seaside Basin, actually the Board of  
13 Directors, determines on an annual basis what the  
14 replenishment fee is going to be. And I'm not going to  
15 try and get into the calculation because that's done by  
16 hydrologists and people that have much more smarts than  
17 I do in that particular area.

18 But I can tell you that the replenishment fee  
19 that was established for at least the first two --  
20 first year, anyway -- was \$1,132 per acre foot. And  
21 then that went up considerably this -- on the next  
22 year, 2,000-something. I can't remember the exact  
23 amount now, but it did go up substantially per acre  
24 foot. That's the amount that the replenishment -- of  
25 the replenishment fee.

1 DR. THOMAS: So if Cal Am was not able for  
2 some reason to get water out of the Carmel River, they  
3 could buy a certain amount from Seaside?

4 MR. EVANS: There is a certain amount, a base  
5 amount, what's called a base amount which they  
6 participate in where it's under the natural safe yields  
7 and all that jargon they use; but over and above a  
8 certain amount, they have to pay for. It's called  
9 overpumping.

10 And that amount is determined, usually my  
11 office working with the -- primarily with the Water  
12 Management District determines that amount of money --  
13 or that amount of acreage, acre foot, over and above  
14 that amount. Then that's the amount that's determined  
15 the replenishment fee from.

16 DR. THOMAS: So conceivably --

17 MR. EVANS: They could pump and they have  
18 pumped over that amount, yes.

19 DR. THOMAS: Conceivably if there was a cease  
20 and desist order on Cal Am, they might be able to buy  
21 for a short period of time maybe, maybe a longer one, a  
22 significant amount of water out of the Sand City --

23 MR. RUBIN: I do object to the question. It's  
24 ambiguous.

25 CO-HEARING OFFICER WOLFF: Overruled.

1           MR. RUBIN: Characterization of significant is  
2 unclear.

3           MR. EVANS: I can attempt to answer.

4           CO-HEARING OFFICER WOLFF: Please attempt.

5           MR. EVANS: The question of whether or not Cal  
6 Am could come in and actually buy additional water from  
7 the Seaside Basin would be extremely difficult.

8           The Seaside Basin has been overpumped now  
9 considerably. In fact, we are doing all we can to  
10 monitor with the numerous wells that we have on the  
11 Seaside Basin determining -- looking for seawater  
12 intrusion.

13           I don't know if you heard my earlier  
14 testimony, but in many cases we found the water level  
15 of the Seaside Basin is 20 feet to 50 feet below the  
16 level of the sea. And for some reason, we haven't had  
17 seawater intrusion yet; but if it doesn't happen, I  
18 think it's almost a miracle at some point in time.

19           So what I'm saying is even if for some  
20 sake of -- that there is no seawater intrusion,  
21 eventually, that aquifer is going to run out of water.  
22 It's getting critical.

23           DR. THOMAS: Do you know how long --

24           MR. RUBIO: Let me add a little bit to that  
25 because it's critical everybody understand.



1           It's an adjudicated basin. Everybody has  
2 their share of water already. The fee is a  
3 replenishment fee, a charge -- a penalty, if you want  
4 to call it that -- for overpumping, and that fee goes  
5 to the development of new water.

6           So it's not where -- it's not a water store  
7 where you can go buy water. It's an adjudicated basin.

8           DR. THOMAS: Again, can I ask Mr. Evans if he  
9 knows how long the Seaside Basin has been supposedly  
10 overexploited, overdrafted?

11          MR. EVANS: I can only tell you what the  
12 judgment itself says, and the judgment itself says --  
13 and there are several attorneys present; they could  
14 probably correct me if I'm wrong -- but I believe it  
15 says it has been overpumped for several years.

16          DR. THOMAS: How long is several?

17          MR. EVANS: I have no idea.

18          MR. RUBIO: I would venture to say it's since  
19 95-10.

20          DR. THOMAS: So we have a water source which  
21 has not experienced saltwater intrusion. I guess none  
22 of you know why that is. But it still has quite a bit  
23 of water as I understood Mr. Evans to say -- or maybe  
24 that was you -- that farther inland, away from the  
25 ocean, there's a significant amount of water which

1 could be removed without saltwater intrusion. Is that  
2 what you suggested in your testimony?

3 MR. RUBIN: I didn't say that.

4 MR. EVANS: I didn't say that.

5 DR. THOMAS: Well, I believe you did. You  
6 said the wells close to the ocean were below sea level,  
7 by inland wells --

8 MR. RUBIO: I didn't say that.

9 DR. THOMAS: Well, I heard it, so --

10 MR. EVANS: I might have said something to  
11 that effect. If I said that, it was a misunderstanding  
12 on his part.

13 What I was indicating was if there is  
14 saltwater intrusion, and it's indicated at the  
15 monitoring wells that we have along the coast -- and we  
16 have ten of them, constantly being monitored -- if  
17 there is an indication of saltwater intrusion, we  
18 immediately have to stop producing or pumping water for  
19 those wells and increase the pumping further inland.

20 But that seawater intrusion -- and I think I  
21 also mentioned that, that seawater intrusion has a  
22 tendency to move also inland, and it's just a matter of  
23 time before the aquifer will be depleted.

24 DR. THOMAS: But you said there is none at  
25 this date.

1           MR. EVANS: Not to the best of our knowledge  
2 at this time, no.

3           DR. THOMAS: Okay. I want to ask a question  
4 of Mayor Pendergrass. You say that you have a  
5 desalination plant approved, and that you talked to Cal  
6 Am about this, and they were just watching you.

7           Mr. Pendergrass, you are on the -- have been  
8 forever on the Monterey Peninsula Water Management  
9 Board. Didn't Cal Am have a requirement to stop -- see  
10 how should I -- I can't say trespass -- stop using  
11 water that they didn't own on the Carmel River. Why --  
12 why, in your opinion, because you worked with this Cal  
13 Am and the rest of them, did they not do a similar  
14 project to yours?

15           MR. PENDERGRASS: Did not do a similar project  
16 where?

17           DR. THOMAS: Desal project. Did you start in  
18 the year 2000?

19           MR. PENDERGRASS: What are you talking about,  
20 the District project?

21           DR. THOMAS: I'm talking about your project  
22 and your understanding of negotiations with Cal Am and  
23 sitting on the water board for as long as you have and  
24 being in charge of it for many years, being president  
25 or whatever you call it. What in your opinion stopped

1 Cal Am from doing what you did in Sand City, creating a  
2 desal plant, sitting on the coast, using brackish  
3 water?

4 MR. PENDERGRASS: I think that's a question  
5 you should ask them, not me.

6 DR. THOMAS: Well you --

7 MR. PENDERGRASS: We did what we did, and  
8 we're doing it.

9 DR. THOMAS: So you have no opinion why they  
10 didn't --

11 MR. PENDERGRASS: I can't --

12 DR. THOMAS: -- because they had the legal  
13 requirement. You just wanted water for development;  
14 isn't that correct?

15 CO-HEARING OFFICER WOLFF: Just ask and answer  
16 one question at a time.

17 DR. THOMAS: Just trying to help.

18 CO-HEARING OFFICER WOLFF: I understand that,  
19 but it's a little difficult with a large panel. So you  
20 ask the first question. Did you hear his answer?

21 DR. THOMAS: I guess he said he didn't know  
22 why Cal Am didn't do it.

23 MR. PENDERGRASS: I said I can't answer for  
24 Cal Am.

25 DR. THOMAS: You have no idea, is that

1 correct? If you have an idea, I want to know your  
2 idea. Just --

3 MR. PENDERGRASS: I will not and cannot answer  
4 for Cal Am.

5 DR. THOMAS: You lived on the Peninsula for a  
6 long time. You know when the Carmel River washed away  
7 -- bridge washed away, we had a new bridge in a couple  
8 months, or a few months. Are you working 24/7 on the  
9 desal plant? You know what 24/7 means, right?

10 MR. PENDERGRASS: What, working it --

11 DR. THOMAS: 24/7 means seven days a week,  
12 24 hours a day.

13 MR. PENDERGRASS: No. That's under  
14 construction during the day.

15 DR. THOMAS: You don't feel any immediacy? I  
16 mean need for it? Or does Cal Am feel immediacy to  
17 have this water supply available? I'm just asking.

18 MR. PENDERGRASS: Well, that's a speculative  
19 question, Mr. Chair.

20 CO-HEARING OFFICER WOLFF: Well, there are  
21 multiple questions in the same question. If you ask  
22 one question at a time, I'd appreciate it. I think it  
23 will be easier for you to get an answer.

24 DR. THOMAS: Do you feel it's important to  
25 work as fast as you can to develop a desal plant?

1           MR. PENDERGRASS: I think it -- that if it  
2 could be online, the quicker possible, but there's  
3 engineering and technical aspects. You just don't snap  
4 your fingers and it happens. You know that.

5           DR. THOMAS: I know that if you put the effort  
6 in you can make things go faster. I mean that's what  
7 some people can do, but I don't know. I'm asking.

8           MR. RUBIN: I'm going to object to the  
9 question. I apologize for interrupting you, but it  
10 appears those questions are directed to diligence and  
11 for that reason outside the scope of this second phase.

12          DR. THOMAS: Well, I'm trying to show that  
13 there's a source of water that could be here sooner.

14          CO-HEARING OFFICER WOLFF: Overruled.

15          I do appreciate -- I understand where you're  
16 going, Mr. Thomas, but I'd appreciate it if you get  
17 there with just direct questions and a little less sort  
18 of explanation because I don't think -- you're trying  
19 to help the witnesses, but you're not really helping to  
20 get to the answer that you want.

21          DR. THOMAS: Would more money make the project  
22 move faster?

23          MR. PENDERGRASS: No. We're doing due  
24 diligence and getting --

25          DR. THOMAS: Thank you. I think I have a few

1 more questions for Mr. Rubio, Ralph, pertaining to your  
2 efforts to save water. Do all the houses in your  
3 community have low-flow toilets?

4 MR. RUBIO: Those we have access to.

5 DR. THOMAS: You have no ordinance that says  
6 those, because of the water shortage, that live in --

7 MR. RUBIO: No.

8 DR. THOMAS: -- Seaside have to replace their  
9 toilets?

10 MR. RUBIO: No.

11 DR. THOMAS: Do you know what percentage of  
12 your homes have low-flow toilets?

13 MR. RUBIO: No, I have not been in all of  
14 them.

15 DR. THOMAS: Have you -- well, you know all  
16 the new construction, right, so could --

17 MR. RUBIO: All the new construction --

18 DR. THOMAS: You haven't actually looked at it  
19 to see --

20 MR. RUBIO: Our new construction has --

21 (Interruption by the reporter)

22 DR. THOMAS: Have you investigated how much  
23 water you might save by requiring through a city  
24 ordinance low-flow toilets?

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

1 question. Have we? No.

2 DR. THOMAS: Do you allow lawns in Seaside?

3 MR. RUBIO: Yes.

4 DR. THOMAS: Do you require drought-tolerant  
5 landscape?

6 MR. RUBIO: In new construction, yes, new  
7 development.

8 DR. THOMAS: So you have new construction with  
9 drought-tolerant landscape and a lawn?

10 MR. RUBIO: Excuse me?

11 DR. THOMAS: Can you have a house with  
12 drought-tolerant landscape and a lawn?

13 MR. RUBIO: I know we encourage the use of  
14 drought-resistant plantings, but I'm not sure we  
15 prohibit lawns.

16 DR. THOMAS: Does your city allow systems to  
17 store roof runoff?

18 MR. RUBIO: Yes.

19 DR. THOMAS: Does the City store roof runoff?

20 MR. RUBIO: No.

21 DR. THOMAS: Do you use recycled water?

22 MR. RUBIO: When it becomes available.

23 DR. THOMAS: Is any available?

24 MR. RUBIO: No.

25 DR. THOMAS: So you don't use recycled water.



1 How many acres of land does the City own?

2 MR. RUBIO: That's a good question. I don't  
3 know. I know it's brown.

4 DR. THOMAS: All right. Does your city assist  
5 your citizens in the creation and the maintenance and  
6 use of cisterns?

7 MR. RUBIO: We make available to all our  
8 citizens the information for advanced technology,  
9 whether it be energy savings, water savings, water  
10 conservation --

11 DR. THOMAS: But do you have anything that  
12 talks about cisterns? That's how you store roof  
13 runoff?

14 MR. RUBIO: I don't know.

15 DR. THOMAS: Thank you. That's all I wanted  
16 to ask.

17 CO-HEARING OFFICER WOLFF: Thank you,  
18 Mr. Thomas. I believe we have the Monterey Peninsula  
19 Water Management District next. Mr. Laredo.

20 CROSS-EXAMINATION BY MR. LAREDO

21 FOR MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

22 MR. LAREDO: Good afternoon. My name is David  
23 Laredo. I'm general counsel to the Monterey Peninsula  
24 Water Management District.

25 Mr. Zehnder, I understand that you did your

1 analysis of the economic impact to the City of Seaside  
2 extended to the loss of development capacity due to a  
3 moratorium or potential moratorium.

4 Did you have an opportunity to analyze the  
5 economic impact that would result merely from the  
6 rationing that could be imposed upon the City?

7 MR. ZEHNDER: No, we did not. Our analysis  
8 was strictly limited to the evaluation of the  
9 moratorium. So the answer is no.

10 MR. LAREDO: Would you agree that is another  
11 topic that could be evaluated, though, the effect of  
12 rationing on the City or the Peninsula as a whole?

13 MR. ZEHNDER: Certainly, mm-hmm.

14 MR. LAREDO: If I could address Mayor Della  
15 Sala. I understand from Mr. Zehnder that we don't have  
16 a specific economic analysis, but do you have a general  
17 sense as to what the economic impact of water rationing  
18 would be upon the City of Monterey?

19 MR. DELLA SALA: It could be highly  
20 significant. I could foresee that hotel rooms may have  
21 to be closed, restaurant seats removed. We may have to  
22 close the sports center a few days a month or restrict  
23 the use of showers in the sports center, all in an  
24 effort to reduce water consumption in the city of  
25 Monterey.

1           This would create a significant ripple effect.  
2    It would harm our ability to maintain the revenues we  
3    have projected for the budget. And that money, as all  
4    of us know, goes to public safety, infrastructure  
5    improvements, park maintenance, things of that nature.

6           The City of Monterey does use some water from  
7    Lake El Estero to water its adjoining parks and Window  
8    on the Bay Park.

9           I can tell you that about a year ago we  
10   removed a building from our Window on the Bay Park  
11   which is adjacent to Del Monte Avenue in front of  
12   Monterey Bay, and we have not landscaped that lot to  
13   date. It's been over a year.

14          Hopefully, we will be able to landscape that  
15   property come October, November, right before the rains  
16   begin.

17          But the short answer to your question, there  
18   would be a significant hit to our revenue. And not  
19   only to the City's revenue, but to the revenue of those  
20   who work in the hospitality industry.

21          Can you imagine instead of having a paycheck  
22   based on full-time work that your hours are reduced to  
23   half-time? How are you going to pay your mortgages?  
24   How are you going to pay for your car payments and the  
25   bills that your children have for you to pay?

1           This is -- this would be something that would  
2 not be good for the City of Monterey or any other  
3 community on the Monterey Peninsula.

4           MR. LAREDO: While we're on that topic, if I  
5 could expand to the remainder of the panel, Mayors  
6 Rubio, McCloud, or Pendergrass, is there anything that  
7 was stated by Mayor Della Sala that would not apply to  
8 your cities? Mayor Pendergrass?

9           MR. PENDERGRASS: We don't have hotel rooms,  
10 so hotels would not be applicable. We don't have any.  
11 But what we do, we do have a heavy retail industry. So  
12 you're talking about reductions that would go into the  
13 supermarket, Costco.

14           The ability to maintain health and safety with  
15 less water is very difficult, and that would go -- it's  
16 bad enough, would go into the lavatory, the restrooms,  
17 and throughout the whole shopping center. That would  
18 bring economic problems.

19           And throughout the city, whether it's heavy  
20 industry or -- they use a lot of water, would have to  
21 reduce. And there are a lot of small shops and art  
22 studios and so forth would go out of business.

23           MR. LAREDO: Thank you. Mayor Rubio?

24           MR. RUBIO: All those would apply to the City  
25 of Seaside. When you look at reductions in hotel

1 rooms, all those sorts of things, they do cost jobs.  
2 And it would impact us not just from the restrictions  
3 on business in Seaside, but from the whole Peninsula  
4 because much of the workforce lives in Seaside.

5 We would experience a drop in sales tax  
6 because people would not be able to go out and shop.  
7 We would experience an erosion of our revenues into the  
8 City which might cause us to close City Hall, lay off  
9 some fire folks or police folks or public works people.

10 We don't use too much water now on our parks,  
11 and that's why they look as bad as they do and we get  
12 complaints on a regular basis about that.

13 But the scenario of rationing brings to mind  
14 that if you are rationing you're probably restricting  
15 development, so not only would we lose the  
16 opportunities that new development and revenue streams  
17 would bring, but it would also erode existing revenue  
18 streams.

19 Our budgets are balanced on a penny these  
20 days, and any negative impact to that budget creates a  
21 deficit and creates an untenable situation for a city.  
22 So yes, all those impacts. And there's probably more I  
23 haven't even thought of.

24 MR. LAREDO: Thank you.

25 And Mayor McCloud, same question on the

1 impact, the economic impact of rationing?

2 MS. McCLOUD: Well, I would like to take a  
3 page from the books of Mayors Della Sala and Rubio  
4 because the greatest impediment to doing a moratorium  
5 or rationing of the water there is is that it has to be  
6 done totally districtwide.

7 Because if you do it, say in Carmel, and don't  
8 do it in the others, it's a disadvantage for the one  
9 municipality. So if you do a districtwide, the impact  
10 is going to be extreme.

11 Because whether you have to cut, as has been  
12 said, a meal a day or close the restaurant a day or  
13 close down a certain number of beds, rooms in inns --  
14 if those inns have cut back already and put in all  
15 low-flow appliances for the restaurants and low-flow  
16 appliances inn's rooms so there's nothing more that  
17 they cut except to close and not do as much business.

18 So it's got to be districtwide, and the impact  
19 on that, people who will lose their jobs and have  
20 reduced salaries, will be tremendous.

21 MR. LAREDO: Back to you, Mayor Della Sala. I  
22 understood your testimony to the effect the City of  
23 Monterey has approximately 30,000 residents, and I  
24 believe you testified that an equal number of workers  
25 commute daily into the city; is that correct?

1           MR. DELLA SALA: Correct.

2           MR. LAREDO: Do you have a sense as to what  
3 portion of the city's nonresident workforce resides  
4 outside the Cal Am Water service area?

5           MR. DELLA SALA: I can answer that question in  
6 part, and that is I believe it was in 2003 the Monterey  
7 County Hospitality Association did a survey to  
8 determine where the workforce for the hospitality  
9 industry came from for working in the city of Monterey.

10           The findings were that some 16 percent of the  
11 hospitality workforce for the city of Monterey worked  
12 in the city of Monterey. About an equal percentage  
13 worked in the city of Salinas which is served by the  
14 Cal Water Company, not California American Water  
15 Company; and about 25 percent of the hospitality  
16 workforce in Monterey commuted from the city of Marina  
17 which, again, is not served by California American  
18 Water Company.

19           So again, my answer to your question is in  
20 part because it deals directly with the hospitality  
21 industry only and not the entire workforce for the city  
22 of Monterey.

23           MR. LAREDO: Thank you. I believe that you  
24 did characterize the circumstance of the fire-ravaged  
25 structure on Alvarado Street and the City's desire to

1 replace that with a mixed-use structure?

2 MR. DELLA SALA: Correct.

3 MR. LAREDO: Do you recall that testimony?

4 MR. DELLA SALA: I do.

5 MR. LAREDO: Again, the impediment to  
6 replacing that project with a project of the City's  
7 choosing is the lack of water supply; is that accurate?

8 MR. DELLA SALA: It is.

9 MR. LAREDO: So would you agree with my  
10 characterization that in that context the District's  
11 water allocation program is a de facto moratorium?

12 MR. DELLA SALA: I would.

13 MR. LAREDO: Mayor McCloud, do you have a  
14 sense as to what portion of the City's commercial  
15 workforce resides within the city as opposed to the  
16 portion that commutes from outside the city?

17 MS. McCLOUD: I would think if you are doing  
18 retail sales and hospitality, and visitors serving,  
19 that it's a small percentage. And with that in mind --

20 MR. LAREDO: A small percentage, what?

21 MS. McCLOUD: A small percentage of the  
22 workforce lives inside Carmel-by-the-Sea. With that in  
23 mind -- and I think we had some figures at the time --  
24 we went through, we discovered we had almost 300  
25 quote/unquote granny units. So we changed our



1 ordinance to open up the possibility that they could be  
2 rented. Because you can't have two rental units on one  
3 piece of property in Carmel.

4 So we changed that so we could get people to  
5 live, and those were smaller units so hence they would  
6 be a little less expensive. I don't know how  
7 successful it's been.

8 MR. LAREDO: For those that don't have the  
9 good fortune of finding such a unit, why don't they  
10 live within the city of Carmel-by-the-Sea?

11 MS. McCLOUD: I'm afraid the price, they're  
12 priced out of the market for the types of salaries  
13 they're earning.

14 MR. LAREDO: Do you have a sense as to what  
15 the average price of a residence is within the city of  
16 Carmel-by-the-Sea?

17 MS. McCLOUD: Well, right now the price is  
18 going down. But there are some, I think, 200 on the  
19 market, and I would guesstimate it's in excess of a  
20 million dollars easily.

21 MR. LAREDO: Thank you.

22 Mr. Matarazzo, I wanted to focus on the Sand  
23 City desalination plant. I believe Mark Stretars in  
24 his testimony characterized several water supply  
25 sources that he characterized as quote immediately

1    achievable end quote.

2                   As I understand your testimony, construction  
3 of the Sand City desal plant has not yet been  
4 completed; is that accurate?

5                   MR. MATARAZZO:  Yes.

6                   MR. LAREDO:  And obviously, because of that,  
7 the project is not now operational; is that correct?

8                   MR. MATARAZZO:  That's correct.

9                   MR. LAREDO:  Do you have a sense as to how  
10 long it will take to complete testing after project  
11 construction has been completed?

12                   MR. MATARAZZO:  Couple of months.

13                   MR. LAREDO:  Thank you.

14                   Mr. Evans, do I understand accurately your  
15 testimony that the ten percent reduction and diversion  
16 in the Seaside Basin specified in the adjudication  
17 decision is likely to occur on January 1st of 2009?

18                   MR. EVANS:  That is correct.  I'm not sure if  
19 it's January 1st or not.  I know it's January 2009.

20                   MR. LAREDO:  But effective in January, a ten  
21 percent reduction will be required?

22                   MR. EVANS:  That's correct.

23                   MR. LAREDO:  I'd like to draw your  
24 attention -- I believe it will be on the overhead.  
25 This is marked Joe Oliver's Exhibit 15, Exhibit A, page

1 22. I'd like to draw your attention to line 19, and  
2 it's the sentence that states:

3 Further, all Producers are enjoined from  
4 any Over-Production beyond the Operating  
5 Yield in any Water Year in which the  
6 Watermaster has declared that Artificial  
7 Replenishment is not available or  
8 possible.

9 I will represent to you that this is an  
10 accurate copy of the adjudication decision. Do you  
11 know whether the Watermaster has declared that  
12 artificial replenishment is not available to the  
13 California American Water Company?

14 MR. EVANS: We do that on an annual basis.  
15 I'm not sure that has been done in this particular  
16 year. I can't answer that.

17 MR. LAREDO: Okay. Would Joe Oliver be able  
18 to testify to that?

19 MR. EVANS: I would have to ask Joe.

20 MR. LAREDO: Okay.

21 MR. EVANS: But I have all the confidence in  
22 the world that he probably would give us a very  
23 accurate answer.

24 MR. LAREDO: Thank you.

25 I don't need that exhibit any longer.

1           Mayor Rubio, Mr. Silver in cross-examination  
2 asked you several questions about the allocation of  
3 Fort Ord water. I believe he was referring to some  
4 6600 acre feet. Is it your understanding that that  
5 increment of water does not derive from the Carmel  
6 River?

7           MR. EVANS: It does not derive from the Carmel  
8 River. It comes from a separate basin.

9           MR. LAREDO: And that water also does not  
10 derive from the Seaside Groundwater Basin; is that  
11 correct?

12          MR. EVANS: That's correct.

13          MR. LAREDO: And is it your understanding that  
14 that water drives from the Salinas River Basin?

15          MR. EVANS: That's correct.

16          MR. LAREDO: Thank you, panel members. I have  
17 no further questions.

18          CO-HEARING OFFICER WOLFF: Thank you,  
19 Mr. Laredo. Monterey County Hospitality Association?  
20 Any questions, Mr. Lowrey? No questions.

21                 Before I move to California American Water,  
22 the parties are actually entitled to cross-examine each  
23 other. You're one panel, but you're separate parties.  
24 Are there any questions you want to ask of each other  
25 in cross-examination between the parties?

1 MR. FREEMAN: We're done.

2 CO-HEARING OFFICER WOLFF: Thank you.

3 California American Water?

4 CROSS-EXAMINATION BY MR. RUBIN

5 FOR CALIFORNIA AMERICAN WATER COMPANY

6 MR. RUBIN: Good afternoon, lady and  
7 gentlemen. I'm Jon Rubin for California American  
8 Water. I have a few questions for you.

9 If the Hearing Officer deems it acceptable, I  
10 was going to ask a question, let the person who is most  
11 comfortable answering answer the question, and if any  
12 of the other municipalities that are represented  
13 disagree or agree, allow them to state their agreement  
14 or disagreement.

15 CO-HEARING OFFICER WOLFF: As long as one  
16 person speaks at a time, we'll be fine.

17 MR. RUBIN: My first question is what would  
18 the effect be on your community if no water were  
19 available for commercial use?

20 MR. RUBIO: I'll go ahead with that one. I  
21 think as stated already what the impacts would be to  
22 the City in terms of loss to future revenues, lost  
23 opportunity, lost job creation.

24 As the City has recovered from the Fort Ord  
25 closure, we lost a lot of jobs there. And that's one

1 of the prime concerns for our citizens is job creation.  
2 Our young people leave because there are no jobs. The  
3 great minds that we nurture in our community are lost.  
4 And I don't know how you put that into dollars and  
5 cents. That's something you can't quantify.

6 But the loss to the City at this juncture in  
7 our development as a growing, viable part of our  
8 Peninsula community would be devastating.

9 MR. RUBIN: Do the other municipalities agree  
10 with that?

11 MS. McCLOUD: Absolutely.

12 MR. DELLA SALA: I do agree with that and just  
13 to expand on it ever so slightly, each of our cities  
14 has adopted a general plan --

15 MR. JACKSON: Mr. Wolff, I hate to interrupt,  
16 but this is a question that is outside the scope of the  
17 hearing. There is no suggestion there would be no  
18 water.

19 MR. RUBIN: I beg to disagree. We heard  
20 yesterday from the Prosecution Team and specifically  
21 Mr. Stretars developed a conclusion that the health and  
22 safety of the community would be preserved, and the  
23 foundation for his conclusion was a calculation that  
24 was based upon water available for residents and no  
25 other use.

1           CO-HEARING OFFICER WOLFF: I will sustain the  
2 objection because, Mr. Rubin, your understanding of  
3 Mr. Stretars' testimony was incorrect. He was simply  
4 expressing the number 75 gallons per capital per day  
5 per resident, but that water was not only for  
6 residents. That was simply an aggregate number, taking  
7 the total and dividing the number of residents. So  
8 there was no suggestion --

9           MR. RUBIN: The foundation for his statement  
10 was in part a section of the California Code of  
11 Regulations and specifically for residential use, and  
12 there were other sections in that under the California  
13 Code of Regulations for use for commercial, for  
14 irrigation, and none of that was incorporated so I was  
15 assuming his calculation reflected what he stated, and  
16 that was for residential use.

17           CO-HEARING OFFICER WOLFF: I'm going to  
18 sustain the objection. Even apart from the discussion  
19 as to Mr. Stretars' testimony, the CDO does not propose  
20 limitation of water from Cal Am, even if the full  
21 amount of unlawful diversions were unavailable.

22           So if you could rephrase your question within  
23 the boundaries of what is physically possible before  
24 us, that would be helpful.

25           MR. FREEMAN: Excuse me, Chairman Wolff. As I

1 understand the testimony yesterday, there was direct  
2 testimony provided by Mr. Stretars that there was  
3 absolutely no water in his calculation available for  
4 visitors.

5 CO-HEARING OFFICER WOLFF: I'm not going to  
6 argue about the testimony from yesterday with anyone.  
7 We'll have to look at the transcript to see what it  
8 says.

9 But no one has put before us a proposal to  
10 have no water available for the communities in  
11 Monterey, and Mr. Jackson's objection is reasonable in  
12 that regard. I'm sure you can restate the question in  
13 such a way to acknowledge some amount of water and  
14 elicit the type of answer you want.

15 MR. RUBIN: And I will. And I would hope that  
16 you'd take another look at Mr. Stretars' testimony  
17 because I have that interpretation, and I think a  
18 number of other people have the same interpretation for  
19 which he based his conclusion of a lack of jeopardy to  
20 public health and safety.

21 CO-HEARING OFFICER WOLFF: I will look at the  
22 transcript, and there will of course be rebuttal  
23 testimony; so hopefully that can be cleared up before  
24 the whole hearing is over.

25 MR. RUBIN: Thank you.



1           If your community was faced with a 15 percent  
2 reduction in water supply, what do you think the  
3 effects would be on the community.

4           MR. DELLA SALA: The effects would be  
5 negative. As I indicated, each of the cities has a  
6 general plan that has been adopted by their councils,  
7 supported by their residents. That general plan is a  
8 blueprint for development for the next 20 years,  
9 including --

10          MR. SATO: I'm sorry to interrupt.

11          MR. DELLA SALA: -- economic development.

12          MR. SATO: I'm sorry to --

13          CO-HEARING OFFICER WOLFF: Mr. Sato.

14          MR. SATO: I think the way it's phrased calls  
15 for speculation; I object on that ground.

16          MR. RUBIN: I think the witness understood the  
17 question. He was able to answer. I don't know what  
18 the confusion is.

19          CO-HEARING OFFICER WOLFF: Overruled.

20          MR. DELLA SALA: So beyond the economic  
21 impacts, it really takes the respective cities'  
22 control. They are not in control of their destiny when  
23 they have a reduction in water. The changes have to be  
24 made to a general plan that was produced, adopted prior  
25 to any thoughts of having major reductions in water

1 consumption. So the essence of it is it would be  
2 negative.

3 MR. RUBIO: In speaking to the impacts, I  
4 already stated the impacts would be draconian on the  
5 City of Seaside. We sit in a unique position on the  
6 Monterey Peninsula. We would be inordinately --

7 CO-HEARING OFFICER WOLFF: Excuse me --

8 MR. RUBIO: -- penalized --

9 CO-HEARING OFFICER WOLFF: -- Mr. Rubio.

10 MR. SATO: I'm sorry, Mayor Rubio; I'm going  
11 to object again.

12 I'll object on the lack of foundation. I  
13 asked these same questions of these witnesses whether  
14 they made an evaluation of these kinds of things, and  
15 they said no, they had not.

16 Now for them to testify they have -- if this  
17 is just an opinion on their part, that's one thing.  
18 But if they've got something more, then I think that  
19 that contradicts their prior testimony. There's no  
20 foundation.

21 MR. RUBIN: Mr. Sato asked if they conducted a  
22 specific evaluation similar to the one that was done by  
23 Mr. Zehnder, if I believe that's correct. I haven't  
24 asked that question.

25 I'm asking these elected officials who are

1 responsible for the municipalities what their view is.  
2 And you can characterize it as an expert opinion, a  
3 layperson opinion. It is clearly coming from a person  
4 that has a substantial role in the community. I think  
5 it's extremely relevant, if not the most relevant  
6 testimony that could be provided today.

7 MR. SATO: I still believe that it -- I mean  
8 if either Mr. Rubin would say I'll take the testimony  
9 the way they want to give it to me. If he wants it a  
10 certain way, he has to lay a foundation. He  
11 just doesn't -- if he just says it's their opinion,  
12 just asking for their opinion, he can ask them whether  
13 it's their opinion. I won't object to that.

14 MR. RUBIN: I can satisfy that if you would  
15 like.

16 CO-HEARING OFFICER WOLFF: Mr. Jackson?

17 MR. JACKSON: Yes. My objection to the line  
18 of questioning is somewhat different. The objection  
19 would be that this is the CDO hearing. The economic  
20 impacts on the general plan seem to me outside the  
21 scope of the notice. We talked about health safety in  
22 the notice. There was no talk about economic impacts  
23 per se, so no one was able or was led to believe within  
24 the notice that we were hear to argue whether or not  
25 these folks would be affected in terms of their

1 economic impacts to the hospitality industry.

2 CO-HEARING OFFICER WOLFF: Mr. Rubin?

3 MR. RUBIN: I believe in a prior order you did  
4 express interest in hearing this type of testimony. I  
5 will point out that Mr. Jackson is apparently objecting  
6 to the answer that was provided, and not to my  
7 question.

8 CO-HEARING OFFICER WOLFF: Well, Mr. Jackson,  
9 I'll overrule your objection because we've asked for  
10 any evidence with respect to how any such action within  
11 the CDO might be most effectively and equitably  
12 implemented, and economic considerations come in there.

13 Furthermore, economic testimony was provided  
14 earlier, and no objection to the testimony when it was  
15 first submitted, so the topic has already been  
16 broached.

17 With respect to Mr. Sato's objection, I  
18 believe -- could you restate it for me? I want to be  
19 sure I understand it really before I rule.

20 MR. SATO: It was a foundational issue. I  
21 mean, if Mr. Rubin is asking that, just for their  
22 opinion as individuals.

23 CO-HEARING OFFICER WOLFF: That's right.  
24 Mr. Rubin, you were comfortable asking them just for  
25 individual opinions?

1           MR. RUBIN: Yes. It's fine for the mayors to  
2 give me their individual opinions on how the potential  
3 actions of this Board might affect the communities they  
4 are mayors for.

5           But I just want to make it clear that if  
6 Mr. Sato's asking for a foundation, it might make this  
7 a little more difficult. I would have to ask them  
8 first if they have some opinion and then ask what their  
9 opinion is. With the panel, it might be a little more  
10 complicated, but we could try.

11           CO-HEARING OFFICER WOLFF: Just a moment.

12           Mr. Sato, you wanted to say something?

13           MR. SATO: In response to Mr. Rubin's last  
14 comment, I think I stated before I'm willing to  
15 allow him to ask questions about their opinion, and so  
16 he doesn't need to lay a foundation on that issue. I  
17 will stipulate that he can ask with the understanding  
18 it is just their opinion.

19           CO-HEARING OFFICER WOLFF: Do you accept that,  
20 Mr. Rubin, just asking for their opinion. They're not  
21 being accepted as experts on economic matters.

22           MR. RUBIN: I would be very happy to hear the  
23 mayors' opinions on how a reduction in water supply  
24 will affect their communities.

25           MR. RUBIO: I think I was in the middle of a

1 response. And if it's just my opinion, I can open it  
2 up a little bit?

3 MR. RUBIN: I would like for you to answer the  
4 question to the best of your ability.

5 CO-HEARING OFFICER WOLFF: As long as we get  
6 out of here by 6:00 or 7:00.

7 MR. RUBIO: Give a politician a microphone,  
8 you never know what's going to happen.

9 So in restating that the effects on the  
10 community would be draconian. And it's true that  
11 Mr. Sato did ask a question regarding a fiscal  
12 analysis, on what it would take to be a viable city.  
13 We did not do that analysis specifically on that point.

14 But, as Mr. Della Sala pointed out, a general  
15 plan has been in effect throughout the city and is  
16 required by law. In the assembling of that general  
17 plan, there are certain factors that are required to be  
18 met by law. And that is the financial viability of  
19 that plan, the health and safety of its citizens is  
20 paramount in the general plan.

21 So all those factors are studied and analyzed  
22 in the general plan and can be viewed as a financial  
23 analysis of what could happen to a city, what it takes  
24 to be a viable city in California.

25 MR. RUBIN: Thank you. Any of the other

1 mayors have any additional response?

2 MR. PENDERGRASS: Yes, I do.

3 I'd like to talk to the regards of the lesser  
4 evil, the pain across the plan here, looking to figures  
5 you already have and then one you don't have. When you  
6 look at what I stated, that 88 from the 17,000 to 2007  
7 down to 12,003, savings of almost 5000 acre feet.

8 Every month, we collectively, through  
9 conservation and everything we can do to possibly  
10 reduce the water use, and we're like -- the limit is  
11 11,285 acre feet which 95-10 set on the river plus  
12 also -- I don't know the exact figure -- but the  
13 Seaside Basin, as of July 1st we were just 4.2 percent  
14 under the limit. That was 426 acre feet. The CDO,  
15 Mr. -- what's your last name?

16 MR. RUBIN: My last name is Rubin.

17 MR. PENDERGRASS: Yeah, Rubin. At 15  
18 percent -- so you look at that small number. Every  
19 month it's almost like that, that low, just barely  
20 under the limit. And we've done it. But you take a  
21 15 percent reduction, that is 1,693 acre feet.

22 Mr. Rubin, how do we do that?

23 MR. RUBIN: And just let the record show, I  
24 believe Mr. Pendergrass was referring to Exhibit A to  
25 his written testimony.

1           My last question concerned a 15 percent  
2 reduction. What would be the effect of a 20 percent  
3 reduction?

4           MR. RUBIO: I really don't know how any of our  
5 businesses would survive on a 20 percent reduction.  
6 And I mean if businesses are closing, people are losing  
7 jobs. And if people are losing jobs, they're not  
8 spending money. If they're not spending money, they're  
9 not paying property tax. They're probably losing their  
10 homes. They're not making sales tax contributions  
11 which will in effect affect the State coffers as well.  
12 It is not a good solution.

13           MR. RUBIN: Afraid to ask. What about a 35  
14 percent reduction?

15           MS. McCLOUD: Why don't you just give us a gun  
16 and let us commit suicide?

17           CO-HEARING OFFICER WOLFF: Mr. Rubin, just in  
18 the interests of saving time, if you could just move to  
19 50 percent, or whatever your endpoint is.

20           I think it's abundantly clear that the mayors'  
21 opinions are a significant reduction would be  
22 devastating to their communities. That's in the  
23 written record. How much more time do you need to  
24 spend on it?

25           MR. RUBIN: I think the record does not yet



1 reflect the different effects that the stages of  
2 reduction that are being proposed in the draft cease  
3 and desist order might cause, and I wanted it to be  
4 clear that -- what the opinions are for a 15 percent  
5 reduction versus the other steps that are proposed in  
6 this draft cease and desist. I don't think anyone's  
7 asked these question before.

8 CO-HEARING OFFICER WOLFF: I understand. We  
9 could be here all day asking everyone involved in this  
10 hearing what their opinions are with respect to every  
11 increment of the reductions, and you have already  
12 stipulated that the mayors' opinions are just opinions.  
13 So we could ask everyone their opinions on every  
14 increment of the reduction. Just encouraging you to  
15 ask your questions and move on to --

16 MR. RUBIN: One more increment.

17 CO-HEARING OFFICER WOLFF: Then finish up.

18 MS. McCLOUD: May I say something else?

19 There is also the law of unintended  
20 consequences. And as I mentioned, we have 40,000 trees  
21 in our one-mile-square village. Already there are  
22 motions that we need -- and half of our lots are 40 x  
23 100, so 4,000 square feet.

24 And because the things that are coming out now  
25 after the fires in California saying that -- showing

1 that the houses that were saved were ones that had 15  
2 feet -- or I don't remember exact numbers -- between  
3 them. We don't even have that space in Carmel. So now  
4 we're beginning to hear people say let's take down our  
5 trees.

6 So what I'm getting at is unintended  
7 consequences, is that we are going back to the  
8 environment, and so we need trees, and so I think we  
9 have to be careful that one step doesn't create another  
10 step even worse.

11 MR. RUBIN: And my last step here was a  
12 50 percent reduction. What do you perceive the effects  
13 of that to be on your communities?

14 MR. DELLA SALA: I think one of the first  
15 things here is that we would have very little greenery  
16 left in our city. Parks would be brown. That would  
17 lead to a reduction in tourism. That would lead to a  
18 reduction in revenue. That would lead to a reduction  
19 in services for our citizens in the city of Monterey.

20 That would probably bring us to the point  
21 where it would impact the number of public safety  
22 personnel that we currently have on staff that are  
23 there to protect the citizens of Monterey. And our  
24 number one responsibility as leaders of our communities  
25 is to protect the general welfare of our residents.

1           MR. RUBIO: I think if you cut by 50 percent  
2 the water available to citizens, there are things that  
3 are going to have to go by the way. I mean, how often  
4 are they going to wash their dishes? How often are  
5 they going to wash their clothes?

6           Are we going to have odd/even days you can  
7 take a shower? What are the effects of that? It may  
8 sound facetious, but I mean really, 50 percent. That's  
9 a lot of water.

10           What happens when people don't start washing  
11 things? You have disease. And it would be really  
12 terrible to find out that one of the results of a move  
13 like that could be that you have a sick population or  
14 you have some sort of, you know, epidemic.

15           MR. RUBIN: Mayor Della Sala, I have a couple  
16 questions directly for you. I believe on your -- in  
17 response to direct testimony, you referenced about two  
18 million people visiting Monterey annually. Do you  
19 recall that?

20           MR. DELLA SALA: Oh, yes.

21           MR. RUBIN: Do you know what percentage of  
22 those people might be staying in one or more of the  
23 hotels on the Monterey Peninsula?

24           MR. DELLA SALA: I don't know, but I can give  
25 you the statistics that the Monterey Bay Aquarium has

1 provided to us.

2 First, as a little background, the Monterey  
3 Bay Aquarium has had attendance range from 1.7 million  
4 to 2.4 million visitors a year during its time since  
5 1984 when it was constructed. Their figures indicate  
6 that about half the visitors to the Aquarium stay in  
7 the Peninsula hotel rooms.

8 What happens now, taking that a little bit  
9 further, when the economy recovers. Will 55 percent of  
10 the folks visiting the Aquarium stay in our rooms?  
11 Will 60 percent, 65 percent? Same number of folks  
12 going to the Aquarium, but the consumption of the water  
13 because of the overnight stays would rise  
14 significantly.

15 MR. RUBIN: I have another question for you.  
16 It involves a hypothetical. Just assume all other  
17 factors that are out in the community remain the same  
18 as they are today and that I own a restaurant in  
19 Monterey that seats 50 people. If I wanted to increase  
20 the number of people that were allowed to attend my  
21 restaurant to 51, could I do that?

22 MR. DELLA SALA: You would be prevented under  
23 the law from doing that. You would need a water  
24 allocation for additional seats.

25 MR. RUBIN: And if I owned a restaurant in a

1 building, and there was across the street another  
2 building that had a vacancy for commercial, and my  
3 restaurant -- the building my restaurant is located in  
4 burns down: Can I move across the street?

5 MR. DELLA SALA: You can move across the  
6 street, but you wouldn't be able to operate the same  
7 restaurant you had before the building burned down  
8 because there wouldn't be the water credits available  
9 on that site you wanted to move into.

10 MR. RUBIN: Thank you.

11 MR. DELLA SALA: You're welcome.

12 MR. RUBIN: Now a general question for all the  
13 mayors. There is a lot of discussion about alternative  
14 water supplies, projects that are being considered.  
15 Has any of the municipalities determined that the  
16 municipality would not support a desalination plant  
17 with a capacity of approximately 11,700 acre feet?

18 MR. RUBIO: We have not taken a move,  
19 opposing, no. We have not taken an opposition to that  
20 project.

21 MR. RUBIN: Has anyone else?

22 MR. DELLA SALA: No.

23 MR. RUBIN: I assume the silence means that no  
24 other municipality . . . Can I infer that what the  
25 municipalities are looking for is a regional solution?

1 MR. DELLA SALA: Correct.

2 MR. RUBIN: There is no opposition to a  
3 desalination plant?

4 MR. DELLA SALA: No.

5 MR. RUBIN: Let the record reflect, show that  
6 silence presumably means that nobody objects to my  
7 question or disagrees with my question.

8 This might be best directed to Mayor Rubio,  
9 but deals with the Seaside Basin, so whomever is most  
10 knowledgeable for this question. Do you know after  
11 1995 if water -- use of water from the Seaside Basin  
12 increased?

13 MR. RUBIO: Yes.

14 MR. RUBIN: Do you know if Order 95-10 ordered  
15 California American Water to maximize use of Seaside  
16 Basin water?

17 MR. RUBIO: That's my understanding.

18 MR. RUBIN: And Order 95-10 was issued in  
19 1995?

20 MR. RUBIO: Yes.

21 MR. RUBIN: Now I have a question that might  
22 be best directed at Mayor Pendergrass. I believe there  
23 was some discussion about the City of Sand City  
24 desalination plant, and specifically regarding the  
25 schedule for completion. Do you recall having some

1 discussion about that today?

2 MR. PENDERGRASS: Yes, I do.

3 MR. RUBIN: And when is the date of completion  
4 projected?

5 MR. PENDERGRASS: It cannot be later than  
6 February 9, contractual. Steve?

7 MR. MATARAZZO: It will probably be January or  
8 February.

9 MR. RUBIN: So the testimony today from the  
10 City of Sand City is that the desalination plant is  
11 expected to be complete -- should not be complete till  
12 after February of 2009.

13 MR. MATARAZZO: Yes, and then there's testing.

14 MR. RUBIN: And how long does the testing  
15 occur after the desalination plant is complete?

16 MR. MATARAZZO: My understanding is at least  
17 two months.

18 MR. RUBIN: And do you consider the plant to  
19 be fully operational after those two months?

20 MR. MATARAZZO: Yes.

21 MR. RUBIN: Thank you.

22 Back to the Seaside Basin. If I understand  
23 it, there's an operational yield that was set in the  
24 basin adjudication; is that correct?

25 MR. RUBIO: Yes, that's correct.

1 MR. RUBIN: And also a safe yield?

2 MR. RUBIO: Correct.

3 MR. RUBIN: Do you know if California American  
4 Water is operating to the operational yield?

5 MR. RUBIO: Yes, working at the operational  
6 yield.

7 MR. RUBIN: Do you know if California American  
8 Water could extract more than what's allowed under the  
9 operational yield?

10 MR. RUBIO: I'm sorry; say that again.

11 MR. RUBIN: Do you know if California American  
12 Water could extract more water than what's allowed  
13 under the operational yield?

14 MR. RUBIO: They could, but they would be in  
15 violation of the order.

16 MR. RUBIN: Generally, back to the mayors as a  
17 panel, whoever would be best to answer: Do you know if  
18 the municipalities have the authority to order existing  
19 homes to install low-flow toilets?

20 MR. RUBIO: That I don't know, what authority  
21 is within our grasp. That would be a legal question.

22 MR. RUBIN: Any of the mayors have an answer?

23 MS. McCLOUD: I assume we could pass an  
24 ordinance that so stated.

25 MR. DELLA SALA: That's correct.



1           MR. RUBIN: I apologize for jumping back and  
2 forth. Back to the City of Sand City. For the  
3 project, the City of Sand City's desalination plant,  
4 was there review conducted pursuant to the California  
5 Environmental Quality Act?

6           MR. PENDERGRASS: I believe that was part of  
7 the CEQA process, so very definitely, yes.

8           MR. RUBIN: And was the City of Sand City the  
9 Lead Agency for that CEQA document?

10          MR. PENDERGRASS: Yes.

11          MR. RUBIN: Did the City of Sand City need to  
12 obtain approval from the California Public Utilities  
13 Commission in order to construct the desalination  
14 plant?

15          MR. MATARAZZO: No.

16          MR. RUBIN: Are you familiar with the  
17 desalination plant that is part of the Coastal Water  
18 Project?

19          MR. MATARAZZO: Very much.

20          MR. RUBIN: Is California American Water the  
21 Lead Agency under CEQA for that project?

22          MR. MATARAZZO: No, the Public Utilities  
23 Commission is.

24          MR. RUBIN: Thank you.

25          Again, I apologize for jumping around. Mayor

1 Della Sala, in response to a question that was asked of  
2 you by the Monterey Peninsula Water Management  
3 District, you provided some data regarding -- well, I  
4 think it was data that you obtained from the  
5 Monterey --

6 MR. DELLA SALA: Hospitality Association?

7 MR. RUBIN: Yes. Would you please summarize  
8 that data again? And I apologize; I thought you might  
9 have misstated some of the information.

10 MR. DELLA SALA: What I indicated was there  
11 was a report that was commissioned by the Monterey  
12 County Hospitality Association in 2003 in order to  
13 determine what percentage of the hospitality workforce  
14 resided in the city of Monterey and worked in the City  
15 of Monterey.

16 And from that report, my recollection is that  
17 16 percent of the City of Monterey hospitality  
18 workforce lived in the City of Monterey. A like number  
19 lived in the city of Salinas, which is not served by  
20 California American Water Company. 25 percent of the  
21 workers in the hospitality industry within the City of  
22 Monterey came from the city of Marina which again is  
23 not served by California American Water Company.

24 MR. RUBIN: Thank you. Is it the mayors'  
25 positions that the communities within the Monterey

1 Peninsula are limited in their water supply?

2 MR. DELLA SALA: Yes.

3 MR. RUBIO: Absolutely.

4 MR. RUBIN: And how long do you believe that  
5 limitation has existed in the Monterey Peninsula  
6 community?

7 MS. McCLOUD: Since 95-10.

8 MR. PENDERGRASS: 14 years, whatever that --

9 CO-HEARING OFFICER WOLFF: All of you need to  
10 speak more loudly, so please turn on your mic or speak  
11 into the mic.

12 MR. RUBIN: Just so the record's clear, was  
13 the response since 1995-10 or 14 years?

14 MR. PENDERGRASS: Right.

15 MR. RUBIN: I have no further questions.

16 CO-HEARING OFFICER WOLFF: Thank you.

17 Staff, do you have any questions?

18 STAFF ENGINEER MONA: I have one question.

19 This is Ernie Mona. Just a question for all the  
20 mayors.

21 Is it your belief that a 15 percent reduction  
22 by Cal Am of the diversion from the Carmel River over  
23 the next two years would result in an equal 15 percent  
24 reduction in demand within each one of your communities  
25 to allow them to make that reduction in diversions?

1           MR. DELLA SALA: I'm sorry; I didn't hear the  
2 last part. Each of the cities?

3           STAFF ENGINEER MONA: Yeah, each of your  
4 cities is required to make a 15 percent reduction in  
5 use of water to allow Cal Am to reduce its diversion  
6 from the Carmel River by 15 percent over the next two  
7 years. Is it an equal thing? If they have to reduce  
8 diversions 15 percent under the proposed CDO the next  
9 two years, does that mean each one of your communities  
10 is going to be required to reduce your demand by  
11 15 percent over that same time period?

12          MR. PENDERGRASS: I don't know.

13          CO-HEARING OFFICER WOLFF: Please speak into  
14 the mic.

15          MR. PENDERGRASS: I don't know.

16          MR. RUBIO: I would venture to say that is  
17 what I believe. I don't see how Cal Am could  
18 distribute it any other way. They would have to be  
19 equitable. It would have to be broad-based. They  
20 couldn't pick one city out over another. I don't think  
21 any city would stand for that.

22          MS. McCLOUD: I guess I'm asking for  
23 clarification of your question. Are you suggesting  
24 that you're looking at a 15 percent cut on both parties  
25 or are you suggesting that if you cut Cal Am 15 percent

1 they in turn would turn to us and cut our allotment 15  
2 percent?

3 STAFF ENGINEER MONA: Correct. Under the CDO,  
4 Cal Am would be required to reduce its diversions from  
5 the Carmel River 15 percent over next two years. So my  
6 question is: Would that 15 percent reduction in  
7 diversions equate to 15 percent reduction in use of  
8 water within your communities?

9 CO-HEARING OFFICER WOLFF: Mr. Jackson?

10 MR. JACKSON: Excuse me, just a clarification.  
11 Mr. Mona, are you talking about a 15 percent reduction  
12 in the total water supply for these folks or only the  
13 part that Cal Am is taking illegally.

14 CO-HEARING OFFICER WOLFF: Mr. Jackson, are  
15 you objecting? If so, state your objection.

16 MR. JACKSON: My objection is that the  
17 question is unclear.

18 CO-HEARING OFFICER WOLFF: I believe the  
19 people being asked the question understand the  
20 question.

21 MS. McCLOUD: That's why I asked for  
22 clarification.

23 CO-HEARING OFFICER WOLFF: All right.

24 Mr. Mona, would you restate your question one  
25 more time.

1           STAFF ENGINEER MONA:   Okay.

2           Under the CDO, Cal Am is required to reduce by  
3 15 percent the total amount of water that it is  
4 diverting without authorization from the Carmel River  
5 over the next two years.  In response to testimony --  
6 in response to questions from Mr. Rubin, you all  
7 expressed concerns about making a 15 percent to  
8 50 percent reductions in use of water within your  
9 communities.

10           So my question is:  During the next two years  
11 under the proposed CDO, if Cal Am is required to reduce  
12 demand by 15 percent, would you all be required to  
13 reduce use of water within your communities by  
14 15 percent in order for them to achieve that 15 percent  
15 reduction in diversion, unauthorized diversions from  
16 the Carmel River?

17           MR. RUBIO:  That's a little bit different than  
18 the question I answered.

19           CHIEF COUNSEL TAYLOR:  Let me see if I can  
20 help deal with this a little bit.  Background,  
21 hypothetically, Cal Am has the right to take to a  
22 municipality say maybe 17,000 acre feet.  Only about,  
23 say hypothetically, 7,000 acre feet is water to which  
24 it has no legal right.

25           If Cal Am were required to reduce by

1 15 percent the illegal diversion, then that's clearly  
2 not equal to a 15 percent reduction in total amount of  
3 water Cal Am has available to supply to you. You  
4 follow me there? Okay.

5 Now, Mr. Rubin's questions -- your responses  
6 to Mr. Rubin's questions seemed to equate, as I was  
7 listening, that a 15 percent reduction in Cal Am's  
8 illegal diversions would be tantamount to a 15 or 20 --  
9 or 20 percent reduction in the amount of water  
10 available to each of these communities. That seemed to  
11 be the assumption made in these responses, so we're  
12 just asking for a clarification on that.

13 MS. McCLOUD: I think that early on when we  
14 were asked the question, sort of the same thing -- at  
15 least I heard the mayors say that we were not going for  
16 any percentage cut from what we currently have. And  
17 that would have, at least speaking now on that from my  
18 own jurisdiction, that would have a dire consequence.

19 As I pointed out a couple of times about the  
20 senior housing we're trying to get built right now.  
21 And, you know, we're down to 1.25 acre feet. So we  
22 would have to roll those way back, and it would be a  
23 disaster.

24 Now I think maybe there is a little bit of  
25 confusion here too that other sources -- other

1 jurisdictions have different sources. So to make it  
2 equal, it's going to be a real puzzle.

3 MR. PENDERGRASS: I have a logistic problem  
4 with --

5 CO-HEARING OFFICER WOLFF: Please speak up.

6 MR. PENDERGRASS: Yeah, I have a logistic  
7 problem with that question. Before we went to lunch,  
8 every mayor here said we do not want the CDO. And I  
9 said earlier, the enclosure I listed my testimony, how  
10 much water we have saved since 1988. And you're asking  
11 us to reduce -- and I just said a while ago, we're just  
12 under the limit last month, 4.2 percent which was  
13 426 acre feet.

14 CO-HEARING OFFICER WOLFF: Mr. Mayor --

15 MR. PENDERGRASS: You're asking us to reduce  
16 1693 acre feet.

17 CO-HEARING OFFICER WOLFF: Mr. Mayor, I really  
18 respect your presence here, and I appreciate what you  
19 said and I think you said it previously. He just asked  
20 a question. If you would like to answer his question  
21 that's fine; if you don't want to answer the question,  
22 that's fine. But it's a specific question.

23 MR. PENDERGRASS: I say we can't. You want  
24 that answer.

25 CO-HEARING OFFICER WOLFF: All right. You



1 decline to answer the specific question asked, fine.

2 Any others wish to answer the question we've  
3 asked? Seeing none, we'll move on. Thank you. I have  
4 a few questions.

5 CHIEF COUNSEL TAYLOR: Excuse me, Mr. Wolff.  
6 Two more questions?

7 CO-HEARING OFFICER WOLFF: Please, go ahead.

8 CHIEF COUNSEL TAYLOR: Thank you.

9 The testimony of Mr. Corpuz, page 1 states  
10 roughly 89 percent of the potable water available to  
11 the City is served by California American Water  
12 Company. Where does the other water come from?

13 MR. CORPUZ: The City of Seaside has a small  
14 municipal system.

15 CHIEF COUNSEL TAYLOR: And what is the source  
16 of that water?

17 MR. CORPUZ: It's the Seaside Basin.

18 CHIEF COUNSEL TAYLOR: Pumped groundwater?

19 MR. CORPUZ: Correct.

20 CHIEF COUNSEL TAYLOR: Thank you.

21 And a question for Mr. Zehnder. Did your  
22 study about the economic impacts of a curtailment of  
23 water to the City of Seaside look at the alternative  
24 consequences of what benefits might occur to the City  
25 or what expenses the City might save if new development

1 did not occur?

2 MR. ZEHNDER: That's correct. It was looking  
3 at the fiscal implication of new development, the -- I  
4 think it was 334,000 units, about half a million square  
5 feet of commercial space. And looking at the,  
6 basically the positive economic effects that that space  
7 would -- or that development -- would create, and  
8 therefore those are -- that's revenue that they would  
9 not otherwise receive if it is precluded

10 CHIEF COUNSEL TAYLOR: What I'm saying is  
11 there's a flip side to that equation. If new  
12 development does not occur, there seems to be reason to  
13 assume there are some expenses that the City would not  
14 incur and that the City's budget would not incur. Did  
15 your study look at that side of the equation?

16 MR. ZEHNDER: We did not look in detail at the  
17 cost side of the equation. In fact, in our  
18 experience -- and we do a lot of these studies --  
19 typically, when you have a situation like this where  
20 the development program is heavily skewed toward the  
21 commercial development side, there is much less cost,  
22 municipal cost, associated with that scenario relative  
23 to a residential scenario.

24 And the other aspect here is that we're  
25 dealing with essentially in-fill situation which is

1 very different than what we would call a green-fill  
2 situation in that many of the streets and other  
3 infrastructure and support services related to  
4 development in Seaside are already in place.

5           So I think we're talking about a very  
6 marginal, small amount, increment of cost.

7           But your point is well-taken. There would be  
8 some reduction from the revenue benefits that I cited  
9 earlier related to at least some cost. But we haven't  
10 looked at that in detail.

11           CHIEF COUNSEL TAYLOR: I appreciate your  
12 answer, but I gather from your response that your study  
13 does not include any specifics addressing that  
14 particular question?

15           MR. ZEHNDER: We did not look in detail at the  
16 cost side of the equation; that is correct.

17           STAFF COUNSEL TAYLOR: Thank you.

18           CO-HEARING OFFICER WOLFF: I just have a few  
19 questions for you. Your ordeal is almost over,  
20 although I expect all of you, especially the mayors,  
21 have stayed much longer and later at night.

22           Start with Mr. Matarazzo. Sorry if I'm  
23 butchering your name. The Sand City desalination  
24 plant, what is the approximate cost to the water  
25 produced from that plant projected to be?

1 MR. MATARAZZO: \$3500 an acre foot.

2 CO-HEARING OFFICER WOLFF: And how much water  
3 does the City of Seaside use in -- I'm sorry; City of  
4 Sand City use total?

5 MR. MATARAZZO: Right now, 94 acre feet.

6 CO-HEARING OFFICER WOLFF: The plant's going  
7 to produce 300 acre feet, and right now you're using 94  
8 acre feet?

9 MR. MATARAZZO: Correct.

10 CO-HEARING OFFICER WOLFF: The reason I asked  
11 that is there is a sort of underlying political issue  
12 here that's not directly before us but underlies the  
13 conversation that's taking place. And the four mayors  
14 are experts in the politics of your communities and in  
15 the wishes and the willingness of the members of your  
16 communities to do various things. I'm very respectful  
17 of that. In my opinion it takes about 10,000 votes to  
18 elect someone to a local agency board. I don't even  
19 know 10,000 people, much less that many votes. I'm  
20 sure you have a pretty good sense what the people in  
21 your communities think.

22 And if you were faced with -- the communities  
23 were faced with \$2600 and \$3500 an acre foot water,  
24 desalination water, Coastal Water Project estimates  
25 range anyplace from \$1600 to \$2,300 per acre foot, one

1 of our exhibits, so expensive water.

2 If the people in your communities are faced  
3 with that water or continuing diversions from the  
4 Carmel River at much lower cost, what do you think they  
5 would voluntarily choose to do? Are the communities  
6 prepared to pay that much for water, that much money  
7 for water voluntarily? We'll start with you, Mayor  
8 McCloud.

9 MS. McCLOUD: Talking about -- if you're  
10 talking about total replacement, I don't think we could  
11 afford that. But, you know, obviously, if people are  
12 going to pay those prices, it's not going to make it an  
13 equitable market, and it's probably going to preclude  
14 in our jurisdiction looking at low-cost housing because  
15 costs that you're incurring just to invest in the  
16 construction are going to go up.

17 CO-HEARING OFFICER WOLFF: Mayor Rubio?

18 MR. RUBIO: Yeah. When you're trying to gauge  
19 what the public will think, it's difficult. We all  
20 know we have a water problem. But at the same time,  
21 dam proposals are turned down. Other public projects  
22 are turned down.

23 And it seemed to -- that everybody still  
24 agrees to some degree to fix it. We heard today why  
25 hasn't anybody done anything? Well, everybody's

1 working on it. We come up with a plan. It doesn't  
2 mean the public is going to approve it. So there is a  
3 lot of work and money expended, then we're back to  
4 square one.

5 But I do believe that our constituents, our  
6 residents, are very sophisticated in water. And I  
7 think they understand that they're not going to get  
8 something for nothing. And I think they understand all  
9 the issues with the river. They understand the issues  
10 with our environment.

11 We live in a very special place, and most  
12 people understand that too. So if you were to ask them  
13 if they wanted to keep pumping from the river or build  
14 a project, I think, in my view, probably 80 percent  
15 would say let's build a project.

16 CO-HEARING OFFICER WOLFF: Even if the project  
17 is quite expensive?

18 MR. RUBIO: Everybody knows it's going to cost  
19 something. People don't mind paying for something if  
20 they know they're going to get service.

21 CO-HEARING OFFICER WOLFF: Okay, thank you.  
22 Mr. Pendergrass?

23 MR. PENDERGRASS: Yes. Well, Mayor Rubio gave  
24 a good hypothetical answer.

25 You know, we live in a place that's called

1 paradise because it's a beautiful place. And I think  
2 water costs, you don't exactly pay a per acre foot.  
3 It's all broken down depending on what you build, a  
4 house or whatever.

5 So I think our residents are tired of water  
6 wars going on, and I think they would like to have a  
7 comfortable life, and I think they're willing to look  
8 at something that would be whatever reasonable is to  
9 them. We don't know.

10 Any project goes to CEQA, there's a public  
11 vote. There were two projects that came before on the  
12 Peninsula and did not pass. I think times have  
13 changed, and I think there's a good chance whatever  
14 comes out what's recommended by the PUC for the Cal Am  
15 project or projects, I think there will be a vote among  
16 the majority to pay a reasonable cost for the water.

17 CO-HEARING OFFICER WOLFF: Mayor Della Sala.

18 MR. DELLA SALA: Yes, I think the primary  
19 reason why we're looking at a regional water solution  
20 for the Monterey Peninsula is to get an economy of  
21 scale so that we won't have to pay \$3500 per acre foot  
22 for desalinated water.

23 In a larger project, a unit price per acre  
24 foot of water should be less expensive. And we should  
25 be able to develop a plan for that desal plant, the

1 location where the power is going to come from in order  
2 to generate the desal plant. And it may not be next  
3 year, two years from now. It may be several years from  
4 now before the project is actually built and completed.

5           Within that time frame, we're hoping the  
6 technology will advance in the desal plant realm and  
7 perhaps reduce the cost of water further.

8           So to sit on our hands and do nothing is  
9 certainly not the solution. We need to move forward,  
10 and we will stumble along the way here and there, and  
11 we will get our footing back, and we'll put the project  
12 together and put it before the voters and have the  
13 voters decide.

14           CO-HEARING OFFICER WOLFF: I understand. But  
15 I have a decision before me much sooner than that. And  
16 you've all asked me to either assume that Cal Am is  
17 found liable in the remedy phase discussion here, so  
18 that's not a given yet; but assuming that, you've asked  
19 me to exercise enforcement discretion. That's what  
20 you've asked me to do.

21           And your attorney introduced the discussion in  
22 terms of balance. Need for balance. I certainly  
23 understand the need for balance between public health  
24 and safety and Public Trust resources in the river.

25           But it's not clear to me what your position is



1 with respect to the need for balance between high water  
2 rates and inexpensive water from the river without  
3 water rights licenses.

4           You all seem to be saying if it is reasonable,  
5 then our communities will pay. Of course, then we face  
6 the question of what's reasonable. So we can leave it  
7 at that. I was -- that's what I was exploring. That's  
8 the difficult choice that I face.

9           Mayor Rubio, do you have something?

10           MR. RUBIO: In response to that question you  
11 pose of the balance, and whether, you know, part of  
12 your question is whether a high-paying project or the  
13 river. Well, I don't see where we really have a  
14 choice. The river is not part of the solution, as far  
15 as I understand. The river isn't part of the solution  
16 in solving the water situation we're in. It needs to  
17 be remedied, but it's not part of our solution in  
18 getting water.

19           So as far as that goes, we have no choice  
20 other than to find the project that's the most  
21 economic, that makes the most sense, and that will be  
22 approved by the voters. We as mayors have no other  
23 choice but to go find that. We don't have an option.

24           CO-HEARING OFFICER WOLFF: That is in fact  
25 exactly the issue before me. I appreciate your answer.

1 Thank you very much.

2 MS. McCLOUD: Just briefly, I second what  
3 Ralph has said, but I think the public really has  
4 written off a moratorium. It isn't an option for them.  
5 They know something has to be done to find something.

6 So I'm of the school that believes you get  
7 farther with honey than you do with vinegar, and I  
8 think an attaboy to the people who have conserved and  
9 cut way back now, and giving us the -- definite time  
10 lines to move forward, that we could use that as a  
11 lever to come up with a long-time solution. I think  
12 people want a long-time solution, so they can get this  
13 monkey off the back and be able to go ahead and not  
14 worry about the future.

15 So I would opt for the position that I've  
16 taken about no CDO, just for saying you've done a good  
17 job now, but now we have to work together in a  
18 collaborative effort with a long-term solution, and  
19 this is the time line we want you all to meet.

20 CO-HEARING OFFICER WOLFF: Thank you. I  
21 appreciate all the perspectives. I'll just wrap this  
22 up. Is there any redirect from the attorneys for the  
23 panel?

24 MR. FIFE: Yes. We have just a few brief  
25 questions. I'm going to go ask a couple of them, and

1 then my fellow attorney, Ms. Pease, is going to ask one  
2 that she's prepared.

3 REDIRECT-EXAMINATION BY MR. FIFE

4 FOR CITY OF SEASIDE and SEASIDE BASIN WATERMASTER

5 MR. FIFE: Mr. Rubio, during your  
6 cross-examination from Mr. Rubin, he asked you about  
7 when overdraft in the Seaside Basin began, and you  
8 answered that it was in 1995 and that it was somehow in  
9 connection with Order 95-10.

10 Is it your opinion that it was one of the  
11 unintended consequences of Order 95-10 with regard to  
12 the response by Cal Am and others that the Seaside  
13 Basin was put into a condition of overdraft and put at  
14 threat from seawater intrusion?

15 MR. RUBIO: That's correct. I believe that  
16 there wasn't enough adequate study of the condition of  
17 the Basin before that other straw was put in; and as a  
18 result, the unintended consequences, now we have a  
19 water basin that's in overdraft which has other  
20 conditions that are caused by that overdraft which  
21 would be -- the seawater intrusion which could  
22 effectively, you know, taint the one water source that  
23 everybody's counting on.

24 MR. FIFE: My second question is that on  
25 cross-examination by Mr. Sato you were asked whether

1 Seaside has an alternative to the draft CDO. Do you  
2 know whether the City of Seaside has in fact proposed a  
3 stipulation to the Prosecution Team as an alternative  
4 to the CDO?

5 MR. RUBIO: Yes.

6 MR. FIFE: And do you know the Prosecution  
7 Team's response to that offer?

8 MR. RUBIO: My understanding, it was rejected.

9 MR. FIFE: Thank you.

10 REDIRECT-EXAMINATION BY MS. PEASE

11 FOR CITY OF SEASIDE and SEASIDE BASIN WATERMASTER

12 MS. PEASE: My question is also for Mr. Rubio.

13 If the City loses revenues due to rationing or  
14 a moratorium on new water connections, how will that  
15 loss impact your ability as a city to provide financial  
16 support for any regional solutions to a water shortage?

17 MR. RUBIO: Well, we'll definitely have to  
18 withdraw all our outgoing moneys and turn in internally  
19 to try to fund those basic services that cities do  
20 provide which is public safety, number one, and the  
21 other city services we do provide.

22 If we were to lose revenue, as I stated  
23 before, our balanced budget is balanced on the edge of  
24 a penny. And if that happens, we will be doing  
25 layoffs, and that is not a pretty thing to do. We

1 survived some bad times without layoffs, but those  
2 reserves are gone, and it would require immediate  
3 budgetary action by the City.

4 MR. PEASE: Thank you, Mayor Rubio.

5 MR. FIFE: That's all.

6 MR. HEISINGER: Hearing Officer Wolff, I'd  
7 like to move the introduction of the --

8 CO-HEARING OFFICER WOLFF: Just a moment. I  
9 have to ask if there is any recross on the redirect.  
10 I'm sorry, further redirect?

11 MR. FREEMAN: No further redirect, no.

12 CO-HEARING OFFICER WOLFF: Recross on the  
13 redirect?

14 MR. SATO: The Prosecution Team has none.

15 CO-HEARING OFFICER WOLFF: Mr. Jackson is  
16 coming forward.

17 RE-CROSS-EXAMINATION BY MR. JACKSON

18 FOR CARMEL RIVER STEELHEAD ASSOCIATION

19 MR. JACKSON: Mr. Rubio, you indicated that  
20 you believe that the overdraft began in the Seaside  
21 Basin because of 95-10; is that correct?

22 MR. RUBIO: That's my opinion.

23 MR. RUBIN: I'm going to --

24 MR. JACKSON: And what is your opinion -- what  
25 facts are your opinion based on?

1           MR. RUBIO: Well, we know that the adjudicated  
2 basin is in overdraft from the time that they started  
3 taking those measurements.

4           MR. JACKSON: So are you basing your opinion  
5 that the 95-10 caused the overdraft from the fact that  
6 95-10 required you to begin to take measurements and  
7 that the measurements reflected the overdraft? Is that  
8 what you're saying?

9           MR. RUBIO: That's not what I'm saying.

10          MR. JACKSON: All right. How did 95-10 cause  
11 the overdraft?

12          MR. RUBIO: In my opinion, it caused the  
13 overdraft because Cal Am was directed to find the  
14 alternative source which was the Seaside Water Basin.

15          MR. JACKSON: So it was Cal Am's activities in  
16 the Seaside Basin that caused the overdraft?

17          MR. RUBIO: No, it was the order.

18          MR. JACKSON: The order pumps water? I'm  
19 having trouble --

20          MR. RUBIO: The order caused the action. So  
21 therefore, the order --

22          MR. JACKSON: Caused Cal Am to overpump the  
23 basin, in your opinion?

24          MR. RUBIO: I don't know that you would  
25 classify overpumping if it wasn't determined it was in

1 overdraft. That's what I'm saying, is that the  
2 provision to get that straw in the basin was done  
3 without that science.

4 MR. JACKSON: All right. You also testified  
5 on recross that Seaside developed an alternative to the  
6 CDO in the nature of a stipulation?

7 MR. RUBIO: Yes.

8 MR. JACKSON: What were the elements of the  
9 stipulation that Seaside developed?

10 MR. RUBIO: I don't know that I'm at liberty  
11 to discuss those. I'll refer that to my attorney. Jim  
12 or?

13 MR. FIFE: The question he was responding to  
14 earlier from Mr. Sato was a yes-or-no question,  
15 basically whether we had an alternative. He  
16 incorrectly answered at the time when he said no, we  
17 did not have an alternative. We are correcting it,  
18 that we do have an alternative.

19 We are happy to share that with the Board, but  
20 Mr. Rubio does not know the details of that. It was  
21 simply a yes-or-no question that he was correcting his  
22 earlier answer on behalf of the City of Seaside which  
23 turned out to be incorrect.

24 MR. JACKSON: Mr. Wolff, in order to figure  
25 what the remedy ought to be and what the balancing

1 ought to be, if there's been a stipulation offered and  
2 a rejection, we really ought to find out what the  
3 stipulation is and the reason for the rejection. So if  
4 it's not this gentleman, who is it?

5 CO-HEARING OFFICER WOLFF: Let me ask  
6 Mr. McGlothlin. Mr. McGlothlin, you offered to provide  
7 some information. What is the information you are  
8 offering to provide?

9 MR. FIFE: Actually, I'm Mr. Fife, but --

10 CO-HEARING OFFICER WOLFF: Oh, Mr. Fife.  
11 That's the second time today. I promised I'd do it  
12 again.

13 MR. FIFE: Actually, I've been reminded that  
14 this again is something that the City of Seaside  
15 created. It's not had the concurrence of any other  
16 party. We are happy to share it. It is not something  
17 we submitted with our evidence, so I think we'd have to  
18 have permission to be able to share it with the Board.

19 But with the understanding that it's something  
20 simply from the City of Seaside, our own views, not  
21 necessarily endorsed by anybody else, we're happy to  
22 share it.

23 CO-HEARING OFFICER WOLFF: Would the addition  
24 of that exhibit satisfy you?

25 MR. JACKSON: It would. Then I could use it



1 in rebuttal.

2 CO-HEARING OFFICER WOLFF: All right. Let's  
3 add the exhibit, unless someone objects. Mr. Rubin?

4 MR. RUBIN: Yes. I would object to it. It's  
5 an offer or a pursuit of a settlement. I think if you  
6 see that, it could create some issues with you  
7 ultimately making a decision here.

8 CO-HEARING OFFICER WOLFF: Just a moment.

9 CO-HEARING OFFICER BAGGETT: We're off the  
10 record. We'll take a ten-minute break for the court  
11 reporter's benefit.

12 (Recess)

13 CO-HEARING OFFICER BAGGETT: We're back.

14 CO-HEARING OFFICER WOLFF: We're back on the  
15 record. Mr. Fife, you have something to offer?

16 MR. FIFE: After further discussion, we would  
17 prefer not to introduce the document now. I think it  
18 may be better in our closing brief if we could describe  
19 some concepts, we think that could be helpful.

20 CO-HEARING OFFICER WOLFF: Where's  
21 Mr. Jackson?

22 MR. RUBIN: This is Jon Rubin. I could speak  
23 on his behalf if you would like.

24 (Laughter)

25 CO-HEARING OFFICER WOLFF: I would like that

1 actually, but.

2 CO-HEARING OFFICER WOLFF: If the other  
3 parties would like to move their exhibits?

4 MR. HEISINGER: Mr. Wolff, Monterey would like  
5 to move Monterey 1, and Sand City would like to move  
6 Sand City 1 and Sand City 2.

7 CO-HEARING OFFICER WOLFF: Any objection? The  
8 exhibits are accepted.

9 (Exhibit Monterey 1 was accepted into  
10 evidence.)

11 (Exhibit Sand City 1 & 2 were accepted  
12 into evidence.)

13 CO-HEARING OFFICER WOLFF: Mr. Jackson,  
14 Mr. Fife has withdrawn his offer. Do you have anything  
15 further to say on the matter?

16 MR. JACKSON: Since he has withdrawn his  
17 offer, then I would move to strike any reference to a  
18 Seaside offer being made to the Prosecution Team and  
19 any rejection by the Prosecution Team. Because  
20 basically, what I don't want to leave here is the idea  
21 that the Prosecution Team was unreasonable. If we  
22 can't see it, there's no way to judge whether they were  
23 or not.

24 MR. FIFE: We have no objection.

25 CO-HEARING OFFICER WOLFF: All right. Motion

1 accepted. Exhibits for the other parties? Only two  
2 parties.

3 MR. FREEMAN: Carmel would like to move its  
4 exhibits 1 through 5 into evidence.

5 CO-HEARING OFFICER WOLFF: Any objection?  
6 Accepted.

7 (Carmel Exhibits 1-5 were accepted into  
8 evidence.)

9 MR. RUBIN: Hearing Officer Wolff, I do have  
10 one question I would like to ask on recross that  
11 relates to redirect.

12 CO-HEARING OFFICER WOLFF: Which party?

13 MR. RUBIN: It would be Seaside.

14 CO-HEARING OFFICER WOLFF: We haven't accepted  
15 Seaside's exhibits yet, so that's permissible.

16 RECROSS-EXAMINATION BY MR. RUBIN

17 FOR CALIFORNIA AMERICAN WATER COMPANY

18 MR. RUBIN: Mayor Rubio, you were asked a  
19 couple of questions about Seaside Basin and the  
20 relation to Order 95-10 on redirect. Do you recall  
21 that?

22 MR. RUBIO: Yes, I do.

23 MR. RUBIN: I believe you might have testified  
24 earlier today, but I want to make sure I understand  
25 your testimony correctly. You are aware of a provision

1 in Order 95-10 that ordered California American Water  
2 to maximize production in the Seaside aquifer; is that  
3 correct?

4 MR. RUBIO: That's correct. That was my  
5 understanding.

6 MR. RUBIN: Thank you. No further questions.

7 CO-HEARING OFFICER WOLFF: Now a motion to  
8 accept Seaside's exhibit?

9 MR. FIFE: Yes, I'd move to enter Seaside  
10 Exhibits 1 through 9 into evidence.

11 CO-HEARING OFFICER WOLFF: Any objection? So  
12 accepted.

13 (Seaside Exhibits 1-9 were accepted into  
14 evidence.)

15 MR. FIFE: Then in addition I move to  
16 introduce Seaside Basin Watermaster Exhibits 1 through  
17 4 into evidence.

18 CO-HEARING OFFICER WOLFF: Any objection? So  
19 accepted.

20 (Seaside Basin Watermaster Exhibits 1-4  
21 were accepted into evidence.)

22 CO-HEARING OFFICER WOLFF: With that, we'll  
23 take a ten-minute break. Thank you all.

24 CO-HEARING OFFICER BAGGETT: And mayors, I  
25 would like to, as a former rural county supervisor of

1 eight years of a small, poor rural county with a big  
2 national park in it, I appreciate your willingness to  
3 submit yourself to this process today and do this heavy  
4 lifting you're doing back home. I know what it's like  
5 to deal with fees and all those issues, and I just want  
6 to say as one hearing officer I appreciate that you're  
7 willing to take the time. I know you're not  
8 compensated for this, monetarily anyway.

9 So thank you.

10 (Recess)

11 CO-HEARING OFFICER BAGGETT: Okay. Let's go  
12 back on the record. We'll finish the Sierra Club's  
13 case-in-chief and second witness, and then we'll go to  
14 one witness from Public Trust Alliance who's not  
15 available tomorrow, then we'll do the witness from  
16 Pebble Beach Company who's not available tomorrow. But  
17 let's finish the Sierra Club first.

18 MR. SILVER: So I have some brief opening  
19 remarks, and then we'll have Dr. John Williams.

20 As Dr. John Williams will testify today, the  
21 remedial measures directed at the south central coast  
22 salmon DPS through Order 95-10, 98-04, and 2002-02 were  
23 not only not promoting the recovery of the steelhead,  
24 but these same remedial measures were associated and  
25 are being associated with declines in the already

1 depleted steelhead population in the river, as we noted  
2 yesterday from the years 2003 through 2007.

3 The question now that will be addressed by  
4 Dr. Williams is whether the proposed CDO can be  
5 tailored to accomplish the several purposes for which  
6 95-10 was originally issued.

7 One of these purposes was to protect the  
8 remnant vulnerable population of steelhead in the river  
9 which in 1997 was designated a threatened species under  
10 the WSA. Dr. Williams will testify -- I'm sorry; under  
11 the Endangered Species Act.

12 Dr. Williams will testify to the need for the  
13 CDO in terms of the present plight of the steelhead as  
14 well as how the CDO can be modified to better  
15 accomplish its purposes with respect to steelhead  
16 preservation and recovery and also be more palatable to  
17 those whose water use may be reduced.

18 Sierra Club urges the Board to consider the  
19 steelhead population segment in the river in the  
20 context of its determination in Board Order 95-10 that  
21 some 7400 acre feet of Cal Am's diversions from the  
22 Carmel River were and are remain unlawful, that Cal Am  
23 has failed to honor this State's exclusive mechanism  
24 for the appropriation of water by failing to get  
25 appropriation permits, and that therefore Cal Am may be

1 subject to fines of up to \$500 a day so long as the  
2 illegal diversions continue pursuant to Water Code  
3 Section 1052(d).

4           Given the determinations in Order 95-10 and  
5 its forbearance in subjecting Cal Am to the fines and  
6 other penalties authorized under the Water Code, it is  
7 now, Sierra Club believes, necessary and appropriate to  
8 tailor the CDO to accomplish maximum habitat benefits  
9 for the steelhead.

10           The threatened steelhead is a precious  
11 resource, dramatically reduced from historic  
12 populations, hanging on by the proverbial thread, as  
13 Dr. Williams will testify.

14           Sierra Club is asking the Board to order Cal  
15 Am, which has no lawful water rights, to reduce its  
16 diversions in a manner that will improve the  
17 deteriorated conditions of the designated critical  
18 habitat, namely the Carmel River, caused predominantly  
19 by Cal Am's illegal diversions.

20           This Board has been generous for 13 years in  
21 its forbearance. It could have chosen to refer this  
22 matter to the Attorney General for injunctive relief  
23 under section 1052(c). Further, it could have  
24 initiated proceedings that could have resulted in fines  
25 up to \$500 a day.

1           The time for forbearance at the cost of the  
2 steelhead, Sierra Club believes, is over. And as  
3 Dr. Williams will testify, the Board should issue a CDO  
4 tailored to provide protection to the steelhead and its  
5 habitat at those stages of its life cycle when it's  
6 most affected by Cal Am's diversions, that will promote  
7 recovery of the steelhead as required under federal  
8 law, that gives Cal Am a continuing stimulus now  
9 lacking to obtain a legal water supply and will  
10 minimize its reductions in diversions when the water is  
11 not needed by the steelhead.

12           MR. RUBIN: I do have some objections to the  
13 testimony. I don't know if now is the appropriate time  
14 or after there is a summary?

15           CO-HEARING OFFICER BAGGETT: Might as well  
16 object away.

17           MR. RUBIN: Initially, I have an objection  
18 regarding the use of the PowerPoint that's been  
19 prepared. I did take a look, and my associate took a  
20 look at the information that's presented in the  
21 PowerPoint, and it appears as though there's  
22 information that's presented in the PowerPoint that's  
23 not part of either the written testimony or any of the  
24 exhibits.

25           In addition to that, I have some substantive



1 objection, if you want to deal with that first?

2 CO-HEARING OFFICER BAGGETT: Was the  
3 PowerPoint submitted as an exhibit?

4 DR. WILLIAMS: It has not been as yet.

5 CO-HEARING OFFICER BAGGETT: But was it part  
6 of the case-in-chief and submitted with the written  
7 testimony?

8 MR. SILVER: No, the PowerPoint was prepared  
9 afterwards by Dr. Williams.

10 CO-HEARING OFFICER BAGGETT: Then we can't  
11 allow it. I mean, that's just been a standing rule of  
12 this Board since I've been on it. You can't use  
13 PowerPoints to present information on -- not just water  
14 rights. In a water quality hearing, we don't allow it.  
15 So motion sustained.

16 DR. WILLIAMS: The purpose is to help  
17 summarize my written testimony. I believe that was one  
18 of the few exceptions. Everything in it is in the  
19 record in one place or the other, in my testimony or in  
20 exhibits that are from past hearings in this matter.

21 MR. RUBIN: According to our review, over half  
22 the slides that are presented have either information  
23 or depictions that are not part of any of the testimony  
24 that we've seen that's been served on us.

25 MR. SILVER: Well, I think Mr. Rubin --

1 CO-HEARING OFFICER BAGGETT: Your mic.

2 MR. SILVER: I think Mr. Rubin could  
3 effectively cross-examine on that point; and if in fact  
4 his assertions are true, which we think they are not,  
5 then the testimony related to that point could be  
6 struck.

7 MR. RUBIN: We received the PowerPoint  
8 yesterday. Again, we went through all of the testimony  
9 that the Sierra Club submitted with the second phase  
10 and could not find either the depictions or the  
11 information on more than half of the slides.

12 I don't think I should have the burden, and I  
13 don't think the record should have the information come  
14 in subject to my cross-examination.

15 If Mr. Silver thinks that -- or is aware of  
16 where -- if he could point to where the information and  
17 where the depictions are.

18 CO-HEARING OFFICER BAGGETT: It's very  
19 difficult to rule when we haven't seen the PowerPoint,  
20 for one. But if there's charts, graphs, pictures that  
21 aren't already part of the testimony that clearly  
22 wouldn't be allowed. I don't know if that's the case.

23 MR. RUBIN: One of the resolutions, if you  
24 like, we can go off the record. Mr. Silver and I could  
25 have a discussion, and I could point to him each and

1 every slide that we could not find in the written  
2 testimony or the exhibits that Mr. Williams has  
3 submitted, and if he's able to demonstrate to us those  
4 are there, I have no problem.

5 CO-HEARING OFFICER BAGGETT: Does any other  
6 party have an objection? Is it just Cal Am that's  
7 objecting? Any other parties share the objection?

8 MR. LOWREY: Mr. Baggett?

9 CO-HEARING OFFICER BAGGETT: The reason I ask  
10 is that if there is some reconciliation between the two  
11 parties, I want to make sure all parties are willing to  
12 stipulate to this late inclusion of evidence.

13 MR. LOWREY: I have the greatest respect for  
14 Dr. Williams. I haven't seen the PowerPoint  
15 presentation, and I have no idea whether there is  
16 anything in there that's objectionable or not. I would  
17 be willing to examine it, but I think that is going to  
18 delay things somewhat.

19 CO-HEARING OFFICER BAGGETT: Okay. I propose  
20 then we will delay Sierra Club's case until tomorrow to  
21 allow Dr. Williams to submit the copies of the  
22 PowerPoint to all parties. If we can get a  
23 stipulation, then we will accept it.

24 Unless you want to continue without it. It's  
25 your choice. If you want to use the PowerPoint, then

1 we'll delay till tomorrow.

2 DR. WILLIAMS: We will delay then. And I can  
3 prepare a -- if Mr. Rubin and I can sit down and figure  
4 out what he objects to, I may be able to prepare a new  
5 one that does not include them.

6 CO-HEARING OFFICER BAGGETT: Typically the  
7 biggest challenge we've had in PowerPoints in previous  
8 hearings -- at least I have had in my experience -- is  
9 graphs, charts, slides and pictures that weren't  
10 anywhere, and they're making a case -- as we saw  
11 yesterday with some of the regression graphs, it's hard  
12 to tell if it's 2007 or 2008 or 2002 versus 2002 and a  
13 half. And it can be -- it's evidence, and it will be  
14 viewed differently if it's not -- it's summaries like  
15 that that can cause some real confusion, and that's why  
16 we have this policy. So.

17 DR. WILLIAMS: If I may, only in my own  
18 defense, years ago back in 1994, I believe, I -- it  
19 wasn't PowerPoint. It was a slide show. I showed the  
20 Board photographs I'd taken so they would have a better  
21 understanding of what they were --

22 CO-HEARING OFFICER BAGGETT: I appreciate  
23 that.

24 DR. WILLIAMS: That's the reason I prepared it  
25 this way.

1           MR. RUBIN:  And I want to make clear for the  
2 record, I believe my objection stands not because of  
3 any -- the objection is based upon pictures and  
4 information that we have not had time to prepare  
5 cross-examination on.

6           And the fact that we sit down is intended to  
7 simply have Mr. Silver identify for me where the Sierra  
8 Club testimony or exhibits, this information exists;  
9 and if it's not there, I'm going to maintain my  
10 objection.

11           CO-HEARING OFFICER BAGGETT:  I would ask that  
12 you provide copies to the parties, and we will  
13 continue.

14           DR. WILLIAMS:  One point on clarification,  
15 things that are allowed in:  Are things from previous  
16 hearings allowed in?

17           CO-HEARING OFFICER BAGGETT:  The record can be  
18 used.  We can take official notice of it but you've got  
19 to notify all the parties exactly what you're going to  
20 use as evidence and testimony prior to getting up here  
21 so that the parties have a fair opportunity to review  
22 for cross-examination purposes.

23           So if you've got things you want us to take  
24 official notice of, it's a little late, but if other  
25 parties are willing to stipulate.

1 DR. WILLIAMS: Let me give a specific example.  
2 One of them cites some 1994 testimony. Is that  
3 legitimate or not? I'm trying to figure out what is and  
4 what isn't.

5 MR. RUBIN: I would object to that. Again,  
6 this is -- there is a huge amount of material in the  
7 file. I think Mr. Williams is conceding that the  
8 PowerPoint presentation that he prepared for today has  
9 information that has not been served that is based upon  
10 prior testimony.

11 CO-HEARING OFFICER BAGGETT: Exactly.

12 And that would have been fine, but you've got  
13 to provide notice to other parties. You can't just  
14 spring it, you know, that shows up. That's the reason  
15 we're in a quasi-adjudicative hearing. You've got to  
16 provide notice to the parties of what you're going to  
17 present so that they have the opportunity to prepare.

18 MR. JACKSON: I just left superior court in  
19 which the lawyers on the other side were using a  
20 PowerPoint for demonstrative purposes to illustrate the  
21 testimony.

22 CO-HEARING OFFICER BAGGETT: Exactly.

23 MR. JACKSON: Which is a regular thing.

24 CO-HEARING OFFICER BAGGETT: I agree.

25 MR. JACKSON: And not required to be filed

1 before used in court.

2 CO-HEARING OFFICER BAGGETT: That's exactly  
3 true, if it is something has been submitted prior to  
4 the hearing.

5 That is the ruling. You've got till tomorrow  
6 morning to figure this one out. But if it's new  
7 evidence -- you can use it to demonstrate existing  
8 evidence, but not new evidence.

9 And if it's testimony from prior hearings that  
10 you have not given fair notice to all counsel that  
11 you're going to bring back in this time, you can't just  
12 bring it tomorrow.

13 MR. RUBIN: And I would like to ask for a  
14 piece of clarification. I do object to there are some  
15 depictions as well. I don't -- I would object to those  
16 being admitted, even if they arguably are intended to  
17 be demonstrative of written testimony, because the  
18 pictures are admitted into evidence and --

19 CO-HEARING OFFICER BAGGETT: Exactly.

20 MR. RUBIN: Thank you.

21 CO-HEARING OFFICER BAGGETT: So we'll  
22 continue.

23 DR. WILLIAMS: We'll come back tomorrow then.

24 CO-HEARING OFFICER BAGGETT: Let's continue  
25 with Mr. Warburton. Maybe we can do the Public Trust

1 Alliance case in whole and follow that by Pebble Beach.

2 So Public Trust Alliance, you're up for your  
3 opening statement and witnesses which you might have.

4 MR. WARBURTON: Okay. Yeah.

5 I'm Michael Warburton, Executive Director of  
6 the Public Trust Alliance. And opening up, I guess the  
7 basic question of what's going on here comes up.

8 Toward the end of Phase 1, Cal Am said the  
9 story was all about diligence, and they told us how  
10 diligent they were in distributing public water.

11 The Prosecution Team showed that Cal Am has  
12 continuously diverted three times more water than it's  
13 established -- ever established a legal right to.

14 The Pebble Beach Golf Course and associated  
15 developers keep talking about a separate entitlement to  
16 potable water treated to -- related to investment and  
17 water reclamation technology.

18 The environmentalists concentrate on the  
19 extensive damage to river ecosystem and long-endangered  
20 species.

21 The cities and hospitality industry are  
22 telling us just why we have to continue with business  
23 as usual a little bit longer.

24 As Phase 2 is starting here, the only thing  
25 that's clear is that there is different perspectives on



1 the scope of this hearing and what parties and the  
2 public might expect from it.

3 The public was given notice that the basic  
4 issue to be resolved was whether a draft cease and  
5 desist might be adopted to curb illegal diversions by  
6 the Cal Am Water Company and what conditions might  
7 accompany that order if it is in fact deemed  
8 appropriate.

9 Of course, that question could be decided  
10 quite quickly by application of familiar provisions of  
11 water law. Any trespassory diversions and developing  
12 alternative sources of water are not, after all,  
13 completely uncharted processes.

14 I got my law degree at UC Berkeley law school,  
15 and on my way to classes I often encountered this  
16 street comedian and satirist who set the context for  
17 his jokes by reading articles from the day's  
18 newspapers. And in that same vein, two articles that I  
19 saw from this Friday's, from last Friday's newspaper,  
20 could really help out here.

21 The first one was about the California Supreme  
22 Court deciding that Cal Fish and Game and the  
23 Department of Forestry and Fire made a mistake in  
24 giving Maxxam a free ride with logging practices as new  
25 species became endangered and threatened in the redwood

1 forest of northern California.

2           The second article described the settlement  
3 with insurers after they were found to have  
4 inappropriately canceled policies when people became  
5 sick. Those settlements came two weeks after the  
6 Associated Press was alerted that the State had failed  
7 to pursue a million dollar fine against Blue Cross  
8 because it was intimidated by the company's legal  
9 prowess.

10           After that news came in, the State vowed to  
11 seek penalties against the company that could have  
12 totaled \$354 million. A settlement was agreed to,  
13 fines were paid, and 4,000 policies were restated.

14           If we believe the papers from last week, maybe  
15 we're living in a period where the public expects some  
16 accountability from the businesses and providing -- the  
17 businesses providing public services and the regulators  
18 who supervise them.

19           Anyway, we believe that the Public Trust  
20 Doctrine could offer some real guideposts in helping us  
21 shape the remedy that this hearing is considering, and  
22 we sort of feel that if we don't say anything about it,  
23 Public Trust and the principles involved in it will be  
24 either ignored or balanced away.

25           So that's part one of the opening statement, I

1 guess.

2 MS. NELSON: Pat Nelson for the Public Trust  
3 Alliance. I'm just giving part two of our opening  
4 statement and placing this in the context of our legal  
5 theory.

6 CO-HEARING OFFICER WOLFF: Pardon me. Could  
7 you pull the microphone a little closer to you, please.

8 MS. NELSON: In Cal Am's opening statement for  
9 Phase 1, Mr. Rubin suggested that the difficulties in  
10 this case arise partly from differences in perception,  
11 and we fully agree.

12 We would like to offer a piece of the puzzle  
13 we believe has not yet been fully perceived, the  
14 necessary role of citizen participation and public  
15 pressure in crafting an effective CDO.

16 Without effective attention to the public's  
17 input, local governments and the Board cannot achieve  
18 an appropriate solution. The optimum solution is  
19 likely to be sidetracked by institutional process and  
20 decision-making process. These include the likelihood  
21 of capture of the regulatory and political process by  
22 well-organized private interests and the need for  
23 private profit-based entities to advocate solutions  
24 that enhance profits.

25 Both the history of the Public Trust Doctrine

1 and the history of implementing Order 95-10 illustrate  
2 these problems.

3           The Public Trust Doctrine mandates a robust  
4 role for ordinary citizens and has long been used as a  
5 framework for citizen participation. The doctrine  
6 empowers citizens to obtain judicial correction of  
7 government actions that favor profit-based development  
8 at the expense of broad public interests. It allows  
9 citizens to undo excessive generosity with the people's  
10 resources and offers ordinary citizens a right to  
11 effective access to government decision-makers who  
12 manage water. Indeed, this has been described as the  
13 doctrine's unifying theme.

14           For example, Joseph Sax has described the  
15 doctrine as a vehicle for private citizens who have  
16 begun to take the initiative themselves in protecting  
17 the public interest, and a number of courts give their  
18 concerns about the insufficiency of the democratic  
19 process.

20           There are more robust forms of public  
21 participation than the mere opportunity to comment.  
22 Environmental decision-making in general is evolving  
23 away from the top-down regulatory model and toward a  
24 model of collaborative ecosystem governance. This  
25 modern model has produced citizen-driven regional

1 solutions for the Carmel River watershed which our  
2 witnesses will describe.

3 Mr. Rubin has also commented on the large  
4 number of nonparties seeking to intervene in a  
5 disagreement among the real parties. We note the truth  
6 of this observation but suggest that this is a good and  
7 necessary thing.

8 Our testimony will suggest that the Board turn  
9 Mr. Rubin's perception of the real parties on its head.  
10 We will suggest that the parties who count most are not  
11 the water companies or regulators but the citizens  
12 affected by the actions of water companies and  
13 regulators.

14 We will offer two witnesses who have  
15 participated in the decision-making process on behalf  
16 of the public and bring expertise based on that  
17 participation.

18 Our first witness is Michael Warburton who has  
19 studied and advocated for the Public Trust Doctrine  
20 over many years and has consulted with public interests  
21 and other participants in the Carmel River matter.

22 Our second witness is George Riley, a Monterey  
23 resident who has studied the Carmel River problems from  
24 a local citizen's perspective and has helped to craft  
25 citizen-driven solutions. Mr. Riley has had the

1 opportunity to compare claims of diligence with the  
2 realities experienced by citizens and to inform himself  
3 about small scale solutions that do not fit the  
4 profit-driven model.

5           The testimony of these two witnesses will  
6 suggest the basis for the Board to shift the main focus  
7 of these proceedings away from the interests and the  
8 abilities of Cal Am and towards the citizens served by  
9 the Public Trust Doctrine. The doctrine elicits a  
10 discussion of all of the parties and helps to place  
11 citizen solutions in proper perspective.

12           CO-HEARING OFFICER BAGGETT: Mr. Rubin.

13           MR. RUBIN: Before questions are asked, I do  
14 have some objections. We did deal with Mr. Riley  
15 yesterday, so I assume his testimony today will be  
16 appropriately narrow based upon the ruling.

17           I did not deal with Mr. Warburton's testimony.  
18 As far as I could tell from his written testimony and  
19 his statement of qualifications, Mr. Warburton is an  
20 attorney. It appears as though the intent of his  
21 testimony is to discuss or present evidence on the  
22 Public Trust Doctrine.

23           My review of his testimony suggests to me that  
24 there's quite a few paragraphs that are outside of his  
25 expertise unrelated to the testimony of public -- on

1 the Public Trust Doctrine.

2 And specifically, I believe paragraphs 1,  
3 paragraphs 3, paragraph 5, paragraph 11, 12, and 13  
4 arguably fall within the subject matter.

5 CO-HEARING OFFICER BAGGETT: Statement 1.

6 You're talking about statement --

7 MR. RUBIN: Yes, in his statement.

8 CO-HEARING OFFICER BAGGETT: Statement 1 is  
9 not objectionable.

10 MR. RUBIN: No, those -- I am noting the  
11 paragraphs that I think fall within the appropriate  
12 subject matter given the notice of intent and his  
13 statement of qualifications. So again, those are  
14 paragraphs 1, 3, 5, 11, 12, 13.

15 CO-HEARING OFFICER BAGGETT: I mean, I'm  
16 reading the other ones, and yeah. They don't seem to  
17 be particularly prejudicial.

18 MR. WARBURTON: This is a guy who objected  
19 to --

20 CO-HEARING OFFICER BAGGETT: Wait, wait.

21 So let me -- just in fairness, let me look  
22 at -- I guess the only way we can really deal with this  
23 is to allow him to continue, and you'll object when he  
24 gets to a part that Mr. Rubin objects to.

25 I note a lot of this is really more in terms

1 of a closing brief than probably written testimony.  
2 It's arguments -- it appears to me most of this is just  
3 arguments -- it's arguments. It's not facts or  
4 evidence. A lot of this appears argumentative, which  
5 is appropriate in closing brief.

6 I don't know how -- have you got any  
7 suggestions, Mr. Rubin?

8 MR. RUBIN: No, I don't. I was -- that is my  
9 concern. I was trying to be cautious in terms of the  
10 paragraphs I identified. My first response is it  
11 sounds like what Mr. Warburton has provided is a policy  
12 statement or closing brief.

13 But with that said, and understanding the  
14 liberal rules that you do have, I was trying to be  
15 judicious with my objections.

16 And again, I understand the desire to present  
17 testimony on the Public Trust Doctrine. If that's the  
18 focus of his testimony, I don't have an objection to  
19 that, although I would say it's probably most  
20 appropriate to be presented as a legal argument in a  
21 brief.

22 CO-HEARING OFFICER BAGGETT: So what  
23 paragraphs are you -- so you said 1, 3, -- I didn't  
24 write them down.

25 MR. RUBIN: 1, 3, 5, and then 11, 12, 13



1 arguably.

2 CO-HEARING OFFICER BAGGETT: Okay. So just  
3 paragraph 4, 5 -- 2, 4, 6, 7, 8, 9.

4 CO-HEARING OFFICER BAGGETT: Okay. I'll ask  
5 counsel for the public, do you have any --

6 MS. NELSON: Well, Mr. Warburton is also a  
7 percipient witness. He attended various meetings that  
8 address both the Public Trust Doctrine and the Carmel  
9 River situation. And we could try to couch our  
10 questions to capture this experience, if that would be  
11 helpful.

12 CO-HEARING OFFICER BAGGETT: Without going  
13 through each of these paragraphs -- number 7, I mean,  
14 it's a statement of fact. Water Board is public  
15 trustee. I mean . . .

16 MR. WARBURTON: You know --

17 CO-HEARING OFFICER BAGGETT: Wait a minute. I  
18 just want to make sure I understand.

19 Why don't we proceed, and we'll take this  
20 under advisement. We won't rule at this point.  
21 Proceed and deal with them one at a time, Mr. Rubin.  
22 Stand ready.

23 MR. RUBIN: If you don't mind, so I don't get  
24 accused of objecting too frequently, I raised my  
25 objection. It's a standing objection. I noted the

1 paragraphs that I believe the objection pertains to  
2 rather than having to constantly interrupt.

3 CO-HEARING OFFICER BAGGETT: Okay. I'm --  
4 having just read all those paragraphs, I don't think  
5 there is anything that's particularly prejudicial or  
6 harmful. And rather than sit here and argue about each  
7 paragraph, the objection is noted for the record. The  
8 objected paragraphs are noted. Let's continue with the  
9 testimony.

10 MICHAEL WARBURTON

11 Called by THE PUBLIC TRUST ALLIANCE

12 DIRECT EXAMINATION BY MS. NELSON

13 MS. NELSON: Mr. Warburton, could you spell  
14 your name for the record, please?

15 MR. WARBURTON: Michael W-a-r-b-u-r-t-o-n.

16 CO-HEARING OFFICER WOLFF: Is your microphone  
17 on?

18 MR. WARBURTON: What?

19 CO-HEARING OFFICER WOLFF: Bring the  
20 microphone closer to you.

21 MS. NELSON: Have you taken the oath regarding  
22 your testimony?

23 MR. WARBURTON: I have.

24 MS. NELSON: Okay. Is the testimony submitted  
25 on your behalf a true and correct copy of your

1 testimony you prepared?

2 MR. WARBURTON: Yes, it is.

3 MS. NELSON: Could you highlight your  
4 qualifications that you believe are most relevant to  
5 the Carmel River matter?

6 MR. WARBURTON: Well, I think my resume speaks  
7 to 30 years of experience researching and writing about  
8 environmental issues and turning that knowledge toward  
9 effective solutions on the ground.

10 25 years ago, I started work as a research  
11 scholar at the International Institute For Applied  
12 Systems Analysis in Laxenburg, Austria where I co-wrote  
13 the book Uncertainty on a Himalayan Scale.

14 That book's just been republished with a -- it  
15 was about problem definition and solutions and the  
16 application of science to ecological questions, and  
17 it's just been republished with a long introductory  
18 section by the former minister of water resources in  
19 Nepal. The main subject of that was problem definition  
20 and finding effective solutions.

21 Although I'm not presently a practicing  
22 attorney, I've written scholarly articles on  
23 implementation of the Public Trust Doctrine, most  
24 recently a piece for the McGeorge Law Review.

25 The last six years, I've been Executive

1 Director of the Public Trust Alliance which is a  
2 nonprofit project which tries to raise the profile of  
3 the Public Trust Doctrine while also working with  
4 communities to reclaim their public heritage and  
5 working with trustees to better understand their  
6 stewardship duties.

7           One of the first projects we worked on, I  
8 became a member for the last five years of the State  
9 Water -- California Water Plan Update, and saw  
10 collaboration between a lot of different parties who  
11 didn't see the world the same way.

12           And I think one of the culminations of that  
13 water plan was that among the 14 recommendations was  
14 that DWR and other state agencies must explicitly  
15 consider Public Trust values in planning an allocation  
16 of water resources and protect Public Trust uses  
17 whenever feasible.

18           It was almost like pulling teeth to get those  
19 Public Trust duties acknowledged by state agencies, but  
20 they are there, and they are real. And that's part of  
21 what I want to testify to today.

22           MS. NELSON: Could you describe your  
23 involvement in the Carmel River matter?

24           MR. WARBURTON: I read about the proposed  
25 cease and desist order and then started doing research

1 to find out what was happening. And I was struck by  
2 the situation where you have concerned individuals and  
3 organizations rescuing fish, endangered fish, and  
4 literally carrying them from dried-up areas to place  
5 them in places where there's water.

6 And this has been going on for something like  
7 30 years, and at the same time, pumping is continued  
8 from overstressed and oversubscribed water sources, and  
9 a tremendous amount of damage to natural resources is  
10 being done.

11 And essentially, I started attending  
12 meetings -- in terms of the Public Trust, this  
13 opportunity to supervise Trust resources and to protect  
14 Trust uses when feasible seemed a real serious  
15 injunction.

16 MS. NELSON: What did you observe at these  
17 meetings in terms of the actions of the parties and  
18 their efforts to implement the Public Trust Doctrine  
19 and Order 95-10?

20 MR. WARBURTON: Well, of course they weren't  
21 getting together to implement the Public Trust  
22 Doctrine. They were getting together to solve the  
23 water problem.

24 What I saw from the REPOG meeting was  
25 measuring that against the public advisory group that

1 was assembled to prepare the California water plan for  
2 the entire state. That's a very credible process where  
3 the right people and the institutions and organizations  
4 which could actually solve the problem were involved in  
5 generating feasible solutions.

6 And I also saw, just like the Public Trust  
7 Doctrine is a duty to a statewide public, what was  
8 happening at this meeting was the lens was coming up  
9 off a particular river and being placed on an entire  
10 region, and the problem doesn't look like fish versus  
11 people when you get into that regional scale. And I  
12 was really excited by the opportunity of developing  
13 feasible solutions.

14 MR. RUBIN: I'm going to raise an objection at  
15 this point. I'm having trouble finding where a lot of  
16 these statements are in Mr. Warburton's testimony, and  
17 it's going beyond the scope of the written testimony.

18 CO-HEARING OFFICER BAGGETT: I agree.

19 Counsel, ask questions relative to the summary  
20 of the testimony. You'll get an opportunity to write a  
21 closing brief and articulate the arguments that you are  
22 making now. If you would focus on the actual  
23 testimony, that would be helpful.

24 MR. WARBURTON: I was trying to provide to  
25 background. I think the whole thing of becoming a

1 percipient witness and saying based on my expertise  
2 what I saw and what I concluded about the REPOG group.

3 I think a totally --

4 CO-HEARING OFFICER BAGGETT: What we'd like is  
5 to go to the conclusions.

6 MS. NELSON: Okay. We have a final question.  
7 Based on your testimony and your studies and your  
8 expertise, what do you -- what did you conclude about  
9 what the Public Trust Doctrine requires of agencies in  
10 the planning process?

11 MR. WARBURTON: Well, it's the use of the best  
12 knowledge available. And in terms of the scientific  
13 knowledge, the obligation of a trustee is to protect  
14 the resource.

15 But also there's a -- the Hawaiian Supreme  
16 Court made the Public Trust Doctrine the framework for  
17 its resource use decisions. And it found that  
18 explicitly there is a precautionary principal inherent  
19 in the trustees' traditional duties.

20 And there's a duty of continuing supervision  
21 of the Trust as well which means that decisions can be  
22 revisited. And that came directly from the Mono Lake  
23 case, and especially in cases where the Public Trust  
24 hasn't been taken into account in the distribution of  
25 the resources.

1           This Public Trust stands as a background  
2 principle to regular water law. Okay. You can say  
3 that, but in any case, there are obligations to act as  
4 a trustee and not to act just because the situation is  
5 uncertain. That decisions and action has to be taken  
6 protective of the Trust resource.

7           MS. NELSON: Thank you, Mr. Warburton. No  
8 further questions.

9           MR. WARBURTON: Okay. We'll just do that.

10                               GEORGE RILEY

11                               Called by THE PUBLIC TRUST ALLIANCE

12                               DIRECT EXAMINATION BY MS. NELSON

13           MS. NELSON: Mr. Riley, could you state and  
14 spell your name for the record please.

15           MR. RILEY: George Riley R-i-l-e-y.

16           MS. NELSON: And have you taken the oath  
17 regarding your testimony?

18           MR. RILEY: Yes.

19           MS. NELSON: Is the testimony submitted on  
20 your behalf a true and correct copy of testimony you  
21 prepared?

22           MR. RILEY: Except modified by yesterday's  
23 decision, yes.

24           MS. NELSON: Based on your resume, how would  
25 you describe your field expertise?



1           MR. RILEY: I have 26 years' experience  
2 working for local government. I've been in management  
3 the entire time. I was in the United States Navy.  
4 Graduate of the Wharton School. I've been in the  
5 public service ever since then.

6           My job has always been at the management  
7 level. My last job, which I retired in '92, was with  
8 the County of San Mateo. I was head of Community  
9 Services Department for a long time and later it was  
10 merged to include housing.

11           My major responsibilities during those days  
12 were to assure efficient delivery of services. It was  
13 a system-oriented or service-oriented responsibility.  
14 I looked at interagency cooperation which was one of  
15 the charges of my job. It was to create new programs  
16 and new approaches to existing problems.

17           I used -- many times used conflict-resolution  
18 techniques. The objectives were to find agencies and  
19 county programs that had similar objectives but were  
20 missing a target population or was missing some part of  
21 the community.

22           And my responsibility was to look for  
23 interjurisdictional cooperation, program angles that  
24 might be pursued, new approaches to community  
25 participation as well as priorities.

1           Often we were in conflict with policy issues  
2 or political issues that came from the board of  
3 supervisors, because we were in an area where there was  
4 no specific program. An example is in the criminal  
5 justice system in housing and rent control issues as  
6 well as others.

7           The -- my main responsibility seemed to be --  
8 in fact, I attracted a small -- they said let George do  
9 it in many ways at the county because the fact that  
10 there was no plan and the fact that there was no  
11 existing set of principles on which to approach an  
12 issue, I worked with that, and that's where I really  
13 developed the regional reputation. My target work was  
14 with agencies, nonprofit organizations, cities, and  
15 advocacy groups. And --

16           MS. NELSON: Did you have something else?

17           MR. RILEY: I was going to say none of that  
18 was directly related to water. None of it. So I  
19 wanted to clear that up right away.

20           When I got to Monterey County, retired, I had  
21 a boat load of experiences and an energy level and was  
22 available. In retirement, there's lots of jobs you can  
23 pick as a volunteer. I chose democracy advocacy in  
24 general and picked water as a specific issue.

25           MS. NELSON: And what research did you do to

1 explore the Carmel River matter?

2 MR. RILEY: Well, let me generalize a little  
3 bit first about that. I've done a lot of research on  
4 water. It was spear- -- it was triggered largely by  
5 the Carmel River issue, and the focus has merged in a  
6 regional way, but it was the 95-10 issue.

7 It was the lack of resolution, lack of  
8 coordinated approach, just intrigued me about why the  
9 agencies and the population could not come together  
10 when the issue's staring them in the face. With 95-10  
11 staring them in the face. From a systems point of view  
12 and intergovernmental point of view, why was there not  
13 more effort working together?

14 MR. RUBIN: I'm going to raise an objection  
15 here. This is quite a bit of questions about  
16 background, and I'm concerned it is testimony on issues  
17 outside the scope of his testimony indirectly.

18 CO-HEARING OFFICER BAGGETT: Counsel, move on  
19 to the questions on the testimony. We've got the  
20 resume. We understand the background.

21 MS. NELSON: Did you attend a series of  
22 meetings concerning the Carmel River?

23 MR. RILEY: Yes.

24 MS. NELSON: What did you observe at these  
25 meetings?

1           MR. RUBIN: I'm going to object. Again, the  
2 testimony that has not been essentially stricken  
3 relates to remedy, and so the testimony today should be  
4 based exploring what the remedy is being proposed.

5           CO-HEARING OFFICER BAGGETT: I appreciate  
6 that, but I think this is laying a foundation for how  
7 we can get to his remedy -- I assume that's where  
8 counsel is going.

9           MR. RUBIN: But the concern I have is the  
10 potential here to lay a foundation which essentially  
11 does what you decided he can't do and testify on some  
12 of the lack of diligence that this witness perceives.

13          CO-HEARING OFFICER BAGGETT: Continue. We  
14 haven't got there yet. When we do, I'll draw the line.  
15 So you attended meetings. Could you go back to that  
16 part, and focus on remedies.

17          MS. NELSON: What did you observe at the  
18 meetings you attended that is pertinent to the  
19 feasibility of implementing remedies?

20          MR. RILEY: It was more than the meetings. It  
21 was research I did and the reading material that I did.  
22 I looked at DRA documents. I looked at the record at  
23 the Water Management District. I listened to some of  
24 the tapes.

25                 And there is a variety of issues that emerged

1 during my experience in trying to get a basic  
2 foundation of understanding.

3           Going forward -- and I support the issuance of  
4 a CDO, but in order to explain my rationale why I  
5 support it, I may need to go back. I'll make as little  
6 reference as I can to Cal Am because my interest is not  
7 to discuss the diligence of Cal Am.

8           I may want to discuss the diligence of the  
9 cities. I don't know if that's an issue or not.  
10 That's forbidden. But I have a very different point of  
11 view to what you heard this morning about what's  
12 happened about the level of cooperation, and I'd like  
13 to be able to present some part of that.

14           CO-HEARING OFFICER BAGGETT: Mr. Rubin.

15           MR. RUBIN: Again, the objection is the same  
16 objection I have been raising.

17           If there is foundation to support the remedy  
18 that's being proposed in the written testimony, it  
19 should have been provided. There's no foundation for  
20 why he is testifying to support the remedy. And that's  
21 not in his written testimony, so it's outside the  
22 scope.

23           And to the extent the first part of the  
24 testimony was an attempt to do that, it clearly wasn't  
25 successful because it went directly to the issue in the

1 first phase of this proceeding.

2 CO-HEARING OFFICER BAGGETT: Right. We ruled  
3 on that. The remedies consist in your testimony of two  
4 paragraphs. So if you could just focus on the  
5 remedies, or the CDO, why. Continue. See if we can  
6 get through this.

7 MS. NELSON: Did you make any observations  
8 about the effect of pressure on the agencies' and  
9 cities' ability to implement remedies?

10 MR. RUBIN: Again, I'm going to object. Same  
11 reasons.

12 CO-HEARING OFFICER BAGGETT: Objection's  
13 noted. Just continue.

14 MR. RILEY: My issue is pressure. If I'm not  
15 allowed to talk about pressure, my testimony --

16 CO-HEARING OFFICER WOLFF: You've just been  
17 authorized to answer.

18 MR. RILEY: I'm sorry. Thank you.

19 I support the CDO because I think the CDO  
20 represents a level of pressure on the community that  
21 gets their attention. I wrote a column to this effect  
22 in the Herald which was about two months ago. It was  
23 easily printed. I'm often printed in the Herald, my  
24 opinions and observations.

25 The issue I think the CDO represents is it's

1 an organizing tool for the community. It's a positive  
2 influence on the community.

3           When you look back, and what was entered and  
4 testified this morning, I think by Mayor Pendergrass,  
5 he was asked about a chart that shows the reduction in  
6 withdrawals from the Carmel River from 1988 to 19 -- to  
7 2006 or 7; I forget. He was very proud of the fact  
8 that conservation measures were effective and reduced  
9 overdraft and were working.

10           What he failed to mention is that 95-10  
11 occurred in the middle of that. And if not for 95-10,  
12 who knows what would have happened? In my opinion, the  
13 fact that your Board took the action represented by  
14 95-10 created a pressure point for much action.

15           And when you look at what happened shortly  
16 after 95-10, enormous amounts of activity was  
17 undertaken. I mean it was Keeley, it was Assemblyman  
18 Keeley. It was the PUC. It was the state legislature,  
19 and then all the energy level about the dam proposal  
20 and so on. Just couldn't come out fast enough.

21           And what I'm suggesting is that didn't come  
22 out of some magnanimous frame of reference by the  
23 elected officials in the area. It came because of  
24 95-10. And 95-10 represented pressure.

25           What I'm suggesting is that the CDO represents

1 much of the same thing. My example of the pressure for  
2 the success of REPOG. It comes from what I think is a  
3 level of pressure. The organization for REPOG and the  
4 success of the variety of people who participated  
5 actively, energetically and treated it in that process,  
6 and it's still going on, did not come from the  
7 magnanimous and willing understanding that we need to  
8 cooperate.

9           The community -- and you know that from  
10 history -- the community has not displayed that  
11 willingness. They do come together at some point; and  
12 that some point, in my opinion, is response to  
13 pressure.

14           When Cal Am submitted its Coastal Water  
15 Project, it was a coalescing event in the community.  
16 And when it reached the PUC, many people talked about  
17 this is a foregone conclusion because the PUC, my  
18 opinion basically, honors Cal Am. But also the PUC set  
19 up the guidelines for it, so why wouldn't they try to  
20 help Cal Am put in a desal project? Why wouldn't they?

21           The organizing effort came because there was a  
22 certain level of fear that this might happen without an  
23 alternative. And I'm saying it was the pressure that  
24 was created by no alternative, no legitimate  
25 alternatives. That created the energy level.



1           And when you look at the agencies created that  
2 have been participating actively every month, they show  
3 up regularly, when you consider that there is an  
4 enormous support for REPOG and comes from a  
5 cross-section of agencies, a cross-section of interest  
6 groups, and basically those involved in the water  
7 business.

8           And what I'm suggesting is that more recently  
9 your issuance of the draft CDO has coalesced the  
10 community again. The mayors -- I beg to differ with  
11 the mayors. They talk about water cooperation --

12           CO-HEARING OFFICER BAGGETT: We're here to  
13 summarize your testimony, not the mayors' testimony.

14           MR. RILEY: Well, I want to give just a point  
15 of view that there is a motivation to cooperation, and  
16 the motivation I think is pressure.

17           CO-HEARING OFFICER BAGGETT: Okay.

18           MR. RILEY: That's why I say that your CDO at  
19 some level -- I don't want to say exactly what level --  
20 but I have some opinions. And I want to comment on  
21 what -- one other thing about a question made earlier  
22 about the 15 percent first step.

23           CO-HEARING OFFICER BAGGETT: Again, this is  
24 not an opportunity for you to use other parties'  
25 testimony. You can keep it to what's here. I've given

1 you incredible leeway now. I think you've probably  
2 exhausted what's in your testimony already. We  
3 understand the points you made.

4 CO-HEARING OFFICER WOLFF: You made your  
5 points.

6 CO-HEARING OFFICER BAGGETT: Very clearly and  
7 effectively. I don't know if counsel has any other  
8 questions.

9 MS. NELSON: One final question.

10 You mention you recommend an annual reduction  
11 of five percent in your testimony. How do you feel  
12 that the community could handle such a reduction?

13 MR. RILEY: I'd have several, even the 15  
14 percent level. I'm not opposing that, either. What  
15 I'm suggesting is that there be a step, a phased  
16 reduction that is increasingly harsh. Doesn't mean  
17 it's really harsh in the beginning, but increasingly  
18 harsh so that there's no gaps in the kind of pressure  
19 that's created on the community.

20 I also think that there is some evidence in my  
21 opinion, of the 15 percent, I was in a meeting late in  
22 March where a Cal Am official said in general --

23 MR. RUBIN: I'm going to object to the  
24 testimony again.

25 CO-HEARING OFFICER BAGGETT: I would sustain

1 the objection. There's nothing in here about that  
2 meeting. We don't know what meeting. There was  
3 nothing in your written testimony here to let the  
4 parties or us know any of that. And I think we've  
5 given you a lot of leeway here.

6 CO-HEARING OFFICER WOLFF: You've been clear,  
7 and we've permitted you to present your testimony and  
8 people to ask you questions on your testimony.

9 MR. RILEY: Let me finish up the five percent.

10 CO-HEARING OFFICER BAGGETT: Finish the five  
11 percent.

12 MR. RILEY: I think consistent step process  
13 without break works because it constantly reminds the  
14 community that there's more pressure coming if they do  
15 not stay on this issue of supply.

16 I also think as an option that you ought to  
17 allow, you ought to encourage -- I don't know how, what  
18 your jurisdiction lays in this -- but all the supply  
19 solutions look for a one-time, big supply solution.  
20 And it's 10, 12,000 acre feet and the first desal.

21 And I think in order to allow for maximum  
22 opportunity for progress, is a smaller desal of some  
23 kind -- not as small as the Sand City one; that's too  
24 small -- a 4- or 5,000 acre feet facility could be  
25 created that might be created much quicker. The relief

1 to Carmel River might be quicker. It might be small  
2 enough to be more affordable.

3 But the point is you might begin to get some  
4 relief of the issue sooner rather than later. And I  
5 think if you had something like that in whatever CDO  
6 you might issue, I would encourage you to consider it.

7 CO-HEARING OFFICER BAGGETT: Thank you.

8 MS. NELSON: Thank you, Mr. Riley. No further  
9 questions.

10 CO-HEARING OFFICER BAGGETT: Is there any  
11 cross-examination by the Prosecution Team?

12 MR. SATO: No.

13 CO-HEARING OFFICER BAGGETT: Planning and  
14 Conservation League? Sierra Club? Carmel River  
15 Steelhead? Monterey Peninsula? Pebble Beach? Just  
16 down the list here. Any of the cities? No. Monterey  
17 County Hospitality Association? No. And Cal Am?

18 MR. RUBIN: Yes. Very few questions.

19 CROSS-EXAMINATION BY MR. RUBIN

20 FOR CALIFORNIA AMERICAN WATER COMPANY

21 MR. RUBIN: Mr. Warburton, I have a few  
22 questions and all directed towards you.

23 In your written testimony, you cite a case  
24 that was issued by the -- I think you characterized it  
25 as the Hawaiian Supreme Court; is that right?

1 MR. WARBURTON: Yes.

2 MR. RUBIN: That's a state court of Hawaii; is  
3 that correct?

4 MR. WARBURTON: Yes.

5 MR. RUBIN: Was not issued by a court in  
6 California, correct?

7 MR. WARBURTON: No.

8 MR. RUBIN: Are cases decided by a court in  
9 Hawaii precedent-setting for courts in California?

10 MR. WARBURTON: Persuasive authority.

11 MR. RUBIN: Thank you.

12 MR. WARBURTON: Not binding.

13 MR. RUBIN: Mr. Warburton, you would agree  
14 that the Public Trust Doctrine requires the State Water  
15 Resources Control Board to balance between authorizing  
16 the use of water within its jurisdiction and the  
17 impacts of that use on public resources, correct?

18 MR. WARBURTON: Wait a second. Balance the  
19 use?

20 CO-HEARING OFFICER BAGGETT: Can you speak  
21 into the mic, please.

22 MR. WARBURTON: I didn't quite. This was --

23 MR. RUBIN: If you didn't understand my  
24 question --

25 MR. WARBURTON: I didn't because there was one

1 that was balancing the public trust against the public  
2 interests by one or the other.

3 MR. RUBIN: Let me restate it. My question is  
4 whether you agree with my statement. My statement is:  
5 The Public Trust Doctrine requires the State Water  
6 Resources Control Board to balance between authorizing  
7 use of water within its jurisdiction and the impacts of  
8 that use on public resources. Do you agree with the  
9 statement?

10 MR. JACKSON: I'm going to object to the  
11 question on the grounds that while I do believe that's  
12 correct, if there is an authorized use, I don't believe  
13 that the public trust Audubon decision would require  
14 the balancing with the use --

15 MR. RUBIN: Mr. Jackson is testifying --

16 CO-HEARING OFFICER BAGGETT: Overruled. This  
17 witness, I was very lenient with the testimony, so I  
18 think I have to be equally as lenient with the cross.

19 MR. RUBIN: Thank you.

20 CO-HEARING OFFICER BAGGETT: He's representing  
21 the Public Trust. It's a yes-or-no question. Rephrase  
22 it one more time.

23 MR. RUBIN: You would agree that the Public  
24 Trust Doctrine requires the State Water Resources  
25 Control Board to balance between authorizing use of

1 water within its jurisdiction and the impacts of that  
2 use on public resources?

3 MR. WARBURTON: Yes, but it's a complex  
4 balancing. It's not a simple balancing. And economic  
5 use is a bias in favor of protection when feasible.

6 MR. RUBIN: Thank you.

7 You are aware that the State Water Resources  
8 Control Board may authorize a use of water that is  
9 harmful to the Public Trust resource if the public  
10 interest in that use outweighs the harm to the Public  
11 Trust?

12 MR. WARBURTON: Yes.

13 MR. RUBIN: Thank you.

14 Just two final questions. I believe in  
15 paragraph 4 of your written testimony you indicate that  
16 in 1994 the steelhead was listed as a threatened  
17 species; is that correct?

18 MR. WARBURTON: That's what I said, and I  
19 think it's correct. But I don't know the exact  
20 listing.

21 MR. RUBIN: Thank you.

22 And one last question. I believe you spoke on  
23 direct examination about how the Public Trust Doctrine  
24 should be applied using, in your words, best knowledge  
25 available. Do you recall making that statement?

1 MR. WARBURTON: Yes.

2 MR. RUBIN: Have you supplied the State Water  
3 Resources Control Board in this proceeding with the  
4 best available knowledge?

5 MR. WARBURTON: I've attempted to. But, you  
6 know, that's what we've been trying to do.

7 MR. RUBIN: Thank you. No further questions.

8 CO-HEARING OFFICER BAGGETT: Any redirect?  
9 No. Would you like to enter the exhibits?

10 MS. NELSON: We'd like to move into evidence  
11 Exhibits 1 through 4A.

12 CO-HEARING OFFICER BAGGETT: And to clarify,  
13 that is the second half of exhibits, remedies portion,  
14 Mr. Riley's exhibit, correct?

15 MS. NELSON: Correct.

16 MR. RUBIN: There is an exhibit that I object  
17 to. And I'm not exactly sure what it's marked, but it  
18 looks like an impartial analysis by the city attorney.

19 MS. NELSON: That's Exhibit 4A.

20 MR. RUBIN: 4A, I believe, is the first  
21 section of Mr. Riley's testimony?

22 MS. NELSON: Yes. It's in exhibits to  
23 Mr. Riley's testimony.

24 CO-HEARING OFFICER BAGGETT: But dealing  
25 with -- why do you object?



1           MR. RUBIN: I believe it helps support the  
2 testimony that you decided not to allow into evidence  
3 which is the first part dealing with diligence.

4           CO-HEARING OFFICER BAGGETT: Okay. I would  
5 sustain the objection. So the exhibits -- any other  
6 objections to the exhibit? If not the exhibits are  
7 moved into evidence as noted. Thank you.

8                     (Exhibits PTA1-4 were accepted into  
9 evidence.)

10           CO-HEARING OFFICER BAGGETT: Pebble Beach  
11 Company's got a witness that's not available tomorrow,  
12 so let's move on with your case-in-chief, and we might  
13 as well do your whole case then.

14           CO-HEARING OFFICER BAGGETT: Let's go.

15           MR. SWEIGERT: Good afternoon Mr. Baggett,  
16 Mr. Wolff. I'm Dave Sweigert representing Pebble Beach  
17 Company.

18                     And Pebble Beach Company is here for one  
19 reason. That is that it wishes to protect the water  
20 entitlement that is a right to future service from Cal  
21 Am through its draws from the Carmel River that has  
22 historically been fully recognized and respected by the  
23 State Water Resources Control Board.

24                     That right is held not only by Pebble Beach  
25 Company but by 500 other landowners who have paid good

1 money in cash to support one of the most remarkable  
2 water conservation endeavors -- highly successful, I  
3 might add -- ever taken on the Monterey Peninsula and  
4 indeed the state and beyond.

5           The facts are simple. The project of which we  
6 speak is the Carmel Area Wastewater District/Pebble  
7 Beach Community Services District Wastewater  
8 Reclamation Project. You've heard about it before in  
9 these hearings.

10           This water reclamation project supplies  
11 recycled water for irrigation of eight golf courses and  
12 certain other recreational open spaces in the Del Monte  
13 Forest which include the greatest, most renowned golf  
14 courses in the world.

15           Prior to 1994, these golf courses were  
16 watering with potable water drawn from the Cal Am  
17 system consuming over 800 acre feet of potable water a  
18 year.

19           Starting in 1994, with completion of this  
20 reclamation project, the golf courses have been  
21 irrigated mostly with reclaimed water produced by this  
22 project to the tune of over 700 acre feet a year, about  
23 70 percent of irrigation needs.

24           Some potable water supplementation has been  
25 required because of some shortcomings with the original

1 project. As of next year, however, 2009, these  
2 shortcomings will have been remedied with some recent  
3 improvements and the golf courses will be watered  
4 100 percent with reclaimed water, without any potable  
5 water needed.

6 That will be at least 800 acre feet and  
7 probably more in the range of 900 to 1000 acre feet  
8 each year. You can do the math. That's a savings of  
9 800 to 1000 acre feet of water drawn from the Cal Am  
10 system each year.

11 How was this remarkable project water savings  
12 achieved? It wasn't free. Someone had to pay for it.  
13 There weren't any public funds around or available. If  
14 it was going to be done, it had to be done with private  
15 funds.

16 Who would pay, and what would they get in  
17 return? The only thing of value that could be given in  
18 return at no cost to the public was a right to a  
19 portion of the water saved by the reclamation project.

20 So it was conceived in 1989 through a series  
21 of complex ordinances and agreements, the Pebble Beach  
22 water entitlement and the financing plan for this  
23 reclamation project.

24 The Monterey Peninsula Water Management  
25 District led the way through its broad statutory powers

1 and authority and selected Pebble Beach Company as the  
2 private entity to guarantee payment of the cost of the  
3 project.

4 In return, it guaranteed Pebble Beach Company  
5 and two other fiscal sponsors a rock-hard right to up  
6 to 380 acre feet of the potable water saved by the  
7 project to be supplied by Cal Am for future development  
8 in Del Monte Forest.

9 It entered into agreements with the Carmel  
10 Area Wastewater District and Pebble Beach Community  
11 Services District to build and operate this project,  
12 treating sewage influent at the Carmel Area Wastewater  
13 Disposal Plant to a tertiary level and deliver the  
14 reclaimed water through the PBCSD system to the golf  
15 courses.

16 It entered into agreements with the Del Monte  
17 Forest golf courses to modify their irrigation systems  
18 to accept the reclaimed water and to put the reclaimed  
19 water to satisfy their irrigation needs.

20 They then floated bonds to cover the  
21 construction cost of the project, \$33.9 million worth,  
22 with Pebble Beach Company guaranteeing payment of all  
23 principal and interest on these bonds.

24 This got the original project up and  
25 operating, and Pebble Beach Company to date has paid

1 over \$10 million on its guarantee.

2           Then, when ten years into the project it  
3 became apparent that certain improvements to the  
4 project would be needed to reduce the salinity of the  
5 reclaimed water and provide additional storage so as to  
6 eliminate any potable water supplementation, the  
7 Monterey Peninsula Water Management District authorized  
8 Pebble Beach Company to sell a portion of its water  
9 entitlements to other landowners in Del Monte Forest as  
10 a means of financing the cost of these needed  
11 additional improvements, another roughly \$34 million.

12           This started in 2005, and 500 landowners have  
13 stepped forward and purchased the water, about 118 acre  
14 feet generating about 24 million of the \$34 million  
15 with Pebble Beach Company guaranteeing whatever  
16 remains.

17           This is where we stand today. The reclamation  
18 project is saving water and having other multiple  
19 environmental benefits. It wouldn't have happened, and  
20 it wouldn't continue to be happening, without the  
21 Pebble Beach Company water entitlement.

22           Nobody can argue that point. The courts have  
23 validated the legitimacy, effectiveness, and rights of  
24 the water entitlement. The State Water Resources  
25 Control Board on multiple occasions has confirmed its

1 validity and recognize that it provides a right to  
2 service from Cal Am with withdrawals from the Carmel  
3 River system over and above the rights and regulatory  
4 limitations imposed on Cal Am by the State Water  
5 Resources Control Board.

6 Therefore, the draft cease and desist order,  
7 if it is to be issued at all, should be modified with  
8 the addition of the facts as necessary stated in the  
9 testimony and exhibits describing the Pebble Beach  
10 water entitlement and the following language in the  
11 order itself:

12 Cal Am may serve the holders of the  
13 Pebble Beach water entitlement with up  
14 to an aggregate amount of 380 acre feet  
15 annually with withdrawals from the  
16 Carmel River system not subject to any  
17 of the limitations of this order.

18 And that's what we're asking, and that's what  
19 we will argue.

20 And Mr. Baggett, these two witnesses arrived  
21 after lunch time, so they haven't been sworn in so we  
22 need to do that.

23 CO-HEARING OFFICER BAGGETT: Please stand and  
24 raise your hand. Do you promise to tell the truth in  
25 these proceedings?

1 MR. STILWELL: I do.

2 MR. NICCUM: I do.

3 MR. SWEIGERT: We will start with Mr.  
4 Stilwell.

5 MARK STILWELL

6 Called by PEBBLE BEACH COMPANY

7 DIRECT EXAMINATION BY MR. SWEIGERT

8 MR. SWEIGERT: Would you please state and  
9 spell your name for the record.

10 MR. STILWELL: My name is Mark Stilwell  
11 M-a-r-k, S-t-i-l-w-e-l-l.

12 MR. SWEIGERT: And have you reviewed the  
13 testimony contained in Exhibit 1 submitted by Pebble  
14 Beach Company in this proceeding?

15 MR. STILWELL: Yes, I have.

16 MR. SWEIGERT: And is that testimony true and  
17 correct?

18 MR. STILWELL: Yes, that is true and correct  
19 testimony.

20 MR. SWEIGERT: Please state your current  
21 occupation.

22 MR. STILWELL: I work for Pebble Beach  
23 Company, Pebble Beach Resorts in Monterey. My title is  
24 Executive Vice President of Real Estate and General  
25 Counsel. I've worked for Pebble Beach Company since

1 1992, so over 16 years.

2 MR. SWEIGERT: Does your current occupation  
3 involve any responsibilities with the wastewater  
4 reclamation project that I described, and which I will  
5 just refer to as the reclamation project?

6 MR. STILWELL: Yes, a great deal of my  
7 responsibilities revolve around the reclamation  
8 project, and I'm a primary person responsible for the  
9 project at Pebble Beach Company.

10 MR. SWEIGERT: Can you describe your  
11 involvement in a little more detail with the project?

12 MR. STILWELL: There's a book entitled Present  
13 At the Creation. I've pretty much been present at the  
14 creation since the reclamation project was conceived.  
15 I started working on it in 1991 when we put together  
16 the bond financing. I was at that point in time a  
17 relatively young outside counsel for Pebble Beach  
18 Company, and I have continued to work on the project  
19 the last 16 years, in both financing and operational  
20 issues and the expansion and improvement of the project  
21 in the last couple of years.

22 MR. SWEIGERT: Can you describe the function  
23 and purpose of the reclamation project.

24 MR. STILWELL: The primary purpose was to  
25 provide a secure source of nonpotable water to irrigate



1 the golf courses and other recreational open spaces in  
2 Pebble Beach.

3 We'd historically been using 8- to 900 acre  
4 feet of potable water, literally since Pebble Beach  
5 Golf Links opened in 1919, and the other golf courses  
6 developed in the years after that.

7 But to provide recycled water to the golf  
8 courses to irrigate them, and at the same time it was  
9 Pebble Beach Company's incentive and motivation to  
10 provide the financing for it by receiving a water  
11 entitlement for future development on Pebble  
12 Beach-owned lands we owned that were zoned for  
13 development but undeveloped at the time.

14 MR. SWEIGERT: Can you describe the past,  
15 present, and anticipated future performance of the  
16 reclamation project?

17 MR. STILWELL: Well, the project, the  
18 financing began in '92. Roughly \$34 million in bonds  
19 were sold by the Water Management District.

20 The Water Management District has absolutely  
21 no financial responsibility for those bonds. They are  
22 guaranteed totally by Pebble Beach Company. We were  
23 required to obtain a letter of credit guaranteeing the  
24 full amount of the bonds.

25 The project broke ground that year, opened in

1 the fall of 1994. For a number of years, it operated  
2 providing tertiary treated water to the golf courses.  
3 Interesting things happened over the -- from the time  
4 it was conceived till when we started operating it.

5 The Monterey Peninsula started heavily  
6 conserving water for a whole host of reasons described  
7 today, and so the amount of water that was sewage water  
8 that went to the Carmel plant steadily declined. And  
9 the water -- not only did we have less flow into the  
10 plant to produce recycled water, it was also more  
11 concentrated, got saltier.

12 So these two -- and both were dramatically  
13 related to the successful conservation programs that  
14 have been adopted on the Peninsula over the years.

15 So the golf courses started experiencing  
16 stress from having water that was too saline, and we  
17 also found that during the peak summer months because  
18 of the reduction in flow that the two and a half  
19 million gallons of storage that was built for the  
20 reclamation project didn't provide enough capacity  
21 during the peak months to meet all the irrigation  
22 demand on the golf courses.

23 So we started looking at a second phase of the  
24 project which was to incorporate a large moth-balled  
25 Cal Am reservoir that existed in Pebble Beach since the

1 1890s, convert that into a recycled water storage  
2 reservoir. That would take care of the capacity issue  
3 and peak irrigation demand. It would fill the  
4 reservoir in the winter with recycled water and draw it  
5 down in the summer, over a hundred million gallons of  
6 recycled water.

7 Then the second component was to look at ways  
8 to reduce the salinity of recycled water that was  
9 produced for irrigation. And that phase became known  
10 as the MF/RO desal project that we are -- that just  
11 recently started operation at the Carmel Area  
12 Wastewater District plant.

13 So working with CAWD, the PUC, the Water  
14 Management District, Cal Am, the Coastal Commission, we  
15 came up with a solution that would ultimately allow the  
16 golf courses to be 100 percent recycled water of a  
17 quality that we don't need to supplement with any  
18 potable water to flush salts or deal with any agronomic  
19 issues on the golf courses.

20 MR. SWEIGERT: Was there any public funding  
21 available at all for these projects?

22 MR. STILWELL: No, there was no public  
23 financing available. We felt an obligation to see the  
24 project through to fruition. There was a great desire  
25 to make this project 100 percent effective.

1           So the financing plan for Phase 2 worked out,  
2     the Water Management District and the agency -- other  
3     agencies was to allow us to sell a portion of our water  
4     entitlement that we received in 1992 when the project  
5     got financed, sell a portion of our water entitlement  
6     to homeowners in the Del Monte Forest, freeing projects  
7     for vacant lots of record.

8           And a hundred percent of those proceedings  
9     went to help pay the cost of Phase 2 of the project  
10    which was -- ended up roughly \$34 million, just  
11    coincidentally 34 and Phase 2 ended up a cost of  
12    \$34 million. So it's turned out to be approximately a  
13    \$68 million project.

14           We have sold water to over 500 homeowners in  
15    the Del Monte Forest. A hundred percent of the  
16    proceeds of the water entitlement sales have gone to  
17    help defray the cost of the project, roughly 24 million  
18    of the \$34 million, and we're funding the balance.

19           So we expect to be roughly out of pocket 8 or  
20    9, \$10 million. And we will be able to be repaid in  
21    the future as future water sales occur. That was the  
22    deal on Phase 2 of the project, how the financing  
23    worked out.

24           MR. SWEIGERT: So Pebble Beach Company has a  
25    365 acre foot entitlement?

1 MR. STILWELL: Correct.

2 MR. SWEIGERT: But the total entitlement  
3 related to the project is 380. Would you briefly  
4 explain that?

5 MR. STILWELL: There were two other --  
6 we actually, the Water Management District, put the  
7 financing out to bid in the early 1990s. Three  
8 entities indicated an interest in helping with the  
9 financing, Pebble Beach and two other small property  
10 owners in the Del Monte Forest. We ended up working  
11 with the Water Management District, agreeing to finance  
12 a hundred percent of the project, and those two  
13 property owners bought into the project and got 18 acre  
14 feet of water entitlement, both those projects have  
15 basically long been developed and built out in the Del  
16 Monte Forest over the last decade or so.

17 MR. SWEIGERT: Has the State Water Resources  
18 Control Board ever recognized this entitlement?

19 MR. STILWELL: Well, a number of things have  
20 happened over the years.

21 The first thing we did, under advice of bond  
22 counsel, is we went and got a judicial validation of  
23 the entire financing structure for the Del Monte Forest  
24 reclamation project including the water entitlement, so  
25 it's judicially validated by a superior court of

1 California.

2 As pointed out in my testimony in the  
3 exhibits, in my testimony, it was recognized in a  
4 footnote to Order 95-10 that we'd already, prior to  
5 Order 95-10, essentially gone out on a ledge and agreed  
6 to finance this project, guarantee the financing of the  
7 project, and we had an entitlement right to be served  
8 380 acre feet.

9 And then twice subsequent to that, we had  
10 received official correspondence from the State Water  
11 Board staff acknowledging our water entitlement, I  
12 think in 1998 and again in 2001 when we were trying to  
13 put together Phase 2 of the water reclamation  
14 expansion. So on a number of occasions, yes, it has  
15 been acknowledged.

16 MR. SWEIGERT: So is it fair to say that  
17 Pebble Beach Company wouldn't have guaranteed the  
18 funding for this project had it not received the  
19 entitlement?

20 MR. STILWELL: That's very fair to say.  
21 What -- who would -- we paid ten million, almost  
22 \$11 million on the bond financing guarantee to date.  
23 We expect to end up paying roughly \$30 million on it.  
24 We pay roughly a million, million and a half dollars a  
25 year repaying principal and interest. And I can't

1 imagine any property owner agreeing to take on that  
2 financial responsibility without an iron-clad guarantee  
3 that they were getting what they had bargained for in  
4 return.

5 MR. SWEIGERT: And did Pebble Beach Company  
6 rely on the recognition of the State Water Resources  
7 Control Board in proceeding with its continued  
8 participation of the reclamation project for the second  
9 phase that you described?

10 MR. STILWELL: Absolutely. We, again,  
11 assumed -- we guaranteed the cost of Phase 2. That  
12 was -- at the time, we thought it would be \$34 million.  
13 We'd be able to sell some water rights, which the  
14 homeowners who bought the water rights have likewise  
15 relied upon the water entitlement. But both parties,  
16 both homeowners and Pebble Beach, fully relied upon the  
17 validity of the water entitlement going forward into  
18 the future.

19 MR. SWEIGERT: Would it be fair to say that  
20 the purchasers of the water entitlements from Pebble  
21 Beach Company received copies of the State Water  
22 Resources Control Board letters?

23 MR. STILWELL: We have submitted copies of  
24 letters to interested homeowners. We've explained the  
25 whole context of the reclamation project to them, and

1 the homeowners made the decision to move ahead and  
2 purchase water rights and used them in many cases  
3 already.

4 MR. SWEIGERT: So they also relied on the  
5 continuing availability of that water?

6 MR. STILWELL: Absolutely.

7 MR. SWEIGERT: What coordination and approvals  
8 were necessary to implement the reclamation project?

9 MR. STILWELL: Well, it's probably the most  
10 complicated project I worked on my in 25 years of real  
11 estate or legal work, involving numerous agencies,  
12 private parties, country clubs, public golf courses,  
13 residents in the Del Monte Forest, and state and  
14 federal agencies.

15 So it's been -- I mean my testimony alone just  
16 I could fill several boxes with the agreements for  
17 Phase 1 and 2 of the reclamation project. We tried to  
18 just give you the key documents and indexes of the  
19 other documents.

20 But it has taken years and literally millions  
21 of dollars of legal and title, environmental reports,  
22 to pull this project together. And, you know, again  
23 I'm not sure -- aware of any other project that has  
24 been as successful in conserving, single project, as  
25 successful in conserving water on the Monterey



1 Peninsula as this project.

2 MR. SWEIGERT: What are the environmental  
3 benefits of the reclamation project that you're aware  
4 of?

5 MR. STILWELL: First and foremost, it's saving  
6 potable water from the Carmel River. That's pretty  
7 obvious.

8 Less obvious is that prior to this project  
9 roughly 300 million gallons a year of secondary treated  
10 wastewater were discharged into the Carmel Bay ASBS.  
11 This project removed those 300 million gallons and uses  
12 them now positively to irrigate the golf courses in Del  
13 Monte Forest.

14 Another less-well-known benefit is that we  
15 have agreed with Carmel Area Wastewater District, and  
16 with knowledge of the local environmental and public  
17 agencies, we have allowed the Carmel Area Wastewater  
18 District to provide tertiary treated water to  
19 supplement the water level of the Carmel River lagoon  
20 to assist with protection of the steelhead during the  
21 dry summer months.

22 I often say this project is not just a  
23 win/win. It's a win/win/win/win when you look at all  
24 the parties that have benefitted from it from  
25 environmental benefits to obviously our own

1 self-interest in getting the water entitlement to  
2 benefits to the general public and Monterey Peninsula  
3 Public Trust resources.

4 MR. SWEIGERT: And why is it important that  
5 this water entitlement continue to be recognized by the  
6 State Water Resources Control Board?

7 MR. STILWELL: I think my testimony makes that  
8 clear. I hope it does. That a lot of people, lot of  
9 entities, including Pebble Beach Company, have relied  
10 on this for 16, 17 years now, and a whole underpinning  
11 of this project is this water entitlement. It would  
12 not have happened before. And we -- the Company's here  
13 today to ask you to continue to respect that right.

14 MR. SWEIGERT: Can you just briefly describe  
15 what might occur if the water entitlement were to be  
16 undermined by a modification of 95-10 or a cease and  
17 desist order?

18 MR. STILWELL: I can't imagine that. Given  
19 the legal underpinnings of this and the judicial  
20 decision we have, I mean, we would have to take  
21 whatever steps we think we have to take to protect the  
22 water entitlement.

23 I don't know what else to say in that regard.  
24 You know, you don't guarantee a \$68 million project and  
25 say, you know, walk away from it without trying to do

1 whatever you can to mitigate the impacts of that.

2 MR. SWEIGERT: Thank you, Mr. Stilwell.

3 MR. STILWELL: You're welcome.

4 MR. SWEIGERT: Turning to Mr. Miccum.

5 MICHAEL MICCUM

6 Called by PEBBLE BEACH COMPANY

7 DIRECT EXAMINATION BY MR. SWEIGERT

8 MR. SWEIGERT: Would you please state and

9 spell your name for the record.

10 MR. MICCUM: I'm Michael Miccum.

11 M-i-c-h-a-e-l. Last name's M-i-c-c-u-m.

12 MR. SWEIGERT: And you've taken the oath in

13 this proceeding?

14 MR. MICCUM: Yes.

15 MR. SWEIGERT: And have you reviewed the

16 testimony contained in Pebble Beach Company's Exhibit

17 PBC-2 submitted in this proceeding?

18 MR. MICCUM: Yes.

19 MR. SWEIGERT: And is the testimony contained

20 in that document true and correct?

21 MR. MICCUM: Yes.

22 MR. SWEIGERT: Can you state your current

23 occupation?

24 MR. MICCUM: I work for the Pebble Beach

25 Community Services District which is a public agency

1 located in Pebble Beach. My current position is  
2 General Manager. I've been with the District since  
3 1994, just about the time this project started  
4 operations.

5 Community Services District owns and operates  
6 the distribution system for the reclamation project  
7 including the latest addition in the Phase 1 project  
8 which was rehabilitating Forest Lake Reservoir.

9 MR. SWEIGERT: And can you describe the  
10 performance of the reclamation project in terms of say  
11 the average amount of water that has been delivered by  
12 the reclamation project over the years?

13 MR. MICCUM: Yeah, we're responsible for  
14 collecting the readings and the actual numbers are  
15 the -- we kind of split it up a couple of ways. The --  
16 before we came up with the Phase 2, when there was both  
17 a supply and a quality issue, we were averaging  
18 970 acre feet of total demand, and of that -- so  
19 recycled water was 700, just under 700 acre feet a  
20 year. And we continued to use about 290 acre feet of  
21 potable water.

22 Since the Forest Lake Reservoir project's come  
23 online -- and that was basically 30 percent of the  
24 project was supplied by potable. Since the Forest Lake  
25 project's come online, we've cut that down to

1 15 percent. And so we've been providing about 844 acre  
2 feet of recycled water that would have been used as  
3 potable prior to the project.

4 MR. SWEIGERT: And starting in 2009, when all  
5 the improvements are operational for this system, how  
6 much additional potable water would be saved compared  
7 to prior to the improvement?

8 MR. MICCUM: Total for both Phase 2 would be  
9 about, just under 300 acre feet will be -- will be --

10 MR. SWEIGERT: Is that added to the 700?

11 MR. MICCUM: Yes.

12 MR. SWEIGERT: So the total would be what?

13 MR. MICCUM: About a thousand.

14 MR. SWEIGERT: Do you have anything else to  
15 add to summarize your testimony?

16 MR. MICCUM: That's it.

17 MR. SWEIGERT: Thank you very much.

18 CO-HEARING OFFICER BAGGETT: Thank you.

19 Prosecution, cross-examination?

20 CROSS-EXAMINATION BY MS. OKAMOTO

21 FOR THE PROSECUTION TEAM

22 MS. OKAMOTO: I just have a brief clarifying  
23 question for Mr. Stilwell. My name is Mayumi Okamoto  
24 and I'm an attorney with the Prosecution Team.

25 If I could just briefly direct your attention

1 to your exhibit that has been marked PBC-7 which is a  
2 1998 letter from Chief Edward Anton.

3 MR. STILWELL: Got it.

4 MS. OKAMOTO: Referring to the quoted section  
5 of footnote 2, the indented paragraph.

6 MR. STILWELL: Mm-hmm.

7 MS. OKAMOTO: The language that states in the  
8 second to last sentence:

9 . . . based upon issuance of an  
10 appropriative right permit to the  
11 District, for development within Del  
12 Monte Forest.

13 Can you tell me which appropriative permit  
14 this language refers to?

15 MR. STILWELL: I can't.

16 MS. OKAMOTO: You don't know what permit it  
17 is?

18 MR. STILWELL: No.

19 MS. OKAMOTO: Okay.

20 Thank you. I have no further questions.

21 CO-HEARING OFFICER BAGGETT: Planning and  
22 Conservation League? Sierra Club? Public Trust  
23 Alliance? California Salmon and Steelhead Association.

24 MR. JACKSON: That's not us.

25 CO-HEARING OFFICER BAGGETT: I'm sorry.

1 Carmel River Steelhead Association.

2 CROSS-EXAMINATION BY MR. JACKSON

3 FOR CARMEL RIVER STEELHEAD ASSOCIATION

4 MR. JACKSON: These questions are for  
5 Mr. Stilwell.

6 Mr. Stilwell, does the Pebble Beach Company  
7 through the Carmel Area Wastewater reclamation project  
8 have a license from the State Water Resources Control  
9 Board for this thousand acre feet?

10 MR. STILWELL: From the State Water Resources  
11 Control Board?

12 MR. JACKSON: Yes.

13 MR. STILWELL: Not to my knowledge.

14 MR. JACKSON: Does it have a permit from the  
15 State Water Resources Control Board for this 1,000 acre  
16 feet?

17 MR. STILWELL: It's 380 acre feet, not 1,000.

18 MR. JACKSON: Okay. 380 acre feet stored.

19 MR. STILWELL: 380 is what the water  
20 entitlement is. A thousand is what's being saved, just  
21 to get that straight.

22 MR. JACKSON: All right. So the 380 that  
23 begins the process of ending up with a thousand, that  
24 water does not come from the State Water Resources  
25 Control Board?

1           MR. STILWELL: No, it comes from -- the  
2 Monterey Peninsula Water Management District issued us  
3 a permit as did -- and we have a judicial decree.

4           MR. JACKSON: To your knowledge, does the  
5 Monterey Peninsula Water Management District have a  
6 permit for this water from the Carmel River?

7           MR. STILWELL: I don't know the answer to  
8 that.

9           MR. JACKSON: Okay. The water originates in  
10 the Carmel River? That's the source?

11          MR. STILWELL: I think the water originates  
12 from the Cal Am system. I don't know where that water  
13 is derived from.

14          MR. JACKSON: All right.

15          MR. STILWELL: At the time we started, I  
16 believe that was the only water available. Since then,  
17 it's been expanded.

18          MR. JACKSON: You mentioned a couple things in  
19 your testimony, or maybe it was your attorney. A  
20 rock-hard right to the reclaimed sewage water: Where  
21 does this rock-hard right come from?

22          MR. STILWELL: To the sewage water?

23          MR. JACKSON: Yeah.

24          MR. STILWELL: It comes via contract with the  
25 Carmel Area Wastewater District and Pebble Beach



1 Community Services District and the Monterey Peninsula  
2 Water Management District.

3 MR. JACKSON: Okay. And you used the term  
4 water entitlement. Where does the water entitlement  
5 come from?

6 MR. STILWELL: Water entitlement comes from  
7 our agreement with the Monterey Peninsula Water  
8 Management District as reviewed by the state --  
9 California state superior court in the validation  
10 action as well as recognized in Order 95-10 as well as  
11 two subsequent letters from the State Board.

12 MR. JACKSON: Is it your understanding that a  
13 letter from the State Board grants some sort of water  
14 right?

15 MR. STILWELL: Water right, the letter  
16 recognized the right.

17 MR. JACKSON: And you point to two letters,  
18 one from an employee of the Water Board in 1998?

19 MR. STILWELL: The Chief of the Enforcement  
20 Division, I believe.

21 MR. JACKSON: Okay. And the second letter,  
22 who did that come from?

23 MR. STILWELL: Again, it was also Mr. Anton.  
24 Edward C. Anton, Chief, Division of Water Rights.

25 MR. JACKSON: So Ed Anton sent you two

1 letters, and did those letters indicate to you that the  
2 State Board had issued you some form of water right?

3 MR. STILWELL: It indicated the State Board  
4 recognized our water rights issued by the Monterey  
5 Peninsula Water Management District and validated by  
6 the California superior court and relied upon to  
7 finance a \$34 million project in 1992. And I think  
8 respected by the Steelhead Association for many, many  
9 years based on my conversations with local  
10 representatives.

11 MR. JACKSON: Do you believe that we at the  
12 Steelhead Association had the authority to issue a  
13 water right?

14 MR. STILWELL: No. I believe that they  
15 supported our project because they recognize it saves  
16 much, much more water than it would ever use for the  
17 benefit of the steelhead. And they recognize that we  
18 provide water to the lagoon to help the steelhead.

19 MR. JACKSON: How do you provide water to help  
20 the steelhead?

21 MR. STILWELL: The Carmel Area Wastewater  
22 District used the plant to provide tertiary treated  
23 wastewater to the lagoon on a number of occasions over  
24 the last several years.

25 MR. JACKSON: So as far as the Pebble Beach

1 Company is concerned, if it were a condition of a CDO  
2 that the Carmel River wastewater agency would supply  
3 water to the Carmel River lagoon to attempt to help the  
4 steelhead, that would be okay with you folks?

5 MR. STILWELL: I'd have to study what was  
6 requested, but we probably have done that voluntarily  
7 for many years, as long as it's the same terms we've  
8 done in the past.

9 MR. JACKSON: What were those terms, sir?

10 MR. STILWELL: That there's supplemental  
11 recycled water available at the time.

12 MR. JACKSON: And supplemental to the --

13 MR. STILWELL: The needs of the golf courses  
14 for irrigation in the summertime.

15 MR. JACKSON: And the needs of the people you  
16 sell water to for new houses?

17 MR. STILWELL: No, that has nothing to do with  
18 this. You're mixing potable water with recycled water.  
19 I'm talking about the recycled wear going to the  
20 lagoon.

21 MR. JACKSON: All right. Thank you.

22 MR. STILWELL: You're welcome.

23 CO-HEARING OFFICER BAGGETT: Monterey  
24 Peninsula Water Management District? Do you have any?

25 MR. LAREDO: Thank you. I do.

1 CROSS-EXAMINATION BY MR. LAREDO

2 FOR MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

3 MR. LAREDO: Good afternoon, gentlemen. My  
4 name is David Laredo, general counsel to the Monterey  
5 Peninsula Water Management District.

6 Mr. Stilwell, I have a couple of questions  
7 about Pebble Beach Company before I get to the specific  
8 issue of entitlement concerns. The Pebble Beach area  
9 is within the Del Monte Forest; is that accurate?

10 MR. STILWELL: Correct.

11 MR. LAREDO: And the Del Monte Forest is  
12 entirely unincorporated areas in the Monterey  
13 Peninsula?

14 MR. STILWELL: Correct.

15 MR. LAREDO: Are you aware how many lodging  
16 units there are operated by your company within the Del  
17 Monte Forest?

18 MR. STILWELL: 460 hotel rooms within -- the  
19 Del Monte Forest is roughly 5,300 acres, so roughly two  
20 and a half times the size of Carmel and twice the size  
21 of the city of Pacific Grove, and roughly one-tenth the  
22 number of hotel rooms of the surrounding communities,  
23 but we do -- that is our core business, is the resort  
24 and resort golf.

25 MR. LAREDO: Do you know offhand the occupancy

1 rate of those units?

2 MR. STILWELL: It varies. The economy is not  
3 as good this year as it has been in years past.  
4 Historically in the high 70s to low 80s on an annual  
5 basis.

6 MR. LAREDO: And do you know the average  
7 number of persons occupying a unit when it is occupied?

8 MR. STILWELL: If it's a transient guest,  
9 probably close to two I would say. If it's a group  
10 guest, probably more on the order of 1 to 1 and a half.  
11 So probably average one and a half, 1.7, something  
12 like.

13 MR. LAREDO: Thank you. How many employees  
14 work for the Pebble Beach Company within the Del Monte  
15 Forest?

16 MR. STILWELL: Again, it's seasonal. But  
17 roughly 2,000 employees. That's 1600 full-time, couple  
18 hundred part-time, and on-call employees. We're  
19 typically viewed as the largest employer on the  
20 Monterey Peninsula. Not in Monterey county, but.

21 MR. LAREDO: Can you tell me what percentage  
22 do you believe reside and therefore commute from  
23 outside the Cal Am service area?

24 MR. STILWELL: Outside the Cal Am service  
25 area?

1           MR. LAREDO: Commute to work within the Pebble  
2 Beach area but reside and commute to work from outside  
3 the Cal Am service area?

4           MR. STILWELL: Well, I know Salinas is outside  
5 the Cal Am service area. I think roughly 25 percent of  
6 our employees are from Salinas environs. And I would  
7 guess somewhere between 50, 60, 75 percent are within  
8 the Cal Am service area.

9           MR. LAREDO: Within or outside?

10          MR. STILWELL: I think with -- well, Marina is  
11 outside, too.

12          MR. LAREDO: Right.

13          MR. STILWELL: So 50 percent perhaps.

14          MR. LAREDO: Thank you.

15                 You also have some stables do you? How many  
16 horses do you have at the stables?

17          MR. STILWELL: The Pebble Beach Company  
18 Equestrian Center has approximately 175 horses stabled  
19 there. Although at certain times of the year, like  
20 right now, we have the Pebble Beach Summer Equestrian  
21 Classic, so there's probably 500 horses there for the  
22 summer shows that go on in June and July. And the  
23 equestrians, plus we have special events. Like we have  
24 golf, special events like the US Open and the AT&T that  
25 draw visitors to the area.

1           MR. LAREDO: Thank you. Now, addressing what  
2 you came here for.

3           MR. STILWELL: Yes, sir.

4           MR. LAREDO: I'd like to draw your attention  
5 to your Exhibit PBC-7. And in particular on page 2, if  
6 I could have you review the second to last full  
7 paragraph, that paragraph that begins:

8                   Thus the State Water Resources Control  
9                   Board will use its enforcement  
10                   discretion to not penalize Cal Am for  
11                   excess diversions from the Carmel River  
12                   as long as diversions do not exceed  
13                   11,285 afa plus the quantity of potable  
14                   water provided to Pebble Beach Company  
15                   and other sponsors under this  
16                   entitlement for use on these lands.

17           And it continues. If you could just read the  
18 next sentence, and my question to you when you are  
19 done.

20           MR. STILWELL: Okay.

21           MR. LAREDO: Is this the representation made  
22 to Pebble Beach Company upon which you based your  
23 belief that you have a water right to use that water?

24           MR. STILWELL: That's part of the letter, yes.

25           MR. LAREDO: Okay. Do you have any reason to

1 believe that the reference in footnote 2 to WR 95-10  
2 does not refer to either permit 7130B or permit 20808  
3 that are held by the Water Management District?

4 MR. STILWELL: No, I have no reason not to  
5 believe that. I just don't know for certain.

6 MR. LAREDO: Thank you.

7 I have no further questions.

8 CO-HEARING OFFICER BAGGETT: Any of the  
9 cities? No. Hospitality Association, any cross? Cal  
10 Am?

11 CROSS-EXAMINATION BY MR. RUBIN

12 FOR CALIFORNIA AMERICAN WATER COMPANY

13 MR. RUBIN: Good afternoon, gentlemen. My  
14 name is Jon Rubin, attorney for California American  
15 Water. I have just a few brief questions. I believe  
16 they are directed to Mr. Stilwell. If the direction  
17 isn't correct, please feel free to respond.

18 There was some discussion today about the  
19 Carmel Area Wastewater District; is that correct?

20 MR. STILWELL: Correct.

21 MR. RUBIN: And I believe you were describing  
22 water that is produced by the Carmel Area Wastewater  
23 District?

24 MR. STILWELL: Yes.

25 MR. RUBIN: Treated, do you recall that?



1           MR. STILWELL: I do. Wastewater flows from  
2 Pebble Beach from Carmel to the Carmel Area Wastewater  
3 District. It's treated and pumped back to the Del  
4 Monte Forest Pebble Beach to irrigate golf courses  
5 there.

6           MR. RUBIN: And you also talked briefly about  
7 some of the water that is provided to the lagoon?

8           MR. STILWELL: Mm-hmm.

9           MR. RUBIN: Can you describe in a little bit  
10 more detail the circumstances when water might be  
11 provided to the lagoon?

12          MR. STILWELL: Well, it's a judgment that's  
13 typically made by, I believe, the general manager of  
14 the Carmel Area Wastewater District plant.

15          Depending upon what the golf courses are doing  
16 irrigationwise, he may make a judgment there is some  
17 excess recycled water, and he will then -- I think he  
18 works with the State Department of Fish and Game, NOAA,  
19 and others to pump some water that will filter into the  
20 lagoon and raise the levels of the lagoon when it gets  
21 too low for the safety and health of the steelhead.

22          MR. RUBIN: Do you know if there are ever any  
23 circumstances where the Carmel Area Wastewater District  
24 discharged water that ultimately went into the lagoon  
25 during the July period?

1           MR. STILWELL: I believe it has. But, you  
2 know -- I believe during the summer months it's done  
3 that on a number of occasions.

4           MR. RUBIN: And do you know the quantity of  
5 water that the Carmel Area Wastewater District may have  
6 discharged that ultimately went into the lagoon during  
7 this July summertime period?

8           MR. STILWELL: Numbers in acre feet, you know,  
9 it's -- I don't have the exact number in my head, but I  
10 seem to recall somewhere between 4 and 10 acre feet of  
11 water.

12          MR. RUBIN: Do you recall a circumstance in  
13 2004 where tens of acre feet were released into the  
14 lagoon by the Carmel Area Wastewater District?

15          MR. STILWELL: Not -- I don't have a  
16 recollection of that. I know that they have provided a  
17 significant quantity of water on a number of occasions,  
18 but I don't know the specifics.

19          MR. RUBIN: You said that a number of  
20 organizations are aware that the Carmel Area Wastewater  
21 District on occasion, I think in your testimony,  
22 discharges water that ultimately reaches the lagoon?

23          MR. STILWELL: Mm-hmm.

24          MR. RUBIN: Can you explain or describe some  
25 of the organizations that are aware of that?

1           MR. STILWELL: Well, I recall that there was a  
2 function held at Mission Ranch Resort which is right on  
3 the mouth of the river that kind of acknowledged the  
4 fact that water was being provided. And there were  
5 members of the Water Management District there and the  
6 Board. There were members of the Carmel River  
7 Steelhead Association there. Obviously, I was there.

8           You know, there was a project that was funded  
9 by Cal Am for approximately 65-, \$75,000 to help make  
10 that connection more permanent so that, you know,  
11 instead of trying to do a temporary connection every  
12 time, there was a request to supply water to the  
13 lagoon.

14           I think it was an acknowledgement of that  
15 project that there was kind of a community event.  
16 There was some media invited, and I think there were  
17 some articles written about it.

18           MR. RUBIN: Do you know if Roy Thomas, the  
19 president of the Carmel River Steelhead Association,  
20 has been aware of the release of water by the Carmel  
21 Area Wastewater District into the lagoon?

22           MR. STILWELL: I can't remember the -- you  
23 know, it was an official with the Carmel River  
24 Steelhead Association who I spoke with. I've spoken a  
25 couple of times. I think it was Roy Thomas, but I

1 can't recall his name for certain.

2 MR. RUBIN: And just to touch on something  
3 that you mentioned in response to one of my questions,  
4 there was a need for funding for -- to allow for  
5 discharges on a more permanent basis from the Carmel  
6 Area Wastewater District into the lagoon?

7 MR. STILWELL: Mm-hmm.

8 MR. RUBIN: And that funding came from what  
9 entity?

10 MR. STILWELL: It came from Cal Am, the 65- or  
11 \$75,000 commitment that -- the Carmel Area Wastewater  
12 District came up with the project and approached Cal Am  
13 about whether they had a desire to fund it, and they  
14 ended up funding it.

15 MR. RUBIN: All right, thank you.

16 I have no further questions.

17 CO-HEARING OFFICER BAGGETT: Any other  
18 redirect? Any questions from staff?

19 CHIEF COUNSEL TAYLOR: Couple quick questions.

20 Mr. Stilwell, I'd like to refer you to page 3  
21 of your written testimony.

22 MR. STILWELL: Okay, I'm on page 3.

23 STAFF COUNSEL TAYLOR: Would you look at the  
24 lines, the sentence starting at the end of line 12  
25 through line 17.

1           MR. STILWELL: It begins: Once the Forest  
2 Lake Reservoir?

3           CHIEF COUNSEL TAYLOR: Correct.

4           There's a couple things about this statement I  
5 don't understand. At the end of it, you have:

6           Thus conserving an additional 285+ afa  
7           of potable water from the amount of  
8           potable water deliveries existing until  
9           2006.

10          What does that mean?

11          MR. STILWELL: What that means is that once  
12 Forest Lake is filled with MF/RO water, you know, good,  
13 high-quality recycled water that doesn't have a lot of  
14 saline in it, then the -- our agreements with the Water  
15 Management District, all the entities involved, that we  
16 will use 100 percent recycled water to irrigate the  
17 golf courses, with one exception: That if there is a  
18 temporary emergency or problem with the plant.

19          So as of that date, our possible water usage  
20 will be zero.

21          CHIEF COUNSEL TAYLOR: 2006.

22          MR. STILWELL: As of two thousand -- next  
23 irrigation season, 2009. Prior to 2006, we were using  
24 on average 285 acre feet of potable water, prior to  
25 conceiving and doing Phase 2. So we're going from

1 using 285 to using zero, thus saving 285 acre feet of  
2 potable water.

3 CHIEF COUNSEL TAYLOR: Okay.

4 Second question is: Do you -- does the Pebble  
5 Beach Company have a right, an exclusive right to the  
6 285 acre feet that's being saved?

7 MR. STILWELL: We have the right to 365 acre  
8 feet that was, you know, the original agreement. We  
9 didn't request any additional potable water  
10 entitlements other than what we originally were granted  
11 by the Water Management District, so -- we also  
12 expected when the project was complete there would be  
13 some potable water used during peak months. We've  
14 actually gone beyond the original concept of the  
15 project and we're going to essentially zero potable  
16 water use in the future with this expansion.

17 CHIEF COUNSEL TAYLOR: So arguably this  
18 conservation of an additional 285 acre feet is water  
19 that need not be pumped from the Carmel River for  
20 potable uses?

21 MR. STILWELL: Correct.

22 CHIEF COUNSEL TAYLOR: Thank you.

23 CO-HEARING OFFICER BAGGETT: Okay.

24 CO-HEARING OFFICER WOLFF: The 460 units that  
25 you mentioned, I think 460 units was the number?

1 MR. STILWELL: Yes, 460 hotel rooms between  
2 the three resorts in Pebble Beach.

3 CO-HEARING OFFICER WOLFF: Do the hotel rooms  
4 have kitchens or are there restaurant facilities in the  
5 resort? Are they standard hotel rooms?

6 MR. STILWELL: They're standard hotel rooms.

7 CO-HEARING OFFICER WOLFF: Luxury hotel?

8 MR. STILWELL: Luxury hotel rooms, no  
9 kitchenettes or anything like that. We have  
10 restaurants and --

11 CO-HEARING OFFICER WOLFF: Okay. With respect  
12 to the plumbing fixtures in the hotel rooms, are the  
13 toilets 1.6 gallon per flush, or do they use less  
14 water; do you know?

15 MR. STILWELL: They are all one -- I think  
16 1.6. We converted the whole resort to low-flow  
17 fixtures in accordance with the mandate of the Water  
18 Management District a long time ago.

19 CO-HEARING OFFICER WOLFF: And the  
20 showerheads, do you know if they're low-flow --

21 MR. STILWELL: Not off the top of my head.

22 CO-HEARING OFFICER WOLFF: -- 2.5 gallons --

23 MR. STILWELL: Whatever we're mandated by the  
24 Water Management District, we have complied with.

25 CO-HEARING OFFICER WOLFF: And are there

1 clothes washing facilities in the resorts? Linens,  
2 that sort of thing?

3 MR. STILWELL: Actually, no. We don't have  
4 our own laundry.

5 CO-HEARING OFFICER WOLFF: You send it out?

6 MR. STILWELL: We send it out.

7 CO-HEARING OFFICER WOLFF: And in the kitchens  
8 that you have for the restaurants, do you have  
9 pre-rinse nozzles where you rinse the plates with  
10 pre-rinse nozzles that they run them through prior to  
11 putting them in the dishwasher?

12 MR. STILWELL: I honestly don't know the  
13 answer to that one.

14 CO-HEARING OFFICER WOLFF: It's a  
15 water-conserving device.

16 MR. STILWELL: We have a green committee.  
17 Pebble Beach looks at a whole host of options with  
18 respect to sustainable recycling practices, our water  
19 use practices, dishwashing, what we use, what kind of  
20 detergents we use.

21 CO-HEARING OFFICER WOLFF: Thank you. And  
22 then a final question. The toilet flushing, have you  
23 considered using reclaimed water for toilet flushing at  
24 some future time?

25 MR. STILWELL: No. There is -- this project



1 really uses -- meets the demand of the golf courses  
2 right now. There's really not a lot of excess  
3 capacity. We may monitor it. I think it's more likely  
4 if there was excess capacity we'd try to find another  
5 irrigation area that could be converted to recycled  
6 water.

7 CO-HEARING OFFICER WOLFF: Thank you.

8 MR. STILWELL: You're welcome.

9 CO-HEARING OFFICER BAGGETT: Any redirect? If  
10 not, would you like to move your exhibits?

11 MR. SWEIGERT: Yes, Pebble Beach Company would  
12 like to move Exhibits PBC-1 through 17 into evidence.

13 CO-HEARING OFFICER BAGGETT: Any objection?  
14 If not, they're accepted.

15 (Exhibits PBC-1 through 17 were accepted  
16 into evidence.)

17 MR. SWEIGERT: Thank you.

18 CO-HEARING OFFICER BAGGETT: Let's go off the  
19 record.

20 (Recess)

21 CO-HEARING OFFICER BAGGETT: Mr. Jackson,  
22 you're up. Any opening statement? Just going for it?

23 MR. JACKSON: I believe that I will reserve  
24 the opening statement and allow that to be part of the  
25 testimony by Mr. Thomas.

1 CO-HEARING OFFICER BAGGETT: Fine.

2 MR. JACKSON: The witnesses have consolidated  
3 their testimony into one document in order to make it  
4 more streamlined.

5 DR. ROY THOMAS

6 Called by CARMEL RIVER STEELHEAD ASSOCIATION

7 DIRECT EXAMINATION BY MR. JACKSON

8 MR. JACKSON: Mr. Thomas, you need to identify  
9 yourself. Have you been sworn in this case?

10 DR. THOMAS: Yes, this morning.

11 MR. JACKSON: Is the testimony that is put  
12 forward, was part of it prepared by you?

13 DR. THOMAS: Yes. I prepared the first part.

14 MR. JACKSON: Would you summarize your  
15 testimony, sir?

16 MR. RUBIN: I'm going to raise an objection at  
17 this point; and it's a similar objection to what I had  
18 raised earlier, so it's more for the record than  
19 anything else, I would imagine.

20 But there's a lot of testimony these gentlemen  
21 have written -- excuse me -- a lot of information in  
22 the written testimony from these gentlemen that I  
23 believe is outside the scope of this proceeding, issues  
24 dealing with dam operations and the lagoon, again, that  
25 I don't believe are relevant for this phase or for this

1 hearing as it's been noticed.

2 DR. THOMAS: I'd like to respond to that in  
3 that I realize you're trying to keep the abysmal  
4 conditions of the Los Padres Dam --

5 MR. RUBIN: I think that if your attorney  
6 wants to respond --

7 CO-HEARING OFFICER BAGGETT: Mr. Jackson.

8 MR. JACKSON: Obviously, I think that the  
9 information is all relevant in terms of the proposed  
10 CDO. We need to describe the river and the problems on  
11 the river in order for you to determine what remedies  
12 would be possible, given the existing conditions on the  
13 river.

14 And there has been evidence allowed previously  
15 of conditions the length of the river in order to  
16 demonstrate what would be possible to do below San  
17 Clemente given the problems in the upper watershed.  
18 And we would assume that the same ruling would be made  
19 today.

20 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

21 MR. RUBIN: Well, I don't necessarily disagree  
22 with the ultimate conclusion Mr. Jackson raised. This  
23 is a similar objection that I have been raising to  
24 testimony.

25 CO-HEARING OFFICER BAGGETT: I note it for the

1 record. And I think, Mr. Jackson, what you just stated  
2 is accurate. So if you could have your witnesses  
3 summarize their testimony related to any Los Padres  
4 issues.

5 DR. THOMAS: Well, I won't go through the  
6 detailed litany of problems at the Los Padres Dam, but  
7 I want you to understand --

8 CO-HEARING OFFICER BAGGETT: Wait, wait, wait.  
9 Can the attorney ask the witness questions?

10 MR. JACKSON: Actually, I think he jumped into  
11 would you please summarize your testimony.

12 DR. THOMAS: I've been here --

13 MR. JACKSON: -- Mr. Thomas --

14 MR. RUBIN: Clearly, Mr. Thomas enjoyed too  
15 much asking questions earlier this afternoon.

16 (Laughter)

17 MR. JACKSON: The first part of the written  
18 document is your testimony? What part is your written  
19 testimony?

20 DR. THOMAS: The numbers and -- it's not mine.  
21 So if you start -- look, I'll show you the page. Page  
22 9, number 1. That's where it goes to Brian LeNeve.

23 MR. JACKSON: So everything before the  
24 numbered section is Mr. Thomas's, and everything that  
25 is in the numbered section is Mr. LeNeve's.

1 CO-HEARING OFFICER BAGGETT: Proceed with the  
2 summary of the testimony.

3 DR. THOMAS: In order to keep the steelhead in  
4 good condition, not have them go extinct, they have to  
5 have everything they need for all their life stages.  
6 And the problem we have on the Carmel River is that the  
7 well fields and the dams are so destructive to their  
8 habitat that they have to have access to the Ventana  
9 wilderness to persist.

10 They will be listed as endangered, and then  
11 they will go extinct if all the vagaries of water  
12 continue and your management of 95-10 stays the same.  
13 You will lose this population, and it will be partly  
14 your responsibility for the take.

15 Los Padres Dam is an impediment to access up-  
16 and downstream, a very serious one, on the Carmel  
17 River. It is the only place left, the only place left  
18 that's completely watered annually where the fish spawn  
19 and rear. There's spawning and rearing habitat in the  
20 lower river, but most of that most years is dewatered  
21 by overpumping.

22 I'm going to start talking about some of the  
23 problems that the dams, and Los Padres in particular,  
24 cause, the reason for this.

25 Bed load is what they call the stuff that runs

1 downstream when the river flows hard. Steelhead have  
2 to have bed load that's smaller than melons and  
3 grapefruits. They need sand and gravel. Below both  
4 your dams, there's virtually no gravel. Virtually no  
5 gravel.

6           The steelhead in their attempt to find a place  
7 to spawn tend to try and go up the tributaries which  
8 more and more of them are pumped dry every year -- by  
9 other people; not by Cal Am.

10           The lower river, the best spawning gravel lies  
11 below Schulte Bridge, and right now today, this day,  
12 almost all the fish below Schulte Bridge are dead.  
13 They're all gone. Today. Brian and I rescued over  
14 3,000 fish in that area just before we came here. So  
15 the population has been lost below Schulte Bridge.

16           You say well, did the Water Management  
17 District rescue those? Didn't you rescue those? Yeah,  
18 we keep them from dying that day, but if you look  
19 closely as things go on, they don't live well in the  
20 lagoon unless it has water.

21           This year, this year, the water level of the  
22 lagoon has dropped faster than I have ever seen it.  
23 There's Cal Am's pumping. There's another agricultural  
24 operation just above the Highway 101 Bridge. The  
25 habitat values which can be very good in the lagoon are

1 being destroyed.

2           The Water Management District rescued  
3 thousands of fish; but as you know, they have trouble  
4 keeping them live. So being rescued doesn't mean you  
5 live. I want you to appreciate that.

6           You seem to think that everything is taken  
7 care of by the mitigation for 95-10. Look, all the  
8 fish are taken care of. They're spending money doing  
9 this, and there's water, and everything is fine.  
10 Everything is not fine.

11           If you look closely at the population numbers,  
12 and you saw Mr. Rubin give you a graph and say Jesus,  
13 great up into '82, but from '81 to '87 there were seven  
14 consecutive years of decline from a high of 804 fish  
15 counted down to 222. This last year, thanks to a good  
16 year at the lagoon, we had 400 fish show up for the  
17 dam. We're not talking about recovery, and we're  
18 barely talking about survival with those small numbers.

19           The 1990 allocation EIR is referenced in 95-10  
20 as well as the interim relief plan. All the provisions  
21 of those two plans which were referenced in 95-10 that  
22 will be done according to State Board by Cal Am if the  
23 Water Management District doesn't do it. They're not  
24 all being done. Some of them are very important, but  
25 they're not being done.

1           There is no acclimation facilities around  
2 Schulte Bridge or the lagoon. Fish passage studies  
3 haven't been done. Improvements to fish passage  
4 haven't been made to the satisfactory level. All that  
5 counts, not because the pumps are up where the dams  
6 are, but the habitat that's left is above the dams.  
7 That's really important.

8           The fish run facilities have lots of  
9 difficulties. They've spent lots of money. But they  
10 certainly haven't mitigated at all for the losses of  
11 fish in the lower ten miles. I believe in the  
12 testimony of Kevan Urquhart, he says there is something  
13 like 48 adults per mile that should be created by the  
14 river, and he was -- his argument was well, if you add  
15 a little bit more river water down below you'll get 48  
16 more fish.

17           Well, the ten dewatered miles of water on  
18 average, that should be 480 fish just from that bit of  
19 habitat that's fully mitigated. But they don't show up  
20 in the counts. They're not there. Their mitigation  
21 doesn't work.

22           There's a responsibility for someone -- Water  
23 Management District seems to think they don't have to  
24 do it anymore. The 1990 EIR says we will mitigate for  
25 the lagoon by finding a source of water for it. Guess



1 what? The Steelhead Association has found a source of  
2 water for it. We've got to beg. And it's true, Cal Am  
3 paid for a valve, but there is no more water going to  
4 the lagoon because of problems with the quality of  
5 water and the Regional Water Quality Control Board, et  
6 cetera, et cetera.

7 So the very, very, very important habitat of  
8 the lagoon is very much impacted and frequently of no  
9 value. They all die. And that may happen this year  
10 because of what looks like is happening in the seepage  
11 that's allowed for the lagoon.

12 As far as we're concerned, you should require  
13 Cal Am to do what 95 -- the 95 -- the 1990 EIR says and  
14 provide a water supply for the lagoon. They got pumps.  
15 They got pipes. They got water. And believe it or  
16 not, Monterey Water Management District has four  
17 monitoring wells right next to the lagoon. They could  
18 pump that into the lagoon. But nobody seems to be  
19 motivated because I guess everything's just fine.

20 The bed load-starved river below the dams  
21 incises and requires, for the safety of those who live  
22 next to it, armoring, riprap. Very bad for instream  
23 habitat. Not good.

24 Grazas Creek, as he could tell you, used to be  
25 a perennial stream. It's the only undammed

1 gravel-containing creek in the lower river. Lots of  
2 fish go up there. Most of their progeny die. No  
3 water.

4 Woody debris is a big problem in the lower  
5 river. Above Los Padres, there's no problem because  
6 there's nobody there. The Water Management District,  
7 Cal Am, private people cut it all up. The lower river  
8 has virtually no woody debris that's useful. The Water  
9 Management District did a project that left some pools,  
10 but it's not classic woody debris with roots and  
11 branches and things. There's just logs.

12 When there is a fish rescue, most of the time,  
13 half or less of the fish are caught. I'm just talking  
14 about the initial effect. We help out behind Cal Am --

15 MR. LeNEVE: Water Management District.

16 DR. THOMAS: What's that?

17 MR. LeNEVE: Water Management District.

18 DR. THOMAS: I've been corrected. Water  
19 Company doesn't do anything. We help out behind the  
20 Water Management District. They do the best they can,  
21 and we do cleanup, frequently catch as many or almost  
22 as many as they do.

23 This year they've been doing better; they've  
24 been catching most of them. But we still catch 1500 to  
25 1800 fish in one exercise.

1           Real mitigation for the loss of water to the  
2 river is nowhere close to be attained. You have done  
3 virtually nothing for that, even though there is water  
4 where your pumps can't get it.

5           Our efforts in the Carmel River have been  
6 going on for 34 years. We've rescued fish. We've  
7 raised them for eight years. We've been reasonably  
8 successful at everything. We created the only -- a  
9 very unique project which is probably one of the main  
10 reasons you even have fish to talk about, is our  
11 smolt-to-adult four year, 24/7 restoration plan for the  
12 87-91 drought where the fish -- there were almost four  
13 years with no fish coming to the river because they  
14 were trapped in the ocean.

15           We think that's a terribly important project  
16 for anybody who wants to keep the steelhead population  
17 alive in the Carmel River during this time when it's  
18 heavily overextracted because we're -- we've seen from  
19 the existing drought that not a drop of water makes it  
20 to the ocean in that '87 to '91 period for that almost  
21 four years.

22           And the Water Management District claims well,  
23 you know, when we're in a drought, we'll do something.  
24 Well, unfortunately you don't know you're in a drought  
25 until you're too far in it for any agency that I've

1 ever seen to get off its butt and figure out how to do  
2 it and have the money to make it done.

3 I think it has to be an annual event.  
4 Literally, you have to plan that every year is a  
5 drought year.

6 There has to be a system set up to keep a  
7 random sample of wild Carmel River smolts somewhere --  
8 and there are places to do it, and not much money needs  
9 to be spent -- alive, and if there's no drought, turn  
10 them loose back in the river after you've fed them for  
11 eight months.

12 It's very important to have such an event as  
13 to maintain the population in the Carmel River.

14 MR. JACKSON: Mr. Thomas, could you wrap up so  
15 Mr. LeNeve has some time.

16 DR. THOMAS: Sorry.

17 MR. JACKSON: Right.

18 DR. THOMAS: I'll finish quickly.

19 If there is an extended drought, it's too late  
20 for most people.

21 We think that California state parks, Carmel  
22 Wastewater District, business interests, NOAA  
23 Fisheries, Cal Am, and other interested parties should  
24 be providing a place of water for the -- a supply of  
25 water for the lagoon, very important.

1           The Endangered Species Act not only prohibits  
2 take, it also requires recovery.

3           And we have a whole lot of concern about the  
4 ASR project as it defines surplus water because we  
5 don't think it provides enough water for recovery of  
6 steelhead, and it contributes to the long-term demise.

7           And I'd like to remind the State Water  
8 Resources Control Board not only is there a Public  
9 Trust responsibility for the Carmel River and its fish,  
10 but it also has the responsibility under the Endangered  
11 Species Act. Remember they're your country too; it's  
12 your federal government also.

13           And if the State Water Resources Control Board  
14 takes action that facilitates or causes take or does  
15 not take action that results in the avoidance of take,  
16 they share directly in the responsibility for that  
17 take.

18           State Water Resources Control Board has failed  
19 in its oversight responsibility concerning the  
20 enforcement of 95-10 by not managing the environmental  
21 mitigation needed for this serious long-term trespass  
22 that Cal Am has been allowed to do, that has  
23 contributed heavily to the loss of the Carmel River  
24 steelhead.

25           I think that's enough from me.

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BRIAN LENEVE

Called by CARMEL RIVER STEELHEAD ASSOCIATION

DIRECT EXAMINATION BY MR. JACKSON

MR. JACKSON: Mr. LeNeve, did you prepare the numbered sections in the testimony?

MR. LENEVE: Yes, I did.

MR. JACKSON: Would you summarize in the six minutes you have left --

MR. LENEVE: Are we supposed to get done in 20 minutes or 20 minutes apiece.

MR. JACKSON: I don't know.

CO-HEARING OFFICER BAGGETT: 20 minutes per --

MR. RUBIN: Hearing Officer Baggett, I did not see a statement of qualifications for this witness.

MR. LENEVE: I'm going to go through some of them right now. I would like to give a disclaimer first. I am terrified of public speaking, so if I stutter, or if I read part of my testimony, it's not for lack of knowledge of the subject but because my heart rate is about 120 right now.

To save Mr. Rubin some questions afterwards, I'll tell you what I am not. I am not a fish biologist. I'm not a hydrologist. I'm not an ichthyologist. I'm not a water engineer. What I am is a person who loves fish. I love steelhead.

1           I was born in Carmel, raised on the Carmel  
2 River, Carmel Valley, and currently reside in Carmel.  
3 I have been hunting, fishing, backpacking, hiking,  
4 backpacking, floating, rafting the Carmel River since I  
5 was probably nine years old, which would be back to,  
6 oh, 1950.

7           I believe I know the Carmel River itself as  
8 well as probably anyone here and probably better than  
9 most people. I feel that qualification allows me to  
10 speak on that.

11           I have also, as I said, been in love with  
12 fish. I starting studying steelhead when I was in high  
13 school. I wrote papers on fish for classes in both  
14 high school and college and have continued for my own  
15 benefit to study steelhead since that time.

16           I have talked to any experts I could get hold  
17 of. I talked with fish hatchery biologists. I helped  
18 out with the Mad River, Friends of the Mad River, the  
19 hatchery up there, when the citizens took it over.

20           I graduated from Chico State College with a  
21 degree in business administration. My father started a  
22 painting company when I was a kid, and I ran the  
23 painting company for 40 years and my son runs it now,  
24 so I'm acutely aware of what a moratorium cutback would  
25 do to the construction industry. My livelihood depends

1 on the construction industry my whole life.

2 My father moved to California, Carmel, when he  
3 was 12 years old in 1927. He and I talked extensively  
4 about his experiences fishing the Carmel River when he  
5 was a young man in the '30s and '40s. At that point in  
6 time, he only fished the mouth of the Carmel River, and  
7 he told me he would catch an average of 150 fish a  
8 year. That doesn't mean he killed that many fish  
9 because you can catch and release fish. But he did  
10 kill a number of them because we ate a lot of fish when  
11 I was a kid.

12 I started fishing the Carmel River probably in  
13 late the '50s and into the '60s and early '70s. The  
14 best year I ever had on the Carmel River was probably  
15 40 fish. My son has never caught a fish on the Carmel  
16 River.

17 I used to fish Schulte Road for trout in the  
18 summer when we had water and fish in the summer on  
19 Schulte Road. Right now Schulte Road, if not dry right  
20 now, will probably be dry in two weeks. There's no way  
21 anyone can fish trout down there at this point in time.

22 I have in my lifetime gone from talking to my  
23 father catching 150 fish a year to myself catching 40  
24 fish a year to rescuing fish in the summertime. That's  
25 a tragedy.



1 I was asked to compile a list of mitigations.  
2 At that time, I was calling them remedies for what  
3 needed to be done on the Carmel River.

4 I originally organized mine in what I thought  
5 was the most important; but after talking to people up  
6 here, I went down and kind of skipped over the items on  
7 the upper river because I realize there's nothing that  
8 you guys can do about mitigations up there. But I do  
9 think it's important for you to realize that the whole  
10 river top to bottom needs mitigation. And so I am  
11 going to briefly discuss some of those.

12 None of these ideas are new ideas. Most of  
13 them have been presented before. Nine of them in  
14 particular, Darby Fuerst will be submitting Exhibit  
15 DF-11 which is Priorities for Steelhead Restoration  
16 Habitat. They listed nine specific projects.

17 The National Marine Fisheries, Fish and Game,  
18 and the Water Management District rated those on what  
19 they thought was the most important. Briefly, because  
20 these are a lot of my projects too, I will go down the  
21 ranking that National Marine Fisheries thought was the  
22 most important.

23 Their number one was the reverse -- lagoon  
24 reverse osmosis project, which would be a project to  
25 provide the water Roy was just talking about to the

1 lagoon. There's times when the lagoon -- this year,  
2 for example, in the last four weeks, the lagoon has  
3 dropped 23 inches. You can see that change. You can  
4 see change in the surface area of the lagoon.

5           At the rate it's going, there is a good chance  
6 none of these fish are going to survive the lagoon this  
7 summer. If they do survive the lagoon this summer,  
8 there's going to be overtopping by storms in the fall  
9 which is going to let saltwater into the lagoon.

10           These trout at that point in time cannot  
11 survive saltwater and will be forced to the top foot or  
12 two of the lagoon and which the predation by birds will  
13 be horrendous. We were approached by a person who  
14 lives right above the lagoon this year and asked what  
15 we could do about in the summertime there would be a  
16 two- or three-day period where there was just a feeding  
17 frenzy for pelicans at the south of the lagoon  
18 presumably on steelhead.

19           That was their number one priority, and I have  
20 to agree the biggest priority you can address at this  
21 point in time that is within your scope.

22           Second one is the Sleepy Hollow fish facility.  
23 Water uptake. I think that's explanatory.

24           The third was the Los Padres Dam fish passage.  
25 That will encompass three of my proposals because it

1 would look at the entire fish passage upstream and  
2 downstream on Los Padres.

3           Number four they call the Carmel River  
4 Enhancement Project, which was going to put structures  
5 in the Carmel River. Roy referred to that a little  
6 bit, the woody debris program. Structures into the  
7 river would provided habitat in the summer --

8           Thank you.

9           MR. JACKSON: Mr. LeNeve, could you go a  
10 little slower to make it a little easier?

11           CO-HEARING OFFICER WOLFF: I think you're  
12 doing extremely well.

13           MR. LeNEVE: Thank you.

14           I believe that number four which is Carmel  
15 River Enhancement, Mainstem, Tributaries, and Lagoon.  
16 At this point in time, the only enhancement project  
17 done on the river in recent years has been one the  
18 Carmel River Steelhead Association did in the lower  
19 arm.

20           We are currently working on another small  
21 woody debris, trying to get the permit to do that in  
22 the reach just above the lagoon, but this one would  
23 have put a project up and down the river, would have  
24 provided summer habitat for fish.

25           Number five according to National Marine

1 Fisheries is the Old Carmel River Dam removal.

2 Number six was another one Roy touched on,  
3 Sediment/Gravel Injection, a design to put gravel below  
4 Los Padres Dam and San Clemente Dam where fish would  
5 have a chance to spawn.

6 Number seven was the Los Padres Reservoir  
7 Sediment Removal.

8 Number eight was Natural Broodstock Program  
9 which Roy testified on briefly.

10 And number nine was Barrier Beach Sediment  
11 Budget Analysis.

12 I refer to those because they're all  
13 important. And another thing I'd point out, it was  
14 discussed with Joyce Ambrosius whether there was an  
15 agreement between Cal Am and National Marine Fisheries  
16 to put up a sum of money that would eventually amount  
17 to \$11 million. These are the projects that were  
18 supposed to be done by that.

19 I did little calculations, and had this money  
20 been put up in the 60 days you pointed out and the  
21 projects funded -- and I realize they probably could  
22 not have been started, but theoretically had you been  
23 able to, seven of these nine projects could have been  
24 completed at this time. And they could have been  
25 completed for -- I lost my figures here -- basically

1 \$2,245,000. Cal Am was originally supposed to put up  
2 three and a half million dollars the first year. So  
3 seven of those nine projects could have and should have  
4 been done at this point in time.

5           These projects would be the lagoon reverse  
6 osmosis project; the Sleepy Hollow water uptake; the  
7 Carmel River Enhancement -- I used for my basis 20  
8 structures that could have been made at this point in  
9 time; the Old Carmel Dam removal; the sediment gravel  
10 injection -- this is an ongoing project, so I used  
11 three years as a basis; the broodstock program, and I  
12 estimated cost for what it would take to just set the  
13 program up; and Barrier Beach analysis.

14           For 245,000 I used a high estimate from, I  
15 guess, the Water Management District that asked for --  
16 produced this piece of paper.

17           So those are the ones that could have and  
18 should have been done at this point in time. So if I  
19 seem a little callous and skeptical about mitigation  
20 measures, promise to mitigate as ordered, you have to  
21 understand why.

22           CO-HEARING OFFICER BAGGETT: Mr. Rubin.

23           MR. RUBIN: It sounds like a lot of what's  
24 just been talked about is not provided in the written  
25 testimony. I'm trying to be lenient, but it expands

1 beyond a lot of what's listed in the sections on  
2 proposed remedies by the witness.

3 CO-HEARING OFFICER BAGGETT: I think he is --  
4 overruled. He's got it. I think it's a summary of his  
5 testimony, and he's referring back to a document, and  
6 it's not in the record yet. I assume it --

7 DR. THOMAS: Going to be in the record.

8 CO-HEARING OFFICER BAGGETT: Just continue.  
9 Sounds like he's almost finished.

10 MR. LeNEVE: Thank you.

11 Okay, just briefly, starting from the top of  
12 the river, working my way down. Los Padres Dam ladder  
13 improvement is something that needs to be done to  
14 migrate fish upstream and downstream. That would be  
15 number three in the list of priorities.

16 We feel that notching the top of the dam would  
17 allow kelt and fish to migrate down, would also be  
18 included in number three. And screen outlet pipes to  
19 prevent fish from getting chewed up when they go down  
20 the pipe would also be covered.

21 Dredging of the lagoon that was mentioned  
22 before, that needs to be covered. That was under the  
23 item number 11. Another problem is nuisance level of  
24 hydrogen sulfide in the dam and below the dam needs to  
25 be addressed.

1           Another thing that we feel should be brought  
2 up is Los Padres Dam has a sediment total almost  
3 50 percent. We have this thing called the basin fire  
4 going up there right now burning the headwaters of the  
5 Carmel River. We believe that the sediment coming down  
6 the river is going to be filling a great deal more in  
7 the next few years.

8           We should be thinking about whether Cal Am's  
9 water allocation for water stored behind that dam  
10 should be adjusted because of the lack of water stored  
11 behind that dam. If they don't feel like dredging it  
12 out, they shouldn't be getting credit for the water.

13           Sediment below Los Padres Dam and San Clemente  
14 Dam for spawning grounds was item number six on the  
15 National Marine Fisheries list. We moved San Clemente  
16 Dam, was on our list of things to be done. It's my  
17 understanding that that dam is going to be removed.  
18 It's been an ongoing and off-going thing. We  
19 understand now it is going to be removed.

20           The Old Carmel River Dam should be removed.

21           Now we're down to where you can address these  
22 items because I am below the San Clemente Dam now and  
23 into where the thing -- the greatest thing that could  
24 be done to the Carmel River would be to stop illegal  
25 diversions in the water -- the river.

1           I realize that's going to very tough to do. I  
2 don't envy your job coming to a decision what's to be  
3 done. But for the fish, that is the only thing that  
4 will eventually solve the problem. Everything else is  
5 stop-gap measures.

6           The Sleepy Hollow fish rearing facility in  
7 particular is a pet peeve of mine. In my opinion, it's  
8 a joke. There is no year-round access to the facility.  
9 There is no year-round water to the facility. The lack  
10 of year-round water reduces the holding capacity of the  
11 facility. The lack of year-round water requires the  
12 facility to release fish too early when there's not  
13 adequate water or adequate feed.

14           We believe that that facility should be able  
15 to raise 100,000 yearly young fish with a survival rate  
16 of 80 percent. We believe that 20,000 of those fish  
17 would be released as smolt to try to replenish the  
18 river's steelhead population. There's a big difference  
19 between releasing young and releasing smolt. If the  
20 population is to recover, it's not going to be  
21 recovered under these mitigations unless we add to the  
22 supply of potential adults coming back.

23           The captive breeding stock program, which is  
24 Marine Fisheries number eight, could be used in  
25 conjunction with Sleepy Hollow fish rearing facility.



1 It would be really simple to hold 50 fish over the  
2 whole summer until the following winter. If the river  
3 dries up and it looks like we have another drought,  
4 we'd have a basis for a breed stock program. I mean  
5 that's something that could be really simply done.

6 The Carmel River enhancement projects, as I  
7 say, need to be done. The lagoon is another incredibly  
8 important thing. I discussed this a little bit. John  
9 Williams is going to testify that it needs at least .5  
10 cubic feet a second water into the lagoon. If you guys  
11 don't do anything else in this hearing, it would be to  
12 give the lagoon some supplemental water. That's  
13 something that could be done easily. It should be done  
14 fast, and it's absolutely necessary.

15 This year we're going to have a record number  
16 of fish captured in the Carmel River. A great majority  
17 of these fish, in excess of 20,000 by now, have been  
18 placed into the lagoon. We have replaced all the fish  
19 we catch in the main stream of the river and lagoon.  
20 The Water Management District has replaced some of  
21 their fish in the lagoon because they know they can't  
22 keep them at the Sleepy Hollow facility.

23 Without water, there's a good chance that all  
24 these fish could perish this year. I mean an excellent  
25 chance. It would be a shame to let these fish die for

1 promises, for lack of action.

2 MR. JACKSON: Is that a summation of your  
3 testimony?

4 MR. LeNEVE: Yes, sir.

5 MR. JACKSON: We are finished.

6 CO-HEARING OFFICER BAGGETT: Thank you very  
7 much. Let's go with cross. Prosecution Team, any  
8 questions? Planning and Conservation League? Sierra  
9 Club?

10 MR. SILVER: I'd like to confer with  
11 Dr. Williams for just a minute on that.

12 CO-HEARING OFFICER BAGGETT: Okay. We'll  
13 continue down the list. Confer. Public Trust  
14 Alliance, any questions? Monterey Peninsula?

15 MR. LAREDO: No questions.

16 CO-HEARING OFFICER BAGGETT: Pebble Beach?  
17 Any of the cities? Hospitality? Cal Am?

18 MR. RUBIN: I do have quite a few questions.  
19 It's going to take me more than 5 or 10 minutes. I  
20 don't know how long you wanted to go tonight, but I  
21 could ask my questions and see how long we go.

22 CO-HEARING OFFICER BAGGETT: Let's see. Does  
23 Sierra Club have any questions?

24 MR. SILVER: I no.

25 CO-HEARING OFFICER BAGGETT: No questions.

1 Okay. Why don't you start and let's see where we go.

2 Cal Am, you're up.

3 CROSS-EXAMINATION BY MR. RUBIN

4 FOR CALIFORNIA AMERICAN WATER COMPANY

5 MR. RUBIN: Good afternoon, almost evening,  
6 gentlemen.

7 MR. JACKSON: Nice to see you, Mr. Rubin.

8 MR. RUBIN: Always nice to see you. Maybe as  
9 I get myself a little bit organized, Mr. Thomas, can  
10 you provide an explanation of your background,  
11 specifically education?

12 DR. THOMAS: You asked me that at the last  
13 part of the hearing, but I'll be glad to repeat it.

14 MR. RUBIN: Please.

15 DR. THOMAS: I have a BA in zoology and a BS  
16 in science, and a DDS as far as degrees.

17 I am -- have been a member of the American  
18 Fisheries Society for 14 years. At least that's my  
19 recollection. A long time.

20 I wrote a guest article in the Journal of  
21 American Fisheries Society. I have presented and am a  
22 member of the California Salmonid Restoration  
23 Federation.

24 I, like Brian, have been involved with fish  
25 all my life. I have hiked every inch of the Carmel

1 River a number of times from its headwaters to the  
2 ocean. I've been in charge of the Carmel River  
3 Steelhead Association's monitoring program for eight  
4 years. I helped set up and organize Carmel River  
5 Steelhead captive breed stock project which I wrote an  
6 article about.

7 I have watched the population of the Carmel  
8 River steelhead decline. I have rescued Carmel River  
9 steelhead for over 30 years.

10 MR. RUBIN: Thank you. Now, you say you have  
11 a degree if I understood it correctly or heard it  
12 correctly or recall correctly in zoology?

13 DR. THOMAS: Yes.

14 MR. RUBIN: When was that? When did you  
15 receive that degree?

16 DR. THOMAS: 1968.

17 MR. RUBIN: And you also mentioned that you  
18 published an article, a guest article, in the American  
19 Fisheries Society?

20 DR. THOMAS: Yes.

21 MR. RUBIN: Was that article peer-reviewed?

22 DR. THOMAS: Yes.

23 MR. RUBIN: Okay. You are not -- you don't  
24 have a degree in biology; is that correct?

25 DR. THOMAS: I have a degree in zoology, and I

1 have a major in biology.

2 MR. RUBIN: But you don't have a degree in  
3 biology?

4 DR. THOMAS: No.

5 MR. RUBIN: Okay. Do you have a degree in  
6 geology?

7 DR. THOMAS: I'm actually an amateur  
8 geomorphologist. So I'm quite interested in geology  
9 but I don't have a degree in geology.

10 MR. RUBIN: Do you have a degree in  
11 geomorphology?

12 DR. THOMAS: No. I have an interest in  
13 geomorphology; and I've taken classes in geology, but I  
14 don't have a degree in it.

15 MR. RUBIN: And did you take those classes  
16 when you were an undergraduate that resulted in your  
17 degree in zoology?

18 DR. THOMAS: They weren't required courses. I  
19 took them because I was interested.

20 MR. RUBIN: And when did you take them, I'm  
21 trying to --

22 DR. THOMAS: My undergraduate work.

23 MR. RUBIN: Thank you.

24 Now, Mr. Thomas, I believe most of my  
25 questions are going to be directed to you. On page 6

1 of your written testimony, which I believe is marked as  
2 Carmel River Steelhead Association 3, you indicate that  
3 as a result of actions by the Carmel River Steelhead  
4 Association the highest returns of steelhead were seen  
5 in close to 60 years. Do you see that statement?

6 DR. THOMAS: Yes.

7 MR. RUBIN: When -- what time frame were you  
8 referring to when you characterized the highest returns  
9 of steelhead were seen in close to 60 years?

10 DR. THOMAS: Well, because of the failure  
11 of --

12 MR. RUBIN: My question was what time frame?

13 DR. THOMAS: I'm trying to put a basis for you  
14 to understand how it worked. The fish ladder over San  
15 Clemente didn't work. The Steelhead Association  
16 gathered moneys from various places including our own  
17 and built a new finish ladder. This was -- the new  
18 finish ladder was built around the year 2000. The  
19 return from 2001 is the return I'm referencing, 347  
20 fish, the Los Padres Dam.

21 MR. RUBIN: So according to your testimony, in  
22 the year 2001 you saw the highest return of steelhead  
23 in close to 60 years?

24 DR. THOMAS: That's what I said, yes.

25 MR. RUBIN: Thank you.

1 DR. THOMAS: The return over Los Padres Dam.

2 MR. RUBIN: Okay. And I believe in the first  
3 phase of the testimony, you indicated you're the  
4 President of the Carmel River Steelhead Association; is  
5 that correct?

6 DR. THOMAS: Yes, that's correct.

7 MR. RUBIN: And I believe that you also  
8 testified that during Phase 1 that you have been  
9 president for approximately 20 to 30 years?

10 DR. THOMAS: Not 30 years, but a lot of years.

11 MR. RUBIN: Closer to 20?

12 DR. THOMAS: 20, 25, something like that.

13 MR. RUBIN: How many members does Carmel River  
14 Steelhead Association have?

15 DR. THOMAS: Some years we've had 150. Now we  
16 have probably 60 or 70.

17 MR. RUBIN: Now, Mr. Thomas, I believe in your  
18 testimony you've indicated your belief that the  
19 greatest threat to the steelhead is the impediment to  
20 migration caused by the Los Padres Dam?

21 DR. THOMAS: No, the greatest threat to the  
22 steelhead is the overextraction of the river. But  
23 while overextraction of the river is continuing, Los  
24 Padres Dam is the reason they can't survive on their  
25 own without us helping them because no one else will.

1           MR. RUBIN: Mr. Thomas, I ask that you take a  
2 look at page 1 of your written testimony, Carmel River  
3 Steelhead Association 3. You have a statement there  
4 that says:

5           The biggest ever-present problem is the  
6 lack of safe and successful up and down  
7 stream access over Los Padres Dam.

8           Do you see that?

9           DR. THOMAS: Yes, I see that.

10          MR. RUBIN: Do you have a sentence before that  
11 or after that that explains what you just told us  
12 today?

13          DR. THOMAS: Repeat the -- what I just told  
14 you today? I told you a lot of things today.

15          MR. RUBIN: What you just said to me in  
16 response to the first question, I think that you've  
17 indicated that the best -- the biggest ever-present  
18 problem is not the dam, the Los Padres Dam.

19          DR. THOMAS: I don't -- either I don't  
20 understand -- it is the biggest problem. The -- it is  
21 the -- it is -- there would not be a problem if the  
22 river wasn't destroyed downstream from it and it had  
23 water to stay in. But because that's the case, it is  
24 for all the reasons that I've tried to lay out here.

25          MR. RUBIN: And under today's conditions, so



1 you believe that the biggest problem for steelhead is  
2 Los Padres Dam?

3 DR. THOMAS: The biggest problem for long-term  
4 survival. In other words, if we have another long  
5 drought and fish, steelhead can't get above Los Padres  
6 Dam and can't get down safely, they're liable to go  
7 extinct.

8 MR. RUBIN: Now what percent of harm do you  
9 believe the Los Padres Dam causes compared to other  
10 factors that harm steelhead?

11 DR. THOMAS: That's a very strange way of  
12 describing it. I'll give you a spectrum.

13 In the fall when the rains first start, young  
14 steelhead that are going to go to the ocean start  
15 migrating downstream with the fall flows. Los Padres  
16 Dam in the fall is sometimes near empty, always low.

17 Cal Am releases water out of the dam during  
18 that time, and these fish have an in-bred desire to go  
19 downstream. So they follow the flow of the water  
20 through the dam and into that outlet that's unscreened  
21 and are destroyed going through the pipes.

22 MR. RUBIN: Let me ask my question a little  
23 differently. I don't think you're answering --

24 DR. THOMAS: I'm talking about that's a major  
25 component of the population don't survive.

1           MR. RUBIN: I understand. If there are a  
2 hundred fish above Los Padres Dam, how many of those  
3 fish do you think are going to be affected by Los  
4 Padres dam versus other factors that affect steelhead?

5           DR. THOMAS: It's all speculation, but from  
6 my --

7           MR. RUBIN: I don't want you to speculate, so  
8 if you --

9           DR. THOMAS: No one knows what happens to the  
10 hundred fish that get above Los Padres Dam.

11          MR. RUBIN: And would the same be true for any  
12 upstream migrating steelhead? How many of those would  
13 be affected by the Los Padres Dam versus --

14          DR. THOMAS: I can tell you from my  
15 observation that a significant number of the fish --  
16 these are adults that make it, trying to go upstream,  
17 these are the spawning fish, that a significant  
18 percentage of them either don't find the fish ladder or  
19 don't use the fish ladder because they can't find it or  
20 they get injured or killed trying to find it.

21          MR. RUBIN: Thank you.

22          Now Mr. Thomas, on page 3 of your written  
23 testimony, Carmel River Steelhead Association 3, you  
24 reference a document that's called the Interim Relief  
25 Plan?

1 DR. THOMAS: Yes.

2 MR. RUBIN: Is that correct? Do you know if  
3 the Interim Relief Plan has expired?

4 DR. THOMAS: Um.

5 MR. RUBIN: Yes or no?

6 DR. THOMAS: I don't know if it is expired,  
7 but I know it's referenced in 95-10.

8 MR. RUBIN: Okay. You would be -- you are not  
9 aware of the statement in 95-10 that says the Interim  
10 Relief Plan expired in 1993?

11 DR. THOMAS: As I understand mitigation, it's  
12 not supposed to expire unless there is some public  
13 hearing and everybody gets to say whether it should  
14 expire.

15 MR. RUBIN: So you're not familiar with the  
16 statement in 95-10 that says the Interim Relief Plan  
17 expired in 1993?

18 DR. THOMAS: It may have expired -- it may  
19 have expired in 1993, but as I understand it --

20 MR. RUBIN: Thank you.

21 DR. THOMAS: -- the reference in there says  
22 that Cal Am will do what was stated in the Interim  
23 Relief Plan until they quit taking water illegally.

24 MR. RUBIN: Now Mr. Thomas, I believe you also  
25 identified debris in Los Padres Dam as a problem for

1 steelhead?

2 DR. THOMAS: Yes.

3 MR. RUBIN: And you recommend -- and this  
4 might cross over, but you recommend that the debris be  
5 removed on an annual basis?

6 DR. THOMAS: Yeah, I'm glad you brought that  
7 up. Let's talk about that. Yes, most definitely.  
8 That's where hydrogen sulfide and CO2 come from.

9 MR. RUBIN: Okay. Thank you.

10 Do you know what type of environmental  
11 regulations must be complied with prior to removing a  
12 dam from the Los Padres Dam?

13 DR. THOMAS: Dams?

14 MR. RUBIN: Excuse me. I must have misspoken.

15 Do you know what type of environmental  
16 regulations must be complied with prior to removing  
17 debris from Los Padres Dam?

18 DR. THOMAS: I don't believe any are required  
19 to maintain a dam and keeping the debris on your own  
20 property.

21 MR. RUBIN: Do you know what the cost to  
22 remove debris from Los Padres Dam is on an annual  
23 basis?

24 DR. THOMAS: No, but I can speculate. I know  
25 that --

1           MR. RUBIN: I don't want you to speculate on  
2 any question.

3           Do you believe the Carmel River lagoon should  
4 be better managed?

5           DR. THOMAS: I think it should be managed  
6 period. And better managed for sure.

7           MR. RUBIN: And you believe that the Carmel  
8 River lagoon has been affected by reduced in-flow into  
9 the lagoon?

10          DR. THOMAS: Anybody has eyes can tell you  
11 that.

12          MR. RUBIN: Do you believe that?

13          DR. THOMAS: Yes.

14          MR. RUBIN: Do you believe the Carmel River  
15 lagoon has been affected by flood management  
16 activities?

17          DR. THOMAS: Depends on what kind.

18          MR. RUBIN: What kind of flood management  
19 activities could affect the Carmel River lagoon?

20          DR. THOMAS: All kinds, including moving sand  
21 around. Could be armoring. There's all kinds of flood  
22 management activities. If you're talking breaching the  
23 lagoon, yes, I think breaching the lagoon is a  
24 sensitive maneuver.

25          MR. RUBIN: Do you know why -- excuse me. Has

1 the lagoon been breached?

2 A It's been breached lots of different ways, but  
3 are you saying can I tell you why -- how I think it's  
4 been done?

5 MR. RUBIN: No, no, no. I just would like to  
6 know whether it has in the past been breached.

7 DR. THOMAS: It's been breached in the past.

8 MR. RUBIN: Do you know why it's been  
9 breached? Yes or no.

10 DR. THOMAS: Yes, I know why.

11 MR. RUBIN: And why has the lagoon been  
12 breached?

13 DR. THOMAS: In the old days, the fishermen  
14 did it because they wanted the fish to come in. More  
15 recently -- who was the guy that used to have the saw  
16 business there? He did it. Sewer treatment plant used  
17 to do it so it wouldn't flood.

18 More recently, the state -- the county --  
19 flood control, I guess, whoever it is. Public works  
20 does it when the water level gets up high enough for  
21 people to be screaming that live near it.

22 MR. RUBIN: Why are the people that live near  
23 the lagoon screaming to have the lagoon breached?

24 DR. THOMAS: Because they built their house in  
25 the floodplain and it's starting to flood.

1           MR. RUBIN: Okay. Now, do you believe that  
2 the Carmel River lagoon has been affected by sand and  
3 gravel mining?

4           DR. THOMAS: Not recently.

5           MR. RUBIN: Has it in the past -- excuse me;  
6 strike that.

7           Has the lagoon been affected by sand and  
8 gravel mining in the past; yes or no?

9           DR. THOMAS: I don't know. I heard  
10 historically there was a sand mine there, but I don't  
11 know.

12           MR. RUBIN: Are you familiar with the final  
13 study plan for long-term adaptive management of the  
14 Carmel River State Beach and Lagoon?

15           DR. THOMAS: The final one, I know there is  
16 study plans that the organization of agencies has put  
17 together.

18           MR. RUBIN: Did the Carmel River Steelhead  
19 Association participate in the development of an  
20 adaptive management plan for the lagoon?

21           DR. THOMAS: We were uninvited.

22           MR. RUBIN: Do you know what the conclusions  
23 of the study plan were?

24           DR. THOMAS: Not offhand. I think I may have  
25 seen one of them.

1           MR. RUBIN:  Would you be surprised to find  
2   that the study plan includes a conclusion that rigorous  
3   scientific investigations are required before one can  
4   effectively manage the Carmel River lagoon?

5           DR. THOMAS:  I think it's stupid.  But I do --  
6   I did read that, and it -- studying how the sand moves  
7   around -- I don't know if you've ever built a sand  
8   castle at the beach.  I've visited the beach for  
9   multiple years.  I can -- I can suspect to -- or I can  
10  speculate to you that virtually nobody knows how sand  
11  moves around on beaches like that.  And they aren't  
12  going to find out by studying it either, I don't  
13  believe.

14          MR. RUBIN:  You mentioned briefly a number of  
15  entities generally that participated in the development  
16  of the study plan for the lagoon.  Do you know who --  
17  what agencies participated in that process?

18          DR. THOMAS:  I could probably name most of  
19  them.

20          MR. RUBIN:  Could you please do that for us?

21          DR. THOMAS:  I believe NOAA Fisheries.  For a  
22  short time, Cal Fish and Game.  I don't think they show  
23  up anymore.  Water Management District.  I think the  
24  county public works and other flood control people.  
25  And state parks who -- he's cheating.  State parks



1 owned the property. And there's probably one or two  
2 more that sometimes attend.

3 MR. RUBIN: I'm sorry; if you have others?

4 MR. LeNEVE: No.

5 MR. RUBIN: Now, Mr. Thomas, I believe in your  
6 testimony on page 8, you make a statement that under  
7 the Endangered Species Act recovery is required; is  
8 that correct?

9 DR. THOMAS: Yes, that's correct.

10 MR. RUBIN: And by the Endangered Species Act,  
11 are you referring to the federal Endangered Species  
12 Act?

13 DR. THOMAS: That's the one that applies to  
14 Carmel River steelhead, yes.

15 MR. RUBIN: And what section of the federal  
16 Endangered Species Act do you believe requires  
17 recovery?

18 DR. THOMAS: Well, I don't have the number,  
19 but I did attend a recovery session for the Carmel  
20 River put on by the Central -- oh, what do they call  
21 it? The local river -- I can't remember the ESU name  
22 at the moment, but I was invited there by NOAA  
23 Fisheries. I know they're trying to find a recovery  
24 plan.

25 MR. RUBIN: Do you believe that somebody that

1 takes an endangered species has an obligation to  
2 recover the species under the federal Endangered  
3 Species Act?

4 MR. JACKSON: Calls for a legal conclusion.

5 MR. RUBIN: I'm asking him a question -- if  
6 this calls for a legal conclusion, then the statement  
7 in his testimony calls for a legal conclusion and needs  
8 to be stricken, that part of his testimony. It's on  
9 page 8, line 1 to 2 although it's not numbered.

10 MR. JACKSON: Withdraw my objection.

11 DR. THOMAS: I've read parts of the Endangered  
12 Species Act. I didn't memorize it. I took part in the  
13 preliminary activities to create a recovery plan. I  
14 think take is a legal statement which unless you have a  
15 Section 10 permit is you can be arrested or fined or  
16 imprisoned for doing that.

17 MR. RUBIN: Let me ask my question again. Do  
18 you believe that somebody that is taking an endangered  
19 species has an obligation to recover the species under  
20 the federal Endangered Species Act?

21 MR. RUBIN: No, not that person. But they  
22 have an obligation to obey the law.

23 MR. RUBIN: Thank you. Thank you.

24 Now I believe it's Mr. Thomas' section of the  
25 Carmel River Steelhead Association's written testimony

1 which has been marked 3 that has a recommendation that  
2 the State Water Resources Control Board order  
3 California American Water to reduce its Carmel River  
4 diversions to a degree necessary to preserve breeding,  
5 spawning, rearing, migration, feeding, and sheltering  
6 of steelhead.

7 DR. THOMAS: Was that a question?

8 MR. RUBIN: Yes.

9 DR. THOMAS: I didn't hear the question part.

10 MR. RUBIN: I said -- well, does the Carmel  
11 River Steelhead Association recommend that the State  
12 Water Resources Control Board order California American  
13 Water to reduce its Carmel River diversions to the  
14 degree necessary to preserve the breeding, spawning,  
15 rearing, migrating, feeding, and sheltering of central  
16 coast steelhead?

17 DR. THOMAS: I think under their public trust  
18 responsibility most definitely.

19 MR. RUBIN: And how much reduction in the  
20 amount of Carmel River water diverted by Cal Am must  
21 the State Board order in order to achieve the degree  
22 that you stated?

23 DR. THOMAS: I can't tell you precisely, but I  
24 imagine it's at least the trespass water and probably  
25 more.

1           MR. RUBIN:  What's the basis for your  
2 conclusion?

3           DR. THOMAS:  Watching the river disappear.

4           MR. RUBIN:  Now are either of you gentlemen  
5 aware that California American Water extracts the  
6 majority of Carmel River water from the ground?

7           MR. LeNEVE:  Yes.

8           DR. THOMAS:  Yes, we actually lobbied the PUC  
9 to allow you to do that because you were taking it  
10 directly out of San Clemente Dam and dewatered the  
11 river from San Clemente Dam all the way down.

12          MR. RUBIN:  When you prepared your written  
13 testimony, did you perform any analyses to determine  
14 the volume of water that might remain in the Carmel  
15 River if California American Water were to reduce the  
16 amount of water it would otherwise extract from the  
17 ground?

18          DR. THOMAS:  I've watched the river flow for  
19 38 years, and I have paid attention to the stream  
20 gauges.  And if the underflow is not removed, whatever  
21 is on the surface continues to travel down the length  
22 of the river.

23          MR. RUBIN:  So for every acre foot of water  
24 that is not extracted from the ground, there's an acre  
25 foot in the stream?

1 DR. THOMAS: If you don't take out the  
2 supporting flow.

3 MR. RUBIN: And you don't base that on any  
4 quantitative analysis?

5 DR. THOMAS: I base it on qualitative  
6 analysis. When I stood next to the Cal Am pump, the  
7 flows passing over that site disappeared before my  
8 eyes, and I have seen that probably 30 different times.

9 MR. RUBIN: Okay. Thank you.

10 Mr. Thomas, can you state for me the factors  
11 that affect the south-central California coast  
12 steelhead?

13 DR. THOMAS: The factors that affect? There  
14 are thousands. What do you mean, factors that affect?  
15 Be more specific.

16 MR. RUBIN: You said there's thousands of  
17 factors that affect the --

18 DR. THOMAS: Yeah. Just like what affects  
19 you, there's thousands of things.

20 MR. RUBIN: Included in those factors are  
21 climate change?

22 DR. THOMAS: Unfortunately, I'm not as big a  
23 believer in that effect on migratory fish as maybe you  
24 are, but everything affects -- every climate condition  
25 affects everything that lives in that climate.

1           MR. RUBIN: So climate change would affect  
2 steelhead if there's a change in the climate?

3           DR. THOMAS: Well, you have to realize  
4 steelhead have a huge caudal fin, and they swim  
5 thousands of miles. And if they don't like the ocean  
6 climate where they are, they swim someplace else.

7           And if you're kind of saying maybe climate  
8 change did it, you should realize that the steelhead  
9 runs throughout the west coast have been bigger than  
10 they've been for years, so steelhead have found a place  
11 where there's a good climate.

12          MR. RUBIN: Do you believe that predation  
13 affects steelhead in the Carmel River?

14          DR. THOMAS: Predation affects all fish.

15          MR. RUBIN: And what about recreational  
16 fishing? Does that affect steelhead on the Carmel  
17 River?

18          DR. THOMAS: I think from lectures we've heard  
19 from Kevan Urquhart and others and personal experience,  
20 it has a minimal effect on steelhead.

21          MR. RUBIN: But there is an effect  
22 recreational fishing has on steelhead?

23          DR. THOMAS: Yes, just like the effect of the  
24 golf ball that hits the river when there's a fish  
25 present. It has an effect, yes.

1           MR. RUBIN: Do you believe alterations in the  
2 floodplains affect steelhead in the Carmel River?

3           DR. THOMAS: What do you mean by alterations  
4 in the floodplain?

5           MR. RUBIN: Alterations in the floodplain that  
6 don't occur naturally.

7           DR. THOMAS: If not -- adjacent or in the  
8 river, no. If they're in the river, they can.

9           MR. RUBIN: Mr. Thomas, do you know what a  
10 linear regression is?

11          DR. THOMAS: Not precisely. But I understand  
12 linear is line, and regression is dropping. So that's  
13 a sloping line, what I would say.

14          MR. RUBIN: Have you ever conducted a linear  
15 regression analysis with data?

16          DR. THOMAS: Not personally, but I think  
17 you're probably referring to --

18          MR. RUBIN: I'm not referring to anything,  
19 just asking a question.

20          DR. THOMAS: Let me ask you back. Is that a  
21 linear regression?

22          MR. JACKSON: You can't ask him questions.

23          CO-HEARING OFFICER BAGGETT: Yes or no.

24          MR. RUBIN: My questions to Mr. Thomas, I  
25 believe, was has he ever conducted a linear regression

1 analysis, yes or no.

2 DR. THOMAS: No.

3 MR. RUBIN: Mr. Thomas, do you know how many  
4 wells exist within the Carmel River watershed that  
5 affect surface water in the Carmel River?

6 DR. THOMAS: I know there is quite a few. I  
7 don't know the exact number, no.

8 MR. RUBIN: You characterize them as quite a  
9 few. Is that more than a hundred?

10 DR. THOMAS: Probably, yeah.

11 MR. RUBIN: Are you aware of anyone that takes  
12 surface water from the Carmel River?

13 DR. THOMAS: I trip over the hoses sometimes,  
14 yes.

15 MR. RUBIN: How many people do you believe  
16 take surface water from the Carmel River?

17 DR. THOMAS: Talking about the whole length of  
18 the river?

19 MR. RUBIN: Yes.

20 DR. THOMAS: You've got the pot growers  
21 upstream. You got all the people live next to it  
22 through Cachagua. You've got most of the people live  
23 along its banks throw out the garden hose and pump.  
24 There's lots.

25 MR. RUBIN: And by lots, do you think over a



1 hundred?

2 DR. THOMAS: I doubt that many, but a lot.

3 MR. RUBIN: More than 50?

4 DR. THOMAS: About 50. But again, asking me  
5 to guess. I don't know for sure. I didn't count.

6 MR. RUBIN: You believe there is a lot.

7 DR. THOMAS: I think that's a lot. But  
8 they're garden hoses.

9 MR. RUBIN: Do you know if extraction of the  
10 Carmel River water, whether surface or subsurface, by  
11 persons or entities other than California American  
12 Water have changed since 1995-10?

13 DR. THOMAS: Actually, I do. It's changed  
14 quite a bit. In fact, I protested a water right for a  
15 church that said Cal Am charges too much, we're putting  
16 our own well in. So a lot of people have done that.

17 MR. RUBIN: By a lot, are we talking about --

18 DR. THOMAS: 2,000 acre feet.

19 MR. RUBIN: You said 2,000 acre feet?

20 DR. THOMAS: Something in that range. I could  
21 look on this piece of paper, give you a better idea if  
22 you'd like.

23 MR. RUBIN: If your answer was about  
24 2,000 acre feet. That's fine.

25 CO-HEARING OFFICER BAGGETT: How many more

1 questions?

2 MR. RUBIN: About 50. No.

3 MR. JACKSON: Garden hose questions, pump  
4 questions.

5 MR. RUBIN: Just a few more.

6 CO-HEARING OFFICER BAGGETT: Okay.

7 MR. RUBIN: Mr. Thomas, you testified that  
8 there is about 2,000 acre feet of additional water  
9 that's being extracted from the Carmel River by persons  
10 or entities other than the California American Water  
11 company?

12 DR. THOMAS: That's since 95-10?

13 MR. RUBIN: Yes.

14 DR. THOMAS: There's more than that being  
15 taken by people that have been taking it for a long  
16 time.

17 MR. RUBIN: Now the extractions of Carmel  
18 River water that have occurred since 95-10, have they  
19 occurred upstream of the diversions by California  
20 American Water?

21 DR. THOMAS: They're occurring all along the  
22 river, some upstream, some right where your pumps are.

23 MR. RUBIN: And by "your," you're referring to  
24 California American Water.

25 DR. THOMAS: You work for them -- you don't --

1 you're not actually employed; you're just --

2 MR. RUBIN: Okay. And would you say the  
3 majority of the additional diversions that have  
4 occurred since 95-10 are upstream of California  
5 American Water's diversions?

6 DR. THOMAS: I don't know for sure. I  
7 wouldn't say that. I think they're right where yours  
8 are, right near the Cyprus well.

9 MR. RUBIN: Now you testified today that about  
10 2,000 acre feet of additional water is being extracted  
11 by people who are entities other than California  
12 American Water since the issuance of 95-10. Would you  
13 say the majority of that water is surface water being  
14 extracted or subsurface water?

15 DR. THOMAS: There is no surface water in the  
16 lower river. It's all subsurface now.

17 MR. RUBIN: Thank you.

18 DR. THOMAS: Early on, it's surface water.  
19 When it's gone, there's no surface water, both.

20 MR. RUBIN: Okay. My last set of questions.

21 Has the Carmel River Steelhead Association  
22 established a statistically significant relationship  
23 between extractions of Carmel River water by California  
24 American Water and abundance of adult steelhead in  
25 Carmel River?

1 DR. THOMAS: I think that can be done if you  
2 recognize that Cal Am or its predecessors started  
3 pumping the Carmel River in the '60s and the population  
4 of steelhead has dropped like a rock since then.

5 MR. RUBIN: Have you prepared or anyone for  
6 the Carmel River Steelhead Association prepared a  
7 statistical analysis that shows a statistically  
8 significant relationship between extractions by the --  
9 of Carmel River water by California American Water and  
10 abundance of steelhead in the Carmel River?

11 DR. THOMAS: We haven't prepared that. I  
12 think it would be fairly simple to do.

13 MR. LAREDO: But you haven't done that?

14 DR. THOMAS: No. We're not a technical group.  
15 We're kind of hands on.

16 MR. RUBIN: Just one last question, and it  
17 deals with the statement on page 9. I'm not sure if  
18 this is directed to Mr. Thomas or not.

19 Under paragraph 2 on page 9, there is a  
20 statement that says:

21 NMFS has estimated that over 10,000

22 (sic) fish could be in the lower

23 nine-plus miles in any given year.

24 Do you see that statement?

25 DR. THOMAS: I do. I think it's --

1           MR. RUBIN: My question is -- well, excuse me.  
2 100,000 fish. I misspoke. NMFS is the National Marine  
3 Fisheries Service?

4           DR. THOMAS: Yes.

5           MR. RUBIN: And what on report do you base the  
6 statement that I just read?

7           DR. THOMAS: I'm the one who wrote this, and I  
8 have to be honest. I got that from members of the  
9 associate who told me that was the statistics that were  
10 given to them.

11           MR. RUBIN: You have no first-hand knowledge  
12 of whether NOAA Fisheries has estimated that over  
13 100,000 fish could be in the lower nine-plus miles in  
14 any given year?

15           DR. THOMAS: I do not know that. I do know  
16 there has been over 50,000 rescued this year in the  
17 lower seven miles.

18           MR. RUBIN: And those rescued are juvenile  
19 fish?

20           DR. THOMAS: Yes. Younger than a year. I  
21 prefer to think of juveniles being over a year old.

22           MR. RUBIN: I have no further questions.

23 Thank you, gentlemen.

24           MR. JACKSON: We would move our --

25           CO-HEARING OFFICER BAGGETT: Any questions

1 from staff, first.

2 CO-HEARING OFFICER WOLFF: I have questions.

3 I know it's late and we want to get out of here.

4 Mr. LeNeve?

5 MR. LeNEVE: Yes.

6 CO-HEARING OFFICER WOLFF: I believe you  
7 indicated that you believe that additional fresh water  
8 to the lagoon is the most important thing within our  
9 purview?

10 MR. LeNEVE: Other than stopping the illegal  
11 diversions. I believe I said that.

12 CO-HEARING OFFICER WOLFF: Sorry. I don't  
13 mean to mischaracterize your testimony.

14 MR. LeNEVE: Yes.

15 CO-HEARING OFFICER WOLFF: Was the lagoon  
16 important?

17 MR. LeNEVE: Very important.

18 CO-HEARING OFFICER WOLFF: Very important.

19 And you pointed to an exhibit from Monterey  
20 Peninsula Water Management District which was a reverse  
21 osmosis plan, something like that.

22 Would that plant take wastewater and treat it  
23 with reverse osmosis or is it water from some other  
24 source?

25 MR. LeNEVE: Reverse osmosis would have to be

1 wastewater. With fresh water, there would be no reason  
2 for reverse osmosis. This comes off of that Darby  
3 Fuerst DF-11 exhibit, and I believe it is tied to  
4 wastewater that --

5 CO-HEARING OFFICER WOLFF: You think  
6 wastewater you can treat any kind of water with reverse  
7 osmosis, but this refers, you believe, to a wastewater  
8 source?

9 MR. LeNEVE: Could I add to that it's -- we  
10 have available to us an according to the CAWD plant  
11 reverse osmosis wastewater, but it's not legal to put  
12 directly into the lagoon. So there's a project trying  
13 to be created where we make an artificial wetland  
14 adjacent to the lagoon, and the lagoon is fed by  
15 seepage from that.

16 In the same breath, there is fresh water,  
17 groundwater, and there is rights for it owned by  
18 Monterey Peninsula Water Management District and  
19 wells --

20 CO-HEARING OFFICER WOLFF: I'm not -- I  
21 understood your testimony there, but I do appreciate  
22 your clarification. You are saying the reverse osmosis  
23 plant's already in existence. It's what happens with  
24 the water after that that the \$50,000 in the document  
25 was referring to.

1           MR. LeNEVE:  It's the wastewater from the  
2 Pebble Beach plant.

3           CO-HEARING OFFICER WOLFF:  I understand.  
4 Thank you.  Then Mr. LeNeve, you also in your  
5 testimony -- I guess shared testimony -- you said  
6 maintain a level of 5 NGVD in the lagoon.

7           And I realize that a range of water would be  
8 required to maintain that level under different  
9 conditions.  Can you give me a ballpark of what that  
10 range of the supplemental water is, to achieve that  
11 objective?

12          MR. LeNEVE:  The only reason I think I could  
13 do that is going back to John Williams' testimony that  
14 he's going to be giving that he felt that .5 cubic foot  
15 per second would be necessary.

16          I did some -- I don't personally think that  
17 would be enough, and if you had to run it for six  
18 months, that would be the time there was probably no  
19 fresh water going into the lagoon.  That would amount  
20 to 181 cubic -- or 181 acre foot a year.

21          Whether that would be enough or not, I don't  
22 know.  This year, considering the lagoon dropped 23  
23 inches in four weeks, I doubt that much would be  
24 enough.

25          CO-HEARING OFFICER WOLFF:  Gives me a



1 ballpark. It's hundreds not thousands, or do you think  
2 thousands? Trying to --

3 MR. LeNEVE: Less than 500 would probably do  
4 it.

5 CO-HEARING OFFICER WOLFF: Do you know this  
6 project number one that's on the exhibit, the size,  
7 some size of flow? Do you know what that flow is?

8 MR. LeNEVE: I don't know what that flow was.

9 CO-HEARING OFFICER WOLFF: That's fine. I'll  
10 ask Monterey Peninsula Water Management District  
11 tomorrow then since it's their exhibit.

12 The last question is this settlement agreement  
13 between, I think, NOAA and Cal Am. Do you know why the  
14 settlement agreement hasn't been acted upon?

15 MR. LeNEVE: I believe you asked that question  
16 of Joyce Ambrosius, and she told you they were under  
17 negotiation with Cal Am, and it was confidential, and  
18 she couldn't tell you, and she couldn't tell when it  
19 was going to be complete.

20 CO-HEARING OFFICER WOLFF: That's exactly what  
21 she told me, and I was wondering if you knew anything  
22 about it.

23 MR. LeNEVE: We know as much as you do, or  
24 probably less.

25 DR. THOMAS: I think I understand it to some

1 extent. We were involved in this, and it was supposed  
2 to be the Steelhead Association, as far as the  
3 ownership of Cal Am expressed to us at one point in  
4 time. So we followed it fairly closely, even spent  
5 some money developing a formal group to handle that  
6 money.

7 But the negotiation for the money was solely  
8 between NOAA Fisheries and Cal Am, and there was going  
9 to be money for projects in the Carmel River. And as I  
10 understand it, NOAA Fisheries talked to their  
11 Washington people to give us the money and they said  
12 no, we'll put it in our account.

13 And Cal Am didn't like that idea. Neither did  
14 we. And they were going to give it to the Monterey  
15 Peninsula Water Management District. Why they didn't  
16 do that, I don't know.

17 CO-HEARING OFFICER WOLFF: So --

18 DR. THOMAS: Now, Fish and Game, that's the  
19 latest plan. That's the -- you know how bureaucracies  
20 are. They have a hard time working these things out in  
21 a short period of time.

22 CO-HEARING OFFICER WOLFF: I think I  
23 understand. You're saying that the mechanics involved  
24 in moving the money seems to be the issue.

25 DR. THOMAS: Well, it's an issue to us that

1 there is no money yet.

2 CO-HEARING OFFICER WOLFF: I understand that.

3 Thank you very much. Appreciate your answer.

4 CO-HEARING OFFICER BAGGETT: Now, Mr. Jackson?

5 MR. JACKSON: The Carmel River Steelhead  
6 Association would like to move its testimony into  
7 evidence.

8 CO-HEARING OFFICER BAGGETT: Objections?

9 MR. RUBIN: I would just renew the same  
10 objections.

11 CO-HEARING OFFICER BAGGETT: So noted;  
12 accepted.

13 With that, let's go off the record and talk  
14 about tomorrow.

15 \* \* \*

16 (Thereupon the WATER RESOURCES CONTROL  
BOARD hearing was continued at 6:34  
17 p.m.)

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2 I, LINDA KAY RIGEL, a Certified Shorthand  
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4 That I am a disinterested person herein; that  
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6 reported in shorthand by me, Linda Kay Rigel, a  
7 Certified Shorthand Reporter of the State of  
8 California, and thereafter transcribed into  
9 typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said meeting nor in  
12 any way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand this August 5, 2008.

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