

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 IV  
THURSDAY, AUGUST 7, 2008  
10:00 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

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 SEASIDE and SEASIDE BASIN WATERMASTER:

Brownstein, Hyatt, Farber, Schreck

BY: Mr. Russell McGlothlin

Mr. Michael Fife

21 East Carrillo Street

Santa Barbara, CA 93101-2706

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

PLANNING AND CONSERVATION LEAGUE:

Mr. Jonas Minton

1107 9th Street

Suite 360

Sacramento, CA 95814

CARMEL RIVER STEELHEAD ASSOCIATION:

Law Offices of Michael Jackson

BY: Mr. Michael B. Jackson

P.O. Box 207

Quincy, CA 95971

APPEARANCES continued

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  
Ms. Diana Brooks  
505 Van Ness Avenue, 4th Floor  
Room 4101  
San Francisco, CA 94102

ALSO PRESENT

Mr. Joseph W. Oliver, Monterey Peninsula Water  
Management District

Mr. Andrew M. Bell, Monterey Peninsula Water Management  
District

Ms. Stephanie Pintar, Monterey Peninsula Water  
Management District

Mr. Larry Hampson, Monterey Peninsula Water Management  
District

Mr. Thomas Christensen, Monterey Peninsula Water  
Management District

Ms. Henrietta Stern, Monterey Peninsula Water  
Management District

Mr. Darby Fuerst, Monterey Peninsula Water Management  
District

ALSO PRESENT continued

Mr. Robert McKenzie, Monterey County Hospitality  
Association

Mr. Rene Boskoff, Monterey County Hospitality  
Association

Mr. Mark Bastis, Monterey County Hospitality  
Association

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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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 We're back. I guess I'll forego all the formal opening  
5 statements. I would like to invite appearance of the  
6 parties to see who's here, just for the record.

7 And then we'll go back. As I recall, we were  
8 on cross-examination of Monterey.

9 So with that, if you would state your  
10 appearance for the record. Cal Am Water.

11 MR. RUBIN: Good morning. Jon Rubin and  
12 Valerie Kincaid from the law firm of Diepenbrock  
13 Harrison representing California American Water.

14 CO-HEARING OFFICER BAGGETT: Prosecution Team?

15 MR. SATO: Good morning. Reed Sato, attorney  
16 for the Prosecution Team.

17 CO-HEARING OFFICER BAGGETT: Sierra Club?  
18 Mr. Silver is not here today. Carmel River Steelhead  
19 Association?

20 MR. JACKSON: Michael Jackson, Carmel River  
21 Steelhead Association.

22 CO-HEARING OFFICER BAGGETT: Public Trust  
23 Alliance?

24 MR. WARBURTON: Michael Warburton and Patricia  
25 Nelson for Public Trust Alliance.



1 CO-HEARING OFFICER BAGGETT: Planning and  
2 Conservation League?

3 MR. MINTON: Jonas Minton for Planning and  
4 Conservation League.

5 CO-HEARING OFFICER BAGGETT: Monterey  
6 Peninsula Water Management District?

7 MR. LAREDO: Good morning. David Laredo,  
8 general counsel from the firm of DeLay & Laredo for the  
9 Monterey Peninsula Water Management District.

10 CO-HEARING OFFICER BAGGETT: Pebble Beach  
11 Company?

12 MR. JAMISON: Good morning. Thomas Jamison,  
13 of the law firm of Fenton & Keller for Pebble Beach  
14 Company.

15 CO-HEARING OFFICER BAGGETT: City of Seaside  
16 and the Seaside Basin Watermaster.

17 MR. FIFE: Good morning. Michael Fife,  
18 Brownstein, Hyatt, Farber, Schreck, for the City of  
19 Seaside and Seaside Basin Watermaster.

20 CO-HEARING OFFICER BAGGETT: City of Sand  
21 City? No one here. City of Monterey? City of  
22 Carmel-by-the-Sea? And lastly, Monterey County  
23 Hospitality Association?

24 MR. LOWREY: Lloyd Lowrey of the firm of  
25 Noland, Hamerly, Etienne & Hoss for the Monterey County

1 Hospitality Association.

2 CO-HEARING OFFICER BAGGETT: Thank you. And  
3 there is a court reporter present who will prepare a  
4 transcript, and I think you all know how to obtain  
5 that.

6 So with that, any other business before we  
7 begin? Well, I see we have one other party.

8 MR. GOMBERG: Good morning. Max Gomberg,  
9 Division of Ratepayer Advocates. We'll be making an  
10 opening statement.

11 CO-HEARING OFFICER BAGGETT: Thank you. Now,  
12 Mr. Rubin, where we left off.

13 MR. RUBIN: Just for scheduling purposes, we  
14 have a witness that we would like to present as part of  
15 our rebuttal case. He's on vacation this week, and so  
16 we're trying to have him come in for a window of time  
17 so he could enjoy his vacation to the extent possible.

18 I'm wondering if we could just get a sense  
19 where we might be today, how many people are intending  
20 to provide rebuttal cases, assuming or hoping that our  
21 rebuttal case would come at the end of others' cases,  
22 so understanding if any of the other parties intend to  
23 present rebuttal.

24 CO-HEARING OFFICER BAGGETT: Thank you. Any  
25 party have any other rebuttal case at this point they

1 intend to present?

2 MR. JACKSON: I don't think so.

3 CO-HEARING OFFICER BAGGETT: Looks like --  
4 does Public Trust Alliance will have a --

5 MR. WARBURTON: We do.

6 CO-HEARING OFFICER BAGGETT: Public Trust  
7 Alliance has a witness for rebuttal, and Cal Am has a  
8 witness for rebuttal. Very good.

9 MR. RUBIN: Do we have a sense of whether  
10 we're going to complete Monterey Peninsula Water  
11 Management District and the Monterey County Hospitality  
12 Association today?

13 CO-HEARING OFFICER BAGGETT: I would hope  
14 sooner than later today and get into the case-in-chief  
15 for California American. I mean, I'm personally  
16 willing to go as late as possible if it looks like we  
17 can finish this. I don't know if you are.

18 Is your witness present today?

19 MR. RUBIN: He's not. He resides here in  
20 Sacramento, so we can call him and have him here this  
21 afternoon.

22 CO-HEARING OFFICER BAGGETT: If it looks like  
23 we're going to get done? We'll see how it goes, see  
24 how the cross-examination goes. Okay.

25 Let's go back to -- as I recall, we were on

1 cross-examination. Which party was. . . . We did one  
2 of the witnesses who's no longer here.

3 MR. LAREDO: Kevan Urquhart, our fisheries  
4 biologist. I believe his cross-examination has been  
5 completed.

6 CO-HEARING OFFICER BAGGETT: We were starting  
7 back at the top again. Or I guess in reverse order, as  
8 I recall, for the cross-examination of these witnesses.  
9 Cal Am, were you completed with your cross-examination?

10 MR. RUBIN: We were provided an opportunity to  
11 cross the whole panel, so.

12 CO-HEARING OFFICER BAGGETT: So we'll just go  
13 in reverse order then. Monterey County Hospitality  
14 Association, do you have any cross-examination for any  
15 of the witnesses?

16 The cities are not here.

17 Seaside Basin? No cross-exam.

18 Pebble Beach Company? No cross-examination.

19 Public Trust Alliance? No cross-examination.

20 Mr. Jackson, do you have any cross-examination  
21 for the remaining panelists?

22 MR. JACKSON: Yes, sir, I do.

23 PANEL OF WITNESSES

24 Previously Called by MONTEREY PENINSULA WATER

25 MANAGEMENT DISTRICT

1 CROSS-EXAMINATION BY MR. JACKSON

2 MR. JACKSON: My first set of questions will  
3 be directed to Mr. Fuerst.

4 Mr. Fuerst, you are the general manager of the  
5 Monterey Peninsula Water Management District?

6 MR. FUERST: Correct.

7 MR. JACKSON: And for many years, you were the  
8 hydrologist for the District?

9 MR. FUERST: Yes.

10 MR. JACKSON: So you're familiar with all  
11 parts of the river in terms of hydrology as well as  
12 being familiar with the general manager's duties?

13 MR. FUERST: Yes.

14 MR. JACKSON: What is the relationship between  
15 Monterey Peninsula Water Management District and the  
16 California American Water Company?

17 MR. FUERST: That relationship is described in  
18 my original testimony, but basically we were -- the  
19 District is a California Special District created by  
20 the State Legislature to provide integrated water  
21 resource management in the Monterey Peninsula area; and  
22 accordingly, we regulate all water distribution systems  
23 within our boundary.

24 Cal Am is the largest water distribution  
25 system.

1           In addition -- in addition to providing  
2 regulation over their operations, we also have a  
3 comprehensive environmental mitigation program that  
4 mitigates the impact of their pumping from the Carmel  
5 River system.

6           In addition, we are -- we conduct water supply  
7 planning. So at times, we have cooperated such as with  
8 the District and the Cal Am Phase I Aquifer Storage and  
9 Recovery Project, water supply project, where we hold a  
10 joint water right for that project.

11           We also have provided earlier, when Cal Am had  
12 proposed a Carmel River dam and reservoir project, they  
13 were the project proponent, but we were the Lead Agency  
14 under CEQA.

15           So we perform roles as regulator, mitigator,  
16 and water supply planner.

17           And lastly, we have an extensive conservation  
18 and rationing plan that's done in cooperation largely  
19 with Cal Am.

20           MR. JACKSON: All right. So taking those one  
21 at a time, in your role as regulator, are you bound in  
22 to your understanding by 95-10?

23           MR. FUERST: We take into account 95-10 and  
24 its restrictions when we develop the quarterly budget  
25 that was described earlier as well as the low-flow

1 Memorandum of Understanding in consultation with the  
2 Department of Fish and Game and NOAA Fisheries.

3 MR. JACKSON: Is it your understanding that  
4 you're required to carry out the mitigation program for  
5 the effects of the unlawful diversions by Cal Am?

6 MR. FUERST: I would say that we're required  
7 to carry out the environmental mitigation program that  
8 was adopted when the District Board certified the  
9 water -- its water allocation program EIR in 1990.

10 Also, and those -- that covers a range of  
11 activities from fish rescue to riparian vegetation and  
12 work in the lagoon -- 95-10 did have an ordering  
13 paragraph which indicated that if for any reason we did  
14 not -- the District did not continue its mitigation  
15 efforts, those would revert to Cal Am.

16 MR. JACKSON: All right. Now, 95-10 had,  
17 starting at page 40, had a series of mitigations that  
18 were required by the Board.

19 MR. FUERST: Right. I don't have that  
20 document.

21 MR. JACKSON: But you are familiar with the  
22 general fact that there were mitigations in 95-10 that  
23 were ordered?

24 MR. FUERST: Yes, I'm aware of that.

25 MR. JACKSON: Okay. One of the mitigations

1 that was ordered was --

2 MR. LAREDO: Mr. Jackson, the witness now has  
3 95-10 in front of him.

4 MR. JACKSON: Calling your attention to Item  
5 11 on page 43.

6 MR. FUERST: Yes, I see it.

7 MR. JACKSON: It states what you just told me,  
8 that Cal Am shall be responsible for implementing all  
9 measures in the mitigation program for the District's  
10 water allocation program environmental impact not  
11 implemented by the District after June 30th, 1996,  
12 correct?

13 MR. FUERST: That's correct.

14 MR. JACKSON: What elements that were  
15 contained in 95-10 were not implemented by the District  
16 after June 30th, 1996?

17 MR. FUERST: I don't see here that they're  
18 specified. Again, going back to what elements were in  
19 the mitigation program, you know. For example, I can  
20 think of one where originally the District was going to  
21 put a holding pen for steelhead in the lagoon.

22 MR. JACKSON: Right.

23 MR. FUERST: That was originally identified in  
24 1990. That has not been done. The District conducted  
25 extensive communications with the California Department



1 of Parks and Recreation, the property owner of the  
2 lagoon; and they basically said that they would not  
3 permit that activity.

4 MR. JACKSON: All right. So you believe that  
5 the reason -- that elements of the Water Allocation  
6 Mitigation Program as ordered in 95-10 are basically  
7 not mandatory, but if you run into problems, you can  
8 just drop them?

9 MR. LAREDO: Objection; that mischaracterizes  
10 the testimony.

11 CO-HEARING OFFICER BAGGETT: Sustained. Could  
12 you please restate it?

13 MR. JACKSON: Certainly.

14 The Water Allocation Mitigation Program had a  
15 number of elements in it. One of them that you  
16 mentioned was lagoon vegetation and wildlife. And part  
17 of that was that there would be holding pens in the  
18 lagoon; is that correct?

19 MR. FUERST: I don't believe the holding pens  
20 were part of the vegetation program, but I do agree  
21 that the mitigation included having a holding pen in  
22 the lagoon for steelhead, yes.

23 MR. JACKSON: And to your knowledge, was there  
24 any other reason that that element was dropped other  
25 than some state agency telling you they didn't want you

1 to do it?

2 MR. LAREDO: Objection; again, that  
3 mischaracterizes the testimony.

4 This is not "some state agency." This -- the  
5 testimony is in fact this is the property owner that  
6 would not permit this.

7 CO-HEARING OFFICER BAGGETT: Okay, please --

8 MR. JACKSON: Well, I guess -- all right.

9 I'll --

10 CO-HEARING OFFICER BAGGETT: -- clarify what  
11 agency.

12 MR. JACKSON: -- change the question to the  
13 property owner told you that they didn't want you to do  
14 that on the river that you had jurisdiction over; is  
15 that correct?

16 MR. LAREDO: Objection again. It wasn't that  
17 the property owner said they didn't want to do it. The  
18 property owner, the state agency, would not permit the  
19 activity.

20 MR. JACKSON: And I guess the question is:  
21 Since when does the property owner have the authority  
22 to not do what the Board ordered them to do?

23 CO-HEARING OFFICER BAGGETT: Overruled.  
24 Answer it within the scope of your knowledge.

25 MR. FUERST: Can you repeat the question?

1           MR. JACKSON: Sure. Was there any other  
2 reason for not building the holding pens other than the  
3 opposition of the property owner?

4           MR. FUERST: No. The primary reason was that  
5 after discussions with the California Department of  
6 Parks and Recreation, the property attorney in the  
7 lagoon area, they would not allow -- they would not  
8 permit that activity. It was not consistent with their  
9 plan for the lagoon.

10          MR. JACKSON: All right. Did you try to find  
11 an alternative lagoon in order to carry out the  
12 mitigation plan somewhere else?

13          MR. RUBIN: I'm going to object to the  
14 question. I don't think it's relevant.

15                 I also am objecting to this line of  
16 questioning, again on relevance and outside the scope  
17 of the second phase of the proceeding, or -- and this  
18 proceeding as a whole.

19                 The issue about violation of Order 95-10 was  
20 discussed, again, at the prehearing conference,  
21 numerous times throughout this second phase, as well as  
22 during the first phase; and the question about  
23 violation of any other terms of Order 95-10 was not  
24 determined to be within the scope of this proceeding  
25 with the very limited caveat that the Hearing Officers

1 provide in the May 29, 2008 order where it says --  
2 where the Hearing Officers' wrote:

3           It should be recognized, however, that  
4           provisions of Order WR 95-10 other than  
5           Condition 2 may be relevant to prove  
6           whether Cal Am is violating Condition 2  
7           or Water Code Section 1052.

8           Both of those issues, even if Mr. Jackson  
9 asserts that's what he's trying to demonstrate through  
10 this cross-examination, are issues that were addressed  
11 during the first phase. They are outside of the second  
12 phase of this proceeding.

13           CO-HEARING OFFICER BAGGETT: Mr. Jackson?

14           MR. JACKSON: These questions come directly  
15 from pages 30 and 31 of 95-10 which talks about the  
16 Water Allocation Mitigation Program and was an integral  
17 part of the order in 95-10. The language is on the  
18 screen right now.

19           And what I'm interested in is why in the areas  
20 of fisheries, riparian vegetation and wildlife, and the  
21 lagoon vegetation and wildlife, for which we've heard  
22 substantial evidence that the elements of those  
23 programs were dropped?

24           CO-HEARING OFFICER BAGGETT: I understand.

25 But I think our hearing Notice was very explicit. The

1 draft cease and desist order specifically alleges  
2 violation of Condition 2 and does not specifically  
3 allege violation of any other condition of Water Right  
4 Order 95-10. And I think the parenthesis section 11, I  
5 think is clearly outside the scope, and I would sustain  
6 the objection. So if you could move on.

7 MR. JACKSON: Mr. Fuerst, has Monterey  
8 Peninsula Water Management District taken any actions  
9 to regulate the amount of pumping that is taking place  
10 on the river to bring it down over the last 10,  
11 12 years?

12 MR. FUERST: Yes. As described in my earlier  
13 Phase 1 testimony, the District has a quarterly water  
14 supply budget process by which we, in consultation with  
15 Cal Am and California Department of Fish and Game and  
16 NOAA Fisheries determine on a quarterly basis how much  
17 water should be produced from each of Cal Am's source  
18 areas.

19 MR. JACKSON: All right. In regard to how  
20 much water should be produced, you have regulatory  
21 authority and could lower the amount that was produced?

22 MR. FUERST: We have regulatory authority  
23 during a time of physical drought, yes.

24 MR. JACKSON: All right. And you have no  
25 regulatory authority over the amount of water produced

1 within your boundaries unless there is a drought?

2 (Discussion between counsel and witness)

3 CO-HEARING OFFICER BAGGETT: Is that an  
4 objection, counsel?

5 MR. FUERST: With respect to the quarterly  
6 budget, we take into account all the State water  
7 orders, the agreements with NOAA Fisheries --

8 MR. JACKSON: Excuse me, sir. That -- I'm  
9 going to ask the question again: Do you believe that  
10 you have authority over Cal Am in any period of -- Cal  
11 Am's -- pumping in any period other than a drought?

12 MR. FUERST: No.

13 MR. LAREDO: Objection on grounds of  
14 relevance. What this witness believes or what -- the  
15 regulatory authority of the Water Management District  
16 is not an issue in the CDO proceeding.

17 MR. JACKSON: The fact is that for -- since  
18 95-10, there are two organizations that have some  
19 regulatory authority. I'm trying to determine why  
20 Monterey Peninsula Water Management District has not  
21 used their regulatory authority to stop the illegal  
22 diversions.

23 CO-HEARING OFFICER WOLFF: Why is that  
24 relevant in this proceeding?

25 MR. JACKSON: It's relevant in this proceeding

1 to show that not only the -- that the State Board is  
2 the only agency that is practically likely to do  
3 anything about this circumstance because the other  
4 agency is controlled by the same folks who have been  
5 testifying that they can't possibly save any water  
6 anywhere.

7 MR. RUBIN: I would join in Mr. Laredo's  
8 objection. It falls again within this area as well  
9 about jurisdiction, and particularly dealing with the  
10 remedy.

11 Whether the Monterey Peninsula Water  
12 Management District has the authority to take  
13 regulatory action is not much different than whether  
14 Fish and Game has the ability to regulate other factors  
15 that are out there, NOAA Fisheries and the list of  
16 regulatory agencies that could effect the remedies that  
17 Mr. Jackson's clients think are appropriate.

18 MR. SATO: I just wanted to support  
19 Mr. Jackson's line of questioning because I think that  
20 these types of issues are relevant to the inquiry you  
21 are making today.

22 CO-HEARING OFFICER BAGGETT: I would overrule.  
23 It's relevant. But I would ask that the question --  
24 well, sustain the objection to the specific question,  
25 but not on the grounds of relevancy. Could you

1 rephrase the question to be more specific?

2 MR. JACKSON: Well, it would be easier for  
3 me -- all right. Specificity was the reason?

4 CO-HEARING OFFICER BAGGETT: Yes.

5 MR. JACKSON: What actions has Monterey  
6 Peninsula Water Management District taken over since  
7 95-10 to order Cal Am to lower its pumping in order to  
8 protect the Carmel River?

9 MR. FUERST: Since the issuance of Order 95-10  
10 in July of 1995, the District has required Cal Am to  
11 reduce its pumping consistent with the conditions in  
12 Order 95-10 which was in 1996 to reduce their  
13 historical base use by 15 percent and then in 1997 by  
14 20 percent and that level for every subsequent water  
15 year. So our water budgets have been conditioned on  
16 that amount.

17 MR. JACKSON: So after the first two years,  
18 you have done nothing to lower the amount of pumping  
19 that is taking place on the Carmel River?

20 MR. FUERST: Well, in terms of setting the  
21 budget, those are the limits we have adopted. In  
22 addition, we have cooperated with Cal Am on an Expanded  
23 Water Conservation and Standby Rationing Plan which  
24 causes the community demand to be less, therefore the  
25 pumping to be less. But that's done on a -- it has



1 been primarily on a voluntary basis, voluntary  
2 conservation basis, largely driven by increases in the  
3 price of water to the consumers.

4 MR. JACKSON: So then it would be fair to say  
5 that you have not taken any action to limit the  
6 overdraft and the illegal pumping since 1997?

7 MR. RUBIN: I'm going to object to the  
8 question. I think it misstates the testimony of  
9 Mr. Fuerst, and it's ambiguous.

10 CO-HEARING OFFICER BAGGETT: I would sustain.  
11 Could you rephrase the question, if you desire to?

12 MR. JACKSON: Yes. Has there been any --  
13 since the second cutback ordered by the Board, has  
14 Monterey Peninsula Water District taken any action to  
15 lower the total amount of pumping done by Cal Am under  
16 your regulatory authority over Cal Am?

17 MR. FUERST: As indicated in my testimony  
18 under Phase I, the District's taken action so that  
19 during the 12-year period since 95-10 has been in  
20 effect, Cal Am's diversions from the river have been  
21 reduced an average of 3,139 acre feet from the  
22 pre-Order 95-10 average of 14,106.

23 And that reduction represents a 22 percent  
24 decrease in Cal Am's diversions from the Carmel River  
25 during that period.

1           MR. JACKSON: And all of that took place prior  
2 to 1997?

3           MR. FUERST: An average over the 12-year  
4 period. It's from 1995 through 2007. And it reflects  
5 the integrated efforts of the District.

6           MR. JACKSON: Has the District attempted to  
7 find water, additional water, for the people of the  
8 Monterey Peninsula in any way other than the dam that  
9 was voted down?

10          MR. FUERST: Yes.

11          MR. JACKSON: Have you been successful in  
12 bringing water in to the Monterey Peninsula into your  
13 District?

14          MR. FUERST: We've been successful in  
15 developing new source of -- developing additional legal  
16 water within the District, not -- we have not looked at  
17 importing water into the District, if that was your  
18 question.

19          MR. JACKSON: Yes, that was my question. Have  
20 you at the District attempted to find a water source  
21 from outside the District to replace Cal Am's illegal  
22 diversions?

23          MR. FUERST: No, the District has focused on  
24 developing supplies within the District boundaries  
25 consistent with our enabling act.

1           MR. JACKSON: Do you have the authority under  
2 your enabling act to purchase water from outside the  
3 District and bring it to your customers, to your  
4 constituents?

5           MR. FUERST: I'm not certain. I believe we  
6 have the authority to purchase the water. Again, we  
7 don't -- we would have to act as a wholesaler. We  
8 don't have customers, per se.

9           MR. JACKSON: You would --

10          MR. FUERST: Not a utility.

11          MR. JACKSON: You'd have to act -- are you  
12 familiar with the Metropolitan Water District?

13          MR. FUERST: Yes.

14          MR. JACKSON: And you would have to act in  
15 that provision?

16          MR. FUERST: Yes.

17          MR. JACKSON: To go out and identify water and  
18 bring it in? Have you looked in the Salinas Valley to  
19 see whether or not there is water available --

20          MR. FUERST: Yes.

21          MR. JACKSON: -- that you could bring in?

22          MR. FUERST: We have had discussions with  
23 representatives of the Monterey County Water Resources  
24 Agency which oversees the groundwater and surface water  
25 resources in the Salinas Valley River Basin.

1           MR. JACKSON: And it's your testimony that  
2 in -- since 95-10, there is no water available from any  
3 farming operation in the Salinas Valley that could be  
4 brought into your District to resolve some of these  
5 problems that the mayors were talking about last time?

6           MR. FUERST: I don't know of any sources  
7 available from the agricultural interests you  
8 indicated.

9           MR. JACKSON: When is the last time you made  
10 an attempt to find water?

11          MR. FUERST: We met with representatives from  
12 Monterey County Water Resources Agency, their general  
13 manager, Curtis Weeks, and Rob Johnson, their head of  
14 water resources, yesterday.

15          MR. JACKSON: Great.

16          MR. FUERST: Regarding this topic.

17          MR. JACKSON: And Curtis Weeks told you  
18 yesterday that there was no water available anywhere in  
19 the Salinas Valley?

20          MR. FUERST: He indicated that it was his  
21 opinion that development of groundwater that serves  
22 agricultural interests in the Salinas Valley, it would  
23 be unlikely to be developed in the near term.

24                 He indicated that there was a possibility of  
25 obtaining surface water at the proposed diversion on

1 the Salinas River. And that was described in earlier  
2 testimony by Steve Kasower.

3 MR. JACKSON: So there is a possibility -- I  
4 mean, Mr. Fuerst, I guess part of the problem here is  
5 that I know you're very good at what you do. There are  
6 lots of people who are buying water this year in  
7 various places to resolve water problems that are much  
8 bigger than yours, aren't there?

9 MR. FUERST: Yes.

10 MR. JACKSON: Hundreds of thousands of acres  
11 of water, acre feet of water?

12 MR. RUBIN: I'm going to object to the  
13 question. I'm trying to be patient here. I don't  
14 understand the relevance.

15 CO-HEARING OFFICER BAGGETT: I agree,  
16 sustained.

17 MR. FUERST: And I would like to correct my  
18 testimony. We met with representatives on Tuesday,  
19 August 5th, not yesterday.

20 MR. JACKSON: You were sustaining an objection  
21 to questions about their ability to find water.

22 CO-HEARING OFFICER BAGGETT: Hundreds of  
23 thousands of acre feet in the state, I don't  
24 understand --

25 MR. JACKSON: I was thinking of the Yuba

1 transfer that you just approved.

2 MR. RUBIN: I could explain my objection  
3 further if you'd like.

4 CO-HEARING OFFICER BAGGETT: I understand, but  
5 that's -- this is -- we're dealing with the Carmel  
6 River. Could you just focus the questions to the  
7 witness on the Carmel River?

8 MR. JACKSON: And the question is: How far is  
9 the -- isn't the Seaside Basin in the Salinas drainage?

10 MR. FUERST: Based on Bulletin 18 -- Bulletin  
11 118, which is a State document which defines the  
12 groundwater basins, the major groundwater basins in the  
13 state of California, the Seaside Groundwater Basin is  
14 considered a subset or subunit of the larger Seaside  
15 Groundwater Basin.

16 Excuse me. The Seaside is considered the  
17 southernmost unit of the larger Salinas Groundwater  
18 Basin.

19 MR. JACKSON: All right. So this would --  
20 this would -- developing a conjunctive use project  
21 would take the pressure off the Carmel River? Using  
22 Salinas water would be using in-basin water; is that  
23 correct?

24 MR. FUERST: Hydrologically, that's correct.  
25 That's not correct institutionally.

1           MR. JACKSON: You mean your jurisdiction  
2 doesn't cover the whole Salinas Valley?

3           MR. FUERST: No, what I mean is -- and this  
4 was the purpose of the discussion on Tuesday with  
5 representatives from Monterey County Water Resources  
6 Agency. They have both an ordinance that prohibits  
7 exportation from groundwater from the Salinas Valley  
8 Groundwater Basin outside -- they define it differently  
9 than the State so that they -- the only exception would  
10 be water from the Salinas Valley Groundwater Basin  
11 could be exported out of their defined basin onto lands  
12 formerly occupied by the Fort Ord military reservation.

13           MR. JACKSON: Which is how far from your  
14 district?

15           MR. FUERST: A portion of the former Fort Ord  
16 reservation is within our district.

17           MR. JACKSON: Okay. And that ordinance only  
18 applies to groundwater and does not apply to surface  
19 water; is that correct?

20           MR. FUERST: That's my understanding.

21           MR. JACKSON: So you could buy surface water,  
22 deliver it to Seaside, and use it to recharge the  
23 basin?

24           MR. RUBIN: I'm going to raise an objection.  
25 Again, I've tried to be patient here. I'm having

1 difficulty finding relevance to these questions. How  
2 this deals with remedies -- I don't know if Mr. Jackson  
3 is asking these questions because he believes the Board  
4 could order Cal Am to go and buy water from one of  
5 these other areas. I just don't see the relevance in  
6 terms of a remedy. Maybe these were questions he could  
7 have or did ask during the first phase on diligence.  
8 But again, I don't see the relevance on remedy.

9 MR. JACKSON: Mr. Baggett, my position is that  
10 Cal Am is taking water illegally. There is somebody  
11 else who can deliver water to avoid the taking water  
12 illegally that you seem to -- I mean the Board is  
13 considering today. I'm trying to show how easy it  
14 would be -- obviously, Cal Am is relevant -- they are  
15 not the ones testifying.

16 CO-HEARING OFFICER BAGGETT: I understand. I  
17 will overrule. But could you, I guess, get to the  
18 point of your questions then? I think you've made it,  
19 but can you continue the questions, and just try to  
20 bring it to some conclusion. Sooner than later would  
21 be appreciated.

22 CO-HEARING OFFICER WOLFF: I would --  
23 Mr. Jackson, I think you've made the point very clearly  
24 through the questions up till now. If you have other  
25 points to make, I'm eager to hear them, but I'm not



1 sure you need to continue with this point. I think you  
2 made this point.

3 MR. JACKSON: If you believe this point has  
4 been made, then I ought to quit because I'm not getting  
5 straight answers from anybody in this room and, but  
6 if --

7 CO-HEARING OFFICER WOLFF: I hope you don't --

8 MR. JACKSON: The combination -- I don't get  
9 to cross-examine you, Mr. Wolff, so I certainly am  
10 excluding you and Mr. Baggett and everyone else at the  
11 dais from that statement.

12 CO-HEARING OFFICER BAGGETT: Okay. Just  
13 continue.

14 MR. JACKSON: No. We're done.

15 If I can't ask about the river, I can't ask  
16 about fish, I can't ask about their management, and you  
17 don't want to hear other water ideas to save the river,  
18 then I'm done.

19 CO-HEARING OFFICER WOLFF: You should not  
20 assume what I want to hear or don't want to hear.  
21 There was an objection; the objection was overruled.  
22 You can continue with your correction if you like.

23 I was simply saying that the particular point  
24 you're making, I heard loud and clear. If you have  
25 other points, that's great. If you want to continue

1 with that point, you're allowed to. It's up to you.

2 MR. JACKSON: Then I will continue a little  
3 bit.

4 You indicated you started looking for -- you  
5 started talking to Mr. Weeks sometime this week?

6 MR. LAREDO: Objection; that mischaracterizes  
7 the testimony. The question was when did he last speak  
8 with him, not when did he start speaking with him.

9 MR. JACKSON: I'll ask that a little  
10 differently.

11 Had you talked to Mr. Weeks about available  
12 water in 1996?

13 MR. FUERST: I'm not certain.

14 MR. JACKSON: In 2000?

15 MR. FUERST: Likely.

16 MR. JACKSON: And were his answers pretty much  
17 the same in 2000 as they are -- as they were this week?

18 MR. LAREDO: Objection; assumes it's a  
19 question and answer. He asked if the answers were the  
20 same. We don't know what questions were asked. And  
21 Mr. Fuerst's testimony also indicates that he was not  
22 the general manager of the District at that time, so  
23 the question has no foundation as to in what capacity  
24 were the questions asked or answered.

25 MR. JACKSON: To your knowledge, were the

1 answers in 2000 that you were testifying to pretty much  
2 the same as they were this week?

3 MR. LAREDO: I'll renew my objection. There's  
4 no foundation.

5 CO-HEARING OFFICER BAGGETT: Overruled.  
6 Just -- I think you understand the question.

7 MR. FUERST: No, the answers were different  
8 because circumstances have changed.

9 The Monterey County Water Resources Agency has  
10 gone forward with its Salinas Valley reclamation  
11 project. They are retrofitting their two reservoirs.  
12 They are building a diversion with the rubber dam. So  
13 that's changed the availability of water, at least with  
14 respect to surface water.

15 The answer with respect to groundwater is  
16 pretty much what -- today what it was back then.

17 MR. JACKSON: All right. Thank you, sir.

18 Given the changes that are taking place since  
19 2000 and the conversation you had, assuming there was a  
20 seller of surface water from somewhere in the upper  
21 part of the Salinas River and a dedication of that  
22 water under 1707 the Fish and Game Code to keep anyone  
23 else from taking it, and it arrived at the rubber dam,  
24 how long would it take you to arrange the delivery of  
25 that water to the people of Seaside, Sand City,

1 Monterey, Pacific Grove, and Carmel?

2 MR. FUERST: I'll answer the question based on  
3 my participation in what was the Regional Plenary  
4 Oversight Group which is now referred to as Water For  
5 Monterey County Coalition.

6 Much of the renewed interest in getting water  
7 from within different parts of the region has come  
8 through that effort, and there was a meeting of that  
9 group yesterday. This was discussed.

10 And when that question was posed to the  
11 engineer working for the Water for Monterey County  
12 Coalition, he said as early as two years but likely,  
13 you know, two to four years with respect to a pipeline  
14 from the Salinas River to the Peninsula.

15 MR. JACKSON: So it could be done before -- if  
16 the State Board were to make the order requested by the  
17 Prosecutorial Team, you would have the water before the  
18 more onerous parts of that recommendation would take  
19 effect?

20 MR. RUBIN: I'm going to object to the  
21 question. I think it's assuming testimony that was not  
22 provided by this witness.

23 CO-HEARING OFFICER BAGGETT: Overruled.

24 MR. FUERST: Again, what I reported was  
25 reported by the engineer. And I would add that as soon

1 as he said that Curtis Weeks cautioned that that was a  
2 very aggressive time line with respect to the  
3 permitting aspect, aside from the technical  
4 engineering, and alluded to the five-year process that  
5 they have gone through up to date to get a Biological  
6 Opinion to build the diversion and operate it under the  
7 current agreed conditions.

8 So there is a possibility it could extend  
9 longer, but I don't know how much longer.

10 MR. JACKSON: No further questions.

11 CO-HEARING OFFICER BAGGETT: Thank you.

12 Planning and Conservation League?

13 CROSS-EXAMINATION BY MR. MINTON

14 FOR PLANNING AND CONSERVATION LEAGUE

15 MR. MINTON: I'm Jonas Minton, representing  
16 the Planning and Conservation League. Would staff  
17 please project the PowerPoint slide used by Mr. Fuerst  
18 entitled Water Remaining For CAW Customer Service?

19 CHIEF LINDSAY: Which slide was it?

20 MR. MINTON: I believe it might have been the  
21 second or third slide.

22 MR. FUERST: Number seven.

23 MR. MINTON: Thank you. I will have six  
24 questions for you.

25 Does this slide include any new or expanded

1 water supplies that may be developed in the future?

2 MR. FUERST: No. This slide assumes that no  
3 additional supplies are developed and diversions from  
4 the Carmel River that are specified in the draft cease  
5 and desist take place as well as the ramp-down  
6 specified in the Seaside Basin adjudication decision  
7 occur as proposed.

8 MR. MINTON: Thank you for that clarification.

9 Mr. Fuerst, in the 23 years you have worked  
10 for the District, have there been numerous proposals  
11 for projects that would provide new water supplies  
12 including proposals for new dams, desalination, and  
13 other projects?

14 MR. FUERST: Yes.

15 MR. MINTON: Mr. Fuerst, have there been  
16 conflicting positions and sometimes competition among  
17 parties in the Monterey area over many of these  
18 projects?

19 MR. FUERST: Yes.

20 MR. MINTON: Mr. Fuerst, has a lack of  
21 cooperation among parties in the Monterey area  
22 contributed to delays and lack of implementation of new  
23 water supply projects in the Monterey area?

24 MR. FUERST: That has been one factor.

25 MR. MINTON: Thank you. Just two questions

1 remaining.

2           Mr. First, would adoption of the draft cease  
3 and desist order as recommended by the Prosecution Team  
4 provide additional pressure for parties in the Monterey  
5 area to cooperate towards implementation of water  
6 supply projects such as those identified in the REPOG  
7 process to allow California American Water to comply  
8 with Water Board Order 95-10.

9           MR. LAREDO: Objection; the question is  
10 argumentative.

11           MR. MINTON: I would refer to the testimony of  
12 Mr. Fuerst, Exhibit DF-9, on page 6, lines 13 through  
13 18 where he indicates and I'll quote.

14           . . . because of the uncertainty in  
15 estimating further conservation savings  
16 and the availability of replacement  
17 water supplies . . .

18           This question gets to the motivation of the  
19 parties within the region to carry out projects, and I  
20 believe it is relevant to Phase 2.

21           CO-HEARING OFFICER BAGGETT: I think it's  
22 relevant. I would, I guess, if you could -- it's  
23 fairly compound. Could you maybe break the question  
24 down? I know you're trying to get it in six. If you  
25 could make it seven questions, it might be simpler for

1 the witness to understand as well as all of the rest of  
2 us.

3 MR. MINTON: I'd be happy to.

4 Mr. Fuerst, would adoption of the draft cease  
5 and desist order provide additional pressure for  
6 parties in the Monterey area to cooperate on new water  
7 supply projects?

8 MR. LAREDO: I'll renew my objection.

9 Certainly this is a position that can be argued, but  
10 this is beyond the scope of this witness.

11 CO-HEARING OFFICER BAGGETT: Then I would ask  
12 the witness -- I would overrule, and answer to your  
13 ability to answer the question. I mean it's only  
14 within your knowledge. You are the general manager. I  
15 would expect you could -- if you have an opinion, so  
16 answer it. If you don't, answer that way.

17 MR. FUERST: As long as whatever cease and  
18 desist order that is adopted is realistic, achievable,  
19 and doesn't jeopardize the public health and safety of  
20 the users on the Peninsula, it's likely that this would  
21 create a greater incentive to move forward on a water  
22 supply project for the Monterey Peninsula area.

23 MR. MINTON: Let me follow up more  
24 specifically. Would the Board's adoption of the cease  
25 and desist order as recommended by the Prosecution Team



1 provide additional pressure?

2 MR. FUERST: I don't know. I'm not certain.

3 In terms of on first -- first blush, yes, it would.

4 But in terms of if it's unrealistic, if it's not

5 achievable, there could be unintended consequences that

6 haven't been unexplored.

7 MR. MINTON: My last question, Mr. Fuerst.

8 Absent the additional pressure of the cease and desist

9 order, what is your estimate of the number of years, if

10 ever, it will take for California American Water

11 Company to fully comply with Water Board Order 95-10?

12 MR. RUBIN: I'm going to object to the

13 question. It misstates the answer that Mr. Fuerst

14 provided to the question previous.

15 CO-HEARING OFFICER BAGGETT: Sustained.

16 Please re- --

17 MR. MINTON: Let me rephrase.

18 Absent the Water Board's adoption of the draft

19 cease and desist order as recommended by the

20 Prosecution Team, what is your estimate of the number

21 of years it will take for California American Water

22 Company to reduce its diversions consistent with Water

23 Board Order 95-10?

24 MR. RUBIN: I'm going to object to the

25 question. It calls for speculation.

1 MR. MINTON: If I may?

2 CO-HEARING OFFICER BAGGETT: I will overrule.

3 MR. MINTON: Thank you.

4 CO-HEARING OFFICER BAGGETT: You are the  
5 general manager. If you have an opinion.

6 MR. FUERST: Based on my knowledge, my  
7 information, it's my understanding that Cal Am is  
8 committed to delivering water from their Coastal Water  
9 Project in 2015. That's contingent on actions by the  
10 California Public Utilities Commission in processing  
11 their CEQA review. But it would be seven years.

12 MR. MINTON: If I've understood your answer,  
13 you've indicated that is what California American's  
14 position is.

15 As general manager of your district and based  
16 on your experience of 23 years working in that area, do  
17 you believe that that is a reasonable time -- or that  
18 is an achievable time period?

19 MR. FUERST: I don't think they'll have water  
20 delivered in 2015. I think it will be within a year of  
21 that time unless there are further delays in processing  
22 their Environmental Impact Report document or  
23 litigation.

24 MR. MINTON: Thank you.

25 CO-HEARING OFFICER BAGGETT: Thank you.

1 Prosecution Team?

2 CROSS-EXAMINATION BY MR. SATO

3 FOR THE PROSECUTION TEAM

4 MR. SATO: Good morning. My name is Reed  
5 Sato. I'm an attorney representing the Prosecution  
6 Team. I've just got a few questions for Mr. Bell.

7 You described several desalination projects  
8 proposed for the Monterey Peninsula area. Can you  
9 please name these projects and identify the main  
10 proponents for each of those projects?

11 MR. BELL: There have been a number of  
12 projects over the years. Do you want to give a time  
13 frame for me to limit my answer to? That would help.

14 MR. SATO: Sure, since the adoption of Order  
15 95-10.

16 MR. BELL: Okay. At that time, and still  
17 existing, there is a project in Marina Coast Water  
18 District, 300 acre feet per year. I don't have a  
19 formal title for that. It's been in operation on and  
20 off. It's not in operation now.

21 The Water Management District looked at a  
22 project starting in about 2002, and we looked at it for  
23 about two years. That was called the Sand City  
24 Desalination Project, which is somewhat confusing  
25 because now there is the City of Sand City Project.

1 But it was -- this project was to be located in Sand  
2 City, 7.5 million gallons per day, 8,409 acre feet per  
3 year was the production target.

4 Cal Am applied for their Coastal Water Project  
5 which includes a large desalination plant in the Moss  
6 Landing area. I believe that was in 2004. The  
7 capacity of that project was, I believe, 10 million  
8 gallons per day to produce 9,000-some-odd acre feet per  
9 year in combination with the Aquifer Storage and  
10 Recovery project.

11 And the City of Sand City developed and is in  
12 construction for their seawater desalination project,  
13 300 acre feet per year, right now. That is under  
14 construction.

15 There have been a number of other proposals  
16 that the Water Management District has looked at. One  
17 was by the Pajaro/Sunny Mesa Community Services  
18 District. That was a project that would be located  
19 also in the Moss Landing area at a site called, known  
20 as either the Kaiser Plant or National Refractory Plant  
21 adjacent to Moss Landing Harbor.

22 That was a project also brought to the Water  
23 Management District by the company named the Water  
24 Standard Company, and that was a seawater desalination  
25 vessel project. It was a ship to be located off shore

1 and bring desalinated seawater to the Monterey  
2 Peninsula, and actually regionally to the entire  
3 Monterey Bay area.

4 Those were the primary ones. There have been  
5 a couple small projects proposed.

6 MR. SATO: And then in terms of the status of  
7 the Monterey Peninsula Water Management District's Sand  
8 City Desalination Project, is that currently an active  
9 project?

10 MR. BELL: No, it's under construction.

11 MR. SATO: Pardon me?

12 MR. BELL: Could you repeat the question?

13 MR. SATO: Sure. To the best of your  
14 knowledge, is the Monterey Peninsula Water Management  
15 District Sand City Desalination Project, is that still  
16 an active project from the District's perspective?

17 MR. BELL: That was reinitiated, but it's come  
18 out in a different form, and we're actively studying  
19 that project known as the 95-10 project.

20 MR. SATO: So the 95-10 project, is that still  
21 contemplated to provide something in the neighborhood  
22 of 8,409 acre feet per annum?

23 MR. BELL: That would be great. But we're  
24 looking at what the maximum capacity of the project  
25 could be.

1           MR. SATO: And did I correctly state what the  
2 maximum capacity of the project might be?

3           MR. BELL: If it could produce more, that  
4 would be even better.

5           MR. SATO: Well, is there a target for the  
6 95-10 project?

7           MR. BELL: Nominally, it was aligned with the  
8 proposed project that we looked at back in 2002 to  
9 2004. But there's not been a formal capacity target  
10 put on it by our Board.

11          MR. SATO: Now, you're familiar with the  
12 Coastal Water Project. Would the Board continue with  
13 the project 95-10 even if the Coastal Water Project  
14 were to proceed to completion?

15          MR. LAREDO: Objection; that calls for  
16 speculation. I don't know that this witness can say  
17 what the Board would do. He could ask if there are any  
18 specific plans that have been adopted by the Board, but  
19 he cannot testify to what the Board would do.

20          MR. SATO: All right. I'll withdraw my  
21 question then.

22                 With regard to the Coastal Water Project, do  
23 you know whether the -- and I'll call the Monterey  
24 Peninsula Water Management District, I'll just refer to  
25 it as the District. Do you know whether the District

1 has -- or what the District's plans are to continue  
2 with the 95-10 project provided the Coastal Water  
3 Project is going forward?

4 MR. BELL: No, I don't.

5 MR. SATO: Has the District identified its  
6 support for any specific project that you've identified  
7 so far, desalination project?

8 MR. BELL: In the 2002 to 2004 time frame, the  
9 District was supporting its own project, yes.

10 MR. SATO: Do you know whether the District  
11 supports the Coastal Water Project?

12 And that's a question to anybody on the panel.

13 MR. FUERST: The District Board hasn't taken a  
14 position for or against the Coastal Water Project. It  
15 is looking at its own project that could be completed,  
16 constructed and operating prior to the projected date  
17 for the Coastal Water Project.

18 MR. SATO: Let me ask you, Mr. Fuerst, then a  
19 follow-up question. If the 95-10 project were to  
20 proceed, do you know whether the Board has any  
21 particular position as to whether the Coastal Water  
22 Project would then be necessary?

23 MR. FUERST: I don't know what the Board's  
24 understanding is. I know that the direction is to work  
25 on this project, the 95-10 project, the District's

1 95-10 project, and as a possible -- as an alternative  
2 that could be implemented sooner.

3 It's our understanding from discussions with  
4 Cal Am and its consultant that if this project were to  
5 be implemented --

6 MR. SATO: That's the 95-10 project?

7 MR. FUERST: The 95-10 project, correct --  
8 then the components in the Coastal Water Project would  
9 be downsized.

10 MR. SATO: So in terms -- Mr. Fuerst, would  
11 you then characterize 95-10 and the Coastal Water  
12 Project as potentially complementary?

13 MR. FUERST: Potentially, yes.

14 MR. SATO: And is there any sense in which  
15 these two projects would be considered competing  
16 projects?

17 MR. FUERST: Yes, in the sense that our  
18 task -- and again, let me just review that real  
19 quickly. Our -- this is the top water supply  
20 alternative identified by our Board.

21 We were close -- we had an administrative  
22 draft for this project in 2003, 2004. We have been  
23 asked to resurrect the project and move it forward as  
24 quickly as possible.

25 In order to do that, we identified with our



1 consultants a three-step process. One was a 90-day  
2 fatal flaw or constraints analysis. That phase has  
3 been completed. That report will be presented to our  
4 Board this month, August 18th, at their Board meeting.

5           Depending if the Board decides to go forward,  
6 based on -- and again, the constraints analysis looked  
7 at changed circumstances from 2004 to 2008. If the  
8 decision is made to go to the next stage, it would be  
9 to do additional fieldwork and develop the detailed  
10 project description.

11           That detailed project description would then  
12 be used to complete the EIR.

13           And then if that was certified, it would be  
14 constructed and operating. And I forget now what  
15 question I was answering, so if you could ask your  
16 question again.

17           MR. SATO: All right. And let me just ask you  
18 then in terms of what is the anticipated completion  
19 date for the -- assuming you take all of these steps  
20 you just described, what would be the estimated  
21 completion date for the 95-10 project?

22           MR. FUERST: That's not been specifically  
23 determined, but it's on the order -- it's between 2013,  
24 2015. And there is where it starts to compete with the  
25 Coastal Water Project.

1           At that point, a determination would be made,  
2 is -- can it be done sooner, and is there sufficient  
3 yield. As Mr. Bell indicated, it is unlikely, if it's  
4 implemented quickly, to be the full 8400 we would have  
5 liked.

6           But the question will become more of an  
7 economical one: Are there economies of scale  
8 associated with the Coastal Water Project, or as an  
9 alternative to that the water from Monterey County,  
10 whatever it is, such that would preclude going forward  
11 with the 95-10 project.

12           But without certainty knowing that any of  
13 those projects are going forward, our Board has  
14 directed us to develop a fall-back plan, the 95-10  
15 plan, which consists of not just this desal -- what was  
16 referred to as the District's 95-10 project in the Sand  
17 City/Fort Ord area. It also would include the  
18 District's Aquifer Storage and Recovery Project which  
19 we're just completing Phase I of and just embarking on  
20 Phase 2 of.

21           MR. SATO: Now, if the 95-10 project could --  
22 strike that.

23           Is it your testimony that the 95-10 project  
24 could actually start providing water in the years  
25 between 2013 and 2015?

1           MR. FUERST: I think that's possible. I think  
2 that's a very aggressive schedule.

3           MR. SATO: And so if the 95-10 project  
4 possibly could provide water during that time period,  
5 that would allow Cal Am to comply with portions of the  
6 proposed cease and desist order; is that correct?

7           MR. FUERST: If the project could move forward  
8 at that schedule, yes.

9           MR. SATO: And it is correct, isn't it,  
10 Mr. Fuerst, that none of these projects, either the  
11 Coastal Water Project or the 95-10 project, could go  
12 forward?

13           MR. FUERST: Could you repeat that?

14           MR. SATO: I'm sorry. Isn't it correct that  
15 the 95-10 project could not proceed at some point in  
16 time?

17           MR. FUERST: It's possible that -- you're  
18 asking is it possible that it would -- could not  
19 proceed?

20           MR. SATO: Correct.

21           MR. FUERST: That's possible.

22           MR. SATO: And how about the Coastal Water  
23 Project? Is it possible also that it may not proceed?

24           MR. FUERST: That's a possibility also.

25           MR. SATO: I have a couple questions now for

1 Mr. Oliver.

2 Now you identified Cal Am has allocated  
3 3,504 acre feet per year of production rights from the  
4 coastal subarea and 345 acre feet per year of  
5 production rights from the Laguna Seca subarea. Is  
6 that correct?

7 MR. OLIVER: Yes, that's correct. That's the  
8 initial operating yield that was supplied by the  
9 Watermaster decision.

10 MR. SATO: Okay. Is there any time period  
11 associated with providing those type of production  
12 rights?

13 MR. OLIVER: Yes.

14 MR. SATO: What was that time period?

15 MR. OLIVER: That's through the initial period  
16 in -- of the post decision starting for the water years  
17 2006, 2007, and 2008.

18 MR. SATO: Now, let me ask you a few questions  
19 about the ASR water. The ASR water -- the ASR Phase I  
20 project is supposed to yield 920 acre feet per annum;  
21 is that correct?

22 MR. OLIVER: Yes.

23 MR. SATO: And that's about ten percent of the  
24 amount that was determined to be unlawfully deferred  
25 from the Carmel River?

1           MR. OLIVER: Yes, that's an average value and  
2 would be just below ten percent.

3           MR. SATO: Now if the ASR water is pumped  
4 under a water right permit held by Cal Am and the  
5 Monterey Peninsula Water Management District, does Cal  
6 Am get to divert all of the ASR water diverted to the  
7 Seaside Basin?

8           MR. OLIVER: Is your question does Cal Am get  
9 to divert all the water that is under that joint  
10 right --

11          MR. SATO: Yes.

12          MR. OLIVER: -- to Seaside Basin?

13          MR. SATO: Yes.

14          MR. OLIVER: Up to the point that it's  
15 allowable by conditions that are added to that water  
16 rights permit.

17          MR. SATO: And do you know just off the top of  
18 your head what those conditions are?

19          MR. OLIVER: There are quite a few. But I'm  
20 speaking mainly to the minimum flow requirements in the  
21 Carmel River. Diversions can only happen after those  
22 minimum flow requirements have been met.

23          MR. SATO: Now, with regard to the District's  
24 right to store water in the groundwater basin, is the  
25 District allowing Cal Am to utilize its storage space

1 if the Watermaster restricts Cal Am's ability to store  
2 water in the future?

3 MR. OLIVER: That question perhaps hasn't been  
4 completely explored by the Watermaster yet, but the  
5 District does have the ability to store water in the  
6 Seaside Groundwater Basin as does Cal Am, the producer  
7 of the Seaside Groundwater Basin. If your question is  
8 would the District use its storage right in lieu of Cal  
9 Am's storage right, I don't know the answer to that.

10 MR. SATO: All right. Moving to Ms. Stern.  
11 Do you have your testimony in front of you?

12 MS. STERN: Yes, I do.

13 MR. SATO: Direct your attention to page 3 of  
14 your testimony.

15 MS. STERN: I have it.

16 MR. SATO: I didn't know whether the -- it's  
17 going to be displayed on the screen?

18 CHIEF LINDSAY: HS which?

19 MR. SATO: HS-1, page 3. Sorry, lines 24  
20 through 26.

21 Directing your attention to lines 24 through  
22 26, you see since 1995?

23 MS. STERN: Yes.

24 MR. SATO: And:

25 . . . a primary consideration has been

1           the ability of an alternative project --

2           And I'll just edit this -- to result in full  
3 compliance with SWRCB Order 95-10. Do you see that?

4           MS. STERN: Yes.

5           MR. SATO: What do you mean by resulting in  
6 full compliance with that order?

7           MS. STERN: What I mean by that is that the  
8 water yield that is desired from these projects meet  
9 the estimated 10,730 acre feet. However, that number  
10 was based on an old average. So it's in essence the  
11 3,376 that are recognized as a lawful right, whatever  
12 the need is above and beyond that to meet the goal,  
13 whether it's existing community needs or future  
14 communities needs, the quantity of water that should  
15 come from a project is consistent with the order.

16           MR. SATO: So you're basing -- you're looking  
17 at the order's requirement that diversions above 3,376  
18 are not authorized for Cal Am; is that correct?

19           MS. STERN: Correct.

20           MR. SATO: Now you also talk about the  
21 Monterey Regional Water Supply Program. Can you tell  
22 me what the current status is of that program?

23           MS. STERN: I think I would like to defer to  
24 Mr. Fuerst as he has been involved in the various  
25 meetings associated with that.

1           MR. SATO: All right. Same question to  
2 Mr. Fuerst.

3           MR. FUERST: Is it referenced in Henrietta's  
4 testimony?

5           MR. SATO: I thought it was, but I'll throw  
6 the question open to the panel, whoever can tell me.  
7 Can you tell me what the current status is of the  
8 Monterey Regional Water Supply Program?

9           MS. STERN: Do you mean -- I think your  
10 terminology is throwing us off. Is that the REPOG?

11          MR. SATO: Yes.

12          MS. STERN: That is now recently renamed to  
13 the words you just used.

14          MR. SATO: Yes, the REPOG program that has  
15 been -- I thought it was now going by the name Monterey  
16 Regional Water Supply Program.

17          MR. FUERST: No. Just for the record, the  
18 process, the stakeholder process that was originally  
19 initiated and sponsored by the Division of Ratepayer  
20 Advocates of the California Public Utilities Commission  
21 which was for the first 14 meetings -- it's in its 16th  
22 meeting, monthly meeting -- the first 14 meetings, it  
23 was referred to as REPOG and came up with -- developed  
24 through those first 13, 14 meetings, a regional water  
25 supply project that would be an alternative to Cal Am's



1 proposed Coastal Water Project at the Moss Landing  
2 site, or there is now a second variation of that, a  
3 Coastal Water Project at the north Marina site.

4 That now goes under the name of Water For  
5 Monterey County. And it's -- again, I would refer to  
6 it as a regional water supply plan. So with that,  
7 what's your question?

8 MR. SATO: I just wanted to know what the  
9 current status is.

10 CO-HEARING OFFICER WOLFF: I'll suggest that  
11 we call it REPOG, and that will be good enough. As  
12 long as people understand the effort we're referring  
13 to. The old name, REPOG, also known by the name Mr.  
14 Fuerst has referred to.

15 MS. STERN: Right. And again, as I indicated,  
16 there was a meeting of the REPOG yesterday in the  
17 morning. And at that time, there was a status report  
18 from the environmental consultant for the PUC on the  
19 status of the EIR for the Coastal Water Project.

20 There also was a presentation on the Next  
21 Steps that REPOG will be taking which is to develop a  
22 strategic implementation plan which would start to look  
23 at the nonengineering aspects of moving the proposed  
24 regional plan forward in terms of who would pay, who  
25 would own, who would operate that collection of

1 projects.

2           And there's an -- there are monthly meetings  
3 the first Wednesday of every month scheduled. But they  
4 are looking for funding for that process to continue,  
5 and Cal Am has committed, and I think Monterey  
6 County -- excuse me -- Marina Coast Water District has  
7 committed. But that has not been finalized.

8           MR. SATO: Now with regard to the REPOG  
9 project, Ms. Stern has said that the concept continues  
10 to evolve. Can anyone tell me when the concept is  
11 going to stop evolving? Do you have an understanding  
12 of when the process may stop evolving?

13           MR. FUERST: I think it will always be a work  
14 in progress. But they are under certain deadlines, and  
15 they had to submit by June 1st of this year a project  
16 description which the REPOG did to the environmental  
17 consultant for the EIR. And that is being looked at.

18           But, as you noted, they are making refinements  
19 to that project description that was submitted in June.  
20 So there will be continual adjustments, refinements to  
21 that. And I can't tell you if those will ever cease.

22           And again, it's a moving target, but the --  
23 what we heard yesterday at the REPOG meeting was that  
24 the schedule is still to have a draft EIR on the  
25 Coastal Water Project by the end of 2008 or early 2009,

1 and at that point it would end.

2 MR. SATO: So it's your testimony it's your  
3 understanding that at least by the end of -- by 2009,  
4 that the project would have been defined for the  
5 purposes of public review; is that correct?

6 MR. FUERST: The REPOG, regional project,  
7 would be defined for the purpose of CEQA analysis, yes,  
8 by that time.

9 MR. SATO: Mr. Fuerst, do you have any  
10 understanding of what the outside date might be for  
11 when that process would be complete? You talked about,  
12 you know, the end of 2008, early 2009. Is there any  
13 more specificity in -- placed on the end date?

14 MR. FUERST: When you refer to that process,  
15 is that the CEQA process?

16 MR. SATO: Correct. You were the one who  
17 testified that you thought that it would be achieved,  
18 you know, either the end of 2008 or early 2009. I'm  
19 just asking you for that process that you just  
20 described. Do you have a better date in mind?

21 MR. FUERST: No, I was referring to the CEQA  
22 environmental review process for Cal Am's proposed  
23 Coastal Water Project. And that's -- it's my  
24 understanding that the draft EIR would be completed by  
25 the end of 2008, early 2009, and then they would look

1 to have that considered and certified by the Lead  
2 Agency which in this case is the California Public  
3 Utilities Commission. And again, that would be in the  
4 first half of 2009. That is the proposed schedule.

5 MR. SATO: All right. So when you were  
6 talking about early 2009, you -- that -- your testimony  
7 would be you estimate somewhere in the first half of  
8 2009; is that correct?

9 MR. FUERST: Yes. But again, there are two  
10 phases. You have a draft EIR, and then it goes out for  
11 comment. You respond to the comments. You have a  
12 final EIR. And it's the final EIR that would be  
13 considered and certified.

14 So that's why you would go from the beginning  
15 of 2009 to a certified -- a final certified document,  
16 you know, sometime in the middle of 2009 as I  
17 understand the process.

18 MR. SATO: Thank you.

19 Now Ms. Stern, you were being asked some  
20 questions about the Coastal Water Project before. Do  
21 you have an expectation as to when the Coastal Water  
22 Project will be implemented?

23 MS. STERN: My understanding, based on the  
24 schedule that the Cal Am representatives have provided  
25 to our agency -- and again, as Darby mentioned,

1 everything keys off the EIR process.

2 As noted in my testimony, I don't believe it  
3 will occur until 2016 at the earliest. One reason for  
4 that is that the Cal Am vice president when he made a  
5 presentation to our Board indicated an implementation  
6 year of 2015. That was based on completion of the  
7 draft EIR in July of 2008.

8 Well, that was last month. That hasn't  
9 happened. You just heard Mr. Fuerst note that the  
10 draft EIR likely will not be completed until early  
11 2009. Thus, the schedule gets shifted back.

12 It's also my experience that permit processes  
13 and implementation water supply projects tend to take  
14 longer than expected rather than sooner than expected.

15 MR. SATO: Let me direct your attention now to  
16 page 8 of your testimony, paragraph 16.

17 MS. STERN: I see it.

18 MR. SATO: All right. And you see where  
19 you're talking about how there was an estimated  
20 certification of a final EIR by the CPUC in February  
21 2006 and the completion of project construction by fall  
22 2008?

23 MS. STERN: I see that.

24 MR. SATO: When you talk about completion of  
25 project construction, what did you mean there?

1 MS. STERN: Just what those words state, that  
2 the actual, physical construction of the project is  
3 completed and it's ready to supply water.

4 MR. SATO: Okay. So at that point in time,  
5 fall 2008, it was anticipated that the project actually  
6 would supply water?

7 MS. STERN: Well, you need to read the actual  
8 text, the first line of paragraph 16, line 5. That was  
9 estimates that were made in 2004. They believed the  
10 project would be ready to supply water in fall -- well,  
11 completed construction in fall of 2008. Often there's  
12 testing and those types of things.

13 The point of that is that things take longer  
14 and delays occur. In 2004, they thought they'd be done  
15 with construction in the fall of 2008; and that was  
16 based on the assumption of a final EIR being completed  
17 in February 2006.

18 At this point in time, we don't have a draft  
19 EIR yet. And this goes just to my basic point of my  
20 testimony, that water supply projects take much longer  
21 than originally anticipated for a variety of reasons.

22 MR. SATO: Right. And you've picked up  
23 exactly the kinds of questions I'm going to ask you  
24 about this paragraph.

25 So it seems initially that between the

1 final -- the certification of a final EIR and the  
2 completion of a project's construction, it was about a  
3 two-and-a-half-year difference. Is that what your  
4 testimony states?

5 MS. STERN: Yes. Again, these were estimates  
6 that were provided to us by the PUC.

7 MR. SATO: Right. Now, as we go through your  
8 testimony, paragraph 16, now you're talking about the  
9 certification of the final Environmental Impact Report  
10 is not likely to occur until late 2009. Do you see  
11 that in your testimony?

12 MS. STERN: Yes, I do. I believe that's on  
13 line 11.

14 MR. SATO: And now prior to completion is not  
15 expected until mid 2015; is that correct?

16 MS. STERN: Correct.

17 MR. SATO: Okay. So now we have what appears  
18 to be about a five-and-a-half to six-year difference  
19 between the certification of the EIR and the completion  
20 of the project; is that correct?

21 MS. STERN: I don't think so. Because I'm  
22 referencing the draft EIR completion in mid July of  
23 2008 as opposed to the final certification, which takes  
24 many more months.

25 MR. SATO: I'm sorry. It says the

1 certification of the final EIR is not likely to occur  
2 until late 2009.

3 MS. STERN: I see that.

4 MR. SATO: So it seems to me that your  
5 testimony is that there is a delay -- or delay -- is  
6 that -- strike that.

7 It seems to me that your testimony is saying  
8 that there is now a time period of about five and a  
9 half to six years between certification of a final EIR  
10 and the completion of the project; is that correct?

11 MS. STERN: Yes.

12 MR. SATO: So tell me what accounts for the  
13 difference between your projection that it will take  
14 five and a half to six years between certification of  
15 an EIR and project completion when earlier in this  
16 paragraph you said it would be about two and a half  
17 years?

18 MS. STERN: First of all, it's not my  
19 projections. What I'm reporting here in this paragraph  
20 16 are estimates that were provided to us as part of  
21 our matrix of water supply alternatives where we went  
22 to the various project proponents and asked them for a  
23 series of information on a variety of topics, one of  
24 those topics being time line key milestones. So for  
25 example, the lines 5, 6, and 7 were estimates provided



1 to us.

2 MR. SATO: Then --

3 MS. STERN: And also, that is the same case  
4 for the lines 10, 11, and 12. These were estimates  
5 provided to us by Cal Am or the PUC.

6 So I cannot answer the question directly  
7 because I did not develop these estimates. I'm  
8 reporting these estimates. But they are consistent  
9 with my understanding of the process, and especially  
10 the permitting process.

11 Once you have a certified EIR, there are still  
12 state and federal -- many state and federal permitting  
13 processes that take a long time. There's financing  
14 issues. There's final design engineering issues.  
15 There's actually physically constructing the project,  
16 which may take several years. And then there's the  
17 testing and actually implementation phase of fully  
18 operating a project so it's consistently generating  
19 water.

20 So I'm not an expert in each one of those  
21 steps. Some of the other colleagues I have with me can  
22 address engineering and those issues.

23 But I would imagine it's just a more realistic  
24 time frame that's offered in lines 10, 11, and 12 as  
25 compared to lines 5, 6, and 7 based on more detailed

1 assessment of each step that's needed to truly bring a  
2 water supply project online.

3 MR. SATO: All right. And then based upon  
4 your understanding of the process, you believe that  
5 it's a reasonable estimate that it would take five and  
6 a half to six years between certification of a final  
7 EIR for the Coastal Water Project to actual project  
8 completion in 2015?

9 MS. STERN: That seems reasonable based on my  
10 experience with other projects that I've worked on.

11 MR. SATO: And do you have an estimate --  
12 that's one estimate. I mean, are there other estimates  
13 that you would consider to be reasonable in terms of a  
14 time period between the final EIR being adopted and the  
15 project completion?

16 MS. STERN: This is the only written estimate  
17 I'm aware of. One could make assertions that it could  
18 be longer if there is any litigation involved which  
19 could -- you know, for example, if there was a  
20 challenge to the certified EIR, that could very much  
21 delay a process.

22 If there were challenges or unexpected  
23 archaeological resources or endangered species issues  
24 that may come into play as they start construction. If  
25 human remains or whatever are found, that can delay a

1 project.

2           So I think this would be the more -- the  
3 estimates in my testimony here are probably more on the  
4 optimistic end of the spectrum where they could  
5 actually be longer if you take a pessimistic view of  
6 some of these things that might happen.

7           MR. SATO: Okay. I'm going to ask you about  
8 your optimism view.

9           Is it also possible that the time period  
10 between the final EIR certification and project  
11 completion could be shorter than five and a half to six  
12 years?

13           MS. STERN: When you say the words "is it  
14 possible," I assume perhaps possible. But not  
15 probable.

16           MR. SATO: Okay. Well --

17           MS. STERN: My experience is that the permit  
18 process takes a long time. We had to work six months  
19 just to get a permit to do two test wells, for example,  
20 with six different agencies.

21           Often tasks that one might think would be  
22 simple, easily achievable tasks end up being very  
23 difficult and quite a regulatory process to even take  
24 one simple step.

25           So I think it would be unlikely that it would

1 be faster, but I'm certainly open to the possibility  
2 that somehow streamlining might occur. But I can't  
3 think of a way that that definitively would happen.

4 MR. SATO: Thank you.

5 Now in paragraph 17, you I guess based your  
6 review period based upon experience that you had with  
7 other water projects; is that correct?

8 MS. STERN: Yes.

9 MR. SATO: Now the water projects that you  
10 identify in that paragraph, do you know whether there  
11 was any particular urgency to get those projects done?

12 MS. STERN: Can you clarify what you mean by  
13 urgency?

14 MR. SATO: Any type of court order requiring  
15 people to implement these projects, any kind of  
16 administrative order requiring something to do with  
17 these projects?

18 MS. STERN: For the first project, the New Los  
19 Padres project which began in 1982, I don't believe  
20 there was a court order or administrative type of  
21 thing.

22 There was a very severe drought in 1976-1977.  
23 I think that motivated the community that we needed a  
24 more reliable water supply than we had.

25 The second item there -- I'm looking at the

1 bottom of page 8, the Carmel River dam and reservoir  
2 project. That was Cal Am's version of the New Los  
3 Padres project. And that was, I believe, a sense of  
4 urgency about that because that came on the tails of  
5 Order 95-10 as well as the decision, was it 1632, that  
6 the State Board approved the water rights permit for a  
7 dam on the Carmel River. That was viewed at that time  
8 as a means to fully comply with Order 95-10, implement  
9 the permit for the dam given to our agency by the State  
10 Board.

11           And my understanding is the Coastal Water  
12 Project, once the dam was determined as not really  
13 being viable for a variety of regulatory and  
14 environmental reasons, that the Coastal Water Project  
15 represents a sense of urgency to comply with Order  
16 95-10.

17           MR. FUERST: And I would add that the first  
18 project that Henrietta refers to, the New Los Padres  
19 project shown on line 22, the voters voted on that in  
20 November of 1995. That was just six months or so after  
21 the issuance of Order 95-10. So that was known at that  
22 time of the vote.

23           MS. STERN: And the voters did reject funding  
24 of that project and it did not go forward.

25           MR. SATO: Turning your attention now to

1 paragraph 21 of your testimony on page 10.

2 MS. STERN: I have that.

3 MR. SATO: You have that in front of you?

4 MS. STERN: Yes.

5 MR. SATO: Couple quick questions on this.

6 Here you targeted for your discussion the year 2015.

7 Do you see that?

8 MS. STERN: Yes.

9 MR. SATO: And that is because the draft CDO  
10 has a target date of 2015 in it?

11 MS. STERN: Yes.

12 MR. SATO: And if the target date in the CDO  
13 were let's say delayed by 2016, would your testimony be  
14 the same?

15 MS. STERN: It might be different. Because  
16 there are several water supply projects, based on the  
17 information I'm aware of at this time, that could  
18 potentially come online in 2016.

19 MR. SATO: How about if the CDO had the target  
20 that you had in mind to 2017? Would that also change  
21 your testimony?

22 In other words, would the CDO target that you  
23 had in mind when you made testimony in paragraph 21, if  
24 that CDO target were 2017 instead of 2015, would that  
25 change your testimony?

1 MS. STERN: Only as it relates to that last  
2 major increment and would there be a water supply  
3 project available to meet that. But as you know, the  
4 CDO isn't just 2015. It has a variety of series of  
5 cutbacks earlier than that.

6 So I think my major point is that the cutbacks  
7 should be in synch with available water supply  
8 projects. And my testimony does include some smaller  
9 water supply projects that could be coming online  
10 sooner.

11 So to answer your question, some of my  
12 testimony would remain exactly the same as written, and  
13 some might be amended if the dates changed.

14 MR. SATO: Turning your attention now to page  
15 12, paragraph 32.

16 MS. STERN: I see it.

17 MR. SATO: What is the purpose of your  
18 observation in paragraph 32 that the desalination  
19 project proponents have not carefully considered NEPA  
20 requirements?

21 MS. STERN: The NEPA, N-E-P-A. The point of  
22 that is that much of the time line information that's  
23 been presented and provided to us by the project  
24 proponents has focused to CEQA process, where my  
25 experience in doing -- working in the NEPA, the federal

1 National Environmental Policy Act, process can often  
2 add time to the environmental review of a project.

3 NEPA has differences from CEQA in several  
4 ways. And some of those federal agencies have specific  
5 regulatory processes they have to follow to comply with  
6 NEPA that add time to the overall project approval and  
7 obtaining all the permits one needs to move forward and  
8 have an accurate estimate of what the project will cost  
9 and what your mitigations might be.

10 MR. SATO: I believe there was testimony from  
11 the District earlier that the District actually had a  
12 desalination project. Is that correct?

13 MS. STERN: We had proposed one. We did not  
14 physically have a project.

15 MR. SATO: You proposed one.

16 MS. STERN: Yes.

17 MR. SATO: Now does your comment also apply to  
18 the desalination project that the District is working  
19 on?

20 MS. STERN: Well, hopefully, since I'm  
21 involved with that project, we're carefully addressing  
22 NEPA issues as well. But I am concerned that all the  
23 time lines could be longer than expected because the  
24 NEPA process adds so much time, even for a simple  
25 project like our ASR Phase 1. The NEPA compliance



1 aspects added many months to our obtaining permits.

2 MR. SATO: Turning your attention to page 15,  
3 lines 12 through 15. All right. Do you see your  
4 statement on paragraph 41 about any CAW production  
5 cutback?

6 MS. STERN: Mm-hmm.

7 MR. SATO: Okay. The second sentence says:  
8 Specific production cutbacks should be  
9 tied to realistic and achievable water  
10 project yield time lines as well as  
11 reasonable conservation measures.

12 Do you see that?

13 MS. STERN: Yes.

14 MR. SATO: What reasonable conservation  
15 measures were you contemplating in that statement?

16 MS. STERN: I was personally not contemplating  
17 any specific measures. Later on in this same  
18 testimony, I emphasized I was focusing on the water  
19 supply projects and that my colleague, primarily  
20 Stephanie Pintar, addressed conservation measures. So  
21 I don't have direct knowledge of the specific  
22 conservation measures.

23 MR. SATO: Okay. Now, in your recommendations  
24 for an alternative in the CDO, are you considering the  
25 fact that the CDO is attempting to address an

1 underlying illegal diversion of water by Cal Am?

2 MR. LAREDO: Is that a question to this  
3 witness?

4 MR. SATO: Yes.

5 MR. LAREDO: And do you have a reference to  
6 her testimony?

7 MS. STERN: I'm not quite sure where you're --

8 MR. LAREDO: Just a minute.

9 MR. SATO: You're saying:

10 Any CAW production cutback should  
11 consider the combined effect of the CDO  
12 and the Seaside Basin --

13 Then you say:

14 Specific production cutbacks should be  
15 tied to realistic and achievable water  
16 project yield time lines.

17 I mean you're making some recommendations as  
18 to how the CDO should be generally adjusted. And I'm  
19 wondering, in making these recommendations, did you  
20 account for the fact that a portion of the diversion by  
21 Cal Am from the Carmel River is in excess of its  
22 recognized appropriative water right?

23 MS. STERN: In making my statement, I didn't  
24 focus on that issue. I was focused primarily on the  
25 specific quantities of water that would need to be

1 reduced and how -- would there be a water supply  
2 project to make up those quantities. And the various  
3 exhibits supported my contention that these seemed to  
4 be out of synch and provided numerical estimates of --  
5 that there would not be adequate water supply projects  
6 to address the reductions that the CDO as drafted was  
7 asking for.

8 MR. SATO: Now I'm wondering if you could tell  
9 me a little bit more about the adaptive management  
10 techniques that you are recommending in your testimony.  
11 And I'll direct your attention to page 16, section 42.

12 MS. STERN: Do you have a specific question  
13 or --

14 MR. SATO: I just wonder, do you see that  
15 section?

16 MS. STERN: Yes.

17 MR. SATO: This adaptive management technique  
18 you are referring to, is this something that I can look  
19 at in literature as a way of addressing water supply  
20 issues?

21 MS. STERN: I'm not an expert in adaptive  
22 management. I've heard the term used within the  
23 context of situations that are somewhat fluid,  
24 changing, rather than a hard-set, we're going to do A,  
25 B, C, and D no matter what the actual conditions are.

1           So an adaptive management, as I understand the  
2 term, means that you look at what is the real-life  
3 situation and adapt, keeping your goal in mind, but  
4 adapt ways that make the most sense, given the most  
5 up-to-date data and abilities, opportunities, and  
6 constraints that are available.

7           Thus, you'll see in that paragraph I'm  
8 recommending as opposed to a hard-wired schedule of  
9 this particular cutback is going to happen at this  
10 particular date, no matter what, that cutbacks be tied  
11 to milestones and projects or other efforts that come  
12 forward that are -- that result in achieving the goal.

13           MR. SATO: And are you familiar with the  
14 requirements of Order 95-10?

15           MS. STERN: In general.

16           MR. SATO: In general then, how would your  
17 proposed adaptive management technique differ from the  
18 requirements under 95-10 that Cal Am is already subject  
19 to?

20           MS. STERN: Can you give me an example?  
21 That's awfully broad. Are you talking about mitigation  
22 measures or -- when you say requirements of Order  
23 95-10, can you explain what you mean there?

24           MR. SATO: Well, in terms of the measures that  
25 Cal Am is required to undertake in that order, they're

1 designed to address the diversion of water from the  
2 Carmel River Basin.

3 And I'm wondering how your adaptive management  
4 techniques differ in terms of the ultimate result in  
5 getting Cal Am to reduce its diversions from the Carmel  
6 River Basin.

7 MS. STERN: I'm struggling with your question.  
8 My understanding of Order 95-10 is that it identified  
9 what Cal Am's recognized rights were and what they  
10 weren't and ordered a cutback, an interim cutback until  
11 full compliance or that diversions were fully under  
12 color of right.

13 But where I'm struggling with it, I don't see  
14 how that order connects to the adaptive management that  
15 I described in paragraph 42 where you have a specific  
16 schedule in the draft CDO, and I'm recommending ways to  
17 alter that schedule to be in synch with achievable  
18 water supply projects or other actions. But I'm  
19 confused still by your question.

20 MR. SATO: All right. In terms of the  
21 adaptive management technique that you're proposing, is  
22 it just to deal with the availability of new water  
23 supply projects, or would it also include conservation  
24 measures?

25 MS. STERN: The paragraph that I presented is

1 focused on water supply projects. And it -- yes. And  
2 it does note that there could be other measures.

3 For example, in the table, Exhibit 14 I think  
4 it is, has a -- the final paragraph on the right  
5 describes that water supplies need to be made available  
6 either through water supply projects or some other  
7 measures and identify how much water is available  
8 through water supply projects and how much over that  
9 would have to be through some other means.

10 And the key question there is are those other  
11 means reasonable and achievable? And I don't have the  
12 expertise to address that question on the conservation.

13 But in general, the philosophy is whatever is  
14 adopted should be reasonable, achievable, and of course  
15 not jeopardize public health and safety.

16 MR. SATO: All right. And just to that, when  
17 you say jeopardize public health and safety, are you  
18 aware of what -- do you have a particular standard in  
19 mind when you talk about public health and safety?

20 MS. STERN: No. I don't have that specific  
21 expertise.

22 MR. SATO: With regard to the adaptive  
23 management techniques, you don't have any specific  
24 language to recommend to this Board about specific  
25 language they can adopt in lieu of the proposed cease

1 and desist order; is that correct?

2 MS. STERN: Correct. The text on line 7  
3 through 10 gives some general type of language one  
4 might use, but I would not consider that as specific  
5 text that would be used in a formal order.

6 MR. SATO: All right. And then directing your  
7 attention now to the next paragraph, paragraph 43, you  
8 talk about your feeling that the community must believe  
9 the process is fair.

10 And I take it that -- I mean, is it your  
11 testimony that you believe that the rationale for the  
12 draft cease and desist order is not reasonable?

13 MS. STERN: That's not exactly what this says.  
14 I'll just read the paragraph:

15 The community must believe the process  
16 is fair and the rationale for an  
17 ordinance or other directive is  
18 reasonable, even though they may not  
19 agree with it. Otherwise, it is a  
20 frustrating, expensive battle that is  
21 harmful to the agency's credibility to  
22 obtain compliance by the affected  
23 public.

24 So that paragraph was written in the context  
25 of my role. Often as a regulator and our Board passing

1 ordinances that people may be very upset about, my job  
2 is to explain to people why there is a rationale and  
3 why it make sense, even though they may be irritated  
4 about it.

5           So, the point of this paragraph is: Whatever  
6 you may do with the CDO, it needs to be perceived as  
7 reasonable and fair or people are just going to rebel.  
8 They are just not going to comply, and it would be a  
9 tremendous time of agency effort, money, to try to  
10 force something if there is a perception by the  
11 community that it doesn't make sense.

12           For example, 20 percent rationing in the  
13 middle of a very wet year when there's flooding on the  
14 Carmel River and people have to be conserving  
15 20 percent in their homes will not make sense to people  
16 and will be very difficult to explain why this is fair  
17 and reasonable.

18           It's that type of thing I'm referring to.

19           MR. SATO: Okay. So I just want to try to  
20 dissect your statement in paragraph 43 with the draft  
21 CDO that's currently before us.

22           So your statement the community must believe a  
23 process is fair: Do you have any belief that this  
24 process is not fair?

25           MR. LAREDO: I would object to this line of



1 questioning. This really goes beyond the expertise of  
2 this witness. She's not to pass judgment as to whether  
3 or not the CDO is fair or not.

4 MR. SATO: I think it's an appropriate line of  
5 questioning. It's her testimony, and I can ask her  
6 what she means by whether she thinks that the process  
7 is fair.

8 CO-HEARING OFFICER WOLFF: Overruled.

9 MS. STERN: I didn't hear you?

10 CO-HEARING OFFICER WOLFF: Overruled.

11 MR. LAREDO: Could the question be reread,  
12 with the microphone?

13 (Record read)

14 MS. STERN: Just for clarification, my  
15 testimony does not state that the process is not fair.  
16 What my testimony states is that if the community  
17 perceives any ordinance or directive is unfair, there's  
18 going to be difficulty.

19 So is your question: Do I believe I would  
20 have difficulty helping explain to the community the  
21 CDO as written?

22 MR. SATO: No. Do you perceive that this  
23 process is fair?

24 MS. STERN: "This" meaning the State Board  
25 hearing process or the CDO?

1 MR. SATO: State Board hearing process.

2 MS. STERN: The hearing process is fair.

3 MR. SATO: All right. Then secondly then, you  
4 talk about the rationale for an ordinance or other  
5 directive is reasonable. So do you believe that the  
6 rationale for the draft CDO is reasonable?

7 MS. STERN: I'm not sure if there is a stated  
8 rationale. What I would focus on is the CDO itself  
9 states there shall be a cutback no matter what. No  
10 matter whether it's a very wet year, whether it's  
11 flooding, that you need to cut back 20 percent,  
12 35 percent, 50 percent, even though it's a wet year and  
13 houses are falling into the river because there is  
14 flooding.

15 That, I do not believe, would be perceived as  
16 reasonable or fair because most people, in my  
17 experience, especially in our community, are very aware  
18 of their surroundings. And if there is a true physical  
19 drought -- or even the condition today. They recognize  
20 there is a need to help address the Carmel River  
21 steelhead and the habitat and that people use water and  
22 it has an impact on the environment. Most people get  
23 that.

24 But to cut people back to drought level type  
25 of rationing when it's raining like crazy, independent

1 of the river flow or the weather or the recovery of  
2 habitat, would be very difficult to explain to people,  
3 and I think there would be a perception that that is  
4 not fair.

5 MR. SATO: In your job with the District, do  
6 you do any type of enforcement work?

7 MS. STERN: Yes. I mean paper enforcement.  
8 I'm not out in the field enforcing people.

9 MR. SATO: And what kind of enforcement work  
10 is it that you do?

11 MS. STERN: Part of the job I'm involved with  
12 our water distribution systems and whether or not  
13 people are compliant with their water distribution  
14 system limits that relates to water production or  
15 connections, those types of things.

16 MR. SATO: And then for the people who exceed  
17 those limits, do you take some type of action against  
18 them?

19 MS. STERN: Our rules and regulations have a  
20 formal series of notifications and action that the  
21 people need to come into compliance.

22 MR. SATO: Then in your role as the enforcer,  
23 you expect people to come into compliance with those  
24 requirements; is that correct?

25 MS. STERN: Yes.

1 CO-HEARING OFFICER WOLFF: Mr. Sato, how are  
2 we on time? How much more?

3 MR. SATO: About half way done.

4 CO-HEARING OFFICER WOLFF: Half way. And the  
5 reporter, do you need a break?

6 (Discussion off the record)

7 CO-HEARING OFFICER WOLFF: Let's take an hour  
8 for lunch. We'll come back at ten of 1:00 and resume  
9 with cross-examination.

10 (Lunch recess)

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1                                   AFTERNOON SESSION

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3                   CO-HEARING OFFICER WOLFF: I'm going to call  
4 the hearing back to order. Please bring all the  
5 witnesses in.

6                   Mr. Sato, are you ready to proceed?

7                   MR. SATO: Yes.

8                   CO-HEARING OFFICER WOLFF: We'll go back on  
9 the record, picking up with the prosecution's  
10 cross-examination of the Water Management District  
11 panel.

12                  MR. SATO: Good afternoon. I still have a few  
13 more questions for Ms. Stern.

14                  Ms. Stern, directing your attention to Exhibit  
15 HS-13.

16                  MS. STERN: I see it.

17                  MR. SATO: I wanted to ask you a couple  
18 questions about this table here. There is a section  
19 here that says Seaside Coastal Reduction Limit. Do you  
20 see that?

21                  MS STERN: Yes.

22                  MR. SATO: And that is for 2008, that has a  
23 number of 3,504, correct?

24                  MS. STERN: Yes.

25                  MR. SATO: Now, does that number include Cal

1 Am's allotment for the Laguna Seca subarea?

2 MS. STERN: I do not believe so. I defer to  
3 Mr. Fuerst who's more knowledgeable about the details  
4 of this particular case.

5 MR. FUERST: No, it does not. As indicated in  
6 the title, it's just for Cal Am's main system. It does  
7 not include delivery of water to their satellite  
8 systems.

9 MR. SATO: Now, maybe you can answer this  
10 question, Mr. Fuerst. With Cal Am's Laguna Seca  
11 allotments, what total amount can Cal Am extract from  
12 the entire Seaside Basin in 2008?

13 MR. FUERST: 3,849 acre feet. That includes  
14 345 acre feet per year for the Laguna Seca subarea.

15 MR. SATO: Okay. Just so you can help me, is  
16 the water that Cal Am can take from the Laguna Seca  
17 allotments, can that be applied to reduce its diversion  
18 from the Carmel River?

19 MR. FUERST: There are -- Cal Am is not  
20 allowed to take water from those subunits to its main  
21 system. There is one interconnection between -- there  
22 are three subsatellite systems, Ryan Ranch, Hidden  
23 Hills and Bishop Unit.

24 There is an existing connection between the  
25 main system and the Hidden Hills, but water has only

1 been used to -- during emergency for the Ryan Ranch,  
2 never the other way.

3           There are no inter-ties at this time between  
4 Cal Am's main system and their Hidden Hills Unit in the  
5 Laguna Seca subarea, nor its Bishop Unit in the Laguna  
6 Seca subarea.

7           MR. SATO: Okay. Now Mr. Fuerst, directing  
8 your attention to your testimony that you submitted for  
9 Phase II, I want you to look at page 6.

10           MR. FUERST: I'm on page 6.

11           MR. SATO: I'm just waiting for the document  
12 to be put on the screen.

13           Yes. In looking at section 12, lines 3  
14 through 12. Now, you testified here that the average  
15 daily use in the Monterey Peninsula area for  
16 residential use is 68 gallons per day.

17           MR. FUERST: Average residential use per  
18 capita per day, correct.

19           MR. SATO: Okay. Now, does that include just  
20 residential use? Or subsumed within that term, is  
21 there irrigation use also?

22           MR. FUERST: No, this is just -- this would be  
23 referred to as residential water -- water use per  
24 capita. So this includes taking what Cal Am has  
25 delivered to the single-family residences and then

1 dividing by the number of residents in those homes.

2 MR. SATO: Oh, okay.

3 MR. FUERST: So it includes -- it does include  
4 lawns associated with the residence, but nothing beyond  
5 that. Lawns or any landscaping, I should say.

6 MR. SATO: And does it also include  
7 multiresidential use?

8 MR. FUERST: No, this calculation is specific  
9 only to Cal Am's single-family residential sector.

10 MR. SATO: All right. So I take it then it  
11 also doesn't include use for commercial?

12 MR. FUERST: No, it does not.

13 MR. SATO: Industrial?

14 MR. FUERST: No.

15 MR. SATO: Golf course?

16 MR. FUERST: No, it would be difficult because  
17 of not having the number of persons associated with  
18 each of those sectors to make the similar calculation.

19 MR. SATO: Now, you testified further in that  
20 section about a 50-gallon per day per person required  
21 in the Monterey Peninsula during the severe 1976-1977  
22 drought period. Do you see that?

23 MR. FUERST: Yes, I do.

24 MR. SATO: Do you have any direct knowledge as  
25 to how the 50-gallon standard was determined?



1           MR. FUERST: I was not employed by the  
2 District at that time. I have seen some after-action  
3 reports from that rationing program; and based on that,  
4 it is my understanding that that was based on Cal Am's  
5 physical ability to supply water.

6           MR. SATO: When you say physical ability to  
7 supply water, can you elaborate?

8           MR. FUERST: Basically, given the number of  
9 wells that they had and the water level in the aquifers  
10 from which those wells extracted from, as well as  
11 surface diversions which were occurring at that time,  
12 this is the most water per person per day that could be  
13 delivered without risking a service interruption.

14          MR. SATO: All right. And once again, that  
15 50-gallon limit that you testified to, that's only for  
16 single residential use?

17          MR. FUERST: I'm not certain, but I believe  
18 so.

19          MR. SATO: Now, sorry to jump around like  
20 this, but could you show the exhibit that was the  
21 exhibit to Mr. Pendergrass' testimony in Phase 2?

22          CHIEF LINDSAY: I'm sorry, which party?

23          MR. SATO: He was with the Sand City, mayor of  
24 Sand City.

25          CHIEF LINDSAY: Okay.

1 MR. SATO: There is an exhibit attached to it.

2 CHIEF LINDSAY: Okay.

3 MR. SATO: That's it.

4 So, Mr. Fuerst, calling your attention to this  
5 exhibit -- I'm sorry, what is the exhibit again, the  
6 number?

7 CHIEF LINDSAY: Sand City 2.

8 MR. SATO: Sand City 2. Do you recall seeing  
9 this exhibit previously?

10 MR. FUERST: Yes.

11 MR. SATO: And I recall that you calculated a  
12 kind of a per capita use for water of 99 gallons per  
13 day per person. Does that sound familiar?

14 MR. FUERST: That would be -- the 99 gallons  
15 or the hundred gallons per person per day would be the,  
16 what's referred to in the State's planning reports as  
17 urban per capita water use. And that refers to the  
18 total production by utility divided by -- which  
19 includes all sectors -- divided by the total  
20 residential population, not including unaccounted-for  
21 water losses.

22 MR. SATO: All right. And when you testified  
23 to that, is -- was it 100 or 99 gallons that you  
24 testified to?

25 MR. FUERST: It's 99 gallons per capita per

1 day.

2 MR. SATO: Okay. That number that you  
3 testified to, is it based upon the information provided  
4 in this table?

5 MR. FUERST: Not exactly. This table is  
6 derived from the information that's in my Exhibit DF-13  
7 that was submitted at the end of the July hearings.  
8 That is the raw data. That's the -- that was the  
9 annual summary of Cal Am's consumption that I used to  
10 make that calculation from which this table is derived.

11 MR. SATO: So this table and your calculation  
12 were both derived from information set forth in DF-13,  
13 correct?

14 MR. FUERST: Yes.

15 MR. SATO: So when I hear you say the urban  
16 per capita water use of 99, that is different than the  
17 68 gallons per day that you testified to in paragraph  
18 12 that we just went over?

19 MR. FUERST: Correct. The 99 refers to urban  
20 water use, urban per capita water use. The 68 refers  
21 to residential water -- per capita water use.

22 MR. SATO: Mr. Fuerst, do you know what Cal  
23 Am's production number was for 2007?

24 MR. FUERST: Production number for customers  
25 in its main system?

1 MR. SATO: Yes.

2 MR. FUERST: Yes, it was 14,068 acre feet.

3 MR. SATO: And do you know whether that was  
4 composed of 3,625 acre feet from the Seaside Basin and  
5 10,443 acre feet from the Carmel River?

6 MR. FUERST: I believe you're referring to one  
7 of my exhibits earlier, so I'll check that.

8 MR. SATO: I think it was DF-3.

9 MR. FUERST: Right. This is DF-3, which is  
10 Cal Am water production by source for customers in its  
11 main system, monthly values from October '96 through  
12 the present, which was May of 2008 at the time. So  
13 your question was?

14 MR. SATO: I just asked you to identify that.  
15 So in terms of the production of 14,068, do you recall  
16 what the demand was?

17 MR. FUERST: The demand for customers is shown  
18 on the overhead, and it was 12,375. That's the metered  
19 consumption value.

20 MR. SATO: And so the difference between  
21 14,068 and 12,375 is 1,693 acre feet, correct?

22 MR. FUERST: Yes.

23 MR. SATO: And is that number the amount of  
24 the unaccountable loss or the 12 percent figure you  
25 testified to in Phase 1 of this proceeding?

1           MR. FUERST: Right. I counted that -- it's  
2 defined as the difference between metered production  
3 and metered consumption.

4           MR. SATO: Okay. Now, do you recall  
5 Mr. Stretars' testimony in Phase 2 of this proceeding  
6 when he talked about calculating a number of 75 gallons  
7 per day per person?

8           MR. FUERST: I recall that he referred to some  
9 research he did that he found that number, yes.

10          MR. SATO: And do you recall whether he used  
11 the -- strike that.

12          Would you agree with the way that Mr. Stretars  
13 calculated his numbers to come up with that amount?

14          MR. RUBIN: I am going to object.

15          MR. SATO: I'll withdraw the question.

16          Do you recall that Mr. Stretars testified that  
17 he had utilized a process for making that calculation?

18          MR. FUERST: Yes. I believe he referred to --  
19 and I'm reviewing his testimony -- he referred to Title  
20 23 of the California Code of Regulations, Section 697.  
21 And that's where he cited that figure of 75 gallons per  
22 person per day was a reasonable allowance for domestic  
23 use that would not jeopardize public health and safety.

24          MR. SATO: And the 75 -- well, the number that  
25 Mr. Stretars used, would you believe that that is more

1 comparable to the 99 gallons per day, the -- excuse me,  
2 the urban per capital water use that you calculated for  
3 comparison purposes?

4 MR. FUERST: I'm not certain. I don't believe  
5 it does. I mean, the Section 697 doesn't derive the  
6 numbers. It just shows the range. It doesn't show  
7 the -- what it is based on.

8 MR. SATO: I'll ask this to anybody on your  
9 panel. There's been some testimony here about level of  
10 water that would jeopardize public health and safety.  
11 Does the District have a calculation as to what a level  
12 of water would be that would not jeopardize public  
13 health and safety?

14 MR. FUERST: No, we do not. And as was  
15 discussed, it may vary depending on the duration of  
16 that reduction. If it was for an indefinite amount of  
17 time, it may be different than, for example, the  
18 50 gallons per person per day that was imposed in 1977  
19 for about 11 months because of that severe two-year  
20 drought. That had a very -- it had a beginning and an  
21 end. It was a finite event.

22 MR. SATO: All right. So just recalling your  
23 testimony about the number that the residential use is  
24 in Monterey Peninsula, that is 68 gallons per day, do  
25 you know whether or not there is a minimum amount of

1 usage that would not jeopardize public health and  
2 safety?

3 MR. FUERST: I'm not certain what that number  
4 is. And we have not made a calculation, and we have  
5 not -- there are no references that we -- I can cite to  
6 give you that number.

7 MR. SATO: So is it your testimony that you  
8 are not aware of any standards by which somebody would  
9 make such a calculation for residential use?

10 MR. FUERST: Well, based on my, you know, the  
11 information I have, compared to statewide averages, the  
12 water users served by Cal Am and the District are well  
13 below statewide average. Whether they could go lower,  
14 I'm not certain.

15 MR. SATO: But in terms of a calculation for  
16 what would affect public health and safety, I want to  
17 know whether there is -- you said there was no  
18 references that you would be able to look at to advise  
19 you as to what that number would be; is that correct?

20 MR. FUERST: Other than the testimony provided  
21 by Mr. Stretars where he, you know, cited Section 697  
22 and also referred to conversations that the Prosecution  
23 Team had had with I believe Monterey County Department  
24 of Health and the State Department of Public Health.  
25 So whatever information they provided, but I don't have

1 that.

2 MR. SATO: All right.

3 CO-HEARING OFFICER BAGGETT: Excuse me.

4 Mr. Jackson?

5 MR. JACKSON: I didn't want to interrupt the  
6 answer. The witness ought to be answering for himself  
7 and not being coached by his attorney.

8 CO-HEARING OFFICER WOLFF: I concur.

9 MR. SATO: And I have the same question for  
10 anybody on the panel.

11 Is anybody on this panel aware of a standard  
12 that one would use to provide a minimum amount of water  
13 to protect public health and safety for residential  
14 use?

15 I think by silence, the answer is no, nobody  
16 has any understanding.

17 Mr. Fuerst, you are aware of Order 95-10,  
18 correct?

19 MR. FUERST: Yes.

20 MR. SATO: And you are aware that Order 95-10  
21 places or makes a finding that diversion from the  
22 Carmel River Basin by Cal American in excess of  
23 3,376 acre feet is done without appropriative rights?

24 MR. FUERST: Correct.

25 MR. SATO: Since Order 95-10 was issued, what



1 kind of planning has the District done to deal with the  
2 contingency of Cal Am being required to reduce its  
3 diversions to the 3,376 acre foot level?

4 MR. FUERST: Well, as discussed in testimony  
5 already presented today, the District was in the  
6 process of developing the Los Padres Dam project at the  
7 time 95-10 was issued. If that project had been  
8 approved by the voters, it would have provided a full  
9 legal supply so Cal Am would have been in compliance.  
10 So that was one proposal.

11 Subsequent to that, the District cooperated --  
12 or actually, the District prepared the environmental  
13 documents for Cal Am's proposed Carmel River dam and  
14 reservoir project.

15 Since then, the District has been within its  
16 own water supply planning effort looking at Aquifer  
17 Storage and Recovery, the seawater desalination  
18 project. Those are all ways of increasing the supply,  
19 so that there would be a replacement supply so that Cal  
20 Am could reduce its diversions from the Carmel River.

21 And at the same time, we have had an extensive  
22 expanded conservation and rationing plan which has both  
23 pricing, policy and outreach components.

24 MR. SATO: Okay. Let's talk about the  
25 conservation plan then. Now you talk about -- could

1 you say it again, what those components were of your  
2 conservation plan?

3 MR. FUERST: The conservation, it's -- the  
4 District adopted its original conservation plan in  
5 1987. In 1997, Cal Am exceeded its -- the limit that  
6 was set in 95-10 for that year.

7 As a result, the District, first Cal Am, then  
8 the District with Cal Am, worked to develop an Expanded  
9 Water Conservation and Standby Rationing Plan. The  
10 first three stages of that plan aimed specifically at  
11 ensuring that Cal Am would stay within the regulatory  
12 limits as we understood them at that time, which at  
13 that time was the 11,285 acre feet per year.

14 MR. SATO: So have you addressed a situation  
15 in any of your planning documents that if Cal Am were  
16 to be required to go to, or limited to 3,376 acre feet  
17 from the Carmel River basin?

18 MR. FUERST: Yes, those would be the water  
19 supply efforts that we just reviewed which would be --  
20 would have been the Los Padres dam and reservoir  
21 project, the ASR project --

22 MR. SATO: I'm sorry. Let me ask it again.

23 In terms of conservation measures, do you have  
24 a conservation measure that specifically is designed to  
25 address the situation of where Cal Am is required to

1 reduce its diversions from the Carmel River Basin to  
2 3,376 acre feet per annum?

3 MR. FUERST: No, we do not.

4 MR. SATO: And do you know why the District  
5 does not have such a contingency plan?

6 MR. FUERST: Our focus has been on maintaining  
7 the demand under the 11,285 acre feet per year, which  
8 the community has done 11 out of the last 12 years and  
9 is on track to do the 12th year, this year. So our  
10 conservation has been directed at that.

11 And then creating savings below that that are  
12 not required but are being -- are occurring. For  
13 example, in this year, Cal Am's production or Cal Am's  
14 diversions from the Carmel River are almost 400 acre  
15 feet under the limit to date.

16 And that's through voluntary conservation,  
17 again as a result of all of the effort in Stages 1, 2,  
18 and 3, Stage 1 being primarily restrictions on  
19 nonessential or waste, wasteful water use; 2 being the  
20 focus on outdoor use through the requirement to have  
21 landscape audits and adhere to those budgets; and then  
22 the third step, which is Stage 3, which would require  
23 significant increases in the higher tiers of Cal Am's  
24 rate structure.

25 MR. SATO: Mr. Fuerst, if the Board were to

1 order a reduction in the amount of water that Cal Am  
2 could divert from the Carmel River Basin, and it  
3 required additional conservation measures to be  
4 employed within the jurisdiction of the District, how  
5 would that -- how would you undertake that process?

6 MR. FUERST: Under the --

7 MR. RUBIN: I'm going to object to the  
8 question. It assumes that the Board has the authority  
9 to take an action that hasn't been established outside  
10 the scope of this proceeding. So it's a hypothetical  
11 that is outside the scope. It presumes -- it's not  
12 relevant, I guess is the question, because it's outside  
13 the scope.

14 CO-HEARING OFFICER WOLFF: Mr. Sato?

15 MR. SATO: Well, it's clearly relevant. I  
16 mean, the issue is -- I mean the testimony that is  
17 presented by the District is that you can't take any  
18 more conservation measures. And I'm interested in  
19 exploring with the District, you know, to what extent  
20 that statement is correct, or whether or not there is  
21 other conservation processes that can occur.

22 But I don't know because I haven't been able  
23 -- I haven't asked the question and gotten the answer  
24 from Mr. Fuerst about what the process would be.

25 MR. RUBIN: Mr. Sato's question asked

1 essentially a hypothetical where the Board issued an  
2 order that extended beyond California American Water to  
3 the District, an order that compelled the District to  
4 implement some sort of conservation measures. And  
5 that's clearly outside the scope of this proceeding.

6 MR. SATO: I can re-ask the question, if -- if  
7 the objection is simply because it sounds like I'm  
8 directing an order towards the District, I can change  
9 the question. But if it is something else, then I need  
10 to know from Mr. Rubin.

11 MR. RUBIN: Well, I stated my objection. It  
12 did go to the scope of the Board's authority.

13 CO-HEARING OFFICER WOLFF: The objection is  
14 sustained. Please rephrase.

15 MR. SATO: All right.

16 So Mr. Fuerst, if Cal Am were to receive an  
17 order from this Board that reduced its diversions from  
18 the Carmel River such that it resulted in a reduction  
19 of water to customers within the District jurisdiction,  
20 what process would the District follow in order to try  
21 to address the reduced supply of water for conservation  
22 purposes?

23 MR. RUBIN: I'm going to object to the  
24 question. Again, this question calls for speculation,  
25 presumes that the District would follow a process. At

1 this point, I don't know -- we don't know what the  
2 District would do, if anything, if this Board -- excuse  
3 me, the State Water Resources Control Board were to  
4 order California American Water to reduce its  
5 diversions.

6 MR. SATO: I think Mr. Fuerst was prepared to  
7 answer my question, so I think he clearly understands  
8 it; and I think it's certainly within the scope of what  
9 he's testified to so far and what all the others have  
10 testified to.

11 MR. RUBIN: The fact that Mr. Fuerst is  
12 prepared to answer the question doesn't mean it's a --  
13 from an evidentiary standpoint it's a valid question.

14 CO-HEARING OFFICER BAGGETT: Yeah, I  
15 understand. If you want to rephrase the question to  
16 focus on a hypothetical, how the District would deal  
17 with, just ask your question. Because I see where you  
18 want to go. But to understand the process -- just  
19 rephrase the question to go more narrowly tailored to  
20 the process. I'll sustain in part. Rephrase.

21 MR. JACKSON: Mr. Baggett, before you do that,  
22 may I be heard?

23 CO-HEARING OFFICER BAGGETT: Sure.

24 MR. JACKSON: We spent at least a day and a  
25 little more time listening to everybody from the

1 Hospitality Association to a bunch of mayors saying  
2 they couldn't possibly do anything. I mean, that  
3 evidence was -- is certainly evidence that you could go  
4 to the regulator, who has been identified as among  
5 others the Monterey Peninsula Water Management  
6 District, and ask them questions in regard to whether  
7 or not --

8 CO-HEARING OFFICER BAGGETT: I'm trying to  
9 allow him to ask the question. I just would like -- it  
10 was a fairly broad hypothetical. If you could make it  
11 narrow and more directly to the point.

12 MR. SATO: All right.

13 CO-HEARING OFFICER BAGGETT: Try again.

14 MR. SATO: Mr. Fuerst, if you -- if the  
15 Monterey Peninsula District were confronted with a  
16 reduction in the supply of water from Cal Am such that  
17 it needed to implement conservation measures in  
18 addition to the ones that have been identified in  
19 existing ordinances, what process would the District  
20 follow in order to address that reduction?

21 MR. RUBIN: Again, I'm going to object on the  
22 same grounds. There's a huge amount of speculation; it  
23 assumes facts that are not in evidence.

24 CO-HEARING OFFICER BAGGETT: Overruled. Just  
25 answer the question. I think it's pretty

1 straightforward.

2 MR. FUERST: Under the rules in existence, the  
3 District would be -- is authorized to go to higher  
4 levels of rationing, mandatory reductions, under two  
5 sets of circumstances.

6 One, we have a set of predetermined objective  
7 water storage standards that we look at to see is there  
8 a physical drought occurring? Do we need to go to  
9 stage 4? Stage 5 would be a 20 percent overall  
10 reduction. Stage 6 is a 35, and Stage 7 is a  
11 50 percent.

12 We also besides that objective standard based  
13 on carryover storage, the amount of usable storage at  
14 the end of the rainy season each year, we do have an  
15 emergency trigger. So if there is something  
16 unforeseen, then there would be the need to achieve a  
17 20 percent or a 35 percent or a 50 percent reduction in  
18 total system demand. This would include both changes  
19 to both Cal Am's diversions from the Carmel River as  
20 well as Cal Am's diversions from the Seaside Coastal  
21 area for the main system.

22 MR. SATO: Has the District ever implemented a  
23 Stage 5 reduction?

24 MR. FUERST: No, it has not. Again, this plan  
25 went into effect in 1999.



1           MR. SATO: And has it ever implemented a Stage  
2 6 reduction?

3           MR. FUERST: No, it has not.

4           MR. SATO: And has it ever implemented a Stage  
5 7 reduction?

6           MR. FUERST: No.

7           MR. SATO: Now, you testified that the Stage 5  
8 reduction requires a 25 percent reduction?

9           MR. FUERST: No, I said 20 percent reduction.  
10 And it would be systemwide. It would apply to both Cal  
11 Am and non-Cal Am if triggered by the storage, the  
12 physical factors.

13           MR. SATO: That is 20 percent of what?

14           MR. FUERST: That's a good question. It's  
15 20 percent of the pre Order 95-10 base. So essentially  
16 it's -- the base in 95-10 for Cal Am was 14,106 acre  
17 feet per year, and the Seaside Coastal base was  
18 2700 acre feet. So the total system base was 2,000 --  
19 excuse me. The total base for both elements of the  
20 system would be 16,806 acre feet. So that's looking at  
21 it from an integrated systems approach.

22           CHIEF COUNSEL TAYLOR: Question for  
23 clarification, please. You've made reference to these  
24 conditions being triggered by amounts of storage. What  
25 storage are you referring to?

1           MR. FUERST: Certainly. The storage refers to  
2 all of the storage available within what we refer to as  
3 the Monterey Peninsula water resource system.

4           And that includes water in the Carmel River,  
5 water in the Carmel Valley alluvial aquifer, which  
6 underlies the river, and water in the coastal subareas,  
7 the Seaside Groundwater Basin. Those interconnect.  
8 They're not connected hydrologically, but they are  
9 connected hydrologically through Cal Am's system.

10           So what we look at at the beginning of May  
11 each year is the total usable water in Cal Am's Los  
12 Padres reservoir, Cal Am's San Clemente reservoir.  
13 That makes up all of the surface water available.

14           And then we look at the amount of total usable  
15 groundwater in the Carmel Valley aquifer and the total  
16 usable groundwater in the Seaside Coastal subarea of  
17 the Seaside Groundwater Basin. And we --

18           MR. SATO: Do you know, Mr. Fuerst, how the  
19 20 percent number was derived?

20           MR. FUERST: When we developed the plan, it  
21 was meant to conform with the standards, the guidelines  
22 for the Urban Water Management Plans that the State was  
23 recommending at that time.

24           MR. SATO: And speaking of the Urban Water  
25 Management Plans, does the District have an Urban Water

1 Management Plan?

2 MR. FUERST: No, we do not. We're not  
3 required to because we do not serve -- we don't serve  
4 3,000 customers, nor do we pump 3,000 acre feet of  
5 water per year. Cal Am does have a series of Urban  
6 Water Management Plans.

7 MR. SATO: Are you familiar with the Cal Am  
8 Urban Water Management Plan?

9 MR. FUERST: I have seen -- I have reviewed  
10 all of their previous Urban Water Management Plans, and  
11 we provided comments in their most recent, on their  
12 draft Urban Water Management Plan for the 2006-2010  
13 period.

14 MR. SATO: And do you know whether any of Cal  
15 Am's Urban Water Management Plans address the issue of  
16 how much water is required per capita per person per  
17 day to protect public health and safety?

18 MR. FUERST: I don't recall.

19 MR. SATO: Mr. Fuerst, if the draft CDO -- or  
20 strike that.

21 If the CDO was adopted as it currently exists  
22 in its draft form, is that a situation that could be  
23 addressed by the District within the structure of its  
24 various stages for water conservation and rationing?

25 MR. FUERST: Yes. The first two, again

1 because -- I just want to clarify that the cease and  
2 desist order goes to reductions in diversions from the  
3 Carmel River. Those make up 70 percent of Cal Am's  
4 supply. There are also going to be reductions -- Cal  
5 Am also gets 30 percent of its supply from the Seaside  
6 Basin. There may be reductions there.

7           So, because of these different bases,  
8 different percent reductions, all of that needs to be  
9 converted into what the actual absolute acre foot  
10 reduction would be. And then compared to the original  
11 base for the plan.

12           And so with that said, the -- I think the  
13 first three reductions could be handled within our  
14 existing Expanded Conservation Standby Rationing Plan.  
15 The last one would require a reduction that goes beyond  
16 Stage 7.

17           MR. SATO: So the last one that you referred  
18 to is the reduction that requires a reduction of  
19 50 percent?

20           MR. FUERST: Right. When that reduction --  
21 when that reduction would be made in for the water year  
22 2015, and that's coupled with the reduction that could  
23 be occurring in the Seaside Basin, that would require  
24 more than a 50 percent system reduction.

25           And remember, there will be continued

1 reductions in Cal Am's ability to produce from Seaside  
2 past 2015, so there could be the need to have a Stage 8  
3 or something beyond that that would accomplish more  
4 than a 50 percent system reduction, if I'm clear.

5 MR. SATO: Yeah, and you just referred to a  
6 Stage 8. I mean, Stage 8 doesn't exist within your  
7 current ordinance; is that correct?

8 MR. FUERST: That's correct. It's just  
9 illustrative.

10 MR. SATO: Do you know whether there's any  
11 discussions within the District about amending the  
12 ordinance to add additional stages to address potential  
13 reductions to Cal Am's ability to divert water from the  
14 Carmel River Basin?

15 MR. FUERST: There are no discussions at this  
16 time that are occurring.

17 MR. SATO: If the District were to try to move  
18 to a modification to the ordinance, how would they go  
19 about doing that?

20 MR. FUERST: And by ordinance, you mean a  
21 modification to our rationing rule?

22 MR. SATO: Correct.

23 MR. FUERST: It would adopt -- it would  
24 propose an ordinance to change the rule. And our  
25 practice is to have a first reading and a second

1 reading. So -- and oftentimes preceded by a conceptual  
2 ordinance that would be reviewed by the Water Demand --  
3 in this case Water Demand Committee of the District  
4 Board. And then there would be two public hearings if  
5 there were to be changes in the rule which need to be  
6 made by ordinance.

7 MR. SATO: And going back to the provision of  
8 the draft CDO that you think would be difficult to  
9 address within the current structure of the ordinance,  
10 the last reduction. If that reduction were delayed for  
11 a period of time, say to 2016, would that be something  
12 that you think that the existing ordinance could  
13 address?

14 MR. FUERST: The ordinance could address it.  
15 Again, it would always at all times take into account  
16 the effect on public health and safety.

17 MR. SATO: I think you testified before that  
18 there is no specific standard established for public  
19 health and safety; is that correct?

20 MR. FUERST: That's correct.

21 MR. SATO: I'm sorry -- if I asked this  
22 question, I apologize. But even though the District  
23 doesn't have to do an Urban Water Management Plan, has  
24 it done any analysis to determine what amount of water  
25 is needed for public health and safety within its

1 jurisdiction? I'll throw this open to the panel.

2 MR. FUERST: No, we have not. We have looked  
3 at, just based on the jurisdictional build-out plans,  
4 what's needed for future needs as to comply with the  
5 general plan. We've also looked at what water is  
6 needed to comply with 95-10 and the Seaside  
7 adjudication.

8 MR. SATO: To comply with Order 95-10, was  
9 that on the assumption that the diversion from the  
10 Carmel River Basin by Cal Am would be 11,000 acre feet  
11 as opposed to 3,367 acre feet?

12 MR. FUERST: No. It was predicated on the  
13 3,376 acre feet per year.

14 MR. SATO: I believe this testimony is from  
15 Ms. Pintar, but if anybody else can answer this  
16 question.

17 I believe, Ms. Pintar, you indicated that in  
18 terms of additional conservation measures that could be  
19 implemented within the District, you targeted outdoor  
20 irrigation as one area for potential reduction; is that  
21 correct?

22 MS. PINTAR: Yes.

23 MR. SATO: Is there currently some kind of  
24 reduction on outdoor irrigation in the District?

25 MS. PINTAR: Yes, there is at this time. As

1 Darby mentioned, our Stage 1 water conservation, as  
2 part of the preparation for Stages 2 and 3, requires  
3 specific water users to preserve -- large residential  
4 users that use an average of 32 units of water per  
5 month, large irrigated areas of three acres or more,  
6 and dedicated landscape irrigation meters to undergo a  
7 landscape water audit and have a budget for their  
8 reasonable water needs.

9           And then during Stages 2 and 3, the water use  
10 must stay within the water budget. Additionally, we  
11 have requirements for new construction that require a  
12 review of landscape plans and accounting for outdoor  
13 water use as part of our large residential new  
14 construction. And also we do require drip irrigation  
15 where appropriate for new construction.

16           MR. SATO: Now, are you currently in a Stage 1  
17 situation in the District?

18           MS. PINTAR: Yes, we are.

19           MR. SATO: Okay. Are you currently in a Stage  
20 2 situation in the district?

21           MS. PINTAR: No, not at this time.

22           MR. SATO: And how is the Stage 2 -- strike  
23 that.

24           Have you ever been in a Stage 2 situation  
25 within the District?



1 MS. PINTAR: Yes, we have.

2 MR. SATO: And how is that triggered?

3 MS. PINTAR: By exceeding targets that are  
4 listed in our regulation 15.

5 MR. SATO: And then is the Stage 2 something  
6 that's basically temporary? In other words, once you  
7 achieve the target set forth, then you can go back to  
8 Stage 1?

9 MS. PINTAR: No, the Stage 2 or Stage 3 when  
10 they are triggered stay in effect into the next water  
11 year. And the customers have to be in compliance with  
12 the year-to-date targets for two months in the  
13 following water year before we revert back.

14 MR. SATO: If people were going to implement  
15 additional outdoor irrigation reduction measures, is  
16 that something that can be done with the existing  
17 ordinance that addresses conservation and rationing?

18 MS. PINTAR: I'm not sure I understand your  
19 question.

20 MR. SATO: In other words, in order to  
21 undertake the additional measures that you've testified  
22 to, can you do that within the existing ordinance that  
23 addresses water rationing and water conservation, or do  
24 you need additional legal authority within the District  
25 to do so?

1 MS. PINTAR: I don't believe I testified to  
2 certain outdoor irrigation programs.

3 MR. SATO: All right. Well, do you think that  
4 outdoor irrigation reduction appears to be the most  
5 valuable water conservation potential on the Monterey  
6 Peninsula?

7 MS. PINTAR: It is certainly one of the most  
8 potential -- the largest potential savings.

9 MR. SATO: And it is also one of the least  
10 regulated uses; is that correct?

11 MS. PINTAR: Yes, I would say so.

12 MR. SATO: So if one were to employ water  
13 conservation related to outdoor irrigation, is that  
14 something that the District can do within its existing  
15 ordinance regulating conservation and rationing, or  
16 does it need additional legal authority?

17 MS. PINTAR: I think that there are existing  
18 programs that can be undertaken with our existing  
19 rules.

20 In addition to our rules, we also have  
21 incentives which I think is the main way that we're  
22 achieving a lot of savings at this time. Those  
23 incentives go to a fairly extensive rebate program that  
24 has been expanded in 2007 to include incentives for  
25 outdoor irrigation.

1           And that -- there are plans currently in the  
2 works to expand that outreach to achieve further  
3 participation.

4           MR. SATO: If the District were required to  
5 prohibit all outdoor irrigation, what stage would that  
6 require?

7           MR. LAREDO: Objection. This hypothetical is  
8 beyond the scope of this proceeding. The question was  
9 if the District were required to prohibit certain  
10 actions, and there is no evidence that this body has  
11 the ability to require the District. There's no  
12 mechanism for that.

13           MR. SATO: I'll withdraw.

14           CO-HEARING OFFICER BAGGETT: Sustained.  
15 Rephrase.

16           MR. SATO: If the water supply to the district  
17 was such that there was a consideration of banning all  
18 outdoor water irrigation, what stage would that be  
19 implemented in under the District's current scheme?

20           MS. PINTAR: Under the existing regulation 15,  
21 that would be considered a Stage 6.

22           However, our Board is considering a second  
23 reading and adoption of an amending ordinance to  
24 regulation 15 that will be considered for adoption next  
25 Monday evening. That would move the consideration of

1 outdoor water use reductions to Stage 5.

2 CHIEF COUNSEL TAYLOR: I'm having difficulty  
3 hearing you. Would you answer that question again,  
4 please?

5 MS. PINTAR: Sure.

6 Currently, our consideration of outdoor  
7 watering restrictions occurs during Stage 6. However,  
8 our Board is considering adoption of an ordinance next  
9 Monday evening that amends the Expanded Conservation  
10 Standby Rationing Plan and moves the consideration of  
11 outdoor watering restrictions to Stage 5.

12 MR. SATO: Is there any --

13 MS. PINTAR: I'm sorry. On the 18th of August  
14 Board meeting.

15 MR. SATO: Now, is there any effort going on  
16 within the District to make outdoor irrigation  
17 reduction a permanent feature within the District?

18 MS. PINTAR: The Water Awareness Committee of  
19 Monterey County, of which both Cal Am and the District  
20 are members, currently have a -- are working on a cash  
21 for grass program which would reduce water use on  
22 outdoor.

23 The District offers some incentives for  
24 commercial users and properties that have had water  
25 permits for outdoor use that permanently abandon that

1 use. And our Water Demand Committee is very interested  
2 in targeting outdoor water use incentives and reducing  
3 irrigation.

4 MR. SATO: And would all of those steps that  
5 you can take through kind of these incentive programs,  
6 have you made an estimate as to how much water can be  
7 saved through those programs?

8 MS. PINTAR: No, we have not.

9 MR. SATO: Have you done an analysis as to  
10 whether or not you could -- strike that.

11 Have you done an analysis as to what --  
12 whether a ban on outdoor water irrigation would result  
13 in any particular level of water savings within the  
14 District?

15 MS. PINTAR: No, because we do not currently  
16 have access to individual customer consumption  
17 information to identify what percentage of water use is  
18 exterior versus interior.

19 MR. SATO: And why don't you have that  
20 information?

21 MS. PINTAR: It is Cal Am information.

22 MR. SATO: And Cal Am won't provide that?  
23 Have you asked Cal Am for that information?

24 MS. PINTAR: Yes, we have.

25 MR. SATO: And Cal Am hasn't provided it to

1 you?

2 MS. PINTAR: We are currently discussing  
3 obtaining that information from Cal Am, though we have  
4 not received it yet.

5 MR. SATO: And what's the problem? I'm sorry;  
6 what is the problem identified by Cal Am in providing  
7 the District with that information?

8 MS. PINTAR: They have customer  
9 confidentiality concerns.

10 MR. SATO: In terms of what about the customer  
11 confidentiality have they told you causes them concern?

12 MR. FUERST: Under their -- through their  
13 regulation 5 of the California Public Utilities  
14 Commission, there are confidentiality concerns. We've  
15 made the request for this customer-specific demand  
16 data, because much of the information we are provided  
17 has been based on average residential use. We don't  
18 have a distribution within a sector, for example.

19 We have made that request. Cal Am has said  
20 they'd be willing to provide that information provided  
21 that they get direction from the California Public  
22 Utilities Commission that it satisfies their concerns  
23 regarding privacy of the information.

24 MR. SATO: And do you know --

25 MR. RUBIN: That's okay. I'm sorry.

1           MR. SATO: And do you know whether Cal Am has  
2 made that request to the CPUC?

3           MR. FUERST: Yes, they have. And it has -- it  
4 is part of their general rate case before the PUC,  
5 which is a separate evidentiary hearing, and it is  
6 scheduled to be heard before the Commission, that  
7 specific issue as part of -- excuse me.

8           Cal Am has five evidentiary hearings going on  
9 this year, and as both -- this will be addressed in  
10 their hearing regarding their special conservation  
11 program request.

12          MR. SATO: And is there other information that  
13 the District would like to get from Cal Am that it has  
14 not been provided because of some issue with approval  
15 from the CPUC related to water use?

16          MR. RUBIN: I'm going to object to the  
17 question on relevance grounds.

18          MR. SATO: Well, I mean, they've testified  
19 that, at least in one aspect, where they would need  
20 information that would be relevant to an evaluation of  
21 water use. They weren't able to get it from Cal Am. I  
22 was wondering if there were other situations in which  
23 that also applies.

24          CO-HEARING OFFICER BAGGETT: Still don't  
25 understand the relevance, whether they can or cannot.

1 You might ask what information they need, but --

2 MR. SATO: I was going in reverse on that just  
3 to find out what they can't get, and then ask them  
4 about why they needed it. But if you want me to ask it  
5 a different way, I'd be happy to.

6 CO-HEARING OFFICER BAGGETT: Yeah, I would  
7 sustain the objection.

8 MR. LAREDO: I'm not certain that the question  
9 is understood at the moment, so could you either repeat  
10 the question or have the reporter read it back?

11 MR. SATO: It was sustained.

12 MR. LAREDO: Okay.

13 MR. SATO: Ms. Pintar, in your testimony you  
14 talk about addressing an extensive database relating to  
15 commercial users. Do you recall that testimony?

16 MS. PINTAR: Can you direct me to the page  
17 please.

18 MR. LAREDO: Page 19, section 49.

19 MS. PINTAR: Yes.

20 MR. SATO: You see the last sentence in that  
21 section where it says:

22 CAW has been requested to provide the  
23 data for two years and has not shared  
24 this data.

25 MS. PINTAR: Yes.



1           MR. SATO: Why has Cal Am not shared this  
2 data?

3           MR. LAREDO: Objection. That would be beyond  
4 the scope of this witness's ability to testify as to  
5 why Cal Am did not do something.

6           MR. SATO: Well, she testified that they  
7 didn't share the data.

8           MR. LAREDO: But she doesn't know why.

9           MR. SATO: Do you know why Cal Am hasn't  
10 shared the data?

11          MS. PINTAR: No, actually.

12          MR. SATO: All right. And were you personally  
13 involved in the request for this data?

14          MS. PINTAR: Yes, I have been.

15          MR. SATO: Okay. And can you tell me again  
16 what the reason was for needing this data from Cal Am?

17          MS. PINTAR: Part of the reason that this  
18 particular data is requested is to test and verify our  
19 expanded conservation plan and our rationing plan  
20 rationing stages.

21          MR. SATO: Were you directly involved in the  
22 request to Cal Am for this data?

23          MS. PINTAR: I believe I just answered that.  
24 Yes, I was.

25          MR. SATO: And Cal Am did not share this data

1 according to your testimony. Did they give you a  
2 reason why they didn't share the data?

3 MS. PINTAR: No.

4 MR. SATO: They just said we're not going to  
5 give you the data?

6 MS. PINTAR: No. I believe that they were  
7 trying to provide the information to us.

8 MR. SATO: Okay. And what's the basis of your  
9 belief?

10 MS. PINTAR: Just discussions with them.

11 MR. SATO: So did they tell you a reason why  
12 they were unable to provide you with the data despite  
13 your request?

14 MS. PINTAR: Not that I recall.

15 MR. SATO: They didn't say they had to get  
16 permission from the CPUC to provide this data?

17 MS. PINTAR: I don't believe that was the  
18 reason for this particular information.

19 MR. SATO: And your testimony is you don't  
20 recall any reason that Cal Am gave you for not  
21 providing --

22 MS. PINTAR: I don't recall a specific reason,  
23 no.

24 MR. SATO: Do you recall a general reason?

25 MS. PINTAR: No.

1           MR. SATO: In section 50, your testimony, you  
2 see that?

3           MS. PINTAR: Yes.

4           MR. SATO: It says:

5           As of July 1st, 2008, CAW has not  
6           provided MPWMD access to the consumption  
7           data.

8           Are these the consumption records that you  
9 testified to previously about asking Cal Am for and  
10 they were trying to get permission from the CPUC?

11          MS. PINTAR: Partially, yes.

12          MR. SATO: Okay. What other records are  
13 covered by this testimony?

14          MS. PINTAR: Actually, there's a request to  
15 obtain full information on individual customer  
16 consumption so that we can look at whether the  
17 rationing plan will work as it's developed. And also  
18 to look at what the water savings are.

19          MR. SATO: Were you directly involved in the  
20 request to Cal Am for these consumption records?

21          MS. PINTAR: Yes.

22          MR. SATO: And did Cal Am provide you with an  
23 explanation as to why they didn't provide access?

24          MS. PINTAR: Because it was part of the -- our  
25 current conservation filing. And their concerns about

1 customer confidentiality that will be addressed by the  
2 PUC.

3 MR. SATO: Turning your attention to paragraph  
4 52 of your testimony, page 20, you talk about current  
5 flow restrictor standards. Do you recall that  
6 testimony?

7 MS. PINTAR: Yes.

8 MR. SATO: Now, you say that this will have  
9 minimal effect on CAW customers because it's set too  
10 high. What do you mean by that?

11 MS. PINTAR: My recollection is that the  
12 standard is a -- the minimum reduction would be a  
13 six-unit-per-month flow rate for flow restrictors. And  
14 for customers that use less than six units per month,  
15 that would have minimal effect on enforcement.

16 CO-HEARING OFFICER BAGGETT: Could we get a  
17 time check? How much longer do you have?

18 MR. SATO: About 15 minutes.

19 CO OFFICER BAGGETT: Try to expedite it,  
20 please.

21 MR. SATO: Ms. Pintar, let me ask you some  
22 more questions about conservation within the District.

23 Assuming that this Board does not adopt the  
24 proposed cease and desist order and Cal Am continues to  
25 be regulated under Order 95-10, how is the District

1 going to address the reduction in water that's  
2 available from -- to Cal Am from the Seaside Basin?

3 MS. PINTAR: I think that the District has a  
4 very active water conservation program, and there are  
5 additional concepts that are being pursued at this time  
6 to help reduce water use.

7 And partly in partnership with Cal Am, we are  
8 a partner in their current conservation filing to  
9 obtain money to do programs such as large landscape  
10 audits and to help with retrofitting and achieve  
11 retrofits in areas that have not particularly had a lot  
12 of attention such as the large landscaping.

13 MR. SATO: So is it your testimony that the  
14 District in partnership with Cal Am has already taken  
15 steps to fully address any reductions from the Seaside  
16 Basin?

17 MS. PINTAR: No.

18 MR. SATO: Okay. What more does the District  
19 need to do or Cal Am need to do in order to address  
20 those reductions from the Seaside Basin?

21 MS. PINTAR: I think in addition to  
22 conservation programs there are also all of the other  
23 projects that have been testified to in terms of water  
24 supply projects.

25 MR. SATO: Just sticking with the conservation

1 measures only, my question is, you know, if this order  
2 was adopted by the State Board, the District still  
3 faces a reduction in available water based upon  
4 restriction on the Seaside Basin allocation; is that  
5 correct?

6 MS. PINTAR: Yes.

7 MR. SATO: So how does the District intend to  
8 deal with that from a conservation or rationing  
9 standpoint?

10 MS. PINTAR: Well --

11 MR. FUERST: I think as part of the special  
12 conservation application that Cal Am has pending before  
13 the PUC, there are elements that are specifically  
14 conservation measures.

15 In addition, the whole price structure is  
16 being increased so that price will be used as a further  
17 incentive to have water conservation savings.

18 And then thirdly in that application or its  
19 companion, which is the general rate case which is more  
20 infrastructure, there is a significant expenditure  
21 recovery cost requested for -- to reduce the amount of  
22 unaccounted-for water losses.

23 So those are three areas in the current  
24 applications pending before the PUC that there are  
25 potentials to save water to address the potential

1 reduction that Cal Am faces in 2009 from the Seaside  
2 Coastal area.

3 MR. SATO: What activities has -- and this is  
4 to anybody on the panel. What activities has the  
5 District undertaken to provide economic incentives for  
6 all consumers to implement desirable water management  
7 practices?

8 MS. PINTAR: I can address that, yes.

9 Actually following 95-10 in 1996, the District  
10 adopted a rebate program that began as a rebate for  
11 voluntary retrofit of ultra-low flush toilets. That  
12 has been expanded several times, most recently last  
13 summer. It includes 11 items including high efficiency  
14 toilets, zero water consumption urinals, low water  
15 dishwashers and two different levels of washing machine  
16 retrofits, instant access hot water systems, smart  
17 irrigation system controller rebates, rain sensors and  
18 soil moisture sensor rebates, and rebates for cisterns.

19 In addition, there have been, the District --  
20 both the District and Cal Am provide a number of  
21 different free water-saving devices to the public,  
22 including shutoff nozzles, hose timers, soils moisture  
23 probes, shower heads, faucet aerators, shower timers,  
24 toilet leak detector tablets.

25 We've also recently in this year kind of

1 renewed an older program that we had where we require  
2 restaurants to serve water only upon request by  
3 revising and reprinting the table tents that are  
4 available and delivered those to all of the local  
5 restaurants and reminded them of that requirement  
6 that's been in place for a number of years.

7 We also have a towel and linen reuse project  
8 that's been undertaken in the past year in partnership  
9 with the Hospitality Association. And as part of that  
10 we provide the free signage to the hospitality  
11 industry.

12 There are also requirements that all  
13 visitor-serving commercial facilities in the District  
14 were required to retrofit to low-flow toilets and  
15 shower heads and faucet aerators as of December of  
16 2000. And there are requirements for signage, and all  
17 of those things were provided to the customers.

18 MR. SATO: And Ms. Pintar, so what would the  
19 District have to undertake to address the duration and  
20 severity of a water supply shortage if Cal Am were  
21 required to reduce its diversions from the Carmel River  
22 Basin pursuant to the draft cease and desist order?

23 MR. FUERST: We would start with our existing  
24 rules and regulations. The specific measures, we would  
25 look at all the Best Management Practices available



1 with respect to urban water use efficiency.

2 And again, I don't think I can underemphasize  
3 the elements or the motivation that price has. Just as  
4 the users in the Monterey Peninsula have very low use  
5 rates, they have very -- water usage rates -- they pay  
6 very high prices for that water.

7 When you -- Stephanie went through the  
8 rebates, but, you know, as I outlined in my testimony  
9 back in June for Phase 1, the rates for the -- it's an  
10 increasing block rate, and each customer has five  
11 blocks.

12 The fourth and fifth blocks are four times the  
13 standard rate, and then eight times the standard rate.  
14 So it's \$26 per 750 gallons at that rate when we are in  
15 Stage 3. So there is a very hefty price for large  
16 water use.

17 MR. SATO: What activities has the District  
18 undertaken to evaluate the potential impacts to  
19 economic development resulting from any reduction in  
20 Cal Am's diversions from the Carmel River Basin?

21 MR. FUERST: We have not undertaken any  
22 specific economic or econometric studies.

23 MR. SATO: Do you know whether anybody has?

24 MR. FUERST: It's my understanding that a  
25 study was presented by the City of Seaside in their

1 testimony during the first part of Phase 2 of this  
2 hearing.

3 MR. SATO: And aside from whatever that study  
4 was, are you aware of any other studies?

5 MR. FUERST: No, I'm not aware of any others.

6 MR. SATO: Same question to everybody on the  
7 panel: Anybody aware of any other studies about the  
8 economic impacts resulting from reductions in Cal Am  
9 diversions from the Carmel River? Nothing from anyone  
10 on the panel, correct?

11 I have no further questions.

12 CO-HEARING OFFICER BAGGETT: Thank you. Any  
13 questions from staff? Ernie? Paul?

14 --o0o--

15 EXAMINATION BY THE HEARING TEAM

16 --o0o--

17 ENGINEERING GEOLOGIST MURPHEY: I have a  
18 question for Mr. Oliver.

19 There's been discussions during this hearing  
20 about how wells in the Carmel River alluvial aquifer  
21 affect the flows in the Carmel River. Do you know, has  
22 there been any pump tests done on those wells where  
23 you'd be able to determine the time when the pump goes  
24 on by the time you see an effect in the river?

25 MR. OLIVER: Yes, the district was involved in

1 several studies that focused just on that topic in the  
2 1980s when the -- what was at that time being called  
3 the four new lower Cal Am wells were just coming  
4 online, located in the lowestmost part of the aquifer  
5 system. And there are several reports that do provide  
6 some documentation with regard to the timing of changes  
7 in river flow versus the timing of when pumping starts.

8 ENGINEERING GEOLOGIST MURPHEY: Could you tell  
9 us just generally what's the time frame when you see  
10 that? Is it minutes, days, months, weeks?

11 MR. OLIVER: It's on the order of within --  
12 and it varies from location to location, but day --  
13 within a day to a day as opposed to within minutes.

14 ENGINEERING GEOLOGIST MURPHEY: Okay. Thanks.  
15 That's all I have.

16 CHIEF COUNSEL TAYLOR: I have a few brief  
17 questions, first for Ms. Pintar. On page 20, paragraph  
18 52, lines 3 through 5, you indicate that:

19 . . . Cal Am's enforcement mechanisms  
20 are notices and installation of flow  
21 restrictors.

22 For my information, how does a flow restrictor  
23 work? How does it affect water delivery on a service  
24 address?

25 MS. PINTAR: I'm not an expert on flow

1 restrictors. My understanding is that it is a device  
2 that goes into the water line between the meter and the  
3 customer's service that reduces the flow of water into  
4 the home.

5 CHIEF COUNSEL TAYLOR: Does someone else on  
6 the panel have the answer to the question?

7 MR. FUERST: It's like a washer in the line  
8 which has a very small orifice, so it restricts the  
9 amount of flow that can go through that opening.

10 CHIEF COUNSEL TAYLOR: It doesn't limit the  
11 amount of water delivered on any particular day in  
12 terms of the rate of flow?

13 MR. FUERST: Correct.

14 CHIEF COUNSEL TAYLOR: Thank you. Mr. Fuerst,  
15 you testified that -- on page 4, paragraph 8 -- that  
16 any limit on Cal Am's diversions should be implemented  
17 in a way which would not jeopardize public health and  
18 safety. Is that substantially correct?

19 MR. FUERST: That's correct.

20 CHIEF COUNSEL TAYLOR: You testified in  
21 response to a question from Mr. Sato that you do not  
22 know how to calculate a minimum amount of water  
23 necessary to assure public health and safety; is that  
24 correct?

25 MR. FUERST: That's correct.

1           CHIEF COUNSEL TAYLOR: How then can you advise  
2 the Board on not transgressing this line in terms of  
3 how much water is necessary to assure water for public  
4 health and safety to people in the district?

5           MR. FUERST: I think the Board needs to start  
6 with the research that this hearing, the prosecution  
7 staff has come up with, the Water Code -- Title 13 of  
8 the Water Code, Section 697; in addition, to look at  
9 the data that's been developed by the Department of  
10 Water Resources through their bulletin 160; and then  
11 also look at the -- which looks at, you know, up to 3-  
12 or 400 systems within California, but then looks  
13 specifically to the Peninsula and what Cal Am's  
14 customers, main system customers, have been able to  
15 accomplish.

16           And again, that's where they're at, the  
17 70 gallons per capita per day, within the State Board's  
18 limit of the 11,285.

19           But as the data has shown that over --  
20 since -- not only are they at that limit, but they're  
21 slightly under. They're doing that through the  
22 conservation program. And that's equivalent to about  
23 three or four percent.

24           But that's been able to be accomplished where,  
25 again through the pricing, the outreach, the retrofits.

1 Beyond that, it's difficult to say what could be  
2 accomplished, especially if it was required.

3           You know, we work very hard to stay under the  
4 limit and create a buffer for unforeseen events where  
5 we can have a, you know, record heat wave. And that's  
6 really what happened the last time we went to Stage 3  
7 where we were close to the -- our year-to-date budget  
8 just to comply with Order 95-10, the 11,285 limit. But  
9 we had a, you know, a record heat wave and went over;  
10 and, you know, without an earlier buffer, if we were  
11 put right at the margin, we would have no margin of  
12 error.

13           CHIEF COUNSEL TAYLOR: Given the water supply  
14 currently available for California American Water  
15 Company, is it the District's position that there is no  
16 order the Board could adopt directing Cal Am to reduce  
17 water from the Carmel River, reduce diversions from the  
18 Carmel River, without jeopardizing public health and  
19 safety?

20           MR. FUERST: That's the position of the  
21 District Board, yes.

22           CHIEF COUNSEL TAYLOR: Okay. Are there cities  
23 subject to the regulatory authority of the District  
24 which are authorized to approve new developments  
25 requiring water supply from the Carmel River currently?

1           MR. FUERST:  If I understand your question,  
2  there are member jurisdictions, jurisdictions within  
3  the District, that can come to the District, and if  
4  they have water remaining in their allocation and they  
5  get approval of that jurisdiction, and a water release  
6  form is provided to the District, then the District  
7  will issue a water connection permit for that  
8  development.

9           CHIEF COUNSEL TAYLOR:  If there is water for  
10 new development, how can the District take the position  
11 that there cannot be a reduction in diversions from the  
12 Carmel River without threatening public health and  
13 safety?

14          MR. FUERST:  In terms of integrated  
15 management, we've looked at keeping below the limits as  
16 we understand them today, honoring the prior  
17 commitments to the allocation of the water that was,  
18 you know, promised to the jurisdictions back in 1993 or  
19 secured through an entitlement process.  At the same  
20 time, we work very hard with Cal Am to continue to find  
21 conservation savings to offset that.

22          CHIEF COUNSEL TAYLOR:  Putting aside the  
23 District's position, is it your professional opinion  
24 that given the water supplies available to California  
25 American Water Company, that the Board cannot adopt an

1 order reducing diversions from the Carmel River without  
2 threatening public health and safety?

3 MR. FUERST: My professional opinion would be  
4 that I don't think that the full range of reductions  
5 specified in the cease and desist order could be  
6 accomplished without jeopardizing public health and  
7 safety.

8 I'm not certain about the first 15 percent  
9 reduction. If that were to go into place, it's  
10 likely -- if that were to be imposed in conjunction  
11 with the reductions scheduled for the Seaside Basin,  
12 then it's likely the District would be in a -- would be  
13 required to go to Stage 5.

14 That would require, based on the calculations  
15 we've done in advance of a ration plan, would limit  
16 each customer to no more than 60 gallons per person per  
17 day. And I think anything beyond that certainly would  
18 jeopardize public health and safety. I'm not certain  
19 about the 60.

20 CHIEF COUNSEL TAYLOR: Thank you, Mr. Fuerst.  
21 I don't have any further questions.

22 CO-HEARING OFFICER WOLFF: I have some  
23 questions. But your ordeal is almost over. Consider  
24 if you had to have gone through all the  
25 cross-examination in one day.



1           Mr. Oliver, on page 5 of your testimony you  
2 refer to a possible aquifer storage recovery system in  
3 the Paso Robles aquifer, and I believe you indicate  
4 that access to well locations was difficult and  
5 challenging; is that correct?

6           MR. OLIVER: Yes. I don't -- I'm still  
7 looking for the exact location on page 5, but I can  
8 testify that access to any location within the  
9 preferred area for ASR and Seaside Basin is somewhat  
10 restricted because of an existing foreplanned land use.

11           CO-HEARING OFFICER WOLFF: That was for an  
12 aquifer storage recovery project in the Paso Robles  
13 aquifer which was not pursued any further according to  
14 your testimony; is that right?

15           MR. OLIVER: Yes.

16           CO-HEARING OFFICER WOLFF: And were any sort  
17 of estimates of annual yield, potential annual yield,  
18 done for the Paso Robles aquifer prior to abandoning  
19 the project?

20           MR. OLIVER: Yes, but not to the extent that  
21 it was done for the program that we're now pursuing in  
22 the -- using the Santa Margarita Sandstone aquifer as  
23 the target.

24           CO-HEARING OFFICER WOLFF: I understand. What  
25 was the estimated annual yield, though, for the Paso

1 Robles aquifer, understanding that it was a preliminary  
2 estimate?

3 MR. OLIVER: Well, that's what I guess I was  
4 getting to the explanation of. We didn't get to that  
5 level yet with the Paso Robles because of the testing  
6 that was done in the Paso Robles aquifer showing that  
7 that aquifer system was not capable of providing the  
8 anticipated recharge amounts per well, and it would  
9 require a large, very large number of wells in a very  
10 small area to try to achieve a project. And so that's  
11 when we switched to the pursuit of the Santa Margarita  
12 aquifer storage and recovery program. So the --

13 CO-HEARING OFFICER WOLFF: I understand the  
14 limitations that you testified to. I'm just trying to  
15 get at what the annual yield would have been from the  
16 aquifer were there adequate money, were there adequate  
17 access, et cetera. Clearly those conditions did not  
18 exist. But if there is an estimate of annual yield,  
19 I'd like to know about it. If there's no such  
20 estimate, say so.

21 MR. OLIVER: No, it did not progress to that  
22 level of analysis.

23 CO-HEARING OFFICER WOLFF: There was no one  
24 out -- there was no estimate of the potential annual  
25 yield from that aquifer?

1 MR. OLIVER: Correct.

2 CO-HEARING OFFICER WOLFF: Okay. That's all.

3 And so I assume also that's also the case then  
4 there was no estimate of any cost of an aquifer storage  
5 recovery project for that aquifer?

6 MR. OLIVER: No.

7 CO-HEARING OFFICER WOLFF: Are there any  
8 saline aquifers within the service area?

9 MR. OLIVER: Within the Monterey Peninsula  
10 Water Management District boundary toward the very  
11 northern part of the boundary in the Fort Ord area,  
12 there is an area of saline intrusion that's been in  
13 that area for some time, yes.

14 CO-HEARING OFFICER WOLFF: Was there any sort  
15 of investigation of recharging fresh water into those  
16 saline aquifers and recovering that fresh water later?

17 MR. OLIVER: In that particular location, no.  
18 But there is an investigation that is going on right at  
19 the moment. It was referred to earlier in testimony as  
20 the 95-10 project.

21 One of the options being pursued there would  
22 be to produce water from those areas of saline  
23 intrusion and potentially desalinating that as a  
24 brackish water source.

25 CO-HEARING OFFICER WOLFF: So there wouldn't

1 be any storage under that project, just extraction and  
2 treatment and use of the saline?

3 MR. OLIVER: That's correct.

4 CO-HEARING OFFICER WOLFF: So just to be  
5 clear, were there any studies ever done of recharging  
6 that aquifer?

7 MR. OLIVER: Yes. And it's an ongoing  
8 investigation as well being conducted, sponsored  
9 primarily by the Monterey Peninsula -- excuse me,  
10 Monterey Regional Water Pollution Control Agency. It's  
11 known as the Seaside Basin Groundwater Replenishment  
12 Project. And I'm on the Technical Advisory Committee  
13 for that.

14 And one of the options that is being pursued  
15 there would be to take highly purified recycled water  
16 from the regional water treatment plant and potentially  
17 either percolating that water or injecting that water  
18 as a barrier-type project, but not for direct recovery  
19 of that water.

20 CO-HEARING OFFICER WOLFF: Not for recovery.  
21 So again, there's no estimate of potential annual yield  
22 if the aquifer were used for storage and recovery?

23 MR. OLIVER: Not in saline-intruded areas, no.

24 CO-HEARING OFFICER WOLFF: Okay. Thank you.

25 Mr. Hampson, on pages 19 to 21 of your

1 testimony, you refer to fresh water for the lagoon.  
2 And at the bottom of page 20, continuing on to page 21,  
3 there is a statement that:

4           However, because the lagoon stage  
5           normally drops to a very low level prior  
6           to reopening, the lagoon TAC --

7           Which I assume means Technical Advisory  
8 Committee --

9           -- has set a long-term management goal  
10          of finding additional sources of fresh  
11          water to maintain lagoon volume  
12          throughout the summer and fall.

13          Is that correct?

14          MR. HAMPSON: Yes, that's correct.

15          CO-HEARING OFFICER WOLFF: So can you tell me,  
16 what are the possible ways of finding fresh water to  
17 maintain lagoon volume throughout the summer and fall?  
18 What are those possible sources that are being sought?

19          MR. HAMPSON: The Carmel Area Wastewater  
20 District has an additional process that they have just  
21 completed or just added to their treatment plant, and I  
22 believe this came up in earlier testimony.

23          They have approximately an acre foot per day  
24 of what they call reject water, so they process sewage  
25 treatment water, and they get a certain amount that

1 they can't push through the filters.

2 They currently plan to discharge that through  
3 their outflow to Carmel Bay. So they have a permit to  
4 discharge this to Carmel Bay. But they are pursuing a  
5 project to perhaps create a terminal wetland in the  
6 vicinity of Highway 1 in which the flow can be  
7 discharged.

8 And in addition, they're looking at capturing  
9 from the City of Carmel, dry season stormwater from the  
10 City of Carmel, treating those, and potentially putting  
11 those into a wetlands adjacent to the lagoon. So this  
12 is one possible alternative to increased flow in the  
13 low season time period.

14 CO-HEARING OFFICER WOLFF: Is that the same  
15 project as was listed in one of Mr. Fuerst's exhibits  
16 as one of the possible mitigation actions? First, I'll  
17 have to find the exhibit, the first action, and I think  
18 it had a \$50,000 price tag on it?

19 MR. RUBIN: DF-11, I believe.

20 MR. HAMPSON: While we're getting to that, I  
21 believe that's the list of alternatives for mitigation.  
22 And the number one alternative was reverse osmosis at  
23 the lagoon. The project that -- well, I'll wait till  
24 you get there.

25 CO-HEARING OFFICER WOLFF: That's it. Thank

1 you.

2 MR. HAMPSON: The reverse osmosis water  
3 project that was conceived at that time, and that's  
4 March 2007, that no longer exists because CAWD has  
5 changed their process. The concept of using recycled  
6 water that's discharged to Carmel Bay has not been  
7 abandoned. So the concept behind that lagoon reverse  
8 osmosis water project was to use water that would  
9 otherwise go to Carmel Bay and use it in the lagoon.  
10 So that concept is being pursued. It's just in a  
11 slightly different method -- using a slightly different  
12 method.

13 CO-HEARING OFFICER WOLFF: So there is a  
14 variation on the theme; one is backwash water, another  
15 one is treated wastewater, a third one is storm water?  
16 Is that correct?

17 MR. HAMPSON: Potentially diverting dry season  
18 storm drain flows to the treatment plant, yes.

19 CO-HEARING OFFICER WOLFF: I see. To the  
20 treatment plant, not to the lagoon.

21 MR. HAMPSON: Treating -- treating the dry  
22 season flows at the treatment plant, and then  
23 discharging to a terminal wetland, or if they can meet  
24 the surface water standards, discharging to the lagoon.

25 CO-HEARING OFFICER WOLFF: Okay. And are the

1 costs estimates for all those variations in the same  
2 cost range?

3 MR. HAMPSON: I don't know. The study that  
4 Carmel Area Wastewater District is doing on this has  
5 only begun.

6 CO-HEARING OFFICER WOLFF: All right.

7 MR. HAMPSON: I don't believe that the reverse  
8 osmosis water project that's described there that would  
9 cost the 50,000 would include any capture of storm  
10 drain flows.

11 CO-HEARING OFFICER WOLFF: What about the idea  
12 that was put forward in some of the other testimony in  
13 cross-examination of bringing the water from Cal Am's  
14 wells upstream down to the lagoon to maintain flows at  
15 the end of the summer? Is the Technical Advisory  
16 Committee looking into that as a way of finding fresh  
17 water for the lagoon?

18 MR. HAMPSON: The -- I think at this point,  
19 the constraint, or the -- what needs to be defined as  
20 what level of the lagoon should be maintained because  
21 as the level goes up the amount of water needed to  
22 maintain that level goes up quite a bit from -- roughly  
23 estimated, if an elevation of five feet were to be  
24 maintained, it could take two to six acre feet per day.  
25 Whereas if you try to maintain eight to nine feet,



1 you're looking at --

2 CO-HEARING OFFICER WOLFF: I understand. All  
3 I'm asking though is: Is the advisory committee  
4 looking at that as a possibility, as another one of the  
5 possibilities of providing water for the lagoon?

6 MR. HAMPSON: That has been discussed. It  
7 hasn't been looked at in any detail.

8 CO-HEARING OFFICER WOLFF: Okay. Which leads  
9 to my last question on the topic, which is: Among  
10 these different alternatives, if there were no CDO  
11 issues, how would this issue of alternatives be brought  
12 to a resolution, possibly involving water being  
13 delivered to the lagoon in some way, or possibly the  
14 decision being made to not deliver water to the lagoon,  
15 but what's the decision process there in the absence of  
16 the CDO?

17 MR. HAMPSON: There is an outline for creating  
18 a long-term management plan for the lagoon that the  
19 lagoon Technical Advisory Committee has put together  
20 that was introduced into evidence previously.

21 CO-HEARING OFFICER WOLFF: Yes.

22 MR. HAMPSON: Presumably funding for that plan  
23 would allow that group to move forward and look at what  
24 alternatives there are to maintain lagoon volume. I  
25 believe that would be the process that would move

1 forward in the absence of any other alternatives.

2 CO-HEARING OFFICER WOLFF: So the process  
3 would involve funding that continuing effort, and  
4 eventually that effort might lead to additional water  
5 to the lagoon -- or might not, depending how the  
6 process unfolds. Am I understanding correctly?

7 MR. HAMPSON: Correct. We don't seem to have  
8 enough information to devise an alternative.

9 CO-HEARING OFFICER WOLFF: I understand; I  
10 looked at the report. I'm just trying to understand  
11 the process. Okay. Thank you.

12 Mr. Christensen.

13 MR. CHRISTENSEN: Yes.

14 CO-HEARING OFFICER WOLFF: Page 13 of your  
15 testimony, you talked about expanding irrigation  
16 systems, potentially expanding irrigation systems  
17 around California American wells, in dry to critically  
18 dry years. Do you recall --

19 MR. CHRISTENSEN: That's correct.

20 CO-HEARING OFFICER WOLFF: -- that possible  
21 idea for mitigating impacts on habitat? Are there any  
22 cost estimates for that?

23 MR. CHRISTENSEN: Well, no.

24 CO-HEARING OFFICER WOLFF: Is there any  
25 process for obtaining the cost estimates or making

1 decisions about that in the absence of the CDO?

2 MR. CHRISTENSEN: I can tell you how it works,  
3 that when we have unusually dry conditions, when we're  
4 in the field, we make observations of where riparian  
5 plants are stressed and where recruiting plants are  
6 stressed. And we make linear measurements and come up  
7 with estimates of how much irrigation material we need  
8 to get water to those plants.

9 And we go through the process of getting Board  
10 approval to purchase the drip irrigation lines and the  
11 emitters, and we expand those systems as needed. And  
12 we sometimes spend anywhere between \$500 to a \$1000 on  
13 irrigation equipment on kind of a piecemeal basis and  
14 doing work kind of in an adaptive management kind of  
15 mode.

16 CO-HEARING OFFICER WOLFF: If the District  
17 chose to do that project, does the District have the  
18 authority to do that project?

19 MR. CHRISTENSEN: I believe that part of the  
20 mandate of the allocation EIR, and folded in with  
21 95-10, we have the authority to carry out that work  
22 under our agreements with Cal Am, and the obligation to  
23 the State and everybody else to take care of it the  
24 best we can.

25 CO-HEARING OFFICER WOLFF: Mr. Fuerst, would

1 you agree?

2 MR. FUERST: Yes, sir. We have the authority;  
3 it would just be within our budget.

4 CO-HEARING OFFICER WOLFF: Right. And do you  
5 have the authority to impose fees as necessary to  
6 support your budget?

7 MR. FUERST: Yes. That's through a public  
8 hearing process.

9 CO-HEARING OFFICER WOLFF: Subject to 218  
10 processes or whatever, but --

11 MR. FUERST: Correct.

12 CO-HEARING OFFICER WOLFF: I'm trying to  
13 understand, you know, the full implications of the  
14 mayor's recommendation that we do nothing, and what the  
15 other mechanisms are for getting some things done that  
16 have been mentioned in other places in the testimony.  
17 So that's helpful. Thank you.

18 Ms. Pintar?

19 MS. PINTAR: Yes.

20 CO-HEARING OFFICER WOLFF: I'm a little  
21 confused by the number on page 5 of your testimony.  
22 You talk about 90 gallons per person per day as  
23 current. I think it's current water use. Let me find  
24 that.

25 MR. LAREDO: Mr. Wolff, I believe that

1 testimony was corrected to 70 gallons per person per  
2 day under the direct presentation.

3 CO-HEARING OFFICER WOLFF: Good. I missed  
4 that. What's what I wanted to find out. So that 70 is  
5 comparable to the 68 calculated by Mr. Fuerst in his  
6 testimony, so it represents single-family residential  
7 water use divided by the number of single-family  
8 residents within the survey area; is that correct?

9 MR. FUERST: That's correct.

10 CO-HEARING OFFICER WOLFF: Okay.

11 MR. LAREDO: Mr. Wolff, I believe -- I stand  
12 corrected. I don't believe it was under direct  
13 testimony; I believe it was in previous  
14 cross-examination that that number was corrected.

15 CO-HEARING OFFICER WOLFF: Either way, I  
16 missed it, so I appreciate being reminded.

17 Let's go to page, I think it's page 13 of the  
18 testimony. No, that's not the right one.

19 Page 8. Here we have an estimate of an amount  
20 of water saved through outdoor irrigation programs.  
21 You estimated a hundred acre foot per year could be  
22 conserved as a 20 percent reduction of something,  
23 presumably 20 percent of 500 acre foot per year. What  
24 is the basis of the 500 acre foot per year?

25 MS. PINTAR: It's actually a comparison.

1 Because we only have access to aggregated data from Cal  
2 Am at this time, it's a comparison of the wet water  
3 year 2007 winter wet months, January-February compared  
4 with the August-September time frame, and just coming  
5 up with an estimate of potentially what would be  
6 outdoor irrigation and then reducing that by  
7 20 percent.

8 CO-HEARING OFFICER WOLFF: So across the  
9 entire district -- not district necessarily, but across  
10 the entire service area, you did a winter month/summer  
11 month comparison, and you estimated total outdoor use  
12 at 500 acre foot per year?

13 MS. PINTAR: That was the estimate, yes.

14 CO-HEARING OFFICER WOLFF: Which amounts to  
15 less than five percent of total water use. So you  
16 believe that within the Cal American service area, more  
17 than 95 percent of water use occurs indoor and less  
18 than five percent occurs outdoor?

19 MS. PINTAR: I'd have to go back and look at  
20 it.

21 CO-HEARING OFFICER WOLFF: Okay.

22 MS. PINTAR: I believe that's what the  
23 information was based on.

24 CO-HEARING OFFICER WOLFF: Okay. Well, that's  
25 a fair enough answer, that that particular calculation

1 led to that. But let me ask you: In your professional  
2 opinion, do you believe that less than five percent  
3 water use in the service area is outdoor water use? If  
4 you don't know, that's all right.

5 MS. PINTAR: I believe if we had access to the  
6 data we would be able to come up with a more accurate  
7 estimate.

8 CO-HEARING OFFICER WOLFF: Right.

9 CHIEF COUNSEL TAYLOR: Pardon me, Mr. Wolff.  
10 I believe earlier in the hearing we had testimony that  
11 much of the outdoor areas in Monterey were supplied  
12 from reclaimed wastewater from Pebble Beach.

13 CO-HEARING OFFICER WOLFF: Well, the golf  
14 courses are.

15 CHIEF COUNSEL TAYLOR: And other common areas,  
16 I believe.

17 CO-HEARING OFFICER WOLFF: Residences aren't.  
18 It's a single meter. Commercial establishments are on  
19 a separate meter. And Ms. Pintar can fill this in if  
20 she wants, and that's actually where I'm leading.

21 I'm trying to find out what information  
22 exists. Is there an estimate of outdoor water use in  
23 the area? What is the percentage of total use that's  
24 outdoor water use?

25 MS. PINTAR: I would need to go back and

1 check.

2 CO-HEARING OFFICER WOLFF: Is there any  
3 information on the total area of landscape area  
4 irrigated within Cal American's service area?

5 MS. PINTAR: Not that I am aware of.

6 CO-HEARING OFFICER WOLFF: Is there any  
7 information on the types of plants that exist in that  
8 area, distribution of low water use, medium water use  
9 and high water use?

10 MS. PINTAR: We do have some information based  
11 on the water budgets that have been done for our Stage  
12 2 compliance.

13 CO-HEARING OFFICER WOLFF: Those are the  
14 larger accounts?

15 MS. PINTAR: Those are the large residential  
16 users, the irrigated areas over three acres, and the  
17 dedicated irrigation meters. But I don't have that  
18 information with me.

19 CO-HEARING OFFICER WOLFF: So the dedicated  
20 irrigation meters, and for the -- well, let's leave the  
21 dedicated irrigation meters out for a moment. For the  
22 residential, the large residential, you don't know  
23 offhand the percentage of outdoor water use,  
24 residential water use?

25 MS. PINTAR: No, I don't.



1 CO-HEARING OFFICER WOLFF: And for the  
2 dedicated irrigation meters, since there's an indoor  
3 meter that accompanies each outdoor meter, you don't  
4 know what the relative proportions are of indoor versus  
5 outdoor use?

6 MS. PINTAR: No, I don't.

7 CO-HEARING OFFICER WOLFF: So the statement  
8 that outdoor irrigation contributes a hundred acre foot  
9 per year is based on one extremely limited piece of  
10 information, and there's other information that you  
11 don't recall at the moment that might give a different  
12 answer; is that correct?

13 MS. PINTAR: That information again was based  
14 on the aggregated data, and I think that it could be  
15 refined.

16 CO-HEARING OFFICER WOLFF: I understand. But  
17 there are two different types of data here, the  
18 aggregated data you used for winter/summer months, how  
19 you get this number you said that could be refined, and  
20 then there's this other information that you referred  
21 to as well, limited information on large households,  
22 some dedicated accounts, some commercial industrial  
23 accounts.

24 MS. PINTAR: Most of them would be, yes.

25 CO-HEARING OFFICER WOLFF: How many dedicated

1 accounts are there with a dedicated outdoor meter?

2 MS. PINTAR: I don't have that number.

3 CO-HEARING OFFICER WOLFF: All right. With  
4 respect to indoor water use, let's start with  
5 residential. Do you have any kind of information on  
6 the percentage of say toilets that use less than  
7 1.6 gallons per flush?

8 MS. PINTAR: That use less than 1.6 gallons?

9 CO-HEARING OFFICER WOLFF: Less than 1.6.

10 MS. PINTAR: No, I don't.

11 CO-HEARING OFFICER WOLFF: Or more than 1.6?

12 MS. PINTAR: What I do know is that the  
13 District has had a retrofit program since 1987 where it  
14 required retrofits for all changes, title changes, use  
15 and expansion.

16 Our conservation database has close to 26,000  
17 records in it for properties that have been subject to  
18 those requirements. The Cal Am service area has  
19 approximately 38,000 connections. And assuming that  
20 those retrofits -- we're looking at about two-thirds of  
21 the property in the District having already been  
22 retrofitted.

23 CO-HEARING OFFICER WOLFF: Which would be the  
24 existing plumbing code, correct?

25 MS. PINTAR: That would be the existing

1 fixtures and replacement of older fixtures. And then  
2 there's another chunk of that which would be the new  
3 construction requirements that have been in place also  
4 since 1987 and require the installation of the low-flow  
5 fixtures.

6 CO-HEARING OFFICER WOLFF: The low-flow  
7 fixtures again being those that meet the current  
8 plumbing code?

9 MS. PINTAR: That meet our current plumbing  
10 codes, yes; but they were in place prior to the actual  
11 implementation of the current code.

12 CO-HEARING OFFICER WOLFF: What's the current  
13 code?

14 MS. PINTAR: 1.6 gallons per flush toilets,  
15 2.5 gallons from the showerhead, 2.2 gallon per minute  
16 faucet --

17 CO-HEARING OFFICER WOLFF: All right. Now  
18 there are devices that use less water than that?

19 MS. PINTAR: Yes, there are.

20 CO-HEARING OFFICER WOLFF: But you don't know  
21 the penetration percentage of those, or do you?

22 MS. PINTAR: No, we do not.

23 CO-HEARING OFFICER WOLFF: That's what I'm  
24 trying to find out.

25 Do you know those penetration numbers for any

1 segment of the water use area? We're talking about  
2 single-family residential. Do you know for multifamily  
3 residential? Do you know for commercial? Do you know  
4 for hotels? Do you have any sort of studies that break  
5 that out?

6 MS. PINTAR: Not for our area other than the  
7 information in our database for our rebate program.  
8 And we do track -- the District actually administers  
9 the joint Cal Am/District rebate program, so we have  
10 information about the number of fixtures that have been  
11 installed.

12 CO-HEARING OFFICER WOLFF: Okay. Thank you.

13 If I remember, you also testified on page 20  
14 that you believe that imposing the CDO would cause a  
15 substitution of water away from the system, the Cal Am  
16 system, to private wells. In item 54. Is that  
17 correct?

18 MS. PINTAR: Yes.

19 CO-HEARING OFFICER WOLFF: Did I understand  
20 earlier, though, that the District has to approve new  
21 wells?

22 MS. PINTAR: Yes.

23 CO-HEARING OFFICER WOLFF: So can people  
24 substitute to new private wells without District  
25 approval?

1           MR. FUERST: I think this question is probably  
2 best answered by Joe.

3           CO-HEARING OFFICER WOLFF: Well, it's in her  
4 testimony. I mean, we can let him add on, but I'd like  
5 to hear it from --

6           MR. FUERST: Okay.

7           MS. PINTAR: Yes. Permits are required at  
8 this time.

9           CO-HEARING OFFICER WOLFF: And so this  
10 substitution would require permits for new wells, or  
11 people could perhaps pump from a private well that they  
12 already have, but they'd have to have a private well  
13 and a public water connection, is that correct, to  
14 substitute between the two? Without getting a permit?

15          MS. Pintar: Any change would require a water  
16 permit through the District. We consider private wells  
17 to be small water distribution systems, and all water  
18 distribution systems are currently regulated and  
19 require a permit.

20          CO-HEARING OFFICER WOLFF: Well, I guess I  
21 asked my question clumsily. Are there people who have  
22 both a private water system and a connection to the Cal  
23 Am system?

24          MS. PINTAR: Yes.

25          CO-HEARING OFFICER WOLFF: There are. Do you

1 know how many?

2 MS. PINTAR: No.

3 CO-HEARING OFFICER WOLFF: Do you think it's  
4 small or large? And no need to speculate. I mean, if  
5 you don't know, you don't know.

6 MS. PINTAR: I don't know.

7 CO-HEARING OFFICER WOLFF: Okay. Mr. Oliver?

8 MR. OLIVER: I don't have an exact number  
9 either that would have both a connection to the  
10 California American Water Company and an individual  
11 well.

12 I can say that in terms of the number of  
13 individual wells in the Carmel Valley alluvial aquifer,  
14 which is within the Cal Am service territory, as of  
15 this last most recently reported water year, 2007,  
16 there are 290 of those active wells. I would assume  
17 that the majority of those wells also have access to  
18 the California American Water system.

19 CO-HEARING OFFICER WOLFF: Okay. Thank you.

20 Lastly, Mr. Fuerst, you said you believe that  
21 reductions in water supply would at some point,  
22 personally you believe at some point cause public  
23 health and safety problems. You weren't exactly clear  
24 on what those were, but you believe there could be  
25 public health and safety problems. What sort of

1 problems are you thinking of?

2 MR. FUERST: I think -- well, the -- I'm  
3 focused primarily on the residential sector. I think  
4 that there would be problems in the business -- I think  
5 the business community is here to address those.

6 In terms of public health and safety within  
7 the single-family and multifamily, the information I've  
8 seen, my experience on the Peninsula is that we're at,  
9 you know, a low level now, and we have for a short  
10 duration, intense drought, it's my understanding the  
11 District, the users within the District got lower.

12 But again, in the after-action reports I've  
13 seen from that, there were concerns about the brown  
14 lawns, the landscaping costs that occurred. A lot of  
15 that we've gone to, you know, a different type of  
16 landscaping system since '77, certainly.

17 But I guess the main concern would be that  
18 there would be sufficient water for drinking, for  
19 sanitation, food preparation, the basic requirements.

20 CO-HEARING OFFICER WOLFF: Primarily indoor  
21 functions? Or were you suggesting that a brown lawn  
22 somehow creates a public health and safety concern? It  
23 wasn't clear from your answer.

24 MR. FUERST: No, that wouldn't -- that would  
25 not be public health and safety concern, but --

1 CO-HEARING OFFICER WOLFF: So the indoor.

2 MR. FUERST: Indoor as well as fire  
3 protection. That becomes a very hot topic in our area.

4 CO-HEARING OFFICER WOLFF: Okay. So these  
5 types of problems that you are referring to, I went  
6 through the Exhibit DF -- not DF.

7 I went through the exhibit that was attached  
8 to Ms. Pintar's testimony, the Expanded Water  
9 Conservation and Standby Rationing Plan, which I  
10 believe it is SP-1, and I didn't find anyplace in the  
11 plan where these different rationing stages trigger  
12 concern about public health and safety problems which  
13 then had to be addressed through management.

14 Did I miss that? Is there someplace in the  
15 plan where public health and safety concerns are  
16 discussed?

17 MR. FUERST: Again, stages 1 through 3 would  
18 be regulatory compliance, primarily the 95-10, the  
19 Seaside Basin. I'm looking for Rule 165. Under  
20 emergency. This is -- I don't know if you have it?

21 CO-HEARING OFFICER WOLFF: Is it different  
22 than SP-1?

23 MR. FUERST: SP-3.

24 CO-HEARING OFFICER WOLFF: SP-3.

25 MR. FUERST: And I'm looking on -- this is a



1 copy of the District rules that relate specifically to  
2 the -- it's our Regulation 15, which is Rule 160  
3 through 175, the complete Expanded Water Conservation  
4 and Standby Rationing Plan, and I'm looking on Rule  
5 165, Stage 5 water rationing, section B-2.

6 CO-HEARING OFFICER WOLFF: Can you give me a  
7 page number?

8 MR. FUERST: Yes, the pagination starts --  
9 it's 165-1. And I can read it.

10 CO-HEARING OFFICER WOLFF: Let's see if we can  
11 get it on the screen. It will be easier. In my  
12 package, this is part of SP-1 -- I'm sorry. I see.

13 MR. FUERST: SP-1 was the implementation plan.  
14 That's what we are getting ready to implement, the  
15 actual plan which is described in the rules, and again  
16 165-1, and then it's section B-2 under emergency. And  
17 it's -- you know, it ends by saying:

18 20 percent reductions in water use from  
19 a distribution system's production  
20 limits are necessary to ensure public  
21 health, safety or welfare.

22 CO-HEARING OFFICER WOLFF: Yes, I see that,  
23 and I did see that previously in reviewing it. But  
24 that section refers to the condition necessary to  
25 declare an emergency. Is that not correct?

1           MR. FUERST: Right. Other than the storage  
2 trigger above.

3           CO-HEARING OFFICER WOLFF: Right. I'm just  
4 looking at B-2, so the place where the words "public  
5 health, safety or welfare" appear, is with respect to  
6 the justification for the district to declare an  
7 emergency; is that correct?

8           MR. FUERST: That's correct.

9           CO-HEARING OFFICER WOLFF: What I'm looking  
10 for -- and perhaps it's here, perhaps it's not; that's  
11 why I'm asking you -- is there anyplace that suggests  
12 that implementing any of these stages of rationing  
13 would potentially create public health and safety  
14 concerns which need to be addressed through management  
15 of the District?

16          MR. FUERST: That's not defined in the plan.  
17 There are in the back of the plan a variance procedure  
18 where someone could come for a medical reason or other  
19 hardships, and ask for, under special circumstances,  
20 additional quantities to their ration.

21          CO-HEARING OFFICER WOLFF: I understand. So  
22 with the exception of the variance procedure on page  
23 169-1, you're saying that no place in the plan does it  
24 specifically refer to health and safety needs or  
25 concerns.

1 MR. FUERST: Correct.

2 CO-HEARING OFFICER WOLFF: So the structure of  
3 the plan was to implement this rationing if necessary,  
4 either in an emergency or because of water supply  
5 limitations. But then if there were any public health  
6 or safety concerns, they could be addressed through  
7 variances as described in the variance section; is that  
8 correct?

9 MR. FUERST: Yes.

10 CO-HEARING OFFICER WOLFF: All right.

11 MR. FUERST: And again, the way this evolved,  
12 the original triggers were objectively pre-determined.  
13 It was only the water supply limitations. And then we  
14 actually had a situation in 2004 where the trigger  
15 wasn't being pulled, but we knew we were in a -- we had  
16 a problem.

17 CO-HEARING OFFICER WOLFF: I understand. I  
18 understand.

19 Now, could you describe to me how the variance  
20 procedure works? It refers in here to having submitted  
21 a request for variance, but I wasn't able to follow  
22 fully how that would work or what is required in the  
23 request for variance.

24 MR. FUERST: Yes. Could Ms. Pintar  
25 describe --

1 CO-HEARING OFFICER WOLFF: Of course. Of  
2 course.

3 MS. PINTAR: The variance process generally as  
4 listed below would be to give an additional amount, and  
5 that would be a staff, general manager determination.  
6 And I guess -- is that answering your question or do  
7 you want further --

8 CO-HEARING OFFICER WOLFF: Well, I'm wondering  
9 what someone needs to do to get a variance. They need  
10 to fill in some paperwork. Do those forms exist? Do  
11 those forms exist?

12 MS. PINTAR: Yes. We do have forms from the  
13 last rationing, and I would expect them to be revised  
14 if we were planning --

15 CO-HEARING OFFICER WOLFF: Sure.

16 MS. PINTAR: And that's part of the  
17 implementation plan is to prepare the forms that are  
18 necessary.

19 CO-HEARING OFFICER WOLFF: And they describe  
20 the need in the form, I assume; and then who reviews  
21 it? Walk me through this process.

22 MS. PINTAR: Since I haven't had to implement  
23 this particular plan, the process would be that they  
24 would submit their justification, it would be reviewed,  
25 and if it was determined that additional water was

1 needed, an additional increment of water would be  
2 assigned to that account.

3 CO-HEARING OFFICER WOLFF: And that  
4 determination would be made by the regional manager or  
5 by the Board? Would it require a public hearing or  
6 what?

7 MS. PINTAR: The variances would be made by  
8 the general manager or his designee.

9 CO-HEARING OFFICER WOLFF: Okay.

10 MS. PINTAR: But all of our decisions are  
11 appealable. So there is a process where if someone  
12 disagrees with it it can be appealed by not only that  
13 person but any other member of the public.

14 CO-HEARING OFFICER WOLFF: Okay. Thank you.  
15 Just a few more.

16 Going now to the exhibit we looked at earlier  
17 that was the list of mitigations, I think it might have  
18 been DF-7. Attached to --

19 MR. FUERST: It's DF-11.

20 CO-HEARING OFFICER WOLFF: DF-11. Mr. Rubin  
21 told me that, didn't he. DF-11.

22 It appears to me that these mitigations  
23 excluded the Los Padres Dam fish passage and the Los  
24 Padres Reservoir sediment and organic debris removal.

25 The rest of the measures are all well within

1 the dollar amount of the settlement agreement between  
2 NOAA Fisheries and Cal Am. Would you agree with that?

3 MR. FUERST: Yes. And that was in the context  
4 in which they were prioritized, and then there were  
5 subsequent letters sent to NOAA Fisheries.

6 CO-HEARING OFFICER WOLFF: Okay. And what I  
7 was told -- I was provided an answer to this question  
8 by someone else earlier, but I don't know whether  
9 it's -- it's their opinion but I don't know whether  
10 it's true or not so I'm trying to find out what you  
11 know.

12 What is your understanding of why the  
13 agreement hasn't been put into full force and effect,  
14 the money hasn't actually been transferred?

15 MR. FUERST: This definitely calls for a legal  
16 opinion, but my understanding is that it relates to the  
17 Antideficiency Act of the US Constitution.

18 CO-HEARING OFFICER WOLFF: I really don't want  
19 to get into the law. I appreciate that. Thank you,  
20 Mr. Baggett, for saving us. But on kind of a common  
21 sense level, I mean, is there --

22 MR. FUERST: Basically --

23 CO-HEARING OFFICER WOLFF: It's the mechanics  
24 of moving the money around; is that a good summary?

25 MR. FUERST: Right. In the simplest sense,

1 the money now would go -- wouldn't go directly to NOAA  
2 Fisheries. It would go to the general treasury and  
3 could be used for any purpose.

4 CO-HEARING OFFICER WOLFF: I understand. So  
5 there's difficulties with the mechanics of moving the  
6 money. That was what I was told previously. That's  
7 your understanding as well.

8 MR. FUERST: Right. It's efforts to have it  
9 not to go to NOAA Fisheries but to Fish and Game, and  
10 they can redirect the money and not to national  
11 security purposes.

12 CO-HEARING OFFICER WOLFF: I understand.  
13 That's great. Thank you. You follow the money. I  
14 understand.

15 And last, some questions about water pricing.  
16 You mentioned water pricing a little bit in  
17 cross-examination. The first block in the residential  
18 structure: What is the first -- the rate for the first  
19 block, \$3 and something, I think, per CCF.

20 MR. FUERST: Right, the standard block is like  
21 \$3.20 per unit per unit, per hundred cubic feet.

22 CO-HEARING OFFICER WOLFF: Right. And every  
23 block over that doubles?

24 MR. FUERST: Not quite.

25 CO-HEARING OFFICER WOLFF: Okay.

1           MR. FUERST: The first block is 50 percent of  
2 the second block. And so you are encouraged if you can  
3 stay within a very low amount.

4           Let's say, normally the blocks are four units.  
5 So zero to four, you get each one at half price. You  
6 pay the full price for the next four units, five to  
7 eight. And that should -- you know, that would keep  
8 you within the average use zone per resident on the  
9 Peninsula.

10           When you start going above that, it's  
11 200 percent. It's 150 percent for the next block.

12           CO-HEARING OFFICER WOLFF: So the second block  
13 is 150 percent of the first block?

14           MR. FUERST: No, the third one is 150 percent  
15 of the second.

16           CO-HEARING OFFICER WOLFF: And the second, how  
17 does it relate to the first?

18           MR. FUERST: Well, I mean, you could either --  
19 well, you could get, use any reference you want. The  
20 easiest --

21           CO-HEARING OFFICER WOLFF: How about dollars  
22 per CCF?

23           MR. FUERST: Okay. It's 3.20 for everything  
24 in the second block, \$1.60 for each unit in the first  
25 block, so it's 50 percent.



1 CO-HEARING OFFICER WOLFF: Oh, \$1.60 for the  
2 first four units --

3 MR. FUERST: No, for the fourth through the  
4 eighth.

5 CO-HEARING OFFICER WOLFF: Your first block  
6 should start with zero.

7 MR. FUERST: Right. Zero to four, that would  
8 be at 50 percent of the standard rate.

9 CO-HEARING OFFICER WOLFF: Which is --

10 MR. FUERST: Which is \$1.60.

11 CO-HEARING OFFICER WOLFF: So zero to four is  
12 \$1.60.

13 MR. FUERST: Five through eight would be the  
14 full standard rate, which is roughly \$3.20. The nine  
15 through 12 would be 150 percent of that.

16 CO-HEARING OFFICER WOLFF: Of 3.20, right.

17 MR. FUERST: So that was \$5 or so.

18 CO-HEARING OFFICER WOLFF: 4.80.

19 MR. FUERST: Yeah. 12, 13 through 16, would  
20 be 200 percent.

21 CO-HEARING OFFICER WOLFF: 200 percent --

22 MR. FUERST: Of the standard rate.

23 CO-HEARING OFFICER WOLFF: Of the 3.20. Or at  
24 6.40.

25 MR. FUERST: Right.

1           And then the fifth, which would be anything  
2 above 16 units, would be 400 percent, or four times, so  
3 it would be 12.40 per unit.

4           CO-HEARING OFFICER WOLFF: 12.40 per unit.

5           MR. FUERST: And the 16th, 17th, 18th units.

6           CO-HEARING OFFICER WOLFF: For the fifth block  
7 which has no upper limit; is that correct? The fifth  
8 block goes on --

9           MR. FUERST: Right. If you do a thousand --  
10 yeah. And the only variation on this, and it's in the  
11 testimony, is that when we're at Stage 3, the price per  
12 unit in that fourth and fifth block doubles. So what  
13 was four times goes to eight times, so it's \$12 per  
14 unit, and what was four goes to eight, and it's now \$24  
15 per unit.

16           CO-HEARING OFFICER WOLFF: Exactly. That's  
17 what I wanted to get to. That was the number you  
18 provided earlier, I think. So that's the fifth block,  
19 but only under Stage 3 or higher restrictions. Are you  
20 under Stage 3 or higher restrictions now?

21           MR. FUERST: Not at this time. But the basic  
22 rate is being revised, and it's even higher rates  
23 through the PUC process.

24           CO-HEARING OFFICER WOLFF: Now, these are Cal  
25 American rates approved by the CPUC. You don't set

1 those rates?

2 MR. FUERST: No, we do not.

3 CO-HEARING OFFICER WOLFF: Okay. Thank you.  
4 That is all.

5 CHIEF COUNSEL TAYLOR: Is there any redirect?

6 MR. LAREDO: Yes, there is. But if we could  
7 take a slight recess, we may be able to have a short  
8 redirect.

9 CO-HEARING OFFICER BAGGETT: Let's take ten  
10 minutes.

11 (Recess)

12 CO-HEARING OFFICER BAGGETT: We're back on the  
13 record, and we have redirect for Monterey Peninsula.  
14 Mr. Laredo?

15 MR. LAREDO: Thank you.

16 REDIRECT-EXAMINATION BY MR. LAREDO

17 FOR MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

18 MR. LAREDO: I have one brief line of  
19 questioning of Ms. Stern.

20 Ms. Stern, you testified in this proceeding on  
21 July 25th specifically with reference to paragraphs 35  
22 and 41 of your prepared testimony in relation to your  
23 Exhibit HS14. Do you recall that?

24 MS. STERN: Yes, I do.

25 MR. LAREDO: At that time, on July 25th, I

1 believe you made some oral modifications in response to  
2 several questions on cross-examination regarding  
3 paragraphs 35, 41 on Exhibit 14.

4 MS. STERN: Yes, I did.

5 MR. LAREDO: Since that time, have you had an  
6 opportunity to review your files and to determine the  
7 accuracy of your oral corrections?

8 MS. STERN: Yes, I have.

9 MR. LAREDO: Did you -- do you wish to make  
10 further correction to that testimony?

11 MS. STERN: Yes, I do.

12 MR. LAREDO: We have had an opportunity, I  
13 believe, to have you prepare corrections to testimony.  
14 We'd like to distribute this at this time. It's  
15 labeled Exhibit MPWMD-HS18?

16 MS. STERN: Correct.

17 MR. LAREDO: And by this testimony, do you  
18 mean to withdraw your prepared testimony as to  
19 Exhibit -- as to paragraphs 35 and 41?

20 MS. STERN: Yes.

21 MR. LAREDO: And to replace the new paragraphs  
22 35 and 41 as stated in this correction?

23 MS. STERN: Yes.

24 MR. LAREDO: And have you also provided a  
25 corrected Exhibit HS14 that is labeled here as HS14B?

1 MS. STERN: Yes.

2 MR. LAREDO: And are these corrections true  
3 and accurate of your own personal knowledge?

4 MS. STERN: Yes.

5 MR. LAREDO: Thank you. That completes my  
6 cross-exam -- or redirect.

7 CO-HEARING OFFICER BAGGETT: Okay. We'll give  
8 everyone the opportunity to review this, so let's take  
9 five minutes. Off the record for five minutes, allow  
10 people to read it.

11 (Recess)

12 CO-HEARING OFFICER BAGGETT: Let's go back on  
13 the record. Do any parties have any recross?

14 Mr. Laredo, do you have any -- maybe if you  
15 put this in context, it would save people a lot of  
16 time.

17 MR. LAREDO: Certainly.

18 CO-HEARING OFFICER BAGGETT: It appears to be  
19 questions that were asked.

20 MR. LAREDO: I can either as an offer of  
21 proof -- I believe that during the original  
22 cross-examination there were some errors in numbers  
23 comparing the prepared testimony to an exhibit.  
24 Ms. Stern believed the exhibit to have the accurate  
25 numbers, and she changed her direct testimony.

1           Upon reviewing her files, and she could  
2 testify to this, she discovered that the exhibit in  
3 fact was a draft exhibit, that the prepared testimony,  
4 although she corrected it orally, the prepared  
5 testimony actually had the correct set of numbers and  
6 it was the exhibit that needed to be modified.

7           This withdraws 35, 41 and the exhibit and sets  
8 forth the correct version of all that, so that instead  
9 of correcting the direct testimony in the paragraphs to  
10 an erroneous exhibit, this now uses the correct exhibit  
11 and it refers to the original testimony which was  
12 accurate.

13           But rather than complicate that, we just  
14 thought it would be better to withdraw those two  
15 paragraphs, submit the same testimony that was  
16 originally there, and that way to not confuse the  
17 record because the original --

18           CO-HEARING OFFICER BAGGETT: Very good. We  
19 have the exhibits.

20           CHIEF COUNSEL TAYLOR: And as I recall, it was  
21 Mr. Rubin who drew most of this information out on  
22 cross-examination.

23           MR. LAREDO: That's correct.

24           CO-HEARING OFFICER BAGGETT: Since we haven't  
25 accepted the original exhibit into evidence --

1 MR. LAREDO: Hasn't been moved into evidence  
2 yet.

3 CO-HEARING OFFICER BAGGETT: Any questions?

4 MR. MINTON: Jonas Minton for Planning and  
5 Conservation League.

6 RE-CROSS-EXAMINATION BY MR. MINTON

7 FOR PLANNING AND CONSERVATION LEAGUE

8 MR. MINTON: For Ms. Stern, the corrected  
9 Exhibit HS14B that was just provided.

10 MS. STERN: Yes.

11 MR. MINTON: The projects listed in the second  
12 column, the estimated new yield from water projects, do  
13 not include water from the Salinas River or some of the  
14 other projects identified in the REPOG process; is that  
15 correct?

16 MS. STERN: Hold on a second.

17 MR. MINTON: Thank you.

18 MS. STERN: Some of these may be part of the  
19 REPOG. There is no specific item that refers to  
20 importation of Salinas Basin water, but some of these  
21 reclaimed water items could be part of the REPOG, as I  
22 understand it.

23 MR. MINTON: As you understand it, are there  
24 some REPOG-identified projects that are not included in  
25 your list?

1 MS. STERN: I'm not sure if I understand your  
2 question. What this list tried to do is identify,  
3 based on the information when the testimony was written  
4 in June, late June, very early July, is what projects  
5 are identified and have a clear implementation path.

6 As my testimony identifies the written  
7 testimony -- I'll have to check and see which  
8 paragraph -- the REPOG is still in the process of  
9 defining itself. It has a variety of potential  
10 components.

11 But the specific quantities of water that  
12 would go to the Monterey Peninsula and address the Cal  
13 Am system as opposed to some other city or area in the  
14 Salinas Valley haven't been thoroughly defined, so  
15 those numbers are not identified on this exhibit.

16 MR. MINTON: So they are not identified. And  
17 if they were capable of being implemented, that  
18 could -- or could that change both the required yield  
19 deficits if those come online?

20 MS. STERN: So are you saying that if, let's  
21 say five months from now, I looked at this same  
22 question again and there had been a more detailed  
23 assessment and description of the REPOG project, would  
24 this table change?

25 MR. MINTON: Yes.



1 MS. STERN: I think it would be fair to say it  
2 could change.

3 Again, it depends on what type of information,  
4 the specificity of the information would be available.  
5 But certainly this table is going to be amended over  
6 time as specific projects come online and we have a  
7 more, a much better, firm estimate of the time lines as  
8 opposed to more general concepts.

9 MR. MINTON: Thank you.

10 MR. JACKSON: Mr. Baggett, I do have one line  
11 of questioning.

12 CO-HEARING OFFICER BAGGETT: Okay.

13 RECROSS-EXAMINATION BY MR. JACKSON  
14 FOR CARMEL RIVER STEELHEAD ASSOCIATION

15 MR. JACKSON: Ms. Stern, calling your  
16 attention to the yield deficit column, it's my  
17 understanding that that results from the yield deficit  
18 as it is figured from cumulative new yield and  
19 reduction from the CDO and the adjudication?

20 MS. STERN: Correct.

21 MR. JACKSON: And that gives you, then, the  
22 yield deficit?

23 MS. STERN: Correct.

24 MR. JACKSON: So is it fair to say in looking  
25 at this that if you were -- if the CDO was to go into

1 effect, that the maximum amount of water that would be  
2 necessary as source water in any year through 2014  
3 would be 2,115 acre feet from some new source not on  
4 this list?

5 MS. STERN: Correct, assuming that all the  
6 projects listed in the second column didn't come online  
7 with those quantities of water.

8 MR. JACKSON: And that basically if you could  
9 get through the year 2009, by conservation, there --  
10 that would be the worst year that you would have until  
11 2012?

12 MS. STERN: Correct.

13 MR. JACKSON: Thanks. No further questions.

14 CO-HEARING OFFICER BAGGETT: Any other  
15 parties? Mr. Rubin.

16 RE-CROSS-EXAMINATION BY MR. RUBIN

17 FOR CALIFORNIA AMERICAN WATER COMPANY

18 MR. RUBIN: Ms. Stern, followup along the  
19 lines of what Mr. Jackson was just talking about, I  
20 understood your testimony to be a bit different.

21 You just indicated in response to  
22 Mr. Jackson's comment that the yield deficit numbers  
23 reflect a maximum amount of deficit that could occur;  
24 Is that correct?

25 MS. STERN: I realize that the word maximum

1 may mean different things to different people. I'll  
2 just state that the number in that final right-hand  
3 column is based on subtracting the new yield number  
4 from the required reduction.

5 MR. RUBIN: And when you subtract those  
6 numbers, you're using average annual yield; is that  
7 correct?

8 MS. STERN: Yes. The estimated new yield from  
9 water projects column, the second column, those are  
10 average yields for those water projects.

11 MR. RUBIN: And I believe that you testified  
12 in regards to the program or project called Phase 1  
13 ASR, that average could be zero, or there could be zero  
14 yield from the ASR in certain years?

15 MS. STERN: Yes, in any particular year, it  
16 could range from zero to a quantity higher than the  
17 quantity shown here.

18 MR. RUBIN: And this is something new, I  
19 believe, that appears on this table. In 2012 you  
20 indicate 1,000 acre feet of water may be available  
21 through Phase 2 ASR.

22 MS. STERN: Yes, that is a new item on the  
23 table.

24 MR. RUBIN: And Phase 2 ASR, is it structured  
25 similar to Phase 1 ASR?

1 MS. STERN: Yes.

2 MR. RUBIN: And therefore the -- that is,  
3 1,000 acre feet is an average annual yield?

4 MS. STERN: Yes.

5 MR. RUBIN: And it's possible that 1,000 acre  
6 feet might not be available in any particular year?

7 MS. STERN: Correct.

8 MR. RUBIN: Has Phase 1 ASR been implemented?

9 Let me reask that question -- or ask my  
10 question again; excuse me.

11 Has the Monterey Peninsula Water Management  
12 District or California American Water received all  
13 approvals necessary to implement Phase 2 ASR?

14 MS. STERN: No.

15 MR. RUBIN: What types of approvals are  
16 required to implement Phase 2 ASR?

17 MS. STERN: Some examples may include the  
18 physical permission to drill the wells in the various  
19 locations, and the permits that would be needed from  
20 the land use jurisdiction in that particular area.  
21 Water rights from the State Water Resources Control  
22 Board. CEQA compliance with the Lead Agency. And  
23 depending on where those locations are, there may be a  
24 NEPA compliance, if it's on former Fort Ord land that  
25 has not yet been transferred by the US Army to the

1 recipient jurisdiction.

2 MR. RUBIN: And based on your experience, can  
3 you guarantee that Phase 2 ASR will be able to be fully  
4 implemented in 2012?

5 MS. STERN: I cannot guarantee.

6 MR. SATO: Objection. This is beyond the  
7 scope of the cross-examination -- or the redirect.

8 MR. RUBIN: This question was about this  
9 table. This is a new addition to the table, so I think  
10 it's within the scope of what could be on the --

11 CO-HEARING OFFICER BAGGETT: I think you've  
12 already asked. It's been asked and answered, so  
13 just --

14 MR. RUBIN: Turning to footnote 2, I believe  
15 is a footnote that relates to the Sand City desal.  
16 Footnote 2, did that appear in HS14 as originally  
17 submitted?

18 MS. STERN: Let me double-check, please.

19 Yes.

20 MR. RUBIN: I'm sorry, footnote 2 did appear  
21 in that table?

22 MS. STERN: No. No, it did not.

23 MR. RUBIN: And I believe the yield of the  
24 City of Sand City desalination plant, the full yield --  
25 excuse me, of the City of Sand City desal plant is not

1 available to California American Water; is that  
2 correct?

3 I can restate my question. Let me state it  
4 generally. Is the full yield of the City of Sand City  
5 desal plant available to California American Water?

6 MS. STERN: I believe so.

7 MR. RUBIN: I have no further questions.

8 CO-HEARING OFFICER BAGGETT: Thank you. Any  
9 questions from staff? Okay.

10 MR. LAREDO: Mr. Baggett, if I could then move  
11 our exhibits. We have eight witnesses. I suggest I  
12 just characterize them by individual witness.

13 The six exhibits identified as MPWMD-AB1  
14 through 6, sponsored by Andrew Bell.

15 CO-HEARING OFFICER BAGGETT: Any objection?  
16 If not, they're admitted.

17 (Exhibits MPWMD were admitted into  
18 evidence as above.)

19 MR. LAREDO: The five exhibits marked as  
20 MPWMD-DF9A and then DF-10 through 13, sponsored by  
21 Darby Fuerst.

22 CO-HEARING OFFICER BAGGETT: Any objection?  
23 If not, admitted.

24 (Exhibits MPWMD were admitted into  
25 evidence as above.)

1           MR. LAREDO: The 18 exhibits marked HS1  
2 through HS18 with the exception of HS14 which we  
3 substituted HS14B, as to those 18 exhibits were  
4 sponsored by Henrietta Stern.

5           CO-HEARING OFFICER BAGGETT: Any objection?  
6 If not they're admitted.

7           (Exhibits MPWMD were admitted into  
8 evidence as above.)

9           MR. LAREDO: As to the 17 exhibits sponsored  
10 by Joe Oliver marked MPWMD-JO1 through JO17, we move  
11 their introduction.

12          CO-HEARING OFFICER BAGGETT: Objection?  
13 Hearing none, they're admitted.

14          (Exhibits MPWMD were admitted into  
15 evidence as above.)

16          MR. LAREDO: I believe I've already introduced  
17 Mr. Kevan Urquhart's 17 exhibits, but under an  
18 abundance of caution, I'd like to re-move their entry.

19          STAFF COUNSEL TAYLOR: We already have them.

20          MR. LAREDO: Thank you.

21          CO-HEARING OFFICER BAGGETT: We have those.

22          MR. LAREDO: As to Mr. Hampson's exhibits, he  
23 sponsored 20 exhibits marked MPWMD-LH1 through LH20,  
24 I'd like to move their introduction.

25          CO-HEARING OFFICER BAGGETT: Any objection?

1 Hearing none.

2 (Exhibits MPWMD were admitted into  
3 evidence as above.)

4 MR. LAREDO: And as to Mr. Christensen's  
5 exhibits, he has sponsored 21 exhibits marked as  
6 MPWMD-TC1 through TC21. We'd like to introduce their  
7 introduction.

8 CO-HEARING OFFICER BAGGETT: Hearing no  
9 objection, they're in.

10 (Exhibits MPWMD were admitted into  
11 evidence.)

12 MR. LAREDO: And as to the 13 exhibits  
13 sponsored by Stephanie Pintar marked as MPWMD-SP1  
14 through SP13, I'd like to move their introduction.

15 CO-HEARING OFFICER BAGGETT: Hearing no  
16 objection, they're in.

17 (Exhibits MPWMD were admitted into  
18 evidence.)

19 MR. LAREDO: Thank you.

20 CO-HEARING OFFICER BAGGETT: Thank you. Thank  
21 you, panel. Let's go home now.

22 (Recess)

23 CO-HEARING OFFICER BAGGETT: Let's go back on  
24 the record. You're up, Hospitality case-in-chief.

25 MR. LOWREY: Thank you, Mr. Baggett. Lloyd



1 Lowrey, for the Hospitality Association. As a  
2 preliminary matter, I notice that we have two exhibits  
3 marked 003, and we'd like to change the numbering on  
4 the testimony of Mr. Boskoff and make that 11 instead  
5 of 3 to avoid confusion.

6 CO-HEARING OFFICER BAGGETT: Any objection to  
7 that?

8 CHIEF COUNSEL TAYLOR: As long as Paul's got  
9 it clear for the record.

10 ENGINEERING GEOLOGIST MURPHEY: Could you  
11 repeat that?

12 MR. LOWREY: We have two 003s, and I'd like to  
13 change the testimony of Mr. Boskoff to make it 11  
14 instead of 3. Just for reference purposes.

15 (Exhibit MCHA-11 was marked for  
16 identification.)

17 MR. LOWREY: The hospitality industry has been  
18 proactive in water conservation since the mid 1980s and  
19 has adopted the economically viable measures to  
20 conserve water under existing technologies. Mandated  
21 further decreases in hospitality water will correlate  
22 directly with reduced hospitality business.

23 In hotels, this is likely to be close to a  
24 one-to-one reduction by percentage; so for example, a  
25 five percent reduced water use would translate into

1 five percent in reduced business and income.

2 A decrease in hospitality business means  
3 impaired ability to stay in business for a number of  
4 the businesses on the Peninsula, reduced financial  
5 support for the community and for governmental budgets  
6 as has been previously testified to by the mayors, and  
7 reduced support for community health and safety  
8 measures.

9 So with that brief introduction, I'd like to  
10 ask the witnesses to come up, Mr. McKenzie, Mr. Bastis  
11 and Mr. Boskoff. If we could have them as a panel, I  
12 would appreciate it.

13 ROBERT MCKENZIE

14 Called by MONTEREY COUNTY HOSPITALITY ASSOCIATION

15 DIRECT EXAMINATION BY MR. LOWREY

16 MR. LOWREY: Mr. McKenzie, would you please  
17 state and spell your name for the record.

18 MR. MCKENZIE: My name is Bob McKenzie. Given  
19 name actually is Robert.

20 (Interruption by the reporter)

21 MR. MCKENZIE: My name is Bob McKenzie, or  
22 Robert McKenzie. Spelling of the last name is  
23 M-c-K-e-n-z-i-e.

24 MR. LOWREY: Mr. McKenzie, do you have a  
25 position with the Monterey County Hospitality

1 Association?

2 CO-HEARING OFFICER BAGGETT: Excuse me. Have  
3 your witnesses taken the oath?

4 MR. LOWREY: Oh, I'm sorry. I believe that  
5 Mr. McKenzie and Mr. Bastis have, but Mr. Boskoff has  
6 not.

7 CO-HEARING OFFICER BAGGETT: Okay. We might  
8 as well do it now. Would you please -- do you promise  
9 to tell the truth in these proceedings?

10 MR. BOSKOFF: Yes, I do.

11 CO-HEARING OFFICER BAGGETT: Just have your  
12 witnesses state for the record whether they have taken  
13 the oath.

14 MR. LOWREY: Have you taken the oath,  
15 Mr. McKenzie?

16 MR. MCKENZIE: Yes, I have. July 23rd.

17 MR. LOWREY: Mr. McKenzie, do you have a  
18 position with the Monterey County Hospitality  
19 Association?

20 MR. MCKENZIE: I do. I have been their  
21 government affairs director since 1996.

22 MR. LOWREY: And what's the scope of your  
23 responsibilities in that position?

24 MR. MCKENZIE: I basically follow issues of  
25 concern to the Hospitality Association that fall within

1 the legislative or regulatory arenas. The two issues  
2 of most concern to the hospitality industry are  
3 transportation issues -- that is to say can visitors  
4 get in and out of our area -- and the other is water.

5 MR. LOWREY: And have your responsibilities  
6 included tracking the water conservation within the  
7 hospitality industry during the period since the 1980s?

8 MR. MCKENZIE: Yes.

9 MR. LOWREY: As a result of that, have you  
10 accumulated firsthand knowledge and also observed  
11 trends within the hospitality industry in water  
12 conservation use and the results of that water  
13 conservation?

14 MR. MCKENZIE: Yes, I have.

15 MR. LOWREY: And has the testimony that --  
16 your written testimony, labeled MCHA-001, does it  
17 reflect that information that you've gathered?

18 MR. MCKENZIE: Yes it does.

19 MR. LOWREY: Did you prepare this exhibit?

20 MR. MCKENZIE: I prepared the testimony and  
21 the exhibits.

22 MR. LOWREY: And so that would be MCHA-001 and  
23 the exhibits that you're sponsoring that are 2 through  
24 9; is that correct?

25 MR. MCKENZIE: That's correct. Well, I did

1 not prepare the newspaper article or the editorial.

2 MR. LOWREY: But those, the newspaper article  
3 and the editorial, do they accurately reflect the  
4 information that you have prepared about which they are  
5 talking?

6 MR. MCKENZIE: Yes.

7 MR. LOWREY: And is this information in  
8 MCHA-001 and the attached exhibits to your knowledge  
9 true and accurate as of today?

10 MR. MCKENZIE: Yes.

11 MR. LOWREY: Do you have any changes that you  
12 want to make to it?

13 MR. MCKENZIE: No.

14 MR. LOWREY: Looking then at the conservation  
15 experience, will you please explain what conservation  
16 activities have been that the Hospitality Association  
17 has undertaken since the 1980s.

18 MR. MCKENZIE: The activities the hospitality  
19 industry has engaged in I think fall into two  
20 categories.

21 One is the Monterey County Hospitality  
22 Association has been the lead community organization,  
23 as opposed to governmental entity or more regulated  
24 public utility, to promote water conservation within  
25 the Cal Am service area.

1           We have actively acquired and distributed  
2 materials to not only our members but to other  
3 businesses, to the general public, reflecting what  
4 water rules exist that need to be complied with, water  
5 savings materials, reminders to guests in restaurants  
6 and hotels, for instance, to conserve on water because  
7 it's a precious resource in our area.

8           The list of those things basically goes on and  
9 on. We've distributed tens of thousands of those  
10 things.

11           In the late 1990s and as late as the early  
12 2000s, we conducted a number of meetings for our  
13 members, for the general public, in cooperation with or  
14 by ourselves, the Water Management District, California  
15 American Water, outlying water districts and water  
16 agencies, including the county water resources  
17 agencies.

18           So our activities I think have been very  
19 extensive in promoting savings on water use. We'll  
20 hear later I think from aquifers and facilities.

21           The second part of what the industry has done  
22 is actively embrace water savings in their facilities.

23           MR. LOWREY: Mr. McKenzie, what do your  
24 Exhibits 02 through 07 reflect?

25           MR. MCKENZIE: They reflect the fact that the

1 hospitality industry over a period of time, from  
2 roughly 1987 and '88, which can be described I think as  
3 the last more or less normal water years in our area,  
4 through the late '90s, '97 and '98, the hospitality  
5 industry dramatically decreased its use of water to  
6 conduct its business. That reduction is reflected in  
7 the tables in the exhibits.

8 MR. LOWREY: What process did you use to  
9 prepare these exhibits?

10 MR. MCKENZIE: I acquired, and I say this --  
11 well, I want to make it clear that we had the full  
12 cooperation of the California American Water Company  
13 and the Water Management District in acquiring  
14 production records, the production details that we  
15 needed to zero down to what our industry uses. So we  
16 acquired all the records that we needed to examine a  
17 history of water use.

18 MR. LOWREY: To your knowledge, have the  
19 efforts of the hospitality industry included both  
20 voluntary and mandated activities?

21 MR. MCKENZIE: Yes.

22 MR. LOWREY: What have been the voluntary  
23 activities?

24 MR. MCKENZIE: Voluntary activities have been  
25 those that I described earlier. I know that some of

1 the properties that are members of the hospitality  
2 industry -- or the Hospitality Association have gone  
3 beyond what is currently mandated. For instance,  
4 installation of waterless urinals where not required  
5 currently, that kind of thing.

6 MR. LOWREY: And what have been the mandated  
7 activities, to your knowledge?

8 MR. MCKENZIE: Mandated activities have  
9 included retrofitting. There was a deadline set by the  
10 Water Management District for retrofitting visitor  
11 serving facilities December 31st, 2000, as I recall.  
12 Everybody had to retrofit to low-flow toilets, whatever  
13 the standard was at that time, which I think was  
14 1.6 gallons. Most of the bigger facilities did that  
15 much earlier than the deadline.

16 MR. LOWREY: To your knowledge, are there  
17 other water conservation activities available under  
18 current technology that have not been implemented by  
19 the industry within the jurisdiction of Cal Am in the  
20 Monterey Peninsula service area?

21 MR. MCKENZIE: There might be a few, but they  
22 would not yield very much by way of result in water  
23 savings. It could be that a few facilities could go to  
24 waterless urinals in public areas that have not done  
25 that. But all things considered, the industry is



1 pretty much state-of-the-art in terms of water savings.

2 MR. LOWREY: And do you have personal  
3 knowledge, through your position, of the impact of  
4 water conservation on the hospitality industry? The  
5 impact -- the economic impact on the hospitality  
6 industry of water conservation to date: Has there been  
7 an impact?

8 MR. MCKENZIE: It makes some of the facilities  
9 less competitive. The industry generally in our area  
10 struggles to be competitive with other alternate  
11 destinations.

12 Market drives what people want to see which  
13 drives what properties try to provide. I know that  
14 there are several properties in our area that could be  
15 more competitive if there were enough water to allocate  
16 the installation of things like spas, because spas are  
17 in high demand. But they can't because they don't have  
18 the water, and the jurisdictions simply don't have the  
19 water to give them.

20 MR. LOWREY: Thank you.

21 RENE BOSKOFF

22 Called by MONTEREY COUNTY HOSPITALITY ASSOCIATION

23 DIRECT EXAMINATION BY MR. LOWREY

24 MR. LOWREY: Mr. Boskoff, will you please  
25 state your name for the record and spell your name,

1 please.

2 MR. BOSKOFF: Rene Boskoff. Rene, R-e-n-e,  
3 accent aigu, which is to the right. And Boskoff is  
4 B-o-s-k-o-f-f.

5 MR. LOWREY: And just for the record, you just  
6 took the oath, right?

7 MR. BOSKOFF: Yes, I did.

8 MR. LOWREY: Have you reviewed the exhibit  
9 which is now labeled 003, styled Testimony of Rene  
10 Boskoff?

11 MR. BOSKOFF: Yes, I have.

12 MR. LOWREY: And were you involved in the  
13 preparation of that testimony?

14 MR. BOSKOFF: Yes.

15 MR. LOWREY: Is it true and correct to the  
16 best of your knowledge?

17 MR. BOSKOFF: Yes, it is.

18 MR. LOWREY: Do you have any changes that you  
19 believe are required at this time, any corrections to  
20 the testimony?

21 MR. BOSKOFF: Not at this time, no.

22 MR. LOWREY: Thank you. Will you please tell  
23 us what your current position is, employment position?

24 MR. BOSKOFF: I'm the general manager of the  
25 Monterey Marriott, and I've been there, working with

1 Marriott organization since 1975. And worked over two  
2 years in California, part of them in southern  
3 California, the last 17, 18 years in northern  
4 California.

5 MR. LOWREY: How long have you currently  
6 been -- or how long have you been employed in your  
7 current position with the Monterey Marriott?

8 MR. BOSKOFF: Since 19 -- July of 1997.

9 MR. LOWREY: Have you been active during that  
10 time also in hospitality industry activities?

11 MR. BOSKOFF: Yes. Since 1998, I've been a  
12 Board member of MCHA, which is the Monterey County  
13 Hospitality Association. For the past 40 years, I have  
14 been on the executive committee and a past president.

15 I'm also involved on the Board and executive  
16 committee member of the California Hotel & Lodging  
17 Association. It's our state trade organization.

18 And Monterey County, the Monterey County  
19 Convention and Visitors Bureau, on the Board and also  
20 on the executive committee.

21 And on the Monterey Peninsula Chamber of  
22 Commerce, I'm also serving as a Board member, and I  
23 guess I'm a part-time general manager.

24 MR. LOWREY: Thank you. What conservation,  
25 water conservation activities, has your hotel and

1 similar facilities undertaken since the 1980s?

2 MR. BOSKOFF: I'll start with our hotel. We  
3 have of course installed the low-flow toilets that you  
4 heard about. We discontinued taking house laundry,  
5 which that was really a very large one. Some people  
6 may suggest, okay, that's nice, you stopped doing it in  
7 the hotel, but you may have brought it across the  
8 street to a laundry so it still creates water use in  
9 the area. However, that's some news there, we did  
10 bring it all the way to a facility in Gilroy, which is  
11 outside of our county, for whatever that's worth.

12 We only replace the bedsheets and the bathroom  
13 linen in checkout rooms and unoccupied rooms, we only  
14 do it upon request or every third day, which is a  
15 dramatic savings in water consumption.

16 We serve water to the hotel guests only upon  
17 request. We installed the low-flow shower heads in all  
18 the guest rooms. We encourage guests to use water only  
19 when needed and advise them it's a valuable resource in  
20 this market as you heard Cal Am talking about.

21 Our industry has worked together with Cal Am,  
22 and they provided the means to communicate that to our  
23 guests and they provided all those tools for us.

24 We closed the restaurant on top of our hotel  
25 and turned it into a banquet facility which created a

1 great reduction of water use. And we consolidated two  
2 kitchens to one kitchen.

3 MR. LOWREY: To your knowledge have similar  
4 facilities on the Monterey Peninsula undertaken similar  
5 conservation efforts?

6 MR. BOSKOFF: Yes. Not all of them. Of  
7 course, not everybody closed restaurants, so that may  
8 be unique to our facility. But as far as I know, many  
9 of our hotels, or many of our brothers and sisters in  
10 the business, have done this since we really started  
11 embracing the needs of our community and wanted to make  
12 sure that there was enough water for everybody.

13 MR. LOWREY: Do you know if there are other  
14 conservation measures under current technology that  
15 could be undertaken by your facility and similar  
16 facilities on the Monterey Peninsula?

17 MR. BOSKOFF: I know that we have not  
18 installed the waterless urinals at this point in time,  
19 so there's still some room for opportunity, and that's  
20 pretty much the extent.

21 I think that after we install the low-flow  
22 toilets that a newer, better version has come out  
23 since, which I think is a 1.3 gallon tank, and we use  
24 one that I think is either the 1.5 or 1.6 gallon. So  
25 they have some new items come out. Unfortunately,

1 we're not necessarily planning on every seven or eight  
2 years to replace that. That is a costly undertaking.

3 MR. LOWREY: So that's a fairly major cost  
4 to --

5 MR. BOSKOFF: To replace all the toilets, you  
6 know, 350 to 400, that's a lot.

7 MR. LOWREY: Do you have a sense of how much  
8 water is saved by employing that measure?

9 MR. BOSKOFF: The 1.3 gallon?

10 MR. LOWREY: Uh-huh.

11 MR. BOSKOFF: Well, see, that would be the 1.6  
12 versus 1.3, so it's three-tenths of a gallon times -- I  
13 guess that can be calculated. I don't know exactly,  
14 but.

15 MR. LOWREY: Do you have an opinion of what  
16 the impact would be, economic impact, if you had to  
17 reduce water by say ten percent?

18 MR. BOSKOFF: Well, you know, I shouldn't  
19 suggest that there may be -- those two items are the  
20 only two items I'm aware of that we would be able to  
21 save, so I would need to figure out what that would  
22 mean in actual water reduction.

23 But assuming that -- and I know we saved about  
24 45 percent in our water consumption over the ten-year  
25 time frame. So maybe a couple percent could be had.

1 But the remaining would really have to come, as far as  
2 I know, out of closing actual guest rooms.

3 So for my calculation, I took just an example  
4 of what if I had to close ten percent of our hotel  
5 inventory. And closing them during the November and  
6 December time frame, which is the slow time, will  
7 really not reduce any water savings. So that would  
8 suggest we would have to close our inventory during the  
9 busy time, actually summer.

10 And that would translate into a ten percent  
11 reduction in our room revenue, and that would translate  
12 roughly rounded up to about \$2 million annually.

13 Our City of Monterey gets ten percent of that,  
14 so that would be a reduction to the city of 200,000.  
15 And then the neighborhood improvement gets  
16 one-sixteenth of that 200,000 -- I think that's about  
17 24,000 -- that they use in order to improve the  
18 neighborhoods, and they would be losing that as well.

19 So as I looked at that, we are truly, we  
20 meaning the Marriott Hotel, is a small fish in a large  
21 pond. Meaning the hospitality industry is the number  
22 one industry on the Peninsula as it relates to revenue  
23 generating, and number two in the county after  
24 agriculture.

25 So I was kind of curious what it would mean if

1 that were to be multiplied times all the units in the  
2 county, and what kind of numbers that would translate  
3 that into. And I don't know if you want me to share  
4 that with you at this time.

5 MR. LOWREY: Well, go ahead. Sure.

6 MR. BOSKOFF: The tourism, direct spending in  
7 Monterey, so this would mean the tourists coming to our  
8 area, and where the county currently is two million --  
9 I'm sorry, two billion, with a B, and tourist direct  
10 spending in the Cal Am service area is 1 billion 836  
11 million.

12 The TOT or Transient Occupancy Tax that is  
13 produced in the county is forty-four, nine hundred  
14 seventy-seven million, and for the TOT, just the Cal Am  
15 service area, would be forty million, four hundred and  
16 forty-nine thousand. Then the sales tax that is  
17 generated in the county would be twelve million, and in  
18 the Cal Am service area it would be eleven million.

19 So if we were to take a ten percent reduction  
20 on that, that would translate into direct reduction in  
21 spending of 188 million for every ten percent reduction  
22 in occupancy.

23 There is additional reductions in revenue that  
24 would be produced, and that is the indirect, meaning  
25 those vendors that provide goods and services to our



1 industry. So about ten percent less room sales and ten  
2 percent less customers, then we feed them less and need  
3 less goods and supplies in order to feed them. There  
4 is other loss of sales, and that would be the induced  
5 impacts which would be the employment created by our  
6 vendors.

7 MR. SATO: I have an objection to this  
8 testimony. I mean, a lot of this is not in the written  
9 testimony that was provided to us. So I would move to  
10 strike all of the testimony that is not in the written  
11 submission previously submitted.

12 MR. JACKSON: I would join in that. And if  
13 they're going to be allowed to testify to this stuff,  
14 then cross-examination is going to be substantially  
15 longer, because some of the things they're saying just  
16 don't make sense, and we're going to need to ask them  
17 about it.

18 CO-HEARING OFFICER BAGGETT: Can you point to  
19 where this is in the written testimony?

20 MR. LOWREY: No, I don't have -- I have no  
21 objection to striking that.

22 CO-HEARING OFFICER BAGGETT: Very good. You  
23 do have an opportunity at rebuttal if you feel it's  
24 necessary to bring it in as rebuttal testimony.

25 MR. LOWREY: Mr. Boskoff, would the reduction

1 at some point of water use affect the viability of your  
2 facility and similar facilities?

3 MR. BOSKOFF: Yes, it would. Our business, we  
4 really have two type of customers. One is the leisure  
5 traveler, the vacationer. And the other is the  
6 conventioner. The business traveler is very, very  
7 small and almost less than one percent in my hotel.

8 The larger conventions are booked anywhere  
9 from two to ten years out. So if we have large groups  
10 that commit 90 percent of the hotel and have a  
11 long-term contract with the hotel, and all of a sudden  
12 we have to close an X percentage of our inventory, we  
13 may not be able to accommodate the written contracts we  
14 have, and we would have a duty to advise our guests  
15 that they -- that we would not be able to live up to  
16 our commitment, at which point in time they could go to  
17 other locations as an option, if they don't want to  
18 deal with the uncertainty.

19 And it could become very, very difficult to  
20 replace that if word gets around that the inventory of  
21 the hotel industry in Monterey may vary by time of the  
22 year or at any time may be reduced by 10 or 20 percent.

23 MR. SATO: I'm going to move to also strike  
24 this portion of his testimony. It's also not in his  
25 written submission.

1           I don't actually understand what is going on  
2 here. People understood, I thought, that the testimony  
3 is supposed to be in writing and that this is supposed  
4 to be a summary of the testimony, not a completely  
5 wholesale new manufacturing of information.

6           MR. LOWREY: On this one, I do think that is  
7 part of the testimony and is subject to  
8 cross-examination.

9           MR. SATO: You have one sentence talking about  
10 group business, and he's testified quite a bit as to  
11 what the ramifications are for that business. So I  
12 move to strike.

13           CO-HEARING OFFICER BAGGETT: Can you show us  
14 what exhibit?

15           MR. LOWREY: Page 3 of exhibit, what's been  
16 called 11 now. Line 22, 23.

17           CO-HEARING OFFICER BAGGETT: Exhibit 9?

18           MR. BOSKOFF: And then the next page 1, 2, 3,  
19 and 4.

20           CO-HEARING OFFICER BAGGETT: Page --

21           CHIEF LINDSAY: It's listed as 9 on the  
22 website.

23           CO-HEARING OFFICER BAGGETT: I'm on the  
24 website. Okay. There it is.

25           MR. BOSKOFF: It says:

1           Group business takes years to develop --  
2           the lead time on group bookings is two  
3           years or more in most cases.  
4           Devastating cuts in water availability  
5           will crush group business and the harm  
6           will last long after a new water supply  
7           is found, and in the meantime our group  
8           business infrastructure continues to age  
9           and become less competitive.

10           CO-HEARING OFFICER BAGGETT: So what's the  
11 objection?

12           MR. SATO: That part is there. All of the  
13 other testimony that he was providing was not part of  
14 the written testimony.

15           MR. BOSKOFF: I'm just clarifying it.

16           CO-HEARING OFFICER BAGGETT: Without going  
17 through line by line, it's going to be a challenge.  
18 Some of this clearly is. Overruled. He's explaining  
19 what that means.

20           MR. BOSKOFF: If you only want me to read  
21 what's here, I can just read this paragraph. I can  
22 read it to you, but I thought --

23           CO-HEARING OFFICER BAGGETT: Okay. We'll  
24 sustain the motion. Read the paragraph, and then if  
25 there's questions, I'm sure there will be questions on

1 cross-examination.

2 MR. LOWREY: Will you summarize the paragraph,  
3 Mr. Boskoff.

4 MR. BOSKOFF: Okay. Summarizing is that the  
5 group business takes many years to be developed, and is  
6 booked way in advance. And it's going to create  
7 uncertainty in that market. We stand to lose  
8 additional business, and it may take a long time to  
9 recuperate.

10 MR. LOWREY: Thank you.

11 MARK BASTIS

12 Called by MONTEREY COUNTY HOSPITALITY ASSOCIATION

13 DIRECT EXAMINATION BY MR. LOWREY

14 MR. LOWREY: Mr. Bastis, could you state your  
15 name for the record, please.

16 MR. BASTIS: Mark Bastis.

17 MR. LOWREY: Can you spell your last name for  
18 us, please.

19 MR. BASTIS: B-a-s-t-i-s.

20 MR. LOWREY: Have you taken the oath here,  
21 Mr. Bastis?

22 MR. BASTIS: I have, last week.

23 MR. LOWREY: What's your current position?

24 MR. BASTIS: I am the general manager of the  
25 Hyatt Regency, Monterey.

1           MR. LOWREY: How long have you been the  
2 general manager there?

3           MR. BASTIS: Three years.

4           MR. LOWREY: What is your other experience  
5 with hotel management?

6           MR. BASTIS: I've been with Hyatt 26 years.  
7 I've been the general manager of a few different  
8 properties, and been through all aspects of the hotel  
9 industry.

10          MR. LOWRY: And have you been active in the  
11 hospitality industry on the Monterey Peninsula since  
12 you've been here?

13          MR. BASTIS: I have. I'm actually, by way of  
14 correction, in my documents it says I'm president elect  
15 for Monterey County Hospitality Association. I'm in  
16 fact the president this year. And also I'm not on the  
17 Steinbeck Center Board.

18          MR. LOWREY: Okay. Have you participated in  
19 the preparation of this document that's been marked as  
20 MCHA-10?

21          MR. BASTIS: Yes, sir.

22          MR. LOWREY: And it's true and correct to the  
23 best of your knowledge?

24          MR. BASTIS: Yes, sir.

25          MR. LOWREY: Other than the changes that you

1 just made?

2 MR. BASTIS: Correct.

3 MR. LOWREY: Any there any other changes that  
4 you wish to make?

5 MR. BASTIS: No.

6 MR. LOWREY: Then to your knowledge, what  
7 activities, conservation activities, has your hotel in  
8 the hospitality industry been involved in? Are they as  
9 testified to by Mr. Boskoff?

10 MR. BASTIS: Yes. And I think it's important  
11 to note that good environmental practices in our  
12 business are not just good business practices, but our  
13 clients expect it of us these days.

14 And we have already mentioned the low-flow  
15 toilets, 1.6. We have 1.3 in our hotel. We just spent  
16 \$60 million to do a lot of these things. The shower  
17 heads are 2.5s. Faucets, we have 1.5 flow faucets.

18 Also the same in the public area toilets, the  
19 public area faucets. We have waterless urinals now  
20 throughout our resort.

21 Laundry, Rene touched on. But we also, and  
22 most places in Monterey send their laundry out of the  
23 county to be done.

24 The restaurants, we spoke about we all do  
25 water upon request. But we also -- another big user of

1 water is in our dishwashing machines, most of which  
2 have been calling it water reclaim systems on them.  
3 Which not only keeps water, but keeps the temperature  
4 hot and there is some chemical savings as well.

5 And landscaping. We're located on 22 acres.  
6 And most places throughout Monterey have either put in  
7 drip systems, or drought-resistant systems,  
8 drought-resistant type of landscapes.

9 MR. LOWREY: What would be the impact of say a  
10 ten percent reduction in water on your facility?

11 MR. BASTIS: It would be tough. I think, what  
12 strikes me is that when we're talking water reduction  
13 we need to recognize that as an industry in Monterey,  
14 Monterey's destination occupancy for the past few years  
15 has been in the low 60 percent which by comparison to  
16 many other destinations is considered very low.

17 So any water reduction, we're talking about  
18 from historical amounts based on 62 to 64 percent over  
19 the last 30 years. One of the challenges we have is  
20 seldom do we run 62 percent on any given day. The  
21 62 percent occupancy is made up of 100 percent days and  
22 20 or 30 percent occupancy days. It's very hard to  
23 save water if you don't have anyone in your hotel.

24 So the majority of the water savings, if it  
25 was, you know, as the draft CDO points out to whatever



1 the amounts are, 15, 15, 10, 10 -- 50 percent over the  
2 next few years would have to come -- and this is why  
3 there's -- we feel strong it's a one-to-one  
4 relationship with any cuts in water is a cut in  
5 available rooms.

6 Our product is very perishable. Any room we  
7 don't sell last night we can't resell. So our guests  
8 need to bathe.

9 MR. LOWREY: Would that translate into a loss  
10 of revenue?

11 MR. BASTIS: Absolutely.

12 MR. LOWREY: Would that be the one-for-one  
13 loss of revenue on a percentage basis as you've  
14 testified?

15 MR. BASTIS: Absolutely.

16 MR. LOWREY: Approximately.

17 MR. BASTIS: Absolutely.

18 MR. LOWREY: And what would be the impact on  
19 your employees?

20 MR. BASTIS: Well, similar. Similar impact.  
21 In our case, we have 400 associates to run our  
22 62 percent a year. If you took ten points off of that,  
23 you take ten points out of the -- ten percent out of  
24 the labor pool.

25 MR. LOWREY: Is there any other available

1 method to save water that you are familiar with other  
2 than reducing the business?

3 MR. BASTIS: Could be --

4 MR. LOWREY: With the current technology.

5 MR. BASTIS: Right. I think it would be  
6 unrealistic to say you couldn't save any more. But in  
7 general our water use, you know, the water use of  
8 Monterey Peninsula hospitality has diminished  
9 considerably over the years, so it's going to be  
10 impossible in my view to obtain huge amounts of  
11 increases like we did in the past.

12 MR. LOWREY: Thank you, Mr. Bastis.

13 That's the direct testimony.

14 CO-HEARING OFFICER BAGGETT: Thank you. Let's  
15 get going on cross-examination. Does Cal Am have any  
16 questions?

17 CROSS-EXAMINATION BY MS. KINCAID

18 FOR CALIFORNIA AMERICAN WATER COMPANY

19 MS. KINCAID: Good afternoon. Valerie Kincaid  
20 on behalf of California American Water.

21 Mr. Bastis, I'm going to start with you. On  
22 page 2, line 10 of your written testimony, Exhibit  
23 MCHA-10, you state the Hyatt Regency Monterey has an  
24 average annual occupancy rate of about 65 percent; is  
25 that correct?

1           MR. BASTIS: No. It states that the  
2   hospitality industry in Monterey has the average  
3   occupancy of 65. I had just said 62 to 64, in that  
4   range.

5           MS. KINCAID: And is the Hyatt Regency  
6   Monterey also in that range?

7           MR. BASTIS: That is as a matter of fact true,  
8   yes.

9           MS. KINCAID: Okay. And you state on page 2  
10  of the written testimony, Exhibit MCHA-10, this average  
11  annual occupancy rate is made up of busy and slow  
12  periods?

13          MR. BASTIS: Correct.

14          MS. KINCAID: And what specific periods are  
15  considered a busy period for the Hyatt Regency  
16  Monterey?

17          MR. BASTIS: Well, when you are full, it's  
18  busy.

19          MS. KINCAID: Well, I mean, what times of the  
20  year, specific time of year?

21          MR. BASTIS: Right. It's easier to probably  
22  characterize the off times. The off time generally is  
23  November, December, January.

24                 One thing particularly with the larger hotels  
25  is we're very group-driven. Group is what makes or

1 breaks us. So that can vary year to year depending on  
2 what type of group bookings you have.

3 MS. KINCAID: Okay. A 65 percent average  
4 annual occupancy rate results in approximately 113,575  
5 room nights booked at the Hyatt Regency Monterey; is  
6 that correct?

7 MR. BASTIS: I believe so.

8 MS. KINCAID: On average, how many guests  
9 occupy each room booked at the Hyatt Regency Monterey?

10 MR. BASTIS: Our average guest per room  
11 counts, just under two. 1.7, 1.8. And again, that  
12 varies by season. July and August are all families, so  
13 it's over two. When we're in group season, it's less  
14 than two.

15 MS. KINCAID: Therefore the Hyatt Regency  
16 Monterey books approximately 225,000 guests per year?

17 MR. BASTIS: Correct.

18 MS. KINCAID: On page 2, line 23 of your  
19 written testimony, Exhibit MCHA-10, you state that  
20 group business is an economic driver for your hotel?

21 MR. BASTIS: Correct.

22 MS. KINCAID: In your experience, if a hotel  
23 does not have enough open rooms for a group, will the  
24 group look for another facility that is able to  
25 accommodate the whole group?

1 MR. BASTIS: Absolutely.

2 MS. KINCAID: So it is possible that a limited  
3 water supply which reduces room inventory could have a  
4 much larger impact because of the effect on a hotel's  
5 ability to book group business?

6 MR. BASTIS: Without question.

7 MS. KINCAID: Let me ask a hypothetical  
8 question based on -- let me ask a hypothetical to see  
9 if I understand the potential impacts.

10 Assume a hotel has 550 rooms; however, it only  
11 has 500 rooms available due to a reduced water supply.  
12 Also assume that a group would like to stay at the  
13 hotel but requires 550 rooms. Under that hypothetical,  
14 is it possible that the group would seek accommodations  
15 at a different hotel with 550 open rooms available?

16 MR. BASTIS: I would assume so. I mean, if  
17 you can't use the 50 rooms, I don't know what your  
18 penalties would be; but certainly if it's unlawful to  
19 do, you wouldn't occupy it, so.

20 MS. KINCAID: And in that instance if the  
21 group is looking for more rooms than you have, the  
22 whole group would leave; is that correct?

23 MR. BASTIS: In most instances. Not all, but  
24 most.

25 MS. KINCAID: Okay. That's -- another

1 hypothetical I just presented is a possible water  
2 limitation which removes 50 rooms from inventory will  
3 impair the hotel's ability to book 550 rooms?

4 MR. BASTIS: Yes.

5 MS. KINCAID: Thanks. On page --

6 MR. BASTIS: Can I just make one little  
7 comment on that too is that -- and I believe my  
8 colleague alluded to it -- the groups booking cycle is  
9 much further out. So, you know, groups book years in  
10 advance because they need to know where to go, and they  
11 announce it.

12 So, you know, if we don't -- or not having or  
13 knowing what our water availability is two or three  
14 years from now will have immediate impact as well.  
15 Just a little bit of a side note.

16 MS. KINCAID: Sure.

17 On page 3, line 18 of your written testimony,  
18 Exhibit MCHA-10, you discuss additional impacts on the  
19 Monterey Peninsula community that would likely be  
20 caused if the hospitality industry is affected by  
21 limited water supply.

22 MR. BASTIS: I'm sorry, what page?

23 MS. KINCAID: Page 3, line 18.

24 MR. BASTIS: Right. Correct.

25 MS. KINCAID: One of these additional impacts

1 might be reduction in the number of Hyatt Regency  
2 Monterey hotel employees; is that correct?

3 MR. BASTIS: Correct.

4 MS. KINCAID: On page 4, starting on line 3 of  
5 your written testimony, MCHA-10, you discuss the  
6 membership of the Monterey County Hospitality  
7 Association?

8 MR. BASTIS: Correct.

9 MS. KINCAID: During that discussion, you  
10 state over half the members of the Monterey County  
11 Hospitality Association are not directly associated  
12 with the hospitality industry.

13 MR. BASTIS: Correct. Now, our membership, we  
14 have 260, and I believe it's 263; it fluctuates every  
15 day, every week. But we loosely categorize hotels,  
16 motels, restaurants, attractions and so forth.

17 And then we also have general business which  
18 is anything that we don't fit into a restaurant, a  
19 hotel, an attraction, a direct tourism-related  
20 business. 62.6 percent of our membership is in the  
21 general business category.

22 MS. KINCAID: Okay. And are those general  
23 business members because their business is affected by  
24 the hospitality industry?

25 MR. BASTIS: Absolutely. We support them. So

1 it could be anything. It could be vendors. It could  
2 be dentists. We have dentists, we have attorneys, we  
3 have -- it's a wide range of businesses.

4 MS. KINCAID: If the number of guests in the  
5 Monterey area hotels decreases due to a limited water  
6 supply resulting from remedies proposed during this  
7 proceeding, would those other businesses also be  
8 adversely impacted?

9 MR. BASTIS: I would imagine so. Many of them  
10 serve our staff and our clients. So if we have less  
11 staff, less clients. So they would be affected as  
12 well.

13 MS. KINCAID: And can you quantify the  
14 potential effect of reduced hotel occupancy rates on  
15 the Monterey Peninsula community?

16 MR. BASTIS: To quantify it -- well, I believe  
17 the mayors gave some numbers there. But we in the --  
18 for the hotels, and the tourism tax, we generate 44,  
19 almost \$45 million a year. Of that, 40 million or so  
20 is of the hotels in the Cal Am water district, so  
21 that's a substantial amount.

22 And I believe Chuck Della Sala said between  
23 the TOT and between the sales tax, additional sales  
24 tax, generated by that makes up 50 percent of the  
25 county -- or the City of Monterey's budget, I guess.



1 That's fairly substantial.

2 MS. KINCAID: Okay.

3 And can either Mr. Boskoff or Mr. McKenzie  
4 further quantify the potential effect of reduced hotel  
5 occupancy rates on the Monterey Peninsula community?

6 MR. BOSKOFF: Yes, I can. Every ten percent  
7 reduction in occupancy would translate into a reduction  
8 in direct spending of \$188 million a year. These  
9 numbers come from the Dean Runyon Associates, who do --  
10 who calculate statistics and economic impacts for the  
11 CTTC, which is the California Travel and Tourism  
12 Commission for the State of California. They are I  
13 think the most knowledgeable about this.

14 And as we discussed, the Monterey, just the  
15 one hotel, it kind of piqued curiosity of what would it  
16 do on a larger scale. And we didn't have all those  
17 numbers, so we tried to get those numbers through  
18 this -- the associates, and these are the numbers we  
19 received.

20 CO-HEARING OFFICER BAGGETT: Mr. Jackson?

21 MR. JACKSON: I would move to strike the  
22 answer. I have not found this information in the  
23 testimony. Maybe I overlooked it, but it sounds to me  
24 like it was not part of the testimony, and therefore  
25 it's --

1 CO-HEARING OFFICER BAGGETT: This is  
2 cross-examination.

3 MS. KINCAID: On cross, I think it's relevant.

4 CO-HEARING OFFICER BAGGETT: This is an  
5 expert. He runs a hotel. He's on a statewide board.  
6 If he has -- it's hearsay, we don't have to --

7 MR. JACKSON: Just about the friendliest cross  
8 I ever saw. And you haven't let the environmentalists  
9 do it, and I don't know why this is happening.

10 I mean, they're supposed to put this in  
11 evidence. If they want to do a study, talk about a  
12 study, they should put it into evidence.

13 CO-HEARING OFFICER WOLFF: Mr. Jackson, I'll  
14 let Mr. Baggett address your concern, but I don't know  
15 what you're talking about. We didn't let the  
16 environmentalists do it. You have a way of making  
17 offhand remarks about somehow the process being unfair.  
18 I wish you would you either explain yourself or refrain  
19 from the remarks.

20 MR. JACKSON: Sure, I will explain it. The  
21 cross-examination of one environmental group by another  
22 has been regularly restricted by rulings. And I'm not  
23 actually only talking about Mr. Baggett in this case.

24 The information that could be elicited from  
25 one friendly cross-examiner to a set of witnesses could

1 go a long way and take an awful lot of time. And it's  
2 been my impression that you have ridden pretty hard on  
3 that particular issue. That's what I'm referring to.

4 MR. RUBIN: Can I speak to this for just a  
5 second, if you don't mind?

6 CO-HEARING OFFICER BAGGETT: I would like to  
7 rule and get on, but --

8 MR. RUBIN: Okay.

9 MR. SATO: Just on that point, Mr. Baggett. I  
10 do want to move to strike his last answer, because  
11 again I don't know -- he's just reading off a document.  
12 I don't know if he's intending to introduce it or if he  
13 doesn't intend to introduce it. And I don't think it's  
14 appropriate; there's no other substantiation.

15 CO-HEARING OFFICER BAGGETT: It appears that I  
16 will grant that it is relevant, which is the difference  
17 between some of the prior issues. The economics are  
18 clearly a relevant issue in this case, and that's the  
19 case being made. This isn't talking about fish ladders  
20 and other issues which we determined weren't directly  
21 relevant in any previous rulings. So I feel this is  
22 fairly within the scope.

23 The document is not cited. If you've got  
24 information, I guess it would be useful to have it in  
25 this rebuttal or redirect, if there is a document

1 someone wants to bring in.

2 But right now, it is hearsay; and the Board's  
3 rules on hearsay are very, very broad. And we  
4 obviously can't take it for a finding of fact in this  
5 case because it is hearsay. But it's made to  
6 illustrate a point, and that's all that it can be used  
7 for at this point. So continue.

8 MS. KINCAID: Mr. Boskoff, I'm not sure if you  
9 were finished, but Mr. McKenzie, please feel free to  
10 further quantify the potential effects that reduced  
11 occupancy may have on the Monterey Peninsula community.

12 MR. MCKENZIE: I'd be happy to add a few  
13 things if you like.

14 MS. KINCAID: Sure.

15 MR. MCKENZIE: If you assume a given reduction  
16 in the amount of water available to these businesses,  
17 then you have heard the experts say there is  
18 practically nothing left for them to do except to close  
19 rooms. If you just do a static analysis of generally  
20 available information about the tourism industry in  
21 Monterey County, you can make some assumptions about  
22 what that means.

23 Now, Mr. Boskoff told you in a one-to-one  
24 sense what that translates to in loss of direct  
25 spending in the area. Mr. Bastis testified about how

1 many employees he would have to let go if he had to  
2 reduce the number of rooms.

3 As a general proposition within the Cal Am  
4 service area, the potential was for a loss of something  
5 approaching 11- and 12,000 jobs from a 30 percent  
6 reduction in water use.

7 Now, you've also heard them testify that it's  
8 quite likely if they can't book a particular group  
9 because the room needs exceeds their room availability  
10 because they cut back, they may lose the whole thing.  
11 That would magnify these concerns.

12 MS. KINCAID: Thank you. And thank you, Mr.  
13 Bastis.

14 Mr. Boskoff, on the bottom of page 2 and top  
15 of page 3 of your written testimony, newly marked as  
16 MCHA-11, you said the Monterey Marriott has made a  
17 number of conservation measures; is that correct?

18 MR. BOSKOFF: Correct.

19 MS. KINCAID: And on page 3, line 12 of your  
20 testimony, MCHA-11, you estimate a ten percent water  
21 reduction would result in a loss of \$2 million for the  
22 Monterey Marriott. Is it correct that a 15 percent  
23 reduction would likely result in a \$3 million loss?

24 MR. BOSKOFF: Slightly below that, but  
25 approaching it.

1 MS. KINCAID: And similarly, would a  
2 20 percent reduction result in a \$4 million loss?

3 MR. BOSKOFF: Correct.

4 MS. KINCAID: On page 3, line 28 of your  
5 written testimony, MCHA-11, you state the Marriott has  
6 an annual occupancy rate of about 63 percent?

7 MR. BOSKOFF: No, that's not what that says.  
8 What 63 percent is referring to is that leisure  
9 travelers have many choices, and the Monterey area has  
10 been losing market share slowly but surely for years.

11 That's arguably the biggest problem the area  
12 has. Occupancy is around 63 percent lately. Pre 9/11,  
13 the market, meaning Monterey as a destination market,  
14 used to run 72 percent occupancy. That was in '99 and  
15 2000.

16 After 9/11, we have never been able to  
17 completely bounce back from that. Then in '06 and '07,  
18 the occupancy on an annual basis for the market has  
19 been hovering between 63 and 64 percent for the market.  
20 That means some are higher and some are lower, but the  
21 average is.

22 MS. KINCAID: Okay. Thank you.

23 MR. BOSKOFF: You're welcome.

24 MS. KINCAID: On page 3, line 23 of your  
25 written testimony, MCHA-11, you reflect the impact that

1 would likely be caused if hotel occupancy is limited by  
2 remedies proposed during this hearing.

3 MR. BOSKOFF: Correct.

4 MS. KINCAID: Are the impacts likely to be  
5 caused to the Monterey area the same type of impacts  
6 Mr. Bastis testified to in his written and oral  
7 testimony provided today?

8 MR. BOSKOFF: Absolutely.

9 MS. KINCAID: Are there any additional impacts  
10 beyond those Mr. Bastis testified to that would impact  
11 the Monterey Marriott?

12 MR. BOSKOFF: No additional ones.

13 MS. KINCAID: Thank you. On page 4, line 2 of  
14 your testimony, MCHA-11, you state that group business  
15 is an important sales segment for the Monterey  
16 Marriott; is that correct?

17 MR. BOSKOFF: That's correct.

18 MS. KINCAID: And do you know the average  
19 number of guests in a group booking?

20 MR. BOSKOFF: Yeah, the average is around  
21 the -- between one-five and one-seven.

22 MS. KINCAID: Okay. Thank you. In your  
23 experience, if a hotel does not have enough open rooms  
24 for a group, will the group look for another facility  
25 that is able to accommodate the whole group?

1 MR. BOSKOFF: Yes.

2 MS. KINCAID: Let me ask a question based on a  
3 probably familiar hypothetical circumstance. Assume a  
4 hotel has 100 rooms. Due to limited water supplies, it  
5 can only make 75 rooms available to guests. Also  
6 assume that a group would like to stay at the hotel,  
7 but requires a hundred rooms. Under that hypothetical,  
8 is it possible the group would seek accommodations at a  
9 different hotel with 100 rooms available?

10 MR. BOSKOFF: Absolutely. We would become a  
11 secondary or third choice and no longer be a first  
12 choice.

13 MS. KINCAID: That's -- under the hypothetical  
14 I just presented, is it possible a water limitation to  
15 remove 25 rooms from that inventory would impair the  
16 hotel's ability to book all 100 rooms?

17 MR. BOSKOFF: Correct.

18 MS. KINCAID: Thank you, Mr. Boskoff.

19 MR. BOSKOFF: You're welcome.

20 MS. KINCAID: Mr. McKenzie, on the bottom of  
21 page 2 and top of page 3 of your written testimony,  
22 Exhibit MCHA-1, you discuss water conservation  
23 measures; is that correct?

24 MR. MCKENZIE: Yes.

25 MS. KINCAID: The list of conservation



1 measures discussed on pages 2 and 3 of your written  
2 testimony, MCHA-1, presents only those actions taken by  
3 the Monterey County Hospitality Association itself; is  
4 that correct?

5 MR. MCKENZIE: That's correct.

6 MS. KINCAID: The list of conservation  
7 measures discussed on pages 2 and 3 is not an  
8 exhaustive list of all actions taken by Monterey County  
9 Hospitality Association members?

10 MR. MCKENZIE: Not at all.

11 MS. KINCAID: On page 4, line 12 of your  
12 written testimony, Exhibit MCHA-1, you state:

13 Any increased requirement to reduce  
14 water use would damage and possibly  
15 cripple the Monterey Peninsula's number  
16 one economic driver.

17 Is that correct?

18 MR. MCKENZIE: Yes.

19 MS. KINCAID: Is the number one economic  
20 driver you are referring to the hospitality industry?

21 MR. MCKENZIE: I'm referring to the -- what we  
22 call the hospitality industry, the travel and tourism  
23 industry.

24 MS. KINCAID: Thank you. The damage that you  
25 believe will be caused: Is that damage described in

1 the written and oral testimony you and other witnesses  
2 for the Monterey County Hospitality Association  
3 provided today?

4 MR. MCKENZIE: I hope that we've covered most  
5 of it, yes.

6 MS. KINCAID: Great. Thank you very much.

7 No further questions.

8 CO-HEARING OFFICER BAGGETT: Any of the cities  
9 have any questions? Pebble Beach Company? Public  
10 Trust Alliance?

11 CROSS-EXAMINATION BY MR. WARBURTON

12 FOR PUBLIC TRUST ALLIANCE

13 MR. WARBURTON: Mike Warburton, Public Trust  
14 Alliance. Mr. Boskoff, in both your written and oral  
15 testimony, you talked about guests who might find  
16 alternative destinations.

17 With all the economic impacts that you have  
18 testified to, would it make a lot of sense for water  
19 providers to search for alternative water supplies to  
20 the Carmel River?

21 MR. LOWREY: I'm going to object to that  
22 question, because I think it goes beyond the scope of  
23 the testimony.

24 MR. WARBURTON: It just seems that it's  
25 totally relevant to the remedy which is proposed. And

1 you've drawn a direct line between a CDO and the  
2 onerous impacts on the hospitality industry, and I was  
3 just wondering if, you know, the CDO, instead of having  
4 a bad impact, might have the impact of encouraging  
5 people involved in providing water, which is your  
6 problem, to go to other sources, and wouldn't you work  
7 with them to make that possible?

8 CO-HEARING OFFICER BAGGETT: Why don't you  
9 just re-ask the question.

10 MR. WARBURTON: Just asking if water was  
11 available from alternative sources, would that help  
12 alleviate some of these economic problems?

13 MR. BASTIS: You said Mr. Boskoff, and that's  
14 him, but you're looking at me.

15 MR. WARBURTON: Oh, sorry.

16 MR. BOSKOFF: On this one, I don't know if I'm  
17 answering your question. Our first focus was on lets  
18 help to try to reduce the water consumption. That was  
19 focus number one.

20 As our trade organization -- our trade  
21 organization of course would be interested in having  
22 additional water sources available for the Peninsula.

23 We also have businesses to run, and I'm not  
24 sure that we can necessarily -- that I'm qualified to  
25 create alternative sources. So we start at least

1 reducing the water.

2           Would it be terrific to have additional water  
3 on the Peninsula? Absolutely. It's well documented  
4 that it has been an issue for 30 years. And we think  
5 we try to do our part by aggressively embracing  
6 conservation efforts.

7           Are we perfect? No, I'm not trying to say  
8 that. But we have been really aggressive in trying to  
9 embrace the need.

10           If you ask me -- and I think that's what  
11 you're asking me -- would I like to see additional  
12 water production? Absolutely.

13           MR. WARBURTON: You heard the testimony  
14 earlier today and in this hearing about the REPOG  
15 effort, okay, with the regional water supplies. Would  
16 that be a movement toward serving your problem?

17           MR. BOSKOFF: Well, I'm not an expert. If  
18 anybody asked me to perform brain surgery on somebody,  
19 I'd say you're asking the wrong guy; you may not  
20 survive, so please go to an expert.

21           I don't consider myself enough of an expert to  
22 truly, you know -- and I'm not sure that I understand  
23 all the technical details from the water. It may  
24 appear that there are some laymen that perhaps have  
25 some very good solutions out there.

1 MR. WARBURTON: Okay. Thanks very much.

2 CO-HEARING OFFICER BAGGETT: Thank you.

3 Mr. Jackson, you're up.

4 CROSS-EXAMINATION BY MR. JACKSON

5 FOR CARMEL RIVER STEELHEAD ASSOCIATION

6 MR. JACKSON: My first question is for  
7 Mr. McKenzie. Mr. McKenzie, where did you get the idea  
8 that a five percent water use translates to a five  
9 percent loss in tourism?

10 MR. MCKENZIE: I don't recall saying that.  
11 Did I say that?

12 MR. JACKSON: All right. Maybe you didn't.  
13 You didn't say that. Mr. Boskoff, did you say that?

14 MR. BOSKOFF: I said that we think we have  
15 saved a lot of water. We have made a lot of  
16 conservation efforts. And that if I am being told that  
17 I need to save another ten percent that I may -- the  
18 only way I may be able to get there is by having to  
19 close guest rooms.

20 MR. JACKSON: All right. And is there a study  
21 that says it would be a one-for-one?

22 MR. BOSKOFF: No, there is not a study. I'm  
23 just not aware at this point in time of additional --  
24 of being able to come up with large amounts of savings  
25 in the water department.

1 I have shared with you what we have done. I  
2 have shared with you that we're not perfect, that we  
3 still can do the waterless urinals. So we can do  
4 those. I don't know what that translates into total  
5 reduction. I'm more than happy to look at that because  
6 that's much more attractive than closing rooms. But  
7 beyond that, I do not know how else to get the savings  
8 without closing guest rooms.

9 And the way -- you know, we studied it. We  
10 said here's how much is being used per room or per  
11 guest, so in order for me to get to additional  
12 savings -- I have hardly any landscaping -- I need to  
13 be able to close rooms. And I think that's relatively  
14 Draconian.

15 MR. JACKSON: You indicate -- I believe it was  
16 you, Mr. Boskoff, who indicated that there -- since  
17 1998, there's been about a 45 percent savings in water  
18 use?

19 MR. BOSKOFF: Since 19 -- between 1987 and  
20 1997.

21 MR. JACKSON: All right. And yet at that  
22 point you haven't had to close any rooms? I mean the  
23 Monterey Marriott --

24 MR. BOSKOFF: That's correct.

25 MR. JACKSON: -- is about the same size -- I

1 mean, when I first started going there, it's the same  
2 size as it is today?

3 MR. BOSKOFF: That's correct.

4 MR. JACKSON: Okay. The -- you indicated that  
5 your -- over that period of time the number of people  
6 who come, your occupancy rate, has dropped.

7 MR. BOSKOFF: I never said that to you.

8 MR. JACKSON: Has it dropped since --

9 MR. BOSKOFF: I said to you that the best  
10 years of the industry on the Monterey Peninsula were  
11 1999 and the year 2000, that the market was running  
12 72 percent occupancy. Then after 9/11, we dropped to  
13 between 63 and 64 percent, and we have never recovered  
14 from.

15 MR. JACKSON: So you are not attributing the  
16 drop in occupancy rate to problems with water up until  
17 this point?

18 MR. BOSKOFF: Correct.

19 MR. JACKSON: Okay.

20 MR. RUBIN: Can I just ask -- I don't mean to  
21 interrupt, but to the extent Mr. Jackson is referring  
22 to a portion of the written testimony that he direct  
23 the witness to the section?

24 MR. JACKSON: That's kind of hard to do since  
25 substantial things that were said are not in the

1 written testimony.

2 MR. RUBIN: My request was to the extent  
3 you're referring to something in the written testimony  
4 that you direct the witness to that section.

5 MR. JACKSON: No, but none of this was in the  
6 written testimony as far as I know.

7 Mr. Boskoff, have any of the -- assuming I'm  
8 your customer, is there anything that's happened since  
9 1987 up until today that makes me, because of water  
10 reduction in your hotel or water reduction on the  
11 Monterey Peninsula, that in your opinion affects my  
12 health and safety as one of your customers?

13 MR. BOSKOFF: Between what time frame?

14 MR. JACKSON: Yeah, between 19 --

15 MR. BOSKOFF: No. Not that I'm aware of.

16 MR. JACKSON: The fact that the linens go out,  
17 the low-flush toilets, all that stuff does not affect  
18 health and safety of your customers?

19 MR. BOSKOFF: No.

20 MR. JACKSON: All right. The fact that the  
21 restaurant --

22 MR. BOSKOFF: Let me just -- we have tried to  
23 set up in such a fashion that if you -- realizing not  
24 everybody is, has the exact same needs and wants, and  
25 if a guest is insistent on needing to have his linen



1 changed every day, we will do that. But the general  
2 rule is that 99 percent of the guests are more than  
3 happy, they are fine with it; and a few who insist on  
4 having us do that more often, we will do it.

5 MR. JACKSON: All right. Now, at some point  
6 you became aware of the water problem. Do you  
7 understand that the water problem is that Cal Am is  
8 taking water and delivering it to you that they have no  
9 legal right to?

10 MR. LOWREY: Objection to that question. It  
11 asks for a legal opinion.

12 CO-HEARING OFFICER BAGGETT: Sustained.

13 MR. JACKSON: Do you care whether or not the  
14 water that's being delivered to you is legal or not?

15 MR. BOSKOFF: Of course I do.

16 MR. JACKSON: Of course you do?

17 MR. BOSKOFF: Yes.

18 MR. JACKSON: I mean, it's a lot like if I  
19 stayed in your place and didn't pay you, right?

20 MR. BOSKOFF: Well, I don't know if I would  
21 agree with that analogy, but --

22 MR. JACKSON: But somebody would call the  
23 police --

24 MR. BOSKOFF: If it works for you.

25 MR. JACKSON: -- if I did that.

1 MR. BOSKOFF: Yes.

2 MR. JACKSON: The -- so do you understand that  
3 the problem is that Cal Am is not delivering you a  
4 lawful water supply, and that's causing the problem?

5 MR. RUBIN: I'm going to object to the  
6 question. At the very least, it's assuming facts that  
7 are not in evidence. I can go on if you'd like.

8 CO-HEARING OFFICER BAGGETT: I think it's also  
9 ambiguous.

10 MR. LOWREY: And it asks for an opinion that's  
11 beyond the expertise of this witness.

12 CO-HEARING OFFICER BAGGETT: I would sustain  
13 that objection. Mr. Jackson, they are just running  
14 hotels here. Making assumptions whether water is legal  
15 or illegal, we haven't even made that determination.

16 MR. JACKSON: 95-10 didn't make that  
17 determination?

18 CO-HEARING OFFICER BAGGETT: Will you proceed?

19 MR. JACKSON: If Cal Am would get a water  
20 supply from some other source and supply you with  
21 water, you would be very happy, right?

22 MR. RUBIN: I'm going to object; it's  
23 ambiguous.

24 CO-HEARING OFFICER BAGGETT: Sustained.

25 MR. JACKSON: Mr. Baggett, they come in and

1 tell you they can't possibly give up any water, but  
2 there's no indication that they understand that there  
3 is lots of water out there that could be brought in.

4 MR. RUBIN: My objection dealt with ambiguity.  
5 I can explain why I think it's ambiguous. It doesn't  
6 relate to the relevance or the, you know --

7 CO-HEARING OFFICER BAGGETT: I'm just  
8 trying --

9 MR. RUBIN: -- Mr. Jackson's personal position  
10 in this case.

11 CO-HEARING OFFICER BAGGETT: I sustained it.  
12 I'm just trying to understand -- I guess I'm asking the  
13 relevancy question from where this particular panel of  
14 witnesses, where you were trying to go with these  
15 questions.

16 MR. JACKSON: Where I'm going is to try and  
17 get these folks to admit that all their problems go  
18 away if Cal Am gets a lawful water supply and delivers  
19 it to them. And this testimony is basically  
20 hypothetical at that point.

21 CO-HEARING OFFICER WOLFF: Maybe you can just  
22 ask them that.

23 MR. JACKSON: All right.

24 CO-HEARING OFFICER BAGGETT: Objection  
25 already. But proceed.

1 (Laughter)

2 MR. JACKSON: You folks don't care where the  
3 water comes from as long as you get it, do you; is that  
4 right?

5 MR. BOSKOFF: I don't think that's a correct  
6 statement.

7 MR. JACKSON: You don't think that -- how is  
8 that incorrect?

9 MR. BOSKOFF: Well, you are saying we don't  
10 care where it comes from as long as we have the water.

11 I don't think that, you know, we would want to  
12 have it trucked in from the east coast. It would be  
13 maybe a solution, but I don't know if we would be  
14 supportive of that, so I think that's a little bit too  
15 open of a statement.

16 MR. JACKSON: All right. Do you care if it's  
17 taken from the Carmel River without a right?

18 MR. BOSKOFF: Didn't you ask the question  
19 before?

20 MR. JACKSON: Yeah, and I never did get an  
21 answer.

22 MR. BOSKOFF: I thought I answered that  
23 question.

24 CO-HEARING OFFICER BAGGETT: He did. He  
25 answered that question before.

1           MR. JACKSON: Has the Hospitality Association  
2 on its own gone and looked for a water supply say from  
3 the Salinas Valley?

4           MR. BOSKOFF: No.

5           MR. JACKSON: Is the Hospitality Association  
6 relying totally on the California American Water  
7 Company to supply them?

8           MR. BOSKOFF: I think also the Monterey Water  
9 Board, right? Weren't they originally installed 30  
10 years ago to -- after the first severe drought in the  
11 '70s and the mission that they were given at the time  
12 to create additional water?

13          MR. JACKSON: You think that's within their  
14 mission to go get water?

15          MR. BOSKOFF: I think it's part of that. And  
16 I think it's not one person. I think everybody is part  
17 of that solution, the whole community.

18          MR. RUBIN: I'm going to raise my objection  
19 again. You see what's being -- what's happening here.  
20 I don't know what it does to further the evidence  
21 frankly that Mr. Jackson's clients might want on the  
22 record, but more importantly that the Board needs for a  
23 decision.

24          The panel of witnesses are here for a specific  
25 purpose, to testify about the hospitality industry. To

1 the extent Mr. Jackson wants to question them on that,  
2 I think it's extremely relevant and important for him  
3 to have that opportunity. But this type of dialogue,  
4 I'm not sure it would serve any purposes.

5 CO-HEARING OFFICER BAGGETT: I appreciate  
6 that. And I believe he's answered your question, so  
7 proceed.

8 MR. JACKSON: Mr. Bastis, you indicated in  
9 your direct testimony that there's a 62 to 64 percent  
10 occupancy rate, and you consider that very low.

11 MR. BASTIS: Industrywide, that's considered  
12 low.

13 MR. JACKSON: To this date, does lack of  
14 availability of water have anything to do with that  
15 occupancy rate?

16 MR. BASTIS: I don't know specifically, but I  
17 don't think so.

18 MR. JACKSON: In -- and this question is for  
19 all of you: Based upon your knowledge of the  
20 hospitality industry, you indicate that you're in  
21 competition with other destination resorts. Would Las  
22 Vegas be one of those?

23 MR. BASTIS: Everyone is our competitor.

24 MR. JACKSON: Okay. Have you checked into Las  
25 Vegas' water problems in comparison to your own to

1 determine whether or not the drop in occupancy rate is  
2 caused by water?

3 MR. BASTIS: No, I haven't.

4 MR. JACKSON: You have talked about certain  
5 fears you have about what might happen if the Board  
6 adopts the draft CDO. Have you all reviewed the CDO?

7 MR. BASTIS: We have attended presentations on  
8 it in our Board meetings.

9 MR. JACKSON: You've all indicated that you  
10 don't think you yourself can make much more in the way  
11 of changes. How much of the water in the area do your  
12 hotels use, the total amount?

13 MR. BOSKOFF: I think you need to ask Cal Am.  
14 They have a better number of that.

15 MR. JACKSON: You don't know?

16 MR. BOSKOFF: I don't know the total balance  
17 that Cal Am, on an annual basis --

18 MR. JACKSON: Don't any of you know?

19 MR. BOSKOFF: I don't have it in my memory.  
20 I'm sure I can find it somewhere.

21 MR. MCKENZIE: Mr. Jackson, I think that some  
22 of my exhibits reflect what percentage of total water  
23 use the hospitality industry accounts for.

24 MR. JACKSON: Great. And what does that  
25 reflect?

1           MR. MCKENZIE: I've got one chart that  
2 indicates 14 percent of total water use. That chart  
3 tracks water use from '88 to '97.

4           MR. JACKSON: You indicate that you believe  
5 there is a potential reduction still available, whether  
6 it's nonflush toilets or additional conservation  
7 measures. What percentage do you believe could be  
8 reduced in that 14 percent of total water use before it  
9 affected your business?

10          MR. BOSKOFF: Who are you asking the question  
11 to?

12          MR. JACKSON: Any of you who would like to  
13 answer.

14          MR. BOSKOFF: What I would say to you is, for  
15 my hotel, I would invite the Water Board and Cal Am and  
16 ask me to help me calculate what potential I still have  
17 there to find in additional savings, and we are going  
18 to encourage any of our members of the hospitality  
19 industry who run hotels to do same thing.

20          MR. JACKSON: Do you believe that a study  
21 should be done by the Monterey Peninsula Water  
22 Management District to determine that, since as you  
23 pointed out they are a source --

24          MR. BOSKOFF: I think -- I'm not sure if --  
25 how relevant it is who does it as long as it gets done.



1 And I think that we can either do it ourselves, but we  
2 will need help, and we will ask Cal Am to help us. If  
3 they want to do it, great. If we want to do it  
4 ourselves, that's great, too, as long as we get it  
5 done.

6 MR. BASTIS: I also want to add, you know,  
7 we've got -- we went through all the hoops, the  
8 physical changes that we've made to save water. We ask  
9 our guests if they want water. We don't give it to  
10 them. We ask our guests if they want their linens  
11 changed. We don't -- all of this is a little bit  
12 counter-intuitive to our business of providing service.

13 So, you know, it all does speak to your Las  
14 Vegas example to some competent disadvantages. That  
15 works fine with water. We get by. It works fine with  
16 the linens to some degree. Quite obviously, there is a  
17 amount of guests commenting on that from time to time.

18 Can you extend that to the showers and toilet  
19 flushing? Probably not.

20 And there is landscape. We take -- our  
21 laundry is not done in the hotels any longer. Our  
22 dishwashers reuse water. So, you know, the amounts? I  
23 don't know what the amount is either. But I'd say it's  
24 very, you know, it's small.

25 Can it be done? Sure, there's some savings

1 there.

2 MR. JACKSON: So in comparison, the  
3 residential houses and their landscaping may use more  
4 water than you do. Do you think that should be looked  
5 into?

6 MR. BOSKOFF: That's not for me to decide.

7 MR. MCKENZIE: I couldn't comment on that. We  
8 are here on behalf of the Hospitality Association.

9 MR. JACKSON: So if there are savings in the  
10 other areas in Monterey, you have no opinion about  
11 whether that should be done rather than continuing to  
12 pump water out of the Carmel River without right?

13 MR. BASTIS: Nobody here said that.

14 MR. BOSKOFF: We said it's not for us to  
15 decide.

16 MR. JACKSON: I have no further questions.

17 CO-HEARING OFFICER BAGGETT: Thank you.

18 Mr. Sato?

19 CROSS-EXAMINATION BY MR. SATO

20 FOR THE PROSECUTION TEAM

21 MR. SATO: Good afternoon. My name is Reed  
22 Sato. I'm an attorney; I represent the Prosecution  
23 Team in this matter.

24 A few questions first for Mr. McKenzie.

25 Looking at your exhibits, I notice that the information

1 that you provided stops in about 1999; is that correct?

2 MR. MCKENZIE: Approximately, yes.

3 MR. SATO: Is there some reason why you didn't  
4 provide information for a time period after 1999?

5 MR. MCKENZIE: Yes.

6 MR. SATO: Why is that?

7 MR. MCKENZIE: The reason would be I haven't  
8 done the study.

9 MR. SATO: So you don't know whether, for  
10 example, any of the information that you provided for  
11 1999 is still current?

12 MR. MCKENZIE: We have done a preliminary  
13 survey. I did not submit it because it doesn't have  
14 enough properties to really constitute a valid sample.

15 But we've done a preliminary study just to  
16 make sure that the reduced rates of water use are  
17 remaining current, and they are. But, the sample is  
18 not big enough to put that in an exhibit and say  
19 without fear of contradiction basically that it's true  
20 and accurate.

21 MR. SATO: So you believe then that at least  
22 with regard to the reductions in use -- strike that.

23 You at least believe that the information you  
24 have about reduced water use per guest is still  
25 accurate --

1 MR. MCKENZIE: Yes.

2 MR. SATO: -- as per 1999?

3 MR. MCKENZIE: Yes, I think that remains the  
4 case until today. Probably the easiest overall proof  
5 is that our area is living within the constraints of  
6 Order 95-10.

7 MR. SATO: Now, in terms of the exhibits that  
8 you provided, which exhibit is it that tells me what  
9 the average water use is per guest per night? Can you  
10 point me in that direction?

11 MR. MCKENZIE: Looks like MCHA-003 and  
12 MCHA-004.

13 MR. SATO: All right. So looking at MC --  
14 well, looking at Exhibit 3, you've indicated here that  
15 in June 30th, 1997 that the use is down, what -- which  
16 number should I look at in terms of the use per guest  
17 per night? I'm having a hard time reading all the  
18 little dots.

19 MR. MCKENZIE: Do you have this in color or in  
20 grayscale?

21 MR. SATO: I only have it in grayscale.

22 MR. MCKENZIE: Oh. The far-right column in  
23 Exhibit 3, or I should say the right-hand column in  
24 Exhibit 3, if you compare those two, that would show  
25 you the reduction over that period of time in the per

1 guest use of water.

2 MR. SATO: Okay. So the per guest use of  
3 water is which number, looking just at years 1997?

4 MR. MCKENZIE: Okay. 1997 is .11 --  
5 .1115 units of water per guest.

6 MR. SATO: And a unit of water is how much  
7 again?

8 MR. MCKENZIE: 748 gallons, I think. Isn't  
9 it?

10 MR. SATO: So a guest is using about  
11 11 percent of that number; is that correct?

12 MR. MCKENZIE: Yes.

13 MR. SATO: Now --

14 MR. MCKENZIE: No, not 11 percent. .11.  
15 Maybe that is 11 percent. I don't know. Sure. Have  
16 it your way.

17 MR. SATO: Thank you. Now, looking at that  
18 number .1115 units of water per guest, have you ever  
19 done an economic analysis of the minimum amount of  
20 water a guest could be provided without affecting a  
21 guest's desire to stay in the Monterey Peninsula?

22 MR. MCKENZIE: Have I ever done that study?

23 MR. SATO: Yes.

24 MR. MCKENZIE: No.

25 MR. SATO: Do you know if anybody has for your

1 association?

2 MR. MCKENZIE: No one has done it for our  
3 association. And I have done a pretty thorough review  
4 of studies available for the industry, and I don't know  
5 of any study that analyzes that.

6 MR. SATO: Okay. So you wouldn't be able to  
7 provide this information for the Board today to help it  
8 make its decision about whether or not it should reduce  
9 water?

10 MR. MCKENZIE: I'd be happy to give you a  
11 number.

12 MR. SATO: But you don't have --

13 MR. MCKENZIE: But I have nothing to back it  
14 up with.

15 MR. SATO: Very good.

16 And then in terms of that same type of  
17 question -- so no economic analysis of the minimum  
18 amount of water that a guest could be provided. Have  
19 you looked at any information about the amount of water  
20 and its effect on visitor days in the Peninsula?

21 MR. MCKENZIE: No. I don't think we've had a  
22 situation -- and this is just my opinion -- I don't  
23 think we've had a situation yet where water  
24 availability has affected visitation, except possibly  
25 during the periods of severe drought in the late '70s

1 that we mentioned earlier; and I did a pretty  
2 exhaustive search and couldn't find any documentation  
3 what the effect was.

4 MR. SATO: You just mentioned that severe  
5 drought. I believe there was a drought in 1976 and  
6 1977, does that sound right?

7 MR. MCKENZIE: Yes.

8 MR. SATO: And you said that you don't have  
9 any information about whether or not those conditions  
10 affected the visitor days in the Monterey Peninsula?

11 MR. MCKENZIE: No. No information.

12 MR. SATO: For the folks who own the hotels, I  
13 believe you were asked a question, a hypothetical about  
14 booking 550 rooms at one time for a convention of some  
15 sort. Do you recall that question?

16 MR. BASTIS: Yes.

17 MR. SATO: How often -- I guess I will ask  
18 specifically about your facility. How many rooms do  
19 you have available for rental?

20 MR. BASTIS: 550.

21 MR. SATO: 550. And how often in the last  
22 year have you booked all 550 rooms at the same time?

23 MR. BASTIS: As recent as yesterday, we had a  
24 lengthy team discussion about booking a 550-room group  
25 for ten days.

1           MR. SATO: You had a discussion, but how often  
2 in the last year have you actually booked all 550 rooms  
3 at the same time?

4           MR. BASTIS: How many sold-out days have we  
5 had?

6           MR. SATO: Yes.

7           MR. BASTIS: In a given year, probably 30 to  
8 40.

9           MR. SATO: I'm sorry, Mr. Boskoff. How often  
10 have you booked all your rooms at one time in the last  
11 year?

12          MR. BOSKOFF: I'm sorry, can you clarify? How  
13 many times do I sell out?

14          MR. SATO: Yes.

15          MR. BOSKOFF: Roughly, off the top of my head,  
16 I sell out about a hundred times a year, roughly.

17          MR. BASTIS: And I should also add, I've been  
18 under renovation for a good part of last year. So just  
19 using the last calendar year, I have all 550 rooms back  
20 as of June. But prior to the renovation starting --  
21 but it's still the same dynamic, quite honestly. You  
22 know, renovation, we probably sold out 30 to 40 nights.

23          MR. SATO: All right.

24          MR. BASTIS: It was less than 550 rooms. Just  
25 to make sure --



1           MR. BOSKOFF: I'm not sure where it comes in  
2 on the page, that's two different questions. One  
3 question is how many times do you sell out; the other  
4 question is how many times do you have a group in that  
5 takes your entire hotel.

6           MR. SATO: Thank you for clarifying. Let me  
7 ask you particularly, then. How often did you book a  
8 group that requires all the rooms in your establishment  
9 in the last year?

10          MR. BOSKOFF: I would really need to look at  
11 that. I mean we have 364 days in our cycle, and I'm  
12 not sure, but I would say that there are at least --  
13 gosh. Let me think for a second. I'm taking stab at  
14 it. Taking a swipe.

15          MR. SATO: That's all right. You don't have  
16 to. If you can't estimate, that's all right.

17          MR. BOSKOFF: Right.

18          MR. SATO: Let me stop you there, then. Let  
19 me stop you there, then.

20          Mr. Bastis, how often did you in the last year  
21 book the entire hotel for a single group?

22          MR. BASTIS: Seldom. Seldom. If ever, quite  
23 honestly. But how often do we book a group that needs  
24 our remaining rooms, the ones that haven't been booked  
25 yet? Fairly regularly.

1 MR. SATO: The question --

2 MR. BASTIS: The end result is that the entire  
3 hotel is sold out.

4 MR. SATO: Well, that wasn't exactly what I  
5 was asking, whether the hotel was sold out --

6 MR. BASTIS: Very seldom.

7 MR. SATO: And so the questions you were being  
8 asked --

9 MR. BASTIS: Seldom do we have that  
10 opportunity because we have business on the books. So,  
11 you know, I don't know how relevant that question is.

12 MR. SATO: Well, I think it goes to the  
13 questions that the counsel for Cal Am was asking you in  
14 terms of lost opportunities for when, you know, you'd  
15 like to have all 550 rooms available. And it sounds  
16 like your testimony is that doesn't happen very often  
17 in any case; is that correct?

18 MR. BASTIS: For a single group, correct. But  
19 how often do we sell it to the fill, which is relevant  
20 to water usage, is 30 to 40 times a year.

21 MR. SATO: Move to strike the last answer as  
22 being nonresponsive.

23 MR. RUBIN: I'm going to object, if I can, to  
24 this motion. I think the witness was explaining his  
25 answer, and I think he is entitled to do that under the

1 rules of the State Water Resources Control Board. The  
2 fact that Mr. Sato didn't like the answer is not a  
3 basis to strike.

4 MR. SATO: Well, I don't think if that would  
5 be a basis to strike, a lot of testimony would be  
6 stricken.

7 (Laughter)

8 MR. JACKSON: I have a different objection.  
9 It's inconsistent with the answer that was given  
10 before, which is that there has been no loss of  
11 occupancy up until now on the basis of water use. So  
12 the answer was not only nonresponsive, but it was --  
13 I'll put a nice word on it -- it was different than it  
14 was the first time.

15 CO-HEARING OFFICE BAGGETT: I'll allow the  
16 answer. But you can clarify the question. You can ask  
17 the question again. You can leave it. I'll leave that  
18 up to counsel to decide.

19 MR. SATO: Mr. McKenzie, you were talking  
20 about impacts to the visitor days based upon a  
21 reduction in water. That's the essence of your  
22 testimony, correct?

23 MR. MCKENZIE: In the future?

24 MR. SATO: Yes.

25 MR. MCKENZIE: Yes.

1           MR. SATO: Now, I guess following on with some  
2 of the questions Mr. Jackson has asked, your  
3 association is aware that the California American Water  
4 Company has some limitations on the water that it is  
5 entitled to divert from the Carmel River basin; is that  
6 correct?

7           MR. MCKENZIE: Yes.

8           MR. SATO: And as a result of that awareness,  
9 has your association undertaken any contingency plans  
10 to deal with the possibility that Cal American might be  
11 limited to diversions from the Carmel River Basin less  
12 than what it is currently doing at this moment?

13           MR. MCKENZIE: No. I think our industry's  
14 understanding generally was this: Order 95-10 set,  
15 call it, an interim right for Cal Am to use 11,285 acre  
16 feet per year from the Carmel River and related  
17 aquifer; ordered Cal Am to maximize its production out  
18 of the Seaside aquifer as partial compensation for the  
19 cutbacks in the Carmel River; also ordered Cal Am to  
20 diligently pursue a water supply.

21           Well, Cal Am has pursued it. Whether its  
22 pursuit has been diligent is obviously one of the  
23 questions that's being dealt with here. I don't know.  
24 I don't run Cal Am.

25           But they have pursued a water supply. The

1 Monterey Peninsula Water Management District has  
2 pursued a water supply. Those are the two entities or  
3 agencies, if you will, with the responsibility to do  
4 that kind of thing.

5           Has the industry looked for other water  
6 supply? No. We're not in the water business.

7           MR. SATO: But have you developed any  
8 contingency plan in the event that Cal Am is then  
9 required to reduce its diversions from the Carmel River  
10 Basin?

11           MR. MCKENZIE: No. It's been our  
12 understanding, contrary to way too many years of  
13 experience, that a new water supply would be developed.

14           MR. SATO: Contrary to too many years of  
15 experience; what do you mean?

16           MR. MCKENZIE: Well, Assemblyman Henry Mello  
17 created the Monterey Peninsula Water Management  
18 District by legislation in 1977 because it was well  
19 established and well recognized there is a water  
20 shortage in the area, that it needs a safe, stable,  
21 sufficient water supply.

22           The voters of the District approved the  
23 establishment of the District in June 1978. Well,  
24 30 years ago, recognized need.

25           So when I say against experience, we still

1 believe that a water supply will be developed. That's  
2 what I mean.

3 MR. SATO: You're saying despite the fact that  
4 the District has been in existence for an X period of  
5 time and no new water supply has been created as a  
6 result, you still believe that some new water supply is  
7 just on the horizon?

8 MR. MCKENZIE: Yes.

9 MR. SATO: All right.

10 MR. MCKENZIE: Sort of. That's sort of a  
11 cynical way of putting it, but yeah.

12 MR. SATO: All right. Just a few more  
13 questions.

14 Mr. Boskoff, you I believe indicated that  
15 somehow the water is going to be turned off to your  
16 hotel as a result of reaching a certain use limit. Is  
17 that the way I understand your testimony? Is that  
18 correct?

19 MR. BOSKOFF: I wasn't trying to say that. I  
20 do not know where, if we are being told that we have to  
21 reduce by certain percentages, I do not know where to  
22 get the savings from. So -- other than closing, start  
23 closing down rooms.

24 Now, I'm more than happy, and I would love to  
25 have any help to see if there is any other potential

1 savings that we are not aware of that can help us in  
2 that effort. I would be more than happy, you know, to  
3 open up the doors and take a look at that.

4 But I don't know where to save water  
5 consumption in any other place other than closing guest  
6 rooms. That's what I was trying to say.

7 MR. SATO: Looking at your testimony, I didn't  
8 see on your written testimony any mention of reducing  
9 outside irrigation. Is that one of the steps that your  
10 establishment could also take?

11 MR. BOSKOFF: We almost have no grounds. It's  
12 all pretty much concrete, and we've got a couple of  
13 planters with some flowers and a few trees in them. We  
14 don't have grounds.

15 MR. SATO: All right.

16 Mr. Bastis, are you under the impression that  
17 somehow the -- if an order is issued by the State Board  
18 similar to the draft cease and desist order that it  
19 will cause you to shut down rooms as a direct result of  
20 that order?

21 MR. BASTIS: If there's a 50 percent reduction  
22 in the water supply, I think our testimony is based on  
23 the assumption that that would be applied equally to  
24 everybody.

25 MR. SATO: All right.

1           MR. BASTIS:  If my water supply was reduced  
2  50 percent, I think it would affect -- and the  
3  challenge is we have toilets that are 1.3.  As far as I  
4  know, that's the latest, greatest technology out there.  
5  You can't -- there is nothing less.

6           We have waterless urinals.  There's no water  
7  saving there.  Our faucets -- I have an engineering  
8  study, they flow 1.5 gallons which is below what is  
9  called for.

10          We don't do any laundry, there's no water  
11  savings there.  We don't give guests water in the  
12  restaurant, there's no savings there.  Our dishwashers  
13  use recycled water.  And our landscape is either drip,  
14  rocks, mulch or drought-resistant, so there is very  
15  little water there.

16          Closing rooms -- I'm not sure what that really  
17  means, because closing rooms won't save water either,  
18  if there aren't any guests in there.  So the only  
19  reduction in water is rooms that people occupy.  How  
20  it's going to work, I don't know.

21          But to answer your question, I know the CDO  
22  calls for 15 percent, 15 percent, 10 percent,  
23  10 percent, it's a 50 percent reduction.  If that's  
24  applied equally in the course of the year, I don't  
25  know.  It's -- that's what we're here to speak about.



1           MR. SATO: All right. And so I just heard  
2 your testimony referring to a 50 percent reduction  
3 number. Have you made any analysis based upon, say, a  
4 five percent reduction number?

5           MR. BASTIS: No, I have not.

6           MR. SATO: How about a 10 percent reduction  
7 number?

8           MR. BASTIS: No, sir.

9           MR. SATO: You heard me ask questions of  
10 Mr. McKenzie about any contingency plans based upon the  
11 reduction of water, the reduction in diversions of  
12 water by Cal Am from the Carmel River Basin. Has your  
13 establishment developed any contingency to take -- to  
14 address that potential?

15           MR. BASTIS: We're here testifying today, this  
16 is the first step of our contingency plan.

17           MR. SATO: Step one of the contingency is to  
18 fight the CDO. What's step two?

19           MR. BASTIS: Well, I just went through where  
20 the water reduction is in the very --

21           MR. SATO: No, so --

22           MR. BASTIS: -- water, so that's where we're  
23 from.

24           (Interruption by the reporter)

25           MR. SATO: I understand that you made those

1 efforts in the past to reduce your use of water, but  
2 I'm asking do you have any specific contingency plans,  
3 written plans, to address the potential for the  
4 reduction in the water from Cal Am?

5 MR. BASTIS: Sure. It's hard to establish. I  
6 don't know how this would be implemented, back to my  
7 statement a moment ago. If, you know, the four-year  
8 result is a 50 percent reduction in water that's split  
9 to everybody equally, we can't take it out of the  
10 toilets, faucets, irrigation, laundry or the  
11 restaurant, then it's only an occupied room.

12 So without knowing how it's implemented, it's  
13 hard to establish a contingency plan. So the answer to  
14 your question is no.

15 MR. SATO: Same question to Mr. Boskoff. Does  
16 your organization have any contingency plans for  
17 dealing with the potential for a reduction in water  
18 from Cal American?

19 MR. BOSKOFF: No, the only thing we're doing  
20 is studying if there are other places, and I think you  
21 heard me say earlier that we would welcome either the  
22 District or Cal Am to give us any of their expertise,  
23 advise if they see any missed opportunities that could  
24 help us. We are very open to that.

25 MR. SATO: Have you, any of you, have you ever

1 asked any of the guests that come to your facilities  
2 whether they would be willing to reduce the use of  
3 water if it would cause the improvement of the  
4 steelhead fishery in the Carmel River Basin?

5 MR. LOWREY: Would you repeat that question?  
6 Could you read me the question? I didn't understand  
7 it. Maybe the witnesses did.

8 MR. SATO: Did the witnesses understand my  
9 question?

10 MR. LOWREY: Well, if you would repeat it for  
11 me, I would appreciate it, or have it read back.

12 MR. SATO: If you could read it back.

13 (Record read)

14 MR. BASTIS: I have not.

15 MR. BOSKOFF: I have not either. I usually  
16 ask if they have any friends who'd like to come to  
17 Monterey.

18 MR. SATO: Mr. McKenzie?

19 MR. MCKENZIE: I'm sorry. I don't run a  
20 facility, so I don't have guests to request.

21 MR. SATO: For those of you who run a  
22 facility, you don't know whether or not your guests  
23 might be willing to reduce their water use voluntarily  
24 if you would explain to them the purpose for why the  
25 water is being saved; is that correct?

1           MR. RUBIN: I'm going to object to the  
2 question. I let the first set of questions go, but I  
3 think the question is assuming facts that are not in  
4 evidence or the question lacks foundation.

5           MR. SATO: I just laid the foundation, and now  
6 I'm asking my follow-up question.

7           MR. RUBIN: The question presumes, without  
8 foundation and without facts, that if the guests were  
9 to take shorter showers, I guess, flush less  
10 frequently, that that would translate into a benefit to  
11 the steelhead. And I don't think that the foundation  
12 has been laid for that connection with these witnesses,  
13 or frankly with any of the witnesses, so that's my  
14 objection.

15           CO-HEARING OFFICER BAGGETT: I would sustain.

16           If you could lay a clearer foundation, which  
17 hotel, whether they're connected to the system, I think  
18 you're right. Lay a foundation.

19           MR. SATO: All right.

20           Mr. Boskoff, I think it's your testimony that  
21 you have not tried any type of public relations effort  
22 to advise your guests in your hotel that if they reduce  
23 their use of water that it may potentially have a  
24 beneficial impact to steelhead in the Carmel River; is  
25 that correct?

1           MR. BOSKOFF: We have communicated with our  
2 guests that we want to be a good citizen, that water is  
3 a very tight resource in the Peninsula, and that we  
4 would like to do everything we can to use it wisely.  
5 And based upon that, we have certain initiatives in our  
6 hotel, and we communicate that with our guests.

7           We have not made the connection with the  
8 steelhead. We have more covered perhaps on the  
9 environmental, the more green umbrella as opposed to  
10 make connections with the steelhead.

11          MR. SATO: Mr. Bastis?

12          MR. BASTIS: We have gone to great lengths  
13 explaining how precious a resource water is in the  
14 Peninsula in our hotel.

15          Also, we have made the direct connection with  
16 the steelhead. But we have made -- our restrooms have  
17 signs, our guest rooms have signs, our restaurants have  
18 signs explaining why we do this and how precious a  
19 resource it is.

20          So in terms of savings water, we've gone to  
21 great effort and have communicated it with our guests  
22 on why we're doing some of the things we're doing.

23          MR. SATO: No further questions.

24          CO-HEARING OFFICER BAGGETT: PCL, any  
25 questions?

1                   CROSS-EXAMINATION BY MR. MINTON  
2                   FOR PLANNING AND CONSERVATION LEAGUE

3                   MR. MINTON: Good afternoon, I'm Jonas Minton  
4 with the Planning and Conservation League.

5                   Mr. Boskoff, are there frequently conferences  
6 held by organizations such as the Association of  
7 California Water Agencies, the League of California  
8 Cities, and others that have attendance greater than  
9 your facility can hold?

10                  MR. BOSKOFF: Yes.

11                  MR. MINTON: Is the attendance of those large  
12 conferences greater than what any single facility hotel  
13 can accommodate?

14                  MR. BOSKOFF: Yes.

15                  MR. MINTON: And yet they still have their  
16 conferences there?

17                  MR. BOSKOFF: Well, yes.

18                  MR. MINTON: Thank you.

19                  Mr. Bastis, is Pebble Beach Company a member  
20 of Monterey County Hospitality Association?

21                  MR. BASTIS: Yes, it is.

22                  MR. MINTON: Did you have a chance to hear  
23 their testimony in this proceeding on how they took a  
24 leadership position working with other entities to  
25 develop a recycled water project to meet a significant

1 portion of their irrigation needs?

2 MR. BASTIS: I did not.

3 MR. MINTON: Are you aware of the role the  
4 Pebble Beach Company has taken in working with other  
5 agencies to develop a water recycling project to meet  
6 much of their irrigation needs?

7 MR. BASTIS: For the golf courses. I've heard  
8 of it.

9 MR. MINTON: Yes. Thank you. Mr. Bastis, has  
10 the Hospitality Association considered taking a more  
11 active role in working with others to achieve  
12 implementation of Water Board Order 95-10?

13 MR. BASTIS: When you say -- I'm not sure who  
14 you are referring to by others, but we're very active  
15 in understanding the situation and being involved in it  
16 so we can let our members know.

17 MR. MINTON: Specifically, has your  
18 association worked with Cal Am or the Monterey  
19 Peninsula Water Management District to implement  
20 projects that would allow compliance with Water Board  
21 Order 95-10?

22 MR. RUBIN: I'm going to object to the  
23 question. It states facts that are not in evidence,  
24 question about compliance with Order 95-10.

25 CO-HEARING OFFICER BAGGETT: I would sustain

1 the compliance part. But I think if you'd rephrase the  
2 question, that they worked with other agencies, I think  
3 that's appropriate.

4 MR. MINTON: Has the Hospitality Association  
5 considered taking a more active role in working with  
6 other agencies including the California American Water  
7 Company and the Monterey Peninsula Water Management  
8 District to develop water supply projects to serve your  
9 area?

10 MR. LOWREY: I object to the question and the  
11 characterization of an active role. If he just wants  
12 to ask the question without saying what role they have  
13 had in the past, then I wouldn't object to it. I think  
14 it's ambiguous.

15 CO-HEARING OFFICER BAGGETT: Yeah. Well,  
16 definitely leading. But could you answer the question,  
17 strike the word "active," and answer the question.

18 MR. MINTON: Has the Monterey Hospitality  
19 Association taken a role in working with other entities  
20 such as California American Water Company and the  
21 Monterey Peninsula Water Management District to  
22 implement water supply projects for your area?

23 MR. BASTIS: We've met with Cal Am, and we  
24 have had a number of meetings with Cal Am regarding the  
25 situation.



1           MR. MINTON: Have you considered taking a role  
2 in assisting -- in working with those other agencies to  
3 achieve implementation of water supply projects?

4           MR. BASTIS: I don't know what other agencies  
5 you --

6           MR. MINTON: California American Water Company  
7 and Monterey Peninsula Water Management District.

8           MR. BASTIS: We've met with Cal Am quite a  
9 bit. The District, I don't believe we have. We've  
10 communicated -- we're a trade organization.

11           We're a bunch of individual business people.  
12 We don't have any technical people to design a water  
13 implementation plan.

14           We've had the folks -- some folks that have  
15 testified last week -- to our meetings. We've listened  
16 to their proposals and invited them to our membership  
17 so that we can assist in any way possible to lend  
18 support or whatever the technical answer to this issue  
19 is by educating our association and letting our members  
20 know what's out there and what's available.

21           But we don't have the technical expertise to  
22 do what I think you're asking. We're a trade  
23 organization. We're hoteliers, we are restaurateurs,  
24 we have one paid staff member.

25           MR. MINTON: Does your association ever appear

1 before the Monterey Peninsula Water Management District  
2 to state its views on matters before them?

3 MR. BASTIS: Yes, we have.

4 MR. MINTON: Absent the Water Board adopting a  
5 cease and desist order similar to the draft that is  
6 proposed by the Prosecution Team, what incentives does  
7 the Hospitality Association have to increase its  
8 efforts working with others such as California American  
9 Water Service Company and Monterey Peninsula Water  
10 Management District to implement water supply projects  
11 that would serve your area?

12 MR. RUBIN: I'm going to object to the  
13 question. The way it's stated, it assumes that the  
14 draft cease and desist order that's being proposed by  
15 the Prosecution Team will provide an incentive for the  
16 Monterey County Hospitality Association.

17 MR. JACKSON: It's a hypothetical in which he  
18 is asking them whether or not they think it will  
19 provide an incentive.

20 MR. RUBIN: That's fine but --

21 MR. JACKSON: Many things could provide an  
22 incentive. But this would be one that might be useful.

23 MR. RUBIN: If Mr. Minton wants to phrase his  
24 question with assuming the draft cease and desist order  
25 would provide an incentive, I would not raise my

1 objection. But that's not the way it was stated.

2 CO-HEARING OFFICER BAGGETT: Is that  
3 acceptable? Sustained. Proceed.

4 MR. MINTON: Would State Water Board adoption  
5 of the cease and desist order in substantially the same  
6 form as offered by the Prosecution Team provide your  
7 organization any additional incentive to work with  
8 others such as the California American Water Service  
9 Company and the Monterey Peninsula Water Management  
10 District to achieve implementation of water supply  
11 projects to serve your area?

12 MR. BOSKOFF: I think we've tried. I think  
13 it's not an additional incentive. I think we have  
14 tried to help to the extent we can. We cannot by  
15 ourselves solve the issue because we are not the  
16 experts.

17 I don't know if desal is better than filling  
18 aquifer. I don't have that expertise. I honestly  
19 don't know.

20 We would like to see additional water, but we  
21 need to go to certain experts to be able to make those  
22 decisions. Because if somebody tells me -- if Group A  
23 tells me that desal is better and Group B tells me that  
24 the aquifer is better, I'm not expert in that.

25 I usually look at the expert. If I need help,

1 if I need to cook for 500 people, I get a chef, that's  
2 the expert.

3 MR. BASTIS: And going back to the other  
4 question, the incentive: The incentive is we're  
5 businessmen. Water is expensive. Cal Am's got a  
6 salary proposal and pricing proposal separate from this  
7 entire issue, to change commercial water pricing, to  
8 raise residential water pricing.

9 We have some of the highest housing in the  
10 state. The incentive for us is we don't want to use a  
11 lot of water. It's expensive. That's our incentive.

12 We're not here to waste water. We don't have  
13 car washes on the property. We don't wash our  
14 sidewalks. We don't want to use water. The pricing is  
15 the incentive.

16 Pricing is going to go up threefold, aside  
17 from all this, in water. That is our incentive, not to  
18 use water.

19 MR. BOSKOFF: Without water, we don't have  
20 customers.

21 MR. BASTIS: We can't serve our customers. I  
22 also want to say the Carmel Valley River, the beauty,  
23 that's -- we don't want to ruin that either. We want  
24 fish, we want rivers. That's why people come to our  
25 places. So it's a tough situation.

1           We -- the beauty of our place is the natural  
2 resources. And we're here to protect them as well.  
3 And that's why we're here, and this is important.

4           But we're a trade organization. We don't know  
5 how to build water wells. We don't know where to get  
6 water from. We recognize there is a water issue. And  
7 we just want to get it resolved in a sensible manner so  
8 that we can conduct our business. We're not talking  
9 about doubling the size of our hotels, just to run our  
10 hotels.

11           MR. MINTON: If the cease and desist order is  
12 not adopted by the Water Board, will you have any  
13 increased incentive for further improvements or to work  
14 with others including California American and Monterey  
15 Peninsula Water Management District to secure  
16 additional water supplies for the areas?

17           MR. LOWREY: Asked and answered. I believe  
18 that this witness just testified that there is pricing  
19 mechanisms ongoing outside of the proceedings here that  
20 provides incentive.

21           CO-HEARING OFFICER BAGGETT: He just stated  
22 that pretty clearly in the two monologues you just  
23 heard. Do you have any followups to that?

24           MR. MINTON: Let me follow up by asking: It  
25 is now your testimony that you anticipate there will be

1 increased -- there will be rate increases?

2 MR. BASTIS: That's my understanding --

3 MR. MINTON: Mm-hmm.

4 MR. BASTIS: -- that those rate increases have  
5 been submitted.

6 MR. MINTON: Do you have any information or  
7 belief as to whether there would be additional rate  
8 increases with implementation of water supply projects  
9 to increase the water supply to your areas?

10 MR. BASTIS: As a matter of fact we, as I've  
11 stated, our organization, this is an important issue.  
12 We have the speakers -- a lot of people that have been  
13 and testified here -- come to speak to us. And I'll  
14 tell you here's my layman's term of, I don't know if  
15 it's 150 or 300 percent increase in water rates that's  
16 being proposed, much of that pays to remove the dam.  
17 None of that money even goes to finding new water  
18 sources, to resolving this issue.

19 So to answer your question, I don't know how  
20 else -- it's got to happen. These price increases are  
21 just to help to resolve ongoing issues on what we got  
22 today. I don't recall -- and I could quite possibly be  
23 wrong -- I don't recall any bit of it, or if it's there  
24 it's a very small amount, that goes to any effort to  
25 developing new water. Which is -- so to get new water

1 it's going to cost more on top of this. I suspect so.

2 MR. MINTON: Thank you.

3 CO-HEARING OFFICER BAGGETT: Any questions?

4 Let's take a break, then. We'll come back --  
5 let's take a short break, come back at 5:30. We'll  
6 finish the cross from up here. We can go off the  
7 record.

8 (Recess)

9 CO-HEARING OFFICER BAGGETT: Let's go back on  
10 the record. I understand you have a procedural issue.

11 MR. RUBIN: After we submitted the testimony  
12 for Mr. Schubert marked I believe as CAW-37, it came to  
13 my attention that there was a reference to a document  
14 starting on page 4, Comprehensive Planning Study.

15 Essentially, we originally thought it was some  
16 helpful information, background essentially legal  
17 perspective dicta. But that Comprehensive Planning  
18 Study, it came to my attention, is a confidential  
19 document. It can't be disclosed for a number of  
20 different reasons. The most paramount is national  
21 security reasons. So what we have done --

22 (Laughter)

23 CO-HEARING OFFICER BAGGETT: No, I --

24 MR. RUBIN: And so it's a comprehensive  
25 planning study, but it deals with a number of different

1 aspects of operations.

2           What we've done to try to facilitate -- and  
3 recognize that this is an inconvenience to some of the  
4 parties -- is prepare a document that redacts the  
5 references to the CPS and highlighted a couple of areas  
6 where we have to change the text so that it makes sense  
7 and leaving information that Mr. Schubert has  
8 independent knowledge, expertise to testify  
9 irrespective of the comprehensive planning studies.

10           So what we were going to do is introduce as  
11 Exhibit CAW-37A, revised testimony. We have prepared  
12 two versions because we weren't sure how the Hearing  
13 Officers would want to proceed here.

14           One is a document that's essentially a new  
15 document, would reflect no redactions, but would take  
16 out any of the information related to this  
17 Comprehensive Planning Study.

18           The other one is the one I spoke about just a  
19 few minutes ago where it's exactly the same as what we  
20 submitted, but deleting as a redaction the references.  
21 So just wanted to make it --

22           CO-HEARING OFFICER BAGGETT: So do you want to  
23 provide copies of that document?

24           MR. RUBIN: We have made copies, and we can  
25 describe it to the parties. Just -- it's hard to



1 explain, but the version that has a redaction is  
2 probably the easiest for the parties because it will  
3 demonstrate what's been changed very clearly.

4 CO-HEARING OFFICER WOLFF: This is the Cal  
5 American Comprehensive Planning Study?

6 MR. RUBIN: That's correct. It's a document  
7 that's prepared by California American Water.

8 CO-HEARING OFFICER WOLFF: For submittal to  
9 who?

10 MR. RUBIN: It's a document -- and I can have  
11 Mr. Schubert explain little bit more in detail, but I  
12 believe it's more generally for internal uses.

13 CO-HEARING OFFICER BAGGETT: Why don't you  
14 provide copies, and we can deal with it tomorrow  
15 morning. Mr. Jackson?

16 MR. JACKSON: Yes. It would seem to me that  
17 the document either ought to come in unredacted or not  
18 come in at all. I mean, I don't see that you can use  
19 an incomplete document.

20 CO-HEARING OFFICER BAGGETT: Depends on what  
21 it says. Without seeing the document, it's hard to  
22 make that conclusion.

23 MR. JACKSON: It is, but it's a little -- it's  
24 also a little hard to argue a national security  
25 argument on a California American document in a water

1 case.

2 CO-HEARING OFFICER BAGGETT: I would totally  
3 disagree. I mean I've had to deal with personally in  
4 two negotiations where Homeland Security's broad arms  
5 blacked out pages of documents because they had to do  
6 with a dam for national security reasons.

7 MR. JACKSON: And you allowed that into  
8 evidence?

9 CO-HEARING OFFICER BAGGETT: No, it was  
10 another forum.

11 MR. JACKSON: Yeah, that's my -- my objection  
12 is that -- a redacted document coming into evidence in  
13 this case.

14 CO-HEARING OFFICER BAGGETT: The ruling is you  
15 can take it, sleep on it, and we'll deal with it in the  
16 morning. Everybody has got a copy, you can see whether  
17 it's prejudicial, if the information is useful, to make  
18 a point.

19 MR. RUBIN: And just to be clear, we're not  
20 seeking to admit the Comprehensive Planning Study.

21 We're talking about Mr. Schubert's testimony,  
22 redacting portions of his written testimony that  
23 referred to or potentially relied upon the  
24 Comprehensive Planning Study. We've redacted that so  
25 that the testimony now that's been marked as Exhibit

1 CAW-37A provides no reference to that, and all of the  
2 information in here Mr. Schubert has independent  
3 knowledge and expertise to testify.

4 CO-HEARING OFFICER BAGGETT: Okay. Thank you.  
5 Let's go back to cross-examination. Where were we?  
6 Staff, Ernie, Paul.

7 --o0o--

8 EXAMINATION BY THE HEARING TEAM

9 --o0o--

10 ENGINEERING GEOLOGIST MURPHEY: Yes. I have a  
11 question for Mr. McKenzie.

12 Your Exhibit 2 is a table that shows water  
13 consumption by selective categories, and one of the  
14 categories is hospitality, and in parentheses it says,  
15 including golf. Could you determine what percent of  
16 that total was used for irrigation of golf courses?

17 MR. MCKENZIE: Not from that point. I'm  
18 looking to see if any of this is -- none of the  
19 exhibits I submitted breaks golf out separately from  
20 the hospitality industry.

21 ENGINEERING GEOLOGIST MURPHEY: Are any of  
22 those golf courses that were irrigating -- because this  
23 is data from '88 to 99 --

24 MR. MCKENZIE: Right.

25 ENGINEERING GEOLOGIST MURPHEY: Are any of

1 those golf courses the ones that Pebble Beach mentioned  
2 that are being currently irrigated by recycled water?

3 MR. MCKENZIE: Yes. The Pebble Beach golf  
4 courses that are served by recycled water are included  
5 in that category.

6 ENGINEERING GEOLOGIST MURPHEY: Are there any  
7 golf courses that aren't?

8 MR. MCKENZIE: No.

9 ENGINEERING GEOLOGIST MURPHEY: Okay. Thank  
10 you.

11 MR. MCKENZIE: That category called  
12 hospitality, paren, including golf, includes all golf  
13 courses.

14 CO-HEARING OFFICER BAGGETT: Let me make a  
15 suggestion that might be helpful, I think at least to  
16 us up here. If one of the parties, whichever party  
17 there are who have already testified, and I know have  
18 some of this information, under rebuttal, they could  
19 provide a document or a table citing this. The  
20 Municipal Water District, Cal Am, Pebble Beach. You'll  
21 likewise have a chance under rebuttal tomorrow. If  
22 there is a table, that would be useful for us to  
23 understand the relationship between what's golf  
24 courses, what's reclaimed, and what's not.

25 And I'm sure that table is out there among all

1 the brilliant water experts in this room. I wouldn't  
2 expect the hospitality industry to know those kind of  
3 numbers. I would just ask that if you could provide  
4 that we can decide who's got the best information.

5 CO-HEARING OFFICER WOLFF: Just to quickly  
6 follow up, though, just to be sure I understand the  
7 answer.

8 This is 1999 data. It includes water for  
9 water golf courses. Was that potable water in 1999 and  
10 the reclaimed water system in Pebble Beach came into  
11 effect after that?

12 MR. MCKENZIE: Yes, this would not count any  
13 nonpotable sources used at that time, but I think those  
14 were minimal.

15 CO-HEARING OFFICER WOLFF: Right. At that  
16 time, they were minimal. I think that's my  
17 understanding of the record as well.

18 MR. MCKENZIE: Right.

19 CO-HEARING OFFICER WOLFF: Thank you.

20 CHIEF COUNSEL TAYLOR: The question is briefly  
21 for Mr. Bastis, just for clarification. We're hearing  
22 a lot of different things here. Say on average over  
23 the last three years, how many days a year is your  
24 hotel fully booked?

25 MR. BASTIS: I said 30 to 40 is venturing a

1 guess. And fully booked being every single room.

2 CHIEF COUNSEL TAYLOR: Okay. And the same  
3 question for the other gentleman who runs a hotel.

4 MR. BOSKOFF: About a hundred times.  
5 Approximately a hundred times.

6 MR. BASTIS: He's busier than I am.

7 CHIEF COUNSEL TAYLOR: Per year.

8 MR. BOSKOFF: Per year.

9 CHIEF COUNSEL TAYLOR: Thank you.

10 MR. BASTIS: Smaller hotel.

11 CO-HEARING OFFICER BAGGETT: It seems to me  
12 the question would really be when do you have a hundred  
13 percent occupancy as opposed to all rooms booked. How  
14 many -- what's your hundred percent, your hundred  
15 percent occupancy night, hundred percent booked.

16 MR. BASTIS: The answer remains the same, and  
17 just to clarify that, we're 550 rooms, but we've also  
18 been under a major renovation project for the year,  
19 which was the question, so.

20 CO-HEARING OFFICER WOLFF: This question is  
21 for Mr. McKenzie, but if the others have some knowledge  
22 feel free to join in.

23 You know, you indicated that rationing would  
24 create a severe problem for the hospitality industry.  
25 But your colleagues on the panel started talking about

1 large water rate increases under the current Cal Am  
2 application at CPUC. What is the magnitude of the  
3 commercial rate increases proposed? Was it a tripling,  
4 is that what I heard?

5 MR. MCKENZIE: Roughly a tripling, yes.

6 CO-HEARING OFFICER WOLFF: Roughly a tripling  
7 if that application were approved, that applies to the  
8 hospitality --

9 MR. MCKENZIE: If PUC approves everything  
10 that's on file, then yeah; commercial rates would  
11 triple, maybe even quadruple.

12 CO-HEARING OFFICER WOLFF: And what are those  
13 rates now?

14 MR. MCKENZIE: It's also a change in the rate  
15 structure. Right now it's a two-tiered structure, and  
16 I believe -- Cal Am's here; I believe it goes to  
17 five-tier rate structure or something along those  
18 lines.

19 CO-HEARING OFFICER WOLFF: When you say  
20 doubling, you mean the rates will double? You mean  
21 your estimated bills -- I'm sorry. Your rates will  
22 triple or your estimated bills will triple under the  
23 new rate structure?

24 MR. BASTIS: The rates that are -- the high  
25 end would be a tripling of rates, as I --

1 CO-HEARING OFFICER WOLFF: High end would be a  
2 tripling of the highest rate now.

3 MR. BOSKOFF: Right. And it's based on --  
4 it's based on a rolling average. So if you last year  
5 had a slow time, you get doubly penalized because you  
6 are busier and you use more. And that's difficult.

7 CO-HEARING OFFICER WOLFF: I just received my  
8 ration from East Bay Municipal Utility District, so I'm  
9 personally familiar with the concern.

10 So these significant rate increases -- I want  
11 to ask Mr. McKenzie. If rationing would cause severe  
12 problems for the industry, wouldn't large rate  
13 increases also cause severe problems for the industry?

14 MR. MCKENZIE: In the short term, probably so.  
15 In the longer term, the hotels would be able to recoup  
16 from charges that they make to guests. They can adjust  
17 over time to rate increases. What they can't adjust to  
18 is not having any water.

19 CO-HEARING OFFICER WOLFF: All right. So has  
20 the hospitality industry or association taken any  
21 position for or against any of the water supply  
22 projects proposed in the area?

23 MR. MCKENZIE: Oh, yes. Very definitely.

24 CO-HEARING OFFICER WOLFF: In favor or  
25 against?



1           MR. MCKENZIE: In favor. In 1995, the  
2   Hospitality Association was in favor of the Water  
3   District's dam proposal. The Hospitality Association  
4   supported Cal Am in its efforts basically to propose  
5   the same dam that is their project as opposed to the  
6   District.

7           The Hospitality Association is still  
8   supportive of Cal Am finding a water supply. We are  
9   supportive, and this is a position taken within the  
10  last three months, we are supportive of I guess we're  
11  calling it the REPOG plan.

12          CO-HEARING OFFICER WOLFF: Yes.

13          MR. MCKENZIE: That's an alternative that the  
14  PUC is going to study. Whether it turns out to be the  
15  preferred alternative or not, we'll see. I mean,  
16  that's a CEQA issue. But we're supportive of that  
17  also. Oh, and the current desal effort of Cal Am, of  
18  course.

19          CO-HEARING OFFICER WOLFF: Right. So the  
20  significantly higher price water proposals that are  
21  being made, those are things you think the industry can  
22  cope with, whereas shortages the industry cannot cope  
23  with.

24          MR. MCKENZIE: Yeah. I think there's a stark  
25  difference. And I think I understand the point you're

1 getting to which is: The rate increases induce less  
2 use.

3 CO-HEARING OFFICER WOLFF: No, no. I wasn't  
4 getting into that at all. I understand in terms of,  
5 you know, raw economic impact, if you --

6 MR. MCKENZIE: Oh.

7 CO-HEARING OFFICER WOLFF: -- change the rates  
8 there is an impact. And it seems to me the appropriate  
9 comparison is between whatever it takes to solve the  
10 problem versus what's being proposed as a CDO as a way  
11 of solving the problem. There are different solutions  
12 to the problem. There's no future path which involves  
13 rates staying what they are.

14 MR. MCKENZIE: Right.

15 CO-HEARING OFFICER WOLFF: All right. So it's  
16 late. I have one last question just for Mr. Boskoff  
17 and Mr. Bastis. I hope you'll appreciate the spirit in  
18 which it's asked, and a simple yes or no answer will  
19 suffice. If I stayed in your hotels, would I find  
20 Fokey in my bedroom?

21 MR. BOSKOFF: Who's Fokey?

22 CO-HEARING OFFICER WOLFF: You don't know who  
23 Fokey is?

24 MR. BOSKOFF: No, I don't know who Fokey is.  
25 Who is -- I am so sorry.

1 CO-HEARING OFFICER WOLFF: He's the little  
2 mascot, the sea otter mascot.

3 MR. BOSKOFF: Oh, well, if you brought your  
4 children, you may.

5 CO-HEARING OFFICER WOLFF: All right. If you  
6 knew I had children you may put Fokey in my bedroom.  
7 Thank you.

8 (Laughter)

9 CO-HEARING OFFICER BAGGETT: No objections?

10 (Laughter)

11 CO-HEARING OFFICER BAGGETT: With that, would  
12 you like to move any --

13 MR. LOWREY: Yes, I would like to starting  
14 with exhibits sponsored by Mr. McKenzie, 1 through 9.  
15 I'd like to move those into evidence.

16 CO-HEARING OFFICER BAGGETT: No objection? So  
17 moved.

18 (Exhibits MCHA-1 through 9 were admitted  
19 into evidence.)

20 MR. LOWREY: And Exhibit 10 sponsored by  
21 Mr. Bastis together with the two attachments to his  
22 testimony, move into evidence.

23 CO-HEARING OFFICER BAGGETT: Do I hear  
24 objection? So moved.

25 (Exhibit MCHA-10 was admitted into

1 evidence.)

2 MR. LOWREY: And the testimony of Mr. Boskoff  
3 as renumbered number 11, move that into evidence.

4 CO-HEARING OFFICER BAGGETT: No objection.  
5 Accepted into evidence. Thank you.

6 (Exhibit MCHA-11 was admitted into  
7 evidence.)

8 MR. LOWREY: Thank you.

9 CO-HEARING OFFICER BAGGETT: Okay. Statement  
10 from the Public Advocate from the California PUC.

11 MR. GOMBERG: Good afternoon. We have a  
12 PowerPoint presentation to facilitate our statement,  
13 and my colleague, Diana Brooks, will be distributing  
14 those.

15 MR. RUBIN: Hearing Officer Wolff, I have a  
16 point of clarification. This is characterized as an  
17 opening statement. Is this going to be considered an  
18 opening statement or a policy statement? I don't know  
19 if it makes that much of a difference, but I know that  
20 under the rules clearly policy statements are not  
21 evidentiary statements. Opening statements -- again  
22 this is an area of limbo.

23 CO-HEARING OFFICER WOLFF: Good question.  
24 I'll take it under advisement.

25 MR. GOMBERG: Good afternoon, Hearing

1 Officers. My name is Max Gomberg. I represent the  
2 Division of Ratepayer Advocates with the California  
3 Public Utilities Commission. DRA is an independent  
4 division of the CPUC, our director is appointed by the  
5 Governor, and we are a party to proceedings at the  
6 commission.

7 Next slide, please.

8 DRA is here today to provide the Board with  
9 context on California American Water's current request  
10 before the CPUC as well as how a CDO may affect  
11 ratepayers.

12 Next slide, please.

13 The proceedings currently before the  
14 Commission involve conservation and rationing programs,  
15 rate design, infrastructure investments, staffing and  
16 other expenses.

17 One of these, the Coastal Water Project  
18 application, involves water supply.

19 DRA initiated and continues to be involved in  
20 stakeholder dialogues to develop a regional water  
21 supply as an alternative to California American's  
22 proposed Coastal Water Project.

23 You've all heard about the REPOG group. DRA  
24 initiated that group. We are no longer the sponsor of  
25 the group. We continue to participate in its monthly

1 meetings. And as you heard, that group has come up  
2 with a plan that will be included in the CEQA analysis  
3 in the EIR document that the Commission will be  
4 reviewing as the Lead Agency.

5 Next slide, please.

6 DRA is currently analyzing California American  
7 Water's proposals for how much water can be saved  
8 through conservation and structure management. Precise  
9 estimates, however, are difficult due to uncertainty  
10 about how customers will respond to higher rates,  
11 additional rebate programs, audits, other conservation  
12 measures that you have heard a lot about.

13 Next slide, please.

14 DRA will be able to review costs associated  
15 with CDO compliance, if one is issued; but DRA may not  
16 be able to review those costs until after they have  
17 been incurred. DRA will advocate for Cal Am to achieve  
18 cost-effective compliance and will recommend  
19 disallowing imprudent costs of compliance with a CDO.

20 Next slide, please.

21 DRA does not have the data necessary to  
22 accurately estimate the cost of compliance with the  
23 draft CDO as currently written. DRA would like to see  
24 local water agencies develop a low-cost replacement  
25 water supply in an expeditious manner, and that is why

1 we are involved in the REPOG process.

2 Next slide, please.

3 DRA acknowledges there may not be a perfect  
4 reduction schedule in the CDO but hopes that the Board  
5 consider ratepayers in the formulation of any CDO.

6 DRA also notes that the effects of rationing  
7 and moratorium impacts different groups of ratepayers  
8 differently. DRA believes the current ratepayers who  
9 have worked diligently to conserve water should not be  
10 penalized by an unfair rationing program.

11 In addition, DRA believes that Cal Am  
12 ratepayers should not have to pay for any fines or  
13 liability resulting from the CDO.

14 Further, DRA believes that the regional  
15 alternative of which you have heard has the potential  
16 for substantial cost savings to ratepayers. DRA will  
17 be evaluating any water supply project that is selected  
18 through the Commission's CEQA review.

19 That concludes DRA's opening statement. Thank  
20 you.

21 CO-HEARING OFFICER WOLFF: Thank you. Just a  
22 moment. Did you wish the statement to be included as  
23 evidence in the record, or you simply wanted a  
24 statement of the policy position of the Division of  
25 Ratepayer Advocates?

1           MR. GOMBERG:  If the Board wishes it to be  
2 entered into the record, we would happily move for it  
3 to be entered into the record.

4           CO-HEARING OFFICER WOLFF:  Well, you have no  
5 witnesses who provided testimony, so there's no way to  
6 cross-examine.  It appears to me to be a policy  
7 statement.

8           MR. GOMBERG:  That's correct.  We selected  
9 Opening Statement Only when we submitted our Statement  
10 of Party Status to the Board.

11          CO-HEARING OFFICER WOLFF:  Does anyone have  
12 any concerns about ruling this as a policy statement?  
13 Mr. Jackson?

14          MR. JACKSON:  No.  I don't think there is any  
15 question.  I think it's a policy statement.

16          CO-HEARING OFFICER BAGGETT:  Is this an  
17 evidentiary issue?

18          CO-HEARING OFFICER WOLFF:  Well, we've been  
19 asked whether the opening statement is considered part  
20 of the evidentiary record or is it a policy statement.

21          CO-HEARING OFFICER BAGGETT:  I think --

22          CO-HEARING OFFICER WOLFF:  I'm about to rule  
23 it's a policy statement.  Do you concur?

24          CO-HEARING OFFICER BAGGETT:  I've never seen  
25 an opening statement in any court that I've been in



1 that's used as evidence.

2 CO-HEARING OFFICER WOLFF: Right.

3 CO-HEARING OFFICER BAGGETT: It's a summary of  
4 evidence. So go for it.

5 CO-HEARING OFFICER WOLFF: Well, it can't even  
6 be a summary of evidence because they have introduced  
7 no evidence. So it's purely a policy statement, and  
8 that's how we'll treat it.

9 MR. GOMBERG: That's fine.

10 CO-HEARING OFFICER WOLFF: Mr. Rubin, just  
11 asked for a clarification.

12 (Laughter)

13 CO-HEARING OFFICER WOLFF: With that, end of  
14 the day?

15 CO-HEARING OFFICER BAGGETT: Yeah.

16 CO-HEARING OFFICER WOLFF: All right. Unless  
17 anyone has any procedural matters, we'll return  
18 tomorrow morning at 9 o'clock.

19 CO-HEARING OFFICER BAGGETT: 9 o'clock, and  
20 we'll go until we're done.

21 \* \* \*

22 (Thereupon the WATER RESOURCES CONTROL  
23 BOARD hearing adjourned at 5:51 p.m.)

24

25

1 CERTIFICATE OF REPORTER

2 I, LINDA KAY RIGEL, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify:

4 That I am a disinterested person herein; that  
5 the foregoing WATER RESOURCES CONTROL BOARD hearing was  
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 25, 2008.

15

16

17

18

19 LINDA KAY RIGEL, CSR

Certified Shorthand Reporter

20 License No. 13196

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