STATE WATER RESOURCES CONTROL BOARD

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WATER RIGHTS HEARING ON APPLICATION 30532

FILED BY THE MONTEREY COUNTY WATER RESOURCES AGENCY

NACIMIENTO RIVER, SAN LUIS OBISPO COUNTY

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HELD AT

BONDERSON BUILDING
901 P STREET
SACRAMENTO, CALIFORNIA

TUESDAY, JULY 18, 2000
9:00 A.M.
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Reported by: ESTHER F. WIATRE
CSR NO. 1564

APPEARANCES

HEARING OFFICER:

JOHN BROWN

STAFF MEMBERS:

KEVIN LONG, STAFF ENGINEER
MIKE MEINZ, STAFF BIOLOGIST

COUNSEL:

BARBARA KATZ

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REPRESENTATIVES

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and
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SACRAMENTO, CALIFORNIA

TUESDAY, JULY 18, 2000, 9:00 A.M.

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HEARING OFFICER BROWN: Good morning.

This is the time and place for a hearing on Water Rights Application 30532 filed by the Monterey County Water Resources Agency to appropriate water from the Nacimiento Reservoir for storage in Nacimiento Reservoir in San Luis Obispo County.

This hearing is held in accordance with the Notice of Hearing dated May 24th, 2000.

Sound system working all right in the back?

I am John Brown, a member of the State Water Resources Control Board. I will be assisted by staff members Barbara Katz, counsel on my right; Kevin Long, engineer on my left; and Mike Meinz, environmental specialist on Barbara's right.

The purpose of this hearing is to afford the applicant, Monterey County Water Resources Agency, the Protestants known as Salinas Valley Protestants, and others who have filed a Notice of Intent to Appear and submitted written testimony and exhibits in accordance with the Notice of Hearing an opportunity to present relevant, oral testimony, maps, charts, studies and other evidence which may assist the Board in determining whether there is unappropriative

water available for appropriation to supply the project described in Application 30532.

The Salinas Valley Protestants include Barbee Ranch, California Orchard Company, Duflock Ranches, Fairview Vineyards, Michel and Mary Orradre, Salinas Land Company, San Bernabe Vineyards and Scheid Vineyards.

Three protestants did not submit notices of intent to appear and written testimony and exhibits. Those protestants are the California Department of Fish and Game, the National Marine Fisheries Service and the California Sportfishing Protection Alliance.

The City of San Luis Obispo withdrew its protest against Application 30532. The California Sportfishing Protection Alliance has submitted a written policy statement. The Department of Fish and Game, the National Marine Fisheries Service and the California Sportfishing Protection Alliance did not comply with the prehearing submittal requirements. Accordingly, they are dismissed as parties to the proceedings in accordance with Section 648.1(c) Title 23, California Code of Regulations, and their protests are dismissed.

In addition to the Agency and the Salinas Valley Protestants, those persons who submitted a Notice of Intent to Appear and written testimony and exhibits are Clark County Water Company; Rosenberg Family Ranch, LLC; Tanimura

& Antle, Inc.; and Marina Coast Water District. They are designated interested parties to the proceeding in accordance with Section 648.1(b) Title 23, California Code of Regulations.

The Salinas Valley Water Coalition submitted a Notice of Intent to Appear and reserved the opportunity for rebuttal if necessary. The East Side Water Alliance submitted a Notice of Intent to Appear and reserved the opportunity for cross-examination and/or rebuttal if necessary.

If the Coalition and the Water Alliance find it necessary to participate in the limited manner I just described, they are designated interested parties in accordance with Section 648.1(b).

Our hearing today has a narrow focus. It is not an adjudication of water rights in the Salinas Valley, nor is this an adjudication of the protestants' water rights or any other parties' water rights.

The Board does not have the authority to make a final determination regarding any water rights other than post-1914 water rights. It is not a proceeding to determine whether diversions and extractions of water and uses of water in the Salinas Valley are reasonable. And finally, it is not a proceeding to develop a management plan for water diversions and use in the Salinas Valley.

For the record, I would like to state that a claim made by Mr. Maloney regarding a determination of sufficiency of his clients' protest is not correct. Neither the Division of Water Rights and the Board made any finding or final determination regarding the sufficiency of the Salinas Valley Protestants' protest or whether a prima facie case has been made regarding the existence of water rights and whether there has been injury to any of the claimed rights caused by the Agency's diversion to storage of the 27,900 acre-feet that is the subject of this hearing.

Since there were other outstanding protests requiring a hearing on the application, it was decided to let the Salinas Valley Protestants participate in the hearing.

Please note that the Board will not be taking any action in this proceeding similar to the actions it took in the Napa Valley regarding reasonableness of diversions. So, the Napa Valley proceedings are not relevant to this hearing. Also, the pending proceeding regarding Salinas Reservoir are not relevant to this proceeding. Do not expand the scope of this hearing.

Our hearing today is limited to the 27,900 acre-feet of water that has been diverted to storage in Nacimiento Reservoir and is the subject of Application 30532. The 350,000 acre-feet of water that is stored in Nacimiento Reservoir under License 7543 is not at issue in this

proceeding.

The issues noticed for hearing are:

One, is unappropriated water available for appropriation to supply the project described, Application 30532?

Number two, has the additional diversion to storage which would be authorized by the approval of Application 30532 caused injury to persons with senior water rights downstream of Nacimiento Reservoir? If so, how? What conditions, if any, should the State Water Resources Control Board adopt to protect senior water right holders?

Three, has the additional diversion to storage which would be authorized by the approval of Application 30532 caused adverse impacts to public trust resources in the Nacimiento River, the Salinas River or Nacimiento Reservoir? If so, what are they? What conditions, if any, should the State Water Resources Control Board adopt to avoid or mitigate any adverse impact on public trust resources caused by the proposed project?

Four, is the proposed project exempt from the California Environmental Quality Act? If so, which exemption applies to the proposed project and why?

Testimony and exhibits which do not address issues noticed for hearing are not relevant. Please limit your testimony and exhibits to the stated issues.

I also ask that the policy statements address those issues noticed for hearing. I ask for cooperation from all in this regard and hope that it would be not necessary to remind anyone of the purpose of this hearing. Again, we are not adjudicating water rights in this proceeding.

After the conclusion of this hearing, the Board will consider a draft decision at a Board meeting. After the Board adopts a decision, any person who believes the decision is in error has 30 days within which to submit a written petition with supporting evidence for reconsideration by the Board. Petitions for reconsideration must comply with Sections 768 and 769 of Title 23, California Code of Regulations.

Appearances of the parties. At this time I would like to invite appearances by the parties. Will those making appearances please state your name, address and who you represent so the Court Reporter, Esther Wiatre, can enter this information into the record.

Who is representing the Monterey County Water Resources Agency?

MR. O'BRIEN: Morning, Mr. Brown. Kevin O'Brien of Downey Brand Seymour Rohwer representing the Monterey County Water Resources Agency. My address is 555 Capitol Mall, 10th Floor, Sacramento 95814. With me today is Mr. Scott Shapiro, also from my firm.

H.O. BROWN: Morning, Mr. Shapiro.

Morning, Mr. O'Brien. Welcome.

MR. O'BRIEN: Thank you.

H.O. BROWN: Who is representing the Salinas Valley Protestants?

MR. MALONEY: Patrick J. Maloney, 2425 Webb Avenue, Alameda, California. With me today is Mr. Virsik.

H.O. BROWN: Good morning, Mr. Virsik, and welcome.

Morning, Mr. Maloney.

MR. MALONEY: Thank you, your Honor.

H.O. BROWN: Who is representing Clark County Water Company?

MR. BEZERRA: Mr. Brown, Ryan Bezerra of Bartkiewicz, Kronick & Shanahan, 1011 Twenty-Second Street, Sacramento, California 95816. We are representing Clark County Water Company in this proceeding.

H.O. BROWN: Morning, Mr. Bezerra, and welcome.

MR. BEZERRA: Thank you.

H.O. BROWN: Who is representing Rosenberg Family Ranch?

MR. BEZERRA: Mr. Brown, Ryan Bezerra, Bartkiewicz, Kronick & Shanahan, 1011 Twenty-Second Street, Sacramento, California 95816. We are representing Rosenberg Family Ranch in this proceeding.

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

Who is representing Tanimura & Antle?

MR. DONLAN: Robert Donlan of Ellison, Schneider & Harris, 2015 H Street, Sacramento, California 95814.

H.O. BROWN: Morning, Mr. Donlan, and welcome.

Who is representing Marina Coast Water District?

Who is representing the Salinas Valley Water Coalition?

MR. GOLDSMITH: Good morning, Mr. Brown. Janet Goldsmith from Kronick Moskovitz Tiedemann & Girard, 400 Capitol Mall, 27th Floor, Sacramento 95814. And I am representing the Salinas Valley Water Coalition.

I won't be here during the entire proceedings and in my absence Nancy Isakson, the consultant for Salinas Valley Water Coalition will be participating.

MS. ISAKSON: P.O. Box 804, Carmel, California 93921.

H.O. BROWN: Morning, Ms. Isakson. Ms. Goldsmith, welcome.

Who is representing the East Side Water Alliance?

MS. LENNIHAN: Good morning, Hearing Officer Brown. Martha Lennihan of Lennihan Law, 2311 Capitol Avenue, Sacramento, California 95816.

H.O. BROWN: Morning, Ms. Lennihan, welcome.

I've read the various proposals for the order of presentation. The order in which the parties will present their cases is as follows:

First will be the applicant, Monterey County Water

Resources Agency.

Second will be Tanimura & Antle.

Third will be the Marina Coast Water District.

Fourth will be Clark County Water Company.

Fifth will be Rosenberg Family Ranch; and

Sixth will be the Salinas Valley Protestants.

For cross-examination and rebuttal, in addition to the parties above, the order of proceeding will continue with the East Side Water Alliance for cross-examination and rebuttal and the Salinas Water Coalition for cross-examination and rebuttal.

Before the parties present their cases, persons who want to present policy statements may do so. The Board will also accept written policy statements. A policy statement is not evidence. It may include the policy views and positions of the speaker.

Persons who wish to make only a policy statement may do so subject to the following provisions: Persons making policy statements will not be sworn or asked to affirm the truth of their statements. Persons making policy statements must not attempt to use their statements to present evidence of facts, either orally or by introduction of written exhibits. At my discretion questions may be asked to persons making policy statements for the purpose of clarifying their statements. However, they shall not be

subject to cross-examination.

After the policy statements we will hear an opening statement and testimony from the Agency and its witnesses followed by cross-examination by the parties in the order of presentation that I stated earlier, the hearing team and then myself.

There will be an opportunity for redirect and recross. After completion of recross, exhibits will be offered into evidence. Following the Agency's direct testimony, cross-examination and redirect and recross, the other parties will put on their cases in chief in the same manner as I just described for the Agency and in the order of presentation as I stated earlier.

After all the parties have testified and been cross-examined, there will be an opportunity for rebuttal and cross-examination. Finally, closing arguments will be allowed.

Since written testimony has been submitted for each witness, the oral testimony given today should be limited to summarizing the important points in the written testimony. Oral testimony that goes beyond the scope of written testimony may be excluded. Please address only the issues noticed for the hearing. Parties with more than one witness have the option to conduct cross-examination of their witnesses as a panel. If this option is selected, each

witness will be giving his or her direct testimony before any witness is cross-examined.

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

Please note that the time limits specified in the Notice of Hearing will be enforced. The time limits are: policy statements, five minutes. Opening statements, 20 minutes. Direct testimony, 20 minutes per witness, not to exceed two hours for all witnesses by a party. Cross-examination, be one hour per witness or a panel of witnesses. Closing arguments, you have ten minutes.

Time limits may be extended at my discretion upon showing of good cause demonstrated in a offer of proof.

This hearing will be transcribed by Esther Wiatre. Persons who want a copy of the transcript should order one directly from her. Sixty days after the Board receives its copy of the transcript, the transcript will be posted on our website at www.swrcb.ca.gov.

Procedural matters. There are procedural matters to be addressed prior to the parties putting on their cases.

Rulings are necessary to respond to.

Firstly, in objection by the Agency to a notice issued pursuant to Code of Civil Procedure Section 1987 by the Salinas Valley Protestants. Pursuant to Section 1987 the Salinas Valley Protestants have demanded that the Agency produce the Assessor-Recorder of Monterey County and that the Assessor-Recorder produce all water rights books of Monterey County, all Assessor parcel books through 1960 and grantor and guarantee books through 1960.

The Agency has objected to this demand for documents as being, one, overly broad, too vague to allow compliance and lacking the specificity required by Section 1987(c). Also, it is overly burdensome, disruptive of the Office of the Assessor-Recorder, an abuse of process in that the protestants have equal or better access to the requested documents than does the Agency, and irrelevant to the issue noticed for hearing.

The second item. A motion or petition of the Salinas Valley Protestants to consolidate or coordinate the Board's proceedings on the petition for extension of time regarding Permit 5882 filed by the City of San Luis Obispo for this proceeding on Application 30532 and to take official notice of the files regarding the proceeding of Permit 5882.

Third issue, a petition of the Salinas Valley Protestants for a Section 257 review and for an order to

show cause why application should not be dismissed.

Fourth issue. A request by the Agency for a prehearing order regarding the scope of admissible evidence.

I have read the written arguments that have been submitted on these issues. My rulings are as follows:

First one, as to objection by the Agency to the Section 1987 noticed filed by the Salinas Valley Protestants, I sustained the Agency's objection. The notice is quashed as to the production of the Assessor-Recorder, all water rights books of Monterey County, all assessor parcel books through 1960 and the guarantor and grantee books through 1960.

Mr. Maloney, all of those records are available for your use in the County. You may copy them for your use at your discretion.

MR. MALONEY: Your Honor --

H.O. BROWN: Second item. As to the motion or petition of the Salinas Valley Protestants to consolidate or coordinate the Board's proceedings on the petition for extension of time regarding Permit 5882 filed by the City of San Luis Obispo with this proceeding on Application 30532, it is denied.

Request to take administrative notice of files regarding the proceedings on Permit 5882 is also denied.

Approval of the petition would expand the scope of this hearing beyond what has been set forth in the Notice of

hearing. Permit 5882 is not the subject of this hearing. The hearing was held on Permit 5882 and the record is closed. The documents that the Salinas Valley Protestants asked to be made a part of the administrative record in this hearing are not relevant to the issues noticed for hearing. It's appropriate to keep these proceedings separate.

Third item. As to the petition of the Salinas Valley Protestants for a Section 275 review and for an order to show cause why application should not be dismissed, it is denied.

The Salinas Valley Protestants request that the Board invoke Water Code Section 275 in this hearing to solve the seawater intrusion in the Salinas basin would expand the scope of the hearing beyond the Notice of Hearing. The development of a solution to the seawater intrusion problem in the Salinas basin is outside the scope of this hearing, so, too, is an examination of the reasonableness of the proposed Salinas Valley Water Project and other water extractions and uses in the Salinas basin.

The Board is proceeding along parallel tracts regarding the seawater intrusion problem. Monitoring the progress of the Agency reaching a local solution and proceeding toward an adjudication under Water Code Section 2100 if a local solution is not reached.

The Salinas Valley Protestants' request to have the

Board cancel Application 30532 prior to the hearing fails to state any appropriate basis for the Board to do so. The staff of the Division of Water Rights did not specify a deadline regarding submittal of water availability analysis. Consequently, Water Code Section 1276 does not apply. The Agency is not required to submit a document called a water availability analysis.

Under the circumstances of this case it is appropriate for the Agency to submit evidence regarding the availability of unappropriated water to supply water Application 30532 at this hearing.

Four, as to the Agency's proposed prehearing order regarding the scope of admissible evidence, I have decided not to enter an order at this time. As I stated earlier, I request that all of you cooperate and limit your testimony and exhibits to the issues noticed for hearing.

Ms. Katz, do you have any other matters to discuss at this time?

MS. KATZ: Mr. Brown, I am not aware of any other motions or petitions or requests that the Board, you, take action prior to the hearing. But I would like to offer the staff exhibits into evidence.

H.O. BROWN: All right.

MS. KATZ: I offer in evidence by reference the documents listed in the list of staff exhibits set forth on

Page 4 of the Notice of Hearing, dated May 24th, 2000. The staff exhibits are numbered 1 through and 6, and Exhibit 1 is broken out as 1A through D.

If no party has an objection, I will dispense with reading the list of staff exhibits into the record.

Are there any objections?

MR. BEZERRA: Mr. Brown, Ms. Katz, good morning.

Second, the documents in the State Board's file contain a number of assertions by Mr. Maloney of a right to represent the water rights of Rosenberg Family Ranch and Clark Colony Water Company. We understand that -- we'd just like to assert that as a general rule that hearsay shall not be used as the basis for a finding under Government Code, should apply to those, and they should not be relied to make a finding to the state that Mr. Maloney does have the right to represent the water rights of Clark Colony and Rosenberg Family Ranch.

MS. KATZ: That is correct.

MS. GOLDSMITH: I would second that objection, and I have a letter from Ralph Samento, Paul Samento, W.B. Lindley, and R.R. Smith with respect to representation by Mr. Maloney. I have their interests. I've only got one copy. I would like to have the opportunity to make sufficient copies at the break and provide it to you. Basically, I can read it into the record at this point or

during opening statement, whatever.

But in terms of objection to staff exhibits, I would like to second the objection to the acceptance of Mr. Maloney's protest forms as hearsay.

H.O. BROWN: Mr. Maloney.

MR. MALONEY: I think we have filed that letter in connection with Mr. Rosenberg and Clark Colony representation issue. I believe I filed a letter in connection with Mr. Samento where we called him Sacramento. That letter does show up in the files, Ms. Katz?

MS. KATZ: Kevin, do they show up in the files?

They are in the files.

MR. MALONEY: I want to make sure they are in the files.

Thank you.

H.O. BROWN: Mr. Bezerra.

MR. BEZERRA: Thank you, Mr. Brown.

Mr. Maloney relates to -- states that he does not represent or is not the attorney for Rosenberg Family Ranch. It does not state that he is not representing the water rights of the Rosenberg Family Ranch. There is a crucial distinction in that the water rights of the Rosenberg Family Ranch are included in the water rights of the protestants, quite a number of documents in this proceeding.

So, we, therefore, object to those statements, not only

on the basis that they may be representing Rosenberg Family Ranch and Clark Colony as an attorney, but also that those entities' water rights are included within the protestants' water rights.

Thank you.

H.O. BROWN: Thank you.

Ms. Goldsmith.

MS. GOLDSMITH: I am not aware of any letter. Perhaps Mr. Maloney can show me the letter later on. I do want the same clarification made with respect to the Samentos. I believe that they have a total of 1627.03 acres that are included within Mr. Maloney's Exhibit Number 1.

H.O. BROWN: All right.

Mr. Maloney.

MR. MALONEY: We are not sure what we represent in connection with Rosenberg. It is covered by the decision of the Superior Court of the State of California for the County of Monterey. It is my understanding that settlement is part of the record. To the extent that Mr. Duflock does have any rights, we are assuming those rights in our representation.

I believe that the Samento letter, which we call the Sacramento letter, has my misspelling, basically indicates we represent one of the lessees of Samento and we are withdrawing any representation of the Samentos in connection

with our representation. I think that is covered in the letter. I can show that to Janet during the break.

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

Ms. Goldsmith.

MS. GOLDSMITH: The letter from Samentos points out that the lessees have no authority under their lease to deal with water rights.

H.O. BROWN: I didn't hear that.

MS. GOLDSMITH: The letter from the Samentos indicates that the lessee has no authority to act with respect to the water rights within the land. So, Mr. Maloney's relationship with the lessee is not particularly relevant to the issue of whether or not he represents the water rights of the lands.

H.O. BROWN: All right.

Mr. Bezerra.

MR. BEZERRA: Yes, thank you, Mr. Brown.

I just wanted to point out that the partial judgment that Mr. Maloney referred to in respect to the Rosenberg Family Ranch is one of our exhibits. We plan to discuss it and essentially our point is that it does not give Duflock the right to represent the water rights of Rosenberg Family Ranch.

Thank you.

H.O. BROWN: Mr. Maloney.

MR. MALONEY: I thought we were not going to talk about water rights or anything, but obviously are going to reargue the petition, partition judgment. There is -- my client, Duflock, believes they have some interest in land. That is covered in that partition judgment that gives them the right to take water out of the Salinas River. That is all we can say. We don't think we should be getting into this. That partition judgment should speak for itself beyond the scope of this hearing.

If we want to argue about everybody's rights in Monterey County, we are ready to do it. We do not believe adjudication is necessary and never have. If you have any problem with my letter, I will issue on the Samento that we do not have any representations other than land lessee of Samento, I apologize. We are in the process of bringing out the letter. Now I do not intend to be saying about Mr. Samento's water rights in that letter.

H.O. BROWN: I am going to ask Ms. Katz to make a statement.

MS. KATZ: I think it would be easier, Mr. Brown, for me to withdraw the staff proposed Staff Exhibit Number 2, which is all of the files related to Application No. 30532. The parties have submitted extensive exhibits and will be testifying today. Those are the things that will form the basis of the Board's decision in this matter, not the files,

that no one is testifying to those are hearsay. Given the controversy what may be in the files and what they may purport to say, it is simpler to withdraw staff proposed Staff Exhibit Number 2.

H.O. BROWN: So you talking about Exhibit 1 A through D and then 3, 4, 5 and 6?

MS. KATZ: Yes.

H.O. BROWN: Are there any objections to the acceptance of those remaining exhibits into evidence?

MR. O'BRIEN: Mr. Brown, I hate to do this.

H.O. BROWN: Mr. O'Brien.

MR. O'BRIEN: I want to make sure that the basic application document, the notices, the protests do make it into the record in this proceeding. I just want to clarify Ms. Katz's suggestion that those documents would remain in -- I see under Paragraph 1 those documents would be in the record, and I would just want to confirm that for the record.

H.O. BROWN: I think what we will do is hold off on 2. We will bring that issue up later. For the time being we will just look at accepting those into evidence of 1A through D, 3, 4, 5 and 6.

Are there objections to those?

MR. MALONEY: You are not making any decision on those?

H.O. BROWN: No decision on 2.

MR. MALONEY: That is fine with us.

H.O. BROWN: That will get us going.

Seeing no further objections, those are admitted into evidence, Ms. Katz.

I will now administer the oath. Will those who plan to testify, please stand and raise your right hand.

(Oath administered by Hearing Officer Brown.)

H.O. BROWN: Policy statements. We will begin with policy statements. I know for the record that the California Sportfishing Protection Alliance has submitted a written policy statement. The order for persons presenting policy statements is: National Marine Fisheries.

Are they here?

Dr. Hearn.

DR. HEARN: Yes, My name is Dr. William Hearn. I will be presenting a policy statement for the National Marine Fisheries Service. I have submitted six copies of full text of this statement to the Board.

I'm a fisheries biologist with the National Marine Fisheries Service, Southwest Region. With respect to the NMFS interest in this proceeding, NMFS is responsible for protecting and managing a variety of marine animals, including Pacific salmon and steelhead. Their habitats are are under the Endangered Species Act and other laws.

The purpose of ESA is to conserve endangered and threatened species and the ecosystems upon which they

depend. To this end, ESA provides for the prohibition of taking of endangered and threatened species or requires federal agencies to determine if their actions will not jeopardize such species or adversely modify their critical habitat.

ESA requires NMFS to take certain actions if a marine or anadromous species may need protection under the ESA. The NMFS must determine whether such species qualifies for listing as either endangered or threatened, must also designate critical habitat essential to the conservation of the species.

With respect to the status of listing actions. The NMFS designated South Central California Coast steelhead as a federally listed threatened species on August 18, 1997. Furthermore, NMFS designated South Central California Coast steelhead critical habitat in the Salinas River and Nacimiento River downstream from Nacimiento Dam on February 16th, 2000.

As for protective regulations, aside from the federal duty to consult and avoid jeopardy under Section 7, both federal and nonfederal entities possess a duty under Section 9 to avoid taking listed species. The ESA defines take broadly under the ESA to mean to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or attempt to engage in such conduct." The NMFS regulations

interpret the term "harm" broadly to mean "an act which actually kills or injures fish or wildlife." Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavior patterns, including breeding, spawning, rearing, migrating, feeding and sheltering.

Protective regulations prohibiting take of threatened steelhead by all persons, including federal agencies and private entities, were published on July 10th, 2000. When effective these regulations will extend certain Section 9 prohibitions to threatened salmonids, including the South Central California Coast steelhead ESU. The proposed protective regulations describe certain activities that are likely to injure or kill salmonids or that may injure or kill salmonids resulting in a violation of the ESA. These activities include, in part, "physical disturbance or blockage of the streambed where spawners or redds are present concurrent with the disturbance, blocking fish passage to fills, dams or impassible culverts and water withdrawals that impact spawning or rearing habitat."

As for the status of NMFS water rights protest, on July 15th, 1996, NMFS filed with the State Water Resources Control Board its protest of water rights Application No. 30532. That protest stated that the requested diversion of

water would further contribute to the decline of steelhead habitat. It recommended a thorough assessment of this diversion on flows in the Salinas River. As conditions for the protest dismissal, NMFS requested an instream flowing analysis of the main stem Salinas River and all existing steelhead supporting tributaries, and an assessment that included an examination of alternatives for improving water quantity and quality. NMFS' protest concluded with a recommendation to mitigate for impacts associated with the permanent loss of the 27,900 acre-feet of water.

The Nacimiento Reservoir has operated historically in a manner that has been destructive of steelhead habitat. During winter the applicant stores winter runoff in the reservoir. As a result, the minimum regulated stream flow below Nacimiento Dam is only 25 cfs. During summer, flow releases are considerably higher in order to meet downstream water demands. By late fall, November and December, flows may drop to almost nothing.

Such a flow regime runs entirely counter to the historic natural flow regime for the needs of steelhead. Steelhead spawn and their eggs incubate in the winter when flows are naturally high. Their juvenile stay in the stream for one or two years, and during their first spring and summer are vulnerable to the impacts of high stream flows. The current operations provide conditions that are almost

opposite to those needed by steelhead.

Impoundment and diversion of surficial stream flows, groundwater pumping and blocked access to perennial headwaters that caused the decline of Salinas River steelhead. Good quality habitat for steelhead is now very limited in this watershed. The Nacimiento River provides approximately 12 miles of critical habitat for steelhead below the Nacimiento Dam. Unfortunately, the quality of this habitat has been greatly reduced by historic operations in the Nacimiento Reservoir.

NMFS has requested that instream flow studies be conducted and that the impacts of additional water diversions be mitigated. To date the applicant has not conducted the types of studies that we requested that are needed to develop a flow regime that would restore and protect steelhead habitat in the Nacimiento Reservoir -- on the Nacimiento River.

Additional study is also likely needed on the issue of flow needs for passage of migrating steelhead in the Nacimiento and Salinas Rivers. Given the importance of recovering runs of steelhead to the Salinas River, NMFS believes that it would be inappropriate to grant the applicant its requested water right until it undertakes substantive evaluation and studies of alternatives for improving steelhead habitat in the Salinas watershed.

Properly done studies could assist water resource managers in identifying opportunities to mitigate ongoing impacts of the project on critical habitat for steelhead. Those studies should be conducted in close consultation with NMFS and the California Department of Fish and Game. The requested 27,900 acre-feet represents a relatively large volume of water that could be judiciously used to benefit both steelhead and downstream water users.

In closing, NMFS reiterates its protest to the application for Water Right 30532. We urge the State Water Resources Control Board to require the applicant to complete instream flow related investigations in consultation with NMFS and Cal Fish and Game for the purpose of identifying practical opportunities for mitigating impacts of the Nacimiento Reservoir on the South Central California Coast steelhead before issuing the water right.

H.O. BROWN: Thank you, Dr. Hearn.

Chris Bunn.

MR. BUNN: Good morning, Mr. Brown and staff.

I am Chris Bunn, General Farm Investment Company.

We own agricultural land in the Northern Salinas Valley. Our attorneys, Fenton & Keller, in Monterey have prepared a letter to the Board expressing our support for the Agency's application. The letter also expresses our concern that this hearing would be turned into a forum to

adjudicate the water rights of some Salinas Valley landowners. I have an original and five copies of this letter for the Board for inclusion into your record.

I won't read the letter in its entirety, but I would like to summarize a couple important points in it. First, the Agency and local interests have come a long way in addressing the various water problems in the Salinas Valley. But as everyone recognizes, there is a long way to go. If this application is denied, the Agency will lose an important tool for managing the valley's water resources and it will make it more difficult to find meaningful solutions to these problems, and nobody wants to see that happen.

By this application the Agency is only asking the State Board to correct a technical error on its 50-year-old permit. The storage allowed by the water rights permit issued to the Agency in the 1950s for the Nacimiento Reservoir is less than the actual capacity of the reservoir. Since the dam was built, the Agency has been using the full capacity of the reservoir which it could in years when rainfall was above normal. This has not hurt anyone in the valley. Instead, downstream landowners, especially those in the south end of the valley, have benefited from this additional storage.

The Board should approve the application so that the Agency's permit is consistent with the actual storage

capacity of the reservoir.

The second point is that it appears that some landowners want the State Board to adjudicate their water rights in this hearing. It has been our understanding all along that this hearing would not adjudicate the water rights of any downstream landowners. Nothing in the Notice of Hearing hinted that water rights would be adjudicated by this application. We decided it didn't make sense to pay attorneys to sit here for a week if significant downstream water right issues were not going to be addressed in this proceeding.

If this was noticed as a hearing to adjudicate anyone's water rights in the Salinas Valley, we would have participated fully in the evidentiary part of the hearing, and I am sure many other landowners would have participated.

Various correspondences from Board staff has stated that water rights will not be adjudicated in this hearing, and we are confident that this is true, and I appreciate your comments, Mr. Brown, that the Board can make the right decision without determining the validity of or quantifying anyone's water rights and without making any determination as to the reasonableness of anyone's water use.

Just so it is clear, we hope the Board will do everything it can to make sure that nothing it does or says

in its decision can be used later by some landowners in the valley to gain a water use or water rights advantage over other landowners. That would be very unfair to all those landowners who did not participate fully in this hearing, many of whom are not even aware that the hearing is taking place.

As discussed in the letter from our attorneys, we ask the Board to clarify on the record that nothing it may say in its decision about the nature, priority or amount of downstream water rights or water used is intended to be binding on other Salinas Valley landowners in the future.

Thank you for the opportunity to speak to you on these important issues.

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

East Side Water Alliance, Ms. Lennihan.

MS. LENNIHAN: Thank you, Mr. Brown. Martha Lennihan for the East Side Water Alliance.

I have the good fortune to follow Chris Bunn who is very articulate about the position that the East Side also takes with respect to the scope of the hearing and the reliance on the representations of the Board that water rights of not only some of the protestants, any of the protestants, but also of other landowners in the valley will not be adjudicated through this proceeding.

I appreciate the statements of Hearing Officer Brown

that started this hearing off, defining more clearly and narrowly the scope of the hearing. And we hope that we will not have to participate in a significant manner as a result of those determinations. I would just like to say quickly we are here primarily to avoid any expressed or implied adjudication of water rights, excepting, of course, the water right now sought by the Agency by Application 30532 and to encourage the Board to grant the Agency's application in order to bring the Nacimiento Reservoir into compliance with the law and thus allowing the Agency and other parties to redirect their resources and attention to resolving the larger water issues, with which you are familiar, in the Salinas Valley.

The East Side Water Alliance has a strong interest in both of those items. We discussed this in some detail in the hearing on the motion to quash the subpoena of the clients of Mr. Maloney, and I don't want to take your time to repeat that here, but we would like to encourage you to again adhere very closely, if not absolutely, to the scope of the hearing as defined by Hearing Officer Brown earlier. We will try to be here for as much of the hearing as we can, but we hope that this can be done efficiently and effectively without involving a lot of resources of other parties.

So, again, thank you very much for the opportunity to

appear, and we will exhort the Board to remain within the narrow parameters earlier defined.

Thank you.

H.O. BROWN: Thank you, Ms. Lennihan.

MR. MALONEY: May I ask a clarifying question?

H.O. BROWN: Mr. Maloney.

MR. MALONEY: Could you please state who the East Side Water Alliance is and where the land is that they represent?

H.O. BROWN: Ms. Lennihan.

MS. LENNIHAN: Mr. Brown, I would be happy to generally define the East Side Water Alliance area. Geographically on the map and for the record I would state it is in the northeastern portion of the valley, generally north and east of the river and in the Salinas area and north of Gonzales. In fact, east of 101, north of Johnson Canyon Road near Chualar is the general area of the East Side. We have a variety of landholdings, some thousands of acres, and some of the acreage is outside of the area I just generally defined, but the focus of it is in that East Side area.

We are landowners, growers, other entities with water rights and interests in the Salinas Valley.

H.O. BROWN: Thank you.

Are there any other persons who wish to make a policy statement?

Ms. Goldsmith.

MS. GOLDSMITH: Good morning, Hearing Officer. I am Janet Goldsmith, and I represent the Salinas Valley Water Coalition.

And I just could not resist sort of completing the representation of Salinas Valley landowners who would urge you not to expand this hearing beyond the scope that was set forth in the notice. I am very gratified for the opportunity for the Salinas Valley Water Coalition to participate as an interested party.

Much of the opening statement that I have prepared has already been quite well dealt with by your rulings on the motions and your recognition of the Salinas Valley Water Coalition as an interested party with the right to cross-examine, to present rebuttal witnesses, if necessary, and very clearly setting forth the scope of this hearing.

As you are aware, Mr. Hearing Officer, because you have seen us in other forums, the Salinas Valley Water Coalition represents water users, farmers and small businesses related to agriculture throughout the Salinas Valley, primarily in the central part of the valley but the south and also members are in the north and, of course, the agriculturally-related businesses serve the entire agriculture community.

The Coalition supports Monterey County Water Resources Agency's pursuit of long-term balance of supply, demand and

its effort to halt seawater intrusion. And that support is based on the Agency's commitment to developing a program that is reasonable, hydrologically sound, cost-effective and equitable to the landowners in all areas of the Salinas Valley. And we believe that the last five to seven years has shown tremendous progress in collaborative problem solving by all areas of the valley.

The application filed by the Agency to preserve its current operation of Nacimiento by reconciling its water rights to its historic operations is important to the Agency's efforts and the Coalition members to support the Agency's application. The Coalition actively participates in administrative, governmental and regulatory processes affecting Salinas Valley's water in order to preserve its members' water rights and to protect the quantity and quality of the valley's water resources, contribute to the policy decisions which may concern the valley's water and promote the valley's agricultural production and quality of life. We believe that the granting of Application 30532 is consistent with those goals.

We basically strongly endorse the statements that were made by Mr. Bunn and by Ms. Lennihan and add the Coalition's voice to those statements and concerns. We believe that an adjudication would divide the community and would hinder the valleywide collaborative processes that are ongoing to find

solution. And finally, as I mentioned earlier, I will at a break copy the letter from Mr. Samento and I will discuss it with Mr. Maloney to clarify representation that is encompassed by the Salinas Valley Protestants.

Thank you.

H.O. BROWN: Thank you, Ms. Goldsmith.

Is there anyone else wishing to make a policy statement?

All right. We will begin the case in chief.

Mr. O'Brien, you are up.

MR. O'BRIEN: Thank you, Mr. Brown. I will go ahead and have my witnesses come up. I have just a very brief opening statement.

Mr. Brown, I, like Ms. Goldsmith, had a number of remarks in my opening statement that have been dealt with more than adequately in your opening rulings, and I very much appreciate that ruling and moving this proceeding forward this morning. I think I was anticipating that I would spend a couple of hours dealing with these various procedural issues, and I do appreciate the definitiveness of your rulings.

Just a couple points I would like to underscore before we get started with our presentations. As you know, this proceeding is really about a measurement error and it is to

correct a measurement error. That is all it is about.

This reservoir was built in the 1950s. It went through a water rights process, ultimately received a license for 350,000 acre-feet of water, based on estimates of the storage capacity in the reservoir back in the '50s. We then found ourselves in the late '80s and '90s with some rather more sophisticated measurement tools at your disposal. And, lo and behold, we found that the reservoir was larger than we previously thought.

Unfortunately, the Water Code does not have a simple procedure for fixing problems of this type. Frankly, I wish it did. Frankly, that may be something we ought to talk about in a different forum sometime. But we are here before you because we have to be here. It is important that this reservoir have water rights covering the full storage increment. And I think you are going to hear repeatedly from the witnesses today that this is more than just a paper exercise. This increment of water that we are talking about here is important because there is a very thin margin available within the water supply of the Salinas Valley to solve all the various issues that are out there.

We heard this morning from National Marine Fisheries about some of their concerns with the reservoir operations. You are going to hear from Mr. Maloney about his concerns about downstream people he represents, and you are going to

hear from our witnesses about some of these issues as well.

I think the bottom line is that we need this extra 27,900 acre-feet of water to make this system work, and I think it is important that we not lose sight of that point.

Secondly, I think it is important to keep focused on hearing issues as they have been articulated and particularly the issue of injury. We are probably going to hear a lot about various things at this hearing relating to the Agency and how it operates its reservoirs. But when you get to the key issue of whether our storage of this 27,900 acre-feet has injured anyone, the only evidence in this record before you is, I believe, that not only has there been no injury, but there have been a number of benefits, not only to the Agency but to downstream landowners.

Those benefits are most dramatically felt during drought years when the groundwater levels in that basin downstream are higher, significantly higher, than they would have been if they had not been able to store this water. We have seen nothing from Mr. Maloney or his clients that in any way refutes that evidence.

So with that brief introduction, I would like to go ahead and get started. Our first witness up today will be Mr. Curtis Weeks.

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DIRECT EXAMINATION OF MONTEREY COUNTY WATER RESOURCES AGENCY

BY MR. O'BRIEN

MR. WEEKS: Mr. Brown, my name is Curtis Weeks. Since January 7, 2000, I have served as the Agency's Interim General Manager. Prior to that date I served as Deputy General Manager from September 27, 1997, until January 7th. Prior to that, I have been employed as a consultant. I am a registered engineer.

MR. O'BRIEN: Mr. Weeks, I need to, just for the record, have you identify both your testimony, which is MCWRA Exhibit 1-1, and your resume, which is MCWRA Exhibit 1-2.

Are those true and correct copies of those two documents?

MR. WEEKS: Yes, they are.

MR. O'BRIEN: Thank you.

You may proceed.

MR. WEEKS: The function of the Agency principally are to provide long-term management and conservation of water resources within the Monterey County. In 1947 the Agency was formed as a precursor to the Monterey County Flood Control and Water Conservation District. The charge of that organization was essentially the same as the current organization; that is, to provide flood control services as well as to store those waters for beneficial and useful

purposes.

In 1990 the Legislature of California renamed the organization under the Monterey County Water Resources Agency Act, essentially replaced the Agency -- replace the District with the Agency. Essentially, the mission is the same, to provide long-term water preservation and conservation and management of the water resources of Monterey County.

The management and shepherding, stewarding of those resources require the Agency to address issues such as seawater intrusion and basin overdraft. In his testimony Mr. Melton will identify some of the details that the Agency has been doing in the last several years to address those issues.

The capacity -- I am going to move now to talking briefly about the history relative to the Nacimiento Reservoir.

The capacity of the reservoirs essentially estimated in the '50s as the reservoirs were designed and constructed using USGS quad sheets, was estimated to have 350,000 acre-feet of storage at a full elevation capacity of 800 feet. In the 1990s the reservoir was first surveyed. That survey found that the full reservoir elevation of 800 feet, the actual capacity was 377,900 acre-feet of storage. Hence the underestimation of the actual storage of 27,900

acre-feet.

Application 30532 looks to seek for authorization to divert that 27,900 acre-feet to storage. Because now Nacimiento Reservoir over some 43 years of its operation has seen wet years in which the storage was used, essentially is to preserve the status quo of the application; 30532 is to preserve the status quo.

Dr. Taghavi will identify some of the historical records associated with the operation of the reservoir, and our consultant, Jeff Hagar, will identify the lack of significant environmental impacts relative to the operation of the reservoir as well in that testimony.

The purpose of the water essentially is the same as the existing license; that is to release during -- in spring and summer months, recharge the groundwater basins so that the groundwater can be used for beneficial purposes, including agriculture and industrial uses and permanent domestic uses.

Finally, the place of use of the proposed water in our application would be the same as the existing license.

H.O. BROWN: Same as what?

MR. WEEKS: Same as the existing license.

That concludes my testimony.

Thank you.

MR. O'BRIEN: Thank you, Mr. Weeks.

Next up is Mr. Lyndel Melton.

Mr. Melton, is MCWRA 2-1 a true and correct copy of your written testimony?

MR. MELTON: Yes, it is.

MR. O'BRIEN: Is 2-2 a true and correct copy of your resume?

MR. MELTON: Yes, it is.

MR. O'BRIEN: Could you please summarize your written testimony for the Board.

MR. MELTON: Mr. Brown, our testimony that I am going to speak to this morning really covers a brief overview of the valley as well as the basic purpose and functionality of the reservoir operation.

Shown here on this map is the representation of the Salinas Valley. The area within the red is that portion of the valley that is heavily farmed with agricultural high-valued crops.

MS. KATZ: Excuse me, Mr. Melton. Every time you refer to a map or chart or something, would you identify it for the record so that we know when we go back and look at this, this is Exhibit 2-5 of the Monterey County Water Resources Agency.

H.O. BROWN: Thank you, Ms. Katz.

MR. MELTON: My apologies.

Exhibit 2-5 delineates the area of the Salinas Valley

in the red that is heavily farmed in high-valued agricultural crops. There is also a number of municipalities located throughout the valley as shown by those designations from San Ardo in the south to Salinas, Marina and Castroville in the northern portion of the valley.

Studies of the Salinas Valley really began in earnest in 1946. Introduced as Exhibit 2-3, Department of Water Resources Bulletin No. 52. It's an in-depth study of the water resource and management issues of the Salinas Valley. A number of additional studies have been undertaken over the years. One other one we would like to point out is Exhibit 2-4, which is the white paper on the Salinas Valley hydrology prepared in 1995 by a panel of experts convened under the direction of the Agency to review overall operations and water supply issues within the valley.

The valley's one continuous hydrologic unit, completely contiguous. There are four subunits, however, within the valley that are referred to as hydrologic subareas, as originally defined in Bulletin 52 as shown here on Exhibit 2-6. In general, the Upper Valley and Forebay areas are unconfined aquifers. The East Side area, shown there in the red, is partially confined and partially unconfined. And the Pressure area, shown in a little darker blue, in the northwestern portion of the valley is underlain by three

separate aquifers that we commonly refer to as the 180-foot aquifer, 400-foot aquifer and deep aquifer.

It is important to understand those areas as we operate the reservoir system within the valley and how they are impacted by the reservoir operations and overall use of water.

As we look at the valley here in Exhibit 2-7 and the rainfall pattern, rainfall varies widely throughout the area. That is the purpose of the reservoirs. Over time -- this is a representation in Exhibit 2-8 of how rainfall has varied, and I won't go into the details on that, but it is presented in our testimony.

Exhibit 2-9, though, is variation of annual rainfall. Clearly, the function of the reservoir is to take those wetter years, store that water and use it for release during those drier years to carry over storage.

Land use in the valley, as I mentioned, is predominantly agricultural use as shown in Exhibit 2-10. The green representing the agriculture production area or acreage within the valley, and the red representing the urban acreage. You can see how both have grown, but have generally flattened here in the last several years.

Very important is the cumulative change in groundwater storage as occurred over time. And as you can see in Figure 2-11, that cumulative change in groundwater storage, as

referenced off the bright green line in the middle, has generally been in the decline during those dry years and significantly in the decline in the late '80s and early '90s and rebounding in early 1993 and 1994 time frame.

What is important about that is, as we look over time, the change in groundwater storage that has occurred and how that variation has been managed through the reservoir operations. The annual seawater intrusion is what this reservoir operation is all about. Because of the heavy agricultural demands, the increasing urban demands within the valley, pumping has occurred throughout the valley and has caused seawater to intrude into particularly the Pressure area as well as portions of the East Side area.

The entire valley, with the two exceptions, relies on groundwater for its water supply. Those two exceptions are the Clark Colony up on the Arroyo Seco and the recycled water supply that is currently being utilized to supplement groundwater irrigation in the northern portion of the valley for agriculture use in the area generally known as the Castroville Seawater Intrusion Project area.

As we look at Exhibit 2-13, we can see that in essence seawater intrusion has occurred in virtually every year since 1958, with the exception of 1983. That is important because this water that we are talking about. The 27,900 acre-feet, is an increment of supply that needs to be able

-- to be available, excuse me, to the Agency in order to help address these seawater intrusion issues.

In summary of the seawater intrusion, as we look in the northern part of the valley, represented here in Exhibit 2-14, in the 180-foot aquifer beginning in 1994 and moving inland through 1997, we can see the progression of seawater intrusion as it moves inland from that groundwater pumping that exceeds the capacity of the system. The same thing is happening, but to a slightly lesser degree, in the 400-foot aquifer as represented in Exhibit 2-15.

In response to these conditions, the Agency operates the reservoirs of both Nacimiento and San Antonio, as shown here in 2-16 to maintain river flow past the Chualar gauge to an area of approximately Highway 68 and Davis Road. The purpose of that is to retain winter runoff in the reservoirs and keep that flow in storage for release during the summer months to increase recharge to the groundwater basin. By optimizing that recharge, by maintaining a flow front in the vicinity of Highway 68 and Davis Road area, the Agency can increase the amount of water that is put back into the groundwater system for storage and later used in consumption by all entities in the valley.

That concludes my testimony this morning.

MR. SHAPIRO: Thank you.

I would like next to call Dr. Taghavi to testify.

Dr. Taghavi, is the testimony contained in Monterey County Water Resources Agency Exhibit 3-1 true and correct testimony?

DR. TAGHAVI: Yes, they are.

MR. SHAPIRO: The qualifications listed for you in Monterey County Water Resources Agency Exhibit 3-2, is also true and correct?

DR. TAGHAVI: Yes, it is.

MR. SHAPIRO: Would you please offer a summary of your testimony to the Board at this time.

DR. TAGHAVI: Yes, of course.

Mr. Hearing Officer, can I use the podium, please?

The purpose of my testimony today is to reiterate some of the issues that have been discussed today. In specific, I would like to emphasize and focus on two issues in regards to the effects of the application to divert the 27,900 acre-feet into storage on the operation of the reservoirs as well as the impacts on the downstream hydrologic conditions.

I would like to use two exhibits from Mr. Melton's testimony, Exhibit 2-8, reiterates the fact that Salinas Valley is a rainfall watershed, and there is a vast hydrologic variability in this watershed. Approximately 64 percent of the years based on a long-term record are normal years, normal rainfall years, and about 22 percent of the years are categorized within the wet category, and about 14

percent are dry or below normal years.

When you look at the long-term variability of the hydrologic conditions, you see approximately 14 inches of rainfall on long-term average basis based on the Salinas FAA station. However, the hydrologic variability is such that you would see above normal and also below normal years. In specific, the 1987 to '91 drought conditions are within below normal years.

MR. SHAPIRO: Dr. Taghavi, are you referring to Exhibit 2-9?

DR. TAGHAVI: Exhibit 2-9, yes.

Most of the work that I will be presenting today will be focusing on the hydrologic conditions, approximately from 1958 to 1994 as well as 1949 to '94.

If you note on this Exhibit 2-9, the 1949 and 1958 through 1994 hydrologic conditions are well within the long-term hydrologic variability in the valley and they do include dry as well as wet and normal conditions. And they represent long-term normal hydrologic conditions which would be used within the analysis today.

To reiterate, also the operations of the reservoirs and the means that the Agency uses to operate the reservoir I would like to use Exhibit 3-3.

The Agency has been operating the reservoirs in order to maximize the recharge through the Salinas riverbed, to

minimize the surface water outflow to the Monterey Bay as well as minimizing seawater intrusion by promoting higher groundwater levels in the coastal areas and also minimizing the flood control impacts downstream of the reservoirs.

The Agency uses the reservoirs to release conservation -- flood control releases and also conservation releases. Basically maximizing the recharge throughout the Salinas riverbed. And when you look at it from the downstream conditions where the Agency monitors gauges at Chualar as well as Spreckels gauges, the excess water which is released basically outflows to the ocean and what is recharged is tagged and kept track of in the Agency records as recharge releases.

So, in essence, the Agency operates the reservoirs to minimize the excess releases and maximize the recharge releases. In order to operate the reservoirs, the Agency keeps track of the records at the reservoir, both as far as the inflow to the reservoirs from upstream gauges from Nacimiento as well as downstream releases measured at gauging stations downstream of the reservoirs and also the gate openings at the reservoirs. The Agency also keeps track of the daily records of the elevation of the reservoirs by the staff gauge at the site of the dam and also the evaporation and rainfall records on a daily basis at the site of the dam from their weather stations at the

site of the dam.

The inherent errors that may occur in any of these measurements, as well as the inconsistency that may occur within each one of these measurements, would prevent the Agency to come up with a balanced reservoir. So the Agency has developed over the past several years a computer program to put all of these different inflows and outflows of the reservoirs in order to come up with a balanced reservoir and determine what the releases are and what the storage contents are, also the inflows to the reservoirs on a daily basis.

The 800-foot elevation has previously been established at 350,000 acre-feet of storage and recently based on the recent service in 1990 has been established at 377,900 acre-feet of storage.

Part of the operation of the reservoirs relies on the elevation area capacity curves. And as you notice in Exhibit 3-4, the 350,000 acre-feet of storage corresponds to 800-foot elevation shown on the blue curve here, which shows the relationship between the area and the elevation. I beg your pardon, the blue line shows the relationship between the area and storage and the dark brown line shows the elevation in the areas' relationship.

When you look at Exhibit 3-5 the same relationship is shown under the new survey where 377,900 acre-feet of

storage is related to the elevation 800, basically. When you put both together, what we are talking about in terms of under Exhibit 3-6, we are talking about approximately 27,900 acre-feet of additional storage which is available to the Agency.

Exhibit 3-7 shows my work in terms of looking at the historical storages that have been -- I beg your pardon. What I did, basically, was I used a computer program that the reservoir has available to develop the storage, the historical storages, which are shown in this Exhibit 3-7 with the blue line here under historical conditions and superimposed on that same curve the conditions under the 377,900 acre-feet of storage.

So the red peaks that you would see in most of these areas here are the differences or the time periods where the 27,900 acre-feet of storage would be encroached at any one point in time.

The significance of these encroachments in the 27,900 acre-feet would occur, though, when the reservoir's storage is beyond 350,000 acre-feet, which is currently water rights to the Agency.

Exhibit 3-8 shows only nine years in here whereby the 27,900 acre-feet is encroached beyond the 350,000 acre-feet of storage.

Most of those conditions and occurrences correspond to

fairly wet years and wet periods. In order to develop the probability of the occurrence of these conditions I developed a exceedance probability curve of the elevation, the elevation, exceedance probability of elevation of the reservoir and also exceedance probability of the storage of the reservoir. If you notice, the dark blue line here shows the exceedance probability of the elevation and also the red line here, the light red, shows the exceedance probability of the storage.

Notice that the 350,000 acre-feet of storage is approximately 4 percent of the time exceeded. So during the wet years when we do exceed or some of the wet years over the hydrologic record when we do exceed the 350,000 acre-feet of storage, that corresponds approximately to 4 percent of time over the life of the project or life of Nacimiento Dam to date, actually through 1994.

That 4 percent corresponds to the 795-foot elevation when you look at the elevation exceedance curve. What I would like to conclude from this Exhibit 3-11 is that if the 27,900 acre-feet of storage is not granted to the Agency, the Agency would have to operate the reservoir at elevation 795 during the periods when they can actually go to elevation 800. So they would lose approximately five foot of elevation, and that five foot of elevation would become critical and some of the downstream impacts.

Let's look at those downstream impacts. What I -- in order to evaluate the downstream impacts, I used the Salinas Valley Integrated Groundwater and Surface Water Model. The SVIGSM is a comprehensive hydrologic model that simulates most of the parts of hydrologic cycle and their interaction. It's been developed in the -- during the early 1990s. It's gone through quite a bit of -- through extensive public review and also it has gone through technical review at the Agency as well as by peers in the technical community.

The SVIGSM uses the hydrologic period from 1949 to '94 which is a balanced hydrology period and covers the period that the Nacimiento Reservoir has been in operation. I used SVIGSM to operate the reservoir because it does have a reservoir operation module. I used it to operate the reservoirs both under 350,000 acre-feet of storage as well as 377,900 acre-feet of storage.

I looked at the downstream groundwater levels as simulated by the model. Specifically in the Upper Valley area, and noticed that for most of the parts this Exhibit 3-12 here shows the average groundwater levels throughout the Upper Valley area with both conditions.

The dark pink line shows the conditions -- the groundwater levels, average groundwater levels, under 350,000 acre-feet capacity, and the dashed line shows the

groundwater levels, average groundwater levels, under the prior capacity, 377,900. For the most part, throughout the Upper Valley, you would not see much of a difference in terms of the average groundwater levels. However, when it is drought years of '87 to '91, you would see that the dashed lines are somewhat higher than the pink line.

I focused on the circle area in my Exhibit 3-13 here and looked at the 1989 through 1991 and noticed that Exhibit 3-13 shows approximately 2.9 feet of elevation higher in terms of average groundwater level in the Upper Valley area compared to the conditions where the capacity of the reservoir is set at 350,000 acre-feet. This would show me that the reservoir has used a carryover storage of 27,900 acre-feet throughout an extended drought period in order to supply sufficient water to recharge the groundwater basin downstream of the reservoir.

I also used the SVIGSM to simulate the flood flows downstream on a daily basis to evaluate what the impact of storing the 27,900 acre-feet would be on flooding downstream and the reduction of flooding downstream.

There are several instances, approximately 31 percent of the time of the high peak flows would be reduced somewhat by the storing of the 27,900 acre-feet. In specific, I picked out 1969, February 1969, which was included in the simulation period and also was a pretty wet year during

those periods, February of 1969.

And if you notice, approximately on February 24 and also February 25th, the recorded flow was 34,800 and 60,400 respectively. If the 27,900 acre-feet was not available to the Agency, those recorded flows would have been somewhat higher, approximately 2,000 cfs higher. These are all in -- I am sorry, these values are all in cfs under Exhibit 3-18.

H.O. BROWN: Remember to mention your exhibit number that you are working with.

DR. TAGHAVI: Exhibit 3-18 shows the February 24th -- the recorded flow as well as the simulated flow conditions during the February 1969 hydrologic period. The 24th of February and 25th of February, the peak flows were 34,800 and 60,400, and they would have been increased approximately 2,000 cfs.

The channel capacity at Bradley is approximately 50,000 cfs. We are already, at least on the 25th of February, we are beyond the channel capacity at Bradley. However, the extent of the flooding would have been worse if the 27,900 acre-feet would not be available to the Agency.

In my analysis I also looked at the seawater intrusion and the impact of lack of diversion of the 27,900 acre-feet on the seawater intrusion. Honestly, there is not a significant change in terms of the seawater intrusion because of the 27,900. The reason being there are a number

of factors which play a role in terms of the seawater intrusion. There is a recharge from the deep percolation of the applied water, recharge from rainfall, pumping in the coastal areas as well as recharge to the Salinas riverbed in the northern area, in the coastal areas. These are much greater factors which played roles in terms of the rate of seawater intrusion.

The 27,900, by the time it travels approximately the 80 miles of the river, river length, may not impact significantly the seawater intrusion. However, I would like to stress the fact that Salinas Valley Water Project is focusing on solution, local solution, to the seawater intrusion problem as well as overdraft problem. The Salinas Valley Water Project, the way it is currently configured, is working under a very marginal and tight amount of diversion and tight amount of water to be diverted for remediation of seawater intrusion. Any additional amount of water which is diverted to storage and released on a timely manner for recharge throughout the Salinas riverbed would significantly impact not only the recharge and the hydrologic conditions downstream of the dam, but also the seawater intrusion.

H.O. BROWN: Mr. Maloney, you rise?

MR. MALONEY: Yes. I may have misunderstood your order, but I didn't know that we were going to be talking about the Salinas Valley Water Project based on your order.

I could have misunderstood it, as to whether or not we are going to be commenting. I thought we were talking only about the 27,900 feet and not the Salinas Valley Water Project. If we are talking about the Salinas Valley Water Project, that raises all sorts of 275 issues, and 275 issues are part of the remedy that we would suggest in terms of management of the reservoir.

I am just trying to clarify the order.

H.O. BROWN: Mr. O'Brien.

MR. O'BRIEN: This is a very brief element of Dr. Taghavi's testimony. It simply makes the point that if you don't grant this storage you are going to affect the ability of the Agency in the future to deal effectively with the seawater instruction issue through the Salinas Valley Water Project.

I don't think we plan to belabor that point, but I think it is relevant as to the -- certainly as to whether granting this application is in the public interest. But I don't think we need to say anything more about it, frankly.

H.O. BROWN: Mr. Maloney, any response?

MR. MALONEY: Are we going to get into whether or not the Salinas Valley Water Project is in the public interest? Because if it is, we can put on massive amounts of testimony that it is not in the public interest and other ways in dealing with the saltwater intrusion.

We prefer not to do that. That is what we understood the Board's rulings were this morning, not to be involved with it. We think all reference to Salinas Valley Water Project should be removed from the testimony of the applicant.

H.O. BROWN: How much more time on direct?

MR. O'BRIEN: Dr. Taghavi is about finished.

DR. TAGHAVI: I am summarizing.

H.O. BROWN: Go ahead.

DR. TAGHAVI: In summary, Mr. Brown, I would like to emphasize that the water is available for application at Nacimiento Reservoir during the periods of diversion to storage. The 27,900 acre-feet of storage space is only encroached 611 days, which is approximately 4 percent of the time. This water has been available during periods of above normal years when there is ample runoff occurring from all tributaries in the Salinas River.

Groundwater pumpers in the Salinas Valley have not been harmed by the storage of 27,900 acre-feet historically of this incremental water. In fact, groundwater pumpers in the Upper Valley have received measurable and significant benefits to the tune of 2.29 feet as simulated by the model that you have used, higher groundwater elevations during the drought conditions, during August 1990.

When the Agency, Monterey County Water Resources

Agency, has stored this water, the Salinas Valley has received flood control benefits as well, including reductions in daily peak flows during flood conditions.

That is all I have to say.

H.O. BROWN: Thank you.

Let take a 12-minute break now.

(Break taken.)

H.O. BROWN: Mr. O'Brien, we will continue.

MR. O'BRIEN: Our next witness is Mr. Jeff Hagar.

Mr. Hagar, is MCWRA Exhibit 4-1 a true and correct copy of your written testimony?

MR. HAGAR: Yes, it is.

MR. O'BRIEN: Is Exhibit 4-2 a true and correct copy or your resume?

MR. HAGAR: It is.

MR. O'BRIEN: Could you please summarize your testimony for us.

MR. HAGAR: Yes, I will, and I am going to move to the podium.

Good morning. My testimony today is going to address the issue of management of Nacimiento Reservoir on the steelhead resources in Nacimiento River and Salinas River. Most of what I am going to be saying today is going to be based on work that I have done for the Agency since about 1994. Looking at steelhead spawning abundance in this reach

of the basin, looking at habitat conditions for steelhead in the basin and assessing needs for flows in the Salinas main stem for steelhead migration.

Historically, steelhead were found in the Salinas River basin in the Arroyo Seco tributary. In the Arroyo Seco, which enters the Salinas River around Soledad and continues up in this direction. Also in the San Antonio River and Nacimiento River which extend into the Big Sur area of the Central Coast and in some of the tributaries and perhaps upper main stem in the Salinas River down here off the map. Referring to Exhibit 2-5.

The Arroyo Seco contains some of the best habitat remaining in the Salinas River. Its headwaters are on national forest land and are rather pristine. It is also located relatively close to Monterey Bay, about 40 to 50 miles in the Salinas River up to the Arroyo Seco confluence. In contrast, steelhead migrating to the upper Salinas River have to traverse probably over a hundred miles of Salinas River channel which often has marginal conditions for migration.

Steelhead migration is linked with hydrology. Generally high flows are required related to winter storms to reach the sandbar that forms at the mouth of the Salinas River and to provide attraction for steelhead into the river and offer cues that steelhead use to move upstream. Once

they are in the river channel, they basically need enough depth of flow to negotiate the channel. We don't have a very good idea of the kind of flows required to reach the sandbar and provide attraction and migratory cues. And it turns out that issues related to this proceeding that is not really that important. I will get back to that later.

As for flows in the main stem for fish to access the upstream habitat, I should mention that the Salinas River itself does not provide habitat for spawning or rearing steelhead and has not historically. So it is used primarily for a migration corridor. The needs for steelhead to migrate through the Salinas River channel were the subject of a study that the Agency conducted.

We looked at a number of locations in the lower Salinas River, identified areas that had the broadest, shallowest, worst possible conditions for passage, and then measured the relationship between depth and flows at those locations, and established, ultimately established, a flow that would meet minimum migration criteria based on, I think, information in the scientific literature. This is a rather standard approach to assessing migration needs of steelhead and salmon, often referred to as the Thompson methodology. And application of this methodology in the Salinas River resulted in an estimate of 150 cfs as the minimum flow needed for fish to move through the Salinas River channel.

That primarily addressed the needs of adult steelhead moving upstream. Steelhead that survive spawning, some of them return downstream, and those fish could probably negotiate the channel at that flow or perhaps a lower flow since they are swimming downstream rather than upstream. Also, smolts demigrating to the ocean are considerably smaller than adults and could potentially migrate at less than 150 cfs.

Looking at the historic hydrology in relation to the 150 cfs minimum passage criteria, it's apparent that there are a number of years in the Salinas River when conditions are not very conducive to steelhead migration. We have several-year periods when the migration threshold is not met, for example the drought of '86 to '92 was a period which migration was potentially precluded four to six years. A number of other years that have relatively known low periods of time when the migration threshold is met is questionable whether steelhead could actually enter the Salinas River and ascend to spawning habitat in some of those periods as well.

MS. KATZ: Let the record reflect that that is Exhibit 4-5.

MR. HAGAR: Sorry about that.

So releases from Nacimiento have potential to influence migration of steelhead through lower Salinas

River. As Dr. Taghavi has testified, there are eight years in the hydrologic record when storage in Nacimiento Reservoir exceeded 350,000 acre-feet, and this generally occurred during the period from February through August. And the timing of these releases is critical to evaluate their impact on steelhead life history.

Adult still generally migrate upstream from mid December through mid April and then post-spawning adults return downstream generally from April through June.

Smolts and other juveniles tend to migrate downstream over extended periods, but it's pretty much concentrated in April, May and June, particularly migration of smolts to the ocean.

So, based on the period when these additional releases would have occurred -- well, first let me say that if we assume that schedule of releases could keep Nacimiento Reservoir below 350,000 acre-feet, we can use that to assess impacts on migration. That is what I have done here. Basically, releases between February and June would keep storage below 350,000 acre-feet. The majority of those releases would occur after the first week of April, however. So they would have potential to impact downstream migration of adults and smolts, but would have very little impact on spawning since that would have occurred before April.

And also in terms of reaching lagoon and attracting fishing into the river this practice also would have fairly minimal effect.

So there are -- referring to Exhibit 4-7, this shows the hydrology in the Salinas River at Bradley. This is historical hydrology for year 1967. It also shows a pattern of releases that would have kept storage in Nacimiento Reservoir below 350,000 acre-feet. There is the migration threshold of 150 cfs that we're using as a index in there.

As can be seen here, throughout this period the flow at Bradley was fairly substantial. It exceeded the migration threshold by quite a significant amount throughout the period when releases would have been made. This is actually atypical of five of the eight years when additional releases would have been required. And we have concluded that there be minimal, if any, beneficial effect of those releases on migration during those time periods.

There were three years during which stream flows actually fell fairly low during the latter part of the migration period. This indicates that after about mid April stream flow at Bradley fell below the migration threshold and releases during this period would have actually have increased flows above the threshold. In this example, would have been increased in about 16 days.

MR. O'BRIEN: You are referring now to Exhibit 4-17?

MR. HAGAR: That's correct.

As I said, this is atypical of three years in the record. During those three years the potential impact on smolts and returning adults would be fairly small. We are looking at an increase of maybe 1 to 63 days when flows would have been above migration threshold. And also in those particular years conditions were already very good for migration.

This is Exhibit 4-23, and it shows the number of days in each year when the migration threshold was met for the entire hydrologic record. And the red bars indicate the years when additional Nacimiento releases would be required. You can see those releases would be required generally in the years that already have the largest percentage of time available for migration.

This is also true for fish migrating from the upper Salinas basin as shown here in Exhibit 4-24.

So, in conclusion, I would not expect that this practice has led to significant biological impacts on steelhead in Nacimiento Reservoir and Salinas River. Most of the additional releases would have occurred outside of the period when fish are potentially spawning in Nacimiento River. And they occurred in very brief intervals over the hydrologic record, too brief to benefit any rearing that could have occurred.

Their impact on migration is that they may have had slight beneficial impact in three years out of the periods since 1958 when the reservoir was first filled. But the addition of a few days at the end of an already good migration season wouldn't be expected to significantly affect the abundance of steelhead in the Salinas River or population.

That concludes my testimony.

MR. O'BRIEN: Thank you, Mr. Hagar.

Final witness is Mr. Gary Jakobs.

Mr. Jakobs, is Exhibit MCWRA 5-1 a true and correct copy of your written testimony?

MR. JAKOBS: Yes, it is.

MR. O'BRIEN: Is Exhibit 5-2 a correct copy of your resume?

MR. JAKOBS: Yes, it is.

MR. O'BRIEN: Please summarize your written testimony.

MR. JAKOBS: My expertise focuses on the California Environmental Quality Act and National Environmental Policy Act, CEQA and NEPA. I am going to be speaking on the applicability of CEQA in particular to this specific application.

I have served as Director of the Salinas Valley Water Project Environmental Impact Report for the past three years. I have been working in this arena, in this area.

It is my opinion that granting of this license is both statutorily and categorically exempt from the CEQA. As I will explain, it is based on four primary factors.

The first is that Nacimiento Dam was completed in 1957.

Second is that the Agency is currently permitted under its water rights to store at an elevation of up to 800 feet mean sea level.

The third is that the historical, occasional storage has been at 350,000 acre-feet and up to 377,900 acre-feet on occasion, and this will not change with the granting of this license. These conditions will not, and this is the baseline.

And the fourth is that no significant environmental effect will occur as a result of granting the license.

First, with regard to statutory exemption under CEQA. Pursuant to CEQA guideline Section 15261, a project is exempt under CEQA if it was approved prior to enactment of the act, which was November 23, 1970, unless there are two conditions that occur.

The first is that the project is really not complete yet, a substantial portion of public funds allocated for the project have not been expended, and it is feasible to modify the expenditure of the funds to mitigate for environmental impacts.

The second exception would be if the public agency proposes to modify the project at a future date in such a way that the project might have a significant affect on the environment.

With regard to the first statutory exemption, the project's been complete and operational since 1957. So this exemption does not apply.

With regard to the second exemption concerning significant effects, CEQA defines a significant environmental impact as a substantial or potentially substantial adverse change in any of physical conditions affected by the project. So, an adverse change in the conditions.

In the case of the proposed action, granting of the license to store the same quantity of water that has been stored frequently in the past and at the same elevation as has been permitted since 1957 will not change any physical environmental conditions. Therefore, by definition no significant impact can occur.

So the project is statutorily exempt from CEQA. That alone is enough to excuse the project from consideration under CEQA. In addition, it is also categorically exempt from CEQA.

Section 21084 of the Public Resources Code requires that the CEQA guideline identify a list of classes of

projects that have been determined to have no significant environmental affect. Therefore, they would be exempt from consideration under CEQA.

Section 15301 of the CEQA guidelines defines Class I exemptions as those related to existing facilities with actions consisting of, and I am quoting, "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private facility involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination."

So here we have a classic case of a Class I exemption. First, we have an existing facility, Nacimiento Reservoir, and, second, we have a granting of a license and this license will lead to no expansion of the use beyond that which already exists.

So the project would be categorically exempt under CEQA and not eligible for further consideration.

There are exceptions to the categorical exemption requirement. One exemption is if significant environmental effects would occur. And as I described a few moments ago, there would be no significant environmental effects.

Nor does the presence of any endangered species alter these conclusions. As the Board recently concluded in the Garapatta Water Company case, there must be a reasonable probability of an effect on a species as result of granting

of the license.

As previously explained, this license would change none of the physical, environmental conditions. This specific license would change none of the physical, environmental conditions in the area, and so would not significantly affect any species. And Mr. Hagar also explained the differential and potential affect between the 350,000 acre-foot storage and 377,900 acre-feet storage as also not being significant.

That concludes my testimony.

MR. O'BRIEN: That concludes our case in chief.

H.O. BROWN: Thank you, Mr. O'Brien.

We are going to cross-examination.

Mr. Donlan.

MR. DONLAN: I don't have any questions at this time, Mr. Brown.

H.O. BROWN: We will hear from Marina Coast Water District.

MR. DONLAN: Could I reserve the right to question later at the end of -- my primary witness is not here. I would like to speak with him. He is supposed to arrive anytime. He may have some questions that he would want to pass through. If I could be held over till the end of cross-examination, I'd appreciate it.

H.O. BROWN: I will permit that.

MR. DONLAN: Thank you.

H.O. BROWN: Marina Coast.

Clark County Water Company.

MR. BEZERRA: Mr. Brown, Clark Colony Water Company has no cross-examination for these witnesses.

Stepping one step forward, Rosenberg Family Ranch has no questions for these witnesses either.

H.O. BROWN: All right.

Mr. Maloney.

MR. MALONEY: Yes. Mr. Virsik and I will both do it.

You want us to sit up here?

H.O. BROWN: Yes. If you can make some room for him, Mr. O'Brien. Scoot over.

MS. KATZ: Whichever is easier for Esther to hear and the Board and staff.

H.O. BROWN: Can you both stand at the podium, at the dais?

MR. MALONEY: Yes. We just have stuff to move around.

I am trying to stay within the restraints of this morning, your Honor, in terms of cross-examination and I apologize if I get --

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

MR. MALONEY: Things we would like to get covered.

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CROSS-EXAMINATION OF MONTEREY COUNTY WATER RESOURCES AGENCY

BY SALINAS VALLEY PROTESTANTS

BY MR. MALONEY AND MR. VIRSIK

MR. MALONEY: I am going to start with Mr. Weeks. I am going to try to follow on the order in which things were presented.

Mr. Weeks, could you tell me how many members are on your Board of Directors?

MR. WEEKS: How many people are on the Board of Directors?

MR. MALONEY: Yes.

MR. WEEKS: Currently there are eight. There are nine seats.

MR. MALONEY: Does any one of your Board of Directors who own or operate vineyards, to your knowledge?

MR. WEEKS: Yes.

MR. MALONEY: Who?

MR. WEEKS: Richard Morgantini.

MR. MALONEY: Could you tell me how many committees you have in your organization?

MR. WEEKS: Five.

MR. MALONEY: Could you tell me the direct chairman of your -- could you tell me the names of the different chairmen?

MR. WEEKS: Steve Collins.

MR. MALONEY: Does he operate any vineyards, to your knowledge?

MR. WEEKS: May I answer one question at a time? And would you rephrase the first question?

MR. MALONEY: Could you tell me the chairman of your different committees.

MR. WEEKS: Name of the chairman is your question?

MR. MALONEY: Yes.

MR. WEEKS: Steve Collins, Steve Collins, Elizabeth Williams, Paul Martin, Norm Martela.

MR. MALONEY: Does Mr. Collins operate any vineyards, to your knowledge?

MR. WEEKS: No.

MR. MALONEY: What committee is he chairman of?

MR. WEEKS: Mr. Collins chairs the Finance and Basin Management Planning Committee.

MR. MALONEY: Does Mr. Martin operate any vineyards, to your knowledge?

MR. WEEKS: No.

MR. MALONEY: Does Mr. Martel operate any vineyards, to your knowledge?

MR. WEEKS: No.

MR. MALONEY: Does Ms. Williams operate any vineyards, to your knowledge?

MR. WEEKS: No.

MR. MALONEY: Now, have any of your directors -- do you know what the term "double crop" means?

MR. WEEKS: Would you rephrase that?

MR. MALONEY: Do you know what the term "double crop" means?

MR. WEEKS: I have a definition in my mind.

MR. MALONEY: Could you state what your definition is in your mind?

MR. WEEKS: Would be to have two crops produced on a single plot of land in a year's time.

MR. MALONEY: Do you know what the term "triple crop" means?

MR. WEEKS: No.

MR. MALONEY: Do you know if any of your directors triple crop?

MR. WEEKS: I do not know.

MR. MALONEY: Do you have any idea of the split between row crop acreage or vineyard acreage in the Salinas Valley?

MR. WEEKS: Could you please define row crop acreage?

MR. MALONEY: Acreage where row crop is grown.

MR. WEEKS: Your definition for row crop would be?

MR. MALONEY: There is a definition in -- I think in your -- include lettuce, celery, everything except field crops.

MR. WEEKS: And what would a field crop be?

MR. MALONEY: I am not sure. I think that is pastures. I think it is defined in the Division of Water Resources, a row crop is defined. I think it is --

You do know the definition of row crop?

MR. O'BRIEN: He didn't say that. Mr. Maloney. He asked you for your definition.

MR. MALONEY: I am asking the questions, if you will pardon me.

MR. WEEKS: I am just saying that I want to make sure that I answer the questions correctly. So if we are talking about lettuce and things like broccoli and celery and those kinds of crops.

MR. MALONEY: Is there an engineering definition -- is there a Department of Water Resources definition of row crop?

MR. WEEKS: I am not sure there is or is not.

MR. MALONEY: Does Salinas Valley -- does the Monterey County Water Resources Agency have a definition of row crop?

MR. WEEKS: I don't believe we have a definition. We might have a phrase or term that we use in defining other --

MR. MALONEY: Would you define the term that you use?

MR. WEEKS: Crops that would be grown in rows along the ground and which they are irrigated for food crop production.

MR. MALONEY: Could you tell me what the percentage of row crop is in the Salinas Valley, if you know?

MR. WEEKS: Percentage as compared to what?

MR. MALONEY: Vineyards.

MR. WEEKS: I don't know if I have that specific information available to me at this time.

MR. MALONEY: Do you know if it is 200,000 acres?

MR. WEEKS: It would be a guess on my part.

MR. MALONEY: In other words, you don't know how much row crop you have versus how much vineyards you have?

MR. WEEKS: I know it is a significant amount, but I don't know what the actual percentage is.

MR. MALONEY: Have you made any estimate as to the size of vineyard acreage in Salinas Valley 30 years from now?

MR. WEEKS: We have made estimates of the overall land use up to 2030.

MR. MALONEY: I am just asking vineyards.

MR. WEEKS: I would believe vineyard would be part of land use.

MR. MALONEY: So you haven't made any direct estimates of only vineyards; is that correct?

MR. WEEKS: I don't think I said that. Would you rephrase that question?

MR. MALONEY: Have you made estimates as to what the vineyard size will be in the Salinas Valley 30 years from now? MR. WEEKS: I think I answered that. We have made estimates relative to land use in 2030.

MR. MALONEY: Could you tell me what the agricultural estimate is in 2030?

MR. WEEKS: Not offhand. I know where I could find that information, but I don't have it here available today.

MR. MALONEY: Possibly after lunch could you find it for me?

MR. WEEKS: No. I would need to go back to the office and obtain some resources.

MR. MALONEY: Now you had a map up here, did you, at the very beginning. I did not get the exhibit number on it. Could you place that map up back again, first one? We can use the exhibit out of the testimony. I think it is best if we have that map.

MS. KATZ: That is Exhibit 2-5.

MR. MALONEY: It is much better on the wall than it is in the paper. I think we may have a violation of ADA. I don't see out of my right eye. I have to turn around. Let me ask you a question about this, MCWRA Exhibit 2-5.

Am I correct that you are not making application to cover this particular part, in particular the area around Marina, in this particular application, area of use? Your area of use does not cover Marina, does it?

MR. WEEKS: You know, I am not sure what the current area of use covers.

MR. MALONEY: Do you know who might know that?

MR. WEEKS: County counsel.

MR. MALONEY: There is nobody here in this room that would know the current area of use?

MR. WEEKS: I don't know that for a fact.

MR. MALONEY: Now, could you tell me if the Salinas Valley as shown up there is in overdraft?

MR. WEEKS: The Salinas Valley groundwater basin is in overdraft.

MR. MALONEY: Could you tell me what that means?

MR. WEEKS: It means that more water is being withdrawn from the basin than is recharged or provided through releases of water from the reservoirs.

MR. MALONEY: Have you -- let me ask you a question. Have you ever had any discussion, you personally, with anybody about the possibility of the sale of water from the Salinas Valley recycling project outside of the area of use covered by the Nacimiento permit?

MR. WEEKS: How do you mean "Have I had any conversations"?

MR. MALONEY: I am just asking if you had any discussions, period.

MR. WEEKS: I am not sure.

MR. MALONEY: Concerning the sale of water?

MR. WEEKS: Outside the area?

MR. MALONEY: Yes.

MR. WEEKS: Would that be water that was produced by the Central Valley Water Project -- excuse me, Monterey County Water Recycling Project?

MR. MALONEY: Yes.

MR. WEEKS: So, would it be recycled water or water pumped from land?

MR. MALONEY: I don't know. Any water.

MR. WEEKS: I have had some discussion about expand -- possibly expanding the area, yes.

MR. MALONEY: Basically the Agency is discussing the possibility of selling available water even though the basin itself is in overdraft; is that correct?

MR. WEEKS: I did not say that, no.

MR. MALONEY: The Agency isn't discussing the possibility of selling water?

MR. WEEKS: You asked me if I had discussions. I had discussions about -- the Agency isn't making any kind of offers about selling water.

MR. MALONEY: I didn't say offers. You have had -- in your official capacity as the acting general manager have you had any discussions about the possibility of selling water from the Salinas Valley Recycling Project?

MR. WEEKS: We have had discussions about possibly expanding the boundary area of the Monterey County Water Recycling Project, water cooperations to me. There was

recognition of that, there was dialogue that expanding the area of Monterey County Water Recycling Projects would really have no impact, excuse me, would have no benefit because essentially we are using all the water we can use during the summer months. I would say that is the nature of dialogue that I have had about this issue.

MR. MALONEY: Can you just try yes or no, and then do your explanation?

MR. O'BRIEN: Objection. The witness should be allowed to answer the question as he desires.

H.O. BROWN: Here is the ground rules: If you -- it is Mr. Maloney's turn to ask the questions. Answer the questions to the best of your ability. If he wants a yes or no question, give him a yes or no answer if you can. If you can't give him a yes or no, qualify it up front so he will know whether or not he wants to take his time on your explanation.

All right?

MR. WEEKS: Fair enough.

H.O. BROWN: Mr. Maloney.

MR. MALONEY: You have had discussions about the possibility of selling at minimum -- excuse me, you have had discussions about the possibility of selling water from Monterey -- from Salinas Valley Recycling Project; is that correct?

MR. O'BRIEN: Objection. Asked and answered at least three times.

MR. WEEKS: I have answered the question.

MR. MALONEY: Yes or no?

H.O. BROWN: I am going to permit it, yes or no. If you can't answer --

MR. WEEKS: I can't answer that yes or no.

MR. MALONEY: Now, to your knowledge, does the Agency have any obligation to sell or make water available to anybody outside the current area of use?

MR. WEEKS: I can't answer that yes or no. I have a clarifying question. Can you define area of use?

MR. MALONEY: Yes, the area of use in the application that is pending before the State Water Resources Control Board.

MR. WEEKS: Is that the existing license or the one --

MR. MALONEY: It is my understanding, you can correct me if I am wrong, you are not asking to expand the area of use; is that correct?

MR. WEEKS: That is correct.

MR. MALONEY: Have you had any discussions about the possibility of selling water outside of the area of use under the current application?

MR. WEEKS: Not to my knowledge.

MR. MALONEY: Never had any discussions about selling

water to Marina?

MR. WEEKS: I have not had any discussions.

MR. MALONEY: Do you know if the Agency has had any discussions about selling water to Marina?

MR. WEEKS: I don't know if I can answer that yes or no.

MR. MALONEY: Give me an answer.

MR. WEEKS: The Agency has an annexation agreement with the water district.

MR. MALONEY: Does that contemplate delivering water to Marina?

MR. WEEKS: I don't believe it does.

MR. MALONEY: Does it contemplate delivering any water to Fort Ord?

MR. WEEKS: There is an annexation with Fort Ord that is separate from the annexation with the Marina Coast Water District.

MR. MALONEY: Does that contemplate delivering any water to Fort Ord?

MR. WEEKS: There is a project described in the annexation agreement with Ford Ord.

MR. MALONEY: What you are saying is that there is a project described in the Ford Ord agreement, but there is no project described in the Marina Coast agreement; is that what you are saying?

MR. WEEKS: Yes.

MR. MALONEY: Do you know what Marina expected to get from becoming annexed to the district, to the Agency's area of use?

MR. WEEKS: I would have to review the annexation agreement.

MR. MALONEY: Do you know if they paid you any money?

MR. WEEKS: I believe they did.

MR. MALONEY: Do you know why they paid you money?

MR. WEEKS: Yes.

MR. MALONEY: Would you tell me why?

MR. WEEKS: Yes.

MR. MALONEY: Tell me why.

MR. WEEKS: They paid us money such to annex into the Zone 2 and 2A, provides for two areas of cost, one to essentially provide their pro rata share of the cost to construct the reservoir and to provide -- as well as to have water made available to them.

MR. MALONEY: You just said --

MR. WEEKS: In the groundwater basin.

MR. MALONEY: So water is going to be made available to Marina?

MR. WEEKS: Water is made available to the groundwater basin.

MR. MALONEY: Let's get back to this overdraft. You

say the whole Salinas Valley is in overdraft; is that correct?

MR. WEEKS: Yes.

MR. MALONEY: How much of the so-called Upper Valley is in overdraft, if you know?

MR. MELTON: Curtis, if I might add to that, continguous groundwater basin --

H.O. BROWN: Wait a minute. He will ask you a question if he wants to. This is Mr. Maloney's time, as I remind all of you. I would appreciate it if you know the answer, answer the question to the best of your ability. This is his time. He has one hour, and I am going to stick pretty close to that unless he shows cause for more time. My interruptions or yours does not count against his time.

Let's try to proceed through this in an orderly manner, gentlemen.

MR. MALONEY: So I can be clear on my time, we started at ten minutes after 11?

H.O. BROWN: You have 50 minutes.

MR. MALONEY: I am going to try to get done quicker than that.

Can you answer the question?

MR. WEEKS: Could you rephrase it. I've forgotten.

MR. MALONEY: Could you tell me how much the Upper Valley is in overdraft, if you know?

MR. WEEKS: I can't answer that with a yes or no, if I know. I look at the basin as an entire basin and there is a number of draws in a basin. There is a number of inputs in that basin. The entire basin is in overdraft. It is a matter from my perspective, Mr. Maloney -- you've asked me to answer. I look at it on a holistic basis, the whole basin.

MR. MALONEY: I want Exhibit 2-6 if we can get that up.

You don't know -- let's go over this real quickly -- how much of the Upper Valley is in overdraft; is that correct?

MR. WEEKS: Again, I can't answer that yes or no.

MR. MALONEY: You don't know how much the Forebay is in overdraft; is that correct?

MR. WEEKS: I wouldn't -- I can't answer yes or no.

MR. MALONEY: You don't know how much the East Side is in overdraft; is that correct?

MR. WEEKS: I can't answer that yes or no.

MR. MALONEY: You don't know how much the Pressure area is in overdraft; is that correct?

MR. WEEKS: I can't answer that yes or no.

MR. MALONEY: Are you familiar with Ordinance 3790?

MR. WEEKS: Yes.

MR. MALONEY: 3790 contemplates that certain wells are

going to be shut down; is that correct?

MR. WEEKS: Could you define "shut down"?

MR. MALONEY: Sealed so they won't be in production any longer.

MR. WEEKS: There are provisions for destroying wells in 3790.

MR. MALONEY: Have those wells, in fact, been destroyed, all the wells that are required to be destroyed by 3790?

MR. WEEKS: No, they have not been.

MR. MALONEY: Do you have any reason to believe -- we heard about the saltwater intrusion problem. I have no idea why it has any relevance to this hearing.

MR. O'BRIEN: Objection. Argumentative.

MR. MALONEY: Talking about it.

Let me direct your attention to minutes of, I believe, June 15th, B2.

Can I make this next in order of Salinas Valley Protestants?

H.O. BROWN: You have it? Let me see it.

MR. MALONEY: I have three or four copies.

H.O. BROWN: What are we looking at here, Mr. Maloney?

MR. MALONEY: D3.

MS. LENNIHAN: Can the other participants get copies?

MR. MALONEY: We are trying to give them out.

MS. LENNIHAN: I appreciate that.

MR. MALONEY: Mr. Antle stated that he had felt there was a great deal of pumping going on at the 150-foot aquifer level in the CSIP area. I will give you next in order, whatever the exhibit number, for you to look at to refresh your recollection, D3.

MS. KATZ: Are you saying B?

MR. MALONEY: D as in dog.

H.O. BROWN: You are making this D3?

MR. MALONEY: No, making reference to Paragraph D3.

MR. O'BRIEN: Mr. Brown, can we give this exhibit a number so the record is clear?

MR. MALONEY: I ask Protestants' next in order.

MR. O'BRIEN: What is that number?

H.O. BROWN: Twenty-two, this is Exhibit Number 22.

MR. MALONEY: Can I have it back to ask questions about it?

Mr. Antle seems to be suggesting here that the water is leaking -- a lot of people are pumping from 180-foot aquifer in CSIP area or Pressure area; is that correct?

MR. WEEKS: There are people pumping from the 180-aquifer in the vicinity of the recycling project.

MR. MALONEY: Do you know if any of those pumpers are pumpers that should have had their wells sealed pursuant to 3790?

MR. WEEKS: I don't know.

MR. MALONEY: You don't know. Okay.

MR. WEEKS: But I can -- if I could amplify there?

MR. MALONEY: Go ahead.

MR. WEEKS: Most of the wells, the 180-foot wells, in the recycling project boundary are all intruded; I believe the wells we are talking about in the dialogue that you are referencing are outside of the project area of the recycling project.

MR. MALONEY: You don't know for sure one way or the other?

MR. WEEKS: I don't know of any wells that are currently in operation in the recycling project area in the 180-foot aquifer.

MR. MALONEY: Do you know of any wells that are operational in the 400-foot aquifer?

MR. WEEKS: Yes.

MR. MALONEY: Do you know how many there are?

MR. WEEKS: No.

MR. MALONEY: Do you know if some of those wells should have been sealed pursuant to 3790?

MR. WEEKS: It's possible. I know -- if I can amplify, there are 205 wells that we have identified in the project area in the 180-aquifer.

MR. MALONEY: You don't know which ones are pumping and

which ones are not pumping?

MR. WEEKS: I don't know which ones are actively in use at this time.

MR. MALONEY: You in your capacity as the general manager have chosen not to enforce Ordinance 3790; is that not correct?

MR. WEEKS: I can't answer that yes or no.

MR. MALONEY: Would you like to answer it some other way?

MR. WEEKS: Yes, I would. The Board of Directors of the Agency and the project participants have chosen to essentially suspend action on 3790 while the Agency attends to other more pressing matters, recognizing that the project is delivering, has delivered 10,000 acre-feet of recycled water in the last fiscal year. As we meet the project objectives, we move forward with 3790; at this time it wasn't considered a prudent measure.

MR. MALONEY: In the last five years do you have any idea how many acres of row crop have been converted to vineyards?

MR. WEEKS: Significant amount.

MR. MALONEY: Do you have any idea how many acres of grazing land, this is what you would call non-irrigated agricultural land, has been converted to vineyards?

MR. WEEKS: I know the Agency has currently conducted a

survey to identify how much grazing land has been converted to vineyards. I don't know the exact numbers.

MR. MALONEY: You say significant amount?

MR. WEEKS: Thousands.

MR. MALONEY: 5,000 acres? 10,000 acres?

MR. WEEKS: Thousands.

MR. MALONEY: Do you know if that has had any impact on your previous water studies?

MR. WEEKS: Our water studies have identified and included modifications, as I answered earlier, to land use patterns in 2030. We believe them to be good modeling tools.

MR. MALONEY: Now, do you have any idea how many thousands of acres of grazing land was converted? Is it in the thousands, do you know?

MR. WEEKS: In reference to what? I am sorry.

MR. MALONEY: Vineyards.

MR. WEEKS: I am sorry, are we talking about today or are we talking --

MR. MALONEY: Today, in the last five years.

MR. WEEKS: I think I answered that question. We've identified thousands of acres but I don't know --

MR. MALONEY: You don't know how many thousands of acres of row crop that has been converted either?

MR. WEEKS: I thought we were talking about grazing

into vineyards.

MR. MALONEY: I want to talk about row crops as well.

MR. O'BRIEN: Excuse me, Mr. Brown. I believe the witness is getting confused because we are talking back and forth, converting them from grazing land and then converse from row crop. I think if can take it one step at a time, we'd have a much better record here.

H.O. BROWN: I am getting a little confused, Mr. Maloney.

MR. MALONEY: I agree.

H.O. BROWN: If you want to start this thing over.

MR. MALONEY: I think we got all that we need. He knows there are thousands of acres converted to vineyards in row crop and thousands of acres converted to vineyards converted from pastureland.

Do you know where most of that conversion has occurred?

MR. WEEKS: I believe most occurred in the southern portion of the Salinas basin, but exactly where, no.

MR. MALONEY: Now, how long has the Agency or the County of Monterey been studying the saltwater intrusion problem, to your knowledge?

MR. WEEKS: By saltwater intrusion problem you mean?

MR. MALONEY: The fact that wells have salt in them in the Castroville area.

MR. WEEKS: We started identifying the problem back in 1946. We have been developing water quality programs since the '80s, I believe. They have identified saltwater intrusion from this point forward.

MR. MALONEY: It is my understanding there is no water in the East Side. There is an overdraft problem in the East Side.

Are you familiar with that?

MR. WEEKS: Can I amplify that response?

MR. MALONEY: Sure.

MR. WEEKS: There is plenty of water in the East Side, first of all, although they have both quantity and quality problems. The East Side has significant difference in -- strategically there is a little bit of difference in the way the soil types are stratified if you are on the East Side compared to the rest of the Salinas -- Upper Part of the Salinas basin.

MR. MALONEY: Now, has the Agency had any permits to divert water from the Salinas River, or does the Agency have any permits to divert water from the Salinas River?

MR. WEEKS: Not to my knowledge.

MR. MALONEY: I think the record should show that the Agency does have a permit to divert water from the Salinas River to make reference to it as part of public record.

H.O. BROWN: Mr. O'Brien.

MR. O'BRIEN: This witness obviously isn't familiar with this permit. I don't know that it is appropriate to question him about it.

H.O. BROWN: You will have time to get that in your direct, Mr. Maloney.

MR. MALONEY: Okay.

In connection with this application, did you make a water rights analysis?

MR. WEEKS: I don't believe we did.

MR. MALONEY: You didn't.

Now in any of your analyses that you have ordered done, have you done any estimate of the impact of a hundred thousand new acres of, for lack of a better term, vineyard plantings in the Upper Valley would have on any of your analysis on availability of water?

MR. WEEKS: Where would this hundred thousand acres be located?

MR. MALONEY: In the Upper Valley and parts of the Forebay.

MR. WEEKS: That would be in areas that would overlie the existing groundwater basin?

MR. MALONEY: I don't know what the existing groundwater basin is.

MR. WEEKS: It's correctly defined in the red outline.

MR. MALONEY: That is somebody's definition. I don't

know whose definition it is. I am asking you.

MR. WEEKS: My question -- clarify the question. Is the air roughly confined within those red lines?

MR. MALONEY: Absolutely not.

MR. WEEKS: All of our analysis to date has addressed the Salinas groundwater basin. That has roughly defined the areas within the red lines, which would include the Fort Ord area and upwards toward --

MR. MALONEY: What I am asking you is, this is a decision made by the Board of Directors as to what the Salinas Valley hydrologic groundwater basin is?

MR. WEEKS: You asked me about what kind of analysis we had done about acres, and I want to make sure I am clear about your question. The folks that have been doing the analyses have been consultants under the direction of our Board of Directors.

MR. MALONEY: Right. You told them to only look at the area within the red lines; is that correct? I should say not you, but the Agency told them to only look at the areas within the red lines?

MR. WEEKS: The Agency's responsibility is to preserve and manage the Salinas Valley groundwater basin. That is where we have focused the conduct of our work.

MR. MALONEY: You never told them to look at any potential development outside of the red lines?

MR. WEEKS: Again, I think I answered the question. We have focused along the Salinas Valley groundwater basin managing and preserving that and utilizing that to the extent we can provide agriculture water resource to enhance that groundwater basin.

MR. MALONEY: Do you know if the areas -- if any of the areas outside of the red lines might have some entitlement to water?

MR. WEEKS: I don't have --

MR. O'BRIEN: Objection. Calls for a legal conclusion.

H.O. BROWN: I --

MR. MALONEY: I didn't ask water rights; I asked entitlement. Do they have any entitlement to water?

MR. O'BRIEN: He's asking about water rights.

MR. MALONEY: I am not asking about water rights.

H.O. BROWN: Wait. Esther is good, but she can only take one at a time.

Mr. Maloney, go ahead and ask the question.

MR. WEEKS: I don't know how to respond to that yes or no. I don't know what the word entitlement means to you.

MR. MALONEY: Do they have any ability to develop land if they have water? That is the first question.

MR. WEEKS: If they include a water interest from some other place like icebergs. I mean, when you say ability,

that is a pretty broad term. Help me understand what your question is.

MR. MALONEY: Do they have -- is there lands outside of the red lines if you applied water to that you would be able to have an agriculture crop on in so-called Upper Valley and Forebay?

MR. WEEKS: If you could find a source of water you could develop the lands.

MR. MALONEY: Do you know if they have any legal entitlement? You apparently did a water rights study in connection with this application contemplated by the letter from Mr. Satkowski. That evidence has not been put on in the case in chief. We assume there is a water rights study someplace, and have you done any independent analysis of the water rights in that area?

MR. O'BRIEN: Wait, wait. I am going to object. Number one, it is a compound question. Number two, he's still getting at the question of whether this witness knows anything about water rights. This witness is not qualified to answer water rights questions.

H.O. BROWN: That's right. Mr. Maloney, do you have a response to that?

MR. MALONEY: I will withdraw the question.

Mr. Virsik is going to do Mr. Jakobs now.

MR. VIRSIK: I am not going to make an exhibit out of

this. I have written my notes down. I am going to turn one side and leave it alone.

Mr. Jakobs, I believe you spoke about regulation 15301 during your direct; is that correct?

MR. JAKOBS: That's correct.

MR. VIRSIK: Can you define for me in the context of that declaration what the phrase "lead agency's determination" means?

MR. JAKOBS: In the context of Section 15301 of CEQA, the lead agency is the agency making the decision on the proposed action in front of it.

MR. VIRSIK: In this context for what we have in front of us today, which agency is that?

MR. JAKOBS: That would be the State Water Resources Control Board.

MR. VIRSIK: Is that -- am I correct in saying the effect in the instant application is the lead agency's determination was the decision of the State Water Resources Control Board at some point prior to 1970?

MR. JAKOBS: Could you clarify the question?

MR. VIRSIK: I shall try. Under Section 15301, certain projects are exempted from CEQA, if the lead agency's determination was prior to the enactment of CEQA. Can we agree it states that in essence?

MR. JAKOBS: No, we cannot. That is not what Section

15301 states.

MR. VIRSIK: Why don't you go ahead and read that into the record so we can be clear.

MR. JAKOBS: Section 15301 of CEQA pertains to existing facilities, and those are facilities whose actions consist of the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private facilities involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

MR. VIRSIK: My mistake. I was referring to the other statutory exemption. Presumably you will find the language I am looking for in that, in 15261, I believe it was.

MR. JAKOBS: That is the statutory exemption.

MR. VIRSIK: Does that contain the language "lead agency determination"?

MR. JAKOBS: Section 15261 is exemption of a project from CEQA if it was approved prior to enactment of CEQA.

MR. VIRSIK: The project we are speaking of here, is it your testimony that that is the construction and operation of the Nacimiento Dam and Reservoir?

MR. JAKOBS: Which project are you referring to? Are you referring to Nacimiento or are you referring to the current permit in front of the Board? Both are projects.

MR. VIRSIK: I am referring to the project to which you

are applying that statutory language. I am going to assume, and you can correct me, that that is the project in front of the Board now, that is the additional 27,900 acre-feet of water.

Am I correct in that?

MR. JAKOBS: It is a complex question. The issue of whether or not the water right that the additional 27,900 acre-feet is being referred to is both statutorily and categorically exempt. It is statutorily exempt because the Nacimiento Reservoir was constructed prior to enactment of CEQA, and it functions at 800 feet mean sea level in the permit. So that is statutorily exempt.

MR. VIRSIK: Have you had occasion to review the State Water Resources Control Board file on the application for both the present 27,900 appropriation and the original 350,000 acre-feet appropriation?

MR. JAKOBS: Personally have not.

MR. VIRSIK: Have you had occasion to review the license that is presently in place for the 350,000 acre-feet; that is, the lawfully permitted license?

MR. JAKOBS: Only to the degree that the portions of the license refer to the 800-foot storage height.

MR. VIRSIK: If the operation of the reservoir was charged and water reused for a purpose other than that listed in the Agency's present license, in your opinion,

would there need to be CEQA review?

MR. JAKOBS: Please restate the question.

MR. VIRSIK: If a project was going to be used -- if a reservoir project was going to use water for a purpose other than had already been licensed, would that other use require a CEQA review?

MR. JAKOBS: May I ask a clarifying question?

MR. VIRSIK: Yes.

MR. JAKOBS: Would the license need to be modified so that the license refers to a different project?

MR. VIRSIK: I may need to ask you a clarifying question back about that one. All I am trying to ask, and I am trying to be as clear as I can because these regulations are quite cumbersome.

If the Agency, for example, to use a very preposterous hypothetical, was going to use all its water to bottle and sell to the third world, would that project, for example, require CEQA review?

MR. JAKOBS: To the degree that any project is consistent with the current license in front of the Board and the current license is being used, I would say that it is exempt from CEQA. You are talking about a change in a license which would be new action in front of the Board. I would say that may be subject to CEQA.

MR. VIRSIK: Would the change in place of use require

CEQA review as well?

MR. JAKOBS: Change in place of use of?

MR. VIRSIK: Of the Agency's -- the water stored in the Agency's reservoir, Nacimiento Reservoir.

MR. JAKOBS: With regard to this specific application?

MR. VIRSIK: Yes, that is where we are here.

MR. JAKOBS: My understanding, this specific application pertains to storage and release within the reservoir and not in place of use, so I don't know if that is relevant.

MR. VIRSIK: If the place of use, and I am asking you in your role as an expert in CEQA matters, is it your opinion that if the Agency requested in addition to correcting the sometimes called historical error of 27,900 acre-feet, that it also desired to change the place of use of that water, in that event would a CEQA review be required?

MR. JAKOBS: I truly cannot answer that question without knowing details. It would take an examination of the issue. The question comes up would any new significant environmental effects be created by such a change of use, and that would have to be examined.

MR. VIRSIK: Do I understand your testimony that if the place of use did not impact the environment, then CEQA review would not be required in that event?

MR. JAKOBS: As I understand the question, if no

significant effect would be created, then it would be exempt?

MR. VIRSIK: Tell me if the Agency's -- let me back off on hypotheticals and just ask you what is in front of us.

It's your opinion that there is no significant environmental effect based on the additional storage of 27,900 acre-feet, correct?

MR. JAKOBS: That is correct.

MR. VIRSIK: You're basing that principally or -- let me strike principally. Tell me what body of evidence are you basing your conclusion upon?

MR. JAKOBS: Under CEQA the existing environmental conditions in effect at the time of consideration of an application form of the environmental baseline that is considered in determining whether or not there is a significant environmental effect on the project.

In this case, the existing environmental condition, the existing baseline, is the historic operation of the reservoir, including storage up to 800 feet msl and storage of up to 377,900 acre-feet of water. That forms the environmental baseline to compare this application against. There is no change between this application and the current environmental baseline. Therefore, there is no significant effect.

MR. VIRSIK: My question was a little more narrow.

This environmental baseline you are speaking of, what documentation are you referring to? What is there that we can look to from this record and say Mr. Jakobs is correct, we you do look at the baseline and when you look at the projected changes or lack of changes as it may be, that Mr. Jakobs is, in fact, correct on his opinion? What can I look at in this record in order to demonstrate that or refute it?

MR. JAKOBS: I believe you can look at testimony of Dr. Taghavi and Mr. Hagar to look at the historic operations of the reservoir and to indicate -- to understand that that will not change by this application.

MR. VIRSIK: Did you rely on anything other than those, I believe, three things that you just now mentioned in formulating your conclusions about the lack of a necessity, sorry about the double negative, the lack of a necessity of CEQA review?

MR. JAKOBS: I looked at the testimonies of Dr. Taghavi, Mr. Hagar. I looked at the history of the construction of the dam, and I looked at the CEQA guidelines to come to my conclusion.

MR. VIRSIK: You did not, for example, look at the State Water Resources Control Board's file personally; is that correct?

MR. JAKOBS: That is correct.

MR. VIRSIK: That is all I have.

Thank you.

MR. MALONEY: In connection -- referring to you as fishing. I am talking about the gentleman that was the Agency's fish expert.

Mr. Hagar, if you increase the spring releases during February, March and April, that will have impact on the fish in the stream, will it not?

MR. HAGAR: It may or may not have impact.

MR. MALONEY: During certain water years will it have an impact?

MR. HAGAR: Yes. The impact would depend on other conditions at the time and on the presence of fish there.

MR. MALONEY: If you were to change the release patterns and release all the available flow in the Nacimiento River during wet years, what impact would that have?

MR. HAGAR: I don't really know that I can say what impact that would have.

MR. MALONEY: Would it have any impact?

MR. HAGAR: Again, I don't really know. Given the general nature of the question, I don't know whether there would be an impact or not.

MR. MALONEY: You don't know what the impact of increasing the natural flows from Nacimiento would have on fish during wet years?

MR. HAGAR: My testimony did address that issue in the sense that we looked at wet years, and we looked at what additional releases during the wet years would do. And I concluded that there would not be a significant impact to steelhead in those particular years.

MR. MALONEY: What about during dry years?

MR. HAGAR: I didn't look at dry years.

MR. MALONEY: What about during average years?

MR. HAGAR: I didn't look at conditions during average years.

MR. MALONEY: You don't know if you have natural releases during the spring, say from February 1st forward, what impact that would have on spring at all, do you, during average and dry years, only during wet years?

MR. HAGAR: I believe that is true in the sense that I did not look at those years.

MR. MALONEY: Now, Mr. Taghavi, a couple of questions.

When you prepared your testimony as to the impacts of the reservoir, increase in size of reservoir, did you make an analysis as to how much flow would be needed to satisfy downstream prior rights?

DR. TAGHAVI: Would you repeat the question?

MR. MALONEY: Did you make an analysis as to how much flows would have to be released from the reservoir in order to satisfy downstream prior rights?

DR. TAGHAVI: I am not familiar with the "downstream prior rights" term. What are you referring to as "prior rights"?

MR. MALONEY: Refer to a letter from the State Water Resources Control Board to my office in March 26th, 1999. It talks about the flow needed to satisfy downstream prior rights. That is an exact quote from the letter.

Have you ever heard of that term?

DR. TAGHAVI: I am not familiar with that term.

MR. MALONEY: Do you know if any of the lands outside the red lines has any downstream prior rights?

DR. TAGHAVI: I am not familiar with the "prior rights" term to make a recognition of that.

MR. MALONEY: Have you ever heard of the term "riparian rights"?

DR. TAGHAVI: I have heard of that term.

MR. MALONEY: Do you know if any of the land outside at the red area in that MCWRA 2-6 has any riparian rights?

DR. TAGHAVI: I am not aware of such.

MR. MALONEY: You don't know?

DR. TAGHAVI: No, I don't know.

MR. MALONEY: You never made any inquiry concerning that issue?

DR. TAGHAVI: I have not.

MR. MALONEY: What about pre-1914 rights, have you made

any inquiry concerning possible pre-1914 rights outside of the red line area?

DR. TAGHAVI: No, I have not.

MR. MALONEY: Now, what about overlying rights, have you made any analysis of overlying rights?

DR. TAGHAVI: I have not done any water rights analysis, so to speak. If that is what you are referring to. Whatever the riparian or pre-1914.

MR. MALONEY: Between 1910 and 1914, County of Monterey resurveyed itself, for a whole series of political reasons. It showed all the different land uses in the County of Monterey.

Are you familiar with those land uses that existed between 1910 and 1914?

DR. TAGHAVI: No, I am not familiar.

MR. MALONEY: Now, if I were to tell you that there is going to be an increase in the acreage in the area outside -- increase in acreage in the area south of Greenfield, estimated increase in acreage by irrigated acreage by 110,000 acres, what impact would that have on your model?

DR. TAGHAVI: Since Greenfield is not marked on the map, would you please --

MR. MALONEY: Yes, sir. I will show you the approximate area. Again, I am looking Exhibit 2-6, showing the line between the so-called Upper Valley and the

Forebay. That is approximately where Greenfield is located.

DR. TAGHAVI: The question again is?

MR. MALONEY: What impact would an increase of 110,000 acres have on your model, a hundred new -- growth of 110,000 acres of irrigated crops?

DR. TAGHAVI: Are you referring to the area within the red boundary?

MR. MALONEY: Outside, outside.

DR. TAGHAVI: I need to -- I can't say yes or no. I have to make a clarification.

MR. MALONEY: Go ahead.

DR. TAGHAVI: The areas outside the red line there, they are not included -- as far as land use is concerned, they are not included in the modeling analysis, per se. And so, there would not be any impact in terms of water use on the model simulation.

MR. MALONEY: What impact -- if you were to add 110,000 acres, taking water out of the area from the red as well as from the streams along the areas of the red to the model, what impacts would that have on your simulations?

DR. TAGHAVI: Would you repeat your question?

MR. MALONEY: If you had an increase in irrigated crops by 110,000 acres using water both within the red area and outside the red area, what impact would that have, if any,

on your model simulations to date, simulations, if you know?

DR. TAGHAVI: I don't know. I need to make an analysis. That requires extensive analysis of additional pumping and any other type of water use within the red area and then exporting that water, if that is what you are referring to, to the lands outside the red boundary.

MR. MALONEY: If you increased pumping by, let's say, 400,000 acre-feet outside the red boundary, south of Greenfield, would there be any water available, in your opinion, to satisfy the 27,500 acre-feet that you -- that is contemplated by this application?

DR. TAGHAVI: Could you repeat the question?

MR. MALONEY: If you increased pumping in the area south of Greenfield by 400,000 acre-feet, would there be any water available to store during the months of February, March and April?

DR. TAGHAVI: To store?

MR. MALONEY: In the reservoir.

DR. TAGHAVI: I need to make a clarifying statement here. The water, that 27,900 acre-feet of water which is stored in the reservoir, has nothing to do with downstream. The source of that water is from Nacimiento watershed and has nothing to do with downstream pumping in terms of the source of that water.

MR. MALONEY: Could you reduce the water levels if you

were to not store any water -- could you increase the water levels downstream from Nacimiento if you did not store any water between -- if you did not store any water in Nacimiento?

MR. O'BRIEN: I am going to object. I think this hypothetical question is getting awfully convoluted. I am not sure I can follow what the question is at this point. I will object on the grounds of vague and ambiguousness.

H.O. BROWN: I followed that question. The one prior, you cleared up for me. I followed your question.

Go ahead and answer.

DR. TAGHAVI: Repeat the question.

MR. MALONEY: Could the reporter read the question back.

(Record read as requested.)

DR. TAGHAVI: Still not clear.

MR. MALONEY: Mr. Brown and I are clear.

If you dot not store any water in Nacimiento during February, March and April, and you increased the acreage by 110,000 acres, could you materially increase the water levels during those months?

DR. TAGHAVI. That would require extensive analysis of again increasing the acreage land, usable acreage, increasing the pumping in the south valley area as well as including 27,900 acre-feet of storage in the reservoirs and

then making an analysis of what sort of impact would there be on water level.

I cannot say a yes or no answer on that.

MR. MALONEY: You made a comment that during the drought you increased the water level in the Upper Valley by two and a half feet in August; is that correct?

DR. TAGHAVI: That's correct. Actually was 2.29.

MR. MALONEY: Would you give me some feeling as to what the margin of error is on that model that you used?

DR. TAGHAVI: The margin of error in what?

MR. MALONEY: How close to accurate do you think that 2.29 is.

DR. TAGHAVI: I would say it is within plus-minus 10 percent.

MR. MALONEY: 10 percent?

DR. TAGHAVI: Yes.

MR. MALONEY: So it could be between, pardon my stupidity, it could be between 2 and 2.5; is that what you are talking about?

DR. TAGHAVI: Approximately between, yes, 1.9 to 2.4.

MR. MALONEY: So if you materially increase the pumping during February, March and April during 1990, because of use of water for frost protections, would you still have the same impact in August?

DR. TAGHAVI: You need to clarify when the frost

protection pumping is.

MR. MALONEY: February, March, April and May.

DR. TAGHAVI: And the question, again?

MR. MALONEY: Would you still have the same impact on water levels in August?

DR. TAGHAVI: It would be within the same order of magnitude. It may not be exactly the same, not exactly the same. However, it would probably be within the same order of magnitude.

H.O. BROWN: How much more time do you need, Mr. Maloney?

MR. MALONEY: Probably need about --

MR. VIRSIK: Mr. Brown, there is also by arrangement with counsel, Mr. Madruga is present, who did not testify as a witness for the Agency, but we requested him in our rebuttal. We propose to take him out of order. I want to be clear we are not attempting to use up our time with -- we are going to exam Mr. Madruga, take that separately from our cross of the panel today.

MR. MALONEY: Thirty minutes at most for everything.

H.O. BROWN: All right. You have 20 minutes, 15, 20 minutes remaining.

We will stipulate to 30 minutes after the meeting, then after lunch?

MR. MALONEY: Okay.

H.O. BROWN: We will adjourn and meet back here at five after one.

MR. MALONEY: Thank you.

(Luncheon recess.)

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AFTERNOON SESSION

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H.O. BROWN: Mr. Maloney.

MR. MALONEY: Mr. Taghavi, couple more questions.

In a wet year, during the wet years, do you know the term "wet years"?

DR. TAGHAVI: I have an understanding of wet years.

MR. MALONEY: Can you give me an idea during the wet years, as defined by State Water Resources Control Board, how many times in the past water was stored in excess of 350,000 acre-feet in the reservoir?

DR. TAGHAVI: I am not familiar with the term "wet year" as defined by the State Control Board but I have offered a definition of wet year in my testimony, in my direct testimony, if that is what you want to use.

MR. MALONEY: How many years will that be?

DR. TAGHAVI: I believe, based on my direct testimony, there is probably eight years that the storage levels in the Nacimiento Dam was exceeded, based on my analysis, was exceeded past the 350,000 acre-feet.

MR. MALONEY: Do you know what the term "average year" means?

DR. TAGHAVI: Again, based on my definition.

MR. MALONEY: Could you tell me what your definition is?

DR. TAGHAVI: The definition was a long-term average

rainfall during the 1904, I believe, to 1994. The long-term average plus or minus one standard deviation of that average.

MR. MALONEY: That is the average year?

DR. TAGHAVI: That is what I defined in my testimony as the average year.

MR. MALONEY: How many times did it exceed 350,000 acre-feet during average years?

DR. TAGHAVI: I don't think there was any instances that I concluded that the 350,000 acre-feet was exceeded during an average year.

MR. MALONEY: In the dry years?

DR. TAGHAVI: Same thing.

MR. MALONEY: Let's get your definition of wet year into the record.

DR. TAGHAVI: Definition of wet year was the years that the rainfall -- the rainfall was over and beyond one standard deviation above the average. And the dry year was subsequently less than that.

MR. MALONEY: The reservoir has been in existence for about 45 years, give or take a couple years?

DR. TAGHAVI: Approximately.

MR. MALONEY: You're saying seven years during the 45 years it exceeded 350,000 acre-feet; is that correct?

DR. TAGHAVI: That is correct, based on --

MR. O'BRIEN: I believe you said eight.

MR. MALONEY: Excuse me, I am sorry.

How many days on average during each year did that exceed 350,000 acre-feet?

DR. TAGHAVI: I do not have the average number for each year, but total number of days that I simulated or I analyzed was 611 days for all the eight years.

MR. MALONEY: That is under current reservoir operations; is that correct?

DR. TAGHAVI: That is under current reservoir operation criteria that the Agency uses.

MR. MALONEY: There has been some talk -- this is a very limited question -- I beg the Hearing Officer's indulgence on this -- about something called the Salinas Valley Water Project. I think you made reference to it in your testimony. One simple question about that:

Does the Salinas Valley Water Project contemplate reoperation of the reservoir?

DR. TAGHAVI: As far as I understand it, yes.

MR. MALONEY: Have you made any calculations as to how many additional years 350,000 acre-feet will be exceeded under reoperation of the reservoir?

DR. TAGHAVI: I did not consider the Salinas Valley Water Project in my analysis.

MR. MALONEY: Have you made any calculation with

reoperation of the reservoir on how many years it would exceed 350,000 acre-feet?

DR. TAGHAVI: Reoperation of the reservoir is just part of, one of the components of the Salinas Valley Water Project, and I did not consider that in my analysis, no.

MR. MALONEY: I am asking you, sitting here today, can you tell me what the proposed -- I guess I put the word "proposed" -- proposed reoperation of the reservoir, how many years would it exceed 350,000 acre-feet, if you know?

DR. TAGHAVI: I don't know.

MR. MALONEY: Looking at that Salinas Valley hydrologic subareas, could you tell me what part, if any, of that hydrologic subareas are not covered in the area use and in the pending application, if you know?

DR. TAGHAVI: Repeat the question.

MR. MALONEY: Could you tell me what part, if any, of the hydrologic subareas are not covered in the pending application?

DR. TAGHAVI: As an area of use, I don't know.

MR. MALONEY: So you did all of your modeling for this project not knowing what the area of use under the application was; is that correct?

DR. TAGHAVI: No, that is not correct. I believe the area of use is the area as shown in the red lines, and that is what I considered as part of the modeling project. In

fact, what I considered was beyond this red line and that was the areas that overlie the groundwater basin to the northeast of the current map here as well which includes part of the East Side to Elkhorn Slough.

MR. MALONEY: Do you have an exhibit to show your area of analysis in the model?

DR. TAGHAVI: Yes, I do. It is Exhibit 2-5.

MR. MALONEY: 2-5?

DR. TAGHAVI: Yes, it is. It is part of the exhibits provided by Mr. Melton in his testimony.

MR. MALONEY: You don't know, sitting here today, whether or not that -- or do you know, I am not sure which -- do you know whether or not that includes the area of use that is covered in this application?

DR. TAGHAVI: I believe it includes most of the area of use. I have no overlay of the two, but it should include most of it because this red boundary here covers for the most part the groundwater basin and all the overlying lands on the groundwater basin.

MR. MALONEY: So your answer is you don't know?

DR. TAGHAVI: I think I answered it.

MR. MALONEY: Have you ever actually looked at the area of use of this pending application?

MR. O'BRIEN: Excuse me, Mr. Brown.

Could Mr. Maloney please let the witness finish his

statements before he asks the next question?

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

MR. MALONEY: Have you ever looked at the area of use of the pending application?

DR. TAGHAVI: My understanding is that the area of use of the application is Exhibit 2-6 and that is a subset and is included in the area that is considered as a study area in Exhibit 2-5.

MR. MALONEY: Who told you that was the area of use?

DR. TAGHAVI: That was my understanding.

MR. MALONEY: Who told you that?

DR. TAGHAVI: Based on readings that I have made on the -- in the application. Not necessarily in the application itself, but in the testimonies.

MR. MALONEY: You've never actually looked at the area of use filed with the State Water Resources Control Board; is that right?

DR. TAGHAVI: That is correct.

MR. MALONEY: And you have been told to limit the Salinas Valley along those sharp lines that you have there south of the Greenfield, looking at Exhibit 2-5?

DR. TAGHAVI: No. Again, I would like to explain. The groundwater basin and overlying lands are included within the red line and the red boundary in here, and that is what I have considered in my analysis here.

MR. MALONEY: I show you a letter dated June 3rd, 1969, from D.W. Sabiston, Coastal Region, State Water Resources Control Board. I would like to mention one thing here. Anything I do wrong here is Mr. Sabiston's fault. He copied everything. I didn't learn. Next in order.

H.O. BROWN: Mr. Bezerra, you rise.

MR. BEZERRA: I'd just like to -- Mr. Brown, I would like to state this is the second time now that those of us in the audience have not had the opportunity to review the exhibit that Mr. Maloney is asking the witness to testify to and would definitely like it if future exhibits, and this is also, could be given to us at the time of testimony.

Thank you.

H.O. BROWN: We will take a two-minute break for you to review the exhibit.

Off the record.

(Break taken.)

H.O. BROWN: Mr. Bezerra --

MR. O'BRIEN: That is me, Mr. Brown.

H.O. BROWN: I am sorry.

MR. O'BRIEN: I would like to make an objection before Mr. Maloney starts his examination. This letter appears to deal with issues relating to distinctions between percolating groundwater and underflow in the Salinas Valley. That is not an issue in this proceeding. I am not

sure who D.W. Sabiston is. But there is no foundation laid for this document as to qualifications of this individual, so I am going to object on grounds of lack of relevance, hearsay and lack of foundation.

H.O. BROWN: All right, Mr. O'Brien.

Also, all of you know only the Board can make a determination as to whether or not this is a subterranean stream or not, and other staff members.

MR. MALONEY: I just wanted to ask him some questions in --

H.O. BROWN: Lay a little foundation to see where you are headed with this witness.

MR. MALONEY: Very quick.

H.O. BROWN: Whether I will allow it or not.

MR. MALONEY: In connection with Mr. Sabiston -- for the record, Mr. Sabiston is, I think he headed the Division of Water Rights at one time of this agency or this Board.

Mr. Sabiston suggested that the recent alluvium would be underflow in the Salinas Valley. What I am trying to find out is when you constructed this map showing the red areas, did you pay any attention to the hydrology of the area involved, if you know?

H.O. BROWN: I will allow that question on this.

DR. TAGHAVI: Well, I am not quite sure what you mean by hydrology. Number two, the area involved, which area are

you referring to?

MR. MALONEY: The area within the red lines.

DR. TAGHAVI: The hydrology?

MR. MALONEY: In Exhibit 2-5.

DR. TAGHAVI: You are referring to the hydrology of the area within the boundary of the red line?

MR. MALONEY: Yes.

DR. TAGHAVI: Of course, the hydrology was included as part of the definition of this red line.

MR. MALONEY: When you were making the red lines, did you make a distinction between recent alluvium in the Paso Robles formation?

MR. O'BRIEN: I renew my objection. Not relevant.

MR. MALONEY: Your Honor, may I speak to the objection?

H.O. BROWN: He has nine minutes to go. I don't know where you are headed with this. I am going to go ahead and allow it. You have nine minutes, though.

DR. TAGHAVI: Could you repeat the question, please?

MR. MALONEY: Did you make a distinction when you were drawing the red lines between the recent alluvium in the Paso Robles formation?

DR. TAGHAVI: The Paso Robles formation as it is extended down into the Salinas Valley area is included in the geology and hydrogeology of the model. The recent alluvium is included as far as it defines the alluvium

channel within which the Salinas River is flowing through. And that is the extent of the alluvium channel that is included in the model.

MR. MALONEY: So, do you get water in that -- out of the Paso Robles formation in your model?

DR. TAGHAVI: Would you refer on the map to the Paso Robles formation as you refer to it?

MR. MALONEY: No. Maybe I could ask a question. Do you know where the Paso Robles formation is on Exhibit 2-5?

DR. TAGHAVI: Paso Robles formation starts down south in San Luis Obispo County and it is extended through the Bradley Narrows and further north, even north of San Ardo to some extent. In effect, well, not most but part of the Paso Robles formation is included in the model, yes.

MR. MALONEY: Could you tell me -- could we go back to the previous one. I think it is 2-6. Could you tell me what the safe water yield on an annual basis of Upper Valley is?

MR. O'BRIEN: Object. Irrelevant.

H.O. BROWN: Mr. Maloney, where are you going with this one?

MR. MALONEY: We are basically going to show -- we have to show that we have sufficient water rights so there isn't any water available for the applicant to appropriate. We are going to determine, show, what the water rights are on a

mass basis in the Upper Valley, the Forebay, the East Side and Pressure; not an individual basis.

MR. O'BRIEN: I don't know what that has to do with the question of injury resulting from this application or any of the other key issues noticed in this proceeding. The Hearing Officer indicated this morning that we would not be addressing water rights in this proceeding, and I don't understand why we need to talk about the safe yield of a particular portion of the valley, if there is such a thing. I don't see that that has anything to do with the issue in this proceeding.

H.O. BROWN: I concur with Mr. O'Brien. I am going to sustain the objection.

MR. MALONEY: Do you know what the reasonable water usage is in the Upper Valley on a per acre basis?

DR. TAGHAVI: That depends on the type of crops that is grown on a particular acre.

MR. MALONEY: What is the reasonable water usage for row cropping in the Upper Valley?

DR. TAGHAVI: Row crops being what was defined earlier today?

MR. MALONEY: Yes.

DR. TAGHAVI: I would say somewhere on the order of two foot of water, two acres, two to three acre-feet of water, two and two and a half acre-feet per acre.

MR. MALONEY: Is that applied water?

DR. TAGHAVI: That is applied water, yes, from what I understand.

MR. MALONEY: What is the reasonable use in the Forebay?

DR. TAGHAVI: On the same kind of crops?

MR. MALONEY: Yes.

DR. TAGHAVI: I would say about the same amount, somewhere between two to two and a half.

MR. MALONEY: What about the East Side?

MR. O'BRIEN: I am going to object again on the grounds of relevance. This is not a groundwater adjudication. The issue of reasonableness of the use of water throughout the valley is not an issue in this proceeding.

MR. MALONEY: May I speak to that, your Honor?

H.O. BROWN: Only if you want to change my mind.

MR. MALONEY: I want to change your mind.

H.O. BROWN: I was going to overrule.

MR. MALONEY: Excuse me.

H.O. BROWN: Go ahead, answer the question. You can answer without it being related to water rights, Mr. O'Brien. So, what is the reasonable use of applied water?

DR. TAGHAVI: That is what I was referring to. In the Forebay area we are talking about somewhere around two and two and a half acre-foot of water, acre-feet per acre on the

row crop.

In Pressure area?

MR. MALONEY: Yes.

DR. TAGHAVI: And for that matter most of the East Side area I would say that the applied water is somewhat less. You have a little more humidity and rainfall affects of the bay, so we are talking about, one, less than two foot of water. So I would say between 1 and 1.8 to 2.2 foot of water.

MR. MALONEY: What about the Pressure area?

DR. TAGHAVI: Same.

MR. MALONEY: Is that per year or per crop?

DR. TAGHAVI: That would be the applied water per -- applied water per acre per year.

MR. MALONEY: Applied water per acre per year.

What is the reasonable application of water for vineyards in the Upper Valley?

DR. TAGHAVI: The familiarity that I have with vineyard crops and practices that they have is just the applied water for beneficial use, which is for growing the crop is, somewhere around .8 to 1.2 acre-foot per acre of water.

MR. MALONEY: What is the applied water for crops, for vineyards in the Forebay?

DR. TAGHAVI: Probably about the same.

MR. MALONEY: East Side, if you know?

DR. TAGHAVI: I do not know much about the vineyards in the East side. There are vineyard growers in the East Side. I would suspect it would be somewhere around the same magnitude. It may be somewhat less.

MR. MALONEY: Looking at this, 2-6, where would I find a list of lands that are -- excuse me, 2-5, that are covered in the APNs, if you know?

DR. TAGHAVI: I am not sure what an APN refers to

MR. MALONEY: Assessor parcel numbers.

Where would I find a list of what APNs are in that area?

DR. TAGHAVI: There is no APNs marked in this exhibit.

MR. MALONEY: Or meets and bounds. Is there any meets and bounds on this exhibit?

DR. TAGHAVI: Not on this exhibit.

MR. MALONEY: Rancho descriptions?

DR. TAGHAVI: This exhibit was just purely developed for presentation purpose to show the extent of the study area, so it doesn't include such details.

MR. MALONEY: You prepared the exhibit?

DR. TAGHAVI: It was prepared by the Agency staff and provided to us.

MR. MALONEY: Mr. Virsik is going to examine Mr. Madruga.

Thank you.

DR. TAGHAVI: Thank you.

MR. MALONEY: Mr. Melton, do you have any opinion as to what is percolating groundwater in the Salinas Valley?

MR. O'BRIEN: Same relevance objection.

H.O. BROWN: Mr. Maloney.

MR. MALONEY: We are trying to determine whether there is any water under the jurisdiction of this State Board which these people can appropriate. And what we have to do is find exactly how much nonappropriative water there is and how much water is actually being used pursuant to right. One of the first things we want to determine is the level of percolating groundwater. This is the way it was done in the upper Salinas Valley.

H.O. BROWN: I am going to sustain the objection.

MR. MALONEY: Have you made any -- do you know what the term "underflow" means, Mr. Melton?

MR. O'BRIEN: Same objection.

H.O. BROWN: Time-out.

(Discussion held off the record.)

H.O. BROWN: Ms. Katz, I want you to make a statement for the record.

MS. KATZ: The State Water Resources Control Board has not made any determination of the legal classification of groundwater in the Salinas Valley. The fact that you have comments from Dave Sabiston, who is not a Board Member, who

is not representing the State Board, is not making any decision binding on the State Board, this --

H.O. BROWN: The point is that the State Board has not made any determination on percolating groundwater in the Salinas Valley, and there is nothing that I know of on the horizon that the State Board intends to do that.

It is your time, Mr. Maloney, that is just about up. If you proceed on this line of questioning I will permit it.

MR. MALONEY: Let me tell you what the problem is. Mr. Melton made a statement, very definite statement, that only groundwater is pumped in the Salinas Valley except for two people. We are prepared to show that there's a lot more than groundwater being pumped in the Salinas Valley. We want to hear the basis on which he is making the statement, because we are prepared to show that he's made different statements at public meetings in Salinas about underflow of the Salinas River and that is really the water we are taking and we are not taking percolating groundwater. We are trying to ask questions about his testimony on direct.

His direct testimony was they are only pumping groundwater except for Clark Colony, and I guess this particular application. Our problem is our clients are pumping underflow of the river extensively and the record shows that it is going to be accepted that it is only

groundwater. It is not groundwater. It is underflow. We are going to offer extensive testimony on that. Maintaining the underflow is a fundamental issue as to how much water has to be released out of that reservoir to maintain the underflow in its natural state.

H.O. BROWN: That is not the subject of the hearing, Mr. Maloney.

Mr. O'Brien, do you have any comment?

MR. O'BRIEN: No, sir.

H.O. BROWN: I am going to allow you to proceed with the questioning only because you have a few more minutes. I suspect you are about to the end of where you are headed on this issue, anyway. Ask the question and let's see where we go.

MR. MALONEY: I asked the question.

H.O. BROWN: Ask it again.

MR. MALONEY: Do you know what percentage of the water that you used in Salinas Valley is underflow of the Salinas River?

MR. MELTON: I have no knowledge about that.

MR. MALONEY: Do you know what the area of use of this application is?

MR. MELTON: I would agree with the general definition as provided by Dr. Taghavi previously, which is the area outlined in Exhibit 2-6, which represents the area of use in

the application.

MR. MALONEY: 2-6 or 2-5?

MR. MELTON: I said 2-6. I believe that is reasonably accurate.

MR. MALONEY: You have not looked at the actual area of use?

MR. MELTON: I have read the application and the existing permit and looked at the area of use. I can't sit here and tell you that is a hundred percent accurate representation of it as it was presented.

MR. MALONEY: You don't know if additional acres have been added to the application? You don't know if this is different than the actual application filed with the area of use on it?

MR. MELTON: This is a graphic representation of the area of use to the best of our knowledge.

MR. MALONEY: Do you know if the area of use includes San Luis Obispo County?

MR. MELTON: Off the top of my head, no, I don't know that.

MR. MALONEY: Do you know what the term "underflow" by the State Water Resources Control Board -- do you know what the term "underflow" as used by the State Water Resources Control Board means?

MR. MELTON: I would say no.

MR. MALONEY: I am through with one reservation. In our case in chief we would like to recall Mr. Weeks to authenticate some documents. We can stipulate to those for what that is worth.

H.O. BROWN: When we get to that point in time we will see where we are.

MR. VIRSIK: I have questions of Mr. Madruga somewhat out of order based on accommodation with counsel. The witness has a scheduling issue.

H.O. BROWN: Can the rest of the panel be excused?

MR. VIRSIK: Yes.

MR. MALONEY: Except for recall.

MR. VIRSIK: Yes.

MR. O'BRIEN: I have a couple redirect questions, Mr. Brown.

H.O. BROWN: That is correct.

MR. VIRSIK: Mr. Madruga, I am going to attempt to be brief, and I thank you for being here today. I know there was scheduling issues. I will ask and you give me answers. At least that part will be over.

Could you tell me -- let me get a tiny bit of background because your resume and the description of your duties don't actually appear in the Agency's case in chief, although they are referenced.

Can you give us a postage stamp description of what

your duties are at the Agency.

MR. MADRUGA: I am Joe Madruga. I am the Chief Engineer of the operations and maintenance division of the Water Resources Agency. I have been with the Agency for over 26 years now. My duties are to operate and maintain the reservoirs; operate and maintain all flood control facilities of the Agency; perform other flood control functions, including observation of potential flooding events and provide warning to the County of Monterey.

MR. VIRSIK: I think you said you are in charge of a -- among other things you have daily supervision of the Nacimiento Dam and reservoir; is that correct?

MR. MADRUGA: That is correct.

MR. VIRSIK: In that connection from time to time you make determinations as to releases from the reservoir; is that correct?

MR. MADRUGA: I do.

MR. VIRSIK: You don't have unfettered discretion to make releases -- let me put it in a more positive way.

Your discretion to make releases is limited, to some extent, isn't it?

MR. MADRUGA: The Agency has a policy regarding releases from the reservoirs.

MR. VIRSIK: Could you tell us what that policy is?

MR. MADRUGA: The policy was adopted by the Board of

Directors about three years ago. It's essentially out in a written form; the operation of the reservoirs regard flood control, water conservation and also identifies some recreation parameters.

MR. VIRSIK: Can you tell us your understanding of what the policy is; that is, when you are or not to release water, what are the conditions you are looking for? I am not trying to trap you. I am asking what basis do you understand that you are going to be releasing or not releasing.

MR. MADRUGA: For the flood control operation when the reservoirs reach certain levels, that is the bottom of the flood pools, then we make flood control releases to regain the empty space in the reservoirs so that they can function as flood control. And we have a rule curve for each reservoir that we follow as a guideline.

And for water conservation releases we release water for percolation any time that the Salinas River is dry. So that basically at the end of the, I would say, the wet season or rainy season once the natural flow in the Salinas River begins to diminish to the point where there are dry areas in the river, we begin releases from the reservoirs, San Antonio and Nacimiento, and percolate water into the groundwater basin through the river channel, attempting to minimize waste of that water to the ocean. That operation

continues until the following late fall or winter when natural flow occurs. Once natural flow occurs in the Salinas River, then we shut off the water and conservation releases. Usually that coincides with inflow into Nacimiento, so we are storing water then at Nacimiento.

MR. VIRSIK: Is it fair to say that most of your releases are during the hottest months of the year in a normal year? Let me make sure I am being clear. In a normal year most of your releases would be in the hotter months?

MR. MADRUGA: During hotter months we are making releases, yes.

MR. VIRSIK: Is that roughly from June to September in normal years?

MR. MADRUGA: These are the warmest months, and I would say in an average year releases are made from probably May through November into December, pretty typically.

MR. VIRSIK: When you make these releases are you taking into account the natural conditions that would have existed but for the reservoirs?

MR. MADRUGA: Well, when I am making the releases there is a, like, day-to-day operation, and that day-to-day operation really is to percolate as much water as they can into the groundwater basin without wasting water or having water flow to the ocean. So it is kind of, I guess, a more

of a rote process. We look at the end of flow somewhere near the Highway 68 bridge near Spreckels and we try to keep the underflow in that area. And if the end of flow goes past that area, we cut back on the releases. If it backs up, we increase releases. It's kind of a mechanical process there, and that is actual releases.

Of course, there is an overall policy of the Agency with regard to groundwater recharge and percolation that's considered or taken into account. So there really are two kind of two processes in consideration.

MR. VIRSIK: I didn't mean to cut you off.

Do you take into consideration the downstream water rights when you make releases?

MR. MADRUGA: As I explained, when I make the releases, it's kind of a rote situation and I'm taking into account the end of flow.

MR. VIRSIK: I understand you said it is a rote situation. I am also trying to make sure there are things that are not part of that rote.

Can you tell me if you also take into account what the groundwater water levels are when you make releases?

MR. MADRUGA: Well, again, as I explained, there is like two levels. There is the levels that -- there is the level that I look at when I am making the releases. That is the guidelines of percolating without -- and minimizing --

percolating as much as I can and minimizing flow to the ocean. But then there is also the overall Agency policy of percolate as much water into the groundwater basin as we can. So there is I guess two things going on there.

MR. VIRSIK: If you were charged with releasing waters to satisfy downstream water rights, do you have any tool available to you, a resource, that would aid you in that?

MR. MADRUGA: A hypothetical question. If I was charged with that, it would be a matter of using the same guidelines. I would release water as long as I had water in the reservoir down to the Spreckels area. All of the water users along the river would take water out as they do now, and that would be the type of operation, again a hypothetical consideration, question.

MR. VIRSIK: Is it fair to say that your release would not change if you were told to consider the downstream water rights?

MR. MADRUGA: The general guidelines would not change. I believe that would be the case. Again, this a hypothetical. But I believe the general guideline would not change.

MR. VIRSIK: I think you testified that you have been with the agency 26 years?

MR. MADRUGA: Correct, a little over.

MR. VIRSIK: Can you tell us when it was that the

Agency determined that the capacity of the Nacimiento Dam was actually in excess of 350,000 acre-feet? Do you recall that?

MR. MADRUGA: Actual calculations were made in early 1990s. I believe it might have been 1990 or 1991. Two different flights of San Antonio and Nacimiento to determine the volumes in 1987 and 1989. Those got us topographic maps of the reservoirs, and then it took us a while to process that data and get the actual volumes. So I am not sure of exact dates, but somewhere 1990, 1991.

MR. VIRSIK: Based on your long-term operation of the reservoir, do you have any reason to disagree with Mr. Taghavi's analysis of the frequency of storage in excess of 350,000 acre-feet, the historic analysis? I am not asking you to testify to the future.

MR. MADRUGA: From my perspective I haven't looked at my records to determine if it is exact. But it sounds about right to me.

MR. VIRSIK: Based on your experience in your day-to-day job duties, in a practical sense it sounds about right what Mr. Taghavi analyzed the historic storage?

MR. MADRUGA: A figure certainly sounds right to me.

MR. VIRSIK: When you open the reservoir, the Nacimiento, do you take into account the hydroelectric power plant that is associated with the dam?

MR. MADRUGA: I'm almost in charge of the operation of the power plant, so, of course, I take that into account. The releases are not made to generate power. Power is generated when releases are made. So we first determine the amount of releases to make from Nacimiento and then whatever that amount is. We run it through the power plant.

MR. VIRSIK: Were you operating the reservoir during the drought of '87 to approximately 1990?

MR. MADRUGA: Yes, I was in charge of operation of the reservoirs at that time.

MR. VIRSIK: Do you recall that during the spring months of 1990, that there were essentially no releases made from Nacimiento, or do you not have any recollection of that?

MR. MADRUGA: I have recollection that there were no releases made during 1990, yes.

MR. VIRSIK: Do you recall when releases did begin in earnest in 1950 to the end of the drought in 1990, if you recall?

MR. MADRUGA: I believe it was '92, but I don't recall exactly.

MR. VIRSIK: Would the Agency have kept records of those releases during that drought period?

MR. MADRUGA: Yes. We have daily records of all releases from the reservoir.

MR. VIRSIK: How long, to your knowledge, has the Agency kept daily records? Forever from your perspective?

MR. MADRUGA: Yes. Since the reservoir began operation in '57 for the Nacimiento and '67 for the San Antonio.

MR. VIRSIK: With the Board's indulgence, I am going to be handing a document to the witness, and I do not have the dozen or so copies that would be necessary for everybody. I just did not bring that. Why don't I give then everyone -- this will be my last set of questions for Mr. Madruga. I will hand it to the Board.

H.O. BROWN: Let's see what the document is.

MR. VIRSIK: I will give one to Mr. Madruga.

MS. GOLDSMITH: May I request that Mr. Maloney and Mr. Virsik make copies available to us tomorrow morning?

H.O. BROWN: All right. Gentlemen, can you do that?

MR. VIRSIK: We can do that when we next convene.

For the record, while we are reviewing it, that is a letter -- I don't have it in front of me -- it is a mid '50s letter from the State Board to the Agency's predecessor about the operation of the then new Nacimiento Reservoir.

H.O. BROWN: Agency to the State Board.

MR. VIRSIK: Agency to the State Board. There is correspondence. I don't have it in front of me; I don't know which direction it is, whether correspondence between the Agency and State Board.

MR. O'BRIEN: Can we give this an exhibit number, please?

MR. VIRSIK: This will be 24.

Very few questions. Mr. Madruga, have you, first, ever seen this letter?

MR. MADRUGA: Not that I recall, no.

MR. VIRSIK: To your knowledge, do you know if this, the reservoir operation system contained in that letter, was ever followed by the Agency?

MR. MADRUGA: I have not had a chance to read the letter in its entirety, so I do not know.

MR. VIRSIK: Would it be possible if you did read the letter you could tell us, based on your experience with the Agency that -- I will ask two questions just to preview you can read all of it. Is whether, to your knowledge, that system or one that is substantially similar has been followed by the Agency, based on your wealth of experience there? And two, again, based on your wealth of experience, whether that system could be followed by the Agency now, not whether it is a good or bad policy, albeit, but whether you could implement such a system? Only two questions I have about that letter.

H.O. BROWN: All right.

MR. MADRUGA: I have briefly reviewed this letter. I would like to take a little longer to study it, to see

exactly, but generally Paragraph A talks about inflow into the reservoir, and essentially we are. There is a gauging station on the Nacimiento River. Inflow is determined as stated in this Paragraph A on Page 1.

In other words, it's a computational thing taken into account: storage, evaporation, change of reservoir storage.

Regarding on Page 2, regarding releases from Nacimiento Reservoir, it says measured directly at a lower USGS station. We are doing that. That station exists. However, we have a pretty good handle on the actual flows from the high level and low level outlets at Nacimiento, and we also keep track of it based on our settings for those valves. So we also make measurements that way. In other words, if we open the high level gauge to 50 percent, we know more or less that that is 2600 cfs. We keep track of it that way, also.

Regarding C, the change in storage in Nacimiento Reservoir, we do directly measure that on a daily basis. Discharge to Salinas River into Monterey Bay D, there is a gauge station at Spreckels. That is a gauge of record. Anybody can look that one up.

Regarding D, monthly measurements, depth to groundwater, that was done on a monthly basis for a number of years, 20, 30, maybe, 20 or 30 years. In more recent times, due to budgeting constraints, we have gone to fewer

than monthly measurements of those groundwater wells. We are measuring.

So this one, we are still doing that program, but it is not on a monthly basis, as far as groundwater measurements.

And then the estimate of augmentation to groundwater supply on Page 3, that was done for quite a number of years, also, each year in more recent times. Again, budget constraints have caused us to back away on that. We do not have all of the years. Say in the past 15 years we have not made estimates of the actual augmentation. That is as complete an answer I can give.

MR. VIRSIK: I think that is a fair response to the two questions in both counts.

Let me make sure I have my notes right. As to the portion under F, you said your recollection approximately -- you have not done that, the Agency has not done that within approximately the last 15 years; is that correct?

MR. MADRUGA: This was done, I believe, in 1994 and 1995 water years, but over about the last 15 years there -- most of those years, with those two exceptions, I don't believe this was done in the detail that we did it, say, the first 30 years or so.

MR. VIRSIK: Also as to D, which called for monthly data collection, you are doing that less frequently in recent times.

Can you tell us, do you have a year figure? Do you know if it's been two years, 20 years?

MR. MADRUGA: It's actually the second time. I Just noticed in this letter there are two Ds. It should be E; the first D should be E.

Yes, we are doing that, measuring wells, less frequently than monthly.

MR. VIRSIK: Do you know when you stopped measuring monthly? Couple years or longer time?

MR. MADRUGA: Fifteen years or so, possibly in that time frame.

MR. VIRSIK: That is all the questions I have for Mr. Madruga.

H.O. BROWN: Thank you.

Ms. Lennihan.

MS. LENNIHAN: No cross-examination.

H.O. BROWN: Ms. Goldsmith.

MS. GOLDSMITH: No cross-examination.

H.O. BROWN: Staff.

Redirect.

MR. O'BRIEN: Thank you.

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REDIRECT EXAMINATION OF

MONTEREY COUNTY RESOURCES WATER AGENCY

BY MR. O'BRIEN

MR. O'BRIEN: Dr. Taghavi, Mr. Maloney asked you a series of questions, the gist of which was whether you had specifically considered a series of different types of water rights in preparing your analysis.

Do you recall those questions?

DR. TAGHAVI: Yes, I do.

MR. O'BRIEN: My question to you, sir, is whether your hydrologic analysis indirectly considers the needs of downstream water rights holders in the various model runs you did, and if so how does that occur?

DR. TAGHAVI: Actually, indirectly we do include the water rights considerations downstream. And that is by considering the place of use and the Zone 2 and 2A's boundaries which are within the boundaries of the model area, the study area and model area. The landowners and the water used by the landowners and the land use that occurs on the overlying lands within the boundaries of the model do indirectly consider the water rights and the users and the water use within the boundaries of the model. So it does include that indirectly.

MR. O'BRIEN: When you say it does include it indirectly, is that through the analysis of changes in

groundwater levels on a valleywide basis?

DR. TAGHAVI: Yes, it does.

MR. O'BRIEN: Mr. Weeks, in the questioning of Mr. Madruga he made reference to a release policy which is established by the Agency.

Do you recall that?

MR. WEEKS: Yes, I do.

MR. O'BRIEN: Who sets that policy?

MR. WEEKS: The policy is set by the Board of Directors. Actually it is a two-stage process. The Reservoir Operations Committee meets on a regular basis, sets the policy for releases and subsequent in the year it is passed by the Board of Directors.

But there is also two documents that are reservoir operation policy manuals that have been approved by the Board of Directors. So it is pretty much a decision that is made by the full Board.

MR. O'BRIEN: In the course of making that policy determination does the Board consider the needs of water users downstream of the two reservoirs?

MR. WEEKS: Certainly. One of the key parameters that the Board considers is how well a job we are doing recharging the groundwater basin. It is the key component to operating the reservoirs as to how much groundwater is recharged and then is providing beneficial use for all the

pumpers from the groundwater basin.

MR. O'BRIEN: Thank you.

No further questions.

MR. MALONEY: We have recross.

H.O. BROWN: Thank you, Mr. O'Brien. We'll do recross now.

Mr. Donlan, any recross? ^

MR. DONLAN: No, I don't.

H.O. BROWN: Anyone here from Marina?

Clark County, Mr. Bezerra.

MR. BEZERRA: No recross for Clark Colony and no recross for Rosenberg Family Ranch.

Thank you.

H.O. BROWN: Mr. Maloney.

MR. VIRSIK: Very brief recross of Mr. Taghavi.

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RECROSS-EXAMINATION OF

MONTEREY COUNTY WATER RESOURCES AGENCY

BY SALINAS VALLEY PROTESTANTS

BY MR. VIRSIK

MR. VIRSIK: In response to Mr. O'Brien's question, you said indirectly your analysis -- I want to use the correct verb and I am not sure which one to use -- accommodates or considers or something the water rights and uses. And I think that is what you said, but I do want to be very clear

about it.

Did you say the water rights and the uses of the water? That is what I understood you to have said.

DR. TAGHAVI: What I alluded to is through analysis of the land use as well as the water use in the areas and the lands that overlie the groundwater basin, which are included in the boundaries that we do consider as the model boundaries, the water rights, the water rights of landowners and overlying lands are considered.

MR. VIRSIK: Perhaps I am being dense. Can you tell me how it is the rights of these landowners are considered in your analysis. I will ask you that question.

DR. TAGHAVI: By simulating the groundwater system and surface water system, the Salinas River system as well as reservoirs, the model accommodates for release of water on a timely manner so that the proper percolation and recharge is made to the groundwater basin so that all the landowners that overlie the groundwater basin can pump the groundwater for beneficial use.

MR. VIRSIK: Is it fair to say then that your analysis assumes that the water rights of the landowners are uniform?

DR. TAGHAVI: I am not quite sure what you mean by "uniform."

MR. VIRSIK: You stated that you are releasing water

from the reservoirs to accommodate releases from, I believe you said, proper percolation. And at no point did I hear you to say that the proper percolation may be of a greater or lesser degree based on the water rights of the various lands that may be receiving this percolation.

DR. TAGHAVI: Let me explain what the model does, and that is basically try to simulate the operation of the reservoirs and the groundwater basin in the same manner that Mr. Madruga a few minutes ago explained. And that is increase and maximize the recharge through the Salinas riverbed, streambed, and extend the full front of the basin up north to approximately Highway 68 and the Spreckels area. That is the gist of the simulation of the model.

And if in the operation of the basin the Agency does consider any of the rights the way you are explaining, as far as more percolation in some areas and less in some other areas, then that is what the model does. That is not my understanding of the way the system works or operates.

MR. VIRSIK: I am still confused about how the water rights work, accommodated in your analysis.

Is there a program, a diagram, a place, a file, that I can go to find what the quantity of the water flows for water rights that you have accommodated in your water is located so I can find what that number is?

DR. TAGHAVI: Like I said, there is no specific water

rights, per se, called out in the model. What we have included is the calculation of the pumps, the groundwater pumps by the landowners within the basin, within the boundaries of the model, and release of water so that the proper percolation is made for this initial calculation. So there is no specific water rights called out in that fashion. All I try to allude to is indirectly we are considering the water rights of landowners on overlying lands.

MR. VIRSIK: That is all I have.

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

Ms. Lennihan, any recross?

MS. LENNIHAN: No, thank you, your Honor.

H.O. BROWN: Ms. Goldsmith.

MS. GOLDSMITH: I approach with trepidation. I am trying to help.

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RECROSS-EXAMINATION OF

MONTEREY COUNTY WATER RESOURCES AGENCY

BY SALINAS VALLEY WATER COALITION

BY MS. GOLDSMITH

MS. GOLDSMITH: Mr. Taghavi, is it safe to say that in analyzing water use in the Salinas Valley it is assumed that if people pump they have water rights to pump?

DR. TAGHAVI: Repeat again. I want to make sure I

understand.

MS. GOLDSMITH: Is it safe to say that in modeling the water hydrology of the Salinas Valley that the model assumes that if people pump they've got water rights to pump?

DR. TAGHAVI: The model assumes that they have water to pump, but not the water rights. They do not specifically call out for any water rights in the model.

MS. GOLDSMITH: The model does take water that is pumped and uses it as water that is pumped?

DR. TAGHAVI: That's correct.

MS. GOLDSMITH: Hoping that that clarifies something, I will sit down.

Thank you.

H.O. BROWN: Staff, any recross?

Mr. O'Brien, would you like to offer your exhibits?

MR. O'BRIEN: Yes, we would like to offer Exhibit 1-1 through 5-3 as set forth on the exhibit identification index.

H.O. BROWN: Are there any objections to the offer of those exhibits into evidence?

Seeing none, they are so accepted.

MR. O'BRIEN: Thank you.

H.O. BROWN: Thank you, gentlemen.

Mr. Donlan. ^

MR. VIRSIK: Your Honor, I have a procedural motion.

H.O. BROWN: Step forward.

MR. VIRSIK: If that is not overly redundant.

We are going to renew our motion under 1276, failure to timely provide information, cancellation time extensions. We understand that your Honor made a ruling this morning holding that there had been no deadline in the letter sent from the State Board on or about March 26, 1999, to the Salinas Valley Protestants, a copy of which letter and a copy of same letter was sent to the Agency, which required under 1275 of the Water Code for the Agency to meet its showing under 1260(k), reading from the letter, to show among other things a water availability analysis which considers the flow needed to satisfy downstream prior rights.

We submit that the time frame in which the Agency can comply with that letter has now elapsed; that if they did not make the showing in the exhibits they submitted by June 23rd, they had every opportunity to make it today and they had every opportunity to make it by direct, recross or wherever else they try to make it.

Our point is that the Salinas Valley Protestants were -- I am going to mispronounce that. I went to Catholic schools. Forgive me about that one -- relied detrimentally on the letter from March 26, 1999, saying that the Agency was, in fact, obligated to provide the analysis. We

understand there need be a sheet of paper or a volume labeled "Water Availability Analysis" in compliance with the March 26, 1999 letter, or any such chart which says "The Flow Needed to Satisfy Downstream Prior Rights." However, the Agency, especially the latter testimony of Mr. Taghavi, shows that they did not at all accommodate or look at the flows needed to satisfy downstream prior rights.

Had they, perhaps there would have been no problem. We do not know that. The point is that they have not met their burden. As they have not met their burden, 1276 states that if within the period provided, which again could be no later than this moment, the applicant does not provide information requested under Section 1275, and the record shows a letter that was sent under the only Code Section 1275, that unless for good cause shown, and perhaps there is good cause, perhaps there is an extension that could be granted, the application shall be cancelled. This is before any evidence of anyone else need be considered.

So we are renewing the motion based upon the Agency's showing and based upon the lapse of time till now.

Thank you.

H.O. BROWN: Mr. O'Brien, do you have a response?

MR. O'BRIEN: We have briefed and argued this issue before. I don't want to spend a lot of time on it. The Board has ruled on the issue, but I will just quickly

respond to Mr. Virsik.

We presented very extensive evidence in this proceeding which shows two things. First of all, shows that this water, this 27,900 increment of water, has been stored on a number of occasions over the years of operation. It also shows that there has been no injury to any downstream water user as a result of that storage. There has been no decrease in groundwater levels. There has been no other, any other injury put into this record. In fact, the only evidence of effects, hydrologic effects, of that storage is that there has been a benefit to downstream water rights holders in the form of higher groundwater levels during drought periods.

I don't know what more Mr. Virsik thinks we need to show to establish that this water can be stored without injuring downstream senior water right holders. But if he thinks there is other evidence out there that would demonstrate that, he's free to come in in his case in chief and present that evidence. So far there is nothing in the record that supports that claim.

What he is clearly doing is trying to put on the Agency a burden beyond any burden that I've ever seen in a water right proceeding. He is asking us, in fact, to adjudicate the basin first before we can go in and apply for a water right. We don't need to do that. All we have to show is

that we can appropriate this water without injuring a senior water user, which we have shown. And, in fact, we have shown that those users, Mr. Virsik's clients, have been benefited.

Thank you.

H.O. BROWN: Ms. Katz, do you have a comment?

MS. KATZ: Yes, I do. Once a matter comes to the Board at a hearing, it is then up to the members of the State Water Resources Control Board to make that determination, whether to approve, approve of conditions, or to deny the application.

As I have explained to you before, Mr. Virsik, we are past the cancellation stage. The application was accepted as complete. And we do not -- as a standard Board practice, we do not require applicants to determine all water rights or to quantify them. They don't have that authority or that ability, and we rely on protestants to have a showing of injury. So, the purpose of this hearing is to let the applicants put on their case, you put on your case. Everyone puts on their case and then the Board makes a determination.

H.O. BROWN: Thank you, Ms. Katz.

Mr. Virsik, last word.

MR. VIRSIK: Very quick rebuttal. Injury is irrelevant at this stage. Yes, that is our burden and we will have our

case in chief. Obviously we haven't gotten to it yet. Injury doesn't make any difference.

We are relying on 1275 and 1276, which states, and notwithstanding the procedures or history of the Board -- the Water Code spells out the burdens of applicant, spells out the burdens of protestants. And our reading, and if the Board determines it is wrong, and it so determines, we will have a full record on this matter as to the rationale and positions of the parties and the procedures that the Board, staff of Board, determined that applicant must meet a particular threshold, may or may not have been the best or worst threshold in the world, but it was a threshold that asked it to meet. And we relied on that threshold as we have every right to do since we were served with the letter that told us that is what the Agency was required to do. And having us show injury, which we will, again, in a case in chief, prior to determining there is unappropriative water is standing the burdens on their head. It would be our burden to show they are wrong. It is their burden to show they are right before we have to show anything else.

That is the position of the motion and we will proceed based on whatever ruling your Honor makes.

H.O. BROWN: Excuse us for just a moment.

(Discussion held off the record.)

H.O. BROWN: Thank you, all of you, for your persuasive

arguments. My decision, the motion is denied. We proceed.

Mr. Donlan.

MR. DONLAN: We have an exhibit that we would like to hang up in some way. Is there an easel or something? I probably should have talked to you in the break.

H.O. BROWN: This is a good time to take a break to give you extra time to set up. We will meet back here at 25 till three. You may have to go across the street to get a cup of coffee. You can bring a drink back, but make sure it has a lid on it.

(Break taken.)

(Oath administered by Hearing Officer Brown.)

H.O. BROWN: Proceed.

MR. BEZERRA: Good afternoon, Mr. Brown. My name is Ryan Bezerra. I am the attorney for Rosenberg Family Ranch and Clark Colony.

Mr. Donlan has kindly allowed me to make a request, not of Mr. Scalmanini but of the Board, in that it appears we may or may not reach Rosenberg Family Ranch and Clark Colony today. I request that rather than beginning their testimony and not complete it today, that we take it up first thing tomorrow morning. In particular because the Rosenbergs have come in from out of state and have been up since 4:00 a.m. So I was hoping that we might just be able to start with them tomorrow morning.

H.O. BROWN: Mr. Donlan, how much time do you need on direct?

MR. DONLAN: We are hoping this will be real quick, might just be 20 minutes. I guess it depends on Mr. Maloney.

H.O. BROWN: All right, I think we can accommodate that. We may leave a little early tonight. That's all right.

MR. BEZERRA: Thank you very much. I appreciate that, Mr. Brown.

H.O. BROWN: Mr. Donlan, you are up.

MR. DONLAN: Good afternoon, Mr. Brown, Ms. Katz, Mr. Long and Mr. Meinz. My name is Robert Donlan. I will be presenting the testimony of Tanimura & Antle, actually the opening statement of Tanimura & Antle, and Mr. Scalmanini will be presenting their testimony.

Tanimura & Antle is appearing in this proceeding as an interested party in support of Monterey County Water Resources Agency's Application No. 30532, which is a permit to appropriate water from Nacimiento River for storage in Nacimiento Reservoir.

Tanimura & Antle is an agricultural corporation based in the Salinas Valley who has farmed land for many decades. Over the course of the past several years Tanimura & Antle have spent hundreds of thousands of its own dollars in

efforts to develop a cost-effective, reliable and permanent solution to the water quality and water supply problems in the Salinas Valley. Tanimura & Antle's only direct testimony in this proceeding will be presented by Mr. Scalmanini and will address two main points.

First, Mr. Scalmanini's testimony will address the importance of the Agency's application toward assuring the most cost-effective management of the basin's water supply. While not the subject of this proceeding, the increment of water sought by the Agency under Application 30352 will help ensure that basin resources are optimized for the needs of the entire Salinas Valley. Water quality and water supply problems, if left unaddressed, will result in irreparable damage to yield and usefulness of the Salinas Valley groundwater basin, the primary water source for the valley.

Seawater intrusion will not only decrease the productivity of the valley's agriculture land, but will also have a substantial adverse effect on the valley's municipal and potable water supplies. The Agency's application, to the extent it addresses seawater intrusion to any degree without impact to other water uses, is in the public interest.

The second reason why Tanimura & Antle is appearing in this proceeding is to assist the Agency in refuting claims by certain protestants that approval of the Agency's

application will somehow result in harm or injury to water supplies or water rights in the Salinas Valley. Tanimura & Antle has analyzed the testimony submitted by the Agency and agrees with the Agency's conclusions that the appropriation of water under Application 30352 will not cause harm or injury to water rights or fish and wildlife resources. In fact, as Mr. Scalmanini's testimony will demonstrate, the historical operation of the reservoirs, including the quantity that the Agency is now applying for, have provided benefit to groundwater levels enjoyed throughout the entire Salinas Valley, including the Upper Valley and Forebay subareas where the Salinas Valley Protestants' lands are located.

Now we will submit Mr. Scalmanini's testimony.

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DIRECT TESTIMONY OF TANIMURA & ANTLE

BY MR. DONLAN

MR. DONLAN: Would you please state your name for the record.

MR. SCALMANINI: Joseph C. Scalmanini.

MR. DONLAN: Are Tanimura & Antle Exhibit Number 1 and Exhibit Number 2 true and correct copies of your testimony and resume?

MR. SCALMANINI: Yes, they are.

MR. DONLAN: Will you please summarize your testimony.

MR. SCALMANINI: I was asked by Tanimura & Antle some time back to analyze historical groundwater conditions in the Salinas Valley, with focus on the impacts of reservoirs operations since the construction of Nacimiento and San Antonio Reservoirs which were in the mid 1950s and mid 1960s.

H.O. BROWN: Move the microphone closer.

MR. SCALMANINI: I subsequently was asked by Tanimura & Antle to develop an alternative water supply project that would finish the job of stopping seawater intrusion and contribute to the overall hydrologic balancing of the groundwater basin.

H.O. BROWN: Mr. Maloney, you rise?

MR. MALONEY: I am right? Excuse me, I thought you were agreeing with me before I had anything to say.

I didn't think we were going to get into the Salinas Valley Water Project. Most of Mr. Scalmanini's testimony will be about the Salinas Valley Project, and we are more than willing to get into it and talk about its problem and everything else. But we don't think it's appropriate to put testimony on at this point. We tried to limit our cross-examination on the issue and make the hearing a lot more complex than it needs to be.

The only thing that is really important to us about the Salinas Valley Water Project is will the -- does the Salinas

Valley Water Project contemplate the modification of the reservoir releases and the amount of water stored? That is the only issue that should be discussed in this hearing. Because if the Agency is going to change the way it stores water in the reservoir so there is more than nine days -- nine years in which there is water available, more than, I think, 110 days in which water is available that should be an issue of this hearing.

But the project itself and its validity and all the rest of that stuff, we don't think should be discussed at this point in time based on your earlier rulings, your Honor.

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

Mr. Donlan.

MR. DONLAN: I think that in your review of an application one of the things that you take into account is the public interest. And to the extent, as I said in my opening statement, that this water can be used as the Agency intends to use it, although not the subject of this proceeding, it certainly goes to the question of whether or not the application is in the public interest or whether or not the water will be put to reasonable and beneficial use.

If Mr. Maloney has a better idea of how that water can be used, that is not the purpose of this proceeding.

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

MR. MALONEY: We do have better ideas.

H.O. BROWN: Last word, Mr. Maloney. You have the last word.

MR. MALONEY: We do have better ideas that that water can be used. There is a lot of good fish out there that would like to grow. That is the first way that it can better be used.

The second way it can better be used is the development of 110,000 acres of good, solid vineyard land in the south. We are willing to put testimony on as to that fact. We think one of the big issues we are going to have here is is this application going to be put to beneficial use. And we will be putting testimony in on that.

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

(Discussion held off record.)

MR. DONLAN: If I could add one thing, the discussion of Salinas Valley Water Project is only a small part of Mr. Scalmanini's testimony. The lion's share of his testimony goes to the issue of water availability and whether or not the reservoirs have ever provided benefit. That is clearly an issue.

H.O. BROWN: Mr. Maloney is correct in that regard. Salinas Valley Project really is not the issue at hand here. So you may want to reconsider how much you are going into that, if any, on your direct, Mr. Donlan.

Please proceed.

MR. DONLAN: Thank you.

Mr. Scalmanini -- I assume that we were off the clock.

H.O. BROWN: Go ahead. The clock stopped.

MR. SCALMANINI: The purpose of my testimony as written, anyway, was threefold:

To illustrate that there has historically been a substantial benefit to the groundwater supply in the Upper Valley and the Forebay.

The historical operation is the second. The historical operation of reservoirs has not interfered with or harmed the groundwater supplies to the southern part of the valley as illustrated up here earlier, known as the Upper Valley and Forebay.

And the third part, which will go as appropriate, the planned future operation of the reservoirs to complete the control of seawater intrusion will continue the historical groundwater benefits and not interfere with their otherwise harm to groundwater supplies in the Forebay and Upper Valley.

Interestingly, I don't know where the Salinas Valley Water Project came from. I don't think I mentioned it yet, but we will just talk about the things that I just mentioned.

H.O. BROWN: We are having difficulty hearing you, Mr. Scalmanini. Slow it down and pull that mike in front of

you.

MR. SCALMANINI: To go back to what I was originally asked to do, which was to look at the historical conditions in the groundwater basin. All of what I will discuss here in the next few minutes is based on existing historical data and is not based on any model or other simulation.

The so-called conceptual model as I identified in my written testimony is an examination of the three principal components of groundwater storage and the water supply system in the valley. Number one is the groundwater pumpage or satisfaction of the water requirements for irrigation. Secondly, storage in the groundwater basin. And thirdly, stream flow losses such as they contribute to groundwater recharge and, as I just said, all based on existing publishing or unpublished data.

In sort of a summary introduction, it's obvious on examination of the groundwater basin, particularly in the areas that I just mentioned, the Upper Valley and Forebay, where there is a claim of harm, that there have been essentially constant groundwater conditions throughout that part of the groundwater basin from well prior to the reservoirs, meaning prior to 1957 when the first of the two reservoirs, meaning Nacimiento, was constructed but put in service to the present time.

Over the same time, from let's just say World War II

era to post-World War II era to the present, there have been a significant increase in lands put into production and irrigated. And in light of the fact that there is a combination of new lands in service and -- or in production, excuse me, and constant groundwater conditions, there has to have been some additional groundwater recharge into the system. It is impossible for the basin to stay full and uncharged over 40 to 50 years in the face of increasing water demands on it and not have new recharge to the system. Otherwise, groundwater levels would have declined and storage would have been depleted.

In my written testimony I go in sort of a subject-by-subject basis, which I would like to summarize as quickly as possible. Then we can respond to questions appropriately.

But since approximately World War II, there has been for all practical purposes about 50-percent increase in irrigated lands in the Salinas Valley. The growth rate of those lands is illustrated in Figure 1 of my written testimony. And a general picture of the growth is illustrated in Figure 2 of my testimony which is also hanging on the Board behind me.

If I can point to it real quickly and step away from here, I will talk a little louder.

You can see graphically illustrated from land use

mapping sources which are identified in my original written testimony, but in this case for 1945 an illustration in green of the lands that were irrigated in 1945 as documented in the Division of Water Resources Bulletin 52, which was published in 1946. And then just for a visual comparison you can see two things really in the early 1980s and it's been pretty much a flat curve since the early 1980s.

Based on land use mapping by the Department of Water Resources in 1982, that there was close to build out in the valley overlying the groundwater basin, and that as I mentioned a minute ago, essentially about a 50-percent increase in land use, irrigated land use, from what existed at the end of World War II to what existed in the early 1980s and continued to the present.

In acreage numbers, from immediately prior to the reservoirs, that is in the early 1950s, about 136,000 acres were irrigated in the valley. And using the more or less constant number since the early 1980s, about 195,000 acres have been irrigated in the valley.

Now one of unfortunate things in any discussion that dealings largely with agricultural water use is the fact that much of it is not metered. So there are not records of actual pumpage. And there are varying methods available to estimate what groundwater pumpage has been to satisfy the irrigation of the kind of lands that I just discussed.

Fortunately, at the present time there is, I'll call it, a metering program which consists of conventional water meters as well as other methods for estimating indirectly what pumpage is from wells. And there is enough available information at present on which to estimate what historical about groundwater pumpage was versus time for the periods.

But in general there has been something close to an approximately 50-percent increase, corresponding to about a 50-percent increase in the irrigated land use. There has been an approximately similar increase in water use pumpage from the valley.

Most of the increase in both land use and in water use in the valley has occurred in the Upper Valley and in the Forebay. So the bulk of increase in pumpage has taken place in those areas as well.

The growth rate based on estimates based on land use of water pumpage, estimated irrigation pumpage, in the valley is summarized on a subarea-by-subarea basis for the four -- for four of the commonly known subareas in the Salinas Valley: the so-called Pressure Zone, East Side, Forebay and Upper Valley. In my written testimony in Figures 3 through 6.

As I mentioned at the outset, when we first started to look at the groundwater basin in the Salinas Valley, we obtained the entire database of groundwater levels and

groundwater quality as maintained by the Agency, which includes measurement of water levels from as infrequently as yearly to as frequently as semiannually to in some cases a little more frequently. Most of them fall into the category of either annually or semiannually.

We plotted hydrographs of literally every available well water level record in the valley. Ultimately, we selected some of those for illustration purposes, and they are illustrated from one end of the valley to the other in my written testimony as Figure 7 through 18. For illustration purposes they are all combined on one plate, which is also hanging here. It is included as Plate 1 in my written testimony and is hanging here on the board.

I would like, if I could, to spend a couple of minutes walking from one end of the valley to the other to illustrate how groundwater levels have or have not changed with time.

Hydrographs of groundwater levels that are presented in individual form in my written testimony and on this plate extend from the vicinity of San Ardo at the far upper end of the Upper Valley and continue progressively with, I think we had, three illustrations of water levels in each of the four subareas that I just mentioned: in the Upper Valley, the Forebay, East Side and Pressure Zone.

Of consequence or of significance in looking at these

hydrographs, literally from one end of the valley to the other, but focusing at first on the Upper Valley and Forebay, is a recognition that groundwater levels have been more stable and more constant since the construction of Nacimiento Reservoir through the present with only one exception, which I will talk about in just a moment, throughout those first two subareas.

So, in the face of increasing water use, but in some respects despite increasing water use or almost irregardless of increasing water use in the areas, the fact that there is a full and overflowing groundwater basin throughout that reach of the system suggests that there has been no change, no harm and, if anything, I would argue some benefit given the timing of the recharge that supports these constant groundwater levels, as I just mentioned.

But that is illustrated from hydrograph to hydrograph to hydrograph as one walks down the valley from the north end to the -- excuse me, from the south end to the north. As perceived beyond Forebay, the Forebay being named by the Division of Water Resources back in the mid 1940s when it was first studied the problem of saltwater intrusion into the Salinas Valley from Monterey Bay, the Forebay is the recharge area or just Forebay or the Pressure Zone and the East Side.

As one proceeds past that Forebay recharge area into

the East Side and Pressure Zone, particularly moving farther away from the contact between the Forebay and those other two subareas, then there has been a continuation of groundwater level decline on the East Side, a continuation at a lesser rate of groundwater level decline through the Pressure Zone, which suggests the need for continuing with the solution of the problem that the reservoirs were first part of.

By why of reflection, Bulletin 52, which studied this problem in the 1940s, identified the solution to declining water levels and intrusion in the north part of the valley by transferring groundwater from the southern part of the valley, specifically the Forebay area, via an overlain conveyance, a canal, to the East Side and to the Pressure Zone and distributing that water for substitution of pumpage in those areas.

The reservoirs which were mentioned as a possibility because they were under study at the time when Bulletin 52 was prepared, were envisioned to capture or conserve surplus flows and ultimately recharge those if it worked out that, and it did. So the operation as it has evolved with time and has been the conservation of water in the reservoirs, the release of water down that stream channel for groundwater recharge purposes and the potential for yet the final piece in whatever configuration it might turn out to

deliver and conserve water to replace pumpage in the north.

At any rate, though, the historical look says that the groundwater basin has been and continues to be full and stable in the Upper Valley and Forebay in response to the conservation and release of the water to the river channel for recharge. And there continues to be a decline in groundwater levels in both the East Side at a higher rate and the Pressure Zone at a lower rate, which suggests the need for continuation of solving the problem.

One other thing with regard to groundwater levels that is worthy of note is the fact that when one looks at how the system actually responded to hydrologic conditions, the significant drought period of 1987 to '92 was surmounted for a long period of time, as in the first three years, by releases from the reservoirs which held conserved water. When you look at hydrographs of groundwater levels you can see that for the first three years of the drought the groundwater levels remained full because of the seasonal recharge that took place as a result of the releases from the reservoirs.

It was only after the fourth year occurred that -- and the reservoir storage ran out that groundwater levels declined rather significantly, suggesting in the absence of that seasonal recharge that those kind of drought impacts would be realized sooner rather than later. That is to say,

there wouldn't be the drought protection associated with wet weather releases.

Finally, with regard to, I will call it, a historical look at how the system has responded. There are two figures in my written testimony. Figures 19 and 20, which illustrate stream flow in the system at the upper end of the valley and the lower end of the valley. And we analyzed those to look at how the system responded in an absence of any conservation of water. How much rainfall runoffs stream flow is there with and without reservoirs, particularly during the irrigation season.

An examination of what happened to the system prior to the construction of reservoirs is limited to a seven-year period because there was only gauge data from the upper end of the valley from 1949 to 1956, which is immediately before the introduction of Nacimiento Reservoir to the system. There was gauge data at Spreckels at the low end of the system. Flow past Spreckels for practical purposes could be considered to be lost to the ocean although there might be small, small amounts of remaining recharge to shallow aquifer materials once you get past Spreckels.

But in looking at the flow records and recognizing that there was no base flow past typically May, possibly as late as June, but in the summer months or irrigation season when pumping is occurring, that there was no flow into the

system, in the river channel, and there was no recharge from the river channel in an undeveloped state or prereservoir state. The recharge to the system then occurred just in the couple of months of springtime before the river ran dry.

And on average, over the time period that I just mentioned, from 1949 to '56, about 56,000 acre-feet per year on average disappeared, if you will, from flow into the system at Bradley that didn't get to Spreckels.

Looking at a system after the fact, meaning after reservoirs were constructed, there is significant flow at Bradley, at the upper end of the valley, as a result of releases from the system. And looking again at a change in flow between the introduction to the system at Bradley and the exit from the system at Spreckels. We now have one more piece of available data, which is a gauge that has been installed at Soledad since the reservoirs were put in place. Then on average, about 155,000 acre-feet per year are, if you will, lost or recharged from the stream channel between Bradley and Soledad during the irrigation season. Or during the irrigation season there is an active artificial recharge system that introduces some hundred thousand acre-feet of water per year at the same time the pumping is taking place, which contributes directly to the constant hydrographs that I have illustrated before, that keeps the basin full on an ongoing basis year in and year

out. I mentioned in passing that despite this full Forebay and full Upper Valley over the last 40-plus years now, that there has continued to be a decline in groundwater levels in the East Side and there has also been a lesser decline in the groundwater levels in the Pressure Zone area, which has allowed intrusion to continue to advance inland. So the full solution of seawater intrusion, as envisioned in the Bulletin 52 write-up by the Department of Water Resources about 55 years ago hasn't been completed, and there still needs to be a delivery of water from some source -- we can talk about the available sources here in a second -- but from some source to release some pumping stress near the coast to finish that part of the overall solution.

In conclusion, with regard to a conceptual look at the historical system, the maintenance of an essentially full groundwater basin throughout the Upper Valley and Forebay on a year-round basis, including through the irrigation or pumping season, clearly shows that the historical operation and including intermittent storage of water, which is the subject of this pending application, has not interfered with or harmed or otherwise had a negative impact on the groundwater supplies of those upper parts of the valley, meaning the Upper Valley and Forebay.

It is provided -- if the reservoir operations, it is provided a year-round active groundwater recharge for

infiltration of reservoir releases through the artificially live stream channel of the Salinas River, and there has been a substantial degree of drought protection by maintaining that recharge through the Salinas River channel in multiple years after the onset of drought, at least in one lengthy drought where the system could be stressed.

As far as the future solution goes, there is available water in the system to solve or to implement a solution like was proposed by the Division of Water Resources in the 1940s and variations on that theme have been advanced with time since then. There is a current version of that which envisions continuing to use the stream channel as a conveyance to conserve water for releases all the way to the north end of the valley and a diversion from the stream channel to supply water in lieu of pumpage at the north end.

Analysis of the current version of that, and there have been multiple versions over the last 30, 40 years, an analysis of the current version suggests that with available water in the system and continuing the recharge system that I have just described, that there is sufficient water to stop seawater intrusion. But analysis suggests that that will just barely stop seawater intrusion. In that light, the availability of even the smallest increment of water on a very intermittent basis that is being applied for in this

application by the Agency will help to solve that problem.

That is the summary from start to finish.

MR. DONLAN: Thank you.

H.O. BROWN: Cross, Mr. O'Brien.

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CROSS-EXAMINATION OF TANIMURA & ANTLE

BY MONTEREY COUNTY WATER RESOURCES AGENCY

BY MR. O'BRIEN

MR. O'BRIEN: Mr. Scalmanini, you were here this morning, I believe, when Mr. Maloney was cross-examining the Agency witnesses; is that correct?

MR. SCALMANINI: I was.

MR. O'BRIEN: Do you recall a series of questions he asked regarding the possible development of additional vineyard lands outside the area of the basin boundary as we currently understand it?

MR. SCALMANINI: Yes.

MR. O'BRIEN: He used the figure 110,000 acres of new vineyard lands?

MR. SCALMANINI: Yes.

MR. O'BRIEN: I believe he also stated that, at least in one scenario, water taken from presumably wells within the basin and transported to these lands that do not overlie the basin.

Do you recall that?

MR. SCALMANINI: I do.

MR. O'BRIEN: Do you have opinion as to what the effect on the overall hydrology of the valley would be if that scenario were to occur on an order a magnitude discussed by Mr. Maloney?

MR. SCALMANINI: Well, yes, I do, and it would go something like this: That what I thought I heard him say was that pumpage would be from both inside and outside the valley to supply these lands. I heard him describe the lands as being outside the groundwater basin or outside the valley. I heard him use a number of 400,000 acre-feet of water, which is a pretty big number for vineyards.

Simply stated, without knowing exactly what the breakdown would be of pumpage from the aquifer system beneath lands outside the valley versus lands inside or overlying the groundwater basin, but certainly any pumpage along the lines of the 400,000 acre-foot number can simply be called a bankrupting of the system, that there isn't enough water in the system to support that kind of pumping and interception from the groundwater basin without substantial harm to the kind of groundwater levels that have been preserved in the basin historically.

MR. O'BRIEN: If that harm were to go to those levels were to occur what would be the ultimate result?

MR. SCALMANINI: Well, there is no question that, for

example, in the Forebay the maintenance of constant groundwater levels in a part of the aquifer system known as the Forebay, which is where the confined portion or Pressure Zone as it was labeled in the 1940s, were it recharged, if you were to intercept as much as 400,000 acre-feet a year from the system in the Forebay and upstream of the Forebay, that you'd logically have a significant effect of groundwater levels in that Forebay.

If you lower the water level in the Forebay, then you lower the rate at which water can flow from the Forebay into the Pressure Zone or the East Side, which are immediately downgradient. In the face of that, you can expect that groundwater levels in the East Side will plummet at a faster rate than they historically have. You could expect seawater intrusion would advance inland at a notably faster rate than they historically have.

So, the first reaction response to your question is just upset, which you could expect lower water levels in the upper part of the valley with that type of intercepting of pumpage and the downgradient effects on the Pressure Zone and the East Side, farther down the valley.

MR. O'BRIEN: Thank you.

H.O. BROWN: Mr. Bezerra.

MR. BEZERRA: No questions, Mr. Brown, either for Clark Colony or Rosenberg Family Ranch.

H.O. BROWN: Mr. Maloney.

MR. MALONEY: It is my understanding I am not supposed to mention the word "Napa" in this proceeding; is that right, your Honor, your ruling?

H.O. BROWN: That would help, Mr. Maloney.

MR. MALONEY: I won't.

But I can mention management of water resources?

H.O. BROWN: Yes, sir.

MR. MALONEY: Before I start, I've got these two books from the California -- University of California at Berkeley Water Resources library on pain of death. What I have done is I have copied two pages from the books, and I would like to take them back immediately after the meeting today, or I will mark be returned. If people would like to verify these pages, I can give them to the people to verify while we are looking. That way we won't take up the Court's time. These are for identification only.

For the record, so I can make this clear, we are looking at Plate No. 77 from Soil Survey of the Lower Salinas Valley California by Macy Lapham and W.H. Heilman, 1901.

And we are looking at Water Resource of the Salinas Valley by Homer Hamlin. We are looking at Water Supply Paper No. 89. I believe it is Plate 11.

MR. VIRSIK: That might be II.

MR. MALONEY: Or Roman two.

H.O. BROWN: These would be 25 and 26 for your exhibits?

MR. MALONEY: Yes. The first one is -- this is the second one that I made reference to. This is the Hamlin, the Hamlin thing, and this is the Lapham thing.

MS. KATZ: This is 25.

MR. DONLAN: This is an exhibit that is in your testimony?

MR. MALONEY: Yes.

What we are going to do is return these to the library. These are copies for the people to verify of certain pages within the books.

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CROSS-EXAMINATION OF TANIMURA & ANTLE

BY SALINAS VALLEY PROTESTANTS

BY MR. MALONEY

MR. MALONEY: One thing that I wanted to make sure, you talked a lot about history. I am going to go back another 50 years, Mr. Scalmanini, if you don't mind.

MR. SCALMANINI: I'd appreciate it if you'd pronounce my name correctly.

MR. DONLAN: Scala -- how do you pronounce it?

MR. SCALMANINI: Scalmanini.

MR. MALONEY: Scalmanini.

MR. SCALMANINI: That's about right. Go ahead.

MR. MALONEY: It's like how do you pronounce Belli, belly or Belli?

MR. SCALMANINI: I can't pronounce Belli. I can barely pronounce my name. Go ahead.

MR. MALONEY: I am saying my name is pronounced differently. It doesn't make any difference to me.

Anyway, looking at Plate No. 77 from this 1901 situation, it shows the situation in the northern part of the valley.

Can we put up your map that you have taken down? Ask you a quick question.

Shows a lot of streams and it shows what I would call a slough.

Am I pronouncing that right, Mr. Scalmanini?

MR. SCALMANINI: I don't know what word you are trying to use.

MR. MALONEY: I am looking at Plate No. 77. Land that is covered with water around Castroville.

MR. SCALMANINI: I don't see the word "slough" on there, but go ahead.

MR. MALONEY: Would you consider that land that was under water?

MR. SCALMANINI: Where?

MR. MALONEY: Land that is around Castroville in dark

green.

MR. SCALMANINI: I don't think I would, no.

MR. MALONEY: Would you consider the water level high in that area?

MR. SCALMANINI: High relative to what?

MR. MALONEY: Well, is the water level that is dark green less than three feet?

MR. SCALMANINI: That is what the legend says, yes.

MR. MALONEY: Do you believe that was true?

MR. SCALMANINI: I have no personal knowledge what it was.

MR. MALONEY: Let me show you, let's look at the exhibit from Water Supply Paper 89, quickly. Let's look at the legend.

Do you have any reason to believe the legend that suggests there is no irrigation in the Castroville area is right or wrong in 1909, I believe is the water supply paper?

MR. DONLAN: Can we ask where Mr. Maloney is going with this? Can I object to this on relevancy grounds?

H.O. BROWN: Sure, go ahead.

Mr. Maloney, he objects.

MR. MALONEY: I am just getting some more history. Then I am going to suggest that the real water problem in the Salinas Valley is not the development of the Upper

Valley at Forebay which was already developed at this time. And we will produce evidence that it was developed, highly successful.

But the real problem and half of his testimony is about is we need this water to stop saltwater intrusion. The way you stop saltwater intrusion is to stop the pumping in the area that is causing the saltwater intrusion. We'll have testimony that indicates that the water and the saltwater -- the pumping in that area is causing saltwater intrusion.

Why that becomes important is, one of the tests we have to make here as to whether or not they get their application granted is whether they are going to be putting water to beneficial use. They're saying they are using the water in the -- to stop saltwater intrusion. This is not really a use of water to stop saltwater intrusion.

Basically, he brought up the issue of the review of the historical records, as to how water has changed.

H.O. BROWN: Proceed with your questions.

MR. MALONEY: Do you know whether or not there was any agriculture developed in the Castroville area around 1910, based on these exhibits?

MR. SCALMANINI: No.

MR. MALONEY: You don't know from personal knowledge whether or not there is any water in the -- agriculture in the Castroville area around 1910?

MR. SCALMANINI: That's correct.

MR. MALONEY: Do you know what the impact of reducing all agriculture in what is called the -- reducing all pumping in the area known as the CSIP would have on saltwater intrusion?

MR. SCALMANINI: Not from memory, no.

MR. MALONEY: Now, this was prepared by the Agency, something called Historical Benefits Analysis Final Report, April 1998. Prepared by a company called Montgomery Watson.

I direct your attention to the Executive Summary, Page 1-9, paragraph beginning with Figures 1 through 2 and 1 through 3. Could you review that paragraph.

H.O. BROWN: Is that an exhibit?

MR. MALONEY: It is not an exhibit. It's been made reference to I think in everybody else's.

H.O. BROWN: Is it short enough that you can read it into the record?

MR. MALONEY: I was going to ask him questions about it.

MS. LENNIHAN: Mr. Brown, I'd just like to interpose another objection. I realize that Mr. Scalmanini went into some discussion on historical issues in the valley, and Mr. Maloney is relying on that. But the ruling of you as Hearing Officer at the onset of this hearing was to restrict

the scope of the hearing such that we wouldn't be discussing exactly the type of thing that it appears we are going into now. And I think that it's important in order to remain within the noticed provision and due process limitations that we not go further.

Again, I don't want any unfairness to either Tanimura & Antle or the Salinas Valley Protestants, but neither is it appropriate to subject the rest of us who are participating in this hearing at a level consistent with the Board's own statement and your rulings this morning to go this far afield.

H.O. BROWN: Thank you, Ms. Lennihan.

Mr. Maloney.

MR. MALONEY: My problem is I thought objections were going to be raised. No objections were raised. And I was not about to raise the objections because Mr. Scalmanini was opening up the whole issue of historical use of water.

We think the evidence will show that most of his facts are wrong, of course. But that is coming down the line. But the bottom line of the thing is since no objections were raised we are sitting here with all this evidence that has been put before you without the benefit of controversion. We have a memo here that will basically show that only 30,000 acre-feet of new water was added to the whole valley by these dams. We have the impression we have huge

prosperity down there because of the dams. This statement and this EBA shows only 30,000 acre-feet.

What we are getting at is this water is of no benefit, except to a very small group of people that they are trying to appropriate, and we think that it could be put to better use doing other things. That is the reason we think we should be able to go into it.

H.O. BROWN: Ms. Lennihan.

MS. LENNIHAN: Mr. Brown, I think it is important to realize that the -- there actually hasn't been any of this evidence admitted yet into the record, and that gives the Board, you as Hearing Officer, the opportunity to restrain the scope both of Tanimura & Antle presentation and Mr. Maloney into the record and any of the rest of us to conform to the scope as defined earlier today.

The issue here today, again, of course, is only the incremental, additional reservoir storage. It is not the full reservoir storage. It is just the amount that is sought by the agency in its application. And it is essential, given the complexity of issues with which you are familiar, to remain within that scope to avoid creating serious problems for the entire Salinas Valley in terms of what is being decided here today.

I would ask you as Hearing Officer to rule from an evidentiary standpoint and recognize you can restrict the

evidence that has not yet been admitted.

H.O. BROWN: Thank you, Ms. Lennihan.

Last word.

MR. MALONEY: The applicant's own cross brought out a lot of this stuff that they are now objecting to me crossing on. And, I mean, we were flabbergasted you let all this information in and the positions they were taking. We thought it was -- it could narrowly be construed that was beyond the scope of what you said this morning. The applicant chose to bring these issues up, and here we are. They've been brought up. You have all this evidence, and we won't even be able to controvert it.

MR. DONLAN: May I add something, Mr. Brown?

H.O. BROWN: Yes.

MR. DONLAN: Mr. Scalmanini, his testimony goes to the benefits of the reservoirs. These -- this information that Mr. Maloney is trying to put in the record now has nothing to do with the operation of the reservoirs nor the incremental amount of water that is being applied for now. They're two totally entirely different matters, and he is attempting to use this to get to the water rights issue as Ms. Lennihan pointed out that you precluded on a number of occasions now, including this morning. This is exactly what he put forth in his petition for a Section 275 motion that you denied this morning.

H.O. BROWN: Thank you.

MR. DONLAN: Thank you.

H.O. BROWN: Now you get the last word.

MR. MALONEY: For what it is worth, we understand the Water Code, and we could be wrong on this, but we can cite other hearings where this had happened, that one of the remedies you can construct in connection with this application and the granting of this permit is a 275 solution that takes into account different water usage.

So, we see the 275 as only a remedy that you can look at when you decide how to grant this application. I would recommend, and I am not going to say it, look at where the case occurred, but look at the See case. This is what the Board did 28 years ago in connection with a decision. They did construct a 275 remedy even though it wasn't specifically pled. That was one of the remedies you can look at. Secondly, these people are saying that the 110,000 acres, which will create 25,000 jobs in the south, 10,000 jobs, change the whole nature of the agriculture economy, will bankrupt the water system. We can show how that hundred will bankrupt the water system of the County. That was the testimony that Kevin elicited from this witness.

We can demonstrate with proper management, I can't say where it happened, but we can demonstrate with proper

management that you are not going to bankrupt the system. If you look at the numbers we were looking at in that area where I can't say that it happened, we were looking at 10,000 acres. Now we have 50,000 acres. We are looking at 50,000 acres here. We are going to have 150,000 acres in 30 years.

The one thing that is very important here is it is not necessarily all grapes. It is because technology of agriculture has changed. And what we need to think about is more efficient uses of water. That is what we always talk about. We talk about water usage.

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

Here is my ruling on this. You both have persuasive comments. I am going to caution you both again this time that we have a narrow scope here on this hearing.

I am going to sustain Ms. Lennihan's objection. I am going to caution other parties, too, try to stay within the scope as identified in the Notice of Hearing. To start to talk about history and bringing in some of the other issues, you start to open up the door for reconsideration on some of these other matters.

I am not going to let that happen. So the objection is sustained, but I caution all of you to stay on that narrow track this time.

You may proceed, Mr. Maloney.

MR. MALONEY: Your Honor, before the objection was raised, and I am not trying to offend the Court. I am just trying to get a clarification of objection.

You suggested that we read a certain paragraph into the record from this report prepared by the Agency.

H.O. BROWN: Is this on a matter other than what I just ruled on?

MR. MALONEY: Well, I am not sure because I am sort of confused in my mind. This is the matter which essentially says the total benefits of the reservoirs to groundwater recharge were 30,000 acre-feet, period, throughout the whole valley in a report prepared by the Agency.

So we are talking about benefits of the reservoirs, so I am not sure if you directly ruled on this or not. I think you may have, but I am not positive. I am not trying to be -- I think Ms. Katz knows.

H.O. BROWN: I am sorry, you lost me on that, Mr. Maloney.

Ms. Lennihan, do you know what he is speaking of?

MS. LENNIHAN: Yes. I think most of us in the valley are familiar with the Historical Benefits Analysis. And I would submit, Mr. Brown, that it is overbroad for purposes of this proceeding. Again, I think we need to be looking at the increment of storage. And I think that discussion here is whether or not there is a reasonable and beneficial use

for increment of storage that is proposed by the Agency, and not the breadth of issues which is addressed in that particular report.

I would ask that you rule it out.

H.O. BROWN: Proceed with your question and let's see where you are going.

MR. MALONEY: Your Honor, at this point we would move to strike all Mr. Scalmanini's testimony from the record on the theory that we can't adequately cross-examine on the broad issues that he raised in terms of history and in terms of water usage and growth of the south, all the rest of this stuff.

H.O. BROWN: Mr. Donlan.

MR. DONLAN: The basis of Mr. Scalmanini's testimony is set forth in the other Tanimura & Antle exhibits. They are all data dealing with the operation of reservoirs since they were constructed. I don't know what the relevancy of this type of information is to what Mr. Scalmanini testified to, and I don't see any basis for striking his testimony.

H.O. BROWN: Mr. Maloney, last word.

MR. MALONEY: If I can't cross-examine, I don't think it should be included. And I think I can disprove most of his testimony if I can cross-examine him. I understand what Ms. Lennihan's concerns are. I absolutely do, and I don't want to violate any of the orders that this Court has

already entered in asking questions.

H.O. BROWN: Mr. Maloney, I will not rule to strike Mr. Scalmanini's testimony in whole. If there are parts of it that you wish to have stricken, I would consider that.

MR. MALONEY: Can we make that motion as a post-hearing motion based on rulings that you have made so we can go through page by page and move that it be stricken instead of doing it right now?

H.O. BROWN: You may look his direct testimony over this evening and bring the matter forward tomorrow morning, and I will consider then what portion, if any, should be stricken.

MR. MALONEY: Thank you, your Honor.

H.O. BROWN: You may proceed.

MR. MALONEY: Mr. Scalmanini, do you know what the term "safe yield" means?

MR. SCALMANINI: Yes.

MR. MALONEY: Could you define the term "safe yield," please?

MR. SCALMANINI: Safe yield is the average amount of pumpage which can be sustained from a groundwater basin on a long-term average basis without causing undesirable results.

MR. MALONEY: Could you tell me what the safe yield of the Upper Valley is?

MR. SCALMANINI: No, I cannot.

MR. MALONEY: Can you tell me what the safe yield is of the East Side?

MR. SCALMANINI: No, but I want to expand on the answer. You are picking hydrologic subareas with just subareas within the Salinas Valley for your questions, which were created by the Division of Water Resources in the 1940s for study purposes. None of those is a basin. To the best of my knowledge, the so-called safe yield of subareas of the groundwater basin is not an applicable use of that term being safe yield and has never been studied in any of the subareas of the Salinas Valley.

MR. MALONEY: Is it your testimony -- let me ask you this.

You're totally familiar with Bulletin 52, Bulletin 52A and Bulletin 52B; is that correct?

MR. SCALMANINI: Reasonably. Not totally, but reasonably.

MR. MALONEY: Is it your testimony that they never discussed safe yield in the Upper Valley in Bulletin 52?

MR. SCALMANINI: I don't remember them using that term. But certainly the definition that I just used evolved long since Bulletin 52. If they used that term then, it's evolved substantially since.

MR. MALONEY: My recollection, and, of course, I have

no idea whether it is correct or not, but they used the term "overdraft."

Are you familiar with the word "overdraft"?

MR. SCALMANINI: I am.

MR. MALONEY: Is the word "overdraft" different from safe yield?

MR. SCALMANINI: Yes.

MR. MALONEY: What did the word "overdraft" mean when Bulletin 53 was written?

MR. SCALMANINI: I am not sure I know or remember exactly what they meant when they used that term. I'd have to look it up.

MR. MALONEY: Did they use the word "overdraft" in Bulletin 52?

MR. SCALMANINI: I think so, but I don't know for sure.

MR. MALONEY: Did they make an estimate of what the overdraft was in the Upper Valley in Bulletin 52?

MR. SCALMANINI: I don't remember.

MR. MALONEY: Did they make an estimate of what the overdraft was in Forebay in Bulletin 52?

MR. SCALMANINI: I don't remember that.

MR. MALONEY: Did they make an estimate of what the overdraft was in the Pressure areas in Bulletin 52?

MR. SCALMANINI: Same answer.

MR. MALONEY: What about the East Side?

MR. SCALMANINI: Same.

MR. MALONEY: Safe yield, I am sort of confused. Help me out on this. If you're using water during March, say, February, March and April, can you use more water during February, March and April than you can, let's say, during August and September? Does it have the same impact in terms of safe yield of the valley?

MS. LENNIHAN: Mr. Brown, I apologize. I would like again to object, and perhaps for it to be a constructive inquiry as to where this line of questioning is going. I would remind you that earlier during Mr. Maloney's cross-examination of Dr. Ali Taghavi, questions regarding safe yield in the basin were raised. There was an objection to those, which was sustained. And it sounds to me as if we are going down this same subject matter area, and the earlier ruling sustaining the objection would be applicable here.

H.O. BROWN: Mr. Maloney.

MR. MALONEY: One of the issues we are raising here is we are going to the veracity or knowledge of Mr. Scalmanini. You will see when you look at Bulletin 52 that there was extensive discussion about overdraft and safe yield of the Upper Valley, the Forebay, the East Side and Pressure area. What that does show is that there was no overdraft in the Upper Valley and the Forebay and a lot more

development could occur.

And that is part of the reasons we are asking the questions that we are asking. We will show at a later date the lack of knowledge about the actual facts in the Salinas Valley of Mr. Scalmanini. And some of his arguments that he has made about the huge amount of development that's occurred and things like this and all this excessive water usage will start to disappear when we start to look at the actual documents.

We will be making that point probably in closing arguments when we refer to Bulletin 52, and that is the reason we are asking the questions. I don't believe you overruled the questions on safe yield as to the different areas, but I could be wrong on that.

H.O. BROWN: Ms. Lennihan, last word.

MS. LENNIHAN: I think that we need to evaluate the appropriateness of various lines of questioning based upon the scope, again, of the hearing and whether it goes to an injury question, for example. And I am not hearing anything that seems connected to the issues that were contained in the hearing notice. Perhaps Mr. Maloney can explain, but seems to me outside the scope of hearing what he has yet to argue.

H.O. BROWN: Thank you, Ms. Lennihan.

I don't remember overruling that this morning either.

You may proceed.

MR. MALONEY: I am going to move through this pretty quickly.

H.O. BROWN: Ms. Goldsmith, are you going to change my ruling I just made?

MS. GOLDSMITH: Pardon?

H.O. BROWN: Is this on the ruling I just made?

MS. GOLDSMITH: It goes to my notes of this morning.

H.O. BROWN: I made the ruling.

MR. MALONEY: In terms of safe yield, does it make any difference where water is used? I am asking if used during March or April compared to August and September.

MR. SCALMANINI: It can.

MR. MALONEY: You make a statement in Table 1 that suggests increases in irrigated land logically suggest that there has been a corresponding increase in groundwater pumping. Something like the Jesuits would teach you.

Has that always happened that as you increase irrigated acreage, does that always mean that the water pumping is going to increase?

MR. SCALMANINI: Not always, no. But logically it does.

MR. MALONEY: I don't understand the logic. I don't understand the logic.

MR. SCALMANINI: The logic is from the 1940s to the

1980s the kind of crops that were grown and irrigated in the Salinas Valley required, let's say, comparable applied water rates. And so to increase or to increase the irrigated lands by about 50 percent would suggest that if you are using the comparable applied water rate on half again as much land that you're logically having to apply more water in total to irrigate that much land.

MR. MALONEY: Let me take a little look here at Exhibit 26, Posa De Los Ositas Rancho.

MR. DONLAN: I believe that is the exhibit that you've already ruled on as being beyond the scope.

MR. MALONEY: I am not sure it is.

H.O. BROWN: We haven't ruled on this exhibit.

MR. DONLAN: This is the line of questioning that Ms. Lennihan raised at the objection, and I believe you said that you need to move off of that subject.

MR. MALONEY: I have no purpose for it, just doing some identification of where lands are located.

H.O. BROWN: The exhibit -- you still can make reference to it.

What is the question with the exhibit?

MR. MALONEY: It is very simple. I have a client that I think owns about half of Posa De Los Ositas, and I apologize for my Spanish. My client switched from vineyards to grapes, and I want to test his logic.

H.O. BROWN: From vineyards to grapes?

MR. MALONEY: Excuse me, from row crop to grapes. I want to test his logic.

H.O. BROWN: You did that to see if we were paying attention, didn't you?

MR. MALONEY: Yes, sir. I learned that trick last time I was here.

H.O. BROWN: Go ahead, answer the question.

MR. MALONEY: My client, just for the point of facts, has 6,000 acres of row crop in that particular rancho, and now has 4,000 acres of row crops and 3,000 acres of vineyard.

Has he increased his water usage on that rancho?

MR. SCALMANINI: First of all, the exhibit you put in front of me shows the land not to be irrigated at all. So, first of all, it went from nonirrigated to irrigated at some level.

As regards to my table that you asked me about and my logic, I went from nonirrigated lands to irrigated lands, and said that an increase in irrigated lands would logically require an increase in applied water.

You are asking me to convert land use from one type of irrigation to another, would there necessarily be an increase. I didn't testify that there was an increase. And I would agree if you change the land use as compared to

increasing the land to irrigated land that there is a possibility that you would not change water use. You can even decrease water use.

MR. MALONEY: Logically --

MR. SCALMANINI: Let me finish. But to suggest that your client had lands that were irrigated in the 1950s and changed them to irrigated vineyard by the early 1980s is a question that needs to be specifically looked at.

MR. MALONEY: This happened in late 1990s, this changeover particularly occurred.

I have clients that went from alfalfa to grapes in the early 1970s. Do they reduce their water usage in your opinion?

MR. SCALMANINI: Again has nothing to do with what I testified. I testified if you went from nonirrigated land to irrigated land and increased from, as I said, by about 50 percent that you would logically increase the applied water, and I still stand by that.

What I said just a minute ago in response to your other question, if you change the land use from one type of irrigation to another type of irrigation, it is possible that you kept it the same or reduced it.

MR. MALONEY: If you change a land use throughout a whole area, you very possibly could --

M.R SCALMANINI: From one type of irrigation to

another, you could change the water use or applied water accordingly, yes.

MR. MALONEY: In your experience a lot of my clients, I think, like, 20,000 acres of my clients, have gone from sprinklers to drip irrigation, for their -- not for the frost protection. In your opinion would that have reduced the water use?

H.O. BROWN: Mr. Bezerra, you rise?

MR. BEZERRA: Yes, Mr. Brown. Thank you.

I would like to suggest that Mr. Maloney put these questions in the form of a hypothetical. If he wants to suggest as he seems to be suggesting that changes of certain uses may affect the water rates that apply to them, that is fine. But he is coaching them in the form of questions about what his clients do or do not do, and we have yet to reach his clients in order of presentation. I think his questions are more appropriate as a hypothetical.

H.O. BROWN: Thank you, Mr. Bezerra. You raise a very strong point.

Mr. Maloney.

MR. MALONEY: I can put them in hypotheticals.

H.O. BROWN: I ask you to do that. I also -- I am not sure of the direction that you are heading here, and you are edging towards an area that I cautioned you not to do.

MR. MALONEY: The problem we have is --

H.O. BROWN: Your presentation, Mr. Maloney.

MR. MALONEY: I understand that. The problem we have, I think we pretty well exhausted this, there is a sentence in here that says it is logical just because you increase the acreage you increase the water usage.

I am not sure that that is necessarily logical. Depends on the crop mix and a number of things. And I think that has come out in the cross-examination.

Now, let me quickly ask you a few questions.

On average how much water in the Upper Valley does a row crop pump per acre per year?

MR. SCALMANINI: Don't know.

MR. MALONEY: You don't know how much it pumps on a monthly basis per year?

MR. SCALMANINI: On a monthly basis per year, I've never answered a question like that.

MR. MALONEY: On average how much water does the Forebay pump on an acre basis per year?

MR. SCALMANINI: The Forebay on an average acre basis -- this is different than the question you just asked me about the Upper Valley. The Agency publishes some annual groundwater extraction reports. And from memory I think the average applied water that it reported for Forebay was around 2.4 or 2.5 acres for all types of land use, irrigated land use within the Forebay.

MR. MALONEY: Do you know how much is the average applied water for row crop in the Forebay?

MR. SCALMANINI: No.

MR. MALONEY: Do you know how much the average applied water for vineyards in the Forebay is?

M.R SCALMANINI: No.

MR. MALONEY: Would it be fair to say that you don't know for all of the different areas you don't know the average applied water per year; is that correct?

MR. SCALMANINI: I know what's been reported for each of the areas on average, for each of the subareas. I do not know on an individual per crop basis that I've ever seen a published reported number for row crops, pasture, vineyards, et cetera.

MR. MALONEY: Have you looked at Bulletin 52?

MR. SCALMANINI: Yes.

MR. MALONEY: On this issue?

MR. SCALMANINI: Not for a long, long time.

MR. MALONEY: Does it have anything about pumped water in Bulletin 52 on a per acre basis?

MR. SCALMANINI: It may have, yes.

MR. MALONEY: For different crops?

MR. SCALMANINI: I don't remember.

MR. MALONEY: Now, could from the -- do you know what double cropping is?

M.R SCALMANINI: Yes.

MR. MALONEY: What is it?

MR. SCALMANINI: It's using the same parcel of ground to grow two crops in one called irrigation or growing season.

MR. MALONEY: Could the East Side reduce its pumping if double cropping were outlawed?

MR. DONLAN: I object to that question. I think it is irrelevant to the issues.

H.O. BROWN: Mr. Maloney.

MR. MALONEY: Well, one of the big issues we have to decide here is it beneficial to give this Agency another 27,500 acre-feet of water. And repeatedly the argument has been made this is the way we are going to stop saltwater intrusion. We need every drop we can get.

We are saying there is other ways of dealing with that problem. That has to be looked at, necessarily we will have to be looked at by the Board when it makes its decision.

H.O. BROWN: Mr. Donlan.

MR. DONLAN: Again, you ruled this morning that the reasonableness and use of water was not an issue in this hearing with respect to the Agency's application.

H.O. BROWN: I agree with Mr. Donlan again.

Mr. Maloney, I am going to sustain the objection.

MR. MALONEY: For the record, and that is all. I think

I am saying the same thing.

Could you offer any opinion on what would happen on saltwater intrusion if double cropping were outlawed?

And I assume you are objecting to that?

MR. DONLAN: Yes, I will.

MR. MALONEY: And you're sustaining his objection.

Thank you, your Honor.

Now, in Table 2 in the '90s you suggested there were apparently 115,000 acres under production in the Upper Valley and Forebay and it was pumping approximately 325,000 acre-feet that year; is that correct?

MR. SCALMANINI: Say those numbers again, please.

MR. MALONEY: Table 2, in the '90s you suggested there were currently 115,000 acres under production in the Upper Valley and the Forebay and pumping approximately 325,000 acre-feet per year; is that correct?

MR. SCALMANINI: No.

MR. MALONEY: Maybe I added wrong.

MR. SCALMANINI: You did.

MR. MALONEY: In the Upper Valley and Forebay in Table 2 it is currently pumping about 325,000 acre-feet.

MR. SCALMANINI: That is an estimate, yes.

MR. MALONEY: There is apparently about 110,000 acres under production; is that correct?

MR. SCALMANINI: I don't know where you see that.

Table 2 doesn't have any of this language in it.

MR. MALONEY: Excuse me, in Table 1 you show 110,000 acres; is that correct?

MR. SCALMANINI: No.

MR. MALONEY: In the Upper Valley and Forebay?

MR. SCALMANINI: Correct.

MR. MALONEY: 115,000, is that more accurate?

MR. SCALMANINI: No.

MR. MALONEY: Let's look at Table 1. How many acres are currently irrigated in Table 1 in the Upper Valley and the Forebay according to your table?

MR. SCALMANINI: About 105,000.

MR. MALONEY: You are right, excuse me. My math was wrong.

Now, could you tell me how much of that water is surface water they're pumping, if you know?

MR. SCALMANINI: To the best of my knowledge, none of it.

MR. DONLAN: I object. That is what Ms. Katz ruled on earlier today.

H.O. BROWN: It's been asked and answered.

MR. MALONEY: Now, if we were to add an additional 110,000 acres of something that requires frost protection, some type of crop, whether it is grapes -- I mean, marijuana, whatever the current crop is, lemons, required

frost protection, do you have -- do you know when that pumping would occur?

MR. SCALMANINI: Yes.

MR. MALONEY: When?

MR. SCALMANINI: Typically during the months of probably March through May.

MR. MALONEY: That is the time which you want to store water in the reservoir; is that correct?

MR. SCALMANINI: What reservoir?

MR. MALONEY: Nacimiento.

MR. SCALMANINI: I don't want to store water anywhere, but that is what the application is for, yes.

MR. MALONEY: And February; is that correct?

MR. SCALMANINI: If the vines come out of dormancy by February, yes.

MR. MALONEY: Do you know San Bernabe does, in fact, pump it for frost protection in February?

MR. SCALMANINI: I read in something that -- testimony from, I think, Mr. Merrill that they pump for frost protection between February and May, yes.

MR. MALONEY: Have you been party to any study of the water rights in the Upper Valley?

MR. SCALMANINI: I haven't been party to anything, and I am not familiar with any, quote, study of water rights in the Upper Valley.

MR. MALONEY: To your knowledge, you have no idea what the area outside the red line that was shown this morning is outside the area of study? You have no idea if they have any water rights or not; is that correct?

MR. SCALMANINI: I wasn't here when the red line was described, so I don't know what it is.

MR. MALONEY: Let me just go over to your map.

Looking at 1982, looking at the area in the Upper Valley in Sections 20810E and 2S10E and 22S11E, it is not marked on the other side, do you know if any of these townships have water rights?

MR. DONLAN: Objection. That calls for a legal conclusion.

H.O. BROWN: Mr. Maloney, are you asking from a legal standpoint?

MR. MALONEY: I am trying to find out why he drew this line. He says he didn't take into account any of the land outside the line, and I am trying to find out why.

H.O. BROWN: Maybe you want to ask him why he drew the line where it is.

MR. MALONEY: Do you know why the line is here?

MR. SCALMANINI: First of all, the purpose of the illustration is to show what lands were mapped by others as being under irrigation during the two years that are depicted in that table, in that figure.

So for 1945 and for 1982 the green and magenta respectively illustrate lands that were mapped by various agencies in those years as being under irrigation. The line, the dotted or dashed line to which you refer is an outline of the groundwater basin beneath the Salinas Valley.

MR. MALONEY: Who determined that groundwater basin?

MS. GOLDSMITH: I would like to make an objection. I am not sure whether we are going to continue to pursue the question of water rights and townships or water rights within or beyond red lines. Mr. Scalmanini's testimony went to water use studies, and I have no objection to asking whether or not he took into account water use within townships or within or outside of red lines.

But I believe that water rights as a subject is relevant to neither Mr. Scalmanini's testimony nor to the proceedings here today.

H.O. BROWN: Thank you, Ms. Goldsmith.

Can you rephrase the question?

MR. MALONEY: Well, there has been testimony from you, Mr. Scalmanini, that there is 400,000 of developed -- that 400,000 acre-feet were used to take care of another 110,000 acres outside the broken lines. That is my understanding. I could be wrong on this, that it would have a very bad effect upon the water balance in the Salinas Valley.

Have I stated your testimony correctly?

MR. SCALMANINI: Pretty close.

MR. MALONEY: As best I can.

What I am trying to find out is what happens if to all of your modeling, if all of those people are, in fact, entitled to water outside those drawn lines?

MR. DONLAN: Again, he is dressing it up as a different word, but it's a water rights question.

H.O. BROWN: Can you make it water use instead of water rights?

MR. MALONEY: Yes. Can I just make a comment as water rights is concerned? I have certain strong feelings about water rights.

H.O. BROWN: This is not the place.

MR. MALONEY: I never claimed it was the place. I have my opponents, or whoever these people are, constantly talking about water rights. My issue is what is reasonable and beneficial and what is in the best use of the public. That is what I think where the issue should be.

We think the evidence will be overwhelming that what is reasonable and beneficial and the best use of the public is not to grant the application. That is what we think our showing should be. We don't think water rights has anything to do with it.

H.O. BROWN: Wait.

MR. MALONEY: Now --

H.O. BROWN: Wait a minute.

MR. MALONEY: Excuse me.

H.O. BROWN: I'm going to allow you to proceed, but I'm going to ask you to make reference to water use and not water rights. I think you'll accomplish the same thing and you'll help the people in the audience. Proceed.

MR. MALONEY: Thank you.

If we were to use water outside of the lines, and there is nothing wrong with it, what would prevent us from using water outside the lines, in your opinion?

MR. DONLAN: That calls for a legal conclusion.

H.O. BROWN: He asks for opinion.

MR. SCALMANINI: Let me make sure I understand your question. You are asking me if you pumped water from within the lines and exported it and used it for whatever purpose outside the lines, what is to prevent you from doing that?

MR. MALONEY: Yes, if you have an opinion.

MR. DONLAN: I object to that question.

H.O. BROWN: On what grounds?

MR. DONLAN: On the grounds of relevancy, first of all, and also on the grounds that he is calling for a legal conclusion. He is asking for his opinion, legal opinion as to what would preclude Mr. Maloney's clients from exporting the water.

H.O. BROWN: I do not hear the word "legal opinion." I

just heard "opinion."

MR. MALONEY: That is all I said.

H.O. BROWN: That solves the second part. What was the first part of the objection?

MR. DONLAN: It is the relevancy issue. He is going to water rights and use beyond the scope of water availability and injury.

H.O. BROWN: Mr. Maloney used water use, not water rights.

MR. MALONEY: That's right.

H.O. BROWN: Water use and opinion.

Proceed. Answer the question, Mr. Scalmanini, if you can.

MR. SCALMANINI: I'll do the best I can. It is a mixed answer. It includes my understanding of the rights to pump groundwater.

H.O. BROWN: That is what he asked for.

MR. SCALMANINI: First of all, physically, technically there is -- what is to prevent you from doing it. There is no system in place to do it. It assumes that the physical works can be built, to put wells, that there is sufficient yield. With all the other pumping for overlying use within the basin that the pumping of 400,000 acre-feet of water for export won't mutually interfere with the ongoing operation of existing wells.

And so, therefore, number one is that the question of whether the aquifer is deep enough and productive enough to support those kind of, I'll call it, potentially competing well yields is an open question. That is the technical opinion. I guess the answer is what could constrain you from that.

The second part is that the lands outside the line do not overlie the groundwater basin. And my understanding is that in the absence of any determination that groundwater is anything else, it is assumed in California to be percolating groundwater and, therefore, is available for use on overlying lands for reasonable, beneficial purposes.

The balance of the system as it has been studied for decades shows that there is enough water to supply the needs of the Upper Valley and Forebay as illustrated by the constant hydrographs that are shown here, that the system has enough recharge and enough flow to refill that during and after the season in which groundwater is pumped.

But analysis also shows that if you were to establish an export use of the magnitude that you described, and I am not sure how you got all the way up to four acre-feet per acre for grapes or whatever on the outside, that is a pretty big number for anywhere in that valley, but regardless of that detail if you export that much water there is not enough yield left over to satisfy all the rest of the

correlative overlying uses within the groundwater basin, and I suspect there would be a constraint in doing it.

The rest of your answer to your question, in my opinion as to what would constrain someone from doing that.

H.O. BROWN: How much more time do you need, Mr. Maloney?

MR. MALONEY: Just about a minute or two. I am almost through.

Again, I am going to talk about my specific clients here. Posa De Los Ositas and San Bernabe, if they would reduce their water usage --

MR. DONLAN: I thought we were not going to talk --

MR. MALONEY: Can I finish the question first before you object?

They reduced their water usage by approximately between 15- and 20,000 acre-feet over the last three years. Being they, just asking your opinion. They have facilities which would make that -- if they can pump that water outside of your so-called basin lines, do they have right to pump that water outside of the basin lines?

MR. DONLAN: Objection.

MR. MALONEY: Simple yes or no.

MR. DONLAN: Calls for a legal conclusion.

H.O. BROWN: The objection is sustained.

MR. MALONEY: Is it your opinion that that water should

go back into the overall basin because they've reduced their pumping by so much?

MR. DONLAN: Objection for the same reasons.

H.O. BROWN: The question, again.

MR. MALONEY: My question is: Does that water go back -- is that water now part of the overall water supply in his opinion or does it belong to my clients to transfer to some other place?

MR. DONLAN: Objection.

MR. MALONEY: His opinion.

H.O. BROWN: I sustained that objection.

MR. MALONEY: Now, are you familiar with Ordinance 3790?

MR. SCALMANINI: Not by number I am not.

MR. MALONEY: This is the ordinance that requires that wells be shut down in the Castroville area, in the CSIP area?

MR. SCALMANINI: I have heard of it, but I am not familiar with it.

MR. MALONEY: I want to ask one question about the Salinas Valley Water Project, the same question that we have been asking all the way through, very limited and I will sit down.

Does the current proposal of the Salinas Valley Water Project contemplate reoperating the reservoir?

MR. SCALMANINI: Best of my recollection, yes.

MR. MALONEY: There was testimony this morning there were only nine years in which the water level would -- there would be water stored in the 27,700 acre-feet?

MR. DONLAN: I believe there was eight.

MR. MALONEY: Excuse me, I made the same mistake twice today.

MR. SCALMANINI: You made a different mistake before, but that's okay.

MR. MALONEY: Fine.

In the reoperation of the reservoirs is it contemplated in the Salinas Valley Water Project would it be more than eight times that that area would have water in it as stored?

MR. SCALMANINI: I don't know.

MR. MALONEY: Do you know anybody who might know?

MR. SCALMANINI: I think the question is analyzable if you will excuse the word. I don't know who would know.

MR. MALONEY: That analysis has never been made?

MR. SCALMANINI: I don't know that it has or hasn't. I don't know.

MR. MALONEY: Would your client -- it is my understanding you are representing a client here and you are not representing the Agency; is that right?

MR. SCALMANINI: Yes, sir.

MR. MALONEY: Would your client have any objections to a limitation put in the permit saying that the reservoir

cannot be filled above 350,000 acre-feet except during certain time frames?

MR. SCALMANINI: I don't know. I think before we answer that question we'd want to analyze the frequency and impacts of such a constraint.

MR. MALONEY: If they were no different than the past, same conditions? So it would be approximately eight times during the last 45 years in which it could go over 350,000.

MR. SCALMANINI: Are you suggesting eight times in the next 45 years, that would be the constraint?

MR. MALONEY: Yes.

MR. SCALMANINI: I think it would be dependent on hydrology only, not on time.

MR. MALONEY: Same availability of water that exists in only the last 45 years would be determined whether or not --

MR. SCALMANINI: Again, I have to get into hydrologic triggers before I just sit here and agree they would say absolutely or absolutely not.

MR. MALONEY: Thank you.

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

Let's see if we have other cross-examination.

Ms. Lennihan, do you have cross?

MS. LENNIHAN: No questions, no cross.

H.O. BROWN: We are going to adjourn at four. I wonder if we might get Mr. Scalmanini out of here.

Ms. Goldsmith.

MS. GOLDSMITH: No questions.

H.O. BROWN: Staff have questions?

MR. LONG: No questions.

H.O. BROWN: Do you have any redirect?

MR. DONLAN: No, I don't.

H.O. BROWN: No redirect.

That concludes your testimony, Mr. Scalmanini.

Would you like to offer your exhibits into evidence?

MR. DONLAN: Yes, I would. I would like to offer Tanimura & Antle Exhibits 1 through 7 of the testimony.

H.O. BROWN: One through 7, are there any objections?

MR. MALONEY: Yes. Subject to the motion to strike which we will prepare for tomorrow or the next hearing date.

H.O. BROWN: I will ask you to underline the portions of the direct that you would like to have stricken.

MR. MALONEY: Yes.

H.O. BROWN: Make copies of that for the parties so we may review it and discuss it tomorrow.

MR. MALONEY: Yes.

MR. DONLAN: Is there any clarification of what this motion to strike, what the basis is for allowing the motion to be filed? I don't quite follow.

H.O. BROWN: I presume it is relevance. Is that -- you are talking about striking a portion of the direct due to

relevance?

MR. MALONEY: Yes. And inability to cross-examine on it.

H.O. BROWN: Let's see what it is, and then we will rule on it in the morning. I don't know whether you want to have Mr. Scalmanini back here in the morning for that part of this discussion or not. That is your call, Mr. Donlan.

H.O. BROWN: We stand adjourned until 9:00 in the morning.

Thank you.

MR. MALONEY: Can we check on witnesses before we leave?

H.O. BROWN: Witnesses.

MR. MALONEY: We have worked out an agreement on our clients not to be here till Monday. We were sort of hoping we can put our case on on Monday as one group instead of piecemeal. We think we can get it over with easily in a day.

H.O. BROWN: You think we might be finished by tomorrow; is that your thoughts?

MR. O'BRIEN: I think the other cases are going to go very quickly, Mr. Brown, and I suspect that with another hour or so of presentation we'll probably be ready to get to Mr. Maloney.

So I guess what I am wondering is, we are going to put

his witnesses on on Monday, and I am wondering if it makes sense to come back tomorrow for the limited presentation.

H.O. BROWN: Are your witnesses available tomorrow?

MR. MALONEY: No. What happened is that we got a letter and we just put them off.

H.O. BROWN: Maybe if we will have one more day, then you make a good point, Mr. O'Brien. We can skip tomorrow and adjourn on Monday.

Is there any objection to that?

MR. BEZERRA: Yes. Unfortunately, Mr. Brown, my witnesses, the Rosenbergs and Ms. Isakson, are in town currently. They live out of town. We were expecting that they would be on tomorrow, and it appears that they will.

This is Mr. Rosenberg. Just one minute.

H.O. BROWN: Nobody leave the room yet.

MR. SHAPIRO: The doors are sealed.

H.O. BROWN: Lock the doors.

MR. BEZERRA: My clients have just informed me that I was incorrect in asserting their interest, that they are willing to come back on Monday.

H.O. BROWN: Thank you.

MR. MALONEY: The second thing we'd like to do, we talked to Ms. Katz about this, is this Exhibit 2. We would like to get a pretty good definition as to what people are objecting to before Monday.

H.O. BROWN: We will work on that. You work on the exhibit of Mr. Scalmanini's direct. We will review Exhibit 2, discuss that. There is no need to meet tomorrow, and we will meet Monday morning at 9:00.

Ms. Katz.

MS. KATZ: Actually, if we can resolve Exhibit 2 now, then the parties would know what from the Board's files they might need to copy to get to everyone. I am prepared to offer, to severely restrict the scope of Exhibit 2 similar to Exhibit 1.

And I would offer only as Exhibit 2A, the Notice of Application 30532; 2B, the Application 30532; Exhibit 2C, the protests filed against Application 30532; and Exhibit 2D, as in dog, the responses to the protests.

H.O. BROWN: Read those one more time so everybody will have them.

MS. KATZ: 2A is the Notice of Application 30532.

2B is the Application 30532.

2C, protests filed against Application 30532.

And 2D, the responses to the protests against 30532.

H.O. BROWN: That is what you are offering into evidence?

MS. KATZ: That is what I am offering into evidence.

H.O. BROWN: Are there any objections to the acceptance of that exhibit as modified by Ms. Katz into

evidence?

MR. MALONEY: I think there is. We are getting it together.

MR. BEZERRA: Mr. Brown, I'd just like to ask a clarifying question, so I understand.

H.O. BROWN: All right.

MR. BEZERRA: Ms. Katz has designated as Exhibit 2C the protestants' matter. The Board asked Mr. Maloney's clients to supplement their protests in order to establish the right to protest. I want to clarify whether or not those supplements are included within the protest that would be submitted as staff exhibits. The reason that this is important is that those additional documents related to the protest were the ones that specifically talked about my clients' water rights as rights of the protestants. And so, therefore, I just want to understand if we are responding to that additional protest information.

H.O. BROWN: Ms. Katz.

MS. KATZ: I am going to further limit it, Mr. Brown. The only thing that we might need would be Exhibit 2A, the Notice of Application 30532 and Exhibit 2B, the application 30532. That would be the extent of staff Exhibit 2.

And to the extent that anyone else cares to introduce such as Mr. Maloney's protest information or whatever, they may do so on their own. But that is not part of staff

exhibits.

H.O. BROWN: With that modification, is there any objection?

MR. BEZERRA: Mr. Brown, I'd just like to clarify just a little bit more. I appreciate you going past the time.

So, am I to understand that the protest will not be part of the staff exhibits?

MS. KATZ: Yes, that is correct.

MR. MALONEY: We will be introducing the whole protests and everything else. The problem is that it is title stuff and APN stuff and things of that nature, and a whole title history. It's common knowledge. We would assume that we would not have to have every single one of our clients here to discuss that. You can bring up the assessor and get the same thing, bring up the court and bring up the same thing, a couple of books.

MS. KATZ: To the extent there is controversy, Mr. Maloney, about which lands and which people you are representing, that is something to be worked out with the parties.

MR. MALONEY: The problem is, I do not want to get in a relitigation of the nature of the rights that Duflock versus Rosenberg has. This went on for years. I think that the document that has been filed speaks for itself. We don't want to have to relitigate that before the State Board.

I believe you have filed the stipulated settlement in your case. We don't know what it represents. We made reference to that all the way along. I don't think it's appropriate for the State Board to get -- to make those determinations, and I don't think that determination is the least bit relevant to this proceeding.

Did you think it is the least bit relevant?

MR. BEZERRA: Yes, I do. Because the basis --

H.O. BROWN: We will decide that Monday morning.

MS. KATZ: The problem is if they need copies of this to get to other people, we are not going to have copies available. So I would suggest --

The purpose of staff exhibits is to assist the staff, primarily. And all the staff needs is the Notice of Application 30532 and Application 30532, 2A and 2B.

To the extent Mr. Maloney or anyone else needs additional information, they should make copies of the files that are relevant to their issues.

H.O. BROWN: Are you revising what you are offering into evidence, then?

MS. KATZ: Yes.

H.O. BROWN: Revise it again.

MS. KATZ: As to staff Exhibit 2, it will only consist of Exhibit 2A, Notice of Application 30532 and Exhibit 2B which is Application 30532. That is all.

H.O. BROWN: Are there any objections to the acceptance of those exhibits into evidence?

Seeing none, so ordered.

MS. KATZ: To clarify, Mr. Brown, Exhibits 1, 3, 4, 5 and 6 were already accepted into evidence and we just admitted 2A and 2B.

H.O. BROWN: That's correct.

And we will start at 9:00 Monday morning.

MS. LENNIHAN: Mr. Brown, If I might just on a procedural point. We do have this pending motion to strike, and I wonder if we could ask the Salinas Valley Protestants to serve the other parties, perhaps tomorrow or Thursday, so that we can then be able to be prepared to respond.

H.O. BROWN: Thank you.

MR. VIRSIK: We clearly serve on everyone what we will will serve on the Board.

MS. LENNIHAN: Thursday of this week.

MR. VIRSIK: Yes, Thursday. Faxes work still?

MS. LENNIHAN: Thank you.

H.O. BROWN: Thank you.

MR. O'BRIEN: 9:00?

H.O. BROWN: 9:00 Monday.

Have a nice weekend.

(Hearing adjourned at 4:20 p.m.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, ESTHER F. WIATRE, certify that I was the official Court Reporter for the proceedings named herein, and that as such reporter, I reported in verbatim shorthand writing those proceedings;

That I thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 7 through 231 herein constitute a complete, true and correct record of the proceedings.

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 28th day of July 2000.

_____
ESTHER F. WIATRE
CSR NO. 1564