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PUBLIC HEARING  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS  
STATE OF CALIFORNIA

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SUBJECT: AMENDMENT OF CITY OF LOS ANGELES' WATER RIGHT  
LICENSES FOR DIVERSION OF WATER FROM STREAMS THAT ARE  
TRIBUTARY TO MONO LAKE

---o0o---

Held at:  
Mono Lake Visitors Center  
Friday, December 3, 1993

VOLUME XVII

---o0o---

Reported by: Kelsey Davenport Anglin, RPR,  
CM, CSR No. 8553

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0005

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0006

LEE VINING, CALIFORNIA

FRIDAY, DECEMBER 3, 1993, 9:00 A.M.

---o0o---

HEARING OFFICER DEL PIERO: Ladies and Gentlemen,  
good morning. This is the time and place for the  
continuation of the hearing regarding the amendment of  
the City of Los Angeles' water rights licenses for  
diversion of water from the streams that are tributary

09 to Mono Lake.

10 My name is Marc Del Piero. I'm Vice-Chairman of  
11 the State Water Resources Control Board, and with me  
12 today is my esteemed staff. I would point out for the  
13 record that I can't think of any other group of  
14 individuals who could have caused Mr. Dodge and  
15 Mr. Frink both to come to Mono Lake at this time of  
16 year together, not to mention esteemed counsel on  
17 behalf of all the rest of the parties.

18 Mr. Birmingham, did you have an adequate tour of  
19 the facilities, Sir?

20 MR. BIRMINGHAM: I did, it was most impressive.

21 At this point, I'd like the record to reflect,  
22 Mr. Del Piero, that counsel for California Trout,  
23 Incorporated, has now joined the Department of Water  
24 and Power at a table which we are very glad to share  
25 with counsel for California Trout. Unlike counsel for

0007

01 Mono Lake and the National Audubon Society, we do not  
02 view this table as ours, and we are happy to share it.

03 MR. ROOS-COLLINS: On behalf of California Trout,  
04 I would like to say that we will find truth and justice  
05 and coffee whenever we find it, and there is at least  
06 one at this table.

07 HEARING OFFICER DEL PIERO: In years to come, I'm  
08 sure that portion of the official record will have  
09 great meaning to researchers.

10 We are here today to empanel and have evidence  
11 presented by two panels; one on air quality, and one on  
12 historic information on the Mono Basin.

13 Mr. Flinn, I understand you're calling the first  
14 panel on air quality; is that true?

15 MR. FLINN: Yes, Sir, we are.

16 First of all, we appreciate being able to take  
17 these witnesses out of order, and we appreciate being  
18 able to have them here at the Mono Basin to testify.  
19 We thank all counsel and the Board for permitting that,  
20 and at this point, the National Audubon Society and the  
21 Mono Lake Committee would call John Denny, Charles  
22 Simis, and Sally Murray.

23 HEARING OFFICER DEL PIERO: Great. Ladies and  
24 Gentlemen, if you'd be kind enough to join us at the  
25 witness table, if you'd stand when you arrive there,

0008

01 raise your right hand, so I can swear you in for the  
02 day.

03 In fact, are the witnesses that are intending to  
04 present testimony here today, also? Not yet, okay. If  
05 you all would be kind enough to raise your right hand,  
06 please, and repeat -- pardon me, and answer  
07 affirmatively after I get done.

08 Do you promise to tell the truth during the course  
09 of these proceedings?

10 THE WITNESSES: I do.

11 HEARING OFFICER DEL PIERO: Thank you very much.  
12 You're sworn. Please be seated.

13 Mr. Flinn, please begin.

14 DIRECT EXAMINATION BY MR. FLINN

15 Q Starting first with Mr. Denny, if each of you in  
16 turn would state your name and spell it for the

17 record.  
18 A BY MR. DENNY: John Denny, last name's D-E-N-N-Y.  
19 A BY MS. MURRAY: Sally Murray, M-U-R-R-A-Y. Sally  
20 S-A-L-L-Y, excuse me.  
21 A BY MR. SIMIS: Charles Simis, S-I-M-I-S.  
22 MR. CANADAY: Mr. Flinn, would you please use the  
23 microphone, please, so we can get this on tape? And  
24 we'd appreciate it, also, if the witnesses could use  
25 the microphones as well.

0009

01 MR. FLINN: I'm only going to stand here very  
02 briefly to hand witnesses copies of their testimony.  
03 First, Mr. Denny, I'm going to show you a copy of  
04 National Audubon Society/Mono Lake Committee Exhibit  
05 1-F. I'm going to ask you to take a look at this and  
06 tell us if this is a copy of your direct testimony in  
07 this proceeding.  
08 MR. HERRERA: Mr. Flinn, would you try to switch  
09 on the microphone there?  
10 MR. FLINN: Is this on now?  
11 MR. CANADAY: Would you flip the switch on that  
12 mike as well? Thank you.  
13 Q BY MR. FLINN: Now, Ms. Murray, showing you a copy of  
14 National Audubon Society and Mono Lake Committee  
15 Exhibit 1-M. Would you identify this as a true copy of  
16 your direct testimony in this case?  
17 A BY MS. MURRAY: It is a true copy.  
18 Q And now, Mr. Simis, showing you a copy of National  
19 Audubon Society and Mono Lake Committee Exhibit 1-Q.  
20 Could you identify, Sir, that as a true copy of your  
21 direct testimony in this case?  
22 A BY MR. SIMIS: Yes, it is a true copy.  
23 Q Could each of you, first Mr. Denny, then  
24 Ms. Murray, Mr. Simis, tell the hearing panel --  
25 describe where you live?

0010

01 A BY MR. DENNY: We live on the north shore of Mono  
02 Lake, approximately nine and a half miles down Highway  
03 167.  
04 Q How close are your houses to each other?  
05 A I'd say probably a half a mile apart.  
06 Q Are you the only folks that live in that area?  
07 A In that particular area, yes.  
08 Q But in the general north shore area, are there  
09 other people?  
10 A There's people down on Bodie Road, back up in the  
11 hills above Bodie Road, yes.  
12 Q Approximately how -- well, approximately how many  
13 families live generally in your north shore area?  
14 MR. BIRMINGHAM: I'm going to object on the  
15 grounds that this goes beyond the scope of the written  
16 testimony of the witnesses.  
17 THE REPORTER: I'm sorry. I'm having trouble  
18 hearing you.  
19 MR. FLINN: I'll withdraw it, and I'll move on.  
20 Q BY MR. FLINN: What I'd like each one of you in turn  
21 to do -- I'll ask you first. Have the three of you  
22 experienced the dust storms that occur on the north  
23 shore of Mono Lake?  
24 A BY MR. DENNY: Oh, yes.

25 Q What I'd like each one of you to do in turn is to  
0011  
01 describe, first Mr. Denny, then Ms. Murray, and then  
02 Mr. Simis, what those storms are like.  
03 A Well, dust storms out there are kind of like you  
04 don't go outside. It's in your mouth. It's in your  
05 teeth. It's a bad, pungent odor. It's in the house.  
06 It's just -- it's just kind of everywhere. There isn't  
07 anywhere you can really go to hide from it. It hurts  
08 your lungs when you breathe. Just stuff like that.  
09 A BY MS. MURRAY: I would say it's a very creepy  
10 feeling in that all of a sudden, in the middle of the  
11 day, it will get very dark and the view for -- the very  
12 reason why we would live there is to see the view of  
13 the Sierras and the craters and the lake, is totally  
14 obscured. And on top of that, I wouldn't go outside if  
15 I didn't have to, and so I'm not one that's been out  
16 there and had it, and you can taste it and smell it.  
17 The dust is terrible. But it's really a very  
18 oppressive sort of feeling, and it's something that's  
19 imposed upon you, and it's something we feel is  
20 terribly unhealthy, also.  
21 A BY MR. SIMIS: I can't add a lot to that except that  
22 it's -- they're fairly predictable in terms of when the  
23 storm system's going to come in, the wind picks up.  
24 The wind, at the same time with the dust, is sort of a  
25 howling sort of thing, and the dust is coming through  
0012  
01 every tiny crack that you can have, either in a vehicle  
02 or in the house.  
03 My property line is, oh, maybe 300 feet south of  
04 the house, and there are times when I cannot see the  
05 fence. I can look out the north side of the house, and  
06 I can't see the Dennis' house, so I know that it's bad.  
07 And, of course, the mountains and the landscape  
08 disappears. It's a very disagreeable sort of  
09 experience. It's a very chemical sort of taste that's  
10 kind of all pervasive.  
11 Q Mr. Denny, when storms come and you're in your  
12 house, are there any things that you do to try and keep  
13 the dust out?  
14 A BY MR. DENNY: Well, not usually. The one dust storm  
15 where it was the worst, we did put a plastic over a  
16 slider and a blanket over it to try to help. Living  
17 out around here, the houses are pretty well sealed,  
18 just from the weather and the cold and, you know, just,  
19 you know, to try and stop it that way one time.  
20 Otherwise, no.  
21 Q Was there a particularly bad storm this past May?  
22 A Yes, there was.  
23 Q Could you describe what -- were you in your house  
24 during that storm?  
25 A Yes.  
0013  
01 Q Could you describe what it was like to be in your  
02 house during that storm?  
03 A It was as dusty in the house as out of the house.  
04 You couldn't see probably 15 feet with a flashlight.  
05 That's how we noticed it. We were putting up plastic,  
06 and we had a light out and stuff. You look down the

07 living room and it just had a beam of dust and you  
08 could taste it. It was just everywhere. It's the  
09 worst storm I've seen.

10 Q Could you tell us, remembering that day in May of  
11 1993, how you felt seeing this dust in your house with  
12 your flashlight on?

13 A It's probably the first time that my wife and I  
14 really talked about not living out there, realizing  
15 that there is a probability that if the dust keeps  
16 getting worse and worse as it has, that it's just not a  
17 good place to live.

18 Q Do you, the three of you, have any animals,  
19 livestock of any sort up there on your property with  
20 you?

21 A I do. I have horses, dogs, cats.

22 Q With regard to your horses, did anything unusual  
23 happen with regard to horses?

24 A We used to have one horse that every time the dust  
25 would blow, she would cough, and I have always found  
0014

01 horses will cough. Clear days and everything else, she  
02 was fine, but she sounded like someone with  
03 tuberculosis. A heavy hacking cough. You feel sorry  
04 for the animals because they're right out in it.  
05 There's nothing you can do. There's nowhere to hide  
06 them.

07 Q Mr. Denny, do you have any dogs?

08 A I have four dogs.

09 Q And do the -- you take the dogs out in the brush  
10 after storms?

11 A We go out walking in this one area that you can  
12 only do, like, this time of year when the ground --

13 MR. BIRMINGHAM: Excuse me, Mr. Del Piero. I'm  
14 going to again object on the grounds that this goes  
15 beyond the scope of written testimony submitted by  
16 Mr. Denny?

17 MR. FLINN: I'll move on.

18 Mr. Simis and Ms. Murray, do you have any dogs?

19 MS. MURRAY: When I moved out to the Simis ranch,  
20 I had a dog, a shepherd/elkhound mix, and she was  
21 eleven years old. And she died of lung cancer.

22 Q BY MR. FLINN: When was that?

23 A Several years ago. And the veterinarian said it  
24 was highly unusual.

25 Q Could -- Mr. Simis, could you describe how the  
0015

01 dust storms have affected your willingness to continue  
02 to live out there, and the attractiveness of your house  
03 as a place to live given the dust storms?

04 A BY MR. SIMIS: It's sort of a right-hand/left-hand  
05 experience because during a dust storm, it's absolutely  
06 miserable, and it's very, very disagreeable in the  
07 worse possible terms. Fortunately, they don't last  
08 forever, but during the storms themselves, they're  
09 absolutely miserable. It makes you want to leave.  
10 It's disagreeable to yourself, your furnishings, your  
11 equipment, the house itself, you know, animals.  
12 Anything that is related to the property. So it's --  
13 it's a bad experience.

14 MR. FLINN: I have no further questions.

15 HEARING OFFICER DEL PIERO: Thank you very much,  
16 Mr. Flinn. Cal-Trout. Questions?  
17 Pardon me? We're going to follow the same order  
18 we've been following.  
19 MR. FRINK: Isn't L.A. first? We haven't had them  
20 cross-examine.  
21 HEARING OFFICER DEL PIERO: With all these  
22 parties, it really doesn't make a difference. Not that  
23 I'm aware.  
24 Cal-Trout, questions?  
25 MR. ROOS-COLLINS: No questions.

0016

01 HEARING OFFICER DEL PIERO: We have no one from  
02 State Lands Commission, right? Okay. Do you have  
03 questions of these witnesses? Mr. Frink? Why don't we  
04 just -- Mr. Birmingham, would you proceed?  
05 MR. BIRMINGHAM: Yes, I do have some  
06 cross-examination.  
07 HEARING OFFICER DEL PIERO: There's a switch.  
08 CROSS-EXAMINATION BY MR. BIRMINGHAM  
09 Q First, I will ask Mr. Denny some questions. And,  
10 Mr. Denny, before I start, let me identify myself. My  
11 name is Tom Birmingham, and I am one of the attorneys  
12 that represents the Department of Water and Power for  
13 the City of Los Angeles and the City of Los Angeles in  
14 these proceedings.  
15 As I understand from your testimony you, bought  
16 your house on the north shore of Mono Lake in 1982; is  
17 that correct?  
18 A BY MR. DENNY: Yes, it is.  
19 Q And for three years prior to that, you lived in  
20 the Mono Basin?  
21 A We actually lived on June Lake.  
22 Q Your testimony states that you moved to the Mono  
23 Basin in 1978; is that correct?  
24 A Actually, we moved to June Lake at that time. The  
25 Mono Basin, we moved into in '82.

0017

01 Q I'd like to refer you to the first page of your  
02 testimony. Am I incorrect in reading the first page of  
03 your testimony that, "I moved to the Mono Basin in  
04 1978"?

05 MR. FLINN: If you continue to read the whole  
06 sentence in context, it makes that clear.  
07 MR. BIRMINGHAM: Is that an objection, Mr. Flinn?  
08 MR. FLINN: It is, if -- there's a very standard  
09 rule that if you're going show a witness some prior  
10 testimony, you're allowed to have the time to read --  
11 the entire context of the testimony read.  
12 HEARING OFFICER DEL PIERO: Do you want to object,  
13 Mr. Flinn?  
14 MR. FLINN: I do object. I'd like the entire  
15 context read.  
16 HEARING OFFICER DEL PIERO: Any comments,  
17 Mr. Birmingham? No? Are you going to withdraw the  
18 question, or do you want me to rule?  
19 MR. BIRMINGHAM: You can go ahead and rule.  
20 HEARING OFFICER DEL PIERO: I'll sustain the  
21 objection.  
22 Q BY MR. BIRMINGHAM: Mr. Denny, I'm looking at the

23 first paragraph of your testimony. It states, "I was  
24 born in 1944 in Albuquerque, New Mexico." Do you have  
25 a copy of your testimony in front of you?

0018

01 "I moved to the Mono Basin in 1978. I lived in  
02 June Lake for three years before I bought a house 11  
03 years ago on Highway 167 on the north shore of Mono  
04 Lake across the road from the Simis Ranch. While  
05 living there, I have personally experienced the effects  
06 of the dust storms which blow from the exposed bed of  
07 Mono Lake."

08 Now, your testimony does state that you moved to  
09 the Mono Basin in 1978; is that correct?

10 A That's what it says here, yes.

11 Q Does it say that because you consider June Lake to  
12 be part of the Mono Basin?

13 A This whole area is part of the Mono Basin, yes.

14 Q Now, my -- this isn't critical, but -- and my  
15 arithmetic may not be right. But if you bought your  
16 house in 1982, was it four years that you lived in the  
17 June Lake area if you moved in 1978?

18 A Whatever it subtracts out to, yes.

19 Q Now, in your testimony, you described the effects  
20 of dust storms; is that correct?

21 A Yes.

22 Q But your testimony says that you didn't know about  
23 the dust storms when you bought your house in 1982; is  
24 that right?

25 A Yes. Because we'd never really gone out in the  
0019

01 Mono Lake area to see what goes on out there.

02 Q Between 1978 and 1982 when you bought your house,  
03 no one had told you about dust storms in the Mono  
04 Basin?

05 A No.

06 Q And during that period, you hadn't personally  
07 observed dust storms in the Mono Basin?

08 A No.

09 Q And the person from whom you purchased your house  
10 didn't tell you about dust storms?

11 A No.

12 Q Now, your testimony says that the view from your  
13 place is excellent; is that correct?

14 A Yes. Except for about three or four months a  
15 year.

16 Q Well, we're looking outside today, and the record  
17 already reflects that we're in the Mono Basin, and  
18 we're looking outside today and the view is obscured;  
19 is that correct?

20 A Somewhat.

21 Q The gray material that we see in the sky today is  
22 not dust, is it?

23 A No. It's fog.

24 Q Except for those three or four months that you  
25 describe, you say that there isn't anything that you  
0020

01 can't see from your place, the Sierras, the White  
02 Mountains, the Bodie Hills, Mono Lake, and the Nevada  
03 country; is that correct?

04 A Yes, it is.

05 Q Now, beauty is in the eye of the beholder, but in  
06 your opinion, are those things that you've described in  
07 your testimony that you can see from your place  
08 beautiful?

09 A Yes.

10 Q From the last paragraph of your testimony, are we  
11 to infer that you are interested in selling your place?

12 A No. No way.

13 Q You would not be interested in selling it?

14 A No. I would walk away from it. I would never  
15 sell it.

16 Are you offering to buy?

17 Q Pardon me?

18 A Are you offering to buy?

19 (Laughter.)

20 HEARING OFFICER DEL PIERO: Mr. Birmingham, you  
21 aren't under oath.

22 (Laughter.)

23 Q BY MR. BIRMINGHAM: Well, let me ask you a question,  
24 Mr. Denny. If you were going to sell your place, do  
25 you have an opinion as to what its value is? I know

0021

01 that your testimony says that because of the dust, you  
02 think it has no value. But do you have an opinion as  
03 to what you'd sell it for if someone were interested in  
04 buying it?

05 A I would think that if anyone were interested in it  
06 and you were very truthful about what goes on around  
07 the lake, it is worth absolutely nothing because anyone  
08 who would buy in there, it would be a total  
09 misrepresentation to sell it with the dust storms that  
10 go on.

11 Q If the entity or agency or person interested in  
12 buying your property was fully aware of the dust storms  
13 and the severity of the dust storms but was still  
14 interested in buying your property, what would you want  
15 to sell it for?

16 MR. FLINN: I'll object to the question. First of  
17 all, it's a hypothetical. He's not an expert witness.  
18 Secondly, it assumes facts not in evidence that there  
19 is some person out there who would be willing to buy  
20 the place under the circumstances.

21 HEARING OFFICER DEL PIERO: Mr. Birmingham?

22 MR. BIRMINGHAM: I think it's a common rule of  
23 evidence that an individual is qualified to express an  
24 opinion concerning the value of their own property and,  
25 therefore, he certainly, I think, is qualified to

0022

01 answer this hypothetical question.

02 MR. FLINN: The rule that allows people to express  
03 opinions about the value of their property does not  
04 make them into expert witnesses allowing you to ask  
05 them hypothetical questions.

06 HEARING OFFICER DEL PIERO: I'm going sustain the  
07 objection.

08 Q BY MR. BIRMINGHAM: Finally, in your testimony you  
09 talk about a horse, Lizzy. That's the horse that you  
10 referred to that coughed during the dust storms; is  
11 that correct?

12 A Yes, it is.

13 Q Now, your testimony says that finally, you had to  
14 put her down. Does that mean that finally you had to  
15 euthanize the animal?  
16 A Yes. It was due to bad stifle joints. She could  
17 no longer walk.  
18 Q And your testimony attributes that to old age; is  
19 that correct?  
20 A Correct.  
21 Q Ms. Murray, I have just a few questions for you.  
22 Your testimony indicates that you've sent pictures of  
23 dust storms to the State Water Resources Control  
24 Board. Is that correct?  
25 A BY MS. MURRAY: That's correct.

0023  
01 Q Do you have copies of those -- those photographs?  
02 A Not with me, but I have the negatives.  
03 Q Do you know if the Department -- excuse me, if the  
04 National Audubon Society and the Mono Lake Committee  
05 submitted those pictures as evidence in this  
06 proceeding?  
07 MR. FLINN: Objection. Lack of foundation. How  
08 would she know that?  
09 MR. BIRMINGHAM: I asked her --  
10 HEARING OFFICER DEL PIERO: I will sustain the  
11 objection.  
12 Mr. Birmingham, you can get to where you want to  
13 go.  
14 Q BY MR. BIRMINGHAM: Do you know if the National  
15 Audubon Society/Mono Lake Committee submitted those  
16 pictures as evidence in this proceeding?  
17 A BY MS. MURRAY: I do not know that.  
18 MR. FLINN: Just for the record, we didn't have  
19 them. There's no mystery here. We didn't have them,  
20 and they're not part of our exhibits.  
21 Q BY MR. BIRMINGHAM: When did you first start living  
22 on the north shore of Mono Lake, Ms. Murray?  
23 A BY MS. MURRAY: In my deposition, it says between  
24 19 -- since 1989, I've lived on the Simis Ranch.  
25 Q And have you -- since 1989, have you permanently  
0024  
01 resided on the Simis Ranch?  
02 A Yes. May I say that last May, if you'll notice in  
03 my deposition, I took a trailer up to a campground in  
04 Lundy Canyon to move out of the dust because it was so  
05 oppressive.  
06 Q Your testimony does refer to your  
07 elkhound/shepherd mix -- actually, your testimony  
08 refers to Sheba as a shepherd/elkhorn mix.  
09 A It was elkhound.  
10 Q I thought there might be a breed I wasn't familiar  
11 with.  
12 And you say that in the fall and summer, she began  
13 to slow down. Now, am I correct that a  
14 shepherd/elkhound mix is a relatively large breed of  
15 dog?  
16 A This one wasn't. It was the perfect size.  
17 Q How big was she?  
18 A 35 pounds.  
19 Q A 35-pound dog. Now, it says that -- in your  
20 testimony that when she died she was 11 years old. Is

21 that -- that's a relatively old age for a dog; is that  
22 correct?  
23 A Well, she wasn't that large, so I didn't feel it  
24 was that old.  
25 Q Have you -- your testimony says that when you took  
0025  
01 her to the veterinarian, he X-rayed her lungs and said  
02 that the lungs were filled with cancer. Did the  
03 veterinarian tell you that your dog died of lung  
04 cancer?  
05 A I beg your pardon. After that, I had her put to  
06 sleep because she was suffering.  
07 Q Did they perform an autopsy on your dog after --  
08 A No.  
09 Q Did they biopsy the tumors that were in your dog?  
10 A No. They simply looked at the X-rays.  
11 Q And did your veterinarian tell you that your dog  
12 had lung cancer?  
13 A Oh, yes.  
14 Q But he did not tell that you she died of lung  
15 cancer?  
16 MR. FLINN: Objection. The facts are that the dog  
17 was put to sleep.  
18 HEARING OFFICER DEL PIERO: Sustained.  
19 MR. BIRMINGHAM: During your direct examination, I  
20 believe, and I wrote this down very carefully,  
21 Ms. Murray stated that, "The veterinarian told me that  
22 the dog died of lung cancer," and I just want to  
23 establish that, in fact, the veterinarian did not tell  
24 her the dog died of lung cancer.  
25 HEARING OFFICER DEL PIERO: I think that's on the  
0026  
01 record at this point. It's clear.  
02 Ma'am, you're going to have to speak directly into  
03 the microphone. It's difficult for even us to hear you  
04 over here.  
05 MS. MURRAY: I'm sorry.  
06 HEARING OFFICER DEL PIERO: That's quite all  
07 right.  
08 Q BY MR. BIRMINGHAM: Actually, I concluded my  
09 examination of Ms. Murray. I'd like to talk a few  
10 minutes to Mr. Simis, if I may.  
11 Mr. Simis, you've lived in the Mono Basin since  
12 1966; is that correct?  
13 A BY MR. SIMIS: Actually, since 1957.  
14 Q '57, I beg your pardon. I see the reason for my  
15 mistake.  
16 You became employed as a school teacher at Lee  
17 Vining High School in 1966; is that correct?  
18 A That's correct.  
19 Q Lee Vining High School is located where,  
20 Mr. Simis?  
21 A Approximately three-quarters of a mile due south  
22 of this building.  
23 Q That would be at the north end of the town of Lee  
24 Vining?  
25 A That's correct.  
0027  
01 Q And from Lee Vining High School, you have a pretty  
02 good view of Mono Lake; is that correct?

03 A From outside the high school, that's correct.  
04 Q Your testimony indicates that you moved to what is  
05 now known as the Simis Ranch in 1972?  
06 A That's correct.  
07 Q And then your testimony indicates that the dust  
08 storms began to occur in the late seventies. Is that  
09 correct?  
10 A That would be to my nearest recollection, that  
11 would be correct.  
12 Q I'm referring to Paragraph 6 of your testimony.  
13 It says, "I first started noticing dust storms in the  
14 late seventies." Is that right?  
15 A That would be --  
16 MR. FLINN: Can you give us the paragraph?  
17 MR. BIRMINGHAM: Paragraph 6, Mr. Simis.  
18 MR. SIMIS: That's correct.  
19 Q BY MR. BIRMINGHAM: So prior to the late seventies,  
20 you did not notice dust storms?  
21 A Well, I was -- I was not aware of them. That's  
22 correct.  
23 MR. BIRMINGHAM: That concludes my  
24 cross-examination.  
25 HEARING OFFICER DEL PIERO: Thank you very much.

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01 Ms. Cahill?  
02 MS. CAHILL: No questions.  
03 HEARING OFFICER DEL PIERO: Mr. Roos-Collins, we  
04 already figured out you have no questions?  
05 MR. ROOS-COLLINS: No questions.  
06 HEARING OFFICER DEL PIERO: Is Mr. Haselton here?  
07 Do we have any other parties here that wish to  
08 cross-examine before the State Board Staff begins?  
09 Good.  
10 Mr. Frink?  
11 MR. FRINK: Just a few, please.  
12 CROSS-EXAMINATION BY THE STAFF  
13 Q BY MR. FRINK: I'm Dan Frink. I'm a staff attorney  
14 with the State Water Board. The questions I have, any  
15 of you are free to answer.  
16 I wondered if you can give us an approximate  
17 estimate of the number of people who do live in the  
18 north shore area, the area that you believe is  
19 frequently affected as a result of the dust storms?  
20 A BY MR. DENNY: I would say it's probably -- I don't  
21 know how many people, there's probably 10 to 12  
22 families that live out there, houses that are permanent  
23 on/off residences, also. That's just kind of a -- a  
24 ballpark. We could sit down and pencil it out and get  
25 real exact, if that's what you're asking.

0029  
01 Q Do any of those households have children, do you  
02 know?  
03 A I don't think so.  
04 Q Are there any lodging establishments, motels,  
05 hotels?  
06 A Oh, no.  
07 MR. FRINK: I don't have any other questions.  
08 Other staff?  
09 HEARING OFFICER DEL PIERO: Mr. Smith?  
10 Q BY MR. SMITH: I have just one question.

11 This would be for any of you -- some one of you  
12 said that the storm in May of this year was the worst  
13 you'd ever seen; was that correct?  
14 A BY MR. DENNY: Yes, that's correct.  
15 Q I just want to know, was it anything as bad as the  
16 one here about two weeks ago?  
17 A No -- it was worse, actually, yes. You couldn't  
18 see. It was like this.  
19 Q One of the Board members and some of the staff and  
20 other people were wandering around in that  
21 90-mile-an-hour wind a couple of weeks ago.  
22 A BY MR. SIMIS: If I may comment on that. The one two  
23 weeks ago was a general dust storm from a lot of high  
24 wind. The one we're referring to last May was  
25 primarily an alkali dust storm. It's different in

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01 that it has more chemical properties because the wind  
02 is in an alignment with the direct north/south shores  
03 of the lake. It picks up more of the alkali that's  
04 exposed. A general wind storm is going to pick  
05 up all kinds of dust including the alkali dust. So  
06 there is a, you know, there's a geographical, maybe,  
07 differentiation.

08 MR. SMITH: Thank you.

09 HEARING OFFICER DEL PIERO: Mr. Herrera.

10 Q BY MR. HERRERA: Again, any one of the panel that  
11 wishes to respond. My questions are -- is, in relation  
12 to where the current shoreline is on the lake, where  
13 are your residences located? How far away from the  
14 shoreline is it?

15 A BY MR. SIMIS: I would say approximately a mile,  
16 maybe three-quarters of a mile from -- let's see. From  
17 the present shoreline, maybe a little more than a mile.

18 Q Is that true for all three of your --

19 A Right. We're in the same general area.

20 MR. HERRERA: I think that concludes my  
21 questions. Thank you.

22 Mr. Canaday?

23 Q BY MR. CANADAY: Again, this would be a question for  
24 any member of the panel. It's correct that there is a  
25 state highway that runs on the backside of the lake,

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01 the north side of the lake? Can you reflect on your  
02 experience in -- with the dust storms that have  
03 occurred, what you believe the effects are on someone  
04 trying to drive that highway? Is it a hazardous  
05 condition?

06 A BY MR. SIMIS: Well, in coming home from work, from  
07 school, I've had to use headlights. The visibility is  
08 greatly reduced, you know. I've thought to myself,  
09 "What do these people think they're getting into when  
10 they drive into that material, that stuff?" I would  
11 say it was a hazard. Anything that reduces visibility  
12 would definitely be a hazard.

13 Q How reduced was the visibility? I mean, was it  
14 like on a foggy day where you had 20-foot visibility?  
15 100-foot? Do you have just an idea what that would be?

16 A Well, the worst case is probably less than  
17 maybe -- maybe less than 50 feet. The worst possible  
18 case. Sometimes it's not that bad. As I said in my

19 testimony, there are times when I cannot see the fences  
20 in front of my residence.  
21 Q Any other panel members have a recollection?  
22 That's all I have.  
23 MR. DENNY: I'd kind of say what Charlie says is  
24 pretty accurate. It just depends on the intensity of  
25 the wind out there and how the alkali dust is going  
0032  
01 whether you can see 10 feet or 100 feet. And if you're  
02 in a car going down that road and going through where  
03 it's blowing across the highway, it's the same  
04 conditions there.  
05 HEARING OFFICER DEL PIERO: Mr. Flinn, redirect?  
06 REDIRECT EXAMINATION BY MR. FLINN  
07 Q Very briefly, for Mr. Denny, a question about  
08 fog, having had the opportunity to get the view myself  
09 out there yesterday.  
10 Can you tell us whether or not you could see the  
11 mountains and the other scenery above the layer of fog  
12 from your house when there is fog?  
13 A BY MR. DENNY: Well, if you go up on Conway Summit or  
14 towards June Lake, you can get out of the fog. But if  
15 you're in the fog, no.  
16 Q But even -- are there times when the fog is here  
17 or over the lake, but from where your house is you can  
18 see it above the layer of fog?  
19 A No. The best thing is maybe looking under it.  
20 MR. FLINN: Thank you.  
21 HEARING OFFICER DEL PIERO: Any other questions,  
22 Mr. Flinn? Mr. Flinn?  
23 MR. FLINN: No further questions. Oh, I'm sorry.  
24 MR. BIRMINGHAM: Excuse me. That violates the  
25 first rule. It's not signed.  
0033  
01 MR. DODGE: We can go off the record for a second.  
02 That's only my rule.  
03 MR. FLINN: This had to do with the question --  
04 HEARING OFFICE DEL PIERO: We didn't go off the  
05 record on that, Mr. Dodge.  
06 Q BY MR. FLINN: Do you have a family on the Bodie Road  
07 named Cochran (phonetic), Jack Cochran (phonetic)?  
08 A BY MR. DENNY: Yes.  
09 Q Do you know if they have children?  
10 A I don't know if they do or not.  
11 Q Do you know, Mr. Simis?  
12 A BY MR. SIMIS: I believe they do have at least one  
13 child. I'd forgotten about that.  
14 Q And how old?  
15 A I want to say junior high school age. And my son  
16 is a 60-year old that lives out there.  
17 MR. FLINN: No further questions.  
18 HEARING OFFICER DEL PIERO: Thank you, Mr. Flinn.  
19 Mr. Birmingham, recross?  
20 MR. BIRMINGHAM: Thank you. Mr. --  
21 HEARING OFFICER DEL PIERO: I think I liked it  
22 better when you all were farther apart.  
23 (Laughter.)  
24 MR. BIRMINGHAM: Mr. Flinn and I sit this close to  
25 one another every day.

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01 HEARING OFFICER DEL PIERO: I know. It's not  
02 getting any better, either.

03 RE-CROSS EXAMINATION BY MR. BIRMINGHAM

04 Q BY MR. BIRMINGHAM: Mr. Simis, you responded to a  
05 question by Mr. Smith about the dust storm that was  
06 experienced by the members of the State Board Staff and  
07 one member of the Board a couple of weeks ago. I  
08 believe, in fact, it was a week ago today. Is that  
09 correct?

10 A BY MR. SIMIS: That's correct. It was a Monday.  
11 Monday night football.

12 HEARING OFFICER DEL PIERO: I think it was the  
13 Monday of Thanksgiving week.

14 Q BY MR. BIRMINGHAM: It was Monday of Thanksgiving  
15 week; is that correct?

16 A BY MR. SIMIS: That's correct.

17 Q Now, you distinguished that dust storm from what  
18 you call an alkali dust storm; is that right?

19 A In a major wind storm -- I mean, there are --  
20 it's -- I guess it's like defining types of spaghetti  
21 or something. When the wind blows, there are various  
22 levels of intensity and various types of particular  
23 movement as a result of the wind blowing and depending  
24 on the wind direction. So most of the winds that we  
25 get in the Mono Basin come from either a frontal

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01 passage or a frontal leaving, exit, north/south wind  
02 system.

03 The wind that we had on that Monday was a fairly  
04 major wind storm. I don't know what the velocities  
05 were recorded. I heard they were as much as 60 or 70  
06 miles an hour, and there was much structural damage in  
07 the area. That's going to move a lot of material,  
08 including the alkali dust. So it is -- yes, it is an  
09 alkali dust storm but it is also a more general dust  
10 storm.

11 Q That particular wind storm was picking up dust  
12 from all over the Mono Basin; isn't that right?

13 A That's correct.

14 Q Mr. Simis, you said that on -- in response to a  
15 question by Mr. Canaday, a member of the State Board  
16 Staff, that in the worst case, you have to turn on your  
17 headlights when you're driving -- when you're driving  
18 through one of the dust storms because you can see less  
19 than 50 feet. That worst case happens how many times  
20 per year?

21 A It's just a guesstimate, but I would say maybe  
22 three to four to five.

23 MR. BIRMINGHAM: Thank you. I have no further  
24 questions.

25 HEARING OFFICER DEL PIERO: Thank you very much,

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01 Mr. Birmingham.

02 Mr. Roos-Collins?

03 MR. ROOS-COLLINS: No questions.

04 HEARING OFFICER DEL PIERO: Ms. Cahill?

05 MS. CAHILL: No questions.

06 HEARING OFFICER DEL PIERO: Mr. Frink?

07 MR. FRINK: No questions.

08 HEARING OFFICER DEL PIERO: Mr. Smith?

09 Mr. Herrera? Mr. Canaday?  
10 Mr. Simis. One question, maybe two.  
11 CROSS-EXAMINATION BY THE BOARD  
12 Q BY HEARING OFFICER DEL PIERO: When did you move to  
13 the Simis Ranch?  
14 A BY MR. SIMIS: Pardon?  
15 Q When did you move to your current residence?  
16 A I built my current residence in 1972.  
17 Q And what's the current distance between the shore  
18 of the lake and your house? The current distance?  
19 A You know --  
20 Q Estimate.  
21 A I'm just going to have to guess. Approximately a  
22 mile, maybe three-quarters of a mile. People say --  
23 for example, visitors will say, "Can we walk down to  
24 the lake for a quick walk?" And I have to say I've  
25 been down there, but I've never really paid much

0037

01 attention to the distance.  
02 Q In '72 when you built your house --  
03 A That's -- yes.  
04 Q -- was the distance to the shore of the lake  
05 shorter?  
06 A Oh, yes.  
07 Q What would it be in relationship to your guess of  
08 three-quarters of a mile to a mile?  
09 A You mean how much shorter was it then?  
10 Q Yes.  
11 A I would -- you know, again, it's a guess. Several  
12 hundred yards, I would say.  
13 Q That -- several hundred yards less than a thousand  
14 yards or more than 200 yards? Can you put some  
15 parameters around the guess?  
16 A I understand what you're getting at. I would  
17 say -- well, definitely more than -- less than 200  
18 yards -- in 1972, it was a great deal closer, I would  
19 say, at least 200 yards closer, at least. Because I  
20 remember, for example, one time I had a small sailboat.  
21 We were able to take the sailboat from the end of the  
22 road and carry it down to the water's edge with  
23 reasonably little effort and discomfort. But now it  
24 would be a major trek.  
25 HEARING OFFICER DEL PIERO: Thank you.

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01 Mr. Flinn, offer the testimony into evidence?  
02 MR. FLINN: Yes. At this point, we would offer  
03 Mono Lake Committee and National Audubon Society  
04 Exhibits Nos. --  
05 HEARING OFFICER DEL PIERO: Mr. Birmingham, any  
06 objection?  
07 MR. BIRMINGHAM: If he's going to offer 1-F, 1-M,  
08 and 1-Q, we have no objections.  
09 MR. FLINN: Yes.  
10 HEARING OFFICER DEL PIERO: Thank you.  
11 Mr. Roos-Collins? Ms. Cahill?  
12 So ordered.  
13 (NAS/MLC Exhibits Nos. 1-F,  
14 1-M, and 1-Q, were admitted  
15 into evidence.)  
16 HEARING OFFICER DEL PIERO: Ladies and Gentlemen,

17 thank you very much for your time and your  
18 participation. We appreciate your effort. Thank you,  
19 again.  
20 Mr. Flinn?  
21 MR. FLINN: We are done. It's Mr. Dodge's turn.  
22 HEARING OFFICER DEL PIERO: Aha. The higher order  
23 on the food chain.  
24 Shall we -- would you like a break?  
25 MR. DODGE: I am informed that she asked them to  
0039  
01 come at 10:30.  
02 HEARING OFFICER DEL PIERO: We're in recess for 30  
03 minutes.  
04 Mr. Birmingham, I'd strongly recommend if there's  
05 anyone here who's capable of giving Mr. Birmingham a  
06 tour of this facility to a greater extent than he's had  
07 already, I think since this is the first time he's ever  
08 been here, he ought to be afforded the same  
09 consideration I was afforded when I came here the first  
10 time.  
11 MR. BIRMINGHAM: You know, Mr. Del Piero, it's  
12 interesting, but attorneys for the Department of Water  
13 and Power are not afforded the same courtesies as  
14 members of the State Board.  
15 (Laughter.)  
16 (Whereupon a recess was taken.)  
17 HEARING OFFICER DEL PIERO: Ladies and Gentlemen,  
18 this hearing will again come to order.  
19 Mr. Dodge?  
20 MR. DODGE: Yes, Mr. Del Piero. We have a panel  
21 today --  
22 HEARING OFFICER DEL PIERO: Mr. Dodge, should I  
23 mention the snowballs that have been -- that have been  
24 flying around the outside here? I probably should  
25 not. So why don't you proceed.  
0040  
01 MR. BIRMINGHAM: You have, Mr. Del Piero, and I  
02 didn't see them, but I'd be more than interested in  
03 finding out what happened.  
04 MR. DODGE: We have a panel today of --  
05 HEARING OFFICER DEL PIERO: He was running around  
06 looking for Mr. Roos-Collins.  
07 (Laughter.)  
08 MR. DODGE: Going left to right, Mr. Kellogg,  
09 Ms. Shannon, Ms. Blaver, and Mr. Hess. And Ladies and  
10 Gentlemen, I'm going to be --  
11 HEARING OFFICER DEL PIERO: Mr. Dodge, we need to  
12 get you on the microphone.  
13 DIRECT EXAMINATION BY MR. DODGE  
14 Q I'm going to be asking you some brief questions,  
15 and then the other attorneys will also be asking you  
16 some questions, and let me introduce them. You may not  
17 recognize them because we were told to dress casually.  
18 And so we'll have questions from Mr. Birmingham  
19 right there who represents Los Angeles, and  
20 Mr. Roos-Collins who represents Cal-Trout. This is  
21 casual for Mr. Roos-Collins.  
22 (Laughter.)  
23 MR. DODGE: He comes to Sunday breakfast like  
24 that.

25

(Laughter.)

0041

01 Q BY MR. DODGE: Then Mr. Thomas representing the  
02 California Department of fish and game, and Mr. Frink,  
03 with the beard there, looking sort of fierce,  
04 representing the State Water Board, and I understand  
05 that Ms. Volin will have some questions representing  
06 the Sierra Club.

07 So with that introduction, if I can find my  
08 folders, Mr. Kellogg, showing you National Audubon  
09 Society and Mono Lake Committee Exhibit 1-J, is that a  
10 true copy of your written testimony, Sir?

11 A BY MR. KELLOGG: Yes.

12 Q And do you affirm that that testimony is true and  
13 correct?

14 A Yes.

15 MR. BIRMINGHAM: Has this panel taken the oath,  
16 Mr. Del Piero?

17 HEARING OFFICER DEL PIERO: I don't believe they  
18 have. If you all would stand, please, and raise your  
19 right hand?

20 Do you promise to tell truth during the course of  
21 this proceeding? The response is I do.

22 THE WITNESSES: I do.

23 HEARING OFFICER DEL PIERO: Please be seated.

24 Mr. Dodge, if you'd be kind enough to make sure  
25 that the witnesses spell their names for the record.

0042

01 Q BY MR. DODGE: Mr. Kellogg, would you state and spell  
02 your name, please?

03 A BY MR. KELLOGG: My name is Kerry Kellogg, K-E-R-R-Y  
04 K-E-L-L-O-G-G.

05 Q Now that you're officially under oath, could I ask  
06 you again whether Exhibit 1-J is a true copy of your  
07 written testimony?

08 A Yes, it is.

09 Q Okay. Next, Betty Shannon. If you would spell  
10 your name, please?

11 A BY MS. SHANNON: It's Betty, B-E-T-T-Y, Shannon,  
12 S-H-A-N-N-O-N.

13 Q And showing you National Audubon Society and Mono  
14 Lake Committee Exhibit 10. Is that a true and accurate  
15 copy of your written testimony?

16 A Yes, it is. I believe it's 1-0.

17 Q 1-0? Uh-huh. My mistake. Thank you.

18 Elma Blaver, if you would spell your name for the  
19 record, please?

20 A BY MS. BLAVER: My name is Elma Blaver, and it's  
21 E-L-M-A B-L-A-V-E-R.

22 Q Ms. Blaver, if would you look at National Audubon  
23 Society and Mono Lake Committee Exhibit 1-C, I'll ask  
24 you whether that's an accurate copy of your written  
25 testimony?

0043

01 A Yes, it is accurate.

02 Q And finally, Mr. Hess, if would you spell your  
03 name, please?

04 A BY MR. HESS: My name is August Hess. A-U-G-U-S-T,  
05 capital, H-E-S-S.

06 Q And if you would look at National Audubon Society

07 and Mono Lake Committee Exhibit 1-A. I'll ask you  
08 whether that is an accurate copy of your written  
09 testimony?

10 A It is.

11 Q Now, what I'm going to do is ask you one at a  
12 time, and we'll start with Mr. Kellogg, to summarize  
13 your written testimony. Mr. Kellogg, if you can get a  
14 microphone in front of you.

15 A You want me to read the whole testimony?

16 Q I'd just like to you summarize the testimony.

17 A I was born in Long Beach in 1936, and I moved to  
18 Lee Vining in 1945 at the age of nine, and I've lived  
19 in Lee Vining ever since. And I've seen that -- I've  
20 seen a lot of things have happened at Mono Lake and  
21 mostly the decrease in water in Mono Lake on that. And  
22 there's a lot of photos that verify it since 1960.

23 Q Could you tell us about the hunting water fowl  
24 that's described in your testimony?

25 A Yeah. I can -- in the early fifties and middle  
0044

01 fifties, I hunted with my dad a lot on Mono Lake, and  
02 there was quite a lot more water fowl at that time than  
03 there is at this time now. I kind of thought that  
04 there was probably more water in the area. When I say  
05 "water," I mean spring action and things like that that  
06 were where the ducks and the geese could eat. And now,  
07 most of the springs have dried up more or less around  
08 Mono Lake.

09 Q What areas of Mono Lake did you hunt in, Sir?

10 A We hunted all the way around the lake, really.  
11 There was a lot of wildlife. Out towards the northern  
12 part of the lake, out by Thompson Ranch, in that area,  
13 there was a lot of wildlife in that area, and there was  
14 a lot of wildlife down in the Rush Creek area, and  
15 there was a lot of wildlife, duck hunting and goose  
16 hunting over around the Simons Springs area.

17 Q What portion of the Rush Creek area did you cover?

18 A In the beginning down at Rush Creek, there was  
19 ponds and there was a man by the name of Walt  
20 Dumbrowski that owned the ponds that were down at the  
21 Rush Creek area, and they grew a lot of feed and stuff  
22 for the ducks and the geese that came in on the lake.  
23 And they had regular ponds down there, so they kind of  
24 attracted a lot of the wildlife that came in on the  
25 lake at that time. So the Rush Creek area was -- would  
0045

01 be kind of south of where Rush Creek is now over by the  
02 south Tufa tower, between the south Tufas and the Rush  
03 Creek area where this pond was, the area that they  
04 hunted mostly in that area. And we did hunt the creek  
05 because a lot of creek -- I mean, the ducks would go up  
06 in the creek in that area, and we would shoot the ducks  
07 out of the creek there.

08 Q What part of the creek specifically, Sir?

09 A Well, most of the time it was up around the meadow  
10 part of the creek where the water kind of runs a lot  
11 slower, where there was pools and stuff. There was  
12 also a lot of watercress in that area so that the ducks  
13 could feed in that area up there.

14 Q Let me ask you to take a look at Mono Lake

15 Committee Exhibit 36, which is one of the photographs.  
16 It should be at your table.

17 MR. BIRMINGHAM: Excuse me, Mr. Dodge. May I have  
18 a moment to find that?

19 MR. DODGE: Surely.

20 MR. BIRMINGHAM: 36?

21 I apologize, Mr. Del Piero. My photos were put  
22 into a three-ring binder and one of the holes for one  
23 of the rings unfortunately was put through the number  
24 of each exhibit.

25 HEARING OFFICER DEL PIERO: I'll tell you what,  
0046

01 Mr. Birmingham. We have another copy here, and we'll  
02 be happy to provide you with that so --

03 MR. BIRMINGHAM: Thank you very much, and I  
04 apologize.

05 HEARING OFFICER DEL PIERO: You don't have to  
06 apologize, Sir. Okay?

07 Q BY MR. DODGE: Mr. Kellogg, can you tell us what's  
08 depicted in Exhibit 36?

09 A BY MR. KELLOGG: Looks like there's quite a lot of  
10 Phalaropes in the water and Tufa towers in the 36  
11 picture.

12 Q Is that something that you saw historically here  
13 at Mono Lake?

14 A Phalaropes?

15 Q Yeah.

16 A Yes. Uh-huh. There was lots of Phalaropes  
17 earlier.

18 Q Where?

19 A All over the lake, didn't matter. But they were  
20 mostly by the springs, you know? You would see a  
21 congestion of bird life around the spring like you do  
22 even nowadays. You know? But early in the 1950s,  
23 there wasn't very much of this Tufa tower showing, was  
24 there, like in 36? Do you remember that?

25 Q Let me ask you to take a look at Exhibit 39, Sir.  
0047

01 What's depicted there?

02 A That looks like an Indian lady that was down at  
03 the beach, and she's collecting the larva off of the  
04 flies.

05 Q Now, can you tell us, if you can, the extent to  
06 which the fly larva, in terms of their density and  
07 numbers, have decreased since the forties and fifties?

08 A I thought that there was more of the fly larva.  
09 When I say that, with the flies, that they covered a  
10 wider area on the shore, when you would walk through  
11 them and stuff, that there would be more of them in the  
12 forties or the fifties. I don't know about the  
13 forties, but just the fifties, sixties.

14 Q How about fishing in Rush and Lee Vining Creek,  
15 Sir? Did you have any experience in that?

16 A Yes, uh-huh. And the fishing was good in Rush  
17 Creek and Lee Vining Creek.

18 Q Can you give the Board anymore details when you  
19 say it was "good," in terms of number of fish or size  
20 of fish?

21 A You could catch -- in Lee Vining Creek, you could  
22 catch probably brown trout up to about 14, 15 inches

23 long. Right down below town here you could to that.  
24 It wasn't unusual to go fishing and catch that many  
25 fish. There were quite a few fish right down here  
0048  
01 below town at that time, and on Rush Creek it was that  
02 way, too. There was a lot of fish in Rush Creek in  
03 those days.  
04 Q Okay. Let's -- unless you have something to add,  
05 Sir, I'm going to move on to Ms. Shannon and ask her to  
06 summarize her written testimony.  
07 A BY MS. SHANNON: I, Beth Shannon, declare: I am a  
08 photographer and journalist who has visited the Mono  
09 Basin on numerous occasions in the last three decades.  
10 I currently reside in Placerville, California. I took  
11 the photographs in the exhibits introduced by the  
12 Sierra Club, the Mono Lake Committee, and the National  
13 Audubon Society, numbered SC-1, NAS and MLC 29, 30, 32,  
14 34, 36, 40, 41, 42, and 43.  
15 In the 1960s we, meaning my husband and daughter  
16 and I, traveled by motor boat and four-wheel drive  
17 automobile around Mono Lake on holidays exploring the  
18 area and taking photographs and collecting material for  
19 freelance writing on Mono Lake. My husband and  
20 daughter and I visited the north, west, east, and south  
21 shores of Mono Lake and the island.  
22 We returned periodically to the Mono Basin in the  
23 seventies and eighties and noted the changes to the  
24 visual environment and the declining lake level. This  
25 picture, the Sierra Club 1, is a picture that we took  
0049  
01 in 1963 of the Yates (phonetic) Harbor on Neggit  
02 Island, and it shows -- excuse me. They say that this  
03 was -- excuse me, 1964. And it shows how in 1964, the  
04 size of the harbor had diminished. The structures that  
05 you see were built by a movie company when the film  
06 Fair Winds to Java, I believe is the title, was made,  
07 and we think the film was made around 1950. So it  
08 shows that in 14 years, how much the lake level had  
09 diminished.  
10 And by this time, you see how far from the harbor  
11 that we had to beach our boat, and we had to walk up  
12 there. And because of all the white alkali, it was  
13 like -- it was so hot because it was acting like a  
14 mirror in there with all the reflection from the white  
15 alkali, and it was very hot and humid in there. And it  
16 was muddy, and it was difficult to make our way up to  
17 the buildings which had been used by the movie  
18 company.  
19 In the early sixties, we accessed Mono Lake via  
20 the marina on the west shore which is, of course, not  
21 possible today. There were -- we do have photographs  
22 of south Tufa area which shows that there was already a  
23 lot of Tufa in abundance at that time.  
24 And there were the Phalaropes, which we've already  
25 talked about in that photograph.  
0050  
01 In my opinion, the most impressive elements of the  
02 1960s Mono Lake setting was the thick, dark band of  
03 alkali flies along the lake shore in mid summer. I  
04 think this was the thing that most amazed us, that

05 there was this band of flies that you could -- it  
06 didn't make any difference which part of the lake we  
07 went to along the shore, that there were -- there was  
08 this thick band that was at least 18 inches wide, and  
09 you could walk through the flies. And you would never  
10 step on one, they would always get out of your way, but  
11 you look behind and immediately the flies had filled in  
12 where your footsteps had been. And the flies did not  
13 bother you. They didn't -- they just were there, and  
14 I -- it may seem strange to go a long ways just to see  
15 a lot of flies, but it really was the most amazing  
16 thing that we discovered about Mono Lake. And, of  
17 course, in the years since then, there have been very  
18 very few flies compared to the quantity that were there  
19 in the 1960s.

20 As a beginning photographer in the company of my  
21 family, I appreciated the lake for the diversity of  
22 scenery and images to photograph along the lake shore,  
23 the Tufa, the birds, the wildlife, and the solitude of  
24 the camping experience.

25 As the years passed, however, my photography of  
0051 the scenic aspects of the landscape turned more and  
02 more into photo documentaries of the lake's decline. I  
03 observed and photographed the concerns of growing  
04 alkali being around the lake, the growth of the land  
05 bridge to Neggit, and expansion of the unvegetated  
06 areas on the east and north shores.

07 In particular, I noted we had to walk farther and  
08 farther to be near the shore and the deterioration of  
09 the views along the shore. It actually became easier  
10 to photograph these impressions from the air, which we  
11 did beginning in 1982 when my husband got his pilot's  
12 license, and there are photographs in the air, also --  
13 of the aerial views that I took that show the decline  
14 of the lake level.

15 Q One thing I'd like you to comment on, and I'm not  
16 sure you did. I may have missed it, is Exhibit 29.

17 A Yes.

18 Q What does that depict?

19 A All right. This is a view of the lake taken from  
20 higher up in the basin on the Bodie Road, and it shows,  
21 of course, both of the islands are actually islands in  
22 this picture, as well as the little island that the  
23 gulls use for nesting sites. And comparing it, then,  
24 with the picture that was taken this year, you can see  
25 how much of the land's exposed.

0052 Q That's Exhibit 51?

02 A That's Exhibit 51. And you could see how much  
03 land is exposed, and how the -- the islands are, of  
04 course, much, much larger because of the receding lake  
05 water.

06 Q One last thing, if you could just comment on  
07 Exhibits 32 and 34?

08 A This 32 is a picture --

09 Q I should say 32, 33, and 34.

10 A All right.

11 Q And 35, excuse me.

12 A 32 was taken in 1966, May of 1966, and it shows

13 how much Tufa was already exposed at that time. And  
14 it's a picture taken -- this is the one that's  
15 amazing. This is the same site today, and you see that  
16 you do not even see a lake in this picture. This is  
17 Tufa and vegetation.

18 Again, the other -- what were the other two  
19 numbers?

20 Q 34 and 35?

21 A 34 and 35. Again, this is a picture that I took  
22 in 1966 from the south shore up in the background and,  
23 again, showing that there was considerable amount of  
24 Tufa exposed at that time. And this is its companion  
25 picture taken this year, 1993, showing how much closer

0053

01 the island looks and also, showing vegetation and also  
02 showing one of the large Tufa towers that was there  
03 then is not there now, assuming -- I assume that it was  
04 taken by somebody when it became part of the shore.

05 Q Thank you very much. You reminded me that I've  
06 been looking for a year and a half on my late night  
07 television for Fair Winds to Java, and I haven't seen  
08 it yet. It may not be played, even by the 500 stations  
09 that we're supposed to be getting these days.

10 Ms. Blaver, could you summarize your testimony for  
11 us, please?

12 A BY MS. BLAVER: I was born in 1916 in my grandmother  
13 Nellie Charlie's house on Rush Creek in Mono Basin. I  
14 grew up in a house just north of Tioga Lodge until the  
15 age of six --

16 THE REPORTER: I'm sorry. You'll have -- could  
17 you pass --

18 HEARING OFFICER DEL PIERO: Excuse me. Can you  
19 begin again because if we don't have it in the record,  
20 you haven't said it.

21 MS. BLAVER: I was born in 1916 in my grandmother  
22 Nellie Charlie's house on Rush Creek in the Mono Basin.  
23 I grew up in a house just north of Tioga Lodge until  
24 the age of six, when my family moved to Lee Vining,  
25 where I have lived to the present day.

0054

01 The Exhibits 11, 13 show the west shore of Mono  
02 Lake near Tioga Lodge as I remember it. And in this  
03 photo, we lived where the highway goes through right  
04 here. This is where we used to live, and this was our  
05 front yard.

06 Q BY MR. DODGE: Referring to Exhibit 11, Ms. Blaver?

07 A BY MS. BLAVER: Yes. Exhibit 11.

08 Q Could you point out to the Hearing Officer where  
09 you're talking about? I know it's difficult.

10 A We lived right here where the road now goes right  
11 through the knoll.

12 HEARING OFFICER DEL PIERO: Is that what appears  
13 to be the white house in the picture?

14 MS. BLAVER: Pardon me?

15 HEARING OFFICER DEL PIERO: Is that what appears  
16 to be the white house in the picture?

17 MS. BLAVER: No. This was sort of a brown house  
18 that my father had built there.

19 HEARING OFFICER DEL PIERO: Which building is it  
20 in the picture?

21 MS. BLAVER: It isn't here. It's in Lee Vining.  
22 It was in Lee Vining. They moved it. And this one  
23 here just shows the lake. It was taken in 1938, almost  
24 the same.

25 These photos show the west shore of Mono Lake near  
0055

01 Tioga Lodge as I remember it on the way to Lee Vining.  
02 I remember throwing rocks from the highway and easily  
03 hitting the lake. It was a beautiful place to grow up  
04 with the lake as our front yard. It is devastating to  
05 me to look at the lake today and see how far it has  
06 shrunk from the old shore.

07 Exhibits 12 and 14 --

08 MR. HERRERA: Mr. Dodge, that's 20 minutes time.

09 HEARING OFFICER DEL PIERO: It's 20 minutes in  
10 terms of your initial presentation, Mr. Dodge.

11 MR. DODGE: Excuse me, Ms. Blaver. We would apply  
12 for an additional 20 minutes.

13 HEARING OFFICER DEL PIERO: Granted.

14 Q BY MR. DODGE: Excuse me. Go ahead.

15 A BY MS. BLAVER: So this is the highway today, and  
16 this was taken in 1993.

17 As a child, I frequently visited my grandparents  
18 on Rush Creek. Their home was located on the west side  
19 of the stream about one and one-half miles downstream  
20 of The Narrows, in what is often called The Meadows or  
21 The Bottom Lands. There were at least ten Paiute  
22 families that lived there between The Narrows and The  
23 Ford downstream on Rush Creek. Most lived there until  
24 the mid 1930s when one of the power companies came in  
25 and bought up most of the area. Many of the families

0056  
01 then moved to Jake Mantly's (phonetic) ranch below  
02 Highway 395 on Horse Creek.

03 My grandfather maintained a large garden growing  
04 mostly potatoes but other vegetables as well. The  
05 families were able to grow or collect most of their  
06 food from the area. We harvested wild onions from the  
07 Parker Creek and Rush Creek, buckberries in abundance  
08 from Lee Vining, Rush, Parker, and Walker Creeks.

09 Rabbits were easily obtained around Rush Creek and  
10 ducks were regularly hunted on Rush Creek in the fall.  
11 The abundant watercress beds on Rush Creek especially  
12 attracted the ducks.

13 As far back as I can remember the families on Rush  
14 Creek all fished there, and I fished there when I was  
15 older. By 1940 and 50s, I was taking my own children  
16 fishing on Rush Creek. We fished all through The  
17 Meadows, above and below The Ford, and above and below  
18 the lower bridge where Walt Dumbrowski lived. We used  
19 worms and always caught all we needed to eat.

20 My family used to collect Kuzabi, the pupae of the  
21 alkali fly all around Mono Lake in the summertime. In  
22 Exhibit 39, the photo records the last time that my  
23 grandmother Nellie Charlie collected Kuzabi. This was  
24 on the north shore of Mono Lake near Black Point in  
25 1960.

0057  
01 When we went collecting, we typically waded  
02 through floating pupae two or three feet on the edge of

03 the water, both on the north shore where we lived at  
04 the Tioga Lodge. What, 29? Oh, this is the -- this is  
05 where this picture was taken, too. It shows how  
06 difficult it is to access the collecting areas on the  
07 north shore today.

08 In the 1940s and 1950s, my husband boated to Paoha  
09 Island to hunt ducks and geese in the bay on the east  
10 side. He also hunted at Simons Springs and Warm  
11 Springs from hunting blinds. All these areas have  
12 fresh water springs and tall grasses along the shore.

13 Through the 1950s, I often picnicked and swam with  
14 my family at the mouth of Lee Vining Creek where it was  
15 lush and green with a big bubbling spring. Exhibit 37  
16 shows the thickness of the trees and the abundance of  
17 shade. This was a beautiful spot. There used to be  
18 wild roses all around here and a lot of quaking Aspen  
19 trees around. I think this is one of my favorites.

20 It was a great tragedy for the town to lose this  
21 forest and the bridge and all the vegetation around it.

22 Q Thank you very much, Ms. Blaver.

23 Mr. Hess, can you summarize your testimony,  
24 please?

25 A BY MR. HESS: I'm August Hess --

0058

01 HEARING OFFICER DEL PIERO: Mr. Hess, you've got  
02 to have the microphone, Sir.

03 MR. HESS: I, August Hess, declare I have personal  
04 knowledge of the facts stated in my declaration. I was  
05 born in 1914 and raised in the Mono Basin. I grew up  
06 playing on the banks of Rush Creek and Lee Vining  
07 Creeks and on the shores and in the waters of Mono  
08 Lake. I have hiked, fished, and hunted extensively in  
09 the area. As a child, I stayed in my grandfather's  
10 house while my parents worked at Mono Mills. We lived  
11 in the Rush Creek Meadows, about two miles below The  
12 Narrows above The Ford.

13 I remember The Meadows being more extensive than  
14 they are today, well watered with abundant springs  
15 turning into wet meadows near the creek. From The  
16 Meadows, I would wade across the creek and fish and  
17 jump-shoot ducks in deep water ponds that were created  
18 from overflow from Rush Creek. The ponds were nearer  
19 the big sandy banks on the east side of the creek where  
20 the hill is scalloped.

21 The ponds were full of watercress and surrounded  
22 thickly by cottonwood trees. One pond had a duck blind  
23 built by hunters in the early forties. Springs came  
24 right out of the hills on the east side of the creek.  
25 Because of the springs, the creek never froze over in

0059

01 the winter. I believe that there were mallards that  
02 nested there and stayed year-round. I would see flocks  
03 of mallards flying back and forth from Rush Creek to  
04 the springs and watercress beds on the north shore.

05 From the early 1930s into the early 1950s, I hunted  
06 at many locations, including Simons Springs, Warm  
07 Springs, ponds and lagoons on the north shore, the Rush  
08 Creek meadows below The Narrows to the mouth of Rush  
09 Creek, and the shore between Rush Creek and the south  
10 Tufa. The hunting was really good at all of these

11 locations. At Simons Springs, ducks and geese were  
12 abundant in the fall. There must be tens of  
13 thousands of shore bird ducks which were called spoon  
14 bills and hundreds of geese.

15 When my father worked at Mono Mills in the early  
16 1920s, he would get sacks of ducks from Simons  
17 Springs -- Simons Springs watercress beds. There used  
18 to be an old -- I knew Walt Dumbrowski pictured in one  
19 of these NAS and MLC Exhibit 48.

20 HEARING OFFICER DEL PIERO: He's the gentlemen  
21 with the ducks, I understand.

22 MR. HESS: Who ran a duck club at the mouth of  
23 Rush Creek. The club consisted of three to four  
24 man-made ponds with duck blinds constructed adjacent to  
25 the creek and filled with overflow from Rush Creek.

0060

01 There were also several small lagoons near the mouth  
02 along the lake shore that the ducks used. Many  
03 thousands of ducks were present in this area in the  
04 fall. Shore birds and mallards were most numerous.

05 One thing I remember about the Mono Basin prior to  
06 the beginning of diversion was the abundance of  
07 wildlife around the lake. The wildlife sage grouse,  
08 deer, chuckers, and especially water fowl, were usually  
09 associated with springs or creeks. Many of the springs  
10 are dry now and most don't run like they used to.

11 Locations of some of these springs where the Comasdo  
12 (phonetic), now the Endera (phonetic) Ranch, Rush Creek  
13 meadows, a big spring near The Meadows south of Lee  
14 Vining Creek, springs at marina, and the east of the  
15 marina, the county park, Dan Berg (phonetic) Beach,  
16 Wilson Creek, there was more -- there was much more  
17 open water and vegetation associated with these springs  
18 than at present, grasses and Willows and watercress  
19 beds that provided food and cover and a resting place  
20 for water fowl.

21 Now, Exhibit 25 compared to Exhibit 26. Maybe  
22 we'll see 25 here. You see where the lake came way  
23 back up in this area here, and today, there's nothing  
24 but just land. I fished a lot on Lower Creek and, to a  
25 lesser extent, on Lee Vining creek. Rush Creek had the

0061

01 bigger fish, I believe. I think the water was a little  
02 warmer there because of flowing through the meadows and  
03 everything. I know someone who once caught a  
04 five-pound brown trout above the Clover Ranch. That's  
05 a pretty good-sized fish for that particular time.

06 In the 1940s and 1950s. there were lots of 15-inch  
07 long brown trout in Rush Creek. The creek channel  
08 varied from riffles to pools and runs with water in the  
09 bottom lands as deep as four to five feet in places.  
10 There was good fishing below town on Lee Vining Creek.  
11 The stream never dried up in spite of irrigation out of  
12 it. In the thirties, there was a hobo camp below town  
13 on Lee Vining Creek and the hobos got a lot of fish  
14 meals -- fishing out of that creek. Locals, too, would  
15 regularly catch a complete -- or a couple eight- to  
16 ten-inch trout for dinner.

17 My family picnicked all from near the mouth of Lee  
18 Vining Creek. That's where I think he's shown here.

19 That was Exhibit 37 there. This is 37 here. That's  
20 the old bridge down Lee Vining Creek, and there's a  
21 road going --

22 HEARING OFFICER DEL PIERO: I can see it. I can  
23 see it, certainly.

24 MR. HESS: There's the old Lee Vining bridge  
25 there, and as you go east, maybe about 50 feet, there  
0062

01 is a road going down toward the lake, and right in that  
02 area, that's a beautiful picnicking area. That's where  
03 everybody would picnic.

04 As a boy, I used to walk down to the lake from  
05 town with friends on the old highway to swim in the  
06 area south of what became the marina as shown in the  
07 photo Exhibit 30. This is -- it is the marina area  
08 here. We'd go down this way. You can see down there,  
09 that's where we used to go swimming.

10 Tourists that came to see the lake now may think  
11 it's beautiful, but they don't know how it was once.  
12 What's left of the lake may still be beautiful, but  
13 there used to be so much more of it, the colors, the  
14 views, the shores. It's very different now.

15 There's Exhibit 20 -- No. 20. No. 20, 21 -- and  
16 21 here, and 20. This here is kind of a shot from up  
17 in the mountain here, and it shows the lake coming way  
18 back -- way down in here, see this area here? And  
19 today, you won't see that anymore. It's all land, all  
20 land in that area. It's just drying up.

21 I declare under penalty of perjury that the  
22 foregoing is true and correct.

23 MR. DODGE: Okay. Thank you, Mr. Hess. The  
24 marina area you just talked about, I just noticed is  
25 right out in front of us here.

0063  
01 That's all I have. Thank you.

02 HEARING OFFICER DEL PIERO: Thank you very much.

03 Mr. Hess, just before cross-examination -- I just  
04 want to get something straight in my mind. Picture No.  
05 37, have you got that there? That's the picture of the  
06 old bridge?

07 MR. HESS: 37?

08 HEARING OFFICER DEL PIERO: Yes, Sir. Is that in  
09 the area of the county road now?

10 MR. HESS: Yes. There's no bridge there now.

11 HEARING OFFICER DEL PIERO: I know. How tall were  
12 those trees then?

13 MR. HESS: What?

14 HEARING OFFICER DEL PIERO: How tall were those  
15 trees?

16 MR. HESS: Down by -- you mean down where this  
17 area is?

18 HEARING OFFICER DEL PIERO: Yes, Sir.

19 MR. HESS: The trees are very tall. There's a lot  
20 of pine trees still there. Very tall.

21 HEARING OFFICER DEL PIERO: And the aspen?

22 MR. HESS: A lot of thick willows down in that  
23 area.

24 HEARING OFFICER DEL PIERO: Give me relative  
25 height, if you can guess or judge.

0064

01 MR. HESS: What?  
02 HEARING OFFICER DEL PIERO: The relative height of  
03 the trees?  
04 MR. HESS: I would say the willows, well, they'd  
05 be at least 14 feet, I guess. Pretty high.  
06 HEARING OFFICER DEL PIERO: Okay.  
07 MR. HESS: Of course, the pine trees, they're  
08 still down there.  
09 HEARING OFFICER DEL PIERO: I've seen the pine  
10 trees. The rest of the -- pardon me? The rest of the  
11 vegetation including the cottonwoods, is this picture  
12 representative of the degree of thickness of the  
13 corridor of vegetation?  
14 MR. HESS: Yes, I think so. Yes. You see how  
15 these trees are?  
16 HEARING OFFICER DEL PIERO: Yes. Is that  
17 representative of what it looked like?  
18 MR. HESS: This in 1946, I think more -- prior to.  
19 That I think more trees also, yes, um-hum.  
20 HEARING OFFICER DEL PIERO: Really? Up and down  
21 Lee Vining?  
22 MR. HESS: Also up and down. You bet. Um-hum.  
23 Yes. Um-hum.  
24 HEARING OFFICER DEL PIERO: And how about Rush  
25 Creek?  
0065  
01 MR. HESS: Rush Creek?  
02 HEARING OFFICER DEL PIERO: In relationship to  
03 this picture?  
04 MR. HESS: I think above the bridge, the lower  
05 bridge from that -- up toward the -- up toward Grant  
06 Lake, there's a lot of trees in there.  
07 HEARING OFFICER DEL PIERO: Comparable to this?  
08 MR. HESS: Huh?  
09 HEARING OFFICER DEL PIERO: Was it comparable to  
10 this?  
11 MR. HESS: I think so, yes. Yeah.  
12 HEARING OFFICER DEL PIERO: Okay. Thank you.  
13 Mr. Birmingham?  
14 MR. HESS: Rush Creek had a lot of willows in  
15 there. You had to crawl through, very thick in through  
16 there.  
17 HEARING OFFICER DEL PIERO: Thank you.  
18 Mr. Birmingham?  
19 CROSS-EXAMINATION BY MR. BIRMINGHAM  
20 Q Yes, thank you.  
21 First, I'd like to identify myself. Mr. Dodge  
22 introduced me earlier, but I will do it again. My name  
23 is Tom Birmingham, and I am one of the attorneys that  
24 represents the Department of Water and Power of the  
25 City of Los Angeles and the City of Los Angeles in  
0066  
01 these proceedings.  
02 And before I begin my cross-examination, I'd like  
03 to note that Mr. Dodge looks a lot better today than he  
04 does when he dresses up. But as I said earlier,  
05 beauty's in the eye of the beholder, and I'm sure  
06 there's many people who wouldn't think that Mr. Dodge  
07 looks very good on any day. I'm not among those  
08 people. I could tell the story about the time Bruce

09 got kissed in court --  
10 HEARING OFFICER DEL PIERO: Mr. Birmingham, you've  
11 hit bedrock. Okay?  
12 (Laughter.)  
13 Q BY MR. BIRMINGHAM: I have very few questions, and  
14 I'd like to begin, if I may, with Ms. Blaver.  
15 Ms. Blaver, your testimony indicates that you  
16 fished in Rush Creek; is that correct?  
17 A That's correct.  
18 Q Now, was that Rush Creek below The Narrows where  
19 you fished?  
20 A Yes, it was below.  
21 Q Did you fish Rush Creek above Old Highway 395?  
22 A Not very often, no.  
23 Q When did you stop fishing in Rush Creek?  
24 A Oh, I'd say about maybe '35, '36.  
25 Q '35 or '36? I'm sorry. If you could pull the  
0067  
01 microphone a little bit closer?  
02 A About '35 or '36.  
03 Q Your testimony at Paragraph 5 states that, "As far  
04 back as I can remember, the families on Rush Creek all  
05 fished there, and I fished there when I was older. By  
06 1940, I was taking my own children fishing on Rush  
07 Creek. We fished all through The Meadows above and  
08 below The Ford and above and below the Lower Bridge  
09 where Walt Dumbrowski lived. We used worms and always  
10 caught all we needed to eat."  
11 Now, was it 1936 when you started fishing there?  
12 A No. I fished there in the forties. Probably when  
13 I was younger than that, too.  
14 Q But -- in terms -- what year did you stop fishing  
15 in Rush Creek? If you can remember that?  
16 A Well --  
17 Q Did you fish there through the 1940s?  
18 A Yes, I did.  
19 Q And did you fish there into the 1950s?  
20 A Yes, I did.  
21 Q Was the fishing pretty good there in the 1950s?  
22 A Yes, it was.  
23 Q Did you fish there into the 1960s?  
24 A Sixties?  
25 Q Sixties.  
0068  
01 A Sixties. Yes, I must have, time and again. I was  
02 having more children, so I had to kind of stay home.  
03 Q Have you fished Rush Creek in the last few years?  
04 A No.  
05 Q I just read a portion of your testimony where you  
06 referred to Walt Dumbrowski. You say that he not only  
07 applied his engineering skills to building ponds and  
08 maintaining -- building and maintaining duck ponds, but  
09 apparently he also built the first rope tow above Lee  
10 Vining; is that right?  
11 A Yes, that's true.  
12 Q From that testimony, do we understand that the  
13 ponds that were on his place on Rush Creek were ponds  
14 that he built?  
15 A I'm sure they were.  
16 Q And those ponds were constructed for duck hunting;

17 is that correct?  
18 A It was. Of course, I didn't duck hunt, so -- but  
19 the ponds were.  
20 Q In fact, I -- one of you, I believe it was  
21 Mr. Kellogg, testified that Dumbrowski grew a lot of  
22 feed for the ducks and the geese; is that right?  
23 A BY MR. KELLOGG: Yes.  
24 Q And I think you testified that that was grown to  
25 attract the birds to that place; is that right?  
0069  
01 A Uh-huh.  
02 MR. BIRMINGHAM: May the record reflect that the  
03 witness is nodding his head affirmatively?  
04 HEARING OFFICER DEL PIERO: Ladies and Gentlemen,  
05 you need to announce your responses clearly because, as  
06 I pointed out earlier, if the Court Reporter doesn't  
07 record it in the record, for all intents and purposes,  
08 you've not responded. Okay? Thank you.  
09 Q BY MR. BIRMINGHAM: Thank you, Mr. Kellogg.  
10 Going back to Ms. Blaver, do you know if  
11 Mr. Dumbrowski charged people to hunt at his duck  
12 club?  
13 A BY MS. BLAVER: I'm sure he did.  
14 Q He did.  
15 A BY MR. HESS: He charged -- he had a duck club down  
16 there. He charged them.  
17 Q It was a commercial operation?  
18 A Yes, I think so.  
19 Q Ms. Blaver, at the end of your testimony you say  
20 that, "Through the 1950s, I often picnicked and swam  
21 with my family at the mouth of Lee Vining Creek where  
22 it was lush and green with a big bubbling spring. The  
23 Mono Lake Committee and National Audubon Society photo  
24 Exhibits 37 and 38 show the thickness of the trees and  
25 the abundance of shade. It was a great tragedy for the  
0070  
01 town to lose that forest."  
02 Looking at Exhibits 37 and 38, is that what the  
03 forest looked like in the 1940s along Lee Vining  
04 Creek?  
05 A BY MS. BLAVER: This, yes.  
06 Q Do you think that pretty accurately represents how  
07 the forest looked during the period of the early  
08 1940s?  
09 A Yes.  
10 Q Now, you say that it was a great tragedy for the  
11 town to lose that forest. That forest was destroyed by  
12 a fire in the 1950s; is that correct?  
13 A Yes, it was.  
14 Q Mr. Hess, I have a few questions for you. Your  
15 testimony refers to deep water ponds along Rush Creek.  
16 Were those ponds ponds that were constructed for duck  
17 hunting, if you know?  
18 A BY MR. HESS: Those ponds are an overflow from the  
19 creek. The creek sometimes got -- well, it was all  
20 there, but that sort of came from a creek more or less.  
21 Q Your testimony refers to the fact that  
22 Mr. Dumbrowski's ponds were filled with overflow from  
23 the creek. Was that overflow from the creek or was  
24 water intentionally diverted out of Rush Creek to fill

25 those ponds?

0071

01 A I think it was -- it wasn't an overflow down  
02 there. They made a ditch going into the creek there  
03 and got water out of it that way.

04 Q Your testimony also refers to fishing in Rush and  
05 Lee Vining Creeks. When did you stop fishing in Rush  
06 Creek?

07 A What? When did I stop?

08 Q Yes. When did you stop fishing in Rush Creek?

09 A I stopped fishing in the middle of the sixties.  
10 That's when my dad passed away. I used to go with him  
11 all the time. When he passed away, I didn't fish  
12 anymore, so probably in the middle of the sixties  
13 and --

14 Q And the fishing was pretty good in Rush Creek  
15 through the middle of the sixties?

16 A Very good. You bet. I take that back. You're  
17 talking about Rush Creek?

18 Q Rush Creek.

19 A I didn't fish Rush Creek in the sixties too much.  
20 I went up Lundy Lake, different places. But there was  
21 pretty good fishing, I heard, you know, on the lower  
22 end of Rush Creek there.

23 Q In the sixties you heard there was pretty good  
24 fishing down in the lower end of Rush Creek?

25 A Oh, yeah. There was very good fishing there.

0072

01 Q Your testimony refers to a five-pound fish that  
02 was caught on -- above a particular place. What was  
03 that?

04 A Yes. I heard that there was a five-pound caught  
05 there on the Lower Rush Creek, you know, where they had  
06 that test stream at that particular time.

07 Q That was in the late forties and fifties; is that  
08 right?

09 A I think so, yes.

10 Q Now, I believe it was your testimony that the fish  
11 in Lee Vining Creek were a little bit smaller than the  
12 fish in Rush Creek?

13 A Yes. I think so, yeah. They were much -- I  
14 think, you know, due to the cold water, I think a lot  
15 better fish, myself.

16 Q Now, you refer to the locals catching eight- to  
17 ten-inch fish in Lee Vining Creek. Is that what you  
18 recall the approximate size of the larger fish was?

19 A I think that's about, you know, pan sized. That's  
20 about what they caught on Lee Vining Creek. Sometimes,  
21 you know, you fish and you might get a bigger one. It  
22 averages about eight to ten inches.

23 Q This is a question that I will direct either to  
24 Ms. Blaver or Mr. Hess because you were both in the  
25 Mono Basin in the 19 -- the 1920s; is that right?

0073

01 A BY MR. HESS: Yes.

02 A BY MS. BLAVER: Yes.

03 Q You were small children?

04 A BY MR. HESS: Yes.

05 A BY MS. BLAVER: Yes.

06 Q In 1924, you would have both been about ten years

07 old; is that right?  
08 A Yeah. I was born in 1914.  
09 Q I'd like to show to you, if I may, a photocopy --  
10 HEARING OFFICER DEL PIERO: Mr. Birmingham, do we  
11 have this?  
12 MR. BIRMINGHAM: No, we do not.  
13 HEARING OFFICER DEL PIERO: Do you mind telling me  
14 what it is, Mr. Birmingham?  
15 MR. BIRMINGHAM: I was going to show it to  
16 opposing counsel first, Mr. Del Piero, if I may.  
17 HEARING OFFICER DEL PIERO: Do you propose to  
18 introduce it, Sir? Mr. Birmingham? Do you propose to  
19 introduce it?  
20 MR. BIRMINGHAM: No. I do not, Mr. Del Piero.  
21 MR. THOMAS: I apologize for time I'm taking, but  
22 this is a complex exhibit being offered at the last  
23 minute.  
24 HEARING OFFICER DEL PIERO: That's okay.  
25 MR. BIRMINGHAM: In fact, it's not an exhibit, and  
0074  
01 I'm more than happy to take the time to let Mr. Thomas  
02 review the document, although we're still asking for  
03 that document that he used to cross-examine  
04 Mr. Tillemans in Sacramento. Anytime we could get  
05 that, we'd be most appreciative.  
06 MR. THOMAS: I was talking to your counsel  
07 yesterday, and she said nothing of the kind, so I  
08 assumed you weren't interested.  
09 MS. GOLDSMITH: You're mistaken.  
10 MR. THOMAS: I've got it right here.  
11 MR. BIRMINGHAM: Mr. Del Piero, would you like see  
12 this?  
13 HEARING OFFICER DEL PIERO: Why don't you go ahead  
14 with your cross-examination? I'll see it afterwards.  
15 Q BY MR. BIRMINGHAM: Certainly. I'd like to show to  
16 both Ms. Blaver and Mr. Hess a photocopy of the front  
17 page of the September 11, 1924, edition of the Inyo  
18 Register, and I'm going to ask you to just read the  
19 first few paragraphs of the left-hand column which  
20 appears under a headline "City Promises to Outline Its  
21 Plan." And if you could just take a couple of moments  
22 and read the first few paragraphs of that. You could  
23 read it silently. You don't need to read it out loud.  
24 Why don't you read down the first four or five  
25 paragraphs? Or you can read the entire thing if you'd  
0075  
01 like, but I'm going to ask you about the third  
02 paragraph of the article.  
03 MR. THOMAS: Mr. Birmingham, while we're waiting,  
04 here's a copy of Exhibit Fish and Game 137.  
05 HEARING OFFICER DEL PIERO: The record should note  
06 that I'm not going hear any more complaints at least  
07 about that document anymore.  
08 MR. BIRMINGHAM: Not at least that document.  
09 There'll be others, I'm sure.  
10 HEARING OFFICER DEL PIERO: I was very specific,  
11 Mr. Birmingham. I recognize that.  
12 Q BY MR. BIRMINGHAM: Have you both had an opportunity  
13 to read the article? If I may, I just have one  
14 question for both of you, and I will read -- I will

15 read aloud the third paragraph of the article, and I'll  
16 ask you to read it along with me so that we can verify  
17 that I read it accurately. But this is an article  
18 that, as I said, is from the September 11, 1924,  
19 edition of the Inyo Register, and it appears under a  
20 headline "City Promises to Outline Its Plan."

21 Is that correct, Mr. Hess?

22 A BY MR. HESS: I have no idea.

23 Q Does it say, "City Promises to Outline Its Plan"?

24 A What year is this now?

25 Q 1924.

0076

01 A I don't have no recollection of that.

02 Q I'm not asking if you've seen the article, but I  
03 want to read to you a paragraph out of the article, if  
04 I may, and I'll ask you to read along with me just to  
05 make sure that I read it properly so I don't misread  
06 it. It says, "Thursday was used for a trip to Long  
07 Valley and to the Mono Basin to view that proposed  
08 source of water. With Rush Creek absolutely dry at the  
09 road and Lee Vining Creek little or no better, the Mono  
10 Basin water resources make no impressive showing at  
11 this time."

12 Now, did I accurately read that paragraph?

13 A Yeah.

14 Q Now, do you recall in the 1920s that Lee Vining  
15 Creek -- let me state it differently. Do you recall in  
16 the mid 1920s --

17 HEARING OFFICER DEL PIERO: Mr. Birmingham,  
18 inasmuch as I've not had the opportunity to see the  
19 article, I have one question. Can you tell me the  
20 date? What time of the year and what day and what  
21 month?

22 MR. BIRMINGHAM: Yes. It was September 11, 1924.  
23 I'm sorry. I thought that I had identified that  
24 earlier.

25 HEARING OFFICER DEL PIERO: Thank you.

0077

01 Q BY MR. BIRMINGHAM: Do you recall Rush Creek being  
02 dry at the road in 1924?

03 A BY MR. HESS: That sounds pretty small, doesn't it.  
04 I don't remember because there was water down in Rush  
05 Creek, so there must have been water --

06 Q Down below The Narrows with the springs there was  
07 Watt center.

08 A Oh --

09 HEARING OFFICER DEL PIERO: Excuse me. Excuse me,  
10 Mr. Birmingham, you're going to have sit down.  
11 Mr. Hess is going to have to lean forward into the  
12 microphone. I can't even hear it, and I don't know how  
13 the Court Reporter's going to get a record on this. So  
14 if --

15 Q BY MR. BIRMINGHAM: Mr. Hess, do you recall in 1924  
16 if Rush Creek was dry at the road?

17 MR. DODGE: Objection. He already answered the  
18 question. He said no.

19 HEARING OFFICER DEL PIERO: Is that -- Mr. Hess,  
20 do you or do you not recall whether or not there was  
21 water in the creek --

22 MR. HESS: Yes. I'm sure -- there was water in

23 the creek at that time.  
24 HEARING OFFICER DEL PIERO: In September of 1924,  
25 Sir, do you remember?  
0078  
01 MR. HESS: I was living in that area, so there was  
02 a lot of water in the creek, yes.  
03 HEARING OFFICER DEL PIERO: Okay. Mr. Birmingham,  
04 proceed.  
05 MR. BIRMINGHAM: May I ask that that be handed  
06 down to Mr. Del Piero? Thank you.  
07 May I confer with Ms. Goldsmith for a moment?  
08 HEARING OFFICER DEL PIERO: Yes.  
09 MR. BIRMINGHAM: Thank you.  
10 Q BY MR. BIRMINGHAM: Mr. Hess, can you tell us when  
11 you stopped hunting water fowl, approximately what  
12 year?  
13 A BY MR. HESS: When I what?  
14 Q Stopped hunting water fowl?  
15 A I'd say the last 20 years I haven't hunted at  
16 all. There's nothing to hunt around there anymore,  
17 anyway.  
18 Q Now, I just have very few questions for  
19 Mr. Kellogg. Actually, just one.  
20 Mr. Kellogg, it was your testimony that the number  
21 of ducks began to noticeably diminish in the late  
22 1960s; is that correct?  
23 A BY MR. KELLOGG: Yes. That's the way I remember it,  
24 yes.  
25 Q Did you hunt water fowl, Mr. Kellogg, through the  
0079  
01 late 1960s?  
02 A Yes, I did.  
03 Q Mr. Hess, you said a few moments ago, there's not  
04 much left to hunt. Is it correct that the number of  
05 deer in the eastern Sierra are down? I'm talking about  
06 the entire region.  
07 A BY MR. HESS: I didn't get the question.  
08 Q Do you know if the -- throughout the entire region  
09 of the eastern Sierra, and now I'm talking about Mono  
10 and Inyo Counties, that the number of deer is down  
11 remarkably?  
12 MR. DODGE: Objection. Irrelevant.  
13 HEARING OFFICER DEL PIERO: Mr. Birmingham? I  
14 would -- forgive me, but you can explore a variety of  
15 areas in terms of cross-examination. I don't recall  
16 that he made any comment in regards to deer in terms of  
17 his direct testimony, so if you could outline the  
18 relevance of this issue, I'd appreciate it.  
19 MR. BIRMINGHAM: I believe that this witness did  
20 talk about hunting deer and other species in his direct  
21 testimony. Is that correct, Mr. Hess?  
22 MR. HESS: Well, I think it's down a little, yes.  
23 MR. BIRMINGHAM: Excuse me, Mr. Hess.  
24 MR. DODGE: I withdraw the objection.  
25 Mr. Birmingham's correct.  
0080  
01 HEARING OFFICER DEL PIERO: Forgive me, then.  
02 Q BY MR. BIRMINGHAM: Do you think, Mr. Hess, that the  
03 number of deer are down throughout the region?  
04 A I think it's down a little bit compared to what it

05 used to be, yes.

06 MR. BIRMINGHAM: Thank you. I have no further  
07 questions.

08 HEARING OFFICER DEL PIERO: Thank you very much,  
09 Mr. Birmingham.

10 Ms. Cahill?

11 MR. THOMAS: Mr. Thomas.

12 HEARING OFFICER DEL PIERO: Mr. Thomas?

13 MR. THOMAS: Mr. Chairman, could I take a chair  
14 and move over next to the witnesses and take a  
15 microphone so that particularly Mr. Hess can hear me?

16 HEARING OFFICER DEL PIERO: I don't have a problem  
17 with that, but you can't sit in front of Mr. Hess  
18 because the problem we had was when Mr. Birmingham was  
19 trying to do that --

20 MR. DODGE: Hal, why don't you take our table.

21 HEARING OFFICER DEL PIERO: These tables are not  
22 party favors, Mr. Canaday advises us.

23 CROSS-EXAMINATION BY MR. THOMAS

24 Q Good morning, Ladies and Gentlemen. My name is  
25 Hal Thomas. I'm staff counsel with the Department of  
0081

01 Fish and Game, and I'd like to ask you a few questions  
02 about hunting. Now, you'll have to help me because I'm  
03 not much of a hunter myself. I do a little fishing. I  
04 don't really have a history, and when I read through  
05 some of your declarations, I didn't fully understand  
06 what you meant. So I want to start with Mr. Hess and  
07 ask a few questions about what he was telling us.

08 You were saying that back in -- prior, I guess, to  
09 the 1940s, that you would wade across Rush Creek and  
10 jump-shoot ducks in the deep water ponds. Is that  
11 correct?

12 A BY MR. HESS: That's correct, um-hum.

13 Q And if you could put yourself, your mind, back in  
14 that time and start back down there at the bottom of  
15 the creek or wherever you started to jump-hunt, what  
16 did you mean by "jump hunting"? Could you tell us  
17 that?

18 A I'd start right across -- right below The Narrows  
19 there, then hunt down the creek, all the way down,  
20 just like a fisherman would do, you know? Fly fishing  
21 and just go right down the river. I do that duck  
22 hunting. They did little ponds and the turns in the  
23 creek.

24 Q Did you follow the creek?

25 A Yes.

0082

01 Q Real close?

02 A Follow the creek right down.

03 Q Would those ducks be off on the side somewhere?

04 A Sometimes they'd be in these little turns in the  
05 creek and other times they would be in the swamps.  
06 There's some swamps down in that area, ponds.

07 Q And what kind of ducks were you seeing there?

08 A These were all mallards, mostly, in that Rush  
09 Creek area.

10 Q Were these big ducks pretty much on Rush Creek?

11 A Would you say big?

12 Q The big ducks, were they pretty much on Rush

13 Creek?

14 A Yes. Um-hum. The spoonbills were on the lake.

15 Q And why were these big ducks down on those little  
16 meanders that you talk about?

17 MR. BIRMINGHAM: I'm going to object on the  
18 grounds that it calls for an opinion that this witness  
19 is not qualified to express.

20 HEARING OFFICER DEL PIERO: I'll sustain the  
21 objection, but I think if you lay foundation, you can  
22 get to where you want to go.

23 Q BY MR. THOMAS: Why would a hunter be interested in a  
24 duck that was located down there on that little  
25 meander?

0083

01 A For one thing, there was a lot of watercress  
02 there, and the ducks like to stay there and feed there.  
03 And there were pretty good-sized mallards all through  
04 there there, yes, um-hum. That's why all the hunters  
05 went there.

06 Q Would they just eat the watercress?

07 A Watercress, yes. That was good for them.

08 Q And they eat bugs?

09 A What?

10 Q Were there a lot of bugs around that watercress?

11 A Bugs? I don't know about that.

12 Q Did you see any when you were walking down there?

13 A I don't know. Might have been. I don't know.

14 But they went after the watercress and the roots of the  
15 grass. Yes.

16 Q You've got to remember I'm not a hunter, so -- I  
17 know what bugs are, mosquitoes and bugs along the  
18 stream, but if these ducks are eating something out  
19 there, you'd have to tell us.

20 MR. BIRMINGHAM: You knew enough, Mr. Thomas, to  
21 identify mallards as the big duck. I don't think the  
22 witness ever did, but you knew enough to do that.

23 HEARING OFFICER DEL PIERO: Gentlemen. Mr. Hess,  
24 why don't you go ahead and finish telling us about what  
25 the ducks ate. Okay? Please? Or I may have two

0084

01 attorneys for lunch.

02 MR. ROOS-COLLINS: Can I pick the second?

03 MR. HESS: They just like this watercress and the  
04 grass that grew around there.

05 Q BY MR. THOMAS: And what does it mean to "jump  
06 hunt"? Do the birds jump up in front of you?

07 A Yes. You go along the creek there with your gun  
08 ready, and all of a sudden a flock will fly up, and you  
09 try to get one. And everything will fly up, and you  
10 don't know what to do. Everybody's excited. You  
11 probably don't get any.

12 Q Did you get your limit these days?

13 A Sure. I used to get my limit. You bet.

14 Q Did you get your limit all the time? Ever go home  
15 without a limit?

16 A Not all the time, no.

17 Q Most of the time?

18 A Quite a -- yeah, when I went hunting, yes, I  
19 usually got a few. You bet.

20 Q Do you remember what the limit was back in those

21 days?

22 A I don't remember. That was way back.

23 Q Was it what it is today?

24 A I don't think they had any limits then.

25 (Laughter.)

0085

01 HEARING OFFICER DEL PIERO: Mr. Thomas, I would  
02 point out the gentleman is providing testimony to a  
03 representative of the Department of Fish and Game.  
04 Given the nature of your questions, I might be  
05 reluctant to respond to you, too.

06 MR. THOMAS: Fortunately, the statute of  
07 limitations has run on that particular offense, as it  
08 has for drying up the creek.

09 Q BY MR. THOMAS: We will -- again, I want to  
10 understand this. You walked down this creek, and these  
11 birds would fly up in front of you, and --

12 A BY MR. HESS: We tried to knock them down.

13 Q And did you do the same kind of jump hunting over  
14 there on the east side by Simons Springs?

15 A That was a little different over there. We used  
16 to hide in blinds there and wait for the ducks to come  
17 over. Sometimes you'd wait all day and wouldn't get  
18 any. But if the wind was blowing pretty good, the  
19 ducks would fly around the shore pretty good, and then  
20 you'd have a chance at them.

21 Q And did you get a limit over there at Simons  
22 Springs?

23 A Again, I don't know what the limit was, but we  
24 would get a few, yes. Get enough for dinner.

25 Q Did you get enough to stock your freezer for the

0086

01 winter?

02 A Huh?

03 Q Did you get enough to stock your freezer for the  
04 winter?

05 A No. We didn't have no freezer then.

06 Q What time of year would you be hunting over at  
07 Simons Springs?

08 A Well, I'd say in the thirties and the forties.

09 Q I mean what time, in the winter time, late fall?  
10 What time of year?

11 A They did have a season on them, yes. We'd have to  
12 go during the season. Yes. In the fall, yes, um-hum.

13 Q And was it -- were these areas iced over in the  
14 late fall?

15 A What?

16 Q Did these areas ice up? Did they close up? These  
17 springs?

18 A No. No. The springs, there was always water in  
19 there. That's what they get -- over on the east side.

20 Q Yeah. Right.

21 A The spring never froze up.

22 Q The springs never froze up. And did that attract  
23 a lot of ducks?

24 A It sure did. Especially, at Warm Springs where  
25 the water was a lot warmer. They liked that. There

0087

01 were a lot of ducks in that area.

02 Q Did you ever get any goose over at Warm Springs?

03 A Yes.  
04 Q Did they go over there for the warm water, too?  
05 A Yes. Simons Springs and all through there, they'd  
06 feed on the grass there, you know, on the roots of the  
07 grass there, and there was a lot of geese. But on a  
08 calm day, like I said, if you go down there on a calm  
09 day, you make any kind of noise at all, the geese will  
10 go out on the lake and just stay out there all day  
11 long. And you'd stay in a blind and come back --  
12 Q It was a cold, long wait.  
13 A The wind blew real heavy, then they'd fly over  
14 you.  
15 Q Now, let's go around the lake further. Did you  
16 hunt the north shore at all?  
17 A You mean down by the beach there?  
18 Q Yeah.  
19 A I've hunted through there, sure.  
20 Q And was that as good as Simons Springs?  
21 A I don't think so, no. I think Simons Springs was  
22 the best at that particular time.  
23 Q Was it better than Rush Creek?  
24 MR. BIRMINGHAM: Excuse me. I'm going to object  
25 on the grounds the question is vague.

0088  
01 MR. HESS: For geese it was, yes  
02 HEARING OFFICER DEL PIERO: Excuse me. Can you  
03 read the question back again?  
04 (Whereupon the record was read as requested.)  
05 Q BY MR. THOMAS: Was the hunting better than Rush  
06 Creek?  
07 MR. BIRMINGHAM: I'm going to renew the objection  
08 because I'm not sure what comparison --  
09 HEARING OFFICER DEL PIERO: I will sustain the  
10 renewed objection. You need to specify in regards to  
11 what, whether it's ducks or geese or what?  
12 Q BY MR. THOMAS: Was the duck hunting -- let me ask  
13 you, Sir. What were you hunting over there on the  
14 north shore?  
15 A BY MR. HESS: Usually, we'd -- I hunted there for  
16 geese. They'd land in the springs over there, and then  
17 we'd try to sneak up on them and get them that way.  
18 Q And was the goose hunting better than over on  
19 Simons Springs?  
20 A I think over around Simons Springs was better.  
21 You had a better chance.  
22 Q And were there any goose over on Rush Creek?  
23 A Very few on Rush Creek. Once in a while they'd  
24 land in the meadows up there. That's the only time I  
25 noticed them.

0089  
01 Q Do you remember how old you were when were doing  
02 this hunting that you saw the goose land on the  
03 meadows?  
04 A I was probably around 18 to 23 years old.  
05 Q So that would have been back --  
06 A '33.  
07 Q -- in the early thirties?  
08 A I wish I was that young again.  
09 Q We all do.  
10 Now, where did you go to take sage grouse and

11 chucker around Mono Lake?  
12 A What did I do?  
13 Q Where did you go when were you hunting sage grouse  
14 and chucker around the lake?  
15 A Sage grouse? I'd hunt up in the Bodie Hills  
16 mostly for, I guess you call them sage hens.  
17 Q Did you take any sage hens down on Rush Creek?  
18 A I never noticed too much down there, but I imagine  
19 they went in those -- landed in those springs, sure, to  
20 get some water, but I hunted most around the Bodie  
21 area.  
22 Q Same with chucker?  
23 A Chucker's the same, yes. There's a place called  
24 Indian Wells way up by Mono. McPherson Grade? I guess  
25 Wild Horse Grade. Chucker used to come to that spring  
0090  
01 quite often.  
02 Q You said you haven't hunted much duck in the last  
03 20 years; is that correct? Pardon me? You better  
04 speak into the mike?  
05 A I haven't hunted at all since, I guess, the last  
06 20 years.  
07 Q And you said something under your breath about not  
08 being anything to hunt. Could you state it out in the  
09 microphone, if I heard you correctly?  
10 A I didn't get the question.  
11 Q Did -- is there a reason why you haven't hunted  
12 much in the last 20 years?  
13 A Well, yeah. One reason. I started playing golf  
14 and -- at this playing golf, and I just let everything  
15 go.  
16 (Laughter.)  
17 HEARING OFFICER DEL PIERO: Careers have been lost  
18 that way.  
19 Q BY MR. THOMAS: Is there much wildlife around to  
20 hunt?  
21 A BY MR. HESS: That's another reason. The wildlife,  
22 you know, it decreased and not much hunting around  
23 there like it used to be. That's another reason I  
24 guess I quit. Mainly, it was that golf. I just quit  
25 fishing, quit hunting, and quit everything.  
0091  
01 MR. BIRMINGHAM: We won't call Mrs. Hess.  
02 Q BY MR. THOMAS: Mr. Kellogg, you've heard some of the  
03 questions I've asked Mr. Hess. Have you hunted much in  
04 the last 20 years?  
05 A BY MR. KELLOGG: Not too much, no.  
06 Q Is there any reason why that relates to wildlife  
07 in the area?  
08 A Same reason, not much to hunt.  
09 Q And have you been out around the lake at some of  
10 these old hunting spots to compare them with the old  
11 days?  
12 A Most of the old hunting spots are too far from the  
13 lake.  
14 Q And how about down Simons Springs? Have you been  
15 down there in the last few years?  
16 A No, I haven't.  
17 Q Have you been down to the bottom of Rush Creek?  
18 A Yeah. I've been down Rush Creek.

19 Q And does it look different than it used to look?  
20 A Yes. Quite a bit.  
21 Q Do you see as much wildlife as you used to see  
22 down there?  
23 A No.  
24 Q Did you get your limit when you were hunting in  
25 the fifties?

0092

01 A Yeah. Uh-huh.  
02 Q Do you remember what that limit was?  
03 A Nope.  
04 Q I won't ask why there weren't many hunting  
05 licenses sold up here in this part of the county when I  
06 looked at the historical records.  
07 HEARING OFFICER DEL PIERO: That's good, because I  
08 might sustain any objection made by any party.  
09 Q BY MR. THOMAS: Just a second please. I have a  
10 couple of notes here.  
11 Let me ask you a couple of questions about where  
12 the hunters came from. When were you hunting,  
13 Mr. Hess, back in the thirties, did you hunt with the  
14 people from out of the county?  
15 A BY MR. HESS: No. Just my friends would just --  
16 people around this area, mostly.  
17 Q Did the people who went down to Walt Dumbrowski's  
18 place, did they come from out of town?  
19 A Yes. They did come from Southern California, a  
20 lot of them.  
21 Q Do you remember where in Southern California these  
22 people came from?  
23 A I have no idea.  
24 Q You weren't friends with any of them?  
25 A I wasn't too friendly with all those people, so I

0093

01 don't know.  
02 Q You didn't pay for hunting?  
03 A No. Walt Dumbrowski always asked me to come down  
04 there, so I used to go down there -- he treated me  
05 pretty good.  
06 Q Mr. Kellogg, did you have friends from Southern  
07 California that hunted in this area?  
08 A BY MR. KELLOGG: No. No.  
09 Q Did you know anything about the folks that hunted  
10 down at Dumbrowski's place?  
11 A I didn't know anything about them. No.  
12 Q You came up here when you were about nine years  
13 old?  
14 A Yes.  
15 Q And did you first hunt this area when you were  
16 nine?  
17 A I started hunting when I was nine. Uh-huh.  
18 Q And when you hunted with your father, did you --  
19 did you hunt pretty much with him for 10 years, 10 to  
20 12 years?  
21 A I hunted with him for the first five years,  
22 uh-huh, until I had my own driver's license, and I  
23 could go by myself.  
24 MR. THOMAS: Okay. All right. I don't have any  
25 further questions. I want to thank you.

0094

01 HEARING OFFICER DEL PIERO: Thank you very much.  
02 Mr. Roos-Collins? Questions?  
03 MR. ROOS-COLLINS: I do have questions.  
04 HEARING OFFICER DEL PIERO: Why don't you take  
05 that seat over there? Well, that's fine. Which would  
06 you prefer? That's fine. It seemed to work more  
07 effectively that way.  
08 Mr. Birmingham, on recross, you can take your seat  
09 down there at Mr. Dodge's table and take some small  
10 solace.  
11 MR. BIRMINGHAM: I would consider that an honor to  
12 be seated at the left hand of F. Bruce Dodge.  
13 (Laughter.)  
14 MR. THOMAS: Now, don't get jealous.  
15 HEARING OFFICER DEL PIERO: Is that -- are we to  
16 assume that's better than being seated at the right  
17 hand of Patrick Flinn?  
18 Please proceed, Mr. Roos-Collins.  
19 CROSS-EXAMINATION BY MR. ROOS-COLLINS  
20 Q Good morning. I'm Richard Roos-Collins, the  
21 attorney for California Trout in this matter. My  
22 questions will concern the tributaries to Mono Lake and  
23 the fisheries in those tributaries.  
24 Mr. Kellogg, I'll begin with you. Let me begin by  
25 relating a personal experience I have with my client,  
0095  
01 who is a fisherman. He often tells me about his  
02 fishing trips when he returns, and I listen to his  
03 stories with a grain of salt. You're familiar with the  
04 term "fish story"?  
05 A BY MR. KELLOGG: Yes.  
06 Q Paragraph 13 of your declaration --  
07 A Um-hum.  
08 Q -- describes the trout that you caught in Lee  
09 Vining and Rush Creeks in the 1940s and early 1950s.  
10 A Um-hum.  
11 Q That paragraph isn't a fish story, is it?  
12 A No. I don't think so. I didn't think that. When  
13 you're younger, you know, everything looks bigger, but  
14 I thought the fish we caught were that big.  
15 Q You're confident that the trout that you caught in  
16 Lee Vining Creek were occasionally 12 to 14 inches in  
17 length?  
18 A Yes.  
19 Q And you're confident that the trout that you  
20 caught in Rush Creek averaged 12 to 14 inches in  
21 length?  
22 A Not averaged, I don't think. I think we caught  
23 fish that were that big, but I think on the average  
24 that they wouldn't be that big, no. That means every  
25 fish in the creek would have to be that big, and they  
0096  
01 weren't, no.  
02 Q Paragraph 13 refers to your catching wild brown  
03 trout. How did you know they were wild?  
04 A Well -- the way I felt about trout in those days  
05 is that the trout could have been planted in the early  
06 days, but the trout that went ahead and spawned in the  
07 creek and became its own trout, I mean, you know, it  
08 wasn't planted. I thought that that was probably a

09 wild trout. I called that a wild trout. I'm sure that  
10 it probably had to be planted somewhere along the  
11 line. Somebody put trout in the stream somewhere along  
12 the line, but I thought after they took over and did  
13 their own thing, that those were called native trout.  
14 They grew up in that creek by themselves.

15 Q How often did you fish in Lee Vining and Rush  
16 Creeks in the late forties and early 1950s?

17 A In the fifties was mostly when I fished down there  
18 because they turned Rush Creek into what they called a  
19 test stream down there, and you could actually even go  
20 down there and catch quite a few fish because they  
21 planted it quite often to do their research, whatever  
22 they did on Rush Creek at that time. So there was  
23 always -- in those days, I was pretty young in those  
24 days. I had to hitch a ride to go fishing. I didn't  
25 have my own car or anybody that would take me fishing.

0097

01 So in Rush Creek there was always a lot of people going  
02 down to Rush Creek to go fishing, so it was easy to  
03 catch a ride to Rush Creek and fish in the test stream  
04 and that type of thing. So yeah, I fished quite a lot  
05 down there.

06 Q Did you ever meet a Department of Fish and Game  
07 biologist named Eldon Vestal?

08 A Not that I can remember, no.

09 Q Did the Department of Fish and Game wardens ever  
10 sample the trout you caught for weight, for length?

11 A Yes. They had a test stream. When you came out  
12 of the entrance there, it was right at Dumbrowski's  
13 house. When you came out there, they had different  
14 areas that you would go up to the little house there,  
15 and they had it so that you could dump your fish out on  
16 the table. And they would go ahead, and the way they  
17 marked their fish is that they would cut fins off of  
18 these fish and mark them that way, and when you would  
19 come up there, they would count your fish. And they  
20 were more interested in the fish that you caught that  
21 were marked than the fish that weren't marked, and so,  
22 consequently, yes they did check all your fish at the  
23 test stream.

24 Q On a typical day, how many hours would it take to  
25 you catch a trout in Rush Creek?

0098

01 A I mean, I'd go down there in the mornings  
02 probably, and fish until -- in the afternoon until it  
03 was almost lunch time and have my limit of fish.

04 Q We have heard testimony that Rush Creek in certain  
05 areas was unproductive for fishermen. Would you agree  
06 with that testimony as applied to Rush Creek below  
07 Highway 395 in the late forties and early fifties?

08 A What did you want me to testify to? I didn't  
09 understand that too much.

10 Q In your opinion, was Rush Creek unproductive as a  
11 fishery below Highway 395 in the late forties and early  
12 1950s?

13 A No. I thought that Rush Creek was pretty  
14 productive as far as I was concerned. I always caught  
15 fish down in the Rush Creek area.

16 Q Do you recall ever fishing in Rush Creek and not

17 catching a fish?  
18 A Well, that's a long time ago. I can't say that I  
19 remember that.  
20 Q Okay. When you were fishing at Rush Creek, did  
21 you ever see sheep grazing in the vicinity of the  
22 creek?  
23 A Yes. And there was evidence -- you know, this  
24 country was loaded with sheep. So it's hard to, you  
25 know, to say that specific here, specific there. Yeah,  
0099  
01 there was evidence of sheep in the area, and I'm not  
02 saying that I can specifically remember seeing them  
03 forging the creek or anything like that. I have seen  
04 it in Lee Vining Creek a lot, but I'm not going to say  
05 that I did because I was pretty young back then. I  
06 can't really remember the sheep right in the creek, but  
07 I know that there was always a lot of sheep tracks and  
08 stuff, you know, around there, droppings and stuff, of  
09 the sheep around Rush Creek.  
10 Q Do you remember the sheep ever disrupting your  
11 fishing --  
12 A No.  
13 Q -- in Rush Creek?  
14 A No. I can't say that I remember that.  
15 Q Lee Vining Creek?  
16 A In Lee Vining Creek, yeah. I've had them come  
17 right up to where you're fishing across the creek.  
18 Q In the forties?  
19 A And the fifties. You're going back to forties  
20 with me, and that's too far back.  
21 Q Well, I'm referring to your Paragraph 13 that  
22 describes fishing in the late forties and early 1950s?  
23 A Well, it was the real late forties.  
24 Q Do you ever remember Rush Creek being dry below  
25 Highway 395?  
0100  
01 A There was a time, yes, when Rush Creek was dry,  
02 yes, and there was springs down below there that fed  
03 the lower part of Rush Creek. I can remember Rush  
04 Creek when it was dry, and we fished across 395, yes.  
05 Q Was Rush Creek ever dry below Highway 395, in your  
06 experience?  
07 A It was down for about two or three miles. It was  
08 dry until you came the that spring area again, and then  
09 it would flow out of the springs towards the lake.  
10 Q You're talking about the late forties, early  
11 fifties?  
12 A Probably the late fifties and sixties, in that  
13 area. Uh-huh. I would think. I'm not sure now.  
14 Don't quote me. I'm not going to say for sure.  
15 MR. BIRMINGHAM: I'm going to move to strike on  
16 the grounds of speculation. I'll withdraw that.  
17 HEARING OFFICER DEL PIERO: Thank you,  
18 Mr. Birmingham.  
19 Q BY MR. ROSS-COLLINS: You were born in 1945?  
20 A BY MR. KELLOGG: No, I was born 1936. I moved to Lee  
21 Vining in '45.  
22 Q Excuse me. So you do recall days when Rush Creek  
23 below Highway 395 was dry in the early forties or  
24 fifties?

25 A Um-hum. I can remember that.

0101

01 Q Do you remember whether the springs in The Meadows  
02 dried up in that period?

03 A No. I think that there was always some kind of  
04 water down below there in Rush Creek. Maybe not  
05 abundant, but there was water in the lower Rush Creek.

06 Q Paragraph 5 of your written declaration describes  
07 brine shrimp that were concentrated at springs. Are  
08 you referring to springs along Lee Vining or Rush  
09 Creek?

10 A No. I was talking about the springs that were out  
11 in the lake. You know?

12 MR. ROOS-COLLINS: I see. Thank you, Mr. Kellogg.

13 HEARING OFFICER DEL PIERO: Thank you very much,  
14 Mr. Roos-Collins --

15 MR. ROOS-COLLINS: Mr. Del Piero, those were my  
16 questions for Mr. Kellogg.

17 HEARING OFFICER DEL PIERO: Forgive me.

18 Q BY MR. ROOS-COLLINS: Ms. Shannon, I have no  
19 questions for you.

20 Ms. Blaver, good afternoon. Could you move the  
21 microphone in front of you? Your declaration in  
22 Paragraph 5 states that you always "caught all we  
23 needed to eat." Were you talking there about the early  
24 1940s?

25 A BY MS. BLAVER: Yes, I was.

0102

01 Q Now, you heard my caution to Mr. Kellogg about  
02 fish stories. You don't recall any day when you fished  
03 in Rush Creek and didn't catch a fish?

04 A That was feasible because a lot of times you went  
05 fishing, you didn't catch fish anywhere. You know? I  
06 mean -- it was just -- luck, I guess. But usually,  
07 yes, we caught fish always.

08 Q You say that you caught "all we needed to eat."  
09 A That could even be two or three.

10 Q You're saying that you caught all that you needed  
11 for your family to eat?

12 A Um-hum. Yes.

13 Q You heard my question about the productivity of  
14 the fishery in Rush Creek below Highway 395? Let me  
15 state the question again.

16 A Yes, I did hear, yes.

17 Q What is your opinion about the productivity of the  
18 trout fishery in Rush Creek through the early 1940s?

19 A Well, as far as I'm concerned, there were a lot of  
20 fish. I didn't really go for catching the big fish,  
21 either. I just went for the fun of it because it was  
22 easy to take the children down there, and I didn't have  
23 to watch them quite as closely as you do everywhere  
24 else, and even they could fish.

25 Q They fished with worms as well?

0103

01 A Um-hum.

02 Q And they caught trout?

03 A Um-hum.

04 Q Did they have fun?

05 A Oh, yes, um-hum.

06 Q Through the early 1940s, was Rush Creek ever dry

07 below Highway 395, in your experience?  
08 A That's weird, because I don't remember it being  
09 dry.  
10 Q You first saw -- let me withdraw that question.  
11 You were born on the shoulder of Rush Creek in  
12 1916; is that correct?  
13 A Yes.  
14 Q And you grew up along the shore of Mono Lake?  
15 A Um-hum. That's right.  
16 Q So you have been around Rush and Lee Vining Creeks  
17 since you were born?  
18 A That's right.  
19 Q You don't recall any day when Rush Creek was dry  
20 below Highway 395 from your first memory to the  
21 present?  
22 A No, I don't. Isn't that funny?  
23 Q Do you recall any day when Lee Vining Creek was  
24 dry?  
25 A No. I've never seen Lee Vining Creek dry, either,  
0104  
01 except recent years.  
02 Q Your testimony talks about the ten families that  
03 lived along Rush Creek during your childhood in the  
04 bottom lands. Did those families also fish?  
05 A Oh, yes. Um-hum.  
06 Q Were they also successful catching trout?  
07 A Yes, they were.  
08 Q Paragraph 7 of your declaration describes a  
09 particular willow species that your grandmother used to  
10 weave into basket. What type of willow did they use?  
11 A Gosh, well, I don't know the scientific name or  
12 them or anything, but they had to be very straight.  
13 They were willow. They had to be very straight. And  
14 they usually had different places that they would go,  
15 like on Parker Creek.  
16 Q Um-hum.  
17 A That was a great place to get willows. And over  
18 on the Conway Ranch was another place that they would  
19 gather willows. But after a while, they -- the willows  
20 didn't grow as well because they had to have water,  
21 naturally, so collecting willows got down to a minimum  
22 almost.  
23 Q Now, did your grandmother gather young willows to  
24 weave basket?  
25 A I would say yes.  
0105  
01 Q Let me ask the question more generally. What age  
02 willows do they use for weaving basket?  
03 MR. BIRMINGHAM: Objection. Lacks foundation.  
04 MS. BLAVER: I really don't know.  
05 HEARING OFFICER DEL PIERO: Excuse me?  
06 MR. BIRMINGHAM: It lacks foundation. But I think  
07 the witness answered the question.  
08 HEARING OFFICER DEL PIERO: I'm sorry, but I -- I  
09 mean, like -- he asked the question early -- which  
10 question are you objecting to, the initial three  
11 questions on the willows or the last one?  
12 MR. BIRMINGHAM: The last one.  
13 HEARING OFFICER DEL PIERO: As to what age?  
14 MR. BIRMINGHAM: As to what age.

15 MR. ROOS-COLLINS: And she answered she didn't  
16 know.  
17 HEARING OFFICER DEL PIERO: She didn't know.  
18 Okay.  
19 MR. ROOS-COLLINS: I'll withdraw the question.  
20 HEARING OFFICER DEL PIERO: Thank you.  
21 Q BY MR. ROOS-COLLINS: Ms. Blaver, along Rush and Lee  
22 Vining Creeks through the early 1940s, did you see  
23 young willows growing?  
24 A Yes, uh-huh. I did.  
25 Q You did?  
0106  
01 A Um-hum.  
02 Q In isolated locations or --  
03 A Well --  
04 Q -- along the bank?  
05 A It was about the same places, but they in  
06 different spots, you know, this they had to collected  
07 willows.  
08 Q Did you see young cottonwoods growing?  
09 A Yes, I guess I did.  
10 Q Would you agree or disagree with testimony that  
11 grazing along Rush and Lee Vining Creeks generally  
12 prevented the growth of willows through the early  
13 1940s?  
14 A Well, they must have had some pretty good herders  
15 because if you kept moving the sheep, they wouldn't --  
16 they really wouldn't ruin the environment to that  
17 extent.  
18 Q Do you ever see sheep herds in the bottom lands of  
19 Rush Creek through the early 1940s?  
20 A Oh, yes, um-hum.  
21 Q Did they ever interfere with your fishing?  
22 A No. Hum-um.  
23 Q Did they ever turn up so much soil or sand in the  
24 stream as to make it muddy?  
25 A I suppose so, on the sides of the banks, but I  
0107  
01 don't think it hurt anything.  
02 Q Were you in Lee Vining Creek in the late 1950s  
03 when the fire that Mr. Birmingham referred to occurred?  
04 A Yes. I was living here. Um-hum.  
05 Q Did that fire reach the area used for picnicking?  
06 A Yes, it did.  
07 Q Ms. Blaver, do your children still fish?  
08 A Yes, they do.  
09 Q Do they live in the area?  
10 A No, they don't. They don't anymore. One lives in  
11 Costa Mesa in the Los Angeles area, and the other one's  
12 in Nevada.  
13 Q Thank you, Ms. Blaver. No further questions.  
14 A Thank you.  
15 Q Mr. Hess, good afternoon.  
16 A BY MR. HESS: Good afternoon. I'm hungry.  
17 Q I couldn't hear you. What did you say?  
18 A I said good afternoon. I'm hungry.  
19 HEARING OFFICER DEL PIERO: Do you want to have  
20 lunch with me, Mr. Hess?  
21 MR. BIRMINGHAM: There is a maple bar in the  
22 back.

23 MR. HESS: I'm just kidding.  
24 Q BY MR. ROOS-COLLINS: Mr. Hess, if this were the  
25 1930s, could you walk down to the creek and catch  
0108 trout?  
01 trout?  
02 A Yes, you bet.  
03 Q Could you catch a trout for lunch if this were the  
04 19 thirties?  
05 A Well, yes, right down, you bet. That was good  
06 fishing then.  
07 Q Could you catch a trout for lunch today?  
08 A Well, I don't think -- no. I don't fish -- like I  
09 said, I don't fish anymore.  
10 Q Do you have your declaration in front of you?  
11 A Yes, um-hum.  
12 Q Let's start with Paragraph 11.  
13 A Okay.  
14 Q You say that you knew someone who once caught a  
15 five-pound brown trout above the Plover Ranch?  
16 A Yes.  
17 Q Was he a trustworthy fisherman?  
18 MR. BIRMINGHAM: Objection.  
19 MR. HESS: I just said someone told me --  
20 HEARING OFFICER DEL PIERO: Wait. I want to hear  
21 the reason for this objection. Go ahead, Tom.  
22 MR. BIRMINGHAM: Assumes facts not in evidence.  
23 HEARING OFFICER DEL PIERO: Overruled.  
24 MR. HESS: I myself didn't catch anything that  
25 big, but I did hear that there was one caught there,  
0109 that five-pounder, yes.  
01 that five-pounder, yes.  
02 Q BY MR. ROOS-COLLINS: Did you believe him?  
03 A Well, I kind of doubt it. Five pounds, that's a  
04 pretty good-sized fish.  
05 Q You go on to say that in the 1940s and 1950s,  
06 there were lots of 15-inch brown trout in Rush Creek?  
07 A Yes.  
08 Q Did you catch any 15-inch brown trout in Rush  
09 Creek?  
10 A I think so. There were -- I really didn't measure  
11 them, but I'm sure they ranged around 13 to 15 inches  
12 long, pan-sized fish.  
13 Q Did Mr. Thomas' predecessor wardens ever measure  
14 your fish for you?  
15 A I didn't see any game wardens around then. We  
16 always ducked when they came around.  
17 MR. THOMAS: Is that called jump hunting?  
18 MS. CAHILL: Jump fishing.  
19 MR. ROOS-COLLINS: Mr. Thomas -- is Mr. Peaster  
20 (phonetic) in the audience? Apparently not.  
21 MR. HERRERA: Mr. Roos-Collins, it's 20 minutes.  
22 MR. ROOS-COLLINS: Mr. Del Piero, I request an  
23 additional ten minutes for additional fish stories.  
24 HEARING OFFICER DEL PIERO: Granted.  
25 Q BY MR. ROOS-COLLINS: If you had to use one word to  
0110 describe the fishery in Rush Creek through the early  
01 describe the fishery in Rush Creek through the early  
02 1940s, what would it be?  
03 A One word, you say?  
04 Q One word.

05 A Good. You say in 1940?  
06 Q Through the early 1940s?  
07 A I would say good, yeah.  
08 Q Did you ever go out to Rush Creek through the  
09 early 1940s and not catch a fish?  
10 A I'm sure I got skunked a few times, yes. But  
11 that's -- I guess every fisherman gets skunked once in  
12 a while.  
13 Q And you're honest enough to admit it. But usually  
14 you would catch fish?  
15 A Yeah. Usually, we would catch a fish. You would  
16 use bait or sometimes you would use spinners and -- you  
17 would usually catch a fish.  
18 Q Same experience in Lee Vining Creek?  
19 A Same deal in Lee Vining Creek, yes.  
20 Q Through the early 1940s, did the sheep herds ever  
21 interfere with your fishing, either in Rush or Lee  
22 Vining Creek?  
23 A They graze in the meadows, as I remember, but they  
24 never bothered the creeks. The only time they got the  
25 creek muddy is when they crossed like on the Lower Rush  
0111  
01 when they crossed there. They might have have muddied  
02 up the water a little bit there, but that's the only  
03 time I think that they harmed the water.  
04 Q Paragraph 3 of your declaration states that  
05 grazing of big sheep herds that occurred at that time  
06 was over at Mono Mills and did not come into the bottom  
07 lands until Mendiburo (phonetic) came in late in the  
08 1940s. Who or what is Mendiburo (phonetic)?  
09 A Mendiburo (phonetic)? He's a big man from  
10 Bakersfield. He has livestock all over the country.  
11 That's when he come into this area. Well, I don't know  
12 when he came in, maybe earlier than that. But he had  
13 a lot of fish -- sheep in this area. He grazed sheep  
14 in this area. They'd walk them from Bakersfield to  
15 here, and then in the summertime, they'd graze them in  
16 this area here, and then they'd go back in the fall.  
17 You know, they'd trail herd them back to Bakersfield.  
18 Q Now, you were born in the Mono Basin in 1914?  
19 A Yes.  
20 Q And you've lived here all your life?  
21 A Yes.  
22 Q Do you recall Rush Creek ever being dry below  
23 Highway 395?  
24 A Oh, yes, yes, I'm sure. Sure.  
25 Q Through the early 1940s, was Rush Creek ever dry  
0112  
01 below 395?  
02 A Maybe in the early forties it might be -- I think  
03 there was a little stream coming down I think from the  
04 springs there, then. That's the only water that I  
05 remember.  
06 Q In the 1930s, was Rush Creek ever dry below  
07 Highway 395, in your experience?  
08 A There was always water in that, Sir. I never --  
09 never -- I don't think I've ever seen it dry, no.  
10 Q Through the early 1940s, was Lee Vining Creek ever  
11 dry, in your experience?  
12 A Through the 1940s.

13 Q Through the early 1940s?  
14 A No. No. There's always water in Lee Vining Creek  
15 then.

16 MR. ROOS-COLLINS: Mr. Birmingham, could you pass  
17 me the article that you previously read from?

18 I will read two paragraphs from this article and  
19 then ask for your collective -- your individual  
20 opinions about whether these paragraphs apply to the  
21 Mono Basin. You'll recall that Mr. Birmingham read  
22 about a visit to Rush and Lee Vining Creeks in  
23 September of 1924 when they appeared to be dry at  
24 Highway 395. Let me read further on in this article.

25 "An unexpected but timely variation in the program  
0113

01 was when a delegation of five named at a meeting of the  
02 several women's clubs secured an opportunity to talk  
03 with the Los Angeles party. This delegation, each  
04 member of which addressed the visitors, included," and  
05 then it lists five people.

06 "While the remarks cannot be outlined here with  
07 any completeness or accuracy, their force and  
08 directness impressed the city men as greatly as any  
09 incident of the whole trip. The general situation was  
10 shown with the fact that the women have worried over  
11 the possible ruination of the valley and their homes,  
12 and their patience is nearing exhaustion."

13 Now, as I understand this article, this refers to  
14 the Owens Valley. Do you have an opinion as to whether  
15 the City of Los Angeles' diversions from the Mono Basin  
16 have been a benefit or a loss for the town of Lee  
17 Vining?

18 Let me start with you, Mr. Hess.

19 A BY MR. HESS: Well, I was in business at that  
20 particular time, so it was a benefit to me. I sold a  
21 lot of gas. I was in the gas business then. And --  
22 but outside of that, I don't know. I think they harmed  
23 the country, you know, taking the water out of here.

24 Q How so?

25 A Hum?

0114

01 Q How?

02 A Well, you know, the diversion, getting all the --  
03 Lee Vining Creek and Rush Creek down to Los Angeles. I  
04 think that hurt this country a lot. You bet. Dried up  
05 all of our springs, and the duck hunting and all that  
06 was gone, and there was no more springs. So I think it  
07 hurt a lot, yes, um-hum.

08 Q From 1941 through the early 1980s, how did those  
09 diversions affect your daily life?

10 A Since when?

11 Q 1941 through early 1980s.

12 A Eighties? How did it affect my life, you say?

13 Gosh, I don't know. At first, there, it -- I don't  
14 know. I can't answer that one. I'm sure it affected  
15 it somehow. I can't answer that.

16 Q Do you fish as much today as you did?

17 A Did I fish what?

18 Q From 1941 through the early 1980s, did you fish as  
19 much as you did before 1941?

20 A Well, I wasn't -- I didn't fish too much myself.

21 I think about the same, I would say. I don't know. I  
22 didn't pay too much attention then. I usually -- I did  
23 more hunting than I did fishing. But like I said  
24 before, when my dad passed away, I quit hunting and  
25 fishing, and I used to go with him quite a bit to

0115

01 different places. So that's the way it stands there.

02 Q Thank you.

03 Ms. Blaver, what is your opinion about how the  
04 City of Los Angeles' diversions have affected this  
05 community?

06 A Well, I like the artistic part of it. I think  
07 that the lake was more beautiful, and I noticed from  
08 where I live that whenever the wind blows, the winds  
09 are just terrible across the lake because of all the,  
10 you know, the whirlwinds that would come and go on up  
11 those canyons. I thought that was very -- was sad.  
12 And I don't know, I just miss the beauty of the lake.  
13 It used to be so beautiful, and it was so high and  
14 maybe it isn't good for anything, but it was a  
15 God-given lake, and I think it should still be there  
16 like it was.

17 Q Thank you.

18 Ms. Kellogg, your testimony refers to a tragedy.

19 A BY MS. SHANNON: I'm Mrs. Shannon.

20 Q Shannon. Excuse me.

21 A I've only known him since yesterday.

22 (Laughter.)

23 HEARING OFFICER DEL PIERO: Thank you for  
24 clarifying that.

25 MS. SHANNON: Yes.

0116

01 Q BY MR. ROOS-COLLINS: That was a compliment to him  
02 but no reflection on you.

03 Ms. Shannon, is it your opinion that the City of  
04 Los Angeles diversions have been a tragedy for the  
05 community of Lee Vining?

06 A BY MS. SHANNON: Yes, I think that they have. I  
07 think the biggest tragedy is for the wildlife that is  
08 dependent on a healthy lake system. And I know from my  
09 observations that the wildlife does not exist in the  
10 quantity that it did when we were here first in the  
11 1960s, and we're not talking about wildlife that can be  
12 hunted or fished, but I'm talking about the gulls and  
13 the avocets, the Phalaropes that we saw in great  
14 abundance. And then starting in the mid seventies we  
15 just did not see them.

16 I know when we went through this exhibit for the  
17 first time in September of this year, I mentioned to  
18 one of the people at the desk here, "Why hadn't they  
19 said anything about the avocets," because the avocets  
20 were nesting on Paoha in the sixties, and they're a  
21 beautiful bird. And we also saw them in great  
22 abundance on the east shore. And they said, "Well,  
23 they didn't say anything about them because they just  
24 were not a major bird here any longer."

25 And so that I feel that the lake is just -- I

0117

01 mean, it's amazing to me how much it has changed in 30  
02 years because of the -- the declining lake level has

03 just left so much exposed shore that just wasn't here  
04 30 years ago.  
05 Now, was that kind of a roundabout answer for you?  
06 Q No. That was a very direct answer. Thank you.  
07 And now Mr. Kellogg.  
08 A BY MR. KELLOGG: You ask me how do I feel about it?  
09 Q It affects the community of Lee Vining.  
10 A I thought it was very bad because of the declining  
11 lake level, just like everybody else, and I also feel  
12 that the air quality is not very good because of alkali  
13 that grows around in the valley from the windmills. I  
14 don't think that's good for us.  
15 I would like to -- I think that it -- in the  
16 earlier days, I think that it affected our fishing  
17 because of the less water that was in the area and that  
18 our springs more or less dried up, so there is no  
19 more -- not very good hunting anymore. There is still  
20 hunting, but not good.  
21 Yes, I think it's affected our lives quite a bit  
22 with the diversion of the water.  
23 MR. ROOS-COLLINS: Thank you all. No further  
24 questions  
25 HEARING OFFICER DEL PIERO: Thank you very much,  
0118  
01 Mr. Roos-Collins.  
02 We have two more parties. Mr. Carle on behalf of  
03 the State Department of Parks and Recreation, I  
04 understand has some questions, but before him -- who's  
05 here on behalf of the Sierra Club? How many questions  
06 or how much time do you anticipate?  
07 MS. VOLIN: Not very much.  
08 HEARING OFFICER DEL PIERO: Not very many is  
09 subjective. I'm not putting any pressure on you. I  
10 just want to know. Okay?  
11 MS. VOLIN: A lot depends on how he answers it.  
12 HEARING OFFICER DEL PIERO: My effort to get a  
13 direct answer is lost.  
14 You need to state your name for record since  
15 you've not asked questions before.  
16 CROSS-EXAMINATION BY MS. VOLIN  
17 Q My name is Jaqueline, J-A-Q-U-E-L-I-N-E, Volin,  
18 V-O-L-I-N. I'm here representing the Sierra club. I  
19 wanted to ask some questions regarding recreation on  
20 Mono Lake, and I wanted to begin with some questions  
21 for Mr. Hess and Ms. Blaver.  
22 I wanted to start with just asking you about when  
23 you were kids, and if you and your friends and family  
24 went swimming much in the lake?  
25 A BY MR. HESS: Are you asking me?  
0119  
01 Q Yes.  
02 A Yes. We did a lot of swimming in the lake. You  
03 bet.  
04 Q What part of the lake did you swim from?  
05 A I lived here in Lee Vining, then. We'd walk right  
06 down to the lake here. Right down by the marina, by  
07 the big rock down here.  
08 Q What was the beach like?  
09 A What?  
10 Q What was the beach there like?

11 A What was it like?  
12 Q Yeah.  
13 A The lake was -- it was a little milder, then, I  
14 think because we'd go down and we could swim in the  
15 water with our eyes open then. I don't think you could  
16 do that today. It's too strong.  
17 Q Was the beach nice and sandy and --  
18 A Yes. Right on the shore. Nice and sandy. Yeah.  
19 Nice beach there. Um-hum.  
20 Then also there was some springs there, you know,  
21 a nice spring there you could rinse off a little bit.  
22 Q Rinse the salt off?  
23 A Rinse the salt off from the lake.  
24 Q Did you swim around the Tufa at all then?  
25 A Well, there was one big Tufa rock that we used to  
0120 swim out to and back, yes.  
02 Q Ms. Blaver, did you go swimming much when you were  
03 a kid?  
04 A BY MS. BLAVER: Yes, we did. Yes, I did.  
05 Q In the lake? The same area of the lake near where  
06 the marina was?  
07 A Yeah, mostly down there.  
08 Q What was it like? Was the water warm?  
09 A Well, considerably warm.  
10 Q Did you swim around the Tufa or near the creek  
11 mouths?  
12 A Pardon?  
13 Q Did you swim around the Tufa or near the creek  
14 mouths?  
15 A It was only the one rock that I noticed, or I  
16 guess you would call it a Tufa. I don't think I was  
17 that good of a swimmer. I didn't swim out there.  
18 Q Do either of you recall a lot of other people  
19 swimming, also? Friends and --  
20 A Yes. I think a lot of people used to go around  
21 the lake.  
22 Q Um-hum.  
23 A And swim.  
24 Q And did you -- I wanted to ask about picnics  
25 because both of you mentioned picnicking along Lee  
0121 Vining Creek. Did you sort of throw like picnic  
02 parties, and you'd have parties where you picnicked and  
03 swam?  
04 A Yes. It was really a nice place to take the  
05 children.  
06 Q Where was --  
07 A There was a nice little sandy beach there.  
08 Q Where was this? I'm sorry.  
09 A Down at the mouth.  
10 Q At the mouth of Lee Vining?  
11 MR. BIRMINGHAM: Excuse me, Mr. Del Piero. I'm  
12 having trouble hearing the witness.  
13 HEARING OFFICER DEL PIERO: Ma'am, you really need  
14 to try and pull -- okay?  
15 Q BY MS. VOLIN: So could you just repeat when you were  
16 talking about swimming and -- with your family and  
17 picnicking up at Lee Vining creek at the mouth, what  
18 was that like?

19 HEARING OFFICER DEL PIERO: Mrs. Blaver, before  
20 you answer. Put the microphone in front of you because  
21 even though you pulled it close, you're turning your  
22 head away. Thank you.

23 MS. BLAVER: I liked it there because it was nice  
24 for the children. There was a small beach, sandy  
25 beach, and the lake -- didn't -- it was shallow, for  
0122  
01 one thing, and until you went out quite a ways and then  
02 it would go down into the deeper water. We'd go there  
03 often.

04 Q BY MS. VOLIN: Um-hum. Do either of you, Mr. Hess or  
05 Ms. Blaver, remember a lot of people boating around  
06 the same time when you were kids around the lake?

07 A Yes. But mostly when they had the marina, and  
08 they had -- then, of course, there were a lot.

09 Q Do you remember the boat that -- the Mono Inn used  
10 to run out?

11 A Yes.

12 Q Did you ever travel on that?

13 A Yes, I did.

14 Q And was that when you were a young kid?

15 A No. I was married, and it was later. Much later.

16 Q I wanted to ask you both about Mark Twain days.  
17 Do you both remember them?

18 A Oh, yes.

19 A BY MR. HESS: Yes.

20 Q Can you tell us what you remember of them? What  
21 they were like?

22 A BY MS. BLAVER: They were grand affairs, really.  
23 Mrs. McPherson started Mark Twain days, and it was  
24 really a big celebration.

25 Q When did it happen? When did it usually take  
0123  
01 place?

02 A It was about August, I think.

03 Q Every year?

04 A Um-hum.

05 Q Do you remember when they started, when they  
06 began?

07 A I don't remember exactly the year.

08 Q Mr. Hess?

09 A BY MR. HESS: 1929 was when they first started.

10 Q And did they take place every year?

11 A Every year. I think it was second Sunday in  
12 August.

13 Q What kinds of things happened? What kinds of  
14 activities went on?

15 A Well, they had -- at first, I don't think they had  
16 a boat race, I don't believe. But they had like  
17 swimming, all kinds of swimming, then they had horse --  
18 horse race swimming, also.

19 Q In the lake?

20 A In the lake.

21 Q They have horse races --

22 A You had to go around a pole. Then they had foot  
23 races, all kind of foot races. I remember a band, I  
24 think, came up from Lone Pine and played that  
25 particular time and -- well, that's it. It was pretty  
0124

01 nice. Very nice.  
02 Q Do you remember the bathing beauty contests?  
03 A Yes.  
04 (Laughter.)  
05 MR. BIRMINGHAM: Your Honor, excuse me,  
06 Mr. Del Piero, I'm going object.  
07 HEARING OFFICER DEL PIERO: Mr. Birmingham, go  
08 ahead and state your objections. Before you begin,  
09 though, Sir, I just want to point out of all the  
10 exhibits submitted, my personal favorite is this one.  
11 Now, go ahead and state your objection,  
12 Mr. Birmingham.  
13 (Laughter.)  
14 MR. HESS: I think my sister here was in the  
15 beauty contest a little bit.  
16 MS. BLAVER: I'm not going to say a thing.  
17 MR. BIRMINGHAM: In fact, I think one of the  
18 witnesses at one time won first prize in the bathing  
19 beauty contest.  
20 MR. HESS: Mono Inn? You see that picture? That  
21 one of Mono Inn? That was my older sister, I guess.  
22 MS. BLAVER: That was me.  
23 MR. ROOS-COLLINS: The record isn't clear as to  
24 which she is.  
25 HEARING OFFICER DEL PIERO: This is true. This is  
0125  
01 true. And in order to stay completely out of the  
02 disagreement between the two of them, I'll pass the  
03 picture over and someone else can identify her.  
04 MR. DODGE: Some things are best left ambiguous in  
05 life.  
06 HEARING OFFICER DEL PIERO: Thank you very much  
07 for that observation, Mr. Dodge.  
08 Please proceed.  
09 Q BY MS. VOLIN: Ms. Blaver, did you say you won one of  
10 those contests? Did you say you won one of the bathing  
11 beauty contests?  
12 A BY MS. BLAVER: No.  
13 Q How many people used to come down for this event?  
14 A BY MR. HESS: How many people?  
15 Q Yeah.  
16 A I think that first one, I think at least a  
17 thousand people were there that particular time. I  
18 would say pretty close to a thousand. A lot of people,  
19 they come from Lone Pine, you know, Nevada. Like  
20 Fallon and different places in Nevada. Quite a  
21 gathering. That was quite a gathering for that  
22 particular deal because there wasn't too much doing in  
23 those days. People come from all over and  
24 participated.  
25 Q Did -- was it a big gathering day for all of you  
0126  
01 who lived around here as well?  
02 A Sure. You bet. That was a big deal for us.  
03 Q Do you remember the boat races?  
04 A Boat racing? Yes. I remember all of them, yes.  
05 More or less.  
06 Q What kind of boat races did they used to have?  
07 A They had outboard motors that could probably go  
08 30, 40 miles an hour. Not very fast. That's what they

09 used at first. Then as time went by, they got a little  
10 bigger motors in their boats and higher speeds and so  
11 forth. And I guess at one time, they had a sanction  
12 here called a boat club from Southern California or  
13 something. They had tryouts here for big races down  
14 south, I guess. That was later on, of course. I think  
15 after they got started, they kind of went for the boat  
16 racing, more or less.

17 Q Was that a big draw for a lot of people?

18 A Yes, oh, yes.

19 Q Did a lot of people come to Mark Twain days  
20 specifically to compete in the boat races?

21 A A lot of -- yes. Yes. You bet. They had quite a  
22 gang participating in the races. And also a big gang  
23 came up here, you know, to see it, you know? A lot of  
24 people, crowd. It was nice. It was very nice. They  
25 had big dances, later on up here in Lee Vining, that

0127

01 big hall up here. They had a big dance that evening.  
02 It was quite a gathering for people around this area.

03 Q Do you remember when they stopped?

04 A What?

05 Q Do you remember when Mark Twain days sort of lost  
06 their popularity?

07 A Oh, yes. It was very popular up to the time that  
08 World War II broke out. Then they discontinued. Then  
09 after we got back from the service, I think around '48,  
10 '49, they tried it again, but it wasn't as good as it  
11 used to be, so then -- I think that it was last time.  
12 The American Legion put it on, and I was a member at  
13 that particular time. And we went broke trying to put  
14 it on, and then we didn't do it like Mrs. McPherson  
15 used to do it.

16 Q That was why it wasn't as popular was because  
17 Benita McPherson had the get up and go to get it going?

18 A Yeah.

19 Q Do you miss them?

20 A What?

21 Q Do you miss the Mark Twain days?

22 A Mark Twain days? Yeah. I miss them. That was  
23 quite a deal for the country.

24 Q How about Ms. Blaver, do you miss them?

25 HEARING OFFICER DEL PIERO: Please proceed.

0128

01 MS. VOLIN: Actually, it's more like three  
02 questions because I have to repeat one. They're  
03 short.

04 Q BY MS. VOLIN: I just -- Ms. Blaver, I just wanted to  
05 know if you miss Mark Twain days, too?

06 A BY MS. BLAVER: Well, I think it was a great thing  
07 for Lee Vining. It was sort of an attraction for the  
08 tourists to come, and it was good for the business  
09 around here when we -- when we were in business it was  
10 good for us.

11 Q What was your business? I'm sorry.

12 A We had the Lee Vining Market.

13 Q I did have -- this was one question I just wanted  
14 to ask Mr. Hess about referring to the duck hunting.  
15 And I saw in your declaration, in Paragraph 6 and 7,  
16 where you're talking about essentially the duck

17 hunting on the eastern part of the lake --  
18 A BY MR. HESS: What?  
19 Q These are Paragraphs 6 and 7.  
20 A What did you want to know?  
21 Q I'm referring to them because those are where  
22 you're talking about people duck hunting on the east  
23 part of the lake. And I wanted to know if you  
24 remembered three people who owned lodges up at June  
25 Lake and used to bring hunters, one of the attractions  
0129  
01 of their lodges was that they would bring their guests  
02 down to the east part of Mono Lake to hunt. And I  
03 wanted to know if you remember that?  
04 A The only ones I remember is Walt Dumbrowski that  
05 had a duck club down here, and he'd bring people from  
06 June Lake like Walburns. He also raced in Mark Twain  
07 days. He had a boat.  
08 Q Mr. Dumbrowski did?  
09 A Then there's people by the name of Carson that  
10 used to have the Carson resort there on Silver Lake. I  
11 remember them coming down there to hunt ducks, the  
12 boys. They had two or three -- three or four boys, and  
13 they used to come down there hunting for -- and hunt  
14 with Walt Dumbrowski. Then there's another fellow by  
15 the name of Carl Miller. He used to -- he used to hang  
16 around with those Carson boys, and then eventually, he  
17 had the resort up here, Lundy Lake, and he'd come down  
18 there and hunt, also.  
19 In fact, he -- Walt Dumbrowski had a daughter down  
20 there, and he started courting her and finally married  
21 her, and they moved up, too. There was a lot of people  
22 in Los Angeles that -- Southern California that would  
23 go down there with Mr. Dumbrowski and hunt ducks and --  
24 he advertised quite a bit there, so he had quite a few  
25 people coming in there.  
0130  
01 Q Okay. Thank you. Thank you all.  
02 Actually, my last question was for Ms. Shannon. I  
03 wanted to ask you what kind of recreation you saw when  
04 you were around Mono Lake as far as swimming and  
05 picnicking, and boating? Was it like what -- was it  
06 similar to what Mr. Hess and Ms. Blaver talked about?  
07 A BY MS. SHANNON: No. It was not like that at all by  
08 the 1960s. I think that we were amazed at how few  
09 people were actually going down to the lake shore. We  
10 launched our boat on the July 4th weekend, 1964. And,  
11 you know, usually the July 4th weekend, the middle of  
12 summer, is a big time for boating. We went out to both  
13 of the islands. We saw no other people our entire time  
14 on the lake other than at the marina where we  
15 launched. The marina, of course, was a business at the  
16 time. I don't see as how it could have been a very  
17 profitable business because there were so few boats  
18 going out on the lake.  
19 There was a -- there was some water skiing that  
20 was being done, generally, just in this area here on  
21 the western side. But the problem, at that time, with  
22 boating on the lake was that because of the dropping  
23 lake level, the Tufa was beginning to show up and so  
24 you had to watch the speed. I know that when we got

25 out around Neggit, my husband had me go out on the bow  
0131  
01 of the boat to watch -- and he reduced the speed and to  
02 go out and watch for the Tufa, so that we wouldn't hit  
03 any of them. And there were places around there where  
04 I could see the bottom of the lake.

05 And so as I say, you had -- I think that was one  
06 of the reasons the people didn't do much boating. I  
07 mean, it wasn't a place for speed boats, that's for  
08 sure, because of the danger of striking a Tufa. And so  
09 they were doing a little water skiing down here, but  
10 even then, they had some of the Tufa -- I think they  
11 had little markers on them where they maybe were just  
12 below the surface, so that people would avoid them.  
13 But we -- but in all of our travels around the lake  
14 through the sixties, we never saw anybody along the  
15 shore except -- except right down here where there was  
16 access from Highway 395.

17 Sure, people would go down, right down here, but  
18 that was it. We didn't see anybody else in our other  
19 travels around the lake.

20 MS. VOLIN: Thanks. I don't have any more  
21 questions.

22 HEARING OFFICER DEL PIERO: Thank you very much.  
23 Mr. Carle?

24 CROSS-EXAMINATION BY MR. CARLE

25 Q Thank you for this opportunity. My names David  
0132

01 Carle, D-A-V-I-D C-A-R-L-E, and I'm with the Mono  
02 Lake Tufa State Reserve. And I really just have what  
03 amounts to one question for Ms. Shannon.

04 I envy you your experiences of Mono Lake in the  
05 1960s, and you began to tell us about some of that.  
06 I'm specifically focusing on your photographs you  
07 took. These were Exhibits 32, 34, and 36 of south Tufa  
08 during the 1960s?

09 A Yes.

10 Q As you recall your visits to that area, can you  
11 just characterize for us what it was like, both off  
12 shore, where I understand you boated in, and also on  
13 shore, if you landed and walked around in that area?

14 A Yes. Well, we probably didn't land with our boat  
15 there because of -- I don't think it would have been  
16 feasible. I mean -- it needed to draw more water than  
17 that, probably. But we did have -- we had a jeep. And  
18 so a lot of the exploration of that area, especially  
19 where the pictures were taken from the shore, no doubt  
20 we had followed the Jeep trail around, and we just  
21 wandered around the Tufa.

22 And I do remember that there were a lot of birds.  
23 There were a lot of killdeer in that area, and I assume  
24 that they were nesting in that area. You know how they  
25 always act when you get near a nest. They do their

0133  
01 little dance to draw you away.

02 There was some Tufa, which I don't know if it  
03 exists today. I guess it's what's called the sand Tufa  
04 that is very, very fragile, and there was a lot of that  
05 in that area. And I know if you touch it, it would  
06 just crumble. And we didn't go around stomping it. I

07 want you to know that. But it was -- it was amazing  
08 because it was so fragile and --  
09 Q Can I ask you, just to direct this a little bit?  
10 You took -- we have three photographs that you took of  
11 the area. Did you take other photographs?  
12 A Yes, I did.  
13 Q Would you characterize the area as photogenic?  
14 A Oh, definitely. It was beautiful, yes. I think  
15 it shows up even more so from the pictures that I did  
16 take.  
17 Q And just -- I don't know if you made these  
18 determinations, but on identification labels for these  
19 three photographs we're referring to, 32, 34, and 36,  
20 it indicates for 32 and 34 that they were taken in  
21 1966?  
22 A 1966.  
23 Q And the lake elevation was about 6389 feet, is  
24 that correct, on these labels?  
25 A Well, the dates are correct as to when they were  
0134  
01 taken.  
02 Q Okay.  
03 A I don't know about the lake elevation.  
04 Q And No. 36 would have been July 1963 and the label  
05 indicates this lake elevation was 6393.5 feet?  
06 A Yes.  
07 Q So with the lake between 6389 and 6393.5, as you  
08 recall, this south Tufa area was photogenic and  
09 beautiful, I think you said?  
10 A Yes, it was. I've been to the preserve. I was  
11 there in 1988, and I think it was prettier in '63 and  
12 '66 just because more of the Tufa was out in the water  
13 and, you know, when the water's calm, you get the  
14 reflections of the Tufa in the water. And now where  
15 people can wander all through it the way that it is  
16 now, it has that used look of civilization, which it  
17 did not have at that time because of the fact that when  
18 its in the water, its less accessible to people.  
19 Q Okay. I believe that's all the questions I have  
20 unless -- I should maybe offer the table, if any of you  
21 recall your experiences at -- specifically at south  
22 Tufa, if you want to add anything to what Mrs. Shannon  
23 has said.  
24 A BY MR. HESS: Experience? You say experience?  
25 Q Your impressions, your experience of the Tufa  
0135  
01 area, particularly we're talking about south Tufa,  
02 years ago.  
03 A Well, years ago I remember -- I think early in the  
04 early fifties, I had a boat, and I used to travel out  
05 through that area quite a bit. And it seems to me like  
06 there weren't so many Tufa sticking up as it is now,  
07 but I remember one Tufa way out in the lake maybe about  
08 a quarter of a mile and all by itself sticking up  
09 there, and fresh water was coming out of it. That's  
10 one thing I remember about it.  
11 But I don't -- I can't really tell more about the  
12 Tufa because they're springing up now all over, and it  
13 looks pretty nice, I think.  
14 HEARING OFFICER DEL PIERO: Thank you very much.

15 It's one o'clock. How much redirect do you have,  
16 Mr. Dodge?  
17 MR. DODGE: Five minutes.  
18 HEARING OFFICER DEL PIERO: Mr. Birmingham,  
19 recross?  
20 MR. BIRMINGHAM: Five minutes, no more.  
21 HEARING OFFICER DEL PIERO: What, you have ten  
22 questions, maybe, total?  
23 MR. SMITH: Two minutes maximum.  
24 HEARING OFFICER DEL PIERO: Mr. Roos-Collins?  
25 MR. ROOS-COLLINS: Five to ten minutes.

0136  
01 HEARING OFFICER DEL PIERO: Mr. Thomas?  
02 MR. THOMAS: Five plus depending on what we get.  
03 HEARING OFFICER DEL PIERO: We're going to break  
04 for lunch. We're going to break for lunch. We're  
05 going to be back here -- it is five minutes to one. We  
06 will be back here at two o'clock.  
07 (Whereupon the lunch recess was taken.)  
08 HEARING OFFICER DEL PIERO: Ladies and Gentlemen,  
09 we're back on the record now.  
10 When last we left, we'd completed  
11 cross-examination. I understand that one of you has  
12 to -- would like to leave? Is that true, Ms. Shannon?  
13 MS. SHANNON: We want to cross back over the  
14 Sierras before it gets too icy.  
15 HEARING OFFICER DEL PIERO: Let me just poll the  
16 parties.  
17 MR. DODGE: One question.  
18 HEARING OFFICER DEL PIERO: Mr. Birmingham, one  
19 question? Mr. Roos-Collins? Of her, do you have  
20 questions? No. No. Where's Fish and Game? I'm  
21 sorry. Wrong state agency. Let's get her out of the  
22 way, so she and her husband can leave. And then we'll  
23 follow through. Okay?  
24 So, Mr. Dodge, why don't you begin?  
25 REDIRECT EXAMINATION BY MR. DODGE

0137  
01 Q Ms. Shannon, you showed us some photographs that  
02 you took in the sixties. Did you also visit the Mono  
03 Basin earlier than the sixties as a teenage girl?  
04 A BY MS. SHANNON: Yes. The -- probably I don't need  
05 this, do I?  
06 HEARING OFFICER DEL PIERO: Yes, you do.  
07 MS. SHANNON: I do? Okay. The first time that I  
08 saw Mono Lake and the Mono Basin was in June of 1946,  
09 and I was on a camping trip with my father and my  
10 stepmother.  
11 Q BY MR. DODGE: Where were you camping?  
12 A We camped at Convict Lake.  
13 Q In the course of that trip, did you have a chance  
14 to see Rush Creek?  
15 A Yes, we did. My parents were interested in  
16 fishing. That was the reason that they came up here,  
17 and so they went down to Rush Creek one day to go  
18 fishing.  
19 Q Were you a fisherwoman?  
20 A No, not at all. Never have been.  
21 Q What did you observe on this one day?  
22 A All right. We went to Rush Creek, and we went to

23 it -- it would be this side of Highway 395. In other  
24 words, between the highway and the lake, but, you know,  
25 I cannot pinpoint exactly where we were on the creek

0138

01 other than we were far enough back that we couldn't see  
02 the lake from where we were. And the -- the creek was  
03 very, very brushy. There were -- most of the  
04 vegetation where we were were willows, as I recall, and  
05 it was so thick that it wasn't a creek that you could  
06 walk along the banks of because of the vegetation along  
07 the banks. And so in order to fish, in order to go in  
08 there, you had to, you know, find a place where you  
09 could get into the creek to find a fishing hole, and  
10 then if you wanted to go someplace else on the creek,  
11 you had to go back out beyond the stream side  
12 vegetation and find some other place to go into the  
13 creek. And it was hot and muggy, and there were a lot  
14 of biting insects, as I recall.

15 Q Sounds like you may have had a typical reaction of  
16 a teenage girl?

17 A That's right.

18 MR. DODGE: I have no further questions.

19 HEARING OFFICER DEL PIERO: Thank you very much.

20 Mr. Dodge.

21 Mr. Birmingham?

22 RE-CROSS EXAMINATION BY MR. BIRMINGHAM

23 Q Ms. Shannon, during your cross-examination, and I  
24 can't recall by whom, but you -- you referred to having  
25 seen sand Tufa along the shores of Mono Lake; is that

0139

01 correct?

02 A BY MS. SHANNON: That's right.

03 Q And you stated you didn't know if there still was  
04 sand Tufa that had been -- that was in existence; is  
05 that right?

06 A That's right.

07 Q If there were sand tufa in existence, would you  
08 think it important to save that sand Tufa?

09 A Yes, I would think it would be.

10 MR. BIRMINGHAM: I have no further questions.

11 HEARING OFFICER DEL PIERO: Thank you very much.

12 Mr. Roos-Collins? Ms. Cahill?

13 MR. DODGE: Could I ask one follow-up question?

14 MR. THOMAS: He can have ours, please.

15 HEARING OFFICER DEL PIERO: We're trading in  
16 securities here now. It's time for questions.

17 Go ahead, Mr. Dodge.

18 FURTHER REDIRECT EXAMINATION BY MR. DODGE

19 Q If you remember, what year did you observe sand  
20 Tufa?

21 A BY MS. SHANNON: Probably about 1966 or 1967.

22 MR. DODGE: Thank you.

23 HEARING OFFICER DEL PIERO: No one else has any  
24 other questions of this witness? Staff?

25 You're excused. Thank you very much.

0140

01 MR. DODGE: Before I excuse Ms. Shannon, may I  
02 offer into evidence National Audubon Society and Mono  
03 Lake Committee Exhibit 1-0 and the photographs referred  
04 to therein?

05 MR. BIRMINGHAM: Do you mean Exhibit 1-0?  
06 MR. DODGE: I'm now oh for two on that. Yes.  
07 MR. BIRMINGHAM: I have no objections.  
08 HEARING OFFICER DEL PIERO: It will be ordered.  
09 (NAS/MLC Exhibit No. 1-0 was  
10 admitted into evidence.)  
11 HEARING OFFICER DEL PIERO: Again, thank you so  
12 much for your time.  
13 Now, Mr. Dodge, do you want to begin with redirect  
14 on the other -- I'm sorry. Staff has questions.  
15 Forgive me.  
16 Why don't you begin, Mr. Frink?  
17 CROSS-EXAMINATION BY THE STAFF  
18 Q BY MR. FRINK: Yes, I just have a couple of  
19 questions.  
20 Ms. Blaver and Mr. Hess, I wonder if you know if  
21 there is as much swimming or boating in Mono Lake now  
22 as there was in the 19 -- excuse me in the 1930s,  
23 either or both of you?  
24 A BY MR. HESS: You say between what years?  
25 Q I believe your testimony earlier regarded the  
0141  
01 swimming and boating in Mono Lake in the 1930s?  
02 A There's always boating, as far as I can remember,  
03 way back as a little tiny fellow.  
04 Q How does the situation now compare with how it was  
05 in the thirties?  
06 A There's not as much boating as there was in the  
07 past.  
08 Q Do you have an impression if there's as much  
09 swimming?  
10 A In the early thirties, it seemed like there was a  
11 lot of boating in this area. Everybody seemed like  
12 they had a boat on a lake on excursion trips and so  
13 forth.  
14 Q Do you have an impression of the amount of  
15 swimming in the lake?  
16 A Very little swimming now compared to what it used  
17 to be.  
18 Q Do you have any idea as to why?  
19 A I think the water -- this lake is sort of small.  
20 The water in there is so strong that people don't care  
21 to swim in there anymore, not like it used to be.  
22 Q Ms. Blaver, is that your opinion, also?  
23 A BY MS. BLAVER: That is right.  
24 Q The only other question I had and maybe Mr. Dodge  
25 is the one that can answer it, I noted that Mr. Carle  
0142  
01 was asking about the elevations that are noted on the  
02 exhibit labels of the lake photos. Could you explain,  
03 in order that our record is clear, how the lake  
04 elevation numbers were determined that are on the  
05 exhibit labels? Do you know offhand?  
06 MR. FLINN: I know. The answer is that we have a  
07 record of what the lake level was at any given date, so  
08 what we did was simply match the date of the photograph  
09 to the reported lake level at the time.  
10 MR. FRINK: Okay. Thank you. That's all the  
11 questions I have.  
12 HEARING OFFICER DEL PIERO: Mr. Smith?

13 MR. SMITH: Yes. Thank you, Mr. Del Piero. I  
14 have two short questions.

15 Q BY MR. SMITH: One for Mr. Kellogg. Mr. Kellogg, I  
16 realize you haven't got a very good -- you say you  
17 haven't got very good memories of the late forties when  
18 fishing was there, and you say you came into the region  
19 about '45?

20 A BY MR. KELLOGG: Uh-huh.

21 Q Do you remember any stories from your father? For  
22 instance, how did he consider the fishing?

23 A He came in 1945, too.

24 Q How did he consider the fishing in Lee Vining and  
25 Rush? Did he think it was good? Excellent? Poor?

0143

01 A I thought he felt that it was good fishing, yes.

02 Q Okay. Thank you.

03 One question for you, Mr. Hess. Did you fish Rush  
04 Creek during the thirties?

05 A Yes, I did.

06 Q Do you consider the fishing during the thirties to  
07 be a good experience? Was it a good fishing experience  
08 for you during that time?

09 A Yes. There was -- I think so. There was a lot of  
10 fish in the creek at that particular time.

11 Q In Rush Creek?

12 A Rush Creek was very good fishing.

13 MR. SMITH: Thank you very much.

14 HEARING OFFICER DEL PIERO: Mr. Herrera?

15 Q BY MR. HERRERA: I'm going to pursue a little bit of  
16 the fishing and hunting exploits of these two  
17 gentlemen. We'll start with hunting and direct the  
18 question to Mr. Hess to begin with, since you have the  
19 microphone.

20 Back in your hunting days when you hunted on the  
21 east side or wherever, what area would you consider --  
22 when you were going hunting, when you picked an area to  
23 go, you would obviously, I would assume, go to the  
24 areas which you felt you'd have the best chance of  
25 shooting ducks. What would that area be? In your  
0144

01 earlier days?

02 A BY MR. HESS: I think on Rush Creek was the best for  
03 me. I had a lot of good luck on Rush Creek.

04 Q And that was jump-shooting ducks on --

05 A Also, I hunted there at Simons Springs and  
06 different springs all in through there. It was pretty  
07 good, but I preferred Rush Creek when I was hunting  
08 ducks.

09 Q What about geese? Would you --

10 A Geese, there were more around Simons Springs, in  
11 that area. They seemed to flock in there quite a bit.  
12 There was pretty good hunting there.

13 Q While you were hunting these ducks and geese, when  
14 you were walking up and down these streams and you  
15 jump-shot and you indicated there was a number of ducks  
16 that would spring from the water and fly away, did you  
17 make any notations or observe where these ducks went  
18 once you dislodged them from that particular spot?

19 A No, I didn't.

20 Q Did they go out to the lake, for example?

21 A You mean the -- you mean the ducks or --  
22 Q The ducks or the geese?  
23 A Go out on the lake you mean?  
24 Q Yes.  
25 A After you crippled them, you mean?  
0145  
01 Q After you jump-shot them and missed?  
02 A A lot of them got away, I'm sure. The latter part  
03 of my hunting out there, I had a nice dog, Labrador  
04 dog, and he went right out there and got them.  
05 Q The ones that got away that you didn't wound or  
06 kill, did you have any observations of where they  
07 preferred to go?  
08 A I don't know. A lot of them -- I'm sure a lot of  
09 them got away.  
10 Q Did they go out on Mono Lake to rest or to stop on  
11 Mono Lake then, or did they leave the area entirely?  
12 A I think they would stick around. Sure, they would  
13 stick around for a while.  
14 Q And while you were hunting, did you observe many  
15 other hunters?  
16 A Yes.  
17 Q Except Dumbrowski?  
18 A There was other ones around, sure.  
19 Q Other unattached hunters that weren't hunting on  
20 the duck clubs?  
21 A At one time, I was out there I was behind this  
22 blind and I had some decoys out there, and I seen some  
23 people come down from the right of me. They snuck up  
24 on these decoys, and they got about 50 yards from them.  
25 And they went up and shot my decoys. There was quite a  
0146  
01 few hunters in that area.  
02 Q Pretty routinely there was quite a few?  
03 A I'd say not a lot, no, just a few. There was  
04 different blinds that different ones had, and they'd  
05 just stay right in the blind hoping that the geese  
06 would come over sometimes. Sometimes they'd stay all  
07 day and nothing happened.  
08 I got a story if I can read it. It's about  
09 hunting on the east side in the early days. You want  
10 to listen to it?  
11 Q Is it short?  
12 A It's kind of a light side. It's just one little  
13 paragraph. This is an old mining book of Emil Phillips  
14 way back. He says, "In the fall and during the winter  
15 months, the Indians who worked at Mono Mills would move  
16 to various places in the Mono Basin. A couple of the  
17 families moved to the area near Warm Springs on the  
18 east shore of Mono Lake. There, during the duck  
19 season, they shot many ducks for themselves and for  
20 sale. Ducks were plentiful and the east shore of the  
21 lake was a excellent place for hunting, as very few  
22 people except railroad employees ever visited the  
23 area.  
24 "There was one Indian, a fellow by the name of  
25 Jack, they called him Jack, had a large-caliber,  
0147  
01 long-barreled shotgun. A regular shell in this gun was  
02 not enough for him, and he loaded small scraps of metal

03 for added destructiveness. For hours he would wait in  
04 the sand dunes close to the lake hoping for a potshot  
05 at the ducks. Loaded with a shotgun shell and all that  
06 scrap metal, the gun's recoil was so strong that Jack  
07 could not hold it, so he'd place it on the ground,  
08 carefully aimed at the spot that the ducks would  
09 congregate. Well-shielded from sight in the sand and  
10 sage brush, Jack would wait until the ducks were  
11 grouped together, then he would lie on the ground and  
12 pull the trigger. The result was a slaughter of ducks  
13 and as soon as he had fired, he was on his feet, a club  
14 in hand rushing into the lake, waist deep. He would  
15 whale away at the birds that were wounded and  
16 struggling to get out of reach. It was a sight to  
17 behold, but the effort was evidently worthwhile for it  
18 was not unusual for Jack to bag from 10 to 20 ducks  
19 from the one shot."

20 That's some of the experience they had there.

21 Q You didn't have a shotgun like that, did you?

22 A No. I didn't have that experience.

23 Q Did you -- were most of these hunters, though,

24 that you observed, were they local hunters? The

25 hunters that you did observe when you were there? Did  
0148

01 you know most of those people that were hunting there,  
02 or were they people from places you didn't know?

03 A Most of the people, I knew them, yes.

04 Q They were local hunters?

05 A Very few outsiders came in that particular time.

06 That was way back.

07 Q And were they successful? Do you think most of  
08 these people were fairly successful?

09 A Most of them.

10 Q Quite a few ducks? We won't hold you to numbers.

11 A We call them spoonbills. A lot of them on the  
12 lake at that particular time. There was thousands,  
13 millions on the lake. They just come in a particular  
14 time and wander around. They were pretty hungry by  
15 that time they land here, and then they freshen up  
16 again and take off again. I guess that's what  
17 happened.

18 Q Let's talk a little about fishing again. When you  
19 were fishing in these areas, did you run into a number  
20 of fishermen? Were there very many other people  
21 fishing these areas where you were?

22 A Not in the early days, I don't think there was too  
23 many, no. Just when --

24 Q In the early days, you're referring to the  
25 thirties or forties?

0149  
01 A Early thirties, yes. Latter twenties. Then after  
02 there was more people come to this area, of course,  
03 there was more fishing, of course. Then the area got  
04 noted for fishing, you know, and a lot of people in  
05 Southern California came to this area and fish.

06 Q And that was in the forties it became noted for  
07 fishing?

08 A Well, in the thirties and forties, yes.

09 Q Okay. Let me refer the rest of the questions to  
10 Mr. Kellogg, please. Thank you, Mr. Hess.

11 I'm going to ask much the same questions. By the  
12 way, did you two hunt together in your early days? You  
13 weren't the one shooting his decoys case, were you?

14 (Laughter.)

15 MR. BIRMINGHAM: Those were the fellows from Los  
16 Angeles, I'm sure.

17 HEARING OFFICER DEL PIERO: I want the record to  
18 reflect that that was Mr. Birmingham who said that.

19 MR. BIRMINGHAM: Mr. Birmingham doesn't reside in  
20 Los Angeles.

21 Q BY MR. HERRERA: Again, somewhat the same questions.  
22 When you were hunting in the late forties and early  
23 fifties, did you run into a number of hunters?

24 A BY MR. KELLOGG: Not a lot around Mono Lake, no.

25 Q Again, if you were to pick an area to go shoot  
0150 ducks, where would you have gone?

02 A I usually hunted on the other side of Mono Lake.  
03 You had to almost have a four-wheel drive to get on the  
04 back side of Mono Lake towards Warm Springs and Simons  
05 Springs. There wasn't a whole bunch of four-wheel  
06 drives around the country, so it was a lot harder work  
07 going out there because you'd get stuck, and you've  
08 have to get dug out. And it was kind of hard to get  
09 out there.

10 On this side of the lake, it was a lot easier and  
11 there was quite a bit of game, ducks and geese, quite a  
12 few of them on this side, too.

13 Q And you were pretty successful?

14 A Yes, uh-huh.

15 Q If you were going to select an area to go shoot  
16 geese, where would you have selected?

17 A I probably hunted over here at the Thompson Ranch  
18 and places like that more. Down by the Mono Lake Park  
19 and over by Black Point, in that area, more so than the  
20 other side. I did go over there, but it was a lot  
21 easier going over here. But there was just as many  
22 geese, I think, around DeChambeau Ponds and down below  
23 the bluffs, by DeChambeau Ranch there. There was a lot  
24 of springs at that time that used to come out between  
25 the lake and the bluff there, and it was good over in

0151 that area, too, and duck hunting.

02 Q Mr. Hess had testified that there were spoonbills  
03 or --

04 A Spoonbills. They called them shovelers, uh-huh.

05 Q And mallards that he'd experienced on Rush Creek.  
06 Pretty much the same mix?

07 A Yes, uh-huh. We went down here -- we snuck down  
08 on some shovelers one day, a friend of mine and I, and  
09 we raised it -- we got down to where we were going to  
10 shoot, and I said, "Okay. Let's go." We raised up and  
11 shot, and when we got done shooting, we had 80 ducks.  
12 It was a lot more than I wanted to pick. I didn't want  
13 to shoot that many ducks. That was more than a gunny  
14 sack full.

15 Q Yes. And I'm sure Fish and Game was aware of  
16 that.

17 Did you, by any chance, as he read that little  
18 article there, were you aware of any marketing of water

19 fowl that was going on here? Anybody shooting ducks  
20 and selling them?  
21 A No. Not in my time, they didn't. That was  
22 earlier.  
23 Q Quickly, Mr. Hess?  
24 A BY MR. HESS: I shot a goose once that had a band  
25 wrapped around his leg, and it came from way up around  
0152  
01 the Alaska area.  
02 Q Do you know of anybody that was shooting ducks and  
03 geese in the Mono Basin and selling them in the local  
04 market?  
05 A No, I don't.  
06 Q Okay. Mr. Kellogg, a little bit on the same thing  
07 on fishing. When you were fishing, were you running  
08 into a number of fishermen, or was it crowded or --  
09 A BY MR. KELLOGG: Yes. Down at the test stream when  
10 they were doing the test stream, it was awful crowded  
11 down there. There was quite a few fishermen.  
12 Q Do you think most of those fishermen were catching  
13 fish?  
14 A Everyone that I ran into had fish, yeah. It was  
15 pretty good fishing.  
16 Q And I'm assuming that -- well, in that test  
17 stream, do you remember what the limit was?  
18 A 15.  
19 Q 15?  
20 A Uh-huh.  
21 Q And that was in the fifties?  
22 A Uh-huh.  
23 MR. HERRERA: I think that concludes my  
24 questioning. Thank you, Gentlemen.  
25 HEARING OFFICER DEL PIERO: Mr. Canaday.  
0153  
01 Q BY MR. CANADAY: Mr. Hess, I have some questions for  
02 you. Would you pass Mr. Hess the microphone, please?  
03 Thank you.  
04 Mr. Hess, you testified earlier about some of the  
05 water fowl species that you had harvested on the lake.  
06 You said typically that you were jump-shooting mallards  
07 on Rush Creek, and so -- and then you talked about  
08 shovelers on the lake.  
09 Is that typically where you found those species,  
10 then, the mallards in fresh water and the shovelers on  
11 the lake?  
12 A BY MR. HESS: That's right.  
13 Q The Dumbrowski Duck Club on Rush Creek, did they  
14 have man-made ponds?  
15 A Yes.  
16 Q And how far away from the lake at that time were  
17 the ponds?  
18 A Well, at that time, it wasn't very far. I'd say  
19 maybe 50 yards, maybe, something like that. Maybe not  
20 even that.  
21 Q Do you recall how they made those ponds?  
22 A What?  
23 Q Do you recall how -- were those ponds constructed  
24 or just flooded areas?  
25 A Yeah. It was kind of a flooded area, there was,  
0154

01 you know, little dips in there. There was some -- I  
02 remember him having a dam, you know, different ones.  
03 They were kind of leveled off in different levels.  
04 He'd have a dam here, and then the water rode on the  
05 next little pond, and then down that way. He had about  
06 four or five of them, that I remember.

07 Q Okay. You testified earlier that -- in your  
08 testimony, you talk about shooting sage hens or grouse,  
09 but you did that at the Bodie area rather than right  
10 around the lake perimeter. Is that correct?

11 A I never did shooting around the lake. I never did  
12 see any. I usually went around the Bodie area and  
13 different places like that.

14 Q I'd like to shift a little bit to your  
15 recollections of fisheries. In your testimony, you  
16 talk about catching fish on Lee Vining Creek, and you  
17 describe the kind of typical fish that you could tell  
18 were fish from eight to ten inches. Is that correct?

19 A Yes.

20 Q And your recollections of the fish that you caught  
21 on Rush Creek were somewhat larger than those fish that  
22 you caught on Lee Vining; is that correct?

23 A Yes. That's true.

24 Q And you -- in your testimony, you talked about how  
25 Rush Creek in the bottom lands had areas of deep water,  
0155

01 four to five feet deep; is that correct?

02 A Yes.

03 Q Were those kinds of deep water habitats found in  
04 Lee Vining Creek as well?

05 A Lee Vining Creek was kind of more a rushing creek.  
06 They should have called that Rush Creek. It was more  
07 swifter. They had pools where the fish would get  
08 around them.

09 Q Ms. Blaver, I'd like to ask you a question, if I  
10 might. You also recall the man-made ponds on Rush  
11 Creek; is that correct? Or you testified that there  
12 were man-made ponds on -- were those the same ponds,  
13 the Dumbrowski ponds?

14 A BY MS. BLAVER: Are you talking to me?

15 Q Yes, Ma'am.

16 A I'm sorry. I don't think I recalled saying it.  
17 Did I?

18 MR. THOMAS: No. No. No. No. That's the proper  
19 answer. That's true.

20 Q BY MR. CANADAY: Do you remember any ponds on --

21 A BY MS. BLAVER: Yes, I remember the ponds.

22 Q Do you recall if they were man-made or natural  
23 ponds?

24 A Well, I thought some were man-made, yes.

25 Q Okay. And do you recall where those ponds were?  
0156

01 Were they near the lake edge, or were they back into  
02 the bottom lands more and The Meadows?

03 A Those ponds? I really don't know.

04 Q Okay. Mr. Kellogg, much like Mr. Hess, your  
05 recollections of the water fowl were typically the  
06 shovelers or the spoonies that were found on the lake  
07 or the lake margin, and then the mallards were found in  
08 the fresh water areas. Is that your recollection?

09 A Yes, uh-huh.  
10 Q Were there any other species that you recall?  
11 A Yeah. There was quite a few pintails that came  
12 out on the lake, and a lot of times it depended, you  
13 know? But sometimes there would be big flocks of  
14 pintails that would come in on the lake.  
15 Q And they would use the lake?  
16 A Uh-huh. And they would also use fresh water.  
17 Q And do you recall the ponds that were in the  
18 meadow areas on Rush Creek?  
19 A Yes, uh-huh.  
20 Q And a similar kind of question to you, Mr. Hess.  
21 In your fishing experience, do you recall that the fish  
22 on Rush Creek or on Lee Vining Creek that you caught  
23 were pan-sized or eight- to ten-inch fish?  
24 A Well, some of them, but you caught bigger ones,  
25 too.

0157  
01 Q You could catch bigger ones. Is your recollection  
02 of the fish that you caught on Rush Creek generally  
03 that those fish were larger or about the same?  
04 A I thought they were about the same.  
05 Q About the same. Okay.  
06 That's all I have. Thank you.  
07 HEARING OFFICER DEL PIERO: Thank you very much,  
08 Mr. Canaday.  
09 Mr. Dodge, you want to begin with redirect -- one  
10 question.  
11 Mr. Hess did you know Jack?  
12 MR. HESS: I think maybe I do know him. They  
13 don't tell his last name.  
14 HEARING OFFICER DEL PIERO: Who do you think it  
15 is?  
16 MR. HESS: Huh?  
17 HEARING OFFICER DEL PIERO: Do you think you know?  
18 MR. HESS: I think I know.  
19 HEARING OFFICER DEL PIERO: Really? Given what  
20 you know about that individual, is that story likely to  
21 be true?  
22 MR. HESS: I think so, yes.  
23 HEARING OFFICER DEL PIERO: What was his last  
24 name?  
25 MR. HESS: I think that was his last name, Jack.

0158  
01 HEARING OFFICER DEL PIERO: What was his first  
02 name?  
03 MR. HESS: I'm not going say.  
04 HEARING OFFICER DEL PIERO: Is he still around?  
05 MR. HESS: No. I think he's gone now. That was a  
06 long time ago.  
07 HEARING OFFICER DEL PIERO: I understand it was a  
08 long time ago. I just wondered whether or not you --  
09 MR. HESS: I guess that was 1920, '2.  
10 HEARING OFFICER DEL PIERO: The reason I ask is  
11 because the story out of a book is interesting because  
12 it's obviously documentation of the author, but if you  
13 had some knowledge of it, it would be interesting for  
14 us to find that out.  
15 Mr. Dodge?  
16 MR. DODGE: Yes, thank you. I just have a few

17 questions, I think.

18 REDIRECT EXAMINATION BY MR. DODGE (Continued)

19 Q Mr. Hess, Mr. Birmingham showed you an article  
20 from the Inyo Register in 1924 and asked you some  
21 questions about whether there was water in Rush Creek,  
22 and you told him that you were living there at that  
23 time in Rush Creek.

24 Do you remember that?

25 A BY MR. HESS: Yeah, in the early --  
0159

01 HEARING OFFICER DEL PIERO: Mr. Hess? Why don't  
02 you -- why don't you get up and come over to another  
03 chair over here next to -- get out of that sun. That  
04 way -- sometimes it's hard enough to answer questions  
05 when there isn't a light in your face.

06 MR. HESS: In 1924, I was living right here in Lee  
07 Vining then. In '22, my dad moved up here to Lee  
08 Vining, from '22 on, I lived here.

09 Q BY MR. DODGE: So in 1924, you lived here in Lee  
10 Vining. So let's go back to 1924. Before you moved to  
11 Lee Vining, where did you live?

12 A We was down on the lake shore down on Mono Lake  
13 here by Tioga Lodge. Just maybe about 100 yards yards  
14 beyond Tioga Lodge.

15 Q The lake then was right next to the road, right?

16 A Yes, um-hum.

17 Q Going back to 1924, I'm trying to see whether you  
18 have any additional recollection. Mr. Birmingham asked  
19 you a series of questions as to whether Rush Creek was  
20 dewatered during that time frame. Do you have any  
21 additional recollection of that?

22 A No. No. No. As far as I know, there's always  
23 been water in that.

24 Q But in 1924, you were living right here in the  
25 town of Lee Vining?

0160  
01 A Yeah. We used to go down there, and there was  
02 always water there.

03 Q You were ten years old then?

04 A Well, yeah. Somewhere along there.

05 Q Mr. Kellogg, if you could look at Exhibit 29, and  
06 if you might just at the same time, pull out 51.

07 A BY MR. KELLOGG: Yes.

08 Q Now, can you tell me whether exhibits -- let's  
09 take Exhibit 29. It's entitled "From viewpoint off of  
10 Highway 167 and Bodie Road." Is that that an area,  
11 Sir, where you saw water fowl?

12 A Down below that next, close to the lake, yeah.

13 Q Close to the lake? What sort of water fowl did  
14 you see down there?

15 A There was lots of ducks and geese. There was a  
16 bank, that bank that you're looking at right there at  
17 the edge of the lake there, if you dropped over there,  
18 it was a pretty good-sized bluff that you had to drop  
19 down there to get to the lake, and there was lots of  
20 springs and different things in that area right below  
21 the bank there.

22 Q And looking at Exhibit 51, is it fair to say that  
23 that's gone today?

24 A It's fair to say that, yes. Pretty self

25 explanatory.

0161

01 Q Mr. Hess, you were asked a bunch of questions  
02 about -- by Ms. Volin about swimming. And Ms. Blaver  
03 was also asked questions about swimming, and I think it  
04 related to the marina area. Do you recall that?

05 A BY MR. HESS: Yes.

06 Q And the last question I have down for Ms. Blaver  
07 was that lots of people swam at the marina area. I  
08 didn't know that she asked you that question. Let me  
09 ask you that question.

10 Is it also your recollection that the marina area  
11 was a popular swimming hole?

12 A It was, yes. After they started this marina down  
13 there, a lot of people were swimming on the shore there  
14 right along that area. Um-hum.

15 Q Okay. I think my last question is to  
16 Mr. Kellogg. You were asked some questions about  
17 fishing in Lee Vining Creek in the 1940s and 1950s, and  
18 I've sort of forgotten your answer. Can you tell me  
19 what your success was?

20 A BY MR. KELLOGG: I said that the fishing was good.

21 Q And what was the source of the water that you  
22 fished from in the forties and fifties?

23 A Well, the water that used to come down through Lee  
24 Vining Creek, there was a diversion -- there was two  
25 dams on Lee Vining Creek. There was the upper

0162

01 reservoir and the lower reservoir, and the lower  
02 reservoir is where the town of Lee Vining used to get  
03 their drinking water. They had a pipeline that came  
04 all the way down, so they kept that lower diversion  
05 pretty much full for the people of Lee Vining to get  
06 drinking water out.

07 Plus, there was a ditch that used to run down, and  
08 it always came across there by Elma and Harry's house,  
09 across there, and it was a dairy at that time where the  
10 trailer park is now, Mono Vista Trailer Park, and they  
11 used that water that came through that ditch for  
12 irrigation purposes. And that water, they picked that  
13 up between 395 and on the Old Tylerville Road where the  
14 ditch goes across there, they picked the water up  
15 there. So there was always a little bit of water that  
16 came down that Lee Vining Creek area that the city let  
17 go because of the water right, I would imagine, from  
18 the dairy property over there that they had to use  
19 that.

20 But in later years, that dried up. They took that  
21 ditch out. No water ever goes through the ditch  
22 anymore, so I don't know what happened there. But I  
23 know that the water has dried up, and when it did,  
24 that's when the lower Lee Vining Creek more or less  
25 dried up, too, because they put a water tank up. They

0163

01 took the diversion out, the lower dam. They did away  
02 with it, and they put a water tank in there now. And  
03 so there is no more lower dam.

04 Q When do you remember that that water stopped? Do  
05 you have a recollection of that?

06 A I would have said that it was probably -- Elma

07 probably knows more than I do.  
08 When did the ditch quit running in front your  
09 house? '52? '51? Yeah? It was running, you know,  
10 for a long time. Maybe '53, huh? '4?  
11 MR. DODGE: In the fifties. Okay. That's all I  
12 have. Thank you.  
13 HEARING OFFICER DEL PIERO: Thank you very much,  
14 Mr. Dodge.  
15 Mr. Birmingham?  
16 RE-CROSS EXAMINATION BY MR. BIRMINGHAM (Continued)  
17 Q My questions will be directed primarily to  
18 Ms. Blaver and Mr. Hess. There were some questions  
19 about Mark Twain days, and I believe it was your  
20 testimony, Mr. Hess, that the Mark Twain days started  
21 in -- in 1929. Is that correct? Could you lean  
22 forward and speak into the microphone, Mr. Hess?  
23 A BY MR. HESS: What's that?  
24 Q Would you lean forward and speak in the  
25 microphone?  
0164  
01 A Yes. I think Mark Twain did start in 1929.  
02 Q Mark Twain days were named after Mark Twain, the  
03 author of "Roughing It;" is that right?  
04 A What's that?  
05 Q Mark Twain days were named after Mark Twain the  
06 author of "Roughing It"?  
07 A That's right. That's him.  
08 (Laughter.)  
09 MR. DODGE: You got him on that one, Tom.  
10 (Laughter.)  
11 HEARING OFFICER DEL PIERO: Mr. Birmingham, if you  
12 would like to assert that it was named after some other  
13 Mark Twain, you need to lay a foundation.  
14 MR. BIRMINGHAM: I just wanted to lay the  
15 foundation for this. I'd like to read from "Roughing  
16 It." Beauty is in the eye of the beholder.  
17 Q BY MR. BIRMINGHAM: Mark Twain was here before L.A.  
18 DWP began its diversions; isn't that right? I'm asking  
19 you because I need the lay a foundation; is that  
20 right?  
21 A BY MR. HESS: That's right.  
22 Q Have you read "Roughing It"?  
23 A No.  
24 Q I'll read from Chapter 38 of "Roughing It," which  
25 is on Page 243. "Mono Lake lies in a lifeless,  
0165  
01 treeless, hideous desert 8,000 feet above the level of  
02 the sea and is guarded by mountains 2,000 feet higher  
03 whose summits are always clothed in clouds. This  
04 solemn, silent sailless lake, this lonely tenant of the  
05 loneliest spot on earth is little graced with the  
06 picturesque."  
07 Now, that's not something you would agree with, is  
08 it?  
09 A I don't agree with that.  
10 Q But that's what Mark Twain apparently thought?  
11 A That's his -- I think he was mad at the world when  
12 he come in here.  
13 (Laughter.)  
14 MR. DODGE: Give Mark Twain credit. He had one

15 thing right. He had it 8,000 feet above sea level.  
16 We're not asking for that.

17 MR. BIRMINGHAM: Actually, I'm quite surprised.

18 HEARING OFFICER DEL PIERO: Please,

19 Mr. Birmingham, proceed, please.

20 Q BY MR. BIRMINGHAM: I think we have to score that  
21 two, Hess, Birmingham one.

22 Mr. Hess, getting back to Mark Twain days. You  
23 said that they ended during the war; is that right?

24 A What?

25 Q Mark Twain days, they ended because of World War  
0166

01 II?

02 A Yes.

03 Q And then you said you tried to start them again,  
04 the American Legion tried to start them again in 1948?

05 A That's true.

06 Q And your efforts to resume Mark Twain days were  
07 unsuccessful; is that right?

08 A That's right.

09 Q Now, the failure of your efforts to resume Mark  
10 Twain days didn't have anything to do with the  
11 declining level of Mono Lake, did it?

12 A Well, of course, they couldn't use -- they  
13 couldn't use the boats anymore like they did before on  
14 account of the Tufa sticking up.

15 Q Were there Tufa sticking up in 1948?

16 A Well, just a few showing. It was getting  
17 dangerous. You could see them when you'd go on top of  
18 the water, you could see them aways down below there.

19 Q Do you know what the level of Mono Lake was in  
20 1948?

21 A Gosh, I don't know. I have no idea. It was  
22 pretty high then. There is a marking right down there  
23 by the shore, the lake used to come right to that  
24 mark. That's way up there.

25 Q But in 1948, the level of the lake was still  
0167

01 pretty high?

02 A Yeah.

03 Q I had a question following up a question  
04 Mr. Del Piero asked you. Was the native American named  
05 Jack, was that the same fellow who caught the  
06 five-pound trout on Rush Creek?

07 (Laughter.)

08 MR. HESS: I presume so. I don't know.

09 (Laughter.)

10 MR. BIRMINGHAM: Thank you. I don't have any  
11 further questions.

12 HEARING OFFICER DEL PIERO: Thank you.

13 Mr. Roos-Collins. Any questions? I'm sorry.

14 Mr. Thomas, do you have any questions?

15 MR. THOMAS: Yeah. A couple.

16 MR. BIRMINGHAM: Actually, Ms. Goldsmith just  
17 reminded me there is one other -- actually, I have no  
18 further questions.

19 RECROSS EXAMINATION BY MR. THOMAS

20 Q Mr. Kellogg, Sir. When you did your fishing down  
21 on Lee Vining Creek, did you get the biggest fish out  
22 of pools on Lee Vining?

23 A BY MR. KELLOGG: If I remember right, yeah. I  
24 usually fished the pools more than I did the rapids.  
25 Q And was Lee Vining a pretty constant creek all  
0168  
01 year-round? Did it -- it kind of would flow high in  
02 the spring and then tail off towards the end of summer?  
03 A Yes.  
04 Q And did the creek, towards the end of summer, slow  
05 down to the point where most of the water was in big  
06 pools?  
07 A Yes. It would do that. Uh-huh.  
08 Q Do that in all years?  
09 A Well, some years you had more and some of the  
10 drought years, you know, you had less water.  
11 Q So it's possible, based on your recollection, that  
12 the creek might have appeared dry or dryer to somebody  
13 if they had come along at the end of the season, and  
14 they had been at the wrong spot in the creek. Is  
15 that --  
16 A In the earlier years, let's say, when I was  
17 telling you about when the creek ran across up here and  
18 stuff, that's when the creek -- there was always quite  
19 a bit of water that got by the diversion points where  
20 they would divert the water into this ditch that went  
21 across here and stuff. They might not get it all, and  
22 then that -- what was left, or there might be too much  
23 coming down through there, so that water would go on  
24 by. So that water would stay in Lee Vining Creek, and  
25 it was quite a lot of water.  
0169  
01 But sometimes the water would go, you know, there  
02 wouldn't be hardly any water in Lee Vining Creek,  
03 later in the year.  
04 Q Okay. That's -- that subject matter -- thank  
05 you.  
06 Now, Mr. Hess, when you were doing your jump  
07 hunting down there on Rush Creek at the bottom lands of  
08 Rush Creek, did you call the bottom lands The Meadow?  
09 Did I hear you correctly?  
10 A BY MR. HESS: I guess so, yes. Um-hum. That's what  
11 we'd call the bottom lands, those meadows in Rush Creek  
12 below The Narrows there.  
13 Q If you were going to fish or hunt Lower Rush  
14 Creek, would you say you were going down to The Meadow?  
15 A Yes, um-hum.  
16 Q And when you yourself hunted, where would you  
17 drive and park before you went out to hunt Lower Rush  
18 Creek?  
19 A Well, right there. You could drive right down to  
20 The Meadows there, just below The Narrows there. Are  
21 you acquainted with that?  
22 Q Yeah.  
23 A Are you? Just below The Narrows, there's a road  
24 that goes right down in there, and we'd park there and  
25 then hunt the creek.  
0170  
01 Q And that was your practice most of the time?  
02 A Yes.  
03 Q And did you hunt the right side of the creek or  
04 the left side as you went downstream?

05 A Mostly on this side. You couldn't cross it in a  
06 lot of places.  
07 Q And why couldn't you cross it?  
08 A It was pretty high, and it was pretty swift. I  
09 didn't have real high boots.  
10 Q It was best hunting on one side?  
11 A The best hunting was on the other side of the  
12 creek. I had to go across there. We got across  
13 somehow. There's some shallow parts there where you  
14 just cross.  
15 Q And did the creek run on that far bank adjacent to  
16 the -- would that be on the south side of the creek?  
17 A The creek didn't go in that lagoon. The creek  
18 went straight, but there was some overflow that went in  
19 there.  
20 Q So there was overflow?  
21 A The channel was away from there.  
22 Q And was there a lot of willows down in that area?  
23 A Yes, um-hum.  
24 Q Was it --  
25 A There was a lot of water in the swamps. A lot of  
0171  
01 watercress growing through that area.  
02 Q And was it so wet that it would be over your  
03 boots?  
04 A What?  
05 Q Was it so wet that it was over your boots?  
06 MR. BIRMINGHAM: I'm going to object on the  
07 grounds that the question's leading.  
08 MR. HESS: Oh, yeah, it was pretty high --  
09 HEARING OFFICER DEL PIERO: Excuse me. I'm going  
10 to sustain the objection, but I'm interested in finding  
11 out the information. So I think you can pursue it a  
12 different way.  
13 Q BY MR. THOMAS: When you were hunting down the creek  
14 and crossed over into the area where the watercress was  
15 located, how wet was that terrain, that area?  
16 A BY MR. HESS: How wet?  
17 Q Yeah.  
18 A The area you mean or what? I don't understand  
19 your question.  
20 Q When you stepped down into that area to cross the  
21 bottom lands or The Meadow, how high did the water come  
22 up on your boots?  
23 A Oh, I'd say knee high, a lot of those places.  
24 Sure.  
25 Q And when the creek runs down towards where the  
0172  
01 county road crosses that ford, did you hunt down in  
02 that area?  
03 A Yes. There was a big cove in there. We hunted a  
04 lot in that area, too.  
05 Q What do you mean by "a big cove"?  
06 A Right at the ford there, you come about 200 yards,  
07 something like that, the creek comes in a cove like  
08 that and then goes back out. And they open here, and  
09 there's a lot of swampish spots in there. That's where  
10 the ducks -- and it's full of trees, also willows, and  
11 trees, the top of the trees. Ducks liked in it  
12 there. That's another good spot there.

13 Q And there were sort of multiple channels down  
14 through there where the ducks were to be found?  
15 A The channel to go by that, and eventually go down  
16 toward the creek there, or toward the bridge there.  
17 MR. THOMAS: Okay. I appreciate your answer.  
18 Thank you. I don't have anything further.  
19 HEARING OFFICER DEL PIERO: Mr. Roos-Collins?  
20 MR. ROOS-COLLINS: I do have questions, and I  
21 request permission to move down to the end of that  
22 table.  
23 HEARING OFFICER DEL PIERO: We'll make Mr. Dodge  
24 move. Get up, Mr. Dodge.  
25 MR. DODGE: He didn't ask me to move. He just  
0173  
01 asked to move down here.  
02 HEARING OFFICER DEL PIERO: I understand that. I  
03 also understand it's three o'clock. If you'll indulge  
04 him, then we'll appreciate it. It means you'll be able  
05 to get home before it gets dark.  
06 MR. BIRMINGHAM: I have to, while Mr. Roos-Collins  
07 is moving -- I have to take this opportunity to note  
08 that as Mr. Dodge is getting older, the hour of the  
09 afternoon at which he gets cranky is getting later and  
10 later. He must be getting mellower with age.  
11 HEARING OFFICER DEL PIERO: Mr. Birmingham, wait  
12 until we start going to eleven o'clock at night and see  
13 how cranky he is.  
14 Mr. Roos-Collins, please proceed.  
15 MR. ROOS-COLLINS: Thank you.  
16 RE-CROSS-EXAMINATION BY MR. ROOS-COLLINS  
17 Q Ms. Blaver, do you recall the discussion of Sierra  
18 Club Exhibit No. 4, which is a photograph of the Mark  
19 Twain day bathing beauty contest from 1929?  
20 A BY MS. BLAVER: Pardon?  
21 Q You have that exhibit in front of you?  
22 A Yes, I do.  
23 Q Mr. Dodge thinks some things in life should be  
24 left ambiguous, not including his ownership of this  
25 table or his evening Cuban cigar, but I would like to  
0174  
01 know which one of the women shown --  
02 A Mono Inn.  
03 Q Which end? You're the fourth from the left.  
04 A Yes.  
05 Q Thank you.  
06 Mr. Hess, Ms. Blaver is your sister?  
07 A BY MR. HESS: That's right.  
08 Q Would you agree that she's a beauty?  
09 (Laughter.)  
10 MR. HESS: You're putting me on the spot here.  
11 (Laughter.)  
12 Q BY MR. ROOS-COLLINS: Let me put you on the spot a  
13 little bit more. I didn't realize at the beginning of  
14 your testimony that you two are brother and sister.  
15 Your declarations talk about fishing at your  
16 grandparents' home in the Rush Creek Meadows. Who  
17 caught more fish?  
18 A BY MR. HESS: My grandfather or me?  
19 Q You or your sister?  
20 A I don't know.

21 Q Let me show you a photograph on Cal-Trout Exhibit  
22 15 which is a publication by Trihey and Associates  
23 entitled Summary Comparison of Pre-1941 and Post 1941  
24 Conditions Affecting Fish Populations in Lower Rush  
25 Creek. Photograph 7-3 shows the Rush Creek bottom  
0175  
01 lands in March of 1934.  
02 Could you point out approximately where your  
03 grandparents' home was?  
04 A BY MS. BLAVER: I don't think it's on here.  
05 A BY MR. HESS: This is the upper -- it's way down in  
06 here. See where that cove comes in there? Right  
07 there.  
08 Q The home is beyond the left margin?  
09 A BY MR. HESS: Right here, there's a white cove.  
10 That's where the -- I was telling you about. It was  
11 right across the river from there. Right across the  
12 creek. Right down about that area there.  
13 Q The record should reflect that Mr. Hess was  
14 referring to a white mark approximately one-third of  
15 the way from the left-hand margin of the photograph  
16 approximately in the middle.  
17 Let me refer you as well to Photograph 7-5 in this  
18 same report. This is a photograph taken between the  
19 ford and the county road. Does this photograph fairly  
20 depict the conditions that you remember for that area?  
21 A That's the way it looks to me.  
22 A BY MS. BLAVER: It was a beautiful meadow.  
23 HEARING OFFICER DEL PIERO: Folks, you need to  
24 speak into the microphone. We need to get it on the  
25 record so --  
0176  
01 MR. ROOS-COLLINS: This photograph --  
02 HEARING OFFICER DEL PIERO: I don't mind both of  
03 you talking. We're interested in the answers, but we  
04 need to get it in the microphone so that we can get it  
05 on the record.  
06 Q BY MR. ROOS-COLLINS: This photograph was taken  
07 between the ford and the county road in 1934.  
08 A BY MR. HESS: This is the same one you showed us?  
09 That looks very familiar. Yes. I think it looked just  
10 like that. That's the way it looks.  
11 Q Now, Ms. Blaver, your declaration refers to  
12 fishing with worms. Where did you gather the worms for  
13 fishing in the Rush Creek bottom lands?  
14 A Up Lee Vining Creek.  
15 Q Where?  
16 A I think it was past the -- I don't remember.  
17 Somewhere along the way down at Thompson.  
18 MR. THOMAS: I didn't hear that.  
19 MS. BLAVER: Mostly at Thompson Ranch.  
20 Q BY MR. ROOS-COLLINS: Where was Thompson Ranch  
21 located?  
22 A BY MS. BLAVER: The Mono Lake park.  
23 Q Mr. Hess, let me ask you about an exhibit marked  
24 as Cal-Trout 5-C. This is a map dated 1938 published  
25 by the Hayden Map Company entitled "Mono County Greetings  
0177  
01 You, Fisherman's Paradise," and at the bottom of it, it  
02 refers to the Hess Garage, Lee Vining, at the foot of

03 the Tioga Pass, day and night tow, car service, we  
04 repair all makes of cars. Automobile Club of Southern  
05 California, Gus Hess, proprietor.  
06 Were you the owner of this garage in 1938?  
07 A BY MR. HESS: That was my dad. He owned it.  
08 Q When did your dad establish that garage?  
09 A Well, in 1922, we moved up here to Lee Vining from  
10 down Tioga Lodge area, and there was only one little  
11 building here at that time. And he got things going,  
12 like brought in the utilities, like, you know,  
13 different -- electricity, and so forth, water. 19 --  
14 1938 my dad had a garage over on the old road here,  
15 prior to that, see. Then when they built that new road  
16 and they were kind of shut out here on the old road, so  
17 they moved up there to where this was here, 1938, moved  
18 up there, and he run the garage many years.  
19 Q That garage is now the Mini-Mart, the 76  
20 Mini-Mart?  
21 A No. That's where this -- what do they call that?  
22 It's a gift shop, and a fur shop up on the left here.  
23 Q Did your family sell the garage at some point?  
24 A Well, we went -- my brother and I went to the  
25 service, and when we come back, my dad turned the  
0178 garage over to my brother Stanley, and he turned the  
01 service station over to me. And we run it that way for  
02 a long time until my brother passed on, and then I got  
03 it in 1968, I think.  
04 Q You sold the service station in 1968?  
05 A That's when I acquired all that and -- along 1980,  
06 that's when we sold everything out. 1980. Not too  
07 long ago.  
08 Q Were you often around the service station in the  
09 1930s when this map was published?  
10 A I was around, sure. You bet.  
11 Q Fishermen stop there?  
12 A Sure. A lot of fishermen. You bet.  
13 Q In the 1970s, did fewer fishermen for Rush and Lee  
14 Vining Creek stop there than they did in the 1930s? In  
15 the 1970s, did fewer fishermen for Rush and Lee Vining  
16 Creeks stop at your service station than in the 1930s?  
17 A I still don't understand your question.  
18 Q In the 1970s --  
19 A Yes.  
20 Q -- did fewer fisherman who had just been to or who  
21 were going to Rush and Lee Vining Creeks stop at your  
22 service station than had stopped there in the 1930s?  
23 A I think there's a lot more now. A lot more  
24 fisherman.  
0179 A BY MR. KELLOGG: He's saying Rush Creek after it  
01 dried up. There wasn't too many people that stopped to  
02 go fishing in Rush Creek.  
03 A BY MR. HESS: No. But this area, fishing this area.  
04 Rush creek was dried up.  
05 Q Okay. Do you agree with the map that in the  
06 1930s, Rush and Lee Vining Creeks were a fisherman's  
07 paradise?  
08 MR. BIRMINGHAM: Objection. I don't believe  
09 there's anything on the map that says Rush and Lee  
10

11 Vining Creeks were a fisherman's paradise.  
12 HEARING OFFICER DEL PIERO: Sustained. I've seen  
13 the map.  
14 Q BY MR. ROOS-COLLINS: Mr. Hess, in the 1930s, were  
15 Rush and Lee Vining Creeks a fisherman's paradise, in  
16 your opinion?  
17 A BY MR. HESS: I think so, yes.  
18 Q Mr. Kellogg, when I first visited the Mono Basin  
19 in the mid 1970s, I stopped to eat at Kellogg's  
20 Restaurant. Are you connected to that restaurant?  
21 Q BY MR. KELLOGG: I used to be. Not in 1970. Sold it  
22 out in 1960. My folks owned it.  
23 Q When did your folks found it?  
24 A They didn't find it. They bought it in 1953, and  
25 they also owned the Gateway Motel.

0180

01 Q In the fifties, did fishermen for Rush and Lee  
02 Vining Creeks eat at your restaurant?  
03 A I would say yes. I'm not for sure -- I didn't go  
04 around saying, "Are you going fishing today at Rush  
05 Creek?" I didn't do that, no.  
06 MR. ROOS-COLLINS: Thank you. No further  
07 questions.  
08 HEARING OFFICER DEL PIERO: Thank you very much,  
09 Mr. Roos-Collins.  
10 Sierra Club? Questions? Did I miss anybody?  
11 Parks? One question?  
12 Okay. Let's get the Sierra Club first, and we'll  
13 catch you at the end. And then I want to pursue some  
14 more questions about Jack, but --  
15 MR. ROOS-COLLINS: Actually, Mr. Del Piero I did  
16 have one further question for Mr. Kellogg.  
17 I particularly enjoyed the coconut covered French  
18 toast. Do you still that have recipe?  
19 HEARING OFFICER DEL PIERO: Lacks foundation,  
20 Mr. Roos-Collins.

21 RECROSS EXAMINATION BY MS. VOLIN

22 Q I have one question for Mr. Kellogg, and it's  
23 about when you went fishing on Rush Creek. When the  
24 fishing was slow, did you go swimming afterwards?  
25 A BY MR. KELLOGG: Lots of times we swam in Rush Creek,

0181

01 uh-huh.  
02 Q And was it in the creek?  
03 A Yes. Uh-huh.  
04 Q Was it in the ponds as well that were near the  
05 creek?  
06 A Yes. Uh-huh. And we used to take float tubes up  
07 there. We'd float down the creek. It was deep enough.  
08 Q And when was this?  
09 A Oh, probably in the early fifties, in that area.  
10 Q How deep was the water then?  
11 A It was, you know, we were pretty small in those  
12 days, so it was probably up to our chests.  
13 Q Um-hum. In the creek?  
14 A Uh-huh. Some of it, you know, wasn't very deep  
15 because there was a lot of fast water. There was  
16 rapids going down there. In the deeper holes, it was  
17 probably up to our chests, sometimes deeper.  
18 MR. VOLIN: Thanks.

19 HEARING OFFICER DEL PIERO: Thank you. Parks?  
20 RE CROSS EXAMINATION BY MR. CARLE  
21 Q The book "Roughing It" came up, and I would like  
22 to just --  
23 HEARING OFFICER DEL PIERO: They're sold out now,  
24 I understand. Is that true?  
25 Q BY MR. CARLE: Mr. Hess, Auggie, you were read the  
0182  
01 opening paragraph of a chapter from the book "Roughing  
02 It" in which the words "lifeless" and "little graced  
03 with the picturesque" were used to describe Mono Lake  
04 by Mark Twain. And I believe you disagreed with those  
05 characterizations.  
06 Could I read you a couple more sentences from that  
07 chapter and see what you think of these sentences?  
08 A BY MR. HESS: You bet.  
09 Q May I?  
10 MR. BIRMINGHAM: Remembering, of course, that Mark  
11 Twain was mad at the world.  
12 (Laughter.)  
13 MR. CARLE: Remembering that.  
14 HEARING OFFICER DEL PIERO: I just want you two to  
15 remember, somebody's got to submit a copy of that to  
16 Staff.  
17 MR. CARLE: They have them for sale in the book  
18 store.  
19 (Laughter.)  
20 Q BY MR. CARLE: If I may, this sentence, "Millions of  
21 wild ducks and seagulls swim about the surface but no  
22 living things exists under surface except a white  
23 feathery sort of worm, one-half an inch long, which  
24 looks like a bit of white thread frayed out at the  
25 sides. If you dip up a gallon of water, you will get  
0183  
01 about 15,000 of these."  
02 Would you agree that -- with that sentence in  
03 terms of your reaction to what Mr. Twain was saying?  
04 Is that characteristic of what you know of Mono Lake?  
05 A BY MR. HESS: You say do I agree with him or what?  
06 Q That's how this was originally brought up is  
07 whether you agreed with the kinds of statements  
08 Mr. Twain was saying.  
09 Would you agree that there are millions of wild  
10 ducks and seagulls in the old days, and if you dipped  
11 up a gallon of water, you would get thousands -- he  
12 says 15,000 of these white feathery sort of worms, as  
13 he called them?  
14 A Is that referring to the shrimp?  
15 Q I think so.  
16 A I think so, yeah. There are a lot of them in  
17 there. I'll agree with him.  
18 Q Let me go on to another statement. "Then there is  
19 a fly which looks something like our housefly. These  
20 settle on the beach to eat the worms that wash ashore."  
21 This is what he says, "And any time, you can see there  
22 are belts of flies an inch deep and six feet wide, and  
23 this belt extends clear around the lake, a belt of  
24 flies 100 miles long."  
25 Now, some of the figures you may not necessarily  
0184

01 want to agree with. I would like to know whether you  
02 would agree with the characterization about the general  
03 abundance of flies?

04 A BY MR. HESS: There were a lot of them, yes. I don't  
05 think 100 miles long, but they were -- I'd say maybe --  
06 like he said, they were thick.

07 Q So maybe you would agree or would you agree that a  
08 careful reader can gather some useful information about  
09 Mono Lake but needs to take it with a grain of salt  
10 when reading Mark Twain? Would you agree with that?

11 A Yeah.

12 Q Okay. One more. "Speaking of the peculiarities  
13 of Mono Lake, I ought to have mentioned that at  
14 intervals all around the shore, stand picturesque  
15 turret looking masses and clusters of a whitish,  
16 coarse-grained rock that resembles inferior mortar  
17 dried hard," and then he goes on to describe something  
18 rather strange about gulls eggs in these what we think  
19 are probably Tufa towers.

20 What I've read so far about -- intervals of  
21 picturesque turret-looking masses, would you agree in  
22 general that that characterizes something about Mono  
23 Lake?

24 A Yeah.

25 Q Okay. And let me run right back to where we  
0185

01 started, the opening chapter of Chapter 38, "This  
02 solemn silent, sailless sea is little graced with the  
03 picturesque."

04 Would you agree that Mark Twain contradicted  
05 himself in these chapters?

06 A Would I agree to it?

07 Q Would you agree that he contradicted himself when  
08 he said --

09 A I think, yeah, sure.

10 MR. CARLE: Thank you. That's all I have.

11 HEARING OFFICER DEL PIERO: Thank you very much.

12 Mr. Frink?

13 MR. FRINK: No questions.

14 HEARING OFFICER DEL PIERO: Mr. Smith?

15 MR. SMITH: No.

16 HEARING OFFICER DEL PIERO: Mr. Herrera?

17 MR. HERRERA: No.

18 HEARING OFFICER DEL PIERO: Mr. Canaday?

19 MR. CANADAY: One.

20 RE-CROSS EXAMINATION BY THE STAFF

21 Q BY MR. CANADAY: Either for Mr. Kellogg or Mr. Hess.  
22 Do you recall if there was water fowl -- much water  
23 fowl hunting on Grant Lake?

24 A BY MR. KELLOGG: I hunted water fowl at Grant Lake,  
25 uh-huh, before it froze in the fall. Before it would

0186  
01 freeze, there would be ducks and geese on Grant Lake,  
02 yes.

03 Q Mr. Hess, do you recall?

04 A BY MR. HESS: Yes.

05 A BY MR. KELLOGG: And there was also quite a lot of  
06 ducks in Rush Creek above Grant Lake. The ducks would  
07 come into that area, too, on that creek.

08 Q Okay. Mr. Hess do you recall that as well?

09 A BY MR. HESS: Yes. That's very true, I think,  
10 uh-huh.  
11 MR. CANADAY: Thank you.  
12 HEARING OFFICER DEL PIERO: You still don't want  
13 to tell me what Jack's first name was, do you?  
14 MR. HESS: I have an idea, but I don't want to say  
15 for sure.  
16 HEARING OFFICER DEL PIERO: Well, you aren't going  
17 to offend him, I don't think.  
18 Okay. That's all we have.  
19 Mr. Dodge, you want to make an offer?  
20 MR. DODGE: Yes. I would offer National Audubon  
21 Society and Mono Lake Committee Exhibit 1-H, 1-C, and  
22 1-J, and the exhibits mentioned -- the photographic  
23 exhibits mentioned therein.  
24 HEARING OFFICER DEL PIERO: Okay. Any  
25 objections? Okay. None. None. It's so ordered.

0187

01 NAS/MLC Exhibits Nos. 1-H,  
02 1-C, and 1-J were admitted  
03 into evidence.)  
04 HEARING OFFICER DEL PIERO: Ladies and Gentlemen,  
05 thank you very much. It has been both enlightening and  
06 entertaining. I appreciate it very much.  
07 Mr. Canaday?  
08 MR. CANADAY: Before we close, Staff would like to  
09 thank the U.S. Forest Service for their hospitality  
10 here today. They provided this building for us to hold  
11 this hearing in.  
12 We would also like the Mono Lake Committee, who  
13 did a lot of the logistical work, as well working with  
14 the Forest Service, and we appreciate that very much.  
15 Thank you.  
16 HEARING OFFICER DEL PIERO: Mr. Dodge, anything  
17 else?  
18 MR. DODGE: Pardon me?  
19 HEARING OFFICER DEL PIERO: No preliminary items  
20 for us to take care of?  
21 Mr. Birmingham, any procedural items, Sir?  
22 Nothing.  
23 Ladies and Gentlemen, thank you very much for  
24 your -- Mr. Roos-Collins?  
25 MR. ROOS-COLLINS: Starting time Monday?

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01 HEARING OFFICER DEL PIERO: 8:30 Monday morning in  
02 Sacramento.  
03 Thank you so much for your participation. This  
04 hearing is adjourned.  
05 (Whereupon the hearing was adjourned at 3:17 p.m.)  
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01 REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SACRAMENTO )

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I, KELSEY DAVENPORT ANGLIN, 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 1 through 188 herein constitute a complete, true and correct record of the proceedings:

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PRESIDING OFFICER: Marc Del Piero  
JURISDICTION: State Water Resources Control Board  
CAUSE: Mono Lake Diversions  
DATE OF PROCEEDINGS: December 3, 1993

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IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 7th day of December, 1993.

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Kelsey Davenport Anglin, RPR,  
CM, CSR No. 8553