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01 PUBLIC HEARING  
02 STATE WATER RESOURCES CONTROL BOARD  
03 DIVISION OF WATER RIGHTS  
04 STATE OF CALIFORNIA

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

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14 Held in  
15 State Water Resources Building  
16 901 P Street  
17 Sacramento, California  
18 Thursday, February 3, 1994

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20 VOLUME XXXVI

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24 Reported by: Kimberley R. Mueller  
25 CSR No. 10060

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01 SACRAMENTO, CALIFORNIA  
02 THURSDAY, FEBRUARY 3, 1994, 2:07 P.M.  
03 ---o0o---  
04 HEARING OFFICER DEL PIERO: Ladies and gentlemen,  
05 this hearing will come to order.  
06 Ladies and gentlemen, welcome back. This is a  
07 continuation of the hearing of the State Water  
08 Resources Control Board regarding the amendment of the  
09 City of Los Angeles' water rights licenses for  
10 diversion of water tributary to Mono Lake.  
11 My name is Marc Del Piero. I've Vice-Chair of the  
12 State Water Resources Control Board, and I'm acting in  
13 the capacity of Hearing Officer for this matter.  
14 Good morning -- actually, good afternoon,  
15 Mr. Dodge.  
16 MR. DODGE: Good afternoon.  
17 HEARING OFFICER DEL PIERO: I've already been in  
18 one meeting already this morning, so you'll forgive me.  
19 MR. DODGE: A couple of procedural things before  
20 we call Mr. Vorster as our next witness.  
21 One, in terms of my client's surrebuttal, it is  
22 quite likely that it will be limited to Mr. Vorster and  
23 Dr. Stine, and we will decide that the other witnesses  
24 will be unnecessary. And if that changes, I'll let  
25 people know.

0008

01 Secondly, I have talked informally with all  
02 counsel as to the post-hearing submissions. I think we  
03 all agree with the concept of an opening brief filed  
04 simultaneously some number of days after the last  
05 transcript is received and a simultaneous closing  
06 brief.  
07 But again, it is whatever is going to help the

08 Board.

09 HEARING OFFICER DEL PIERO: I'm prepared to  
10 indicate what the Board's desire is this morning or,  
11 rather, this afternoon about that.

12 I anticipate that legal briefs and the written  
13 closing statement will be filed within 30 days of the  
14 close of the hearing. The parties that wish to submit  
15 reply briefs would be obliged to submit those reply  
16 briefs within 15 days of the deadline of the initial  
17 briefs. Okay?

18 Anybody have any problems with that?

19 MR. DODGE: I would just request a little more  
20 time on the reply brief.

21 HEARING OFFICER DEL PIERO: More than 15 days?

22 MR. DODGE: Yes. Mr. Birmingham indicated to me  
23 this morning that he'd like 45, and he mentioned he  
24 had to respond to a bunch of folks, and I'm sympathetic  
25 to that. I think 15 is really pushing it.

0009

01 HEARING OFFICER DEL PIERO: I'm sympathetic, but  
02 not that sympathetic, Mr. Dodge. The reality is that  
03 it's now February. This Board is obliged, pursuant to  
04 court order, to have a decision out by August.

05 With the exception of the last few days of  
06 transcripts, everyone, all of the parties, will have or  
07 have the vast majority of the transcripts of this  
08 hearing already.

09 It is not unreasonable to assume that the closing  
10 arguments -- or, pardon me, the closing statements  
11 could not be already begun. And so I'm somewhat  
12 reluctant to do that. I might be willing to shave five  
13 days off the 30 days and grant you an additional --  
14 grant you 20 for the reply brief. But the net number  
15 of days in terms of the response, I don't think is  
16 going to change very much.

17 We're obliged to meet the requirements of the  
18 court. My staff and my Board need that time to be able  
19 to review the voluminous records that exist in order to  
20 come up with as comprehensive and as intelligent and  
21 appropriate decision as possible.

22 MR. DODGE: On behalf of my clients, I would  
23 request three weeks on the closing brief. 30 days  
24 we'll live with. Obviously, we'll live with the 15  
25 days, too, if we have to.

0010

01 HEARING OFFICER DEL PIERO: Anybody else have any  
02 observations or comments?

03 Mr. Birmingham, you have a smile on your face  
04 still, sir.

05 MR. BIRMINGHAM: I do. I'm ill prepared, but I  
06 have a smile on my face.

07 HEARING OFFICER DEL PIERO: That's okay.

08 MR. BIRMINGHAM: The Department of Water and Power  
09 will have to respond to, at a minimum, I would guess  
10 five opposing opening briefs. And there's the  
11 potential that we will have to respond to a total of  
12 eleven opening briefs.

13 I acknowledge that we have had the opportunity to  
14 begin preparing our closing brief, but it will be very,  
15 very difficult for us, if not impossible for us, to

16 intelligently and accurately respond to the number of  
17 closing briefs that we anticipate receiving.

18 So I would join in Mr. Dodge's request that the  
19 period between the opening and closing be extended from  
20 15 days to three weeks.

21 HEARING OFFICER DEL PIERO: You got a calendar,  
22 Dan?

23 MR. FRINK: No, I don't. I'm sorry.

24 HEARING OFFICER DEL PIERO: 15 days.

25 MR. BIRMINGHAM: Thank you.

0011

01 HEARING OFFICER DEL PIERO: 20 days after the  
02 deadline for the submission of the initial briefs for  
03 the reply briefs. Okay?

04 MR. BIRMINGHAM: One additional request that we  
05 were going to make on behalf of the Department of Water  
06 and Power.

07 I'm not sure that this would fit into the Board's  
08 schedule, but I was going to request that after --  
09 shortly after the submission of the closing briefs,  
10 that we be given an opportunity to present very limited  
11 oral argument to the Board.

12 I recall that we all presented very limited  
13 openings statements at the beginning of this process  
14 many months ago, and I felt that that was quite  
15 helpful. And I think it would be very helpful if we  
16 were able to submit a very limited oral argument.

17 HEARING OFFICER DEL PIERO: Closing argument?

18 MR. BIRMINGHAM: I'm sorry. Closing argument,  
19 yes.

20 HEARING OFFICER DEL PIERO: It's -- after the  
21 reply brief?

22 MR. BIRMINGHAM: Shortly after the close of the  
23 submission of the reply brief.

24 HEARING OFFICER DEL PIERO: Any other comments in  
25 regard to that?

0012

01 MR. DODGE: Well, we'd be happy to do that if it's  
02 going to be helpful to the Board. We don't wish to  
03 waste everyone's time.

04 HEARING OFFICER DEL PIERO: I'll think about that,  
05 Mr. Birmingham.

06 MR. BIRMINGHAM: If I may, the reason that I  
07 suggest it is that the position of virtually every  
08 primary party has changed to one degree or another  
09 during the course of the hearing.

10 And I'm not certain that, by the time we submit  
11 reply briefs, that everyone will be certain of the  
12 position that they ultimately will want to advocate to  
13 the Board. And it's for that reason I'm making the  
14 request.

15 HEARING OFFICER DEL PIERO: I'll think about that.

16 MR. BIRMINGHAM: Thank you.

17 HEARING OFFICER DEL PIERO: I'll give you an  
18 answer at the end of the day.

19 Mr. Roos-Collins, good afternoon, sir.

20 MR. ROOS-COLLINS: Good afternoon.

21 For your benefit, my last name is R-o-o-s, hyphen,  
22 Collins. I'm the attorney for California Trout.

23 Mr. Del Piero, I have four procedural matters to

24 raise with you this afternoon. First, since we were  
25 last here, Judge Finney has ordered the parties to his

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01 proceeding before him on February 14th. That day is  
02 currently reserved as open in your schedule.

03 As far as Mr. Birmingham, Mr. Dodge and I are  
04 concerned, it is now closed. We will be before  
05 Judge Finney to discuss the funding for the 1994  
06 restoration.

07 HEARING OFFICER DEL PIERO: What would happen if I  
08 demanded you gentlemen be here?

09 MR. ROOS-COLLINS: I would have been tempted to  
10 ask Judge Finney to meet with you.

11 Secondly, due to the unavailability of funding for  
12 the completion of Mr. Trihey's reports for Rush Creek,  
13 we are currently uncertain when those reports, which  
14 are now being drafted, will be completed.

15 I notified the City of Los Angeles last week that  
16 I intend to move for late admission of those reports  
17 once they are available, and I wish to notify you that  
18 I will so move once I have greater clarity from  
19 Mr. Trihey and Judge Finney.

20 HEARING OFFICER DEL PIERO: When's the last day  
21 we've got scheduled for hearing, Mr. Canaday?

22 MR. CANADAY: The 18th.

23 MR. FRINK: Actually, we did send out a notice  
24 that listed the 14th as a likely hearing date, and then  
25 the 17th and 18th were identified in here as being

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01 optional days in the event we didn't complete it.

02 MR. ROOS-COLLINS: Judge Finney was apprised of  
03 the conflict. He understands that this Board had  
04 reserved the 14th. Unfortunately, his criminal docket  
05 is so crowded that that was the only date between last  
06 week and February 28th when he could hear argument  
07 regarding the 1994 restoration project.

08 HEARING OFFICER DEL PIERO: That's fine. I have  
09 no problem with Judge Finney or the schedule. He has  
10 his responsibilities, and we have ours. And his court  
11 and my hearing can work cooperatively together in terms  
12 of scheduling. That's not a problem.

13 Is the issue that's going to be coming before  
14 Judge Finney the issue of payment?

15 MR. BIRMINGHAM: No, it's not.

16 HEARING OFFICER DEL PIERO: It is not.

17 MR. BIRMINGHAM: And actually, I would take  
18 exception to Mr. Roos-Collins' statement that the  
19 reason that the reports haven't been finished is the  
20 lack of funding.

21 In fact, through the end of 1993, there was  
22 funding available for completion of reports and there  
23 are many factors which have contributed to Mr. Trihey's  
24 inability to complete the reports; one of which is the  
25 need to participate in these hearings.

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01 But the issue that will be decided by  
02 Judge Finney, if, in fact, there is a hearing on the  
03 14th, and it's not certain there will be, but the issue  
04 that will be addressed by Judge Finney is the maximum  
05 annual allotment of money that will be made available



06 for restoration activities in 1994. And that will be  
07 the only issue that will be heard by Judge Finney on  
08 the 14th.

09 HEARING OFFICER DEL PIERO: Just for my own  
10 understanding of what's going on. I've gotten this  
11 third hand, so that's why I'm asking the question. I  
12 understand there's some payments allegedly in arrears.

13 Is there some truth to that or, at least, is there  
14 some argument that might be made that that's true?

15 MR. BIRMINGHAM: There's some truth to the  
16 argument that there's a dispute that exists between the  
17 Department of Water and Power and the City of Los  
18 Angeles and Trihey and Associates concerning payments  
19 for work that was performed in 1992 and work done in  
20 the first quarter of 1993. There is no dispute over  
21 payments or any money due for work that was done 1993,  
22 and --

23 MR. DODGE: I don't know about the last part of  
24 1993, but I can assure you, there's a dispute about  
25 payment for 1992 work and early 1993 work.

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01 HEARING OFFICER DEL PIERO: Okay.

02 MR. BIRMINGHAM: But that is not an issue that  
03 will be addressed by Judge Finney on the 14th.

04 Under the existing order pursuant to which the  
05 Restoration Technical Committee operates, the  
06 Restoration Technical Committee, by the end of each  
07 year, is to establish a maximum annual allotment for  
08 the following year's restoration activities.

09 In 1993, that was not accomplished by the end of  
10 year for a variety of reasons, and the judge extended  
11 that period until January 31, 1994. There was a vote  
12 taken on this issue at a meeting on January 12, 1994.  
13 It was not unanimous.

14 Therefore, it is necessary for the matter to be  
15 resolved by the court, except Judge Finney requested  
16 that the parties meet again, and a meeting has been  
17 scheduled for February 10th at which the Restoration  
18 Technical Committee will again discuss a maximum  
19 allotment of money for restoration activities during  
20 1994.

21 In the event there is unanimous agreement on that  
22 amount, there will be no hearing on the 14th.

23 HEARING OFFICER DEL PIERO: All right.

24 Mr. Roos-Collins, I've heard Mr. Birmingham's  
25 explanation. Tell me yours now.

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01 And I'm not particularly -- I mean, I have no  
02 great interest in involving myself in terms of what's  
03 going on in Judge Finney's court. My big concern is  
04 how this may be impeding the future of an evidentiary  
05 record for this Board to ultimately render a decision.

06 That's why I'm asking these questions and why I'm  
07 interested, simply to make sure that my Board has a  
08 full and complete evidentiary record necessary to be  
09 able to justify a decision and to certify the  
10 Environmental Impact Report.

11 MR. ROOS-COLLINS: Thank you for the opportunity  
12 to state our position.

13 I did not mean to imply the parties agree that the

14 unavailability of funding is the principal cause for  
15 the delay in completion of certain reports including  
16 the restoration alternative report for Rush Creek.

17 HEARING OFFICER DEL PIERO: Let me just ask a  
18 point-blank question. I understand that some people  
19 have indicated they are no longer going to participate  
20 in some of the committees because they have not been  
21 paid. Is that true?

22 MR. ROOS-COLLINS: Mr. Del Piero --

23 HEARING OFFICER DEL PIERO: Just answer it yes or  
24 no. Is it true?

25 MR. ROOS-COLLINS: I have heard --

0018

01 HEARING OFFICER DEL PIERO: Mr. Dodge?

02 MR. DODGE: Let me respond to a slightly different  
03 question.

04 MR. ROOS-COLLINS: Can I respond to your question  
05 first?

06 HEARING OFFICER DEL PIERO: Certainly,  
07 Mr. Roos-Collins.

08 I'd like an answer to my question, and then,  
09 Mr. Dodge, you can answer whichever question you'd  
10 prefer.

11 MR. DODGE: I was going to answer a better  
12 question.

13 HEARING OFFICER DEL PIERO: I'm trying to get  
14 better, Mr. Dodge.

15 Go ahead.

16 MR. ROOS-COLLINS: Certain subcontractors to  
17 Mr. Trihey have indicated privately to various parties,  
18 not to Judge Finney, but to various parties, that they  
19 may be unable to discharge their responsibilities to  
20 Mr. Trihey if payment for 1992 activities still  
21 disputed between Mr. Trihey and Los Angeles is not  
22 resolved expeditiously.

23 HEARING OFFICER DEL PIERO: Mr. Dodge, what's the  
24 question you want to answer? I need to know the  
25 question first.

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01 MR. DODGE: The question is: Is Mr. Trihey  
02 working as we stand here today? And I believe the  
03 answer to be no, that he stopped people from working  
04 when his contract expired on 12/31/93.

05 MR. ROOS-COLLINS: That is Cal Trout's  
06 understanding as well.

07 I opened this Pandora's box just a little --

08 HEARING OFFICER DEL PIERO: No, because it's on my  
09 list of things to discuss here today before we begin,  
10 so --

11 MR. ROOS-COLLINS: And I appreciate the  
12 opportunity to discuss it, but I wish to emphasize  
13 again that California Trout intends to move to open the  
14 hearing for the production of late evidence,  
15 specifically Mr. Trihey's reports when they are  
16 available.

17 As of today I cannot tell you when those reports  
18 will be available because their availability depends on  
19 the resolution of certain disputes between the City of  
20 Los Angeles and other parties regarding 1994 contract  
21 funding.

22 HEARING OFFICER DEL PIERO: Mr. Frink, can I ask  
23 you a question?  
24 MR. FRINK: Certainly.  
25 HEARING OFFICER DEL PIERO: Is the State Board a  
0020 party to the matters that are before Judge Finney?  
01 MR. FRINK: Mr. Canaday has been sitting as a  
02 non-voting member on the RTC. The State Board is a  
03 party in the litigation but has not been a voting  
04 member on the RTC, and we have not taken a stand with  
05 regard to the controversies over work or funding.  
06 HEARING OFFICER DEL PIERO: Okay. You and I need  
07 to talk afterwards.  
08 MR. ROOS-COLLINS: My third procedural matter  
09 concerns February 9th currently set aside for a  
10 fisheries and stream panel.  
11 When the current schedule was distributed by Mr.  
12 Canaday on January 24th, he asked whether attorneys had  
13 conflicts with any of the specified dates. I did not  
14 object. That was an error.  
15 When this schedule was discussed on January 18th,  
16 I informed this Board that I had a conflict on February  
17 9th such that I was unavailable in the afternoon. Now,  
18 I understand that this date has been set aside for this  
19 panel.  
20 I wish to apprise you today that I am attempting  
21 to work out an arrangement with the parties and with  
22 the witnesses to find another date now open which will  
23 be convenient for them.  
24 HEARING OFFICER DEL PIERO: Okay.  
0021 MR. ROOS-COLLINS: The fourth matter I wish to  
01 raise to your attention concerns the scheduling of the  
02 surrebuttal witnesses on water supply and economic  
03 matters. You have a water supply and economics panel  
04 scheduled for tomorrow. It is my understanding that  
05 one of the City of Los Angeles' surrebuttal witnesses  
06 who will be replying to Mr. Fullerton will not be  
07 available tomorrow.  
08 HEARING OFFICER DEL PIERO: Is that true?  
09 MR. POLLAK: For purposes of the record, my name  
10 is Andrew Pollak, P-o-l-l-a-k, for the City of Los  
11 Angeles and Department of Water and Power for the City  
12 of Los Angeles.  
13 Mr. Ray Hoblan is going to rebut -- has been  
14 identified as surrebuttal to Dr. Fullerton, and his  
15 availability -- the availability of his attorney is  
16 limited. She was going to take tomorrow off.  
17 HEARING OFFICER DEL PIERO: Mr. Hoblan from across  
18 the street?  
19 MR. POLLAK: Across the street, correct.  
20 His availability -- he would prefer to be on some  
21 other time.  
22 As far as the Department of Water and Power, we  
23 would prefer to have --  
24 HEARING OFFICER DEL PIERO: This is the employee  
0022  
01 of the Department of Water Resources?  
02 MR. POLLAK: That's correct.  
03 HEARING OFFICER DEL PIERO: That's the only reason

04 why he can't be here, because she wants to take the day  
05 off?

06 I'm not upset with you, Mr. Pollak, I'm just  
07 asking a simple question.

08 MR. BIRMINGHAM: That's what I always tell him.

09 HEARING OFFICER DEL PIERO: Mr. Pollak, I'm not  
10 upset with you.

11 MR. POLLAK: I understand that. We had requested  
12 that Mr. Hoblan go on after the party that he is  
13 rebutting, who is Dr. Fullerton.

14 HEARING OFFICER DEL PIERO: Mr. Canaday, come  
15 here, please.

16 MR. POLLAK: That is in order to respond to the  
17 issues raised on --

18 HEARING OFFICER DEL PIERO: Mr. Pollak, if I can  
19 arrange to have Mr. Hoblan and his attorney here  
20 tomorrow, can you --

21 MR. POLLAK: I can inform them of that, and I  
22 think they would be here.

23 MR. BIRMINGHAM: Mr. Del Piero, before we elevate  
24 this to --

25 HEARING OFFICER DEL PIERO: We just did,

0023

01 Mr. Birmingham, relax.

02 MR. BIRMINGHAM: Before we elevate this to the  
03 Chairman of this Board contacting the director of the  
04 Department of Water Resources, maybe we could ask  
05 Mr. Pollak to convey to Mr. Hoblan's attorney the  
06 Hearing Officer's desire that he be here tomorrow. I'm  
07 confident that that will be enough to have him here  
08 tomorrow, and her, both of them. Mr. Hoblan is the  
09 witness.

10 HEARING OFFICER DEL PIERO: Mr. Pollak?

11 MR. POLLAK: Mr. Del Piero, that would be okay.  
12 Thank you. I'm off.

13 MR. BIRMINGHAM: Thank you.

14 HEARING OFFICER DEL PIERO: Mr. Roos-Collins, what  
15 else do you have?

16 MR. ROOS-COLLINS: Just a request that before the  
17 end of the day, we discuss the open dates insofar as  
18 any tentative commitments have been made for particular  
19 witnesses to come on those dates so that our calendar  
20 is up-to-date. Thank you.

21 HEARING OFFICER DEL PIERO: Thank you very much.

22 Ms. Cahill, do you have any procedural issues?

23 MS. CAHILL: I have no procedural issues. Do you  
24 want me to make one up?

25 (Laughter.)

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01 HEARING OFFICER DEL PIERO: No. Let's save that  
02 one for a little while later. We may need a break.

03 My Scoonover, anything from you?

04 MS. SCOOVER: I'm staying out of this.

05 HEARING OFFICER DEL PIERO: That's good.

06 Mr. Dodge, let me see, do you have anything else,  
07 sir, before --

08 MR. DODGE: No.

09 HEARING OFFICER DEL PIERO: Let me see, I want to  
10 address a couple of things. First of all, we got the  
11 brief issue out of the way. The actual dates for the

12 submission of briefs we'll set at the close of the  
13 hearing.

14 I've been assured by someone who I had heard  
15 about, but never met before Saturday, that there's  
16 going to be an extra effort made to get the transcripts  
17 of the last days of this hearing out as expeditiously  
18 as possible, and I appreciate her willingness to do  
19 that for us.

20 Do we have any objections to -- besides the  
21 comments made by Mr. Roos-Collins, do we have any other  
22 concerns articulated by the witness schedule at this  
23 point?

24 MS. CAHILL: Well, I guess I do have one.

25 HEARING OFFICER DEL PIERO: Okay.  
0025

01 MS. CAHILL: The same day that Mr. Roos-Collins  
02 has raised concerns about, the 9th, tentatively shows  
03 Dr. Kondolf on that date. He would be available if we  
04 had the session in the late afternoon or evening, but  
05 he would not be available earlier on that day.

06 HEARING OFFICER DEL PIERO: He would be  
07 available -- I'm sorry?

08 MS. CAHILL: After about 4:00 o'clock, he could be  
09 here.

10 HEARING OFFICER DEL PIERO: Is that a problem for  
11 anybody aside from Mr. Roos-Collins, who's trying to  
12 work it out? And I assume, Richard, you're going to  
13 talk to me later about what your discussions with the  
14 other parties were.

15 MR. ROOS-COLLINS: Yes, I will.

16 HEARING OFFICER DEL PIERO: Okay. Mr. Dodge?  
17 Mr. Vorster, you've been sworn previously.

18 MR. VORSTER: Yes, I have.

19 DIRECT EXAMINATION BY MR. DODGE

20 Q. Mr. Vorster, can you identify your rebuttal  
21 testimony for the record?

22 A. BY MR. VORSTER: It's listed as Exhibit 1-A-G,  
23 NAS, slash, MLC 1-A-G.

24 Q. And is Exhibit NAS/MLC 1-A-G a true and accurate  
25 copy of your rebuttal testimony?

0026  
01 A. Yes, it is. There's a few slight typos I'd like  
02 to correct.

03 Q. All right. Go ahead and do that.

04 A. In the first paragraph, very unintentionally in  
05 the fourth line, where it says, "The reduction of Mono  
06 Basin experts," it should be, "The Mono Basin exports,"  
07 so an "O" should be substituted for the "E."

08 And on page 3, the third line from the bottom, the  
09 last character should go over to the second line.

10 It should say, "11.4 thousand acre-feet per year."  
11 This was originally done on a Macintosh and translated  
12 into a main frame on Morrison and Foerster, and we had  
13 some things like that occur.

14 I think that's the only obvious corrections that  
15 need to be made.

16 Q. Are there any other corrections?

17 A. There are, like extra periods and spaces and  
18 things like that, but I don't think anything that would  
19 affect the testimony. No changes in the testimony.

20 MR. BIRMINGHAM: Excuse me, Mr. Del Piero. I'm  
21 informed by Mr. Pollak that Mr. Hoblan will be here at  
22 any time tomorrow at the Board's disposal.

23 HEARING OFFICER DEL PIERO: Thank you very much,  
24 Mr. Pollak, Mr. Birmingham, appreciate it.

25 Q. BY MR. DODGE: In paragraph 8, Mr. Vorster, you  
0027  
01 set out certain goals that the two management plans are  
02 designed to meet. Was there one goal that was deleted  
03 from the 6390 foot management plan?

04 Q. BY MR. VORSTER: Yes. I apologize. I'm sorry if  
05 in the haste to put this together, one got eliminated  
06 that shouldn't have.

07 In the 6390 management plan goals, one should be  
08 added that stating, "Provide additional water-based  
09 Tufa," as an additional goal of the 6390 management  
10 plan.

11 Q. Mr. Vorster, can you, in approximately 20 minutes,  
12 please summarize your rebuttal testimony?

13 A. Yes, I will. I'm going to need the overhead  
14 projector.

15 I think we had a discussion last Friday about the  
16 different versions of the model, and I used version  
17 3.31, which I refer to as 3.3a. It contains a minor  
18 correction which I needed to have for the calculation  
19 of exports in the Mono Lake water management plans that  
20 I'll be discussing.

21 Now, the input assumptions that I use are  
22 identical to those identified by Dr. Brown in his  
23 testimony, except for the differences that I show in  
24 Table 3 in my testimony. And I just wanted to put  
25 those up on the overhead to make sure it's clear what

0028  
01 those difference are.

02 There are essentially two differences. I use the  
03 minimum reservoir targets identified by Dr. Brown that  
04 he used for the no-restriction alternative that was  
05 11.5 thousand acre-feet for Grant Reservoir and a  
06 series of minimum targets for Crowley Reservoir. I  
07 used those targets in all of my simulations, while he  
08 used different targets in his simulations for the  
09 higher lake level alternatives.

10 This table just points out the differences. So I  
11 use a minimum Grant storage of 11,000 acre-feet in a  
12 year -- another typo, should be "11,500," and then it  
13 should also say, "Minimum Crowley storage 80,000  
14 acre-feet in dry years 100,000 acre-feet in normal  
15 years, 120,000 acre-feet in wet years.

16 I also do not use Grant Lake storage for the Rush  
17 Creek deficits to make up deficits in the fish flows.  
18 I do use Grant storage to make up the deficits only in  
19 the second alternative that I ran just to make a  
20 comparison.

21 The result of those two differences is that  
22 Dr. Brown, when he ran the DFG flows, he obtained an  
23 average Mono export to 27 1/2 thousand acre-feet. My  
24 simulation has a result of 32.3 thousand acre-feet.  
25 The difference is entirely explained by the different  
0029  
01 reservoir storages, and the fact that I don't use Grant

02 Lake to make up the fish deficits.

03 In other words, if I use the exact same  
04 assumptions that Dr. Brown does, I get the exact same  
05 results.

06 The -- one of the reasons why I did not use the  
07 Grant Lake storage to make up the fish deficits is that  
08 the Department of Fish and Game has issued a  
09 clarification to its recommendation that, I think, was  
10 contained in Ms. Cahill's letter to the Board last  
11 week. And they, Fish and Game, recommend that Grant  
12 storage only be used to maintain Rush Creek fish flows  
13 only when the inflow is less than the dry-year  
14 recommended flows.

15 This use of Grant storage cannot be modeled  
16 directly at the current time with LAAMP, but a  
17 comparison of the available Rush Creek inflow with the  
18 DFG dry-year releases indicates that releases of  
19 storage would be required in less than 15 percent of  
20 the months and would cause a small reduction, in the  
21 order of 600 acre-feet per year over the long term, in  
22 the exports of Mono Basin.

23 Therefore, because of that that is the reason why  
24 I used the option of not requiring Grant storage for  
25 fish deficits.

0030

01 The whole point of my explaining all this is to  
02 make a fundamental point about models and actual  
03 operations.

04 The model has to make a number of simplifying  
05 assumptions that constrain operations that would not  
06 necessarily occur with actual operations. For example,  
07 LAAMP allocates and LAASM allocates water on a  
08 month-to-month basis and does not have a long range,  
09 six or more months, view that actual operations can  
10 have.

11 This long-range view that an actual operator would  
12 have if, for example, he knows the snow pack is very  
13 high, and he can make some operational releases early  
14 in the year in order to allow, perhaps, more exports  
15 later in the year. In general, actual operations would  
16 allow more exports -- or more optimum allocation of the  
17 water.

18 And so when we're looking at these numbers from  
19 the models, we should just be aware of that and not fix  
20 on the numbers too precisely. I think with the Fish  
21 and Game flow, the yield for the Mono Basin would vary  
22 in the long term between 30 and 35,000 acre-feet.

23 Now, I use LAAMP to indicate the number of years  
24 it would be required to achieve a lake level with no  
25 diversions by DWP, and those results are shown by Table

0031

01 2-A -- excuse me, Table 1.

02 I assumed the lake level, starting this April 1st,  
03 with 6375.5, which is what I think the lake will be or  
04 very close to it. It is a little above 6375 right now  
05 and usually it rises in February and March.

06 Now, the amount of time to achieve a particular  
07 lake level, obviously, depends on the sequence of  
08 precipitation and runoff that's assumed. And like many  
09 other hydrologic models, LAAMP assumes the historic

10 sequence in the order that it actually occurred.

11       However, we can evaluate the fact that different  
12 sequences of precipitation and runoff would have on the  
13 time it would take to reach any particular lake level  
14 by doing a number of different things.

15       One would be a Monte Carlo method where you  
16 rearrange the historical sequence in a random way or a  
17 stochastic sequence, but the most, kind of a very  
18 simple straightforward way to do it would be to have  
19 each year of historic sequence be stacked on top of  
20 each other. Meaning that I started one sequence in  
21 1942, ran it through for 50 years, and had it cycle  
22 back to the beginning, and so on and so forth. So my  
23 last sequence was starting in 1989 and cycling back to  
24 the beginning in the order it occurred.

25       So it gives us a feeling of the range of number of  
0032  
01 years it would take to achieve a particular lake  
02 level.

03       In Table 1-A, I show how many years it would take  
04 to achieve the various lake levels with no diversions  
05 in a starting year of 1940, a starting year of 1987,  
06 and cycling through the first six years would be the  
07 six-year drought we just experienced. So it would be  
08 1987 through 1992 and cycling back starting with 1942.

09       And I also show it with a starting year of 1978,  
10 which was the beginning of the wettest sequence in the  
11 historic period. And with that, you get a feel for how  
12 long it would take if there were no diversions.

13       So, for example, it would take 13 years to achieve  
14 6390 starting in 1940. It would take 23 years if you  
15 started in 1987. And it would only take 7 years if you  
16 had a sequence that started with 1978.

17       Now, you can do the same thing assuming the  
18 exports that the Draft Environmental Impact Report  
19 assumed and these transition year exports for the  
20 different alternatives, and you would achieve 6390 in  
21 28 years if you started in 1940.

22       I can do the same exercise I did for the  
23 no-diversions, where I tried 50 different sequences,  
24 and it takes an average of 23 years to reach 6390 with  
25 the transitioned exports as identified by the Draft

0033  
01 Environmental Impact Report. The range is anywhere  
02 from 10 to 26 years.

03       Now, in Table 2-A, I show the results for the  
04 different alternatives, and I provide information on  
05 the minimum, median, and maximum lake levels, as well  
06 as the mean annual stream flow releases below the DWP  
07 diversion facility, as well as the mean annual flow in  
08 the Upper Owens River.

09       Now, these results, the LAAMP results, are most  
10 appropriately used in comparing the different  
11 alternatives. And Table 4 of my testimony can be used  
12 to make that comparison. It is most helpful, for  
13 example, to determine the relative difference between  
14 the different alternatives.

15       The numbers I show here in this first two columns  
16 is comparing the average exports for the Mono Basin, as  
17 well as the average delivery to Los Angeles between the



18 various alternatives, and the Fish and Game flows using  
19 that as a base, and these two columns do the same thing  
20 but compares it to the no-restriction alternative.

21 Q. Mr. Vorster, in your written testimony, you  
22 mention 11.4 thousand acre-feet per year as the  
23 difference between 6405 and 6390.

24 Can you show the Hearing Officer where that  
25 appears on Table 4?

0034

01 A. Yes. That is the difference between the 10.6  
02 thousand acre-feet reduction in deliveries from the  
03 Fish and Game flow and the 22,000 for 6405.

04 Actually, a more straightforward way would be just  
05 to take the 399,000 acre-feet per year export to L.A.  
06 or delivery to L.A. and the 387.6. And that difference  
07 is 11.4 thousand acre-feet. So I think that's one of  
08 the helpful things that this table can be used for.

09 Another thing, the table can also be used to  
10 compare the differences in reduction between the Mono  
11 exports and the reductions actually to Los Angeles.  
12 The model suggests that the Los Angeles aqueduct  
13 deliveries for a given alternative is less than the  
14 reduction in Mono exports, and this is due, in part, to  
15 the fact that as less water is available from the Mono  
16 Basin, and you have the same amount of storage  
17 available, there are increased opportunities to store  
18 and export more of the runoff from the Owens River  
19 Basin in wet years.

20 Now, how much you would actually be able to  
21 deliver to Los Angeles, obviously, depends on the  
22 actual operation and any constraints that occur  
23 downstream.

24 The other point I want to make is that the  
25 relative differences between the alternatives with

0035

01 LAAMP 3.31 are very similar to what the differences  
02 between the alternatives were in Version Two, and  
03 that's because there weren't a lot of changes made to  
04 the Mono export version of the model.

05 Okay. I now want to discuss the Mono Lake water  
06 management plans. The Mono Lake Committee and the  
07 Audubon Society asked me to develop two separate  
08 management plans that would achieve the goals that I've  
09 outlined for 6390 and for 6405, and I just want to very  
10 quickly run through the goals for each one of them.

11 For 6390, the goals are to keep fish in good  
12 condition, to achieve air quality compliance with the  
13 EPA schedule set forth in the letter from David Calkins  
14 to Ellen Hardeback, provide a buffer against droughts,  
15 create a permanent water barrier between Negit Island  
16 and the mainland, increase the area of submerged hard  
17 substrate environments, keep the lake at or above a  
18 total dissolved solids of 75 grams per liter, to  
19 increase the primary productivity of the ecosystem in  
20 order to benefit the migratory and nesting birds, to  
21 achieve the lake level goals above that I just outlined  
22 in the shortest practical time period, to provide water  
23 to DWP in dry years when it's most available.

24 And the additional one that I just mentioned at  
25 the beginning of my oral testimony, provide additional

0036

01 water-based Tufa.

02 The 6405 management plan will achieve the  
03 additional goal of restoring waterfowl habitat by  
04 raising the lake above 6400 feet onto the gently  
05 sloping delta plains of tributary streams where  
06 marshlands can form in association with hypopycnal  
07 lenses of freshwater.

08 It will also restore the waterfowl habitat by  
09 periodically rewatering the brackish water lagoons on  
10 the northeast shore. It will restore still-water coves  
11 and hypopycnal conditions around shoreland marshes  
12 which will also increase waterfowl habitat. It will  
13 permanently cover the playa of the Mono shorelands.

14 It will restore the historic recreational uses of  
15 Mono Lake including boating, swimming, picnicking, and  
16 hunting.

17 And I want to add that the recreational uses that  
18 I just outlined for 6405 would also be enhanced at the  
19 6390 level, too.

20 And the 6405 plan will also restore the historic  
21 visual characteristics of a full Mono Lake.

22 Now, how can we achieve these goals? What  
23 measures do we have to take? Well, there are four  
24 basic parts to that; one is to adopt the Fish and Game  
25 recommended flows in all cases with the modifications

0037

01 to the recommendations as outlined in Ms. Cahill's  
02 letter of last week.

03 One additional part of keeping fish in good  
04 condition will be to limit releases in Lee Vining Creek  
05 to 250 cfs for the next 10 to 15 years while the creek  
06 establishes sufficient high flow refuge habitat.

07 Now, in order to accelerate the protection of  
08 these public trust values that I outlined for the 6390  
09 and 6405 plans, the recommendations is to have no  
10 diversions until the lake reaches 6384 feet. It will  
11 get the lake to a reasonable buffer level in the  
12 shortest period of time, and the lake will rise as  
13 quickly as possible and thus minimize the undermining  
14 of Tufa at the South Tufa grove.

15 And the reasoning for no diversions in the first  
16 number of years -- and that number of years would vary,  
17 obviously, depending on what sequence of precipitation  
18 runoff we have. The periods of no diversions can vary  
19 from as little as four years to as much as twelve  
20 years.

21 But DWP customers have demonstrated that they have  
22 been able to do without Mono Basin water. Their  
23 efforts are both, what I call, hard conservation with  
24 the hardware that has been adopted by DWP, including  
25 the ultra-low-flow toilets and the habit changes that

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01 seem to have permanently changed the consumption  
02 patterns of the people of L.A., which have decreased  
03 DWP's need for additional water, for example,  
04 population growth in the foreseeable future.

05 Now, when the lake reaches 6384 feet, the  
06 diversions of up to 10,000 acre-feet will be allowed.  
07 And the concept here is a constant amount of water that

08 is available to DWP in each year type, no matter  
09 whether it's a dry, normal, or wet year.

10 The actual amount that would be available,  
11 obviously, is somewhat dependent -- well, is dependent  
12 upon the runoff and the requirements for Fish and Game  
13 flows. So the actual amount varies from 5 to 11,000  
14 acre-feet per year.

15 The advantage of allocating a fixed amount,  
16 though, in all year types, is that it would avoid the  
17 controversy of what if one -- you start out in one  
18 runoff year type and because of additional  
19 precipitation or lack of precipitation in spring or  
20 summer, it becomes another year type. The idea is that  
21 DWP would know at the beginning of the runoff year how  
22 much they could potentially export.

23 The Mono exports would be allocated to maximize  
24 the benefits in the Upper Owens River and not  
25 necessarily be bound by continuously uniform monthly  
0039

01 expert allocation. I think the flexibility that we're  
02 calling for here has been shared by most or all  
03 parties.

04 Now, when the lake level achieves the 6390 level,  
05 then there will be no more -- the exports that would be  
06 available to DWP would be all that is available after  
07 the Fish and Game flows are met. And so there would be  
08 no lake level targets that would need to be achieved.

09 The reasoning behind that --

10 Q. This is under the first alternative?

11 A. That is under the 6390 plan.

12 There's no lake level release requirement, because  
13 LAAMP indicates that the DFG fish flows, by themselves,  
14 will keep the lake in the range between 6387 and 6400  
15 with a median lake level around 6391 or 6392.

16 MR. BIRMINGHAM: Would the reporter mark that,  
17 please?

18 MR. VORSTER: Now, I want to emphasize the basis  
19 for choosing this no diversions rather than a constant  
20 10,000 acre-foot allocation is the based upon getting  
21 the lake up to 6390 in an average 16 years, and that 16  
22 years, as I say, is an average. I ran LAAMP 50 times  
23 to see what the range would be, and it ranged from 7  
24 years to 25 years with this average of 16 years to  
25 achieve 6390 under the plan.

0040  
01 And Audubon feels that the 16-year period is the  
02 longest practically measured time period allowed by the  
03 EPA for compliance with the Clean Air Act as outlined  
04 in the December 16th, 1993, letter from David Calkins  
05 to Ellen Hardeback.

06 Now, under the 6405 plan, once the lake achieves  
07 6390 feet, DWP can then export an additional 5,000  
08 acre-feet for a total of 15,000 acre-feet until the  
09 lake rises to 6405 feet.

10 When the lake is at or above 6405 feet, then all  
11 of the runoff above the fish flows will be available  
12 for export. When the lake drops down to 6405 feet,  
13 then it will switch back to the 15,000 acre-feet per  
14 year.

15 Now, there still needs to be some kind of protocol

16 established for determining the year type, because the  
17 Fish and Game fish releases are dependent on year time.  
18 Mr. Hasencamp has suggested a protocol which, I think,  
19 is very similar to what I have outlined. In other  
20 words, you get a preliminary indication of the year  
21 type from the April 1st runoff forecast, and you can  
22 make a final determination after the May 1st forecast.

23 I also suggested that if the forecast projects the  
24 runoff to be near the boundary of a year type, in other  
25 words, very close to the minimum or the maximum of a

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01 particular year type, some kind of protocol should be  
02 established to revisit the runoff projections before  
03 the end of the peak runoff period in July.

04 And lastly, I have outlined a number of  
05 opportunities to mitigate the reductions in Mono  
06 exports that DWP could do in the L.A. aqueduct system.  
07 And as we heard from Mr. Coufal, DWP has pursued or is  
08 currently pursuing many of these opportunities, and  
09 there are many opportunities. One of the best  
10 opportunities, one of the best opportunities is to  
11 reduce the involuntary spilling in the Owens Valley,  
12 which currently averages about 15,000 acre-feet per  
13 year, by expanding the facilities to spread water in  
14 wet years.

15 Other opportunities were outlined and discussed by  
16 Mr. Coufal.

17 And that ends my testimony for right now. I'll  
18 discuss the water supply implications of the management  
19 plans tomorrow when that panel is convened.

20 Q. BY MR. DODGE: Just a couple quick questions,  
21 Mr. Vorster.

22 MR. HERRERA: Excuse me, Mr. Dodge. The first 20  
23 has expired.

24 MR. DODGE: Can I have an additional two minutes?

25 HEARING OFFICER DEL PIERO: Granted.

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01 Q. BY MR. DODGE: Did you run your two management  
02 plans assuming that the Upper Owens River is limited to  
03 200 cfs?

04 A. BY MR. VORSTER: Yes. That's the Fish and Game  
05 recommendation.

06 Q. And did you quantify the effect of that  
07 limitation?

08 A. Yeah. I did want to see if the exports would be  
09 substantially increased if, for example, there was a  
10 300 cfs limitation. So I ran that alternative again  
11 with the 300 cfs limitation. And the Mono exports over  
12 the long term only rose by about 150 acre-feet per year  
13 on average.

14 Obviously, the 200 cfs limitation is not a major  
15 constraint, in fact, a very minor constraint on the  
16 exports from the Mono Basin.

17 Q. One other question. Once you reach 6390, you said  
18 that the DFG fish flows would suffice if you wanted to  
19 maintain 6390; is that right?

20 A. Yes. If you wanted to maintain a median lake  
21 level around 6390 to 92, which is what, I think, Great  
22 Basin Air Pollution Control Assumed was the median lake  
23 level to achieve compliance.

24 Q. But if I understand you correctly, once you've  
25 achieve 6405, if you want to maintain 6405, you need

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01 flows in excess of DFG flows; is that correct?

02 A. That's correct. That's why if the level falls  
03 down below 6405, you have to reduce the exports down to  
04 the constant 15,000 acre-feet per year.

05 Q. And my question to you is: In the 6405 foot plan,  
06 where do you show when the additional water over and  
07 above the DFG flows would go down?

08 A. I want to make sure I understand your question.  
09 When the lake is at or above 6405 feet, then all the  
10 water above the Fish and Game flows can be exported.  
11 Is that what you're asking?

12 Q. No. To maintain 6405 you need water over and  
13 above the Fish and Game flows, correct?

14 A. Right.

15 Q. And during what part of the year, what months  
16 would you send this additional water down to Mono Lake?

17 A. I see. I understand your question. That  
18 additional water would be sent down when it's most  
19 available, obviously, which is during the spring and  
20 summer snow-melt runoff months, although, subject to  
21 the optimal allocation for the Upper Owens River.  
22 That's where the operator would have some flexibility.  
23 But generally, you want to add the flows into the lake  
24 during the snow-melt months to simulate the natural  
25 hydrograph.

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01 MR. DODGE: That's all I have. Thank you.

02 HEARING OFFICER DEL PIERO: Thank you.

03 Mr. Smith, is this mine or is this the file copy?

04 MR. SMITH: This is the file copy.

05 HEARING OFFICER DEL PIERO: I want to make sure it  
06 gets back to the file.

07 Mr. Birmingham? Been to Fresno lately,  
08 Mr. Birmingham?

09 MR. BIRMINGHAM: No, I haven't. But probably I'll  
10 be going to Fresno in the very near future. It's not  
11 my favorite place in the State of California.

12 HEARING OFFICER DEL PIERO: I understand that.

13 MR. BIRMINGHAM: I hope I haven't offended anyone  
14 from Fresno.

15 HEARING OFFICER DEL PIERO: If they're in  
16 Sacramento, they've left.

17 MR. CANADAY: I'm from Fresno.

18 HEARING OFFICER DEL PIERO: I know, but you came  
19 here.

20 CROSS-EXAMINATION BY MR. BIRMINGHAM

21 Q. Good afternoon, Mr. Vorster.

22 A. BY MR. VORSTER: Good afternoon, Mr. Birmingham.

23 Q. You stated in preparing your written rebuttal  
24 testimony, you relied on LAAMP 3.3a?

25 A. That's correct. I think in Mr. Huchison's

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01 testimony --

02 Q. I didn't ask about Mr. Huchison's testimony. I  
03 asked about your testimony, Mr. Vorster. You relied on  
04 3.3a.

05 A. The reason why I wanted to offer the clarification

06 is because in the record, it's officially 3.31. I'm  
07 the divergent one calling it 3.3a.  
08 Q. Mr. Vorster, let's establish early on you're going  
09 to answer my questions. And if somebody else wants to  
10 ask you another question, or you think that there's  
11 something you need to say in addition to the response  
12 to my question, maybe you can tell Mr. Dodge, and he  
13 can ask you that question. But if you would respond  
14 just to my questions, I would appreciate it very much.

15 Using LAAMP 3.31 or 3.3a, your testimony states  
16 that you calculated the number of years required to  
17 achieve certain lake levels assuming no diversions; is  
18 that correct?

19 A. That's correct.

20 Q. And you used the LAAMP 3.31 or 3.3a to calibrate  
21 lake levels and Mono Basin exports under the Mono Lake  
22 Committee/National Audubon Society's management water  
23 plans presented in your testimony?

24 A. That's correct.

25 Q. Is it correct that you briefly describe LAAMP in  
0046

01 paragraph 6 of your written testimony, your written  
02 rebuttal testimony?

03 A. That's correct.

04 Q. There you say that, "LAAMP was designed to be very  
05 flexible and easy to use in order to simulate Los  
06 Angeles' aqueduct operations with a wide range of Mono  
07 Basin fish-flow and lake-level alternatives." Is that  
08 right?

09 A. That's correct.

10 Q. And then you go on to say that, "LAAMP's monthly  
11 results should be used with caution, since LAAMP is a  
12 planning model and not an operations model. Actual  
13 operations will be different since they will not be  
14 constrained by the simplifying assumptions made in the  
15 model." Is that correct?

16 A. That's correct.

17 Q. And then finally in paragraph 6 you say, "LAAMP  
18 allocates the water on a month-to-month basis and does  
19 not have the long-range, six or more months, view that  
20 can be incorporated into actual operations, which can  
21 result in a more optimal allocation, including the  
22 possibility of greater exports of water."

23 A. That's correct.

24 Q. Now, isn't it also correct, Mr. Vorster, that  
25 actual operations may result in lesser exports of

0047  
01 water?

02 A. That is a possibility.

03 Q. You indicate that, "LAAMP results are most  
04 appropriately used in making comparisons between  
05 alternatives."

06 Is that your opinion?

07 A. Yes.

08 Q. And there we're talking about relative  
09 comparisons; is that right, Mr. Vorster?

10 A. Yes.

11 Q. For instance, in paragraph 7, you state that,  
12 "Table 4 can also be used to determine the relative  
13 differences in Mono Basin exports in Los Angeles

14 Aqueduct deliveries between the various alternatives."

15 A. That's correct.

16 Q. What do you mean by "relative"? There, do you  
17 mean the general differences between alternatives?

18 A. No. Actually, I just mean that instead of the --  
19 focusing on the absolute number for an export or a  
20 delivery, it's the difference between those absolute  
21 numbers. So the relative difference between one  
22 absolute number and another absolute number.

23 In fact, that's what Table 4 is comparing, the  
24 different alternatives with the Fish and Game flows and  
25 the Mono Basin flows, and that's an exercise in showing

0048

01 the relative differences.

02 Q. It's correct, isn't it, Mr. Vorster, that there  
03 are still substantial uncertainties concerning the  
04 export that will be available under different  
05 alternatives using the LAAMP model?

06 MR. DODGE: Objection. Vague as to what do you  
07 mean "relative exports" or "absolute exports"?

08 MR. BIRMINGHAM: Let me see if I can clear it up.  
09 I'll withdraw the question.

10 HEARING OFFICER DEL PIERO: Thank you very much.

11 Q. BY MR. BIRMINGHAM: Were you involved,  
12 Mr. Vorster, in the process that resulted in the  
13 changes between LAAMP 2.0 and LAAMP 3.31?

14 A. BY MR. VORSTER: Yes, I was.

15 Q. Now, it's correct, isn't it, Mr. Vorster, that the  
16 algorithms in LAAMP 3.3a used to calculate lake level  
17 are the same algorithms in LAAMP 2.0?

18 A. Yes, yes.

19 Q. And none of the logic that's in LAAMP 2.0 that  
20 relates to lake level has changed in LAAMP 3.3?

21 A. Yes. Let me see and make sure I understand.  
22 You're saying the calculated lake level for a given  
23 amount of water flowing into Mono Lake is the same in  
24 3.3 as it was in Version Two. That's my understanding,  
25 and that's correct.

0049

01 Q. That was my question, and your answer is that the  
02 logic with respect to the lake level hasn't changed  
03 between LAAMP 2.0 and LAAMP 3.3?

04 A. That's my recollection. I don't think there's  
05 been any change in that.

06 Q. Now, it's correct, isn't it, Mr. Vorster, that in  
07 your opinion, LAAMP, both LAAMP 2.0 and LAAMP 3.3,  
08 overestimate inflow into Mono Lake?

09 A. I think that LAAMP 3.3 and LAAMP 2.0 as well as  
10 LAAMP --

11 Q. My question here relates to LAAMP.

12 A. Okay.

13 Q. Let me just ask it differently, Mr. Vorster.  
14 LAAMP overestimates inflow into Mono Lake; isn't that  
15 your opinion?

16 A. That's my opinion relative to the water balance  
17 model that I developed. My water balance model  
18 suggests that for a given inflow into Mono Lake, you  
19 would not be able to achieve the same lake levels. So  
20 it's relative to that.

21 I don't say it's an overestimate. Both of them

22 calibrate with a historic record very well. So I'm not  
23 saying LAAMP is incorrect and mine's correct. It's  
24 just there's a difference.

25 Q. Now, isn't it correct that you talked about this  
0050 difference in your original testimony?

01 A. No, I don't think so. I don't think -- I'm  
02 talking about the difference between --

03 Q. Maybe my question isn't clear, Mr. Vorster. In  
04 the original testimony that you submitted in connection  
05 with these proceedings, I believe it's Cal Trout  
06 Exhibit 6, didn't you talk about the difference between  
07 LAAMP and the fact that compared to your model, LAAMP  
08 overestimates inflow into the lake?

09 A. I would need to see that.

10 Q. Sure. Do you have a copy of your testimony in  
11 front of you?

12 A. For Cal Trout 6, I could go get it. I don't have  
13 it in front of me.

14 MR. BIRMINGHAM: I have a copy over here. Excuse  
15 me, can I take a moment?

16 HEARING OFFICER DEL PIERO: Certainly.

17 Q. BY MR. BIRMINGHAM: Mr. Vorster, I'm handing you a  
18 volume of documents that I believe contains Cal Trout  
19 Exhibit 6. Do you have that document?

20 A. BY MR. VORSTER: Yes, I do.

21 Q. And Cal Trout Exhibit 6, that's the original  
22 written testimony that you submitted in connection with  
23 these proceedings?

24 A. Yes, it is.

0051

01 Q. Would you please turn to paragraph 43 of that  
02 exhibit?

03 A. Okay.

04 Q. Now, paragraph 43 of Cal Trout 6, your written  
05 testimony states, "There are certain errors and  
06 inconsistencies in LAAMP. One inconsistency is that  
07 the LAAMP water balance for Mono Lake calculates a 1987  
08 lake level, assuming no diversions by DWP of 6432 feet,  
09 or four feet higher than the historic stand in 1919.  
10 This appears to me to be unreasonably high and suggests  
11 that the water balance may overestimate Mono Lake  
12 inflow. The LAAMP results should be evaluated and  
13 compared to the results of the other models."

14 Now, was that your testimony when you submitted  
15 it, Mr. Vorster?

16 A. Yes, it was.

17 Q. And at the time you submitted this testimony, it  
18 was your opinion that LAAMP overestimates inflow into  
19 Mono Lake?

20 A. That's what it states.

21 Q. And it was your opinion that as a result of that  
22 inflow -- of that overestimation of inflow, it resulted  
23 in a lake level which you thought appeared to be  
24 "unreasonably high."

25 Those are your words, aren't they, Mr. Vorster?

0052

01 A. That's correct.

02 Q. Now, did you submit any statement or any comments  
03 to the Draft Environmental Impact Report?



04 A. Yes, I did.  
05 Q. Did you submit comments to Morrison and Foerster  
06 to be submitted on behalf of the Mono Lake Committee  
07 and the National Audubon Society?  
08 A. Yes, and I also submitted my own separate --  
09 Q. Do you have a copy of those comments in front of  
10 you, Mr. Vorster?  
11 A. No.  
12 Q. Let me take a moment and get a copy.  
13 Now, the comments you submitted -- actually, let  
14 me lay an appropriate foundation.  
15 I've put before you, Mr. Vorster, comments that  
16 were submitted by Morrison and Foerster on behalf of  
17 the Mono Lake Committee and National Audubon Society to  
18 the Draft Environmental Impact Report, and I'm looking  
19 at page 22 of those comments.  
20 Do you have that page in front of you?  
21 A. Yes, I do.  
22 Q. Now, did you draft that portion of the comments  
23 that's contained on page 22?  
24 A. It appears that those are the comments I drafted.  
25 Q. Now, it states on page 22, "More importantly,  
0053  
01 LAAMP estimates more net inflow to Mono Lake than does  
02 the Vorster model." Is that correct?  
03 A. That's correct.  
04 Q. And it was based upon that analysis that you  
05 compared, that you concluded for your written testimony  
06 that LAAMP overestimates inflow; is that right, Mr.  
07 Vorster?  
08 A. Yes.  
09 Q. And it was based upon that analysis you conducted  
10 comparing LAAMP with your model and other models that  
11 led you to the conclusion that LAAMP suggests lake  
12 levels that are, using your words, "unreasonably high"?  
13 A. That's what I said.  
14 Q. Now, I asked the court reporter to mark a point  
15 during your testimony, and I wonder if I could go back  
16 and have her reread that portion of your oral summary  
17 of your written testimony.  
18 (Whereupon the record was read as requested.)  
19 Q. BY MR. BIRMINGHAM: Now, there, Mr. Vorster, you  
20 said, in response to Mr. Dodge's question, that there  
21 wouldn't be any -- under the 6390 foot management plan  
22 that you described, there wouldn't be any lake level  
23 releases after the lake reaches elevation 6390, because  
24 LAAMP indicates that the DFG flows would maintain the  
25 lake at an elevation above 6390; is that right?  
0054  
01 A. That's correct.  
02 Q. Now, if you're correct in your original opinion  
03 that LAAMP overestimates inflow into Mono Lake, isn't  
04 it correct that the DFG flows by themselves would not  
05 maintain the lake elevation at 6390?  
06 A. That is a possibility, if the inflows aren't as  
07 high as estimated by LAAMP.  
08 Q. And it was your original opinion that LAAMP  
09 estimates lake levels that are unreasonably high?  
10 A. I think LAAMP, relative to my water balance model,  
11 has higher inflows than Mono Lake.

12 Q. And if your water balance model is correct and  
13 your original opinion was correct, the DFG flows by  
14 themselves are not going to maintain the lake at a  
15 median level of 6391; is that right, Mr. Vorster?

16 A. That assumes one of the models is correct and one  
17 is not. As I stated earlier, no one can say which one  
18 is correct and which one is wrong. The truth probably  
19 lies somewhere in between.

20 So if I ran the Fish and Game flow with my water  
21 balance model, I would get a lower median lake level.

22 Q. I don't want to be argumentative here,  
23 Mr. Vorster, but I need to go back to paragraph 43 of  
24 your original testimony where you said -- because I  
25 want to make sure I understand what your position is,  
0055

01 there you said, "There's certain errors and  
02 inconsistencies."

03 Now, that statement, "errors and inconsistencies,"  
04 indicates that when you wrote that paragraph, you were  
05 taking a position concerning the accuracy of LAAMP;  
06 isn't that right?

07 A. That's correct.

08 Q. Now, I'd like to talk about another aspect of this  
09 overestimation. Your testimony talks about -- your  
10 rebuttal testimony talks about the transition period  
11 between 6375.5 and higher lake levels; is that right?

12 A. Yes, if I understand your question correctly. I  
13 look at a variety of different possibilities between  
14 now and some lake level flow.

15 Q. For instance, you say that if we started elevation  
16 6375.5 using LAAMP, and we make certain assumptions, it  
17 will take X number of years to reach elevation 6390?

18 A. That's correct.

19 Q. Let me again ask you to assume that your original  
20 opinion of LAAMP is correct, and LAAMP overestimates  
21 inflow into Mono Lake.

22 Isn't it correct that the transition period  
23 between elevation 6375.5 and 6390 is actually going to  
24 be longer than you have indicated in your rebuttal  
25 testimony using LAAMP?

0056  
01 A. That's correct. If I were to use my water balance  
02 model, it would probably indicate a longer period of  
03 time.

04 HEARING OFFICER DEL PIERO: Excuse me,  
05 Mr. Birmingham.

06 How long?

07 MR. VORSTER: I wish I had the time to do that.  
08 Unfortunately, I haven't had the time to do it.

09 MR. BIRMINGHAM: We'll come back to that question  
10 a little later, Mr. Del Piero.

11 Q. BY MR. BIRMINGHAM: I'd like to look at Table 1-A  
12 of your testimony, Mr. Vorster. Now, Table 1-A is the  
13 table you prepared using the LAAMP which shows the  
14 number of years it will take to achieve a specified  
15 lake level under different assumptions; is that  
16 correct?

17 A. BY MR. VORSTER: That's correct.

18 Q. For instance, if we look at the second column from  
19 the left in Table 1-A, using LAAMP and the assumptions

20 described in your testimony, you calculated that in the  
21 first five years, starting from elevation 6375.5, in  
22 the first five years the lake would rise eight feet; is  
23 that correct?  
24 A. That's correct, by the end of the fifth year.  
25 Q. Now, that represents an increase in lake elevation  
0057  
01 of approximately 1.6 feet per year; is that right,  
02 Mr. Vorster?  
03 A. That's correct.  
04 Q. Now, again, if your assumption is correct, that --  
05 or your original opinion is correct that LAAMP  
06 overestimates inflow into Mono Lake, it will take more  
07 than five years for the lake to rise eight feet from  
08 elevation 6375, assuming no diversions, and starting  
09 with the 1940 water year scenario?  
10 A. It might take six years. You've got to understand  
11 that the overestimate I'm talking about is a very  
12 relatively small overestimate, maybe on the order of 5  
13 percent. But if you see that 5 percent go on for many,  
14 many years, it will then, at the end of 50 or 60 years,  
15 result in a lake level of eight or nine feet.  
16 But in just over a period of time of five years,  
17 you wouldn't be able to tell. So it might be six years  
18 instead of five years at the most.  
19 Q. But the transition period is going to be longer?  
20 A. Yes. It would be longer if the inflow was not as  
21 great as LAAMP assumed.  
22 MR. ROOS-COLLINS: Mr. Del Piero, excuse me, I  
23 have a procedural point of order. Either Mr. Vorster  
24 and Mr. Birmingham are discussing a different exhibit  
25 than I have, or they're misreading it. Mr. Birmingham  
0058  
01 said the left-hand column in Table 1-A, said 6375 as  
02 the starting lake level --  
03 MR. BIRMINGHAM: No, you misheard me.  
04 HEARING OFFICER DEL PIERO: 6377.  
05 Q. BY MR. BIRMINGHAM: Actually, 6377 is not the  
06 starting lake level, is it, Mr. Vorster? 6375 is the  
07 starting lake level.  
08 A. BY MR. VORSTER: 75.5. I think, Mr. Birmingham,  
09 you had it correct where you said in my testimony I  
10 made the assumption about the initial lake level.  
11 Q. And using LAAMP, you calculated that from 6375, it  
12 would take one year to get to 6377, assuming that there  
13 are no diversions, and you begin with the 1940 water  
14 year sequence?  
15 A. Slight correction, 75.5.  
16 Q. Excuse me. And it will take one year to get to  
17 6377?  
18 A. With runoff being equal to 1940, yes.  
19 MR. BIRMINGHAM: Mr. Del Piero, may we take a  
20 recess?  
21 HEARING OFFICER DEL PIERO: Ten minutes.  
22 MR. BIRMINGHAM: Thank you.  
23 (A recess was taken at this time.)  
24 HEARING OFFICER DEL PIERO: Ladies and gentlemen,  
25 this hearing will again come to order.  
0059  
01 Mr. Birmingham?

02 MR. BIRMINGHAM: Thank you very much,  
03 Mr. Del Piero.  
04 Q. BY MR. BIRMINGHAM: Mr. Vorster, during your  
05 testimony, I think you said that the transition to lake  
06 elevation 6390 from elevation 6375 could be anywhere  
07 from five years to --  
08 HEARING OFFICER DEL PIERO: Mr. Birmingham, would  
09 you like to sit?  
10 MR. BIRMINGHAM: If I may?  
11 HEARING OFFICER DEL PIERO: Sure.  
12 MR. HERRERA: Also, Mr. Birmingham, your 20  
13 minutes has expired.  
14 MR. BIRMINGHAM: I make an application for an  
15 additional 20 minutes.  
16 HEARING OFFICER DEL PIERO: Granted.  
17 Q. BY MR. BIRMINGHAM: During your testimony, your  
18 oral summary, Mr. Vorster, you said that the transition  
19 period to elevation 6384 feet from 6375.5 feet could be  
20 anywhere from 4 to 12 years; is that correct?  
21 A. BY MR. VORSTER: If you look at Table 1-A, the  
22 range actually is 4 to 11 years. At least looking at  
23 the column for 1978 start, it says 4 years. For the  
24 1987 start, it says 11 years.  
25 Q. And that figure 4 to 11 years to get to elevation  
0060  
01 6384 feet was based upon your use of LAAMP?  
02 A. That's correct.  
03 Q. And I believe in your written testimony you  
04 indicate to get to elevation 6390 from elevation 6375.5  
05 feet, it will take from 7 to 25 years; is that correct?  
06 A. Yes. I said that it would take -- with the plan,  
07 the Mono Lake management plan.  
08 Q. You would agree with me, wouldn't you,  
09 Mr. Vorster, to coin a phrase from Mr. Dodge, you would  
10 agree that there is substantial uncertainty concerning  
11 the length of a transition period from the current lake  
12 level to any higher lake level?  
13 A. Absolutely. It totally depends on what the  
14 sequence of runoff and precipitation we receive.  
15 Q. And totally depends on which model we use?  
16 A. No. In the sense that since this transition  
17 period we're talking about isn't a great length of  
18 time, I think the differences among the models wouldn't  
19 be that great, maybe a couple of years at most. But we  
20 can use -- we have LAAMP. We have LAASM. We have my  
21 water balance model, and we have DWP -- Gene Coufal  
22 developed a water balance model. Mine is kind of at  
23 the low end. I think LAAMP and LAASM are right at --  
24 kind of the high end.  
25 Q. You would agree, wouldn't you, that there is  
0061  
01 uncertainty about the flows required to maintain Mono  
02 Lake at an equilibrium level?  
03 A. Yes. There's uncertainty because of climate more  
04 than anything else.  
05 Q. I'd like you to look at Vorster Table 2-A, and  
06 there's been an Amended Vorster Table 2-A; is that  
07 correct?  
08 A. That's correct. And I think the Amended Vorster  
09 2-A contains the stream flows -- includes the stream

10 flows.

11 Q. Now, looking at Vorster Table 2-A -- and we'll  
12 concentrate on the first alternative described, the  
13 Department of Fish and Game only flows, it indicates  
14 that during the first 50 years, there would be a Mono  
15 export of 32.3 thousand acre-feet; is that correct,  
16 Mr. Vorster?

17 A. That's correct.

18 Q. Now, with respect to that export, that was  
19 calculated using LAAMP?

20 A. That's correct.

21 Q. Now, with the Department of Fish and Game  
22 recommended flows, the average export may be higher  
23 than 32.3 thousand acre-feet; isn't that right,  
24 Mr. Vorster?

25 A. I'm trying to -- let me see if I understand the  
0062

01 question. The average exports may be higher --

02 Q. What I'm saying is that that is not an absolute  
03 number, is it?

04 A. What that number reflects is the output of the  
05 model which reflects the input assumptions we make.

06 Q. And, in fact, if minimum Department of Fish and  
07 Game flows are released down the streams, the minimum  
08 recommended flows, it's correct that export may be  
09 higher than 32,000 acre-feet?

10 A. It could be higher, yes.

11 Q. And it could also be lower; is that correct?

12 A. That's correct.

13 Q. Now, again, I'm going to ask you to assume that  
14 your original opinion about LAAMP is correct, that  
15 LAAMP overestimates inflow to Mono Lake.

16 Making that assumption, Mr. Vorster, isn't more  
17 likely that the minimum recommended flows, the minimum  
18 Department of Fish and Game recommended flows, it's  
19 more likely that the exports will be less than 32.3  
20 thousand acre-feet than more?

21 A. No, not at all. Because the exports are  
22 determined by what's available after you satisfy the  
23 releases. And the releases, of course, they're not  
24 subject to any model that's specified. Here you have a  
25 given inflow, specified inflow; you have a given

0063

01 release, specified release. How much is left over is  
02 32,000 acre-feet given the constraints that we put into  
03 LAAMP.

04 Q. Mr. Vorster, your testimony describes two separate  
05 water management plans; is that correct?

06 A. That's correct.

07 Q. It describes a 6390 foot alternative; is that  
08 right?

09 A. That's correct.

10 Q. And it describes a 6405 feet alternative; is that  
11 correct?

12 A. That's correct.

13 Q. Your testimony states that these plans were  
14 proposed by the Mono Lake Committee and the National  
15 Audubon Society?

16 A. The goals for these plans were articulated by the  
17 Audubon Society and Mono Lake Committee.

18 Q. And you're presenting these plans on behalf of the  
19 Mono Lake Committee?  
20 A. That's correct.  
21 Q. And you're presenting these plans on behalf of the  
22 National Audubon Society?  
23 A. That's correct.  
24 Q. And you mentioned goals of the two alternatives.  
25 Those goals are listed on pages -- excuse me. Those  
0064  
01 goals are listed on pages 4 and 5 of your testimony; is  
02 that correct?  
03 A. That's correct.  
04 Q. Now, I have a question about some of those goals,  
05 Mr. Vorster.  
06 You indicate that the purpose of this plan is to  
07 keep fish in good condition; is that correct?  
08 A. That's correct.  
09 Q. You're not a fisheries biologist, are you,  
10 Mr. Vorster?  
11 A. No, I'm not.  
12 Q. So you are not in a position to tell us what's  
13 required to keep fish in good condition?  
14 A. That's correct. I have been advised by my client  
15 and fellow consultants as to what would be necessary to  
16 keep fish in good conditions.  
17 Q. Now, you said you've been advised by your clients.  
18 That would be Mono Lake Committee and National Audubon  
19 Society?  
20 A. That's correct.  
21 Q. Now, you say one of the goals is to increase the  
22 primary productivity of the ecosystem to benefit  
23 migratory and nesting birds; is that right,  
24 Mr. Vorster?  
25 A. That's correct.  
0065  
01 Q. Now, primary productivity of the lake has not been  
02 identified by any expert as a limiting factor for any  
03 species of bird at the lake, has it?  
04 A. That's correct. I don't think the primary  
05 productivity has been defined as a limiting factor.  
06 Q. Now, what is the consequences of 90 grams per  
07 liter of total dissolved solids on the primary  
08 productivity of Mono Lake, Mr. Vorster?  
09 A. I don't think I'm in a position to answer that.  
10 Q. And you wouldn't be in a position to tell us what  
11 the effects of 100 grams per liter of total dissolved  
12 solids would be on the productivity of Mono Lake; isn't  
13 that right?  
14 A. That's correct.  
15 Q. Now, with respect to the 6405 feet alternative,  
16 your testimony lists six specific goals which you  
17 attempt to achieve through that alternative; is that  
18 right, Mr. Vorster?  
19 A. Let me make sure. Did you say the 6390?  
20 Q. 6405.  
21 A. Oh, yeah, 6405. Yeah, six goals. Six goals in  
22 addition to the ones articulated in 6390.  
23 Q. Now, the first three goals are -- in actuality,  
24 the first three goals under the 6405 feet alternative,  
25 those first three goals are all really to restore

0066

01 waterfowl habitat; isn't that right, Mr. Vorster?  
02 A. Yes, you could -- I think --  
03 Q. And you've listed as one of the goals, "To restore  
04 the historical and recreational uses of Mono Lake  
05 including boating, swimming, picnicking, and hunting,  
06 as described in the declaration of Jacqueline Volin of  
07 the Sierra Club." Is that right?  
08 A. That's right.  
09 Q. Now, Ms. Volin described many historical  
10 recreational uses of Mono Lake?  
11 A. That's correct.  
12 Q. And, in fact, the restoration of elevation of  
13 6405, Mr. Vorster, would not restore all of the  
14 recreational uses that she described in her testimony?  
15 A. I would have to look at the testimony again to  
16 give any definitive answer to that.  
17 Q. For instance, Ms. Volin described Mark Twain days?  
18 A. That's correct.  
19 Q. Isn't it correct that Mark Twain days were  
20 terminated as a result of the economy or lack of  
21 interest as opposed to any lake level?  
22 A. I think I remember hearing testimony to that  
23 effect. But I wouldn't -- something to that effect.  
24 Q. Well, it's correct, isn't it, that the last Mark  
25 Twain days was in 1948?

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01 A. No, that's not correct. They've had Mark Twain  
02 days recently, actually. In fact, you're refreshing my  
03 memory. Lee Vining has resurrected that.  
04 Q. When did Lee Vining resurrect that, Mr. Vorster?  
05 A. I think sometime during the early '80s.  
06 Q. What was the elevation of Mono Lake in the early  
07 '80s?  
08 A. It reached a historical low stand of 6372 in 1981,  
09 early 1982.  
10 Q. Now, Mr. Vorster, have you ever -- prior to  
11 preparing the two management plans described in your  
12 testimony, which you are presenting on behalf of the  
13 Mono Lake Committee and National Audubon Society, have  
14 you ever consulted with the Mono Lake Committee in  
15 preparation of another Mono Lake management plan?  
16 A. Yeah. I consult on an ongoing basis. I've been a  
17 consultant to the Mono Lake Committee, and there have  
18 been a number of plans we've discussed over the years.  
19 MR. DODGE: Mr. Del Piero, if Mr. Birmingham is  
20 going to pull out some historical Mono Lake settlement  
21 proposal, we're going to revisit that same issue that  
22 we fought about before.  
23 I would object to it on the grounds that -- if  
24 that's the intent, on the grounds that -- it was an  
25 effort to settle the controversy which we're long

0068

01 past -- that it's based on pre-draft EIR information,  
02 therefore, it's irrelevant.  
03 And lastly, it's beyond the grounds of the scope  
04 of rebuttal. We're here on a rebuttal case. And for  
05 him to try to sneak this in on cross-examination and  
06 rebuttal is totally improper.  
07 HEARING OFFICER DEL PIERO: Okay. Can we take a

08 break?

09 (A recess was taken at this time.)

10 HEARING OFFICER DEL PIERO: We're back on the  
11 record.

12 MR. BIRMINGHAM: Mr. Dodge has raised an objection  
13 to a line of questions that he is anticipating about --  
14 what he has termed "proposed settlements by the Mono  
15 Lake Committee."

16 I've got a number of responses, but before I state  
17 them for the record, I want to recall a story I told a  
18 few weeks ago about how during the early stages of Mono  
19 Lake proceeding before Judge Finney, Mr. Flinn was  
20 attempting to have admitted a declaration which we  
21 objected to and the Court sustained our objection. And  
22 Mr. Dodge, teaching the Morrison and Foerster Palo Alto  
23 office a lesson, subsequently got that same declaration  
24 in.

25 I am prepared, at this point, to again offer the  
0069  
01 statements that the Hearing Officer has previously  
02 considered. And I would propose to examine Mr. Vorster  
03 on that proposal, because it is a management plan  
04 which, if it's based on his work, if, in fact, what it  
05 states is accurate, if it's based on Mr. Vorster's  
06 work.

07 Mr. Vorster is here presenting testimony on the  
08 management plan on behalf of the Mono Lake Committee.  
09 And he has stated that the management plan that is  
10 being presented is designed to achieve particular  
11 goals.

12 And I think that we are entitled to cross-examine  
13 him on how the management plan relates to those goals,  
14 and whether or not other management plans that have  
15 been proposed by the Mono Lake Committee also relates  
16 to those goals.

17 Specifically, the document that the Hearing  
18 Officer has previously reviewed and, for the record, it  
19 is a portion of the Mono Lake Committee newsletter  
20 dated fall of 1989, with respect to that particular  
21 document, when we offered it previously, it was offered  
22 at a time when a witness was being examined on a very  
23 limited question, and that was a question related to  
24 stream flows.

25 Mr. Vorster's testimony relates to management  
0070  
01 plans that go well beyond stream flows and, therefore,  
02 it has become relevant. Whether the document is --  
03 would be excluded under Section 1152 of the Evidence  
04 Code, because it relates to a compromise, is  
05 questionable.

06 There is authority, and specifically, I'm  
07 referring now to a decision by the First District Court  
08 of Appeal, Motion Picture, et cetera --

09 HEARING OFFICER DEL PIERO: Mr. Birmingham, first  
10 of all, I need not point out that I know you're as  
11 aware of it as anyone else is in the room, that this  
12 Court is not obliged to operate under the Rules of  
13 Evidence of the Evidence Code of the State of  
14 California. That is expressed a number of times in our  
15 administration regulations covering the conducts of



16 water rights hearings conducted by this Board.

17 At this point, you've not yet identified for me  
18 what portion of that newsletter that you wish to  
19 attempt to introduce. If you do that, then I'll be  
20 prepared to rule.

21 I would point out, although I think the record is  
22 probably clear, that this document came to light not  
23 because of it being provided by any of the parties, but  
24 simply because I, in my capacity as Hearing Officer,  
25 felt somewhat at a loss since everyone on both sides

0071

01 apparently had had access to it, and were referring to  
02 it, and it had not been introduced into the record.

03 And at this point, only that portion that I had a  
04 question about that related to the testimony that was  
05 presented at the time has, in fact, been introduced  
06 into the record.

07 MR. BIRMINGHAM: I was going to make that same  
08 observation, Mr. Del Piero, that I had previously  
09 objected to a question on the grounds that it called  
10 for an answer that related to an offer of compromise.  
11 And here, I'm referring to the transcript of the  
12 November 16, 1993, proceeding, and the Hearing Officer,  
13 at that point, overruled my objection stating that,  
14 "I'm going to overrule the objection. I'm going to  
15 overrule it, one, because, as I stated, this Board has  
16 the prerogative of attempting to solicit as much  
17 information as possible.

18 And, two, at this point in time, it's impossible  
19 for me -- for that matter, for the attorneys or for any  
20 other parties, to know the actions that were taken in  
21 the course of committee activity," et cetera.

22 What I specifically want to examine Mr. Vorster  
23 about is a graph that is contained in the Mono Lake  
24 proposal that indicates that it was prepared based upon  
25 work by Mr. Vorster.

0072

01 And if I may approach, I'll show the document to  
02 you.

03 HEARING OFFICER DEL PIERO: I'd like to see it.  
04 Is that the graph that's shown here on page 8 -- or,  
05 pardon me, 10?

06 MR. BIRMINGHAM: Yes, it is, Mr. Del Piero.

07 HEARING OFFICER DEL PIERO: Is that the only  
08 portion of this you wish to introduce?

09 MR. BIRMINGHAM: Actually, I had intended to offer  
10 the entire thing, because the entire document relates  
11 to the goals that are described by the document. But  
12 for the purposes of this document, I would be happy if  
13 this were the only portion of the document to come in.

14 I have a number of other documents that are --  
15 well, actually two documents that relate to the same  
16 proposal made by the Mono Lake Committee.

17 It is not an offer of compromise. It is simply  
18 statements by the Mono Lake Committee. And if I could  
19 ask Ms. McKeever to hand out copies of that document,  
20 the Hearing Officer would have an opportunity to review  
21 it.

22 HEARING OFFICER DEL PIERO: Let's take these one  
23 at a time, Mr. Birmingham.

24 MR. BIRMINGHAM: Sure.  
25 HEARING OFFICER DEL PIERO: The first document  
0073  
01 that you've submitted, I'm inclined to allow in the  
02 chart, because it's indicated to have been drafted by  
03 Mr. Vorster.  
04 The balance of the article includes a variety of  
05 information on a variety of subjects that Mr. Vorster  
06 did not testify to. It seems to me that it would be  
07 inappropriate to allow that in at this point in time,  
08 particularly inasmuch as your questions at this time  
09 relate to lake levels, and that is what the chart  
10 refers to.  
11 And the rest of the sections refer to things like  
12 fisheries, which you yourself established he's not  
13 qualified to comment on: Habitat for butterflies,  
14 shrimp, alkali flies, rotifers, California gulls,  
15 waterfowl, shorebirds.  
16 So recognizing this is prepared in 1988, and  
17 recognizing that things out of the newsletter that it  
18 predates the Environmental Impact Report, I'm going to  
19 allow this in because it, in my opinion, reflects the  
20 historical position of a representative of Mono Lake  
21 some six years.  
22 You want to address the other ones?  
23 MR. BIRMINGHAM: Yes.  
24 HEARING OFFICER DEL PIERO: I have not seen the  
25 other ones before, and they have no indication that  
0074  
01 Mr. Vorster is the author of them.  
02 MR. BIRMINGHAM: That is correct, and it would be  
03 necessary for me to -- first, I don't think Mr. Vorster  
04 is the author of them. They relate to proposals that  
05 were made by the Mono Lake Committee who Mr. Vorster is  
06 here representing. Mr. Vorster identified them as his  
07 client.  
08 HEARING OFFICER DEL PIERO: I'd like for you to  
09 identify for me what this has to do in terms of  
10 rebuttal.  
11 MR. BIRMINGHAM: The first one, winter 1993,  
12 Volume 15 edition of the Mono Lake Newsletter --  
13 HEARING OFFICER DEL PIERO: Yes.  
14 MR. BIRMINGHAM: -- and the accompanying article  
15 or editorial, sets forth a, what I will refer to as a  
16 Six-Point Plan. And it talks about how the Six-Point  
17 Plan will protect different aspects of the lake and its  
18 ecosystem, and I would make an offer that  
19 Mr. Vorster participated in the preparation of the  
20 Six-Point Plan.  
21 The second article --  
22 HEARING OFFICER DEL PIERO: I guess the question I  
23 have for you, Mr. Birmingham, is: Why should this be  
24 allowed at this point when Mr. Vorster is here  
25 testifying as to the model?  
0075  
01 MR. BIRMINGHAM: Well, actually, Mr. Vorster  
02 testifies to more than just the model. Mr. Vorster's  
03 rebuttal testimony outlines two management plans which,  
04 according to Mr. Vorster's testimony, he is presenting  
05 on behalf of the Mono Lake Committee and the National

06 Audubon Society.

07 Those plans are described beginning at page 4 of  
08 Mr. Vorster's rebuttal testimony. And he is, again,  
09 presenting these two management plans on behalf of the  
10 Mono Lake Committee and the National Audubon Society.  
11 And he has stated that these two management plans are  
12 designed to achieve the goals that have been listed in  
13 his testimony.

14 So his rebuttal testimony goes well beyond the  
15 scope of modeling. The plans, the documents that I  
16 propose to have marked and introduced into evidence,  
17 are documents that relate to another plan prepared by  
18 the Mono Lake Committee that are designed to achieve  
19 very similar goals.

20 And so, to the extent that Mr. Vorster's rebuttal  
21 testimony has included these plans, I think that we are  
22 entitled -- and he is introducing these plans as a  
23 representative of the Mono Lake Committee and National  
24 Audubon Society, we're entitled to cross-examine him  
25 about the position previously taken by the Mono Lake

0076  
01 Committee in connection with a different plan.

02 And these two, as you will note --

03 HEARING OFFICER DEL PIERO: The document that is  
04 dated winter of 1993, that's actually a publication  
05 from 1992; is that correct?

06 MR. BIRMINGHAM: It's dated winter of 1993. I  
07 cannot tell you the publication date. I have the  
08 original here with me. It indicates --

09 HEARING OFFICER DEL PIERO: The reason I ask that  
10 is, I have not had a chance to read it very closely.  
11 But having skimmed the last paragraph, it indicates,  
12 "In 1993, the State Water Resources Control Board will  
13 begin critical hearings to balance the water  
14 requirements of a healthy Mono Lake."

15 The statement appears that it was written prior to  
16 the beginning of the year.

17 MR. BIRMINGHAM: Actually, I don't know when it  
18 was written, Mr. Del Piero, but the copyright on the  
19 original -- if I may approach, the copyright on the  
20 original indicates it was copyrighted in 1992, which  
21 would suggest that it was written in 1992.

22 HEARING OFFICER DEL PIERO: Have you seen these,  
23 Mr. Dodge?

24 MR. DODGE: What? The full document?

25 HEARING OFFICER DEL PIERO: Yes.

0077  
01 MR. DODGE: No.

02 HEARING OFFICER DEL PIERO: You want to comment on  
03 these, Mr. Dodge? The Six-Point Plan, we haven't  
04 addressed that. That's the 1991 --

05 MR. BIRMINGHAM: Well, actually, the winter 1993  
06 document and the winter 1991 document both relate to  
07 the Six-Point Plan.

08 HEARING OFFICER DEL PIERO: Are the points the  
09 same?

10 MR. BIRMINGHAM: Not being under testimony, I  
11 think they are. I'm not offering testimony, but I  
12 believe that the points are the same or very similar.

13 HEARING OFFICER DEL PIERO: We're going to take a

14 break for five minutes.

15 (A recess was taken at this time.)

16 HEARING OFFICER DEL PIERO: Hearing is back in  
17 session.

18 Mr. Birmingham, did you have anything further to  
19 say?

20 MR. BIRMINGHAM: No. The only other thing I would  
21 add, Mr. Del Piero, is that the two documents, the  
22 winter 1993 document and the summer 1991 document, are  
23 documents that, from their face, do not appear to be  
24 related to an offer of compromise. They certainly are  
25 not statements made during the negotiation of an offer

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01 of compromise.

02 In fact, they're public statements related to the  
03 position of the Mono Lake Committee. Certainly, they  
04 are several years old, and that may go to their weight,  
05 but it certainly doesn't go to their admissibility.

06 And the other thing is that I'm informed by  
07 Mr. Canaday that the 1989 document is already in the  
08 record.

09 HEARING OFFICER DEL PIERO: Okay. Mr. Dodge?  
10 Mr. Dodge, do you have any further comments?

11 MR. DODGE: I would just restate what I said  
12 before. I don't have any further comments except that  
13 these are offers of compromise. They are, indeed,  
14 public offers of compromise.

15 HEARING OFFICER DEL PIERO: Any further comments  
16 by anyone? No?

17 I'm going to allow them to be admitted at this  
18 point. I want you to establish a foundation and,  
19 Mr. Vorster, pardon me, I want it clear what I'm  
20 allowing in.

21 In relationship to the -- well, the '89 document,  
22 Mr. Canaday, is it true the entire document is in our  
23 record, or is it just what I allowed in the other day?

24 MR. CANADAY: What we have is the entire article  
25 entitled the --

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01 MR. BIRMINGHAM: Excuse me. You may not want to  
02 read it.

03 HEARING OFFICER DEL PIERO: Yeah. You may not  
04 want to read that. He did it the other day, and I got  
05 really upset with him.

06 MR. CANADAY: Well, this would be a first for me.

07 HEARING OFFICER DEL PIERO: Is the entire article  
08 in the record?

09 MR. CANADAY: Yes.

10 HEARING OFFICER DEL PIERO: Or just that portion?

11 MR. CANADAY: Yes. The entire article.

12 HEARING OFFICER DEL PIERO: When was it submitted?

13 MR. CANADAY: It wasn't submitted. It was picked  
14 up by staff as we visited Mono Basin. They're there  
15 for the public to pick up at the Mono Lake Committee  
16 office.

17 MR. FRINK: Yes. Mr. Del Piero, near the  
18 beginning of the hearing, we introduced the Division of  
19 Water Rights file 0.50 titled "Special studies, Mono  
20 Lake, SWRCB Exhibit No. 2," and that newsletter is  
21 included in that.

22 HEARING OFFICER DEL PIERO: Okay. Fine. Then I  
23 don't have to worry about that. It's already in the  
24 record.  
25 As to the other two, I'm going to allow them to be  
0080  
01 introduced recognizing the historic content.  
02 You need to establish foundation so Mr. Vorster  
03 knows, since his name does not appear on either one of  
04 these other two documents, at least as far as I've been  
05 able to determine from my quick review of them, that he  
06 knows something about these, particularly since they  
07 appear to be authored by somebody other than Mr.  
08 Vorster.  
09 MR. BIRMINGHAM: I will attempt to lay that  
10 foundation.  
11 May I ask that the summer 1991 document, the  
12 Volume 14, Number 1, which has attached to it a  
13 statement, an article called "Six-Point Plan Protects  
14 both L.A. and Mono Lake," that that be marked next in  
15 order?  
16 HEARING OFFICER DEL PIERO: Do we have a number?  
17 MR. SMITH: Yes. 156.  
18 HEARING OFFICER DEL PIERO: Okay.  
19 (L.A. DWP Exhibit No. 156 was  
20 marked for identification.)  
21 MR. BIRMINGHAM: And then I would ask that the  
22 winter 1993 publication, Volume 15, Number 3, with the  
23 attached editorial entitled "Lake Views, You Can Lead  
24 DWP to Water," be marked DWP Exhibit 157.  
25 Mr. Vorster --  
0081  
01 HEARING OFFICER DEL PIERO: That's the editorial?  
02 MR. BIRMINGHAM: Yes, it is.  
03 (L.A. DWP Exhibit No. 157 was  
04 marked for identification.)  
05 Q. BY MR. BIRMINGHAM: Mr. Vorster, you've previously  
06 testified that you were presenting a management plan in  
07 your rebuttal testimony -- actually, two management  
08 plans on behalf of the Mono Lake Committee; is that  
09 correct?  
10 A. BY MR. VORSTER: That's correct.  
11 Q. And then I asked you if you had ever participated  
12 in the preparation of any other management plans for  
13 the Mono Lake Committee, and you said that you had; is  
14 that correct?  
15 A. That's correct.  
16 Q. Now, do you have a copy of L.A. DWP Exhibit 156 in  
17 front of you?  
18 A. If you identify which newsletter that is.  
19 Q. That is the winter 1991, Volume 14, Number 1,  
20 newsletter.  
21 A. Okay.  
22 Q. Do you have a copy of that in front of you?  
23 A. Yes, I do.  
24 Q. Attached to that cover page of the newsletter is a  
25 single-page article entitled "Six-Point Plan Protects  
0082  
01 Both L.A. and Mono Lake."  
02 Are you familiar with this Six-Point Plan?  
03 A. Yes, I am.

04 Q. Did you participate in the preparation of this  
05 Six-Point Plan for the Mono Lake Committee?  
06 A. Yes. In my role as the consultant of the Mono  
07 Lake Committee as someone who would develop the  
08 hydrologic aspects in the water management aspects of  
09 plan.

10 MR. SMITH: Mr. Birmingham, before you go on. I  
11 think I'd like to straighten out the title of L.A. DWP  
12 156, the summer of 1991.

13 MR. BIRMINGHAM: Summer 1991, Volume 14, Number 1?

14 MR. SMITH: I'm afraid you said "winter."

15 MR. BIRMINGHAM: I beg your pardon.

16 Q. BY MR. BIRMINGHAM: You did participate in the  
17 preparation of the Six-Point Plan?

18 A. BY MR. VORSTER: As I stated before, in the water  
19 management and hydrologic aspects of implementing the  
20 plan.

21 Q. Now, when you were involved in the preparation of  
22 the Six-Point Plan that is described in L.A. DWP  
23 Exhibit 156, did you have discussions with any of the  
24 Mono Lake Committee, with any Mono Lake Committee  
25 employees concerning the level of Mono Lake required to

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01 protect ecological resources of the lake?

02 A. I had those discussions during a time period which  
03 I would not necessarily say was just related to this  
04 plan, but the levels which are presented in the plan,  
05 the minimum level, for example, of 6377 is one that the  
06 Mono Lake Committee decided without my input. I mean,  
07 that was their own decision.

08 Q. Now, in the first element of the Six-Point Plan on  
09 the left-hand column, under the column entitled "Mono  
10 Lake Needs," the second paragraph states, "The 6386  
11 lake elevation provides a prudent nine-foot buffer  
12 against dramatic declines in the water level resulting  
13 from droughts or the diversions still allowed to Los  
14 Angeles."

15 Now, you participated in identifying that buffer  
16 level; isn't that right, Mr. Vorster?

17 A. That's correct.

18 Q. And then it goes on to say that, "As a management  
19 level, it would allow fluctuations between 6390 and  
20 6377, the range recommended by both federal and state  
21 governments."

22 Now, you are the person who is responsible for  
23 identifying the range of lake levels between which the  
24 lake would fluctuate under this management plan; isn't  
25 that right, Mr. Vorster?

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01 A. Yes. That's an output from the model.

02 Q. Now, the bottom paragraph, number 5, the left-hand  
03 side column of L.A. DWP Exhibit 156, it states under 5,  
04 minimum lake level 6377. "This level, upheld for the  
05 third time by the Courts, is the elevation below which  
06 Mono Lake must never fall."

07 Now, did you identify elevation 6377 as the level  
08 which the lake would not fall under this proposed  
09 management plan?

10 MR. DODGE: Objection. Asked and answered.

11 HEARING OFFICER DEL PIERO: Mr. Birmingham?

12 MR. BIRMINGHAM: I'll just stand by the question.

13 HEARING OFFICER DEL PIERO: I'm going to sustain  
14 the objection.

15 Q. BY MR. BIRMINGHAM: Now, under the right-hand  
16 column, Mr. Vorster, of L.A. DWP Exhibit 156, it  
17 states, under drought-year protection, "As long as the  
18 lake stays above the 6377 level and minimum  
19 court-ordered stream flows continue, water can be  
20 diverted from the basin."

21 Did you do an analysis in the preparation of this  
22 Six-Point Plan concerning the extent to which DWP would  
23 be permitted to divert water during a drought?

24 A. What do you mean by "analysis"? I developed the  
25 inputs to the model necessary to achieve these goals so  
0085

01 that there would -- there could be diversions during  
02 dry periods, as stated here -- the answer is yes. I'm  
03 trying to make sure I understand your question, so I --

04 Q. You did calculate how much water and when the  
05 Department of Water and Power would be able to divert  
06 during periods of drought in preparation of this  
07 Six-Point Plan?

08 A. That's correct. In fact, I think, to give you the  
09 specifics, the plan proposed that diversions would  
10 occur if the runoff was below 75 percent of normal.  
11 And if it was above 75 of normal, then there would be  
12 no diversion until the lake achieved 6386.

13 Q. Now, in the middle of this page there is a box  
14 with smaller print in it. The first paragraph states  
15 that, "The Mono Lake Committee and National Audubon  
16 Society proposed a Six-Point Plan to restore and  
17 permanently protect the public trust and scenic values  
18 of Mono Lake and to provide Los Angeles with a reliable  
19 and environmentally sound water supply replacing  
20 diversions from the Mono Basin."

21 Did you consult with the Mono Lake Committee on  
22 the extent to which the Department of Water and Power  
23 would be able to develop water supply alternatives  
24 under the Six-Point Plan?

25 A. One of my pieces of information that I provide to  
0086

01 the Mono Lake Committee is the availability of  
02 alternative water supplies. So if you would interpret  
03 that as an affirmative answer, yes, I provided  
04 information on that point.

05 Q. Let me ask you more specifically, Mr. Vorster,  
06 when the Mono Lake Committee was developing this  
07 Six-Point Plan or gathering information that it used to  
08 develop the Six-Point Plan, did you provide information  
09 to them concerning alternative supplies of water for  
10 the Department of Water and Power?

11 A. Yes, I did.

12 Q. Now, paragraph 6 of the document, L.A. DWP Exhibit  
13 156, states that, "Because it may take time to develop  
14 replacement water, L.A. would be able to divert 15,000  
15 acre-feet of water a year from the basin for the first  
16 five-years, provided that the minimum stream flows and  
17 lake level requirements ordered by the Court are met.  
18 This is a five-year concession that allows DWP to take  
19 basin water until its new proposed projects come on

20 line even though reaching Mono Lake's healthy  
21 management plan is delayed."  
22 Did you consult with the Mono Lake Committee  
23 concerning the length of time it would take for  
24 replacement water supplies to come on line for the  
25 Department of Water and Power?

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01 A. I was one of many sources of information that was  
02 relied upon. In fact, Martha Davis and her other  
03 associates in the Mono Lake Committee, Betsy  
04 Reichschneider (phonetic) and John Cane (phonetic),  
05 were also provided information that was used to  
06 determine how long this grace period would be.

07 MR. HERRERA: Mr. Birmingham, your 20 minutes is  
08 up.

09 MR. BIRMINGHAM: I make an application for an  
10 additional 20 minutes, Mr. Del Piero. I don't believe  
11 I'll use the entire 20 minutes.

12 HEARING OFFICER DEL PIERO: Go ahead.

13 Q. BY MR. BIRMINGHAM: Mr. Vorster, do you have a  
14 copy of L.A. DWP Exhibit 157?

15 A. BY MR. VORSTER: Could you identify which  
16 newsletter that is?

17 Q. Yes. L.A. DWP 157 is the winter 1993, Volume 15,  
18 Number 3, a newsletter with an editorial attached to  
19 it?

20 A. Okay. I have that in front of me.

21 Q. Would you take a moment and review this editorial,  
22 please?

23 Have you had an opportunity to review this  
24 document, Mr. Vorster?

25 A. I'm slipping on my speed-reading techniques, but I  
0088

01 have reviewed it, yes.

02 Q. The Six-Point Management Plan that is described in  
03 L.A. DWP Exhibit 157, is that the Six-Point Plan which  
04 you helped the Mono Lake Committee develop as described  
05 in L.A. DWP Exhibit 156?

06 A. Are you talking about the Six-Point Plan that's  
07 highlighted in the middle of what appears to be page 5  
08 in this editorial? It appears to be the same  
09 principles that are articulated in the previous  
10 newsletter, DWP Exhibit 156.

11 Q. Have you previously seen DWP Exhibit 157?

12 A. This newsletter?

13 Q. Yes.

14 A. I get it sent to my home, and sometimes I read  
15 them and sometimes I don't.

16 Q. Do you know who Bob Schlichting is?

17 A. Yes, I do.

18 Q. Who is Bob Schlichting?

19 A. He used to be the publication editor for the Mono  
20 Lake Committee. He no longer is. He's no longer  
21 employed.

22 Q. Now, I'd like to ask, since we now have  
23 established the entire document is in the letter, to  
24 have --

25 MR. BIRMINGHAM: May I refer to this document by  
0089

01 name, Mr. Del Piero?



02 HEARING OFFICER DEL PIERO: Inasmuch as it is in  
03 the record, I assume you can now.

04 MR. BIRMINGHAM: I'd like for this to be marked  
05 next in order, L.A. DWP Exhibit 158.

06 It is a document from the fall 1989 Mono Lake  
07 Newsletter, Volume 12 Number 2. It's a --

08 HEARING OFFICER DEL PIERO: You wish to have --  
09 it's being numbered as a staff document here; is that  
10 not correct?

11 MR. SMITH: Yes.

12 MR. FRINK: It's included in a lengthy file. I  
13 don't know, for ease of reference, it may be preferable  
14 to give it its own exhibit number.

15 HEARING OFFICER DEL PIERO: That's fine.  
16 (L.A. DWP Exhibit No. 158 was  
17 marked for identification.)

18 Q. BY MR. BIRMINGHAM: Mr. Vorster, do you have a  
19 copy of L.A. DWP Exhibit 158 in front of you?

20 A. Yes, I do.

21 Q. There is a graph on page 10 of the newsletter,  
22 which is actually the third page of Exhibit 158.

23 Are you familiar with the graph that appears on  
24 that page of L.A. DWP Exhibit 158?

25 A. Yes, I am.

0090

01 Q. It indicates that the water level graph  
02 projections were prepared by you, doesn't it? In fact,  
03 did you prepare the water level graph projections that  
04 were used in the development of this graph?

05 A. Yes.

06 Q. Now, did you consult with the Mono Lake Committee  
07 when it was developing the compromise proposal that is  
08 described in L.A. DWP Exhibit 158?

09 A. Yes.

10 Q. And there are a number of lake levels that are  
11 identified in this graph. For instance, it states,  
12 "6380, 1987, severe dust storms."

13 Is that meant to indicate the level of the lake  
14 and the year in which severe dust storms began?

15 A. No. It did not indicate the year in which severe  
16 dust storms began since they occurred before that. But  
17 I think that portion of the graph you're referring to  
18 was taken from or paraphrased from the Daniel Botkin,  
19 et al., 1988, "The Future of Mono Lake."

20 That was, I think, contained in that -- this time  
21 line was contained in that document. And I'd have to  
22 check that document to be sure. But it does say down  
23 there the critical lake elevation source is that  
24 document.

25 Q. Now, this article appears to be drafted by Emilie  
0091

01 Strauss and Lauren Davis. Do you know Ms. Strauss and  
02 Ms. Davis?

03 A. Yes.

04 Q. Who is Emilie Strauss?

05 A. Emilie Strauss is a biologist who, at one time,  
06 worked for the Mono Lake Committee and is currently an  
07 employee of the California Department of  
08 Transportation.

09 Q. And at the time this was drafted in 1989, was

10 Ms. Strauss an employee of the Mono Lake Committee?  
11 A. I don't know. Because I know she was -- after she  
12 left the committee, she did some work for the  
13 committee, and I think this article was a result of  
14 that. I think she may have left before this time.  
15 Q. But to your knowledge, this article was prepared  
16 by Ms. Strauss on behalf of the Mono Lake Committee?  
17 MR. DODGE: Objection. Vague and ambiguous as to  
18 what you mean by, quote, on behalf of, end quote.  
19 HEARING OFFICER DEL PIERO: You want to restate it  
20 and get the answer you want? I'm going to be  
21 sustaining the objection.  
22 MR. BIRMINGHAM: Can I ask the last answer that  
23 Mr. Vorster gave to me be reread.  
24 HEARING OFFICER del PIERO: Why don't you read the  
25 last question and the answer to it as well?

0092

01 (Whereupon the record was read as requested.)  
02 Q. BY MR. BIRMINGHAM: When Ms. Strauss drafted the  
03 article that has been identified as L.A. DWP Exhibit  
04 158, was she working for the Mono Lake Committee?  
05 A. I do not know for sure, but I think she was not at  
06 the time. Someone from the Mono Lake Committee would  
07 be able to answer that very easily.  
08 Q. When Ms. Strauss wrote this article --  
09 A. I think there's actually a pretty easy way to tell  
10 if you have the actual newsletter.  
11 Q. How is that, Mr. Vorster?  
12 A. Because it usually tells who the employees are.  
13 Q. Thank you.  
14 I'd like the record to reflect that for the first  
15 time, Mr. Vorster has gone beyond the scope of a  
16 question and has offered some very valuable  
17 information.  
18 (Laughter.)  
19 HEARING OFFICER DEL PIERO: You want to object to  
20 that stipulation, Mr. Dodge? Mr. Roos-Collins?  
21 MR. ROOS-COLLINS: I object to it. Mr. Vorster  
22 has often contributed information of great value to Cal  
23 Trout that has gone beyond the scope of his  
24 examination.  
25 HEARING OFFICER DEL PIERO: I was waiting for

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01 someone to say that.  
02 MR. BIRMINGHAM: But apparently, as Mr. Vorster  
03 many times has been, in offering the additional  
04 information, he was wrong.  
05 No, he was not.  
06 HEARING OFFICER DEL PIERO: He was not.  
07 MR. BIRMINGHAM: It's not where he said it would  
08 be, but it is there.  
09 HEARING OFFICER DEL PIERO: And?  
10 Q. BY MR. BIRMINGHAM: Can you tell me, Mr. Vorster,  
11 is Ms. Strauss identified as a Mono Lake Committee  
12 biologist, staff biologist, by the fall 1989 newsletter  
13 of the Mono Lake Committee?  
14 A. Yes, she is. I think I said she left shortly  
15 thereafter. It's easy enough to confirm because I  
16 think the -- that's why I was confused.  
17 Q. Now, this appeared in the Mono Lake Newsletter,

18 this article; is that correct?  
19 A. That's correct.  
20 Q. And you understand that Mono Lake Newsletter to be  
21 a publication of the Mono Lake Committee?  
22 A. That's correct.  
23 Q. Now, I asked you some questions at the outset of  
24 this area of examination concerning the degree to which  
25 you consulted with the Mono Lake Committee or other  
0094  
01 consultants when the Six-Point Plan was being prepared.  
02 Do you recall specifically what any of the other  
03 consultants said about the effect of maintaining an  
04 elevation of 6377 would have on the ecosystem of the  
05 lake?  
06 A. I can't recall any specific conversation, no.  
07 MR. BIRMINGHAM: I don't think I have any further  
08 questions at this time. Thank you very much.  
09 HEARING OFFICER DEL PIERO: Thank you very much,  
10 Mr. Birmingham.  
11 Ms. Cahill?  
12 MS. CAHILL: We have no questions.  
13 HEARING OFFICER DEL PIERO: Okay.  
14 Mr. Roos-Collins?  
15 MR. DODGE: Just so we're clear, Mr. Del Piero.  
16 Mr. Birmingham didn't offer these exhibits into  
17 evidence, but I understand the tenor of your ruling is  
18 that they will come into evidence.  
19 HEARING OFFICER DEL PIERO: Yes.  
20 MR. BIRMINGHAM: It has been my practice to offer  
21 all of the exhibits --  
22 HEARING OFFICER DEL PIERO: At the end.  
23 MR. BIRMINGHAM: -- at the end. I will offer  
24 these three specific exhibits now so that we don't  
25 forget.  
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01 HEARING OFFICER DEL PIERO: Other than your  
02 objection, Mr. Dodge, anyone else wish to object to the  
03 introduction of these exhibits?  
04 I'll order them into the record given the comments  
05 and stipulations made early on by me as well as by the  
06 others.  
07 Mr. Roos-Collins?  
08 So, Mr. Birmingham, you don't have to offer them a  
09 second time.  
10 MR. BIRMINGHAM: Okay. Thank you.  
11 (L.A. DWP Exhibits Nos. 156,  
12 157, 158 were admitted into  
13 evidence.)  
14 CROSS-EXAMINATION BY MR. ROOS-COLLINS  
15 Q. Good afternoon, Mr. Vorster.  
16 A. BY MR. VORSTER: Good afternoon.  
17 Q. The rebuttal testimony you have offered is on  
18 behalf of the Mono Lake Committee and the National  
19 Audubon Society?  
20 A. That's correct.  
21 Q. It is not on behalf of Cal Trout?  
22 A. That's correct.  
23 Q. You have that testimony before you?  
24 A. That's correct, yes.  
25 Q. Please turn to paragraph 6 on page 3. As you

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01 previously discussed with Mr. Birmingham, you state  
02 there that LAAMP does not have the long-range view that  
03 could be incorporated into the actual operation which  
04 can result in a more optimal allocation of the water.

05 What was the basis for your opinion that a  
06 longer-range view might result in a more optimal  
07 allocation, including greater exports of water?

08 A. Well, for example, we heard some testimony last  
09 week from Mr. Hasencamp that indicated that in wet  
10 years when DWP knows it has an abundant runoff, they  
11 would be able to divert a small additional amount of  
12 water that the models itself would not indicate would  
13 be available, but it's because they would know that was  
14 a wet year and be able to operate their reservoirs in a  
15 fashion to make room for this runoff.

16 You know, lowering, for example, Crowley Reservoir  
17 in anticipation of higher runoff. That would be an  
18 example that the natural operations, when you know it's  
19 a wet year, you would lower it as much as feasible to  
20 be able to capture as much of the runoff.

21 Q. Is it your opinion that the Mono Lake Committee  
22 Management Plan presented in your written rebuttal  
23 testimony may result in greater export than LAAMP  
24 predicts?

25 A. It's possible, yes. I would say that we're going

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01 to be in a position in the next few years, next ten  
02 years, for example, to see -- to constantly adjust the  
03 models that we have that we're relying upon to reflect  
04 actual operations.

05 And actual lake level responses to given inflows,  
06 and that empirical evidence that we gather in the next  
07 ten years and the DWP's operations, the fine-tuning of  
08 their operations, will presumably allow them to get as  
09 much water as possible while still maintaining certain  
10 stream flows or certain lake levels.

11 Q. Is it also your opinion that the Department of  
12 Fish and Game's flow recommendation may allow greater  
13 export than LAAMP predicts?

14 A. To the extent that, for example, the runoff was  
15 different than, obviously, LAAMP assumed, there would  
16 be greater exports if the runoff was greater. Given  
17 the same runoff, if we had the same runoff pattern as  
18 LAAMP assumes, which, as I cited, is impossible, one  
19 thing we know for sure, we're not going to have the  
20 same runoff as we have in the past in the same  
21 sequence.

22 But making that assumption, under actual  
23 operations, I would suggest that it is a possibility  
24 that greater exports could be achieved because of the  
25 foresight that the operators would have.

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01 Q. Now, under cross-examination by Mr. Birmingham,  
02 you said it was also possible that the export under the  
03 Mono Lake Committee Management Plan might be less than  
04 LAAMP predicts; is that correct?

05 A. That's correct.

06 Q. Since none of us has a crystal ball and,  
07 therefore, since none of us can determine to a

08 certainty what the rainfall pattern will be between now  
09 and the year 2004, do you have an opinion which way the  
10 probability lies as to whether the actual export under  
11 the Mono Lake Committee Management Plan will be greater  
12 than the LAAMP prediction?

13 A. The only reasonable response I can give is that if  
14 you assume the same sequence of runoff and  
15 precipitation that I assumed for this LAAMP simulation,  
16 I feel that under actual operations, that the exports  
17 could -- there was a greater likelihood that the  
18 exports could be a little higher because of long-range  
19 view that the operators would have.

20 But, as I say, it's all dependent on what actually  
21 occurs runoff-wise.

22 Q. A little bit higher meaning in what order of  
23 magnitude in acre-feet?

24 A. I think, as I indicated earlier in testimony, for  
25 a given runoff and the specified Fish and Game  
0099

01 releases, and there's an absolute maximum that you  
02 could get out of the basin, and it's, again, depending  
03 on how the runoff actually occurs on a month-to-month  
04 basis, it would vary. It would be somewhere in the 30  
05 to 35,000 acre-foot range.

06 So it wouldn't be significantly higher than the  
07 model indicates now. It would be on the order of, I'd  
08 say, less than 10 percent.

09 Q. Let's turn to page 10 of your written rebuttal  
10 testimony where you discuss opportunities to increase  
11 the yield of the aqueduct, notwithstanding a reduction  
12 in export from the Mono Basin.

13 Point A states that the extraction of groundwater  
14 in the Owens Valley, "Is constrained but not excluded  
15 by the Inyo-Los Angeles groundwater management  
16 agreement."

17 Would you elaborate on what you mean that the  
18 extraction of ground water is only constrained by that  
19 agreement?

20 A. I guess you weren't here last Friday when we had  
21 an elaborate discussion on this. Let me see if I can  
22 simplify the agreement between Inyo and Los Angeles  
23 because it is a very complicated agreement.

24 Q. Mr. Vorster, let me stop you here. Have you  
25 previously answered this question in response to  
0100

01 another attorney's examination?

02 A. No. But there were several questions to the panel  
03 last Friday on this, and I would like to offer my  
04 opinion to clarify this.

05 Q. Please do.

06 A. The Inyo-L.A. agreement does not specify a  
07 particular pumping level. It attempts to protect the  
08 resources of the Owens Valley and determine the  
09 pumping, allowable pumping, through a number of  
10 mechanisms including monitoring the soil, soil  
11 moisture, providing for in-valley uses. A number of  
12 things are involved in this agreement, but there's  
13 nothing that says DWP can only pump a certain amount of  
14 water.

15 It does set some very -- guidelines or constraints

16 that says you can pump if you meet these, you know,  
17 these things are met, these constraints are met. So  
18 there's nothing in the agreement that says if they  
19 recharge the groundwater basin, they won't be able to  
20 extract it. In fact, this whole purpose of trying to  
21 increase the recharge, which DWP has proposed to do, is  
22 on the premise that they will be able to extract the  
23 water in a later period.

24 Q. Previous witnesses, including Mr. Hasencamp, have  
25 referred to a Green Book or document. Is that the

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01 agreement to which you refer in paragraph 18-A of your  
02 written rebuttal testimony?

03 A. The Green Book is the -- I think as Mr. Huchison  
04 testified last Friday, is the detailed guidelines to  
05 implement the Inyo-L.A. agreement. So that the  
06 agreement is a broader -- has a broader scope than just  
07 the Green Book. The Green Book is a way to actually  
08 implement that agreement.

09 Q. Have you estimated the potential increase in  
10 exportable water which might be achieved through  
11 additional storage in the groundwater basin in the  
12 Owens Valley?

13 A. No, I have not.

14 Q. Let's turn now to point E in paragraph 18, where  
15 you discuss, "Increasing the efficiency of irrigation  
16 in the Mono-Owens Basin."

17 How much water is currently supplied by the City  
18 of Los Angeles on a long-term average basis for  
19 irrigation in the Owens Basin?

20 A. I would be taking a pretty rough guess at that. I  
21 think that information was provided in response to some  
22 questions you asked earlier of V. Miller.

23 Q. You have no reason to disagree with Mr. Miller's  
24 estimate?

25 A. Not at all.

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01 Q. Do you have any estimate of the potential of the  
02 increase in exportable water if the irrigation  
03 efficiency were increased in the Owens Basin pursuant  
04 to paragraph 18-E?

05 A. No. I have not studied that in any detail.

06 Q. Let's turn now to paragraph 5 on page 2 of your  
07 written rebuttal testimony. You discuss there the  
08 historic average transit loss and release of about  
09 15,000 acre-feet per year between the Owens Valley and  
10 Los Angeles.

11 Is that to say that 15,000 acre-feet per year are  
12 lost for further productive use in the course of  
13 transportation between the Owens Valley and Los  
14 Angeles?

15 A. Not entirely, because I can break down that  
16 transit loss and releases into two parts. The transit  
17 loss is about 10,000 acre-feet between the Owens Valley  
18 and Bouquet Reservoir, and then about 5,000 acre-feet  
19 is for evaporation from Bouquet Reservoir, that's  
20 B-o-u-q-u-e-t, no -- well, I'll be corrected if that  
21 wasn't correct.

22 And then there's several thousand acre-feet that  
23 are required to be released from Bouquet Reservoir for

24 fish flow or fish stream maintenance. So the 10,000  
25 acre-feet is the figure that we would look upon as

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01 being lost for further use.

02 Let me further elaborate on that. Some of that  
03 water is actually released from the aqueduct for their  
04 facilities along the way, their maintenance yards and  
05 for some irrigation in the Antelope Valley. So there's  
06 leaks and losses. There's releases for beneficial use.  
07 There's releases for fish. There's releases for  
08 irrigation along the way. The actual leaks, I cannot  
09 say actually how much of it's leaks.

10 I do know that DWP has pursued -- has tried to  
11 identify the leaks and repair it. And they have  
12 actually been successful at reducing some of that  
13 transit loss, so that figure of, what I said, 10,000  
14 acre-feet is no longer that amount. I don't know how  
15 much less it is now.

16 Q. Do you have an opinion whether the transportation  
17 losses which you have just been discussing can be  
18 reduced further?

19 A. No, I do not.

20 Q. Let's turn now to paragraph 9 where you discuss a  
21 flow regime to keep fish in good condition.

22 Now, in response to a question from  
23 Mr. Birmingham, you stated you were not in a position  
24 to state what's required to keep fish in good  
25 condition. You were advised by clients and fellow

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01 consultants. Was that your testimony?

02 A. I think that was my testimony, yes.

03 Q. Does the Mono Lake Committee Management Plan  
04 differ in any respect from the Department of Fish and  
05 Game flow recommendation with respect to the flow  
06 regime to keep fish in good condition?

07 A. No.

08 Q. Let's turn now to paragraph 10, page 6 of your  
09 written rebuttal testimony, where you state that under  
10 the Mono Lake Committee Management Plan, "There will be  
11 no diversions until the lake level reaches 6384 feet in  
12 elevation."

13 Table 1-A estimates that that could take five  
14 years with a 1940 start and no diversions?

15 A. That's correct. Yes, well, to get to 6383.5.

16 Q. Now, paragraph 10 states that the no-diversion  
17 provision is intended "to accelerate the protection of  
18 public trust values associated with higher lake  
19 levels." Is that correct?

20 A. That's correct.

21 Q. Does it have any stream protection purpose?

22 A. Could you clarify what you mean by "stream  
23 protection purpose"?

24 Q. Insofar as the no-diversion provision puts more  
25 water in the streams than the Department of Fish and

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01 Game recommends to keep the fisheries in good  
02 condition, is it your opinion that that extra water  
03 will provide protection for the streams?

04 A. It is my opinion that that extra water actually,  
05 in the long term, will benefit the fish because it will

06 work on the streams. It will enable the streams to  
07 create more complex habitat and accelerate the recovery  
08 of vegetation.

09 Q. And is the basis of that opinion the advice of  
10 your clients and fellow consultants?

11 A. That's correct.

12 Q. Finally, let's turn to paragraph 16 on page 9 of  
13 your written rebuttal testimony. The second full  
14 sentence states, "There is no need to constantly adjust  
15 the exports in order to meet the lake level or release  
16 target."

17 Is it your understanding that any management plan  
18 before this Board would involve constant adjustment of  
19 exports in order to meet a lake level or release  
20 target?

21 A. Depends on how you define the term "constant."

22 But I do think there is the --

23 Q. As you use the term?

24 A. Oh. There is a possibility that if the exports  
25 were tied to a particular runoff amount, then the

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01 exports would be adjusted on a fairly constant basis.

02 Let's say, for example, the exports would be 30 percent  
03 of the runoff, let's say the monthly runoff, then there  
04 would be an adjustment in each month.

05 Q. Let me ask you a related question. Is it your  
06 understanding that the Draft Environmental Impact  
07 Report contains any alternative which involves constant  
08 adjustment of the exports in order to meet the lake  
09 level or release target?

10 A. The Draft EIR doesn't go into the detail of  
11 actually how a particular alternative would be  
12 implemented, so I don't think we can extract that.

13 Q. So this sentence was not intended as criticism of  
14 any other management plan?

15 A. No, not at all.

16 Q. It was intended as an explanation of the advantage  
17 of the Mono Lake Committee management plan?

18 A. That's correct.

19 MR. ROOS-COLLINS: Thank you very much.

20 HEARING OFFICER DEL PIERO: Miss Scoonover?

21 MS. SCOONOVER: I have no questions.

22 HEARING OFFICER DEL PIERO: Mr. Dodge?

23 MR. FRINK: Excuse me, Del Piero.

24 HEARING OFFICER DEL PIERO: Forgive me.

25 ///

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01 CROSS-EXAMINATION BY THE STAFF

02 Q. BY MR. FRINK: Mr. Vorster, on page 7 of your  
03 testimony, you state that, "The plan of no diversions  
04 until the lake reaches 6384, and then the allocation of  
05 a constant 10,000 acre-foot per year export amount in  
06 the initial period was designed to have the lake rise  
07 to 6390 in an average of 16 years," end of quote.

08 Did you plan to reach a 6390 lake level in 16  
09 years in order to comply with your understanding of the  
10 requirements of the Clean Air Act?

11 A. BY MR. VORSTER: That's correct.

12 Q. Now, I assume that if you took longer than 16  
13 years to reach a 6390 lake level, that that would have



14 the effect of increasing the average amount of water  
15 available for export; is that correct?

16 A. That's correct.

17 Let me clarify the answer to the previous  
18 question. Trying to get to 6390 in 16 years, that  
19 specific number was tied into the Clean Air Act  
20 requirements or the way we interpreted them.

21 We also, though, wanted to achieve the public  
22 trust values associated with 6390 as quickly as  
23 feasible.

24 Q. All right. I believe you testified that the  
25 Lee Vining Creek flows should be limited to 250 cfs for

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01 a period of ten years to give the vegetation on Lee  
02 Vining Creek a chance to get re-established more; is  
03 that roughly accurate?

04 A. That's correct.

05 And I want to add a clarification of that because  
06 I'm anticipating, perhaps, a question. That if there  
07 was a wet year, and it was an indication that  
08 diversions from Lee Vining Creek, in order to limit the  
09 releases to 250 cfs, would somehow cause Grant Lake  
10 Reservoir to exceed its capacity and spill, the Mono  
11 Lake Committee/National Audubon Society plan would not  
12 want to recommend that limitation.

13 In other words, we don't want to divert water from  
14 Lee Vining Creek in order to cause uncontrolled flows  
15 on Rush Creek.

16 So if it was a very wet year and that situation  
17 was anticipated, we would not want to limit the flows  
18 on Lee Vining and, in fact, let them be released down  
19 the creek, the entire flow.

20 Q. Have you made an assessment of what the likely  
21 impact on Rush Creek flows would be on wet years if you  
22 were to move over any excess water from Lee Vining  
23 Creek to the Grant Lake Reservoir and release it into  
24 Rush Creek?

25 A. The model will give you indications of what that

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01 would be. And, as I said, the model requires you to  
02 put an assumption in that would hold for the entire  
03 period, thick or thin. And to the extent that  
04 actually, when you have very wet years, the model just  
05 tends to release all the water anyway.

06 So, yes, the model will do that analysis, and I  
07 don't have the specifics in front of me.

08 MR. FRINK: All right. That's all the questions I  
09 have. Thank you.

10 HEARING OFFICER DEL PIERO: Mr. Satkowski?

11 MR. SATKOWSKI: Just a couple questions,  
12 Mr. Vorster.

13 Q. BY MR. SATKOWSKI: On page 6 of your rebuttal  
14 testimony, Item 10, you state that in the management  
15 plan there will be no diversion until the lake level  
16 reaches 6384. Why did you pick 6384?

17 A. BY MR. VORSTER: Well, as I stated under A, we  
18 wanted to get the lake to a reasonable buffer level as  
19 soon as possible. So 6384 does provide protection  
20 against 6378 from a seven-year drought.

21 It also was chosen in order to get to the -- it

22 had to do with getting to 6390 in 16 years and allowing  
23 some exports by DWP and, you know, finding a level at  
24 which we could do that.

25 But it was specifically targeted to protecting --  
0110

01 establishing a buffer level, rising through the  
02 vulnerable areas of the South Tufa grove as quickly as  
03 possible.

04 Q. In item 11, down at the bottom of the page, it  
05 says, "Diversion will be limited to 10,000 acre-feet  
06 per year of available water in all the year types."

07 And why did you choose 10,000 acre-feet per year?

08 A. Again, to achieve the goal of achieving 6390 in 16  
09 years. Again, the concept is what's important. The  
10 concept is, you know, to specify a constant export for  
11 DWP.

12 10,000 acre-feet is a result of the assumptions  
13 that we made by the hydrology for LAAMP and the output  
14 that results in order to achieve the 16-year -- to  
15 achieve 6390 in 16 years.

16 If the runoff was greater than what was assumed,  
17 then actually more than 10,000 acre-feet could be  
18 exported, and you could still achieve the 16-year time  
19 line. So the concept is the constant amount of export.

20 MR. SATKOWSKI: Thank you.

21 HEARING OFFICER DEL PIERO: Mr. Smith?

22 MR. SMITH: I have no questions.

23 HEARING OFFICER DEL PIERO: Mr. Herrera?

24 MR. HERRERA: I have no questions.

25 HEARING OFFICER DEL PIERO: Mr. Canaday?

0111

01 MR. CANADAY: Thank you.

02 HEARING OFFICER DEL PIERO: After your questions  
03 are completed, Mr. Canaday, we're going to take a break  
04 so people can move their cars.

05 MR. CANADAY: Okay.

06 Q. BY MR. CANADAY: Mr. Vorster, on page 4 of your  
07 testimony when you talk about the total dissolved  
08 solids -- have you found that line?

09 A. BY MR. VORSTER: Yes.

10 Q. It's your plan to keep the lake at or above the  
11 total of dissolved solids at 75 grams per liter or at  
12 or below the total dissolved solids per liter?

13 A. Very good. It's what happens when you write  
14 testimony in the last minute. That should be below 75  
15 grams per liter. And I would like to make that a  
16 formal correction of the testimony, because the total  
17 dissolved solids vary inversely with lake level. And  
18 as the lake level stays above 6390, the total dissolved  
19 solids will be below the 75 grams per liter.

20 HEARING OFFICER DEL PIERO: I'm sure the brine  
21 shrimp will appreciate that.

22 MR. DODGE: It's also one that he can't blame on  
23 the transfer to the Morrison and Foerster agreement.

24 MR. VORSTER: That's also correct, but Captain  
25 Habitat also picked it up.

0112

01 Q. BY MR. CANADAY: In your discussion, you also  
02 discussed a concept for up to ten years and those  
03 releases would not be greater than 250 cfs; is that

04 correct?  
05 A. BY MR. VORSTER: That's correct.  
06 Q. And you also testified in response to a question  
07 that if we had very wet years, it's not the intent of  
08 your management plan to use Rush Creek, in a sense, as  
09 a sluiceway to put that extra water into the lake; is  
10 that correct?  
11 A. That's correct.  
12 Q. Have you thought about how that decision was going  
13 to be made and who was going to make that decision and  
14 what time of year that decision would be made?  
15 A. I have not thought about it in enough detail to  
16 give you a well-thought-out answer. But it's something  
17 that I'm continuously thinking about, how a decision  
18 would be implemented. And that's one I'm giving even  
19 more thought to.  
20 Q. But that is the kind of decision that would take  
21 nearly on-the-spot determination, correct? Or would it  
22 take a long -- could you forecast that?  
23 A. I think you could forecast that. I think you  
24 could forecast that with a combination of actual  
25 operational experience in years that had similar  
0113 runoff, and this is where actually the use of  
01 simulation model would be helpful. That's exactly it.  
02 It would give you a sense of whether you had a  
03 problem, so you could use LAAMP for that purpose.  
04 Q. You responded to some questions about LAAMP and of  
05 how it's primarily a monthly model and isn't an  
06 operations model.  
07 Is LAASM also a monthly model?  
08 A. Yes. LAASM is also a monthly simulation model.  
09 Q. And so the same kinds of caution on the use of  
10 LAASM in forecasting would be the same as LAAMP; is  
11 that correct?  
12 A. That's correct.  
13 Q. Your 6390 management plan was based -- one of the  
14 criteria was based on your reading of an EPA statute,  
15 not statute, but the EPA letter? Your reading of that  
16 letter said that you had to reach attainment within 16  
17 years.  
18 A. That's correct.  
19 MR. DODGE: Objection to the use of the term  
20 "your" as to whether it applies to Mr. Vorster or as it  
21 applies to National Audubon Society and the Mono Lake  
22 Committee, which is what I understood his testimony  
23 gave him the goals.  
24 HEARING OFFICER DEL PIERO: Clarify what you  
0114 intend to mean, whether "your" is intended to be  
01 Mr. Vorster or the Audubon Society.  
02 Q. BY MR. CANADAY: The criteria that you used, 16  
03 years, that was provided to you to develop the plan?  
04 A. BY MR. VORSTER: That was provided to me by  
05 Mr. Flinn.  
06 Q. And that, I assume, was the interpretation of  
07 Mr. Flinn or others representing the Mono Lake  
08 Committee?  
09 A. That's right.  
10 Q. And with that 16-year assumption, that led to the

12 10,000 acre-foot-a-year continual diversion as part of  
13 your plan; is that correct?

14 A. Yes. In order to achieve the goal of 6390 within  
15 a 16-year period, 10,000 acre-feet was what worked out  
16 best.

17 Q. That was the product of that assumption?

18 A. Yes, yes.

19 Q. So let's assume that that letter did not -- let's  
20 assume that 16 years -- you had longer than 16 years.  
21 Let's assume that you had 20 years. If you had 20  
22 years, then continual diversion allowed under your plan  
23 would be greater than 10,000 acre-foot per year; would  
24 it not?

25 A. I probably should not answer that question because  
0115

01 there are other goals in the plan that are articulated  
02 besides the Clean Air Act compliance. So I would need  
03 to consult with the client before saying yes. It would  
04 be -- from a hydrologic standpoint, the answer is yes.

05 Q. That was the question I had, from a hydrologic  
06 standpoint.

07 A. Yes.

08 MR. CANADAY: Thank you. That's all I have.

09 HEARING OFFICER DEL PIERO: Thanks very much.

10 Ladies and gentlemen we're going to take a  
11 15-minute break. We'll be back.

12 (A recess was taken at this time.)

13 HEARING OFFICER del PIERO: Ladies and gentlemen,  
14 we're back in session.

15 Mr. Dodge?

16 MR. DODGE: Yes, just a few questions.

17 REDIRECT EXAMINATION BY MR. DODGE

18 Q. Mr. Vorster, you had an exchange with  
19 Mr. Birmingham about how the transition period might be  
20 longer under your water balance model than it would be  
21 under LAAMP. And Mr. Del Piero interrupted with a  
22 question as to how much longer, and you said you didn't  
23 know specifically.

24 Do you have any order of magnitude at all that you  
25 can give us at this time?

0116  
01 A. Yes. I think I did answer Mr. Birmingham when he  
02 asked me how much longer it would take to get the  
03 6383.5 with no diversions with my model.

04 With LAAMP, it was five years. I said with my  
05 model, it would, at most, be six years. We're talking  
06 about a very small difference in the number of years in  
07 this transition period. So I would say no more than  
08 one, possibly two years additional.

09 Q. And hypothetically, if we go downstream, not to  
10 mix metaphors, but if we go down through time for 10 or  
11 15 years and it turns out that LAAMP does, in fact,  
12 overestimate inflow, what would the remedy be?

13 A. Well, I would say we would want to recalibrate  
14 LAAMP. And we'd be able to -- if we had a specific  
15 lake level target that we were trying to achieve, we  
16 would -- it would take some additional waters or  
17 additional time to achieve that.

18 But the main thing you want to do is don't accept  
19 the models we have at this point in time as the be-all

20 end-all. We recalibrate as we get new information. As  
21 the years progress, we can improve their ability to  
22 predict.

23 Q. Now, let me move to these various Mono Lake  
24 Committee publications, the DWP Exhibits 156 to 158, I  
25 believe. And you've told us about your involvement in  
0117

01 that.

02 Let me ask you: During the time frame when those  
03 documents were published, to what extent did the Mono  
04 Lake Committee have awareness of the duck habitat  
05 pre-1940 in the Mono Basin?

06 A. We did not have the awareness that it was the  
07 critical aspect of the higher lake level for duck  
08 habitat.

09 We were aware that ducks did occur prior to 1940,  
10 and in fair abundance, but we did not have the  
11 information on the critical relationship between the  
12 delta marshland, the hypopycnal flow, the lower  
13 salinity, all the things that were articulated in  
14 Dr. Stine's testimony. That's all new information.

15 Q. And I believe that you told us that around 6391  
16 feet, it was your understanding that, at least, on a  
17 modeling basis that there would be an elimination of  
18 air quality violations?

19 MR. BIRMINGHAM: Objection. Misstates the  
20 testimony.

21 MR. DODGE: No, I don't think it does,  
22 Mr. Del Piero.

23 MR. BIRMINGHAM: I don't think Mr. Vorster has  
24 testified about the modeling results as they relate to  
25 air quality.

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01 HEARING OFFICER DEL PIERO: Mr. Dodge?

02 MR. DODGE: Well, it's in paragraph 8 of his  
03 testimony.

04 HEARING OFFICER DEL PIERO: I handed the testimony  
05 back to the staff too fast.

06 MR. BIRMINGHAM: In reviewing paragraph 8, I don't  
07 see any reference to the modeling of air quality.

08 MR. DODGE: Well, I'll withdraw.

09 HEARING OFFICER DEL PIERO: You mean the second  
10 bulletin --

11 MR. DODGE: Yes, I do.

12 I can ask the question without the modeling if  
13 that's the objection.

14 MR. BIRMINGHAM: The question is ambiguous in the  
15 sense that there are --

16 HEARING OFFICER DEL PIERO: I'm going to sustain  
17 the objection. And, Mr. Dodge, why don't you start  
18 again?

19 MR. DODGE: Thank you.

20 Q. BY MR. DODGE: Looking at paragraph 8 of your  
21 testimony, sir, "Achieve air quality compliance with  
22 the EPA schedule set forth in the December 16, 1993,  
23 letter from David Calkins to Ellen Hardeback."  
24 Now, my question is simply when DWP Exhibits 156  
25 to 158 were written, was the Mono Lake Committee aware  
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01 of this air quality compliance schedule?

02 A. Absolutely not, because at the time, of course,  
03 the Mono Basin had not been designated as a  
04 non-containment area which triggered this schedule that  
05 was set forth in that letter. That was the key thing.

06 Q. When was it designated non-containment?

07 A. I think December 6th, sometime in December. It  
08 was published in the Federal Register whenever David  
09 Calkins testified.

10 Q. Now, let me ask you finally, relating to this  
11 modeling testimony. And I will note that we have  
12 designated Mr. Vorster on surrebuttal on a couple  
13 points that will take five minutes, but I don't intend  
14 to ask him those questions tonight.

15 But limiting the final area of questioning, sir,  
16 to paragraph 8 of your rebuttal testimony. Do you see  
17 that?

18 A. Yes.

19 Q. And I want to focus in specifically -- let's start  
20 with 6405 feet, first, and Mr. Birmingham correctly  
21 pointed out that the first three items related to  
22 waterfowl, right?

23 A. That's correct.

24 Q. Now, the compromise proposals set out in DWP  
25 Exhibits 156 to 158, management level of 6386 or 6388.

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01 Do you have those in mind, sir?

02 A. Yes.

03 Q. Would those compromise management proposals  
04 achieve the waterfowl goals set out in 6405 feet?

05 A. No, they wouldn't.

06 Q. And that's based on Dr. Stine's testimony?

07 A. That's correct.

08 Q. How about the remaining goals set out in -- for  
09 lake level elevation 6405 feet? To what extent would  
10 the 6386 or 6388 proposals achieve those goals?

11 A. Well, it would not permanently cover the  
12 deflatable playa of the Mono shorelands, and it would  
13 not restore the historical visual characteristics of  
14 the full Mono Lake.

15 It would begin -- and besides, it would only begin  
16 to restore some of the historical recreational uses of  
17 Mono Lake. Boating still, at least power boating, as  
18 was once done extensively at Mono Lake, would still be  
19 somewhat dangerous when the lake level in the 6380  
20 level, mid 6380's.

21 Obviously, swimming could occur, but it wouldn't  
22 have the dilution and the freshwater springs which made  
23 swimming a much more enjoyable experience historically.  
24 And it would not restore the hunting or waterfowl  
25 habitat previously described.

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01 Q. Unless you wanted to hunt phalaropes?

02 A. That's correct.

03 HEARING OFFICER DEL PIERO: Is there a season for  
04 phalaropes?

05 Q. BY MR. DODGE: Everyone has told his hunting  
06 story, so -- I've only hunted a few times and not for  
07 many, many years. But I hunted with a friend from  
08 Redding that I tried a case with, went duck hunting  
09 together many, many years ago. And I'm sure the

10 statutes of limitation is running. Is DFG still here?  
11 It turned out that that --  
12 HEARING OFFICER DEL PIERO: That duck was a swan?  
13 (Laughter.)  
14 MR. DODGE: -- that duck, I was told by my friend,  
15 was a curlew.  
16 (Laughter.)  
17 Q. BY MR. DODGE: Let me go back, Mr. Vorster, to --  
18 MR. BIRMINGHAM: Excuse me, Mr. Dodge, but who was  
19 your friend?  
20 HEARING OFFICER DEL PIERO: That fact will be lost  
21 on this record.  
22 Q. BY MR. DODGE: Going back to the goals set out for  
23 6390 feet on paragraph 8 of your testimony, sir. Could  
24 you go down those goals and tell the Board to what  
25 extent the compromise set out in Exhibit 156 to 158

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01 would achieve those goals?  
02 A. BY MR. VORSTER: Well, at the time we developed  
03 the Six-Point Plan, we had the interim -- well, no, we  
04 didn't have -- I'm trying -- at 1991, we had the  
05 interim fish flow order as set forth by Judge Finney,  
06 which I want to emphasize they were interim flows only.  
07 So we did not have all the Fish and Game reports in on  
08 Rush and Lee Vining and Walker and Parker Creek.  
09 I just previously testified that Mono Lake had not  
10 been designated a non-attainment area. We did not have  
11 the benefit of the modeling that was done for the Draft  
12 EIR to indicate what lake level was needed to achieve  
13 compliance.  
14 Q. What is your understanding of the lake level  
15 necessary to achieve compliance?  
16 A. Well, I stated on paragraph 14 of my testimony,  
17 page 8, as, "I understand, as Duane Ono has testified,  
18 that the Great Basin Air Pollution Control District  
19 assumed that compliance with the Clean Air Act could be  
20 achieved if the median lake level was at 6392 feet."  
21 Q. All right.  
22 A. As far as providing a buffer against droughts, the  
23 6386 was established to provide a buffer against 6377,  
24 using historic droughts. But we did not have the  
25 information that Dr. Stine has since provided on the

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01 duration and magnitude of prehistoric droughts.  
02 The Six-Point Plan would create a water barrier as  
03 long as the lake level was above 6377, but not  
04 necessarily a coyote barrier, as we've heard testimony  
05 that coyotes could pass over Negit at 6378.  
06 And also the Six-Point Plan would create a problem  
07 for some of the Paoha Islets, specifically Duck Islet.  
08 And I think we'll hear some testimony from Dr. Stine on  
09 that.  
10 The Six-Point Plan would maintain the -- or have  
11 some hard substrate environments would be increased  
12 with that, so there's not much change there.  
13 As far as the total dissolved solids, the  
14 Six-Point Plan would have delays higher than the 75  
15 grams per liter. It would be in the range of 80 to 90  
16 grams per liter.  
17 And it did provide water to DWP in dry years.

18 That's the similarity between the two plans. And it  
19 would also provide additional water-based Tufa, but the  
20 6390 plan would provide even more water-based Tufa.

21 MR. DODGE: That's all I have, Mr. Vorster.

22 HEARING OFFICER DEL PIERO: Thank you very much,  
23 Mr. Dodge.

24 Mr. Birmingham?

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01 RE-CROSS EXAMINATION BY MR. BIRMINGHAM

02 Q. Mr. Vorster, Mr. Roos-Collins asked you a question  
03 about paragraph 9 of your testimony. That's the  
04 paragraph that discusses keeping fish in good  
05 condition; is that correct?

06 A. That's correct.

07 Q. And Mr. Roos-Collins asked you whether or not in  
08 preparing this management plan or the two management  
09 plans, you adopted the recommendations of the Fish and  
10 Game?

11 A. I think he asked me that, that's correct.

12 Q. And you said that the management plan adopted the  
13 recommendations of the Fish and Game?

14 A. I think I testified to that, yes.

15 Q. Now, what did Trihey -- he's one of the  
16 consultants to the Mono Lake and National Audubon  
17 Society; is that right?

18 A. He has testified on behalf of the Mono Lake  
19 Committee and National Audubon Society. That's  
20 correct.

21 Q. In fact, he appeared in this proceeding and  
22 testified on behalf the National Audubon Society and  
23 Mono Lake Committee; isn't that right?

24 A. That's right.

25 Q. And isn't it right that during his testimony,  
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01 Mr. Trihey presented what he thought were the minimum  
02 flows necessary to keep fish in good condition in these  
03 streams?

04 A. I'm not sure in what context he presented those  
05 flows. I would have to actually read -- see or read  
06 his testimony.

07 Q. Were you present when Mr. Trihey testified?

08 A. I think I was.

09 Q. I'm going to ask you to assume that Mr. Trihey  
10 testified that for Lee Vining, he was proposing a  
11 minimum flow for the summer months, that would be April  
12 through September, of 50 cfs, and that winter months,  
13 he was proposing a minimum flow of 25 to 35 cfs for Lee  
14 Vining Creek.

15 Now, those flows are higher than the flows  
16 recommended by the Department of Fish and -- excuse me.  
17 Let me restate that.

18 The flows recommended by Mr. Trihey, if I've  
19 accurately represented them to you, those flows are  
20 lower than those flows recommended by the Department of  
21 Fish and Game; is that correct?

22 A. For some of the year types, I think they're  
23 actually higher than the dry-year recommendations.

24 Q. Now, on Rush Creek, I'm going to represent to you  
25 that Mr. Trihey testified that it was his proposal that



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01 minimum flows in Rush Creek be maintained at 55 cfs  
02 during the summer months and that the flows be  
03 maintained at a minimum of 35 cfs in the winter  
04 months.

05 Now, those flows are also lower than the flows  
06 recommended by the Department of Fish and Game; is that  
07 correct?

08 A. That's correct, with the same admonition that  
09 Trihey's flows are higher than the Department of Fish  
10 and Game's dry-year recommended flow.

11 Q. Now, when you were preparing this management plan  
12 for the Mono Lake Committee and National Audubon  
13 Society, why did the committee decide to abandon the  
14 recommendation of its expert and adopt the  
15 recommendations of the Department of Fish and Game?

16 MR. DODGE: Objection. Calls for speculation.

17 HEARING OFFICER DEL PIERO: Sustained.

18 Q. BY MR. BIRMINGHAM: Well, you were involved in  
19 preparation of the management plan; is that correct,  
20 Mr. Vorster?

21 A. BY MR. VORSTER: That's correct.

22 Q. And you were involved in citing what goals would  
23 be achieved through the management plan?

24 A. I was involved in providing advice, but the goal  
25 of using Fish and Game flows to keep fish in good

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01 condition was not my decision. That was the decision  
02 of the client, the Audubon Society and Mono Lake  
03 Committee.

04 Q. So you don't know why the Mono Lake Committee and  
05 National Audubon Society decided to abandon the  
06 testimony of their expert and, instead, adopt the  
07 recommendations of the Department of Fish and Game?

08 MR. DODGE: Objection. Assumes facts not in  
09 evidence.

10 HEARING OFFICER DEL PIERO: Do you want to  
11 respond?

12 MR. BIRMINGHAM: Well, I don't have the transcript  
13 in front of me here, but I did look at our computerized  
14 transcript and, as I recall, that indicates that I've  
15 accurately --

16 HEARING OFFICER DEL PIERO: I saw the computerized  
17 transcript --

18 MR. DODGE: Well, the point of objection is that  
19 we haven't abandoned Mr. Trihey's recommendation.

20 HEARING OFFICER DEL PIERO: I understood the point  
21 of the objection. I want to hear --

22 MR. DODGE: I frankly think this is a pointless  
23 exercise. If there's some difference in Mr. Trihey's  
24 testimony, they can point it out in argument, and  
25 beating Mr. Vorster on the head is going to do no good.

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01 MR. BIRMINGHAM: I'll withdraw the last question.

02 Q. BY MR. BIRMINGHAM: Do you know why the Mono Lake  
03 Committee decided that Mr. Trihey's proposed minimum  
04 flows were inadequate to maintain fish in good  
05 condition?

06 MR. DODGE: That's a hypothetical question. I  
07 assume, Mr. Chairman, he's assuming the Trihey flows

08 are as he stated.

09 MR. BIRMINGHAM: That's correct.

10 HEARING OFFICER DEL PIERO: Fine.

11 Q. BY MR. BIRMINGHAM: Assuming the flows are, as I  
12 stated, the Trihey flows are as I stated, do you know  
13 why the Mono Lake Committee decided that those flows  
14 were not adequate to keep fish in good condition?

15 MR. ROOS-COLLINS: I object to this question, as  
16 well, on the ground it assumes facts not in evidence.  
17 I have heard no evidence Mono Lake Committee decided  
18 that Mr. Trihey's flows were inadequate to keep fish in  
19 good condition.

20 HEARING OFFICER DEL PIERO: I'm going to overrule.  
21 The way the question was framed, it's a hypothetical.  
22 It doesn't assume any facts in evidence. It's a  
23 hypothetical.

24 Mr. Vorster, do you understand the question?

25 MR. VORSTER: I think I do, and I will --

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01 HEARING OFFICER DEL PIERO: Do you understand this  
02 is a hypothetical, and it assumes that what  
03 Mr. Birmingham has stated is, in fact, correct?

04 MR. VORSTER: Right.

05 HEARING OFFICER DEL PIERO: Do you have an answer?

06 MR. VORSTER: Yeah. I don't have a specific  
07 knowledge why the client chose -- would not have chosen  
08 Mr. Trihey's. But I can tell you this, that  
09 Mr. Trihey's recommendations were not based upon nearly  
10 the rigorous analysis that was done by the Department  
11 of Fish and Game in their IFIM analysis.

12 In fact, I helped Mr. Trihey do some of the --  
13 what he would call, a modified Tennant analysis to come  
14 up with his recommended flow. I think they were  
15 originally developed for the interim stream flow  
16 hearing, and they were based on, you know, limited  
17 analysis, I think, as Mr. Trihey testified.

18 They were not based upon any kind of IFIM, any  
19 kind of rigorous study that was done for the Department  
20 of Fish and Game.

21 MR. DODGE: May Mr. Vorster be asked to answer the  
22 question, Mr. Del Piero?

23 HEARING OFFICER DEL PIERO: Mr. Vorster -- that's  
24 why I was asking Mr. Vorster if he understood the  
25 question and, again, Mr. Vorster, I don't think you

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01 answered the question.

02 MR. BIRMINGHAM: Let me see if I can ask a  
03 different question.

04 Q. BY MR. BIRMINGHAM: Mr. Vorster, is it correct  
05 that when the Mono Lake Committee gave you these flows,  
06 they told you that these were the flows they thought  
07 were necessary to keep the fish in good condition, the  
08 Department of Fish and Game flows?

09 A. BY MR. VORSTER: That's correct.

10 Q. From that, do you take it that the Mono Lake  
11 Committee determined that the flows recommended by  
12 Mr. Trihey were inadequate to keep the fish in good  
13 condition?

14 A. I can't answer that, because I would be  
15 speculating as to what they would be.

16 Q. If the flows that were necessary to keep fish in  
17 good condition were, in fact, the flows recommended by  
18 Mr. Trihey, then there would be additional water for  
19 exports to the City of Los Angeles; is that correct?

20 MR. DODGE: Objection. Unintelligible. Are we  
21 assuming the fish flows are the whole criteria here?

22 HEARING OFFICER DEL PIERO: I'm going to overrule  
23 the objection.

24 Mr. Vorster, do you understand the question?

25 MR. VORSTER: Boy, I obviously didn't understand

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01 the last one.

02 HEARING OFFICER DEL PIERO: Well, if you didn't  
03 understand it, then, Mr. Birmingham, restate the  
04 question. And you may want to restate it in a  
05 different fashion, if he didn't understand it, from the  
06 way you stated it the first time.

07 Q. BY MR. BIRMINGHAM: Mr. Vorster, I'm going to ask  
08 you to assume the flows that were recommended by  
09 Mr. Trihey are the flows required to keep the fish in  
10 good condition.

11 It's correct, isn't it, that if that is the case,  
12 that the lake level necessary to achieve this goal of  
13 keeping fish in good condition would be a lower lake  
14 level than the lake levels described in your testimony?

15 MS. CAHILL: Objection. Implies that a lake level  
16 is required to keep fish in good condition, or the lake  
17 level would keep the fish in good condition as opposed  
18 to stream conditions.

19 MR. BIRMINGHAM: May I ask the question be reread?

20 HEARING OFFICER DEL PIERO: That's what I was  
21 going to ask, too.

22 (Whereupon the record was read as requested.)

23 HEARING OFFICER del PIERO: Restate the question,  
24 Mr. Birmingham.

25 Q. BY MR. BIRMINGHAM: Mr. Vorster, you have

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01 identified this 6390 feet management program as one of  
02 the goals to achieve fish in good condition; is that  
03 correct?

04 A. BY MR. VORSTER: That's correct.

05 Q. Now, let's put aside all of the other goals. If  
06 that's the goal, fish in good condition, and  
07 Mr. Trihey's recommended flows are the flows necessary  
08 to keep fish in good condition, then the resulting lake  
09 level is going to be lower than 6390, isn't it?

10 A. The range of lake levels that would occur under  
11 those hypothetical flows, the Trihey flows, would be  
12 less than what I have actually shown on Table 2-A as  
13 the minimum-maximum median levels.

14 Q. Mr. Dodge asked you a question about duck  
15 habitat. He said when the compromise proposals that  
16 have now been introduced into evidence as L.A. DWP  
17 Exhibits 157, 158, and 159 were being developed, was  
18 the Mono Lake Committee aware of the relationship  
19 between lake level and duck habitat, and I think you  
20 said it was not; is that right?

21 A. I said it would not, to the detail we know today.  
22 I said we did know that ducks were more abundant prior  
23 to 1940. We did know that. In fact -- well, I'll

24 leave it at that.

25 Q. Well, in fact, the document, the winter -- the  
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01 fall, excuse me, the fall 1989 document that is in  
02 evidence as Exhibit 15 --

03 HEARING OFFICER DEL PIERO: Mr. Birmingham,  
04 whatever the number is, go ahead and ask the question.

05 Q. BY MR. BIRMINGHAM: I'd ask you to look at page 12  
06 of that document, Exhibit 158. The third full  
07 paragraph states, "Although a declining water table  
08 created some marshland around the lake, it also wiped  
09 out extensive shallow lagoons and ponds which once  
10 lined Mono's north shore, citing Stine 1989, see photo  
11 below. These brackish lagoons afforded excellent duck  
12 habitat. Dan Banta, personal communication."

13 That was written in 1989, wasn't it, Mr. Vorster?

14 A. BY MR. VORSTER: That's correct.

15 Q. So in 1989, it was known that the receding lake  
16 level, at an elevation below 6390, would have resulted  
17 in the loss of excellent duck habitat?

18 A. As this states, we knew that the brackish water  
19 lagoons, which were one component and one relatively  
20 smaller component of the excellent duck habitat, would  
21 be lost.

22 MR. BIRMINGHAM: Mr. Del Piero, in looking at  
23 Exhibit 158, I have discovered that a -- one page of  
24 the documents which lists the references, it's page 15  
25 in the original newsletter, has been omitted. I would

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01 ask, with the concurrence of the parties, that this  
02 page be copied and attached to each one of the  
03 exhibits, and I will provide the copies tomorrow.

04 MR. DODGE: That's fine.

05 HEARING OFFICER DEL PIERO: Fine.

06 Ms. Scoonover?

07 MS. SCOONOVER: No objection.

08 HEARING OFFICER DEL PIERO: Ms. Cahill?

09 MS. CAHILL: No questions -- no objection.

10 MR. DODGE: No objection.

11 Q. BY MR. BIRMINGHAM: Now, Mr. Vorster, Mr. Dodge,  
12 in looking at the goals of this management plan that  
13 you've described in your rebuttal testimony, asked you  
14 about the goal of achieving air quality compliance with  
15 the EPA schedule described in the December 16th, 1993,  
16 letter from David Calkins to Ellen Hardeback.

17 Do you remember him asking you that question?

18 A. BY MR. VORSTER: Yes.

19 Q. And he asked you, in fact, whether the Six-Point  
20 Plan and the compromise plan described in L.A. DWP  
21 Exhibit 158, if you were aware of the need to set a  
22 lake level at 6392 or thereabouts to achieve  
23 compliance.

24 Do you remember him asking you questions relating  
25 to that subject?

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01 A. Yes.

02 Q. And you said you were not?

03 A. That's correct.

04 Q. And, in fact, when you were responding to his  
05 question, you used the term "we" meaning the Mono Lake

06 Committee; isn't that right?

07 A. We, myself and Martha Davis and other people who  
08 worked on developing the management plan.

09 Q. Now, when you were developing the Six-Point Plan  
10 that's contained in DWP Exhibits 156 and 157, it's  
11 correct, isn't it, that the Mono Lake Committee was  
12 aware of the exceedences of the Air Quality Standards  
13 that occurred in the Mono Basin?

14 A. I think so, yes.

15 Q. In fact, that was the subject of the extensive  
16 testimony during the Mono Lake preliminary injunction  
17 proceeding before Judge Finney in 1991; isn't that  
18 correct?

19 A. That's correct.

20 Q. And at the time the Six-Point Plan was prepared,  
21 the Mono Lake Committee was aware that at the elevation  
22 below 6390 feet, there would be exceedences of the  
23 Federal Air Quality Standard?

24 A. I don't think they had that specific awareness,  
25 no. I don't know exactly what they were aware of, but

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01 we did not have the benefit of the modeling that's been  
02 done since 1990.

03 Q. At the time, you had the benefit of all the air  
04 quality monitoring data that had been collected by the  
05 Great Basin Unified Air Pollution Control District;  
06 isn't that correct?

07 A. I would assume that I was not involved extensively  
08 in the air quality testimony.

09 Q. And were you involved in the discussions with  
10 Dr. Thomas Cahill concerning the effective lake level  
11 and air quality in 1989?

12 A. At times I was involved with discussions, but not  
13 all the time.

14 Q. And isn't it correct that in 1989, Dr. Cahill  
15 informed the Mono Lake Committee that at elevations  
16 below 6390, there would be exceedences of the Federal  
17 Air Quality Standard?

18 A. I can't recall that, whether that recommendation  
19 or that observation was made by Dr. Cahill.

20 Q. I'd like to ask you a question about these goals  
21 in response to a question that I asked you earlier.  
22 You said that the Mono Lake Committee, your client, and  
23 the consultant gave you these goals; is that correct?

24 A. That's correct, the attorneys for the Mono Lake  
25 Committee and National Audubon Society.

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01 Q. Now, isn't it also correct that they specified the  
02 lake level required to achieve these goals?

03 A. That's correct.

04 Q. The lake level wasn't the lake level that you  
05 selected. It was provided by the attorneys --

06 A. That's correct.

07 Q. -- for the Mono Lake Committee?

08 A. Yeah, that's correct.

09 Q. Now, Mr. --

10 MR. DODGE: We'll stipulate for once Mr. Vorster  
11 carried out instructions.

12 Q. BY MR. BIRMINGHAM: Now, Mr. Vorster --

13 HEARING OFFICER DEL PIERO: Do you want to agree

14 with that stipulation, Mr. Birmingham?

15 MR. BIRMINGHAM: I couldn't agree with it, because  
16 I don't know what the instructions were.

17 Q. BY MR. BIRMINGHAM: Mr. Vorster, Mr. Dodge asked  
18 you a question about the flows necessary to keep the  
19 fish in good condition, and you said at the time the  
20 Six-Point Plan was developed, you didn't, you, the Mono  
21 Lake Committee, didn't have the Rush Creek IFIM report,  
22 and you didn't have the Lee Vining Creek IFIM report.

23 Do you recall saying that in response to  
24 Mr. Dodge's question?

25 A. BY MR. VORSTER: I think I said we didn't have  
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01 available all the IFIM reports. The Six-Point Plan was  
02 first articulated -- and I'm really going to be  
03 stretching my memory -- I think in 1988, '89, '90,  
04 sometime in that period of time. And so at some point  
05 during that time, we got a draft Rush Creek IFIM report  
06 but, obviously, we did not have the other IFIM reports.

07 Q. It is correct that in 1991, the Mono Lake  
08 Committee was aware of the recommendations of the  
09 Department of Fish and Game for minimum flows in Rush  
10 Creek?

11 A. That's correct.

12 Q. And, in fact, the court ordered flows that were  
13 being advocated as part of the Six-Point Plan were less  
14 than the flows recommended by the Department of Fish  
15 and Game?

16 A. That's correct.

17 Q. Now, with respect to Lee Vining Creek. In 1991,  
18 the Mono Lake Committee was aware of preliminary  
19 recommendations of the Department of Fish and Game for  
20 flows in Lee Vining Creek; isn't that correct?

21 A. No. I don't think that's correct.

22 Q. Is it your understanding that the Department of  
23 Fish and Game made proposed recommended flows for Lee  
24 Vining Creek during the interim stream flow hearing  
25 before Judge Finney in 1991?

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01 MS. CAHILL: Objection. Needs to be clarified  
02 whether these were interim or permanent flows.

03 HEARING OFFICER DEL PIERO: The question was  
04 interim flows.

05 Mr. Vorster, do you know the answer?

06 MR. VORSTER: I can't recall what the Department  
07 of Fish and Game recommended.

08 HEARING OFFICER DEL PIERO: Okay.

09 Q. BY MR. BIRMINGHAM: I'd like to go back to the  
10 questions about LAAMP overestimating inflow to Mono  
11 Lake.

12 Mr. Roos-Collins asked you some questions on this  
13 subject, and Mr. Dodge asked you a question about the  
14 remedy, if in 15 years, we discover that you were  
15 correct, that LAAMP does overestimate the flows to  
16 maintain the inflow of water to Mono Lake.

17 Do you recall those questions by Mr. Roos-Collins  
18 and by Mr. Dodge?

19 A. Yes.

20 Q. I'm going to ask you the same question, but I'm  
21 going to phrase it a little differently. I'm going to

22 ask you to assume that you are correct, that LAAMP does  
23 overestimate the inflow to Mono Lake. And I'm going to  
24 ask you to assume that a lake level of 6385 feet has  
25 been established by this Board.

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01 Now, isn't it correct, Mr. Vorster, that the flows  
02 necessary to maintain a lake level at 6385 will have to  
03 be increased in order to maintain the lake at that  
04 level, if you are correct, that LAAMP overestimates  
05 inflow to Mono Lake?

06 A. That's correct. The releases from the DWP  
07 diversions facilities.

08 Q. Now, Mr. Roos-Collins asked you a question about  
09 whether or not, in your opinion, the projection of  
10 exports under LAAMP were too low or too high. That's  
11 my statement of his question, not his. But you recall  
12 him asking you a question on that subject; is that  
13 correct?

14 A. That's correct.

15 Q. Now, I'd like to follow up on that a little bit.  
16 You stated that you thought the projections probably  
17 were a little bit low because the operators will adjust  
18 the conditions; is that correct?

19 A. That's correct.

20 Q. So your statement of your opinion is based upon  
21 the operators of the aqueduct system making adjustments  
22 to their operation of the system; is that correct?

23 A. Well, that's correct, and the foresight that they  
24 would have that the models don't have, that they would  
25 have the benefit of the six-month foresight.

0141

01 Q. If we restrict your opinion strictly to LAAMP, to  
02 your analysis of LAAMP, isn't it correct, Mr. Vorster,  
03 that in your opinion, LAAMP overestimates the amount of  
04 water that can be exported under different lake level  
05 alternatives?

06 A. If I were to run the lake level alternatives  
07 through my water balance model, which is not a monthly  
08 simulation model, it's just an annual water balance  
09 model for the Mono Basin, I would show that to maintain  
10 a given lake level it would require more releases from  
11 the streams that DWP controls, and therefore, somewhat  
12 less export.

13 Q. Then in response to my question, the answer is  
14 yes?

15 A. Yes, if comparing it to my model. I'm not saying  
16 my model is correct or LAAMP is incorrect, I'm just  
17 saying in comparison.

18 Q. We talked about that earlier, and I'll clarify my  
19 question by asking you to assume that the original  
20 opinion you expressed about overestimation of LAAMP is  
21 correct. Your answer to my question would be yes?

22 A. Yes.

23 MR. BIRMINGHAM: I have no further questions.

24 HEARING OFFICER DEL PIERO: Thank you very much,  
25 Mr. Birmingham.

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01 Ms. Cahill?

02 MS. CAHILL: Can I have just a moment?

03 HEARING OFFICER DEL PIERO: Certainly.

04 MS. CAHILL: We have no questions at this time.  
05 HEARING OFFICER DEL PIERO: Thank you.

06 Mr. Roos-Collins?

07 RE-CROSS EXAMINATION BY MR. ROOS-COLLINS

08 Q. Good evening, Mr. Vorster.

09 A. BY MR. VORSTER: It's now evening.

10 Q. Your written rebuttal testimony, paragraph 6,  
11 states that, "LAAMP's monthly results should be used  
12 with caution." Is that correct?

13 A. That's correct.

14 Q. And in response to a question by Mr. Dodge on  
15 redirect examination, you said that LAAMP is not a  
16 "be-all and end-all." Is that also correct?

17 A. That's correct.

18 Q. Assuming that this Board does amend the City of  
19 Los Angeles' licenses by August of 1994, and assuming  
20 as well that LAAMP is not revised between now and then  
21 to make it perfect, do you have any recommendations for  
22 this Board how to hedge against the deficiencies you've  
23 identified in LAAMP?

24 A. Let me preface my answer in saying the  
25 deficiencies are relative to my model. And again, I

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01 want to emphasize, I'm not saying LAAMP is wrong or my  
02 model is correct. It's just relative to my model. It  
03 indicates greater inflow.

04 One thing that could be done is to use other  
05 models, such as my model, in trying to see what the  
06 exports would be using my model with the different lake  
07 level alternatives. It would give you, perhaps, a  
08 floor, and then LAAMP would be a range of exports that  
09 would be allowed for a given lake level alternative.  
10 That would be one -- if we had the luxury of time and  
11 money to do something like that.

12 I think that LAAMP right now has gone through a  
13 tremendous amount of review and scrutiny and has been  
14 shown to be quite an adequate tool, a very good tool,  
15 to use to simulate what might happen, predict what  
16 might happen, what the exports could be.

17 I think every person who has come up here to talk  
18 about that model and the models in general have said,  
19 "Models have uncertainty. But it is -- for the inputs  
20 that we put in, it's giving us results that we think  
21 can be used as a guideline for what we think the  
22 exports will be."

23 And I think it's a totally appropriate tool to use  
24 at this time, with the understanding that there is a  
25 range, a range of exports that would be allowed or a

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01 range of releases that would be required to maintain a  
02 given lake level.

03 Q. Let's assume that this Board established a lake  
04 level target to be met in a certain number of years.

05 Do you have a recommendation for this Board as to  
06 how it would interpret LAAMP results in setting the  
07 flow regime to achieve that lake level target?

08 A. Yes. It would -- first you have to understand  
09 that the hydrology that you use as an input is just one  
10 of many possibilities that obviously will occur in the  
11 future, and that we could make LAAMP results even more



12 sophisticated in terms of we could have synthetic  
13 hydrology as an input. And that would be the next step  
14 to give a probability of achieving a lake level in a  
15 given time period based upon what we call synthetic  
16 sequences. That would be the next step in getting more  
17 use out of LAAMP.

18 So it would not -- you would not want to use --  
19 say that the output from LAAMP for any given input is  
20 what is going to be expected in under all conditions.  
21 I think, obviously, we all know it depends on what the  
22 hydrology will be. But we can have a better feel if we  
23 did, for example, use synthetic sequences,  
24 probabilistic view.

25 Q. Mr. Vorster, I have understood all of your answers  
0145

01 to my questions today up until that one.

02 A. Okay.

03 Q. Let me try again.

04 A. Okay.

05 Q. Again, let's assume the Board desires to achieve a  
06 lake level target in a certain number of years. Let's  
07 also assume that LAAMP shows that a flow of X  
08 cubic-feet per second will achieve that lake level  
09 target.

10 Are you recommending that this Board establish a  
11 flow regime of X cubic-feet per second plus some  
12 increment, given the tendency of LAAMP to overestimate  
13 inflow into Mono Lake?

14 A. No, not at this time. Because, again, LAAMP is  
15 the tool that we've agreed to use with the  
16 understanding that the -- in achieving that target,  
17 dependent upon hydrology, and we are relying upon a  
18 model that is not perfect, that would not be my  
19 recommendation.

20 We have the tool. We will have to adjust it in  
21 the future. There's no question we will have to adjust  
22 our understanding, our predictions, as time goes on,  
23 and we have the provisions for doing that.

24 Q. Let me pursue a different subject; namely, the  
25 opportunities to increase the yield of the aqueduct to  
0146

01 offset the reduction in Mono Basin export addressed on  
02 page 10 of your written testimony.

03 Are these opportunities captured in LAAMP version  
04 3.3a?

05 MR. DODGE: Objection. Beyond the scope of any  
06 examination. He's reopening.

07 HEARING OFFICER DEL PIERO: You want to read the  
08 question back to me again, please?

09 (Whereupon the record was read as requested.)

10 HEARING OFFICER DEL PIERO: Overruled.

11 Do you understand the question, Mr. Vorster?

12 MR. VORSTER: Yes, I do. Not directly.

13 HEARING OFFICER DEL PIERO: Answer, please.

14 MR. VORSTER: Not directly. Indirectly, we can  
15 use LAAMP to suggest how -- for example, we can  
16 manipulate LAAMP and assume storages for Crowley Lake  
17 Reservoir, the storage range, to see what additional  
18 storage would do for the yield of the aqueduct system.

19 But none of these were directly part of LAAMP as

20 it currently stands. But we can use LAAMP to examine  
21 some of these opportunities.

22 Q. BY MR. ROOS-COLLINS: Your Table 2-A estimates  
23 aqueduct exports. In developing your aqueduct export  
24 estimates, did you incorporate any of the opportunities  
25 addressed in paragraph 18 of your written rebuttal

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01 testimony?

02 A. BY MR. VORSTER: No.

03 Q. One final line of inquiry. Mr. Dodge interposed,  
04 during Mr. Birmingham's recross examination, that for  
05 once, you had followed instructions.

06 Have you always followed my instructions when  
07 you've worked as Cal Trout's consultant?

08 A. To the best of my ability, yes. Yes, I have.

09 MR. ROOS-COLLINS: Thank you. No further  
10 questions.

11 HEARING OFFICER DEL PIERO: I assume Mr. Dodge,  
12 you feel the first answer was the more characteristic  
13 one?

14 MR. ROOS-COLLINS: I think this goes to show that  
15 my instructions are clearer.

16 MR. DODGE: They're probably much, much more  
17 reasonable.

18 HEARING OFFICER DEL PIERO: Ms. Scoonover?

19 MS. SCOONOVER: I have just a few questions,  
20 Mr. Vorster.

21 CROSS-EXAMINATION BY MS. SCOONOVER

22 Q. In 1989, were you aware of the significance of  
23 still water coves and hypopycnal conditions around  
24 shoreland marshes to waterfowl population in Mono Lake?

25 A. BY MR. VORSTER: No.

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01 Q. In 1989, were you aware of Dr. Stine's current  
02 drought projections for Mono Lake?

03 A. No.

04 Q. In 1989, did you have the results of Great Basin  
05 Unified Air Pollution Control District's air quality  
06 monitoring for Mono Lake?

07 A. We didn't -- we have the --

08 Q. Excuse me. Let me clarify. Do you have the model  
09 results of the Great Basin Unified Air Pollution  
10 Control District's air quality monitoring data for Mono  
11 Lake?

12 A. We did not have the model results, no.

13 MS. SCOONOVER: Thank you. That's all.

14 HEARING OFFICER DEL PIERO: Mr. Frink?

15 MR. FRINK: Yes. One question.

16 RE-CROSS EXAMINATION BY THE STAFF

17 Q. BY MR. FRINK: Mr. Vorster, my understanding of  
18 your earlier testimony is that your water balance model  
19 predicts that a greater quantity of inflow to Mono Lake  
20 is required to achieve a given water level than is  
21 predicted by the LAAMP model.

22 Do you know what the main reason is for the  
23 difference between the predictions of your model and  
24 the predictions of LAAMP model with regard to the  
25 amount of inflow on Mono Lake required to achieve a

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01 given water elevation?

02 A. BY MR. VORSTER: I've thought about it several  
03 months ago when I had discussions with Dr. Brown. And  
04 before I answer that question, I want to make sure it's  
05 clear it's for a given level of releases from the DWP  
06 facility.

07 Obviously, I think that if we had the same inflow,  
08 our models would say the lake level is the same. I  
09 just want to clarify that point: It's for a given  
10 level of releases from the aqueduct controlled streams.

11 Now, to answer your question about the  
12 differences, I, in my water balance model, attempted to  
13 directly estimate all of the water balance components  
14 that are in the Mono Basin. And so that would include  
15 components such as the evaporation from the exposed  
16 playa, evaporation from the riparian vegetation and  
17 wetlands, and things like that. I have outflows like  
18 that.

19 The LAAMP model, as well as, I think, LAASM are  
20 both based on projecting Mono Lake levels using  
21 regression equations, not directly estimating the  
22 individual water balance components. And to the extent  
23 that the regression equations can incorporate those  
24 outflows into kind of a lump-sum term or some factor,  
25 there would be some similarity.

0150  
01 But there's just a difference in approach of the  
02 two models, and I -- you know, I think I just have more  
03 outflows.

04 And I have generally the same inflow. We use the  
05 aqueduct runoff, the same runoff base. I directly  
06 estimated the ungauged runoff from a different portion  
07 of the basin. LAAMP does that indirectly through this  
08 regression equation.

09 Q. In stating that you believe you have more outflow  
10 in your model, is the source of that outflow  
11 evaporation?

12 A. Yes. Evaporation, and then there's outflow in my  
13 model from the export of the groundwater that goes into  
14 the tunnel.

15 Q. Okay.

16 A. That's not directly modeled by LAAMP. Again, as  
17 we both calibrate our models off of what the actual  
18 lake level fluctuations were, and we both are fairly  
19 similar. Although, I want to point out that LAAMP is a  
20 monthly water balance. Mine is an annual water balance  
21 model.

22 MR. FRINK: I think that's all.

23 HEARING OFFICER DEL PIERO: Mr. Satkowski?

24 MR. SATKOWSKI: No questions.

25 HEARING OFFICER DEL PIERO: Mr. Smith?

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01 MR. SMITH: I have one question, Mr. Del Piero.

02 Q. BY MR. SMITH: Mr. Vorster, thank you for your  
03 testimony.

04 On a follow-up question to Mr. Frink, just a brief  
05 question. Do you think that there would be a way which  
06 you could generally improve LAAMP to take into account  
07 these further outflows by, perhaps, inputting some  
08 historical data, or do you think it would be worth it?

09 A. BY MR. VORSTER: Over the long haul, sure. I hope

10 we can continually improve LAAMP if it's going to be  
11 used as a tool by the Water Board.

12 In the time frame we're talking about, the next  
13 couple weeks before the hearing record closes, no. I  
14 think it's -- the approach that was used in LAAMP to  
15 predict lake levels is a hydrologically valid  
16 approach. For the purposes that it was -- we had to  
17 develop some kind of predictive tool to make monthly  
18 lake level predictions. We do not have the data to do  
19 the same kind of estimates or computations I did in my  
20 water balance model. That's why I didn't develop a  
21 water balance.

22 We didn't have accurate estimates of each of the  
23 terms, so that's why LAAMP took the tack it did, using  
24 regression equations. I think it's a valid approach.  
25 And as we get more information and as we have an

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01 opportunity to refine it, I think we should look into  
02 it some more.

03 MR. SMITH: Thank you.

04 HEARING OFFICER DEL PIERO: Mr. Herrera?

05 MR. HERRERA: I have no questions.

06 HEARING OFFICER DEL PIERO: Mr. Canaday?

07 MR. CANADAY: No.

08 HEARING OFFICER DEL PIERO: Mr. Dodge?

09 MR. DODGE: I don't have another opportunity.

10 HEARING OFFICER DEL PIERO: I know. Are we done  
11 with him?

12 MR. DODGE: Yes.

13 HEARING OFFICER DEL PIERO: Thank you,  
14 Mr. Vorster.

15 Gee, it's ten to seven.

16 MR. ROOS-COLLINS: Mr. Del Piero, before  
17 Mr. Vorster escapes too far from the witness table, let  
18 me remind you and all parties that I reserve discussion  
19 of Mr. Vorster's direct testimony on pre-1941 flow  
20 regime until a subsequent date which will be his next  
21 appearance now scheduled for February 9th.

22 HEARING OFFICER DEL PIERO: Yes, I recall. You'll  
23 be back with us again, Peter.

24 MR. VORSTER: More than once again, I think.

25 HEARING OFFICER DEL PIERO: Okay.

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01 Mr. Canaday?

02 MR. CANADAY: So that we can try to develop a  
03 better schedule, I would appreciate if the counsels for  
04 the various parties could have for me tomorrow morning  
05 a list of the witnesses they do intend to call and the  
06 subject areas in which they intend to have those  
07 witnesses testify, so that I may try to develop a  
08 schedule as we're meeting tomorrow.

09 HEARING OFFICER DEL PIERO: Let me help you,  
10 Mr. Canaday.

11 You will have that information available for him  
12 tomorrow.

13 MR. DODGE: Could I have until Monday,  
14 Mr. Del Piero?

15 HEARING OFFICER DEL PIERO: You're going to be  
16 gone. That's right. Yes. You can have until Monday.

17 Anyone else, unless you're getting on a plane at

18 6:30 tomorrow morning, I want it by tomorrow afternoon.  
19 What else do you have, Mr. Canaday?  
20 MR. CANADAY: Just that I'll secure this room,  
21 and I'll see everyone tomorrow morning at 8:30.  
22 (Whereupon the proceedings were  
23 adjourned at 7:00 p.m.)  
24 ---o0o---  
25

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01 REPORTER'S CERTIFICATE

01  
02 ---o0o---

02  
03 STATE OF CALIFORNIA )  
03 ) ss.  
04 COUNTY OF SACRAMENTO )  
04

05 I, KIMBERLEY R. MUELLER, certify that I was the  
06 official court reporter for the proceedings named  
07 herein; and that as such reporter, I reported, in  
08 verbatim shorthand writing, those proceedings, that I  
09 thereafter caused my shorthand writing to be reduced to  
10 typewriting, and the pages numbered 1 through 153  
11 herein constitute a complete, true and correct record  
12 of the proceedings:  
13

14 PRESIDING OFFICER: Marc Del Piero  
15 JURISDICTION: State Water Resources Control Board  
16 CAUSE: Mono Lake Diversions  
17 DATE OF PROCEEDINGS: February 3, 1994  
18

19 IN WITNESS WHEREOF, I have subscribed this  
20 certificate at Sacramento, California, on this 17th day  
21 of February, 1994.  
22

23  
24  
24 \_\_\_\_\_  
24 Kimberley R. Mueller  
25 CSR No. 10060  
25