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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 THAT ARE
10 TRIBUTARY TO MONO LAKE

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

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18 VOLUME XVII

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24 Reported by: Kelsey Davenport Anglin, RPR,
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LEE VINING, CALIFORNIA

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

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

09 to Mono Lake.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 THE WITNESSES: I do.

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

13 Mr. Flinn, please begin.

14 DIRECT EXAMINATION BY MR. FLINN

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

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

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

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

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

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

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

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

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

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

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

24 A We used to have one horse that every time the dust
25 would blow, she would cough, and I have always found
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01 horses will cough. Clear days and everything else, she
02 was fine, but she sounded like someone with
03 tuberculosis. A heavy hacking cough. You feel sorry
04 for the animals because they're right out in it.
05 There's nothing you can do. There's nowhere to hide
06 them.

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

08 A I have four dogs.

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

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

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

17 MR. FLINN: I'll move on.

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

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

22 Q BY MR. FLINN: When was that?

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

25 Q Could -- Mr. Simis, could you describe how the
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01 dust storms have affected your willingness to continue
02 to live out there, and the attractiveness of your house
03 as a place to live given the dust storms?

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

14 MR. FLINN: I have no further questions.

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

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

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01 Q I'd like to refer you to the first page of your
02 testimony. Am I incorrect in reading the first page of
03 your testimony that, "I moved to the Mono Basin in
04 1978"?
05 MR. FLINN: If you continue to read the whole
06 sentence in context, it makes that clear.
07 MR. BIRMINGHAM: Is that an objection, Mr. Flinn?
08 MR. FLINN: It is, if -- there's a very standard
09 rule that if you're going show a witness some prior
10 testimony, you're allowed to have the time to read --
11 the entire context of the testimony read.
12 HEARING OFFICER DEL PIERO: Do you want to object,
13 Mr. Flinn?
14 MR. FLINN: I do object. I'd like the entire
15 context read.
16 HEARING OFFICER DEL PIERO: Any comments,
17 Mr. Birmingham? No? Are you going to withdraw the
18 question, or do you want me to rule?
19 MR. BIRMINGHAM: You can go ahead and rule.
20 HEARING OFFICER DEL PIERO: I'll sustain the
21 objection.
22 Q BY MR. BIRMINGHAM: Mr. Denny, I'm looking at the

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

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

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

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

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

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

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

18 A Whatever it subtracts out to, yes.

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

21 A Yes.

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

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

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

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

05 A No.

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

08 A No.

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

11 A No.

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

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

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

20 A Somewhat.

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

23 A No. It's fog.

24 Q Except for those three or four months that you
25 describe, you say that there isn't anything that you
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01 can't see from your place, the Sierras, the White
02 Mountains, the Bodie Hills, Mono Lake, and the Nevada
03 country; is that correct?

04 A Yes, it is.

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

09 A Yes.

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

12 A No. No way.

13 Q You would not be interested in selling it?

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

16 Are you offering to buy?

17 Q Pardon me?

18 A Are you offering to buy?

19 (Laughter.)

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

22 (Laughter.)

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

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

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

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

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

21 HEARING OFFICER DEL PIERO: Mr. Birmingham?

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

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01 answer this hypothetical question.

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

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

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

12 A Yes, it is.

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

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

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

03 A From outside the high school, that's correct.
04 Q Your testimony indicates that you moved to what is
05 now known as the Simis Ranch in 1972?
06 A That's correct.
07 Q And then your testimony indicates that the dust
08 storms began to occur in the late seventies. Is that
09 correct?
10 A That would be to my nearest recollection, that
11 would be correct.
12 Q I'm referring to Paragraph 6 of your testimony.
13 It says, "I first started noticing dust storms in the
14 late seventies." Is that right?
15 A That would be --
16 MR. FLINN: Can you give us the paragraph?
17 MR. BIRMINGHAM: Paragraph 6, Mr. Simis.
18 MR. SIMIS: That's correct.
19 Q BY MR. BIRMINGHAM: So prior to the late seventies,
20 you did not notice dust storms?
21 A Well, I was -- I was not aware of them. That's
22 correct.
23 MR. BIRMINGHAM: That concludes my
24 cross-examination.
25 HEARING OFFICER DEL PIERO: Thank you very much.
0028
01 Ms. Cahill?
02 MS. CAHILL: No questions.
03 HEARING OFFICER DEL PIERO: Mr. Roos-Collins, we
04 already figured out you have no questions?
05 MR. ROOS-COLLINS: No questions.
06 HEARING OFFICER DEL PIERO: Is Mr. Haselton here?
07 Do we have any other parties here that wish to
08 cross-examine before the State Board Staff begins?
09 Good.
10 Mr. Frink?
11 MR. FRINK: Just a few, please.
12 CROSS-EXAMINATION BY THE STAFF
13 Q BY MR. FRINK: I'm Dan Frink. I'm a staff attorney
14 with the State Water Board. The questions I have, any
15 of you are free to answer.
16 I wondered if you can give us an approximate
17 estimate of the number of people who do live in the
18 north shore area, the area that you believe is
19 frequently affected as a result of the dust storms?
20 A BY MR. DENNY: I would say it's probably -- I don't
21 know how many people, there's probably 10 to 12
22 families that live out there, houses that are permanent
23 on/off residences, also. That's just kind of a -- a
24 ballpark. We could sit down and pencil it out and get
25 real exact, if that's what you're asking.
0029
01 Q Do any of those households have children, do you
02 know?
03 A I don't think so.
04 Q Are there any lodging establishments, motels,
05 hotels?
06 A Oh, no.
07 MR. FRINK: I don't have any other questions.
08 Other staff?
09 HEARING OFFICER DEL PIERO: Mr. Smith?
10 Q BY MR. SMITH: I have just one question.

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

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

08 MR. SMITH: Thank you.

09 HEARING OFFICER DEL PIERO: Mr. Herrera.

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

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

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

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

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

22 Mr. Canaday?

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

0031

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

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

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

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

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

0034

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

03 RE-CROSS EXAMINATION BY MR. BIRMINGHAM

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

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

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

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

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

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

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

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

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

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

13 A That's correct.

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

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

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

25 HEARING OFFICER DEL PIERO: Thank you very much,

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01 Mr. Birmingham.

02 Mr. Roos-Collins?

03 MR. ROOS-COLLINS: No questions.

04 HEARING OFFICER DEL PIERO: Ms. Cahill?

05 MS. CAHILL: No questions.

06 HEARING OFFICER DEL PIERO: Mr. Frink?

07 MR. FRINK: No questions.

08 HEARING OFFICER DEL PIERO: Mr. Smith?

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

0037

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

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

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

25

(Laughter.)

0041

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

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

11 A BY MR. KELLOGG: Yes.

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

14 A Yes.

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

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

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

22 THE WITNESSES: I do.

23 HEARING OFFICER DEL PIERO: Please be seated.

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

0042

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

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

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

08 A Yes, it is.

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

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

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

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

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

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

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

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

0043

01 A Yes, it is accurate.

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

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

06 Q And if you would look at National Audubon Society

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

10 A It is.

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

15 A You want me to read the whole testimony?

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

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

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

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

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

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

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

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

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

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

08 Q What part of the creek specifically, Sir?

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

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

15 Committee Exhibit 36, which is one of the photographs.
16 It should be at your table.
17 MR. BIRMINGHAM: Excuse me, Mr. Dodge. May I have
18 a moment to find that?
19 MR. DODGE: Surely.
20 MR. BIRMINGHAM: 36?
21 I apologize, Mr. Del Piero. My photos were put
22 into a three-ring binder and one of the holes for one
23 of the rings unfortunately was put through the number
24 of each exhibit.
25 HEARING OFFICER DEL PIERO: I'll tell you what,
0046
01 Mr. Birmingham. We have another copy here, and we'll
02 be happy to provide you with that so --
03 MR. BIRMINGHAM: Thank you very much, and I
04 apologize.
05 HEARING OFFICER DEL PIERO: You don't have to
06 apologize, Sir. Okay?
07 Q BY MR. DODGE: Mr. Kellogg, can you tell us what's
08 depicted in Exhibit 36?
09 A BY MR. KELLOGG: Looks like there's quite a lot of
10 Phalaropes in the water and Tufa towers in the 36
11 picture.
12 Q Is that something that you saw historically here
13 at Mono Lake?
14 A Phalaropes?
15 Q Yeah.
16 A Yes. Uh-huh. There was lots of Phalaropes
17 earlier.
18 Q Where?
19 A All over the lake, didn't matter. But they were
20 mostly by the springs, you know? You would see a
21 congestion of bird life around the spring like you do
22 even nowadays. You know? But early in the 1950s,
23 there wasn't very much of this Tufa tower showing, was
24 there, like in 36? Do you remember that?
25 Q Let me ask you to take a look at Exhibit 39, Sir.
0047
01 What's depicted there?
02 A That looks like an Indian lady that was down at
03 the beach, and she's collecting the larva off of the
04 flies.
05 Q Now, can you tell us, if you can, the extent to
06 which the fly larva, in terms of their density and
07 numbers, have decreased since the forties and fifties?
08 A I thought that there was more of the fly larva.
09 When I say that, with the flies, that they covered a
10 wider area on the shore, when you would walk through
11 them and stuff, that there would be more of them in the
12 forties or the fifties. I don't know about the
13 forties, but just the fifties, sixties.
14 Q How about fishing in Rush and Lee Vining Creek,
15 Sir? Did you have any experience in that?
16 A Yes, uh-huh. And the fishing was good in Rush
17 Creek and Lee Vining Creek.
18 Q Can you give the Board anymore details when you
19 say it was "good," in terms of number of fish or size
20 of fish?
21 A You could catch -- in Lee Vining Creek, you could
22 catch probably brown trout up to about 14, 15 inches

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

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

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

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

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

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

17 A Yes.

18 Q What does that depict?

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

0052 Q That's Exhibit 51?

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

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

08 A This 32 is a picture --

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

10 A All right.

11 Q And 35, excuse me.

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

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

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

20 Q 34 and 35?

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

0053

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

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

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

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

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

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

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

0054

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

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

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

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

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

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

14 MS. BLAVER: Pardon me?

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

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

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

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

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

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

07 Exhibits 12 and 14 --

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

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

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

13 HEARING OFFICER DEL PIERO: Granted.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Q Thank you very much, Ms. Blaver.

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

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

0058

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

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

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

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

0059

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

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

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

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

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

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

0060

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

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

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

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

0061

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

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

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

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

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

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

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

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

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

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

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

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

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

02 HEARING OFFICER DEL PIERO: Thank you very much.

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

07 MR. HESS: 37?

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

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

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

13 MR. HESS: What?

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

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

18 HEARING OFFICER DEL PIERO: Yes, Sir.

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

21 HEARING OFFICER DEL PIERO: And the aspen?

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

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

0064

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

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

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

25 those ponds?

0071

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

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

07 A What? When did I stop?

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

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

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

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

18 Q Rush Creek.

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

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

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

0072

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

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

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

09 A I think so, yes.

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

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

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

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

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

0073

01 A BY MR. HESS: Yes.

02 A BY MS. BLAVER: Yes.

03 Q You were small children?

04 A BY MR. HESS: Yes.

05 A BY MS. BLAVER: Yes.

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

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

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

21 Is that correct, Mr. Hess?

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

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

24 A What year is this now?

25 Q 1924.

0076

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

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

12 Now, did I accurately read that paragraph?

13 A Yeah.

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

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

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

25 HEARING OFFICER DEL PIERO: Thank you.

0077

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

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

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

08 A Oh --

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

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

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

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

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

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

05 used to be, yes.

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

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

10 Ms. Cahill?

11 MR. THOMAS: Mr. Thomas.

12 HEARING OFFICER DEL PIERO: Mr. Thomas?

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

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

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

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

23 CROSS-EXAMINATION BY MR. THOMAS

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

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

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

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

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

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

24 Q Did you follow the creek?

25 A Yes.

0082

01 Q Real close?

02 A Follow the creek right down.

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

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

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

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

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

11 A Would you say big?

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

13 Creek?
14 A Yes. Um-hum. The spoonbills were on the lake.
15 Q And why were these big ducks down on those little
16 meanders that you talk about?
17 MR. BIRMINGHAM: I'm going to object on the
18 grounds that it calls for an opinion that this witness
19 is not qualified to express.
20 HEARING OFFICER DEL PIERO: I'll sustain the
21 objection, but I think if you lay foundation, you can
22 get to where you want to go.
23 Q BY MR. THOMAS: Why would a hunter be interested in a
24 duck that was located down there on that little
25 meander?
0083
01 A For one thing, there was a lot of watercress
02 there, and the ducks like to stay there and feed there.
03 And there were pretty good-sized mallards all through
04 there there, yes, um-hum. That's why all the hunters
05 went there.
06 Q Would they just eat the watercress?
07 A Watercress, yes. That was good for them.
08 Q And they eat bugs?
09 A What?
10 Q Were there a lot of bugs around that watercress?
11 A Bugs? I don't know about that.
12 Q Did you see any when you were walking down there?
13 A I don't know. Might have been. I don't know.
14 But they went after the watercress and the roots of the
15 grass. Yes.
16 Q You've got to remember I'm not a hunter, so -- I
17 know what bugs are, mosquitoes and bugs along the
18 stream, but if these ducks are eating something out
19 there, you'd have to tell us.
20 MR. BIRMINGHAM: You knew enough, Mr. Thomas, to
21 identify mallards as the big duck. I don't think the
22 witness ever did, but you knew enough to do that.
23 HEARING OFFICER DEL PIERO: Gentlemen. Mr. Hess,
24 why don't you go ahead and finish telling us about what
25 the ducks ate. Okay? Please? Or I may have two
0084
01 attorneys for lunch.
02 MR. ROOS-COLLINS: Can I pick the second?
03 MR. HESS: They just like this watercress and the
04 grass that grew around there.
05 Q BY MR. THOMAS: And what does it mean to "jump
06 hunt"? Do the birds jump up in front of you?
07 A Yes. You go along the creek there with your gun
08 ready, and all of a sudden a flock will fly up, and you
09 try to get one. And everything will fly up, and you
10 don't know what to do. Everybody's excited. You
11 probably don't get any.
12 Q Did you get your limit these days?
13 A Sure. I used to get my limit. You bet.
14 Q Did you get your limit all the time? Ever go home
15 without a limit?
16 A Not all the time, no.
17 Q Most of the time?
18 A Quite a -- yeah, when I went hunting, yes, I
19 usually got a few. You bet.
20 Q Do you remember what the limit was back in those

21 days?

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

23 Q Was it what it is today?

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

25 (Laughter.)

0085

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

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

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

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

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

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

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

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

25 Q Did you get enough to stock your freezer for the
0086

01 winter?

02 A Huh?

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

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

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

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

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

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

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

15 A What?

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

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

20 Q Yeah. Right.

21 A The spring never froze up.

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

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

0087

01 were a lot of ducks in that area.

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

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

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

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

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

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

0092

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

0093

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

0094

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

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

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

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

0097

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

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

08 A Not that I can remember, no.

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

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

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

0098

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

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

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

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

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

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

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

25 A Um-hum. I can remember that.

0101

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

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

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

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

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

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

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

17 HEARING OFFICER DEL PIERO: Forgive me.

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

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

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

0102

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

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

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

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

12 A Um-hum. Yes.

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

16 A Yes, I did hear, yes.

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

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

25 Q They fished with worms as well?

0103

01 A Um-hum.

02 Q And they caught trout?

03 A Um-hum.

04 Q Did they have fun?

05 A Oh, yes, um-hum.

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

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

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

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

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

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

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

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

25 "An unexpected but timely variation in the program
0113

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

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

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

18 Let me start with you, Mr. Hess.

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

24 Q How so?

25 A Hum?

0114

01 Q How?

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

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

10 A Since when?

11 Q 1941 through early 1980s.

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

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

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

17 A Did I fish what?

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

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

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

0115

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

02 Q Thank you.

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

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

17 Q Thank you.

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

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

20 Q Shannon. Excuse me.

21 A I've only known him since yesterday.

22 (Laughter.)

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

25 MS. SHANNON: Yes.

0116

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

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

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

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

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

0117

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

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

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

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

23 MS. BLAVER: I liked it there because it was nice
24 for the children. There was a small beach, sandy
25 beach, and the lake -- didn't -- it was shallow, for
0122

01 one thing, and until you went out quite a ways and then
02 it would go down into the deeper water. We'd go there
03 often.

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

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

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

11 A Yes.

12 Q Did you ever travel on that?

13 A Yes, I did.

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

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

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

18 A Oh, yes.

19 A BY MR. HESS: Yes.

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

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

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

01 place?

02 A It was about August, I think.

03 Q Every year?

04 A Um-hum.

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

07 A I don't remember exactly the year.

08 Q Mr. Hess?

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

10 Q And did they take place every year?

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

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

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

19 Q In the lake?

20 A In the lake.

21 Q They have horse races --

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

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

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

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

18 A Yes, oh, yes.

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

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

0127

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

03 Q Do you remember when they stopped?

04 A What?

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

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

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

18 A Yeah.

19 Q Do you miss them?

20 A What?

21 Q Do you miss the Mark Twain days?

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

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

25 HEARING OFFICER DEL PIERO: Please proceed.

0128

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

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

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

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

12 A We had the Lee Vining Market.

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

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

25 out around Neggit, my husband had me go out on the bow
0131

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

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

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

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

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

24 CROSS-EXAMINATION BY MR. CARLE

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

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

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

09 A Yes.

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

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

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

0133
01 little dance to draw you away.

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

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

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

0136

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

0137

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

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

0138

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

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

17 A That's right.

18 MR. DODGE: I have no further questions.

19 HEARING OFFICER DEL PIERO: Thank you very much.

20 Mr. Dodge.

21 Mr. Birmingham?

22 RE-CROSS EXAMINATION BY MR. BIRMINGHAM

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

0139

01 correct?

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

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

06 A That's right.

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

09 A Yes, I would think it would be.

10 MR. BIRMINGHAM: I have no further questions.

11 HEARING OFFICER DEL PIERO: Thank you very much.

12 Mr. Roos-Collins? Ms. Cahill?

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

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

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

17 Go ahead, Mr. Dodge.

18 FURTHER REDIRECT EXAMINATION BY MR. DODGE

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

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

22 MR. DODGE: Thank you.

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

25 You're excused. Thank you very much.

0140

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

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

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

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

20 A BY MR. KELLOGG: Uh-huh.

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

23 A He came in 1945, too.

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

0143

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

02 Q Okay. Thank you.

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

05 A Yes, I did.

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

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

11 Q In Rush Creek?

12 A Rush Creek was very good fishing.

13 MR. SMITH: Thank you very much.

14 HEARING OFFICER DEL PIERO: Mr. Herrera?

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

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

01 earlier days?

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

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

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

09 Q What about geese? Would you --

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

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

19 A No, I didn't.

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

21 A You mean the -- you mean the ducks or --
22 Q The ducks or the geese?
23 A Go out on the lake you mean?
24 Q Yes.
25 A After you crippled them, you mean?

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

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

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

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

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

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

24 that you observed, were they local hunters? The

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

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

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

04 Q They were local hunters?

05 A Very few outsiders came in that particular time.

06 That was way back.

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

09 A Most of them.

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

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

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

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

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

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

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

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

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

11 I'm going to ask much the same questions. By the
12 way, did you two hunt together in your early days? You
13 weren't the one shooting his decoys case, were you?
14 (Laughter.)
15 MR. BIRMINGHAM: Those were the fellows from Los
16 Angeles, I'm sure.
17 HEARING OFFICER DEL PIERO: I want the record to
18 reflect that that was Mr. Birmingham who said that.
19 MR. BIRMINGHAM: Mr. Birmingham doesn't reside in
20 Los Angeles.
21 Q BY MR. HERRERA: Again, somewhat the same questions.
22 When you were hunting in the late forties and early
23 fifties, did you run into a number of hunters?
24 A BY MR. KELLOGG: Not a lot around Mono Lake, no.
25 Q Again, if you were to pick an area to go shoot
0150 ducks, where would you have gone?
02 A I usually hunted on the other side of Mono Lake.
03 You had to almost have a four-wheel drive to get on the
04 back side of Mono Lake towards Warm Springs and Simons
05 Springs. There wasn't a whole bunch of four-wheel
06 drives around the country, so it was a lot harder work
07 going out there because you'd get stuck, and you've
08 have to get dug out. And it was kind of hard to get
09 out there.
10 On this side of the lake, it was a lot easier and
11 there was quite a bit of game, ducks and geese, quite a
12 few of them on this side, too.
13 Q And you were pretty successful?
14 A Yes, uh-huh.
15 Q If you were going to select an area to go shoot
16 geese, where would you have selected?
17 A I probably hunted over here at the Thompson Ranch
18 and places like that more. Down by the Mono Lake Park
19 and over by Black Point, in that area, more so than the
20 other side. I did go over there, but it was a lot
21 easier going over here. But there was just as many
22 geese, I think, around DeChambeau Ponds and down below
23 the bluffs, by DeChambeau Ranch there. There was a lot
24 of springs at that time that used to come out between
25 the lake and the bluff there, and it was good over in
0151 that area, too, and duck hunting.
02 Q Mr. Hess had testified that there were spoonbills
03 or --
04 A Spoonbills. They called them shovelers, uh-huh.
05 Q And mallards that he'd experienced on Rush Creek.
06 Pretty much the same mix?
07 A Yes, uh-huh. We went down here -- we snuck down
08 on some shovelers one day, a friend of mine and I, and
09 we raised it -- we got down to where we were going to
10 shoot, and I said, "Okay. Let's go." We raised up and
11 shot, and when we got done shooting, we had 80 ducks.
12 It was a lot more than I wanted to pick. I didn't want
13 to shoot that many ducks. That was more than a gunny
14 sack full.
15 Q Yes. And I'm sure Fish and Game was aware of
16 that.
17 Did you, by any chance, as he read that little
18 article there, were you aware of any marketing of water

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

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

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

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

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

19 A Yes.

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

23 A Yes. That's true.

24 Q And you -- in your testimony, you talked about how
25 Rush Creek in the bottom lands had areas of deep water,
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01 four to five feet deep; is that correct?

02 A Yes.

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

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

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

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

15 Q Yes, Ma'am.

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

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

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

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

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

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

25 Q Okay. And do you recall where those ponds were?
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01 Were they near the lake edge, or were they back into
02 the bottom lands more and The Meadows?

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

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

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

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

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

17 questions, I think.

18 REDIRECT EXAMINATION BY MR. DODGE (Continued)

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

24 Do you remember that?

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

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

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

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

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

16 A Yes, um-hum.

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

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

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

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

03 Q You were ten years old then?

04 A Well, yeah. Somewhere along there.

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

07 A BY MR. KELLOGG: Yes.

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

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

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

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

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

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

25 explanatory.

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

05 A BY MR. HESS: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

07 probably knows more than I do.
08 When did the ditch quit running in front your
09 house? '52? '51? Yeah? It was running, you know,
10 for a long time. Maybe '53, huh? '4?

11 MR. DODGE: In the fifties. Okay. That's all I
12 have. Thank you.

13 HEARING OFFICER DEL PIERO: Thank you very much,
14 Mr. Dodge.

15 Mr. Birmingham?

16 RE-CROSS EXAMINATION BY MR. BIRMINGHAM (Continued)

17 Q My questions will be directed primarily to
18 Ms. Blaver and Mr. Hess. There were some questions
19 about Mark Twain days, and I believe it was your
20 testimony, Mr. Hess, that the Mark Twain days started
21 in -- in 1929. Is that correct? Could you lean
22 forward and speak into the microphone, Mr. Hess?

23 A BY MR. HESS: What's that?

24 Q Would you lean forward and speak in the
25 microphone?

0164

01 A Yes. I think Mark Twain did start in 1929.

02 Q Mark Twain days were named after Mark Twain, the
03 author of "Roughing It;" is that right?

04 A What's that?

05 Q Mark Twain days were named after Mark Twain the
06 author of "Roughing It"?

07 A That's right. That's him.

08 (Laughter.)

09 MR. DODGE: You got him on that one, Tom.

10 (Laughter.)

11 HEARING OFFICER DEL PIERO: Mr. Birmingham, if you
12 would like to assert that it was named after some other
13 Mark Twain, you need to lay a foundation.

14 MR. BIRMINGHAM: I just wanted to lay the
15 foundation for this. I'd like to read from "Roughing
16 It." Beauty is in the eye of the beholder.

17 Q BY MR. BIRMINGHAM: Mark Twain was here before L.A.
18 DWP began its diversions; isn't that right? I'm asking
19 you because I need the lay a foundation; is that
20 right?

21 A BY MR. HESS: That's right.

22 Q Have you read "Roughing It"?

23 A No.

24 Q I'll read from Chapter 38 of "Roughing It," which
25 is on Page 243. "Mono Lake lies in a lifeless,

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01 treeless, hideous desert 8,000 feet above the level of
02 the sea and is guarded by mountains 2,000 feet higher
03 whose summits are always clothed in clouds. This
04 solemn, silent sailless lake, this lonely tenant of the
05 loneliest spot on earth is little graced with the
06 picturesque."

07 Now, that's not something you would agree with, is
08 it?

09 A I don't agree with that.

10 Q But that's what Mark Twain apparently thought?

11 A That's his -- I think he was mad at the world when
12 he come in here.

13 (Laughter.)

14 MR. DODGE: Give Mark Twain credit. He had one

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

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

18 HEARING OFFICER DEL PIERO: Please,

19 Mr. Birmingham, proceed, please.

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

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

24 A What?

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

01 II?

02 A Yes.

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

05 A That's true.

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

08 A That's right.

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

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

15 Q Were there Tufa sticking up in 1948?

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

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

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

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

01 pretty high?

02 A Yeah.

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

07 (Laughter.)

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

09 (Laughter.)

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

12 HEARING OFFICER DEL PIERO: Thank you.

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

14 Mr. Thomas, do you have any questions?

15 MR. THOMAS: Yeah. A couple.

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

19 RECROSS EXAMINATION BY MR. THOMAS

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

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

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

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

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

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

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

0180

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

21 RECROSS EXAMINATION BY MS. VOLIN

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

0181

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

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

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

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

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

11 A Yeah.

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

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

24 A Yeah.

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

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

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

06 A Would I agree to it?

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

09 A I think, yeah, sure.

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

11 HEARING OFFICER DEL PIERO: Thank you very much.

12 Mr. Frink?

13 MR. FRINK: No questions.

14 HEARING OFFICER DEL PIERO: Mr. Smith?

15 MR. SMITH: No.

16 HEARING OFFICER DEL PIERO: Mr. Herrera?

17 MR. HERRERA: No.

18 HEARING OFFICER DEL PIERO: Mr. Canaday?

19 MR. CANADAY: One.

20 RE CROSS EXAMINATION BY THE STAFF

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

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

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

03 Q Mr. Hess, do you recall?

04 A BY MR. HESS: Yes.

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

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

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

0187

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

0188

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

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STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

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12

I, KELSEY DAVENPORT ANGLIN, certify that I was the official court reporter for the proceedings named herein; and that as such reporter, I reported, in verbatim shorthand writing, those proceedings, that I thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 1 through 188 herein constitute a complete, true and correct record of the proceedings:

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

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

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25

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