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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

COPY

Central Delta Water Agency; South Delta
Water Agency; Alexander Hildebrand;
R.C. Farms, Inc.,)

Plaintiffs,)

vs.)

CV-F-99-5650
OWW DLB

United States of America; Department of
the Interior; Bureau of Reclamation;
Bruce Babbitt, Secretary of Interior;
Michael J. Spears, Regional Director of
United States Department of Interior Fish
and Wildlife Service, Region 1; and Kirk
Rodgers, Acting Regional Director of
United States Department of Interior Bureau
of Reclamation, Mid-Pacific Region,)

Defendants.)

Tuesday, June 17, 2003 - 9:00 a.m.

Deposition Officer:
Donna Shaffer Lee, CSR No. 5090

Taken in the offices of:
Portale & Associates
211 East Weber Ave.,
Stockton, California 95202

PORTALE & ASSOCIATES DEPOSITION REPORTERS
211 East Weber Avenue
Stockton, California 95202
(209) 462-3377

Exhibit A

1 so forth, but that is not very relevant to this.

2 Q. Are you familiar with South Delta Water Agency?

3 A. I should say so.

4 Q. Are you an elected director of South Delta Water
5 Agency?

6 A. Yes.

7 Q. When were you first elected a director of South
8 Delta Water Agency?

9 A. The original board of the South Delta Water Agency
10 was by appointment. Then subsequently there were election
11 periods every four years, I think it is, but if nobody
12 runs against you the supervisors appoint you and that is
13 what happened to me all the way through. Nobody has ever
14 run against me.

15 Q. Were you originally appointed by the governor?

16 A. Let me think about who actually makes the
17 appointment. I think it's the county supervisors.

18 Q. Okay. When was that?

19 A. Oh, my. That is back, ball park, late seventies.

20 Q. And you're still a director?

21 A. Yes.

22 Q. Are you the board president?

23 A. No. I'm secretary.

24 Q. Did South Delta Water Agency take notice an agenda
25 item to pursue a lawsuit against the United States Bureau

1 impacts that would have on stage elevation within the
2 South Delta Water Agency at any location?

3 A. We haven't attempted to do hypothetical analyses
4 like that. However, 500 CFS increase in flow last June
5 and July would very likely have been sufficient to prevent
6 the problem we had last July.

7 Q. I'm just talking stage elevation now. Have you
8 actually done an analysis to try to --

9 A. We don't analyze a whole lot of hypothetical
10 things.

11 Q. But has South Delta Water Agency ever done an
12 analysis to determine based on a rate incurred what
13 impacts stage elevations would occur by the reduction of
14 inflow?

15 A. I repeat, we know very well that had the inflow of
16 the river not gotten below our level of diversions last
17 summer, we would not have had that problem we had. And
18 flow differences at the magnitude you're talking about
19 would clearly affect that.

20 Q. Has South Delta Water Agency made any
21 determination -- and let's take last year as an example.
22 You keep saying local diversions. Do you know if farmers
23 within the South Delta Water Agency basically irrigate
24 whenever they want?

25 A. They do it whenever they need to if they can, yes.

1 Q. So given the parameters that they need water to
2 irrigate, and if water is available, they're going to
3 irrigate. Correct?

4 A. Yes.

5 Q. Okay. Now, has South Delta Water Agency made any
6 determination as to whether or not the licenses held by
7 members within its agencies have a lower priority than
8 other licenses upstream on the San Joaquin River basin?

9 A. The diverters -- vast majority of these diverters
10 have riparian pre 1914 rights and they've been diverting
11 since before the CVP ever started to operate, so seems to
12 me clearly they have a right to divert.

13 Q. Well, has South Delta Water Agency looked and made
14 any analysis as to those people who hold licenses,
15 appropriative licenses within its boundaries, versus those
16 who hold riparian licenses?

17 A. I don't know if we have done an analysis for every
18 landowner.

19 Q. Isn't it true that a large majority of the
20 landowners within South Delta Water Agency hold
21 appropriative licenses?

22 A. Yeah, I have both riparian and appropriative
23 rights.

24 Q. Have you ever made a determination under your
25 appropriative licenses whether or not you were a junior

1 appropriate and should cease diverting last year?

2 A. I wasn't asked to.

3 Q. Do you know if South Delta Water Agency has made
4 any determination or analysis as to the amount or quantity
5 of water held under its appropriative licenses that could
6 or should be diverted?

7 MR. HERRICK: I just object. I think you got
8 confused in there that the agency doesn't hold any
9 license. I think you mean members within the agencies.

10 MR. O'LAUGHLIN: Yes. I realized that. Thank
11 you.

12 A. We've had no reason to make such analysis.

13 Q. Now, do you agree that the riparians can only take
14 that amount of water for reasonable and beneficial use
15 that is naturally occurring within a system?

16 A. I'm not sure that is entirely true. In terms of
17 quantity perhaps, yes. But in terms of availability at a
18 given time, if upstream parties retain water that causes
19 it to come down at a later time, I think riparian rights
20 still applies to it.

21 Q. Okay. Is South Delta Water Agency asserting then
22 that water that has previously been stored under other
23 licenses and put to beneficial use and then is abandoned
24 is subject to a riparian diversion?

25 MR. HERRICK: I would just make a general

1 objection for a legal conclusion. Mr. Hildebrand can
2 certainly give you his understanding.

3 MR. O'LAUGHLIN: Right.

4 A. I think when the upstream operators store water
5 that is over and above their needs and then at a later
6 time they've displaced it in time but they don't own that
7 water, it wasn't their water just because they stored it,
8 if it was beyond their pre 1914 and other needs --

9 Q. Wait. Let me stop you. I said water that had
10 been stored and put to beneficial use on the land is then
11 abandoned. Okay? Downstream.

12 A. You're talking about return flows?

13 Q. Yeah, return flows. We'll take return flows and
14 then is abandoned. Is that water subject to diversion by
15 riparians?

16 A. I would defer to the counsel on that.

17 Q. Okay. Isn't it true that the reason the vast
18 majority of landowners within South Delta Water Agency
19 sought and got appropriative licenses was for the very
20 fact that upstream reservoirs were storing water, using
21 it, and return flows were then made available that were
22 not subject to diversions by riparians?

23 A. I can't speak for others but the reason I did it
24 was because at that time there were political threats that
25 they might abolish riparian rights.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

COPY

In the Matter of)
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)
BAY-DELTA WATER RIGHTS HEARING.)
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DEPOSITION OF
ALEXANDER HILDEBRAND

THURSDAY, MAY 27, 1999

REPORTED BY:

ESTHER F. WIATRE
CSR No. 1564

1 The water that you get from the San Joaquin River Water
2 Users Company, do you pay for that water?

3 A. It is on co-op basis, yeah. We pay on per acre basis
4 for the maintenance cost and the operator, and then you pay
5 the electric bill for time you actually take water. So the
6 overheads are on breaker and the rest is on energy charge.

7 Q. So, does the co-op maintain all the pipeline and the
8 pump?

9 A. All except what is on the private property, yes.

10 Q. That you maintain yourself?

11 A. Yes.

12 Q. Now, let me ask about the water right that you use for
13 your crop. What is the nature of your water rights?

14 A. We have riparian rights on all the property. Then I
15 doubled up on all that by getting licenses. There are two
16 licenses, but the two licenses cover the same total acreages
17 as the riparian rights I have. There was some threat they
18 might do away with riparian rights, so I went and got
19 licenses as well.

20 Q. Do you remember when you got those?

21 A. I don't recall now. It's been a long time. It was at
22 least in the mid '60s or earlier, I would say.

23 Q. I have a copy here of the Report of Licensees for 1994,
24 '95 and '96, for License Number 7144 and License Number
25 7143.

1 island; is that right?

2 A. Yeah.

3 Q. License 7143, which is for 24 acres, would cover that
4 strip between the levee --

5 A. Yes.

6 Q. -- between the levee and the Old Channel?

7 A. Yeah.

8 MR. JOHNSTON: Does the co-op have a license?

9 THE WITNESS: Co-op has a license that goes way, way
10 back.

11 And a large portion of the lands that are fed by the --
12 big majority of the lands that are fed by the co-op also
13 have riparian rights of their own. Not quite all.

14 Q. BY MR. GODWIN: Is there anyone that is part of that
15 co-op that is north of you?

16 A. One. I guess there would be two of them a little bit
17 north of me, but not much. They are more east than north.

18 Q. I have a couple questions on your license. I notice
19 the irrigation season, the diversion season, is listed as
20 May 1 to November 1 on License Number 7144. Then I see on
21 your --

22 A. I guess you can say I'm irrigating on my riparian
23 rights the other times.

24 Q. I see you have indicated you have irrigated in March
25 and April, March '94 and April of '96?

1 A. Yeah. In fact, going over my records for A different
2 purpose the other day I saw where I irrigated as early as
3 January.

4 Q. On this Report of Licensee for 1970, '71 and '72, it
5 shows you irrigating in February of 1972, March of '70, '71
6 and '72?

7 A. That's sort of typical. But also once in a while in
8 November. I don't remember ever irrigating in December
9 although I don't recall for certain. But I think that is
10 the only month where I probably never irrigated.

11 Q. So in those periods where you are irrigating that is
12 outside your diversion season, you relied on your riparian
13 rights during those times?

14 A. Yes.

15 Q. I notice License 7144 is -- well, let me Back up here.

16 Do you know the horsepower and capacity of your pump?

17 A. Twenty-five horsepower and delivers about 3,000 gallons
18 a minute when I am -- the smaller of the two, 2200 when I'm
19 going over the island.

20 Q. I notice License 7144 is for an amount of .5 cfs, which
21 is about less than 250 gallons per minute; is that right?

22 A. Well, first place, I think the license covers an
23 average rate rather than a peak rate. But in any event, if
24 I am exceeding the license, I am going on riparian.

25 Q. Also on License 7143 the amount is .3 cfs, which is

1 somewhat less than that 200 gallons per minute.

2 A. My recollection is that what you can average. It is
3 not -- I am uncertain about that. But I never worry about
4 that since I have the riparian right, anyway.

5 Q. I notice in your testimony that you submitted for Phase
6 II-B, it says on Page 2 of your testimony:

7 My operations do not include a metering
8 system for the water I use. (Reading.)

9 A. That's right.

10 Q. I was curious. Then, how do you know you exceeded your
11 license amount?

12 A. I haven't worried about it because I have riparian
13 rights.

14 Q. Did you feel comfortable checking the box that you use
15 the full license amount each year?

16 A. As far as I know.

17 Q. Also, in your testimony on Page 1 it says:

18 At the time of my purchase -- (Reading.)

19 Regarding your property on Hays Road.

20 At the time of my purchase of this property
21 and pursuant to my investigations thereafter,
22 my land has always been contiguous to the
23 river, so is considered riparian under
24 California law. (Reading.)

25 I was curious what investigations you have done?

1 A. I can stand on my property anywhere and look and see
2 that I am contiguous to the river. That is adequate
3 investigation.

4 Q. Besides that, have you done any investigations?

5 A. I think our attorney has looked at this relative to the
6 broader picture of the riparian land throughout the South
7 Delta.

8 Q. Your personal attorney or Mr. Herrick?

9 A. Mr. Herrick.

10 Q. Or his predecessor?

11 A. Mr. Herrick and his predecessor. I don't have a
12 personal attorney.

13 Q. Have you done any title search to determine whether or
14 not your land still has riparian rights?

15 A. The title shows clearly that I am contiguous to the
16 river. Do you need any more than that?

17 Q. Also, on Page 1 there is a discussion of Jerry
18 Robinson, who is the president of South Delta Water Agency,
19 and here it says:

20 Pursuant to our investigation, it, too, has
21 always been contiguous to the river and has
22 been riparian. (Reading.)

23 Referring again to Mr. Robinson's property.

24 A. There again I am referring to investigation made by an
25 attorney for South Delta Water Agency and relates also to

1 the fact that there was a determination a long time ago, I
2 can't give you the dates, that properties that are in the
3 Delta are essentially all considered riparian because of
4 their elevation relative to the tidal water.

5 Q. Is that all land within the legal Delta or some other
6 defined Delta?

7 A. I don't recall for certain which way that was, but Mr.
8 Robinson's property would clearly come in either way.

9 Q. Within South Delta Water Agency there is other water
10 districts and irrigation districts; are there not?

11 A. Yes. And then there are lots of lands where each
12 landowner has his own diversion pump, as I do for part of my
13 property. So a large portion of the land is not in an
14 irrigation district.

15 Offhand, I would say it was probably a large majority
16 of the land is not. The diversions are literally in the
17 hundreds, something like 150 or so, and are scattered over
18 75 miles of channel. Only a few of those are districts.

19 Q. I just want to concentrate on the districts right now.
20 Do you know the names of the districts within South Delta
21 Water Agency?

22 A. I don't know that I could list them. I don't know. I
23 can't be sure I would miss one. It would include the Banta
24 Carbona District, is the larger, by far; the West Side
25 Irrigation District. I don't think that our co-op company

1 and as-needed.

2 I don't know why anybody wants to pay attention to
3 that. Even this year we could have put the barriers in, the
4 tidal barriers. The high flow problem doesn't keep us from
5 putting those barriers in because the water is disbursed
6 into three different channels and there is a lot less
7 differential across the barrier even after you get it in.
8 Even at 5,000 cfs you get a five-foot differential across
9 the Head of Old River Barrier. I don't know what it would
10 be at 7,000. And it might be two feet in Old River, for
11 example.

12 So, it's entirely doable to put them in and save all
13 these salmon in the year when you can't put in Head of Old
14 River Barrier. But we keep bringing this up. We've had no
15 support from you people or anybody else to try to counter
16 the restraint put on us by the fish agencies. And the Corps
17 won't give you a permit if the fish and wildlife doesn't
18 want to. And as I was told one time by a high ranking
19 person in the fish and wildlife, we can keep you from having
20 the barriers and we don't have to give you a reason. Direct
21 quote.

22 Q. Outside of the barriers program and outside of pumping
23 on the high tide and then you also mentioned this, bringing
24 water from Walthall Slough, have you taken any other steps
25 to offset the problems?

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

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In the matter of:)
)
CONSIDERATION OF (1) ALTERNATIVES)
TO IMPLEMENT WATER QUALITY CONTROL)
OBJECTIVES FOR THE SAN FRANCISCO)
BAY/SACRAMENTO-SAN JOAQUIN DELTA)
ESTUARY, (2) A PETITION TO CHANGE)
POINTS OF DIVERSION OF THE CENTRAL)
VALLEY PROJECT AND THE STATE WATER)
PROJECT IN THE SOUTHERN DELTA, AND)
(3) A PETITION TO CHANGE PLACES OF)
USES AND PURPOSES OF USE IN THE)
CENTRAL VALLEY PROJECT (BAY-DELTA)
WATER RIGHTS HEARING))
_____)

COPY

DEPOSITION OF ALEX HILDEBRAND

Thursday, June 25, 1998 - 9:05 a.m.

Deposition Officer:
John P. Squires, C.S.R. No. 2001

Taken in the offices of:
CALIFORNIA DEPOSITION REPORTERS
7540 Shoreline Drive, Suite C
Stockton, California

Exhibit C



1 We don't hold rights. They hold the rights.

2 Q. Let's talk about some water rights. Has South
3 Delta Water Agency ever compiled a list of the water
4 rights held within its jurisdiction of the agency?

5 A. You mean landowner by landowner?

6 Q. Right.

7 A. No, not in that detail.

8 Q. Have you broken out the water rights between
9 appropriative water rights within South Delta Water
10 Agency and riparian rights?

11 A. Yes. It's predominantly riparian. There are
12 only two major exceptions, the Banta-Carbona District
13 and the Westside Irrigation District, and they have
14 pre-1914 rights that go way back.

15 Q. Let's focus right now on the riparian rights.
16 Has there been any determination made by South Delta
17 Water Agency as to what lands are truly riparian and
18 what lands aren't within South Delta Water Agency?

19 A. There has not been an acre-by-acre assessment of
20 that.

21 However, it has generally been accepted over the
22 years that, with minor exceptions, the lands are
23 entitled to riparian rights except those with the
24 appropriative rights. There are a few minor exceptions.

25 Q. On these exceptions, did South Delta Water Agency

1 actually make a determination that someone that was
2 irrigating within the agency boundaries was irrigating
3 land that was not riparian?

4 A. I'm aware of some minor instances of that.

5 Q. Can you inform me of what those minor instances
6 were?

7 A. I would have to look them up.

8 Q. Okay. Are those records reflected within the
9 records that are maintained by South Delta Water Agency?

10 A. I don't recall that we have detailed records of
11 that. It's just that when the issue has arisen and
12 we've looked over to see whether there were any lands
13 that did not have riparian rights on the accepted basis,
14 there did seem to be some minor exceptions in places
15 where properties got severed and the landowners weren't
16 careful to retain their riparian rights.

17 Q. Did you do a report on that for the South Delta
18 Water Agency?

19 A. No.

20 Q. Did your attorney do a report for South Delta
21 Water Agency on those properties?

22 A. No.

23 Q. Did the agency take any action to stop those
24 people from pumping water that did not have riparian
25 rights?

1 A. No. Those lands still had senior rights.

2 Q. Senior rights in what extent? Did they also have
3 appropriative rights?

4 A. Yes.

5 Q. So they had dual rights, both riparian and
6 appropriative?

7 A. Yes.

8 Q. Let's stay on the riparian rights for now. Has
9 there ever been a determination done within South Delta
10 Water Agency as to the riparian rights of the
11 landowners?

12 A. You mean how much riparian right each landowner
13 had?

14 Q. Yes.

15 A. No.

16 But the riparian lands have all been in
17 irrigation for decades and decades and so it's not a
18 case of some Johnny-come-lately starting to irrigate.

19 Q. Has anyone within South Delta Water Agency
20 supplied you with chains of title proving their riparian
21 rights?

22 A. I don't recall any occasion where the issue has
23 arisen.

24 Q. During the drought of 1987 through 1992, when
25 water was in short supply, was there any work done by

1 Q. When you did this breakdown between appropriative
2 rights and riparian rights, was that reflected in a
3 report someplace?

4 A. I don't remember that it's in a report per se.

5 Q. Is it in a memo or any other physical document
6 that we could look at?

7 A. Well, we know what those two districts encompass
8 and how much water they use.

9 As I say, the other minor instances we haven't
10 attempted to quantify.

11 Q. Other than Banta-Carbona and Westside Irrigation
12 District, do you know how many landowners within South
13 Delta Water Agency have both riparian rights and
14 appropriative rights?

15 A. I don't know. But a good many of us who had
16 riparian rights, including myself, also filed for
17 appropriative rights some good many years ago when there
18 seemed to be some political urge to get rid of riparian
19 rights, so we doubled up.

20 Q. Do you know how many people have doubled up
21 within South Delta Water Agency in regards to their
22 appropriative rights?

23 A. I couldn't say.

24 Q. Do you know the face value of the appropriative
25 rights held by individuals in South Delta Water Agency

1 Reclamation ever tried to quantify the face value
2 amounts of the appropriative rights held within South
3 Delta Water Agency?

4 A. Well, as I said, those two districts, the rights
5 are quantified, we all know what they are, and the other
6 miscellaneous ones I wouldn't know about.

7 Q. Do you know if DWR or the United States Bureau of
8 Reclamation has tried to determine the face value amount
9 of any pre-1914 appropriative water right?

10 A. Well, those two districts have pre-1914 water
11 rights.

12 Others who may have claimed for pre-1914 in
13 addition to their riparian rights, I wouldn't know
14 about.

15 Q. Do you know if the United States Bureau of
16 Reclamation or DWR has done any work in that regard to
17 figure out the face value of amounts?

18 A. I do not know.

19 Q. In regards to riparian rights, has either DWR or
20 the United States Bureau of Reclamation tried to
21 determine whether or not the lands that were using water
22 were in fact riparian?

23 A. There was some discussion of that a good many
24 years ago and the conclusion they came to was that in as
25 far as there might be some people who are exercising

1 riparian rights who didn't have it, it was so minor and
2 came so much within the general idea that lands in the
3 delta are presumed to be riparian that it was dismissed.

4 Q. Does South Delta Water Agency file on behalf of
5 the landowners within the agency reports to the
6 Department of Water Rights regarding water usage?

7 A. No. We file our own.

8 Q. So you, Alex Hildebrand as an individual, file
9 your own documentation with the State Water Resources
10 Control Board?

11 A. Correct.

12 Q. And that's true for every landowner within the
13 South Delta Water Agency?

14 A. Whether they all file or not, I couldn't say.
15 But that's their responsibility.

16 Q. Has South Delta Water Agency ever tried to
17 ascertain by the filings made of its landowners the
18 amount of water usage within South Delta Water Agency?

19 A. Will you repeat the question?

20 Q. Sure. In other words, the filings that have been
21 made by the landowners with the State Water Resources
22 Control Board, has South Delta Water Agency ever tried
23 to compile those in any one given year to look at water
24 usage within the agency?

25 A. No, not in that context. I can get on to the

30



STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

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In the Matter of)
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BAY-DELTA WATER RIGHTS HEARING.)
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DEPOSITION OF
WILLIAM W. SALMON

TUESDAY, MAY 25, 1999

REPORTED BY:

ESTHER F. WIATRE
CSR No. 1564

1 A. No. That is -- my corporation farms that land. I have
2 a lease on that land.

3 Q. You lease that land?

4 A. That's correct.

5 Q. How about the two ABF parcels that you --

6 A. I manage those, all three. I manage the ABF farms,
7 ranches, and the Thorsen Ranch through my corporation which
8 is a management and farming operation.

9 Q. You do have an ownership in the Thorsen and the two
10 ABF?

11 A. No. I manage it.

12 Q. You just run it?

13 A. I run it. Exactly. I have an interest, per se, on the
14 profits, but I have nothing to do with the land itself.

15 Q. The same with the Long Brothers, you run it?

16 A. No.

17 Q. You lease that one?

18 A. I lease that one.

19 Q. You actually --

20 A. Farm that one personally myself, and I manage those.

21 MR. HERRICK: If I may, your corporation has been hired
22 by ABF --

23 THE WITNESS: That's correct.

24 MR. HERRICK: -- to run, farm those other three?

25 THE WITNESS: Uh-huh.

1 Q. Who owns the Long Brothers?

2 A. Henry and Bill Long.

3 Q. If they are the same -- I hope they are the same. If

4 they are not, let me know. Your management duties for the

5 Thorsen and the two ABF, what would those be? What are your

6 duties?

7 A. Everything. Starting right off with finance, right

8 through decisions, crop decisions. I run it. They are

9 absentee owners.

10 Q. For the Long Brothers, are you familiar with the water

11 rights that are there to serve that piece of property?

12 A. Well, not particularly, no. Because I just lease the

13 land, so I'm not as familiar with that as I am with the

14 Augusta Bixler Farms. I am assuming they have riparian

15 rights because they are on the river. The water comes from

16 the San Joaquin.

17 Q. So the Long Brothers Ranch is adjacent to the San

18 Joaquin River?

19 A. Yes, that is correct.

20 Q. Do you take water from the San Joaquin River to

21 irrigate that farm?

22 A. On most of it. There is about 50 acres that we do with

23 a well. The rest is from the river.

24 Q. How many wells do you have? Just one, on the Long

25 Brothers?

1 is on the southwest corner of the property.

2 Q. BY MR. PARIS: To your knowledge, for the Long
3 Brothers, other than riparian rights, are there
4 appropriative rights to water?

5 A. I have no idea.

6 Q. I think you said earlier that you assumed that there
7 were riparian rights, but you don't have any specific
8 knowledge?

9 A. No, sir.

10 Q. You haven't done a title search or anything like that?

11 A. No, sir.

12 Q. On the Long Brothers, do you have any storage
13 facilities --

14 A. No.

15 Q. -- for water?

16 On the, again still talking about Long Brothers, is
17 there a meter on the diversion pump in the San Joaquin
18 River?

19 A. Yes.

20 Q. What does it measure?

21 A. It's just a PG&E meter.

22 Q. Just a PG&E meter?

23 A. Electricity.

24 Q. Nothing specific to measure gallons per minute or
25 something else?

1 Q. Of any of the three can you raise or lower them?

2 A. No.

3 Q. Are they all slant pumps, as you described?

4 A. No. These are up on pilings in the river.

5 Q. Like a dock?

6 A. Well, like a raised dock. They are up probably 15 feet.

7 Q. What is the source of the water rights for Number I, if
8 you know?

9 A. We have riparian rights. We have a license.

10 Q. You have riparian rights and a license?

11 A. Uh-huh. That we make out, I think is, every three
12 years.

13 MR. HERRICK: Two or three years.

14 THE WITNESS: We fill out every two or three years.

15 Q. BY MR. PARIS: Do you know what the terms and
16 conditions of that license are, how much water you can
17 divert?

18 A. I think it is -- I am not sure that is a restriction.
19 But I believe we put on, there is something like, six
20 acre-feet.

21 Q. Does it have any seasonal restrictions or is it
22 year-round? Do you know?

23 A. They -- to my knowledge, it is year round. However,
24 during the drought I had received letters stating that it
25 may be interrupted.

1 Q. Who did you get those letters from?

2 A. DWR or some higher authority.

3 MR. HERRICK: State Board?

4 THE WITNESS: Maybe it was State Board.

5 Q. BY MR. PARIS: Do you know what source of water that
6 license applies to? Maybe that was San Joaquin, Middle
7 River, Old River, Grant Line Canal?

8 A. Middle River and Grant Line Canal. They state that on
9 there. There is nothing to do with the Thorsen Ranch, but I
10 think ABF, Augusta Bixler Farm, there is two I know of,
11 maybe three.

12 Q. Did you bring any of those licenses with you today?

13 A. No, I did not.

14 Q. In terms of the riparian right, is that something --
15 have you done a chain of title search or anything like that?
16 Or are you working on the assumption that it is riparian?
17 Again, I am not trying to trick you or put words in your
18 mouth.

19 A. I can't say that I researched it, but quite obviously
20 Augusta Bixler Farms have been there since 1847.

21 Q. And the property is adjacent to --

22 A. Exactly, the river.

23 Q. Number I, we are still talking about, Ranch Number I?

24 A. Exactly.

25 Q. Are there any drainage facilities for Number I?

1 A. The one at the end of the Grant Line is probably
2 around, again running around 30 to 40 horsepower and it
3 probably does 3- or 4,000 gallons a minute. And I have
4 another one at the southwest corner of the ranch and that is
5 a 10 horsepower, and it probably does something, like,
6 1,800, 2,000 gallons.

7 Q. For the diversion pumps, do those have trash screens on
8 them as well?

9 A. Yes.

10 Q. Are they electric?

11 A. Yes.

12 Q. Are they -- do they have any other meters other than
13 the PG&E?

14 A. No.

15 Q. Do you or do you direct anybody to take any sorts of
16 measurements at any of these points of diversion?

17 A. Repeat that, please.

18 Q. For Ranch Number I, at the points of diversion do you
19 tell anybody to take any water level measurements or water
20 quality measurements or anything of that sort?

21 A. No.

22 Q. Does anybody else do anything else at those points of
23 diversion, to your knowledge?

24 A. I haven't recently, but I have in the past.

25 Q. So you have?

1 A. Correct.

2 Q. What is the gallons per minute?

3 A. I have about 12,000 gallons a minute.

4 Q. Combined?

5 A. Combined.

6 Q. Are those on pilings?

7 A. On pilings.

8 Q. Fixed pump?

9 A. Fixed pump.

10 Q. Can't raise or lower it?

11 A. Cannot raise or lower it.

12 Q. What is the nature of the water rights there?

13 A. Same as Ranch I.

14 Q. Riparian and a license?

15 A. Correct.

16 Q. Trash screen on the pump?

17 A. Correct.

18 Q. No filter or anything like that? No fish screen?

19 A. No fish screen.

20 Q. Make any measurements there?

21 A. No.

22 Q. Have you in the past?

23 A. Yes, I have.

24 Q. Same as Ranch Number I, ECs?

25 A. No.

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STATE WATER RESOURCES CONTROL BOARD
OF THE STATE OF CALIFORNIA

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COPY

In the Matter of:)
The Long-Term Petition Change of:)
MODESTO IRRIGATION DISTRICT,)
MERCED IRRIGATION DISTRICT,)
TURLOCK IRRIGATION DISTRICT,)

DEPOSITION OF: Richard Pellegri

Monday, March 24, 2003 - 1:50 P.M.

Deposition Officer:
Donna Shaffer Lee, CSR No. 5090

Taken in the offices of:
Portale & Associates Deposition Reporters
211 East Weber Ave.
Stockton, CA 95202

PORTALE & ASSOCIATES DEPOSITION REPORTERS

211 East Weber Avenue

Stockton, California 95202

(209) 462-3377

Exhibit E

1 THE WITNESS: Well, you said how far is Tom Paine
2 Slough from San Joaquin River?

3 MR. O'LAUGHLIN: Yeah.

4 A. I said at the east end about a quarter of a mile
5 and on the west end it starts at Old River but it's about
6 five miles from the San Joaquin.

7 Q. Isn't it correct that Tom Paine Slough comes off
8 of Old River?

9 A. Yes.

10 Q. Yes. Thank you.

11 A. At the west end.

12 Q. At the west end. And backs up --

13 A. Uh-huh. Yes.

14 Q. Okay. So then it's technically a slough off of
15 the Old River of the San Joaquin River?

16 A. Yes.

17 Q. I want to get something clarified. Second
18 paragraph, last sentence. You have not done a title
19 search on these lands. Is that correct?

20 A. Yes.

21 Q. And you can't make a legal opinion or conclusion
22 as to what particular water right is held by what
23 particular parcel. Is that correct?

24 A. Yes.

25 Q. Or in what amounts?

1 A. Yes.

2 Q. When water -- it says our district holds two
3 licenses. Do you see that in the second paragraph?

4 A. Yes.

5 Q. Okay. Do you receive your water from the district
6 for the properties that you irrigate?

7 A. Are you asking me that as a farmer?

8 Q. Yeah.

9 A. Yes.

10 Q. Do you as a farmer know if your properties have
11 individual water rights that you pull water from the river
12 from?

13 A. No.

14 Q. Okay. In 2001, third paragraph, it states that
15 you experience low water levels in the summer. Do you see
16 that?

17 A. Yes.

18 Q. Okay. Do you know what the San Joaquin River
19 Basin Index was in the year 2001?

20 A. No.

21 Q. You said you experienced low water levels in the
22 early summer. Can you tell me what months you define as
23 the early summer?

24 A. Mid May through July. ✓

25 Q. Do you know what the flows in the San Joaquin

1 A. No, I don't.

2 Q. On the second paragraph or, sorry, it's the first
3 paragraph of the second page, it says during the time of
4 low water levels the depth in Tom Paine Slough there near
5 our pumps. Whose pump?

6 A. Bureau of Reclamation district.

7 Q. Well, see, here I'm confused again. This is the
8 third time you've made a response on behalf Pescadero
9 Reclamation District, but you're saying this testimony is
10 personal.

11 A. You asked me whose pumps.

12 Q. Yeah. But I'm confused. Is your testimony on
13 behalf of the reclamation district or yourself?

14 A. See, this is what I had written down that me and
15 John had gone over. It crosses over. I don't understand
16 what else -- I'm just going from my experience.

17 Q. It says -- it says in here because of low water
18 levels we simply could not pump sufficient amounts of
19 water to satisfy the District's needs. Okay. What are
20 the District's rights under its licenses?

21 A. I don't know.

22 Q. Now, do these pumps have meters on them?

23 A. No.

24 Q. So how do you make a delineation between the
25 amount of water you're entitled to pump and the amount of

1 water that you are actually taking?

2 A. All I know is when there was no water in there,
3 they wouldn't pump. I don't know what, how much we're
4 allowed to pump. I don't know how much the District is
5 allowed to pump.

6 Q. Do you know if any water other than the District's
7 licensed water is pumped through those pumps that you set
8 forth?

9 A. No.

10 Q. No, you don't know or no, there aren't any other
11 water rights?

12 A. No, I don't know.

13 Q. Okay. So it says what was the insufficiency in
14 the amount of water necessary to satisfy the District's
15 needs?

16 A. I don't understand.

17 Q. Well, it appears that there was not enough water
18 to meet the District's needs, so there was a shortfall to
19 the District. Is that correct?

20 A. Correct.

21 Q. Okay. I want to know how much was that shortfall?

22 A. As far as in cubic feet or -- I don't know.

23 Q. Cubic feet, acre-feet.

24 A. I don't know. All I know is there wasn't enough
25 water there to pump.

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STATE WATER RESOURCES CONTROL BOARD
OF THE STATE OF CALIFORNIA

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COPY

In the Matter of:)
The Long-Term Petition Change of:)
MODESTO IRRIGATION DISTRICT,)
MERCED IRRIGATION DISTRICT,)
TURLOCK IRRIGATION DISTRICT,)
_____)

DEPOSITION OF: JERRY ROBINSON

Monday, March 27, 2003 - 10:55 A.M.

Deposition Officer:
Donna Shaffer Lee, CSR No. 5090

Taken in the offices of:
Portale & Associates Deposition Reporters
211 East Weber Ave.
Stockton, CA 95202

PORTALE & ASSOCIATES DEPOSITION REPORTERS
211 East Weber Avenue
Stockton, California 95202
(209) 462-3377

Exhibit F
1

1 A. Yes. With our attorney.

2 Q. The first thing I wanted to get clear, I had
3 difficulty with the map. Where exactly on Exhibit A are
4 the 75 acres of the Lafayette ranch?

5 MR. HERRICK: Describe it verbally, Jerry.

6 MR. O'LAUGHLIN: You can point it out to me first,
7 then we'll describe it.

8 A. It's these fields that are right around this.

9 Q. This?

10 A. No. There is three fields in here. There is 325
11 acre fields, more or less.

12 Q. So somewhere between the dark line and, where?

13 A. And the river.

14 Q. 75 acres?

15 A. Right. The dark line is Wing Levee Road.

16 Q. Right. Now, the property that is described in
17 attachment A has a license number 1063. Is that correct?

18 A. Right.

19 Q. What is the maximum rate of diversion for that
20 license?

21 A. I don't know.

22 Q. Do you have a meter on your pump?

23 A. No.

24 Q. Have you had a pump efficiency test done?

25 A. We have. We rebuilt the pump. I don't think we

1 had the rebuilt tested, and we're rebuilding it again.
2 It's finished now. We'll put it in this next week.

3 Q. Okay. How are you -- are you -- how do you know
4 you're in compliance with your license in not diverting
5 more than your license if you don't know how much your
6 well capacity or pump capacity is?

7 A. Well, when we bought this piece of property in,
8 I'm trying to think what year while we're sitting here, I
9 think maybe in the very early seventies, it was already
10 under irrigation, I guess, for about 50 years or maybe
11 more. And we just continued to use their pump, the pump
12 that was in there. And when it wore out, we had it
13 rebuilt. And when it wore out again, we had it rebuilt
14 again.

15 Q. Do you know what the reason is for your license
16 number 1063?

17 A. No, I don't.

18 Q. I noticed on the map that you provided as Exhibit
19 A that there were various denotations of other application
20 and permits and licenses. Do you see that?

21 A. Are you talking about these?

22 Q. Yes.

23 A. Yeah. Yeah, I see them.

24 Q. Do you know what book you got this from or what
25 document you got this from?

COPY

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of)
)
)
BAY-DELTA WATER RIGHTS HEARING.)
)
)
_____)

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DEPOSITION OF
ROBERT FERGUSON

THURSDAY, MAY 27, 1999

REPORTED BY:

ESTHER F. WIATRE
CSR No. 1564

1 Q. Board Member?

2 A. Yes.

3 Q. We are going to have a drawing contest. I have a map
4 of the South Delta area, if you could indicate on there
5 where your property is located.

6 A. I think I have the same map.

7 Q. That made it easy. You are located off Grant Line
8 Canal on Union Island?

9 A. Union Island and Clifton Court Road.

10 MR. GODWIN: Mark this, please.

11 (Exhibit 1 marked for
12 identification.)

13 Q. BY MR. GODWIN: I note from earlier testimony that
14 you're located downstream of the Grant Line Canal?

15 MR. HERRICK: Barrier.

16 THE WITNESS: Barrier is what you mean?

17 Q. BY MR. GODWIN: Grant Line Barrier.

18 A. Barrier being here, I am west.

19 Q. You indicated with a red pen approximately Tracy
20 Boulevard and Grant Line Canal?

21 A. Correct.

22 Q. How many acres do you farm?

23 A. Approximately 1500.

24 Q. Do you farm any other parcels?

25 A. No.

1 (Exhibits 4-8 marked for
2 identification.)

3 Q. BY MR. GODWIN: This is a license to divert water from
4 April 1 to December 31 for irrigation purposes, and the
5 amount is 5.79 cfs for irrigating 463.1 acres.

6 A. I think you have a couple more permits here.

7 Q. I am sorry, I didn't see those.

8 A. For each of these there are two permits.

9 Q. You are right.

10 License Number 1293, covers 12.72 cfs for irrigating
11 1017.3 acres from April 1 to December 31. Both licenses
12 are diverting out of Grant Line Canal.

13 Can you show me which properties are irrigated from
14 these two licenses, the properties that these licenses apply
15 to, I should say?

16 A. The 600 --

17 Q. The 463 acres is the first one.

18 A. That estimate has never really been told to me.

19 MR. HERRICK: Answer what you know.

20 THE WITNESS: I can't tell you. I know the acreages,
21 but they are not jiving with these numbers.

22 Q. BY MR. GODWIN: These licenses were obtained, I notice
23 on these earlier ones, on the Estate of Robert E. Ferguson.
24 Is that your father?

25 A. Correct.

1 Q. Is he the one that had obtained the licenses?

2 A. Prior.

3 Q. Then in addition to these appropriative rights you also

4 claim riparian rights; is that true?

5 A. Correct.

6 Q. Riparian rights to Grant Line Canal?

7 A. Correct.

8 Q. Do you take any kind of measurements of how much water

9 you are diverting at any one time?

10 A. No.

11 Q. Do you take any measurements of how much water you are

12 applying on a particular field?

13 A. No.

14 Q. Do you know approximately how many people divert from

15 Grant Line Canal?

16 A. No.

17 Q. Those that do divert from Grant Line, do they mostly

18 have pumps or floodgates, or is there mixture of both?

19 A. Mixture of both.

20 Q. Can't say one dominates or the other?

21 A. I would imagine there are more pumps as there has been

22 an effort over the years to clean up the pipes with the

23 floodgates, levee integrity, flooding, that kind of

24 thing. I think I am one of the last or very few that still

25 maintain floodgates.

STATE WATER RESOURCES CONTROL BOARD

PUBLIC HEARING

1998 BAY-DELTA WATER RIGHTS HEARING

HELD AT
901 P STREET
SACRAMENTO, CALIFORNIA
THURSDAY, JUNE 24, 1999
9:00 A.M.

Reported by: MARY GALLAGHER, CSR #10749

CAPITOL REPORTERS (916) 923-5447

Exhibit H

1 the San Joaquin Water Users Company?

2 MR. HILDEBRAND: All of that.

3 MR. O'LAUGHLIN: Thank you very much,
4 Mr. Hildebrand. So the record is clear, the witness has
5 marked on San Joaquin River Group Authority 116 in blue
6 the portion of his property irrigated from water from the
7 San Joaquin Water Users Company.

8 Mr. Hildebrand, you also have appropriative
9 rights that you use on these parcels; is that correct?

10 MR. HILDEBRAND: That's correct. What happened was
11 that a long time ago -- I don't recall just when -- there
12 was some talk of doing away with riparian rights. So I
13 quickly doubled up and applied for licenses on the same
14 lands on which I have riparian rights.

15 And it didn't prove to be necessary, but I do
16 have licenses. There's one license for the island and the
17 oxbow and another license for the landowner on the other
18 side of the levee.

19 MR. O'LAUGHLIN: In your testimony attached to your
20 exhibits you reported, as a licensee, some of your reports
21 to the State Water Resources Control Board, Division of
22 Water Rights; is that correct?

23 MR. HILDEBRAND: That's right.

24 MR. O'LAUGHLIN: Okay. I'm looking at the one that
25 that is report of licensee for 1992, '93 and '94 and that

1 bring?

2 MR. O'LAUGHLIN: Well, I'll hand it to you.

3 MR. HERRICK: Thank you.

4 MR. O'LAUGHLIN: And I have extra copies if anybody
5 wants them. We'll mark these as additional exhibits.

6 What's my next one, Vicky, 117?

7 MS. WHITNEY: Yes.

8 MR. O'LAUGHLIN: We will mark for identification the
9 front pages of "License for Diversion and Use of Water for
10 Alex Hildebrand and Barbara Hildebrand," and attached to
11 that is report of licensee for '94, '95 and '96 as San
12 Joaquin River Group Authority Exhibit 117.

13 And then the next one that we'll have marked is
14 San Joaquin River Group Authority 118, "Report of Licensee
15 for 1992, '93 and '94." And we'll have that marked as San
16 Joaquin River Group Authority 118.

17 So my question is, Mr. Hildebrand, now that
18 you've had a chance to use this, if your license is for
19 May 1st to November 1st, why are you reporting water uses
20 in March and April in 1992?

21 MR. HILDEBRAND: It's my understanding that the
22 State likes us to report on our water use, on our riparian
23 rights as well as our license rights. And so I haven't
24 distinguished between the diversions made under one right
25 versus the other. And so these are the months in which we

1 has exceeded its maximum entitlement of 6,637 acre-feet
2 per year?

3 MR. HILDEBRAND: If you take the acreage we serve,
4 divide that into the 6,000, whatever it is, you'll find
5 that the quantity of water is quite adequate.

6 MR. O'LAUGHLIN: Yeah. But what I'm wondering is
7 how can you tell without a meter whether or not there is a
8 diversion here of up to a maximum of 2200 cfs per day.
9 And if the water users -- excuse me, not you, the San
10 Joaquin River Water Users Company starts diverting in
11 March and ends in November, they could theoretically
12 exceed the 6,637 acre-feet per year; is that correct?

13 MR. HILDEBRAND: Theoretically, yes, but what in the
14 world would we do with all that water?

15 MR. O'LAUGHLIN: Now, as in 1992 did you -- did the
16 San Joaquin River Water Users Company receive any
17 notification from the State Water Resources Control Board
18 regarding its ability to divert water in that year due to
19 the drought?

20 MR. HILDEBRAND: I believe we did as did all people
21 up and down the river system. But there was no -- it
22 didn't distinguish between superior or inferior rights.
23 And, consequently, it was really unenforceable and people
24 just continued to divert what water was available to them.

25 MR. O'LAUGHLIN: So in response to that, that was a

1 general statement, would it be safe to say that it's your
2 recollection that San Joaquin River Water Users Company
3 continued to divert water in 1992?

4 MR. HILDEBRAND: Yes. But there were times when we
5 couldn't divert as much as we wanted.

6 MR. O'LAUGHLIN: Okay. Even though the State Water
7 Resources Control Board had told San Joaquin River Water
8 Company to cease their diversions?

9 MR. HILDEBRAND: I don't recall if they actually
10 said we should cease the diversion.

11 MR. O'LAUGHLIN: You said you continued to divert
12 based on your superior rights. How is it that the San
13 Joaquin River Water Users Company have a superior right to
14 anyone else within the San Joaquin River basin when they
15 have an appropriative right with a date of May 2nd of
16 1950?

17 MR. HILDEBRAND: Well, there are other appropriators
18 with rights that are inferior to that. And then there's
19 the question of this business of our people being largely
20 riparian.

21 MR. O'LAUGHLIN: Okay. So if I can understand this
22 correctly, then, your response would be that the water --
23 the San Joaquin River Water Users Company, even though it
24 has an appropriative right, can divert water even when the
25 State Board tells it to stop diverting water pursuant to

1 its appropriative right and then divert that water for
2 riparian lands?

3 MR. HILDEBRAND: Well, I can't give you a legal
4 answer to that. But so far as I know, nobody on the river
5 system stopped pumping with the kind of water right
6 situation that we have. Except, of course, when the water
7 wasn't available.

8 MR. O'LAUGHLIN: Let's mark a new one, San Joaquin
9 River Group Authority 120. Mr. Hildebrand, we've had
10 marked for identification San Joaquin River Group
11 Authority 120, "License for Diversion and Use, San Joaquin
12 Water" -- this one is "Association." In addition to that
13 it's a report for licensee for 1995, '96 and '97; 1992,
14 '93, '94; 1990, '91 and '92.

15 I'm going to go through some similar questions in
16 regards to this one, Mr. Hildebrand. It entitles the San
17 Joaquin Water Association for 4.5 cubic feet per second
18 from March 1st to November 15th of each year.

19 Do you see that?

20 MR. HILDEBRAND: I'm trying to understand just what
21 is meant here by "The Association."

22 MR. O'LAUGHLIN: Yeah, I think that's probably a
23 typo, Mr. Hildebrand, because on the next page it says
24 "San Joaquin River Water Users Company, Inc.," I think
25 that's probably a typo. You will notice the application

1 MR. HILDEBRAND: That's right.

2 MR. O'LAUGHLIN: Okay. And within that you may have
3 380 acres that also receives water from this system; is
4 that correct?

5 MR. HILDEBRAND: Not also, but included in the 1400.

6 MR. O'LAUGHLIN: Okay. So it's within the 1400.
7 Let's call it the doughnut hole within the doughnut.
8 Wouldn't you agree that based on the way your system is
9 constructed at the San Joaquin River Water Users' Company
10 that it is possible that water diverted under license for
11 the 380 acres does not go to the 380 acres, the doughnut
12 hole, but it actually goes to the doughnut, the remaining
13 1100 acres, within the San Joaquin Water Users license?

14 MR. HILDEBRAND: Well, I don't understand your
15 question, because the license, as far as I can recall,
16 applies to the whole 1400 acres. There isn't a separate
17 license for the 380 acres.

18 MR. O'LAUGHLIN: Mr. Hildebrand, do you remember in
19 your deposition saying that in certain dry years that you
20 took water -- you went over to Walthall Slough and put in
21 a pump and began diverting water? Under what right did
22 you do that?

23 MR. HILDEBRAND: Riparian right.

24 MR. O'LAUGHLIN: Okay. Where is Walthall Slough in
25 relation to your property? And I'll give you a pen if you

1 would like to mark it in green. Here you go,
2 Mr. Hildebrand.

3 MR. HILDEBRAND: I guess it's not strictly correct
4 to say that I have a riparian right on Walthall Slough.
5 But the diversion -- the branch of the Walthall Slough
6 that I was pumping out of is -- well, it's approximately
7 here. See, Walthall Slough runs down over here and then
8 it has a branch that comes through and around here.

9 MR. O'LAUGHLIN: Well, you can draw --

10 C.O. STUBCHAER: That isn't going to --

11 MR. O'LAUGHLIN: Go ahead, Mr. Hildebrand, you can
12 draw that on the exhibit and put it in green where
13 Walthall Slough runs in relationship to your property.

14 MR. HILDEBRAND: Well, I'll start with the branch
15 which is over here. And then the main portion of the
16 slough is over here. And that goes down and empties in
17 the San Joaquin River. It receives water from drainage
18 from the South San Joaquin Irrigation District and other
19 properties to the east, including riparian diversions,
20 diversions by the association that irrigates the upper end
21 of District 2075.

22 MR. O'LAUGHLIN: Go ahead and take a seat,
23 Mr. Hildebrand. Mr. Hildebrand has marked on San Joaquin
24 River Group Authority Exhibit 116 in green the general
25 outline of Walthall Slough.

1 That slough never touches your property, does it?

2 MR. HILDEBRAND: No. I corrected myself when I said
3 I had a riparian right to it, that isn't quite correct.

4 MR. O'LAUGHLIN: Okay. So under what right did you
5 go into Walthall Slough and begin diverting water to your
6 property?

7 MR. HILDEBRAND: I guess it was the right of
8 desperation, because the water in the river had been
9 depleted to such an extent that particularly in the
10 absence of the tidal barriers, I didn't have enough water
11 to pump irrigate my land. It was all going to die.

12 So I went out and bought pipe and put in a
13 tractor-driven pump, took the water out of that, pumped it
14 over the levee, made a ditch over to the -- my neighbor's
15 property with his permission. And pumped from there into
16 the channel around the island and then I was able to pick
17 that back up, double pump it. It was very expensive,
18 caused a lot of delay in getting that water on the land.
19 I didn't run around, consult a lawyer to see whether or
20 not I was doing something wrong.

21 C.O. STUBCHAER: Ms. Whitney.

22 MS. WHITNEY: Let the record reflect that
23 Mr. Hildebrand marked the location of his diversion point
24 on Walthall Slough with a green X on the map.

25 C.O. STUBCHAER: Yes. Thank you.

1 could divert any amount, at any time, at anyplace. That
2 was the basis of the question and that's not been stated
3 by the witness.

4 MR. O'LAUGHLIN: Let me withdraw that question.
5 I'll ask a different question.

6 Mr. Hildebrand, now getting back to the question
7 that I asked you earlier: How is it that you know that
8 you have not exceeded your .5 cfs from the April 1st to
9 the November time period?

10 MR. HILDEBRAND: I don't know that I haven't, but
11 I'm not worried about it because I have a riparian right
12 to make the diversions that I've made.

13 MR. O'LAUGHLIN: So if we went back in the record
14 and found that the State Water Resources Control Board had
15 actually issued cease and desist orders in 1990, '91 and
16 '92 on the San Joaquin River to the San Joaquin River --
17 to the San Joaquin Water Users Company and, yet, your
18 reports of licenses continue to show use, your assertion
19 would be that is done under the riparian rights?

20 MR. HILDEBRAND: That's right.

21 MR. O'LAUGHLIN: Okay. On Page 1 of 8 in your
22 declaration you say,

23 (Reading):

24 "Also," comma "the State has previously taken
25 the position that all lands within the Delta

WR 3-02
WRITTEN TESTIMONY OF JOHN O'HAGAN

My name is John O'Hagan. I am a professional Civil Engineer registered in California, and a Senior Water Resource Control Engineer with the State Water Resources Control Board (SWRCB), Division of Water Rights (Division). I have over 21 years of experience in California water rights, working within the Licensing, Complaints and Compliance and Enforcement Units of the Division. My current position is Chief of the Compliance and Enforcement Unit. A copy of my resume is attached as WR 3-01. Mr. Aaron Miller is a member of my staff employed as a Water Resource Control Engineer. Mr. Miller assisted me on this matter and has been sworn in for questions and cross-examination but will not testify in our case in chief.

Lloyd L. Phelps, Jr. and Thelma B. Phelps Family Trust (Phelps); Joey P. Ratto, Jr. and Linda A. Ratto (Ratto); and Ron Silva, Ronald D. Conn, Patricia A. Conn, John E. Conn, Mark W. Conn, Bill J. Conn, and Cathleen Conn (Conn and Silva), herein jointly referred as the "Licensees" agreed to a single hearing before the SWRCB. Therefore, my testimony combines findings relative to each of the Licensees into the following five headings:

- I. Term 91 Curtailment Periods for the Licensees in 2000 and 2001
- II. 2001 Field Inspection by Compliance and Enforcement Staff
- III. Estimated Amounts and Days of Diversion during Curtailment Periods
- IV. Administrative Civil Liability Complaints
- V. Determination of ACL Liability Amount

I. Term 91 Curtailment Periods for the Licensees in 2000 and 2001

Ron Duff of the Division will testify that the Division mailed Notices of Curtailment of Water Diversions for 2000 and 2001 on June 28, 2000, and June 4, 2001, respectively. The curtailment periods identified in the Notice of Curtailment for 2000 and 2001 were June 28, 2000 to August 31, 2000, and June 4, 2001 to August 31, 2001, respectively. A Notice of End of Curtailment of Water Diversion for 2000 was mailed on August 17, 2000, shortening the 2000 curtailment period to June 28, 2000 to August 17, 2000 (50 days). Therefore, there was about 138 total days of curtailment for both years.

When determining compliance with Term 91 curtailment notices, it is reasonable to presume the actual curtailment period for a particular permittee or licensee begins when the notice is received. For that reason, the Division sends the notice by certified mail. In 1997, 1999 and 2000, the Division consecutively sent a notice by regular mail because some diverters declined to accept the certified mail in the past. In 2001, the Division only mailed the Notice certified because that Notice required a new Compliance Certification Statement to be completed and returned to the Division by June 20, 2001. Division records show that the Licensees were included on the mailing lists for all probable notices of curtailment and actual notices of curtailment for 2000 and 2001. As a result, the following Days of Curtailment are considered applicable for each licensee:

Phelps-Licenses 13274 and 13444 (Applications 20957 and 21162)

The notices for 2000 and 2001 were acknowledged as received at the Phelps residence as shown on Receipt of Certified Mail Card for 2000 and by a returned Compliance Certification Statement for 2001 (WR 3-03 and WR 3-04.) Signature and dates on these

compute a total amount of water (acre-feet) consumed during the 2000 and 2001 curtailment periods.

The inspection reports also calculate the number of days needed to pump the above-mentioned amounts. The Division files contained pump test data for each Licensee's pump at the authorized points of diversion. Pacific Gas and Electric (PG&E) Pump Test, are attached as WR 3-09-c and WR 3-10-c for Phelps Licenses 13274 and 13444, respectively, WR 3-11-c for Ratto's License 13194, and WR 3-12-c for Conn and Silva's License 13315. The Days of Diversions for each Licensee during the 2000 and 2001 curtailment periods was considered the calculated amount of water pumped (in acre-feet) divided by the capacity of pump (gallons per minute converted to acre-feet per day). The following table is a two-year summary of the acreage irrigated, total crop consumptive use, and various days calculated for each license in the Term 91 Inspection Reports by Mr. Miller. The days shown for Phelps are for two licensed points of diversion.

Licensee	Acres Irrig.	Crop Demand (Ac-Ft)	Days of Curtailment	Days of Diversion	Violation Days**
Ratto	90.0	102.4	118	7.1	8
Conn & Silva	487.0	633.9	118	28.2	29
Phelps	777.4	784.4	208*	44.8	45

*- Combined Days for two licenses. Each license separately would be 104 days.

** - Violation Days count any portion of a day as a day of violation.

To check the amounts calculated for Crop Demand, I multiplied the allowable licensed rates of diversion by the applicable days of curtailment. This check utilizes the maximum 30-day average rate of diversion authorized by each license, and spreads that rate over the total curtailment period for both years specific to each Licensee. The following results were obtained:

Phelps: $(1.43 + 3.16) \text{ cfs} \times 1.9835 \text{ afd/cfs} \times 104 \text{ days} = 947 \text{ acre-feet}$.

(Combined rates of two licenses)

Ratto: $0.59 \text{ cfs} \times 1.9835 \text{ afd/cfs} \times 118 \text{ days} = 138 \text{ acre-feet}$

Conn & Silva: $3.9 \text{ cfs} \times 1.9835 \text{ afd/cfs} \times 118 \text{ days} = 912 \text{ acre-feet}$

This check demonstrates that the amounts calculated as Crop Demand for the 2000 and 2001 curtailment periods either closely reflect, or are less than, the amount that would be pumped by the Licensees if they diverted water at their authorized average rate of diversion.

IV. Administrative Civil Liability Complaints

Other Division staff and witnesses have provided testimony to support the Division conclusion that the Licensees' evidence to support riparian water rights was inadequate. Based on this conclusion and the findings from the 2000 and 2001 inspections, the Licensees violated Term 91 curtailment notice in both years, and had no basis of right or

1 belief that they were entitled to divert water from the San Joaquin or Middle Rivers during the
2 Term 91 curtailment periods of 2000 and 2001.

3 Out of a potential liability of \$104,000 for petitioner Phelps, respondent imposed a
4 liability of \$45,000, taking into account the market value of the water diverted by Phelps during
5 the Term 91 curtailment period, the effects of Phelps' unauthorized diversion on other users and
6 instream uses of the water, Phelps' failure to curtail diversions after repeated warnings by
7 respondent's inspectors, the need to deter future unauthorized diversions, respondent's
8 enforcement costs, and the fact that this was the first imposition of liability upon Phelps for
9 unauthorized diversions. Considering similar circumstances, respondent imposed a liability of
10 \$7000 on petitioner Ratto out of a potential \$59,000 liability and a liability of \$10,000 on
11 petitioner Conn out of a potential \$39,000 liability.

12 The harmful effects of petitioners' diversions of water from the San Joaquin or
13 Middle Rivers on other users and instream uses of the water during the 2000 and 2001 Term 91
14 curtailment periods is patent: the unauthorized diversions took water out of the Delta system at a
15 time when it was needed to meet Delta water quality standards and the requirements of water
16 right holders senior to petitioners. And despite any novel legal issues related to the inclusion of
17 Term 91 in their water right licenses, petitioners could not have maintained a good faith belief
18 that they were entitled to continue diversions during the Term 91 curtailment periods in light of
19 the repeated warnings that respondent's inspectors gave to petitioners in both 2000 and 2001.

20 Contrary to petitioners' contention, respondent adequately and reasonably considered
21 all the circumstances relevant to the amounts of civil liability imposed on petitioners in Order
22 WRO 2004-0004.

23 For the foregoing reasons, the petition is denied. Counsel for respondent is directed
24 to prepare a proposed order, submit it to counsel for the other parties for approval as to form, and
25 then present it to this court pursuant to rule 391 of the California Rules of Court.

26 Dated: February 14, 2006

27 **LLOYD G. CONNELLY**
28 _____
LLOYD G. CONNELLY
JUDGE OF THE SUPERIOR COURT

Exhibit J