

Public Hearing
STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

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Subject: El Dorado Project Proposed by
El Dorado County Water Agency and El Dorado Irrigation District,
Applications 29919, 29920, 29921 and 29922,
Petition for Partial Assignment of State Filed Application 5645

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Held in
Bonderson Building
Sacramento, California

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Tuesday, October 24, 1995
9:00 a.m.

VOLUME I

TUESDAY, OCTOBER 24, 1995, 9:00 A.M.

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MR. STUBCHAER: This is the time and place for the State Water Resources Control Board hearing regarding the following filings:

A. Applications 29919, 29920, 29921, 29922 and a Petition for a Partial Assignment of State-filed Application 5645 Folder 8 as Amended May 25, 1994, of the El Dorado County Water Agency and El Dorado Irrigation District; and

B. Applications 30062 as Amended June 9, 1995, 30453 and State-filed Application 5645 Folder 11 of Kirkwood Associates, Inc., and U. S. Department of Agriculture, El Dorado National Forest; and

C. Application 30204 of Kirkwood Meadows Public Utility District and U. S. Department of Agriculture, El Dorado National Forest; and

D. Application 30219 and State-filed Application 5645 Folder 9 of Alpine County Board of Supervisors and Alpine County Water Agency; and

E. Application 30218 and State Filed Application 5645 Folder 10 of the County of Amador.

This hearing is being held in accordance with the Notice of Public Hearing dated August 30, 1995.

I am Jim Stubchaer, a member of the State Board. I will be the hearing officer at this proceeding. I will be assisted by Buck Taylor, Staff Counsel; Jim Canaday, Staff Environmental Specialist; and Tom Lavenda, Staff Engineer.

The applications and petitions for assignment of State Filed Application 5645 are as described in Attachment 2, Staff Summary, of the Notice of Public Hearing dated August 30, 1995. An Addendum correcting certain errors or omissions to the Notice has been prepared. Copies of the Notice and Addendum are available on the table at the back of this room.

The purpose of this hearing is to afford the applicants, protestants, and interested parties an opportunity to present relevant oral and written testimony and exhibits, which may assist the State Board in determining whether the applications or petitions should be approved or denied.

This hearing will address the following key issues as listed in the August 30, 1995 Notice of Public Hearing:

1. Is unappropriated water available at Caples Lake, Silver Lake, Lake Aloha, and the South Fork American River for the applications and petitions for partial assignment of State-filed Application 5645 that are the subject of this hearing?

2. Will water be:

(A) Directly diverted at Kyburz, the flange in the Sacramento Municipal Utility District tunnel and penstock between Slab Creek Reservoir and White Rock Power House, and/or Folsom Lake for El Dorado Application 2922 and State-filed Application 5645 Folder 8?

(B) Rediverted at Kyburz and/or Folsom Lake for the El Dorado Applications 29919, 29920, 29921, and State-filed Application 5645 Folder 8?

If so, in what amounts, at what frequency, and for what durations?

3. Would the prospective acquisition of Federal Energy Regulatory Commission Project 184 by El Dorado Irrigation District have any impact on any of the proposed project operations and/or uses of water for the filings that are the subject of this hearing? If so, how? If Project 184 is acquired by El Dorado Irrigation District, how does El Dorado Irrigation District intend to operate the project? When and where will water be diverted?

4. Should the following applications be approved?

(A) El Dorado: Applications 29919, 29920, 29921, and 29922 as amended May 22, 1994, re-noticed on July 15, 1994, and modified by applicants' letter dated July 13, 1995.

(B) Kirkwood, Inc.: Application 30062, as amended June 9, 1995, and re-noticed June 15, 1994; and Application 30453 as noticed June 15, 1995.

(C) Kirkwood Public Utility District: Application 30204 as noticed on August 5, 1994.

(D) Alpine: Application 30219 as noticed on August 5, 1994.

(E) Amador: Application 30218 as noticed on August 5, 1994.

5. Should the following petitions for partial assignment of State-filed Application 5645 be approved?

(A) El Dorado: State-filed Application 5645, Folder 8, as amended May 25, 1994, and re-noticed July 15, 1994, and modified by applicants' letter dated July 13, 1995.

(B) Kirkwood, Inc., State-filed Application 5645, Folder 11, as noticed on June 15, 1995.

(C) Alpine: State-filed Application 5645, Folder 9, as noticed August 5, 1994.

(D) Amador: State-filed Application 5645, Folder 10, as noticed August 5, 1994.

6. Will any of the filings that are the subject of this hearing have any significant adverse public trust and/or environmental impacts? If so, what are the impacts? Can these impacts be avoided or mitigated to a level of non-significance? If so, how?

7. Are the proposed appropriations in the public interest?

8. Will the proposed appropriations cause injury to the prior rights of other lawful diverters of water?

9. Do the proposed projects described in the filings that are the subject of this hearing result in any conflicts between users of the waters sought to be appropriated? If so, what?

Can these conflicts be avoided or resolved? If so, how?

10. What specific terms and/or conditions should be included in any water right permits that may be issued for any of the filings that are the subject of the hearing?

At this conclusion of this hearing, the record will be held open for 20 calendar days to receive certain arguments, and it may be held open to receive additional evidence as I determine is appropriate from time to time during the process of this hearing.

After the State Board adopts a decision on the applications and petitions, any person who believes the decision is in error will have 30 days within which to submit a written petition for reconsideration by the State Board.

Alice Book is present and is reporting these proceedings. Parties who want copies of the transcript must make their own arrangements with the court reporter.

At this time, I will ask Mr. Taylor to cover a few procedural items and introduce staff exhibits.

MR. TAYLOR: Thank you, Mr. Stubchaer. On August 30 of this year, the Board served a notice of this proceeding on all the parties by certified mail. Return receipts have been received from all parties excepting one, Mr. Curtis Manning. The Board sent a notice to his last known address and has to the best of its ability attempted to provide Mr. Manning notice of this proceeding.

Staff would like to have some exhibits introduced into evidence. Within the notice of hearing that was sent to the parties during August, there was a list of proposed exhibits which staff proposed to introduce into the hearing record. Those exhibits included the application files for El Dorado, Kirkwood, Inc., Kirkwood PUD, Alpine and Amador Counties, and all those files staff would like to reintroduce into evidence at this time.

One other matter which is new, which has not been previously noticed is item number F. 3 which is the U. S. Department of the Interior, Geological Survey, "Water Resources Data, California: Volume 4" which deals with hydrology for the period of record. We would like to have

that identified as Staff Exhibit Number 11 at this time.

With the exception of those items, there are no new exhibits which staff would like to offer and I would ask they be accepted into evidence at this time if there are no objections.

MR. STUBCHAER: Are there any objections?

MR. SOMACH: Mr. Stubchaer, I have no objection. I am Stuart Somach on behalf of the El Dorado applicants. I just wanted to clarify with Mr. Taylor with respect to El Dorado that in addition to the application files, that that would include the petition for a partial assignment as well as all the transcripts, exhibits and other materials associated with the hearings that were held on June 14, 15, 16, and 21, 1993.

MR. TAYLOR: The Board's records include -- this is a continuation of the earlier hearing and this hearing record will include all those earlier materials.

MR. SOMACH: Okay. I just wanted to make sure the record is clear.

MR. STUBCHAER: Thank you for that clarification. Any other objections? Yes.

MS. LENNIHAN: Question of further clarification.

MR. STUBCHAER: Will you please identify yourself?

MS. LENNIHAN: Martha Lennihan for Kirkwood Associates, Inc. The Kirkwood Associates and the U. S. also has a petition for partial assignment and we also assumed that that is part of the staff exhibit which includes the application files. Is that correct?

MR. STUBCHAER: That is correct.

Hearing no objection, they are accepted into evidence.

MR. TAYLOR: I have two additional items I would like to briefly touch on in the way of an admonition to the parties today and the next several days. First, the legal adequacy of El Dorado's environmental documents is not relevant in this proceeding. The legal adequacy of Alpine County's documents, however, may be relevant. El Dorado County has raised the issue whether the project described in those environmental papers is a project for which approval of an application is sought in this proceeding.

The factual predicate for that argument will have to be established during the course of this proceeding. Finally, whether PG&E or SMUD's water rights or FERC licenses should be modified in how those projects are operated pursuant to those FERC licenses is not an issue in this proceeding.

That concludes my remarks, Mr. Chairman.

MR. STUBCHAER: Thank you, Mr. Taylor.

Our order of proceeding in this hearing will be to

first hear non-evidentiary policy statements pertaining to all the filings. Such statements will be limited to a maximum of ten minutes each. Next will be the presentation of direct testimony including opening statements for cases in chief.

Testimony will be followed by cross-examination followed by other parties, State Board staff, and myself.

Opening statements for cases in chief will be limited to a maximum of ten minutes each. The purpose of oral

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testimony is to summarize the written testimony. It is not to introduce new evidence or items which are not included in the written testimony.

Witnesses will be sworn and required to identify written testimony as their own. Written testimony should not be read verbatim into the record as it is already in the record. Each witness will be given a maximum of 15 minutes to summarize his or her written testimony on direct examination. The written testimony shall be treated as direct evidence in its entirety.

Cross-examination will be permitted on the exhibits, including the written testimony, and on the oral summary.

Absent extenuating circumstances, new testimony or exhibits will not be admitted.

Cross-examination will be limited to 20 minutes by each party, unless good cause is given on why additional time should be allowed.

In the timing of these things, we have a light set up here, green, yellow and red. The yellow light will come on when there are two minutes remaining in the allotted time period, and the red will come on when the time has expired. Interruptions of the witness and questions by staff or myself will not be counted against the chargeable time.

Following cross-examination, there may be redirect and recross if necessary. After all parties have presented their case in chief and have been cross-examined, rebuttal testimony may be received. Rebuttal testimony is also subject to cross-examination.

Closing oral statements will be heard. They will be limited to a maximum of 10 minutes each.

Written arguments may also be submitted.

I now invite appearances by the participants. Will those making appearances please state your name, address, phone number, and whom you represent so that the court

reporter can enter this information into the record.

First, participants making non-evidentiary policy statements, who is representing El Dorado County citizens concerned for water?

MR. HAZBUN: The person who is supposed to do it is not here. I am doing it in his place. My name is Albert Hazbun. I am replacing Ed Murray, who is supposed to be here with a bunch of letters to present to your Board. I live at 760 Lakebrest Drive, El Dorado Hills, California, 95762. My phone number is (916) 933-3448.

MR. STUBCHAER: You are representing El Dorado County Citizens concern for water, and I will just go through the order and ask for parties to identify themselves so you can be prepared.

Next is California Native Plant Society, El Dorado Chapter, City of Sacramento, City of Stockton, Miwok Indian Tribe, El Dorado County Taxpayers for Quality Growth, and Plasse's Resort, Silver Lake.

All right, The Plant Society.

MS. BRITTING: Sue Britting. My address is Post Office Box 377 Coloma.

MR. STUBCHAER: City of Sacramento. No one. City of Stockton. No one. Miwok Indian Tribe. No one. El Dorado County Taxpayers for Quality Growth?

MR. INFUSINO: Thomas Infusino, I-n-f-u-s-i-n-o. My address is Post Office Box 1011, Georgetown, California, 95634.

My phone number is area code (916) 333-0269, and I'm representing Craig Thomas, Keith Johnson, Alice Howard, and El Dorado County Taxpayers for Quality Growth. There are also a number of persons who want to make policy statements.

MR. STUBCHAER: Thank you. Plasse's Resort, Silver Lake.

MS. HOWARD: There are four of us to make policy statements. Do you want our names?

MR. STUBCHAER: Are you representing yourselves?

MS. HOWARD: We are with the El Dorado County Taxpayers for Quality Growth.

MR. STUBCHAER: Mr. Taylor.

MR. TAYLOR: I think our rule is we allow one spokesperson for each organization. Now, you can speak for yourself and you have to identify yourself if you wish to speak for yourself.

MS. HOWARD: Well, do you want my name and address right now?

MR. TAYLOR: Do you wish to speak?

MS. HOWARD: I wish to speak. My name is Alice Q.

Howard. My address is 1487 Crooked Mile Court, Placerville, 95667.

MR. INFUSINO: Clarification, please. Is this to identify people making policy statements?

MR. STUBCHAER: Yes.

MR. INFUSINO: So the position is there's only one policy statement allowed?

MR. STUBCHAER: Per organization. Individuals can speak for themselves.

Plasse's Resort, Silver Lake.

MR. VOLKER: Good morning, Mr. Stubchaer and State Water Board staff and all assembled here. My name is Stephan Volker. I am a lawyer with the Sierra Club Legal Defense Fund and I am appearing today on behalf of the same organizations that I represented at the 1993 hearing with the exception of Kirkwood Associates, Inc., which is represented by Martha Lennihan, to my left. I am appearing on behalf of the following groups today.

MR. STUBCHAER: Is this for the policy statement?

MR. VOLKER: I wanted to make sure the record was clear that the South Silver Lake Homeowner's Association and Plasse's Homestead Homeowners Association were represented by me, yes, I will be making a policy statement in addition to presenting an affirmative case.

MR. STUBCHAER: Separately from your case? Because the opening statement for the case can also be a policy statement.

MR. VOLKER: What is your pleasure?

MR. STUBCHAER: I would say if you're going to be presenting a case, you can combine them and at the same time when we ask for the parties to identify themselves and present a policy statement.

MR. VOLKER: Fine.

MR. STUBCHAER: But I didn't understand that you were representing Plasse's Resort, Silver Lake. I heard you mention Silver Lake Homeowner's Association. Were you representing the resort also?

MR. VOLKER: Yes. I thought it might be appropriate for me to go through the list of organizations I represent. I am appearing today on behalf of the League to Save Sierra Lakes, Alpine County, Caples Lake Homeowner's Association, Caples Lake Lodge, East Silver Lake Homeowner's Association, Lake Kirkwood Homeowner's Association, Kirkwood Meadows Public Utility District, Kit Carson Lodge, Northern Sierra Homeowner's Association, Plasse's Homestead Homeowner's Association, Plasse's Resort Silver Lake, South Silver Lake Homeowner's Association, the Boy Scouts of America, Forty-

niner Council, and the California Sport Fishing Protection Alliance.

MR. STUBCHAER: Quite a list. Are there any other persons who wish to make policy statements?

MR. THOMAS: Craig Thomas. I live at 6221 Shoofly Way in Kelsey, California and my phone number is 622-8718. I'm just speaking for myself.

MR. STUBCHAER: Thank you. Anyone else?

MS. MOORE: Patricia Moore. I live at 1871 Carl Road, Rescue, California, and my phone number is 676-3714. I guess I am speaking for myself.

MR. STUBCHAER: Anyone else?

MR. MINTON: Good morning. I am Jonas Minton, Post Office Box 174, Coloma, California, 95613. My phone is 433-6288.

MR. EHRGOTT: My name is Alan Ehergott. My address is Post Office Box 502, Coloma, 95613. My telephone number is 622-6919.

MR. STUBCHAER: Anyone else for policy statements? All right. We will go to the parties now. Who is representing El Dorado County Water Agency and El Dorado County Irrigation District?

MR. SOMACH: Mr. Stubchaer, my name is Stuart Somach, of the law firm of De Cuir and Somach, 400 Capitol Mall, Suite 1900, telephone, area code (916) 446-7979. I am representing the El Dorado County Water Agency as well as the El Dorado Irrigation District. With me also representing those districts are Mr. Sprunger and Mr. Cumpston, and I will allow them to introduce themselves so they can give their addresses and telephone numbers.

MR. SPRUNGER: My name is Noble Sprunger, District Counsel, Post Office Box 2213, Placerville, California 95667. My phone number is 626-3021. I am representing El Dorado Irrigation District.

MR. CUMPSTON: Tom Cumpston, Deputy County Counsel, representing El Dorado County Water Agency. My address is 330 Fair Lane, Placerville, 95667. My phone is 621-5770.

MR. STUBCHAER: Who is representing Kirkwood Meadows Public Utility District and the U. S. Forest Service?

MR. VOLKER: Stephan Volker, lawyer with the Sierra Club Legal Defense Fund, 180 Montgomery Street, Suite 1400, San Francisco, 94104.

Mr. Stubchaer, I wanted to clarify that we have here today a representative of the California Sport Fishing Protection Alliance, Mr. Bob Baiocchi, who will be making a policy statement on behalf of that organization. I would be happy to yield as much of my time as is necessary to assure

that he is allowed to make the statement.

MR. STUBCHAER: We have them as a party later on separate from you with Michael Jackson. Is he not going to be here?

MR. BAIOCCHI: Bob Baiocchi, I will be the agent for California Sport Fishing Protection Alliance. Yes, we are a party to the proceedings and we will not be making a policy statement. The reason why we are here is to have the availability for cross-examination, objections, etc., standing in the matter in the event that we need to file a petition for reconsideration or eventually going to court on this matter.

MR. STUBCHAER: Thank you, Mr. Baiocchi. So they have their own time and you will have your ten minutes.

Who is representing Alpine County?

MR. RINGER: I may be out of step here. The Silver Lake representative spoke and I am a native of Amador County. I am Frank L. Ringer, representing Jackson Valley, Amador County. My phone number is area (209) 274-4110. I am here without portfolio from any organization. I am here as a citizen and looking for fair play between Amador County and El Dorado County. I have known --

MR. STUBCHAER: Do you wish to make a policy statement, then, which is an unsworn statement?

MR. RINGER: Yes, that would be fine.

MR. STUBCHAER: We will put your name on the list for policy statements and call on you at the appropriate time. Thank you, Mr. Ringer.

MR. TURNER: Mr. Stubchaer, if I may interrupt, I am James Turner, for the Bureau of Reclamation. Just a question, I wanted to get clarified whether Mr. Volker is, in fact, representing both Kirkwood Meadows and the Forest Service in connection with those particular petitions.

MR. GIPSMAN: I will clarify that. I am representing the Forest Service at these proceedings. My name is Jack Gipsman from the Office of General Counsel, U. S. Department of Agriculture. The address is 33 New Montgomery, 17th Floor, San Francisco, California 94105.

MR. STUBCHAER: Is that appearances for the Forest Service and Kirkwood Meadows Public Utility District?

MR. GIPSMAN: Yes.

MR. STUBCHAER: And is Mr. Volker not representing the Forest Service?

MR. GIPSMAN: That is correct.

MR. STUBCHAER: All right. I think we were at Alpine County. Who is representing Alpine County?

MR. VOLKER: Stephan Volker, and I have identified myself previously. I omitted my phone number. For the

record, it is (415) 627-6700.

MR. STUBCHAER: Kirkwood Associates.

MS. LENNIHAN: Good morning. My name is Martha Lennihan, Law Offices of Martha H. Lennihan. The address is 455 Capitol Mall, Suite 300, Sacramento, California, 95814.

The phone number is (916) 321-4460. I am here representing Kirkwood Associates, both in terms of their applications, they have two applications on file, a petition for partial assignment of State-filed Application 5645, Folder 11, and also in terms of their protest.

MR. STUBCHAER: Thank you. Who is representing Amador County?

MR. GALLERY: My name is Daniel Gallery, 962 J Street, Suite 505, Sacramento, 95814. The phone number is (916) 444-2880. I represent the County of Amador, which is sometimes referred to in the Notice as Amador County Water Resources, but the correct party is the County of Amador.

MR. STUBCHAER: Thank you. And who is representing PG&E Company?

MR. MOSS: Good morning, Mr. Stubchaer. I am Richard H. Moss, Attorney for PG&E Company, Post Office 7442, San Francisco, 94120. The phone is area code (415) 973-6341, representing PG&E.

MR. STUBCHAER: Thank you. Sacramento Municipal Utility District.

MS. DUNSWORTH: Good morning, Mr. Chairman. My name is Leslie Dunsworth. My telephone number is Sacramento Municipal Utility District (916) 732-6126. Our address is P.O. Box 15830, Sacramento, California, 95852-1830. I am here representing Sacramento Municipal Utility District today.

MR. STUBCHAER: Thank you. Bureau of Reclamation.

MR. TURNER: Good morning, Mr. Stubchaer. My name is James E. Turner from the Office of the Regional Solicitor of the Pacific Southwest Region for the U. S. Department of the Interior at 2800 Cottage Way, Room E, for east, 2753, Sacramento, California, 95825. The telephone number is area code number (916) 979-2155, and I will be appearing on behalf of the U. S. Bureau of Reclamation.

MR. STUBCHAER: California Department of Fish and Game.

MS. PETER: Good morning, Mr. Stubchaer. My name is Ellen Peter from the Office of the Attorney General, 1300 I Street, Sacramento, 95814. The telephone number is (916) 314-3559.

MR. CAMPBELL: Matt Campbell, State of California Attorney General's Office. My address is the same as Ms. Peter, and my telephone number is (916) 327-2477.

MR. STUBCHAER: Thank you. California Sports Fishing Protection Alliance. Mr. Baiocchi.

MR. BAIOCCHI: Good morning, Mr. Stubchaer and staff and Alice. I represent the California Sport Fishing Protection Alliance. I am a consultant for them and I will be the agent at this hearing. My mailing address is Post Office Box 357, Quincy, California, 95971. I have three telephone numbers. The Graeagle office is (916) 836-1115. My Quincy office is (916) 283-3767, and the law office is (916) 283-1007. Thank you very much.

MR. STUBCHAER: Thank you. Friends of the River.

MR. EVANS: Steven L. Evans, Friends of the River, 128 J Street, Second Floor, Sacramento, 95814. The phone number is (916) 442-3155.

For the record, I am representing Friends of the River American Whitewater Affiliation, Loma Prieta Paddlers, Bay Chapter, Sierra Club River Touring Section, Sierra Club Mother Lode Chapter.

And also for the record, a party to our original protest, California Outdoors, has withdrawn from the protest, so we are no longer representing that group.

MR. STUBCHAER: Westlands Water District.

MR. BIRMINGHAM: Good morning, Mr. Stubchaer. My name is Thomas Birmingham. I am with the law firm of Kronick, Moskovitz, Tiedemann & Girard, 400 Capitol Mall, 27th Floor, Sacramento, California, 95814, appearing on behalf of the Westlands Water District.

MR. STUBCHAER: Thank you. Other than El Dorado County Taxpayers, are there any other persons who wish to participate? None.

All right, now we will go to participants seeking status under California Code of Regulations, Title 23 -- excuse me.

MR. MURRAY: I wanted to correct something. I arrived late. I'm actually with El Dorado County Citizens Concerned for Water. I'm Ed Murray, 312 Main Street, Placerville.

MR. STUBCHAER: You wish to present a policy statement for yourself:

MR. MURRAY: For the group I represent.

MR. STUBCHAER: We discussed before you got here, I guess, that only one person can represent a party, but you can speak for yourself, if you wish to do so.

MR. HAZBUN: I gave my name but he actually should be the speaker.

MR. MURRAY: I arrived late.

MR. STUBCHAER: Are you also going to speak, Mr. Hazbun?

MR. HAZBUN: No.

MR. STUBCHAER: We will substitute you for Mr. Hazbun. Your name is, again?

MR. MURRAY: Ed Murray for El Dorado County Citizens Concerned for Water, 312 Main Street, Placerville. Thank you very much.

MR. STUBCHAER: Okay, starting back, participants seeking status under California Code of Regulations, Title 23, Section 761(a) as interested parties, is the El Dorado County Taxpayers for Quality Growth who belatedly filed papers requesting it be permitted to participate in the hearings as an interested party. The paper states that in order to avoid prejudice to other participants, taxpayers will not present witnesses at the hearing and are not requesting copies of the documents exchanged among the parties. The taxpayers do wish to introduce 37 exhibits and fully participate in all other aspects of the hearing. Mr. Infusino, do you have anything to add to your request?

MR. INFUSINO: No, Mr. Stubchaer. I would just add that to date I received no objections to the request and I would be curious to find out if there are any today.

MR. STUBCHAER: Is there any objection to this request?

MR. SOMACH: Yes, Mr. Stubchaer. The El Dorado applicants object to the request. I have been through those exhibits. They appear to have -- I do not understand the relevance of those exhibits and without testimony to support those exhibits, it is difficult and will be difficult for us to be able to understand, number one, the relevance to our applications and petition to be able to sufficiently and adequately cross-examine with respect to the content of those exhibits; and finally, to be able to put on any rebuttal testimony with respect to those exhibits. We have no objection whatsoever if this group wants to make a policy statement, but we believe it inappropriate for them to be able to just simply place in a number of exhibits in the manner they have which prejudices our ability to properly represent the interests that we are concerned about.

MR. INFUSINO: Now, I think I do want to add something.

As Mr. Stubchaer has pointed out, on September 13, 1994, Quality Growth filed a protest on the El Dorado applications and requests for a partial assignment. That protest exceeded 50 pages. The protest included a proper protest form, a statement of reasons that set forth the legal basis for that protest, a lengthy statement of facts, and a detailed list of mitigation conditions and some informative

attachments.

An answer to that protest was filed by the applicants indicating they were well aware of the factual legal basis for the protest. At that time, Mr. Keith Johnson was the protestant identified as a person to receive future communications from the State Water Resources Control Board.

Mr. Johnson did receive the August 30 Notice of the State Water Board. He opened the Notice, glanced at the first page, and set it aside with the intention of passing it on to me at the next Quality Growth meeting. Unfortunately, Mr. Johnson never saw the Notice to Appear deadline on page 3 of that Notice.

In the last week of September, another protestant concerned that Quality Growth may abandon its protest faxed me a Notice. Later that week, I called Mr. Lavenda and informed him of Quality Growth's desire to participate in the upcoming hearing.

As you know, October 2 was the special deadline for exchange of exhibits and list of exhibits specified for this hearing. The regulation specified the exchange shall occur not later than 10 days before the hearing.

On October 2, Quality Growth mailed the required list of exhibits and the necessary copies of exhibits to the list of hearing participants and to the Board.

Many of those exhibits were the same exhibits referenced in Quality Growth's 1994 protest.

In addition, on October 2, Quality Growth delivered to Mr. Lavenda of the Board staff, copies of government document exhibits that it intends to introduce by reference at this hearing.

In that Notice, Quality Growth indicated it was aware of the possible prejudice that could result if they were allowed to identify witnesses and receive from other parties to the proceeding the documents that they had exchanged.

In order to avoid that prejudice to the other participants, Quality Growth has made this request before you. Quality Growth does sincerely apologize for missing the September 20 deadline, but the record does reflect that Quality Growth made efforts to avoid prejudice to those other parties, first by the detail of the protest; second, by providing the exhibits and listed exhibits in a timely fashion; and third, by relieving other parties of the burden of providing their exhibits; and finally, by voluntarily limiting the extent of its participation at this hearing.

On the other hand, if Quality Growth is simply prevented from submitting any evidence at this hearing, it will be denied an opportunity to build an administrative

record.

In addition, a court action we may bring following this hearing may be vulnerable to challenge on the basis that Quality Growth failed to exhaust its administrative remedies.

Thus, summarily dismissing Quality Growth's evidence from the proceeding will cause greater due process ills than conditioning Quality Growth's participation.

MR. TAYLOR: May I interject for a moment, Mr. Infusino. We are not at this point prepared to rule on the issue of whether your exhibits should be admitted into evidence or not. I think the only question at this point is one of standing. Mr. Somach has indicated he has no objection to your participation in the hearing in terms of making a policy statement, and I did not hear him object to any cross-examination you want to conduct. I don't believe that we need to spend a great deal more time on this at this point.

MR. INFUSINO: He did introduce objection to the introduction of evidence and his objection appears --

MR. TAYLOR: At this point we are not dealing with the introduction of evidence.

MR. INFUSINO: That's what I feel Stu's objection was, that he felt our participation was prejudicing the applicants because he felt our evidence wasn't weighty enough and I agree with you that the question of the weight of the evidence should be a matter at the time we are introducing evidence.

MR. STUBCHAER: Mr. Taylor, I didn't hear your comment.

MR. TAYLOR: What we are dealing with at this point is whether Taxpayers for Quality Growth should have the standing to participate in this proceeding. Mr. Somach has not objected to that. What Mr. Somach objected to is some uncertainty about what to make of the exhibits which Quality Control proposes to introduce sometime later in the proceeding. I suggest we deal at this point whether Tax Payers for Quality Growth may participate, and deal with the evidentiary question later.

MR. INFUSINO: I agree with that assessment. I have three possible scenarios I would like to toss out for your consideration, Mr. Stubchaer. First, you could refuse to allow Quality Growth to submit evidence at this hearing. If the Board chooses this regrettable course of action, Quality Growth respectfully requests that the Board also enter into the record a stipulation that Quality Growth has attempted to exhaust its administrative remedies.

Scenario number two, the Board could recognize quality growth as an interested party. That's why I'm standing here right now for the purposes of introducing evidence upon such

terms as the Board may choose, to avoid prejudice to the other parties.

You cited a Code Section, Title 23 of the California Code of Regulations, Subsection 761(a). If the Board chooses this course of action, Quality Growth asks that the Board recognize on the record that Quality Growth remains a protestant with all other rights, privileges and duties afforded that designation, including the presentation of an opening statement, closing arguments, closing briefs, and the right to cross-examine.

The third scenario is that the Board has a decision to find that the Board and the other parties have not been prejudiced and to allow Quality Growth to submit exhibits under limitation, as you suggested, and to simply proceed as a protestant.

From Quality Growth's perspective, the latter seems the fairest way to go. In addition, it promotes good public policy by giving parties an incentive to take the initiative to correct and cure potential prejudicial situations prior to the Board hearing.

MR. STUBCHAER: Thank you. We will take a two-minute recess while I confer with counsel, and latecomers can look for seats.

(Short recess.)

MR. STUBCHAER: Let's reconvene. Please come to order. Mr. Infusino, I'm prepared to grant you status as a participant with the right of cross-examination, but I'm not going to rule on the evidence at this time. As Mr. Taylor suggested, we can address the evidence when it comes up later in the proceeding. There are questions about the relevancy and appropriateness of accepting the evidence, so we will rule on that later.

MR. INFUSINO: Thank you very much, Mr. Stubchaer.

MR. STUBCHAER: We will now hear the policy statements, non-evidentiary policy statements, and as I said earlier, ten minutes each. The first is Mr. Ed Murray of El Dorado County Citizens Concerned for Water.

MR. MURRAY: I have copies of our statement here for you if you care to have them and organizational letters of support which are backup.

My name is Edward Murray. I am an architect with an office in Placerville and have been involved for the last 15 years to help ensure El Dorado County obtains additional water rights.

I am speaking on behalf of the El Dorado County Citizens Concerned for Water, an organization of residents who have been meeting for 17 years.

I have, also, supporting letters from the following organizations in El Dorado County: The Building Industry Association, the El Dorado County Association of realtors, El Dorado Builders Exchange, El Dorado Business Alliance, El Dorado County Chamber of Commerce, El Dorado County Farm Bureau, El Dorado County Forum, El Dorado County Surveyors, Architects, Geologists, and Engineers, El Dorado Hills Chamber of Commerce, Placerville Fruit Growers' Association, the Shingle Springs/Cameron Park Chamber of Commerce. Collectively, those organizations represent more than 2500 individuals and businesses.

We have decided to make a single presentation and avoid repetitive, time-consuming testimony. We would like to assure you and the Board that our position has significant support from El Dorado County Citizens, Business, Agriculture, and the Professional Community.

A good number of them are here in the audience and would be glad to express their opinion if the need arises, and I might just ask some of them to stand as they represent El Dorado County. (Representatives stood.) Thank you.

For many years, the County has been in dire need of water. Ten years of hard work in the SOFAR project resulted in some necessary water rights, but the project did not prove financially feasible. Your Board advised our County to come back with a simpler, less environmentally damaging project that could provide the needed water.

This application has been filed in response to that suggestion. The application requires no facilities to be constructed in the American River, uses existing facilities, and offers the most benign environmental impact of any project ever considered for this area.

Nevertheless, we find that this process has already consumed at least three years of valuable time. We certainly hope that a happy end is in sight.

The following is a very brief summary of our case as our people see it.

One. El Dorado County is in dire need of water to allow reliability of the present water supply, job creating business for El Dorado County, approval of the County General Plan update, long-range planning by the County and its citizens for the progress and prosperity of the County.

Two. The area of origin is the only practical source of water to meet El Dorado County's needs. There are no reliable or significant groundwater supplies in the County. The County is upstream from major diverters, some of them export the water from the Basin, which is our area of origin.

Three. El Dorado County and El Dorado Irrigation

District are among leaders in the State in adopting policies and practices for: Water conservation measures, planning process that prevents the creation of any parcel without a water meter when such parcels require public water service. And as an aside, I think we are the only County in the State that has that requirement, and metering all customers, and an ambitious Reclaimed Water Master Plan under execution; also a very well thought out and yearly updated water supply/demand report, as well as an exact accounting of all existing parcels in the County, including agriculture, concerning water availability and need.

Four. Our project EIR has been prepared and certified. The project has practical no recreational or environmentally damaging effects on the American River downstream of Folsom Lake and none above or east of Folsom.

Five. El Dorado County has a contract with the State Water Resources Control Board for expedited application processing, where others do not. Despite paying in excess of 170,000 dollars on that contract, El Dorado Irrigation District/El Dorado County Water Agency finds its application held up by the State Water Resources Control Board staff work on competing applications and now scheduled to be heard in conjunction with these competing applications.

Six. We are especially concerned about conditional approval of the White Rock Point of Diversion/Rediversion as outlined in El Dorado's previous testimony.

While other counties have been making progress in securing reliable water supplies, El Dorado County has not been permitted such progress. The El Dorado County's citizens are looking forward to a timely award of this water, hopefully by December of this year, when an updated general plan is expected to be presented to our Board of Supervisors.

Thank you very much.

MR. STUBCHAER: Thank you, Mr. Murray.

California Native Plant Society, El Dorado Chapter,
Susan Britting.

MS. BRITTING: My name is Susan Britting. I am here today appearing before the Board as a representative of El Dorado Chapter of the California Native Plant Society.

The California Native Plant Society is a statewide organization. It was established in 1965 and we are supported by 31 chapters throughout the State. Our membership includes professional scientists and amateur naturalists.

The mission of the California Native Plant Society is to increase understanding and appreciation of California's native plants and to preserve them in their natural habitat through scientific activities, education, and conservation.

I serve as conservation chair for the Chapter, and our Chapter has focused on promoting the effective management of the eight species of rare plants endemic to the gabbro serpentine soils in El Dorado County.

The Draft EIR for the Water Project indicates that a substantial proportion of the area within the gabbro soil study area will be developed over the next 20 to 30 years.

At the present time, El Dorado County remains undecided as to how to manage for these rare species.

A Rare Plant Advisory group, of which we were participants, was formed by the El Dorado Board of Supervisors to develop management strategies for these species. The Advisory Group recommended the establishment of a preserve system which included a southern preserve site.

The Board of Supervisors in El Dorado County failed to adopt these recommendations in total. An essential southern preserve site was omitted from their approval. Also, not addressed in the Board's approval of the preserve system was a clear management strategy and funding source to support the system.

Continued residential and commercial development within the gabbro soil study area will jeopardize the existence of these rare species and the habitat in which they occur. These species are considered rare under the California Environmental Quality Act and five of the species are listed as threatened or endangered under the California Endangered Species Act and five of these species have been proposed for either threatened or endangered status under the Federal Endangered Species Act.

The threat of extinction that these plant species face and the loss of chaparral habitat in which these species occur is of the highest concern to our Chapter.

We support the establishment of a rare plant preserve system which includes a large preserve in the southern region of the gabbro soil study area.

We ask that El Dorado Irrigation District Water Rights Application be denied until such time as it can be assured that a system to protect these species from extinction has been implemented and funding for management of the preserve system has been provided.

MR. STUBCHAER: Thank you, Ms. Britting.

El Dorado Taxpayers for Quality Growth, Thomas Infusino.

MR. INFUSINO: Mr. Stubchaer, I am going to yield my time to Alice Howard as the representative of El Dorado County Taxpayers.

MR. STUBCHAER: She has her own time. We don't permit yielding of time.

MR. INFUSINO: She wishes to be recognized as the spokesperson. I will withdraw as spokesperson.

MR. STUBCHAER: All right, Ms. Howard.

MS. HOWARD: Mr. Chairman, Ladies and Gentlemen, El Dorado County does not need this water. The County is already scheduled to get 7500 acre-feet per year new water from Folsom Reservoir under Public Law 101-514. The elements of the County are pushing for additional rights to support the level of growth that will bankrupt the County and destroy the environment and quality of life we enjoy.

Quality Growth believes awarding new rights toward this end is not good public policy.

The fifth annual California Water Quality Conference to be held in Sacramento on November 15 and 16 has taken for its theme the critical nexus between water and land use. This nexus was acknowledged by the Governor in signing Senator Costa's bill, SB 901 that links land use planning to availability of water.

It is ironic that this hearing is over an application for new water rights by entities in El Dorado County that have made extraordinary efforts to avoid taking responsibility for managing that critical nexus.

It distresses us greatly that our County wants these water rights, but is unconcerned about using that water in the public interest. It accomplishes this by passing the buck between two county entities, the Board of Supervisors and the County Water Agency run by the same five men who also appoint Planning Commissioners.

Wearing their Water Agency hats, these men are authorized to get water for the County but have no say over land use decisions. Wearing their supervisory hats, they control land use decisions. It is these critical decisions that determine whether that water is used in the public interest that neither wastes natural resources or creates an unsuitable living environment.

Thus, it is entirely possible that the impact of mis-managed growth, facilitated by any new water rights, will not be mitigated and that the water will not be used in the public interest.

Quality Growth contends that that is exactly what is in store for the citizens of El Dorado County.

The process to revise our General Plan has gone through many iterations in the last six years, largely at the behest of the supervisors and their planning commissions.

The aspirations expressed in 1990 by citizens in workshops throughout the County have been cast aside. Any inclination towards managing growth and serving agricultural land, developing efficient public services or preserving rural character have either been eliminated outright or diluted to the point of obscurity.

Our General Plan is now in the hands of those with direct financial interests. It's latest version completely rewrites the old versions, assumptions, strategies, concepts and objectives.

For instance, it is now an objective to oversupply land use designations and to recognize that funding limitations for infrastructure and services will result in lower levels of service.

This bit of sophistry could forestall various mitigating measures as being inconsistent with the goals of the General Plan.

A so-called low-growth alternative presented at the last minute to satisfy CEQA requirements for a range is a charade. Being market driven, as are the other alternatives, it is intended to accommodate the identical population at 2015 as do the others.

There are real constraints to the population our County can accommodate, both physical and fiscal. No alternative plan before us is determined fiscally feasible. That is why we have that new objective about declining levels of services on roads, schools, emergency services, etc.

And we have an irresponsible agency that would be in charge of any new water rights should this Board award them.

The El Dorado Irrigation District has just made headlines over years-long polluting of Deer Creek with effluent from the sewage plant found last November to be in a disgraceful condition by an engineer from your Board staff. But a consultant had told the Irrigation District much the same thing in its 1993 report. EID had done nothing by late 1994.

Another engineer from your staff was evicted from this plant when he later also attempted to inspect it.

A second EID sewage plant seems regularly to discharge effluent, violating its NPDES permit, especially in the dry months when it isn't supposed to discharge downstream at all.

The 1993 report mentioned 800,000 gallons per day being discharged in this manner for a period of 60 days.

Six weeks ago a local paper told how EID directors had refused to conduct a study requested by the Bureau of Reclamation to ensure compliance with the Bureau's suggested regulations about use of water for agricultural purposes.

Though EID apparently knows that some of its customers are in violation, its reason for doing nothing was expectation of buying the Bureau's Sly Park Reservoir, thus relieving itself of any need to comply.

Another EID document, a December 1990 report entitled, "Report of Water System Components Contributing to Unaccounted for Water Use," told of leak detection equipment EID purchased with a grant from the Department of Water Resources. A pilot study had resulted in a water savings of approximately 830 acre-feet per year.

According to the report, "Part of the provision for the grant was El Dorado Irrigation District continue the leak detection program. A formal program has not been followed since the 1986 study.

The District does have the equipment, which is typically used to verify and pinpoint reported leaks."

It borders on the ludicrous that such an agency would be able to operate project 184 economically when PG&E couldn't.

Quality Growth believes that it is poor public policy to entrust such a precious resource as water to an agency with a sorry record of commitment to a wise use in a county that would be devastated and impoverished by the unbridled growth these water rights are intended to support.

We believe this charade has gone on long enough. We respectfully request that this Water Board act to protect the citizens of this State and the citizens of El Dorado County from the ethically challenged and irresponsible government institutions of our County.

If this Board should see fit to approve any new water rights, please condition that approval on the requirement that the Directors of the County Water Agency secure an agreement with the El Dorado County Board of Supervisors themselves to adopt the mitigation measures listed on pages 53 to 56 of Quality Growth's protest.

Thank you.

MR. STUBCHAER: Thank you.

Next we will hear from Craig Thomas.

MR. THOMAS: My name is Craig Thomas and I am here representing myself today.

My concerns regarding this Water Rights Application center around the high potential for damage to valuable natural resources and the likelihood of creating an unsuitable living environment in El Dorado County. The water provided by these applications would create a water supply to support development in El Dorado County at levels far in excess of the growth projected by the next 20-year planning horizon.

Although the County's General Plan Update is not as yet to be completed, the public and the County has recently had the opportunity to evaluate the environmental impacts of growth in the next planning horizon, 2015 and beyond. This was done in the Draft EIR for the General Plan and the Draft EIR Supplement.

The result identified 27 significant unavoidable impacts to the environment. These impacts are driven by the dreamed of acquisition of the 27,000 acre-feet of water being requested by El Dorado County Water Agency.

This level of excessive growth overwhelms the planning process and will cause great harm to biological resources and their existing human environments. There are major quality of life and public trust values at stake here.

The proposed General Plan project description plans to "foster a rural quality of life", "sustain a quality environment", and "conserve, protect, and manage the County's natural resources." Any reasonable evaluation of the results of the Draft EIR would have to conclude that these plans failed to achieve those stated intents.

There are major significant unavoidable impacts to natural resources and the environment induced by the growth, created by this additional water. Some of them are: Surface water and groundwater pollution, harming special status species, fragmenting wildlife habitat, and degrading air quality. There is major degradation of the suitability of the human environment from massive conversion of open space into more intensive uses, groundwater shortages, increased wild land fire risk, severe impacts to the emergency service system, and dramatic increases in traffic and reduction in road safety and level of service in the project description, and I have included in my written testimony a list of the major highways in El Dorado County that will, upon implementation of this proposed project be reduced to levels of service which is the gridlock that many of us experienced on the way down here today, bumper-to-bumper traffic, from now on through that planning horizon if that project is approved based on this water.

My point is that El Dorado County has enough water to meet its needs and maintain reasonable growth through the next planning horizon. What this water rights application represents is the attempt of a handful of arrogant public officials, both on the El Dorado County Water Agency Board and the El Dorado Irrigation District Board, and I am sure you are aware of El Dorado Irrigation District's flagrant disregard for both public safety and environmental protection at Deer Creek, to satisfy the cries of land speculators at the expense

of environmental sustainability and quality of life.

We respectfully request that you protect the public trust values which are your charge and firmly and clearly deny this water rights application by the El Dorado County Water Agency. Thank you.

MR. STUBCHAER: Thank you. Patricia Moore.

MS. MOORE: My name is Patricia Moore and I am just a poor beleaguered taxpayer of El Dorado County and I would like to point out a few things that have stayed the same during this process, and that is that EID still plagues the water of our fair County with repeated violations of waste water discharge standards, making such water unfit by County Health standards for even mere contact recreation.

El Dorado County has failed to complete a general plan update that clarifies the expected need for water in the EID service area.

A few things have changed. During the June 1993 hearing, the applicant made it abundantly clear that El Dorado had no intention of ever altering PG&E's historical operation of the lake in Project 184. I quote: "As previously discussed, the proposed El Dorado project will not impact the historic lake levels. Moreover, El Dorado does not have control over water releases from the lake. PG&E controls the release of water from the lake and must operate the lake consistent with its FERC license 184 -- El Dorado County Water Agency/EID Closing Statement, September 7, 1993, page 27.

EID has now struck a deal to acquire Project 184 from PE&E. No longer will the exercise of any water rights obtained by El Dorado Irrigation District through the applications in question need to suit PG&E.

EID is likely to inherit the broad discretion that FERC conferred on PG&E to change its diversion practices to satisfy its operating requirements.

During the June 1993 hearing, the applicant's witnesses placed a great deal of reliance on the work performed by Economic Planning Systems in projecting population growth in El Dorado County.

That same consulting firm that the applicant relies on for its population growth projections has produced a fiscal land financial feasibility assessment of the County's general plan update.

That assessment concluded that EID rate payers who are expected to finance this project will be the same taxpayers who will be footing the bill for all of the other public works associated with the development that this water is supposed to be serving. The cumulative burdens to finance public works and the services are beyond what the folks are willing to bear.

In conclusion, I would like to point out that El Dorado County is now considering a low-growth General Plan and I would like to leave you with a quote from one of our planning commissioners, Tom Mayhap made during the June 30 Planning Commission. He has some opinion of what your Board's best judgment would be. This is a quote: Now, if I were sitting on that Water Board and looking at the competition between El Dorado County and other counties and the Delta and the valleys and Amador and Alpine County's request to keep the water, the direct water in the lake and all that, I would say to myself, here is El Dorado County who hasn't made a commitment to a 20-year plan at this point and I would see now all of a sudden they're willing to accept lower growth, well, perhaps El Dorado County doesn't need that water. Thank you.

MR. STUBCHAER: Thank you, Ms. Moore. Jonas Minton. Are you speaking for yourself separate from your appearance as a witness for another party?

MR. MINTON: I am no longer a witness for another party.

--

Good morning, Mr. Stubchaer and staff. I am Jonas Minton.

On December 1, 1993 I took a leave of absence from my employer, the California Department of Water Resources, to assist the El Dorado County Water Agency as their general manager. I served in this position for 12 months, until the end of the leave of absence.

At that time, I returned to my position in the Department of Water Resources. My statements here represent my own views and not those of the Department of Water Resources or El Dorado.

During my tenure at El Dorado, I was actively involved in the development of the revised El Dorado project, one of the subjects of the hearing today.

In particular, I have focused on the concerns raised in the letter from Mr. Stubchaer dated October 29, 1993. In that letter you pointed out that an operations agreement had not been secured with PG&E or SMUD. It was also recognized that environmental documentation had not been completed to analyze instream impacts of diversions at points above Folsom Reservoir.

Under direction of the Water Agency Board of Directors, I worked with El Dorado Irrigation District to clarify that the requested amount is a maximum of 17,000 acre-feet per year. We also provided you with an analysis that showed that the entire 17,000 acre-feet could be reasonably and beneficially used if it were diverted from only the Folsom

Reservoir Point of Diversion.

This material was submitted as part of the March 1994 revision as part of your record.

In addition, we worked to address the concerns of those who enjoyed the public trust values at Silver Lake, Echo and Aloha Lakes.

The analyses demonstrate that the project before you could be operated in a way that preserved the traditional lake levels, the project before you can meet El Dorado's consumptive needs without requiring the construction of costly and environmentally controversial reservoirs. It could be operated in a way that does not adversely impact the trust values of the source lakes or the South Fork of the American River above Folsom Reservoir.

My professional observation is that if El Dorado is to increase its surface water supply, the only supply available to it, the project before you operated in the way proposed could have the least impacts on the aquatic resources of Amador, Alpine and El Dorado Counties.

MR. STUBCHAER: Thank you, Mr. Minton. Alan Ehrgott.

MR. VOLKER: Excuse me, Mr. Stubchaer. I would like to lodge an objection in the record to the testimony that was just presented. I would move to strike that testimony on two grounds.

First, the concluding remarks indicated that Mr. Minton had testified in his professional capacity. He said in his professional judgment he had observations to share with the Board. That suggests to me he was testifying as a witness. He has not been sworn. It is inappropriate for someone in his capacity to appear as a private citizen speaking his mind. Perhaps that's appropriate if he is addressing policy matters, but in this case, his point was that as a professional, he could vouch for the representation made by the El Dorado County applicant. I think it inappropriate for a public policy statement.

The second ground for my objection is that Mr. Minton was the General Manager for El Dorado County Water Agency for a year and obviously, has in my estimation, a conflict of interest in attempting to present his personal view separate from those held as an employee of El Dorado County applicants. Thank you.

MR. STUBCHAER: Mr. Volker, he was speaking as a policy witness on his own behalf. He was not sworn, as you stated, and the fact it is not sworn or cross-examined testimony goes to the weight of what he says. It is just a policy statement, so I am going to permit it.

Alan Ehrgott.

MR. EHRGOTT: Good morning, Mr. Chairman. I am speaking on behalf of myself and I would like to just point out I have been a resident of El Dorado County for 13 years. I followed both the General Plan process and the Water Rights process fairly carefully. I am here to express my concern regarding the South Fork American River Watershed.

I believe there has been too much interest and emphasis on the part of the applicants to obtain new water rights and far too little interest placed on protecting the watershed. The basis for my belief is characterized by the following:

Number one, the applicants have not produced any current or updated surveys on instream water quality conducted for fish, invertebrates, food sources for fish, wildlife, including threatened and endangered wildlife, depending upon that watershed.

Two, the applicants contend that their data, collected in the 1960s and 1970s from a FERC application process, called the South Fork American River Upper Mountain Project is valid because of steep and remote topography, and consequently these natural areas have generally precluded additional development adjacent to natural waterways.

Since this data was collected in the 1960s and 1970s, I submit this is far from true. There has been significant impacts on the watershed from urban and suburban development and if these water rights are granted, this will continue even more so. There is impact on road runoff from urban and suburban development and the dumping of untreated sewage from each of the four wastewater treatment facilities managed by the Applicant, EID.

Much of the debate between the applicant and these parties that have filed protests and lawsuits stem from the unwillingness of the applicant to provide new field data and commit in writing to establishing protective safeguards to Caples and Silver Lake in both the Kyburz and Lotus Reach of the South Fork, American River.

I am particularly concerned about the contentions on the part of the Department of Fish and Game regarding the dewatering of the Kyburz Reach at a point on the South Fork of the American River just below the diversion point of the El Dorado Canal.

A study conducted by PG&E in 1983, using instream modeling methodologies, recommended a minimum instream flow to support fish and invertebrate populations of 60 to 65 cfs.

The Department of Fish and Game contends that summer time minimum flows in exactly the same Kyburz Reach has recently been as low as 1 cfs.

The South Fork fisheries have declined significantly because of upstream water diversions.

I am particularly concerned that this application to withdraw water from Folsom Lake is just one step towards additional diversions upstream. At a time when we should be considering increasing natural flows and smoothing out the hydroelectric pulses, we are instead back before this Board debating new water diversions.

Now, after two years, in my opinion, nothing has changed. The lawsuits are still there. There are no written agreements, and the applicants have not been forthcoming with new information. If the applicants refuse to produce updated upstream studies that would, in my opinion, put many of these controversies to rest, then I submit to this Board that a decision on new water rights be linked to the issue of new instream studies that assuredly will be requiring the relicensing by FERC of the upstream PG&E/EID and the SMUD facilities. These studies are now under way. We need more instream information.

Lastly, I ask this Board to err on the side of the watershed and the public trust values of the watershed. The resource in this case is everything.

Granting new rights to El Dorado County will have significant and irreversible growth inducing impacts on the South Fork American River watershed and the water we export to nearly 8 million downstream water users.

MR. STUBCHAER: Thank you, Mr. Ehr Gott.

Mr. Volker, I want to correct the statement I made in ruling on your objection. I referred to the weight of evidence. I meant to say weight of the statement.

All right, Frank Ringer.

MR. RINGER: My name is Frank Ringer. I am a resident of Amador County. My address is Post Office Box 25, Ione. My telephone number is 274-4110, area code (209).

I have had great experience with Silver Lake. My grandparents came by the lake in 1852 and I am the second generation in California. We have known the lake a long time. They settled in Jackson Valley and I am a resident there.

I was instrumental in the formation of the Irrigation District, Jackson Valley Irrigation District, and the building of the Jackson Valley Dam, of which I later became a Director and Chairman of the Board.

Later on, I became Chairman of the Board and was a Director of the Amador County Water Agency, and observed Silver Lake over the years.

It's been properly managed. It hasn't hurt the environment. The recreators have recreated on it. The lake

has been drawn down in the fall so it has storage space for the regulation of inflow with a sudden snowmelt or pineapple express came into the area without overflowing the structures.

It's been well managed, and if El Dorado Irrigation District agreed in writing to Amador County it would be managed in the same manner, they should have that water. All flows into the American River watershed anyway.

It's 8,000 to 8400 acre-feet of water that can be used for the people and the people should use it.

We need water in California and they are entitled to it. It flows into their drainage. It's a shame that people seem to litigate all this stuff so intensively that it turns into kind of a trash meeting. But we need to have an understanding that that water belongs over in El Dorado County. There is no question about it.

And the recreators can still recreate when the lake is drawn down, and they don't do much after Labor Day anyway. Thank you.

MR. STUBCHAER: Thank you, Mr. Ringer.

That concludes the policy statements. I want to thank all the makers of policy statements for staying well within your time limit. I hope that's an omen for the rest of the proceedings.

We will now take a 12-minute break after which we will get to the direct testimony.

(Recess)

MR. STUBCHAER: Will the meeting please come back to order.

We are going to go to the direct testimony of the case in chief of the El Dorado County Water Agency and the El Dorado Irrigation District.

Mr. Somach.

MR. SOMACH: Yes, Mr. Stubchaer, if I could ask for a moment. I noted at the beginning of the hearing that opening statements will be limited to ten minutes. I have not timed my opening statement and it may well be within the ten-minute period, but at the request for the State Board, I have in my opening statement addressed a couple of issues associated, for example, with the FERC licensing issue as well as points of diversion and modification in the applications and petitions.

My hope is by making that part of my opening statement, one of the things that we can do is alleviate concern on the part of parties and the Board perhaps on some of these issues thereby reducing the total amount of testimony that we will provide.

I will also indicate that our direct testimony will be very short. I would be surprised if it exceeded a total of 15 minutes.

As a consequence, I would request some leeway in terms of my opening statement so I can cover the issues that I have been asked to cover and that I have outlined here.

MR. STUBCHAER: Very well, we will give you some latitude, especially based on the request.

MR. SOMACH: Secondly --

MR. VOLKER: Just for the record, to the extent that Mr. Somach is requesting that he be given leave to substitute his argument for the cross-examination of his witnesses, that is improper. None of the parties can cross-examine Mr. Somach in spite of our best desire to do so.

It is necessary that all the factual predicates for the summaries of his presentation be set forth in testimony by sworn witnesses subject to cross-examination.

MR. STUBCHAER: Mr. Somach, do you have a response?

MR. SOMACH: I don't think that's going to be a problem. I think everything I am going to talk about has either been in the context of process and procedural letters I sent to the Board clarifying our applications and petitions, or, in fact, is dealt with and can be dealt with on cross-examination of the witnesses that we will offer. In fact, I can assure you that since I know what I wrote down, I know where I got it from.

MR. STUBCHAER: Mr. Taylor.

MR. TAYLOR: I would support Mr. Somach's argument. We can consider Mr. Volker's objection at such time as Mr. Somach completes his opening statement.

MR. STUBCHAER: Thank you. Proceed.

MR. SOMACH: I have one further point and that was I have focused this opening statement on our applications and petition, and had thought that I would segregate out, and I am not exactly sure how the process is going to go, opening statement with respect to the other potential applicants and petitions.

Is that an appropriate way to proceed?

MR. TAYLOR: I am not sure I understood your original question, Mr. Somach, but the Board during this hearing intends to proceed dealing with your applications first,

protests to your applications, and then the competing applications, and you will be given an opportunity to put on witnesses at a later time if you have witnesses in opposition to the competing applications.

MR. SOMACH: Will I be given a short time for a statement preliminary to those witnesses?

MR. TAYLOR: Yes.

MR. SOMACH: In June of 1993, the State Board conducted four days of hearings on El Dorado's applications and petition. That was June 14, 15, 16 and 21 of 1993. Testimony, including full rebuttal testimony and cross-examination was completed on all aspects of the El Dorado project at that time.

As I went through those portions of the record, it provided a good outline of the issues that we addressed, and those issues were:

1. The El Dorado project's effect upon historic lake levels;
2. The El Dorado project's effect upon the lower American River and the Delta;
3. Concern about growth-inducing impacts of the El Dorado project.

In essence, the question of growth as it was articulated there at that time by protestants was that it was not a very good thing; and

4. That the El Dorado project's effect on upstream resources due to upstream diversions would be adverse to fishery resources and other instream aquatic habitat, as well as adverse to rafting and other recreational issues.

Also dealt with at that hearing were issues associated with concerns raised by PG&E and SMUD about adverse impacts of upstream diversions on their power and other related rights.

At that time, we presented evidence and testimony to demonstrate that all El Dorado intended to do was to divert 33,000 acre-feet that was then in question; once it was released from upstream reservoirs, that El Dorado would rely upon the historic operation of those facilities, that the consumptive use element of the El Dorado project would not control the operation of those power facilities.

We also pointed out that the effect of the El Dorado project on the lower American River and the Delta was not measurable and that cumulative impact arguments ignored such things as the area of origin concept.

In any event, we noted that El Dorado anticipated that it would be subject to any lower American River

requirements that were imposed, and any Delta obligation that might be established that would relate back upstream to those high diversions.

We noted at the time of the last hearing that growth-inducing impact questions were CEQA issues as well as the fundamental question of the sufficiency of the environmental review that was then ongoing. This, we noted, was an issue for the court and not for the State Water Resources Control Board.

With respect to instream issues, we noted that the State Board action did not change anything, that problems with flows due to power operations were for FERC to deal with in the context of the licensing and licenses for the power project.

We also noted that impacts on power and rafting due to upstream points of diversion should be dealt with through access agreements and that the rafting impact, while significant, in the context of our analysis had been dealt with sufficiently in CEQA.

As we proceed with the supplemental hearings, the proper focus, we believe, should be on what is new with respect to the supplemental applications.

The record, in our view, is not open for rearguing or rehashing all the things that we did in the prior four full days of hearing.

The question then, in our view, is what is new and properly the subject of these supplemental hearings. First, the amount of water that is subject to the instant proceeding has been reduced from 33,000 acre-feet to 17,000 acre-feet. This has been documented in letters from me to the Board as well as in our amended applications and petition.

Second, we have dropped two upstream diversion points, the El Dorado forebay and the Hazel Tunnel from the application.

Third, as is noted in detail in Mr. de Haas's testimony, which is Exhibit 93, we have acquiesced to the State Board's position with respect to the White Rock point of diversion. As you recall, this was explained in some detail in letters between my office and the State Water Resources Control Board.

This process culminated in my letter of July 13, 1995, to the State Board in which it was stated that to insure there is no misunderstanding with respect to the amended application and petition, El Dorado will presently seek only the ability to take water from Folsom Reservoir. I note that that letter was on the table and that it

is part of the record, and I believe that it is appropriate to make sure that everyone understands all that is in that letter because I think it sets out our position fairly well there.

As a consequence, El Dorado's testimony and exhibits focus on the Folsom point of diversion and rediversion at these hearings. That is all based upon the Board's previous determinations that are before us.

I have and I want to, because I promised to do so, confirm this position to Mr. Lindgren, an attorney representing the Sacramento Municipal Utility District. We believe that the State Board could still include, if it desired, the proposed term contained in El Dorado Exhibit 80, or in the case of SMUD in particular, what was a stipulated condition which was in SMUD's Exhibit 13-A. We believe that this term is consistent with the State Board's position on this matter, and also, consistent with my July 13, 1995, letter.

However, beyond this statement which merely reconfirms my July 13, 1995, letter, we don't intend to raise this issue again during these hearings.

Fourth, we have provided a full analysis of the diversions-rediversions from Folsom Reservoir. We believe, again, this to be the only proper subject of protest and testimony at this supplemental hearing. In effect, all of what I have discussed either confirms the project as it existed during the 1993 hearing or concedes points through significant project modification to the protesters.

Finally, a supplement to the final Environmental Impact Report was prepared. This supplement addressed reduction of impact to the Lotus reach with the elimination of upstream points of diversion and reliance on Folsom Reservoir points of diversion/rediversion.

This had been the only significant impact that had been found in the prior Environmental Impact Report for the project. It is now gone. All other impacts are the same in terms of this project.

It should be noted that the final supplement to the EIR was certified by El Dorado County Water Agency and El Dorado Irrigation District with appropriate findings yesterday and that we will tomorrow be submitting those here just so that the record is complete and so that the Board will not have to hold open the record as has been indicated to me would otherwise be your preference.

Now, in reviewing the materials by others, it seems to be that much of what I said is confirmed.

Some protests, particularly those prepared by SCLDF,

simply raise and rehash the same issues that were part and parcel of the prior hearings; that is, impacts of lake levels, downstream impacts associated with Folsom Reservoir, impacts on vegetation, growth-inducing impacts, and sufficiency of CEQA analysis.

This testimony has all been provided once. It is part of the record. In our view, there is no need to deal with it again. Indeed, we believe it improper to do so. The Department of Fish and Game testimony is almost identical in this regard to the testimony that it provided previously.

The SMUD process at this point deals with an issue that in reality is no longer in contention. It may also seek to present testimony about the proposal of EID to purchase Project 184. I want to address that for a moment to try to put some dimension around the issue as we see it for your understanding as we proceed through the testimony and cross-examination, and I will note Mr. Alcott, the General Manager of El Dorado Irrigation District, will address the issue in his testimony and be glad to answer whatever questions he can on cross-examination.

I would, however, like to touch on this issue for a moment. First, it should be noted that El Dorado Irrigation District has not yet actually purchased the project, although it would like to do so. Before it can complete the purchase, the parties must proceed through the California Public Utilities Commission process as well as the FERC process. At this point, no one can tell what will be required or what the results of those processes will be. Second, and related to this point, is that the actual operation of the facilities in question are now and will continue to be under the jurisdiction of FERC, not the State Water Resources Control Board, and I don't want to dwell on that point here since it's probably the subject of post-hearing briefing, other than to note that the U. S. Supreme Court and the Ninth Circuit Court have been fairly specific on this point.

The State Board's ability to control the operation of hydro facilities directly or indirectly has been comprehensively pre-empted by the Federal Power Act. As a consequence, terms and conditions on the permits issued here which attempt to compel or limit power-facility operations, are not permissible. Nor, as a practical matter, can they anticipate what FERC will do or order.

In this regard, for example, I note the Department of Fish and Game argues that the State Board should both require water left within the lakes in question, and also,

order increased downstream flows.

Even if it were appropriate for the State Board to embark on this quest without knowledge of what FERC itself intends, as a practical matter, it simply cannot act. Third, El Dorado Irrigation District will operate as PG&E has historically to maximize power. This is the only way that El Dorado Irrigation District can afford to pay for the project, thus even if EID operates the project rather than PG&E, the historic hydrology relied upon to support these applications and petitions is still the basis of EID's operations.

Fourth, and I just simply note again there was a notice of exemption filed for the acquisition and that the acquisition was discussed in the supplement to the EIR. Now, that concludes my opening statement. At this point, I would like to call up El Dorado's witnesses, and what we intend to do, is we have three main witnesses, Mr. de Haas, Mr. Alcott, Mr. Roberts. I would like to call them up together, if I could.

MR. STUBCHAER: Yes, you may.

MR. SOMACH: And we also have some folks I would like to call up in addition, Mr. Hannaford, Tracey Eden, Jens Wessel, Katherine Turkiewicz and Nancy McKenzie, for the purpose of taking the oath.

MR. STUBCHAER: Thank you.

MR. SOMACH: There are some areas that they may be the better party to respond to cross-examination questions when they are posed.

MR. STUBCHAER: Thanks for bringing up the oath. I neglected to do that, and instead of calling up the oath, we are going to call it the pledge. I heard in previous hearings some people object to an oath. We will call it a pledge.

(Thereupon Mr. Stubchaer administered the pledge to Merv de Haas, William Robert Alcott, James Roberts, Jack Hannaford, Tracey Eden, Jens Wessel, Katherine Turkiewicz and Nancy McKenzie.)

MR. BAIOCCHI: Mr. Chairman.

MR. STUBCHAER: Yes.

MR. BAIOCCHI: I need to ask a question. I would think that everyone, all the parties, make an opening statement, and then we go to the applicant's witnesses, or are we to make an opening statement and then go to cross-examination, like in our case?

MR. STUBCHAER: Well, the order of proceeding that I was contemplating has the opening statement, the witnesses,

and then the cross-examination of these witnesses, and not all parties making their opening statement first before we get to any witnesses.

MR. BAIOCCHI: So, we will have the opportunity for opening statement.

MR. STUBCHAER: Oh, yes.

MR. BAIOCCHI: Thank you.

MR. VOLKER: I wanted to check for the record Mr. Somach's reference to the final supplement to the EIR on this project. He indicated that that would be submitted tomorrow based on a certification that occurred yesterday. The deadline for submission of exhibits in this proceeding was October 2. The final supplement to the EIR is obviously a crucial document to these proceedings.

The fact that the participants were deprived of an opportunity to review that document in a timely manner prior to coming to this hearing, I think, is a pivotal defect in the application, and, therefore, I would move to strike all references to the certification of that document and to that document because it is simply too late to bring it in.

MR. STUBCHAER: Mr. Baiocchi.

MR. BAIOCCHI: I would have to agree with Mr. Volker. I received this document a few days ago and I was kind of scratching my head. Normally they are supposed to be submitted prior according to the hearing notice, so I would agree with his conclusion.

MR. STUBCHAER: Mr. Taylor.

MR. TAYLOR: Mr. Hearing Officer, the Board is required by law to consider any final environmental document adopted by an applicant at such time as it makes a decision.

The office of Chief Counsel's recommendation is that environmental documents that are final always be included within the hearing record. We are required by law to evaluate such documents.

With regard to the concerns about the parties' opportunity to examine this document, the Draft EIR or Supplemental EIR, as I understand it, was available to the parties. It has been commented on and I would be very surprised if they are greatly surprised by the contents of the Final Supplemental EIR.

So, my recommendation is that we accept that document into the record at the time it is offered unless there are other appropriate objections, and that the motion to have this stricken from Mr. Somach's opening statement would be denied.

MR. STUBCHAER: Any response, Mr. Volker?

MR. VOLKER: Yes, I have not had an opportunity, and

the parties whom I represent have not had an opportunity to examine the responses to the comments in the Final Supplemental EIR.

To assume, as has been suggested, that there was no need for any parties to fear being surprised by the contents of the final defeats the purpose of having the final document with responses to comments from interested agencies and the public, and strikes at the heart of the whole CEQA process.

I will stand on my objection and move again that the document be excluded. El Dorado has been involved in this process for many years and had opportunity to conduct a proper and complete environmental review long before this hearing.

The fact that on the first day of hearing, it has not yet introduced a final environmental document for its applications, confirms that its application must be denied as premature under CEQA.

MR. STUBCHAER: Mr. Taylor, I heard your recommendation. Do you care to respond?

MR. TAYLOR: My recommendation remains the same. We are required by law to consider any final environmental document on applications before the Board for consideration for action, and that is the case whether or not that document is a part of the record or not.

That being the case, I think everyone involved is better off having that document in the record, so that if there are defects in the document, it can be examined.

The hearing will not conclude this week or even today. The parties will have time to examine that document after today's hearing.

MR. STUBCHAER: Mr. Baiocchi.

MR. BAIOCCHI: I will agree with Mr. Volker. There is an additional deficiency in my mind. I received three documents about three days ago and one here is entitled The Water Conservation Plan for El Dorado Irrigation District. We just received this and I haven't had the opportunity to review it.

Now, if this document is going to be part of the record for this hearing, it really handcuffs a lot of the protestants in regard to cross-examining various witnesses on various statements.

MR. STUBCHAER: Is that part of the EIR?

MR. BAIOCCHI: Probably Mr. Somach would be more familiar with the documents. Those three were mailed out and I just received them.

MR. SOMACH: I was of the understanding that the

water conservation document went out with the initial package.

MR. BAIOCCHI: I just got it.

MR. STUBCHAER: We are going to identify the exhibits and then we'll know if it went out with the initial package. I am going to go with Mr. Taylor's statement in view of your objection, Mr. Volker.

Mr. Somach.

MR. SOMACH: Thank you, Mr. Stubchaer.

What I would like to do is first proceed to introduce the witnesses in order and the first witness is Mr. de Haas.

DIRECT EXAMINATION

by MR. SOMACH:

Q Mr. de Haas, will you state your name for the record.

MR. DE HAAS: A My name is Merv de Haas.

Q Mr. de Haas, is Exhibit No. 85 a true and correct copy of your qualifications?

A Yes, it is.

Q And is Exhibit No. 93 a true and correct copy of your written testimony in this matter?

A Yes, it is.

MR. SOMACH: Thank you.

Next I would like to introduce Robert Alcott.

DIRECT EXAMINATION

by MR. SOMACH:

Q Mr. Alcott, would you state your name for the record.

MR. ALCOTT: A William Robert Alcott.

Q And Mr. Alcott -- just a thought, I forgot to ask whether or not Mr. de Haas -- Mr. de Haas, did you take the pledge a minute ago?

MR. DE HAAS: A Yes, I did.

Q And, Mr. Alcott, did you take the pledge?

MR. ALCOTT: A Yes.

Q Is Exhibit 94 a correct and accurate statement of your written testimony in this matter?

A Yes, it is.

Q And is Exhibit 86 an accurate statement of your qualifications?

A Yes.

DIRECT EXAMINATION

by MR. SOMACH:

Q Mr. Roberts, would you state your name for the record.

MR. ROBERTS: A My name is James Roberts.

Q And, Mr. Roberts, did you take the pledge?

A Yes, I did.

Q And is Exhibit 89 an accurate statement of your

qualifications?

A Yes, it is.

Q And is Exhibit 95 an accurate statement of your written testimony?

A Yes, it is.

DIRECT EXAMINATION

by MR. SOMACH:

Q Ms. Tracey Eden, did you take the pledge?

MS. EDEN: A Yes, I did.

Q And would you state your name for the record.

A Tracey Eden.

Q And is Exhibit 88 an accurate statement of your qualifications?

A Yes, it is.

DIRECT EXAMINATION

by MR. SOMACH:

Q Mr. Hannaford, would you state your name for the record.

MR. HANNAFORD: A Jack Hannaford.

Q And, Mr. Hannaford, is Exhibit 87 an accurate and updated copy of your qualifications?

A Yes, it is.

Q Mr. Alcott, are you familiar with Exhibits 79 and 80?

MR. ALCOTT: A Yes, I am.

Q Could you describe those for me briefly?

A Exhibit 79 is an exhibit that describes a proposed condition. The condition is a one-sentence condition that prohibits the District from rediverting any more than 17,000 acre-feet of water as a result of these applications.

Q And Exhibit 80?

A Exhibit 80 is an exhibit that would require that the permittee, El Dorado Irrigation District, or El Dorado, not take water from the White Rock penstock point of rediversion unless and until the appropriate operation agreements and the appropriate CEQA reviews were done of those agreements.

Q Finally, Mr. Alcott, Exhibit 99, have you reviewed that exhibit?

A Yes, I have.

Q And is that an accurate summary from El Dorado's perspective of El Dorado's position at the end and through the prior days of hearings?

A Yes, it is.

Q Mr. Alcott, there has been some discussion and some interest with respect to the potential acquisition by EID of Federal Energy Regulatory Commission Project 184. Could you describe for the Board exactly the status of that acquisition process and assuming acquisition, what the

intentions of El Dorado would be with respect to the operation of that hydroelectric power facility?

A The status of acquisition is this, in September, last month, EID and PG&E executed an asset-sale agreement. That asset-sale agreement was 30 some odd pages long and it proposes the sale by PG&E to EID of Project 184, the El Dorado project.

The sale is dependent on certain conditions being satisfied prior to closing. We are in the process of working through those conditions. Upon satisfaction of those conditions and upon approval by the two agencies with jurisdiction in this case, the California Public Utilities Commission and the Federal Energy Regulatory Commission, the transaction would be finalized and EID would take ownership and operation of the project.

MR. SOMACH: Mr. Stubchaer, I have no further questions of the witnesses. We will rely, of course, on our detailed written testimony.

I would, however, before cross-examination commences, raise a procedural question to you in the form, I think, of an objection. I think I will make it in the form of an objection. I believe that's the best way to proceed with it and that's as we move into cross-examination, the status of the protestants, Westlands Water District, as the Board is probably aware, Westlands never objected to El Dorado's original or as-amended applications.

As a consequence, technically it has no standing with respect to El Dorado's part of these hearings. Nonetheless, in reviewing that testimony, I note that it deals exclusively with El Dorado and does not even touch upon the other parties.

We believe that allowing Westlands to have status here to cross-examine and to present direct testimony on and dealing with El Dorado's applications would be inappropriate and would request some direction or ruling from the Board on that matter.

MR. STUBCHAER: Mr. Birmingham.

MR. BIRMINGHAM: Mr. Somach is correct, that Westlands Water District did file a protest in connection with the Kirkwood application and did not file a protest in connection with the EID application. However, the notice of hearing that was sent out in connection with this hearing did not differentiate between the two applications or subsequent applications and permitted parties to file notices of intent to appear and to participate in the hearings pursuant to the regulations of this Board.

We complied with the requirements in the notice of

hearing, filed our notice of intent to appear, provided Mr. Somach with the testimony we were going to submit, and I would argue that his objection based upon the notice and the Board's regulations is without basis.

MR. STUBCHAER: Mr. Taylor.

MR. TAYLOR: Mr. Stubchaer, I would be inclined to support Mr. Birmingham's argument on EID's objection.

Mr. Somach is quite correct that in a technical sense the initial protest by Westlands was not directed to EID but to another matter; however, Westlands did file a timely notice of intent to appear, and copies of his proposed testimony were sent to all parties, including EID.

I believe it would be appropriate to accept Westlands as an interested party with regard to the EID application and petition.

MR. STUBCHAER: All right. Mr. Somach, your objection is overruled.

Mr. Baiocchi, we had one outstanding item on whether or not the water conservation plan was in the original distribution. I think our staff has found that it is.

MR. SOMACH: It went out with the original package. I don't have any explanation of why it didn't arrive until whatever date.

The only thing that did not go out with the original package is the final supplement, and as soon as that was prepared, we sent it out in order to make sure the parties had it in as timely a manner as possible.

MR. STUBCHAER: All right, thank you.

MR. BAIOCCHI: The two documents that I have are drafts. There's a date on the bottom, received September 14, 1995, El Dorado County Water Agency, and then there's a final. I got both recently, but the final, I believe Mr. Somach indicated that that was just sent out, so that was sent out just before the hearing commenced today, so consequently, those of us --

MR. SOMACH: What I am saying is the only thing that went out after the date of the submission was the final supplement to the EIR which was the subject of Mr. Volker and Mr. Baiocchi's prior objection, which you overruled; that the rest of the stuff went out on time and I have no knowledge of why he didn't get it on time. It went out with the package of materials.

MR. BAIOCCHI: I just happen to have the packages at the motel, but I think my gal is going to pick them up.

MR. STUBCHAER: We will now proceed with cross-examination.

Mr. Volker.

MR. TURNER: If I might ask, Mr. Stubchaer, do you have an order in which you are proposing to call the other parties for cross-examination?

MR. STUBCHAER: Yes. The order is Kirkwood PUD, Alpine County, Kirkwood Associates, Forest Service, Amador County, PG&E, SMUD, Bureau, Fish and Game, Cal SPA, Friends of the River, Westlands Water District, and taxpayers.

MR. TURNER: Thank you very much.

MR. VOLKER: Thank you, Mr. Stubchaer.

CROSS-EXAMINATION

by MR. VOLKER:

Q I would like to direct my questions initially to Mr. Alcott.

Mr. Alcott, El Dorado Irrigation District has in place a water conservation program; is that correct?

MR. ALCOTT: A Yes, it is.

Q As part of that program, does El Dorado Irrigation District undertake to ascertain whether consumptive users of water delivered by EID have bypassed the metering required for use of that water?

A Do we check to see if people are stealing water?

Q Yes.

A Yes, we do.

Q Have you ever found one who has stolen water from you?

A Yes.

Q What action did you take, if any, to punish the culprit?

A I have recollection of one instance and that instance was referred to the District Attorney's office, and I do not know the status of that.

Q So that involved criminal activity, the theft of a water right; is that correct?

A I don't have knowledge of whether that is civil or criminal.

Q Do you know if the DA prosecuted that matter?

A I do not believe he did.

Q Did you undertake in that case to ascertain what economic losses EID had suffered?

A I don't recall doing that.

Q Can you tell us the retail value of the water that EID distributes in El Dorado County?

A Retail value? We charge water based on a base fee and then a commodity charge, consequently, the value varies based on use. The more you use, the more you pay. It is unlike most of the folks down here in the valley. We meter the use and we charge based on a commodity charge. I

believe the average cost for non-pumped residential customers is 74 cents per hundred cubic feet consumed.

Q Can you translate that roughly into acre-feet?

A No, I can't.

Q Can anyone on the panel do that for us?

Let me tell you that we will take your number and do the computation later. Is that in the range of 100 to 200 dollars per acre-foot, can you tell us that?

A Mr. Volker should start with easier questions.

Q I thought I had.

A About \$320 an acre-foot.

Q Can you tell us how much EID pays for the water that it distributes pursuant to the 1919 agreement?

A The 1919 contract that we have with PG&E has a varying charge schedule. On average it costs about \$2.50 an acre-foot that we pay PG&E. That's raw water and the \$320 is for treated water.

Q Does El Dorado Irrigation District have consumptive water rights to Caples Lake?

A No.

Q Does El Dorado County Water Agency have consumptive water rights to Caples Lake?

A No.

Q Does EID have consumptive water rights to Silver Lake?

A No.

Q Does El Dorado Water Agency have consumptive water rights to Silver Lake?

A Not to my knowledge.

Q Do you know if either of those agencies claims an entitlement to water from Silver Lake pursuant to the 1919 agreement?

A Not to my knowledge. Mr. Volker, along that line of questioning, I would like to make a comment, if I can.

Q Certainly.

A My answers were constrained to your questions. Your questions had to do with what we were laying claims against Silver Lake or Caples Lake water for. We made no claim to that water at this point. We do lay claim to our contractual rights under our 1919 agreement with PG&E and my understanding is the sources of water PG&E uses to meet that contractual obligation is from both lakes.

Q So, it's your understanding as a representative of EID's analysis of the water rights applications is that one or both of those agencies has a contractual right to water from Caples Lake?

MR. SOMACH: Objection, misstates his testimony.

MR. VOLKER: That's a question.

A EID has a contractual right with PG&E for water. We have certain understandings of where they derive that water, but I think the question as to their specific source of delivery would be best asked of PG&E.

MR. VOLKER: Q Well, the question is rather simple. Is it your understanding that either EID or El Dorado County Water Agency has a contractual right with PG&E to water stored in Caples Lake?

MR. SOMACH: He's answered the question.

MR. STUBCHAER: Mr. Taylor.

MR. TAYLOR: The expert answered the question as best he could, I believe, Mr. Hearing Officer.

MR. STUBCHAER: Asked and answered.

MR. VOLKER: Then, I will move to strike the answer as nonresponsive for the purpose of the record.

Q Does anyone on the panel know whether or not either of those agencies claims a contractual water right to water stored in Caples Lake?

A I would need an attorney to interpret the question for me, and my dilemma is I don't understand what is meant by Mr. Volker when he says that we make a claim for a contractual right. It seems the contract stands on its own and it's available for any legal interpretation.

MR. STUBCHAER: Do you want him to consult with his attorney or give his own best estimate?

MR. VOLKER: It depends on whether the consultation time is counted against my 20 minutes.

MR. SOMACH: There is no consultation. Mr. Alcott answered the question. It would do no good to restate his answer. I think it was pretty clear.

The fact Mr. Volker doesn't like the answer is totally another issue, but I don't want to take any more of his time.

MR. STUBCHAER: The clock is stopped. We are not taking any of his time.

MR. SOMACH: The answer is the answer. We are not going to change it.

MR. STUBCHAER: All right.

MR. VOLKER: Well, let me rephrase one more time, and this is a question to all panel members.

Q In your calculations of the operational effects of the water rights applications before the State Water Board, did you make any assumptions with regard to the contractual availability of water stored in Caples and Silver Lakes?

A I am going to ask Mr. Hannaford to answer that.

MR. HANNAFORD: A Historically PG&E has meet the

1919 water needs of EID from releases from the various lakes. They have traded water back and forth even though the 1919 contract indicates that the water available to meet the 1919 contract is only at Silver, the original 5,000 acre-feet at Silver or 2,000 acre-feet at Echo.

Q Thank you, Mr. Hannaford. So, it is true that El Dorado County Water Agency and EID in the calculations performed to prepare and present the water rights applications assumed that water was available from Caples and Silver Lakes?

A The analysis utilized the releases that were historically made by PG&E. Those releases -- well, at Silver Lake, for example, PG&E makes no -- usually makes no substantial releases other than the fish release requirements between the time the lake fills in the spring and Labor Day.

And as a consequence, PG&E may not have been able to meet the 1919 requirements out of Silver Lake. They, instead, met it from other sources.

Q So, historically, in summary, EID has received water from PG&E stored in Caples Lake and sold that water to its customers; is that correct?

A PG&E at their option has made that trade rather than take out of Silver where they had an understanding to hold the water up until the end of the recreation season.

Q But it is true that El Dorado sold that water?

A I can't answer that.

MR. ALCOTT: A I think that's a safe answer, yes.

Q And the same question with respect to Aloha Lake, in preparing the calculations on which the water rights applications of El Dorado are based, did you make any assumptions with regard to the availability of water stored in Lake Aloha for consumptive use by the applicants?

MR. HANNAFORD: A For consumptive use for their supplemental water or the 1919 water?

Q For the 1919 water.

A If it was necessary for PG&E to have met the 1919 water from Silver Lake release, yes. Remember that the 1919 water can also be met by direct diversion in any month of the year.

Q In summary, El Dorado has received and sold to its customers water for consumptive use water stored in Lake Aloha historically?

MR. ALCOTT: A Yes, that's my understanding.

Q I would like to refer you to your Exhibit 78 and within that appear a number of tables, and initially I would like to direct your attention to Table 7.5, which is

entitled Historical Hydrology for the 1977 Hydrologic Conditions.

Does everyone have that available? Who among you is best equipped to respond to questions about this table?

A Mr. Hannaford would answer you most completely.

Q Thus volunteered, Mr. Hannaford, I have some questions for you.

First, let's turn our attention to what I call line number 10. It's actually in the second large block, the second line with numbers, entitled Caples Lake Outlet. You will notice that it depicts water released from Caples Lake in various months totaling 9627 acre-feet annually.

Do you have that, Mr. Hannaford?

MR. HANNAFORD: A Yes.

Q Referring you to the figure under August of 5,625 acre-feet, does that number reflect the amount of water that you assumed would be available from Caples Lake for consumptive use by El Dorado?

A That contributed to the total amount of water available to El Dorado.

Q And following that same column down to the last three lines which refer to total water available to meet EID water demands for the month of August, I see the figure 2,152. Does that reflect the amount of water that El Dorado received from PG&E ostensibly pursuant to the 1919 agreement for consumptive use by EID customers?

A That line is the PG&E 1919 agreement and represents the amount of water that would be taken under current conditions from the 1919 agreement in August.

MR. TAYLOR: Staff is having trouble following this. We still haven't located the correct table. Can you go through that one more time?

MR. VOLKER: As long as it is not on my clock.

MR. STUBCHAER: The clock is stopped.

MR. VOLKER: Q Yes, I will be happy to. This is Table 7.5 and we have across the top of the table the names of months. The August column is a little over halfway across from the left.

MR. TAYLOR: We are with you now. Thank you.

MR. VOLKER: Good.

Q And, Mr. Hannaford, we were talking about the last three rows in the August column, and my question to you now is, can you tell us roughly what percentage of the 2,152 acre-feet which appears in the second and third rows from the bottom, was assumed to be derived from Caples Lake?

A We didn't compute a percentage, we just figured the total pool of water available and then determined whether

there was enough water in order to meet the total demand of 1919 water plus the supplemental water needs.

Q I understand there's no percentage indicated here, but let's just take it step by step. If you move up the August column to the line entitled Total of all Releases Below Reservoirs, find the figure 6,026 acre-feet, and then compare that with the other sources of reservoir releases in that column in the four rows above the last line, 6,026 acre-feet, you find that over 90 percent of the total reservoir releases in that column have their source in Caples Lake; is that correct?

A Came from Caples Lake. That was PG&E's option.

Q And it would follow, therefore, that over 90 percent of the 2,152 acre-feet that appears in the second and third rows from the bottom in the August column had its source in Caples Lake; is that true?

A Yes.

Q I would like to move your attention to the first line in the second block under the title Reservoir Releases. We have a line entitled Silver Lake Outlet, and then far to the right under the total column appears a figure 5,636 acre-feet. Does that reflect the amount of water you assumed was available from Silver Lake for consumptive use by El Dorado?

A That is the amount of water that was released from Silver Lake including the measured portion of the seepage past the right abutment of the dam.

Q I understand, and if you then move down that column to the third row from the bottom which row is entitled Total Water Available to Meet PG&E 1919 Agreement, you find a figure 37,850 acre-feet, and then immediately below that in a row entitled Total PG&E 1919 Agreement Water, and you find the figure 15,080 acre-feet.

Do those figures reflect the amount of water that you assumed was available from Silver Lake and the other reservoirs listed above based on the total reservoir release figures that appear above, such as the 5,636 acre-foot figure?

A Yes, the amount represented at the 37,850 was what would have been available from the releases of those reservoirs. The amount that was actually taken, including the water from direct diversion was 15,080, or that was the amount that would be taken under 1977 conditions now.

Q Is it true that the 1919 agreement with PG&E specifically prohibits the use of water stored in Caples Lake to meet the 15,000 acre-foot contractual entitlement?

MR. SOMACH: Objection, calls for a legal conclusion. None of the witnesses are capable of reaching that

conclusion.

MR. VOLKER: I will rephrase then.

Q In preparing Table 7.5, did you take into account the amount of water legally available to El Dorado from Caples Lake?

MR. SOMACH: Same objection. What is legally available is a legal question.

MR. STUBCHAER: Do you want to try again? Do you want him to answer to the best of his ability?

MR. VOLKER: I think it is important to know whether he had in mind illegal as well as legal use of that water.

MR. SOMACH: Objection again. Those are terms that have no merit in the discussion. If he wants to know what was considered in terms of water and where it came from, the document speaks for itself. He can get confirmation on that without putting legal or illegal labels on what is on the chart.

MR. STUBCHAER: Do you want to rephrase the question?

MR. VOLKER: Let's try another approach.

Q Were you ever advised that the amount of water depicted in this table as reflecting available water for consumptive use from Caples, Silver and Aloha Lakes, in fact, were not available under the terms of the 1919 agreement?

A Yes, and we did analyze the situation and found out that we could have met the 1919 requirements by making releases out of Silver and Echo, but would have pulled Silver and Echo down during the summer period.

Q So, to solve that problem you, in effect, robbed Peter to pay Paul?

A We didn't, PG&E may have.

Q You took water from Caples and Aloha Lakes, which are directly off-limits under the terms of the 1919 agreement, in order to make up the deficit that you acknowledge with respect to Echo and Silver Lakes?

MR. SOMACH: Objection. Counsel just made a statement. It really calls for no response.

MR. STUBCHAER: Do you want to restate the question and omit the robbing Peter to pay Paul?

MR. VOLKER: I apologize.

Q It's true that to make up the deficit that you have described with respect to the impacts on Echo and Silver Lakes that would otherwise flow from your proposed water application, you assumed that water would be available from Caples and Aloha Lakes that, in fact, was beyond the reach of and specifically prohibited by the terms of the 1919 agreement?

MR. SOMACH: Objection. It calls for a legal conclusion as to what was or was not permissible under the 1919 agreement.

MR. STUBCHAER: Do you want to ask if the water was assumed to come from those lakes and then look at the agreement?

MR. VOLKER: Sure, we will try that.

Do you have that question in mind?

A The releases indicated in this table reflect the releases which PG&E made from the system in order to make EID's entitlement for 1919 agreement water. PG&E had to furnish water from those sources in order to meet the entitlement. PG&E apparently traded back and forth within their system in order to meet those needs historically and to provide higher stages in Silver Lake and Echo Lake through the recreational season.

MR. VOLKER: Mr. Stubchaer, I have two short questions. May I be permitted to complete? I see the red light blinking.

MR. STUBCHAER: Yes.

MR. VOLKER: Q Let's move quickly to Table 7.6 which describes sources of water to meet year 2013 demand levels. Referring you to the second large box, first line of figures entitled Sly Park, I see the figure 17,771 acre-feet. In preparing this table, did you assume that that much water would be available from Sly Park in a 1977-type dry year?

A Yes.

Q Is it true that in 1988, Sly Park yielded only 5,740 acre-feet?

A Sly Park wasn't being operated for the safe yield.

Q Can you answer the question, is it true that in 1988 Sly Park produced only 5,740 acre-feet?

A Sly Park was not being operated for the safe yield, it was being operated in a different manner.

MR. STUBCHAER: Can you answer the question or not, is it true?

A Yes, it is true.

MR. VOLKER: One last question.

Q If you move down that same column, the fourth row from the bottom, you will find a reference to USBR contract existing. I assume that refers to the contract for 7,550 acre-feet from Folsom Reservoir?

A Yes.

Q And you assumed in preparing this table that 4,000 acre-feet from that source would be available in a 1977-type dry year?

A Yes.

Q Is it true that in 1992, the Bureau reduced El Dorado's entitlement to just 2,266 acre-feet from that source?

A Yes.

MR. VOLKER: Thank you.

MR. STUBCHAER: Thank you, Mr. Volker.

It is ten minutes of twelve. We are going to take a lunch break now and we will reconvene at one p.m.

(Noon recess)

TUESDAY, OCTOBER 24, 1995, 1:00 P.M.

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MR. STUBCHAER: We will reconvene the hearing.

Before we proceed with cross-examination, I want to announce a revised order of presentation.

Mr. Turner, this might be of interest to you.

This isn't the cross-examination order but the order of presentation of the parties. First, EID, which we have already had. Next will be Friends of the River, then California Department of Fish and Game, then Sierra Club and Kirkwood PUD and Alpine County combined, then the Forest Service, then Amador County, then Kirkwood Associates, Westlands Water District, EID's protest of applications, then PG&E, SMUD, Bureau, Cal SPA and the taxpayers.

MR. PETER: Ellen Peter, representing the Department of Fish and Game. I already identified, Mr. Taylor, in advance that we have a problem. One of our witnesses is traveling from North Dakota. The other witnesses are available today or we could have all available.

MR. STUBCHAER: If we get to him, you might advise us.

MS. LENNIHAN: Martha Lennihan. A similar comment, Mr. Stubchaer. We have made arrangements for the witnesses who are traveling down from Kirkwood to come on Monday. I think that will fit with the order that you just set forth, but I want to make sure that's known because it would be difficult to change that arrangement at this point in time.

MR. STUBCHAER: It depends on how long cross-

examination takes, but it will probably be all right. I guess we could stipulate that it will be all right.

If the order I just called off is completed before the close of the hearing tomorrow -- Mr. Taylor.

MR. TAYLOR: I would point out one other departure in the order of proceeding you just indicated, and that is that the Sierra Club and associated interests have indicated they have difficulties getting their experts here today and tomorrow, and they have asked to put on four of their witnesses next Monday as a panel of just their experts.

MR. STUBCHAER: That will be fine. Thank you.

MS. LENNIHAN: Does that present any difficulty with the arrangements we have made?

MR. STUBCHAER: The only difficulty I can see would be if we were all completed, we happened to wind up tomorrow completely and had to come back just for Monday, and I think that's highly unlikely.

MS. LENNIHAN: Thank you. We appreciate the accommodation.

MR. VOLKER: Excuse me, one little footnote on all of that, and that is we have one witness, John Plasse, who is not available. He is not in the area this week and we had hoped and explained to staff that he would be available next week, and if that meets with the Board's approval, we would present him at the same time as the expert panel the first thing Monday morning.

MR. STUBCHAER: All right. We will proceed with the cross-examination of the first panel.

Mr. Gipsman, did you wish to cross-examine this panel?

MR. GIPSMAN: I don't have any questions.

MR. STUBCHAER: Ms. Lennihan.

MS. LENNIHAN: Yes. Martha Lennihan for Kirkwood Associates.

CROSS-EXAMINATION

by MS. LENNIHAN:

Q I have a few questions of Mr. de Haas. You are the General Manager of El Dorado County Water Agency; are you not?

MR. DE HAAS: A That is correct.

Q And do you have a protest against the Kirkwood Associates' Applications 30062 and 30453, and also, their petition for partial assignment?

A Yes, we do.

Q And is your agency going to dismiss that protest?

A Yes, we are.

Q Thank you.

Mr. Alcott, you are District Manager for the El

Dorado Irrigation District?

MR. ALCOTT: A Yes.

Q And does that District have a protest against the Kirkwood applications I just mentioned?

A Yes, we do.

Q Are you going to dismiss that protest?

A Yes, we are.

MS. LENNIHAN: Thank you.

MR. STUBCHAER: Thank you.

Mr. Gallery.

CROSS-EXAMINATION

by MR. GALLERY:

Q I think I would like to start with Mr. Hannaford. I have a few questions about your Table 7.6, which is a study of how your project would operate under 1977 conditions, and I was having a little trouble with the arithmetic.

On the line that has footnote No. 9, which lists Kyburz total direct diversion and rediversion, you list under August a total of 5,554 acre-feet; is that correct?

MR. HANNAFORD: A Yes.

Q Then, when you drop down to meet the 1919 agreement, you subtract 2,152?

A Yes.

Q And then, what I have construed to be the balance or difference, the total available then to meet the EID under the supplemental water, you have a figure of 3874, and I didn't subtract and get that same number. I got 3302.

A The subtraction should be from the total of all releases below reservoirs, and that's a value of 6026 minus the 2152. You see, there's a line just above the heavy print line, diversion and rediversion to Kyburz. It says total of all releases below reservoirs.

Q But that does not represent the amount of water taken into the canal; does it, the 6026?

A No. There's a fish release from that.

Q It's the 5454 that represents what was taken into the canal?

A Yes. There is water that came from storage that was assumed to go to meet downstream supplemental water needs.

Q But that would be water that would have come into the canal?

A No, it might have been fish release also.

Q I see.

A The fish release wouldn't be picked up until Folsom.

Q I see.

A Water released from storage in order to meet the fish release.

Q But you consider that water available under the 1919 agreement to be taken at Folsom?

A No. It would be under the applications that are before the Board.

Q All right. Then, on the next column, I guess it may be the same question. On the footnote No. 9 line you show that 4,764 was available, the total direct diversion and rediversion, which I take it is into the canal?

A Yes, that's for September.

Q Yes. For September, that's right. And then you need to deliver 661 acre-feet for the 1919 agreement?

A Right.

Q And then you show 3791 available. Again, I subtract 3791 from the 4764, and I subtracted the 661 from 4764, and didn't get your number on the bottom line, which is 3791.

A Again, it should be subtracted from the 4699 on the total of releases below diversions because the applications currently before the Board can't take water by direct diversion during the summer months, August 1 through November 1.

Q I see. Okay. In any event, that bottom line is water that's available, could be available at Folsom under the project?

A Yes.

Q Now, looking at your Exhibit 78, your analysis of supplemental requirements, the March, 1994, exhibit, on page 3 in Section 22, it says the EID boundaries encompass about 135,000 acres as delineated on Plate 1, and Plate 1 is the fold-out in the back, and your next sentence on page 3 says the boundary of the future potential area of use is also delineated.

And I didn't see any future potential area of use on this Plate 1.

A That's what's called the sphere of influence and I'm not sure that it specifies sphere of influence there, but at any rate, it includes all the area within the dark boundary.

Q I see. And does the dark boundary correspond to the legal boundaries of El Dorado Irrigation District?

A No, not the current.

Q So that Plate 1 shows territory not now within the District; is that correct?

A Yes. The District map has a number of areas that are excluded from the District. Probably Mr. Alcott could explain that a little better.

MR. ALCOTT: A Mr. Gallery, the dark border there represents our sphere of influence and while it is not within our District today, it is anticipated by our El

Dorado LAFCO that those areas will be served in the event development is approved in those areas.

Q Well then, is the 17,000 acre-feet the amount needed to serve the sphere of influence?

A No, that's not the correlation. The 17,000 is what we anticipate to need to meet the demands through the year 2013.

Q Within the existing boundaries of the District or within the sphere of influence?

A Both, all within our sphere of influence, some of which will be within our District as it exists today, and likely land that would be annexed to the District in the coming years.

Q So, the answer is that the 17,000 will also serve lands that are not currently in the District?

A Correct.

Q I wanted to then ask you about your Exhibit 99. You refer to the use of the water needs evaluation and it indicates that those are shown on Exhibits 45 and 64. Do you have Exhibit 45 handy?

MR. LAVENDA: Dan, is that an exhibit from the previous hearing?

MR. GALLERY: Yes, it is. It's referred to in your wrap-up summary on page 8 of Exhibit 99.

Q Mr. Alcott, maybe you don't need to refer to the specific exhibit. I can tell you what it depicts. What I wanted to ask you about was Exhibit 45 shows that the agricultural use in El Dorado Irrigation District in 1990 is 11,900 acre-feet. The use is 11,900 acre-feet and that in the projection to the year 2020, it shows an agricultural use of 15,090 acre-feet, a 27-percent increase, and the question was, what areas, what new areas are you going to serve with agricultural water in the future out of this 17,000 acre-feet?

MR. ALCOTT: A That is the water-use projection for increased agricultural demands?

Q Yes.

A That is associated with the County general plan's anticipated increase in agricultural activity. Generally, those areas are the Apple Hill area, the Coloma Gold Field area and South County or Pleasant Valley Road area.

Q Would these be areas that are not now within the District?

A No, those are within the District today.

Q But these are areas not now getting irrigation water from you, but would under this plan?

A Actually, those areas are presently served with

agricultural water. It is just we expect those areas to increase the intensity of the agricultural activity in the coming years.

Q That is the irrigation of new acreage not now being irrigated?

A Correct.

Q On page 8 of Exhibit 78, Mr. Hannaford, you say on the bottom line of that page that the State Water Board has restricted direct diversion from all sources in the period November 1 through August 1 of each season, and then as I look through your study, it appears that you don't take any direct diversion after August 1.

Is that correct?

MR. HANNAFORD: A Yes, that is correct.

Q And I was perplexed about that because you have a petition for assignment of a State filing. Do you understand that you would be restricted also under an assignment to take no direct diversion? Is that your understanding?

A Yes.

Q And then, on page 11, the second paragraph, last sentence reads: After discussion with PG&E, it was concluded that the historic operation of PG&E's El Dorado project adjusted for present streamflow maintenance requirements would represent the best measure of future PG&E operation.

So, you really wrote Exhibit 78, well, you wrote it March, 1984. That was before the deal had been made to buy the system; is that correct?

A Yes.

Q So that in the future it wouldn't be PG&E operating the system, it would be -- if the acquisition is completed, it would be the District?

A Yes, we didn't know that at the time this was written.

Q Directing your attention back to Table 7.5, in footnote 5, you are talking about the table information and you say: The values in this table include estimated leakage which bypasses stream gage. And the next sentence is: A relationship has been developed by Sierra Hydro-Tech between reservoir water surface and the measured historic leakage from USGS records, which has been used to estimate monthly leakage in volumes.

Do you have a table showing that relationship between storage and the leakage from Silver Lake?

A We have a plot, but it's not in the published report here.

Q Could you make that available, that plot?

A Yes. I would like to explain a little bit about the leakage. There is an area of leakage on the right abutment of the dam through the volcanic materials that surfaces in a stream and a small lake called Oyster Lake, and that flow is measured and we plotted the flow measurements against the storage in the reservoir in order to obtain an estimate of what the rate of leakage was.

There is also apparently additional leakage from the lake that isn't measured, and we have done additional studies and plots to determine what that leakage is.

The important point is that in the operational studies, the leakage as measured at Oyster Creek is used as a portion of the total release from the dam.

Q Can you give us an idea of what the estimated leakage is in second-feet or per month from Silver Lake when it is full?

A If the lake is completely full, the leakage from the Oyster Creek side is probably in the order of 900 to 1,000 acre-feet per month if the lake should remain full for a month. The total leakage out of the lake is probably closer to 1500 or 1600 acre-feet per month.

Q Does that leakage amount or number diminish as the lake level lowers in the summer?

A Yes, it does.

Q But that's an unavoidable leakage; is that correct?

A Yes, it is. There have been attempts made to try to suppress that leakage, but not to much avail.

Q Now, when the lake is full, that at least 1600 acre-feet seeping out of the lake is accruing downstream for use that has been used for the 1919 water?

A Yes, it may have been used for the 1919 water, but we are also claiming that leakage as part of the release from the lake.

Q So that number, that leakage number, is necessarily included in all of your release numbers in your study?

A Yes.

Q But you could make that available to us?

A Yes.

MR. SOMACH: Are you affirmatively requesting that it be made available?

MR. GALLERY: Yes, I think it would be helpful to have it in the record.

Is it possible I could maybe have an extra five minutes?

MR. STUBCHAER: If you can convince me why you need it.

MR. GALLERY: I will try to go as quickly as I can.

Q Exhibit 78, Mr. Hannaford, do I take it that it illustrates that El Dorado could get its 17,000 acre-feet every year except in a 1977, without any drawdown on Silver Lake before Labor Day, any drawdown besides the leakage that occurs?

MR. HANNAFORD: A It doesn't illustrate that. It has taken the historic PG&E releases from Silver Lake, assuming that PG&E would operate or that whoever operates the lake would operate it in the same way. The demands for supplemental water were met in 1977.

Q Yes. But could you tell us that PG&E has operated except in the 1977 year, PG&E has operated in a way that did not release any water from Silver Lake before Labor Day other than this leakage and the fish releases?

A From the record it appears that PG&E has operated to keep Silver Lake as high as possible. There are some exceptions to this in the historical record.

Prior to about 1934 or so, Silver Lake was drawn down a lot more than it has been after that date. There are occasions when the lake was drawn down for repair work and other things prior to Labor Day, but in general, PG&E has attempted to keep the lake level as high as possible according to the records that are published.

Q And you are familiar with the condition in the FERC license that they should keep Silver Lake up until Labor Day?

A Yes.

Q You find here in 1977 that El Dorado can get the 17,000 acre-feet also without any deficiency?

A Yes. If El Dorado were to take a deficiency similar to the EID policy 41, which requires deficiencies five percent of the time, and no annual deficiency to exceed 20 percent, the water supply, instead of lasting to 2013 would run out to 2017.

Q Maybe these next questions will go to Mr. Alcott.

Mr. Alcott, you have an agreement with PG&E to purchase Project 184 on the conditions that are in the agreement?

MR. ALCOTT: A Correct.

Q What is the timetable, as best you can give it, for applying for and getting approval of the Public Utilities Commission?

A The applications, we would hope, would be submitted in November, and it's an imprecise guess as to when they will act. We would hope early to mid-1996.

Q And the same question with respect to the FERC

application for approval?

A Yes, I believe the application is going in simultaneously.

Q El Dorado Irrigation District, you are primarily in the water business, the District doesn't have a primary motive in going into the power business; is that correct?

A We do have a primary motive now.

Q Is the motive to go into the power business so that it will enable you to better provide water service?

A That could be an element of it. The District has lived as the other party in a 1919 contractual arrangement whereby we receive 15,000 acre-feet of water a year. Generally, the PG&E service has been reliable. We believe we can improve the reliability if we have ownership and operation under our own control.

Q The El Dorado powerhouse now is down and not operating?

A Correct.

Q And the plan is that El Dorado Irrigation District will spend the money to get it up and running?

A Correct.

Q How much money are you talking about, best estimate?

A Altogether about five million dollars.

Q And that money is going to come from?

A The source of the funds, the up-front money has come from internal reserves on a loan basis. The costs will be reimbursed through future power revenue sales.

Q Has there been a financial feasibility study on the recovery of that cost and the payoff?

A Yes.

Q That's an existing document; is it?

A It is an existing document.

MR. SOMACH: I am going to interpose an objection in terms of relevance in these specific proceedings of the specific question in terms of operating revenues for repair of the El Dorado powerhouse in the context of taking over the power facilities.

These are certainly questions that are interesting in terms of the FERC process, but they simply are not relevant in terms of this water rights proceeding.

MR. STUBCHAER: Mr. Gallery, can you explain the relevance?

MR. GALLERY: The missing element, it seems to me, in the application of El Dorado is how they are going to operate the power project in the future. They tell us that they will operate it like PG&E did, that there will be the water available, but they are going to be actually operating

the power project themselves in the future and making the releases, and the question is, will that have any adverse impacts on Silver Lake.

I believe they claim it won't, but if we can see the power contract and see what the operation is going to be, the full operation of the power project is going to be, we would have a better idea of how this thing is going to operate in the future, not in the past.

I take it there is no power contract in existence to date, but -- there is a power contract?

A I was nodding that you are correct.

MR. GALLERY: Ideally we would have the power purchase contract so we would see what the arrangement is going to be for producing power in the future, and how it is going to be paid for and what flexibility there is going to be in the operation of the project. But we don't have that.

MR. SOMACH: Not only that, you don't have a project that has been purchased by El Dorado yet.

MR. GALLERY: We don't, that is true, but we have a contract that says it will be purchased, probably within a year, so I think we ought to operate on the probability that it will be, rather than look to the past.

MR. SOMACH: My intention in interposing the objection is not to debate the matter with Mr. Gallery. The point I want to make is the point I made in my opening statement, and that is how the project ultimately operates is a matter that is under FERC jurisdiction, that Mr. Alcott's statement on direct, which he could repeat if you would like, talks about what the current plans of operation are; that number one, they will operate within the FERC license and comply with those FERC licenses, and that for various reasons their intention is to maximize the power project and thereby, assuming a license allows so after purchase, to continue to operate as PG&E has operated.

You can ask him that question if you wish.

MR. STUBCHAER: Mr. Taylor.

MR. TAYLOR: I would like to interject myself into the discussion for one moment.

Mr. Gallery is raising the question whether once El Dorado has acquired the PG&E project it would have an interest in operating the project for something other than maximizing power revenues, but perhaps stabilizing and assuring a more reliable delivery of water for consumptive use purposes from the upper lakes.

And granted, FERC will determine how the project is operated for power purposes, but I think the Board has jurisdiction to determine when water can be taken for

consumptive use purposes even though water is being released for power purposes if the Board were persuaded that it might make a difference in how the upper lakes are operated, so I think the line of inquiry is an interesting one from staff's point of view.

MR. SOMACH: And so the point is not missed, I understood that to be a potential area of inquiry, and I just want to reassert my objection based upon the fact that I don't believe the Board can do it in an indirect manner that which they cannot do in a direct manner, so that my objection still stands in that regard.

The second point of objection is that much of what is being talked about is speculative. Mr. Alcott will respond if directed to do so, but he can only respond as he has on direct testimony because we don't know what the FERC process will create in terms of obligations associated with the operation.

We don't know if even all of this will be approved through the FERC and PUC process either.

MR. STUBCHAER: What I think I am going to do, I will sustain the objection as to the specific questions you were asking just before the objection was posed, but not on the line of questions that you are pursuing.

MR. GALLERY: All right, Mr. Stubchaer.

Let me just preface my next question, though, with the observation that we can't silence this information by throwing the FERC blanket over the operation of the project, because FERC doesn't tell PG&E, and won't tell EID how much water to release for power in any given month. FERC has no kind of specifics in the license, but the power purchase agreement will, and so there won't be any intrusion on the FERC jurisdiction by this Board taking a close look at the power purchase agreement itself.

In fact, I would request and I will request now, that this record be held open until we see actually the power purchase agreement itself, so we can see how El Dorado plans to operate for power production and for water supply. And I will make that request and I would like to follow it up with a question of Mr. Alcott.

Q Where are you on the power purchase agreement itself?

MR. ALCOTT: A It is in discussion at the moment.

Q And do you have kind of a time line or estimate on when that will be completed?

Q It, obviously, needs to be done prior to close which would be next year. It may be done sooner. I can tell you that while it is not incorporated into a document as of yet, there is an understanding between PG&E and EID that there's

essentially a set rate that will be paid for the power produced by the project paid by PG&E and that rate is set without regard to the time of day that the power is dispatched from the project.

Consequently, at this point in time, I might suggest that the District will not have any motives in terms of power generation and revenues to operate that project on a time-of-day basis.

Q I see. Who will be pushing the button that makes the releases for power under the arrangements you contemplate with PG&E? Who will be operating the releases at the lakes?

A The District operators would do that. We have an organization set up, one employee hired, and it's an assignment to the operation staff to do that.

I would like to point out, though, it's not simply a matter of pushing a button. As you know, the water travel time from the lakes to the power plant is in some cases up to 24 hours, so we do not have a project that is instantaneously responsive to the calls of the operators. In fact, the operations plan for the project is generally designed on a monthly basis and there are occasional adjustments but they are not daily.

MR. GALLERY: This is dragging out a little bit, Mr. Stubchaer, but I would like to pursue it.

Q Are you saying that El Dorado will release the water for power generation, or that you get the same price so it will not matter to you when you release the water to go through the powerhouse?

A That's the understanding that's been developed to date, and I expect that to be reflected in the power purchase agreement.

Q So, the water will be released, the button will be pushed by EID really when it needs the water down at Folsom; is that it?

A No, it might be helpful if I could explain very quickly the operation.

MR. STUBCHAER: Please do.

A And I might take issue with Mr. Gallery's suggestion that the past isn't pertinent to the future because I think the past is the most accurate representation of the future operation of the project, at least in the near term until FERC modifies the permit, and it will be an interesting struggle indeed to see the lake interests argue their interest and the downstream river interests argue their interest. But, nonetheless, I think the history is pertinent to the future.

The project itself is operated on an annual basis.

The objective is to utilize the water that's retained in storage and operate the system for hydroelectric purposes along with the other public purposes articulated in the FERC permit.

For example, the first column of water in the 1919 contract is water which was considered the highest priority of the project. In addition, there are other calls for water, or not taking water as the case may be. For example, Echo Lake is envisioned to maintain its levels. There's also streamflow requirements and minimum pool in Caples Lake, and then, of course, there's conditions in the Federal Energy Regulatory Commission license that require that the lake levels be maintained for recreational purposes at Silver Lake.

Hydro is the use that's programmed after those uses are programmed in the operations plan. And from EID's perspective, as the prospective purchaser of Project 184, we envision no change to that operating design.

We expect our water, our consumptive use water, if the Board is granting applications, to be taken as available when it reaches Folsom Lake and there is absolutely no predesign to our operation associated with consumptive demands.

Q Mr. Alcott, when you acquire the project, will you be taking the 1919 water on the same schedule you have been taking it historically?

A We expect so, yes.

Q But there won't be any 1919 contract anymore?

A The District is assuming the obligations of the contract, so, of course, we won't have a contract with ourselves.

Q So, you will not have any need to deliver exactly 2,152 acre-feet to yourself in July or August. That won't be a constriction anymore; will it?

A Well, obviously, the contract won't be in force and, therefore, won't be applied. However, as a matter of fact, the water treatment plant that takes and treats that water is designed, in essence, to accommodate the 1919 delivery schedules and our operation is essentially conducted in that fashion.

MR. GALLERY: Well, we are drifting a little bit here, Mr. Stubchaer. I guess I would like to ask that the financial feasibility analysis be provided to us as well as also this informal understanding that Mr. Alcott has.

MR. SOMACH: We do not believe that is at all relevant to these proceedings, and we object strenuously unless absolutely ordered to do so, will not voluntarily

agree to make those available in this process.

MR. GALLERY: And we may as well throw in with it, Mr. Stubchaer, that I want also to ask that when the power agreement is signed, that that be submitted to the Board and other parties to have an opportunity to comment on it.

I believe all of this whole power picture is so vital to the future operation of this project, that we can't ignore it.

MR. TAYLOR: Mr. Stubchaer, I would point out that some of these documents will not be completed and available until well after the hearing record of the Board would ordinarily close, and if the Board were to hold the hearing record open for that period of time, it would be quite a while before staff would be capable of preparing a decision for the Board's consideration.

MR. STUBCHAER: That occurred to me, too. It sounded like an indefinite holding open to receive those contracts, because we don't know when they are going to be available.

MR. GALLERY: It is true some are not available and it may be a while, but some of it is available and could be made available now.

MR. STUBCHAER: You requested three documents, the power purchase agreement, financial feasibility --

MR. GALLERY: Yes. I understand EID logically would have made a financial feasibility analysis of taking over the project and paying for and spending the five million dollars to fix the powerhouse, and how would they pay for that? Well, they would pay for it in part out of the power revenues, and they would be anticipating certain kinds of power revenues under --

MR. STUBCHAER: He has just told us how the revenues are structured.

MR. GALLERY: He said this is how much we are going to get --

MR. STUBCHAER: I think the important thing is whether it varies with time of day and season. In other words, you don't have a peaking contract, you just have a flat rate?

MR. ALCOTT: A Correct. And the cost per unit, per kilowatt hour escalates at a percentage on an annual basis.

MR. GALLERY: Q Like a cost-of-living adjustment or something like that?

A Precisely.

Q Without any constraints on times of delivery or times of running it through the powerplants in months?

A Right.

Q So, it doesn't matter to PG&E if it gets the water in

September or February?

A I can't tell you what PG&E --

MR. STUBCHAER: Under the contract, does the price differ? Whether it matters to PG&E or not is speculation.

A In my understanding, no.

MR. GALLERY: We don't really have a contract. All we have is an agreed-upon price.

MR. SOMACH: And we may not have a contract until 1996, so it's indefinite in the future, associated with negotiations, associated with all the work that will have to be done before the FERC and PUC.

MR. GALLERY: This may be a fundamental problem or flaw in El Dorado's applications because --

MR. SOMACH: There's no flaw in the El Dorado applications. The question is whether or not the materials you are looking for are outside of what is relevant in these proceedings, and as I have said, we maintain and continue to maintain that they are outside of what is necessary for the Board to make its determination in the context of either granting or denying these applications and petitions.

MR. STUBCHAER: Mr. Taylor, were you going to say something?

MR. TAYLOR: Mr. Stubchaer, my recommendation, to the extent this information can be provided to the Board within the next week, is that it should be provided. And if it cannot be provided, if the information cannot be provided by the close of business next Tuesday, I believe it is, that we do not ask that it be provided for the record.

MR. STUBCHAER: All right, that will be my ruling.

MR. VOLKER: I wanted to join in the request by Amador County, and second, the reason for the request, it seems to me is from a common-sense standpoint, if it makes no difference to the seller of the power when it is sold, then the water delivery schedule will be largely a function of the consumptive demands for water.

Yet, this entire application process is predicated on the assumption that historic water delivery schedules premised on power production needs will not be changed.

It is obvious now that they will be changed and they will reflect the demands of consumptive use in El Dorado County rather than historic influences on power production.

MR. BAIOCCHI: Mr. Stubchaer.

MR. STUBCHAER: Yes, Mr. Baiocchi.

MR. BAIOCCHI: I have got a problem with the way it is being argued here, the FERC authority. The State Board does, indeed, have authority in that PUD No. 1 versus State of Washington Department of Ecology. The State Board has

water quality authority over FERC and consequently, can dictate exactly how this project works when it comes to water quality standards.

I am not talking about fish now, but talking about other things, and it is my belief that the Board can regulate the reservoir levels at those lakes under the 401 authority, so I disagree with counsel, Mr. Somach.

MR. SOMACH: With all due respect, this is not a 401 proceeding. This is a water rights hearing.

MR. BAIOCCHI: It will eventually go to 401 anyway.

I also support the request for documentation and I believe there should be an additional document and that should be the FERC license, the license itself, that PG&E has for that project.

The State Board is going to need to know what is in it.

MR. STUBCHAER: It is in the record.

MR. BAIOCCHI: It is in the record. Okay, thank you.

MR. GALLERY: Just a couple more questions and I will be finished.

Q Mr. Alcott, how much money does it cost El Dorado Irrigation District to lift the water up out of Folsom and bring it up to the treatment plant in El Dorado Hills. Do you have a per-acre cost for that?

MR. ALCOTT: A I know my directors will tell you it was a lot. I will try to give you a better figure in one second -- about \$70.

Q Then, do you also not yet have the capacity to take the full Folsom contracted entitlement of 7500 acre-feet in existence today? Do you have to do more work?

A Yes and no. If you went on a full-time operating basis, those facilities are capable of producing 7500 acre-feet a year, but we don't use it for peaking; therefore, another pump is necessary.

Q My question is, really, is this what I get from the reports that have been made, El Dorado plans a buildup, gradual buildup to the 17,000 acre-feet of water?

A Correct.

Q From next year up to 2013, so in the intervening years, you won't be using 17,000, you will be building up towards it.

How do we know that El Dorado won't choose to use just a small amount of the Folsom water because it costs so much to pump it up, and take the gravity water from the lakes instead, go right to full use of the 17,000 and generate the power with it, and save that money at Folsom?

A I'm not following your operational scheme.

Q What I am suggesting is, if I were on the El Dorado board, I would say let's go ahead and use all the lake water we can because it is coming down by gravity, it's cheap and it goes to the power house, and not pump that Folsom water out?

A Well, the water is all ending up at Folsom. It has to be pumped irrespective of whether it is zero water or --

Q That's right, you would have to have your White Rock diversion in order to use the Folsom Lake water. You dropped the diversion of White Rock and you have dropped the diversion at El Dorado forebay.

Do you foresee the District coming back and reinstating those points of diversion in the future?

A I think the District has an interest in continuing to explore the White Rock point of diversion.

Q And to take additional water at the forebay and Hazel Creek Tunnel as well?

A No, not really. Those two points of diversion were included initially because of concerns over a very short period of time.

Q My last question then is, do you still have the direct diversion into the El Dorado Canal to take some of this 17,000 acre-feet?

As I read the notice of hearing, they do not direct the direct diversion into the El Dorado Canal.

MR. HANNAFORD: A The diversion into the El Dorado Canal is a measure of what the EID entitlement would be under these applications. The water is diverted there and it would run through the powerhouse, and then be picked up at Folsom, but it provides a measure of what the direct diversion would be.

Q Why do you need that measure? If you are taking it out of Folsom, why do you need to run it through El Dorado Canal?

A In the wintertime, we are applying for direct diversion.

Q Out of Folsom?

A Well, there is an application for direct diversion out of Folsom, but there is also an application for direct diversion at Kyburz.

Q For consumptive uses?

A Right.

Q And why, again, is that?

A It would be run through the canal and powerhouse, and then picked up at Folsom, but the amount of diversion gives a measure of the amount of water that we would be entitled to out of that direct diversion.

The amount of water appearing at Folsom will be a much larger amount, but we won't be entitled to any amount out of that. We would only be entitled to what we could have diverted at Kyburz.

Does that make sense?

Q No, it seems to me if you have a direct diversion at Folsom, you would just leave the water in the river and not take it out of the canal.

A Well, before the 17,000 acre-foot cap got put on this, the diversion out of the canal provided a measure of the amount of direct diversion that would be available, whether it was at White Rock or Folsom.

Q Well, I am sure that is correct, Mr. Hannaford, but sometimes I don't understand these things.

Well, Mr. Stubchaer, with great disappointment and agitation about your ruling on the power information, I will thank you.

MR. STUBCHAER: Thank you.

MR. VOLKER: Mr. Stubchaer, I would like to make a motion for reconsideration. It was pointed out that under the Jefferson County PUD decision by the Supreme Court, this Board does have water quality authority over streamflows from the lakes in question, even though they are part of a hydro project subject to FERC regulation.

An additional point should be considered and that is under Water Code Sections 1257 and 1258, in determining any water right appropriation application, this Board must consider water quality standards set forth in applicable water quality plans.

I think that provides the nexus that vests this Board the full authority under the Jefferson County PUD decision to exercise regulatory authority over the manner in which these dams can be operated.

Thank you.

MR. STUBCHAER: Thank you.

Any comments, Mr. Taylor?

MR. TAYLOR: I thought you might wish to provide Mr. Somach with an opportunity to comment first.

MR. STUBCHAER: Do you wish to comment, Mr. Somach?

MR. SOMACH: Yes. All I am going to say at this point in time is that that is a misreading and a misconstruction of the case in question. The case in question, as Mr. Taylor probably is aware, and the Board should be aware, is one that involved FERC itself. It involved the interrelationship of jurisdiction in terms of moving forward with a hydroelectric process in a separate and distinct type of proceeding, one that emanated from the

Clean Water Act jurisdiction that was delegated to the State pursuant to the EPA delegation of authority.

That's not this proceeding. This proceeding has nothing to do with any of that. That is not to say that at some point in some State and district proceeding, either emanating from the FERC licensing process or some other action the Board takes in terms of basic planning, in terms of taking a look at water quality issues, it might not embark upon the type of analysis or discussion that was at issue there.

This just isn't that. This isn't even close to the type of thing that was being dealt with in that process.

So, it's difficult other than that to say -- actually, I will leave it at that.

MR. STUBCHAER: My previous ruling will stand.

MR. INFUSINO: I want to interject in support of the statement by Mr. Gallery. I would cite Johnson Rancho County Water District versus the State Water Rights Board, 1965: Major factors in the Board's decision with a less than advanced stage of Johnson's Rancho planning is professed need for future studies, deficiencies in its financial feasibility data, its lack of readiness to proceed with actual financing of the structure, and the cloudy character of its revenue expectations.

Quite aside from the abstract virtues of Johnson's Rancho project proposals, these factors constitute substantial evidence that its proposed appropriation was not in the public interest.

I think that ties in the issues that we have been trying to deal with here regarding the financial feasibility.

MR. STUBCHAER: It is not clear to me that this water rights proceeding depends upon EID buying the PG&E powerplant, in which case, the financial feasibility isn't an issue.

Okay, the next examiner, Martha Lennihan.

MR. SOMACH: In fact, with respect to Ms. Lennihan's examination as a cross-examiner, it went by awfully quick, and I did not want to interrupt Mr. Gallery, but there really was a little bit more --

MR. STUBCHAER: Yes, I missed her.

MR. SOMACH: I guess there was no more to her cross-examination obviously.

MR. STUBCHAER: I lost track of the order.

MR. SOMACH: But the point I want to make, Mr. Stubchaer, is this: Ms. Lennihan asked questions that asked whether or not the folks from El Dorado County Water Agency

and El Dorado Irrigation District had dismissed the protests against Kirkwood. In responding to those questions, we were under the assumption there would be additional questions forthcoming from Ms. Lennihan further elaborating those responses to the Board, and before I knew it, we were done and Mr. Gallery is up, and I think before the witnesses understood that to be the case.

MR. STUBCHAER: You will have redirect.

MR. SOMACH: But I don't want to mislead the Board at this point. There has been an agreement entered into between Kirkwood and El Dorado Irrigation District and El Dorado County Water Agency, and there is no relevance in terms of this line of questioning about whether or not we have dismissed the protest as against Kirkwood, because they haven't gotten up yet, and as a consequence, we haven't testified one way or another in that regard.

The relevant question is whether or not Ms. Lennihan, who got up here and asked questions, had in turn dismissed her protest against the applicants that are sitting up here now, and I believe that at least the Board is entitled to know whether or not a party it gets up on cross-examination has, in fact, withdrawn their protests.

I think it is at least fair to ask that question as part of, you know, the give and take of the cross-examination.

MR. BIRMINGHAM: I would submit Mr. Somach is fully capable of examining the witnesses from Kirkwood on those questions when he has that opportunity.

MR. STUBCHAER: Of course, it is a question of timing. He is relating to the timing and the knowledge at the time the questions were asked.

MR. BIRMINGHAM: Just as Mr. Somach observed that Mr. Volker may not like the answers, Mr. Somach might not like Ms. Lennihan's comments.

MR. STUBCHAER: Do you want to volunteer the answer to Mr. Somach's questions?

MS. LENNIHAN: I don't think there's a problem, but I am happy to --

MR. STUBCHAER: Do you wish to say anything, Mr. Taylor?

MR. TAYLOR: No.

MR. STUBCHAER: The next cross-examiner, if he wishes, will be Richard Moss.

MR. MOSS: PG&E has no questions of the applicant.

MR. STUBCHAER: SMUD.

MS. DUNSWORTH: No questions, Mr. Chairman.

MR. STUBCHAER: Bureau of Reclamation.

MR. TURNER: No questions, Mr. Stubchaer.

MR. STUBCHAER: Department of Fish and Game.

MR. CAMPBELL: Yes, Mr. Chairman.

CROSS-EXAMINATION

by MR. CAMPBELL:

Q I just have a few questions. My first question, I believe, is for Mr. Alcott, and the question is: Is a conveyance system a part of the project as it now stands, a conveyance system from Folsom Reservoir to the project area?

MR. ALCOTT: A No, a conveyance project was not part of this proceeding.

Q Is a conveyance project anticipated subsequent to this proceeding?

A Yes.

Q By conveyance, we mean a pipeline?

A We need to get the water from the lake to places of use, correct.

Q Has EID or the El Dorado County Water Agency conducted any botanical studies in the potential area of the location of the pipeline or conveyance facility?

A Can I direct that question to Mr. Roberts, please?

Q Yes, you may.

MR. ROBERTS: A Yes.

Q And what do those studies show?

A They are reflected both in the Draft EIR which is Exhibit 96 and responses to comments which I don't know --

MR. SOMACH: That's a Draft Supplement.

A It was also contained in the Draft EIR and in the Final EIR, which were previously prepared and submitted in the 1993 time frame.

In the interim, several studies have been done, including I had staff walk the anticipated program route. It was a corridor in which they identified the possibility of certain types of vegetation and certain types of wildlife which should be studied in detail, at which time Mr. Alcott and EID conducted the detailed project specific studies.

Q I believe Mr. Alcott has already stated this, but in terms of where you are now in conducting those botanical studies, have they reached the stage where you have proposed mitigation measures for impacts to the vegetative communities that would be caused by the conveyance facility?

A We recommended, and both agencies adopted, mitigation measures that are defined in the Draft Supplement. They include detailed requirements for a detailed study of the specific vegetation by certified arborists and by the appropriate wildlife personnel.

Q So, the mitigation measures are phrased at this point

in terms of additional studies now, but not actual preserve or relocation or management of specific criteria?

A In part, no, they are not, just general. There are specific estimates of what mitigation measures should be done and how they should be accomplished at the time that the specific project analyses are done.

Q But at this point there is no commitment in place for those mitigation measures and no discernible goals or criteria for those mitigation measures?

A I would disagree. Both agencies, EID and the Water Agency, have adopted the mitigation measures and committed to them. There are mitigation measures, particularly D-1 through D-10 in the table that summarizes the mitigation measures. That is an expansion of the mitigation measures that were contained in the previous Draft and Final EIR, and are now contained in the Draft Supplement which specifically relate now to the potential transmission lines from the Folsom Reservoir site to possible distribution areas.

Q You describe these mitigation measures as further studies by an arborist.

A Yes, further study will be required when project specific evaluations and the project specific pipeline delineations are available.

Q So, other than that, you haven't committed to any specific avoidance of the vegetative community or any specific areas of relocation, or any specific management of those communities?

A We have specified and it is my understanding, they adopted as specified that avoidance would be the highest priority criteria, that where avoidance couldn't be done, then appropriate mitigation measures would have to be negotiated with appropriate bodies which includes Fish and Game, and that is specified in the documentation adopted.

Q My next question has to do with the levels of the source lakes for the project, Silver, Caples, Aloha, and I might be missing one. It's been stated, I guess, under previous cross-examination and in the testimony submitted by this panel, that EID, assuming that it takes over Project 184, will operate in conformance with the FERC license; is that correct?

MR. ALCOTT: A Yes, it is.

Q Does the FERC license provide for any flexibility or discretion to the licensee, or is it quantified?

A I would say that the license included flexibility.

Q In what sense?

A The license recognizes that there are competing demands for the resource and that the operation on an annual

basis is largely dependent on snowfall and runoff, and consequently, the license specifies certain parameters that are to be followed in the development of the annual operations plan, one of which is the permit condition that specifies that lake levels will be maintained for the enjoyment of recreation to the extent possible.

Q So, the key words are to the extent possible, as opposed to a specific quantified storage level?

A Yes.

Q I understand that the proceedings from the earlier hearing back in 1993 are part of the record for this hearing, and I would like to direct the panel's attention to the testimony of the PG&E Company witness in the 1993 proceedings, Mr. Lynch.

And for the record, his testimony can be found in Volume III, Wednesday, June 16, 1993, and the cross-examination that I am referring to begins on page 58.

MR. SOMACH: I am going to object to this kind of questioning. The Department of Fish and Game had adequate opportunity in the first hearing to cross-examine all witnesses on any and all the testimony and exhibits provided at that time. Moreover, they had full and ample time to provide rebuttal testimony at that time; that at this time asking further questions is outside of the hearing notice.

MR. STUBCHAER: Time out for just a minute.

(After discussion)

We will call the hearing back to order. How many questions do you have on the old testimony?

MR. CAMPBELL: Very few. The reason I think this testimony is germane at this point is that there is an anticipated change in ownership of the project from PG&E to EID, and in this prior testimony Mr. Lynch was the man with his finger on the button for PG&E and he described some of the way in which PG&E operated the system of reservoirs, and I want to test his operational methods against, some of his operational methods, because granted they are pretty vague, against how EID would plan to operate the reservoirs.

MR. STUBCHAER: All right, you may proceed.

MR. CAMPBELL: Q Assuming that EID obtains ownership of Project 184, how would it decide -- how would the decisions be made on the timing of the drawdown to the reservoir?

That would be to you, Mr. Alcott.

MR. ALCOTT: A I understand the question is how would the District decide on the drawdown schedule of the lakes?

Q How far would it be drawn down and at what time?

A As I mentioned a little earlier in response to Mr. Gallery's question, at the beginning of the year, late winter, snowfall and runoff estimates become reliable and the engineers and hydrologists can develop the annual operations plan for that coming season.

The operations plan is designed to first satisfy the obligations that are potentially flexible in the permit, but are reflected in the historic pattern of operations where the 1919 contract water is satisfied, the main pool in Caples is maintained, and those other conditions such as fish releases and what have you, those things are all programmed in on a season-long basis.

Once those are programmed, monthly schedules are developed and those monthly schedules obviously are dependent on the amount of snowfall and anticipated runoff, as well as the lake levels that exist at that point in time. Those schedules are done on an annual basis and they are generally observed unless there is some kind of adjustment made necessary because of change of circumstances during the operation.

Q Some of which you say appears to be in line with the way Mr. Lynch approached operations. Some of it, however, does not.

One thing that you did say is that you used snowpack -- will EID set snow survey courses in the upper reaches of the reservoirs?

A I have put in an application to do that myself. I don't know at this point -- I don't recall discussing that when we organized our hydroelectric department.

Q The reason I ask is that according to Mr. Lynch, who was in charge of operating the reservoirs before, he considered this snow survey course to be a key to operation of the project. Because we don't have any operational criteria at this point that would be based on EID's ownership, I am trying to understand how you would attempt to mirror PG&E's decision-making process that leads to the historical operation of the lake levels.

A I think my understanding is consistent with Mr. Lynch's testimony where you begin your planning for the upcoming season with reliable snowmelt and runoff data, and obviously, to the extent that requires snow surveys, that data would have to be collected.

Q Another basis for PG&E's timing, which again, I think it contradicts what you just said, and if you could address it. It says that generally, we, PG&E, like to start our draft on the reservoirs to coincide with the highest price for replacement costs of power, which is later in the summer

or early fall.

Now, I believe you stated earlier that the power purchase agreement that you are looking at, at this point is at a flat rate so there may not be this PG&E stated reason for operating the reservoir in its historical manner, that that reason may no longer apply to EID's operation of the reservoirs.

A In that testimony I would say PG&E was much more restrained than EID would be in its operation.

Q Also, from reading this testimony, it appears Mr. Lynch made these decisions pretty much on his own. He stated without any written operational guidelines. Assuming EID obtains ownership of the project, who is going to be EID's Mr. Lynch?

A We have a hydroelectric director that the District has hired. His name is John Kessler. He was the former project superintendent for eight years on the project. He is now a District employee. The hydroelectric project will operate under his direction and he will have to pick whichever staff will serve as Mr. Lynch.

Q I just have one last question. Because there are no operational criteria in place and because the FERC license doesn't provide that criteria, doesn't provide specific parameters, you cannot state with any certainty today as you are sitting here, assuming EID purchases the project and assuming the FERC license remains as it is, you cannot state with any certainty what the storage level of Silver Lake would be in August of 1998?

A In August of 1998, no one can do that, no.

Q And you couldn't because there are no operational criteria in place.

You could also not state what the lake level would be in terms of a range of 500 feet either way in August of '82?

A I think we can describe what the lake levels would be for two reasons. One, there are, I believe, very clear parameters in the FERC license, and I identified those earlier, about the streamflow obligations, minimum pool obligations and 1919 contract responsibilities. I consider those operating parameters. They may not be specific because it is dependent on runoff data, but I think for any given year, yes, we can project what lake levels would be given those circumstances.

Q So, if you can do that, has EID entered into any binding commitments to maintain a certain lake level at certain times of the year?

A We have made a commitment with these applications and to this Board to observe the criteria and operate the

project as it has historically.

Q Which means the FERC license which you have already stated provides flexibility and discretion?

A Flexibility within the specified parameters.

Q So, there is no FERC license, there is no contract, there is no agreement, there is no document, no law that would constrain EID in its operations of the reservoirs to maintaining certain lake levels; is that correct?

A No, I would say the opposite. I would say the FERC license does constrain the operation, does recognize lake levels --

Q I said specific lake levels.

A I am not aware of a schedule of lake levels, if that's the question.

MR. CAMPBELL: Thank you.

MR. STUBCHAER: Mr. Baiocchi.

MR. BAIOCCHI: Mr. Stubchaer, we weren't given the opportunity for an opening statement, so I am going to build a foundation now about what I am going to ask.

Is that fair, so you understand it?

MR. STUBCHAER: Opportunity for the opening statement will come later, just like every other party, and this is the time of asking questions, not making statements.

CROSS-EXAMINATION

by MR. BAIOCCHI:

Q The questions I am going to ask are about Folsom Reservoir, cumulative effects to the American River, and now the CEQA expert on the panel is Dr. Roberts; is that correct?

MR. ROBERTS: A Correct.

Q Dr. Roberts, in this document you indicated that the cumulative effects would be very insignificant; isn't that true?

A Yes.

Q Now, in your evaluation of the cumulative effects being insignificant, did you evaluate in that equation the Folsom South diversion that's being proposed now by East Bay MUD?

A I will have to check. The answer is no.

Q Secondly, in your equation in evaluating cumulative effects to the American River, did you evaluate the impacts from an application for a water right which is before the Board by Sacramento County for 160,000 acre-feet of water?

A Mr. Chairman, I need to correct the statement I made, no, because I will have to go back and look at the previous EIR because we had a series of projects that were not covered in the previous EIR, and I may have been incorrect

in answering him no, and I would have to go back and look and see if, in fact, that diversion was looked at in the Jones & Stokes' EIR.

We did not add that to our analysis. If it had been discussed at that time, they had done their work, it may, in fact, be in the previous EIR which we accepted as our base.

MR. STUBCHAER: What I was suggesting is unless that's a foundational question for additional questions, we could answer that after the recess.

MR. BAIOCCHI: Q What about the Sacramento County's application?

A I would have to answer the same way. I don't know if it was in the previous EIR.

Q Now, wouldn't it be fair to say, if, in fact, the final EIR didn't evaluate those cumulative impacts, wouldn't it be fair to say that that is new information and consequently, there has to be a subsequent EIR prepared so you can look at the cumulative, evaluate the cumulative impacts, because we are dealing with in one case 150,000 acre-feet of water and in another 160,000, so that's 310,000 acre-feet, and we are dealing with El Dorado's 17,000, so all of a sudden it's starting to look like a third of Folsom Reservoir.

MR. STUBCHAER: Mr. Baiocchi, that calls for speculation at this time. Perhaps we would be better off to take a break and let them find what was considered and then continue your cross-examination. It is a little early for the break, but we will take a 12-minute break now.

MR. BAIOCCHI: Thank you very much.

MS. LENNIHAN: Before we take the break, I would like to clear up something on the record. I think there was some concern earlier by the El Dorado people when I did some cross-examination of their witnesses that now has been explained to me, and I want to make clear what's going on.

MR. STUBCHAER: Why don't we do that after the break?

MS. LENNIHAN: That's fine.

(Recess)

MR. STUBCHAER: Will the meeting please come back to order.

Do you want to resume your cross-examination, Mr. Baiocchi?

MR. BAIOCCHI: Q Dr. Roberts, did you get the information?

A Yes. Pages 13-4 through 13-9 and 10, 11, 12, 13 and 14 of the original Draft EIR provided a list of projects where the cumulative impacts were looked at.

In addition to those pages, 4-2 through 4-4 of the

Draft Supplement added additional projects.

We covered those. In specific response to the two that you added last, in our document which I see you have, but I understand you haven't had a chance to read yet, so I will read you a section.

One of the questions came from one group Pride. The question was: If East Bay MUD has consumptive rights to 150,000 acre-feet of American River water, and Sacramento County has consumptive rights to 160,000 acre-feet of American River water, and both are currently preparing to ask for diversionary rights, why in the DSEIR cumulative impact analysis under reasonably perceivable projects weren't these mentioned?

The response to that comment was as follows: East Bay MUD holds a USBR water supply contract, not a water right, for delivery of up to 150,000 acre-feet from the lower American River. This contractual entitlement has been restricted by court action to periods of high river flows noted in the FEIR, page 6-45.

Sacramento County does not possess the consumptive rights identified in the comment. In light of the competing demands of that resource, the potential acquisition of such rights is speculative.

On the basis of this information contained in the Draft EIR, the Final EIR, the Draft Supplement and our Final Supplement we still conclude that the relative impact is insignificant.

I would also like to point out that the project that we were asked to review was the difference between 1-A and 1-B. There is no difference between the project below Folsom Reservoir than that which was the subject of the previous hearing.

Q Now, given the consideration that the Board will be making down the road a piece, a decision on who is going to get stuck with the new Bay-Delta standards, would that be an additional cumulative impact potentially to the American River? I realize it's speculation.

A Thank you. It is speculative, however, I will give an answer.

The District and the Agency, in my understanding, have both committed to respond appropriately to whatever requirements are leveled on them as their proportionate share. As an example, let's say the State Board said, okay, El Dorado, you can have your water rights, but you can only have 10,000 because we need 7,000 for the Bay-Delta.

That would be speculation on my part.

MR. BAIOCCHI: Okay, thank you.

MR. STUBCHAER: Mr. Baiocchi, I wish we knew what we are going to do on the Bay-Delta.

All right, Friends of the River, Steven Evans.

All right, Ms. Lennihan. Before you do that, you want to make your comments?

MS. LENNIHAN: I would appreciate that opportunity.

I am Martha Lennihan for Kirkwood Associates.

Kirkwood Associates and El Dorado County Water Agency and El Dorado Irrigation District have entered into a settlement agreement, and part of that agreement, of course, is a mutual dismissal of protests.

The agreement, however, on behalf of the two agencies, while having been signed, has a few technical details that need to be completed. I have been assured by both agencies that the folks signing had authority to sign and there isn't any problem. They are going to go back, I guess, after Wednesday, on Thursday, get those attestations and then we will be done, and that, I think, was the clarification that was being looked for earlier.

As soon as that is done, I will be reporting back to the Board and submitting evidence of that agreement.

MR. STUBCHAER: All right, thank you.

Any questions by staff?

All right. Now, Mr. Evans.

CROSS-EXAMINATION

by MR. EVANS:

Q Mr. de Haas, you are familiar with your agency's application for water rights?

MR. DE HAAS: A I believe I am.

Q Can you describe for us the points of diversion and rediversion in that application?

A The points in that application for diversion and rediversion are Folsom Reservoir.

Q Folsom only?

A We have a request for a permit to divert at White Rock, but it is conditioned on additional CEQA documentation and subsequent operating agreements with PG&E and SMUD.

Q But, nevertheless, that is a point of diversion and rediversion?

A But we have not brought anything into this process to support that at this time.

MR. ALCOTT: Excuse me.

Q Sure, go ahead.

MR. ALCOTT: A You have raised a question on a confusing area of the application.

Q I remain very confused about this area of the application.

A I appreciate your confusion and I apologize to the extent I can contributed to it because we did meet and talk about this.

Our applications as amended include the White Rock point of diversion with certain conditions. Those amended applications were submitted in response to direction from the Board and were submitted with the expectation that the Board would consider those.

In subsequent correspondence, however, because of our failure to meet directions from the Board, specifically having operating agreements in hand and under CEQA review as requested by Mr. Stubchaer, we understand that point of diversion will not longer be pursued. It is not actively being pursued by the District at the direction of the State Board, so why we are here as partners in this application, I would simply refine Mr. de Haas's response and say to you, our point of diversion and rediversion here today is Folsom Lake and Folsom Lake only.

Q But your application has not been amended to drop the White Rock point of diversion?

A Correct.

Q Are either one of you aware that the Water Board also lists Kyburz as a point of diversion on Project 184 on your application?

A Yes, and that's, I believe, what Mr. Hannaford was addressing earlier in response to Mr. Gallery's questions.

Q I just wanted to clarify that, because in Mr. Somach's opening statement, the point was made that the only diversion was Folsom. In fact, your application has points of diversion upstream of Folsom?

A Right, and again, on that other point, the Kyburz, the concept is water is diverted for hydroelectric generation purposes and as a consequence, has to be taken at Kyburz and is returned to the river at the powerhouse and is available for rediversion by the District at Folsom.

Q I understand that. Again, for either one of you, you are aware of --

MR. TAYLOR: Pardon me, Mr. Evans. It is not clear to me whether you are talking about points of rediversion or points of direct diversion. As I understand, and correct me if I am wrong, the current applications include the upper lakes as the point of diversion to storage; is that correct?

MR. ALCOTT: A Yes. No one disagrees with that.

MR. LAVENDA: While we are on this subject, clarification on the point of direct diversion at Kyburz.

Your application includes an additional amount of water beyond what PG&E currently diverts for power

generation at Kyburz by direct diversion; is this true?

A No, we don't believe so.

MR. STUBCHAER: Mr. Lavenda, maybe you ought to get to that under staff.

MR. LAVENDA: Okay.

MR. EVANS: Q Regarding Project 184, I understand Mr. Somach's reasoning that it is not germane to this procedure because it is a FERC project. Nevertheless, in response to previous questioning, Mr. Alcott, you mentioned that one of the reasons for EID's acquisition of Project 184 is to increase the reliability of providing water supplies to the County; correct?

MR. ALCOTT: A Yes.

Q So there is a water consumption component to that project and to your intent of acquiring it?

A Most assuredly, and it is focused on our 1919 contract and the consumptive water associated with it.

Q So, acquisition of consumptive water rights, after all, is germane to this proceeding?

A I don't understand the question.

Q We are in the Water Board building and Water Board hearing room before the Water Board discussing acquisition of water rights. Your legal representative has said that Project 184 has nothing to do with this proceeding because it is a FERC project.

You have stated there is a water consumptive component to the acquisition of the FERC project.

I am simply asking then, in your opinion, is this germane to this proceeding?

A Well, the water under the 1919 agreement is pre-1940 water. I am not sure that the Board has jurisdiction over that water, so I guess I can't answer your question.

MR. EVANS: I have no other questions.

MR. STUBCHAER: Westlands Water District, Mr. Birmingham.

MR. BIRMINGHAM: Thank you, Mr. Stubchaer.

CROSS-EXAMINATION

by MR. BIRMINGHAM:

Q I don't know to which panel member my questions should be addressed, so unless I address a question to an individual specifically, I would invite any panel member to respond to my question.

Do the applications on file by El Dorado Irrigation District or the El Dorado Water Agency include diversion or rediversion to storage at Folsom Reservoir?

MR. ALCOTT: A No.

Q So, the applicants do not anticipate using Folsom as

a storage facility?

A Correct.

Q Now, that leads me to some questions about the tables on El Dorado County Water Agency Exhibit 78, and I would like to refer to Table 7.5 and 7.6, a popular table.

A Yes, if we had understood how popular this table would be, we would have enlarged it.

Q As I understand the purpose of these tables is to demonstrate that even in the driest year, 1977, 17,000 acre-feet of water was available from Project 184 operations to meet EID's 2015 demand on a timely basis; is that correct?

MR. HANNAFORD: A Yes.

A Now, looking at the months of July and August, is it correct that Table 7.5 states that there's a total available supply to meet EID's water supply demands in the month of July in a water year of a 1977 type of 2,855 acre-feet?

A Yes, that's the amount available without the 30-day reregulation.

Q Now, turning to Table 7.6, again looking at the month of July, it indicates that there is a total west and El Dorado Hills demand of 4,054 acre-feet; is that correct?

A Four thousand fifty-four, you say?

Q Yes.

A Yes.

Q Now, can anyone on the panel explain to me how that difference between 4,054 acre-feet and 2,855 acre-feet which are reported on Tables 7.6 and 7.5 respectively are made up?

A That is the one time in the entire period of record that we reviewed that we needed to exercise a carryover of up to 30 days for reregulation. The water is carried over from June and utilized in July, the differential.

Q I don't mean to be argumentative, Mr. Hannaford, but isn't the same thing true also in a water year type of 1977 for the month of August?

A No, I don't believe so. I think we were able to make it in August. And there was no place to carry water over on the 30-day amount in August.

MR. BIRMINGHAM: May we have a moment, Mr. Stubchaer?

MR. STUBCHAER: Yes.

MR. BIRMINGHAM: I do have one final question.

Q Looking at Table 7.7, there is an asterisk with respect to July, total supplemental water taken from PG&E sources, which is reported as 3,911 acre-feet, and the asterisk states that the July supplemental water from PG&E sources as 2,655 plus 1,056 acre-feet of reregulated water from June, for a total of 3,911 acre-feet?

A Right.

Q Where is that reregulation going to occur?

A The reregulation would have to occur at Folsom. We are not diverting water to storage there. We are simply using the standard water rights measure of reregulating in order to meet the delayed demand.

MR. BIRMINGHAM: I have no further questions.

MR. STUBCHAER: Taxpayers, Mr. Infusino.

CROSS-EXAMINATION

by MR. INFUSINO:

Q I have some questions for Mr. Alcott.

What does EID estimate the view would be from the Fazio water?

MR. ALCOTT: A I think the so-called Fazio water, I think the EID interests have 7500 acre-feet, which is half of the legislative amount to El Dorado County Water Agency.

Q And the other half of that would be allocated to Georgetown Public Utility District?

A Correct.

Q Is there any opportunity to get more than 50 percent of that water for El Dorado Irrigation District?

A Well, there is a question whether or not any of it will come to El Dorado, but that's a judgment the Water Agency Board of Directors will have to make.

Q Can I get some clarification on that?

A The legislation for that water specifies that the Bureau of Reclamation would contract with El Dorado County Water Agency for up to 15,000 acre-feet of water. The Water Agency has preliminarily at least for handling purposes allocated that water 50/50, half coming to El Dorado Irrigation District and half coming to Georgetown. At this point, it is speculative.

Q In the event the Public Utility District was unable to use the complete allocation, is it possible that El Dorado Irrigation District could then in some way contract for some of that water that is being allocated to the Public Utility District?

A I think the answer is it is possible.

Q Another question for Mr. Alcott. Mr. Alcott, does El Dorado Irrigation District operate the wastewater treatment plant at Deer Creek?

A Yes, it does.

Q And as part of that operation, does El Dorado Irrigation District produce a document called self-monitoring reports?

A Yes, we do.

Q And are those records used to track NPDES permit compliance or lack thereof?

A Those reports are submitted to the Regional Water Quality Control Board as required under our operating permits issued by that Board, and those reports contain data required under the Clean Water Act.

Q On August, 30, 1995, were you at the Deer Creek wastewater treatment plant?

MR. SOMACH: Objection. This is not relevant to these proceedings.

MR. STUBCHAER: Would you explain the relevance?

MR. INFUSINO: The question goes to El Dorado Irrigation District's cooperation with the agency authorized to manage water quality. If El Dorado Irrigation District failed to cooperate with the agency management, Quality Growth suggests it is not in the public interest to allocate to El Dorado Irrigation District more quality water to manage.

MR. STUBCHAER: Mr. Taylor, do you have a comment?

MR. TAYLOR: Its relevance at best is extremely marginal. You have discretion to admit it or end questioning along this line at this time.

MR. STUBCHAER: I think I will sustain your objection.

MR. INFUSINO: Then, I have no further questions.

MR. STUBCHAER: All right, staff.

E X A M I N A T I O N

by MR. LAVENDA:

Q Anybody at the table can respond to these questions.

In regard to the purchase of the FERC project from PG&E, are there other sources other than the three lakes, Aloha, Caples and Silver, that you have applications for -- and Echo? Are there other sources that provide water to meet your 1919 contract agreement with Pacific Gas & Electric Company?

MR. ALCOTT: A The direct diversion of water --

Q From --

A South Fork of the American River.

Q Are there other sources that might contribute to the total contract amount other than the American River direct diversion?

A No.

Q Are there numerous sources of tributaries emptying into the El Dorado Canal?

A Yes, there are several streams tributary to the canal.

Q And do those streams at any time contribute to the quantity of your contract water?

A I can't answer that. I would have to ask you to

direct that question to PG&E. We are unsure how they manage the water tributary to the canal.

Q Are those tributary streams a part of the FERC 184 project and the potential transfer of ownership?

A Yes, they are.

Q So, if that water did contribute, it would be part of the contract water; would it not?

A To the extent that PG&E has rights to that water, that those rights will be transferred to El Dorado Irrigation District.

Q The reason I raise this issue, there seems to be some manipulation of where the water to satisfy the 1919 agreement was originating, Caples versus Silver Lake, that came up in the earlier testimony.

So, the bottom line of my questioning is, did Mr. Hannaford or anybody else consider those potential sources of supply in developing the numbers that are in Tables 7, 5, 4 and 6 in your Exhibit 78?

MR. HANNAFORD: A The numbers developed in the tables did consider the additional water supply. There were losses to it, but the analysis has been made to determine whether the 1919 water could be met from the direct diversions from storage at Silver and Echo, assuming that those lakes were drawn down.

It is possible to meet the 1919 requirements on a timely basis, but it would require drawing the lake down earlier in the season.

MR. STUBCHAER: Was that 2019 or 1919?

A 1919.

MR. LAVENDA: Q Are the lake levels that are reflected in Table 7.5 of Exhibit 78 representative of the operating lake levels that Mr. Alcott alluded to when he responded to Mr. Campbell's question on cross-examination?

I will paraphrase here, I think Mr. Alcott said something about the operating lake levels within the parameters for power release and contract consumption.

Do those lake levels in your Table 7.5 reflect the PG&E operations within those operating parameters?

MR. ALCOTT: A Yes, but I would direct your attention to Table 7.2 as a representative year and not Table 7.5, which is the driest year.

Q We have two other exhibits of yours that have not yet been introduced. I believe they are --

A I was referring to the document, Mr. Lavenda, that you are referring to. I understood your question to be whether or not Table 7.5 was representative of the lake levels given PG&E's operation. I would direct your

attention to Table 7.2, which is representative inasmuch as it is based on a representative year, or 1975, as opposed to Table 7.5, which is based on 1977.

Q So, they both reflect PG&E's operation, one for a so-called normal year and one for a critical year?

A Precisely.

MR. LAVENDA: Thank you.

E X A M I N A T I O N

by MR. CANADAY:

Q This question will be for Mr. de Haas and anyone else on the panel who has the answer.

It is my understanding that yesterday your board approved the Final Supplemental EIR; is that correct?

MR. DE HAAS: A That's correct.

Q Did they adopt all the proposed mitigations that are identified in the Supplemental Draft EIR or did they adopt overriding considerations?

A They adopted the proposed regulations -- okay, I am corrected here, they adopted the mitigations, but then they also did a statement of overriding consideration because not all the impacts were mitigated.

MR. CANADAY: And we will have that information tomorrow?

MR. SOMACH: Yes.

MR. CANADAY: Does anyone know the character of what those overriding considerations are today since we have the panel here?

MR. SOMACH: What I intended to do was -- what I don't have is, I don't have EID's documents. I do have El Dorado County's, at least I have copies of those. If you would like to go over those now, we can do that, or we can delay until tomorrow when we have EID's here and go through them at one time as opposed to --

MR. STUBCHAER: Are they different?

MR. SOMACH: Are they identical documents?

MR. ALCOTT: A They are not identical, but they are virtually identical. We, essentially, took the same action the County did but in the role of a responsible agency rather than the lead agency.

MR. STUBCHAER: Are the findings of overriding considerations and the mitigation measures you adopted the same?

A Yes.

MR. STUBCHAER: It seems to me like we could proceed now.

MR. CANADAY: Do you have an exhibit number you would like to identify this as?

MR. SOMACH: Let's use the next number in sequence, which is 100, and maybe Mr. Alcott could go through and -- actually, what I prefer doing, I think, is let's keep it together. I was going to make the final supplement to the EIR 96-A. In order to keep them all together, if I could make this, which is the County's document, 96-B, and I would provide you with EID's document and that could become then 96-C.

Is that all right?

MR. CANADAY: That would be fine. Thank you.

MR. SOMACH: That way we can keep them together.

MR. STUBCHAER: This is 96 what?

MR. SOMACH: This would be 96-B.

MR. CANADAY: Mr. Stubchaer, I have a proposal. For me to better ask questions, I need some time to look since the parties have it now and it appears that the panel will be back on tomorrow morning.

MR. SOMACH: We certainly will have Mr. de Haas tomorrow and Mr. Alcott will be here tomorrow, and they would be the two parties I would want to respond anyway, so they would be here.

Mr. Roberts will be here too -- can you be here?

MR. ROBERTS: Yes.

MR. CANADAY: I think in fairness to all parties, since we just got this --

MR. SOMACH: We have no objection to, in effect, move through the other stuff and then come back, as long as we have agreement that we are going to focus on a document.

MR. STUBCHAER: You would have 96-C here tomorrow?

MR. SOMACH: Yes.

MR. STUBCHAER: Tell me again what 96-A is.

MR. SOMACH: That is the final, the blue-covered final.

MR. STUBCHAER: All right. So, we will hold particular cross-examination open on item 96 tomorrow.

Okay, then you may proceed with the other items you have, Mr. Canaday.

MR. CANADAY: Q It is my understanding El Dorado Irrigation District filed a notice of exemption for purchase of the FERC Project 184; is that correct?

MR. ALCOTT: A Yes, it is.

Q What was the basis for the finding of overriding consideration?

A The finding was on the fact the project would continue in its current operation and the only issues were the continued operation and change in ownership.

Q Was there a defined operation plan then submitted

with the NOE, or was it more of a pledge?

A It's much in tune with the description of the operations that's before this Board.

Q So, it is my understanding at the present time there isn't a scenario that's been used to represent how the project might be operated; is that correct?

A Correct. As Mr. Lynch from PG&E testified earlier, there isn't a document with a plan per se, that each year a plan is developed based on the circumstances.

Q It is my understanding that the conveyance facility, the El Dorado Ditch, or Canal, is also going to be part of the project as well?

A Unfortunately, that is a necessary component, yes.

Q Has EID committed to upgrading the canal and removing the leakage that presently occurs?

A The District, if the closing occurs, will undergo annual routine maintenance of the canal as it has been historically.

Q That doesn't get to the answer to my question. My question is, it is my understanding there are leaks in the canal, and does El Dorado propose to initiate actions to stop the wasting of that water from the canal?

A I am not aware of any water waste and I am not aware of the condition that you are describing.

Q To clarify, this is for Dr. Roberts. To clarify what was done in the Supplemental EIR as I looked at the potential future conveyance route from Folsom Lake, that was on a programmatic level; is that correct?

A Yes.

Q And the mitigations adopted in the supplemental or proposed in the Supplemental EIR and apparently adopted by the board was that there were going to be continued or additional projects specific or footprint specific studies both for sensitive plants and wildlife; is that correct?

A Yes.

Q So, those studies have not yet been initiated?

A Because specific projects have not yet been proposed.

Q EID has proposed several exhibits here, permit language or stipulated language, on how the Board might condition the permit for future points of diversion, and I am interested in the fact that a point of contention here and the point of confusion I think of the public is that they have no definite idea of how the lakes are going to be operated.

There's a plan, there is a promise to operate them as historically operated, but nevertheless, when you try to get a handle on it, it's like the walnut and the pea. You're

trying to find out how it is really going to be operated.

In response to comments in the Final EIR on the original EIR to the U. S. Forest Service's concerns, on page 6-9, Exhibit 38 of El Dorado Water Agency, the response to the comment was to assure agencies, organizations and individuals concerned, that no changes in the historic operation would occur.

As part of the proposed program for the El Dorado project, El Dorado County Water Agency is willing to include a formal agreement in the terms of any water rights permit issued by the State Water Board that would limit operations of Caples, Silver, Medley Lake releases to PG&E's historic operational criteria and the lake levels, and would agree to the State Water Board's permit stipulations regarding this issue.

Is that still the position of El Dorado County Water Agency?

MR. SOMACH: If I could just simply respond so I can better understand the question and the question could perhaps be better responded to by Mr. Alcott --

MR. ROBERTS: Would you repeat the page?

Q 6-9, response to comments in the Draft EIR.

MR. SOMACH: The contents of that discussion I just want to put in context. It is, as I understood it at the time, to be based upon the fact that PG&E was operating the project and that all El Dorado was doing was relying upon what PG&E's historic operations were, and that is all we have argued here; that, in fact, is an accurate statement of what our position is here.

The one change that is potentially out there is the fact that since there's going to be an acquisition hopefully of the project by EID, FERC may constrain in some way what those historic operations have been. That's the problem that I have been attempting to grapple with a little bit in terms of describing the interrelationship between the one jurisdiction and the other.

Making a commitment now, for example, to mere historic operations may be impossible to do if FERC, for example, requires either greater or lesser instream flow requirements or higher or different lake level obligations as they move through the licensing process.

And that is the difference between the commitment that was arguably being offered in the context of responding to the Forest Service comments there and what may possibly be, you know, what is of concern to EID.

And I just want to bring that in terms of the different context of the question.

But, Rob, you understand the question, I'm certain, and it may be better if you can respond a little bit rather than --

MR. CANADAY: The question is, how is this commitment different from the commitment made in the notice of exemption?

MR. GALLERY: Mr. Chairman, may I interrupt? I don't think anybody would be asking El Dorado to make a commitment that would supersede any new requirements under FERC. I think any new commitments would be subject to any changes FERC might make, so I don't think that needs to be a factor in the answer.

The question still is a valid one; are they still willing to make a firm commitment.

A Mr. Canaday, I would like to answer your question by referring to the paragraph preceding the one that you read from, and for the benefit of the audience, I would like to read that at the moment. This is in the conclusion response to comments received from the Department of Agriculture and Forestry.

It says: In summary, because of the flexibility provided by storage in Sly Park and Folsom Reservoirs, there would be no need under the El Dorado project to alter existing operations of Lake Aloha, Silver Lake and Caples Lake. EID and the El Dorado County Water Agency explicitly state in their water rights applications that no change will be made in operation of El Dorado Canal diversion facilities. Quantities of water diverted and quantities of water remaining in the stream will be the same below the diversions as if diversions were being made by PG&E's power generation purposes only.

And then, there is the paragraph that you read which I believe was the response that recognized the District was willing to enter into an agreement, and it mentioned here that negotiations were currently under way that essentially tied the District to the historical operations as exercised by PG&E, and I believe that's what the statement says, and that's what EID continues to commit itself to.

Obviously, the unsatisfying part of all this is that conditions of operation seem to be less precise than some people would have.

Q Mr. Hannaford, you have done the modeling work for EID and the County Water Agency. Could you develop criteria for wet year, normal year, dry year based on the hydrologic

records that would better represent the possible operations of the reservoirs?

A I suppose it would be possible to do that. It might be a long-term project to do it. Remember that it took PG&E probably 15 years to really firm up the operation of Project 184, and EID is going to make every effort that it can to utilize the approaches used by PG&E, but it is going to be impossible to have a complete operating diagram within the next few weeks.

Q I, too, would like to refer to, I guess, now the infamous or famous Table 7.2 in El Dorado County Water Agency Exhibit 78. And just to clear up something in my own mind, which has to do with the Silver Lake maximum water surface elevation, and I am referring you to the first line in that table and you have that the maximum water surface elevation of Silver Lake is 7207 feet; is that correct, sir?

MR. HANNAFORD: A All right, that is 7.2?

Q Seven thousand two hundred --

A No, I mean the table.

Q Table 7.2.

A A figure in June of 7206.9?

Q No, I am referring actually to the first line where it says up at the top underneath where it says reservoir end-of-month storage elevations, and it gives for Silver Lake the maximum water surface elevation of 7207.0.

A Yes.

Q Somewhere I read, and I'm not sure it is in the FERC license, where it gives the mean maximum water surface elevation in Silver Lake is 7261.1.

A That is the difference between PG&E's data and the datum of the National Geodetic Survey.

Q Okay, that leads to my next question. What do these water surface elevations really mean that we have represented in the next line, water surface elevation per month for an average year of 1975?

If I use the 7261 figure, we would have a significant difference in the feet below the maximum water surface elevation for the lake by a factor of 50 feet.

A This represents the PG&E datum. It is the gage that PG&E uses there. It is the gage that is published in the USGS water reports, so that people are familiar with the lake elevations as indicated by the gage level.

Q Okay. So the data that is represented, these negative numbers of the number of feet below the maximum surface elevation are, in fact, that you have in Table 7.2 are, in fact, the real numbers we would expect?

A Those are the numbers which actually occurred in that

year.

Q From the real maximum surface elevation?

A Yes.

Q Thank you, that's all I have.

MR. STUBCHAER: Mr. Taylor.

MR. ALCOTT: Mr. Chairman, one of the reasons this table was developed was because of the lake interests, the Alpine and Amador concerns about the lake levels, and that line displaying the reduction from the maximum surface elevation was designed in order to demonstrate to the lake interests exactly what the consequence of PG&E's operation has been in terms of something observable to them in the field.

MR. CANADAY: I was trying to clarify so we didn't have a number out there in the record that suggests it's really a 50-foot difference.

MR. HANNAFORD: I might try to clarify that a little bit. If you remember in the earlier hearings, there was the USGS published data indicating that the lake levels that they had in their publication were the National Geodetic Survey datum, and somebody pointed out at the time that, well, it really wasn't the National Geodetic Survey datum, it was the PG&E local datum, and that is the number used by people that deal with the lake issues there so it would be understood by local people with regard to lake elevations.

MR. STUBCHAER: Mr. Taylor.

E X A M I N A T I O N

by MR. TAYLOR:

Q I have a few questions, thank you.

First of all, in terms of the contract to purchase PG&E's project, FERC 184, does the contract for purchase include all PG&E's water rights at Aloha, Echo, Caples and Silver Lakes?

MR. ALCOTT: A It includes all water rights associated with the project.

Q Pre-1914 and post-1914, et cetera?

A Correct.

Q Mr. Alcott, earlier in your testimony today, you indicated that the motivation for entering into an agreement for purchase of FERC 184 was to improve reliability of supply of water under the 1919 contract

MR. ALCOTT: A Correct.

Q You told Mr. Canaday just a few minutes ago that El Dorado has no current plans to enhance or stop any losses of water which are currently occurring in the El Dorado Canal.

My question is, what would you do operationally, I assume, which would improve the reliability of the supply of

water under the 1919 contract?

A My reference to improving the reliability is in regard to the District -- PG&E operates the project for its hydroelectric benefits. It also has an obligation to us for consumptive water. Sometimes PG&E isn't quite as interested to get the canal reoperational as EID is because, for whatever reasons, their hydroelectric pursuits aren't as compelling maybe as our consumptive water requirements are to us, and my reference to our potential improved reliability refers specifically to our responsiveness to interruptions and service on the canal itself.

Q Putting aside the question of how the canal is maintained or operated, are there any other operational changes which El Dorado might make to improve the reliability of the delivery of water from the upper lakes?

A At this time, there is no change in the operation contemplated by EID to improve reliability.

Q You say at this time. Did you take into consideration the build-out for total demand after the year 2000?

A At this point in time, as of today, the District has no plans to change the operation of the project.

Maybe I am not responding to your question.

Q I am just trying to make sure that my question is properly put to you.

I have a few questions for Mr. Hannaford concerning Exhibit 78.

A Mr. Taylor, I have some information here that was provided by Mr. Kessler with respect to the losses in the canal itself. The loss when the flow is 120 cfs amounts to about 5 cfs over the 20-mile of the canal, compared to several other ditches we have the honor to operate, we are damn proud of this one.

I'm sorry, Mr. Chairman.

Q I have several questions for Mr. Hannaford concerning Exhibit 78, and I don't believe you need to look specifically at any table.

When preparing your 7.0, et cetera, series of tables, did you have an opportunity to review PG&E's detailed operating information on the upper lakes?

MR. HANNAFORD: A We did have information on the lake levels, monthly data prior to 1940 and daily data subsequent to that time.

Lake Aloha did not have as much information as Silver and Caples.

Q Is that information currently in your possession?

A Yes, I do have some of this material.

Q Is there any reason you could not make that information available to the Board?

A Probably it should come through PG&E at this point in time.

Q My question is directed to you. Is there any reason why you could not make that information available to the Board?

MR. SOMACH: I am sorry, I didn't hear what information you are talking about.

MR. TAYLOR: The data on the operation of lake levels, what have you, of PG&E's operation of the upper lakes that Mr. Hannaford has in his possession.

A We could provide either the elevation or the storage for the lakes in tabular form.

MR. SOMACH: Let me inquire -- I sense there may be a reason, like maybe it was provided under a certain agreement, but at least allow me to explore that question, Mr. Hannaford, as opposed to dancing here, which is what I perceive we are doing.

And I will get back to you immediately after a moment or two, or first thing tomorrow morning.

MR. STUBCHAER: Mr. Moss is here, too, in the back of the room.

MR. TAYLOR: So, we will defer this question.

MR. SOMACH: I don't want to ignore -- my sense is that there's some proprietary information involved here and I just have to figure out what it is, and figure out if we have any ability to do that.

MR. HANNAFORD: A In a report that we prepared prior to the previous hearings, the end-of-month storage figures are shown for the various lakes.

MR. TAYLOR: Q Are you saying that is information currently in the record?

A I believe it is.

MR. STUBCHAER: For how many years?

A From, I think, 1921 or whenever the lake started.

Q Can you tell us how much water was taken out during that period of time then?

A It would be possible to determine that from the release schedules. Are you looking for the storage in the lakes or the release schedule?

Q We are looking for both so we can determine how the lake operated on as detailed a basis as possible.

A You are looking for daily or monthly?

Q Give us what you've got.

A Yes, we could provide that.

MR. SOMACH: Okay, we will discuss the matter and I

will let you know.

MR. TAYLOR: That concludes my questions.

MR. LAVENDA: It was announced in Mr. Stubchaer's opening statement that we had an addendum that was available on the back table, and for the record, I would like to read one of those items into the record. It was omitted from the hearing notice.

On page 2, Table 1, where we talk about the quantities under the various applications subject to this hearing, the following statement appears:

El Dorado's filings should be qualified by the following statement: The total amount of water directly diverted and diverted to storage under these four applications, or the petition for partial assignment, will not exceed 33,000 acre-feet per annum. The total amount to be taken by direct diversion and rediversion from storage during any one year shall not exceed 17,000 acre-feet. The total amount taken by direct diversion during any one year shall not exceed 15,000 acre-feet and will be limited to water originating in the South Fork American River watershed upstream of the El Dorado Canal diversion near Kyburz.

Now, this statement was included in the notice of the Board's acceptance of the amended applications and petitions that El Dorado filed in 1994, and it was omitted from the hearing notice.

MR. STUBCHAER: I just want to say that it is apparent to me after listening to the various parties and the staff that the uncertainty about how the lake is going to be operated is kind of a very important issue here and I would like to ask the panel or Mr. Somach, if you were on the Board, what condition would you put to govern how the lakes would be operated that would be enforceable and could be monitored?

MR. SOMACH: Our position is, as I stated when I began, and that is that there probably is no condition that could be placed on a State Water Resources Control Board permit that could control the operations of those instream facilities, that the upstream facilities are operated pursuant to their hydroelectric power licenses, and the question of lake levels and streamflows as a consequence are the subject of FERC's jurisdiction.

We have gone to great length as we have moved through this process to reconfigure this project in every area that appeared to us to be clearly within the State Board's

jurisdiction, the upstream points of diversion and impacts associated with those diversions.

When we could not comply with what the State Board requested us to provide in terms of additional environmental reviews and at a point certain or operation agreements, that what we have now basically as we sit here today is merely a reduced project that relies only upon what is released from a hydroelectric project based upon the hydroelectric operations, that we have done an analysis of how historically that project operated and have found that in almost every year there will be enough water down in Folsom for us to rely upon so that we have a feasible project from the perspective of water supply, the water supply needs that we are talking about here.

And more than that, that places -- and I am not suggesting to you that it is not kind of a conundrum, you know. I understand that as well as anybody else here, and I have not denied the fact that what you have, in essence, is a jurisdictional issue in terms of how to deal with the question of operations out of that project.

But we have never argued here that the operations of the project would be primarily based upon our water supply needs. What we have articulated is that this is a hydroelectric project with a by-product being whatever water is released could be picked up downstream, and that the historic operations that we have provided is the best measure that we can provide.

That was the case certainly with PG&E when PG&E operated it. We had absolutely no control over anything PG&E did.

What I suggest to you is that the situation is not much different as we sit here today. It is not much different because we don't own the project as we sit here today, and what conditions there will be imposed upon us before we are actually able to own the project are unknown to us. They are speculative to us.

And that there will be actual proceedings before the California PUC as well as FERC that I can bet just about everybody in this room will focus at least a bit on the question of lake levels. And as Mr. Alcott indicated, also focus upon the conflict between having higher lake levels as well as instream flow requirements that are higher than what currently the PG&E is obligated to do under its current license.

One of the problems with that, of course, is that it is very difficult for me to come here and say, you know, with all due respect to the State Water Resources Control

Board, I think that it does not have the authority to condition how releases are to be made from the project, and I know that's not a great answer and I wish I had a better one to provide for you.

It is, however, not that El Dorado escapes that question. That question is front and center. It is going to be front and center wherever they move with respect to this licensing process and it is going to be dealt with not only in the context of lake levels, but also, this tension between lake levels and increased streamflows.

MR. STUBCHAER: In dealing with the existing FERC license, not any change in the FERC license in the future, and the fact that people seem to be satisfied with historic operation of the lakes under the FERC license, is there any assurance that could be given to the Board that your intentions of operating in the same manner as you have expressed here, in fact, can be done so that people have some comfort level that the lakes are going to be operated in a certain manner?

MR. SOMACH: Absent some rule of FERC's that goes somewhere else, I think that every person that has testified, both back in the prior hearings as well as today, and they could recommit to it now, their intention is to, in fact, operate the project exactly the way PG&E has operated it.

That's the whole reason for having produced all of the documentation on those historical operations. They have even hired the folks that were operating the project at PG&E to assist them as being the operators so that the operation would continue. That is what I heard, that is what is written in the testimony.

I think at one point we were willing to, as was pointed out, Mr. Canaday, you know, to make a commitment. The problem is that you can't put specific numbers on it because how one operates depends upon so many variables on a year-to-year basis.

MR. STUBCHAER: Sure, there would have to be hydrologic year types perhaps, or something like that, and I heard the promises made that the project would be operated as it has been in the past, and just so -- it's just some way to incorporate that into a permit, if the Board grants a permit, that gives some people a comfort level. It is not just an empty promise.

MR. SOMACH: A permit, for example, that would indicate that the project would be operated substantially in conformance with what is presented in El Dorado County Water Agency Exhibit 78 would be very consistent with what we are

talking about doing. That is, in fact, what went into this.

Merely to back out of what is in there, you would get exactly what you are talking about. It's not that you can look at those charts and say the levels have to represent a range from here to here because, as you know, any modeling of past operations doesn't encounter things that may happen in the future in terms of all future contingencies, but certainly, using a document like that and simply holding us to act according to historic operations as they have been articulated and explained in this document, is nothing that we would be afraid of committing to in some form.

Is that accurate?

MR. ALCOTT: Yes.

MR. TAYLOR: I don't want to prolong this conversation any longer than necessary.

I differ with Mr. Somach on the Board's authority. As long as PG&E or El Dorado operate the lake primarily for power, we certainly have no control over how FERC operates those lakes.

We do, however, have a great deal of power over how water may be rediverted for consumptive use purposes, and we also have power when and if the lake should not be operated primarily for power purposes, but would be operated for consumptive use purposes.

MR. SOMACH: I concur with most of that.

MR. TAYLOR: What's still missing here is more detailed hydrologic data on operations, which would give at least Board staff a degree of comfort that we could make a determination that project operations in the future, indeed, are proceeding in accordance with past operations.

I think more detail is needed, other than the very general information in the 7.0 tables.

MR. VOLKER: At some point, Mr. Stubchaer, I would like to put my oar in the water.

MR. SOMACH: If Board staff could be more specific about what additional information -- I know we have submitted at Board request over a period of years now more and more refined hydrology studies that we have done trying to focus on the exact question that you are posing.

And I guess we are at a loss to know exactly what additional more specific information would be required beyond what has been provided and is part of the EIR in addition to Exhibit 78, which focuses on operations associated with the 17,000 acre-feet.

It's not an unwillingness to provide you with more detail. It's a feeling that we have provided a great amount of detail on this point, and I am not sure exactly what else

there is out there for us to provide.

MR. TAYLOR: I was asking Mr. Hannaford earlier if he had detailed daily or weekly operational data for any number of years on lake levels and on releases from lakes.

MR. SOMACH: Raw data, in other words?

MR. TAYLOR: More raw data.

MR. SOMACH: And as I indicated, as soon as we get over the hurdle of the question of whether or not we have got some proprietary information that we, for some reason, can't disclose --

MR. STUBCHAER: We are going to revisit that in the morning.

Mr. Volker.

MR. VOLKER: Thank you. I have been dying to say this. I think historic operations is a red herring. Some of us have been looking at that concept for years and our conclusion after much thought is that it defies definition, and moreover, there is no need to think about it. We are talking about the FERC tail wagging the State Water Board dog.

The value of this water for consumptive use is on the order of ten million dollars annually based on the testimony of --

MR. STUBCHAER: You know, I have to say we are under cross-examination.

MR. VOLKER: All right, I will get to the point. The point is this Board has ample authority to issue a water right permit that says this water may be rediverted, diverted, stored, only if the following set of circumstances are satisfied. If they are not, the water may not be taken.

That provides ample incentive to the applicant in pursuing applications with FERC to assure that it's consumptive use --

MR. STUBCHAER: You are giving a closing argument, I'm afraid. I think we got into this under our staff's cross-examination but I don't think it is appropriate, though I appreciate your comments.

MR. VOLKER: Thank you for hearing me out.

MR. STUBCHAER: All right, anything else on cross-examination?

Now, the only items we have reserved until tomorrow are --

MR. SOMACH: I have also committed that we will come back to the question about the more raw data. I've got that marked down and we'll talk about it as soon as this hearing is over.

MR. STUBCHAER: Any thoughts you might come up with

on trying to define this a little better so it is not so loose, we would appreciate.

Okay, that concludes the appearance of this panel.

MR. SOMACH: Don't I get a couple of redirect questions?

MR. STUBCHAER: I guess you do.

MR. SOMACH: Not that I am going to spend a lot of time doing that, but there are a couple of points I would like to follow up on.

MR. STUBCHAER: Do you want to do your redirect now or wait until tomorrow? We are going to continue for another hour, but I was thinking after the panel finishes, do you want to do it now while it is fresh.

MR. SOMACH: I will be happy to wait until tomorrow to finish up.

MR. STUBCHAER: Then, we have only one recross, so okay. This panel is excused.

MR. SOMACH: I wanted to -- when I handed out that exhibit before, 96-B, I also intended to say that there was an agenda that went with that, and I want to make sure that is put down.

MR. STUBCHAER: This is the agenda that accompanies 96-B?

MR. CANADAY: So it is part of 96-B?

MR. SOMACH: Yes.

MR. STUBCHAER: We are going to continue with Friends of the River, if you have direct, in just a few minutes.

MR. GALLERY: El Dorado is going to supply two or three more documents related to the acquisition of the project, a financial feasibility report and a couple of other matters.

We didn't have any time understanding for their submittal.

MR. STUBCHAER: You had requested three documents. The ruling was if they are available before the close of the hearing on Tuesday, they would be required.

MR. GALLERY: I see, so possibly we can't have them before the hearing concludes.

MR. TAYLOR: What my notes reflect is that you requested of Mr. Hannaford --

MR. GALLERY: The leakage charts --

MR. TAYLOR: Yes, the flow relationship there and the other was the financial feasibility study, which I understood is currently available.

MR. SOMACH: It may not be currently available and I may have to actually brief this before the Board. We are in a process and these documents, particularly that document,

is not necessarily a public document at this point in time, and I argue that it is not relevant to these proceedings at all, in any event, and so, just because it is an easy way to kind of deal with an issue, doesn't necessarily get me over the hurdle of the fact that it is a working document in an ongoing purchase process.

MR. TAYLOR: We are not asking for this under the Public Records Act. We are asking for this as part of the burden of proof you are going forward with your application.

Presumably if El Dorado is well advanced and entering into a contract to purchase FERC 184, they have conducted some kind of a preliminary assessment of whether this undertaking is financially feasible.

All we are asking for is to see that information.

MR. STUBCHAER: I can understand, Mr. Taylor, that if they haven't made their deal with PG&E yet, and it depends on how much it is worth, there may be something they might not want to reveal. I don't know if that's the situation, but I can see that.

MR. SOMACH: The answer is yes and I don't know how to deal with that issue. Moreover, I don't think it is necessary for meeting our burden of proof. Maybe that is just something we have to risk as the Board analyzes the application for permits.

But at some point, you know, you've got to decide. I just don't know if I can make it available and that is why -- the document may be physically in existence, but whether or not it is available may be another question. And rather than just shooting from the hip here, what I want to do is not acquiesce to something, but to look at the issue again, discuss it with EID, and then provide you with something more formal. And it may be you will have to just simply, you know, deal with it one way or another based upon the best we can do.

MR. GALLERY: The third document had to do with some sort of a tentative agreement that they would pay the same price for the power no matter what time it was delivered.

MR. STUBCHAER: I didn't recall that as being a document. It would be the power purchase contract that contained the elements of it, but it doesn't exist yet.

MR. GALLERY: I thought Mr. Alcott referred to something at this point as to the understanding of the price that would be paid for the power?

MR. SOMACH: Moreover, what he indicated, I believe, was an informal understanding that they intended to move forward with this and develop a purchase agreement. That's all there is.

MR. STUBCHAER: Now, Friends of the River, Mr. Evans.

MR. EVANS: My name is Steven L. Evans, Conservation Director of Friends of the River, and I represent Friends of the River, the American Whitewater Affiliation, Sierra Club Loma Prieta, Sierra Club Bay Chapter River Touring Section, and Sierra Club Mother Lode Chapter.

MR. STUBCHAER: Are you testifying or acting as counsel?

MR. EVANS: I am actually making an opening policy statement and Mr. Stork, my associate, is submitting testimony.

MR. STUBCHAER: All right.

MR. EVANS: I am incorporating by reference the previous verbal and written testimony we have submitted on this issue, and basically, that testimony stands, that the South Fork of the American River is the most popular whitewater recreation river in the West, the second most heavily used recreation river in the United States, supporting more than 100,000 user days of whitewater recreation, adding up to local contribution to the economy of more than 30 million dollars.

That testimony also establishes that the optimum boating flows and duration for the so-called Lotus Reach of the South Fork is the most heavily used boating section of the South Fork, and considered to range from 1900 to 2,000 cubic feet per second for at least five hours. Lower flows or shorter release times, as documented in the applicant's Final EIR of March, 1993, will result in congestion, obstruction and unsafe conditions for boaters.

We are requesting in our protest essentially something that I don't think is very far fetched, and that is that ironic as it may seem at this moment, the most popular whitewater river in the West is not formally recognized either under current water rights or FERC licenses in terms of having water normally released to support that beneficial use.

And we would like to see the Water Board amend the applicant's application for water rights to recognize whitewater recreation on the South Fork as a beneficial use, not only because it's a legitimate use, but it is one that is very important to the local economy.

We also believe that if there are any upstream diversions on the South Fork, and I think we have established that there could, in fact, be upstream diversions either through the White Rock Flange or through the existing Kyburz diversion for Project 184, that any flow regime be established under these water rights that supports

the legitimate beneficial use of water recreation.

That's basically our testimony or our policy statement.

We support restricting the diversion to Folsom Reservoir unless those conditions can be made, and we also have another issue that came up subsequent, or after the amended application was submitted, and we submitted a subsequent protest, and that is Friends of the River's participation in the so-called Sacramento Area Water Forum, which is germane to the issues of impacts to the lower American River and the Delta, and that is what my associate, Ronald Stork, will be testifying to.

DIRECT EXAMINATION

by RONALD STORK:

My name is Ronald Stork. I am an Associate Conservation Director of Friends of the River. I also serve on the Sacramento Area Water Forum.

El Dorado County interests --

MR. STUBCHAER: Did you take the pledge?

MR. STORK: I did not take the pledge.

MR. STUBCHAER: Anyone else who hasn't taken the pledge?

(Thereupon four witnesses were administered the pledge.)

MR. STORK: El Dorado County water interests have recently joined the Sacramento Regional Water Forum and they are valued and esteemed colleagues in the effort that we are working on.

Board staff and, indeed, the Board itself is relatively familiar with this effort. The effort essentially involves a diverse set of groups in the Sacramento area, business interests, environmental interests, water development interests, local governments, community group interests, in trying to grapple with the questions of regional water development.

Regional water development is expected to occur and there are clearly contemplated environmental impacts and policy impacts that are associated with expanded water use in the region.

The Foothill Water Forum has become fairly active in the last year, and as I said, a very valued and important part of the Sacramento Water Forum. The Sacramento Water Forum was initially, and still is, in large part funded by Sacramento County and the City of Sacramento, and the City/County Office of Water Management.

Foothill interests have become involved in the last year, foothill interests primarily being in Placer County

and El Dorado County, and their efforts are being integrated in this regional water development planning effort.

As I said before, El Dorado County Water Agency and El Dorado Irrigation District are parts of that process. I believe that they are participating in very good faith in this effort. Their consultants are frequently part of the forum working groups and meetings. Their General Manager and his staff are generally there. They are active participants in this process as are a great number of other people.

One of the issues that we are trying to grapple with in the Water Forum is the question of how to mitigate the environmental impacts of expanded demand as the region develops. It is expected that the current regional diversions from the American River watershed over the next 40 years or so may double if the projected growth demands occur, and potentially additional diversions may also occur as available diversions, essentially conjunctive-use-type diversions, that may correspond with wet water years.

One of the issues that the Board has to grapple with, and that we are attempting to grapple with in the Water Forum is the question of how to mitigate for environmental impacts of increased diversion which are, as I said, indeed, expected.

The question becomes to some extent a question of scale. I understand -- I wasn't here earlier today, that Stuart Somach asserted that, yes, indeed, it is expected that there are probably impacts to the lower American River from increased diversions in El Dorado County, but they are relatively small and difficult to quantify, and perhaps can be dismissed.

It is my understanding that the State Water Board staff has disagreed that the water project here would not impact water quality and fisheries in the lower American River, i.e., that they believe that there is some essential impact from El Dorado County's increased diversion to the watershed below Folsom Reservoir.

I am not a fisheries biologist and I am not an attorney. I am a participant in the Water Forum and the surface water team that is struggling with this issue directly.

The Forum staff has a fisheries biologist, and they are working with the fisheries biologists from the various agencies that are participants in the Forum, as well as seeking the advice of the Water Board staff, Bureau of Reclamation staff, Fish and Game staff, Fish and Wildlife staff on these issues, and though there may not be unanimous

agreement that all increased diversions have to be mitigated, there's, I think, general agreement in the Forum that it would be advantageous if there was some regional approach to mitigation of the various incremental diversions from the American River watershed.

Clearly, as we divert more water there will be less times when there will be optimum flows or perhaps even necessary flows for the fishery impacts of concern and other riparian impacts of concern in the American River watershed.

It is our hope, which I think is widely shared in the Water Forum, that we will be able to eventually come before the Board with an approach dealing with the environmental impacts of these increased diversions.

Those recommendations, of course, have not been developed. This is a work in progress and, indeed, we may fail in that attempt, but there is, indeed, considerable, I believe, optimism that the approaches that we are developing will be useful in the water rights hearings in the American watershed as well as any specific water right hearing of any singular or small piece of that increased demand.

As I suggested in my testimony, El Dorado County's increased consumptive-use diversions are expected to essentially assume approximately 25 percent of the new relatively firm diversions from the watershed.

To some extent, we are casting aside traditional water right prioritizations in attempting to fashion a regional water supply approach that actually makes sure that we get water to the folks that need water in spite of whether they are junior or senior in the water rights perspective, and that does call for a lot of horse trading and mutual discussions.

As I tried to state in my testimony, I think this is of concern to the Board and I think it should be of interest to the Board. As I said, Board members and Board staff have been briefed on this process as it developed and continues to be briefed.

Your staff suggests that there are, indeed, environmental impacts from increased and expanded diversions on the watershed below Folsom Reservoir if El Dorado County, indeed, successfully completes these expanded diversions.

It is our hope that any water rights applications, whether they be individual or very broad, incorporate the contemplated mitigation orders consistent with the kind of mitigation approaches that we are developing.

As I said, it is a work in progress. We are not done yet and nobody has signed on any dotted lines, but as I said, I thought it was very relevant and germane to your

considerations.

So, that's my comments.

MR. STUBCHAER: Thank you.

Mr. Evans, did you identify the exhibits? I don't remember.

MR. EVANS: No, we did not. That was a mistake on our part. We can submit identification or we can delete those exhibits. They are essentially provided to give you some clarification of what the Water Forum process is looking at since it is work in progress. They are not final documents in any way, shape or form.

MR. STUBCHAER: Were they distributed as required?

MR. EVANS: They were distributed to all the parties.

MR. STUBCHAER: If you want to identify them, we can consider them.

MR. EVANS: I will submit that tomorrow, if I could.

MR. STUBCHAER: You will give them numbers tomorrow?

MR. EVANS: Yes, because we just haven't had a chance to do that.

MR. LAVENDA: Staff has gone through their submittal and we have numbering we would like to suggest.

MR. STUBCHAER: Will that be acceptable for consideration tomorrow, Mr. Lavenda?

MR. LAVENDA: Yes, that would be acceptable.

MR. STUBCHAER: Does El Dorado wish to cross-examine?

MR. SOMACH: Is there a submittal? There was a written submittal that the parties got with the exhibits?

MR. EVANS: Yes.

MR. STUBCHAER: Yes, we have it.

MR. SOMACH: I don't have one, and so I assume the written testimony was similar to what was just said.

MR. STUBCHAER: While you are looking at that, let me go around the table.

Is there anyone else in the room who did not receive these exhibits?

Ms. Lennihan. Anyone else?

MR. TAYLOR: Let me understand this, Mr. Evans. You served the copy of what you provided the Board to each and every other party?

MR. EVANS: Yes, we did.

MR. TAYLOR: In a timely fashion?

MR. EVANS: Yes, we did.

MR. STUBCHAER: All right. Mr. Somach, you want time to review the document?

MR. SOMACH: Not to mislead anybody, I am not sure I am going to have any questions. I am at kind of a loss because I have not looked through any of this.

MR. STUBCHAER: I am going to go down the list and ask if anyone else wishes to cross.

Mr. Volker?

MR. VOLKER: Yes, Mr. Stubchaer.

MR. TAYLOR: Do you wish to ask questions?

MR. VOLKER: Yes.

MR. TAYLOR: Would you proceed.

CROSS-EXAMINATION

by MR. VOLKER:

Q Mr. Stork, during your deliberations as part of the Sacramento Area Water Forum and the Foothill Water Forum, did you become familiar with the competing demands on water in the South Fork American River and in all the three forks of the American River from consumptive and non-consumptive uses?

MR. STORK: A The focus of the Water Forum was primarily on environmental impacts to the watershed below Folsom Dam. It is not focused on environmental impacts upstream of that. Most of the diversions are expected to occur from Folsom Reservoir or downstream of that, so it's not been a central part of our delineations.

It's always been expected that upstream diversions would probably have to address mitigation concerns for both the impacts upstream of Folsom Reservoir and downstream.

Q During your deliberations, did you come to the conclusion that it was important to coordinate and integrate competing demands on water within the lower American River?

A That's a major theme of the Water Forum.

Q Would it follow from that theme that just as it is important to coordinate those demands on the lower American River, so, too, it would be essential to coordinate upstream demands with downstream demands on the same watershed?

A Correct.

Q In the course of your deliberations in these Forums, did you become familiar with some of the constraints placed on consumptive use in the lower American River due to the changing regulatory regime for Bay-Delta protection?

A Yes, one of the major targets that we are trying to work with and trying to work out what the impacts of these anticipated expected new diversions will be is how that will have an impact on fishery flows that are expected to result from the Central Valley Project Improvement Act's doubling goal, as well as potential Water Board or agencies like the Bureau of Reclamation's operations of the lower American River.

Q Is it your understanding that the need to coordinate among and between those competing consumptive and non-

consumptive demands is brought into sharp focus with respect to the timing of water deliveries and instream water demands?

A Obviously, the timing of deliveries, and timing of diversions, and timing of availability and the timing of fishery needs in the American River system are all part of the dance that we all have to dance, and certainly, it is the major focus of the Water Board's regulatory activities.

Q And as the grand choreographer of this great dance in the Bay-Delta, the State Water Board's ability to protect and integrate these competing demands is enhanced rather than impaired to the extent it controls the timing of diversions that affect the Bay-Delta?

A Of course, you've got from our perspective of the upstream diversions and the timing of the upstream diversions, there is a substantial reregulation at Folsom Reservoir which can change the timing of the impact on the lower American River and the downstream watershed, so obviously, we have a theory that is correct, but the details of the actual physical structure controls the watershed.

Q And following up on that concept, it is important to give attention to the cumulative effect of diversions which in any given year may seem relatively insignificant, but during periods of extended drought loom large in terms of the Board's ability to assure Bay-Delta protection; isn't that so?

A It's always easier to manage water when you have got a lot of it, unless you've got a flood. And the most difficult times for all of us in the state in balancing that and doing that dance is, indeed, when we have significant water constraints, yes.

Q Based on what you have heard about the applications of El Dorado County in this case, in your judgment, would the Board's ability to assure protection of the lower American River and the Bay-Delta resources, be enhanced rather than impaired to the extent it places specific conditions on the timing, duration and magnitude of water deliveries under the applications?

A I don't have the expertise, really, to answer that question because of the reregulation of Folsom.

MR. VOLKER: Thank you. No further questions.

MR. STUBCHAER: Does the Forest Service wish to cross-examine?

MR. GIPSMAN: No, Mr. Stubchaer.

MR. STUBCHAER: Ms. Lennihan, Kirkwood Associates, do you wish to cross-examine?

MS. LENNIHAN: No, thank you, Mr. Chairman.

MR. STUBCHAER: Amador County, Mr. Gallery?

MR. GALLERY: No.

MR. STUBCHAER: Mr. Moss?

MR. MOSS: No.

MR. STUBCHAER: Does anyone wish to cross-examine?

Let's see, did you raise your hand over here?

Mr. Baiocchi, and then we will get back to you.

CROSS-EXAMINATION

by MR. BAIOCCHI:

Q What I need to get into the record is, is the American River the most popular river in the west?

MR. EVANS: A In terms of recreational use, yes, it is.

Q Is rafting recreation a beneficial use of the State's water?

A I believe it is, yes.

MR. STUBCHAER: I've got to ask a question. I am sorry to do this, but you mean the American is more popular than the Colorado?

A In terms of use levels, yes, user days.

MR. STUBCHAER: Including Lake Tahoe and Havasu and Lake Mead?

A The American is a relatively unregulated river in terms of use. There's regulation of commercial permits, but not of the private permits.

And as we submitted in our testimony in the previous hearings, user days based on both commercial permits and estimates of private boating, was in the area of 130,000 user days in 1993, which makes it the most heavily used river in the West and secondmost heavily used in the United States, the most heavily used being the Daule River Back East.

MR. STUBCHAER: I'm sorry, Mr. Baiocchi, I just had to satisfy my curiosity.

MR. BAIOCCHI: You got something good in the record.

Q Now, it was indicated that 30 million dollars is produced for the county or counties in revenue as a result of rafting?

A Direct income from commercial outfitters, and again, this is from testimony submitted at the previous hearing, is 8 million dollars. The cumulative economic impacts people, not only money going out from the outfitters, but people buying dinner, buying gas, whatever, is estimated by California Outdoors to be more than 30 million dollars a year.

Q More than 30 million dollars, and in what counties is that money spent?

A Primarily El Dorado County.

Q That is interesting.

Now, you indicated that the flows necessary for rafting have to be between 1700 to 2,000 second-feet?

A Those are optimum flows.

Q And based on the final EIR that was done by El Dorado, I believe you stipulated that they felt sure of that. Can you tell me the difference between the days that you believe are applicable and the days that are not applicable -- the environmental documentation originally had a flow regime of 1,000 to 1200 cfs for three hours, which is essentially the drought-year flow regime and I think was attributed to miscommunication between the outfitters and County.

A As a boater, and again based on the expert testimony submitted previously, 1,000 cfs for three hours is marginally safe. Any less flow below 1,000 cfs or any shortenings of the flow duration below three hours makes for unsafe conditions because it creates congestion. The rafts can't get through the rapids fast enough and they get hung up on rocks.

If you get hung up on a rock, it can take a couple of hours to get off the rock, and then the flow is down and you are caught in the middle of a wilderness, so it does make unsafe conditions below those levels, and you have to walk out.

Q Mr. Stork, the Sacramento Area Water Forum, isn't it true you are working collectively with a group trying to get an additional, maybe 80 to 90 thousand acre-feet of water flowing down the lower American River? Isn't that true?

A From the perspective that may be a trade with the Feather River diversions, that is correct.

Q And isn't it true that the California Sportfishing Protection Alliance is now a party to the Forum?

A You are a party to what we call a critical stakeholder group.

Q So, there is an alternative whereby we can get an additional 80 to 90 thousand acre-feet of water flowing down the lower American River. Now, what are the some of the public trust assets that are -- do you know what type of fish, as an example?

A The principal fisheries of concern to the fisheries agencies and to most sports people are fall-run chinook salmon, steelhead, American shad, and then some fish of perhaps not sportsmen, but splittail.

Q In addition to that, isn't there a riparian habitat that lies in that reach down there?

A The lower American River Parkway is one of the most popular parkways in the country, one of the prides of Sacramento, and you are all welcome to go there. It's free, at least in many cases, an enjoyment for, I think, about five million visitors a year.

Q Now, you did not give any testimony regarding this, but I raised questions on cross-examination and, Mr. Stubchaer, I will be very easy on this, but I would like to ask him some questions about cumulative impacts, if I may.

MR. STUBCHAER: Ask the question and we will see if he is able to answer.

MR. BAIOCCHI: Q As you recall, at the Water Forum we discussed 150,000 acre-feet of water that SMUD was going to be taking out of the river and 160,000 for Sacramento County. We discussed that, and we were looking for alternatives to that so the river would not be damaged.

Now, let's say as an example, there was an alternative and that water could be taken out, including the 17,000 acre-feet that El Dorado proposes to take out, in your view, would there be a potential cumulative impact that would be significant to the lower American River as to fish, riparian habitat, recreation, to the parkway, just to everything?

A Once again, I am not a fisheries biologist, but the model runs we have seen suggest that as you expand the diversion, you have some measurable reduction in flows that are thought necessary to support these fisheries of concern. That's fairly clear and easy to accomplish. It is more difficult to try and grapple with some of the impacts to the parkway that are not so clearly flow dependent.

Once again, though, when you group a bunch of big diversions with a relatively small new diversion, it is a bit difficult to try and pin down what the actual impacts are. It's clear that to some extent they are correlated with how small or big the new diversion is.

This is a relatively small diversion but it is not one that is not -- I mean, it is not so small that it is not of concern. It is certainly identified, as I said in my written testimony, and I think in my oral testimony that El Dorado's anticipated new diversion could be approximately 25 percent of the new firm diversions as we approach build-out in the Sacramento region, which is a small percentage, but still one that's on the radar screen.

MR. BAIOCCHI: Thank you very much.

MR. STUBCHAER: Mr. Somach.

CROSS-EXAMINATION

by MR. SOMACH:

Q Mr. Evans, initially I am a little confused about your testimony. I don't know whether or not it is testimony of an evidentiary nature or whether or not it is a policy statement because you indicated it was a policy statement.

So, can you let me know so if I need to, I can figure out how to deal with it?

MR. STUBCHAER: He did not take the pledge.

MR. EVANS: I did this morning.

MR. STUBCHAER: Sorry.

MR. EVANS: Since I simply repeated the testimony that was submitted in the previous hearing, I didn't feel it was necessary to submit that as formal testimony at this point, so I made a policy statement.

MR. SOMACH: So, if the record will reflect that this testimony of Steven Evans is a policy statement and not evidence for the purposes of the record, that would be helpful.

Q Now, you did, however, respond to a whole bunch of cross-examination questions and I assume that is because you took the pledge and that you were listed as an expert witness under the intent to appear; is that correct?

MR. EVANS: A Yes.

Q Does Friends of the River object to the elimination of upstream diversion points from the El Dorado application and petition?

A No.

Q Does Friends of the River object to a requirement that prior to the time that any water could be delivered from White Rock, if at all, a full CEQA analysis and operation agreement would need to be entered into?

A Do we object to that?

Q Yes.

A No.

Q Do you object to a point of diversion for whatever water is provided in the 17,000 acre-feet -- is your preferred point of diversion for that water at Folsom Reservoir?

A Yes, it is.

Q With respect to Mr. Stork and your testimony, I just want to make certain I understand a couple of issues here.

You are concerned, as I understand it, about cumulative impacts below the lower Nimbus, which I think is where the lower American River technically begins, but to my knowledge -- but to my knowledge you have not introduced any evidence with respect to El Dorado Irrigation District and El Dorado County Water Agency's proposed diversion, and its impact either incrementally or cumulatively; is that

correct?

MR. STORK: A There are a number of exhibits which you haven't had the opportunity to review yet, and my apologies for that. I don't think there's any of the exhibits that are able to quantify a 17,000 or 30,000 acre-foot new diversion and what the impacts are going to be.

Q Why is that?

A In part, because I think that the efforts that are happening are expected essentially to try to project what the new demands are going to be and to try and work out essentially regional sharing of that mitigation duty, and I am just suggesting -- so there hasn't been a specific effort on the part of the Water Forum to identify the specific environmental impacts of a specific water right application.

That's the Board's job. I am just suggesting that there are, indeed, discussions to try and help the Board along with that job, and essentially, the Water Forum is trying to help fashion that kind of mitigation package.

Q All I am doing is clarifying that you haven't presented any evidence here that is specific to the El Dorado diversions either incrementally or cumulatively about its impacts on the lower American River; isn't that correct?

A I don't believe that I have submitted any specific evidence on this particular water right application.

Q Now, what you have done is submitted a bunch of information that was generated through the so-called forum process; is that correct?

A That's correct.

Q Okay, and I note that you refer to Category A diversions, both in the context of your testimony, and I believe that that is further described in a memo which is also part of the exhibit you submitted, and it is a memo dated 8-8-95 from Jim McCormick and Jonas Minton to the Foothill Caucus and Surface Water Team members; is that correct?

A Correct.

Q Can you describe what Category A diversions are?

A Category A diversions are new diversions that are contemplated by diverters who are unlikely to be able to divert water and develop new water other than from the American River watershed upstream of Folsom or at Folsom.

Q So that part of the forum process is to try to net out that quantity of water that cannot be, demand that cannot be met anywhere else but from the American River; is that correct?

A That's correct.

Q Okay. Now, is El Dorado County within the area

described as -- or among the entities that are credited with some Category A diversions?

A That's correct.

Q And is the quantity about 37,000 acre-feet of water?

A Correct.

Q And is the 17,000 acre-feet of water that is sought here incorporated within that 37,000 acre-feet?

A The 37,000 acre-foot number is not a number that's developed from demand estimates, from water rights development or water development estimates, it's a demand estimate; that is, taking a look at the -- shall we say, the somewhat incompleated but hoped-for general planning process in El Dorado County, and that's essentially the estimates coming out of El Dorado County that they are projecting for their demand at 2030, and to some extent the build-out demand in El Dorado County as it is essentially new water that would be needed to serve growth that is expected to generate that new demand.

Q And the 17,000 acre-feet that is dealt with here certainly falls within the scope of the 37,000 acre-feet that is dealt with in your submission as you have described Category A?

A I agree with that completely.

Q And I guess the follow-up question I would like to ask you is that the proposal here to divert 17,000 acre-feet for El Dorado County is not inconsistent with what is being discussed in the context of the documents that you have submitted as evidence here?

A No, as I said before, the El Dorado County interests are full participants in this Water Forum and very valued members of that team, and there's a strong desire to see if we can work out a combination of those interests. At the same time, of course, there are concerns that everybody share the kind of mitigation for those impacts.

MR. SOMACH: I have no further questions.

MR. STUBCHAER: Staff.

MR. LAVENDA: I have no questions.

MR. STUBCHAER: Thank you.

Your exhibits will be moved and ruled on tomorrow.

Given the time of day, I think we will recess until nine o'clock tomorrow morning and we will resume with El Dorado Irrigation District cross-examination on item 96 and redirect and recross their exhibits.

Any announcements from staff?

All right, we will recess until tomorrow morning at nine o'clock.

(The hearing was recessed.)

