

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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**Wednesday, October 25, 1995**  
**9:00 a.m.**

VOLUME II

**WEDNESDAY, OCTOBER 25, 1995, 9:00 A.M.**

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MR. STUBCHAER: Good morning. We will reconvene the hearing.

Mr. Somach, is your panel ready?

MR. SOMACH: Yes.

MR. STUBCHAER: This is going to be for cross-examination on Exhibit 96 only.

MR. SOMACH: Just simply to have an original --

MR. STUBCHAER: An original what?

MR. SOMACH: This is 96-C. It's a certified copy from the Irrigation District.

MR. STUBCHAER: That's a certified copy of the Supplemental EIR?

MR. SOMACH: No, that is the certification, and yesterday I distributed what was Exhibit 96-B, which was the County Water Agency's document, and my understanding of what we wanted to do this morning is briefly go through B and C and allow folks to cross-examine if they desire to do so.

MR. STUBCHAER: I ask you again, is there any substantive difference between what you are handing out now and what people had the opportunity to do overnight?

MR. SOMACH: I don't believe so, but I will allow the witnesses to respond to that question directly on the record. Rather than my testifying, they can state it.

Mr. de Haas, Mr. Roberts, and also Jack, why don't you come up because there was some requests for some supplemental information and I want to make sure we also provide that on the record as long as we are here.

Mr. Alcott, if anybody needs copies of the Water Agency paper I handed out yesterday, I brought some extra copies with me, and I want to make sure that the record is clear in terms of these exhibit numbers.

97 was the Draft Supplemental to the EIR. 96-A was the Final Supplemental to the EIR. 96-B was the County Water Agency's Certification and Findings document, and 96-C, which is the document I handed out this morning, is the same Certification of Findings but by the El Dorado Irrigation District.

MR. STUBCHAER: Do you wish to make any statements before we ask for cross-examination?

MR. SOMACH: Yes. In fact, what I would like to do is rather than throw it out there, I would like to suggest and make sure we know what's in the document, whether or not there are any variations one from the other, and then open

it up for cross-examination, if we could.

DIRECT EXAMINATION CONTINUED

by MR. SOMACH:

Q Mr. Alcott, can you describe what is in the documents, and let's talk from your document which is Exhibit 96-C.

MR. ALCOTT: A This is a document that contains the findings, and in fact, incorporates certain documents by reference. It provides findings regarding the alternatives as reviewed in the EIR. It provides a statement of overriding considerations, provides for adoption of the mitigation and monitoring program, provides findings and certification regarding the supplement to the EIR, and it finally approves the preferred alternative.

The document is about six pages long and, in addition, there is a certified copy of the excerpt from the minutes of the El Dorado Irrigation District Board of Directors meeting on October 23.

And finally, there's two pages excerpted from the agenda of that same board meeting. This is Exhibit 96-C.

Q Mr. de Haas, is what is contained in Exhibit 96-B substantially the same as what Mr. Alcott described as being part of 96-C?

MR. DE HAAS: A Yes, it is, except it refers to El Dorado County Water Agency as taking the action and it includes information on EID's action, plus the agenda for the El Dorado County Water Agency.

MR. SOMACH: Thank you, Mr. de Haas.

With that then, I will submit that is our direct testimony on these documents, and allow the panel to be subject to cross-examination on these documents.

MR. STUBCHAER: Thank you. Mr. Volker, do you wish to cross-examine?

MR. VOLKER: Good morning, Mr. Stubchaer. Unfortunately, I have not had an opportunity to review 96-A, B and C before now. Immediately after the conclusion of yesterday's hearing, I had to return to San Francisco to prepare a brief that was due and worked most of the night on that, and I drove back this morning. I had not had a chance to look at it.

MR. STUBCHAER: Mr. Volker, would you like to take whatever time other cross-examiners take to look at it?

MR. VOLKER: I thought of that and I started looking through it two minutes ago, and I notice on page 2 of 96-C it makes reference to Table ES-1 of the final supplement to the EIR and so forth in other pages of that document.

I have not had a chance to go through that document. I wanted to reiterate our strenuous objection to any testimony with regard to these exhibits since they are untimely and it is prejudicial to the protestants whom I represent because it was physically impossible for me to review these materials.

So, I would urge the Board to reconsider its ruling on our objection.

Perhaps the record could be left open to afford protestants an opportunity to respond to these materials. Otherwise, I think the Board is obliged simply to strike because they are untimely.

MR. STUBCHAER: How long would you want the record left open for your response?

MR. VOLKER: I would like three weeks, which I believe is the notice period required, and in my case, I'm extremely busy over the next three weeks and I would need that full amount of time.

As I recall, exhibits were required to be distributed on October 2, which was three weeks prior to the 23rd, the first day of this week, so I think a three-week request would be consistent with the protocol that normally applies here, and as a practical matter is essential to afford protestants an opportunity to review and respond to these materials.

MR. STUBCHAER: Three weeks sounds awfully close to the 20 days for closing arguments.

MR. SOMACH: Mr. Stubchaer, if I could make a statement. I don't need to have this document in the record. I have never needed to have this document in the record. It was requested of us by Mr. Taylor because as a separate matter aside from this hearing record, the Board must make sure that it has complied with CEQA. That means it must rely upon a final document and certification under the California Environmental Quality Act certified by a lead agency.

The Board acts as EID does in this context as a responsible agency relying in its decision making upon a document certified by a lead agency.

There is a confusion, of course, and overlapping interrelationship that is unfortunately caused by the request to have this made part of the record, but I don't believe that your decision in terms of the record is affected at all by what is in these documents.

The core environmental work that we were relying upon and do rely upon is in the draft, the document that was

submitted timely. What the final does is respond to comments and what the certification does is simply make findings by the lead agency. The Board's findings could be separate and different from any of the findings that EID or El Dorado County Water Agency have made as they proceed through with the order.

I think that the Board needs and would like the certification, but it could be provided to you in the normal and ordinary course under CEQA just by putting it in the mail and mailing it.

We have chosen, at Mr. Taylor's request, to make it part of the record so people could ask questions about something that theoretically they have no right under the CEQA process to ask any questions about.

In particular, in this situation I note that the Sierra Club made no comments during the supplemental process and as a consequence, you know, wonder why all of a sudden we are going to allow them three weeks to make comments on a document that theoretically they have no right to make comments on when I have no pressing need to have it in the record, but is in the record at the request of the State Board.

MR. STUBCHAER: Mr. Somach, I didn't understand Mr. Volker to say he wanted to comment on the document. I thought he wanted to use the document to comment on the water rights matter that is before us.

Is that correct?

MR. VOLKER: In part, Mr. Stubchaer. I think there are two separate regulatory regimes in operation here. There is the CEQA requirement. I think this Board must have a certified CEQA document. As a responsible agency, this Board needs to have proper CEQA compliance before it can take action.

Separate from that, the Board has a protocol that applies to hearings which requires the participants to distribute testimony and exhibits in a timely manner so all participants are informed and have an opportunity to engage in meaningful cross-examination at the hearing.

It's true the Board should have CEQA documentation at some point, but that does not negate the right of protestants to have that material in a timely manner so they can engage in an informed examination of the materials at the public hearing.

This is entirely the fault of the applicant. The applicant could have requested a delay in the proceedings because CEQA compliance was not yet at hand, or it could

have sought expedited CEQA compliance to assure that materials were provided to the Board and the public in a timely manner.

That didn't happen. That burden falls on the applicant. Having failed to meet that burden, its application technically should be denied.

Mr. Somach has invited error. He has asked this Board to rule that it can rely simply on a draft EIR and that the public need not have an opportunity to present testimony and cross-examination with regard to the final document, even though the final document has responses to comments, an integral part of the CEQA process. That's flat wrong and I don't want to participate in an effort to invite such error.

MR. STUBCHAER: You wanted to comment on the EIR as part of this hearing; is that what you just said?

MR. VOLKER: No, to engage in testimony and cross-examination with regard to the environmental issues addressed in the EIR.

I should also add that the protestants did comment on the draft supplement to the EIR and on the notice of preparation thereon.

MR. STUBCHAER: Mr. Taylor informed us yesterday we must take notice of the final EIR.

MR. TAYLOR: Both those gentlemen are, to a certain extent, correct. Mr. Somach and El Dorado produced these documents at my request. I thought it would be helpful to the parties if these documents were available to them.

It is unfortunate that they arrived so late. Notwithstanding that, even if the final EIR had been adopted after the administrative hearing had closed, it is my view that the Board could take official notice of those documents for the purpose of making a decision on the information in the administrative hearing record and under the law's requirement that we consider any final environmental papers prepared for the proposed project before making a decision. It seems to me that by having this in the record it provides people a greater opportunity to bring matters to the attention of the Board which it may wish it to consider in making its decisions.

You have discretion to allow Mr. Volker some additional time to provide written comment on these papers if you so choose.

MR. STUBCHAER: I am inclined to give you the same period of time that we allow for closing arguments to address the issues that are raised in this supplement.

MR. VOLKER: Thank you, Mr. Stubchaer.

We have a separate request, to cross-examine the witnesses who are relying on materials in that exhibit. That's part of the process and we are not going to waive that right because I think it is important.

MR. SOMACH: It seems to me it's got to be one way or the other. We will make our witnesses available on Monday or Tuesday. This is not such a difficult job, and moreover, I want to make sure that the record is clear that I fundamentally disagree with Mr. Volker's comments, but I think that what is happening here is a mixing of the Board's hearing requirements under the application and its CEQA obligations and where these documents fall.

But I am not going to debate that point now. If need be, I will debate it in the closing brief, or in court if there is a challenge to this order based upon Mr. Volker's indication that he believes we have invited error.

We will find out at some point whether that's true.

But with respect to this process, it seems to me that he can't have it both ways. If he wants to ask cross-examination questions, I am willing to extend the opportunity, at least assuming the Board would like to do so, to bring witnesses back on Monday so he can ask those questions.

But to allow him to both cross-examine and add documents to the record 20 days down the road is just simply an abuse of the process. He is attempting to abuse the good offices of this Board to the maximum degree possible.

MR. STUBCHAER: Mr. Volker, would you have time to review the documents over the weekend and ask cross-examination questions on Monday or Tuesday?

MR. VOLKER: I wish I did. I have to file a complaint on a CEQA preliminary injunction in Arkansas on a series of timber sales.

MR. STUBCHAER: Do you have an associate familiar with this case that could help you?

MR. VOLKER: No, I wish I had three of them. I can't do it and I insist we be afforded the 20 days that normally would be required so we could prepare for a hearing addressing the document. That involves preparation of our witnesses to address the document and preparation for cross-examining the applicant's witnesses who are relying on the document.

I don't believe it is proper for the Board to include in its record that will be the basis for decision, documents that were not circulated in a timely manner to the

participants to the hearing because we will, in fact, be prejudiced.

MR. STUBCHAER: Mr. Taylor.

MR. TAYLOR: I guess I would only like to reiterate one of the points made by Mr. Somach earlier.

The essential documents were in the record some time ago in the form of the draft supplemental. There have not been great changes. You provided Mr. Volker an opportunity to cross-examine on Monday. He has explained the situation is one of extreme hardship for him.

However, I think I would recommend that you leave that offer on the record and if he does not choose to avail himself of it, then he has the opportunity for the 20-day comment period.

MR. STUBCHAER: Thank you.

MR. BAIOCCHI: Mr. Chairman.

MR. STUBCHAER: Mr. Baiocchi.

MR. BAIOCCHI: With respect to Mr. Somach's remark that we all had a chance to review the draft, CSPA didn't have the opportunity because they had the wrong address. It's in the document. So, consequently, we didn't have the opportunity to review and comment on the draft document. And then, we get the final document at the eleventh hour and I agree with Mr. Volker that we should be given the opportunity of 20 days or 3 weeks to review it and provide comments. I think that would be reasonable, and then, we can come back and cross-examine the witnesses on the validity of the statements in the document.

MR. STUBCHAER: Mr. Gallery.

MR. GALLERY: Yes, Mr. Stubchaer, Amador County would join in the request that we have 20 days to comment on the documents.

MR. STUBCHAER: I am inclined to go with Mr. Taylor's suggestion. Your panel is available on Monday or Tuesday for cross-examination. We will give the additional days to comment, but not extend the period for cross-examination. But it appears to me it could be helpful if the witnesses could point out the differences between the final draft and the certified EIR, if that's possible.

MR. SOMACH: That's no problem at all. Would you like us to do that now?

MR. STUBCHAER: Yes.

MR. SOMACH: Q Can you summarize the difference between the draft document and what appears in the final?

MR. ROBERTS: A Yes.

MR. STUBCHAER: Are you referring to C or D?



MR. SOMACH: This would be 96 and 96-A, 96 being the draft document, 96-A being the final document.

Are you asking for the differences between 96-B and C, the El Dorado documents?

MR. STUBCHAER: No, between either B and C, which I thought were the final.

MR. SOMACH: 96-B and C are the certification and findings documents. 96 is the draft supplement to the EIR and 96-A is the final supplement to the EIR.

MR. STUBCHAER: All right. I guess I don't understand the difference between 96-C or B and A for the purpose of explaining the difference.

MR. SOMACH: Q Mr. Roberts, why don't you go through and explain each one of the documents that have been prepared and what they were prepared for, and as you go through the description, also the differences to the extent that you can.

MR. ROBERTS: A Okay.

MR. STUBCHAER: Maybe I ought to ask Mr. Canaday or Mr. Taylor if they could comment on my confusion on which documents we ought to have explained.

MR. TAYLOR: I think the fundamental question you are asking probably goes to the Draft Supplemental EIR and the Final EIR.

MR. STUBCHAER: Which is 96 and 96-A?

MR. TAYLOR: Right.

MR. STUBCHAER: All right. Thank you.

MR. SOMACH: A Mr. Roberts, why don't you focus on those two documents.

MR. ROBERTS: A 96, the draft supplement included a series of mitigation measures to reduce the significance.

It also indicated which areas would continue to be significant impacts or potential significant impacts.

96-A is the final supplement to the EIR. The section beginning on page IV-1, Changes to the DSEIR. There is a section of the final that lists changes to the draft.

MR. STUBCHAER: What is the date of this document?

A October, 1995. And the first document is July, 1995.

For the convenience of those of you who have it with you, it is the dark blue. My copy happens to be a lighter blue.

The following changes were made: The errata section has been changed and it indicates -- do you wish me to go through each one of these or simply to indicate what they cover?

MR. STUBCHAER: What they cover, but when you get to

mitigation measures and findings of overriding considerations, then be specific.

A In the errata sheet, there were corrections in typing. There is a slight change again, a typing change in ES-2. The footnote reads, subject to Bureau of Reclamation direction. It should be discretion.

On ES-3 -- excuse me, on ES-2, the third paragraph was changed to clarify what the relationship of what the elements of the project were.

MR. STUBCHAER: I don't have it. I am looking for a copy.

A It is page IV-1, ES-3 had a correction -- the statement was that EID has adequate supplies to meet customer demands to 1997. That was an error. It is to 2002.

Again, in ES-3, staying with the Executive Summary section, the statement was the secondary impacts associated with this growth in the EID service area include conversion of vacant land, increased traffic, air quality and noise. It has been changed to read increased traffic and noise, increased emission of air pollutants and increased demand for public services and habitat loss.

There was a change done in the significant impacts, a change in wording. The statement on page ES-4 has been changed as follows: There are no primary significant irreversible environmental changes expected with the proposed project. The word primary was added.

The next sentence was also added: The secondary impact associated with growth inducement are listed on page ES-3.

The next correction that was changed from the draft to the final relates again to the date: The monthly availability of the El Dorado project water could meet EID's monthly supplemental water needs until the demand level projected for the year 2005, and it is corrected to 2013.

MR. STUBCHAER: I would say the remaining are just minor corrections, it looks like, on that page. I don't think we need to go into detail on that.

A I will skip that. The key items now are the mitigation measures. These were changed and have been adopted into both the documents that went forward and were acted upon by both agencies.

In the mitigation measure D-5, three clauses were added to clarify the relationship of the biologist: EID shall retain a qualified botanist and a qualified wildlife biologist, the latter was added, and a qualified wildlife

biologist. The sentence went on to say, to survey the selected conveyance routes and facilities footprints for special status plants and animals; and animals was added.

It went on to read: If any special status populations are found that would be disturbed along identified routes; along identified routes was added.

Also, mitigation measure D-5 in the second paragraph added and animals.

By the way, these changes that were made were certainly suggested by several of the commenters and we responded to the commenters.

In mitigation measure D-10, we added a conveyance segment and added or proposed facility footprints. The addition went on to, the consultant shall coordinate with the COE to verify the delineation and prepare a mitigation plan, if required.

The next sentence was added: If any wetland resources are found that would be disturbed, EDCWA would modify conveyance routes, if feasible, and/or location of proposed facilities to avoid wetlands. That was added.

The next one relates primarily to flow regimes explaining the difference between alternatives 1-A and 1-B. A section was struck from that which was a hypothetical evaluation of the amount of water that might be spread out in the lotus reach. After a careful evaluation of that by several others, as well as my staff, we felt that inserting the hypothetical sentence would not add to the record. It would add confusion.

I'm looking for others that would have affected -- the others would not have affected any of the mitigation measures.

And to clarify, changes to the draft are in Chapter 4. All of the comments that were received are included and all of the responses to those comments are individually included.

The changes that were recommended and adopted in the Response to Comments are also then duplicated in the discussion of the draft changes. They derive from the original draft supplement dated July, 1995, and were then circulated and we received comments from quite a number of organizations, not including the Sierra Club. We then took those comments and prepared the responses thereto that are in this document.

The process then is that I gave this material to County Counsel and worked with County Counsel in preparing the draft of Exhibits 96-C and 96-B.

96-C was written first, is my understanding, given to EID then for their adoption. EID took their action prior to the County's action as the responsible agency to indicate to the County their acceptance of those measures which are specified in the appendix dealing with the mitigation plan.

They specified to those mitigation measures prior to the Water Agency board action and final certification. That is my understanding of the process.

MR. STUBCHAER: Thank you.

I want to ask staff if you have any questions of the explanation?

MR. CANADAY: Not of the explanation.

MR. SOMACH: Again, I am going to assume we will have this panel here on Monday so staff and anyone else can ask cross-examination questions, as I have offered, and as I understood the Board to have ruled.

MR. STUBCHAER: Mr. Taylor.

MR. TAYLOR: Well, it seems to me we are setting ourselves up to cross-examine on this subject twice. Would it be prudent --

MR. STUBCHAER: I would say we just not cross-examine today.

Mr. Baiocchi.

MR. BAIOCCHI: Mr. Chairman, I can't take shorthand, so all the changes verbally stated, I don't know.

MR. STUBCHAER: You don't have the blue-covered book?

MR. ROBERTS: He has it in his hands.

MR. BAIOCCHI: I don't have the draft of the final. I was intending to watch the 49ers play this weekend.

Now, will the District provide me with a draft copy today before I go home?

MR. ROBERTS: You bet. I believe if you will turn in the book in your hand to page IV-1, you have all the comments I made.

MR. BAIOCCHI: Not the comments, I want the draft supplemental. Thank you very much.

MR. STUBCHAER: I want to thank you for that summary. I think it does help. There's a lot of staff work for a lot of folks. It's in there anyway. I just didn't have the document before me.

MR. SOMACH: I think one of the things it does is highlight the fact the fundamental information, the information, quite frankly, that we are relying on as we move through is in that draft document. The other parts of the document are CEQA-related responses to comments, and then certification, mitigation, monitoring, things that were

dealt with and came out of the comments, but which need to be formalized. There needs to be a formal commitment by the agencies to move forward on those things.

But, as I said, we will be here Monday, ready, willing and able and happy to respond.

MR. STUBCHAER: I am glad to hear you are going to be happy.

MR. SOMACH: We are always happy.

MR. STUBCHAER: All right. So we will dismiss the panel for now and then see --

MR. SOMACH: I have some redirect questions I would like to ask.

MR. STUBCHAER: You want to do that before --

MR. SOMACH: Well, I will wait -- I think it may be more effective to do it now on the issues that have been already subject to cross-examination.

MR. STUBCHAER: While they are still fresh.

MR. SOMACH: And moreover, I think we will probably be done -- I don't know, I am not going to predict that again, but I think we can then limit the entirety of what we do with this on Monday with this panel to just these supplemental documents.

MR. TAYLOR: I also want to indicate we have a few business items to clean up from last night on what documents would or would not be made available.

MR. SOMACH: If you want me to start there, I can.

MR. TAYLOR: Your choice.

MR. SOMACH: The first request we received was for a plot diagram with respect to leakage and flow of Oyster Creek, and I have those.

And I have a cover letter from Mr. Hannaford. I don't have copies.

Let me ask you -- maybe I should get to that with the other information first, and then we can decide on the procedure that you want to follow in terms of availability of these documents.

But I do have that here and it is in three pages. I could have it reproduced and distributed if that's your preference on this document.

MR. TAYLOR: I would appreciate it, yes.

MR. SOMACH: Why don't we call this Exhibit 100, El Dorado County Exhibit 100, and it will be in three pages. I will produce it after lunch, but I want to make sure --

MR. STUBCHAER: It probably will be very difficult for parties to have recross -- I'm sorry, this is not your redirect, this is supplemental information.

MR. SOMACH: This just came out of a request. We feel no compulsion to put them in the record.

Then there was a request for more historic data with respect to how historically PG&E Lakes operated. I wanted to, first, make a reference to a document we submitted back at the initiation of these hearings. That was El Dorado Exhibit No. 47. That document describes the historic operations of the lake and included tables going back historically as well as graphs that pull together and summarize and included, in fact, a lot of historic data, and I wanted to make sure that the record was clear.

I alluded to this yesterday when I said I thought that we had from time to time attempted to provide historic data. So, I wanted to include that reference.

Then, what I asked Mr. Hannaford to do today, because again, it is difficult for us -- we have attempted to package this material in as many different ways as we could think of to make it relevant and to explain what it was that we intended to do.

We looked again at Exhibit 78 and noted that it had historical evaluations over the various years, minimum-maximum elevations indicated there.

So, the request I got yesterday was basically for raw data and so what I have here is all the basic data that we have associated with various things.

I have capacity tables of Caples Lake, Silver Lake, Lake Aloha. I have typical printed data from the USGS publication, Water Resources Data, California, 1995 Water Year; Electronic Data files for lake storage and stream gaging stations pertinent to the analysis of the 1919 agreement water and supplement water available under the above applications.

And I have got those listed and that is in these disks; is that correct?

MR. HANNAFORD: Yes.

MR. SOMACH: We have downloaded that information for your utilization in these disks. I have not and have not intended to go through and duplicate these disks for everybody. I think we could do that if people who are interested in this data would request it. We can merely make this data available, you know. It is just a matter of taking stuff out, but this is all the data, and all we have done is package it and analyze it, and put it into the two exhibits that I referred to, the earlier Exhibit No. 47 as well as Exhibit 78, and the way those exhibits were utilized by other parties, so we have attempted ourselves to explain

it and package it.

We are now providing the Board at its request with the raw data. We will make the electronic data available to any party that wishes us to make the disks available to them.

There is no more that we have in terms of being able to really provide additional information or data to you for your analysis and your separate analysis and use.

I will also have copies made of the written material and make that available to everybody as Exhibit 101.

And as I said, I will mark for these purposes the floppy disks as 102-A and B. There's two of them and I will make those available to any party that requests them. We will try to get those out as quickly as possible, but again, this is just supplement information requested by the Board that we have made available. I will have this ready after lunch.

MR. STUBCHAER: What's the machine and what is the format of the disks.

MR. HANNAFORD: Mike, could you comment on the format?

MR. PRESTLER: They are just text files.

MR. STUBCHAER: And for DOS machines or Apple?

MR. HANNAFORD: DOS.

MR. SOMACH: Let me give you the floppies right now and any party that wishes copies of those, I will have copies made and then we will package this as an exhibit and bring copies after lunch.

MR. STUBCHAER: Mr. Campbell.

MR. CAMPBELL: The Department of Fish and Game would like to go on record as requesting all of the information that Mr. Somach just described.

Also, as a matter of clarification, I believe Mr.

Taylor's request included a request for daily storage information, and in response to his request, Mr. Hannaford indicated that daily storage information is available. I would like --

MR. SOMACH: That is in the disks.

MR. CAMPBELL: As I recall, Exhibit 47, which came in the prior days of the hearing, was just end-of-the-month storage, so what you are saying is this new information will include daily storage?

MR. SOMACH: This does include the daily levels, yes.

MR. HANNAFORD: We had a comment on that. The streamflow data includes daily records from the beginning of record, usually in the early twenties through 1992 or '93,

'93, I believe. The daily reservoir data includes records for Caples and Silver Lakes from 1981, I think it is on Silver Lake and from 1985 on Caples. Those are the published records in the USGS publications.

We have also included end-of-the-month storage for the period prior to the beginning of publication.

The end-of-the-month storage sometimes had to be estimated because there weren't complete records on some of those lakes. Usually for the summer months there were pretty good records, but during the wintertime in the early days the records were very fragmentary.

So, in this file is included both the end-of-the-month records for storage and the daily storage for the period of publication by the USGS.

In addition, there's no published records for the storage in Lake Aloha, and that was derived from information obtained from PG&E for their operations of that lake. It is not published, but we do have change in storage during the month for that record.

MR. SOMACH: Okay.

MR. STUBCHAER: Mr. Canaday.

MR. CANADAY: He answered my question.

MR. SOMACH: Now, the last documents that were requested were available documents with respect to -- and I will just simply call it with respect to the purchase of project No. 184. As we indicated, those documents are not available, either one, because of the fact that they are not created. There are no such documents.

But I want to focus just for a moment on the request for financial breakdown documents. As I indicated yesterday and I have confirmed since then, those documents are all confidential and they are all wrapped up in the negotiations between PG&E and El Dorado on the purchase of the project and the development of a power purchase agreement. To produce them there would fundamentally and adversely affect El Dorado's position in those negotiations.

And as a consequence, I again renew my request that I made yesterday, that the Board not order El Dorado to provide those documents, that they simply are not directly germane to these proceedings, and that we are willing ourselves to proceed based upon a record that does not contain those documents, with the knowledge that the Board will be reviewing what is in the record in order to make its decision.

MR. STUBCHAER: I understand the reason for the request. I think it is reasonable and it is granted.



MR. SOMACH: Thank you, Mr. Stubchaer.

With that, if I could now move to redirect, I think that was all of the documents that were out there.

MR. STUBCHAER: Mr. Volker.

MR. VOLKER: Thank you, Mr. Chairman.

First, on behalf of the protestants associated with the League to Save Sierra Lakes, I would like to request the electronic data files that were referenced by Mr. Somach; and secondly, I would like to request that we have made available the models that were employed to explain how the data plan demonstrates that the historic operation will continue in the future. This is essential to afford analysis of the raw data.

I am informed that such models exist and the applicant felt it necessary to develop the models for the purpose of developing the exhibit.

I think since the exhibits were used with the modeling, that the modeling is fair game and all parties should be entitled to that --

MR. STUBCHAER: Mr. Somach.

MR. VOLKER: -- to use in understanding the exhibits.

MR. SOMACH: Maybe if Mr. Hannaford could describe what was done, that might be helpful in terms of, among other things, helping me formulate whether or not we can comply with the request.

MR. HANNAFORD: The material appearing in Exhibit 78 was determined on the basis of the historical releases and historical operation of the PG&E Project 184. There was no attempt made to reoperate the system. We are merely trying to demonstrate that with the historical release pattern, El Dorado would receive not only the 1919, or could receive not only the 1919 agreement water, but also, the supplemental water being requested in these applications.

MR. VOLKER: I guess my question has to do with two questions. One, are there models, and two, aren't those models essential to translate historic information into operating parameters for the future?

MR. HANNAFORD: All of the work necessary to developing project operations by El Dorado Irrigation District for hydrogeneration hasn't been concluded at this time. We are only --

MR. VOLKER: We are only asking for the models that exist. Are there models that exist now?

MR. HANNAFORD: There are models that are in a very preliminary stage of development. They aren't something that can be passed out and somebody be able to use.

MR. SOMACH: Confusing things -- now, he is talking about ongoing work being done by El Dorado in the context of the operation of those facilities, and what Mr. Volker, I believe, is asking for is; number one, was there a model that was developed in order to produce the information that is in Exhibit 78.

MR. HANNAFORD: Yes, there was a procedure to add and subtract the storages and the streamflows to come up with the numbers that were eventually put into Exhibit 78.

MR. SOMACH: But it was not an operational model as you didn't attempt to use your model to reoperate the project?

MR. HANNAFORD: We didn't reoperate any of the PG&E system.

MR. STUBCHAER: Was it just a spreadsheet that took existing data and arranged it?

MR. HANNAFORD: It was not actually a spreadsheet, but it could have been a spreadsheet. It was a FORTRA model.

MR. ALCOTT: I think Mr. Volker's line of questioning points out the two diametrically opposing views on the District plans for the system. Mr. Volker has asked for copies of models about prospective operations of the project. There are none. EID has none. We have not commissioned any.

Our projected financial analysis for Project 184 operation is based on this historic information that has been developed and assimilated into the reports before the Board.

Again, it reinforces our statement and our commitment to operate the project in EID's ownership as it has been operated by PG&E in the past, which is based on hydrologic information and on hydroelectric generation, and is not based on some anticipated reoperation anticipating more consumptive water. It has not been done, it is not expected.

MR. VOLKER: Mr. Stubchaer, I don't believe I have used the word reoperate yet. What I am trying to get at are two things.

MR. STUBCHAER: Let's break this into parts. The method of calculation that was used to come up with the table he referred to, that is based on historic data. Is that available?

MR. HANNAFORD: The method that was used is written up in Exhibit 78. The model or the procedure isn't something that could be readily turned over to somebody else to use,

but the outline of how flows were computed at the various locations and so forth appears in Exhibit 78.

MR. STUBCHAER: It looked to me it was pretty straightforward and could have been done on a spreadsheet.

MR. HANNAFORD: Right.

MR. VOLKER: The second question has to do with the means by which the District would apply historic information in maintaining operation of the facilities.

MR. SOMACH: Is this cross-examination?

MR. VOLKER: I am trying to explain, if the applicant has suggested that it will not change the manner of operation in the future, surely it would have some model which would take information from the water year as it is unfolding and translate that into operational parameters that would mirror historic operations.

Absent that, it is simply open-ended and that's the problem. That's the heart of the issue in this case, is that we have a black box. You know what is inside it and no one else does, and we want to look into the black box to figure out how you intend to replicate the historic operation in the future.

If you cannot do that, I think the application must be denied because there is no opportunity for anyone to evaluate the time --

MR. SOMACH: There was somewhere in there, I think, a question. Did you deduce the question?

MR. ALCOTT: I got a question initially from Steve. First of all, I don't own a black box. I can never find them in the dark.

Mr. Volker suggested that a model was necessary in order to make sense out of the project operations. I would submit that a model isn't necessary to make sense out of the operation. What you need is a process and a series of protocols or operating criteria that you use on an annual basis to determine that for the coming year's operation. And so, I say in response to your question, we have a process, we have protocols. They are articulated in the FERC license and that is what we will follow. We absolutely do not have a model of our prospective operation.

MR. STUBCHAER: I can understand you don't necessarily need a model, but you need rule curves or protocols as you say.

How do we ascertain that you are going to follow what is in the present FERC license until there is a new FERC license?

MR. ALCOTT: We could have carried that conversation

on about three in the morning when I was lying awake wondering how to do that. I can't answer your question at the moment.

MR. SOMACH: But implicit in the question you pose, from a legal perspective at least, is the answer and that is if the FERC license requires it, that's what they will be compelled to do, and that an additional compulsion by the State Board does nothing more or less, and on redirect I want to go over, in fact, some of those criteria again because somehow they appear to always get lost as we move through the cross-examination and focusing on models as opposed to what the real intention is in terms of future operation.

MR. STUBCHAER: Well, Mr. Volker, shall we get to the redirect and then you will have the opportunity to recross at that time?

MR. VOLKER: Yes, I guess the pending question is will the rule curves, to the extent they exist, be made available.

#### REDIRECT EXAMINATION

by MR. SOMACH:

Q I would like to ask Mr. Alcott some questions.

Mr. Alcott, can you describe the nature of the agreement reached between El Dorado Irrigation District and the El Dorado County Water Agency and Kirkwood with respect to the two proposed projects?

MR. ALCOTT: A The settlement agreement?

Q Yes.

A The settlement agreement does several things and it is about a 10- or 12-page document. First, it includes a finding or conclusion that based on the materials that have been developed by El Dorado, that Kirkwood finds that our applications before the Board today do not impact their applications. In other words, there is no effect, no consequence.

It provides to Kirkwood that they would be urging other Caples Lake interests to enter into settlement discussions with El Dorado; in other words, they are serving as a catalyst for discussions that will hopefully conclude in resolving our differences.

It also, in anticipation of EID ownership, provides for an agreement to store up to 500 acre-feet of water that is being requested in the Kirkwood applications before the Board for snow making, and it also provides for a formula for calculating compensation for storing and making that water available.

Q And where are you in the process of finalizing the various agreements and documents that would formally conclude the protests?

A The document, the agreement itself, was executed yesterday morning. That execution was authorized the day before by the vote, both of the El Dorado County Water Agency board as well as the El Dorado Irrigation District board. The document was signed and it is in the various stages of getting the proper attestations. It needs to be attested to. So, that document is executed and is going through the process.

There were also letters written, one by Kirkwood, another by the Water Agency and the third by El Dorado Irrigation District to the Water Board. I know my letter was addressed to Mr. Pettit and it announced that the settlement had been reached and each of the parties is requesting that a finding and a permit term be included with any order by this Board on any of these applications.

And, in essence, the finding of the permit terms related to neither party expressing any priority over the other's amount of water right.

Q And what is your understanding about who it is that is supposed to be submitting those documents to the Board formally?

A My understanding is Ms. Lennihan representing Kirkwood will be presenting this material as an exhibit as part of her application to the Board.

Q So, it is your understanding that the agreement should be filed with the State Board on Monday, assuming that's when Kirkwood puts on its testimony?

A In conjunction with their testimony, yes.

Q And it was on that basis and your understanding you responded to Ms. Lennihan's questions yesterday?

A Yes.

Q Mr. de Haas, do you concur in what Mr. Alcott has indicated?

MR. DE HAAS: Yes.

Q Now, Mr. Alcott, we have spent a lot of time talking about the various hydrology studies that were undertaken and submitted by El Dorado.

What was the purpose from your perspective for asking that those studies be undertaken?

MR. ALCOTT: A The purpose of the studies was to demonstrate that the applications would provide the water that the District sought, simply that.

Q And that assumes historic operations of the upstream

projects?

A Yes.

Q And the conclusions that were reached in those studies?

A It was clear that the 17,000 acre-feet is available to the District based on the historic operation and the historic record of those operations.

Q Without varying those historic operations at all?

A Correct.

Q Were other studies undertaken that focused on the more limited situation in which, for example, upstream operations to meet the 1919 contract requirements were met only from Silver and Echo Lakes?

A Yes, they were. They were conducted, I believe, shortly after the supplemental protests were issued.

Q And what was the purpose of those studies?

A The District wanted to determine whether or not the 17,000 acre-foot yield that is proposed with these applications is compromised in any way by a reoperation of the project through an operation not historically observed by PG&E.

Q And what was the result of that analysis?

A The result was that even with that revised operation, 17,000 acre-feet is available.

Q So, under either situation, the historic operation or this hypothetical reoperation, the 17,000 acre-feet would be available; is that correct?

A Correct, and that is my understanding, that we have queried the operations in a number of ways and the 17,000 acre-feet is available.

Q And I want to confirm in that context that you are not here proposing, as perhaps was suggested by some of the cross-examiners, to change the last 60 years of operational history for project No. 184; is that correct?

A Hopefully clearly correct.

MR. STUBCHAER: Was that a yes or no?

A Yes, sir. I'm sorry.

MR. SOMACH: Q In a situation where El Dorado chose, and this is a hypothetical situation and it would either be because FERC ordered it or because on a whim, El Dorado decided to reoperate the upstream projects, would they receive any additional water under these applications than is available under the historic operations?

A No, they would not, given the cap, the 17,000 acre-foot cap that's been included with these applications.

Q Would reliability in any way be increased by some

reoperation over historic operations?

A No.

Q Would the timeliness of arrival of the 17,000 acre-feet and its use in terms of reliability and reliance be modified through some kind of reoperation of the upstream facilities?

A No, it would not, and the reason for that is that in addition to the 17,000 acre-feet that originates from the PG&E system, the District has water sources from Folsom and Sly Park, other reservoirs that we have access to, and our water supply system can be operated in a variety of ways to use that water without compromising the 17,000 acre-feet.

Q Okay. Several times yesterday you described how the project was to be operated, this operational criteria we have just mentioned based upon the FERC license.

Could you describe that again for the Board?

A Again, the key considerations to the operating plan, first, is that the project is operated on an annual basis and the key before developing the operation plan is having reliable snowmelt and runoff data.

I have learned since the earlier discussion that EID will have access to that snowmelt and snowpack information that's historically been collected by PG&E, as part of our ongoing negotiations with PG&E because it is such a critical feature of the operating plan.

Now, with that data available, it's a matter of meeting certain priorities that are called out under the FERC license and other obligations, for example, the 1919 contract water is considered to be the highest priority in operational planning.

Following that, there are obligations to maintain streamflow releases and minimum pools in Caples Lake, the two historical lakes as well as the minimum pool above that.

Thirdly, there's the obligations in the FERC license to maintain the reservoir levels at Echo and Silver Lakes as late in the season as possible in order to make those available for recreational pursuits.

And then, finally, the hydroelectric generation is the final consideration. And in order to make it abundantly clear, the objective is not to incorporate consumptive requirements in that operating scheme whatsoever. The expectation is that the District gets to access the tailwater, if you will, from the operations that accrues in Folsom Lake.

Q And it is that tailwater that the analysis establishes just exist; that is, the 17,000 acre-feet; is

that correct?

A Correct.

Q Now, during cross by the Department of Fish and Game, Mr. Campbell repeated that and then added that there were some key words to that, and those key words were to the extent possible.

Can you describe exactly how you read those words in the context of the criteria and priority that you have just talked about?

A Well, obviously the operating scenario with those series of priorities, implies that the priority is great, that, in fact, it takes precedent over the hydroelectric operation to the extent that you are programming as a priority the minimum reservoir pools, the streamflows, the elevations for the lake for recreation.

Q Now, Mr. Taylor and others asked about EID's motivation for purchasing the project and you responded in part that insuring the reliability of water supply under the 1919 agreement was certainly a motivation.

You later explained that answer, but I am afraid that the explanation has been kind of missed, and by way of example, using the recent historic situations like the fire that occurred up there a while back, could you elaborate on the motivation of EID, at least part of its motivation for purchasing the project; that is, that water supply?

A Correct. The Cleveland fire was a very difficult tragedy for the District to accommodate. One of the complications was PG&E's approach to repairing the canal and it was a significant job requiring about 15 million dollars for repairs.

MR. STUBCHAER: Was that a wooden flume that burned?

A Portions of the flume were wood, yes, and they have been replaced with concrete by and large. In effect, their approach took about 14 or 15 months in order to have the canal reoperational.

As a consequence, one of our primary, in fact, about 35 percent of our supply is taken from the forebay and provided from Project 184. That supply was unavailable for that 14- or 15-month period of time.

When I talk about improving the reliability, the District believes it could have gotten the canal restored and reoperational sooner, significantly sooner, and that would be an example of prudent reliability.

Q When you talk about improving reliability, you are focusing on repair, replacement, maintenance of crucial features of that project, at least crucial to the water



supply of El Dorado Irrigation District; is that correct?

A Correct.

MR. SOMACH: I have no further questions on redirect, Mr. Stubchaer.

MR. STUBCHAER: Let me ask a question before we open for cross-examination. Are these procedures or protocols that you mentioned, priorities, clearly stated in the FERC license?

A They are in the license and exhibits, yes.

MR. STUBCHAER: Fairly stated so that if parties want to know how you are going to operate, they can look at the FERC license and say this is how they are going to do it?

A I would suggest there's a number of pages you would have to look at, but yes, they are all in the FERC license and the exhibits. I believe the recreational requirements are in Exhibit 32.

MR. STUBCHAER: Thank you.

A Those are in the record, Mr. Stubchaer.

MR. STUBCHAER: I know the FERC license is in the record, but I haven't personally tried to look at it from the point of view of operating the reservoir.

MR. SOMACH: I also believe that these conditions, these criteria, are included within the licensed water rights of PG&E for these projects.

MR. STUBCHAER: You believe they are or you know they are?

MR. SOMACH: I think -- I know they are.

So, what I am saying is reducing these criteria to some form is not something mysterious, that it is in the license and exhibits. It is also in the State Board license with respect to PG&E's license for the operation of this project.

We are talking about what I believe to be fairly known and definite criteria.

MR. STUBCHAER: Okay. Are you ready for recross then?

MR. SOMACH: Yes.

MR. STUBCHAER: Mr. Volker.

MR. SOMACH: Is it my understanding that recross relates to --

MR. STUBCHAER: Is limited to redirect.

MR. SOMACH: Thank you.

MR. VOLKER: As if that isn't enough.

MR. ALCOTT: You said it.

RECROSS-EXAMINATION

by MR. VOLKER:

Q Mr. Hannaford, I am puzzling over your description of your procedure that was employed in developing Exhibit 78. I understand what you described to be a description of a model. I think you indicated it was not readily transferable, but is it not true that it would, in fact, be transferable with some effort?

MR. HANNAFORD: A The analysis of the historic data -- you mean the procedure used to analyze the historic data?

Q Yes.

A I suppose it could be done.

MR. VOLKER: Well then, I would ask that that might be a model that should be made available for the use of the participants and the Board.

Mr. Stubchaer, since it appears that that model or procedure can be made available, can be transferred to the comprehension of others, that it be ordered to be done.

MR. STUBCHAER: Are you sure that a FORTRA procedure would be comparable to all parties?

MR. VOLKER: At least to our assemblage, yes.

MR. HANNAFORD: It is important to recognize that the procedure used employed the historical operation. It didn't reoperate the system.

MR. STUBCHAER: I understand it is a method of calculation from what you said.

MR. SOMACH: Which is included in the exhibits. It could be replicated by the parties on a spreadsheet or whatever. All the data has been provided. The methodology has been provided, our results have been provided.

I am not sure what else it is that we need or that we are being asked to provide, software to run their computers or what?

MR. STUBCHAER: Mr. Volker.

MR. VOLKER: Well, I am not sure myself, but I would like to be able to confer with our computer expert and perhaps after the break to regroup and pursue that line of questioning.

MR. STUBCHAER: Let's do that.

MR. VOLKER: If we are not at a break point now, I do have other questions.

MR. STUBCHAER: When you finish your other questions, we will have a break and you can do the computer questions.

MR. VOLKER: I am intrigued by the concept that was suggested during the redirect, that historic operations can be replicated in the future by use of an understanding of the past that is not reflected in a discrete model, and I have two reasons for my uncertainty about this.

One, it seems to me that you have a question of reliability or verifiability in identifying a water year when you bump into it and assuring that past operation for that specific water year would, in fact, take place; and secondly, you have a situation where you bump into a year that doesn't seem to fit into any of the 45 or 50 years of record that we have, and you have to respond quickly in a manner that would be consistent with the past.

The latter task is a challenging one because there are so many permutations and fluctuations in the historic record.

Now, with that understanding, how do you --

MR. SOMACH: I object. The only understanding that was deducible from that is that you are uncertain because that is the way you started that and I think I would stipulate that you are uncertain.

MR. STUBCHAER: One at a time. Please finish, Mr. Somach.

MR. SOMACH: I am simply saying I object to the form of the question, that all Mr. Volker indicated in all of that was he was uncertain. There still is no question out there and I am not sure what it is that they are supposed to assume other than he is confused and uncertain. That is all that statement said.

MR. STUBCHAER: I heard more than that. Mr. Volker.

MR. VOLKER: I am attempting to explain there are two lines of inquiry here and I would like to pose a question relating to the first line of inquiry, and that is with respect to a water year that seems to fit the past.

How would you assure that the lakes would be operated in the same manner as occurred in that water year in the past?

MR. STUBCHAER: Mr. Volker, could I try adding to your question?

MR. VOLKER: Certainly.

MR. STUBCHAER: Say you have a year that isn't typical of anything that has happened in the past. What is the last priority, which takes the difference? Do the lake levels get maintained as long as possible and then the releases for power come last in the priority list?

MR. ALCOTT: A The plan would be designed to first insure that the water taken under the 1919 contract was available. Secondly, we would be looking to maintain those streamflows and the minimum pools in Caples, and then push comes to shove, I guess, and then you start looking at the recreation demands of the lakes, and after that, the

hydroelectric schedules.

MR. STUBCHAER: So, you meet the first priorities as long as possible, and then any slack or difference in the availability of water comes off the end for their hydropower?

A It is a matter of balancing those, correct. It is a matter of balancing those to the extent there is water available to balance them.

MR. STUBCHAER: You said balancing. That indicates you could spread it over all the priorities? I think the question, and correct me if I am wrong, I think the question is which values are given top priority and retained as long as possible, and which take the cuts rather than just spreading it across all of them in the balancing procedure.

A My understanding is that the 1919 contract obligations are the first and foremost priority, then subsequent to that, there's a specified standard in the FERC license that calls for minimum fish-flow release and specifies an absolute minimum for the pool in Caples, and those are absolute. Those are non-discretionary. They are not subject to balancing.

I think the balancing, and where the art comes in as opposed to the science in this operational planning that is done each year, is how do you balance the hydroelectric demand against the lake-level requirements, and that is where there is discretionary language in the FERC permit that provides for that balancing, understanding that each water year is a different year.

MR. STUBCHAER: Mr. Volker.

MR. VOLKER: Q I think we are nibbling at the edges, but there are some pretty fundamental issues.

First of all, is it not true that the same water year type historically has yielded significantly divergent lake levels over the course of the summer?

MR. ALCOTT: A Do that again, please.

Q Isn't it true that if you define water years by any common methodology, and groups of 50 years approximately of historic operation within those water years, that you will find in each group of a water year type significantly divergent patterns of lake releases and lake levels over the course of the summer?

A I understand it is difficult to apply standard characterizations of the water year to inflow to Folsom or what have you. It is difficult to apply that reliably to the hydrology associated with the upper lakes. There is some relationship but it is not linear.

So, the answer to the question is yes, there is

difficulty.

Q There is difficulty with respect to how you define the water year type, which I think you just explained, and then, is there not also difficulty with regard to the fact that for a given water year type, assuming that it has been properly identified, the lake levels and the lake releases were different within different years of the same water year type?

A Yes.

Q That being the historic operation pattern, that you had inconsistency between water year types and lake levels and lake release operation, is it not difficult, if not impossible, to provide assurance that historic lake-level operations will continue in the future?

A I could turn that around and say, no, it is not difficult; in fact, using the historic operation and the wide swing in those operations, you could say quite convincingly that, yes, you will work within those historic operating conditions.

Q That's fine, but I think that's the same point. There is such a vast range of data points for a given water year type that almost any manner of operation fits the curve, fits within the historic operation such that to say you are going to continue the historic operation becomes a meaningless statement because it does not predict a particular lake-level regime or lake-release regime for a particular water year type, but instead, predicts a vast range of lake-level releases and levels.

A Right, and if the issue is trying to predict with some accuracy the consequential lake levels to the operation, that is a difficult task indeed, as you know.

If you look at solving and addressing the problem from the front end, which is what I have been advocating is required under the FERC license, you do it on an annual basis with your priorities established as to what needs are being met under what priority, and again, articulating that there is no interest in planning the operation to allow for consumptive demand to be met other than through the consequence of the FERC operation.

Q Isn't it possible to employ that front-end approach and simply set forth operating criteria that match the standardized methodology in terms of precipitation levels or water content of snow, inflow to Folsom and so forth, so that you can predict with some precision by a date certain each year the manner in which the lakes would be operated so that the public and this Board today could evaluate that

manner of operation to ascertain whether it properly balances the broad public interest in recreation, in the local economy and fish and wildlife habitat against downstream consumptive uses?

That being possible, can't you do that for this Board now?

MR. SOMACH: That is a compound question.

MR. VOLKER: Q Is it possible to do?

A I think it is possible to do now and I think there are complications. One is your ability to anticipate a water year that has not yet occurred, and the other is anticipating future requirements on the project which are in conflict with one another.

One of the most difficult things for me to understand in this process is the variety of protestants that are being represented at this hearing that had downstream interests that can only be satisfied to the detriment of the upstream interests, and that is a complication that is prohibitive on the District for coming up with some contrived -- regardless of its soundness technically, but nonetheless, a contrived operating parameter that simply puts all the burden of that operation on the EID.

If there are others who want to share this burden in terms of those that want to benefit from recreation and benefit from downstream benefits, maybe that's another story.

Q I didn't mean to suggest that we wanted EID to itself conduct that balancing. My question had to do with the technical feasibility or methodological feasibility of developing operating parameters that would address commonly accepted hydrologic factors so that you could translate your proposal into a set of criteria that this Board and the public could understand and could, for example, say, well, in 1983, had EID been at the helm with a State Water Board permit in its pocket, it would have operated the lakes as follows, or at some point in the future if we have additional fish-flow requirements, Bay-Delta flow requirements, what have you, that that operating regime would change in the following respects.

That's the kind of specific information that we need to make an informed judgment, and my question is, what would it take for you to develop that kind of operating methodology so that the parties could focus on that at this hearing?

A I think there are two questions there. I guess the first answer is I presume it is possible to develop that

kind of scheme.

The second is, what would it take for us to do that.

I don't know.

Q How much time would be required?

MR. SOMACH: He said he didn't know as to how to do it or how long it would take.

Is that what you said?

A I don't know.

MR. SOMACH: I don't know is the answer. It doesn't change.

MR. VOLKER: Q Mr. Hannaford, could you suggest some time frames, because you have had a lot of experience modeling in this watershed? Perhaps the question is best directed to --

MR. ALCOTT: A Could I ask you just so we understand the question, you are asking how long it would take to develop a methodology or how long to develop a methodology that is acceptable to all parties?

Q Obviously the first. Once we have the methodology and we have some parameters that people can address themselves to, obviously there's a Board-balancing process that takes hold, and hopefully resolves this conflict.

A I would be interested in the second.

MR. SOMACH: I will object to the question because all we have got is how long would it take to develop a methodology. That is not a defined-enough question. It is an ambiguous question in terms of anybody being able to respond to it.

MR. STUBCHAER: I thought he defined it perhaps too broadly. When you say how long will the Bay-Delta stuff be taken care of and how would you respond to that, and that is unknown, that is speculation. I don't see how you could do that. I don't see how you could do additional fish flows, but I do see that had you had these rule curves in operation in 1983, it would suggest what the operation would have been. That, to me, is doable.

MR. SOMACH: I guess what I am suggesting is Mr. Alcott said it was perhaps doable.

The question here is the methodology and Mr. Volker defined one series of broad-sweeping notions. You further defined it. I suspect if Mr. Taylor were asked, he would add or subtract from that, and every person in this room could do so.

As a consequence, I still object to the question in that unless the methodology is defined in a known and definite way, it is an ambiguous question.

MR. STUBCHAER: Do you want to rephrase the question, Mr. Volker and define it so it is not vague and ambiguous?

MR. VOLKER: Yes. I apologize for that. I was trying to explain the different context in which the need for methodology would arise.

Q First, Mr. Hannaford --

MR. STUBCHAER: Do you want to take a break now?

MR. VOLKER: Sure.

MR. STUBCHAER: We will take a 12-minute break.

(Recess)

MR. STUBCHAER: Let's reconvene.

Mr. Volker, before we continue with your recross, I just want to say that after this is finished, we will go to the Friends of the River for their identification of exhibits.

There is one other thing I want to say -- Mr. Birmingham.

MR. BIRMINGHAM: I was going to raise a question concerning the procedure on recross-examination. On the initial cross-examination the parties were limited to 20 minutes and I wondered if we are going to have a similar limitation in connection with recross.

MR. STUBCHAER: The clock has been running on 20 minutes but there has been time out for minor interruptions and other interruptions, and as I stated previously, upon showing of good cause, that time can be extended on cross-examination.

But, yes, the clock is running.

Mr. Volker.

MR. VOLKER: Thank you, Mr. Stubchaer.

Q Mr. Hannaford, do you have in mind the question and answer sequence that preceded the break?

MR. HANNAFORD: A Yes.

Q I would like to ask you whether you could develop a methodology by which the operating criteria would assure predictability in lake level and lake-release operation can be developed?

A It may be feasible to develop something of that nature.

Q Have you undertaken to develop such a methodology?

A Not at this point.

Q Can you provide us an estimate of the time required to develop such a methodology?

A In view of all the variables and conflicting uses of water and so forth, in view of all the variables involved, no, I can't give you that time.



Q What would you believe would be required to develop such a methodology?

MR. SOMACH: Objection. Again, methodology is not defined. It is an ambiguous term, and the question is, therefore, objectionable because it is ambiguous.

MR. STUBCHAER: I thought that the previous question and answer regarded a methodology which was at least partly defined, I thought in my mind.

MR. VOLKER: I believe the witness said it was possible so he must have in mind the concept at least.

MR. SOMACH: He said exactly that it was perhaps feasible. He could not provide an estimate because he had no idea of all the variables and the variables in the methodology and I am arguing that in terms of objection make the question ambiguous and unanswerable.

MR. STUBCHAER: Overruled. Answer if you can.

A Will you repeat the last question?

MR. VOLKER: Q Can you describe for us what you would need to do to develop such a methodology?

A Not at this point, no.

Q Can you tell us what operating parameters could be devised in order to provide predictability of lake level and lake-release operations?

A Not at this point.

Q I will back up. Reference has been made to two constraints on operation, the 1919 agreement and the FERC license.

Mr. Alcott, when you referred to the 1919 agreement, did you mean simply to suggest that the first priority in future operations would be to assure delivery of the 15,000 acre-feet that has been delivered in the past pursuant to that agreement?

MR. ALCOTT: A Yes.

Q Obviously, since EID and PG&E have reached a settlement agreement and an acquisition agreement, the 1919 contract is no longer, or will soon no longer be operable; correct?

A In effect, yes.

Q Now, with regard to the FERC restraint or constraint on operations, isn't it true that the FERC criteria are so broad and discretionary that it is impossible to employ them in a manner which would predict a specific lake level and lake-release schedule in any given water year type?

A I think it is problematic to utilize the FERC criteria in a predictive way.

MR. STUBCHAER: Mr. Volker, I would like to ask a

question of you. When you say predict the lake level, are you talking about a reasonable range of lake level or fairly precise level?

MR. VOLKER: I think it is a matter of some scientific inquiry as to how precise the operating regime or the predicted operating regime would be, and that's the purpose of this colloquy. Right now we have nothing.

MR. STUBCHAER: In your mind are you looking at plus or minus a foot, two feet or an inch? Do you have some tolerance in mind?

MR. VOLKER: I think we are talking in terms of feet, not inches. We are not talking in terms of tens of feet. I think we are talking in terms of end of the month, give or take a couple of feet.

MR. STUBCHAER: Okay. I think that helps. Thank you.

MR. VOLKER: Q With that in mind, Mr. Hannaford, if we are talking about developing criteria for predicting lake level and lake-release schedules, with the goal of predicting end-of-month lake level, give or take a couple of feet, is it possible to develop criteria that would permit that level of prediction?

MR. HANNAFORD: A It may be feasible to do that.

Q Have you undertaken to do that?

A No.

Q How much time would be required to ascertain whether, in fact, you could accomplish that task?

A I don't know.

Q Can you tell us whether it would be less than a month?

MR. SOMACH: Objection. He said he didn't know.

MR. STUBCHAER: You are bracketing.

MR. VOLKER: I think it is permissible to ask whether he can give us a range.

A I just don't know at this point.

MR. STUBCHAER: Mr. Taylor, did you want to say something?

MR. TAYLOR: I would like to insert a question here.

What are the primary, say half a dozen factors, you need to look at to develop such a model?

A Some of the items that would have to be addressed would be the estimated inflows to the reservoirs, the timing of those flows during the season, the 1990 water fish releases, and other requirements on the system.

One of the key issues is the fish release at Kyburz, which is the back-breaking problem in the entire project.

During an average year, the fish releases there total 3,000 acre-feet a month. The water to meet the 17,000 acre-feet under these applications would come as a byproduct for the total operation of the system, including the hydro-generation.

MR. TAYLOR: Are there any other significant factors you have omitted?

A Possibly. I can't think of any right now, but there certainly are a lot of things that have to be considered. One big issue on Silver Lake is the tremendous leakage. Caples Lake doesn't have that degree of leakage. Evaporation is an issue in lake surfaces.

The amount of time that elapses between the time the reservoir is filled or reaches its maximum level for the year to whatever fixed point we are operating to, like, let's say Labor Day, that's an issue. The longer the reservoir is exposed to leakage, evaporation and fish release requirements, the more that is withdrawn.

MR. TAYLOR: I'm sorry for the interruption.

MR. VOLKER: Okay.

Q Going through your enumerated list of relevant factors, each of those is ascertainable; is it not, using present technology?

MR. HANNAFORD: A Yes, I think so.

Q And each of those is ascertainable given the operating budget of El Dorado Irrigation District?

MR. SOMACH: Objection.

MR. STUBCHAER: Sustained.

MR. VOLKER: Q Can you tell us what is the range of budget appropriate to develop criteria based on the factors that would predict lake level and lake-release operations?

MR. SOMACH: Objection.

MR. STUBCHAER: The question is what is the range of budget?

MR. VOLKER: Maybe I should ask a foundational question.

Q Mr. Hannaford, how long have you been engaged in the business of studying the hydrology of the South Fork American River?

A Probably 30 years.

Q And you have had occasion to develop a number of studies that address hydrologic questions in that watershed over that period; have you not?

A Yes.

Q You have been involved in developing budgets and administering budgets for the purpose of accomplishing those

studies; have you not?

A Yes.

MR. VOLKER: I think this witness is eminently qualified, Mr. Stubchaer, to address the question about what is the feasibility, economic feasibility of developing this information.

May I proceed?

MR. SOMACH: Objection. The relevance of asking about budgets -- is Mr. Volker proposing to put out an RFP on behalf of his clients to do this work? The relevance of asking about budgets and the feasibility of budgeting is just simply not relevant to the testimony that was provided either on direct or my redirect.

Moreover, it is not relevant to the issues before the Board.

MR. STUBCHAER: Perhaps the question could be phrased, would it be so expensive that EID couldn't do it.

MR. SOMACH: But, Mr. Stubchaer, it still is not relevant. It doesn't go to the issues that are before the Board, unless the Board is going to say as a condition of its moving forward that this has to be submitted to it.

MR. STUBCHAER: This information would be very helpful to the Board to have.

MR. SOMACH: There are many things, I suspect, that would be very helpful to the Board, but there's only a universe of issues that can be covered and done by any applicant in any proceeding in the context of what this process is for.

MR. STUBCHAER: It could be beneficial to the District to have such a procedure in place so the Board wouldn't do something potentially more severe than was necessary.

Mr. Taylor, were you going to say something?

MR. TAYLOR: No.

MR. STUBCHAER: But anyway, I think the question of the budget perhaps is not germane, but the question of whether or not the procedure could be reasonably developed is germane.

MR. SOMACH: And I think that has been asked. It has been answered that it is feasible. The exact time it would take would depend upon a lot of variables that are along the ones Mr. Taylor posed, but I could think of a whole bunch of issues that from El Dorado's perspective I would want added to it if I spent a bunch of time developing those issues, and I suspect the Board itself would think of at least a dozen more on its own basis.

MR. STUBCHAER: Sure, there are points. Certainly, there are other factors.

MR. SOMACH: What I am saying is that the germane question was asked and it was answered, and what I am objecting to is the fact that we are now moving beyond the proper focus of questioning into what I believe to be an improper inquiry about budgets and dollars and cents associated with doing a certain --

MR. STUBCHAER: Mr. Volker, could you proceed without the budget part.

MR. VOLKER: I was trying to get to the bottom line.

Q Is it a reasonable task to undertake given the constraints that you operate under, technological, budgetary or whatever?

MR. ALCOTT: A No.

Q No?

A Correct.

Q Do you say that because you know how much it would cost to do it?

A You asked if it was reasonable and I said no.

Q I'm asking why you said no.

A I find it unreasonable.

Q And I'm asking specifically, do you find it unreasonable because you know how much it would cost?

A We don't know the scope of the study, therefore, we don't know the cost.

Q If you don't know the precise scope of the study, why do you feel you can't do it?

A Because I find it unreasonable.

Q Why do you find it unreasonable?

MR. SOMACH: Objection. The questions are argumentative.

Mr. Volker does not like Mr. Alcott's answer, but he asked if he believed it was reasonable and he said no.

We could go, I guess, in this circle for a very long time, but I suggest the questions now are argumentative and he is badgering the witness.

MR. VOLKER: To the contrary --

MR. STUBCHAER: Then you could also say the answers were nonresponsive, too.

MR. SOMACH: But they are, nonetheless, the answer of the witness.

MR. STUBCHAER: Perhaps the question should be, could you explain why you think it is unreasonable.

MR. VOLKER: The very question.

MR. SOMACH: The question is reasonability itself is

asking someone whether or not they think something is reasonable can only result in one of two answers. It is reasonable to this individual or is unreasonable to this individual.

I don't know what more anybody wants.

MR. STUBCHAER: You could say it is unreasonable because it is expensive and unnecessary, or we think it won't yield reasonable results.

MR. SOMACH: Do you wish to amplify your response? If you do, go ahead and do so.

MR. ALCOTT: A I think the costs are unknown. I think the results are speculative and I think the primary reason I say it is unreasonable is because of the context that has brought us here today.

Not to belabor this, but maybe context is helpful. We started with an application three and a half years ago. It contemplated using the water as we do today, basically the water that is a by-product of the hydroelectric operations. Nothing has changed other than we have reduced the anticipated amount to 17,000 acre-feet, which is about half of what was originally understood to be available, and we have anticipated purchasing the project.

I find the question unreasonable because the issue seems now to become the District's prospective acquisition of the project and not the applications themselves. These questions would not be in this form if EID were not purchasing this from PG&E. You could not put these kinds of conditions -- I don't think you would have asked PG&E for this kind of study in considering our applications. Consequently, I find it unreasonable.

MR. STUBCHAER: Thank you for that explanation.

Mr. Volker, the 20 minutes plus all the interruptions has expired and we still have the computational procedure to go over. How much more time will you require?

MR. VOLKER: We have decided to forego the computational questions. I think it would be simpler to roll up our sleeves and do it ourselves than to try to extract it from this witness.

MR. STUBCHAER: I had the same impression. I am not referring to the extraction, but the procedure is that complex -- no reference to the witnesses.

MR. VOLKER: It's my inability to extract. How's that?

I had some follow-up questions and I wanted to make sure I wasn't extending beyond the reasonable scope of cross-examination, but this seems a central issue.

May I be permitted to proceed with a few more questions?

MR. STUBCHAER: I was asking how much more time you need.

MR. VOLKER: Five minutes, to quote Mr. Gallery.

MR. SOMACH: I just want to procedurally again interpose an objection that we are now going to go beyond the 20 minutes which was intended as a limitation for all the direct testimony that came in. We had a very limited redirect this morning and now we have expended 20 minutes, and I just want to object procedurally to the fact that there appears to be no relationship between what the witness has said and this cross-examination period. It's almost unending.

MR. STUBCHAER: Mr. Somach, the 20-minute time for cross-examination is a goal. It is not an absolute limit because I learned after my first water right hearing that when you try to restrict cross-examination, you interfere with the person's due process right, and also, I think the subject is germane. It is of interest to the Board and the staff, so your objection is noted.

Please proceed, Mr. Volker.

MR. VOLKER: Thank you, Mr. Stubchaer.

Q I understand that in the past when PG&E owned the project and had its hand on the valve, that because it was simply impossible for EID to predict the mode of operation of PG&E with any precision, that it made sense from El Dorado's perspective to argue that it need not define operating parameters specifically because those would be dictated by another entity, PG&E.

We are now in a different posture. EID has its hand on the valve and the question is what criteria will EID employ to predict lake level and lake-release operations for any given water year type.

MR. SOMACH: Objection. The question has been asked and answered. It has been asked four or five times.

MR. STUBCHAER: I think it's been asked and answered.

MR. VOLKER: Q Then, let me be more specific. We have been told that the criteria comprise satisfying the 1919 agreement which has just been indicated has gone away and it is merely another way of saying 15,000 acre-feet are taken off the top of the consumptive use. We have been told that it is FERC criteria, but as a review of the FERC license will reveal, that criteria is so broad and discretionary --

MR. SOMACH: Objection. Mr. Volker is making a

statement.

MR. VOLKER: Q I will ask the question, can you predict -- I believe I tried to ask this question previously -- can you predict based on the criteria in the FERC a specific lake level and lake-release operating regime for any given type of year?

MR. SOMACH: This has been asked and answered.

Objection.

MR. STUBCHAER: It has. I don't recall the answer, though.

MR. VOLKER: I recall there was an objection.

MR. SOMACH: There was an answer.

MR. VOLKER: What was the answer?

MR. SOMACH: He's answered this question more than once. He said that prospectively you can't predict. All you can do at the beginning of the year is go through the criteria which he has now enunciated several times yesterday and several times today.

Again, you may not like these answers. I can't do anything about that, Mr. Volker, but to continue to ask the same questions and get the same answers back again is just simply objectionable, and I again object to the question.

MR. STUBCHAER: Mr. Volker, I do recall your asking the identical questions, so please proceed.

MR. VOLKER: I take that as a no?

MR. STUBCHAER: Well, the previous answer will stand. It will be in the transcript.

MR. VOLKER: I think I will just rest on that answer.

MR. STUBCHAER: Thank you, Mr. Volker.

I think I will just do this broad brush. Who else wishes to cross-examine on redirect?

All right, several. I am going to go down the list.

Kirkwood Associates, Ms. Lennihan.

MS. LENNIHAN: No.

MR. STUBCHAER: Amador County, Mr. Gallery.

MR. GALLERY: Mr. Stubchaer, I am distributing a copy of the FERC requirements with respect to lake levels from the FERC license, which is PG&E Exhibit 2, and I wanted to address specifically the first paragraph which relates to the level of Silver Lake. I have a few extra copies here.

MR. LAVENDA: Dan, will this be an exhibit or are you just bringing this up from the existing FERC license?

MR. GALLERY: I am bringing it up from the existing Exhibit 2 that's in the record already.

Silver Lake is located just in Amador County, Mr. Stubchaer. Our interest is primarily in Silver Lake, but



this lists the lake level requirements in the FERC license for Silver Lake, and it also addresses Lake Aloha and the Caples Lake levels.

If you drop down to the bottom of the page, it starts to talk about fish-water releases, but I don't have this included here. We know that the FERC license does require certain fishery releases downstream below the diversion into the El Dorado Canal.

I wanted to ask my questions, I think, primarily of Mr. Alcott, but perhaps Mr. Hannaford could address them as well.

Q The requirements for Silver Lake is that it will be maintained at as high a level as possible during the summer months. Nevertheless, at times seepage from the reservoir and fish-water release may exceed inflow making it impossible to maintain the lake at full level for recreational purposes.

Mr. Alcott, you would agree with me that there is a fish-release requirement from Silver Lake of 2 cfs; is that correct?

MR. ALCOTT: A Yes.

Q And further, the reference there to seepage, as Mr. Hannaford indicated yesterday, there is substantial seepage from Silver Lake that causes it to unavoidably drawdown and you indicated it was as high as 1600 acre-feet a month when the lake was full; is that correct?

MR. HANNAFORD: A Yes.

Q So, when Silver Lake does get full in the spring, when the inflow drops down, the lake necessarily drops through the summer; is that correct, through the months of July and August?

A Yes.

Q And is that rate of drawdown or the rate of droppage in the magnitude of two and a half to three feet per month? Would you agree with that?

A That's about right.

Q And your Exhibit 47 from the USGS records indicated that the lake does get to full in the spring in just about every year; is that correct?

A In most years. I think there were probably two years out of the record.

Q 1976 and '77?

A Yes.

Q There wasn't enough water?

A Right.

Q Now then, I want to take you back to the first

sentence in this FERC statement: The Silver Lake water surface will be maintained at as high a level as possible during the summer months.

And my question will be, what is meant by as possible? And can we infer from what you said this morning, Mr. Alcott, that in the summer months you will not release any water from Silver Lake for power production

MR. ALCOTT: A Historically Silver Lake has been operated to maintain those lakes as high as possible through the summer months. There have been occasional releases from the lake, some for maintenance and possibly some for other reasons. Those other reasons aren't evident from the PG&E records, however.

Q Can we assume that outside of the necessary maintenance, that El Dorado, if it acquires the project, would not release any water during the summer months for power generation?

A I can't tell you that here and now, no.

Q Would El Dorado be willing to agree as a condition of getting this permit that it would not release any water during the summer months?

A And what are you offering?

Q Pardon me?

A What are you offering?

Q I am offering to perhaps withdraw the protest to the applications.

A Are you speaking of the settlement discussions that were discussed between Amador and EID during the past summer months?

Q No, I am not referring to any past discussions.

A I am not prepared to commit the District to your suggestion.

Q Is it your interpretation then that notwithstanding the language in Exhibit S with respect to Silver Lake that you could release water for power generation in the summer months?

A I believe that's how it is to be read, yes.

Q I read the provision to say that you shall keep the level as high as possible during the summer months, which would not permit you to release water for power generation.

You don't read it that way?

A I think if that's what it meant, that is what it would say. This is obviously a critical document, but there are other documents that would need to be read in conjunction with it to understand the intent behind the statement.

Q Would your interpretation be that the phrase as possible gives PG&E some discretion about releasing water for power generation in the summer months?

A That is my reading, yes.

MR. GALLERY: That's the discussion that bothers us, Mr. Stubchaer.

MR. SOMACH: Objection. That is not a question. Mr. Gallery can make that point in his closing argument and brief the issue.

MR. GALLERY: Q Did I understand you to say that the FERC requirements are also in the PG&E water rights for the Silver Lake and Caples Lake?

MR. SOMACH: Mr. Gallery, I think I made that statement.

MR. GALLERY: Q Is that your understanding, Mr. Alcott, and Mr. Hannaford, is that your understanding?

MR. HANNAFORD: A That the --

Q The FERC requirements on lake operation are in the water rights, existing PG&E water rights.

A Existing water rights, I don't think so, not in the water rights.

MR. GALLERY: Those are all my questions. Thank you.

MR. STUBCHAER: Thank you, Mr. Gallery.

Mr. Somach, do you want to explore that last question?

MR. SOMACH: Well, I have the State Board's license and order with respect to aspects of the project here and I can merely read that with respect to License 2541, and the relevant provision is that as the term added to the State Board's license for water, there is a phrase that says the Water Board's license shall comply with all applicable requirements of FERC, which is, of course, what we have been urging is the proper way to proceed, as the Board did back in 1985 when it issued this order, but it does cross-reference, it does incorporate the license provisions and, of course, these are the Board's licenses.

MR. STUBCHAER: Do you want to clarify Mr. Hannaford's answer that's on the record?

MR. SOMACH: I think Mr. Hannaford was probably referring to pre-1914 rights, but I am not certain. He may want to clarify that.

MR. HANNAFORD: A I was referring to the fact that there is no specific requirement for how to operate the lakes within the water rights.

MR. STUBCHAER: All right. Mr. Gallery, you stood up.

MR. GALLERY: I was only going to ask Mr. Somach the application number on that license you referenced.

MR. SOMACH: 1441.

MR. GALLERY: Thank you.

MR. STUBCHAER: All right. PG&E, Mr. Moss.

MR. MOSS: I have a few questions for Mr. Alcott.

#### REXCROSS-EXAMINATION

by MR. MOSS:

Q In regard to FERC and the license for Project 184, are you aware of the fact that the existing license which we have, PG&E has to transfer to EID will expire in the near future?

MR. ALCOTT: A Yes, I am.

Q Could you tell us when that is?

A I believe it is the year 2002.

Q And can you briefly tell us what EID intends to do in terms of relicensing the project?

A No. We will initiate our interest in renewal. I believe it requires five years prior to the expiration date, and we will initiate all the procedures necessary to acquire relicensing.

Q And can you give us just a general outline of the scope of what is involved in relicensing before FERC under existing law?

A I'm probably not well enough informed to do that very well. I do understand, however, that it is a very public process by which the Federal Energy Regulatory Commission looks to balancing the very competing demands of the various public interests in the watershed, and I guess my impression is that the experience of going through a FERC relicensing makes this proceeding seem to be somewhat minor in scope.

Q As far as you are aware, are all the parties to this hearing, including State agencies such as the Department of Fish and Game and others, will they all have the opportunity to be parties and actively participate in this relicensing proceeding before FERC?

A Yes.

Q Would the Board, in fact, be able to be a party in that if it so chose to be?

A Yes.

Q And as far as you are aware, and I appreciate that this is a question that I am not asking for a legal conclusion, but you as the manager, as far as you are aware, under the existing law that has been defined for the jurisdiction of FERC, does FERC have sole statutory authority to decide all issues concerning the operation of

the project facilities?

A That is my understanding.

Q And as a follow-up, the storage reservoirs that have been the subject of the discussion this morning, are all of those within the project boundaries and defined as project facilities of Project 184?

A Yes, they are.

MR. MOSS: Thank you.

MR. STUBCHAER: Thank you, Mr. Moss.  
Sacramento Municipal Utility District.

MS. DUNSWORTH: We have no questions.

MR. STUBCHAER: Bureau of Reclamation, Mr. Turner.

MR. TURNER: The questions I wanted to pose had to do with trying to get a little more detail with respect to, I guess, the proposed final agreement between the applicant and Kirkwood Associates, and would this be an appropriate time or would these be the appropriate witnesses to pursue that with, or would it be more appropriate to wait until it is introduced in final form?

MR. STUBCHAER: My recollection is that you outlined the terms of that agreement, so if you want to ask the questions now, I think it would be appropriate.

MR. TURNER: Thank you.

RE-CROSS-EXAMINATION

by MR. TURNER:

Q I just have a few rather simple questions.

Let me explain what I heard you say earlier and correct me if I am wrong. I understand in the agreement with Kirkwood Associates, the applicants were dismissing their protests to the Kirkwood Associates application which includes a diversion or requests a permit to divert water from what was the Silver --

MR. ALCOTT: A It was the Kirkwood Associates' application. It was for diversion of water from Caples.

Q From Caples, and that was diversion for snow-making purposes; correct?

A Correct.

Q Now, in addition to that, besides dismissing your protest, you also mentioned in this agreement there was going to be some kind of provision for the storage of -- was it 500 acre-feet of water in Caples for snow-making purposes for Kirkwood Associates?

A Correct.

Q I guess what I am concerned about is how would that relate to the current ownership of the facility by PG&E or does this occur only after the ownership is transferred?

A Precisely.

Q And in the meantime, you would take no exception to Kirkwood diverting water from Caples for snow-making purposes in accordance with its application?

A Correct.

Q Has there been any kind of analysis to as the manner in which the storage of this 500 acre-feet of water in Caples would affect the historic operations of the normal operation of Caples Lake, the lake levels, the releases, et cetera?

A We have evaluated the effect of the 500 acre-feet, yes.

Q And this would be some water over and above the amounts that would already be stored or an allocation of water that had previously been stored where the applicants or other uses would take less? Where does the 500 acre-foot fit in, is what I am trying to figure out?

A It's simply a reservation of storage. And in further answer to your question, any water to be taken would be taken from hydroelectric water, water that would be used for hydroelectric generation.

Q I don't quite understand. So, there will be 500 acre-feet stored. When that 500 acre-feet was being diverted, there would be a resulting reduction in releases for power generation to offset the amounts that are being released from the 500?

A Correct, potentially.

MR. TURNER: I would have no further questions.

Thank you.

MR. STUBCHAER: Fish and Game.

RE-CROSS-EXAMINATION

by MR. CAMPBELL:

Q My first question goes to you, Mr. Alcott. I would like you to identify for the record all pages, page references in the FERC license and the corresponding exhibits that set forth the operational parameters that you alluded to in your earlier testimony.

The reason I am asking this is so that it will be in the record for staff to evaluate.

There seems to be a difference of opinion in terms of whether the so-called parameters are nebulous or do you impose some sort of requirements in terms of lake levels on EID?

So, for the record, would you please provide us with those references?

MR. ALCOTT: A I am not prepared to do that at this point in time. I don't have that in front of me.

Q When could you do that?

MR. SOMACH: The PG&E license is part of the record already in its entirety and it can be read by any party with respect to what its requirements are, and any party can determine whether or not the requirements are nebulous or not.

Moreover, I contend and I obviously did not object to Mr. Gallery's questions in terms of interpretation, but any party, Department of Fish and Game, Mr. Gallery, if he so chooses, if he differs with how PG&E, or at some point in time EID, operates the project pursuant to those terms and conditions, they have easy access to FERC to complain about those operations as being an improper interpretation of those provisions.

MR. CAMPBELL: But we are not before FERC today and Mr. Alcott has relied heavily upon what he referred to, I believe, as some specific statements in the FERC license and the exhibits, and at one point in Mr. Gallery's questioning, I think the response that was given to one of his questions regarding these license conditions was, you are not reading this in context, you have to look up some other sections within the license.

MR. SOMACH: You have to look at the whole of the license.

MR. STUBCHAER: I understand and I think in response to one of my questions there was mention that there were certain pages in appendices that need to be read together. I think it would be appropriate for the witnesses as a whole, not just one witness, to identify the pages in the FERC license they think are applicable to the operation of the reservoir, and that could be done and brought back on Monday.

MR. SOMACH: What about if we provided that as part of our written submission?

MR. STUBCHAER: And sent to all parties?

MR. SOMACH: Sure. I am talking about our closing submission where we just simply explain to everybody our interpretation of the FERC license.

MR. STUBCHAER: Is that timely enough?

MR. CAMPBELL: I believe it is timely enough provided it is timely enough for the staff to take adequate review of it, but I am concerned if it comes in in the form of a post-hearing brief that instead of just being -- I would like to see it laid out, just page number references instead of being spread among various interpretive arguments that can serve the interests of EID. I would like to see it plain

and simple so we can all go back through that document and evaluate it.

MR. STUBCHAER: You are referring to just page-number references without narrative explanation of what is on each page?

MR. CAMPBELL: Yes. Some brief explanation would be all right, but I think a post-hearing brief wouldn't be the appropriate vehicle for it. This is information that they have been relying on in their testimony and I think it is not an undue burden for them to just point out those specific aspects of the FERC license that they say create these parameters.

MR. STUBCHAER: I see it. A page-number reference could be done very quickly and easily. If you start doing a narrative, that is going to take time.

Mr. Taylor.

MR. TAYLOR: Page numbers by themselves may not be that helpful. You may have multiple phrases or terms of art within one page and it would be hard to know exactly what language within the page that he was relying on, so I think we need to have the language identified as well.

MR. STUBCHAER: All right.

MR. SOMACH: Again, I will cover this in my closing brief. I can assure you it won't be hidden, it won't be hard to understand what we are relying on. And again, if the Board isn't satisfied, and the Board's decision won't be made until after these briefs are submitted, they will be looked at and they will be part of what is evaluated, and if it is not satisfactory, it won't do.

MR. CAMPBELL: A brief is a brief is a brief, and I know as an attorney we take some license when we write our briefs, and we write them in a way that is going to serve our client's interest, and it may not be portrayed in the most circumspect way.

That is why I would like, before the post-hearing brief stage, at least a list of the page-number references to that specific part of the FERC license that EID is relying on as setting forth some sort of operational parameters for the lake.

MR. STUBCHAER: Mr. Taylor.

MR. TAYLOR: I think we are spending more time on this than need be. The offer was made to make information available. It may not be in a brief. It need not be in a brief, it could be an attachment to the brief, but I think they have offered to make that information available to us.

MR. CAMPBELL: So, are you saying your recommendation



is as a separate attachment to the brief?

MR. TAYLOR: Sure, or something which accompanies the brief.

MR. SOMACH: I don't think this is going to be a problem and I think that when you get what you get, you will be able to take a look at it, evaluate it, and probably disagree with what we are providing you, but it will be the best we can do.

MR. CAMPBELL: I guess that's all I can ask for.

MR. VOLKER: I would like to join in the request, but I think it might be helpful if we have the information before the closing briefs; otherwise, no one will have the opportunity to respond to the information in their own brief.

I suggest that we bump the time up. Ideally, I would think this information could be provided Monday next week.

MR. SOMACH: I love the way you volunteer what is ideal given the fact that you are incapable of working on this at all between now and then.

My offer is to provide it as part of the closing brief. The license is part of the exhibits in the record. Any party can take a look at them and argue that something is or is not within them.

I have offered as part of our closing brief to include our interpretation of that brief, and I have further agreed, with some hesitation because I don't like pulling part of something out of the entire context of a license, but I will attempt in meeting what I understood to be the requirement to separate out in some way the specific sections and hopefully with a footnote or qualify the fact that we believe the license has to be read as a whole and not in its parts.

MR. STUBCHAER: How many pages is the license and the attachments?

MR. SOMACH: Well, you see, you have to go back to the application and the exhibits to the application. The license itself may be somewhat small, but the other materials associated with it, for example, Exhibit S, which comes from the application which is all part and parcel of the entire document, is lengthy. It is a big document.

MR. STUBCHAER: Even though there may be multiple references on a particular page, could you list the pages which you think are pertinent?

MR. SOMACH: I said I would do that.

MR. STUBCHAER: I mean sooner, just the pages without the narrative just so that --

MR. SOMACH: I don't think I can do that because I am going to have to sit down and go through all the license. I would have to be concerned about cross-references. I have got to be concerned about the license and application and its exhibits as a whole, and I will do that. I have said that we will do that.

And again, he is free to do it and to argue it in any way he wants to.

MR. CAMPBELL: That sort of makes my point that if it is so difficult for them to ascertain these specific elements in the FERC license, how would the general public know how the lakes are going to be operated?

The way it was portrayed I thought it might be a little easier than that.

MR. STUBCHAER: The way the District interprets the FERC license has been explained about three times in detail and it is in the record of this proceeding. So, we will get it with Mr. Somach's submittal.

You may proceed.

MR. CAMPBELL: Q Staying with the FERC license for a moment, Mr. Alcott, are you familiar with Exhibit S?

MR. ALCOTT: A That is the one Mr. Gallery just handed out?

Q Yes.

A Yes.

Q And with regard to Caples Lake, it lists uses of water to be released from Caples Lake; is that correct, in the last sentence underneath it, in the paragraph that's headed Caples Lake?

A Yes.

Q So, this list and order of use, is this an order of priority?

A I don't see it as an order of priority. I just see it as a listing of a lot of uses.

Q And it includes a use that I don't believe was included in the parameters that you set forth in your earlier testimony. It includes domestic and irrigation use, two uses; is that correct?

A My understanding is that Caples has been part of PG&E's integrated operations to meet not only their hydroelectric but the other needs, including the District's 1919 contract needs, and inasmuch as that is true, then domestic, irrigation and industrial would be appropriate.

Q So, to the extent this just says domestic, it doesn't say 1919 contract needs?

A Granted it does not distinguish.

Q So, with regard to the specific language of this Exhibit S to the FERC license, in the event that EID required additional domestic consumptive water right, the 17,000 acre-feet, that would fall within this use listed here as domestic?

A I think that is a reasonable interpretation.

Q So that would be one of the FERC operating parameters that you alluded to before when you went down your list of fish flows, hydropower generation, minimum pool in Caples Lake, so it would also include domestic uses, including this increased amount of consumption, the 17,000 acre-feet that EID is seeking?

A I tend to agree with you. I think the condition in Caples has two sentences. The first one says you will maintain a water surface as high as possible during the recreation season consistent with project demands, and the next sentence specifies the types of acceptable releases for which the water is used in the summer.

Q Mr. Moss had some questions for you regarding Federal Energy Regulatory Commission hydropower generation and FERC jurisdiction and FERC licensing; is that correct?

A And I point out you did excuse me from making any legal decision. Yes.

Q But it sort of confused me, that line of questions and the answers you were able to provide. EID in this forum right here today is seeking consumptive water rights?

A Correct.

Q Not any sort of hydropower rights?

A Correct.

Q And obviously then, the State Board has jurisdiction with regard to the applications for those rights?

A Yes.

Q I just wanted to make that clear. It seemed we were moving off into a different proceeding.

I have a question for you, Mr. de Haas. Are you familiar with a letter from the Board staff, a comment letter on the Draft Supplemental EIR? It is dated September 21, 1995.

MR. DE HAAS: A I have seen the letter but I would like to defer to Dr. Roberts.

MR. SOMACH: I thought we were going to defer questions on these environmental documents until Monday when all parties were going to ask questions.

MR. STUBCHAER: Yes.

MR. CAMPBELL: It doesn't go to the environmental document itself, actually. The question I have has to do

with the request for information that the Board made regarding PG&E's historical operation of the lakes, and I just want to see --

MR. STUBCHAER: Ask the question and we will see.

MR. CAMPBELL: Q On page 2.5, at the bottom of the page, it says: As stated in Appendix F, analysis of El Dorado Irrigation District's supplemental requirements from PG&E sources prepared by Sierra Hydro-Tech, El Dorado Irrigation District demands are assumed to have been met by historic direct diversions from PG&E facilities and storage releases below PG&E reservoirs.

The study assumes no reoperation of Pacific Gas & Electric Company storage or direct diversion to meet EID water demands.

State Water Resources Control Board staff's expectations are that if El Dorado Irrigation District does purchase PG&E's El Dorado project, EID will provide the State Water Resources Control Board with copies of any historic PG&E reservoir operations not yet in the record.

The historical PG&E record will provide the operational basis to which EID is committed to operate Federal Energy Regulatory Commission 184 in the future.

Are you familiar with that request?

MR. ROBERTS: Yes.

Q And what did you do to respond to that request?

A May I read the response?

Q Certainly.

A Appendix F of the DSEIR and Appendix A of the FEIR provides data on historical operations of project 184 lakes. In addition, the U. S. Geological Survey publishes data showing releases from storage in the lakes. (See DSEIR Appendix F at 11.)

Q Why wasn't the raw data, I guess that is going to be produced, why wasn't it produced in response to this request?

MR. SOMACH: Objection. The letter itself talks in terms of prospectively when El Dorado obtained ownership of the project. That is not the factual situation we are dealing with here.

MR. CAMPBELL: I believe this application and this document references the pending acquisition of the project by El Dorado, and it is quite clear to me from reading this that the Board requested that we have certain information regarding historical operation from El Dorado Irrigation District, and I want to know why, instead of providing that information, they just said you have already got information

in Appendix F and some other things which the Board, in asking this question, had already found to be insufficient.

Why wasn't the additional raw data that is being supplied now, I guess, which is well over a month after the request?

MR. STUBCHAER: Does staff have any comments on this before we ask for an answer?

MR. CANADAY: I wrote the letter, and the assumption was that there was additional data available and we apparently now have received it by broadening out of your testimony.

MR. STUBCHAER: What is the relevance of why it wasn't sent in earlier?

MR. CAMPBELL: I just wanted to know if there was a reason that it wasn't provided before the hearing and it had to be elicited through testimony as opposed to just being provided in response to the Board's written request.

MR. SOMACH: That question just simply ignores the entire exchange we had yesterday over the information.

MR. STUBCHAER: I am going to sustain the objection.

MR. CAMPBELL: Q Yesterday, Mr. Alcott, you testified, I believe, and correct me if I am wrong, that historical operations were crucial or determinative of future operations. Is that accurate, or if you want to restate it, that would be fine.

MR. ALCOTT: A I think the statement indicated that the past operations are indicative of the future operations to the extent that the future represents the past.

Q The reason I asked that, subsequent to your statement, Mr. Somach made a statement with regard to, I think it was with regard to the production of additional historical data. He said, I believe, in his view that historical operations really didn't have any bearing on this and that it really wasn't important to what you were trying to do, and I would like to hear from you which is it. Is it what you just said or what Mr. Somach said?

A I don't know what you just said.

Q I'm sorry. I want you to clarify that this historical data, in your view, is determinative or would be determinative of EID's operation of the reservoirs as opposed to what Mr. Somach said yesterday, which was the opposite.

MR. SOMACH: Well, I object. First of all, to the extent that anything I have said is being characterized here, what I said is on the record, number one; and number

two, what I said is not evidence. Only what Mr. Alcott has previously said is evidence, so if you would just simply like to ask him a clear question as opposed to comparing it with what I may or may not have said, I have no objection, but I do object unless what I said yesterday is read from the record so it is clear.

MR. STUBCHAER: Will you rephrase your question.

MR. ALCOTT: A understand the question and I think I would answer by saying it is not determinative, it is demonstrative.

MR. CAMPBELL: Thank you.

Q You have stated, Mr. Alcott, in your earlier testimony that there are certain parameters in the FERC license that will guide or require certain operation of the lake levels, require operation of the lakes to certain lake levels, that these are the guidelines by which EID would maintain the historical releases and the historical storage levels.

Is that accurate?

A No, I think what I said is that the FERC license and the associated documents prescribed certain operation criteria that must be observed in developing and operating a project on an annual basis.

Q So, application of those criteria will not necessarily result in lake levels as we have seen in the source lakes over the last 10 or 20 years, not necessarily?

A Actually, I believe they will, yes.

Q I would like to bring your attention again to Mr. Lynch's testimony from the June 16 date of this hearing.

A The '93 hearing?

Q Yes, and I would like to ask you what you think about his testimony, which if I may characterize, does not suggest at all that the FERC parameters that you outlined influenced in any substantial significant way the lake levels that are achieved from year to year through PG&E's operations.

MR. SOMACH: Objection. There is no question. That is a statement.

MR. STUBCHAER: Wait a minute while he is making his objection.

MR. SOMACH: That is a statement and interpretation, not a question. He ought to ask the question, but to predicate the question based upon a statement which interprets the testimony is improper.

MR. STUBCHAER: Will you rephrase it.

MR. CAMPBELL: I said, what do you think of, and I did characterize -- if you would like me to use specific

portions of the testimony, I could do that.

MR. SOMACH: Mr. Alcott doesn't have the testimony in front of him. The only way he would be able to respond is if you either show him the testimony, read him the testimony and perhaps ask him a question about the testimony.

MR. CAMPBELL: Q First of all, earlier today you testified that EID and PG&E are negotiating regarding snow survey courses.

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

Q Who will be conducting those snow surveys, EID or PG&E?

A My understanding is that PG&E will make available to us access to either the data or to the recording stations. I do not know who actually will be doing the data collection. That is a point of ongoing discussion.

Q Mr. Lynch testified that all of the reservoir elevations and streamflows are telemetered into their Wise switching center, which would give Mr. Lynch a report on the actual water conditions on a daily basis.

What would be the status of that type of information under EID's operation of the project?

A I believe we would be collecting the same information, but rather than having it recorded at the Wise facility in Auburn, it will be recorded at our facility, Camp 5, El Dorado County.

Q Is that information contained within the electronic disks that are going to be provided to the Board and to the parties?

A No, it is not.

Q Does EID or El Dorado County Water Agency have access to that information?

A The PG&E information?

Q These reports on actual water conditions on a daily basis.

A I have not seen them, I don't know.

Q The question is, does El Dorado County have access to that data?

MR. DE HAAS: El Dorado County does not have it.

Q Mr. Hannaford, have you reviewed any of that data as part of your calculation?

MR. HANNAFORD: A The only data I have reviewed is the data that have been published by the USGS, the streamflow data. There's other information included in the data that goes to Wise powerhouse.

Q I would like to read you a statement, Mr. Alcott, from Mr. Lynch's testimony. The question was, do you

calculate how much power the company needs at a given time and week, and then you make the decision on when to turn the valve?

Mr. Lynch's answer is, generally we 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, early fall.

How would this historical operation of the reservoirs by PG&E be reflected in EID's operation of the reservoir, if any?

MR. ALCOTT: A I don't think I can answer your question knowledgeably.

Q So, at this point, you don't know how EID will physically operate the reservoirs to corresponding lake levels?

A That is not what I said.

Q So, would you say that this statement by Mr. Lynch, in which he says drove the timing of PG&E's drawdown -- will that be the same for EID, or different?

A He is articulating a condition that PG&E recognized, that the value of power varied during the day. EID's anticipated power purchase agreement does not have that condition in it.

MR. STUBCHAER: Mr. Campbell, you are just about out of time. How much more do you have?

MR. CAMPBELL: No more.

MR. STUBCHAER: I didn't mean to intimidate you.

Before we take the lunch break, I want to maybe put a condition on my extension of time to comment on the Final EIR.

After going through the differences between the Draft and Final EIR, it is apparent they are relatively minor, so I am going to say that the extent of time to comment applies only to the differences between the final and the Draft EIR and the documents 96-B and C.

Did I say that right, Mr. Taylor?

MR. TAYLOR: Yes, thank you.

MR. BIRMINGHAM: May I ask a clarifying question? In some instances, the omission of a difference or the lack of a difference may be significant. For instance, the Draft EIR, the Draft Supplemental EIR refers to storage in Folsom.

Based upon the testimony yesterday, we know that the project proponents do not anticipate any storage at Folsom, and that is not addressed in the supplemental EIR. That omission may be significant, so may we comment on those omissions as well?



MR. STUBCHAER: Isn't an omission a change in the final?

MR. BIRMINGHAM: You said we could comment on the changes.

MR. STUBCHAER: Well, anything that is different in the final from the draft to me is a change, whether it's an omission or an addition.

MR. BIRMINGHAM: Thank you.

MR. STUBCHAER: We will take an hour and fifteen minutes for lunch and we will be back at one-fifteen.

(Noon recess)

Wednesday, October 25, 1995, 1:15 P.M.

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MR. STUBCHAER: Will the hearing please come to order.

Before we continue with the cross-examination or the EID panel, we are going to go back to the Friends of the River exhibits. Those have been identified.

Mr. Evans.

MR. EVANS: Friends of the River, as was brought out yesterday, we had failed to index and number our exhibits that were submitted with our testimony on October 2. Following the indexing and numbers that the Board staff graciously did for us, we have copies now of the index and the numbered exhibits for everybody who is a party to this proceeding, if they wish to pick those up.

MR. TAYLOR: Do you wish to move the exhibits into evidence at this time?

MR. EVANS: Yes, we do.

MR. STUBCHAER: Any objection to receiving Friends of the River's exhibits into evidence?

Hearing none, they are accepted. Thank you.

MR. EVANS: Thank you.

MR. STUBCHAER: All right, continuing with cross-examination of the EID panel, the U. S. Forest Service, Mr. Gipsman.

RE-CROSS-EXAMINATION

by MR. GIPSMAN:

Q I have a couple of questions in relation to the FERC license, Exhibit S, that Mr. Gallery used. I was curious as to what you believe you have the right to release under that license during the summer months for Lake Aloha, and just looking at the language there, Lake Aloha water surface will be maintained as high as possible consistent with operational demands and fish-water releases.

What is your understanding of the term operational demands? What releases does that apply to?

MR. ALCOTT: A My understanding is that it applies to project-related demands, in this case, the hydroelectric demands and fish-water releases. That would be my answer.

Q So, would that mean that would not apply to releases for consumptive purposes?

A I am not sure how to answer the question. Maybe the question is best asked of PG&E.

Q I was asking for your understanding of that provision.

A My understanding is that this applies primarily to the hydroelectric and fish-water releases. It may be that PG&E has operated the project to meet our 1919 contract consumptive water needs with Lake Aloha water as well, but I am not certain.

Q Now, going back to the language for Silver Lake, I notice in that first sentence that the phrase operational demands does not appear. Now, is it your opinion that when you become owners of this project that you would have the right to make releases for hydropower purposes during the summer months?

A It is my understanding that we would have the right to do that.

Q And what do you base that understanding on? Do you base it on discussions with anybody else or is this your own interpretation?

A It's based on my understanding of the historic operation of the project and the fact that Silver Lake, while generally not relied on for hydroelectric releases in the summer, has occasionally been used for that purpose.

Q And is it also your testimony that you would have the right under the FERC license to make releases for consumptive purposes from Silver Lake during the summer months?

A The FERC license doesn't grant any consumptive rights beyond those that are understood with the 1919 contract.

Q So, it would not prohibit you from making releases for consumptive rights; is that what you are saying?

A I don't see this as a prohibition.

MR. GIPSMAN: Thank you.

MR. STUBCHAER: Okay. Next is Cal SPA, Mr. Baiocchi.

MR. BAIOCCHI: Thank you, Mr. Chairman.

#### RE-CROSS-EXAMINATION

by MR. BAIOCCHI:

Q I have a few questions. Whoever on the panel that would like to answer the questions, I would appreciate it.

The mandatory fish-flow requirement below Silver Lake is three second-feet; is that true?

MR. ALCOTT: A That varies, I believe.

MR. HANNAFORD: A It is two second-feet at Silver Lake under the 1984 order from FERC.

Q That's year round, two second-feet?

A Yes.

Q That bypass flow requirement, to the best of your knowledge, was that based on any type of instream flow study?

A I don't know.

MR. ALCOTT: A I do not know.

Q Has the District to date conducted any surveys on the tributary flowing out of Silver Lake to determine the status of the wild trout populations in that stream reach?

A No.

Q Lake Aloha, what are the mandatory flow requirements to protect public trust and fisheries below Lake Aloha?

MR. HANNAFORD: A I believe that's also two second-feet.

Q Two second-feet, and --

A When available.

Q When available, does that mean you can drop it to zero flows or PG&E can drop it to zero flows?

A If the lake is completely drained and there is no more water supply, the flow would drop down.

Q To the best of your knowledge, do you know if that two second-foot requirement and/or the zero bypass flow alternative was based on any scientific instream flow study?

A I don't know.

Q Caples Lake, what are the mandatory fish-flow requirements for Caples Lake streamflows?

A Five second-feet. In both Caples and Silver, the historical releases since 1984 have exceeded the two second-feet and five second-feet, so that PG&E was assured that they would have the proper amounts of flow at the measuring

station.

Q And do you know if, in fact, that five second-foot requirement was based on fishery instream flow studies?

A I don't know.

Q And do you know if there were surveys conducted by the District on that stream tributary to determine the status of the fish populations?

MR. ALCOTT: A No, the District has not done those studies.

Q Does the District intend to do any type of work on those streams tributary to Silver Lake, Lake Aloha?

A Not at this point.

Q And what about Echo Lake, what is the mandatory flow requirement below Echo Lake?

MR. HANNAFORD: A I don't know what the requirement is there. The right is related to the amount of storage on the lake and waters transmitted out of the basin into the American basin by pipeline.

Q So, in operating FERC Project 184, when and if you get control of it, that will give you folks the authority to operate Echo Lake?

A Yes, it will.

Q I will repeat it again. To your knowledge, you don't know if there is any fish-flow requirement from Echo Lake in the stream tributary flowing out of it?

A I don't know.

Q Does the District intend on doing fish surveys, including instream flow studies to determine the amount of water that's necessary to protect public trust fishery resources in that tributary flowing out of Echo Lake?

MR. ALCOTT: A We are not planning on it at this point.

Q Stream gages, the Board has the authority to order stream gages at various places of storage. Is there a stream gage on Silver Lake, on the tributary below Silver Lake?

A Outflow from Silver Lake?

Q Yes.

A Yes.

Q And is that a full-time gage?

A Yes, it is a recording gage.

Q Is there any type of recorder within the lake that determines by device, not a measuring device but a full-time measuring device, that documents and records the lake levels? To the best of your knowledge, do you know that?

A I believe that there is now. Formerly it was a staff

measurement.

Q But isn't it true that staff gages are only as accurate as the person that reads the gage?

A Yes.

Q And if, in fact, they are only read once a day, well then, after the fact, you really don't know what the lake levels would be the next time they are read; is that true, sir?

A Right.

Q On Lake Aloha, is there a full-time gaging device on the stream tributary, to the best of your knowledge?

A Not at the outlet to the lake. There is a recorder located below the lake down near Twin Bridges.

Q And how many miles downstream is that?

A It is several miles. I don't know just what it is. It might be four or five miles.

Q Would it be true that in that distance of four or five miles there are accretion flows that flow into that tributary?

A Yes.

Q Wouldn't it be true that the amount of water measured at that gage would not necessarily be water that is being released from Lake Aloha?

A Yes.

Q With respect to Caples Lake, is there a full-time measuring device on the stream tributary?

A Yes.

Q And what about the measuring devices in the lake to determine lake levels? Would that be in the form of a staff gage or full-time measuring device which records the levels?

A I am not sure on that. I believe it is probably a recorder.

Q With respect to Echo Lake, is there a full-time measuring device on the stream tributary to measure flows, daily flows?

A I don't know.

Q And also, what about Echo Lake, is there a full-time measuring device that measures the lake levels?

A I don't know.

MR. BAIOCCHI: Thank you very much.

MR. STUBCHAER: Does Westlands wish to cross-examine?

MR. BIRMINGHAM: Yes, Mr. Chairman.

RE-CROSS-EXAMINATION

by MR. BIRMINGHAM:

Q Mr. Alcott, in response to a question asked of you by Mr. Somach on redirect, you described the water which

applicants are seeking to appropriate.

Could you explain the basis of your characterization of this water as tailwater?

MR. ALCOTT: A Having had the opportunity to understand some of our ditch systems within El Dorado Irrigation District a little better than maybe I care to, there's, I think, an analogy between a ditch-system operation as it is typically operated in the foothills and the resultant tailwater that occurs at the end of that operation, and the analogy is that this operation of the hydroelectric project would, in effect, be very similar to that in that there's water derived at the end of the system as a by-product of the operations prior thereto.

Q So, your characterization of this water as tailwater is based upon your understanding that this water is the by-product of the hydroelectric operations of PG&E?

A Correct.

Q Now, you have been asked a lot of questions about historic operation. Mr. Somach asked you a question, would reliability be increased if there were a change in the historic operations, and you responded no.

Yesterday I think we established through questions of Mr. Hannaford that in August of 1977 there would have been inadequate water to supply the demand of EID based upon historic operations. Is that right, Mr. Hannaford?

MR. HANNAFORD: A In July.

Q In August as well; is that correct?

A No, I think there was adequate in August, but not July?

A Let's look at Table -- back to the infamous Table 7.5 and 7.6.

MR. ALCOTT: A Did you say famous?

Q Infamous.

A I object.

Q I will be more than happy to strike my characterization.

Looking at Tables 7.5 and 7.6, is it correct, Mr. Hannaford, that in August of 1977, based on projections there would be a demand of 3,908 acre-feet?

MR. HANNAFORD: A This was in Table --

Q 7.6. 7.6 is the demand table; is that correct?

A Yes.

Q In August of 1977, there would be a demand of 3,906 acre-feet?

A Yes.

Q And there would be water available, looking at Table

7.5 of 3,874 acre-feet?

A Yes.

Q So, there would be a minor deficiency in August of a year type similar to 1977?

A No, there's apparently enough to make it there. There's a total -- the total of all releases below the reservoir was six thousand some acre-feet. Two thousand of that went to meet the 1919 requirements.

Q But when I look at the table, the total available to meet EID's supplemental water demand is 3,874?

A Okay.

Q And that is slightly less than the demand; is that correct?

A Yes, it may be. In Table 7.7, there's a description of where the water was taken from in order to meet the total demand and there's a deficiency in August, but it was made up from the Bureau of Reclamation contract.

Q Well, the question that I have for Mr. Alcott or, you, Mr. Hannaford, relating to Mr. Somach's cross-examination, is that in a month like July of 1977 or August of 1977, a modification of historic operations could increase the reliability of water supply for the project which you propose; isn't that right?

A Well, it possibly could, but within the confines of the existing water supply, including the operation of Sly Park Reservoir, minor fluctuations could be made up for in the operation.

Q Following up on the questions that were asked of you by counsel for PG&E and counsel for the Department of Fish and Game, you were asked if the existing FERC licenses for the PG&E project expired in 2002, and your response was that they do.

Is it correct that if EID were to promise that it would operate the projects exactly as they had been operated, that promise could only extend to 2002 because of the relicensing by FERC?

MR. ALCOTT: A That is one of the uncertainties that makes predictive operations difficult.

Q And in 2002, for all intents and purposes, the bets are off, assuming you acquire the project, as to how you will operate that project after relicensing?

A All bets are off -- could you explain that?

Q You don't know how you are going to be required to operate that project after 2002?

A Correct.

MR. BIRMINGHAM: No further questions.

MR. STUBCHAER: Thank you, Mr. Birmingham.  
Taxpayers, Mr. Infusino, do you wish to cross-examine?

MR. INFUSINO: Yes.

RE-CROSS-EXAMINATION

by MR. INFUSINO:

Q I have a few questions for Mr. Alcott.

In Mr. Gallery's cross-examination you indicated that one of the reasons for acquiring or attempting to acquire Project 184 is to improve the reliability of water service, and you had some concern about PG&E's diligence in repairing outages of the canal; is that correct?

MR. ALCOTT: A Yes.

Q And then, in my cross-examination you indicated that EID currently operates the Deer Creek wastewater treatment plant?

A Correct.

Q Do you know of any problems that EID has had in reliably operating the Deer Creek wastewater treatment plant?

A Yes.

MR. STUBCHAER: This is recross --

MR. INFUSINO: On Mr. Gallery's cross, he suggested that reliability of Project 184 operations was reliable water. My purpose here is to determine if, in fact, EID is capable of more reliably managing 184 for water purposes than PG&E was.

MR. SOMACH: I objected to this line of questioning yesterday in terms of facilities other than the ones that are at issue here. The line of questioning yesterday had to do with the competency or ability of EID to do certain things in terms of its operations.

Mr. Alcott's testimony that is the subject of this cross-examination, as I understand it, was merely that one of the reasons for wanting to acquire the project was water reliability in terms of maintenance, replacement and repair of facilities.

The relative competence of EID to do that, which is what I suggest his testimony goes to, is simply not relevant and it certainly doesn't go to probe the response that Mr. Alcott provided.

MR. INFUSINO: Mr. Stubchaer, I would like to put this in a little better perspective. Currently consumptive water is allocated to EID through the 184 facilities. They are currently applying for additional water to be supplied by that same facility. In essence, we are being asked to



put more of El Dorado County's water eggs in one basket, a basket that already in the record we have evidence that suggests is somewhat fragile, regarding the testimony that was established.

All I am trying to do is, based on Mr. Alcott's earlier statements, that the purpose of acquisition was to improve the reliability of the project, I want to get into evidence information as to EID's current ability to reliably operate its current facilities.

I think that is very relevant to whether they are going to be able to reliably manage their future facilities.

MR. STUBCHAER: And you are referring to wastewater treatment plant as opposed to a water supply conveyance facility?

MR. INFUSINO: That's correct, but it is an EID facility. It's under their management, it's under their maintenance, it's under their operation.

MR. STUBCHAER: The same thing we discussed yesterday.

MR. INFUSINO: Yesterday what I was trying to get to was the cooperation of the State in monitoring the facility. This is somewhat different. This is trying to get actually to the bottom line of do they maintain their facilities well.

It is critical to people of El Dorado County that if we are going to be putting all our water eggs in one basket that it be a reliable basket.

MR. STUBCHAER: Well, I will let you proceed with a couple of questions to see where it goes. It still seems like it is kind of a stretch to me on the relevancy.

Go ahead.

MR. INFUSINO: If I had evidence on their other facilities, I would bring that in.

Let's find out where I was here.

Q My first question was, do you know of any problems EID has had in reliably operating its Deer Creek wastewater treatment plant, and the answer was?

MR. ALCOTT: A Yes.

Q Do you know of any problems EID has had in keeping that plant in good repair?

A Yes.

Q I have a document -- a copy has been provided to the person just preceding the staff. It's dated January 12, 1995. It is to William H. Crooks, Executive Officer, Regional Water Quality Control Board. It is from Maryanne Schueller, State Water Resources Control Board, Division of

Clean Water Program. The subject is investigation of allegations of improper operation and maintenance resulting in violations of waste discharge requirements at the Deer Creek wastewater treatment plant, El Dorado Irrigation District Clean Water Plant No. C-06-1014-110.

I would like to have this identified --

MR. STUBCHAER: It is not appropriate -- well, is it appropriate cross-examination?

MR. TAYLOR: Mark it for identification and if we are going to talk about a specific document, I would like to have it identified for the record and have it marked as well.

MR. INFUSINO: Maybe this would help staff in marking this exhibit. This exhibit was referenced in Quality Growth's exhibit list as No. 29. If they would like to mark it as No. 29 in the event it later gets into evidence, it may simplify things.

Is that acceptable to staff? So, it is marked as Exhibit 29.

May I offer this to Mr. Alcott?

MR. STUBCHAER: Yes.

MR. INFUSINO: Q Mr. Alcott, on the second page of that document, there is a finding identified as Finding No. 1. Would you read Finding No. 1.

MR. SOMACH: Object. I object to this line of questioning. The line of questioning is inappropriate for the reason I objected in the first instance, that going down and in terms --

MR. INFUSINO: But you were overruled.

MR. STUBCHAER: Who said that? Please don't interrupt.

Proceed, Mr. Somach.

MR. SOMACH: You suggested that allowing the questioner to ask a few more questions would be appropriate in terms of making a determination of whether or not the line of questioning was appropriate. However, what the questioner is doing now is having the witness read into the record various portions of letters that, number one, I have not had a chance to review as of yet, without any showing of where we are headed as we read these things, other than embarking upon a reiteration or a reading into the record of documents that are, in fact, evidently State Board documents associated with an entirely different proceeding and entirely different matter before the State Water Resources Control Board.

MR. INFUSINO: Mr. Stubchaer, he suggests he has had

no opportunity to review the document. It was on the exhibit list, was mailed to all these participants on October 2. A copy, as well, was mailed to staff. It was available to staff and Mr. Somach's office is a short walk to the staff headquarters here.

In fact, these exhibits were closer to his office in the last three weeks than to mine. He had ample opportunity to review documents.

MR. TAYLOR: It is not clear to me where you are going either. Are you simply asking the witness to read the portion of the letter into the record or read it to himself so you can ask him questions about it?

MR. INFUSINO: Do you want the final question?

MR. TAYLOR: I want to know how you are going to proceed.

MR. INFUSINO: Q My final question is, given these findings and conclusions, is it his contention that EID is better capable of maintaining and reliably operating Project 184 than PG&E.

MR. STUBCHAER: Why don't you just ask him that question? I have read the letter. I don't know if everyone else has read the letter.

MR. INFUSINO: It's not in the record at this point. It would be difficult for him to respond to something that is not in the record in a meaningful way.

MR. SOMACH: The letters, nonetheless, are only allegations and they are not concurred in. They haven't been concurred in by anybody other than the entity that made the allegations, and that is all they are, is allegations and they are allegations with respect to other facilities that are not before the Board at this time.

It's not like these are other water supply facilities on top of everything else.

MR. STUBCHAER: We grant there may be some problems at the treatment plant. You could ask your question and maybe not get into the details of the problem.

MR. INFUSINO: There's three findings and one conclusion. That is all I want to have him read in just so it is clear for the record what we are talking about.

Failing that, I will accept --

MR. STUBCHAER: Mr. Taylor.

MR. TAYLOR: I feel we are wasting time on something here that is of marginal value, even granting the truth of everything that may be in this letter.

There are a whole array of other factors which would have to be introduced into evidence before you could draw

the kind of conclusion of the witness that it sounds like you would like to draw from him.

We are spending a lot of time on something here that's very marginal.

MR. INFUSINO: I spent 45 minutes trying to get out some models this morning.

MR. SOMACH: Did the motion ever get out that these are the allegations of one inspector, and before we do anything else and concede that the letter is what it is, we would insist upon a full hearing on all the issues raised in this letter, and that is not this proceeding. That is not this process.

MR. INFUSINO: I'm only asking him to concede to the truth in that document. What I am asking him to do is to review it and see if he stands by his previous contention.

MR. SOMACH: We will stipulate that the letter is what it purports to be, period. That's all we will stipulate to, and that is all this witness will respond to. The letter is what it says it is, period.

MR. STUBCHAER: And we are not going at this hearing to try and judge whether it is valid or not. You can ask your question about the ability to operate and maintain.

MR. INFUSINO: But not review any of the information in the document?

MR. STUBCHAER: I don't think so.

MR. INFUSINO: Okay.

Q So, without any foundation the question is based on -- did you take the option to review the document?

MR. ALCOTT: A No, I did not. I am familiar with it.

Q And you are familiar with it?

A Yes.

Q And you are familiar with the findings and conclusions of that document?

A Generally, yes.

Q And did that document find that there were problems with the operation and maintenance of that Deer Creek wastewater treatment plant?

MR. SOMACH: Objection. The letter speaks for itself. Whatever findings it makes are within the letter. It is not appropriate to ask Mr. Alcott to confirm or not confirm what those findings are in the letter, particularly when you are not asking him whether he agrees or disagrees with respect to those findings.

MR. STUBCHAER: I thought the word was changed to allegations. Would that --

MR. SOMACH: The allegations are that anyone can read them. We do not deny those allegations were there.

MR. INFUSINO: I wish they could read them but they are not in the record.

MR. SOMACH: Put them in the record on direct testimony.

MR. INFUSINO: It is not clear to me that we will have any opportunity at this time due to the previous objection to present a case in chief.

MR. SOMACH: Moreover, if you did, I would object to the introduction of that document in any event. It's not relevant.

MR. STUBCHAER: Instead of asking him to agree with the findings --

MR. INFUSINO: I was asking if he understood.

MR. STUBCHAER: Ask him if he understands what the allegation is or something.

MR. INFUSINO: Q Do you understand the allegations in that letter?

MR. ALCOTT: A I understand there are a number of issues raised in that letter, yes.

Q Given the allegations in the letter, is it still your contention that EID is better capable of maintaining the reliability of Project 184 facilities for water and power production purposes than PG&E? You are under oath.

MR. SOMACH: I object. That is argumentative and inappropriate.

MR. STUBCHAER: I think it could be answered.

MR. SOMACH: I wasn't objecting to the question, I was objecting to the statement to remind Mr. Alcott he is under oath. There's nothing that has been done here that would suggest these witnesses are doing anything but telling the truth.

MR. STUBCHAER: We will strike that portion, because you are right, there hasn't been any suggestion that anybody is not telling the truth.

MR. INFUSINO: My own clarification, there was a pregnant pause there.

MR. ALCOTT: For the record, I am not pregnant.

MR. INFUSINO: I didn't mean to suggest that you were.

MR. ALCOTT: And the pause had to do with the way the question was styled because it was styled suggesting that EID has asserted that we are better capable of maintaining the project than PG&E, and I don't recall ever making a statement to that effect.

The statement that has been made, and one of the reasons the District has an interest in acquiring the project, is that we believe we have different priorities as to the maintenance and restoration when required, and we believe it is in our interest in terms of consumptive water supply from the project that will warrant a higher priority in the restoration.

MR. INFUSINO: Q Also, in these proceedings you indicated that it is very difficult to come up with an operating regime for the releases from the lakes?

MR. ALCOTT: A That's not correct.

Q Well, I will try it again. You say that the way you would intend to proceed would be following the snowfall and snowfall surveys, evaluate how you would intend to operate the project during that season, so it would be an annual evaluation?

A Correct.

Q And at that time, there would be some sort of plan for the operation of the project?

A Yes.

Q You are aware that in CEQA there are a variety of levels of environmental analysis that can be engaged in when looking at such a discretionary act that may have a significant impact on the environment. One might be an environmental impact statement, it might be a negative declaration, one might be a categorical exclusion.

The question is, in the event that these annual plans are developed, does EID have any idea at this time which avenue of environmental analysis they would engage in in evaluating those annual plans?

MR. SOMACH: Objection. In the first instance, it calls for a legal conclusion. Moreover, there is no foundation at all established that these annual operations are subject to CEQA in any event. In fact, we believe the case law is quite the contrary.

MR. INFUSINO: What I was trying to get at is, is it the intention to use a categorical exclusion for operation and maintenance and to allow those plants to be under CEQA. Is that a better question?

MR. SOMACH: I still object to the question.

MR. STUBCHAER: Restate the question one more time.

MR. INFUSINO: Q Given those three possible ways of analyzing the plan under CEQA or the possibility the plan does not have to be analyzed at all, does the EID at this time have an indication of which of those options it would choose?

A EID intends to comply with the CEQA requirements in all aspects of the operation of 184.

Q My question was, in which fashion. Do you have an idea of which fashion you would choose? Would you choose to provide an EIR, which is a very detailed, lengthy document -- you are familiar with them -- or a negative declaration, or a categorical exclusion, which is a much more limited evaluation. Do you have an indication of which of those you would --

A I don't think there is information in front of me to answer that very well other than saying that California Environmental Quality Act anticipates a variety of different techniques for reviewing under CEQA discretionary action, and the fact is I don't know what the discretionary action is today, so I can't speculate as to what treatment we might give it.

Q What type of public review would you anticipate for such an annual operating plan?

A I don't have any basis for having any anticipation at this point.

Q So, it is not clear that this annual operating plan, which is going to identify releases and lake levels and such, or determine in any case releases and lake levels and such, would receive any environmental review or public review prior to implementation?

A Well, what you are suggesting then is that we should be evaluating our operations on our water treatment plants and our wastewater plant, and all the facilities of the District on an annual basis under CEQA, and that seems problematic to me.

Q That's not what I am suggesting. What I am suggesting is there has been a great deal of action in this process associated with at what levels the lake will be, the timing of the releases, the amount of the releases, and EID has made it clear it is a tough thing to say at this time what those will be, that it depends a lot on the annual situation.

You suggested your resolution of that is to produce a plan on an annual basis, and in essence, the folks here would have to trust that that will be a plan they could live with.

What I am trying to get at is, if that's going to be the procedure in the future, if the Board does finally decide; yes, this is the way it is going to work, the EID is going to come up with an annual plan that shows the releases and the lake levels. Then, will the public have any input,

any review either under CEQA or in another fashion?

A I can't answer the question. I simply don't know.

Q Thank you, that's an answer.

The last question, last line of questions, there are fish releases at Kyburz as part of the operation of 184?

A Correct.

Q I have a little problem here. When those fish releases are made, is that water then part of the 17,000 acre-feet that's then recaptured out of Folsom?

Maybe I should ask Mr. Hannaford. Would you like to answer that?

MR. HANNAFORD: A In the analysis in Exhibit 78 releases made from the reservoir that were required to meet the fish release at Kyburz were considered to be available at Folsom to meet the consumptive use requirements.

MR. INFUSINO: Thank you. I have no further questions.

MR. STUBCHAER: Thank you.

Does anyone else wish to cross-examine before we go to staff? Did I miss anyone? I guess not.

Staff.

#### E X A M I N A T I O N

by MR. LAVENDA:

Q This can be responded to by anybody that feels comfortable answering.

What is El Dorado's understanding of the origin of the water that is diverted or rediverted at Kyburz and enters the El Dorado Canal? What is your understanding of the origin of that water?

MR. ALCOTT: A In terms of what source?

Q As it stands now.

MR. HANNAFORD: A The direct diversion of 70 cfs is under a pre-1914 right and 86 under an application and license.

Q And if my math is right, it is 156 cfs.

A Total.

Q And does that diversion, which is identified as a direct diversion, does that correspond to the amount that is requested in Application 29922 of El Dorado?

A Yes.

MR. ALCOTT: A And just as a follow-up to that, it corresponds to the application; however, that amount that could be generated by that rate of diversion is severely limited by virtue of the proposed condition that limits the annual take of 17,000 acre-feet.

In other words, the source of water for the project



totals in excess of 17,000 acre-feet annually.

Q Thank you for that explanation.

If, as was testified, and it is my understanding, that the tailwater from the hydroelectric operations is to enter Folsom and then be either diverted or rediverted at Folsom by El Dorado, what justification is there for continuing with Application 29922 of El Dorado, or the corresponding part of that application that is included in State filing 5645, folder 8?

MR. HANNAFORD: A The reason why that application was originally made was to provide a measure of the amount of water that would be available for diversion to consumptive use. Whether that diversion took place at White Rock or took place at Folsom didn't make any difference.

But the watershed above Kyburz has a certain limited amount of water available from the natural flows before they are supplemented by the releases, and it was simply to provide a measure of that amount of water.

Q Is that the only justification for that application to date?

A I think so. There is no intention to divert or take that water from the canal and utilize it elsewhere except for the water that is a portion of the 1919 agreement.

Q Which you are hopefully going to purchase and become the owner and operator thereof?

A Right.

Q Speculative-type response perhaps.

Would not allowing some of that 156 cfs or any portion of new water to be released, that could be counted in that total diversion at Kyburz, would not allowing that flow to go down the river enhance the bypass flows and alleviate some of the problems that you have with FERC operations as FERC operations require today?

A I don't understand the question.

Q If that water were allowed to bypass the Kyburz turnout of the El Dorado Ditch, what would the impact to your proposed project, and what would be the impact to the mainstem South Fork of the American below Kyburz?

A Well, presumably it would increase the flows of the American River below Kyburz during the summer months or during the time when releases must be made to meet the fish-release requirements, and it would decrease the amount that would be available for hydrogeneration and wouldn't change the 17,000.

Q So, it really would not affect your proposed operation for consumptive uses taking that water at Folsom?

A Right.

Q Just as an aside, how was the El Dorado Canal operated after the Cleveland fire when you could no longer take water at Kyburz?

MR. ALCOTT: A How was the project operated?

Q Did you get water into El Dorado Canal after the fire when this segment upstream was destroyed?

A The segment downstream of the fire in the spring had water runoff coming into the canal that recharged the forebay to a limited extent and allowed us to have occasional operations. But what we had to do because it was out 14 months, most notably the entire summer, was put in a pumping facility at Sly Park, essentially the treatment plant, and we pumped water up several hundred feet from the plant out of Sly Park and served our area in Pollock Pines community which is typically served out of the forebay.

Q So, the water you replaced in the forebay distribution came from Sly Park and not the South Fork American River?

A Correct.

Q It is my understanding from Mr. Hannaford's testimony earlier today and yesterday, and I believe Attorney Tom Birmingham touched on this in his cross-examination, that there was some interpretation of the historical records available at Caples and Silver and Lake Aloha in meeting the releases and the lake levels that are in Exhibit 78, Tables 7, 5, 6, et cetera.

Is that a correct understanding on my part that Mr. Hannaford did -- Mr. Hannaford, is this a correct interpretation on my part that you did make some evaluation of carryover storage to meet the demands, or did I misinterpret?

MR. HANNAFORD: A To meet which demands, the fish-release demands?

Q I'm sorry, the availability of the 17,000 acre-feet. Did you make some interpretation of a 30-day regulation and/or carryover from month to month in the historical record in order to provide the numbers in Exhibit 78?

A Yes. In one month during the entire period of record analyzed, July, 1977, PG&E chose to reduce the amount of generation or not to contribute more water to generation in order to provide water in August and later. And in order to get around that problem, that timing problem in that one month out of the entire record, we made the assumption that we could use a 30-day carryover in diverted water before putting it to direct use.

Q And if one were to attempt to replicate your interpretation of the historical data on these hard copies that you supplied me, that is the only instance that such an interpretation would have been made?

A I think that's the only instance in the record where that particular solution would be used or was used. We also got the opportunity to change the releases from Sly Park Reservoir, or change the amount of flow out of the Bureau contract in a given month to adjust for a deficiency, but we couldn't carry over for a year or so at that level.

Q Did these carryovers occur in the mountain lakes or at Folsom?

A In Folsom.

Q Oh, in Folsom.

A In Folsom only. The flows to Folsom are governed to some extent by power generation, as has already been discussed here, and PG&E has historically operated to meet at least a six-hour-per-day, five-day-per-week generation in order to maximize the peaking capability of that plant.

Some of the historical studies indicate that this was the approach used.

If the plant were to be operated in that type of situation, we need some regulation of weekly flows and daily flows also because the water wouldn't be available continuously.

The amount of regulation at Folsom would be very small in terms of the total regulation or total capacity of the lake. We are talking about perhaps a couple of hundred acre-feet on the weekly regulation.

Q One item, if I may, Mr. Stubchaer. As you recall, after the hearing we had in '93, the letter from Mr. Stubchaer to El Dorado stated that we were more than casually interested in the magnitude, the frequency and the duration of releases from storage of the lakes. We reiterated this request in issue 2 of the current hearing notice where we asked for information concerning these various values.

If one were to attempt to use the daily values that you have supplied, we still would not have the frequency, magnitude and duration that perhaps we interpreted we would like to have, but I must admit that we are closer to an operating envelope than we were before.

I would like to suggest that perhaps since Mr. Hannaford has admitted there were other sources of water available that were used to meet the demands, Folsom, Sly Park, perhaps his model that was used to replicate the

values that are in Exhibit 78 could be made available to staff so that we could look at interpreting that data within the format, only within the format of that program, that software.

I ask for nothing else that EID might be attempting to generate, but I would like the capability in house to be able to replicate what we have there and to look at an operating envelope, so I place this as a request before the applicant. It's a comment on my part.

If there is something you could do to provide us with that information, I think it would be quite helpful.

MR. SOMACH: I can appreciate that and we will talk and see what we can do. My sense is that, again, much of the data and information is there, even this additional information. What it may mean is merely sitting down and going over and just explaining how, for example, when there was a shortage like the Bureau of Reclamation contract water, it was merely a matter of going and looking at what the variable supplies are and then determining if there was enough and shifting from one column to another, but I understand the request and we will see what we can do to honor their request in a practical manner.

MR. STUBCHAER: Thank you.

MR. LAVENDA: That is all I have, Mr. Stubchaer.

MR. STUBCHAER: Mr. Canaday.

#### E X A M I N A T I O N

by MR. CANADAY:

Q If, in fact, we got the model, we would be able to pick a year other than 1977 and 1975, and generate a report and be able based on that historical data to look at the lake levels as they are displayed in your report?

MR. HANNAFORD: A Well, I will reiterate on this.

The analysis was based on the historic releases from the PG&E system and the historic amount of water available at Kyburz from other than the releases. All of the basic data needed to make an analysis is on the disk that we gave, or most of it.

Q That's my point. We have the raw data. Now, if I could extract that data and make the inputs into the model that you used to generate these reports, I could generate the same report using the historical data.

A I suppose it would be possible, but I don't believe that we have a copy of that in a form that could readily be used by somebody else.

MR. SOMACH: If I understand Mr. Canaday's question, it is a variation of Mr. Lavenda's and that is maybe some

assistance in explaining with the raw data just kind of how one would go about doing it, and then Board can do it if that explanation is provided.

Let us think a little bit about how best as a practical matter to meet both the requests that were made by Mr. Canaday as well as Mr. Lavenda. I don't know exactly how to do that and that's why I have to kind of defer, and we will talk about how to do it.

It is not that we -- let me leave it at that. I understand certainly the questions and we are going to talk about how best to assist in allowing you to produce whatever you want to produce in terms of your analysis.

MR. HANNAFORD: A I think one point to bring out here is that the PG&E historic operation of Project 184 meets the need of EID for supplemental water supply very well in terms of timing. There are only a few instances where there's a problem where there has to be some adjustment made.

There's usually surplus water. The amount of water, the full natural flow at Kyburz, is about on the average of 293,000 acre-feet annually. PG&E's average take for hydro-generation is probably in the order of about 75,000 acre-feet annually and EID's 1919 water is about 15,000 acre-feet annually.

Out of the quantity that is released through the power plant plus any of the fish releases made by release from storage in the upper lakes, we can meet El Dorado's demands at Folsom Lake.

Q That wasn't the heart of my question. I was trying to understand if there is some data that is generated in these reports that would show for a water year which you represented how the lakes would fluctuate meeting that demand in that historic operation by PG&E, and I would like to be able to, instead of '75, ask the question of '86, of '78, and see what that would represent in historical patterns.

MR. SOMACH: Mr. Stubchaer, this may be our fault again, but for whatever reason, I just want to make sure that it is clear for the record exactly what it is that has been provided in terms of what is being requested.

And Mr. Alcott and Mr. Hannaford, if you could listen to this carefully, because you need to affirm that what I am saying is accurate as to what we are dealing with here.

What Mr. Hannaford did in his analysis was merely to go through, take the raw data and plot during the historic period, the actual historic period, exactly what was being

done and what the result was in terms of lake levels on the one hand and in terms of water that would be done at Folsom on the other hand; that the only thing that he did other than that was to look at the bottom and compare what the El Dorado demands were versus what netted out at the bottom; and that when there was a situation where there was not enough netting out at the bottom, which ends up to be, in essence, two circumstances, looked to see whether there were any other supplies anywhere else to plug into the hole, and that the only two places in terms of the record that occurred was one when he was able to make up the deficit from the Bureau of Reclamation supply and the other where he looked toward the idea of getting some reregulation storage down in Folsom to get them over the 30-day period at issue; that there was no modeling involved in any of that.

It was just simply a plotting of the raw data in a manner that we would understand on a monthly basis what the various elevations were at the lakes and how much water existed then down below to determine whether or not this was a feasible approach in terms of merely asking for what was released; that there are no studies here that modeled future situations at all, that there was none of that traditional type of modeling that one looks at when they are going to, in the first instance, tell you how they are going to reoperate a project.

So, the problem Mr. Hannaford, I think, is having in terms of providing the exact information, that all he has done is just simply at the end in a few situations manipulated what additional water supplies were available to make up the deficit.

Let me, first, confirm what I said is accurate and then go ahead.

Is that accurate?

MR. HANNAFORD: A That's basically the situation. There may be a few more cases where shifting around of water from Sly Park or Folsom was required to cover one month, but it shouldn't be an issue.

MR. STUBCHAER: Question of clarification: Was this done graphically?

Mr. Somach said you plotted this stuff.

MR. SOMACH: The tables -- it was generated in tabular form.

MR. ALCOTT: A The famous tables.

MR. STUBCHAER: But there is something back of the famous tables.

MR. HANNAFORD: A There is computer output.

MR. STUBCHAER: And there is no -- and there's some code that reads the basic data and generates that output without projecting into the future, and I think that's the subject of the discussion.

MR. CANADAY: What I was getting at, and I will read from your report, Exhibit 78: Computer simulation of EID's system operation has been run for demand levels from 1995 to 2013. The 1935 to 1992 historical hydrological record has been analyzed at each demand level. Results of these analyses have been prepared for presentation in tabular form. The results of the operational analysis are summarized in this section, and what has been displayed in this has been the various tables, but they are using the years 1975 and 1977.

My interest is not in the deficit that may occur in the lower watershed. I am interested in when you run the historical PG&E data, what that provides for you as a picture of the upper watershed and that is of interest to a lot of folks in this room.

MR. SOMACH: Are you asking for the same thing generated for every single year?

MR. CANADAY: There's two ways of doing this. One, you can provide us the code and some time with Mr. Hannaford to understand how to implement the model, or you can run the model for every year, would be my request.

MR. SOMACH: I think this has been helpful. I have a better idea and I think we have a better idea, and one or the other may well be something we could provide with little pain. As I said before, I think that's been helpful.

MR. TAYLOR: I don't have any questions. Thank you.

MR. STUBCHAER: I don't either. So, I guess this panel can be in recess until Monday morning.

MR. SOMACH: I need to do a couple of paperwork things for everybody, and the first is to provide additional exhibits that we talked about earlier so that everybody has a copy in hard copy, and I don't remember which one I gave what number to.

These are the plots for leakage from Silver Lake.

MR. CANADAY: That was 100. Let me verify that.

MR. SOMACH: 100. I will hand that out first.

MR. ALCOTT: 100, I believe.

MR. LAVENDA: Operational data, 101.

MR. ALCOTT: The electronic data was 102-A and B.

MR. SOMACH: The other document, which I guess is 101, is the hard information, the raw data which is 101, and

again, anybody who wants the disks, let me know, let Mr. Mooney know, and then we will make sure we get them to you as soon as possible.

So, those are the two exhibits.

What I would like to do also in terms of exhibits at this point and not wait until Monday, if I could, is go through the exhibit situation from El Dorado's perspective and just simply make sure that that is in order.

We had withdrawn -- I want to make sure that is understood, Exhibits 75, 76, 77, as well as Exhibits 83, 84, 90, 91 and 92; that the rest of the exhibits, and I am assuming this is the time you want me to offer these into evidence, and I would like to then move Exhibits 78, 78-A and B, 79, 80, 81, 82, 85, 86, 87, 88, 89, 93, 94, 95, 96, which is the draft supplemental, 97, 98, 99, 100 and 101 into evidence, and I will hold off on 96-A, B and C until Monday in deference to the ruling here on those issues.

MR. STUBCHAER: Any objection to receiving those exhibits into evidence?

MR. VOLKER: Mr. Stubchaer, I am in awe of the exceptional lawyering that we have seen. At the close of cross-examination I finally got a copy of Exhibits 100 and 101. I think it is improper to introduce them at this late date, so I would object to those two exhibits.

MR. SOMACH: I indicated and I will just simply repeat, I provided those because you all wanted them.

MR. STUBCHAER: These are materials which were requested.

MR. SOMACH: They can stay out of the record and I don't care.

MR. VOLKER: I think if they are to come into evidence, they should be subject to cross-examination. I understand they were available earlier in the day but were not distributed.

MR. SOMACH: I didn't have them until I got back from lunch.

MR. STUBCHAER: I am looking at this. One is the data files and the other is the seepage curves. I suppose if there are questions on these two exhibits, we could cover those on Monday morning.

MR. SOMACH: Well, I wanted to raise something with respect to Monday morning also, and I had understood that the Board's ruling had been that folks could either cross-examine or submit comments in large part because of Mr. Volker's statement that he couldn't read this stuff between now and Monday, and so, he needed a comment period, and I



had understood it was going to be an either/or situation and not both.

The second point I want to make and obtain a ruling on is whether or not there will be any bounds or limits on the cross-examination that's going to be allowed on Monday morning, that we have now spent 40 minutes cross-examining.

In all deference to the Board, I do believe cross-examination extended well beyond what my redirect was, but I am not anxious for all kinds of reasons, including I don't want to go through hearing the same questions posed for the third time Monday morning, so I would like some ruling that there will be a very limited nature of any cross-examination.

My understanding of what is subject to cross-examination are the differences that may be between the draft and the final, and how they may have materialized themselves in the two certification documents, and that's it.

MR. STUBCHAER: And then, if we add these two exhibits for Monday morning, which would be new, that would be it.

But the ruling was that it was both the right to cross-examine and to comment later because Mr. Volker said he wasn't going to have time to prepare cross-examination over the weekend and would prepare comments later, but nonetheless, it is limited to the scope that I described earlier, which is the scope you just described for cross-examination.

MR. SOMACH: Why don't I do this just to make things simple. I'm not going to offer 100, 101 and 102-A and B, which are the computer disks as evidence. If the Board wants to have those introduced in the record for your purposes, you may do so. That way I don't have to worry about having Mr. Hannaford here for Monday.

The issues associated with the draft documents are all in Mr. Roberts and Mr. Alcott's and Mr. de Haas's --

MR. STUBCHAER: There is another option. I overruled the objection to their acceptance, too. I think it is important to have this data available for our staff, and it should be evidence in the hearing.

Mr. Volker, do you care to comment on that?

MR. VOLKER: I think that will be productive to have this material in the record provided the parties and the staff have an opportunity to conduct examinations to understand the material.

MR. TAYLOR: Mr. Chairman.

MR. STUBCHAER: Mr. Taylor.

MR. TAYLOR: I would suggest that Mr. Somach move 100 through 102 at this time and that we make some time available on Monday for people to cross-examine on these exhibits if they wish to.

MR. STUBCHAER: And the scope of the cross-examination will be limited to these particular items. I was going to say it did get pretty broad today, I agree, but also, your redirect was fairly broad. It wasn't long but it was fairly broad.

MR. SOMACH: As I said, what is done is done and I am just looking forward to next Monday and wondering whether or not we are going to do this all over.

MR. STUBCHAER: We would hope you would offer this into evidence.

MR. SOMACH: Let me move forward then through 99 and offer those into evidence, as I have indicated.

MR. STUBCHAER: With the one exception, 96-A, B and C.

MR. SOMACH: That's right.

MR. STUBCHAER: Any objection to receiving those into evidence?

Hearing none, they are received. Thank you.

Next we will have the direct testimony of the Department of Fish and Game. I am not sure all of your witnesses took the pledge.

MR. CAMPBELL: No, they have not.  
(Thereupon CINDY CHADWICK, JULIE HORENSTEIN and STAFFORD LEHR, witnesses for Department of Fish and Game, were sworn.)

DIRECT EXAMINATION

by MR. CAMPBELL:

Q Would you please state your name?

MS. CHADWICK: A My name is Cindy Chadwick.

Q What is your current position?

A I'm Environmental Services Supervisor for the Department of Fish and Game, Region 2.

A Could you please identify your qualifications, Department of Fish and Game Exhibit 95-5.

A Yes, that is my resume.

Q Is there anything in your testimony that you would like to highlight?

A My testimony is Exhibit 95-5, and I would like to briefly go over the Department's concerns and discuss how the circumstances have changed since the 1983 hearing.

The Department of Fish and Game's concerns that we

outlined in detail last time concern the operations of the lake and the balances between lake level and streamflow, and the impact between the point of diversion and Folsom Reservoir, impacts downstream of the Folsom Reservoir, and then, the growth-inducing impacts of the water project.

Since that point in time, the District has amended -- the Water Agency has amended its application so the point of diversion is Folsom and that has changed our analysis of the impacts associated with the point of diversion.

The County has circulated a Draft EIR on the general plan but has not yet taken action to certify that general plan and has, in fact, not even -- they don't seem to be making great haste in revising their general plan.

And, of course, as we all have heard, El Dorado Irrigation District has tentatively agreed to acquire Project 184.

These actions, basically have affected our concerns in this hearing and those concerns at this point in time include the balancing of reservoir levels in storage reservoirs and streamflows below that, a general concern for flows below Folsom, and the growth-inducing impacts of the project, specifically the growth-inducing impacts and the effect it could have on the rare plants in El Dorado County, and with me today are Stafford Lehr and Julie Horenstein, who will be covering the fisheries aspects and the growth-inducing impacts of the project and their effect on listed plant species.

MR. CAMPBELL: If we could finish with the panel before cross-examination --

MR. STUBCHAER: Yes, cross-examination is by panel.

MR. CAMPBELL: Q Would you please state your name for the record?

MS. HORENSTEIN: A My name is Julie Horenstein.

Q What is your current position?

A I am the Plant Ecologist for Region 2 of the California Department of Fish and Game.

Q And you have taken the pledge here?

A Yes, I have.

Q Can you identify your testimony as being accurate, Department of Fish and Game Exhibit 95-3?

A Yes, it is.

Q And were your qualifications previously admitted into evidence in the prior days of this hearing.

Q Yes, they were.

Q Is there any part you would like to summarize of your testimony?

A We continue to be concerned with the growth-inducing impacts of this project on eight rare plant species, five of which are listed by the State of California. They are largely limited to the south half of the gabbro soils in the EID service area essentially.

And we are also concerned that in spite of the fact that the conveyance routes were illustrated in the Draft EIR, there were no botanical surveys to analyze the impacts of construction in the conveyance routes on rare plant species.

Q Thank you.

Please state your name.

MR. LEHR: My name is Stafford Lehr.

Q And you have taken the pledge administered in this proceeding?

A Yes, I have.

Q Would you please identify your updated qualifications as set forth in Department of Fish and Game Exhibit 95-1?

A 95-1 is an accurate copy of my Statement of Qualifications.

Q Would you also please identify the written direct testimony?

A Department of Fish and Game Exhibit 95-2 is an accurate copy of my testimony.

Q Do you wish to summarize your testimony?

A I basically would like to concentrate on the issue of the EID potential purchase of Project 184 and the potential impacts it could have on the operation.

We are concerned with regard to carryover minimum storage and minimum pools in the upper three project reservoirs, Lake Aloha, Caples Lake and Silver Lake. And given the operational scenario that was outlined in EID Exhibit 78, I still have concerns as to the duration and magnitude and frequency of the releases from the reservoirs and how they are operated in critically dry years given that 1977 was the most critically dry year on record.

My concern is that they could drawdown earlier than has been historically done to meet consumptive demands, and that would not provide adequate carryover storage for winter or minimum fish releases later in the year.

Q Anything further?

A No, thank you.

MR. STUBCHAER: Are you ready for cross-examination?

MR. CAMPBELL: Yes.

MR. STUBCHAER: All right. Does El Dorado wish to cross-examine this panel?

MR. SOMACH: Mr. Stubchaer, I have no cross-examination questions. However, I do have a series of objections to the testimony. I would like to articulate those, if I could, and move to strike portions of the testimony.

With respect to, and I am reading now from Exhibit No. 95-2, which is the written testimony of Stafford Lehr. To the extent that Mr. Lehr purports to be talking about the potential impacts and operational scenarios resulting from El Dorado Irrigation District's ownership, and in particular, to the extent that the testimony goes to that situation; in other words, it assumes ownership, and objects to the ownership of the project being vested in El Dorado, we object to that.

In particular, I am looking at page 2 of that testimony, question No. 4, which deals with the ownership and adverse impacts to downstream creeks and issues associated with maintenance and other types of resources.

Those issues, I suggest to the Board, are not proper issues dealt with by this Board, but rather, are part and parcel of the considerations of whoever is going to approve the sale and transfer of the project at some point in time. Now, there are other issues that stem from that fundamental objection I have to this particular testimony, such as instream limnological studies of the reservoirs and ordered reoperation of those reservoirs based upon the concept that we have a new owner of the project, but for purposes of the objection, it is primarily those things that focus upon whether or not ownership should be vested in El Dorado as opposed to the kinds of things we have been talking about here dealing with operation issues.

With respect to Ms. Horenstein's testimony, which is Exhibit 95-3, that testimony in its entirety deals with such things as growth-inducing impacts dealt with in the CEQA analysis.

I thought that the ruling had been that those types of impacts, in fact, I am certain that the Board ruled those things out of order during the first four days of hearing. No new issues with respect to those issues have been produced here in any event, so that they are not properly subject to the focused nature of these subsequent hearings, but in any event, they were ruled out of order then as being outside the scope of the issues here.

With respect to Department of Fish and Game Exhibit 95-5, the testimony of Ms. Chadwick, ironically that testimony even discusses the question of litigation ongoing

by Fish and Game and others against El Dorado on the sufficiency of the environmental work, including these growth-inducing impacts.

For that reason, in addition to the ones I have already asserted, I believe that to the extent that Ms. Chadwick's testimony deals with the question of the sufficiency or adequacy of the environmental document with respect to the growth-inducing impacts and the impacts on plants and plant species, also, that testimony is out of order.

With respect to what is merely a rehash of questions on operations, and how it would be operated and all that stuff, I have no objection other than the general objection I have, but the specific matter I am concerned with is the nature and objections to the transfer of the project to El Dorado. That's a FERC process issue, issues associated with growth inducing or CEQA sufficiency issues, which involve, among other things, and almost entirely all of this discussion in these exhibits and testimony on plant species, I request that those issues be stricken from the testimony as just simply not relevant and outside the scope as was determined in the prior hearing, and was articulated, I believe, by yourself in this hearing again.

MR. STUBCHAER: Mr. Campbell.

MR. CAMPBELL: First, with regard to Mr. Somach's first point, the focus on the potential ownership change to El Dorado, we have been discussing that in this hearing all day in terms of operations and potential impacts.

And this change of ownership is reflected in the environmental document that is being utilized, at least the final supplemental EIR, which states in several points that there is a pending acquisition of the project by El Dorado Irrigation District, and I think that puts that acquisition squarely before us.

Moreover, the way that the issues for the hearing are framed go to public trust impacts, and El Dorado's potential pending acquisition, I guess an acquisition that they feel comfortable enough with to have put it in the final supplemental EIR at least as a pending matter, is something that's before us today.

With regard to Ms. Horenstein's testimony, one point Mr. Somach tried to make is that it's no different than her testimony at the prior days of the hearing.

But I would like to point out that it is different in several respects. First of all, what is different this time is that Ms. Horenstein brings up the national significance

of the plant species that would be impacted by the project. Number two, she discusses the infrastructure alignment. That is, again, something that came out in this most recent CEQA document.

Number three, she discusses the nebulous aspects of preserve management, I guess as it would currently stand. Number four, she talks about heavily managed small preserves, which she did not talk about in her earlier testimony, and she also talks about the dwindling options. This is all new from her previous testimony.

With the other point that Mr. Somach brought up --

MR. STUBCHAER: Could we go back to Ms. Horenstein's testimony -- were those same comments given to EID or El Dorado County on their EIR?

MS. HORENSTEIN: Some of those comments are in the comments on the Supplemental EIR, discussing the growth-inducing impacts and the lack of surveys along the conveyance routes. Unique to this testimony were the exhibits that we provided regarding the national botanical situation of this area.

MR. STUBCHAER: Why weren't those comments given on the EIR?

MS. CHADWICK: The Department's comments on the Supplemental EIR is one of our exhibits as well as our comments to the County on their general plan, and I think both of those letters address the potential impacts on the rare plants.

And, in addition, there is also the Biological Opinion that we wrote for the Water District.

MR. STUBCHAER: I thought I just heard that not all the comments that were given to us were given to El Dorado Irrigation District.

MS. HORENSTEIN: I just thought you wanted to know specifically what the differences were in the exhibits and the testimony here, and what was written for the Supplemental EIR, and I was just pointing out that in our exhibits for this hearing we included these letters regarding the national botanical significance of this area, and one of those letters was actually written to the Chairman of the Board of Supervisors in El Dorado County, that El Dorado County has seen these letters in the past. It's been a long-time issue in El Dorado County, so we didn't attach those letters to our comments on the EIR.

MR. STUBCHAER: Thank you.

Mr. Campbell, go ahead.

MR. CAMPBELL: Again, getting back to the hearing

notice, as I understand it, Fish and Game's role here today is to provide testimony and comments on impacts to public trust resources, and this is an important issue that has been recognized by court decisions. I can think of one off the top of my head, the Cal Trout II decision. I don't have the citation.

I can understand how the El Dorado Irrigation District may not want the Board to receive evidence of potential impacts to these public trust resources, but the hearing notice and the law of the State of California requires different.

And to the extent that some issues, some of these impacts are covered in a CEQA document, does not mean that they shouldn't be placed before the Board here today when it takes evidence and is going to decide on whether to issue water rights to the applicant, and will presumably conduct its balancing based on a number of factors, and one of those factors is the public trust resources that the direct testimony and evidence of the Department of Fish and Game addresses.

MR. STUBCHAER: Thank you.

Mr. Taylor, do you want to discuss this now or after a break?

MR. TAYLOR: Let's see if we can finish it up.

I think counsel are speaking past each other here. I think Mr. Somach raises a very good point. This Board will not be considering whether it is proper or improper for El Dorado to acquire FERC 184.

To the extent that the testimony is directed to who should own 184, that's not part of the Board's consideration in this proceeding.

Also, whether the environmental documents which have been adopted by El Dorado are adequate or inadequate is not something this Board can pass judgment on. Those issues should be raised with El Dorado directly, the respective district and agencies, and if not there, then in court.

The Board is directed to treat environmental documents as adequate on their face when trying to evaluate whether to go forward with this project providing we have final documents.

But having said all that, Fish and Game is correct that how the project might be operated is relevant, and growth-inducing impacts are also relevant with regard to public trust issues.

Those are matters over which the Board does have jurisdiction, so I think perhaps simply to indicate they



will not accept the prepared testimony or the oral summaries with regard to the issue of FERC ownership and the adequacy of an EIR document may be sufficient to dispose of the objections.

MR. SOMACH: May I ask for some clarification with respect to specific references, one in particular that I think focuses our concerns on the fact that what the Department of Fish and Game is really doing is much broader than just simply what's the Board's jurisdiction is to the extent that they deal with such things as general planning documentation in terms of the broader growth-inducing impacts associated with county decisions in terms of local planning, and in particular I am looking at Ms. Horenstein's testimony on, it is not numbered but it is in response to question 5 in particular, where we are talking about such things as mitigation measures having nothing to do specifically with the water project, having to do certainly with general planning decisions that the County may at some point choose to make.

Suggestions in that context that the County may not be inclined to adopt mitigation measures involving certain off-site habitat protection devoted or specified not as to things like the project, but rather, this broader concept of growth-inducing impacts and recommending, for example, a 400-acre preserve within the El Dorado Irrigation District service area south of Green Valley Road and specifying as part of that suggested parcels for acquisition by El Dorado Irrigation District.

I don't think that that is appropriate testimony, even in light of what Mr. Taylor said with most of which I have no quibble, and I really would like to focus on that type of testimony that is found there.

MR. TAYLOR: I don't think we can be quite as clean about this as you would like, Mr. Somach.

The Board is charged with a broad public interest consideration in determining when, and whether and how to approve applications to appropriate water.

Whether a particular plan is in the public interest involves consideration of what is the place of use and how development of water will affect resources within the place of use which may well get into rare and endangered species habitat, and what must be done in those areas.

Now, this begins to stretch, I think to the outer limits of the Board's jurisdiction, but I can't clearly advise Mr. Stubchaer that those issues are totally beyond the Board's purview.

MR. SOMACH: Again, just in response, you clearly are stretching to the outer limits and to the extent that water is a prerequisite for use anywhere in California for any kind of development, what you suggest in that argument is that the State Board can become a super land-use planning organization based upon the argument that is being made by the Department of Fish and Game here, because, in fact, that is exactly what the testimony I am specifically objecting to goes to now.

You have the ability certainly to clarify that point and to indicate exactly what the Board's authority is with respect to that, but if you are suggesting that the Board now has become a large super land-use planning organization that can look at these issues under the rubric of the public trust doctrine or public interest, then I certainly want to make sure that my objection to that is strenuously made, not only for the record of this proceeding, but anywhere else that I can make that type of objection.

MR. TAYLOR: Clearly the Board isn't charged with land-use planning for the County of El Dorado. Having said that, the Board, when it issues permits for applications to appropriate water, must give consideration to significant environmental effects of the project which it approves.

If those effects include injury or threats to rare and endangered species, I think the Board is required by law to give some consideration to those issues. That is not comprehensive land-use planning, however.

MR. CAMPBELL: I agree with Mr. Taylor that the Board is not functioning here as some sort of land-use planning agency, but does have the power to impose terms and conditions upon a licensee to benefit the public interest in this resource.

Also, to support what Mr. Taylor said, in a recent Board decision on Contra Costa Water District's Los Vagueros Reservoir, the Board specifically limited the amount of water appropriated to the applicant based on a lack of analysis of growth-inducing impacts.

MR. STUBCHAER: Mr. Volker.

MR. VOLKER: I wanted to comment also that the primary objective of the project applicant, as I understand it, is to provide for projected growth. So, if you had a scale on one side in favor of the application, and the projected growth to be served on the other side of the balance, are they potentially adverse impacts of that growth. In order to conduct the balancing that the applicant has placed before the Board, the Board has both to look at the

adverse impacts and the public trust role, and it also has to evaluate the likelihood that the projected growth will, in fact, take place and that necessarily implicates the planning process.

MR. STUBCHAER: This is a difficult issue and I just want to state that I am a firm believer in local control of land-use planning. I do not want to see this Board get into land-use planning through whatever guise it might be presented to us. I think that the proper place to address the impacts of the growth is at the local level with the EIR and the general plan for whatever project is proposed.

I don't know yet how I am going to rule on Mr. Somach's objections because I don't know enough to do it and I am going to defer ruling on those objections, but I just want to state my general philosophy.

MR. INFUSINO: Mr. Chairman, I just want to briefly refer the Board to proposed Exhibit 96-A of EID, which on page ES-5 states: While evaluating the general level of detail in the EIR, the secondary impacts mitigation measures are evaluated in detail in the Draft EIR on the El Dorado County general plan, suggesting that they, in fact, are drawing us by their document to look at these issues.

MR. STUBCHAER: Thank you.

We are going to interrupt now for our afternoon recess and we will take a 12-minute break and hear you afterwards.

(Recess)

MR. STUBCHAER: We will please come to order.

Mr. Somach, I believe, was finished with his cross-examination.

Who else wishes to cross-examine Fish and Game, just raise your hand -- Mr. Gallery and Mr. Volker.

All right, Mr. Volker.

CROSS-EXAMINATION

by MR. VOLKER:

Q Earlier today during the redirect of El Dorado witnesses, reference was made to the Draft Supplement to the El Dorado County Water Agency water program, and El Dorado project EIR, which is Exhibit 96, page VI-2, in which the following statement appears:

El Dorado Irrigation District prepared a notice of exemption dated April 3, 1995, for the acquisition and continued operation and repair of the PG&E El Dorado hydroelectric project. The exemption was posted with the clerks of the Counties of El Dorado, Alpine and Amador, and submitted to the California

Department of Fish and Game. Having received no comments on the exemption, El Dorado Irrigation District initiated negotiations for acquisition of Project 184.

My question is to the entire panel, to your knowledge, did the Department of Fish and Game receive in a timely manner the Notice of Exemption referenced in this paragraph?

MR. LEHR: A We researched this question and in our database files we were only able to determine that a Notice of Exemption or something similar was received from Pacific Gas & Electric Company, not El Dorado Irrigation District. We don't know. Our database files do not show title of this Notice of Exemption being received.

And I spoke with Mr. Lou Archuletta of EID and he said under law that it only had to be posted with the county clerk. So, that is the information I have.

MR. VOLKER: I will move to strike the last sentence because it is a conclusion of law, but thank you for your testimony.

MR. STUBCHAER: Okay. Mr. Gallery.

CROSS-EXAMINATION

by MR. GALLERY:

Q I had just one or two questions of Mr. Lehr.

On the last page of your testimony you expressed some concern about the application of Amador County to appropriate the water in Silver Lake, Mr. Lehr, and you state that it is possible that the fish releases from Silver Lake may be changed as a result of relicensing Project 184, and let's assume that the fish-release requirement now is 2 cfs. FERC may decide it should be 3 or 4 second-feet.

Was it your assumption that if Amador got a permit pursuant to its application, that that would prevent FERC from increasing from 2 to 4?

MR. LEHR: A No. Their assumption was that if studies showed that an increase in minimum flow was necessary, that it would be perceived by the County of Amador, also by the County of Alpine for Caples Lake, that the minimum flow release would have an adverse impact on the drawdown there by causing recreational impacts.

We want the ability to be able to negotiate and balance all the interests, recreation, aesthetic, archaeological, and downstream fishing, so the fear was that it would be bound up and there would be no ability to modify those minimum flows should they be necessary through the appropriate studies.

MR. GALLERY: I see. That's all, thank you.

MR. BAIOCCHI: Mr. Stubchaer, if I may.

MR. STUBCHAER: All right. I went through the list and nobody else responded. I guess you weren't here when I did that.

MR. BAIOCCHI: I guess I was outside.

CROSS-EXAMINATION

by MR. BAIOCCHI:

Q Concerning your last answer, given the fact that El Dorado would be diverting storage water from the lakes for hydropower purposes, and also for irrigation purposes, and also for domestic purposes, given that scenario, wouldn't it be beneficial to the fisheries in the tributary streams to have a conjunctive-use approach by incrementally releasing water; therefore, enhancing and protecting fisheries while at the same time providing water to El Dorado.

Wouldn't that be true?

MR. LEHR: A Let me see if I --

Q Let me go a little further with this. Unless I am mistaken --

MR. STUBCHAER: Let him answer.

MR. BAIOCCHI: I'm sorry, let him go forward, Mr. Stubchaer.

MR. LEHR: A You are saying that the releases that are made for the uses that you stated, would that not be a benefit to the fishery also.

MR. BAIOCCHI: Q Conjunctively. If it was done in a conjunctive manner thereby providing water for El Dorado and also providing water for the stream tributaries.

A Well, it would, but there are times of the year when they are making only the minimum flow release and that is the point that we are questioning at this point in time because there's no studies proving the adequacy of that 2 cfs or 5 cfs for Caples, or 2 cfs for Aloha.

Q Mr. Lehr, isn't it true that a flow schedule could be developed that would protect recreational resources at the lakes and at the same time when the releases are made for project purposes, whether it be for hydroelectric or irrigation or domestic, that incrementally streamflow requirements could be increased that would benefit the fisheries of those stream tributaries?

A Yes. We have done that in other places.

Q Now, I raised some questions with El Dorado and I will ask you, based on your understanding -- you are a District biologist; is that right?

A That is correct.

Q Based on your understanding, were any instream flow fishery studies conducted on any of the tributaries on which to base the minimum bypass flows that exist now?

A The only instream flow study that was conducted was by PG&E in the early 1980s, I believe it was 1980 or 1981. The most upstream cross-sections were just upstream of the confluence of the Silver Fork and the South Fork of the American River. There was no cross-section studies performed immediately downstream of Silver Lake, Caples Lake, or Lake Aloha.

Q To the best of your knowledge, Mr. Lehr, have there been any fish population surveys conducted in the past several years where there is a basis for what are the population levels -- we are talking wild trout.

A I think the most recent analysis for any of the tributaries to the South Fork of the American River, namely the Silver Fork and South Fork, and Pyramid Creek which flows out of Lake Aloha, were performed in 1986, and there is no more recent information.

Q So, theoretically, in the past ten years -- populations do change; right, don't they fluctuate?

A Oh, absolutely, and with this past seven years of drought, and then we have had such a critically wet year this last year, it would be interesting to see what's going on.

MR. BAIOCCHI: Thank you very much.

MR. STUBCHAER: That's a new phrase, a critically wet year.

MS. CHADWICK: Critically wet in Roseville.

MR. STUBCHAER: Is there anyone else who wishes to cross-examine before we go to staff?

MR. LAVENDA: I have no questions.

E X A M I N A T I O N

by MR. CANADAY:

Q This is for Mr. Lehr or Ms. Chadwick.

You are concerned about the instream flows below the lakes in question. Those are part of the FERC Project 184; is that correct?

MR. LEHR: A That is correct.

Q And it's also your understanding that regardless of who holds the license on Project 184, that that license is due to expire in the year 2002?

MS. CHADWICK: A That is correct.

Q And at that particular time, there will be the relicensing process in which the Department, based on my experience and your experience, intends to play a part; is

that correct?

A The Department expects to fully participate. We do intend to fully participate in the relicensing of the project.

Q But the water right applications that have been applied for by El Dorado Irrigation District are not applications that directly affect instream flows coming out of those reservoirs at this time; is that correct? Is that your understanding?

A That's correct. Our concern in this case, I believe in the closing arguments in the last round of the hearing, we referenced the FERC relicensing proceeding where the consumptive use for the downstream limited the options that FERC considered in that relicensing because they were respectful of the State Board's authority over consumptive use, and so, we just wanted to make sure we don't end up in that trap again.

Q But it is your understanding that the Board is not considering amending those existing instream flows in this proceeding; is that correct, below the reservoirs?

A We understand that the State Board is constrained in what it can do about the Rock Creek decision.

Q Ms. Horenstein, what is before the Board is Project 1-B, which was identified in the Supplemental EIR produced by El Dorado County Water Agency.

Is that your understanding of what is currently before the Board?

MS. HORENSTEIN: A That's correct.

Q And your concern in your testimony is that as it pertains to the project footprints or alignment of the pipeline and disturbance of the soils and habitat has not been adequately defined?

A That is correct.

Q Are you aware of the testimony yesterday by Dr. Roberts that, in fact, what was represented in the Supplemental EIR was a programmatic level and that project specific studies and project specific mitigations were not identified in the Supplemental EIR?

A I understand that's what he said.

Q Is that your understanding from the reading and review of the document?

A That is not my understanding. My understanding from the review of the document is that there are conceptual pipeline routes that exist, and if you are limited to the road right-of-way and the pipeline routes that exist, that's a very defined area and would be available for the

assessment of impacts of this project.

Q The document identifies as mitigation measures D through D-10 that would pertain to habitat that's of interest to the Department, and again, those are on a programmatic level which would require -- is it your understanding that it requires full participation of the Department when those analyses go from a programmatic level to a very specific project level?

MS. CHADWICK: A We are checking it right now. I can't recall exactly what level of participation, consultation with the Department or coordination with the Department, or the different Departments that were involved.

Q I will ask you this question: As a supervisor, what specific terms or conditions should be included in any water right permit issued for Project 184 that would satisfy the Department as being able to participate in the development of terms and conditions and mitigations that would protect the resources about which you are concerned?

MS. HORENSTEIN: A We felt that the conveyance facilities are part of the El Dorado water project and that is why I wrote that there should be surveys done since they have conveyance routes designed, and that it makes sense to do surveys before you specify conveyance routes so that you can identify those sorts of problems, not the other way around.

Q So, what you are suggesting to the Board is that the condition be put in the water rights permit that requires El Dorado Irrigation District, prior to implementation and construction of that project, that they do the appropriate footprint studies of the depth and in cooperation and consultation with the Department of Fish and Game?

MS. CHADWICK: A And I think the one thing we would add to that is the idea that there can be evaluation of the alternative conveyance routes.

Q That will be part of the consultation, so I am suggesting to you if that is a concern of the Department, that in your closing statement or closing brief, that you request that type of permit.

That's all I have.

MR. STUBCHAER: Mr. Taylor.

MR. TAYLOR: No questions, thank you.

MR. STUBCHAER: And I have no questions.  
Do you have any redirect?

MR. CAMPBELL: No, I do not.

MR. STUBCHAER: We are going to defer ruling on the acceptance of the exhibits. We'll probably do that Monday.



Anything else before we excuse this panel?

I guess not, thank you very much and thank you for your brief summary.

We will now go to direct testimony of the Sierra Club, Kirkwood Public Utility District, and Alpine County.

MR. TAYLOR: And others.

MR. VOLKER: Mr. Stubchaer, I have here with me today several representatives of the organizations whom I represent who have to go back to their communities from whence they came, and for that reason, I would like to defer our policy statement until closing in order to maximize the time available for their testimony today in the hopes that we could get them off the witness stand and back to their communities as soon as possible.

Is that permissible?

MR. STUBCHAER: All right with me.

Anyone object? No objections.

MR. VOLKER: Thank you.

MR. SOMACH: Mr. Stubchaer, could I get just a clarification of the way we are proceeding here? It was my understanding we were going to proceed through everyone's case in chief with respect to the El Dorado applications, and then we were going to move through, as I understood, with respect to the applications by Amador, Alpine and Kirkwood, and the parties would then give opening statements and would put on their testimony at that point.

So, I am just kind of curious whether or not this panel will be focused on the question of El Dorado's applications, or whether or not something else is going to happen.

MR. STUBCHAER: Mr. Volker.

MR. VOLKER: That was not my understanding. This is a lay panel. Their testimony is in the record. They are simply here to summarize that testimony. By and large that testimony is directed to the protests that these organizations and individuals have lodged against the El Dorado applications.

MR. STUBCHAER: Does this answer your question, Mr. Somach, by and large?

MR. SOMACH: The by and large part does.

MR. GALLERY: Mr. Stubchaer, if I may, Amador plans on presenting -- we have three witnesses. We plan on perhaps ten minutes of protesting El Dorado's applications and perhaps five minutes in support of our own application, but all at once, we plan on doing that.

MR. STUBCHAER: Mr. Taylor, do you wish to comment?

I guess that's the way you have arranged it.

All right, Mr. Volker, are your witnesses aware of our time limits?

MR. VOLKER: I advised them that I understood the time limit per panel was on the order of 20 minutes. Is that correct?

MR. STUBCHAER: Actually, it's per witness.

MR. VOLKER: Per witness? I'm sure we will fall well below that. Everyone is anxious to get back home.

MR. STUBCHAER: Okay.

MR. VOLKER: Thanks a lot.

For ease of reference, I will follow the order in which the testimony of our witnesses appears in our Exhibit Identification Index, which was served on all parties on October 2.

The first witness is Mr. Kirby L. Robinson, Vice President of Plasse's Homestead Homeowners Association.

DIRECT EXAMINATION

by MR. VOLKER:

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

MR. ROBINSON: A My name is Kirby L. Robinson.

Q Have you taken the pledge?

A I have.

Q Have you had an opportunity to review your written testimony which has been marked SCLDF Exhibit 95-KR1?

A I have.

Q Does that accurately and completely reflect your testimony today?

A It does.

Q Do you care to summarize your testimony?

A Just very briefly, that my family's contact with the Kirkwood and Silver Lake area goes back to the 1860s. I have a very close concern for that area.

I own property in that area. My family owns property in that area and I am extremely anxious to insure that my progeny will enjoy the recreational capabilities of that area, not only for their lifetime but for the lifetime of their children.

Q Are you finished?

A Yes.

MR. VOLKER: Our next witness, Mr. Stubchaer, is Mr. Dan Dawson.

DIRECT EXAMINATION

by MR. VOLKER:

Q Mr. Dawson, would you state your name?

MR. DAWSON: A My name is Daniel Dawson.

Q Have you taken the pledge?

A Yes, I have.

Q Have you had an opportunity to review your testimony which has been marked as SCLDF 95-DD1?

A Yes, I have.

Q Is that a true and complete statement of your testimony today?

A Yes, it is.

Q Do you wish to add anything to that statement or summarize that statement?

A Yes, I do. Generally, as a backpacker and frequent user of that area and in consultation with other people who regularly use that area, it's extremely disturbing that further draws out of Lake Aloha are proposed. Granted draws currently do occur out of the lake, but being within a federal wilderness area, we feel it is inappropriate to further exacerbate any existing condition in an area that's supposed to be in a relatively pristine state.

Q For the sake of clarification for those who may not have copies of your testimony, what is the area you are referring to?

A This would be the Lake Aloha basin, Desolation Valley and Desolation Wilderness area.

Q Would you care to explain your experience with that area?

A Initially, it started off with several trips while I was in the Boy Scouts. That was in 1977 and 1983. Since that time, I have either stayed in or passed through the Desolation basin 12 times.

I have also taken some day hikes into that area, and those are all at various times of the year with varying water levels within the lake.

Q Would you care to comment on the difference in the aesthetic and wilderness experience that you had the privilege of enjoying when the lake was full as opposed to when the lake was drawn down?

A When the lake is full, which is generally in the springtime, it has the appearance of a natural lake. The size of the lake itself is such a dominant feature in that valley, it certainly adds to the experience in addition to the other natural features in the area.

The bathtub ring that appears around the lake as summer draws on through this drawing down of the water level leaves quite a large scar in the basin, especially since the lake is so large.

Reservoirs are not really natural in their appearance because of that, so I would object to further drawdown as a result of this application.

MR. VOLKER: Thank you, Mr. Dawson.

Our next witness is Norbert Rupp. Mr. Rupp is chairman of the League to Save Sierra Lakes.

DIRECT EXAMINATION

by MR. VOLKER:

Q Would you state your name for the record?

MR. RUPP: A My name is Norbert Rupp. I am chairman of the League to Save Sierra Lakes.

In summary of my testimony, I came to this meeting two years ago and I had the sense then and the sense today is why, and I tried to address that in my testimony. And the why is the face of the people. Why are these lake levels critical to that environment? Because it's the people.

I made 12 exhibits showing faces of the people that are there, and although it is very difficult to see, I made an exhibit also of those people to give it a sense of why.

You might look at the little center. There's two people there. One is a little girl throwing a rock into the lake, maybe hearing the splash for the first time; and a fisherman, a fisherman that might be saying, the worst day of fishing is better than the best day of work.

And as you look at that picture, you will see that that lake has some real lunkers. There's some real reasons to be there.

But when we look at this area, and I have been involved in this thing for three years now, I have read every bit of testimony and I have gone over the 20,000 pages of documentation, and the issue seems to be so simple. In other words, isn't there a way to establish a lake level and a recreational season to guarantee that all of those people that come there for that unique experience will have an opportunity to be secure?

In other words, what I have read and what I have listened to is trust me, read my lips, we are not going to do this any different than PG&E has done it in the past.

I may be just a neophyte at this. Three years ago I didn't know what CEQA was, much less how to spell it, but one thing I know is that you have to have things in writing, you have to have it in documentation. You have to have guarantees, and all of this conversation today about FERC, you know, I went back at lunchtime and reread the 1980s documentation of what FERC says. There is no mention of

specific lake levels. There's no guarantees there.

About two months ago, well, no, before that, I went back to Washington. I went to Doolittle's office to try and get some amplification of what lake levels means. I came up totally short.

When I found out about this sale, I called the offices of FERC and said, what's the process of license transfer, and I was assured that there would be a license transfer process and that there would be a public hearing, and they told me the public hearing was going to be in Washington. You know, how do you get there? How do you make your point?

I went to Mr. Volker and I said, can we get representations in Washington? I said, I'm going to be there. Then I called the gentleman who is representing FERC that is going to handle the license transfer in Washington, and I said, I talked with the San Francisco representative and he assured me that there was going to be a public hearing. He said, oh, no, there is not going to be a public hearing. We are going to hold three days of public -- I can't think of exactly the correct terminology -- a hearing notice in the Federal Registry for 30 days and give the public an opportunity to respond.

I don't think those people have an opportunity to respond. In other words, how can we get these lakes guaranteed? What must we do?

As I listened this morning, I thought we were finally coming somewhat together. I participated in all of the negotiations. At one time I thought we were very close, but it all came to nil.

There has to be a way of reasonable people coming to reasonable and intelligent answers to problems like this, rather than this tremendous altercation and the expenses involved, by people sitting down and being reasonable.

Q Have you had a chance to review the testimony which has been marked as SCLDF 95-NR13?

A Yes, I have.

Q Does that accurately reflect your testimony today?

A Yes, it does.

Q Did you take the pledge?

A Yes, I did.

Q Would you care to approach your diagram where the pictures are in order to elaborate on it?

A Sure. I know some of you have the colored pictures. We have a little girl here and I thought she sort of epitomized it all. In other words, I think our decisions

have to be made, not for that little girl, the granddaughter of someone, but for her granddaughter.

The things that are going to be done here, as far as I see, are something that's going to last for a long long time.

Going back and changing this process, to me, will be insurmountable. We must find a way of getting good solid answers to guarantee that little girl's granddaughter will have the opportunity to have the recreational experience that I and my grandchildren have had to go to these lakes and get the rejuvenation that you can have in that kind of place.

I think there will be other panelists that will speak to the numbers of people, and I think you will be boggled at the number of people that go to these areas, and our society needs it.

These are finite resources. There is no way of getting more and there's more people, and if we don't save them now, there's not going to be an opportunity in the future.

MR. VOLKER: Thank you, Mr. Rupp.

Our next witness is Bradley Pearson. Mr. Pearson is the owner and manager of Kit Carson Lodge at Silver Lake.

DIRECT EXAMINATION

by MR. VOLKER:

Q Mr. Pearson, would you please state your name.

MR. PEARSON: A My name is Bradley R. Pearson.

Q Have you taken the pledge, sir?

A Yes, I have.

Q Have you had an opportunity to review your testimony which has been marked as SCLDF Exhibit 95 BP5?

A Yes, I have.

Q Does that accurately reflect your testimony today?

A Yes, it does.

Q Do you care to summarize your testimony?

A Yes, I will. I will try to be as brief as possible.

I operate Kit Carson Lodge, which has existed since 1926 on Silver Lake. We operate under a special use permit with the U. S. Forest Service, and so, along with campgrounds in the area, are one of the substantial providers of services for daytime and overnight guests in the Silver Lake basin.

The primary concern of Kit Carson Lodge is the maintenance of high lake levels from mid-May, or late May to mid-October, and that's the recreational season at Silver Lake.

We are open and there are many of the facilities at Silver Lake open into October. My testimony states that as late as September 21, the air temperature at Silver Lake in the mid-afternoon in the shade is 73 degrees. The water temperature on September 21st of this year was 69.8 degrees. That's very warm for a high Alpine Lake that has 18 inches of ice or more in the wintertime.

This lake is heavily used for fishing and swimming as late as the end of September. A lot of times we look at these lakes as we drive by them and we think they are fairly desolate. Silver Lake is deceiving because there are so many trees and so many uses within the trees. We have over 2,582 bed spaces on Silver Lake. That's how many people can sleep there at one time within a stone's throw of the shoreline. We have a number of uses on the lake that are of substantial economic and recreational interest in the area.

In terms of resorts, campgrounds, individual homes on Forest Service land, individual homes on fee simple land, several Boy Scouts camp, municipal camps, we have compiled figures from all users of the lake and we find that in a season, a four and a half month season, we have approximately 209,660 overnight visitors. These are people sleeping during the summer season at Silver Lake. We have 201,596 daytime visitors. This is over 400,000 users of Silver Lake alone.

To date, El Dorado has failed to show how it can operate, actually operate this project, that would rely on Silver Lake as a water source and at the same time preserve the recreational economic viability of the lake.

On Silver Lake right now there currently are in place or applied for the following water rights: 5,000 acre-feet for PG&E hydro, 5,000 acre-feet Pacific Gas & Electric Company water right for consumptive use that goes to EID through the 1919 agreement, 6,000 acre-feet presently applied under the current subject application by El Dorado for consumptive use, and 2 cfs going to the Department of Fish and Game for minimum streamflows. This constitutes over 16,000 acre-feet for a lake that has a standing capacity in the FERC documentation of 8,590 acre-feet.

The question that we raise now and we have raised before is how do we supply all these water needs, 16,000 acre-feet out of a lake that holds only 8,590 acre-feet?

El Dorado Irrigation District currently fills 15 percent of its 1990 water demands from Silver Lake, and by the year 2020, will be filling 18 percent of its demands from Silver Lake alone.

If you look at the three mountain lakes that the applications are for, we are talking about filling between 37 percent and 55 percent of that demand from these three lakes.

So, obviously, I think our concerns are very critical because these lakes are an integral part of the water system in El Dorado County now and in the future.

As we have stated before in prior testimony last year, Silver Lake has a standing volume of only 8,590 acre-feet, yet EID is looking for, from its existing 5,000 acre-feet and its proposed 6,000 acre-feet, 11,000 acre-feet out of this lake. It's 128 percent of the usable capacity. Why are we asking for 128 percent of this lake?

We have asked this question a number of times. We failed to get an answer.

Now the project has been downscaled from 32,000 acre-feet to 17,000 acre-feet. How much will be coming out of each one of these lakes? I haven't had that one answered yet either.

We still show in the applications 6,000 from Silver, 5,000 from Aloha and 21,000 from Caples. We have downscaled it from 32,000 to 17,000. How much comes out of each lake?

I think that if this Board is to issue a water right, we ought to know how much water is coming out of where, a fairly straightforward question. I haven't been able to find the answer to this.

As Mr. Stubchaer requested yesterday afternoon of El Dorado, what condition could be placed on the proposed permit regarding operational control of the lakes that is enforceable and monitorable. This is something that we have been looking for now for some time and we fail to see any light at the end of the tunnel.

We certainly would like to see something forthcoming from El Dorado in that regard.

I think getting back to my point about late water, we feel it is very important that there be late water in this lake well into September. This year there was a lot of water taken out of Silver Lake in September and for no apparent reason. There wasn't a hydro project operating, so the water didn't go to El Dorado under 1990 water, and yet, just as usual the water is drawn down in September.

We feel it is very important with these kinds of occupancy at the lakes -- we did 25 percent of our business in September and October, the lodge did. We were 76 percent occupied throughout this period. And so, it is a very active time of the year.



I call the Board's attention to my exhibit, SCLDF 95-BP1, which is a chart that shows what happens if you were to take 8,590 acre-feet out of this lake. This is very critical to us. Even if you don't exercise the entire entitlement to your water rights and only take a portion, you end up substantially reducing this lake.

The charts which El Dorado has shown as Exhibit No. 78, Table 7.2 shows for a representative year a mean water level for the end of September of 10.5 feet above the staff gage, 10.5 feet of water in the lake. They show that as a representative water level for the end of September.

Attached to this is an update to my photograph which shows what happens to the lake. This is a photograph that is less than 48 hours old and shows what happens to the lake when you take that amount of water out and you end up with 10.6 feet of water. This is what you are looking at today. This is what Silver Lake actually is today.

We end up with probably three-quarters of a mile of receded shoreline at the southern end of the lake. We have often alluded to this in our current testimony and testimony over the years, that Silver Lake has a big long shallow shelf as you head south to Plasse's Resort.

As the lake drops a foot you lose a hundred feet of shoreline or more, and I think this current photograph of what we have at the lake is very illustrative of this, that you lose a tremendous amount of surface acreage as the lake begins to go down even in small amounts, especially in an area where we have a substantial investment in summer homes, group camps and such.

We think it is very critical that we have guarantees of minimum lake levels throughout the season. So far we have failed to see this.

There has to be guarantees, that if there is water to come out of these lakes to El Dorado, do we want to have El Dorado coming back in the future and saying, oh, my gosh, we have a terrible health and safety crisis down in El Dorado County. The folks can't water their lawns, they can't flush their toilets, they can't do their laundry, we need to take more water out of the lake.

This issue has been hashed over a number of times. There has to be guarantees.

Once again, we have not seen anything from El Dorado in terms of guarantees on how they will maintain these lake levels even if they have to undergo shortages down in El Dorado County with the new homes that are built because of this.

We feel the State Water Resources Control Board has never conducted a comprehensive inventory analysis of water resources, existing water uses and existing water rights and pending water rights in this watershed, and that that really needs to be done.

I go back to my issue that we have pending water rights and existing applications, existing rights of up to 16,000 acre-feet or more on Silver Lake and yet the standing water volume in that lake is only 8,590 acre-feet. So, where is the water?

We consider that the operation of Project 184, whether by PG&E or El Dorado, is critical to the issuance of this permit, and we think the transfer to El Dorado Irrigation District is critical to these proceedings and should be a portion of these proceedings as to what would be the difference between PG&E and EID partnership operating this.

They have different needs, there's going to be different operating regimes and there is no reason why with the asset sale agreement in place why the existing operating regime of PG&E could not be placed as evidence before this Board.

Before PG&E was an active protestant and that information was confidential, but now we have EID already hiring hydro staff, talking about building a new headquarters, we are talking about a sale that as far as I can see in the local press is 99 percent certain as far as El Dorado Irrigation District goes.

So, therefore, I think El Dorado Irrigation District knows what it is buying and I think it knows how it is going to operate. I think it knows what that operating regime is. I think that should be disclosed.

By operating regime I am not talking about the disks that were talked about in the past data, end of the year and daily discharge and such. We have had that stuff for years. Everybody knows how much water is going over the dam. What we need to know is why does it go over the dam, and when does it go over the dam and for what purposes, what water goes where and when?

These are the operating criteria that are set up at the beginning of each year according to that particular water year, but is set up according to year, standards and policies that are in place year after year.

They don't all of a sudden get together at PG&E every May and reinvent the wheel. They know how they are going to act in certain types of water years. Why can't this

information be brought forth?

In summary, we continue to find El Dorado's application for water rights are incomplete. Issuance of the permit at this time would be premature.

El Dorado failed to allay substantial public controversies throughout these applications. There are still many unresolved protests before the Board. We should have all the cards on the table and everything resolved, I think, before we issue a permit on this application.

Thank you very much.

MR. VOLKER: Thank you, Mr. Pearson.

Mr. Stubchaer, our next witness is Steve Bevitt, President of the Lake Kirkwood Association.

DIRECT EXAMINATION

by MR. VOLKER:

Q Mr. Bevitt, would you state your name.

MR. BEVITT: A My full name is Raymond Steven Bevitt.

Q Mr. Bevitt, have you had an opportunity to take the pledge?

A Yes, I have.

Q Have you had an opportunity to review your testimony marked as SCLDF Exhibit 95-SB1?

A Yes, I have.

Q Do you care to summarize your testimony?

A I don't wish to prolong this process, but I would like to underline a couple of points, if possible.

Q Please go ahead.

A First of all, to describe our lake, Lake Kirkwood is a natural lake so tiny it does not even appear on your general map over there. We lie in between Silver Lake and Caples Lake. I represent an association that's existed now for 50 years, most of it cabin owners. We are Forest Service permittees. There's approximately 25 cabins around this little lake and I should say that at least fully half of the families involved have been there at least 50 years also, that are still there, which is to say we have very long collective memories, you know, about drought and times of abundance and whatever.

We are also more than a little aware of what it means to keep a lake as a viable recreational facility. In our case, for example, we draw water directly from Lake Kirkwood for our own consumptive use and, therefore, we have to be especially careful of it, which means that we do at least two to three water tests every year. We have done that for over 30 years.

We have a limnological study that is ongoing for the past ten years to better understand the lake and, of course, we do regular housekeeping duties like trail maintenance and pulling out garbage and things like that, which is to say we are very aware of what it means to keep lakes as a viable ongoing entity that people will want to visit.

Now, our membership, when it came to our attention, and I should say that does not appear in my testimony but I think it is vital that we have no economic interest whatsoever in the matter before this Board. When we heard that Caples, Aloha and Silver Lakes could be drawn down in years of drought, which will happen again we know, to tragically lower levels, our membership voted and has voted with its money also, and we contributed to the League to Save Sierra Lakes to the extent that our limited resources permitted.

And basically, we want on the record that we are protesting this as an ill-considered grab for water. We think we need to carefully balance the issue here between upstream users and downstream users.

Again, we are neutral here because the water comes from our own spring-fed lake. We don't get water and we don't have money involved in any project here, but we would like to see the area maintained in its relatively beautiful form right now.

Frankly, I don't envy you your task whatsoever because as a native of California, I know the history of the state really is the history of water rights and there are many considerations you have to balance. I don't envy you your task.

Thank you.

MR. VOLKER: Thank you, Mr. Bevitt.

Mr. Stubchaer, our next witness is Mr. John Brissenten, who is the owner/operator of Sorensen's Resort in Hope Valley, Alpine County.

DIRECT EXAMINATION

by MR. VOLKER:

Q Mr. Brissenten, would you state your name.

MR. BRISSENTEN: A May I stand?

Q Certainly.

A It is easier to see the smirks of the El Dorado people from here.

I am John Brissenten.

Q Mr. Brissenten, did you take the pledge?

A I certainly did.

Q Have you had an opportunity to review your testimony

which has been marked SCLDF 95-JB1?

A Yes.

Q Does your written testimony accurately reflect your testimony today?

A It does with a few additions.

Q Do you care to summarize your testimony?

A I would like to read it.

MR. VOLKER: Is that permissible?

MR. STUBCHAER: How long is it?

A A page and a half.

MR. STUBCHAER: It is probably faster than trying to paraphrase it.

A I will certainly consider the time that has been spent here by you. I should mention in passing that you had before you thousands and thousands of people hours who have dedicated their lives to the fight before you and on the other side, you have millions of dollars that have been represented by money paid to legal staff.

My name is John Brissenten. I and my family have owned and operated, along with about 25 employees currently, Sorensen's Resort at 14225 Highway 88, Hope Valley, California.

I'm appearing before you to express my strong opposition to the water rights application of El Dorado County. I am most upset over this as well as the El Dorado Irrigation District.

As an historic settlement serving the general public, over 100,000 people a year in Alpine County, and this public comes from throughout California, the nation and the world.

Being located a short distance from Caples and Silver Lakes, we at Sorensen's have a unique view of this water grab by El Dorado County.

Over the past 100 years, Sorensen's Resort has provided the people of California premier outdoor experiences such as fishing, hiking, skiing and now historical photographic and painting opportunities, with these threatened lakes being an important facet of our guests' enjoyment of its Alpine environment.

During our tenure over the past 14 years, we have cajoled and have imbued our visitors with a conservation ethic beyond compare, leading to a major public land acquisition of over 25,000 acres in Alpine County.

This commitment has been through a unique partnership of local residents, visitors and national interests to preserve the open spaces of Alpine County, a national treasure.

Now, in the case of El Dorado County, we have a neighbor attempting to destroy the habitat and natural vistas of Alpine County, a neighbor attempting to destroy what we and thousands of others have so valiantly struggled to save over nearly a decade.

Please protect the environment and economic health of Alpine County so dependent on the visiting public.

I might add as past chair of the Chamber of Commerce, 1986 to '88, we have studied this whole area and we serve upwards of two million people a year that come to enjoy this very important part of California.

We are so dependent on this visiting public that desires to experience our natural setting, a setting that is world renowned and of breath-taking beauty.

The citizens of Alpine County and our nation plan for our future with these natural assets as our cornerstone.

As we have planned, so should El Dorado County plan. The taking of our assets that we have worked so hard to protect will certainly not satisfy the rapacious and voracious appetites of developers who desire our water.

And as of yesterday, given the testimony, the wrongfully taking of our water; in the old days we in the West would have taken them out and shot them. All we are asking you to do is say no. I feel that we are a civilized society in Alpine County and we wish El Dorado County was as well.

Thank you for your consideration.

MR. VOLKER: Thank you, Mr. Brissenten.

Mr. Stubchaer, our next witness is Mr. Bart Bird, who represents the 49er Council of the Boy Scouts of America.

DIRECT EXAMINATION

by MR. VOLKER:

Q Mr. Bird, would you state your name.

MR. BIRD: A Bart Bird.

Q Mr. Bird, did you take the pledge?

A Yes, I did.

Q Have you had an opportunity to review your testimony which has been marked as SCLDF 95-BB?

A I have.

Q And does that testimony accurately reflect your testimony today?

A Yes, it does.

Q Do you care to summarize your testimony?

A In short, the Boy Scouts camp is right on the water's edge. We use Minkalo which was built by the Campfire girls in the early 1920s. There's a bay coming off the lake when

it is full that supplies us with a very nice waterfront, the docks that the Campfire Girls put in.

If the water level fluctuates very much, that bay becomes just a muddy little puddle. So where our needs come is to have a steady lake level at a full position through the summer season, and that is basically a summary of what our needs are.

Q Mr. Bird, would you care to comment on the unique facilities available at Silver Lake for the Boy Scouts program that you have in place there?

A Well, it's easy for people scouting to identify as unique. With the program that we have in place, the closest next Scout camp would be in New Mexico. We have a unique combination of those mountains right close to us, the rocks right in camp right down to the water's edge, a beautiful lake, the appropriate size. We use the lake for sailing. We have a very nice sailing program, swimming, snorkeling, canoeing, and we use our camp as a jumping-off point for other programs associated with the lake, let's say, in the sense of learning to canoe on the lake and then taking the Scout to rivers down below and running them.

So that part of the lake is very important to our program. We have mountaineering; that is rock climbing, a cycling program, backpacking, but I would say probably a good third of our program area is associated directly with the water in the lake.

Q Mr. Pearson testified a few minutes back with regard to the lake when it is drawn down to a staff-gage elevation of ten and a half feet roughly.

Can you tell us what happens to your aquatic program when the lake is drawn down?

A At that level, if you look at the picture -- well, you can't actually see our camp or the little bay that we are in, in that picture, but it indicates at that level that we would have a very low water level, if any, definitely not usable because of stumps and other things that are on the bottom in our section of the lake.

So, at that level of drawdown, not only do we not have the water there, but because we have that shelf, we do not have access to the water because the mud in that stays around, doesn't dry up right away.

Q What is the depth of a full lake at your docking facility?

A I would say approximately seven to eight feet.

Q So, with the lake drawn down seven to eight feet, your docking facility is high and dry?

A Yes. But because of the structures on the bottom, you know, if we lose less than that, we start having problems.

Q Can you explain for us the importance of keeping lake elevations up through September in terms of your program?

A In terms of our program, it would be that we can't get into our camp until what might be considered late in the season for some people, July 1st, because of snow probably, so we don't get the May and June access to our camp.

Our program basically starts the 1st of July and would extend after that for camp development, maintenance and for the presentation of our program, so for our program we would need water, you know, later in the season, essentially through the summer period.

Q Do you have anything more to add?

A I do not.

MR. VOLKER: Thank you very much, Mr. Bird.

Mr. Stubchaer, our next witness is Mr. Leonard Turnbaugh, who is the Public Works Director of Alpine County.

#### DIRECT EXAMINATION

by MR. VOLKER:

Q Mr. Turnbaugh, would you state your name.

MR. TURNBAUGH: A My name is Leonard Turnbaugh.

Q Mr. Turnbaugh, did you take the pledge?

A Yes, I did.

Q Have you had an opportunity to review your testimony which has been marked as SCLDF 95-LT1?

A Yes.

Q Does that testimony accurately reflect your testimony today?

A It does.

Q Do you care to summarize your testimony?

A I would like to summarize it and just kind of highlight a couple of points that are in it.

Q Proceed.

A I do make a statement in my testimony here that we have not received the proposed operating plans from El Dorado Water Agency or El Dorado Irrigation District, and from what we have heard here in the last couple of days, those plans are still not available to us, or to anyone else or to your Board to review what their proposed operation of these lakes is going to be.

We know from the testimony that there is agreement with PG&E to sell the lakes. You have heard about historical operation of the lakes. At the same time, you



have heard reference to a 1919 agreement and how it's been operated, yet it is our understanding under the 1919 agreement that approximately only half of the water was by consumptive right. The other half was supposed to be from natural flowing streams, yet you heard it was being taken out of Caples Lake where there was no consumptive right for the water.

We feel that viewing history when history has been in error, or utilizing history that has been used in error, is inappropriate and unfair. You hear of 17,000 acre-feet being applied for today, yet we do not know where that 17,000 acre-feet is going to come from. Is the 17,000 all out of Caples, is it 15 out of Caples and 2 out of Silver, or is there some other mixture?

And then, when we throw the 1919 water into it, when approximately half that water or 7,000, 8,000 acre-feet of water has been taken from Caples that was not under a consumptive right, all of a sudden are we talking 24,000 acre-feet or water out of a 21,000 acre-foot lake?

We have some real concerns here as to what is going on and how to weigh it. We are being asked, your Board is being asked, the public is being asked to consider a project here on a trust-me basis, although in our area and our county, trust and a handshake has worked for over a hundred years.

We have concerns when we cannot see what we are dealing with and actually be able to weigh it. Once we have that information, maybe trust me and a handshake will work.

I think Alpine County would like to continue to work with our neighbors and work toward solutions. However, we need the information in order to make a fair and just review of this in order to come to some agreement.

You are being asked by this environmental document and their findings of overriding consideration that you just received today, to consider their economy and their future economy, and I would propose to you that you are being asked to consider their economy at the peril of an existing economy, a future economy versus an existing.

And our existing economy is not only Alpine County, it is from Jackson clear to the Nevada border. It is the Highway 88 corridor. It has existed for 70 to 80 years as a recreational area as these lakes were developed and this recreation came into being.

Highway 88 is now a year-round corridor. It wasn't that 20 to 25 years ago, yet it is today. It is now in the national highway system. It's a national hot scenic byway.

It's also a state scenic highway.

You have a growing economy here that is in existence versus one that may happen if growth may occur in El Dorado County. And you are being asked, or it is purported in this finding that it is going to come, therefore, we need to provide water for it.

If you don't provide the water, it won't come. We have the water, let's keep it. Let's keep our economy going and let's do that by the State Board coming to some reasonable parameters setting forth here how we can measure these water years. History with PG&E does not show us anything except inconsistency.

Mother nature, however, does show us some things. We can look at the snowfall records, look at the moisture content, how much water is in the basin of Caples Lake and make some rational decisions as to quantifying the water and quantifying years and operation in order to protect the lakes, and still try to achieve some, not all, but some of what's being asked for.

Thank you.

MR. VOLKER: Thank you, Mr. Turnbaugh.

Mr. Stubchaer, our last witness this afternoon is Mr. Tim Pemberton. Mr. Pemberton is County Counsel and District Attorney for Alpine County, and also, he is a member of the Board of Directors of the Alpine County Chamber of Commerce.  
DIRECT EXAMINATION

by MR. VOLKER:

Q Mr. Pemberton, would you state your name.

MR. PEMBERTON: A My name is Timothy Pemberton.

Q Did you take the pledge?

A Yes, I did.

Q Have you had an opportunity to review your testimony which is marked as SCLDF Exhibit 95-TP1?

A Yes, I have.

Q Does that accurately reflect your testimony today?

A It does.

Q Do you care to summarize your testimony, please?

A Yes. I shall be brief.

Alpine County is a resource-based or has a resource-based economy, that means natural resources.

In the past logging, mining and grazing activities supplied the economy. Those activities are on the decrease within this region and within that county. We still have God's handiwork there and we make use of it now for tourism. And the core area for tourism in Alpine County is the Highway 88 corridor.

You have heard the statistic today, I will add just a couple. The Forest Service installed a log house at the top of Carson Pass that provides tourist information, wilderness permits and the like. Sixteen thousand people stopped their cars there and got out and went over and signed a register at that place. God only knows how many actually drive down the road.

Since mining is not currently occurring in Alpine County, since timber sales are disfavored and are not occurring there, and because the grazing seems to be inevitably restricted, we have tourism, and to have that we have to have the water, and this is the choice that Alpine has made for its future.

Now, we may not have the water because of the ambitions of our neighbors, and it is not fair. We live in modern circumstances. None of us make a great sum of money. We have traded off the lifestyle for those things. We need the water right where it is right now and in the future. It is that plain.

Water is not just to service homes and put down toilet bowls and wash people's hands. Water is also to look at for its beauty and to swim in, and to get on a boat and use it. That's all part of life. And as the population in this state increases, the need for human beings to do these things increases.

That's all I have.

MR. VOLKER: Thank you, Mr. Pemberton.

Mr. Stubchaer, that concludes our direct testimony for my lay panel.

MR. STUBCHAER: All right, thank you.

Who wishes to cross-examine this panel?

Mr. Somach.

MR. SOMACH: I need a couple of clarifying questions on this process. I guess I have 20 minutes to cross-examine nine or ten people?

MR. STUBCHAER: Nine.

MR. SOMACH: And to cross-examine on not only their protest, but also their application, or am I going to have a separate opportunity to discuss, for example, with Mr. Turnbaugh his application to appropriate water?

MR. TAYLOR: For clarification, I gather from what you are asking, and I didn't understand your earlier question; is the Sierra Club's presentation intended to be a presentation in support of its application at this time or just testimony with regard to the protest?

MR. VOLKER: It is intended to be testimony with

regard to both matters.

MR. TAYLOR: Do you have additional testimony by your second panel on the subject of the pending applications?

MR. VOLKER: Yes, we do.

MR. STUBCHAER: Will that be -- that is the expert panel?

MR. VOLKER: Yes.

MR. STUBCHAER: Will that be primarily on the pending applications?

MR. VOLKER: No, it will be primarily on the protests. As indicated in the testimony of Mr. Pemberton, two of the applicants, the Kirkwood Meadows Public Utility District and Alpine County, have adopted resolutions, a copy of which is attached to Mr. Pemberton's testimony, confirming their position that they are willing to suspend their water rights applications in deference to this Board's exercise of its authority to assure that a comprehensive watershed inventory is conducted for the purpose of getting at the facts that are so sorely absent from this process.

Their position is that no significant water rights applications should be granted until this necessary information is in place.

MR. STUBCHAER: Mr. Somach, with regard to the time available for cross-examination, if you need more time, you may request it. We are going to recess at five p.m. today.

MR. SOMACH: If I could just ask one question, who is testifying on behalf of the applicants in favor of the application? I can understand that and maybe segregate my questions out a little bit.

MR. VOLKER: Mr. Pemberton, the County Counsel, and Mr. Turnbaugh, the Public Works Director are here today to answer questions you might have with regard to the status of their pending water rights application.

MR. SOMACH: Can you give me the names again -- Mr. Pemberton and who else?

MR. VOLKER: Mr. Turnbaugh.

MR. SOMACH: And those are the two individuals, and they are not coming back on Monday?

MR. VOLKER: If we can wrap things up today, that is correct.

MR. SOMACH: May I ask another question, and that is in the context of this resolution for a watershed study that you referred to, is there someone going to present testimony on that issue?

MR. VOLKER: That testimony is contained in the written testimony of Mr. Pemberton.

MR. SOMACH: Okay.

CROSS-EXAMINATION

by MR. SOMACH:

Q Mr. Pemberton, can I get some better understanding about what you are talking about in terms of this broader watershed study?

MR. PEMBERTON: A It is our impression that the total availability of water on this drainage has not been determined, and in order to avoid the appearance of taxing the drainage with a consumptive water right, we are willing to withdraw any application for consumptive water use at this time.

That does not extend to the application to keep the water where it is in the lake for nonconsumptive purposes.

Q Let me ask you this question, though. It is the water in the lake for nonconsumptive purposes which, as I understood your testimony and the testimony of others, is the cause of tourism and use in these lake areas; is that correct?

A That is part of it. I referred to it as God's handiwork. Now, we can nit-pick it, but I think that destroys the statement. It's the presence of water, the color, the reflection of wind on the surface of the lake, all of these aesthetic things that create the beauty of the lake.

Q So, as a consequence, water quality would be one of the essential elements of any comprehensive study associated with the watershed; is that correct?

A Assuming the water is there, that's true.

Q And in that context, as I just kind of looked at the numbers that were being argued in terms of the number of uses in these areas, give or take, as I understand, 200,000 persons overnight, 200,000 day users, and these are rough numbers I gleaned while I was listening, about 400,000 person days is what we are talking about there?

A That was not my testimony. My testimony indicates around 40,000 within a certain vicinity.

Q What vicinity is that?

A I focused primarily upon the Alpine County portion of this area.

Q To the extent, however, that you are looking at a watershed analysis, you are talking about a broader view of these lakes; is that correct?

A Yes, we call it the Highway 88 corridor, which extends east to Brissenten's operation in Hope Valley.

Q And the impact to water quality associated with such

things as overnight and day usage, we are talking here about whatever and everything that is produced by those day users and overnight users. That would all be part and parcel of the analysis you are proposing here; is that correct?

A There are established campgrounds with their training -- I don't understand what you are getting to.

Q I am not familiar enough, unfortunately, with the exact operations, whether these are septic systems, sewer systems, or what have you, but to the extent that these activities are taking place within the area that we are talking about, those certainly would be areas that would be included in whatever comprehensive study was being undertaken; is that correct??

A That is likely correct. I have lived in that area for over 20 years and I have made no observation that the presence of tourists has led to water degradation in these areas.

Q You are a lay witness, however, are you not?

A That is correct.

Q You are not an expert in any of these areas?

A I didn't purport to be. I said based upon my residence in that area.

Q Your lay observation?

A That's correct.

Q Mr. Pemberton, why didn't the County bid on Project 184 if it was so concerned with respect to the operation of the lakes as you have described them?

A We are not a wealthy place. Our budget is only a few million dollars a year. We simply don't have the resources to tackle a project like that. It was discussed with the board and we simply do not have the financial wherewithal to undertake that.

Q You intend to participate in any future proceedings dealing with the operation of the lakes?

A I don't know what you mean when you say proceeding.

Q In other regulatory bodies, the California PUC or FERC?

A I am not here today in my capacity as an attorney. That is Mr. Volker's area. You should direct your questions to him. He promulgates the legal strategy that will be used by Alpine County.

Q You certainly misperceived the focus of my question. My understanding from Mr. Volker was that you were acting in your representative capacity, perhaps not as a lawyer but speaking on behalf of the County.

A That is correct, and I am not the attorney of record

within these proceedings. Mr. Volker is, and we are deferring to his judgment on further proceedings as we have on this one.

Q I see. So that the County will make no independent judgment with respect to whether it intends to participate in these other proceedings, but defer entirely to Mr. Volker?

A No, sir, you know that mischaracterizes grossly --  
MR. STUBCHAER: One at a time.

MR. VOLKER: I think this line of questioning is argumentative. I think that it is taking us far afield from the testimony of the witness. I would discourage it.

MR. STUBCHAER: Perhaps we could have a narrative of the relationship of Alpine County Counsel and the Sierra Club attorney as proposed in the future proceedings without argument.

A Which proceedings? This is so speculative --

MR. STUBCHAER: The way I understand it, it would be the FERC proceedings.

MR. SOMACH: Yes. And my question is whether or not Alpine County intends to participate in the California Public Utilities Commission proceedings and the FERC proceedings with respect to the transfer of this project. I don't believe that is argumentative, and moreover, I believe it is germane since there certainly has been enough discussion from their perspective on that issue.

MR. STUBCHAER: The argumentative part of it was perhaps the way the question was posed.

A Isn't this going somewhat beyond my direct testimony? I did not come up here --

MR. STUBCHAER: This is cross-examination on an application and it's fairly broad, so do you wish to answer?

A The question is, are we going to protest in front of PUC?

MR. STUBCHAER: No, participate.

A I don't know as I sit here.

MR. STUBCHAER: And the FERC?

A I do not know as I sit here.

MR. SOMACH: Q Mr. Pemberton, does the County have objections to the way Pacific Gas & Electric are operating the reservoir or the lake at this point in time?

MR. PEMBERTON: Objection. In what form, in terms of litigation, contemplated litigation?

Q No, I am looking toward trying to understand the operation that's been ongoing for at least 60 years and the County apparently is arguing for something, and I want to

know is it maintenance of the status quo, is it some other operation? What exactly is the County urging with respect to the lake and lake levels?

A I think it is a fair statement to say we are urging maintenance of the status quo, but there is a caveat or footnote on that point. We have information that some of the water delivered under the so-called 1919 agreement, in fact, comes from Caples Lake, and there is no legal entitlement to do so.

Q If I could put that aside with the clear recognition that that qualification is there, and certainly, a debate at some point about the issue, I suspect, but assuming that the historic operation itself were to be maintained with respect to lake levels, would the County have an objection to that?

MR. VOLKER: I would object on the ground that historic operations defies definition. The question is vague. We have spent the better part of the last two days attempting to get our hands around the concept of historic operation.

If you would care to break your question down into specific operating parameters, perhaps the witness could address them.

MR. STUBCHAER: It seems to me the witness has been there 20 years and historic operation is what occurred.

A I think this phrase is very glib, myself, and I thought so before I got here today, and now I am convinced that this is a very glib statement, a historic operation. I don't know what that means.

I have driven by Caples Lake in the late summer and seen it drawn down very substantially and basically a stump patch that looks like an atomic bomb went off there. It's a very unattractive looking place, and the water level was several feet less than it was when I last passed by yesterday at the same point in time in other years.

So this statement, historic operation, I am perplexed by it personally because I have seen everything from the thing being relatively full to basically a stumpy bog.

MR. SOMACH: Q I apologize. I must have misunderstood your prior response. You indicated you were not objecting to the way PG&E had operated over a period of time.

Am I to assume that the County does object to the way PG&E has operated the facility over a period of time?

A Are you asking for my personal opinion as an individual or am I speaking on behalf of the County at this time?



Q I'm asking you in whatever capacity that you are here testifying, no more, no less.

A I don't feel comfortable characterizing the board's position and it may be the board has not adopted positions on these things.

MR. SOMACH: Mr. Volker, will there be any other official representative of the County testifying on Monday?

MR. VOLKER: No.

MR. SOMACH: So that Mr. Pemberton is the only witness you are offering in that capacity in terms of representing the view of the board of the County?

MR. VOLKER: No.

MR. SOMACH: Who else will be presenting information on that, and the reason for this, I don't want to argue if he doesn't have the answer. That will be the end of it. I am just asking whether or not someone else would be testifying.

MR. VOLKER: Mr. Turnbaugh is here today also on behalf of the County.

MR. SOMACH: Q Mr. Turnbaugh, what is the County of Alpine's view with respect to the operation of the lakes by PG&E?

MR. VOLKER: Objection, vague and ambiguous.

MR. SOMACH: Q The historic operations of the lake.

MR. VOLKER: Same objection.

MR. STUBCHAER: Do you want to put some time frame on it?

MR. SOMACH: Q The past 60 years of operation.

MR. VOLKER: Same objection.

MR. STUBCHAER: Well, rephrase the question -- can you repeat the question?

MR. SOMACH: I asked simply whether or not the County of Alpine has or does object to the way PG&E has operated the lakes over the past 60 years.

MR. STUBCHAER: You may answer the question if you are able to.

MR. TURNBAUGH: A Well, referring somewhat to Mr. Pemberton's statement, the Board of Supervisors has not taken an official opinion -- if he is asking for an official opinion of the Board of Supervisors, I am not able to give that.

MR. SOMACH: Q Do either of you know whether or not the Alpine County Board of Supervisors has ever lodged a protest with the Federal Energy Regulatory Commission with respect to how PG&E has historically operated the lake?

MR. PEMBERTON: I have no personal knowledge of that.

I have only been in office ten months.

MR. TURNBAUGH: I have no personal knowledge of any protest having been lodged with FERC over the current operation, however, relicensing will be a different proposition.

Q That's a little bit different response than the one Mr. Pemberton gave, so maybe I should ask you whether or not the County intends to participate before the California Public Utilities Commission and FERC with respect to the transfer of the license from PG&E to El Dorado?

MR. VOLKER: Asked and answered.

MR. SOMACH: Well, I asked it of one individual who indicated he did not know, and I asked it of the other because that individual in his last response indicated the exact contrary.

MR. VOLKER: You asked it of Mr. Pemberton previously and he answered.

MR. SOMACH: And I asked it of Mr. Turnbaugh.

MR. VOLKER: I believe the question was directed to Mr. Pemberton.

MR. STUBCHAER: No, I took it to be to Mr. Turnbaugh, and I am going to permit the question because there was a contradiction.

MR. TURNBAUGH: I would like to hear the question again.

MR. SOMACH: Q The question is, does Alpine County intend to participate in the PUC proceedings or the FERC hearings with respect to the proposed transfer of Project 184 from PG&E to El Dorado?

MR. VOLKER: I wish to strenuously object to the mischaracterization of the testimony as a contradiction. As I recall, this witness said with respect to relicensing, that is another proposition.

MR. SOMACH: Q Let me break it down then. I still want to ask the question I just did. Do I need to repeat that question?

MR. TURNBAUGH: A No, you do not.

Q Do you have an answer to that question?

A My answer is that I think you had a two-part question or at least I gave you a two-part answer to the question and I don't think there was any contradiction.

You asked me had I any personal knowledge of the protest that had been filed, and I told you in the past, no. As to the future, however, I don't know. That is a different proposition. That is up to our board to decide at such time as that point in time gets here.

Q Okay. I accept that clarification.

Let me for a moment, and I am a little bit worried here since we are going to stop at five, and some of these witnesses aren't going to be around --

MR. STUBCHAER: We will discuss that in a moment. We have other people who wish to cross-examine, too, and you have cross-examination --

MR. SOMACH: I have questions to those that are not -- I haven't got to the protestants' part of this thing yet.

MR. STUBCHAER: How long do you anticipate your cross-examination would require?

MR. SOMACH: I think I have at least 15 minutes, 20 minutes.

MR. STUBCHAER: Mr. Infusino.

MR. INFUSINO: I just have two questions.

MR. STUBCHAER: Mr. Birmingham.

MR. BIRMINGHAM: Less than five minutes.

MR. STUBCHAER: We can go overtime if you think we will be through in a reasonable period of time.

MR. VOLKER: Thank you, Mr. Stubchaer.

MR. SOMACH: Q Mr. Turnbaugh, could you describe the project that you seek to be approved by the State Water Resources Control Board?

MR. TURNBAUGH: A Well, as Mr. Pemberton stated, our Board of Supervisors has asked the State Water Board to stay or to suspend our application for consumptive use of water, however, our application for recreational use of that water we would like to have stand.

Q When you say you have requested that your consumptive use portion of the application be stayed, does that mean they are not the subject of this hearing? I'm actually asking the board or somebody because this is the first time that --

MR. TAYLOR: The staff needs the same clarification. As I read the written statement, it was a clarified request and that request was predicated on the Board being asked to not take action on any pending applications.

Now, assuming the Board decided to go forward with some applications, do you wish the Board at this time to also consider your consumptive use application?

MR. VOLKER: Excuse me.

(After consulting with clients)

We are ready to proceed, Mr. Stubchaer.

MR. STUBCHAER: Do you have an answer to Mr. Taylor's question?

MR. PEMBERTON: Yes. Some of this has not been

discussed with the Alpine County Board of Supervisors so I feel like I am a little beyond my authority, but my strongest impression is the answer to your question is no.

MR. TAYLOR: My question is, are you today putting on an affirmative case in support of your consumptive use application?

MR. VOLKER: No.

MR. TAYLOR: So, you are not prepared to go forward with that portion of your application?

MR. VOLKER: With respect to consumptive use only.

MR. SOMACH: Q That then is the determination of the Board, for the record, and I won't proceed with questions on that, but I don't want to make --

MR. STUBCHAER: You don't want to give up your right. The answer is on the record.

MR. PEMBERTON: A I think this needs some amplification by our counsel as to why we are making this statement.

MR. VOLKER: I think the position is accurately stated in the exhibit to Mr. Pemberton's testimony, but I will elaborate on it so that this Board understands.

The Alpine County and Kirkwood Meadows Public Utilities Commission do not believe this Board should proceed with approval of any significant consumptive water rights applications at this time because it does not have sufficient documentation before it of the existing water resources, water uses, water rights applications, and their impact on each other to proceed.

The testimony of the last two days confirms that this Board does not have operating criteria information that would enable it to ascertain the effect of significant additional consumptive water rights in this watershed.

MR. STUBCHAER: For the sake of discussion, what if the Board feels it does have enough information and proceeds? What is the position of Alpine County then on their consumptive use water right application?

MR. VOLKER: Well, if we are speaking hypothetically, the position would be that this Board should not proceed and that decisions made in the absence of necessary documentation would be ultra vires, that is beyond the authority of the Board.

MR. STUBCHAER: That really didn't answer the question. Did I accurately repeat your question, Mr. Taylor?

MR. TAYLOR: Yes, but I think the fundamental point we are dealing with here is that the Sierra Club has

represented the applicant is not prepared to go forward with a positive case in support of the consumptive use application.

The reason I think we have spent some time on -- its reasons I think we have spent some time on, but I don't think it is necessary at this point. It is in the record and the exhibit is attached to Mr. Pemberton's testimony, and I think we understand their position.

MR. VOLKER: I think we should clarify your understanding. Our position is not that we are not prepared to proceed with the application, our position is that just as we don't believe this Board should proceed with respect to El Dorado because El Dorado has not furnished the Board sufficient information to make decisions, so, too, it would be inappropriate for these applicants, notwithstanding their fervent desire to be given equal treatment with El Dorado County, it would be inappropriate for them to be vying for water rights given the dearth of data we feel is necessary for an informed decision.

We would be more than happy to assist the Board in developing that information. Indeed, that is one of the purposes of our appearance here today, that we have attempted through examination of witnesses over the last two days to develop the information that would be essential for an informed judgment by this Board on these matters.

But they are all related. All of the applications are related.

MR. TAYLOR: Mr. Volker, I understand your position. As staff counsel, I strongly disagree with the approach or posture being taken in this case. You are essentially putting the Board as trier of the fact in the position of having a proactive obligation to make a case in support of all the applications or against all the applications.

That is not what the Board is here for.

Your role, from my point of view is to make a case in support of your application, and against other applications if you disagree with them.

I think we have a fundamental difference of philosophy to approach this, but we understand what you are saying.

MR. VOLKER: Well, that may be. We feel that under Water Code 1257 and 1258 that the Board actually does have an affirmative or proactive responsibility to assure that its decisions are informed by a full record that reflects consideration of water quality standards and the resources of the watershed.

MR. TAYLOR: From the Board's point of view, this is your opportunity to help create that full record, and if you don't bring that information forward, then we will make a decision based on the record we have.

MR. STUBCHAER: Do you have anything else to say before Mr. Somach continues, or do you wish to change any answer you gave a few minutes ago, or that your witnesses gave?

MR. VOLKER: No.

MR. STUBCHAER: All right, Mr. Somach.

MR. SOMACH: I need clarification from Mr. Taylor or the Board, or somebody. Not moving forward with an affirmative case in defense of an application is wholly another thing from withdrawing an application, and I am not certain which is which. Just not moving forward with an affirmative case on an application certainly would not preclude cross-examination on an application that is existing and which has not been withdrawn.

There may not be very much evidence to support it, but nevertheless, the application is there. There are exhibits submitted, and I am not quite certain whether or not we have a withdrawn application or we have one where the applicant is just refusing to answer any questions about it.

I don't know whether I am to stop asking questions about the project or whether or not -- I am not exactly sure what I am supposed to do.

MR. STUBCHAER: It almost sounds like it is abandoned, but not withdrawn. I don't know how to characterize it.

Mr. Taylor.

MR. TAYLOR: I can't answer it. You will have to ask Mr. Volker whether they want to go forward to consider the consumptive use application at the time that the staff prepares an order on the pending applications.

MR. VOLKER: The applications are not withdrawn. We request that the Board hold the applications in abeyance until it has before it sufficient information to make an informed judgment with regard to proper allocation of water resources in this watershed.

In part, our position reflects the deficiencies present in the documentation presented by El Dorado County.

You must bear in mind that the applications submitted by Alpine County and Kirkwood Meadows Public Utility District were, in part, a response to the applications submitted by El Dorado County to make sure that this Board was aware of the competing interests in this watershed.

MR. STUBCHAER: It seems to me that puts the Board, it puts everybody in a difficult position. Mr. Somach doesn't know how he should pursue the cross-examination.

If we determine hypothetically that we do have enough information and we go ahead and grant water rights and your parties have had their applications fully considered because of the statements that have been made, they could turn out to be losers. I mean, just hypothetically. It is kind of a no-man's land. I don't know how to deal with it either.

MR. TAYLOR: It seems to me that, as Mr. Volker says, the consumptive use applications are not withdrawn, and that being the case, it seems to me Mr. Somach should be given an opportunity to explore those pending applications.

MR. STUBCHAER: And anyone else who wishes to.

MR. TAYLOR: Yes.

MR. VOLKER: There has been no objection to examination on that.

MR. SOMACH: Well, I had a refusal to answer a question because this whole thing started when I attempted to ask questions about the application.

MR. VOLKER: I did not object to the question. Now, if a witness doesn't have the information to answer a question, that is quite a different matter.

MR. SOMACH: Q Mr. Turnbaugh, what is your project?

MR. TURNBAUGH: A Our project for six acre-feet.

Q I want to know what the project is that you are here before the Board attempting to get a permit for.

A First off, we had made application for 21,581 acre-feet of water for recreational purposes to be basically left in the lake. It was a competing application to El Dorado County Water Agency's application for 21,581 to drain the lake.

The second portion of our application was for approximately six acre-feet of consumptive use.

Q There are other numbers that you described elsewhere, most particularly in the application itself, with respect to how much water it is that you are attempting to appropriate for consumptive uses. I believe one number that is used is 71 acre-feet, another is 96. Which is the correct figure?

A I believe that is a matter of calculation as to how you view the appropriation of the water that is fully appropriated during a period of time in that lake, whether you take it on an annual basis or at the time it may be available.

Q Can you provide me further information on exactly when the six acre-feet is intended to be withdrawn, the 71

acre-feet and the 96 acre-feet?

A The six acre-feet would be on an annual basis. The 71 was asking for, as I remember, basically a set aside, here we are, don't forget us, type of application. It was the need for a defensive application, and in working with the State staff, the 71 versus the 96, my understanding is that it has to do with the time and duration. They are not cumulative. They are not additive. They are either the 71 or 96 depending on how you review or how you use the numbers that are available as to when you are taking the water.

Q So, as I understand what I just heard, the highest quantity of water that would be extracted would be the 96 acre-feet, not adding 6 to 71 to 96?

A Correct.

Q Now, did you perform any environmental documentation to support a decision by the Board to grant the application?

A Which one?

Q For up to 96 acre-feet annually.

A Our initial environmental was only on the six, and it had to do with a categorical exemption based on the significance. I think the operative term in CEQA is significant.

And the 96 acre-feet is .4 percent of the water.

Q But as understand what you said, your notice of exemption dealt with 6 acre-feet, not with 96 acre-feet.

A Six acre-feet is .03 percent or three-hundredths of one percent.

Q I understand that. I am not quibbling with you on whether or not it is a lot of water or a little water, I am trying to understand what was illustrated under the Notice of Exemption.

First of all, all that was done was a Notice of Exemption; is that correct?

A Correct.

Q And the Notice of Exemption was on 6, in fact, I believe it was 6.0403 acre-feet; is that correct?

A A calculator with lots of decimal points, it was, yes.

Q Has there been any CEQA work done, whether it be a Notice of Exemption or any other kind of California Environmental Quality Act document on an application to appropriate up to 96 acre-feet annually?

A Not at this time. Again, it was our understanding in our filing of that, that while all we were doing was asking to be brought into this to be considered at some future date.



Q So, that as we are here now, there has been no additional CEQA documentation to support the 96 acre-foot number?

A We may be able to use your document under CEQA.

Q With respect to the instream flow request that you made, could you explain that again. In-lake recreational use, is that what it was?

A Correct. The in-lake recreational use was to try to maintain that lake at its highest level for recreational purposes during the recreational season.

Q Do you intend to do anything in terms of the operation of the lake to insure that that water is maintained in the lake?

A I am not following your question.

Q Do you have any control over the amount of water that is within the lake, physical control?

A Only through this Board.

Q You don't own the project facilities which impound the water; is that correct?

A Correct.

Q If the application is granted and a permit issued, what would you do differently or at all with respect to the lake than can be done today?

MR. VOLKER: Excuse me, I am not sure whether your question is directed to the application for 6.0403 acre-feet or some other application.

MR. SOMACH: I think I was fairly clear.

Q You understood me to be talking about the recreational water; is that correct?

A Yes.

Q Did you understand the last question that I asked you, and that is the water is in the lake today or it has been over an historic period for recreational purposes; is that correct?

A Yes.

Q What will you do the day after a permit is granted that is different than the way you have conducted yourselves with respect to the lake before?

A I think what you would have is that it wouldn't be our conducting, it would be in this case your conducting to leave the water, leave the lake at its fullest point for recreational purposes until such time as you get into the winter drawdown.

Q I am just trying to understand the nature of this application. What you are attempting to do is to appropriate water to maintain the water within the lake and

that you do not intend to in any way divert the water, operate the dam or do anything of that type of a physical manipulation of the system; is that correct?

A Well, as far as diverting the water, it's in storage.

Q It's in the lake; is that correct?

A As far as operation, it would be a matter of who controls the valve during that time period.

Q And you are not proposing to control any valves here; that is, Alpine County is not intending to control any valves?

A I think that is something that needs to be worked out because somebody has to control the valve, and if we are trying to keep the water in the lake or keep the lake at its recreational value, then that valve has to be remain closed or only slightly open.

If somebody else is operating the lake and wanting to take all the water out of it, then, yes, we need some type of control through this Board in order to insure that that does not occur.

Q If I were to simplify in terms of my understanding of what it is that Alpine County is attempting to do with recreational flows, it is to obtain an appropriation permit for water in place, water in the stream, in the lake, nothing more; is that correct?

A Yes, if I understand your question.

Q If I could ask, and again in a way of expediting this process, the lay witnesses that are not official representatives of Alpine County, how many of you have protested the application for consumptive use that has been filed by the County of Alpine?

MR. VOLKER: Perhaps I should answer. The witnesses today are members of organizations whom I represent, who, through me, have filed protests collectively.

MR. SOMACH: Against Alpine County's appropriation?

MR. VOLKER: No, against El Dorado County.

MR. SOMACH: My question is, how many of you have filed protests against Alpine County's consumptive use application? I don't see any of you raising your hands or doing anything else, and I would like the record to reflect that none of these parties has protested Alpine's consumptive use application, whether it be 6, 71 or 96.

Q Mr. Pearson, you testified with respect to the economic benefits that you receive from the lake; is that correct?

MR. PEARSON: A Yes, I did.

Q How much on an annual basis do you pay to maintain

the lake levels?

A Could you rephrase the question? You are talking about monetary payments?

Q Yes, I'm sorry, dollars.

A None.

Q Is the lake a natural lake, to your knowledge?

A Yes, it is.

Q It is entirely natural?

A Not entirely.

Q So, there is some artificial increase in the elevation of the lake?

A That is correct.

Q If the lake were to return to its natural condition, its natural lake levels, would that be sufficient to satisfy you?

A No, it wouldn't.

Q Why not?

A Because the shoreline would recede to the extent that we would lose our ability to use our docks and our beaches.

Q So that part of the benefit that you are arguing here is a benefit that is created by the artificial elevations of the lake; is that correct?

A To a certain degree, yes.

Q And those artificial elevations are maintained currently by PG&E in the context of the way it operates Project 184; is that correct?

A That is partially correct, yes.

Q So, I understand that the other partial is, or what it is that is incorrect, could you tell me the part that's incorrect?

A Well, I am not sure what would be incorrect. PG&E does maintain lake levels by virtue of having its hand on the valve.

Q Well, does it not own the project?

A It owns portions of the lake property, the dam and some of the surrounding land.

Q Mr. Pearson, what causes the lake levels to be artificially high?

A Well, operation of the dam certainly does to a certain degree, but just water coming into the lake. If the dam were to be left completely open, the lake would still rise regardless of what the PG&E does.

Q But the dam that creates the artificial elevation is in the lake; is that correct?

A That is correct.

Q Now, you testified about drawdowns in September for

no apparent reason; is that correct?

A That's correct.

Q Are you familiar with any of the operating obligations that PG&E has with respect to the Division of Dam Safety?

A Some of them, yes.

Q Do you believe any of those requirements might have played a role and might in the future play a role in terms of how that project is operated?

A I don't believe it has played a role at all this year because the water is already fairly below the level of the dam, certainly below the level of the bottom of the radial gates as of Monday. And typically in October the water is well below the level of the dam in terms of what would be considered safety requirements.

MR. SOMACH: Mr. Volker, may I ask a question of you?

There are some exhibits here and I don't know whose they are necessarily, and I don't want to ask any questions about them here if they are someone else's, but they are exhibits that have the outlines of two lakes, comparing natural with artificial.

MR. VOLKER: That sounds like it may be Mr. Pearson's exhibit of Silver and Caples Lakes.

MR. SOMACH: Q It's Exhibits BP1, BP2 and BP3. Is that what we have been talking about, Mr. Pearson, in essence, the difference between what the natural lake levels and what the levels associated with the lake due to the dam and the operation?

MR. PEARSON: A That's correct. The outline represents the full lake and the other dark-shaded area in the middle represents the lake at the normal level in mid-winter when approximately 8,590 acre-feet are taken out of the lake. It is brought down to the natural elevation.

MR. SOMACH: I see the red light.

MR. STUBCHAER: We said five minutes thirty minutes ago. How much time do you need?

MR. SOMACH: I just need a couple more questions, I believe.

Q And referring to this exhibit then, and I want to make sure that I understand the clear statement in these exhibits that the dark area is what is natural and that the area between that dark area and the outer line is what is artificial, caused by the dam and its impact upon what other inflow there was, or is that correct?

MR. PEARSON: A The dark area would naturally expand when there's high levels of runoff in the springtime.

Q For a period of time.

A Regardless of whether or not there is a dam.

Q Is there anyone on the panel that disputes the fact that Silver Lake and Caples Lake -- is there anyone on the panel that has any objection to what Mr. Pearson has provided in his Exhibits BP2 and BP3?

MR. VOLKER: I object. The question is vague and ambiguous. Are you asking whether they object to his delineation of the dark areas, whether they conducted a survey to ascertain whether that is the precise boundary of the lake as described in the exhibit?

MR. SOMACH: Q This exhibit was SCLDF Exhibit BP2 and BP3. Because of the interesting mix of folks that you have here, I am merely trying to ascertain whether or not these exhibits are concurred in, in terms of what they depict, by the other panel members, or whether or not there is a dispute among or between the panel members on what is depicted here.

MR. VOLKER: I would suggest that you address your questions individually to each panel member and give each an opportunity to review the exhibits and respond to your question.

Mr. Stubchaer, I don't understand the purpose of this line of inquiry. Given the late hour, it seems to be bordering on the frivolous. Perhaps Mr. Somach could enlighten us as to the purpose served by this.

MR. STUBCHAER: I think I can see a purpose, but it seems to me he is trying to shorten things by asking the members as a whole. Perhaps he could say, is there anyone who objects rather than asking if they concur because it's not everybody's exhibit.

MR. SOMACH: What I am looking for is an affirmative statement that, yes, either we concur in this or a statement that says, no, we disagree.

MR. STUBCHAER: How about a statement, we don't object?

MR. SOMACH: Q Does anyone object to what's depicted here as being accurate?

MR. VOLKER: Have you all had an opportunity to review this exhibit, and if not, do any of you wish to do so now?

Mr. Stubchaer, these are lay witnesses. None of them is here today as a hydrologist or a land surveyor. I really think this line of inquiry will lead us nowhere.

MR. STUBCHAER: I look at this map and there is no scale on it.

Well, you can determine the location from reference to Highway 88 and the name of the lake, but I suppose you could ask the question, is there anyone who disagrees that the natural lake is substantially smaller than the lake as formed by the dam?

MR. SOMACH: Fine. I adopt Mr. Stubchaer's question. This is your exhibit. I was just trying to confirm that everybody endorsed it. I can't, because you said it so much better than I ever could.

Could you --

MR. STUBCHAER: We will ask the court reporter to read the question back.

(The reporter read the question as follows: Is there anyone who disagrees that the natural lake is substantially smaller than the lake as formed by the dam?)

MR. STUBCHAER: That's right, that's what I said. There's one hand up back there, Mr. Somach.

MR. SOMACH: Let me just confirm everybody else concurs and that there's one person that either has a question or is going to tell me he disagrees. For the record, is that accurate? The record can reflect that only one person raised his hand.

MR. BRISSENTEN: My name is John Brissentent. It's a substantial matter of perception and I would urge all present that they walk the lake to determine for themselves, particularly the Water Board.

MR. STUBCHAER: I have been to the lake, not the dam.

MR. SOMACH: Q And implicit in what I have heard, everybody agrees that lake levels are maintained artificially; is that correct?

MR. PEMBERTON: A To an extent they are, yes.  
Q I'm satisfied with the record on this issue.

Let me ask a question, and I believe this goes to Alpine County, the official folks for Alpine County.

In your notice of application, there are discussions about how water will be taken or released from the dam or from the lake for consumptive uses, and paraphrasing, I believe it was indicated there that they will be made according to the schedules currently maintained by PG&E, the historic operating schedules.

Do you have those release schedules with you now, Mr. Turnbaugh?

MR. VOLKER: I would like to object to the question. To the extent it references historic operation, it is vague and ambiguous.

MR. SOMACH: This is your notice of application.

Q What was written, Mr. Turnbaugh, in your notice of application with respect to what pattern you would take water that is being sought under your consumptive use application?

A At the time this was written, we were looking at using the same drawdown time that PG&E had. Since this was written, I think a lot more information has become available through in great part El Dorado's effort. We find that the one consistency with PG&E is the lack of consistency, that the drawdowns do not occur on a regular basis except possibly around the August period, the period when they were drawing water down to supplement the 1919 agreement, as it were, that our 6 acre-feet of water would be drawn out of the lake during the time that PG&E would allow it to be. That 6 acre-feet in this lake is not measurable as far as surface area. Ninety-six acre-feet is less than two inches on the surface of this lake.

MR. PEMBERTON: A Can I add something I feel is important?

I believe the genesis of this request was to insure that the Caples Lake Resort had water. We were concerned that the existing campground and resort had water, and I think they have a pipe into the lake to deliver water to that area.

We weren't very fancy about this, obviously, and our level of analysis is Mr. Voss's enterprise was there and he would need water to sustain his enterprise, and apparently, he has a plumbing system to get water to his resort. That's the depth of analysis we exercised at the time.

Q And no further information has been provided to the Board; is that correct?

MR. TURNBAUGH: A I don't believe the Board has requested any.

Q And no release schedule or pattern has been produced?

A Again, none has been requested to my knowledge.

MR. STUBCHAER: That last answer really doesn't answer the question, they haven't requested any. You haven't supplied any?

A No, we haven't.

MR. SOMACH: Q Mr. Turnbaugh or Mr. Pemberton, does the County have any operations agreement or other agreement with PG&E with respect to the lake?

MR. PEMBERTON: A I don't believe so.

MR. TURNBAUGH: A No, we do not. Neither did El Dorado at the time of the application.

Q So, in that sense, your application is similarly based as those of El Dorado; is that correct?

A Correct, at the time, two years ago, three years ago.

MR. SOMACH: No further questions.

MR. STUBCHAER: Are you going to have redirect?

MR. VOLKER: No, Mr. Stubchaer.

MR. STUBCHAER: Mr. Birmingham.

MR. BIRMINGHAM: I have a few questions for Mr. Turnbaugh.

#### CROSS-EXAMINATION

by MR. BIRMINGHAM:

Q Mr. Turnbaugh, following up on the two applications to appropriate that have been filed by the County of Alpine, as I understand, those are to appropriate water in Caples Lake; is that correct?

MR. TURNBAUGH: A Yes.

Q And in response to a question asked of you by Mr. Stubchaer, did I understand you to say that the County's applications were filed in response to El Dorado's application?

A Yes.

Q And did I also understand that through your application to appropriate water for recreational use, you were seeking a means of preventing El Dorado, which you anticipate will have its hand on the control of releases, from drawing down the lake?

A Yes.

Q And so, you don't anticipate that the County will control the lake level, instead you will use your right to appropriate to prevent El Dorado from drawing down the lake level; is that correct?

A If I understand you correctly, we see the control here being really the State Board and the permit that they will issue will be the controlling of this lake and ultimately the State Board controls the valve.

Q So, you would use your right to appropriate water as a means of having the Board prevent El Dorado from drawing down the lake?

A Correct.

MR. BIRMINGHAM: I have no further questions.

MR. STUBCHAER: Thank you.

Mr. Infusino.

#### CROSS-EXAMINATION

by MR. INFUSINO:

Q I have a couple of questions for Mr. Rupp. You earlier expressed a concern for the welfare of the little



girl in the picture, and EID Exhibit 96 identified increased air pollution associated with the growth to be served by this water, and it also refers to the El Dorado County general planning EIR for details, which also identify significant and unavoidable increased air pollution associated with the growth to be served by this water.

My question to you, are you also concerned about the impact of this air pollution on the little girl at the camp?

MR. RUPP: A A difficult question. In responding as Chairman of the League to Save Sierra Lake, I would say our Articles of Incorporation specifically limit our area of concern to the lakes; in other words, as far as addressing the growth, we have not tried to address that because we felt if we take this broad umbrella and look at many issues, we are going to defeat the concern, and that's the concern of the lake levels.

MR. INFUSINO: I have no further questions.

MR. STUBCHAER: Thank you.

Mr. Taylor.

#### E X A M I N A T I O N

by MR. TAYLOR:

Q A few brief questions concerning the consumptive use aspect of your application.

I believe in response to a question from Mr. Somach, you indicated the initial application was filed for six acre-feet for an existing use or uses from the lake; is that correct?

MR. TURNBAUGH: A Yes.

Q And someone indicated that those preliminary estimates of the amount required were extremely rough, and I understand that different and larger amounts are now being sought.

Are those larger amounts being sought for existing use or only for prospective use?

A Prospective.

Q So, is your initial estimate of six acre-feet for existing uses essentially correct?

A Yes. We are dealing with the Forest Service campgrounds, PG&E summer cabins, Forest Service summer cabins, the resort that is on the Forest Service property.

Q And in regard to the amount of six acre-feet, what would that water be used for?

A If those areas wanted to expand, the Forest Service needed to put in additional campgrounds or through the FERC relicensing at the time PG&E were required to put in additional campgrounds around the lake, we felt a need to

assure there was some room for growth in the area as the county of origin, and again, I would reiterate a small quantity that we are dealing with here for potential development around that lake.

Q Are the amounts of water sought for future growth based on any specific plans currently in being?

A No, they are not.

MR. TAYLOR: Thank you.

E X A M I N A T I O N

by MR. LAVENDA:

Q Two quick questions. One is for Mr. Bevitt.

According to your testimony, it says this is Forest Service leases. Is there public access to Kirkwood Lake?

MR. BEVITT: A Yes, there is a campground at the west end with 19 campsites and there's a small half-mile access road down to that west end of the lake.

Q Thank you.

Bart Bird, in your testimony you mention the former Girl Scout camp that is now a Scout camp.

MR. BIRD: A Yes.

Q Is that a hard site, by that I mean are there permanent facilities built?

A Yes. In conjunction with the Forest Service a survey was done of the property and buildings torn down, removed. Because of the scenic value of the area, we were working with them to remove whatever they thought was not an appropriate view from Highway 88 and would work with our new program going into the camp.

Q As a hard site, do you have -- and I assume in a Scout camp, you have sanitary facilities and you have a water supply system?

A We have sunk a very deep well and the Girl Scouts in the past had historically pulled the water out of the lake. We did not want to tie ourselves that close to the lake because of possible fluctuations that historically have happened, so for that and other health reasons, we sunk a well.

Q So, you currently are not exercising your water right to obtain water at the camp?

A As our testimony stated, we have left things in place for fire protective reasons, but not for potable purposes.

MR. LAVENDA: Thank you.

E X A M I N A T I O N

by MR. CANADAY:

Q I just have one question for Mr. Bird.

Is the property on a Forest Service lease or do you

own the property?

MR. BIRD: A No, the property is on a Forest Service lease.

MR. STUBCHAER: Does that conclude the cross-examination?

MS. DUNSWORTH: I guess I had a short arm back there. I just had a quick question for clarification, that no one is here today speaking for Kirkwood Meadows Public Utility District; is that correct?

MR. STUBCHAER: Will you identify yourself?

MS. DUNSWORTH: Leslie Dunsworth for Sacramento Municipal Utility District.

MR. VOLKER: That's correct, but there is testimony that the Kirkwood Meadows Public Utility District adopted a resolution similar to that which appears as an exhibit to Mr. Pemberton's testimony.

MS. DUNSWORTH: And that is in Mr. Pemberton's testimony?

MR. VOLKER: Yes.

MS. DUNSWORTH: Thank you.

MR. SOMACH: I assume then the posture of the Public Utility District's application is the same, whatever that may be, with respect to the County's application with respect to consumptive use?

MR. VOLKER: Yes.

MR. SOMACH: I would ask another question and that is, is Cal SPA represented by you?

MR. VOLKER: Yes.

MR. SOMACH: And was that testimony given?

MR. VOLKER: Excuse me.

MR. SOMACH: There was some written testimony of Cal SPA?

MR. VOLKER: Mr. Crenshaw's testimony.

MR. SOMACH: So, this will be on Monday?

MR. VOLKER: There were two lay witnesses that could not make it today, Mr. John Plasse and Mr. Jim Crenshaw. Mr. Crenshaw is with the California Sportfishing Protection Alliance.

MR. SOMACH: And he will be testifying Monday?

MR. VOLKER: Yes.

MR. SOMACH: Okay.

MR. STUBCHAER: I guess that concludes this portion of your lay panel. Thank you, gentlemen, for your appearance, and we are in recess --

MR. TAYLOR: Do you have any announcement before we recess? Are we going to move the testimony we heard on

cross-examination or wait to do that next Monday?

MR. STUBCHAER: We will do it all at once on Monday, so we are in recess until nine a.m. Monday.

(The hearing was recessed until Monday, October 30, 1995.)