

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

In the Matter of:)
)
)
PUBLIC HEARING TO DETERMINE)
WHETHER TO ADOPT A DRAFT CEASE)
AND DESIST ORDER AGAINST)
CALIFORNIA AMERICAN WATER.)
)
~~~~~ )

JOE SERNA JR./CALEPA BUILDING  
1001 I STREET  
COASTAL HEARING ROOM  
SACRAMENTO, CALIFORNIA

HEARING PHASE I, VOLUME II  
FRIDAY, JUNE 20, 2008  
8:32 A.M.

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CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13196

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Mr. Kent Turner, President, California American Water

Mr. Thomas Bunowsky, Vice President Operations, California American Water

Mr. Mark Schubert, Director of Engineering, California American Water

Mr. David P. Stephenson, Director of Rate Regulations, California American Water

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1 P R O C E E D I N G S

2 --o0o--

3 CO-HEARING OFFICER BAGGETT: Let's go back on  
4 the record and pick up where you all left off.

5 DARBY FUERST

6 Previously called by Monterey Peninsula Water  
7 Management District

8 MR. McGLOTHLIN: Good morning. For the  
9 record, Russ McGlothlin representing the City of  
10 Seaside.

11 CROSS-EXAMINATION MR. McGLOTHLIN (continued)

12 FOR CITY OF SEASIDE

13 MR. McGLOTHLIN: Good morning, Mr. Fuerst.

14 MR. FUERST: Good morning.

15 MR. McGLOTHLIN: Mr. Fuerst, yesterday do you  
16 recall being questioned briefly about new water supply  
17 connections?

18 MR. FUERST: Yes.

19 MR. McGLOTHLIN: I want to ask you a few  
20 questions in that respect. How does the District  
21 govern or regulate new connections within the Cal Am  
22 service area?

23 MR. FUERST: Within the Cal Am service area,  
24 the District has established an allocation through its  
25 water allocation program. And the amount of water



1 available to Cal Am is divided -- for Cal Am  
2 service -- is divided among the jurisdictions.

3 And each jurisdiction at this time has an  
4 allocation which they control and can -- the sequence  
5 would be an applicant would go to that city, they'd be  
6 directed to go to the Water Management District,  
7 estimate the amount of water they would like to use.

8 And then that estimate would be provided to  
9 the city, and the city would make the determination to  
10 release that water from their allocation or not.

11 Once that release letter comes to the  
12 District, the District then would debit that amount of  
13 water for that particular permit from that  
14 jurisdiction's allocation.

15 MR. McGLOTHLIN: Do you know how much water is  
16 in the collective allocations for the jurisdictions at  
17 this time?

18 MR. FUERST: There are three sub accounts, but  
19 overall about 120 acre feet is available in the --  
20 from previous allocations from the District to the  
21 jurisdictions that the jurisdictions could release to  
22 applicants.

23 MR. McGLOTHLIN: And what -- you said they're  
24 from three sources, if I'm correct. What are the  
25 three sources?

1           MR. FUERST: Correct. There is -- there is a  
2 pre-Peralta, and Peralta refers to the Peralta well  
3 that was developed in the early '90s, came online in  
4 1993. Prior to Peralta, there was the post-Peralta  
5 allocation.

6           Let me start again with the District's  
7 allocation program. It began in 1980 and set a  
8 production limit for Cal Am's main system of  
9 20,000 acre feet per year.

10           It was challenged in 1986 when one of the  
11 jurisdictions exceeded its allocation. It was  
12 challenged on CEQA grounds, and that resulted in the  
13 District preparing an Environmental Impact Report for  
14 the allocation program.

15           At that time, the 20,000 acre foot annual  
16 production limit for Cal Am was reduced to 16,744 acre  
17 feet.

18           At that time, there was -- all of the City's  
19 allocations were frozen, and that represented the  
20 pre-Peralta. There was no additional water available  
21 at that time.

22           When Peralta, that well, was developed in the  
23 Seaside Groundwater Basin, there was an additional  
24 yield available. Of that yield, 385 acre feet of  
25 production, or 358 acre feet per year of consumption,

1 was allocated among all the jurisdictions. And that's  
2 referred to as the pre-Peralta -- excuse me -- yeah,  
3 the post-Peralta allocation.

4 So of the three, there is a post-Peralta that  
5 dates from 1993 forward. There is the pre-Peralta  
6 that is from 1993 backwards.

7 And then there is a third category, public  
8 water credit. That's where a public agency, a city,  
9 would undertake a program to conserve water and would  
10 get credit.

11 MR. MCGLOTHLIN: And am I correct in assuming  
12 that this 120 acre feet that you referenced is far  
13 short of the jurisdiction's general plan build-out  
14 estimates? Is that correct?

15 MR. FUERST: That is correct. Again, there's  
16 about 120 acre feet in water that has been allocated  
17 by the District to jurisdictions.

18 In our water supply planning efforts, we have  
19 contacted all the jurisdictions and asked for their  
20 build-out estimates, and the most recent number for  
21 all of the jurisdictions to have sufficient water to  
22 meet their build-out needs as specified in their  
23 adopted general plans is on the order of 4500 acre  
24 feet per year.

25 MR. MCGLOTHLIN: So it's a very small

1 percentage of the build-out supply?

2 MR. FUERST: Correct.

3 MR. MCGLOTHLIN: Are you aware of which  
4 jurisdiction has the largest remaining allocation of  
5 that 120 acre feet?

6 MR. FUERST: It's the City of Seaside.

7 MR. MCGLOTHLIN: Okay. Thank you.

8 And you spoke yesterday about the seven-step  
9 conservation program that the jurisdiction -- or that  
10 the Monterey Peninsula Water Management District  
11 maintains.

12 MR. FUERST: Correct.

13 MR. MCGLOTHLIN: Is there a step in that  
14 seven-step program in which a moratorium would go in  
15 effect that would cease allocations for --

16 MR. FUERST: Right. As I mentioned, the  
17 District has a seven-step expanded conservation  
18 stand-by rationing.

19 The first three steps are aimed at maintaining  
20 Cal Am's production within the regulatory limits  
21 primarily imposed by the State Water Resources Control  
22 Board and also the Seaside Adjudication Decision.

23 The stages 4 through 7 are generally designed  
24 to respond to a true physical shortage, and in stage 5  
25 there is a moratorium enacted on water remaining in

1 the allocations, or at least the pre-Peralta and  
2 post-Peralta allocations.

3 MR. MCGLOTHLIN: Given your testimony this  
4 morning, is it then correct that if stage 5 or higher  
5 went into effect and there was a moratorium that the  
6 City of Seaside or any of the other jurisdictions that  
7 have conserved and not used their allocations to date,  
8 or less of their allocations to date, would receive a  
9 disproportionate quantity of the water that was  
10 authorized originally by the Monterey Peninsula Water  
11 Management District?

12 MR. FUERST: Right. That water would not be  
13 issued, and the largest amount remaining is with the  
14 City of Seaside.

15 MR. MCGLOTHLIN: Are you aware -- have you  
16 reviewed Order 95-10 previously?

17 MR. FUERST: Yes.

18 MR. MCGLOTHLIN: Are you aware that 95-10  
19 provides for or suggests that Cal Am should honor and  
20 serve existing commitments?

21 MR. FUERST: Yes, I'm aware of that language  
22 in the conditions.

23 MR. MCGLOTHLIN: Is it your opinion that the  
24 allocations from the Monterey Peninsula Water  
25 Management District to which you've testified this

1 morning is those existing commitments?

2 MR. FUERST: Yes.

3 MR. MCGLOTHLIN: No further questions.

4 CO-HEARING OFFICER BAGGETT: Thank you.

5 I understand that we're down to Cal Am.

6 CROSS-EXAMINATION BY MR. RUBIN

7 FOR CALIFORNIA AMERICAN WATER COMPANY

8 MR. RUBIN: Good morning, Mr. Fuerst. My name  
9 is Jon Rubin. I'm an attorney for California American  
10 Water. I have just a few questions for you this  
11 morning.

12 The first question relates to some testimony  
13 provided yesterday regarding an adjudication of the  
14 Seaside Basin. I believe you referred to a decision  
15 or judgment that was issued; is that correct?

16 MR. FUERST: Correct.

17 MR. RUBIN: Handing to you a document that was  
18 previously marked as California American Water  
19 Exhibit 5, I ask you to take a look at the Exhibit.  
20 Let me know when you are finished reviewing it.

21 MR. FUERST: I'm familiar with this document.

22 MR. RUBIN: Is that the judgment that you were  
23 discussing yesterday involving the adjudication of the  
24 Seaside Basin?

25 MR. FUERST: Yes, this is the original

1 decision that was filed in March 2006.

2 MR. RUBIN: Thank you.

3 Mr. Fuerst, I also have some questions related  
4 to your testimony concerning Exhibit DF-2. There was  
5 quite a bit of testimony yesterday that involved the  
6 use of a term, unlawful diversions. Do you recall  
7 those questions?

8 MR. FUERST: Yes, I do.

9 MR. RUBIN: I believe a lot of those questions  
10 began when you were questioned on the table that  
11 appears as Exhibit DF-2. Do you recall that?

12 MR. FUERST: Yes.

13 MR. RUBIN: Did you prepare the table?

14 MR. FUERST: Yes, I did.

15 MR. RUBIN: Thank you.

16 When you use the term in footnote 2, unlawful  
17 diversions, was that a shorthand description of  
18 diversions that are in excess of 3,376 acre feet?

19 MR. FUERST: Yes, that's how they were -- yes.

20 MR. RUBIN: Mr. Fuerst, is it your opinion  
21 that California American Water is in compliance with  
22 Condition 1 and Condition 3 of Order 95-10 if it is  
23 diverting less than 11,285 acre feet?

24 MR. FUERST: Conditions 1 and 3?

25 MR. RUBIN: Yes.

1 MR. LAREDO: Do you have a copy of the Order?

2 MR. RUBIN: I can have one provided to you.

3 MR. SILVER: With respect to this question, I  
4 think he's asking for this witness, who is not  
5 qualified as an attorney, to provide a legal  
6 conclusion with regard to construing sections one --  
7 and Conditions 1 and 3.

8 MR. RUBIN: I would like a chance to respond.

9 There was a lot of discussion yesterday  
10 regarding the use of the term unlawful diversion. And  
11 I'm trying to ask questions to better understand how  
12 that term was used.

13 I think it is a critical point, and I ask that  
14 the witness respond to the best of his knowledge and  
15 capability.

16 I understand that he's not a lawyer, but in  
17 his capacity and as a manager for the Monterey  
18 Peninsula Water Management District, he does need to  
19 make determinations when he's budgeting for water, and  
20 this gets to the -- those types of -- how those types  
21 of determinations are made.

22 MR. SILVER: He's testified already that he  
23 made the determination for purposes of the definition  
24 that those diversions in excess of the 3,376 acre feet  
25 were unlawful for his purposes.



1           MR. RUBIN: I think his testimony speaks for  
2 itself.

3           CO-HEARING OFFICER BAGGETT: Sustain the  
4 objection.

5           But I think if you could rephrase the question  
6 so it doesn't require a legal conclusion in terms of  
7 how he manages the water, I think that would be  
8 appropriate since he is a water manager. I mean he  
9 does run the District.

10          But to ask him to interpret the ward unlawful  
11 diversion, I think would sustain the objection.

12          CO-HEARING OFFICER WOLFF: I would point out,  
13 Mr. Rubin that the phrase appears in parentheses in  
14 the footnote, and that's noted.

15          MR. RUBIN: I understand that. But again,  
16 just some clarity in the questioning.

17          Clearly yesterday, the term was used. Either  
18 it's a term of art or it's not, and the opinions were  
19 provided, and I'm trying to obtain some clarity on it.  
20 But let me try to rephrase the question.

21          CO-HEARING OFFICER BAGGETT: I think you can  
22 do that.

23          MR. RUBIN: Mr. Fuerst, when you're preparing  
24 quarterly budgets, do you prepare the budgets with the  
25 assumption that California American Water is in

1 compliance with Order 95-10, and specifically  
2 Conditions 1 and 3, if it diverts less than  
3 11,285 acre feet of water from the Carmel River?

4 MR. FUERST: Say the number again; 11,285 acre  
5 feet?

6 MR. RUBIN: Yes.

7 MR. FUERST: Yes.

8 MR. RUBIN: Thank you.

9 Mr. Fuerst, I might have misheard some  
10 testimony that you provided yesterday. I thought I  
11 heard you say that the Monterey Peninsula Water  
12 Management District has nothing to do with the Coastal  
13 Water Project?

14 MR. FUERST: Yes, I said that. The -- I would  
15 clarify that by saying that the District obviously  
16 reviews and Cal Am would be eventually required to  
17 amend their distribution permit if they moved forward  
18 on that project.

19 But in the planning stage, we have worked with  
20 Cal Am closely on the Aquifer Storage and Recovery  
21 Project component.

22 MR. RUBIN: And in order for California  
23 American Water to implement the Coastal Water Project,  
24 are there any applications it would have to file with  
25 the Monterey Peninsula Water Management District?

1           MR. FUERST: Yes. It would need to file an  
2 application to amend its water distribution system  
3 permit with the District.

4           MR. RUBIN: And in response to an application  
5 that California American Water would have to file in  
6 order to implement the Coastal Water Project, would  
7 the Monterey Peninsula Water Management District have  
8 to issue a permit?

9           MR. FUERST: In this case, it would be an  
10 amendment to an existing permit.

11          MR. RUBIN: Are there any legal requirements  
12 that the Monterey Peninsula Water Management District  
13 would have to satisfy prior to issuing the amended  
14 permit?

15          MR. FUERST: Yes.

16          MR. RUBIN: Are some of the legal requirements  
17 that Monterey Peninsula Water Management District  
18 would have to comply with the California Environmental  
19 Quality Act?

20          MR. FUERST: Yes, it would need to undergo  
21 CEQA review.

22          MR. RUBIN: Thank you.

23                 For the CEQA review, would the Monterey  
24 Peninsula or -- excuse me; strike that.

25                 Do you know if California American Water would

1 be the Lead Agency for the CEQA review that would be  
2 used by the Monterey Peninsula Water Management  
3 District?

4 MR. FUERST: It's my understanding that the  
5 Lead Agency is the California Public Utilities  
6 Commission for Cal Am's proposed Coastal Water Project  
7 at this time.

8 MR. RUBIN: Thank you.

9 Mr. Fuerst, you just mentioned the California  
10 Public Utilities Commission. Yesterday, you were  
11 asked a question about, I believe, the regulation of  
12 California American Water.

13 And the question I believe asked who might  
14 regulate California American Water. Do you recall  
15 that question?

16 MR. FUERST: Yes, I do.

17 MR. RUBIN: I believe in your response you  
18 referenced the State Water Resources Control Board and  
19 the Monterey Peninsula Water Management District. Do  
20 you recall that response?

21 MR. FUERST: Yes.

22 MR. RUBIN: Are there any other entities that  
23 might regulate California American Water?

24 MR. FUERST: Yes. There are a number of state  
25 and local regulators.

1           These include, as I've already mentioned,  
2 State Water Resources Control Board with respect to  
3 Cal Am's water rights; the California Department of  
4 Fish and Game with respect to their effect on the  
5 state's fish and wildlife; as well as at the -- and at  
6 the state level, the California Department of Public  
7 Health with respect to providing potable water.

8           And at the federal level, the -- as I've  
9 alluded to, National Marine Fisheries Service US Fish  
10 and Wildlife Service.

11           MR. RUBIN: Mr. Fuerst, I did not hear you  
12 mention the California Public Utilities Commission as  
13 a state agency that might regulate California American  
14 Water.

15           MR. FUERST: Yes, I thought I'd answered that  
16 we had talked about that in the last. But the  
17 California Public Utilities Commission regulates Cal  
18 Am with respect to its rates and recovery of costs.

19           MR. RUBIN: Does the California Public  
20 Utilities Commission regulate any other aspect of  
21 California American Water's operations?

22           MR. FUERST: I don't believe so.

23           MR. RUBIN: Mr. Fuerst, do you know if  
24 California American Water needs to apply to the  
25 California Public Utilities Commission in order to

1 place a moratorium on new connections?

2 MR. FUERST: I'm not sure.

3 MR. RUBIN: I have no further questions.

4 Thank you.

5 CO-HEARING OFFICER BAGGETT: Thank you. Is  
6 there any redirect?

7 MR. LAREDO: I have no redirect, but I would  
8 like to take an opportunity to move the exhibits into  
9 evidence.

10 I'm referring to Exhibit No. MPWMD-1. That's  
11 the testimony Mr. Fuerst.

12 And the related Exhibits DF-1 to DF-8A which  
13 are referenced in his testimony with the exception of  
14 8A being the replacement to 8.

15 Also, there was referenced an exhibit that I  
16 don't know that was identified. This is the exhibit  
17 that was the letter of August 6th that was identified  
18 by Ms. Mrowka that was signed by Victoria Whitney, and  
19 that's the letter that caused a withdrawal of previous  
20 a letter. I would suggest that be identified as  
21 MPWMD-9.

22 Then finally, there was the replacement for  
23 SC-2; and we provided it, I believe, to staff. We  
24 have copies available, a replacement, it's a nine-page  
25 replacement for SC-2A, and we have a stipulation by

1 the Sierra Club, I believe, that that can be entered  
2 as a replacement for what had been SC-2.

3 I would like to move each of those  
4 exhibits into evidence.

5 CO-HEARING OFFICER BAGGETT: Any objection?  
6 If not, they're admitted.

7 (Exhibit MPWMD-2 was admitted into  
8 evidence.)

9 (Exhibits DF-1 to DF-8A were admitted  
10 into evidence.)

11 (Exhibit SC-2A was admitted into  
12 evidence.)

13 MR. RUBIN: I would also like to move Exhibit  
14 CAW-005 into evidence.

15 CO-HEARING OFFICER BAGGETT: And that was?

16 MR. RUBIN: The decision issued in the Seaside  
17 Basin adjudication.

18 CO-HEARING OFFICER BAGGETT: Any objection?  
19 So moved.

20 (Exhibit CAW-005 was admitted into  
21 evidence.)

22 CO-HEARING OFFICER BAGGETT: Pebble Beach  
23 Company, do you have any opening statement?  
24 Witnesses?

25 Mr. JAMISON: Good morning, Mr. Baggett,

1 Mr. Wolff. I'm Thomas Jamison representing Pebble  
2 Beach Company.

3 Mr. Baggett, I do have a brief opening  
4 statement, but in the interest of saving time I wanted  
5 to let you know in advance we do not have a  
6 case-in-chief this morning.

7 Mark Stilwell, executive vice president and  
8 general counsel for Pebble Beach Company, did submit a  
9 testimony under penalty of perjury. We would offer  
10 that as testimony, but he is not present today.

11 And we would also offer the exhibits that were  
12 submitted, certainly, and then request permission to  
13 make a brief opening statement, and that will take  
14 care of us.

15 CO-HEARING OFFICER BAGGETT: Mr. Jackson?

16 MR. JACKSON: As I understand the rules of the  
17 hearing, if the testimony is not subject to  
18 cross-examination, it cannot be admitted.

19 CO-HEARING OFFICER BAGGETT: Correct.

20 Mr. JAMISON: We'll withdraw the testimony  
21 then.

22 As far as the exhibits are concerned though,  
23 Mr. Baggett, we would offer the exhibits. And I would  
24 point out that they are all records of public  
25 agencies, including the State Water Resources Control



1 Board. But I can go through each exhibit if you would  
2 care.

3 CO-HEARING OFFICER BAGGETT: Mr. Jackson.

4 MR. JACKSON: Same objection. The exhibits  
5 are required to be verified by a witness who is going  
6 to testify. And since they have no witness, the  
7 exhibits are not admissible.

8 CO-HEARING OFFICER BAGGETT: It's a proper  
9 objection, and it's sustained. But if they're public  
10 documents, I suspect that many of them are already in  
11 the file. And we can -- and we've taken official  
12 notice of a lot of documents. And I think that with  
13 Cal Am coming up next with their official documents,  
14 if they don't have them, they can -- I assume that  
15 they will be admitted at some point somehow by  
16 someone.

17 Mr. JAMISON: We would move then --

18 CO-HEARING OFFICER BAGGETT: Without a witness  
19 to --

20 Mr. JAMISON: We would move they be accepted  
21 as official -- by official notice then as documents of  
22 a public agency.

23 CO-HEARING OFFICER BAGGETT: I would suggest  
24 make your opening statement. Let us review the list  
25 of documents. If they are official things we can take

1 official notice of, we will; but let us -- we'll  
2 review them.

3 Mr. JAMISON: Thank you.

4 CO-HEARING OFFICER BAGGETT: Proceed with your  
5 opening.

6 Mr. JAMISON: Again, I'm Thomas Jamison  
7 representing Pebble Beach Company, and much of what  
8 I'm going to say in my opening statement, one of the  
9 reasons for trying to save time, Mr. Baggett, is that  
10 much of what we hope to elicit in testimony and in  
11 exhibits was established through the testimony and the  
12 evidence that was presented yesterday.

13 I just want to state a few brief facts. You  
14 have a reclamation project on the Monterey Peninsula  
15 that since 1994 until 2006 has saved 500 acre feet in  
16 potable water and in withdrawals from the Carmel River  
17 for irrigation of Del Monte Forest golf courses and  
18 open spaces.

19 In the last two years, that reclamation  
20 project has saved on the average of 650 acre feet of  
21 potable water; and as of next year, it will be saving  
22 at least 800 acre feet of potable water and probably  
23 more, probably on the order of 1000 acre feet.

24 This is at a cost of roughly \$70 million that  
25 has been invested to achieve this savings of potable

1 water. And in exchange for that savings and that  
2 investment, a water entitlement of 380 acre feet has  
3 been granted to allow potable water service to future  
4 development on the Monterey Peninsula.

5 That's a maximum of 380 acre feet. It may  
6 never be used to its maximum, but it is a maximum.

7 So even at full use, you have a project at a  
8 cost of \$70 million that will save at least 400 acre  
9 feet in withdrawals from the Carmel River and probably  
10 more, more like 600 in a typical year.

11 The 380 acre feet called the Pebble Beach  
12 Water Entitlement has been recognized as a vested  
13 right, and we are here -- Pebble Beach Company is here  
14 simply to protect that water right, not only for  
15 Pebble Beach Company but for many other people and  
16 landowners who have paid hard money to make this  
17 project possible.

18 And that's all we're here to do, and that's  
19 all we ask, that the Pebble Beach Water Entitlement be  
20 recognized and confirmed in these proceedings no  
21 matter what happens and what the outcome of these  
22 proceedings are with respect to Cal Am; that it be  
23 recognized and confirmed as a vested and inalienable  
24 right to water which Cal Am can serve with withdrawals  
25 from the Carmel River over and above whatever other

1 limitations may be applicable to Cal Am. That's all  
2 we're here for, and that is all we ask.

3           And I'd just like to conclude by saying: When  
4 you think about it, this is a remarkable project. You  
5 have the greatest golf courses in the world being  
6 irrigated with reclaimed water.

7           And with all due respect, I think you can take  
8 official notice of the fact that we are dealing with  
9 some of the greatest golf courses in the world when  
10 you talk about Pebble Beach, Spyglass Hill, Spanish  
11 Bay. And as of next year, they will be irrigated with  
12 100 percent reclaimed water.

13           That's an incredible model and an incredible  
14 achievement, and it's an incredible example for the  
15 use of reclaimed water to water golf courses  
16 all over -- literally all over the world.

17           So we're very proud of that project. I think  
18 that Monterey Peninsula Water Management District,  
19 which has taken a very, very important role in the  
20 project is very proud of it.

21           And what we're -- it took a lot of work, very  
22 complex agreements, a lot of creativity. The linchpin  
23 that helped make this work was the financing. And the  
24 financing was based on that water entitlement of 380  
25 acre feet.

1           And again, all we're asking is that that water  
2 entitlement be confirmed, respected, no matter what  
3 else happens in these proceedings.

4           Thank you very much.

5           CO-HEARING OFFICER BAGGETT: Thank you.

6           We've reviewed your exhibits. I think your  
7 MS-5, the letter from Edward Anton, I believe is  
8 already in the files in officially noticed letters.  
9 It's been discussed previously.

10           Water Right Order 95-10 is already in the  
11 record.

12           A judgment of validation, a superior court  
13 judgment, we can take that under official notice  
14 without any problem. And that's MS-3?

15           Mr. JAMISON: Yes.

16           CO-HEARING OFFICER BAGGETT: The questionable  
17 one for me is the Wastewater Reclamation Project  
18 Fiscal Sponsorship Agreement between Monterey  
19 Peninsula Water Management District.

20           I don't know whether that's already in their  
21 records or not. It's -- you might want to check with  
22 them, or if it's in Cal Am's.

23           Mr. JAMISON: It is not in the record,  
24 Mr. Baggett, but it is an official document of the  
25 Monterey Peninsula Water Management District, a public

1 agency.

2 CO-HEARING OFFICER BAGGETT: I think I see  
3 some objections coming.

4 MR. SATO: Just to protect the integrity of  
5 our proceeding, I think you have to reject this  
6 proffered exhibit because nobody testified as to the  
7 validity of the document.

8 CO-HEARING OFFICER BAGGETT: I would sustain  
9 that objection. But we will allow the superior court  
10 order in.

11 Mr. JAMISON: Thank you.

12 (Exhibit PBC MS-3 was admitted into  
13 evidence.)

14 STAFF COUNSEL TAYLOR: I have one brief  
15 question. Will you be available in the next phase of  
16 this proceeding?

17 Mr. JAMISON: Yes, somebody from Pebble Beach  
18 Company will definitely participate.

19 STAFF COUNSEL TAYLOR: Thank you.

20 CO-HEARING OFFICER WOLFF: I just wanted to  
21 comment, Mr. Jamison, that as a strong supporter of  
22 recycled water, if the Pebble Beach Company can see to  
23 it when the next large golf tournament is played there  
24 on national television there is a sign that tells  
25 people reclaimed water is being used, I will see to it

1 this Board signs a resolution officially recognizing  
2 the Pebble Beach Company for its leadership in  
3 recycled water.

4 Mr. JAMISON: I can't guarantee -- I don't  
5 make those kinds of decisions. I don't have enough  
6 juice to make that decision for Pebble Beach.

7 CO-HEARING OFFICER WOLFF: I understand. Who  
8 directs the cameraman is not within your control.

9 CO-HEARING OFFICER BAGGETT: Mr. Rubin.

10 MR. RUBIN: I was thinking maybe we'd have a  
11 field trip to see the golf courses.

12 Good morning. My name is Jon Rubin. I'm an  
13 attorney representing California American Water in  
14 these proceedings. And originally, I had prepared my  
15 opening statement as something I would be saying at  
16 the start of the proceeding, but what I prepared I  
17 think is very appropriate at this time.

18 And I start with asking the question: What is  
19 this proceeding really about? You heard from Mr. Sato  
20 that a lot of the facts might not be all that much  
21 disputed, and I think that to a large degree is true.  
22 We have a lot of documents that are part of the  
23 record.

24 So what is this case about? I believe this  
25 case is about differences in perception.

1           Some people believe -- some people may believe  
2   that California American Water has acted in contempt  
3   of water rights law or Order 95-10.  However, the  
4   evidence has and will continue to show just the  
5   opposite.

6           The evidence has and will continue to  
7   demonstrate that California American Water is a  
8   company dedicated to providing reliable water to  
9   customers consistent with legal mandates.

10          Over the 13 years since the State Water  
11   Resources Control Board issued Order 95-10, California  
12   American Water has consistently communicated with the  
13   State Water Resources Control Board regarding  
14   activities California American Water was and is  
15   pursuing to satisfy Order 95-10.

16          The State Water Resources Control Board  
17   consistently maintained oversight of those California  
18   American Water activities, and the State Water  
19   Resources Control Board has consistently informed  
20   California American Water that it was and remains in  
21   compliance with Order 95-10.  So I ask:  Why are we  
22   here?

23          I believe we are here because of a difference  
24   in perspective.  California American Water approaches  
25   this matter with a very comprehensive view.  We're



1 looking beyond just the general to the specifics.

2           There is a need to consider Order 95-10 in the  
3 13 years since that order issued. With that  
4 perspective, it becomes abundantly clear that the  
5 State Water Resources Control Board through Order  
6 95-10 reached a resolution to a very complicated  
7 problem, a solution that required significant balance,  
8 required balancing between the water needs of the  
9 people and the water needs of fish and wildlife. It  
10 required balance between expectations, what is within  
11 California American Water's control and what is  
12 outside of its control.

13           The result of the balancing has the State  
14 Water Resources Control Board authorizing California  
15 American Water to divert in excess of its water  
16 rights.

17           In the words presented by the State Water  
18 Resources Control Board in 1995: The people and the  
19 businesses of the Monterey Peninsula must continue to  
20 be served water from the Carmel River in order to  
21 protect public health and safety.

22           The authorization was presented in Order 95-10  
23 as a limitation. Order 95-10 ordered California  
24 American Water to cease and desist from diverting more  
25 than 14,106 acre feet of water.

1           The authorization was part of a quid pro quo.  
2 California American Water was ordered to implement  
3 conservation measures. The conservation measures had  
4 an initial goal of reducing diversions by 15 percent  
5 and with a subsequent goal of reaching 20 percent  
6 reductions.

7           California American Water was also ordered to  
8 implement measures to mitigate for its impacts. The  
9 Order ordered California American Water to diligently  
10 pursue actions to end diversions in excess of its  
11 water rights.

12           This latter requirement was grounded in  
13 reality. The measure of compliance is diligence.  
14 Order 95-10, albeit an interim order, does not call a  
15 specific -- excuse me -- does not call for specific  
16 action by a date certain.

17           Again, this later requirement imposes a  
18 realistic obligation to end diversions in excess of  
19 its water rights without jeopardizing the public  
20 health and safety of those on the Monterey Peninsula.

21           California American Water requires permits  
22 from state and/or federal agencies and the cooperation  
23 of many others to implement actions.

24           Whether the actions proposed by California  
25 American Water are attacked by stakeholders and full

1 implementation is delayed is not within California  
2 American Water's control.

3           Likewise outside of California American  
4 Water's control is whether the actions proposed by  
5 California American Water are approved by the State  
6 and/or federal agencies and, if they are, how quickly  
7 it takes to obtain that approval.

8           The State Water Resources Control Board knows  
9 better than most how difficult it is to reach  
10 milestones when dealing with natural resources for  
11 which there are agencies with concurrent or  
12 overlapping jurisdictions, for which there are  
13 competing uses, for which there are significant  
14 stakeholder interests, and for which political  
15 considerations are ever-changing.

16           The Prosecution Team and others, as you've  
17 heard, view this case very differently. The  
18 Prosecution Team and others approach this case with a  
19 very narrow focus.

20           As you have heard, the Prosecution Team and  
21 others claim enforcement is appropriate because  
22 California American Water diverts more than allowed  
23 under its water rights. To accept that claim, the  
24 Hearing Officers of the State Water Resources Control  
25 Board must ignore the actions by the State Water

1 Resources Control Board reflected in Order 95-10 and  
2 the history since that order issued.

3           The Hearing Officers would have to find  
4 California American Water liable based upon diversions  
5 in excess of its water rights even though the State  
6 Water Resources Control Board contemplated that  
7 occurring when it issued Order 95-10.

8           In the alternative, the Hearing Officers would  
9 have to find California American Water liable based  
10 upon a failure to terminate diversions in excess of  
11 its water rights even though California American Water  
12 has been diligent in its efforts to obtain alternative  
13 water supplies.

14           Neither conclusion makes any sense.

15           Order 95-10 requires a finding of liability in  
16 this case only if the Prosecution Team demonstrates a  
17 violation of Condition 2 of Order 95-10. To make that  
18 showing, the Prosecution Team must show that  
19 California American Water has not been diligent in its  
20 pursuit of an alternative water supply.

21           I don't believe you've heard that from the  
22 Prosecution Team, and I believe what you'll hear from  
23 the panel that's presenting on behalf of California  
24 American Water is that they have been diligent.

25           Thank you.

1                   B. KENT TURNER  
2                   THOMAS BUNOWSKY  
3                   F. MARK SCHUBERT  
4                   DAVID P. STEPHENSON

5           Called by California American Water Company

6                   DIRECT EXAMINATION BY MR. RUBIN

7           MR. RUBIN: Good morning again. Jon Rubin,  
8 California American Water. I do have some questions.  
9 We're going to be able to move through this very  
10 quickly.

11                   One of the issues that will be presented  
12 through my questioning is whether the witnesses have  
13 taken the oath, so we either could do that now or  
14 through my questioning, but I believe at least one  
15 witness has not.

16                   CO-HEARING OFFICER BAGGETT: Why don't we do  
17 the oath right now.

18                   Do you promise tell the truth in these  
19 proceedings?

20           MR. TURNER: I do.

21           MR. BUNOWSKY: I do.

22           MR. SCHUBERT: I do.

23           MR. STEPHENSON: I do.

24           MR. RUBIN: Beginning my questions with  
25 Mr. Kent Turner. Will you please state your name and

1 spell your name for the record.

2 MR. TURNER: Kent, K-e-n-t. Turner,  
3 T-u-r-n-e-r.

4 MR. RUBIN: Mr. Turner, you have taken the  
5 oath in the hearing?

6 MR. TURNER: Yes, I have.

7 MR. RUBIN: Do you have in front of you copies  
8 of Exhibits CAW-29, 29-A?

9 MR. TURNER: Yes.

10 MR. RUBIN: Is Exhibit CAW-29A a true and  
11 correct statement of your experience and professional  
12 qualifications?

13 MR. TURNER: Yes, it is.

14 MR. RUBIN: Is Exhibit CAW-29 your written  
15 testimony prepared for the first phase of this  
16 proceeding?

17 MR. TURNER: Yes, it is.

18 MR. RUBIN: Do you have any corrections to  
19 Exhibit CAW-29?

20 MR. TURNER: No, I do not.

21 MR. RUBIN: Is the information presented in  
22 Exhibit CAW-29 true and correct?

23 MR. TURNER: Yes, it is.

24 MR. RUBIN: Thank you. Now a few questions  
25 for Mr. Bunowsky. Mr. Bunowsky, can you please state

1 and spell your name for the record.

2 MR. BUNOWSKY: Thomas Bunowsky,  
3 B-u-n-o-w-s-k-y.

4 MR. RUBIN: Mr. Bunowsky, have you taken the  
5 oath for this hearing?

6 MR. BUNOWSKY: Yes, I have.

7 MR. RUBIN: Do you have in front of you copies  
8 of CAW-30 and CAW-30A?

9 MR. BUNOWSKY: Yes, I do.

10 MR. RUBIN: Is Exhibit CAW-30A a true and  
11 correct statement of your experience and professional  
12 qualifications?

13 MR. BUNOWSKY: Yes, it is.

14 MR. RUBIN: Question for the Hearing Officers.  
15 I do have some questions that I could ask regarding  
16 Exhibits CAW-30B through WW. I believe those will be  
17 addressed as part of the stipulation, and therefore we  
18 don't need to go through the foundation for that; and  
19 if it's acceptable to the Hearing Officers, we would  
20 move past that and would want to reserve the same  
21 reservation I made yesterday that if for any reason  
22 the stipulation is not granted we would want the  
23 opportunity to have those admitted.

24 CO-HEARING OFFICER BAGGETT: Very good.

25 MR. RUBIN: Mr. Bunowsky, is Exhibit CAW-30

1 your written testimony prepared for the first phase of  
2 this proceeding?

3 MR. BUNOWSKY: Yes.

4 MR. RUBIN: Do you have any corrections to  
5 CAW-30?

6 MR. BUNOWSKY: No, I do not.

7 MR. RUBIN: Mr. Bunowsky, as part of your  
8 submittal you did provide Exhibit CAW-30B through  
9 Exhibit 30WW; is that correct?

10 MR. BUNOWSKY: Yes.

11 MR. RUBIN: Did you have any corrections to  
12 any of those exhibits?

13 MR. BUNOWSKY: Yes, I did.

14 MR. RUBIN: Can you explain what corrections  
15 you have to any of the exhibits, CAW-30B through WW?

16 MR. BUNOWSKY: Yes. There were five quarterly  
17 reports that had some information missing in the  
18 submittal in the original exhibits.

19 MR. RUBIN: And was that information missing  
20 because of some sort of a clerical error?

21 MR. BUNOWSKY: Yes. Putting all of the  
22 exhibits together, we neglected to include some of the  
23 information that was originally filed.

24 MR. RUBIN: Thank you.

25 Mr. Bunowsky, is the information presented in



1 Exhibit CAW-30, your written testimony, true and  
2 correct?

3 MR. BUNOWSKY: Yes.

4 MR. RUBIN: Thank you.

5 Mr. Mark Schubert, can you please state and  
6 spell your name for the record.

7 MR. SCHUBERT: Yes. My name is F. Mark  
8 Schubert, S-c-h-u-b-e-r-t.

9 MR. RUBIN: Mr. Schubert, have you taken the  
10 oath for this hearing?

11 MR. SCHUBERT: Yes, I have.

12 MR. RUBIN: Do you have in front of you a copy  
13 of Exhibits CAW-32 and CAW-32A?

14 MR. SCHUBERT: Yes.

15 MR. RUBIN: Is Exhibit CAW-32A a true and  
16 correct statement of your experience and professional  
17 qualifications?

18 MR. SCHUBERT: Yes, it is.

19 MR. RUBIN: Is Exhibit CAW 32 your written  
20 testimony prepared for the first phase of this  
21 proceeding?

22 MR. SCHUBERT: Yes.

23 MR. RUBIN: Do you have any corrections to  
24 Exhibit CAW-32?

25 MR. SCHUBERT: No, I do not.

1           MR. RUBIN: Is the information presented in  
2 Exhibit CAW-32 true and correct?

3           MR. SCHUBERT: Yes.

4           MR. RUBIN: Do you have in front of you copies  
5 of Exhibits CAW-32B, 32C, and 32D?

6           MR. SCHUBERT: Yes, I do.

7           MR. RUBIN: Are you familiar with Exhibits  
8 CAW-32B, 32C, and 32D?

9           MR. SCHUBERT: Yes, I am.

10          MR. RUBIN: What is Exhibit CAW-32B?

11          MR. SCHUBERT: Exhibit CAW-32B as in boy is  
12 testimony filed by Lawrence Gallery.

13          MR. RUBIN: And what is Exhibit CAW-32C?

14          MR. SCHUBERT: Exhibit CAW-32C is also direct  
15 testimony filed by Lawrence Gallery.

16          MR. RUBIN: What is Exhibit CAW-32D?

17          MR. SCHUBERT: Exhibit CAW-32D as in David is  
18 testimony filed by John Klein.

19          MR. RUBIN: What is your relationship to  
20 Lawrence Gallery?

21          MR. SCHUBERT: Lawrence Gallery was the lead  
22 project manager for the Coastal Water Project  
23 environmental assessment that was prepared on our  
24 behalf by RBF Consulting.

25          MR. RUBIN: And what is your relationship to

1 John Klein?

2 MR. SCHUBERT: John Klein is a senior  
3 engineering project manager who works in the  
4 engineering group within California American and  
5 reports to me.

6 MR. RUBIN: Is the information presented in  
7 Exhibits 32-B, C, and D within your personal  
8 knowledge?

9 MR. SCHUBERT: Yes.

10 MR. RUBIN: Are Exhibits 32-B through 32-D  
11 referenced in your written testimony, Exhibit CAW-32?

12 MR. SCHUBERT: Yes.

13 MR. RUBIN: Thank you.

14 Mr. David Stephenson, can you please state and  
15 spell your name for the record.

16 MR. STEPHENSON: My name is David P.  
17 Stephenson. Last name spelled S-t-e-p-h-e-n-s-o-n.

18 MR. RUBIN: Mr. Stephenson, have you taken the  
19 oath for the hearing today?

20 MR. STEPHENSON: Yes.

21 MR. RUBIN: You have in front of you copies of  
22 Exhibits CAW-31 and CAW-31A?

23 MR. STEPHENSON: Yes.

24 MR. RUBIN: Is CAW-31A a true and correct  
25 statement of your experience and professional

1 qualifications?

2 MR. STEPHENSON: Yes, it is.

3 MR. RUBIN: Is Exhibit CAW-31 your written  
4 testimony prepared for the first phase of this  
5 proceeding?

6 MR. STEPHENSON: Yes.

7 MR. RUBIN: Do you have any correction to  
8 Exhibit CAW-31?

9 MR. STEPHENSON: Yes, I do. I have two  
10 corrections.

11 Page 2, line 20. The numerical figure shown  
12 on that line, the 3,646,452 should be replaced by  
13 3,290,103.

14 The second correction is on line 25 of the  
15 same page 2. The start of the new sentence that  
16 starts "to date total" should be replaced by the word  
17 "yearly."

18 MR. RUBIN: Mr. Stephenson, can you explain  
19 the first change that you have made to your testimony?

20 MR. STEPHENSON: Yes. The change from  
21 3,646,452 to 3,290,103 reflects that when the  
22 commission approved the recovery of the Carmel River  
23 Dam project they allowed us recovery of all of our  
24 expenditures but not our capitalized interest on the  
25 project.

1           MR. RUBIN: Thank you. Mr. Stephenson, do you  
2 have before you Exhibit CAW-31B?

3           MR. STEPHENSON: Yes, I do.

4           MR. RUBIN: What is Exhibit CAW-31B?

5           MR. STEPHENSON: That is Decision 06-11-050  
6 from the Public Utilities Commission for a rate case  
7 application for California American Water for its  
8 Monterey District and its Felton District.

9           MR. RUBIN: What involvement if any did you  
10 have in the proceeding the led to the issuance of  
11 CAW-31B?

12           MR. STEPHENSON: As the Director of Rates for  
13 California American, I oversee all proceedings, rate  
14 proceedings, before the Public Utilities Commission.

15           MR. RUBIN: Is Exhibit CAW-31B referencing  
16 your written testimony, Exhibit CAW 31?

17           MR. STEPHENSON: Yes, it is.

18           MR. RUBIN: Thank you.

19           One more question. Apologize, but I'm turning  
20 back to Mr. Bunowsky.

21           Do Exhibits CAW-30B through Exhibits CAW-30WW  
22 reflect the actions pursued or undertaken by  
23 California American Water to comply with Order 95-10?

24           MR. BUNOWSKY: Yes.

25           MR. RUBIN: Thank you.

1           With that, Hearing Officers, I have no further  
2 questions. If you want, we can summarize the  
3 testimony, but I have no problem moving to cross based  
4 upon the written testimony provided.

5           CO-HEARING OFFICER WOLFF: Fine with me.

6           CO-HEARING OFFICER BAGGETT: Fine with us. So  
7 cross-examination. We begin here, Prosecution Team.

8           MR. SATO: We are willing to go after the  
9 other parties unless there is a preference on your  
10 part for us to proceed now.

11           CO-HEARING OFFICER BAGGETT: Skipping to  
12 Sierra Club, that's fine. Sierra Club have any  
13 cross-examination? Mr. Silver?

14           MR. JACKSON: Mr. Baggett, the parties are  
15 asking if I would go first. Is that all right?

16           CO-HEARING OFFICER BAGGETT: That's fine.

17           CROSS-EXAMINATION BY MR. JACKSON

18           FOR CARMEL RIVER STEELHEAD ASSOCIATION

19           MR. RUBIN: For a point of clarification, we  
20 obviously have four witnesses here for California  
21 American Water. I think the best way to deal with the  
22 cross-examination is for the question to be asked, and  
23 we'll have the person with the most knowledge, best  
24 equipped to answer the question, answer the question.  
25 Is that --

1           MR. JACKSON: I would prefer to have the  
2 person with the least knowledge answer the question.

3           (Laughter)

4           MR. JACKSON: No, that would be fine.

5           CO-HEARING OFFICER BAGGETT: Okay. Proceed,  
6 Mr. Jackson.

7           MR. JACKSON: My name is Mike Jackson, and I'm  
8 here for the Carmel River Steelhead Association. And  
9 gentlemen, if I look at one of you and call someone  
10 else's name, I'm sorry. And the person that I'm  
11 talking to . . .

12           These questions are for Mr. Schubert unless  
13 somebody else wants to answer them.

14           Mr. Schubert, in your position you manage all  
15 of the engineering projects for California American in  
16 the Monterey area; is that correct?

17           MR. SCHUBERT: Yes, that's correct.

18           MR. JACKSON: What -- it's my understanding  
19 that the -- California American has attempted in its  
20 own mind to respond to the need to reduce water from  
21 the Carmel River above 3376; is that correct?

22           MR. RUBIN: I object to the question; vague  
23 and ambiguous.

24           CO-HEARING OFFICER BAGGETT: Sustained. Can  
25 you rephrase?

1           MR. JACKSON: It's my understanding that the  
2 California American Water Company has been looking for  
3 an alternative to pumping water out of the Carmel  
4 River above 3376 since 1995; is that correct?

5           MR. SCHUBERT: Yes, that's correct.

6           MR. JACKSON: Has the alternative over that  
7 time period changed?

8           MR. RUBIN: I object. Assumes facts not in  
9 evidence.

10          MR. JACKSON: I'll go through the facts.

11                   Originally, there was a dam project that was  
12 going to be built by Monterey Peninsula Water District  
13 to satisfy the needs of California American and the  
14 Monterey district to reduce the pumping from the  
15 Carmel River; is that correct?

16          MR. SCHUBERT: Yes, that's correct.

17          MR. JACKSON: And that dam was voted down by  
18 the people within the Monterey Peninsula Water  
19 District in November of 1995?

20          MR. SCHUBERT: Yes, that's my understanding.

21          MR. JACKSON: At that point, what did Cal Am  
22 do in an attempt to lessen its pumping on the Carmel  
23 River?

24          MR. SCHUBERT: At that point in time, the  
25 water company put forth its own proposal which was the



1 Carmel River Dam and Reservoir Project.

2 MR. JACKSON: And that was essentially the  
3 same dam, correct?

4 MR. SCHUBERT: It was essentially the same dam  
5 from a capacity standpoint, 24,000 acre feet. But  
6 there was also a provision on the amount of the water  
7 that would be for fire protection as well as releases  
8 from the river.

9 MR. JACKSON: Now, the reason for the releases  
10 to the river were an attempt to deal with  
11 environmental problems?

12 MR. SCHUBERT: Yes.

13 MR. JACKSON: And those environmental problems  
14 are not being dealt with without the building of the  
15 dam? In your opinion?

16 MR. SCHUBERT: I don't understand your  
17 question.

18 MR. JACKSON: Well, as you designed a --  
19 redesigned the dam project, you included some  
20 environmental provisions for the river, correct?

21 MR. SCHUBERT: Yes.

22 MR. JACKSON: And how are those identified  
23 environmental provisions being taken care of in the  
24 absence of the dam?

25 MR. SCHUBERT: I don't think I understand your

1 question.

2 MR. JACKSON: You modified Monterey Peninsula  
3 Water District's dam proposal to include the same  
4 amount of storage and to include some provisions for  
5 taking care of environmental problems you'd identified  
6 on the river, correct?

7 MR. SCHUBERT: Yes.

8 MR. JACKSON: Those identified problems -- the  
9 dam has not been built, has it?

10 MR. SCHUBERT: The dam has not been built.

11 MR. JACKSON: How is California American Water  
12 company solving the problems that you identified in  
13 your dam proposal in the absence of the dam?

14 MR. SCHUBERT: I think I explained some of  
15 this in my testimony.

16 MR. JACKSON: And would you, since you did not  
17 summarize your testimony, would you tell me where in  
18 your testimony you believe that question is answered?

19 MR. SCHUBERT: I'm sorry, could you repeat the  
20 question please?

21 MR. JACKSON: Would you reread the question  
22 please?

23 (Record read)

24 MR. SCHUBERT: In the absence of the dam, the  
25 company has moved forward with a contingency plan that

1 resulted from Assembly Bill 1182 which was the known  
2 Plan B project which was a water supply contingency  
3 plan and that came out in 1998.

4 MR. JACKSON: In 1998, when the water supply  
5 contingency plan came out, what part of the water --  
6 of the water supply contingency plan dealt with what  
7 you would do to solve the problems, environmental  
8 problems, in the river in the absence of the dam?  
9 What was identified in Plan B?

10 MR. RUBIN: I object to the question; assumes  
11 facts not in evidence.

12 CO-HEARING OFFICER BAGGETT: Overruled. You  
13 can answer the question to the extent of your  
14 knowledge. Plan B is clearly in the evidence.

15 MR. RUBIN: The objection in terms of assuming  
16 facts not in evidence did not go to the Plan B issue.

17 But if we want to read back Mr. Jackson's  
18 statement, he had a provision in there that talked  
19 about impacts to resources in the river, and that  
20 hasn't been discussed yet.

21 MR. JACKSON: Do you want a response?

22 CO-HEARING OFFICER BAGGETT: Just to help move  
23 this along, the question which I think was interesting  
24 is: In the absence -- in Plan B, how were you dealing  
25 with those impacts?

1 MR. JACKSON: I'll put all the cards on the  
2 table.

3 CO-HEARING OFFICER BAGGETT: Rephrase it.

4 MR. JACKSON: To go as fast as possible, all  
5 the cards --

6 CO-HEARING OFFICER BAGGETT: Sustain the  
7 objection.

8 Rephrase it. Try to get to where I think you  
9 were trying to get to, and what I think is of interest  
10 to this Board is: What were -- how were you dealing  
11 with those issues in Plan B?

12 MR. JACKSON: How were you dealing with the  
13 issues identified in Plan B?

14 MR. SCHUBERT: Can I defer to Mr. Turner?

15 MR. JACKSON: Sure.

16 MR. TURNER: Every project that we have  
17 developed with regard to the Monterey system has been  
18 designed to reduce the pumping on the Carmel River,  
19 reduce almost up to the point to eliminate that by  
20 virtue would be the fact that we were improving the  
21 environment by no longer pumping the Carmel River.

22 MR. JACKSON: So Plan B assumed that there  
23 would be no improvement in the conditions on the river  
24 until the water supply project was built?

25 MR. TURNER: By virtue of 95-10, it set goals

1 for us to allow a period of time to where we could in  
2 fact construct whatever project that would allow us to  
3 get to our authorized water rights on the Carmel  
4 River.

5 MR. JACKSON: Now by your interpretation of  
6 95-10, can you estimate a date by which you would be  
7 finished getting to 3376?

8 MR. SCHUBERT: The estimated completion date  
9 for the Coastal Water Project is early 2015.

10 MR. JACKSON: And are you on a schedule to  
11 complete the project by 2015?

12 MR. SCHUBERT: Yes, at this point in time.

13 MR. JACKSON: Is the company committed to the  
14 project in any fashion at this point?

15 MR. RUBIN: I object to the question; vague  
16 and ambiguous.

17 MR. JACKSON: I can add one word that would  
18 make it less ambiguous.

19 CO-HEARING OFFICER BAGGETT: Please.

20 MR. JACKSON: Is the company in any way  
21 legally committed to the building of the -- to the  
22 opening of the project by 2015.

23 MR. TURNER: I'm not a lawyer, but no I don't  
24 think there is any commitment because we can't legally  
25 be committed to it because we have lots of permits

1 that have to be obtained.

2 MR. JACKSON: What permits have you obtained  
3 so far in your goal to move this project by 2015.

4 MR. SCHUBERT: One of the first permits that  
5 we have in hand right now is a coastal development  
6 permit to operate a desalination pilot plan at Moss  
7 Landing. That pilot plan was -- started construction  
8 in June of 2007. Initial testing started in the  
9 spring of this year, and official test plan study work  
10 started on June 9th, and that will go for one year.

11 MR. TURNER: In addition, I'd like to  
12 supplement. In addition, there has been an ongoing  
13 project for almost two years now of where the  
14 Environmental Impact Report is being developed by the  
15 California PUC as Lead Agency which will in fact  
16 end -- should end in a permit from the California PUC.  
17 So that's under development.

18 MR. JACKSON: So it's fair to state at this  
19 point that any dam project is over, and the coastal  
20 desal project at Moss Landing is your solution?

21 MR. TURNER: I think that's clear in my  
22 testimony as well as in Mr. Schubert's testimony.

23 MR. SCHUBERT: Yes.

24 MR. JACKSON: Pending that solution, what  
25 actions have you taken to reduce your pumping on the

1 river because of the effects to the environment?

2 MR. TURNER: Two quick ones which have been  
3 discussed by Mr. Fuerst with the District. We have  
4 the joint ASR Phase 1 project that is in effect.

5 We have in fact signed a 15-year commitment to  
6 lease the Sand City desalination facility which will  
7 be a one-for-one reduction for a period of time until  
8 we can get, if we stay on schedule, get the 2015  
9 facility built which is 300 acre feet.

10 MR. JACKSON: All right. Sand City would give  
11 you 300 acre feet that would be returned to the river?

12 MR. TURNER: Sand City -- the Sand City desal  
13 plant would provide 300 acre feet of water which would  
14 not have to be withdrawn from the Carmel River.

15 MR. JACKSON: What commitment has the  
16 California American water district made to return that  
17 water to the river and not use it for additional water  
18 supply?

19 MR. TURNER: I'm afraid I don't understand the  
20 question.

21 MR. JACKSON: I'm not sure I can make that one  
22 any clearer.

23 MR. TURNER: We don't return water to the  
24 river. We simply don't -- take less.

25 MR. JACKSON: So you made a commitment, a

1 legal commitment in some fashion, that indicates that  
2 the 300 acre feet of water that will in the future  
3 someday as a result of your Sand City project return  
4 an additional 300 acre feet per year to the Carmel  
5 River?

6 MR. RUBIN: I object to the question. The  
7 witness already raised the issue with the line of  
8 questioning because of his understanding and tried to  
9 clarify.

10 CO-HEARING OFFICER BAGGETT: I would sustain.  
11 I think --

12 MR. JACKSON: Mr. Baggett, let me try to lay  
13 it out. The diligence that's taking place here is the  
14 diligence to try and find a water supply.

15 The diligence --

16 CO-HEARING OFFICER BAGGETT: It's not going to  
17 relevance here. I think your questions are relevant.

18 But I think he answered your question already.  
19 Maybe you could rephrase it, if that wasn't an answer,  
20 the fact that they will be taking 300 acre feet less  
21 from the river.

22 They aren't returning it. They are taking  
23 less. I think -- so maybe its -- does return, taking  
24 less, meaning returning?

25 MR. JACKSON: What I mean --



1 CO-HEARING OFFICER BAGGETT: Maybe you could  
2 rephrase it because you're talking past each other.  
3 I'm just trying to help move this thing along here.

4 MR. JACKSON: How will the environment benefit  
5 from the 300 -- from the increase of 300 acre feet in  
6 your estimation?

7 MR. TURNER: I'll be taking less water from  
8 the Carmel River.

9 MR. JACKSON: And you will do that to reduce  
10 the numbers that you've seen on the board in terms of  
11 your -- in terms of your pumping?

12 MR. TURNER: Yes, sir.

13 MR. JACKSON: Are there any other projects  
14 that you have designed prior to the completion of the  
15 Moss Landing desal plant that will reduce your pumping  
16 on the river, say within the next five years?

17 MR. TURNER: That question is very broad.  
18 There are hundreds of projects we've attempted to put  
19 forward, small, large -- it's all in my testimony.

20 MR. JACKSON: What is it? Would you identify  
21 it?

22 MR. TURNER: Yes.

23 MR. RUBIN: Could we just get some  
24 clarification on the question? What are you asking  
25 the witness to identify?

1           MR. JACKSON: I'm asking -- the witness has  
2 identified 300 acre feet that may -- that may be  
3 reduced in terms of pumping. I'm asking him whether  
4 there are any other projects within the next five  
5 years that are designed to reduce it and by how much.

6           MR. RUBIN: Again, I object to the question,  
7 if that's the question, on the grounds that it's vague  
8 and ambiguous.

9           CO-HEARING OFFICER BAGGETT: I would overrule.  
10 I think it's a pretty straightforward question. Are  
11 there other projects planned in the next five years.

12          MR. RUBIN: The question is whether there are  
13 projects that are planned?

14          CO-HEARING OFFICER BAGGETT: That was my  
15 understanding of the question. You want to rephrase  
16 your question, Mr. Jackson?

17          MR. JACKSON: We could just reread it.

18          (Record read)

19          MR. TURNER: First of all, the projects I was  
20 referring to are on page 4. There's a lot of them.

21          There are projects -- of my testimony -- there  
22 are projects that could be completed in the next five  
23 years. All of those projects entail dramatic  
24 permitting processes in order to move them forward.

25          For instance, ASR Phase 2 in conjunction with

1 the District would have to come to this Board to seek  
2 water rights for ASR Phase 2.

3 MR. JACKSON: Now ASR Phase 2 relies on Carmel  
4 River water, doesn't it?

5 MR. TURNER: Yes.

6 MR. JACKSON: What projects do you have that  
7 do not rely on Carmel River water that might return  
8 water or might lessen your pumping on the Carmel  
9 aquifer within the next five years?

10 MR. TURNER: I'm currently in negotiations for  
11 additional water from the Seaside Basin that belongs  
12 to other parties that could in fact occur within the  
13 next five years, purchasing of their rights on -- in  
14 the Seaside Basin to the tune of about another  
15 thousand acre feet.

16 MR. JACKSON: And who are those parties, sir?

17 MR. TURNER: I don't recall them right off the  
18 top of my head.

19 MR. RUBIN: And I'll object to the question.

20 CO-HEARING OFFICER WOLFF: What's the basis of  
21 the objection?

22 MR. RUBIN: The negotiations are ongoing.

23 This could be privileged information.

24 CO-HEARING OFFICER BAGGETT: I would sustain.

25 MR. RUBIN: It's also not relevant.

1 CO-HEARING OFFICER BAGGETT: Fair enough.

2 MR. JACKSON: Then I would move to strike the  
3 answer on the grounds that if we can't find out what  
4 they are they certainly can't be credited.

5 CO-HEARING OFFICER BAGGETT: It's already his  
6 written testimony, as I recall.

7 MR. JACKSON: It is not.

8 MR. RUBIN: There are discussions about  
9 discussions that are ongoing, and the level of detail  
10 that we could provide is in the written testimony.

11 CO-HEARING OFFICER BAGGETT: Very good.

12 MR. JACKSON: Are you familiar with 95-10,  
13 sir?

14 MR. TURNER: I am.

15 MR. JACKSON: And do you know that one of the  
16 options under 95-10 is to find water outside the  
17 Carmel River, buy water from other people?

18 MR. TURNER: That's one of the options, yes.

19 MR. JACKSON: Right. What have you done to  
20 carry out that option?

21 MR. TURNER: I just described projects that  
22 are in the Seaside Basin that have no impact on the  
23 Carmel River.

24 MR. JACKSON: The Seaside Basin water is --  
25 we're back in the circle. May I ask him who those

1 people are and how those negotiations are going?

2 CO-HEARING OFFICER BAGGETT: Answer to -- the  
3 witness can answer to the extent it doesn't breach  
4 confidentiality of negotiation.

5 MR. TURNER: State your question again please.

6 MR. JACKSON: Who are the people in the  
7 Seaside Basin that you are going to buy water from?

8 MR. TURNER: You can take a look at all the  
9 appropriations in the Seaside Basin and the owners,  
10 and any of those folks that haven't -- are not using  
11 their appropriation under the Basin I have talked to  
12 most of them.

13 MR. JACKSON: And you have deals.

14 MR. TURNER: I don't have deals yet, no.

15 MR. JACKSON: Okay. Do you have any deals  
16 outside of the Seaside Basin, outside of the Carmel  
17 River?

18 MR. TURNER: Yes --

19 MR. RUBIN: I object to the question; vague  
20 and ambiguous. California American Water is involved  
21 in a lot of deals outside of the basin.

22 MR. JACKSON: Let me identify California  
23 American Water.

24 California American Water doesn't just exist  
25 in the Monterey area, does it?

1 MR. TURNER: No.

2 MR. JACKSON: What are its geographical  
3 limits?

4 MR. TURNER: We have service territory in  
5 southern California. I mean it's quite detailed. We  
6 have service territory in Sacramento, in and around  
7 Sacramento, and then we have the Peninsula.

8 MR. JACKSON: And California American is a  
9 subsidiary of a German corporation?

10 MR. TURNER: California American Water is a  
11 wholly owned subsidiary of American Water Works which  
12 is a publicly traded corporation.

13 MR. JACKSON: And American Water Works is a  
14 subsidiary of a German corporation.

15 MR. RUBIN: I object. We can go down this  
16 path. I don't know what the relevance is.

17 CO-HEARING OFFICER WOLFF: I don't either.

18 MR. JACKSON: The relevance is they had access  
19 to water outside of the Carmel River, and I'm trying  
20 to figure out whether or not they're attempting to  
21 supply any of that water from --

22 CO-HEARING OFFICER WOLFF: Mr. Jackson, I  
23 appreciate your creativity, but there is no  
24 possibility they're going to obtain water from  
25 Germany. Let's just come to the point here.

1           MR. JACKSON: Have you identified any water  
2 transfers anywhere in the state of California that  
3 would be possible for you to reduce your pumping in  
4 the Carmel River by transferring water into the area?

5           MR. TURNER: We have -- some of those are  
6 listed in my testimony. We have investigated water  
7 transfers from the Salinas Basin, a lot of different  
8 transfers within the area. It's in my testimony.

9           MR. JACKSON: Is it possible to transfer water  
10 from the Salinas Basin? As an engineer, is it  
11 possible?

12          MR. SCHUBERT: As an engineer, yes.

13          MR. JACKSON: Is it possible to transfer water  
14 from the State Water Project in the Pajaro Valley as  
15 an engineer?

16          MR. SCHUBERT: I don't know enough about that  
17 system to render an opinion.

18          MR. JACKSON: You haven't looked into that  
19 system?

20          MR. SCHUBERT: Not myself, no.

21          MR. JACKSON: Do you have any idea how far  
22 that terminus is from Cal Am facilities in Monterey?

23          MR. SCHUBERT: No.

24          MR. JACKSON: Does California American Water  
25 Company presently have a conservation plan?

1           MR. RUBIN: I'm going to object to the  
2 questions. I've been trying to be reserved to allow  
3 these to go forward.

4           Part of this proceeding is to have us submit  
5 written testimony. What we provided is in the written  
6 testimony. If Mr. Jackson wants to test the validity  
7 of the statements that are in the written testimony,  
8 then he can test them.

9           And it seems as though these questions are  
10 asking things that we provided information on, and  
11 it's within the written testimony.

12          MR. JACKSON: Mr. Baggett, first of all, the  
13 rules of the hearing which were laid out are that we  
14 can go outside the scope of the written testimony in  
15 regard to cross-examination.

16          The rules also are that if you produce  
17 evidence that is limited you're allowed to test the  
18 evidence in cross-examination. These are questions  
19 that are absolutely relevant to Condition 2 which lays  
20 out --

21          CO-HEARING OFFICER BAGGETT: I would concur.

22          But what Mr. Rubin is stating is that this is  
23 already clearly in their evidence. And we could have  
24 asked them to summarize it all. It's before us, so if  
25 you could test the truth of that, but just to ask what



1 they're doing when they've written pages worth of  
2 these questions, you've already -- what you're asking  
3 is already in here.

4 And I think that's -- you've used your ten  
5 minutes. We're being very generous. Do you have  
6 any -- can you give me a showing why we should extend  
7 your time to ask questions that are already answered  
8 in their testimony?

9 We could be here for two hours and we could  
10 let Mr. Rubin present two hours worth of his  
11 case-in-chief to orally summarize what he's already  
12 put in writing. He's deferred that.

13 So I trust that you've read the exhibits, so  
14 if you can go to test those, the facts they've stated  
15 in their exhibit and testified to.

16 That's what we're trying to get to. So I'll  
17 sustain the objection. Make a showing. Tell me why  
18 we should keep going on now.

19 MR. JACKSON: Sure, I can tell you why.

20 The information in this testimony -- in this  
21 testimony goes to pie in the sky in the future. It  
22 does not -- what I'm trying to find out is what  
23 they're doing now in order to resolve the problem in  
24 any of the ways that are listed in Condition 2.

25 MR. RUBIN: I object to the statement in

1 whole. You asked for a specific response to a  
2 question. Mr. Jackson's beliefs are irrelevant here  
3 and don't respond to your question.

4 CO-HEARING OFFICER BAGGETT: I sustain the  
5 objection.

6 You can make those arguments in your closing  
7 briefs and other places. If you have a disagreement  
8 where their testimony supports their diligence, that's  
9 an issue we're going to be briefing. That's an issue  
10 we're going to have to deal with at some point, and  
11 you have obviously have disagreement with Cal Am.

12 But your line of questioning isn't getting us  
13 there. You have a disagreement. What are you -- what  
14 are we going to gain here?

15 MR. JACKSON: What we're going to gain is to  
16 show you that what they're putting in front of you in  
17 terms of diligence is diligence in finding a water  
18 supply, perhaps, but not diligence in ceasing in  
19 any -- in looking for ways to cease the overpumping  
20 that was identified in 95-10.

21 MR. RUBIN: And I would disagree.

22 I think what the evidence definitely shows is  
23 that over the 13-year period California American Water  
24 has been extremely diligent doing what it can, what's  
25 within its powers --

1 CO-HEARING OFFICER BAGGETT: We sustained the  
2 objection. Again, can you -- you are making closing  
3 arguments.

4 CO-HEARING OFFICER WOLFF: May I make a  
5 suggestion?

6 Mr. Jackson, I think the difficulty goes not  
7 to what you are attempting to do but the way you are  
8 attempting to do it.

9 For example, Mr. Turner has spoken in his  
10 testimony about particular projects which he believes  
11 demonstrate their diligent pursuit of alternative  
12 water supplies. But other than the ASR project, you  
13 haven't asked questions about those projects.

14 You have asked some general questions, you  
15 know, are there other projects other than those listed  
16 in your testimony? That was fair. We allowed that  
17 earlier.

18 But at this point, you are going over the same  
19 ground without any obvious merit in terms of the  
20 development of evidence. So if you want to ask him  
21 about specific projects named in his testimony or any  
22 other testimony, that's admissible. That's  
23 acceptable.

24 MR. JACKSON: In your testimony, Mr. Turner,  
25 on page 4 you indicate that you have looked at the

1 injection of treated wastewater at the mouth of the  
2 Carmel River. What was the purpose of looking at that  
3 project?

4 MR. RUBIN: Would you provide us with a  
5 specific line number with the reference?

6 MR. JACKSON: Sure. Page 4, line 16 and 17.

7 MR. RUBIN: Thank you.

8 MR. TURNER: The technicalities of that  
9 project I would have to refer to Mr. Schubert, but it  
10 is an ASR project.

11 MR. JACKSON: Was the ASR project designed to  
12 reduce the environmental effects on the mouth of the  
13 Carmel River, for instance the lagoon?

14 MR. TURNER: I don't quite understand the  
15 question. Everything we're doing is designed to  
16 improve the environment on the Carmel River.

17 MR. JACKSON: Have you investigated pumping  
18 water and applying it to lagoon when the lagoon needs  
19 it for environmental purposes?

20 MR. TURNER: I can't answer that question.

21 MR. JACKSON: Can anybody here answer that  
22 question?

23 MR. SCHUBERT: To the best of my knowledge, I  
24 don't believe we have done that.

25 MR. JACKSON: Thank you, sir. Mr. Turner, in

1 your testimony on page 4, you talk about the dredging  
2 of San Clemente and Los Padres Reservoirs which  
3 perhaps would allow storage to be used for the  
4 environment below the dams. Have you -- do you have a  
5 dredging project?

6 MR. RUBIN: I object to the question. States  
7 facts not in evidence. It's compound, I guess, if  
8 there's two questions.

9 CO-HEARING OFFICER BAGGETT: Can you break it  
10 into two questions?

11 MR. JACKSON: Sure.

12 Mr. Turner, on page 4, line 17, you say CAW  
13 considered dredging San Clemente and Los Padres  
14 Reservoirs. What do you mean by the use of the word  
15 considered?

16 MR. TURNER: What it says. We considered it.

17 MR. JACKSON: And you decided not to do it?

18 MR. TURNER: Yes.

19 MR. JACKSON: Why?

20 MR. TURNER: There's a variety of reasons. I  
21 wasn't specifically involved in that, but most of them  
22 had to do with the environmental impact.

23 MR. JACKSON: So you -- that project is no  
24 longer being considered by your corporation?

25 MR. TURNER: No.

1           MR. JACKSON: On page 4, line 17 or 18, you  
2 indicate that Cal Am considered importing water from  
3 Arroyo Seco River. What is the status of that  
4 project?

5           MR. TURNER: It's not moving forward.

6           MR. JACKSON: On line -- on page 4, line 19  
7 you indicate that California American Water Company  
8 considered importing water from the Lower Salinas  
9 River. What's the status of that project?

10          MR. TURNER: There are still some internal  
11 discussions, but it's not moving forward.

12          MR. JACKSON: Again on line 19, page 4 you  
13 indicate that California American Water Company  
14 considered importing water from the Big or Little Sur  
15 River. What is the status of that project?

16          MR. TURNER: It's not moving forward.

17          MR. JACKSON: On line 19 and 20, you indicate  
18 that CAW even considered water purchases from the  
19 State Water Project. What's the status of that  
20 project?

21          MR. TURNER: It's not being considered any  
22 longer.

23          MR. JACKSON: You also indicate that  
24 California American Water considered water purchases  
25 from the Central Valley Project. What's the status of

1 that project?

2 MR. TURNER: It's no longer being considered.

3 MR. JACKSON: You indicate on line 21 that you  
4 looked at surface impoundments in the Seaside Basin  
5 Fort Ord area. What's the status of that project?

6 MR. TURNER: There's still some internal  
7 discussions, but it's not moving forward at this  
8 point.

9 MR. JACKSON: You also indicate on line 22  
10 that Cal Am considered surface water utilization at  
11 Laguna Seca. What's the status of that project?

12 MR. TURNER: There's still some discussions,  
13 but it's not moving forward at this point.

14 MR. JACKSON: Did any of the projects which we  
15 just talked about go beyond the consideration stage to  
16 actually be proposals?

17 MR. RUBIN: I object; vague and ambiguous.

18 CO-HEARING OFFICER BAGGETT: Rephrase.

19 MR. JACKSON: Did any of the -- did you apply  
20 for any of the permits that would be required for any  
21 of the projects we just talked about?

22 MR. RUBIN: I object.

23 CO-HEARING OFFICER BAGGETT: Overruled.

24 MR. TURNER: I don't believe so.

25 MR. JACKSON: Mr. Turner, on page 5 you

1 indicate that in 2001 or since 2001 you've been  
2 meeting with the Carmel Development Corporation about  
3 water rights held by the Margaret Eastwood Trust and  
4 Clint Eastwood for the Odello Fields. What are the  
5 Odello Fields?

6 MR. TURNER: I don't have the specifics of  
7 that. Maybe Mr. Schubert does.

8 MR. SCHUBERT: Those are -- it's an area just  
9 east of the lagoon and Route 1 in Carmel.

10 MR. JACKSON: Are those -- is that water that  
11 would come from the same aquifer that Cal Am pumps its  
12 water? I mean is that the Carmel River aquifer as  
13 well?

14 MR. SCHUBERT: Yes, I believe it is.

15 MR. JACKSON: Are those -- are those present  
16 diversions or are those rights that people hold to  
17 increase water from the Carmel River.

18 MR. RUBIN: I object to the question as  
19 compound.

20 CO-HEARING OFFICER BAGGETT: Restate it in two  
21 questions.

22 MR. JACKSON: Are the Odello Fields presently  
23 being pumped?

24 MR. SCHUBERT: I believe they are, yes, by --  
25 not by Cal Am, but by another entity.



1           MR. JACKSON: So if Cal Am purchased those  
2 within the Carmel drainage, it would simply be a  
3 substitution of one person's pumping for another?

4           MR. SCHUBERT: Yes.

5           MR. JACKSON: Would there be any savings in  
6 that regard that would allow you -- or that -- strike  
7 that. Withdraw that.

8           You indicate that in your testimony on page 5  
9 that California American Water Company explored  
10 obtaining an allocation of somewhere around 2000 acre  
11 feet held by Marina Coastal Water District; is that  
12 correct?

13          MR. TURNER: Yes.

14          MR. JACKSON: What's the status of that  
15 project?

16          MR. TURNER: It is not moving forward, but it  
17 is still being discussed.

18          MR. JACKSON: And the conversations, the  
19 discussions, the exploration began in 1996?

20          MR. TURNER: That's what my testimony says.

21          MR. JACKSON: I have no further questions.

22          CO-HEARING OFFICER BAGGETT: Thank you. We'll  
23 just go down the list in order. Monterey Peninsula,  
24 do you have any cross, and if so how much?

25          MR. LAREDO: I believe ten minutes at most.

1 CO-HEARING OFFICER BAGGETT: Let's try to do  
2 that before we take a break then. We can go off the  
3 record.

4 (Discussion off the record)

5 CO-HEARING OFFICER BAGGETT: Back on the  
6 record.

7 CROSS-EXAMINATION BY MR. LAREDO  
8 FOR MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

9 MR. LAREDO: Good morning. David Laredo,  
10 general counsel, Monterey Peninsula Water Management  
11 District.

12 I want to address a series of questions  
13 concerning measures undertaken by California American  
14 Water Company to minimize impacts with respect to  
15 Carmel Valley water diversions, and I'll begin without  
16 addressing a specific member of the panel.

17 Could you characterize in general the  
18 conservation activities that the California American  
19 Water Company is taking in terms of conveying the  
20 message to its consumers to use less water?

21 MR. BUNOWSKY: We have worked with the  
22 Monterey Peninsula Water Management District in  
23 cooperation with instituting a multitude of  
24 conservation measures through rebate programs, through  
25 filings with the California Public Utilities

1 Commission, with a very aggressive rate structure, an  
2 increasing five-tier rate structure through the rate  
3 process that allocates water to each individual  
4 customer based upon their number of people in the  
5 household, size of lot, large animals, and if you go  
6 over that amount of water in the allocation through  
7 the rate structure you have a considerable higher cost  
8 per same unit of water to help reduce the usage on the  
9 Peninsula from customers.

10 Tremendous cooperation with the management  
11 district as well in public information campaigns that  
12 have gone on throughout the years and very  
13 aggressively instituting conservation messages  
14 throughout the Peninsula with its customers.

15 MR. LAREDO: With respect to your rate  
16 structure, the request pending before the Public  
17 Utilities Commission, are you requesting a tier that  
18 you could call a penalty rate?

19 MR. STEPHENSON: This is Mr. Stephenson. We  
20 have requested to substantially increase the upper two  
21 tiers of the rate structure.

22 MR. LAREDO: Can you -- do you know offhand  
23 the magnitude of the last tier in terms of its impact  
24 to the consumer?

25 MR. STEPHENSON: Our plan is that the last

1 tier would be approximately ten times what a base rate  
2 would be. Base rate today is about \$3.20, I believe.

3 MR. LAREDO: So the rate for the last unit of  
4 water used when in the penalty rate would be ten times  
5 as much?

6 MR. STEPHENSON: Again, I'm not going to  
7 characterize it as a penalty rate, but I would say  
8 that the fifth tier rate would be ten times what we  
9 might consider a base rate which would be applicable  
10 in tier 2.

11 MR. LAREDO: Do you know offhand what your  
12 budget request is for conservation-related activities.

13 MR. STEPHENSON: I believe the --

14 MR. RUBIN: Before you -- can I object on  
15 vagueness? Just to make -- I would like it to be  
16 clear where the -- who is making the request and who  
17 the request is made to.

18 CO-HEARING OFFICER BAGGETT: Rephrase the  
19 question.

20 MR. LAREDO: Do you know the magnitude of the  
21 request that California American Water Company is  
22 making to the Public Utilities Commission for  
23 authorization to expend moneys on conservation  
24 activities?

25 MR. STEPHENSON: We have an application before

1 the California Public Utilities Commission in  
2 cooperation with and basically a joint plan with the  
3 Monterey Peninsula Water Management District to spend  
4 approximately \$2.4 million annually.

5 MR. LAREDO: Different topic. I think I could  
6 address this to Mr. Bunowsky. Are you familiar with  
7 the Sleepy Hollow fish rescue facility?

8 MR. BUNOWSKY: Yes.

9 MR. LAREDO: Can you tell me where that is  
10 located?

11 MR. BUNOWSKY: It's located along the Carmel  
12 River.

13 MR. LAREDO: Is it on land owned by California  
14 American Water Company?

15 MR. BUNOWSKY: I would have to defer to  
16 Mr. Schubert on that.

17 MR. SCHUBERT: Yes, it is.

18 MR. LAREDO: Do you know what the -- is it  
19 accurate that you provide that facility to the  
20 District for its operation at no cost in terms of the  
21 lease of the facility?

22 MR. SCHUBERT: Yes, that's my understanding.

23 MR. LAREDO: Again, Mr. Bunowsky, on the topic  
24 of water used to irrigate riparian areas, are you  
25 familiar with the riparian irrigation efforts?

1 MR. BUNOWSKY: Somewhat familiar.

2 MR. LAREDO: Okay. Is it accurate that  
3 California American Water Company provides water for  
4 riparian irrigation at no cost?

5 MR. BUNOWSKY: I believe so.

6 MR. LAREDO: Is it also accurate -- I believe  
7 this may be for Mr. Stephenson -- that California  
8 Water Company pays to Water Management District an  
9 amount in the sum of \$7,000 per year to in part  
10 underwrite costs of riparian irrigation along the  
11 Carmel River?

12 MR. STEPHENSON: I am not sure.

13 MR. BUNOWSKY: I don't know either, the exact  
14 dollar amount.

15 MR. LAREDO: Do you know that moneys are in  
16 fact paid?

17 MR. BUNOWSKY: I believe so, yes.

18 MR. LAREDO: And by paid, by California  
19 American Water Company to the Monterey Peninsula Water  
20 Management District for riparian irrigation purposes?

21 MR. BUNOWSKY: I believe so.

22 MR. LAREDO: I'd like to see if we can hold  
23 this next answer to less than an hour, but could --  
24 Mr. Turner, could you please characterize what are the  
25 efforts undertaken to plan for removal of the San

1 Clemente Dam?

2 MR. RUBIN: I object to the question;  
3 relevance.

4 CO-HEARING OFFICER BAGGETT: State the  
5 relevance.

6 MR. LAREDO: The San Clemente Dam, at the  
7 moment, imposes a major blockage on the Carmel River.  
8 I believe that there is a plan to remove this dam, and  
9 that would in fact improve fish passage which is a  
10 major impediment on the Carmel River.

11 MR. RUBIN: The explanation that was provided  
12 assumes facts that are not in evidence, and I don't  
13 believe it is relevant.

14 MR. JACKSON: And I'm going to join for a  
15 different reason which is that I do believe that  
16 that -- the San Clemente Dam removal probably will be  
17 part of a Phase II in which we'll try to determine  
18 whether or not it would be a solution, and that's when  
19 we've scheduled those for.

20 MR. LAREDO: I was asking the question because  
21 I do believe it pertains to the question of diligence  
22 toward mitigation of the impacts of the present  
23 pumping, but I'll happily withdraw the question.

24 CO-HEARING OFFICER BAGGETT: Thank you.

25 MR. LAREDO: To Mr. Bunowsky, is California

1 American Water Company presently planning any main  
2 replacement program?

3 MR. BUNOWSKY: Yes, we are.

4 MR. LAREDO: Will one of the consequences of  
5 replacing mains be to reduce the unaccounted-for water  
6 use in the Cal Am system?

7 MR. BUNOWSKY: One of the benefits of the main  
8 replacement program is to reduce leakage in the  
9 system.

10 MR. LAREDO: What is the planned main  
11 replacement program that is being requested before the  
12 Public Utilities Commission presently?

13 MR. BUNOWSKY: I don't understand the  
14 question.

15 MR. LAREDO: What is your -- what is your  
16 present request to the Public Utilities Commission for  
17 authorization to replace mains?

18 MR. RUBIN: I'm going to object to the  
19 question. Again, we can go down this path if we want  
20 to. Again, I'm trying to be patient. Maybe this  
21 falls within the issues we dealt with yesterday on how  
22 you --

23 MR. LAREDO: I'll withdraw the question, and I  
24 have no further questions.

25 CO-HEARING OFFICER BAGGETT: Thank you. Let's



1 take a ten-minute break. We'll go off the record.

2 (Recess)

3 CO-HEARING OFFICER BAGGETT: Let's go back on  
4 the record with cross-examination by the Sierra Club.

5 CROSS-EXAMINATION BY MR. SILVER

6 FOR SIERRA CLUB

7 MR. SILVER: Mr. Turner, I'd like to direct  
8 your attention to page 3 of your prepared testimony,  
9 lines 25 through the next page -- whoops, sorry --  
10 through page 4, down through line 12.

11 That is the part of your testimony that talks  
12 about working to perfect rights to 2900 acre feet of  
13 Carmel River water.

14 Can you describe for me what that application  
15 entails? There is a reference there to application  
16 30215A.

17 MR. RUBIN: I object to the question; vague  
18 and ambiguous.

19 CO-HEARING OFFICER BAGGETT: Sustained. Can  
20 you rephrase the question.

21 MR. SILVER: You address an application to  
22 obtain 2900 acre feet of Carmel River water which  
23 seems to be embodied in application 30215A. And for  
24 what purposes would Cal Am be applying for -- to use  
25 that water for?

1           MR. TURNER: There are a lot of legal things  
2 behind this which I don't pretend to understand, but  
3 it would allow us to perfect water rights we have  
4 available to us on the Carmel River.

5           MR. SILVER: But these are water rights at the  
6 present time that are not yours to use? That's why  
7 you're applying for the permit; is that correct?

8           MR. RUBIN: I object to the question.

9           CO-HEARING OFFICER BAGGETT: Sustained.

10           You're asking for a legal conclusion. Can you  
11 restate the -- I thought the original question was  
12 pretty clear. Can you rephrase it and let the witness  
13 answer.

14           MR. SILVER: Now is Cal Am pursuing this  
15 application at the present time?

16           MR. TURNER: Yes.

17           MR. SILVER: And in what -- how is it pursuing  
18 the application?

19           MR. TURNER: By working with the State Water  
20 Resources Control Board to get the water rights  
21 perfected.

22           MR. SILVER: Now you say in your testimony  
23 that California American Water Company signed an MOU  
24 with the Division of Water Rights of the State Water  
25 Board to hire HDR Engineering to prepare a water

1 availability study and environmental review for the  
2 table 13 application. By 2005 HDR completed a draft  
3 scope of work for the environmental review.

4 Now, so has that environmental review at this  
5 point in time been given to the Division of Water  
6 Rights?

7 MR. TURNER: Yes.

8 MR. SILVER: And --

9 MR. TURNER: To my knowledge.

10 MR. SILVER: And what has been the response of  
11 the Division of Water Rights?

12 MR. TURNER: The response by the Division of  
13 Water Rights is that we should go ahead and attempt to  
14 perfect those water rights.

15 MR. SILVER: You indicate in your testimony  
16 that your employees are currently working to amend the  
17 application. In what respect -- maybe someone else  
18 can address this on the panel -- in which respect are  
19 your employees working to amend the application?

20 MR. TURNER: Our attorneys are working to  
21 amend the application in accordance with discussions  
22 that we have had with State Water Resources Control  
23 Board water rights staff.

24 MR. SILVER: And to the best of your  
25 knowledge, has the application been amended?

1           MR. TURNER: I don't think that work has been  
2 finalized yet.

3           MR. SILVER: You state in your testimony that  
4 it has been reported to you that your engineers and  
5 legal team are working on the complex issues of the  
6 permissible place of use and season of diversion but  
7 not fully addressed in Decision 1632 and must be  
8 resolved to amend the application.

9           What are the complex issues of the permissible  
10 place of use and season of diversion that you address  
11 in your testimony?

12          MR. TURNER: As with any permit, there are a  
13 myriad of issues that have to be addressed about where  
14 you take water from and its impact on the environment,  
15 which is why HDR was brought on board was to make sure  
16 that we address those issues. That's also why we're  
17 spending the additional money to have HDR do a review.

18          MR. SILVER: You testified or stated in your  
19 statement that the original application was 1998. Do  
20 you have knowledge as to why now in 2007 -- or 2008,  
21 rather, you have not obtained this water right?

22          MR. TURNER: Those water rights have been  
23 involved in a long-term discussion with the State  
24 Water Resources Control Board, the Monterey Peninsula  
25 Water Management District, the -- excuse me. State

1 Water Resources Control Board water rights staff,  
2 Monterey Peninsula Water Management District, NOAA  
3 Fish and Game, National Marine Fisheries Service, Cal  
4 Fish and Game.

5 And these things have a tendency to take a  
6 very long time to get done.

7 We now just simply want to try to get this  
8 2900 acre feet out of a larger bucket addressed.

9 MR. SILVER: Now other than applying for  
10 appropriation permits for diversion and storage with  
11 regard to the dam project, has Cal Am submitted  
12 applications for permits to the Board for the purposes  
13 of essentially legalizing all or a portion of the  
14 so-called -- of the diversions above the 3,376 acre  
15 feet that Order 95-10 said you had a right to?

16 MR. RUBIN: I'm going to object to the  
17 question. There's a number of different grounds. I  
18 think it's vague and ambiguous. It assumes facts that  
19 were not in evidence.

20 And I'd also raise the same objection I raised  
21 when Mr. Jackson was cross-examining the panel. The  
22 evidence has been presented by California American  
23 Water through testimony that's been written and  
24 submitted. Mr. Silver's had an opportunity to review  
25 it.

1           If he has questions regarding what's in the  
2 testimony, the evidence that we're going to propose be  
3 admitted, then he can ask questions about that.

4           CO-HEARING OFFICER BAGGETT: I'll sustain  
5 that, and rephrase your question.

6           MR. SILVER: You state in your testimony,  
7 Mr. Turner, that CAW -- this is at page 3, line 25:  
8 CAW has been working to perfect rights  
9 to approximately 2900 acre feet of  
10 Carmel River water per year pursuant to  
11 the rights recognized in Table 13 of  
12 Decision 1632.

13           Has CAW taken -- made any efforts to obtain  
14 rights under California law to the water that it is  
15 diverting in excess of 3,376 acre feet?

16           MR. RUBIN: I'm going to object to the  
17 question again on the same grounds. The evidence --  
18 the written testimony has been submitted. The actions  
19 that are described in the testimony are the actions  
20 that are being presented with the hopes that it will  
21 be admitted into evidence.

22           CO-HEARING OFFICER BAGGETT: Let's -- I'll  
23 overrule that one. Can you answer it briefly, then  
24 maybe move on.

25           And a lot of this information is already there

1 that you're asking. It's in the records. So just  
2 answer this one briefly if you can.

3 Then Mr. Silver, if you could try to ask  
4 questions on information that's already in their  
5 exhibits, it would be helpful. Not just summarize.

6 MR. SILVER: Well, there's some information  
7 concerning applications, but I'm not sure how specific  
8 it is. And there's not information in the record as  
9 to why or how diligently Cal Am has pursued those  
10 applications since under Condition 2 one of the  
11 modalities they had in the Board order, you know, for  
12 extricating themselves from their situation was to  
13 obtain -- simply to legalize their diversions.

14 CO-HEARING OFFICER BAGGETT: Maybe to help  
15 move this thing along we can ask -- something more  
16 appropriate would be how many meetings did you have?  
17 When was the last meeting you had to try to resolve  
18 this application? Something a little more specific  
19 than just explain the application. I mean I see what  
20 you are --

21 MR. SILVER: Well, I'd like to establish  
22 whether or not there are. We know that there were  
23 applications for the diversion of the storage of  
24 water.

25 MR. RUBIN: We're not in a deposition where

1 we're exploring issues. We've presented our case, and  
2 the case is before you in written testimony.

3 CO-HEARING OFFICER BAGGETT: And I sustain  
4 that. It's in here, the fact that they have the  
5 application. If you have a question going to the  
6 diligence of the pursuit of that application, that  
7 would be relevant. And you could proceed with the  
8 line of questioning on that.

9 But to ask them to explain what's already in  
10 here, that's the case-in-chief. I mean that's what's  
11 here. You're going to the diligent pursuit of that,  
12 that's another issue. So if you could rephrase your  
13 question to get there, it would probably be helpful.

14 MR. SILVER: So at the present time, to the  
15 best of your knowledge, Cal Am has obtained no permit  
16 from the Board with regard to legalizing its  
17 diversions deemed unlawful under Board Order -- under  
18 95-10 except for that portion of the water which you  
19 obtained the permit for with regard to aquifer  
20 recovery?

21 MR. RUBIN: I'm going to object to the  
22 question. It's compound. It assumes facts not in  
23 evidence. States a legal conclusion that's --

24 CO-HEARING OFFICER BAGGETT: Sustain the  
25 objection on all those grounds.



1 CO-HEARING OFFICER WOLFF: I concur.

2 Mr. Silver, you're trying my patience.

3 MR. SILVER: Okay. I have no further  
4 questions.

5 CO-HEARING OFFICER BAGGETT: Thank you.  
6 Prosecution Team?

7 CROSS-EXAMINATION BY MR. SATO

8 FOR THE PROSECUTION TEAM

9 MR. SATO: Good morning. My name is Reed  
10 Sato. I'm the attorney for the Prosecution Team. I  
11 have a general question for each of you. So let me  
12 just start with each one of you individually.

13 Mr. Turner, you are testifying as an expert  
14 witness; is that correct?

15 MR. TURNER: That means different things to  
16 different people. I'm testifying to the information  
17 that I included in my testimony as the Chief Executive  
18 Officer of California American Water.

19 MR. SATO: Are you aware you were identified  
20 in Cal Am's Notice of Intent to Appear as an expert  
21 witness?

22 MR. TURNER: Yes, I was aware.

23 MR. SATO: So you are appearing pursuant to  
24 that Notice of Intent to Appear; is that correct?

25 MR. TURNER: Yes.

1 MR. SATO: Okay.

2 Mr. Bunowsky, are you appearing here  
3 testifying as an expert witness?

4 MR. BUNOWSKY: Again, I'm appearing here  
5 presenting my testimony as outlined by the company.

6 MR. SATO: Are you aware that you were  
7 identified as an expert witness in Cal Am's Notice of  
8 Intent to Appear?

9 MR. BUNOWSKY: Yes.

10 MR. SATO: Then you are appearing pursuant to  
11 the Notice of Intent to Appear?

12 MR. BUNOWSKY: Yes.

13 MR. SATO: It would be a lot easier guys if  
14 you could just, you know, say yes, I'm here pursuant  
15 as an expert witness. All right.

16 Mr. Schubert, are you appearing here  
17 testifying as an expert witness?

18 MR. SCHUBERT: Yes.

19 MR. SATO: And Mr. Stephenson, are you  
20 appearing here and testifying as an expert witness?

21 MR. STEPHENSON: In regard to the matter of my  
22 testimony, yes.

23 MR. SATO: Thank you.

24 Now, Mr. Turner, as an expert witness, how did  
25 you prepare for your testimony?

1           MR. TURNER: You know, it's an interesting  
2 question. It's very broad. I have been preparing for  
3 this testimony since I came to work for California  
4 American Water in 1999 which is when I first got  
5 involved in State Board Order 95-10.

6           So subsequently, my experience from '99 to  
7 today, I continue to rack up experiences, have created  
8 the preparation that I needed to write this testimony.

9           MR. SATO: All right. Let me be more  
10 specific. With regard to your written testimony, what  
11 specific steps did you take in order to prepare your  
12 written testimony. For example, did you review files,  
13 things of that nature?

14          MR. RUBIN: I'm going to object to the  
15 question. I'm not sure of the relevance.

16          CO-HEARING OFFICER BAGGETT: Could you  
17 explain, counsel, where you're headed with this?

18          MR. SATO: Well, you know, when people are  
19 experts, they -- we are entitled to inquire as to the  
20 basis of what they did to prepare their so-called  
21 expert testimony, and I think I'm entitled to do that.

22          MR. RUBIN: And I guess the response that I  
23 have is that it's clear that none of these witnesses  
24 are testifying as to legal conclusions as a biologist  
25 might that relied upon reports.

1           They are experts on the subject matter that  
2 their testimony addresses.

3           The other issue that I have here is we could  
4 go down this path, I guess, if the Hearing Officers  
5 want. We have four witnesses. It would argue this is  
6 prejudicial to me and to the company. I was  
7 required -- or I was requested to accelerate my  
8 cross-examination of witnesses because of time  
9 concerns.

10           And if we're going to go down this path, we  
11 could probably spend half an hour asking each witness,  
12 the four witnesses, questions about how their  
13 testimony was prepared and -- but that really is  
14 distracting from the heart of the matter.

15           The bottom line is each of these witnesses  
16 attested to the truth of the matter that's asserted in  
17 their testimony.

18           MR. SATO: Well, I think it's important to  
19 find out whether they're testifying as experts; and if  
20 they are testifying as experts what -- how they  
21 prepared for their expert testimony. I'm entitled to  
22 for somebody who is designated an expert witness.

23           MR. RUBIN: And I -- maybe technically that  
24 occurs often but --

25           MR. SATO: I think, once again, Mr. Baggett,

1 if you just let me continue, because I don't think it  
2 will take as long as everybody fears by my first  
3 question.

4 MR. RUBIN: And obviously, I would suggest you  
5 do otherwise.

6 CO-HEARING OFFICER BAGGETT: If you could move  
7 quickly, but the only relevance of their expertise is  
8 when they're drawing opinions and conclusions. And if  
9 you could move to those opinions, it would sure save a  
10 lot of time.

11 How they prepared for their testimony, I mean  
12 to me that's marginally relevant. It takes expertise  
13 to draw the conclusion and opinion --

14 MR. RUBIN: And Mr. Sato is well aware because  
15 of his review of the testimony, much of what's  
16 presented if not all of what's presented in the  
17 witnesses' testimonies are statements of facts that  
18 are acquired within their work on the company or  
19 understanding of the history.

20 CO-HEARING OFFICER BAGGETT: So proceed given  
21 those caveats.

22 MR. SATO: All right.

23 So Mr. Turner, did you review any documents in  
24 preparation for your written testimony?

25 MR. TURNER: Yes, I did. And I had a lot of

1 different documents reviewed and people report back to  
2 me.

3 MR. SATO: But you didn't attach any of those  
4 documents to your written testimony other than your  
5 resume; is that correct?

6 MR. TURNER: No.

7 MR. SATO: And did you write a written -- did  
8 you write your written testimony?

9 MR. TURNER: Some of it. And some of it was  
10 written under my direct supervision.

11 MR. SATO: Who prepared it under your direct  
12 supervision?

13 MR. TURNER: I had numerous people.  
14 Mr. Schubert worked on some of it, Mr. Bunowsky worked  
15 on some of it, the attorneys worked on some of it.

16 MR. SATO: Which portions of your testimony  
17 did your attorneys work on?

18 MR. TURNER: The attorneys did a cursory  
19 review of the testimony after it was finished.

20 MR. SATO: So they didn't draft any of your  
21 testimony aside from grammatical or typos, you know,  
22 general editorial review?

23 MR. TURNER: Clarifications, yes.

24 MR. SATO: Now, you testified that you started  
25 working for Cal Am in 1999; is that correct?

1 MR. TURNER: Yes.

2 MR. SATO: Okay. And yet in your testimony,  
3 you have testified to events that occurred prior to  
4 1999; is that correct?

5 MR. TURNER: Yes.

6 MR. SATO: How did you come to have an  
7 understanding of the so-called facts that you allege  
8 in your testimony that occurred prior to your  
9 employment with Cal Am?

10 MR. TURNER: In my job at California American  
11 Water, I have to have an understanding of everything  
12 going on, current, past, and future for California  
13 American Water.

14 MR. SATO: So just for example, in page 2 of  
15 your testimony, line 15 through 19, you talk about  
16 since 1995 Cal -- just truncating this -- California  
17 American Water has evaluated an extensive number of  
18 options for alternative water resources.

19 How do you know that?

20 MR. TURNER: Well, since 1999, I've been  
21 involved in a lot of the evaluations. I have read the  
22 PEA that was done for the Environmental Impact Report  
23 which evaluated hundreds -- or I'm -- that's an  
24 overstatement -- over a hundred different alternatives  
25 for the situation on the Carmel River.

1           MR. SATO: Now, you've heard testimony, I  
2 believe, people talked about, you know, taking you  
3 back to when Order 95-10 was first adopted by the  
4 State Board, you've heard discussions regarding  
5 something called the New Los Padres Dam project?

6           MR. TURNER: Yes.

7           MR. SATO: And I believe that testimony has  
8 been presented that says basically that there was a  
9 belief that the New Los Padres Dam project, if  
10 completed, would allow California American Water to  
11 eventually cease the diversion of water from the  
12 Carmel River in excess of 3,376 acre feet; is that  
13 correct?

14           MR. RUBIN: I would object to the question.  
15 If Mr. Sato wants to refer to testimony, ask that he  
16 either provide the written testimony to the witness  
17 that he's asking or refer specifically to when the  
18 testimony was provided.

19           CO-HEARING OFFICER BAGGETT: Sustained. Can  
20 you lay a foundation?

21           MR. SATO: Sure.

22           Do you have an understanding of the New Los  
23 Padres Dam project?

24           MR. TURNER: Basic understanding.

25           MR. SATO: Is it your belief that if the New



1 Los Padres Dam project had been completed that Cal Am  
2 would have had the ability to cease its diversions  
3 from the Carmel River in excess of 3,376 acre feet --  
4 above that, excuse me.

5 MR. TURNER: We would have had the ability to  
6 cease diversions. I haven't looked at the specifics  
7 enough to actually do a comparison how much we would  
8 have been able to cease taking from the Carmel River.

9 MR. SATO: But based upon all the things that  
10 you've reviewed and all the briefings that you've  
11 gotten from your staff, I mean is it your  
12 understanding that that project would have basically  
13 allowed you to fully comply with Order 95-10?

14 MR. RUBIN: I would object to the question;  
15 vague and ambiguous.

16 MR. SATO: Well, I think you folks have  
17 posited already that, you know, compliance with  
18 Condition 2 of Order 95-10, those are the things that  
19 you were going to undertake in order to comply with  
20 that.

21 That's my foundation.

22 CO-HEARING OFFICER BAGGETT: Is that a  
23 question?

24 MR. SATO: Yes.

25 MR. TURNER: I didn't understand the question.

1 CO-HEARING OFFICER BAGGETT: Rephrase it.

2 It's a little compound there.

3 MR. SATO: Well, in terms of the project, I  
4 mean did you have an understanding of the dam project  
5 that would basically have allowed California American  
6 Water Company to have complied with Condition 2 of  
7 Order 95-10?

8 MR. TURNER: Yes.

9 MR. SATO: Do you have an understanding,  
10 Mr. Turner -- or actually anybody on the panel -- as  
11 to what completion date for the dam project was  
12 projected as of, you know, the time it was applied  
13 for?

14 MR. LAREDO: I would object to the question.  
15 Vague and ambiguous, assumes facts not in evidence.

16 MR. SATO: Well, they just said -- Mr. Turner  
17 just expressed the belief that if the project had been  
18 completed that that would have allowed them to comply  
19 with Order 95-10. So I'm asking whether they have an  
20 understanding of when that project was to be  
21 completed?

22 MR. RUBIN: And it was based upon, I think the  
23 question referenced the date it was applied for. I'm  
24 not sure -- it's vague and ambiguous.

25 CO-HEARING OFFICER BAGGETT: Okay. I will

1    overrule.  If you could answer to the best of your  
2    knowledge or what -- if you know.  If you don't know,  
3    you don't -- but when it was anticipated that it would  
4    be completed.

5           MR. TURNER:  I can't recall.

6           MR. SATO:  Do you have an understanding that  
7    there was in fact a projected completion date for the  
8    project, any of you?

9           MR. SCHUBERT:  I don't recall, no.

10          MR. SATO:  So it is the panel's testimony that  
11    you don't recall any project completion date for the  
12    New Los Padres Dam project; is that correct?  Can you  
13    state affirmatively?

14          MR. SCHUBERT:  Yes.

15          MR. BUNOWSKY:  Yes.

16          MR. TURNER:  Yes.

17          MR. STEPHENSON:  I have no idea.  It was not  
18    our project.

19          MR. SATO:  Now, previously Mr. Jackson was  
20    going over page 4, lines 13 through 23 about certain  
21    projects that had been, I believe, as you say here  
22    considered and for various reasons not being pursued.

23                 I just wanted to -- I'm not going to ask you  
24    the exact same questions, but I wanted to ask  
25    something related to that testimony of Mr. Turner.

1           When it says that Cal Am Water considered  
2 something, what are the -- what are the steps that you  
3 were taking in order to consider something?

4           MR. TURNER: The steps that we would take to  
5 consider something would be to look at an alternative,  
6 do enough of an evaluation to determine whether or not  
7 it is feasible, similar to what you would have seen  
8 done in the PEA that we prepared for the California  
9 PUC.

10          MR. SATO: So when you talk about that was  
11 considered -- well, strike that.

12          When you considered something for the purposes  
13 of the project identified in that testimony, was there  
14 any kind of written document that memorialized the  
15 considerations?

16          MR. TURNER: I just gave you a written  
17 document that's over 1000 pages long, the PEA from the  
18 California PUC.

19          MR. SATO: Aside from that written document,  
20 any other one?

21          MR. TURNER: I'm sure there's documents in  
22 files having to do with our evaluations, yes.

23          MR. SATO: Is it Cal American's standard  
24 practice that when considering one of these types of  
25 potential additional options, as you call them, that

1 you would prepare a written evaluation and -- for the  
2 consideration?

3 MR. TURNER: Depends on the project.

4 MR. SATO: And is it your belief that for each  
5 of the projects identified in your testimony on page  
6 4, lines 13 through 23 that there was a written  
7 document that evaluated and considered these options?

8 MR. TURNER: I don't know.

9 MR. SATO: And I just wanted to direct your  
10 attention to your testimony about considering water  
11 purchases from the State Water Project. And I believe  
12 your testimony was that is no longer being considered;  
13 is that correct?

14 MR. TURNER: Yes.

15 MR. SATO: Can you tell me the specific  
16 reasons why that option is no longer being considered?

17 MR. TURNER: No, I don't know. I don't recall  
18 specifically reasons for that individual project.

19 MR. SATO: Do you know who in Cal Am would  
20 know the answer to that?

21 MR. TURNER: It's probably included in the  
22 PEA. I don't know that for a fact, but that would  
23 be -- you know, most of these projects were evaluated  
24 in that process.

25 MR. SATO: Do you know whether or not cost or

1 expense was a factor in rejecting that consideration?

2 MR. TURNER: Yes.

3 MR. SATO: And do you recall any details of  
4 how those costs were evaluated?

5 MR. TURNER: No.

6 MR. SATO: Would you say -- do you recall  
7 whether or not costs were the main reason why that  
8 option is not being considered any longer by Cal Am?

9 MR. TURNER: No.

10 MR. SATO: Would cost be an issue in Cal  
11 American's consideration of an option?

12 MR. TURNER: Yes.

13 MR. SATO: I guess I have the same questions  
14 for Central Valley Project. What were the specific  
15 reasons why the Central Valley Project option is no  
16 longer being considered?

17 MR. TURNER: I don't know the specific reason.

18 MR. SATO: And once again, do you think the  
19 PEA is going to provide information about those  
20 reasons?

21 MR. TURNER: Most of the options are in there,  
22 yes.

23 MR. SATO: Do you recall whether the Central  
24 Valley option is specifically included?

25 MR. TURNER: I do not.

1           MR. SATO: I will temporarily move from you,  
2 Mr. Turner. Now, Mr. Bunowsky, I wanted to know --  
3 you are testifying -- strike that.

4           You started working for Cal Am in  
5 approximately 2007; is that correct?

6           MR. BUNOWSKY: Yes.

7           MR. SATO: Yet in your testimony you are  
8 testifying to a number of activities that occurred  
9 prior to your employment with Cal Am; is that correct?

10          MR. BUNOWSKY: Yes.

11          MR. SATO: And how did you get the information  
12 to make the representations that you make in your  
13 testimony about activities that occurred prior to  
14 employment with Cal American?

15          MR. BUNOWSKY: Based upon the information the  
16 company has in files, various reports, talking to  
17 employees of the company, talking to others outside  
18 the company in regard to what the activities have been  
19 over the years in pursuit of the alternate water  
20 supplies and activities of the company.

21          MR. SATO: So -- but it would be correct to  
22 say you don't have any direct personal knowledge with  
23 regard to the facts you testified to that occurred  
24 prior to your employment with Cal American; is that  
25 correct?

1           MR. BUNOWSKY: I was not employed by Cal  
2 American prior to 2007 and therefore do not have any  
3 direct personal knowledge, as I explained just the  
4 knowledge of becoming educated in regard to the  
5 company's activities through being in a position of  
6 management.

7           MR. SATO: And with regard to all of the  
8 documents that you might have reviewed in order to  
9 prepare your expert testimony, were they attached to  
10 your testimony as exhibits?

11           MR. BUNOWSKY: I believe there are exhibits  
12 attached to my testimony, yes.

13           MR. SATO: But are you aware of whether all of  
14 the documents that you reviewed in order to prepare  
15 that testimony are attached as exhibits?

16           MR. BUNOWSKY: I don't understand the  
17 question.

18           MR. SATO: Okay. Apparently you just  
19 testified -- this could be quick -- I mean you  
20 testified that you reviewed a number of documents in  
21 preparing your testimony you submitted in this  
22 proceeding, correct?

23           MR. BUNOWSKY: Correct.

24           MR. SATO: And I want to know whether all of  
25 those documents that you reviewed are identified as



1 exhibits to your testimony.

2 MR. BUNOWSKY: Oh. When I referenced in my  
3 testimony just a second ago those documents, that's  
4 company reports and filings. Not all of the  
5 information that is available is in this testimony,  
6 no.

7 MR. RUBIN: Maybe we could shortcut this. It  
8 would be huge burden on the company, but there are a  
9 lot of documents that these people have reviewed over  
10 time, my guess probably in the tens of thousands or  
11 hundreds of thousands of pages we could make part of  
12 this record, if that's going to be necessary to  
13 support the knowledge these people have acquired  
14 through their work. It's -- again, I mean we --

15 CO-HEARING OFFICER BAGGETT: Okay. Is that --

16 MR. SATO: I wasn't going to ask any further  
17 questions about that.

18 CO-HEARING OFFICER BAGGETT: Okay, thank you.

19 MR. SATO: You guys always berate me when I'm  
20 done with my questions.

21 CO-HEARING OFFICER WOLFF: That means if you  
22 ask one question less each in each of the series we'd  
23 be perfect. Not to criticize you. But we're close.  
24 We're close.

25 MR. SATO: Now, let me direct my questions now

1 to Mr. Schubert.

2 Mr. Schubert, when did you become employed  
3 with Cal American?

4 MR. SCHUBERT: My history with American Water  
5 goes back to 1987. I actually joined California  
6 American in September of 2001.

7 MR. SATO: And same question to you, I mean  
8 basically you're testifying about a number of things  
9 that occurred with California American prior to  
10 employment with California American; is that correct?

11 MR. SCHUBERT: Yes. Let me be clear. I mean  
12 when I started with American Water, I started in an  
13 engineering group, and one of the activities I was  
14 involved with at that time was a planning study for  
15 California American Water.

16 So I have a fairly good background on what's  
17 been going on with California American Water for  
18 almost 20 years.

19 MR. SATO: Very good. So the testimony that  
20 you put in your -- well, your testimony is based upon  
21 facts that are based upon your own direct personal  
22 knowledge; is that correct?

23 MR. SCHUBERT: Yes.

24 MR. SATO: I'll direct this question to the  
25 panel. Are you familiar with Water Rights Order

1 95-10, Condition 12?

2           Anyone can answer that. You have in front of  
3 you -- I'll read it to you then. Condition 12 says  
4 that:

5           Within 90 days of the date of this  
6 order, Cal Am shall submit for approval  
7 of the Chief, Division of Water Rights a  
8 compliance plan detailing the specific  
9 actions which will be taken to comply  
10 with Condition 2 and days by which those  
11 actions will be accomplished, B, and  
12 urban water conservation plan and, C, an  
13 irrigation management plan.

14           Are you familiar with that condition, panel  
15 members?

16           MR. TURNER: Yes.

17           MR. SATO: It's tougher to do this as a panel.  
18 Do you -- does any of the panel members know whether  
19 or not a compliance plan detailing the specific  
20 actions which will be taken was submitted within that  
21 90-day period?

22           MR. RUBIN: Each person should respond.

23           MR. STEPHENSON: Mr. Stephenson. I do not  
24 know.

25           MR. TURNER: I do not know this.

1 MR. SCHUBERT: I don't know.

2 MR. BUNOWSKY: Tom Bunowsky. I do not know.

3 MR. SATO: Okay. And without the 90-day time  
4 period, do any of you know whether or not any  
5 compliance plan as described here in 12A has ever been  
6 submitted by Cal Am?

7 MR. TURNER: Would you restate the question  
8 please, I'm sorry.

9 MR. SATO: I said without regard to the 90-day  
10 time period, do you know whether or not Cal Am has  
11 ever submitted the compliance plan called for in  
12 Condition 12A?

13 MR. TURNER: I am not aware of that. But I am  
14 aware that we -- for the last 13 years, we've been  
15 receiving communications from the State Water  
16 Resources Control Board that we're in compliance with  
17 95-10. I am aware of that.

18 MR. SATO: Move to strike the answer as  
19 nonresponsive to my question.

20 MR. RUBIN: If you're going to rule on that, I  
21 would object or would argue that it was --

22 MR. SATO: You can recross him on this.

23 MR. RUBIN: You moved to strike, so I'm trying  
24 to address your motion.

25 CO-HEARING OFFICER BAGGETT: I think it was

1 responsive.

2 MR. SATO: All right.

3 Then with regard to an urban conservation  
4 plan, panel, are you aware whether or not Cal Am has  
5 ever submitted an urban conservation plan as called  
6 for in 12B?

7 MR. RUBIN: I'm going to object to the  
8 question on relevance grounds. I don't understand how  
9 that, whether the company has or has not complied with  
10 Condition 12B of Order 95-10 has any relevance on  
11 whether the company's complied with Condition 2 of  
12 Order 95-10 or is or is not in compliance with section  
13 1052 of the Water Code.

14 CO-HEARING OFFICER BAGGETT: Response?

15 MR. SATO: Well, these are conditions of the  
16 Order, and we're just testing how diligent the -- one  
17 of the issues is how diligent Cal Am has been. And  
18 they've been arguing they have been so proactive in  
19 trying to address the requirements of this Order. I  
20 think this appropriate, yes.

21 MR. RUBIN: I don't believe the general  
22 diligence of the company is at issue.

23 I think the -- again, the Hearing Officers  
24 made very clear what is it issue is Condition 2. So  
25 the diligence has to relate to the actions that have

1 been articulated in Condition 2. Whether or not the  
2 company has filed an urban water management plan has  
3 no relevance to the issue of diligence as that term is  
4 used in Condition 2 of Order 95-10.

5 MR. SATO: Well, I think it does, your Honors  
6 because I think, you know, they've already just  
7 testified that as to the first Condition in 12A that  
8 they have no knowledge as to whether or not a  
9 compliance plan taken to comply with Condition 2 has  
10 been satisfied.

11 So the second issue then is -- so in other  
12 elements of that same condition have they followed  
13 those things. So I think we can talk about --

14 CO-HEARING OFFICER BAGGETT: Could you answer?  
15 Could one of the witnesses answer the question? Do  
16 you have knowledge of that please? I'll overrule the  
17 objection.

18 MR. STEPHENSON: To my knowledge, we've been  
19 filing urban water management plans as part of our PUC  
20 applications for a number of years.

21 MR. SATO: All right. And then the question  
22 with regard to the requirement for 12C on an  
23 irrigation management plan, panel, are you aware of  
24 whether Cal Am has submitted this for approval of  
25 the -- to the Chief, Division of Water Rights?

1           MR. RUBIN: And I'll renew my objection on the  
2 same grounds.

3           CO-HEARING OFFICER BAGGETT: Objection noted,  
4 overrule. If someone's capable of answering and has  
5 knowledge, answer, so state.

6           MR. TURNER: This is Ken Turner. I don't  
7 know.

8           MR. STEPHENSON: This is Dave Stephenson. I  
9 don't know what's been submitted to the Division.

10          MR. BUNOWSKY: Tom Bunowsky, not aware of it.

11          MR. SCHUBERT: Mark Schubert, I don't know  
12 either.

13          MR. SATO: I don't have any further questions.

14          CO-HEARING OFFICER BAGGETT: Thank you. So  
15 cross-examination is complete. Is there any redirect?

16                 I guess -- sorry. We've got, my colleagues  
17 have got questions. Any other staff up here have any  
18 questions before we go to redirect?

19                         CROSS-EXAMINATION BY MR. TAYLOR

20                         FOR STATE WATER RESOURCES CONTROL BOARD

21                         STAFF COUNSEL TAYLOR: As point of  
22 clarification: On the Sand City desalination plant,  
23 who actually owns that plant?

24                         MR. TURNER: That plant is owned by the City  
25 of Sand City, and I have a 15-year lease on it. And I

1 will operate it. California American Water will  
2 operate it.

3 STAFF COUNSEL TAYLOR: And who has first call  
4 on the rights that water -- the rights that plant  
5 generates?

6 MR. TURNER: 84 acre feet of that water is  
7 effectively water that can be replaced. The  
8 difference is available for the City of Sand City to  
9 use for growth over the next 20 years. So the net  
10 impact on the use of the water for the Carmel River  
11 and our system of new water, so to speak, is 84 acre  
12 feet.

13 STAFF COUNSEL TAYLOR: So you view that as  
14 being water -- most of that water as being outside of  
15 the limits placed on Cal Am for diverting water from  
16 the Carmel River?

17 MR. TURNER: Let me correct one thing I'm  
18 saying. My colleague told me it's 94. I do  
19 apologize. And you're going to have to repeat the  
20 question. I'm sorry.

21 STAFF COUNSEL TAYLOR: Cal Am has a legal  
22 limit -- a set amount of legal rights to the water  
23 from the Carmel River 3,300-some-odd acre feet,  
24 something like that. The amount above that is water  
25 that Cal Am has no current legal rights to.



1 I'm not approaching this right.

2 Cal Am has a cap on how much it can take from  
3 the Carmel River in any given year?

4 MR. TURNER: Yes.

5 STAFF COUNSEL TAYLOR: Is that correct? And  
6 as I understand -- perhaps I'll just ask you if you  
7 understand it. Were you here when you heard Darby  
8 Fuerst testified earlier today or yesterday?

9 MR. TURNER: Yes.

10 STAFF COUNSEL TAYLOR: Did you hear  
11 Mr. Fuerst's testimony about how water is  
12 apportioned -- the quantity of water available within  
13 the area is apportioned to all the subunits to the  
14 area like Sand City and Monterey and Carmel?

15 MR. TURNER: Yes.

16 STAFF COUNSEL TAYLOR: And did you understand  
17 from Mr. Fuerst's testimony that a certain amount of  
18 that water was set aside for growth in each area  
19 provided certain conditions were met?

20 STAFF COUNSEL HERINK: Yes.

21 STAFF COUNSEL TAYLOR: My question then is:  
22 Is the growth -- the water that's made available from  
23 the desal plant, is that water totally outside of this  
24 cap that's applied to the total amount of water that  
25 can come from the Carmel River?

1           MR. TURNER: Yes. And we have a letter from  
2 the State Water Resources Control Board verifying  
3 that.

4           STAFF COUNSEL TAYLOR: Okay. Thank you.

5           MR. McGLOTHLIN: Hearing Officer Baggett, Russ  
6 McGlothlin representing the City of Seaside. If I  
7 may, I have less than two to three minutes of  
8 cross-examination to clarify.

9           CO-HEARING OFFICER BAGGETT: Okay.

10          MR. McGLOTHLIN: Thank you.

11          CO-HEARING OFFICER BAGGETT: Then we'll move  
12 to staff.

13                    CROSS-EXAMINATION BY MR. McGLOTHLIN

14                            FOR CITY OF SEASIDE

15          MR. McGLOTHLIN: Mr. Turner, I just want to  
16 clarify one quick point.

17                    Earlier in your testimony, you recall stating  
18 that the dam projects on the river have been set aside  
19 and substituted by the Coastal Water Project. And I  
20 believe the reference was made to the Moss Landing  
21 project?

22          MR. TURNER: I made no reference to the Moss  
23 Landing project today. But the dam projects have been  
24 set aside, yes.

25          MR. McGLOTHLIN: For the Coastal Water

1 Project, and I just want to clarify the scope of the  
2 Coastal Water Project. And maybe this question is  
3 actually better for Mr. Bunowsky.

4 Mr. Bunowsky, you're aware of the Regional  
5 Plenary Oversight Group, and it's in your testimony?

6 MR. BUNOWSKY: Yes.

7 MR. MCGLOTHLIN: And your testimony, just to  
8 summarize, said there has been 14 meetings, about 50  
9 agencies, interest groups, and other organizations  
10 involved in those meetings; is that correct?

11 MR. BUNOWSKY: Yes.

12 MR. MCGLOTHLIN: And has Cal Am participated  
13 in those meetings?

14 MR. BUNOWSKY: Yes.

15 MR. MCGLOTHLIN: Is it your opinion that  
16 that's been an opportunity for diverse water interest  
17 groups to come together to discuss opportunities  
18 for -- water augmentation opportunities for the  
19 Peninsula?

20 MR. BUNOWSKY: Yes.

21 MR. MCGLOTHLIN: And how out of that, I think  
22 you identified a series of potential alternative  
23 projects to Moss Landing that work will be included in  
24 the CPC EIR process for evaluation; is that correct?

25 MR. BUNOWSKY: Yes.

1 MR. MCGLOTHLIN: No further questions.

2 CO-HEARING OFFICER BAGGETT: Thank you. Back  
3 to Ernie, Paul? Other questions? Gary.

4 CO-HEARING OFFICER WOLFF: This question goes  
5 to the Carmel River Dam and Reservoir project which I  
6 understand was a Cal Am project at one time. Do any  
7 of you know what the estimated annual sustainable  
8 yield of the project was?

9 MR. SCHUBERT: I honestly don't remember, but  
10 we can get that for you.

11 CO-HEARING OFFICER WOLFF: Can you refer me to  
12 the documents that it would be in? Is there a  
13 document in the record that would contain it?

14 MR. SCHUBERT: I don't think it would be in  
15 record, but it might be in the supplemental EIR.

16 STAFF COUNSEL TAYLOR: I believe that's  
17 information that could be found in Decision 1632 by  
18 the Board.

19 CO-HEARING OFFICER WOLFF: That's fine. As  
20 long as I know where to find it. Thank you.

21 My second question: Mr. Turner, on page 5 of  
22 your testimony you talk about discussions with the  
23 Carmel Development Corporation about the Odello fields  
24 and also the Rancho Canada golf club, and you indicate  
25 that at various times since 2001 and up until now you

1 have had discussions which are still ongoing.

2 In very short form, can you tell me why in  
3 that time frame an arrangement has either not been  
4 consummated or an understanding that an arrangement  
5 can't be consummated has been reached?

6 MR. TURNER: As with any negotiations, there  
7 are a multitude of reasons, but price is one of the  
8 reasons. Obviously, water is extremely valuable. I  
9 am bound by the California PUC to make sure that I am  
10 prudent with the expenditures that I make on behalf of  
11 the ratepayers.

12 And so consequently either we've had technical  
13 issues that have kept -- caused us to postpone our  
14 discussions that water could be used -- may be used by  
15 someone else. So typical arm's length negotiation.

16 CO-HEARING OFFICER WOLFF: Okay.

17 With respect to the quarterly reports which  
18 you submit to the Division of Water Rights, I think  
19 there are monthly reports submitted to Monterey  
20 Peninsula Water Management District. And these  
21 reports were compared in the two tables yesterday.  
22 PT-15 was the exhibit, and there was an exhibit from  
23 Monterey Peninsula Water Management District, I  
24 believe DF-2.

25 I know there were some small differences

1 between them. I'm not concerned about the small  
2 differences.

3 But to the best of your knowledge, are the  
4 reports you submitted, quarterly and monthly to the  
5 different entities, are they substantially correct?  
6 Are they substantially accurate?

7 MR. BUNOWSKY: Yes.

8 CO-HEARING OFFICER WOLFF: Thank you.

9 Now, with respect to unaccounted for water  
10 which has been mentioned in passing in these hearings,  
11 can you describe to me again briefly what program you  
12 have to identify water losses in your distribution  
13 system and to correct those losses?

14 MR. BUNOWSKY: In regard to unaccounted for  
15 water, which is the difference between what you  
16 produced through meters and what the customers' meters  
17 register, we read meters in Monterey, the production  
18 meters, daily, we read all the customers' meters on a  
19 monthly basis and compare those two readings in total  
20 to see how much that is a difference.

21 And that difference is unaccounted for water.  
22 There's various terminologies used to identify the  
23 difference between what you produce and the amount  
24 that you register on customers' meters.

25 At that point, the company monitors that on a

1 regular basis, those numbers. The difference is very  
2 reasonable in regard to a system as old as the  
3 Monterey Peninsula's water system is.

4 We also have various programs of leak  
5 detection and looking at the different things  
6 repairing leaks as soon as they're known to diminish  
7 that usage.

8 We're also investigating various technological  
9 advances proposed in a current California Public  
10 Utilities Commission rate case to further enhance that  
11 detection of water that could be lost through leakage  
12 in the water system.

13 There is a various multitude of issues that  
14 are all estimates in regard to that difference.  
15 Cooperating with the local fire departments and  
16 municipalities on fire hydrant use for public service.  
17 Those are estimates. We work with them in regard to  
18 getting those accurate numbers.

19 Because the moment you have a difference  
20 between production and metered sales, it becomes into  
21 how much is designated to different entities, and we  
22 continuously monitor that.

23 CO-HEARING OFFICER WOLFF: I understand, thank  
24 you. Is there a percentage unaccounted for water that  
25 you are aware of?

1           MR. BUNOWSKY: The percentage between how much  
2 that difference is amounts to about 12 percent of the  
3 production in round figures. It varies from month to  
4 month or year to year which in regard to, again, as I  
5 mentioned, a system the age of Monterey.

6           As well as percentage numbers being changed in  
7 the water industry now because a percentage doesn't  
8 give you a very good accurate number at all because  
9 Monterey uses -- the customers use such low water use.  
10 If they use, say, double the amount of water that a  
11 normal California community uses, then that  
12 unaccounted percentage would be half.

13           CO-HEARING OFFICER WOLFF: I understand. If  
14 you wanted to give me the gallons per day, hundred  
15 foot, you can do that, but I didn't want to go to that  
16 level.

17           MR. BUNOWSKY: I understand. It's a very  
18 reasonable number in regard to the system's age there.

19           CO-HEARING OFFICER WOLFF: I understand.

20           And you said in your rate application you've  
21 applied for funding for a more aggressive program of  
22 maintenance. Is there a targeted percentage or some  
23 way to compare the amount of reduction you're  
24 anticipating might occur if the application is  
25 approved?



1           MR. BUNOWSKY: We're hoping through the  
2 aggressive leak detection as well as main replacement  
3 programs, we're hoping to reduce that difference by  
4 20 percent as our goal.

5           CO-HEARING OFFICER WOLFF: So on a percentage  
6 basis, it would be around 2.4 percent, 20 percent of  
7 12 percent, something like that?

8           MR. BUNOWSKY: Correct.

9           MR. TURNER: I'd just like to make one  
10 clarification. We call it unaccounted for water.  
11 That's kind of a utility nomenclature. A more  
12 appropriate term is nonrevenue water. It's water that  
13 hasn't been billed. It doesn't necessarily mean the  
14 water is all lost.

15           CO-HEARING OFFICER WOLFF: I understand. Fire  
16 hydrant uses and other --

17           MR. TURNER: Yes.

18           CO-HEARING OFFICER WOLFF: You mentioned about  
19 the possibility of dredging the existing reservoir and  
20 therefore increasing the capacity that was touched on  
21 earlier, but I'm not clear about that project.

22           You indicated I think in your testimony,  
23 Mr. Turner, that it was looked into. It was  
24 considered. Again, then why was it not pursued? Why  
25 was it dropped?

1           MR. TURNER: The primary reason was  
2 environmental issues. You have to do something with  
3 what you dredge.

4           We have endangered species called the  
5 red-legged frog which is a problem in Monterey. To  
6 destroy some of that habitat would in fact jeopardize  
7 the red-legged frog.

8           CO-HEARING OFFICER WOLFF: Cost is a  
9 consideration as well?

10          MR. TURNER: In that particular situation,  
11 cost wasn't a consideration.

12          CO-HEARING OFFICER WOLFF: I see. So cost  
13 would be reasonable if only there was a way to deal  
14 with the red-legged frog situation? Okay.

15          Then the last question. Returning to a point  
16 made earlier about cost with respect to the Odello  
17 fields and golf course. How do you determine when a  
18 cost is reasonable enough to file a rate application  
19 with the CPUC?

20          I mean unless you apply to them and they turn  
21 you down, you don't really know that it was  
22 unacceptable, right? But you're making some sort of  
23 judgment as to when to apply and when not to.

24          MR. TURNER: I will tell you my career started  
25 on the side of a regulator. So you have -- it is a

1 judgment call in some extent, and a lot of times you  
2 take risk.

3           You have to ask yourself whether a regulator  
4 would see the transaction as prudent under the  
5 circumstances. And one of the things I have learned  
6 in my 37 years in this business is every regulator  
7 looks at things just a little bit different and  
8 perceives things just a little bit different.

9           So you have to look at it from the perspective  
10 of how the -- if the regulator could look at that  
11 objectively and said management was prudent when they  
12 made that decision.

13           CO-HEARING OFFICER WOLFF: So you're  
14 anticipating -- you're doing your best to anticipate  
15 what the decision would be; and if it's likely to be  
16 no, let's not spend a lot of time and money on  
17 pursuing something that's likely to be denied.

18           MR. TURNER: That's not true. We have  
19 projects that have not gotten included. You know,  
20 we -- the thing we do the most is what we believe is  
21 in the best interests of the customer that we are  
22 bound to serve, we have an obligation to serve. Okay.

23           We have -- we do risk capital every time we  
24 spend it that it could be declared not prudent. And  
25 there are literally interveners out the -- out your

1 ears that come and try to prove your projects are not  
2 prudent.

3 CO-HEARING OFFICER WOLFF: I didn't mean to  
4 mischaracterize your statement, if I did. I was  
5 trying to restate it in the way I understood it. So  
6 you're making a judgment, you said, based on what  
7 you -- on how a regulator would perceive it.

8 MR. TURNER: And my ability to convince that  
9 regulator that it was a prudent expenditure.

10 CO-HEARING OFFICER WOLFF: I see.

11 MR. TURNER: Cost is not -- what I'm saying is  
12 cost is a factor but not the only factor.

13 CO-HEARING OFFICER WOLFF: I see. Thank you  
14 for that clarification.

15 CO-HEARING OFFICER BAGGETT: I guess to  
16 continue somewhat along the same line, I think it was  
17 stated you are a publicly traded company, the parent  
18 company is.

19 MR. TURNER: Yes, the parent company is,  
20 American Water.

21 CO-HEARING OFFICER BAGGETT: With that, I  
22 assume you do have a fiduciary obligation to your  
23 shareholders --

24 MR. TURNER: Absolutely.

25 CO-HEARING OFFICER BAGGETT: -- as regulated

1 by the SEC.

2 So I guess I'm trying to understand. I'm very  
3 familiar with these issues as relate to FERC in my  
4 career, but not so much with a water company.

5 When you make these financial decisions,  
6 there's obviously a tension between the obligation  
7 shareholders and what is rate recoverable from the  
8 PUC. Is there a cap -- or how do you -- the exposure  
9 for moving forward with a project that then will not  
10 be rate recoverable?

11 If you could explain how do you -- if the --  
12 to some extent it's outside but I think it is relative  
13 to diligence and the financial issues here because  
14 that goes to diligence.

15 How do you balance that tension or can you  
16 just spend whatever you want --

17 MR. TURNER: No, we --

18 CO-HEARING OFFICER BAGGETT: -- without rate  
19 recovery?

20 MR. TURNER: Well, obviously we can't spend  
21 whatever we want without rate recovery. But, you  
22 know, our board, who is made up of members of the  
23 board of American Water, understand our circumstances.

24 I mean to give you an indication that money's  
25 not necessarily the problem, since I came to Cal Am in

1 '99 we have had in excess of \$750 million planned for  
2 Monterey since I walked in the door, and I was the CFO  
3 at that point of California American.

4 Our board has always understood the magnitude  
5 of the dollars that we have to spend in this  
6 situation. Always.

7 CO-HEARING OFFICER BAGGETT: Then you go for  
8 rate recovery after the fact?

9 MR. TURNER: We have literally walked  
10 hand-in-hand with our ratepayers on this -- our  
11 regulators on this. They understand where we're at.  
12 They're the Lead Agency. They see the cost of this  
13 stuff before we do in some cases.

14 CO-HEARING OFFICER BAGGETT: Okay. That  
15 helps. Any other questions? Any redirect?

16 MR. RUBIN: Just a few questions hopefully to  
17 clarify a couple of the statements.

18 REDIRECT-EXAMINATION BY MR. RUBIN

19 FOR CALIFORNIA AMERICAN WATER COMPANY

20 MR. RUBIN: Mr. Turner, I believe that you  
21 responded to a question regarding the Coastal Water  
22 Project and I think expressed your opinion about  
23 whether it was on track. I wasn't clear what  
24 perspective that was coming from. Can you explain?

25 MR. TURNER: Yes. From our perspective, it is

1 on track given milestone have been set in achieving  
2 the 17 different regulatory approvals that we have to  
3 go through to get the Coastal Water Project on track.

4 The problem that you have is that if any one  
5 of those change, that changes the track of the  
6 project.

7 Right now, our schedule is, and our budgets  
8 reflect, 2015. That's not solely within our control.

9 MR. RUBIN: Mr. Turner, I believe it was also  
10 you who provided testimony regarding the time period  
11 in which an Environmental Impact Report has been under  
12 preparation for the Coastal Water Project. Do you  
13 recall that?

14 MR. TURNER: Yes.

15 MR. RUBIN: Has there been any other  
16 environmental work prepared prior to the preparation  
17 of an Environmental Impact Report for the Coastal  
18 Water Project?

19 MR. TURNER: Yes. The PEA, and I think Dave  
20 or Mark can probably explain to you how long that's  
21 been going on. I was just talking about the final EIR  
22 process. That was preceded by the environmental  
23 assessment that was done before by several years.

24 MR. RUBIN: Maybe just for the record, can you  
25 explain -- somebody from the panel if not you,

1 Mr. Turner -- what a PEA is?

2 MR. SCHUBERT: When we went forward with the  
3 Coastal Water Project, one of the things we had to do  
4 was prepare a proponent's environmental assessment.  
5 That's what was required under CEQA.

6 That is an evaluation of all kinds of projects  
7 to solve a water supply challenge that we have in  
8 Monterey. And that PEA at the end of the day came  
9 down to a preferred alternative as well as other, six  
10 or seven other projects.

11 And once the PEA was submitted, which was in  
12 July 2005, to the Commission, then the Commission  
13 started their clock on preparing an EIR which was  
14 going to evaluate the PEA.

15 MR. RUBIN: No further questions for redirect.

16 CO-HEARING OFFICER BAGGETT: Thank you.

17 Any of the parties have any recross on the  
18 narrow focus of the redirect? There is no one  
19 stepping forward, so with that staff have any? Staff  
20 any questions first? If not, exhibits.

21 MR. RUBIN: The way I'll move these, I  
22 guess -- bear with me.

23 We've marked as Exhibit CAW-29 through  
24 CAW-32D. Rather than have to go through all of them,  
25 we move for all exhibits that are within that as well



1 as lettered exhibits into evidence with, I guess, the  
2 caveat that we will not be moving in CAW-30B through  
3 30WW subject to the stipulation we discussed  
4 yesterday.

5 CO-HEARING OFFICER BAGGETT: Any objection?  
6 They're admitted.

7 (The above-noted exhibits were admitted  
8 into evidence.)

9 MR. RUBIN: So the record's clear, we have  
10 admitted all of the exhibits that we've identified for  
11 this proceeding except for the 30B through WW?

12 CO-HEARING OFFICER BAGGETT: Yes.

13 MR. RUBIN: Thank you.

14 (Discussion off the record)

15 CO-HEARING OFFICER BAGGETT: Let's go back on  
16 and back to Cal Am. Your rebuttal.

17 B. KENT TURNER

18 Called by CALIFORNIA AMERICAN WATER COMPANY

19 REBUTTAL EXAMINATION BY MR. RUBIN

20 MR. RUBIN: Jon Rubin for California American  
21 Water rebuttal case, and Mr. Turner will be, I  
22 believe, the only witness because of the timing. Much  
23 of the discussion I believe he'll be able to answer  
24 the question. If not, we'll have someone up from  
25 California American Water.

1           Mr. Turner, were you present yesterday when  
2 Ms. Mrowka testified?

3           MR. TURNER: Yes, I was.

4           MR. RUBIN: Did you -- strike that.

5           Do you recall Ms. Mrowka testifying that the  
6 California Public Utilities Commission is responsible  
7 for determining whether California American Water can  
8 charge its ratepayers for improvements made?

9           MR. TURNER: Yes, I recall her testimony.

10          MR. RUBIN: Is that the complete oversight  
11 that the California Public Utilities Commission has  
12 over California American Water?

13          MR. TURNER: No, by no means.

14          MR. RUBIN: Can you briefly describe the  
15 breadth of oversight the California Public Utilities  
16 Commission has over California American Water?

17          MR. TURNER: As a regulated public utility,  
18 California American Water is regulated by the CPUC,  
19 and they do it as a surrogate for competition.

20                 So they not only regulate our rates and  
21 ability to recover, they establish the rules for which  
22 we operate. They tell us -- they require us to serve  
23 the customers. We have an obligation to serve on the  
24 customers. They tell us how we can turn customers  
25 off, when we can turn customers off.

1           Relative to this conversation would be: If we  
2 have to change conservation programs, we have to get  
3 it approved from the California PUC.

4           CO-HEARING OFFICER BAGGETT: Mr. Jackson?

5           MR. JACKSON: Yes, Mr. Baggett. It seems that  
6 rebuttal is when they're trying to disprove something  
7 somebody said. What Ms. Mrowka said, according to the  
8 question is absolutely consistent with this testimony.  
9 It's just elaborating and is not proper rebuttal.

10          CO-HEARING OFFICER BAGGETT: I would overrule  
11 because to some extent this goes to some of the  
12 questions I was asking also. I think they're  
13 incredibly relevant and something I think this Board  
14 needs to have a full understanding of, especially  
15 since the Ratepayer Advocate's a party to this  
16 proceeding and hasn't put on testimony.

17           I feel we need to understand how a publicly  
18 traded water company is regulated by the PUC versus a  
19 power company. So I will overrule. I think it is  
20 relevant to the line of questions I asked, if nothing  
21 else.

22          MR. RUBIN: Just a follow up. Mr. Turner, I  
23 believe you referred a term I think will-serve, or an  
24 obligation to serve. Do you recall that?

25          MR. TURNER: Yes. Obligation to serve.

1           MR. RUBIN:  If California American Water wants  
2  to put a moratorium, say, on connections or have a  
3  moratorium placed on connections, do you need to get  
4  approval from the Public Utilities Commission?

5           MR. TURNER:  Yes.

6           MR. RUBIN:  Can I infer from your answer if  
7  you were to impose a moratorium without that approval  
8  you would be operating inconsistent with the  
9  regulations of the Public Utilities Commission?

10          MR. TURNER:  Yes.

11          MR. RUBIN:  One last question, or series of  
12  questions:  You have been involved in a program  
13  referred to as ASR Phase 1?

14          MR. TURNER:  That's correct.

15          MR. RUBIN:  As part of your involvement, have  
16  you been involved in any discussions or meetings with  
17  the State Water Resources Control Board?

18          MR. TURNER:  Numerous.

19          MR. RUBIN:  Were you involved in a meeting on  
20  December 13, 2007, with the State Water Resources  
21  Control Board?

22          MR. TURNER:  Yes, I was.

23          MR. RUBIN:  And do you recall who was at that  
24  meeting?

25          MR. TURNER:  Myself, my attorney Tim Miller

1 were both at the meeting. David Laredo and Dave  
2 Berger -- Dave Berger was with the District at that  
3 time, was at that meeting. Kathy Mrowka was at that  
4 meeting. Vickie Whitney was at that meeting. And  
5 Mr. Taylor was at that meeting.

6 MR. RUBIN: And when you referred to the  
7 District in your response, were you referring to the  
8 Monterey Peninsula Water Management District?

9 MR. TURNER: I apologize, yes.

10 MR. RUBIN: And when you said Mr. Taylor, are  
11 you referring to Buck Taylor?

12 MR. TURNER: Yes, sir.

13 MR. RUBIN: And was there anything discussed  
14 at the meeting besides the ASR project specifically?

15 MR. TURNER: Yeah, the ASR project was almost  
16 a sideline at that meeting. This was to discuss  
17 moving forward on taking care of additional water  
18 rights issues, ASR Phase 2 almost, and then additional  
19 issues that we had to deal with going forward.

20 That's where the -- that's where we had some  
21 discussions of the Schedule 13 water rights, the 2900  
22 acre feet we referred to.

23 MR. RUBIN: Thank you.

24 No further questions.

25 CO-HEARING OFFICER BAGGETT: Any parties have

1 any --

2 MR. JACKSON: Yes.

3 CO-HEARING OFFICER BAGGETT: Rebuttal cross?

4 REBUTTAL CROSS-EXAMINATION BY MR. JACKSON

5 FOR CARMEL RIVER STEELHEAD ASSOCIATION

6 MR. JACKSON: Mr. Turner, you indicated on  
7 direct and your rebuttal testimony that before Cal Am  
8 could issue a moratorium you would have to get PUC  
9 approval. If the State Water Board issued a  
10 moratorium, is it your understanding that it would  
11 require PUC approval?

12 MR. TURNER: Yes, sir. That's my  
13 understanding.

14 MR. JACKSON: And on what ground would the PUC  
15 have authority over the State Water Board?

16 MR. TURNER: They don't have any authority  
17 over the State Water Resources Control Board. I can't  
18 explain the legal connection between the two. But  
19 they have authority over me, over my company, Cal  
20 American Water.

21 MR. JACKSON: So you don't know whether the  
22 PUC can stop the State Board if they ordered a  
23 moratorium?

24 MR. TURNER: No.

25 MR. JACKSON: Okay. In regard to the meeting

1 December 13, 2007, you indicated at first that it was  
2 a meeting on the ASR. And then you said that actually  
3 it wasn't; it was a discussion of moving forward on a  
4 water rights schedule, and you gave a number.

5 MR. TURNER: No. What I said was ASR was  
6 almost a sideline because ASR Phase 1 water rights had  
7 been completed at that point in time, so we were  
8 moving into another phase of discussions on additional  
9 water rights.

10 MR. JACKSON: And those additional water  
11 rights would result in how much additional pumping out  
12 of the Carmel River aquifer?

13 MR. TURNER: Well, we were discussing ASR  
14 Phase 2 water rights. And then we were also -- that's  
15 where the staff did some clarification for us on the  
16 Schedule 13, 2900 acre feet of water rights, that  
17 those could be perfected.

18 MR. JACKSON: And to the best of your memory,  
19 what did they tell you about the Schedule 13, 2900  
20 acre foot water rights?

21 MR. TURNER: They thought we should move  
22 forward to perfect them. And we've done that.

23 MR. JACKSON: When did you do that?

24 MR. TURNER: We started immediately after that  
25 meeting. We have had ongoing discussion with them,

1 with the water right staff, since then.

2 MR. JACKSON: And have you had a hearing of  
3 any kind?

4 MR. TURNER: No.

5 MR. JACKSON: Has any form of application been  
6 approved?

7 MR. TURNER: No.

8 MR. JACKSON: When is your next meeting in  
9 regard to the Schedule 13 water rights?

10 MR. RUBIN: I'm going to object to the  
11 question. Again, we can go down this path if you  
12 want.

13 I believe that the ASR project was discussed  
14 in the direct testimony. Mr. Jackson had the  
15 opportunity to question the panel on the issue. I  
16 think this goes beyond the questions that were asked  
17 on rebuttal.

18 CO-HEARING OFFICER BAGGETT: I think your  
19 questions go to the Table 13 water rights. Isn't that  
20 the question? Are you talking about the ASR?

21 MR. JACKSON: No, I'm talking about table 13  
22 water rights right now.

23 CO-HEARING OFFICER BAGGETT: Yeah. So.

24 MR. RUBIN: The rebuttal questions were  
25 focused on the meeting. If he asks questions about



1 the meeting, that's, I think, appropriate scope.

2 If he asks questions about kind of the  
3 progress of the projects that were discussed, those  
4 were all identified in the written testimony. They  
5 were the subject of direct testimony.

6 CO-HEARING OFFICER BAGGETT: Okay. Sustained.

7 Can you rephrase the question as related to  
8 the meeting, I think --

9 MR. JACKSON: I do believe that was the  
10 question.

11 CO-HEARING OFFICER BAGGETT: Rephrase it  
12 please.

13 MR. JACKSON: Can you tell me what was  
14 discussed about the table -- about the Table 13 water  
15 rights at the meeting of December 13, 2007, as far as  
16 you remember it?

17 MR. TURNER: I think I already answered that  
18 question.

19 MR. JACKSON: I don't have an answer written  
20 down here.

21 CO-HEARING OFFICER BAGGETT: Can you please  
22 answer again.

23 MR. TURNER: I said the State Water Resources  
24 Control Board water rights staff brought the Schedule  
25 13 water rights to our attention and talked about a

1 way forward, how to get those perfected, and suggested  
2 we move forward on those.

3 MR. JACKSON: What do you mean by moving  
4 forward?

5 MR. TURNER: Move forward to get them  
6 perfected.

7 MR. JACKSON: And they are not yet perfected?

8 MR. TURNER: No.

9 MR. JACKSON: Thank you.

10 CO-HEARING OFFICER BAGGETT: Any other  
11 parties?

12 REBUTTAL CROSS-EXAMINATION BY MR. SATO

13 FOR THE PROSECUTION TEAM

14 MR. SATO: Mr. Turner, you indicated that, in  
15 the response to Mr. Jackson's questions, that if the  
16 State Board imposed a moratorium on Cal American that  
17 you would need some permission or that the PUC would  
18 have some role in addressing Cal Am's compliance with  
19 that moratorium. Could you be more specific please?

20 MR. TURNER: As I stated previously, the  
21 Public Utilities Commission not only regulates our  
22 rates, they regulate our entire operation. They  
23 set -- establish the rules for how we operate. When  
24 we make a connection. When we don't make a  
25 connection. When we turn on. When we turn off.

1           If we needed to put a moratorium in effect  
2 today or for any reason, we would have to go to the  
3 California PUC and get approval to do that.

4           MR. SATO: And aside from a moratorium, if for  
5 example Cal Am were to decide to reduce its diversions  
6 from the Carmel River, does it need permission from  
7 the CPUC to do that?

8           MR. TURNER: I wouldn't necessarily need  
9 permission from the CPUC to reduce water from the  
10 river, but it would need to do -- it would need to get  
11 permission if there were things that affected  
12 customers in order to do that.

13           If we had to do rationing, or if we had to do  
14 forced conservation, so to speak, where you do active  
15 turnoffs, you would have to get permission to do that.  
16 You wouldn't have to get permission to stop the  
17 withdrawals; but if it impacted your customers, you  
18 would have to get permission.

19           MR. SATO: Along the same lines, do you know  
20 when Cal Am reduced its diversions from the Carmel  
21 River in response to Order 95-10, was there a process  
22 it needed to go through with the CPUC to do that?

23           MR. TURNER: No, I don't think there was.

24           MR. SATO: So --

25           MR. TURNER: But again, the result was there's

1 been extensive processes on how we did that through  
2 conservation programs. I mean testimony of a lot of  
3 witnesses have talked about the PUC and its role in  
4 the conservation programs that we have in effect.

5 MR. SATO: For example, if the State Board  
6 were to order some type of reduction in terms of  
7 diversions from the Carmel River, and those reductions  
8 could be handled within existing conservation  
9 programs, is it your testimony that you would need to  
10 get further permission from the CPUC to comply?

11 MR. TURNER: If they could be handled with  
12 existing conservation programs, yes. The answer to  
13 that is yes. If we had to change the conservation  
14 programs, then we'd have to go to the CPUC.

15 MR. SATO: And then with regard -- and aside  
16 from the existing conservation programs, are there any  
17 other steps that Cal Am could take in response to an  
18 order for a reduction in diversions from the Carmel  
19 River that it would not have to get additional CPUC  
20 approval from, to the best of your knowledge?

21 MR. TURNER: Any impact on our direct  
22 operations as it affects our customers, we would have  
23 to get approval for. So anything we did that had --  
24 that we had to in fact require our customers to do  
25 something, we would in fact have to get approval for.

1           MR. SATO: I guess my question is: Aside from  
2 the conservation program, is there any other program  
3 that has been authorized by the CPUC that would allow  
4 you to, let's say, absorb the diversions from the  
5 Carmel River without having to go back to the CPUC for  
6 some type of approval?

7           MR. TURNER: No.

8           MR. SATO: Okay. No further questions.

9           CO-HEARING OFFICER BAGGETT: Thank you. Any  
10 other parties? Any questions here?

11          CO-HEARING OFFICER WOLFF: Mr. Turner, I want  
12 to be absolutely certain I understood your earlier  
13 statement.

14           You seem to imply that your company has no  
15 discretion when asked by a local building department  
16 whether you will issue a will-serve letter for a new  
17 development. Is that correct? You must serve those  
18 new developments?

19          MR. TURNER: If the new development is within  
20 our service territory, and the developer is within the  
21 rules that exist with the Public Service Commission  
22 for a development within that service territory, we  
23 don't have to ask the PUC.

24           But if they go beyond the rules that we have  
25 for providing -- for development within that service

1 territory, I don't have to, have to go to back to the  
2 PUC to ask for permission.

3 CO-HEARING OFFICER WOLFF: I'm asking a  
4 slightly different question. Those who are within the  
5 rules where you can grant them service without going  
6 to the PUC --

7 MR. TURNER: If they're within the rules, they  
8 can be granted.

9 CO-HEARING OFFICER WOLFF: But the implication  
10 of your earlier -- the way I was understanding your  
11 earlier statement was that you have no discretion,  
12 that you must provide them service. You cannot -- you  
13 are not permitted to say we will not serve. We don't  
14 have sufficient water; we will not serve.

15 MR. TURNER: That would be --

16 MR. RUBIN: I guess there is a solution here.  
17 Possibly -- if Mr. Turner knows, I would encourage him  
18 to answer your question.

19 But we can provide a legal analysis of the  
20 company's regulation under the PUC. It might be the  
21 best way to get the clearest information.

22 CO-HEARING OFFICER WOLFF: Sure, if Mr. Turner  
23 says he doesn't know, then we can do that. If he does  
24 know, let's give him an opportunity.

25 MR. RUBIN: I think Dave Stephenson who is

1 here might be the best person to answer the question.

2 CO-HEARING OFFICER WOLFF: That would be fine.

3 MR. TURNER: He'll give you the exact story  
4 because it actually differs from service territory to  
5 service territory.

6 CO-HEARING OFFICER BAGGETT: Maybe even more  
7 direct, if this Board ordered a moratorium on hookups  
8 to unbuilt developments within the service area, does  
9 that take PUC approval for you to comply with that  
10 moratorium?

11 CO-HEARING OFFICER WOLFF: That's another way  
12 of asking --

13 CO-HEARING OFFICER BAGGETT: If we declare a  
14 moratorium through a water right proceeding, does that  
15 take the PUC concurrence for you to actually not hook  
16 up those --

17 MR. STEPHENSON: I can't give you the legal  
18 opinion on that. From my belief and what we have in  
19 our rules -- we have to operate under our rules that  
20 we have on file with the Commission.

21 And if we have any customer who comes up to us  
22 with all the proper certification saying we're  
23 granting you -- this public agency says that you can  
24 serve this customer, we have to serve.

25 So we have to have -- basically what's

1 happened in Monterey is there would have to be a  
2 certificate from the management district, Monterey  
3 Peninsula Water Management District, as well as maybe  
4 others who would say you serve this customer. Then we  
5 have no right to do anything except serve at that  
6 point.

7 CO-HEARING OFFICER WOLFF: I see. So you have  
8 no discretion to say we don't have the water; we will  
9 not serve you.

10 MR. STEPHENSON: Unless we have a moratorium  
11 in place, you know, in the area. Which we could seek  
12 a moratorium which has been done before in Monterey  
13 and was denied. We did previously seek a moratorium.

14 CO-HEARING OFFICER WOLFF: Who --

15 MR. STEPHENSON: The Commission denied that  
16 application.

17 CO-HEARING OFFICER WOLFF: I see. The company  
18 sought approval of that from the PUC, and the PUC  
19 denied it.

20 MR. STEPHENSON: That's correct.

21 CO-HEARING OFFICER BAGGETT: Any other  
22 questions?

23 MR. RUBIN: I think one of the things we need  
24 to do is talk about procedural issues.

25 CO-HEARING OFFICER BAGGETT: Right.



1           MR. RUBIN: But my -- we can provide a legal  
2 opinion which is -- on these issues if you would like,  
3 but it might raise an issues with the page limitation  
4 we discussed yesterday.

5           CO-HEARING OFFICER BAGGETT: Yes.

6           STAFF COUNSEL TAYLOR: Who would have prepared  
7 the legal opinion?

8           MR. RUBIN: I guess I could be briefed by  
9 others.

10          STAFF COUNSEL TAYLOR: I'm asking is it  
11 prepared by an attorney for Cal Am or is it prepared  
12 by the PUC?

13          MR. RUBIN: I guess my point is the questions  
14 that are being asked -- and maybe that's a good  
15 question because they are dealing with legal issues.  
16 Maybe from what you heard today is the perspective  
17 from the company, but -- and I don't know frankly  
18 since I don't practice before the PUC how many  
19 different opinions you might get on the issue and  
20 therefore how helpful it would be.

21          CO-HEARING OFFICER BAGGETT: There must be  
22 some guidance written by the PUC that would be  
23 official notice, and that's what I think we need to  
24 caucus on.

25          We're going to take a short break and caucus

1 among ourselves up here before we come back and answer  
2 the next phase questions.

3 But I think it would be helpful to us if we  
4 could get, since there are questions out there, why  
5 don't you give us your questions, and we'll take a  
6 15-minute break, come back after we caucus, and take  
7 them under submission for 15 minutes and come back  
8 with answers.

9 So what parties have questions?

10 MR. MINTON: Jonas Minton, Planning and  
11 Conservation League.

12 The testimony in the case-in-chief we are  
13 prepared to provide has to do with those matters in  
14 the second phase of your hearing. I just wish to  
15 confirm that we are not precluded from doing that if  
16 we do not provide you an opening statement today.

17 CO-HEARING OFFICER BAGGETT: No. Opening  
18 statements are optional.

19 MR. MINTON: Thank you.

20 CO-HEARING OFFICER BAGGETT: Mr. Laredo.

21 MR. LAREDO: Thank you. The Monterey  
22 Peninsula Water Management District Notice of Intent  
23 to Appear shows 13 witnesses. I believe the majority  
24 of those will be called to testify with respect to the  
25 next phase.

1           Three of those in particular are elected  
2 officials, and one of the things that I would like to  
3 know if possible is if we could have a date certain,  
4 at least for the three elected officials, so that we  
5 could arrange to facilitate their attendance on a  
6 specific day. It doesn't matter which of the days,  
7 but that way we would could free up the remainder of  
8 their schedule.

9           As to the remainder of our 13 witnesses, while  
10 it would certainly be helpful to know which day they  
11 would be testifying, we're willing to go with the flow  
12 and call them whenever that's appropriate.

13           But it would help us in terms of managing  
14 appearances for the elected officials we could be very  
15 specific.

16           CO-HEARING OFFICER BAGGETT: That's fair.

17           MR. RUBIN: Two procedural issues right now  
18 that I'd like to raise.

19           First, the Prosecution Team lodged or  
20 submitted to the Hearing Officers, Hearing Team a  
21 letter involving Mr. Kassel's availability.

22           For planning purposes, I would like to have  
23 Mr. Kassel right now kind of slotted for the day that  
24 he is available in case we want to subpoena him to  
25 testify or reach agreement for him to appear.

1           The other point I would like to make is in  
2 terms of briefing. We had some discussion about that  
3 yesterday. With a little bit more thought, my  
4 preference would be either to have an initial brief on  
5 the first phase submitted and then a second brief on  
6 second phase or more pages or a decision on the page  
7 limit until after the second phase is dealt with.

8           It's difficult to gauge how much briefing  
9 we're going to have to do without knowing how broad of  
10 a second phase we're going to have.

11           CO-HEARING OFFICER BAGGETT: I would agree and  
12 I don't know that ten pages is a realistic limit given  
13 the magnitude of some of these issues. Let's take 15  
14 minutes -- well, are there other questions?

15           MR. FREEMAN: Mr. Baggett, Don Freeman.

16           Again, as I indicated at the last hearing that  
17 you had, I would attempt to expedite the next portion  
18 of this phase by coordinating the cities in terms of  
19 their testimony.

20           Just to follow along with Mr. Laredo's  
21 comments, there will be a number of -- not a large  
22 number; I'm going to anticipate maybe one or two  
23 elected officials in the jurisdictions.

24           And it would be helpful if we could identify  
25 one day. We'll attempt to have one attorney address

1 each one of them so we don't have people shuffling in  
2 and out.

3 CO-HEARING OFFICER BAGGETT: It would probably  
4 be helpful, actually, if the Water District and the  
5 cities and Sand City, all of you coordinated, and we  
6 can put that whole -- all your cases, Pebble Beach all  
7 at one time.

8 We'll just dedicate a morning or afternoon if  
9 that's -- so we'll just do that whole case so it's  
10 cohesive. There's a lot of overlap, I understand.

11 MR. FREEMAN: That's correct. The idea -- if  
12 we could do that, that would be very helpful.

13 CO-HEARING OFFICER BAGGETT: Okay. We'll try  
14 to come back with an answer on that.

15 MR. JACKSON: Michael Jackson on behalf of the  
16 Carmel River Steelhead Association.

17 I just want to clarify that when the public  
18 officials come as witnesses, they're subject to  
19 cross-examination just like any other witness.  
20 Sometimes they don't tend to think that's the case.  
21 They come to make a speech.

22 But if they're going to be witnesses, they are  
23 going to be cross-examined, I understand?

24 CO-HEARING OFFICER BAGGETT: Of course. If  
25 they're coming to speak to the truth of the matter,

1 they're a witness. They had the policy statement  
2 opportunity already.

3 MR. SATO: I just wanted to clarify one thing.  
4 We are definitely moving into Phase II. This is not a  
5 situation where there is going to be some preliminary  
6 ruling about liability issues in Phase I and maybe we  
7 go to Phase II. Phase II is definitely on and that  
8 there's not going to be a separate determination to  
9 Phase I; is that correct?

10 CO-HEARING OFFICER BAGGETT: That would delay  
11 this proceeding by nine months. We'd have to go back  
12 and get a board order and in essence have two  
13 proceedings, and I think it's -- so we are moving  
14 forward.

15 What we want to discuss is how we frame the  
16 next phase. So give us 15 minutes. We've talked  
17 about it, but I think given your questions we can come  
18 back with some answers.

19 Wait. One more?

20 MR. WARBURTON: Michael Warburton, Public  
21 Trust Alliance. Because of the phasing, we are doing  
22 our case-in-chief in the second phase.

23 CO-HEARING OFFICER BAGGETT: Right.

24 MR. WARBURTON: I was wondering in terms of  
25 the opening statement, there is nothing that has to be

1 done today.

2 CO-HEARING OFFICER BAGGETT: Right.

3 MR. WARBURTON: Okay.

4 CO-HEARING OFFICER BAGGETT: It would actually  
5 make more sense for you to do it then, if it's  
6 narrowed to the scope.

7 MR. WARBURTON: I think it's widened to that  
8 scope.

9 CO-HEARING OFFICER BAGGETT: Okay. We are  
10 going to go off the record. Back in 10, 15 minutes.

11 (Recess)

12 CO-HEARING OFFICER BAGGETT: We're ready to go  
13 back on the record. Objection already?

14 MR. RUBIN: No.

15 CO-HEARING OFFICER BAGGETT: We haven't said  
16 anything. Okay. Mr. Rubin, you have a comment.

17 MR. RUBIN: Just a request.

18 At some point, depending on what your decision  
19 is on briefing, it would be very helpful for us if the  
20 documents that have been admitted into evidence by  
21 reference are made available aside from this -- from  
22 having to go through the files. I don't know how  
23 difficult that would be. But there are quite a bit of  
24 documents.

25 I personally didn't go to the State Water

1 Resources Control Board file rooms. My associates  
2 did. And it sounded as though they had some  
3 difficulty at times finding them.

4 And part of the difficulty, from what I  
5 understand was some of the Division of Water Rights  
6 staff had been pulling files.

7 And from my perspective, those documents are  
8 critical. It would be very helpful if there was a  
9 single location and all of the parties, all of the  
10 participants, have to go to that room to view the  
11 documents and that they're all kept in a central  
12 location.

13 STAFF COUNSEL TAYLOR: Let me offer an  
14 observation and suggestion.

15 My observation is I think 95 percent of  
16 anything that Board staff might want to use has  
17 probably already been explicitly identified in the  
18 documents and exhibits offered today and yesterday.

19 Notwithstanding that, we'll take a look at the  
20 documents, and anything that we think there's any  
21 chance that we might want to rely on, we will identify  
22 and post on our website.

23 MR. RUBIN: I guess my issue is there's been a  
24 significant number of documents, essentially the  
25 files, that have been marked and admitted into



1 evidence by reference. And the expectation is that  
2 the file number has been identified so the parties  
3 have the opportunity to go to the file room and pull  
4 the files.

5 And my concern is, particularly given the time  
6 frame that we're working on, it's difficult to go  
7 through the standard process of requesting a file,  
8 having the file clerk look for the file if it's not  
9 there, get the file, get the copies made, all of that.

10 So it's just from a time management  
11 standpoint, we have had some difficulties going  
12 through the files, and I was proposing this to make it  
13 a little bit easier.

14 As well as just this circumstance where  
15 division staff has the ability to pull the file and  
16 bring it to their office, and sometimes that does  
17 cause delay or confusion for us.

18 CO-HEARING OFFICER BAGGETT: Maybe we could  
19 keep them with Paul, or do you have an appropriate  
20 place?

21 I guess we could keep them in the file room  
22 and make sure none can be checked out. In my previous  
23 life, that was a challenge at times when there were  
24 files missing and someone had one on their desk. I  
25 think that that would be fair.

1           STAFF COUNSEL TAYLOR: We'll take a look at a  
2 mechanism and send an e-mail announcing what the  
3 arrangements are.

4           MR. RUBIN: Thank you.

5           CO-HEARING OFFICER BAGGETT: Okay. Couple --  
6 here's my notes.

7           One, we didn't discuss this but I think we  
8 need to. The stipulation between Cal Am and the  
9 Prosecution Team: If you could have that by June 30th  
10 with a list of the documents available to all the  
11 parties, that would be helpful. I think just in  
12 fairness so we can resolve this sooner than later,  
13 would be good.

14           We'll reconvene on the 23rd at 9 a.m., and we  
15 will start out with the Prosecution followed by the  
16 NGOs, the nongovernmental organizations and  
17 environmental community groups.

18           Then we'll begin, whether we're completed with  
19 that or not, we'll begin at 9 a.m. on the 24th with  
20 Monterey County and the associates, cities and that  
21 group. Does that work?

22           Then we would -- we could reconvene the  
23 previous day's hearing. That way you've got a time  
24 certain.

25           MR. LAREDO: Certainly the Water Management

1 District would be prepared to begin at 9 a.m. on  
2 Thursday. If I may suggest instead, though, or in  
3 addition to that, that time certain for the elected  
4 officials be at the beginning on Friday?

5 And I say that because I believe that the  
6 potential cross-examination of elected officials may  
7 in fact be quite less in duration if they are not the  
8 first individuals to speak from that perspective.

9 So I've discussed this with other counsel who  
10 have elected officials, and we could arrange to have  
11 the elected officials appear in the morning.

12 CO-HEARING OFFICER BAGGETT: Separate from the  
13 rest of your case-in-chief? I mean if they're  
14 critical witnesses to your case -- I mean, having been  
15 an elected official, I -- of course, no one would put  
16 me on.

17 (Laughter)

18 MR. LAREDO: I'd like to racket their  
19 testimony, and I believe that the only -- the primary  
20 reason for having them appear would be to authenticate  
21 their testimony.

22 And I would believe for the most part the  
23 summary of testimony would be for the other witnesses.  
24 But I think from our perspective having that on Friday  
25 would be the most convenient for their scheduling.

1 CO-HEARING OFFICER BAGGETT: Mr. Jackson, do  
2 you have a comment regarding this issue?

3 MR. JACKSON: Yes. I can't tell you until I  
4 see the testimony, but as far as I know in the  
5 California Code of Regulations there are no  
6 distinctions between elected officials and other  
7 witnesses, and I don't -- I guess what I'm saying,  
8 there seemed to be a plea for you to be harder on the  
9 cross-examiners than you have been in the case of  
10 elected officials, and I hope that's not the case; and  
11 if so, I'd like to know under what authority it's the  
12 case.

13 CO-HEARING OFFICER WOLFF: I have been hard  
14 enough. I have no intention of being any harder.

15 MR. JACKSON: I don't think you could get any  
16 harder.

17 CO-HEARING OFFICER WOLFF: Mr. Silver, I would  
18 apologize to you for my remark earlier if it was too  
19 harsh. I was losing my patience at the moment and  
20 criticized you at the time.

21 Mr. Baggett, the main point here, could we  
22 just have them come Thursday morning you think?

23 CO-HEARING OFFICER BAGGETT: I have a problem.  
24 Unless there is a compelling reason why a particular  
25 witness, which we have -- I think this Board has been

1 very flexible with an expert witness or if they're in  
2 deposition in another case or there's some reason you  
3 can make for a specific witness to come out of  
4 sequence, we will listen to that.

5 But to blanketly say this whole section of  
6 witnesses is going to come at 9 a.m. on Friday  
7 separate from the cases in chief, I can't accept that.  
8 I mean, that just disrupts the whole process, the  
9 hearing, of how we're trying to work through the  
10 parties' case-in-chief.

11 So I say let's begin at 9 o'clock with  
12 Monterey County. If one of your elected officials  
13 absolutely cannot make that, if they can send us a  
14 letter saying they've got a conflict because of this  
15 and this, we'll determine it. Doctor's note or  
16 whatever. But they have to make some cause for not  
17 being able to be a party.

18 And then we'll work through. It really  
19 depends on -- we'll just go through Monterey County,  
20 Sand City, just go right down the road with all of  
21 you. You can talk and have some idea how you can  
22 coordinate it. Maybe one of you can take all the  
23 witnesses for all the city officials at once and you  
24 can put them all up together at once. That's your  
25 decision.

1           And then we will complete the process  
2 hopefully by the 25th. And we have 9 o'clock starts.

3           MR. JACKSON: Is that July the 23rd?

4           CO-HEARING OFFICER BAGGETT: July the 23rd.

5           MR. JACKSON: Is there another hearing on  
6 Auburn that day?

7           CO-HEARING OFFICER WOLFF: Auburn is the 21st  
8 and 22nd; and Cal Am is 23rd, 24th, and 25th.

9           CO-HEARING OFFICER BAGGETT: At least two  
10 people in this room that will be --

11          MR. JACKSON: Three.

12          CO-HEARING OFFICER WOLFF: I'm trying to warn  
13 everyone; I've got a lot of hearing to sit through.

14          MR. JACKSON: Okay.

15          CO-HEARING OFFICER BAGGETT: I'm going to  
16 spell Gary on that one. He's doing the first two;  
17 I'll do the next three days.

18          Mr. JAMISON: Mr. Baggett, briefly, you just  
19 said July 23rd. As far as I understand, MPWMD and the  
20 cities, that's July 24th.

21          CO-HEARING OFFICER BAGGETT: Correct.

22          Mr. JAMISON: Okay. And again, just in the  
23 effort so you don't forget about Pebble Beach, where  
24 do we fit in? We're not aligned with anybody, really.  
25 Where would you like us to go?

1 CO-HEARING OFFICER BAGGETT: After Monterey  
2 County, then we'll do the cities, then we'll have  
3 Pebble Beach, then we'll end up with Cal Am.

4 Mr. JAMISON: Thank you.

5 CO-HEARING OFFICER BAGGETT: We'll start out  
6 with the prosecution and move down through Sierra  
7 Club. Much like we ended up in this one.

8 MR. RUBIN: I'm not sure if Mr. Sato has  
9 something to say?

10 MR. SATO: I just thought instead of each of  
11 us coming up to the lectern I would sit here.

12 MR. RUBIN: Hearing Officers, in your May 13,  
13 2008 rules dealing with the bifurcation, you described  
14 in there Phase II, and I just wanted to make sure.

15 Is that the scope of the proceeding as  
16 described on page 3? Or is there some additional  
17 clarification?

18 I guess part of the issue that I have is for  
19 my client almost a moving target of what we're  
20 supposed to prepare for.

21 Right now we have presumably to deal with the  
22 remedy that's been proposed in the draft  
23 cease-and-desist order.

24 The way Phase II is described on page 3 of the  
25 May 13, 2008 letter suggests that people could come in

1 here and may be able to present alternative measures  
2 for a remedy; if that's the case, obviously we won't  
3 know what those alternatives are until the testimony  
4 is submitted, and then presumably we have the ability  
5 to present a rebuttal case on that issue.

6           If that is the case, I do have a little bit of  
7 a concern about timing.

8           I believe testimony is due, if I recall  
9 correctly, on the ninth of July which gives us two  
10 weeks to prepare a rebuttal case.

11           And that's not a hell of a lot of time -- or  
12 might not be a hell of a lot of time, depending on  
13 what we see from, I think, the 18 or so other parties  
14 that are -- excuse me -- entities that are  
15 participating in this proceeding.

16           CO-HEARING OFFICER BAGGETT: Any other  
17 parties, would you suggest we move that date up for  
18 submission? Because meeting this hearing date later  
19 is going to be very -- I don't want to change the  
20 dates of the hearing.

21           MR. RUBIN: And maybe a way to resolve this is  
22 to give us more time to present our rebuttal case. I  
23 mean obviously the way it's traditionally done is as  
24 soon as the cases in chief are done we immediately  
25 turn to that.



1           CO-HEARING OFFICER BAGGETT: And I would  
2 prefer on this one we might not do the rebuttal that  
3 Friday. I guess, looking at the number of parties and  
4 the potential amount of evidence here I would find it  
5 difficult to conceive that we're done in three days.

6           In which case, we could postpone the rebuttal  
7 to the next day separate, and that would allow you to  
8 serve -- I always find it helpful if the rebuttal  
9 evidence, if there's documents, like to have them the  
10 night before so the parties at least can sleep on them  
11 and see the rebuttal evidence in advance.

12           Today there was no evidence. It was all oral,  
13 so that was one thing.

14           But if there's documents in evidence, it would  
15 be nice to allow a time for that to be submitted. And  
16 I suspect, given the scope of this, potentially there  
17 will be issues.

18           So we will allow sufficient time to prepare  
19 rebuttal testimony. Does that satisfy Cal Am?

20           MR. RUBIN: Obviously, sufficient is in the  
21 eye of the beholder, but.

22           CO-HEARING OFFICER BAGGETT: It won't be an  
23 hour or two. It will be days.

24           MR. RUBIN: That would be preferred, and  
25 obviously for you to defer the decision until the

1 testimony submitted for cases in chief so that we have  
2 that to consider.

3 CO-HEARING OFFICER BAGGETT: Okay. Back to  
4 the rebuttal and the date: What we'll do is once we  
5 decide what the volume of evidence is, we'll at that  
6 point either notice another day in August for rebuttal  
7 and conclusion and closing statements -- or not,  
8 depending on the volume. And I'm sure we'll hear from  
9 parties once if they feel they need more time once you  
10 see the volume of evidence. So we'll just leave it at  
11 that.

12 MR. SATO: I was hoping you could at least set  
13 the rebuttal date in the next order. Because those of  
14 us who have tight schedules, it's important for us to  
15 be able to plan as far ahead as possible that we might  
16 have a date in August that we need to set aside.

17 CO-HEARING OFFICER BAGGETT: We will make the  
18 determination by July 9, they're due? We will make it  
19 by that Monday morning, that's what, the 14th maybe?  
20 July 14th?

21 CO-HEARING OFFICER WOLFF: We can do it that  
22 way or -- would you like us to set a rebuttal date  
23 now? I was trying to see if it was possible to do the  
24 rebuttals in the three days.

25 I think it's unlikely but possible that we

1 could complete all this in three days.

2 MR. SATO: Certainly it would be preferable to  
3 get it done within the three days you've already  
4 established. But if there is in fact going to be a  
5 fourth day for rebuttal, then I would appreciate  
6 knowing it now because we have lots of hearings in my  
7 office that we have to attend.

8 CO-HEARING OFFICER BAGGETT: We won't know it  
9 now because Larry's got to find a hearing room, we've  
10 got to check schedules up here.

11 CO-HEARING OFFICER WOLFF: That's right.

12 CO-HEARING OFFICER BAGGETT: But we will --  
13 should we just say we will set a date --

14 MR. LAREDO: Mr. Baggett, while I'm optimistic  
15 that the matters could be concluded within three days,  
16 I think a reserve date or dates would be appropriate.

17 But I wanted to make certain the Commission  
18 was aware -- I'm sorry; the Board was aware there are  
19 two pending matters before the Public Utilities  
20 Commission that are going to occupy the time of some  
21 of the individuals in this room.

22 Those include the week of August 11th through  
23 15th. That's the PUC hearing on the pending  
24 conservation rate application by California American  
25 Water Company for which the Water Management District

1 and DRA are also parties.

2 Also, beginning on the 27th, there is a second  
3 rate application on their cost of capital. So that's  
4 set for 27, 28, and 29. The first days were 11  
5 through 15.

6 CO-HEARING OFFICER BAGGETT: Okay. Got it.

7 MR. LAREDO: As long as you are aware of that.

8 CO-HEARING OFFICER BAGGETT: Why don't we just  
9 set two additional dates, Larry, and we'll get those  
10 dates noted, and we'll send them out at the earliest  
11 convenience, as soon as we can get our calendars  
12 squared away.

13 Sometime in August, hopefully. Starting to  
14 look like it might not be.

15 CO-HEARING OFFICER WOLFF: That's the problem  
16 with dividing the hearing.

17 CO-HEARING OFFICER BAGGETT: That's the  
18 problem. But we will set them in August or early  
19 September.

20 MR. RUBIN: More than willing to stipulate to  
21 a more narrow scope of Phase II.

22 (Laughter)

23 CO-HEARING OFFICER BAGGETT: Any other  
24 questions?

25 MR. SATO: One clarifying thing for Cal Am.

1 They indicated they want some time reserved for the  
2 possible testimony of Jim Kassel, and they would be  
3 taking that out of order.

4 So I don't know exactly how they intend to do  
5 this, but there needs to be some better clarification  
6 about when they want to take his testimony. I think  
7 we said we'd make him available on July 3rd, but I  
8 don't think he's just going to be sitting there --

9 CO-HEARING OFFICER BAGGETT: July what?

10 MR. SATO: Excuse me. July 23rd. And --  
11 because he needs to be elsewhere on July 24th and  
12 July 25th.

13 MR. RUBIN: I'm confident we can work out a  
14 time that mutually works for us we can recommend to  
15 you, my guess is before June 30th when we provide this  
16 stipulation.

17 CO-HEARING OFFICER BAGGETT: That would be  
18 fine. Appreciate it. And like I said, if there is  
19 good cause, we will take an expert or witness,  
20 especially a key witness, out of order. But sounds  
21 like you've got good cause. Anything else?

22 I think we've got all the dates. We'll  
23 commemorate this in an e-mail electronically to all  
24 the parties.

25 And I guess I would just encourage -- the

1 scope is remedies. But remedies can range -- we have  
2 got an interesting bifurcated hearing here, I think  
3 you're all aware. And the remedies will relate to  
4 what we actually decide on the diligence portion.

5 So I guess we would expect remedies will be  
6 just as broad. They could be from very narrow to, I  
7 think Mr. Rubin's concern, to very broad and require a  
8 lot of rebuttal to deal with.

9 But I think that's what this Board -- since  
10 we're doing it this way, and since we are directing  
11 the order after the first phase, come prepared with  
12 ideas on how you see a cease-and-desist if this Board  
13 determines there's great liability or small liability  
14 will determine the remedy.

15 So we're going to have to have the range, and  
16 I think that's quite frankly very helpful to us as  
17 Hearing Officers to see that range, and we can craft  
18 what we feel the evidence --

19 CO-HEARING OFFICER WOLFF: I would just  
20 comment, the reason I supported not bifurcating the  
21 decision, although we've bifurcated the phases of the  
22 hearing, was that clearly Cal Am's defense on  
23 diligence is they're doing the best they can under the  
24 constraints they have operated under.

25 Well, the discussions of remedy are relevant

1 to that as well. So it's difficult to separate them  
2 entirely. We attempted to. We had some creative  
3 cases made here that could easily have been classified  
4 under remedy as well as liability.

5 In the end, we'll consider your closing briefs  
6 with respect to how diligence should be interpreted.  
7 The boundaries are not entirely clear, and that's one  
8 reason we're having a consolidated order rather than  
9 breaking it in two pieces.

10 MR. RUBIN: I don't -- I guess I became  
11 concerned with your statement. When we're talking  
12 about a remedy, and maybe this is the case, but the  
13 violation that's found is obviously one of two  
14 violations, a violation of 1052 or of Condition 2 of  
15 Order 95-10.

16 And I guess depending how you rule, I -- if  
17 you do go down a path where there's a finding of a  
18 violation of Condition 2, the remedy has to be  
19 tailored, I would imagine, to address the violation.

20 CO-HEARING OFFICER BAGGETT: Yes.

21 MR. RUBIN: And not necessarily open up to  
22 everything that could be done. And it gets --

23 CO-HEARING OFFICER WOLFF: I would agree with  
24 that. I didn't intend to suggest anything different.  
25 The point is that the discussion of remedy is relevant

1 to the limitation under which Cal Am operates.

2 MR. RUBIN: Thank you.

3 CO-HEARING OFFICER BAGGETT: That's why I  
4 think it is helpful for us to hear all the different  
5 alternatives.

6 With that, thank you, and we'll see you on the  
7 23rd. We're adjourned till then.

8 \* \* \*

9 (Thereupon Phase I of the WATER  
RESOURCES CONTROL BOARD hearing  
10 adjourned at 12:21 p.m.)  
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4 That I am a disinterested person herein; that  
5 the foregoing WATER RESOURCES CONTROL BOARD hearing was  
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7 Certified Shorthand Reporter of the State of  
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9 typewriting.

10 I further certify that I am not of counsel or  
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12 any way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my  
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