

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

In the Matter of:)
)
)
HEARING REGARDING LAKE ALPINE)
WATER COMPANY/ COUNTY OF ALPINE)
PETITION FOR PARTIAL ASSIGNMENT)
OF STATE FILED APPLICATION 5648)
AND ACCOMPANYING APPLICATION)
5648X07, PETITION FOR CHANGES TO)
SFA 5648, AND APPLICATION 31523)
)
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JOE SERNA JR./CALEPA BUILDING  
1001 I STREET  
SIERRA HEARING ROOM  
SACRAMENTO, CALIFORNIA

MONDAY, JULY 14, 2008

10:00 A.M.

LINDA KAY RIGEL, CSR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13196

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

HEARING OFFICER

Ms. Frances Spivy-Weber

STAFF

Mr. Matthew Bullock, Staff Counsel

Mr. Ernest Mona, Water Resource Control Engineer

Ms. Jane Farwell, Environmental Scientist

Mr. Larry Lindsay, Chief, Hearings Unit, Division of  
Water Rights

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES continued

ALSO PRESENT

Mr. Robert Wagner, Wagner & Bonsignore

Dr. John Kramer, Condor Earth Technologies, Inc.

Mr. Tom Taylor, Entrix, Incorporated

Mr. Charles J. Toeniskoetter, Lake Alpine Water  
Company

Ms. Terry Woodrow, Alpine County Board of Supervisors

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

2 --o0o--

3 HEARING OFFICER SPIVY-WEBER: Okay. We'll get  
4 started. This is the time and the place for the  
5 hearing regarding Lake Alpine Water Company's and the  
6 County of Alpine's petition for partial assignment of  
7 State Filed Application 5648 and the accompanying  
8 Application 5648X07, petition for changes to SFA 5648,  
9 and Application 31523.

10 Who is going to remember that?

11 I am Frances Spivy-Weber, Board Member of the  
12 State Water Resources Control Board, and I will be  
13 assisted by Matthew Bullock, Staff Counsel; Ernie Mona,  
14 Staff Engineer; and Jane Farwell, Staff Environmental  
15 Scientist.

16 This hearing is being held in accordance with  
17 the Notice of Public Hearing dated May 21, 2008 and the  
18 Revised Notice of Public Hearing dated June 10, 2008.

19 The purpose of this hearing is to afford Lake  
20 Alpine Water Company, the County of Alpine, and any  
21 interested parties an opportunity to present relevant  
22 oral testimony and other evidence which address the  
23 three keys issues specified in the May 21st and  
24 June 10th hearing notices pertaining to, one, the  
25 petition for partial assignment of SFA 5648; the

1 petition to change SFA 5648; and, third, Application  
2 31523 which was submitted under an area of origin  
3 claim.

4           Until I hear an objection, I will dispense  
5 with the reading of all the sub issues specified under  
6 each of the three key issues.

7           A court reporter is present to prepare a  
8 transcript of the proceeding. Anyone who would like a  
9 copy of the transcript must make separate arrangements  
10 with the court reporter. To assist the court reporter,  
11 please provide her with your business card, and make  
12 sure that you speak into the microphones when you  
13 speak.

14           Before we get started, I'll explain the order  
15 in which we will conduct this hearing. First, a few  
16 words about safety. Please look around you and  
17 identify the two exits closest to you. In some cases,  
18 an exit -- well, for most of you, there is an exit  
19 behind you.

20           In the event of a fire alarm, we are required  
21 to evacuate this room immediately. Please take your  
22 valuables with you, and do not use the elevators.  
23 While staff will endeavor to assist you to the nearest  
24 exit, you should also know that you can find an exit  
25 door by following the -- I meant to ask about this --

1 by following the ceiling-mounted exit signs, which I  
2 have never found before. I will look for them.

3 (Laughter)

4 HEARING OFFICER SPIVY-WEBER: Evacuees will  
5 exit down the stairways and possibly to a relocation  
6 site across the street.

7 If you cannot use stairs, you will be directed  
8 to a protected vestibule inside the stairwell. Should  
9 we have to relocate out of the building, please obey  
10 all traffic signals and exercise caution when crossing  
11 the street.

12 Back to the hearing, and explanation of the  
13 order in which we will proceed.

14 Before we begin the evidentiary portion of the  
15 hearing, we will hear from any speakers who wish to  
16 make a nonevidentiary policy statement. If you wish to  
17 make a policy statement, please fill out a blue card  
18 and hand it to staff if you have not already done so.  
19 And I have only one at this point.

20 The Board will also accept written policy  
21 statements. Should you have written copies of your  
22 policy statement, please give them to the staff. A  
23 policy statement is a nonevidentiary statement and  
24 subject to the limitations identified in the hearing  
25 notice.

1           Persons making policy statements must not  
2 attempt to use their statements to present factual  
3 evidence, either orally or by introduction of written  
4 exhibits. Policy statements should be limited to five  
5 minutes. After hearing any policy statements, we will  
6 move to the evidentiary portion of the hearing for  
7 presentation of evidence and related cross-examination  
8 by parties who have submitted Notices of Intent to  
9 Appear.

10           The parties will present their cases-in-chief  
11 and/or conduct cross-examination in the following  
12 order: Lake Alpine Water Company and County of Alpine,  
13 then El Dorado Water and Power Authority.

14           At the beginning each case-in-chief, the party  
15 may make an opening statement briefly summarizing the  
16 party's position and what the party's evidence is  
17 intended to establish.

18           After any opening statement, we will hear  
19 testimony from the parties' witnesses. Before  
20 testifying, witnesses should identify their written  
21 testimony as their own and affirm that it is true and  
22 correct.

23           Witnesses should summarize the key points of  
24 their written testimony and should not read their  
25 written testimony into the record. Direct testimony



1 will be followed by cross-examination by the other  
2 parties, Board staff, and myself. Redirect testimony  
3 and recross-examination limited to the scope of the  
4 redirect testimony may be permitted.

5 After all the cases-in-chief are completed,  
6 the parties may present rebuttal evidence. Parties are  
7 encouraged to be efficient in presenting their cases  
8 and their cross-examination.

9 Except where I approve a variation, we will  
10 follow the procedures set forth in the Board's  
11 regulations and the hearing notices.

12 The parties' presentations are subject to the  
13 following time limits: Opening statement, statements  
14 are limited to 20 minutes for the applicants. For oral  
15 presentations of direct testimony, the applicants will  
16 be allowed up to two hours total to present all of the  
17 direct testimony. I will limit any cross-examination  
18 to no more than 30 minutes per panel of witnesses for  
19 the applicants. Additional time may be allowed upon  
20 the showing of good cause.

21 Oral closing arguments will not be permitted.  
22 An opportunity will be provided for submission of  
23 written closing briefs. I will set the briefing  
24 schedule at the close of the meeting.

25 Before we begin, are there any procedural

1 issues that need to be addressed?

2 (No response)

3 HEARING OFFICER SPIVY-WEBER: Then do we  
4 have -- I have Tim O'Laughlin who is interested in  
5 making a policy statement. Tim? Come to the  
6 microphone, state your name, address, and whom you  
7 represent, and proceed with your policy statement.

8 MR. O'LAUGHLIN: For once, I'm not  
9 representing the San Joaquin River Group Authority.

10 I'm Tim O'Laughlin. My address is 1043  
11 Village Lane, Chico, California 95927. I'm  
12 representing Oakdale Irrigation District, South San  
13 Joaquin Irrigation District, Tri-Dam Project and  
14 Tri-Dam Power Authority.

15 My policy statement will be short and brief.

16 We support the application. We support that  
17 the Board include within the permit terms and  
18 conditions the settlement agreement that was reached  
19 with the applicants between Oakdale, South San Joaquin  
20 Tri-Dam Project, and Tri-Dam Power Authority.

21 Thank you.

22 HEARING OFFICER SPIVY-WEBER: Are there any  
23 other persons who would like to make a policy  
24 statement?

25 (No response)

1 HEARING OFFICER SPIVY-WEBER: Now we will move  
2 to the evidentiary portion of the hearing. Before I  
3 invite appearances of the parties, I will ask Matthew  
4 Bullock to introduce Staff Exhibits.

5 STAFF COUNSEL BULLOCK: The items listed as  
6 Staff Exhibits in the Hearing Notice are offered into  
7 evidence by reference as Staff Exhibits.

8 If there are no objections, I will not read  
9 the list of exhibits.

10 HEARING OFFICER SPIVY-WEBER: Then I accept  
11 the Staff Exhibits into evidence.

12 (Staff Exhibits were admitted into  
13 evidence.)

14 HEARING OFFICER SPIVY-WEBER: Next I invite  
15 the appearances by the parties who are participating in  
16 the evidentiary portion of the hearing. Will those  
17 making appearances please state your name, address, and  
18 whom you represent so that the court reporter can enter  
19 this information into the record?

20 Do you want to state your name, address.  
21 You're El Dorado -- you will be the second one to  
22 present.

23 MR. HERREMA: Did you want all the appearances  
24 now?

25 HEARING OFFICER SPIVY-WEBER: Yes.

1           MR. HERREMA: Okay. My name is Brad Herrema,  
2 H-e-r-r-e-m-a, appearing on behalf of the El Dorado  
3 Water Power Authority.

4           HEARING OFFICER SPIVY-WEBER: Lake Alpine  
5 Water Company and County of Alpine?

6           MR. BAKER: You want everybody then to go down  
7 the row?

8           HEARING OFFICER SPIVY-WEBER: Just one.

9           MR. BARTON: My name is Jesse Barton. I'm the  
10 attorney representing petitioners Lake Alpine Water  
11 Company and County of Alpine. My address is 1112 I  
12 Street, Suite 240, Sacramento, California 95814. My  
13 phone number is 916-444-2880.

14           HEARING OFFICER SPIVY-WEBER: Now I will  
15 administer the oath. Will those persons who may  
16 testify during this proceeding please stand and raise  
17 your right hand.

18           (Potential witnesses complying)

19           HEARING OFFICER SPIVY-WEBER: Do you promise  
20 tell the truth in this proceeding.

21           THE WITNESSES (collectively): Yes.

22           HEARING OFFICER SPIVY-WEBER: You can be  
23 seated. We will now hear the applicants' opening  
24 statement and direct testimony followed by any  
25 cross-examination from El Dorado Water and Power

1 Authority.

2 I'll assume you keep within the time.

3 MR. BARTON: I will. Thank you.

4 Good morning, Hearing Officer Spivy-Weber and  
5 staff. My name is Jesse Barton. I'm the attorney for  
6 the petitioners County of Alpine and Lake Alpine Water  
7 Company.

8 We're here today to consider a project that is  
9 very important to the petitioners. In order to fulfill  
10 a mitigation requirement that was adopted in 1978 as  
11 part of the Bear Valley Master Plan, Lake Alpine Water  
12 Company was obligated to acquire the additional water  
13 needed to meet the future needs of the community of  
14 Bear Valley.

15 The application and petitions before you today  
16 do just that. They will allow Lake Alpine Water  
17 Company to divert from storage an additional 220 acre  
18 feet of water and directly divert an additional 175  
19 acre feet from Bear Creek in Alpine County.

20 We have submitted nearly 20 exhibits and will  
21 present the testimony of five witnesses today that will  
22 show six main items:

23 One, the petition for partial assignment does  
24 not conflict with any general or coordinated plan for  
25 the development of the water. Nor does it violate any

1 water quality discharge requirements or water quality  
2 requirements.

3 Two, water is available for the appropriation.

4 Three, the appropriation is in the public  
5 interest.

6 Four, County of Alpine is a county of origin.

7 Five, the petitions to change State Filed  
8 Application 5648 will not injure any legal user of  
9 water.

10 And six, the appropriation will not cause  
11 significant environmental impacts or harm to public  
12 trust resources.

13 At this time, I would like to -- and you did  
14 bring it up earlier, but I would just like to make  
15 clear that we would like the opportunity to file a  
16 closing brief because many of the hearing issues  
17 involve a mixture of law and fact; and I would like the  
18 opportunity to provide a closing brief after the  
19 reporter's transcript becomes available to file a  
20 closing brief.

21 HEARING OFFICER SPIVY-WEBER: Okay.

22 MR. BARTON: And before I'd like to -- before  
23 I sit down, I would like to clarify that our Notice of  
24 Intent originally classified one of our witnesses,  
25 Terry Woodrow, as an expert. We would like to

1 reclassify her as a lay opinion witness.

2 And that will do it. Thank you.

3 HEARING OFFICER SPIVY-WEBER: Thank you.

4 MR. BARTON: My next question is: Do you --  
5 if the Board or -- excuse me -- if the Hearing Officer  
6 or the staff has any questions, do you want to ask them  
7 as a panel, or do you want to be able to ask questions  
8 after each witness testifies? Do you want to do it all  
9 together or one at a time?

10 HEARING OFFICER SPIVY-WEBER: Panel.

11 MR. BARTON: As a panel. Okay.

12 Our first witness will be Bob Wagner. Bob,  
13 could you -- did you give the reporter a card?

14 MR. WAGNER: I did not. I will.

15 ROBERT WAGNER

16 Called by Lake Alpine Water Company and County of

17 Alpine

18 DIRECT EXAMINATION BY MR. BARTON

19 MR. BARTON: Okay. Bob, could you state your  
20 name and spell it for the reporter.

21 MR. WAGNER: Robert Wagner. W-a-g-n-e-r.

22 MR. BARTON: Have you taken the oath?

23 MR. WAGNER: Yes.

24 MR. BARTON: Is Exhibit F your direct written  
25 testimony?

1 MR. WAGNER: Yes, it is.

2 MR. BARTON: Do you have any corrections to  
3 your direct written testimony?

4 MR. WAGNER: I have an addendum that I would  
5 like to ask the hearing officer if we can submit it.

6 The addendum is additional analysis. It  
7 doesn't change testimony. It doesn't change any of the  
8 exhibits. It doesn't change any of the opinions. But  
9 I think it sheds a little more light on the hydrologic  
10 analysis. I think it would be important information  
11 for staff.

12 It is not critical, if you don't want it  
13 admitted. I prepared it as an appendix to my  
14 testimony. I have three appendices, A, B, and C. This  
15 would be Appendix D. If you'd like it, I would like to  
16 submit it. So just. . . .

17 HEARING OFFICER SPIVY-WEBER: Is that okay  
18 with El Dorado Water & Power to have this addendum?

19 MR. HERREMA: No objection.

20 HEARING OFFICER SPIVY-WEBER: Okay. We would  
21 appreciate it.

22 MR. WAGNER: The -- what's now Appendix D to  
23 my testimony, I'm not going to discuss in any detail;  
24 it's very self-explanatory. You can read it, and I  
25 doubt there will be any questions. It simply augments



1 the work that we've done. Before I get into -- Okay.

2 MR. BARTON: Is Exhibit G your qualifications  
3 and resume?

4 MR. WAGNER: Yes.

5 MR. BARTON: If you would please summarize  
6 your testimony for us.

7 MR. WAGNER: Briefly, my qualifications, I'm a  
8 civil engineer licensed in California. I've appeared  
9 before this Board on several occasions on water right  
10 matters as an expert witness in hydrology and water  
11 right investigations and evaluations.

12 I have also provided similar testimony in  
13 court on several occasions. I'm an engineer for the  
14 Mojave Basin Watermaster.

15 And generally, my work and my firm's work is  
16 integrally related to the business of the State Board  
17 in terms of water rights permitting in all aspects  
18 including water rights that aren't directly  
19 administered by you, riparian rights, pre-1914  
20 appropriative rights, and so forth.

21 My testimony and analysis is included in  
22 Exhibit F. I do not intend to spend any time going  
23 through it unless there are specific questions, of  
24 course.

25 I'd like to turn your attention to page 9 of

1 Exhibit F, and the summary of the testimony is in the  
2 conclusions in paragraph 13. And very briefly, I will  
3 simply go through those.

4 The analysis that I did, my opinion that there  
5 is water available for the requested appropriation in  
6 99 percent of the years we evaluated. That would be  
7 water that's available at the point of diversion.

8 The diversions will have what we characterized  
9 as de minimis impact, if there's any measurable impact  
10 at all, on prior water rights. The diversions will  
11 have de minimis impact on the water resources of the  
12 Stanislaus River system, in particular on the North  
13 Fork of the Stanislaus where we are directly tributary.

14 The partial assignment that's been requested  
15 by the applicants will not interfere with any general  
16 or coordinated plan. It's also consistent with the  
17 California State Water Plan.

18 And currently -- and I think not just  
19 currently, but tomorrow too -- there is no opposition  
20 to approval of petition for partial assignment for  
21 State Filed Application 5648, and the petitions for  
22 change in place of use and purpose of use.

23 With regard to Application 31523, the fully  
24 appropriated streams finding that the Board made on the  
25 North Fork of the Stanislaus system: That finding

1 could impact the applicants' ability to fully divert  
2 the amount of water that we are seeking. And the full  
3 amount of the diversions exercised during the requested  
4 diversion season are going to have a de minimis or no  
5 impact on the prior water rights, so what's true for  
6 31523 is true for 5648, State Filed Application 5648.

7 We do have a seasonal limitation from the  
8 fully appropriated stream index. And currently, there  
9 is opposition to approval of the application as filed  
10 for the amount or season.

11 Unless there are specific questions about what  
12 I have submitted, I have nothing else.

13 HEARING OFFICER SPIVY-WEBER: I will accept  
14 Exhibit F.

15 MR. BARTON: Mr. Wagner, could you elaborate a  
16 little on the amount of time that would be needed by  
17 the Lake Alpine Water Company to fully put the water to  
18 beneficial use, the amount of water requested?

19 MR. WAGNER: In this case, and in the case of  
20 most permits that the Board issues, there's a time  
21 frame to fully develop a project and fully develop the  
22 beneficial use. That number of years is increasingly  
23 small, even if the actual number isn't changing over  
24 the years relative to the amount of time it takes to  
25 actually get a project together and get water put to

1 full beneficial use.

2 In this case, I think an appropriate time  
3 frame to put water to full beneficial use should be  
4 something like the amount of time that's going to be  
5 needed for Alpine County and Lake Alpine Water Company  
6 to get their project off the ground and going and in  
7 full swing.

8 The issue really for the applicants is if we  
9 are issued a permit with a relatively short time frame  
10 and full beneficial use of water isn't made in that  
11 period of time, we have to come back with a petition  
12 for a time extension.

13 It takes the Board a while to process those  
14 for a variety of reasons. The Deputy Director For  
15 Water Rights has the delegated authority, I think, to  
16 approve requests for ten years or less. More than ten  
17 years for a time extension, we have to come back to the  
18 Board. Sometimes it takes ten years to get one  
19 processed.

20 So if we were to need a time extension and  
21 asked for 25 years, we'll be back here again for a  
22 hearing. So we would think it would make some sense to  
23 have a longer -- long enough time in the permit to  
24 develop full beneficial use of the water.

25 MR. BARTON: Do you know how much time would

1 be needed?

2 MR. WAGNER: If -- I would think, given the  
3 Lake Alpine Water Company, which is a private,  
4 essentially a private municipal water supplier, but  
5 like any municipality -- they're not a municipality,  
6 but like any municipal water supplier, 20, 25 years  
7 would not seem to be a terribly long time for a permit  
8 to be alive to make full beneficial use of water.

9 That's it.

10 MR. BARTON: Thank you very much. Are there  
11 any questions? I'm sorry.

12 HEARING OFFICER SPIVY-WEBER: We'll take them  
13 at the end.

14 MR. BARTON: Okay. Petitioners call our next  
15 witness, John Kramer.

16 JOHN KRAMER, PhD, CHG

17 Called by Lake Alpine Water Company and County of  
18 Alpine

19 DIRECT EXAMINATION BY MR. BARTON

20 DR. KRAMER: I'm John Kramer. I am a Division  
21 Manager for Condor Earth Technologies.

22 MR. BARTON: John, could you spell your name  
23 for the record.

24 DR. KRAMER: Kramer, K-r-a-m-e-r.

25 MR. BARTON: Have you taken the oath?

1 DR. KRAMER: Yes.

2 MR. BARTON: Is Exhibit H your direct written  
3 testimony?

4 DR. KRAMER: Yes, it is.

5 MR. BARTON: Do you have any corrections to  
6 your direct written testimony?

7 DR. KRAMER: A minor correction on page 5,  
8 line 17. I neglected to put an apostrophe after the  
9 word projects, so it should be projects', possessive.  
10 That's the only change.

11 MR. BARTON: Okay. Is Exhibit I your  
12 qualifications and resume?

13 DR. KRAMER: Yes.

14 MR. BARTON: Please summarize your testimony  
15 for us.

16 DR. KRAMER: I am Division Manager for Condor  
17 Earth Technologies. I have over 25 years environmental  
18 consulting experience. I've been registered in  
19 California as a professional geologist since 1987.

20 I'm also a certified hydrogeologist with the  
21 state. I have a PhD in geology, geography, and  
22 mechanical and environmental engineering from the  
23 University of California, Santa Barbara.

24 I have been working with Condor Technologies  
25 since 1994. The company has been in existence since

1 1983, providing services for geotechnical engineering  
2 and environmental project approvals.

3 I was the licensed professional responsible  
4 for preparing the draft and the final EIR certified by  
5 the County, and I'm competent to give testimony on it.

6 Just a quick summary. The environmental  
7 effects -- the project involves no specific  
8 construction. It's merely a water rights application,  
9 so we didn't have to generate a lot of analysis of  
10 specific construction activities.

11 The environmental effects that were found to  
12 be less than significant. There were 14 categories.  
13 There were only two categories for which we found  
14 potentially significant effects. Those were hydrology  
15 water quality, also public utilities.

16 The effect on hydrology water quality is  
17 actually an unavoidable impact that was identified in  
18 the initial Bear Valley Master Plan EIR in 1978. That  
19 has to do with dam failure. The County determined that  
20 that is mitigable by the fact that the dam is -- there  
21 are no additions to the dam storage capability. The  
22 dam -- it's just a matter of operating the dam in  
23 different ways, and the dam is licensed and inspected  
24 by the department of Safety of Dams. So that -- that's  
25 mitigation for that one.

1           And the public utilities issue has to do with  
2     the potential that if the water rights are granted that  
3     the utility district may not in the future be able to  
4     determine if they have enough capacity under their  
5     existing waste discharge requirements.

6           And we propose the mitigation that they comply  
7     with Regional Water Quality Control Board requirements  
8     related to their waste discharge requirements when they  
9     increase capacity because they have to.

10          Based on the analysis in the EIR, I do not  
11     believe the approval of the applicants water rights  
12     will have any adverse environmental impacts, water  
13     quality impacts, or harm to the Public Trust Resources  
14     such that the State Board would have to provide any  
15     conditions on them -- on the permit.

16          So thank you very much. Is there any  
17     questions? That concludes any statement.

18          MR. BARTON: Great, thank you. Petitioners  
19     call Tom Taylor.

20                                   TOM TAYLOR

21     Called by Lake Alpine Water Company and County of  
22                                   Alpine

23                           DIRECT EXAMINATION BY MR. BARTON

24          MR. BARTON: Please state your name.

25          MR. TAYLOR: Tom Taylor.



1 MR. BARTON: And spell it for the reporter.

2 MR. TAYLOR: T-a-y-l-o-r.

3 MR. BARTON: Have you taken the oath?

4 MR. TAYLOR: I have.

5 MR. BARTON: Is Exhibit J your direct written  
6 testimony?

7 MR. TAYLOR: I thought that was -- I don't  
8 think that is correct. I thought it was K. That's  
9 correct it is.

10 MR. BARTON: Any corrections to your direct  
11 written testimony?

12 MR. TAYLOR: I believe so, now. In the  
13 introduction section, it says -- oh, I guess that is  
14 correct. No, there are none.

15 MR. BARTON: Is Exhibit K your qualifications  
16 and resume?

17 MR. TAYLOR: Correct.

18 MR. BARTON: Thank you. Please summarize your  
19 testimony for us.

20 MR. TAYLOR: All right. I'm a senior  
21 consultant aquatic ecologist. I work for Entrix,  
22 Incorporated. That's an environmental consulting firm  
23 with a large fisheries component. I am the office  
24 manager for the environmental practice here in  
25 Sacramento.

1           I have over 30 years of experience and  
2 professional experience in fishery science, conducting  
3 aquatic habitat and population assessments, water  
4 resources evaluations, and conducting environmental  
5 documentation and permitting and working in restoration  
6 projects.

7           As part of the evaluation for this project, we  
8 were -- Entrix, Incorporated was asked to evaluate the  
9 project for its potential impact on environmental  
10 impacts on fisheries. And as part of the review of the  
11 project area, we looked at the Fish and Game protest  
12 letter and recognized that Fish and Game also withdrew  
13 that protest upon seeing the water availability  
14 analysis.

15           And the concurrence that I've seen on this --  
16 excuse me -- on the project is -- the area supports a  
17 recreational fishery supported by three species of  
18 salmonids, primarily brook trout, rainbow trout, and  
19 brown trout. There are no listed or sensitive aquatic  
20 species known from the project area.

21           Additionally, the streams tributary to Bear  
22 Lake and downstream of Bear Lake are seasonal, even  
23 under unimpaired conditions, and are snowmelt driven  
24 and are therefore not capable of supporting a  
25 year-round fishery.

1           The water availability analysis indicates  
2 relatively minor impairment on the streams. Therefore,  
3 the effect of the project on Bear Creek and Blood Creek  
4 is considered inconsequential to the recreational  
5 fishery found in the watershed, and approval of this  
6 application would not be expected to result in harm to  
7 either the recreational fishery of the Blood Creek in  
8 North Fork Stanislaus River or the Public Trust aquatic  
9 resources found in the watershed.

10           Thank you.

11           MR. BARTON: Thank you.

12           Petitioners call Charles Toeniskoetter.

13                       CHARLES J. TOENISKOETTER

14           Called by Lake Alpine Water Company and County of  
15                               Alpine

16                       DIRECT EXAMINATION BY MR. BARTON

17           MR. BARTON: Please state your name.

18           MR. TOENISKOETTER: My name is Charles J.

19 Toeniskoetter, and I'll spell it for you.

20 T-o-e-n-i-s-k-o-e-t-t-e-r.

21           MR. BARTON: Have you taken the oath?

22           MR. TOENISKOETTER: Yes, I have.

23           MR. BARTON: Is Exhibit L your direct written  
24 testimony?

25           MR. TOENISKOETTER: Yes, it is.

1           MR. BARTON: And do you have any corrections  
2 to your direct written testimony?

3           MR. TOENISKOETTER: No corrections.

4           MR. BARTON: Is Exhibit M your qualifications  
5 and resume?

6           MR. TOENISKOETTER: Yes.

7           MR. BARTON: Could you please summarize your  
8 testimony for us?

9           MR. TOENISKOETTER: Yes. I represent the  
10 ownership of the Lake Alpine Water Company. And I  
11 might mention, behind me are Bruce and Roma Orvis who  
12 started this company over 40 years ago and really began  
13 the process to secure these water rights over 12 years  
14 ago.

15           I'm a board member of the Lake Alpine Water  
16 Company and an officer of the Lake Alpine Water  
17 Company. I'm also the chairman of the board of SJW  
18 Corp which owns -- is a subsidiary of the San Jose  
19 Water Company in San Jose, California. I love the  
20 water business.

21           I'd like to talk a little bit about Bear  
22 Valley. As was mentioned, the Bear Valley Master Plan  
23 was created in 1978. And the purpose of that plan was  
24 really to create an economically viable community up in  
25 Bear Valley. It was designed to create a year-round

1 community.

2           It's amazing in this little place how many  
3 families there are that are running businesses and  
4 trying to run their lives up there. They chose Bear  
5 Valley because it's a little island in the middle of  
6 the forest service, and they truly love it. I've never  
7 seen so much dedication to an area in my life except  
8 perhaps Big Sur. People have the same interest.

9           But there's a lot of young families. We have  
10 about 487, 488 customers in Bear Valley. But what's  
11 really required, and what the master plan calls for to  
12 make it a viable and economically successful area, not  
13 only for Bear Valley but also for Alpine County, is it  
14 needs additional housing which is called for in the  
15 master plan. It needs additional retail.

16           And the recreational activities up there need  
17 to be expanded, both summer and winter. They're all in  
18 place. They just need -- they need some upgrading, and  
19 it's -- quite frankly, it's Bear Valley's time.

20           And the interesting part of this is because of  
21 the summer and winter activities, it's a place where  
22 you can go and park your car at 7,000 feet and leave it  
23 until you leave. And today that seems to be perhaps  
24 where we might be going with a lot of things that we  
25 do.

1           Now the reason Bear Valley hasn't happened --  
2 well, actually, there's multiple reasons. But the  
3 basic reason is because the key assets in Bear Valley,  
4 the land, the ski areas, and other things were never  
5 under one ownership. They could never be coordinated  
6 to make the master plan come to fruition.

7           In July of 2005, the ski area was purchased  
8 along with a partnership that was formed for the  
9 village to create the combination of assets to make it  
10 work. And right now, that group is in the process of  
11 completing an EIR to do -- to carry out a very large  
12 portion of the Bear Valley Master Plan.

13           In order to accomplish this and carry this  
14 out, we do need the 385 -- 395, excuse me, acre feet of  
15 additional water rights. That's why -- that's  
16 certainly why we're here.

17           I'd like to just mention on Alpine County.  
18 I'd like to say a few words. Terry will cover this  
19 more in just a second, but I'd like to say a couple  
20 things about it, having been up there now myself for  
21 27 years or going on 28 years.

22           It's a very small county. There's 1100-plus  
23 people in this county. 96 percent of it is owned by  
24 the government. And really, the primary areas that  
25 this county can receive its revenues from to survive

1 and to provide services for the people there are  
2 Kirkwood and Bear Valley.

3           The estimated surplus impact of Bear Valley's  
4 development for the county appears to add \$3- to  
5 \$4 million of surplus funds a year when this is done to  
6 their current \$12- to \$15 million discretionary or  
7 general fund budget. This is significant. It's  
8 substantial.

9           And I've watched Alpine County struggle with  
10 so many things over the years to try to make ends meet.  
11 It would be nice to see this happen so they could do  
12 the things that they have always wanted to do as a  
13 county. And it's a very, very small county.

14           Next I'd like to just briefly recap the  
15 history of this because I, at least, think it's very  
16 interesting. As I mentioned, it's been a long journey  
17 started 12 years ago by Bruce and Roma.

18           Lake Alpine Water Company has spent almost  
19 \$350,000 on this project alone. Its annual revenues  
20 are only a little over 400,000. The company chose to  
21 do this because they know the importance of these water  
22 rights to creating and realizing the general plan set  
23 up so many years ago.

24           When we submitted the applications, it  
25 generated -- there were two times we did this, but when

1 we submitted the applications, ultimately there were  
2 ten protests. And these were fairly significant  
3 groups, I have to say, and it looked overwhelming at  
4 times.

5           But honestly, we met with the staff about four  
6 years ago, and we had to then find out what we needed  
7 to do to be here today. And the staff, one of the  
8 things that they said -- they were extraordinarily  
9 helpful; they have been all the way through this  
10 process for a little company like ours. But one of the  
11 things they said was what you can do is -- the best  
12 thing you can do is go resolve these protests.

13           So Bruce and I and Jesse and Bob Wagner got  
14 together, and we went to them, one after the other, and  
15 we spent a lot of time with many of the parties to  
16 resolve their protests.

17           And I'm very happy to say that they listened  
18 to our story. They were -- they asked a lot of  
19 questions, and it was a challenge at times, but we got  
20 over it. We got over every one of them. All protests  
21 have been withdrawn, dismissed, and resolved by  
22 agreement.

23           And the subsequent times we met with the staff  
24 in preparing for this, as I say, their guidance was  
25 very helpful and we really appreciate it. We needed



1 the help.

2 Now, once we're granted these rights, I'd just  
3 like to say how we'd care for them and the stewardship  
4 that we would apply with respect to this. We as a  
5 water company are very dedicated to the issues of  
6 conservation and being good stewards of the water.

7 And to demonstrate that in the written  
8 documentation, but I'd just like to highlight it, is in  
9 the last three years we have added a brand new  
10 filtration plant that without the state revolving fund  
11 we probably would have had a hard time doing it, but we  
12 did it. It will service all of the needs of the  
13 general plan. It's significant enough, and it's  
14 state-of-the-art.

15 We replaced a very leaky 300,000 gallon water  
16 tank up there and significantly saved the water that  
17 was going in and then finding its way right back out  
18 again.

19 We have installed electronic meters,  
20 state-of-the-art electronic meters, for every  
21 connection. They can be read through up to, I think,  
22 20 feet of snow. So we can read these monthly.

23 It's already had a huge impact on finding  
24 leaks, and we'll be putting the rate into place  
25 probably later this year. We're just working through

1 all the -- ironing out all the issues with respect to  
2 these; but for a little company like this to have  
3 everything electronically metered, it's pretty  
4 significant. And it will save us water.

5           Finally, Alpine County instituted years ago a  
6 low-flow ordinance for all new installations of  
7 facilities.

8           So we're going to be focusing on more  
9 efficient water use and water services over time, but  
10 these I think are a pretty good example -- and these  
11 were the big ones that we've already instituted.  
12 They're there. They're working.

13           So maybe I could just summarize. One is,  
14 again, we -- this is a 12-year journey that's sitting  
15 here before you today. We've made every effort to  
16 address every concern that came up. And we just --  
17 Lake Alpine Water Company would ask that the Board and  
18 the staff recognize our efforts by granting us our  
19 requested petition for the 395 acre feet under 5648.

20           And I would like to reiterate what Bob said.  
21 If you could find a way to give us that permit for 25  
22 years, we'd appreciate it because the cost and the time  
23 for this little company to come back and do this  
24 again -- it's just really hard, extraordinarily hard.  
25 So if you would do that, would consider that, we would

1 appreciate it.

2 That's all I have. Thank you.

3 MR. BARTON: Thank you. Petitioners call  
4 Terry Woodrow.

5 TERRY WOODROW

6 Called by Lake Alpine Water Company and County of  
7 Alpine

8 DIRECT EXAMINATION BY MR. BARTON

9 MR. BARTON: Could you please state your name.

10 MS. WOODROW: Terry Woodrow. T-e-r-r-y  
11 W-o-o-d-r-o-w.

12 MR. BARTON: Have you taken the oath?

13 MS. WOODROW: Yes, I have.

14 MR. BARTON: Is Exhibit N your direct written  
15 testimony?

16 MS. WOODROW: Yes, it is.

17 MR. BARTON: Do you have any corrections to  
18 your direct written testimony?

19 MS. WOODROW: No.

20 MR. BARTON: Please summarize your testimony  
21 for us.

22 MS. WOODROW: I am Terry Woodrow, and I am on  
23 the Alpine County Board of Supervisors and have been  
24 since 2003. Presently, I'm the Chair of the Board, and  
25 my district does cover Bear Valley and Kirkwood.

1 Charles Toeniskoetter did cover some of the  
2 material that I was going to state, but I will say that  
3 Alpine County is a very rural county, the smallest  
4 populated county in the state of California, with 96  
5 percent public land and a tourism-based economy.

6 And due to the limited population and  
7 opportunities for growth, the project is critical to  
8 Alpine County because it will secure water rights that  
9 will allow for planned future development contemplated  
10 in the Bear Valley Master Plan.

11 This will support the economic base of local  
12 businesses, the viability of Bear Valley, and the Bear  
13 Valley ski area, and will create potential tax revenues  
14 for a small county otherwise very limited in  
15 opportunities to do so. And I would encourage your  
16 support of these applications.

17 Thank you.

18 MR. BARTON: Thank you. Any questions?

19 STAFF MEMBER MONA: No questions.

20 HEARING OFFICER SPIVY-WEBER: No questions for  
21 me. Is there any -- there's no cross-examination.

22 So I will accept these exhibits into evidence.

23 (The petitioner's exhibits were admitted  
24 into evidence.)

25 HEARING OFFICER SPIVY-WEBER: And thank you

1 for coming. Before I came on board, I was the  
2 executive director of the Mono Lake Committee. So I'm  
3 very familiar with Alpine County and small communities  
4 and the challenges that you face. So thank you.

5 MR. BARTON: Thank you.

6 HEARING OFFICER SPIVY-WEBER: Next will be El  
7 Dorado Water and Power Authority.

8 MR. HERREMA: We have no cross-examination.

9 HEARING OFFICER SPIVY-WEBER: Do you have a  
10 statement to make?

11 MR. HERREMA: No.

12 HEARING OFFICER SPIVY-WEBER: No.

13 MR. HERREMA: Just to clarify, no direct.

14 HEARING OFFICER SPIVY-WEBER: Gold star.

15 MR. BARTON: Hearing Officer Spivy-Weber, I  
16 would just like to make clear you did accept the  
17 exhibits?

18 HEARING OFFICER SPIVY-WEBER: All exhibits.

19 MR. BARTON: All exhibits. Okay. I did make  
20 the motion, and I wasn't sure, but that's fine. We'll  
21 do it on your motion. Thank you very much.

22 WATER RESOURCES CONTROL ENGINEER MONA: It  
23 says here that I should accept all exhibits after you  
24 all have presented them.

25 MR. BARTON: I'll take your word for it.

1 HEARING OFFICER SPIVY-WEBER: And I do what  
2 I'm told.

3 (Laughter)

4 HEARING OFFICER SPIVY-WEBER: Okay. Your  
5 closing brief, which you said you wanted to present,  
6 will be due 30 days following the date the transcripts  
7 are released and limited to ten pages double-spaced  
8 with 12 point Arial font. Now when can he expect the  
9 transcript?

10 (Discussion off the record)

11 HEARING OFFICER SPIVY-WEBER: Two weeks. The  
12 court reporter estimates the transcript will be  
13 available in two weeks from the close of the hearing.

14 MR. BARTON: Actually, I will be on vacation  
15 beginning July 27th for one week, so any time after  
16 that would be ideal for us.

17 HEARING OFFICER SPIVY-WEBER: The other matter  
18 of business is those of you who did not give the court  
19 reporter your card should do so at the close of the  
20 hearing.

21 So if there's no other business, the Board  
22 will take this matter under submission. The  
23 participants in this hearing will be sent notice of the  
24 Board's proposed order in this matter and the date of  
25 the Board meeting at which the proposed order will be

1 considered.

2 After the Board adopts an order, any person  
3 who believes the order is in error has 30 days within  
4 which to submit a written petition for reconsideration  
5 by the Board.

6 I thank you all for your interest,  
7 cooperation, and participation in the hearing. As you  
8 can tell, this is my first hearing on my own. The  
9 hearing is adjourned.

10 \* \* \*

11 (Thereupon the WATER RESOURCES CONTROL  
BOARD hearing adjourned at 10:40 a.m.)

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## 1 CERTIFICATE OF REPORTER

2 I, LINDA KAY RIGEL, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify:

4 That I am a disinterested person herein; that  
5 the foregoing CALIFORNIA STATE WATER RESOURCES CONTROL  
6 BOARD hearing was reported in shorthand by me, Linda  
7 Kay Rigel, a Certified Shorthand Reporter of the State  
8 of California, and thereafter transcribed into  
9 typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said meeting nor in  
12 any way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand this July 28, 2008.

15

16

17

18

19 LINDA KAY RIGEL, CSR

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