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STATE WATER RESOURCES CONTROL BOARD

IN THE MATTER OF: )  
)  
Administrative Civil Liability )  
complaint and draft Cease and )  
Desist Order against Robert C. )  
Mann 1999 trust and Robert Mann )  
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TRANSCRIPT OF PROCEEDINGS

VOLUME I

August 26, 2014

8:53 a.m.

1001 I Street

Sacramento, CA

Brittany Flores, CSR 13460

## 1 APPEARANCES

2 For the Division of Water:

3 Yvonne West, legal counsel, State Water Resources  
4 Control Board, Office of Enforcement5 Aaron Miller, Senior Water Resources Control Engineer,  
6 State Water Board, Division of Water Rights

7 Jeff Wetzel, Division of Water Rights

8 In Pro Per:

9 Mr. Robert Mann  
10 Ms. Lucy Mann  
10 29876 King Ridge Road

11 Cazadero, CA

12  
13  
14 THE HEARING OFFICER:15 Frances Spivy-Weber, Vice-Chair of State Water Resources  
16 Control Board

17 Stephen Moore, Co-Hearing officer

18 STAFF:

19 Carlos Mejia, legal counsel

20 Jane Farewell, environmental scientist

21 Jean, McCue, engineer

22 Michael Buckman, senior environmental scientist,  
23 hearings unit

24 --o0o--

1 SACRAMENTO, CALIFORNIA  
2 Tuesday, August 26, 2014  
3 8:53 a.m.

4 THE HEARING OFFICER: We're going to start a  
5 tad early and if you have -- if you are going to be  
6 making -- wanting to -- can you hear me? If you're  
7 wanting to be making a policy statement of some sort,  
8 there are blue cards at the back that you need to fill  
9 out.

10 They -- Michael, they said they can't -- oops.  
11 Wow.

12 Now, I think that you can hear me. There are  
13 blue cards at the back if you are interested in, in  
14 filling one out for policy statement folks that are in  
15 the audience. Okay.

16 We're starting a bit early. We're eager.  
17 Welcome. There are -- there's a lot that needs to be  
18 put on the record, and so I'm going to be reading from a  
19 transcript and it goes -- kind of goes on and on so just  
20 bear with me.

21 We're starting with the order of proceeding.  
22 This is the time and the place -- and I have this all  
23 written out so if you want a copy, you can have it.

24 This is the time and the place for the hearing  
25 regarding an Administrative Civil Liability complaint

1 and draft Cease and Desist Order against Robert C. Mann  
2 1999 trust and Robert Mann both in his individual  
3 capacity and his capacity as trustee of the Robert C.  
4 Mann 1999 trust, hereafter referred to collectively as  
5 "Mann." The Administrative Civil Liability compliant  
6 and draft Cease and Desist Order were issued by the  
7 assistant deputy director of the water rights on June  
8 14th, 2012.

9 I am Frances Spivy-Weber, vice-chair of the State  
10 Water Resources Control Board, and with me is fellow  
11 board member and co-hearing officer, Stephen Moore. We  
12 will be assisted by staff counsel, Carlos Mejia; staff  
13 environment scientist, Jane Farwell, at the far right  
14 end; and the staff engineer Jean McCue in between.

15 We have evacuation procedures, which some of you  
16 may need to know, I hope not, before we get started.  
17 Look around and identify the exits closest to you. In  
18 the event of a firearm alarm -- in the event of a fire  
19 alarm, we are required to evacuate this room  
20 immediately. Please take your valuables with you and  
21 exit down the stairways. Do not use elevators. I think  
22 it might be hard to. While staff will endeavor to  
23 assist you to the nearest exit, you should also know  
24 that you may find an exit door by following the ceiling  
25 mounted exit signs. Our evacuation location is caddy

1 corner across the street in Cesar Chavez Plaza.

2 Now, back to the proceeding. This hearing is  
3 being held in accordance with public notice -- with the  
4 notice of public hearing dated May 22nd, 2014. The  
5 purpose of this hearing is to afford the parties an  
6 opportunity to, to present relevant oral testimony and  
7 other evidence which address the following key issues;  
8 whether the State Board should impose Administrative  
9 Civil Liability upon Mann for trespass or -- and if so,  
10 in what amount and on what basis. Second, whether the  
11 State Water Board should impose Administrative Civil  
12 Liability upon Mann for failure to file a required  
13 statement of diversion and use, and if so, in what  
14 amount and on what basis. And finally, whether the  
15 State Water Board should adopt, with or without  
16 revision, the June 14, 2012 draft CDO against Mann.

17 We're broadcasting this hearing on the internet  
18 and recording both audio and video. In addition, a  
19 court reporter is present to prepare a transcript of the  
20 proceeding. Anyone who would like a copy of the  
21 transcript must make separate arrangements with the  
22 court reporter. To assist the court reporter, please  
23 provide her with your business card. When you speak,  
24 please be sure to use a microphone so that everyone can  
25 hear you. And each of you have a microphone, and you do

1 have to punch the button. Turn it green.

2 Before we begin the evidentiary portion of the  
3 hearing and hear from the prosecution team and Mann, we  
4 will hear from any speaker who did not submit a notice  
5 of intent to appear, with the exception of Mrs. Mann,  
6 but wish to make a non-evidentiary policy statement.

7 Is there anyone here who wishes to make a  
8 non-evidentiary policy statement? Do we have any blue  
9 cards in other words.

10 Okay. We will note for the record that no one  
11 has indicated that they wish to make a non-evidentiary  
12 policy statement, and we will move onto the evidentiary  
13 portion of the hearing for presentation of evidence and  
14 related cross-examination by parties who have submitted  
15 notices of intent to appear.

16 The parties will present -- both parties will  
17 present their cases-in-chief and conduct, if they wish,  
18 cross-examination in the following order; the Division  
19 of Water Rights, prosecution team first and Robert Mann  
20 and, and the Robert C. Mann 1999 trust second. At the  
21 beginning of each case-in-chief, the parties may make an  
22 opening statement briefly summarizing the party's  
23 position and what the party's evidence is intended to  
24 establish. This is also the time when you will be  
25 wanting to perhaps add some additional ideas -- or some

1 additional information that was not in the email that  
2 was sent to us from Mr. Mann.

3 After any opening statement, we will hear  
4 testimony from the parties' witnesses. Before  
5 testifying, witnesses should identify their written  
6 testimony as their own and affirm that it is true and  
7 correct. Witnesses should summarize the key points in  
8 their written testimony and should not read their  
9 written testimony into the record. It's already part of  
10 the record. Direct testimony will be followed by  
11 cross-examination by the other party, board staff,  
12 Co-Hearing Officer Moore, and myself. Redirect  
13 testimony and recross-examination limited to the scope  
14 of the redirect testimony may be permitted. After both  
15 cases-in-chief are completed, the parties may present  
16 rebuttal evidence. Parties are encouraged to be  
17 efficient in presenting their cases and their  
18 cross-examination. Except where Co-Hearing Officer  
19 Moore or I approve of variation, we will follow the  
20 procedure set forth in the Board's regulation and the  
21 hearing notice.

22 The parties' presentation are subject to the  
23 following time limits; opening statements are limited to  
24 20 minutes. For oral presentation of direct testimony,  
25 each party will be allowed up to one hour total to

1 present all its direct testimony. Any cross-examination  
2 will be limited to no more than one hour per witness or  
3 panel of witnesses. Additional time may be allowed upon  
4 the showing of good cause. There will be an opportunity  
5 to present closing -- to turn in closing briefs but that  
6 will be following this hearing and I'll deal with that  
7 at the end.

8 Before we begin, are there any procedural issues  
9 that need be to addressed?

10 Okay. Seeing none. Now, I will invite the  
11 appearances of the parties. Now, this -- we will have  
12 an oath before we get started.

13 Will the parties who are participating in the  
14 evidentiary portion of the hearing, will those making --  
15 when you make your appearance, please state your name,  
16 address, and whom you represent so that the court  
17 reporter can enter this information into the record.  
18 And we'll start with Division of Water Rights,  
19 prosecution, and then we'll move to the Robert Mann and  
20 Robert C. Mann 1999 trust.

21 So now is the time for the oath. I will  
22 administer the oath. So will those persons who may  
23 testify during this proceeding please stand and raise  
24 your right hand, and it's a simple answer, which will  
25 be -- thank you.



1           Do you promise to tell the truth in this -- in  
2 this proceeding?

3

4                           (Group responds, "yes.")

5

6           THE HEARING OFFICER: Thank you. You may be  
7 seated now.

8           Now, we'll hear the prosecution team's opening  
9 statement and direct testimony followed by any  
10 cross-examination from Robert Mann. So we'll start with  
11 the Division of Water Rights prosecution team.

12           MS. WEST: Great. I'm going to start with  
13 an opening statement.

14           Good morning, Vice-Chair Spivy-Weber, and, Board  
15 Member Moore, and members of the hearing team. I'm  
16 waiting for Michael to pull up my PowerPoint  
17 presentation.

18           THE HEARING OFFICER: Identify yourself.

19           MS. WEST: My name is Yvonne West. I'm the  
20 attorney with the State Water Resources Control Board,  
21 Office of Enforcement, and I'm here today representing  
22 the Division of Water Right staff in this matter.

23           THE HEARING OFFICER: That's new. Hold on  
24 just one second. Let's see if there's some -- I've  
25 never heard that noise before. We have someone who is

1 checking it out, so go ahead and continue.

2 MS. MANN: He -- we might have to move. He  
3 can't hear in one ear.

4 THE HEARING OFFICER: Sure. Okay. You can  
5 certainly move. You should be able to hear. That's  
6 fine.

7 MS. MANN: Yeah, he can't hear.

8 WOMAN IN AUDIENCE: It may be a minute to  
9 find the AV guy.

10 THE HEARING OFFICER: Okay.

11 MS. WEST: It's taking a moment to figure  
12 out my controls here.

13 MR. BUCKMAN: The wheel.

14 THE HEARING OFFICER: Can you hear me now?

15 MR. MANN: I can hear you fine.

16 THE HEARING OFFICER: Okay. I'm so sorry.

17 MS. WEST are we -- okay.

18 Again, I'll just restate, my name is Yvonne West.  
19 I'm an attorney with the State Water Resources Control  
20 Board, Office of Enforcement. I'm here today  
21 representing the Division of Water Rights enforcement  
22 staff in this matter. The matter before you today is an  
23 Administrative Civil Liability complaint and proposed  
24 Cease and Desist Order, which were issued to Mr. Robert  
25 C. Mann and the Robert C Mann trust, again, collectively

1 referred to in my presentation as "Mann" and this --  
2 they were issued on June 14th, 2012.

3           The Administrative Civil Liability complaint  
4 alleges that Mann's 183 acre foot long reservoir is a  
5 trespass under the Water Code Section 1052, Subdivision  
6 A, for which the State Water Board can impose  
7 Administrative Civil Liability. The complaint also  
8 alleges that Mann failed to file a statement of water  
9 diversion and use as required by the Water Code Section  
10 5101 and is subject to additional Administrative Civil  
11 Liability for that violation. The complaint proposes a  
12 penalty of 66,000 in liability for the violations  
13 alleged. Also, issued to Mann was a proposed Cease and  
14 Desist Order. The State Water Board is authorized to  
15 issue a Cease and Desist Order when it determines that  
16 any person is violating or threatening to violate the  
17 prohibition against the unauthorized diversion or use of  
18 water set forth in Water Code Section 1052. The  
19 proposed CDO provides two options by which Mann could  
20 come into compliance. First, by filing and diligently  
21 persuing an appropriative water rate application while  
22 operating a reservoir in compliance with the North Coast  
23 Instream Flow policy or, two, ceasing the diversion of  
24 storing the water subject to the State Water Board  
25 permitting authority.

1           The key issues that the State Water Resources  
2 Control Board requested that the parties address in the  
3 hearing notice -- the hearing notice on this matter are  
4 above, and I believe they were already discussed by  
5 Ms. Frances Spivy-Weber. The Division enforcement team  
6 has submitted for your consideration a legal brief,  
7 written testimony, and evidence in support of issuance  
8 of the Administrative Civil Liability against Mann in  
9 the amount proposed as well as the issuance of the  
10 proposed CDO to require corrective action. The  
11 Division's enforcement staff's presentation will outline  
12 the case as already submitted and emphasize the  
13 important legal and factual issues of this case for your  
14 consideration and determination.

15           To start, it is important to understand the  
16 regulatory context in which these enforcement actions  
17 were issued in 2012. Legislation adopted in 2004  
18 requires the State Water Board to develop a policy for  
19 maintaining instream flows in northern California costal  
20 streaming for the purpose of Water Rights  
21 administration. The policy for maintaining instream  
22 flows in northern costal stream referred to as "the  
23 Policy" was adopted by the State Water Board in response  
24 to this legislative mandate initially on May 4th, 2010.  
25 The policy was readopted without significant changes on

1 October 22nd, 2013, and the readopted policy became  
2 effective on February 4th, 2014. The Policy establishes  
3 principles and guidelines for maintaining instream flows  
4 for the protection of fishery resources. It prescribes  
5 protective measures regarding season of diversion,  
6 minimum bypass flow, and maximum stimulus diversion. It  
7 prohibits the Division from issuing water rights permits  
8 for existing on stream dams constructed prior to July  
9 19th, 2006, which are on class one streams, and it  
10 requires that applications for water rights permits for  
11 existing on stream dams constructed prior to July 19th,  
12 2006, which are located on class one -- or class two  
13 streams cannot be accepted unless specific conditions  
14 are met.

15 As a result of the Policy, the Division undertook  
16 the North Coast Unauthorized Reservoir Investigations.  
17 Mr. Aaron Miller will be presenting details about these  
18 efforts in his presentation and his testimony here  
19 today.

20 Turning back to the specific enforcement actions  
21 at issue in these proceedings, Mann was issued an ACL  
22 complaint alleging a violation of Water Code Section  
23 1052. Water Code Section 1052 prohibits the  
24 unauthorized diversion or use of water subject to the  
25 State Water Boards's permitting and licensing authority

1 and defines that action as a trespass. State Water  
2 Board is authorized by the Water Code Section 1052,  
3 Subdivision A to impose Administrative Civil Liability  
4 of up to \$500 a day for each day that such a trespass  
5 occurs.

6 The diversion and storage of water for use at a  
7 time when natural flow is not otherwise available to a  
8 property is not allowed and is not within a repairing  
9 water right. It requires an appropriative water right.  
10 Since 1914, the only means of obtaining a appropriative  
11 right is through a permit or license issued by the State  
12 Water Board. Mr. Miller and Mr. Wetzel's testimony  
13 along with the other evidence submitted by the  
14 Division's enforcement staff demonstrates that Mann is  
15 diverting water outside of a repairing right and without  
16 the required State Water Board issued permit or license  
17 in violation of Water Code Section 1052. Specifically,  
18 testimony and evidence will demonstrate that the  
19 reservoir on Mann's Sonoma property is of a significant  
20 capacity, approximately 183 acre feet. It's created by  
21 a single access dam across a jurisdictional surface  
22 stream, and the reservoir diverts and stores water for  
23 use in a season where water would be natural -- would  
24 not naturally be available to the property and it does  
25 so without meeting any of the requirements of the

1 policy.

2           The ACL complaint that was issued to Mann also  
3 alleges that Mann failed to file an initial statement of  
4 water diversion and use. Each person who, after  
5 December 31st, 1965, diverts water shall file with the  
6 Water Board prior to July 1st of the succeeding year, a  
7 statement of his or her diversion and use. Failure to  
8 file a diversion -- for a diversion that occurs after  
9 January 1st, 2009 is subject to the imposition of  
10 Administrative Civil Liability. This liability can be  
11 up to a \$1,000 plus -- for the initial violation, plus  
12 \$500 a day for each additional day in which the failure  
13 to file continues past 30 days after the State Water  
14 Board has called the violation to the attention of that  
15 person.

16           Today's testimony and evidence submitted prior to  
17 the hearing demonstrates that the reservoir on Mann's  
18 property diverts and stores water seasonally each year,  
19 that Mann does not have a water right permit or license,  
20 and Mann does not qualify for any of the exceptions in  
21 the Water Code Section 5101 statement filing  
22 requirements. Accordingly, an initial statement  
23 reporting diversions made in 2009 was required to be  
24 filed by Mann prior to July 1st, 2010. Alternatively,  
25 Mann could have filed a statement reporting diversions

1 made during 2010 prior to July 1st to 2011. Mann did  
2 not timely file a statement of diversion made in either  
3 2009 or 2010. Mrs. Mann was informed of the need to  
4 file statements during the inspection of the reservoir  
5 on September 9th, 2011, and an inadequate initial  
6 statement for the diversion and use of the water at the  
7 reservoir in 2010 was filed in October 2011 in response  
8 to the notice provided at the inspection. A corrected  
9 statement was then subsequently filed in September of  
10 2013. Accordingly, the State Water Board can impose  
11 liability on Mann for failure to file a statement.

12 Here, the ACL's complaint seeks penalties only  
13 for the initial failure to file a statement violation of  
14 \$1,000 and the -- \$1,000 was the recommended liability  
15 -- is associated with Mann's failure to file a  
16 statement. The ACL complaint include a total proposed  
17 liability of \$66,000. Water Code Section 1055.3  
18 requires that when determining the amount of liability,  
19 the State Water Board shall consider all relevant  
20 circumstances including but not limited to the extent of  
21 harm caused by the violation, the nature and persistence  
22 of the violation, the length of time over which the  
23 violation occurred, and the corrective action, if any,  
24 taken by the violator.

25 In addition, the policy provides further guidance



1 on how relevant circumstances shall be considered in  
2 these types of cases and provides the State Water Board  
3 will consider the following factors; avoided cost and  
4 economic benefit, deterrent amount including culpability  
5 and threat of harm, staff cost, ability to pay, and any  
6 other appropriate factors when setting the liability  
7 amount.

8 In addition, the policy establishes that a  
9 minimum -- that at minimum, the liability shall be  
10 assessed at a level that covers the staff cost and  
11 economic benefits associated with the acts that  
12 constitute the violation.

13 The Division's enforcement staff have considered  
14 the above circumstances when determining the liability  
15 amount being proposed. The enforcement staff's  
16 consideration of the above circumstances is discussed in  
17 detail in Mr. Miller's written testimony, which is  
18 included as Water Rights Exhibit 1, WR-1 and will be  
19 discussed in detail in his presentation. The testimony  
20 and evidence submitted establishes that the proposed  
21 liability is justified by the facts of this case. Some  
22 of the specific circumstances that justify the proposed  
23 liability include Mann's economic benefit from the  
24 unauthorized diversion and use of water on his property  
25 by avoiding costs of obtaining water from another source

1 and avoiding the cost of complying with the water right  
2 permitting division and license structure. The extent  
3 of harm, the nature and persistence of the violation --  
4 and the nature and persistence of the violation is more  
5 severe in this case than other unauthorized reservoir  
6 cases brought by the Division due to the unusually large  
7 size of the reservoir. Mann was given sufficient time  
8 and opportunity to commit to a corrective action, and  
9 Mann has knowledge of the water right regulations  
10 demonstrated by the fact that he has a water right  
11 permit on other properties. Furthermore, while Mann has  
12 not raised or submitted evidence to substantiate an  
13 inability to pay the fines, the enforcement staff has  
14 met its initial burden of demonstrating an ability to  
15 pay based on Mann's real property assets. Information  
16 concerning real property owned by Mann and tax assessor  
17 values associated with those properties have been  
18 provided in Exhibit WR-23.

19           The third and key -- the third and final key  
20 issue identified for this hearing is whether or not the  
21 State Water Board should adopt, with or without  
22 revision, the June 14th, 2012 draft Cease and Desist  
23 Order against Mann. Water Code Section 1831,  
24 Subdivision G authorizes the State Water Board to issue  
25 a Cease and Desist Order when any person is violating or

1 threatening to violate prohibitions against unauthorized  
2 diversion use as provided for in Water Code Section  
3 1052. As discussed previously, testimony and evidence  
4 provided by the Division's enforcement staff at this  
5 hearing demonstrate -- will demonstrate that the  
6 reservoir is an ongoing violation of Water Code Section  
7 1052, that it will continue until the time when the  
8 reservoir is authorized through the water right permit  
9 license process, or the reservoir is modified to stop  
10 diverting storm water. A Cease and Desist Order is  
11 necessary to provide a timeline for obtaining  
12 compliance. Staff's testimony will highlight that the  
13 Cease and Desist Order in this case is particularly  
14 important because the capacity of this reservoir makes  
15 it ineligible for the expedited registration process,  
16 and its location within the policy area will require  
17 stream class determination and other technical studies  
18 in order to determine whether or not the Division of  
19 Water Rights can authorize -- can issue a water right  
20 permit legitimizing the reservoir or if a case specific  
21 exemption from the Policy will need to be sought for the  
22 State Water Board. Accordingly, the complexity and  
23 potential cost of compliance in this specific case  
24 support the need for the adoption of a Cease and Desist  
25 Order and of a Cease and Desist Order that can be

1 enforced in the future if compliance isn't diligently  
2 pursued.

3           And finally, finally, to provide an overview of  
4 the context in which this enforcement action was issued,  
5 this timeline slide summarizes significant policy  
6 milestones and significant enforcement actions taken in  
7 this matter. Mr. Miller will testify that the ACL  
8 complaint and staff Cease and Desist Order issued to  
9 Mann are part of a broadest North Coast Unauthorized  
10 Reservoir Investigation that included outreach,  
11 education, and enforcement efforts undertaken by the  
12 Division to bring into compliance a significant number  
13 of unauthorized reservoirs in Napa, Sonoma, Mendocino,  
14 and Humboldt County. The actions issued against Mann are  
15 consistent with a number of enforcement actions issued  
16 by the Division at that time. Mr. Wetzel will be  
17 testifying to the investigation of the Mann property  
18 specifically and the findings reached by the Division as  
19 a result of that investigation, and then Mr. Miller will  
20 conclude by providing testimony concerning the issuance  
21 of the ACL complaint, proposed civil liability amount,  
22 propose Cease and Desist Order terms, and staff  
23 recommendations.

24           And with that, I will turn the presentation over  
25 to Mr. Miller and Mr. Wetzel to introduce themselves and

1 provide testimony.

2 MR. MILLER: Okay. Good morning, Vice-Chair  
3 Spivy-Weber, Member Moore. My name is Aaron Miller.  
4 I'm a professional engineer registered in California,  
5 and a senior water resources control engineer, with the  
6 State Water Board, Division of Water Rights. The  
7 testimony I have previously submitted is a true and  
8 correct representation of my knowledge in this case. I  
9 have been working in the Division of Water Rights for 13  
10 years. I have experience in both the permitting and  
11 enforcement section. I'm currently a supervisor of  
12 Division's enforcement unit number four. At the time of  
13 this investigation, Mr. Wetzel was one of my staff.  
14 He's currently also a senior water resource control  
15 engineer. He is a professional engineer registered in  
16 California and has nine years of experience working in  
17 the field of water rights -- or in the field of water  
18 resources for -- the last four being within the Division  
19 of water right both in enforcement and currently -- his  
20 current capacity senior of a -- for a unit within the  
21 Division.

22 Okay. So quick overview of the presentation  
23 Mr. Wetzel and myself will give. I'm going to start off  
24 with general overview of North Coast Unauthorized  
25 Reservoir Investigation that we conducted. Mr. Wetzel

1 will go through the site specifics of the investigation  
2 related to this case and then I will go -- I will go  
3 over the Administrative Civil Liability proposed amount  
4 and Cease and Desist Order.

5           Okay. So the North Coast Unauthorized Reservoir  
6 Investigation began in 2011, and several staff within  
7 the enforcement section were investigating unauthorized  
8 reservoirs in Marin, Mendocino, Napa, Sonoma, and  
9 portions of Humboldt County. The reservoirs -- most of  
10 these reservoirs were built by many individual  
11 landowners and for many multiple purposes. Typically,  
12 if water is flowing in the surface stream is diverted to  
13 storage facility, the time in flow is high for use  
14 during the time the flow is low or does not exist, then  
15 the diverter is appropriating water to storage, which is  
16 subject to the State Water Board's permitting authority  
17 and a water right must be obtained.

18           Reservoirs may be constructed for a variety of  
19 reasons. Most common are some sort of beneficial use to  
20 the landowner. These uses include irrigation crops or  
21 pasture, stock watering, domestic use at a residence,  
22 fire protection, and recreational uses such as fishing,  
23 swimming, or boating. Water districts may build  
24 reservoirs from municipal or industrial use.

25           In December 2007, State Water Board produced a

1 draft Substitute Environmental Document, otherwise known  
2 as SED, part of its development of the North Coast  
3 district flow policy. Appendix E of the SED contains a  
4 report -- contains the report potential indirect  
5 environmental impact of modification or removal of  
6 existing unauthorized dams. This report was proposed to  
7 Stetson Engineers in 2007. In order to complete this  
8 report, Stetson Engineers produced a Geographic  
9 Information System, or GIS, layer in which reservoirs or  
10 locations of existing unauthorized reservoirs were  
11 identified. In June and July of 2011, a review GIS  
12 layer aerial photographs in United States Geological  
13 Survey topographic maps of Sonoma County was undertaken  
14 by State Water Board Division of Water Rights.

15           The policy identified 1,771 potential illegal  
16 reservoirs in Napa, Marin, Sonoma, Mendocino, and  
17 Humboldt counties. Enforcement staff undertook this  
18 investigation in 2011, and to date, have closed  
19 approximately twelve hundred of these cases. Over  
20 twelve hundred of the alleged illegal reservoir cases  
21 were closed because the reservoirs were covered either  
22 by an existing water right or were not subject to the  
23 State Water Board's permitting authority. The remaining  
24 unauthorized reservoirs -- or potentially unauthorized  
25 reservoirs -- Division staff proceeded with contacting

1 many of the landowners either by phone or by sending  
2 notice letter. Approximately 350 letters were sent  
3 throughout the policy area. The letters provided  
4 information about the need for a water right, the State  
5 Water Board's authority to impose a civil liability for  
6 unauthorized reservoirs, the need to file a statement of  
7 diversion and use, and give property owners an  
8 opportunity to provide information concerning the basis  
9 or right for the reservoir, or submit a corrective  
10 action plan.

11 In certain instances, information was available  
12 to directly contact property owners by phone and inquire  
13 about the alleged illegal reservoir. This was the case  
14 for Mr. Mann. Since Mann has other water rights in the  
15 Division's records, contact information was readily  
16 available, and an inquiry about the alleged reservoir  
17 could be made by phone to establish contact rather than  
18 go through the process of sending a letter. Many of the  
19 remaining alleged illegal reservoirs being investigated  
20 have since been covered by applications to appropriate  
21 water filed by the property owner with 48 such  
22 application being filed in 2012.

23 The North Coast Unauthorized Reservoir  
24 Investigation is a significant accomplishment. It  
25 further identifies uses of water of the state and brings



1    them into the reporting process so that there's a better  
2    understanding of where and how much of the State's water  
3    is being used. This provides benefits to the water  
4    availability analysis conducted as part of the process  
5    of issuing new permits. Additionally, it -- bringing  
6    unauthorized diverters into the water rights system in  
7    the North Coast helps to mitigate against any  
8    significant impacts public trust resources, like  
9    steelhead trout fisheries.

10           Regulatory measures such as specifying a season  
11    of diversion or a minimum bypass flow help to limit  
12    times -- diversion to times when water is available and  
13    helps eliminate impacts to the environment and impacts  
14    to other legal uses of water by keeping water instream  
15    that would have otherwise been diverted illegally.

16           The following table is a summary of the  
17    enforcement actions issued in 2012. Summarized here are  
18    11 Administrative Civil Liability complaints that  
19    propose Cease and Desist Orders to owners of property  
20    when unauthorized reservoir has been identified. Nine  
21    of these enforcement cases were issued to property  
22    owners where no response to the Division's notice letter  
23    was received. The other two enforcement cases including  
24    Mann were issued due to the lack of inadequate response  
25    to the findings letter issued by the Division.

1           I'd like to point out that within, within this  
2 table you can see that the cases were issued to a wide  
3 variety of different size reservoirs, ranging from, you  
4 know, capacities of about an acre foot all the way up to  
5 183 acre feet, which is the capacity of Mr. Mann's  
6 reservoir. There -- also, you'll notice the proposed  
7 ACL amounts -- also varies depending upon each of the  
8 individual cases. All of the proposed ACL amounts were  
9 based on the same methodology that I'll present later.  
10 So we have consistently applied this to all of the  
11 different cases. You'll also notice the final column  
12 outlines final ACL liability amounts from the cases that  
13 have since settled with the Division after issuance of  
14 the Division's enforcement action.

15           THE HEARING OFFICER: Excuse me. Let me  
16 interrupt you just briefly, because I think at the  
17 beginning -- and correct me if I'm wrong -- you should  
18 have identified all this testimony that you're giving,  
19 and you do the same when you start, as your own and  
20 affirm that it is true and correct for the record.  
21 So just -- we'll do it, to some extent, in retrospect so  
22 that all the testimony that you're presenting is true  
23 and correct.

24           MR. MILLER: Okay. Yes, all the testimony  
25 I'm presenting here today is true and correct.

1 THE HEARING OFFICER: And it is your own.

2 MR. MILLER: And it is my own testimony and  
3 presenting the facts as I know them for this case.

4 THE HEARING OFFICER: Okay. Thank you.

5 MR. MILLER: Okay. Now, I'd like to turn  
6 the presentation over to Mr. Wetzel, who will go through  
7 the site specific investigation.

8 MR. WETZEL: Good morning Vice-Chair  
9 Spivy-Weber and Board Member Moore. I'm Jeff Wetzel  
10 with Division of Water Rights, and my written testimony  
11 and testimony here today is true and correct.

12 The policy did identify Mr. Mann's reservoir as  
13 potentially unauthorized. However, my initial site  
14 information -- my initial investigation did review  
15 Division records to verify that there was no known basis  
16 of right for Mr. Mann's reservoir on file with the  
17 Division of Water Rights. My initial investigation also  
18 included reviewing US GS topographical maps and aerial  
19 imagery much like the one that you see in the slide.  
20 Mr. Mann's reservoir is located near the town of  
21 Cazadero within the Gualala River watershed in Sonoma  
22 County. At the top of the picture, you'll see a single  
23 access dam or the impoundment that creates the  
24 reservoir. On the bottom of the picture, there are two  
25 unnamed tributaries and the drainage areas that produce

1 surface water runoff that the reservoir collects.

2 This is a US GS topographic map. I know it's  
3 hard to see, but the blue line above and below the  
4 reservoir are indications of intermittent draining  
5 features commonly associated with river, streams, and  
6 creeks. This topo map indicates that the reservoir was  
7 constructed on a stream channel. Indicated in this topo  
8 map -- is 1978 -- indicates that the reservoir has been  
9 in place for some time. Based on this topo map, aerial  
10 imagery, and review of Division records, the site  
11 inspection was needed to confirm the remaining findings  
12 and also confirm the use of water from the reservoir.

13 In September of 2011, I conducted my site  
14 information with Mrs. Lucy Mann. The majority of the  
15 site inspection was spent at the reservoir measuring the  
16 dam and -- the next three slides are pictures taken  
17 during my inspection. This picture was taken --

18 THE HEARING OFFICER: Hold on just one  
19 second. Because all of these are in evidence, can you  
20 identify in the -- in your submittals as to each  
21 photograph so that we can also get that on the record.

22 MR. WETZEL: The exhibit numbers that were  
23 in the submittal?

24 THE HEARING OFFICER: Exactly.

25 MR. WETZEL: This photo is Water Rights

1 Exhibit WR-19. This topographic map will be WR-6 at the  
2 end of my inspection report.

3 MR. MEJIA: Madame Hearing Officer, can I  
4 note for the record that Mr. Wetzel was just referring  
5 to slides 9 and 10 of his presentation.

6 THE HEARING OFFICER: Thank you.

7 MR. WETZEL: This image -- or photo is  
8 taken -- or is in WR-22, additional site photos.

9 THE HEARING OFFICER: And this is slide  
10 Number 11.

11 MR. WETZEL: And this is slide number 11.

12 THE HEARING OFFICER: And then we're -- what  
13 exhibit it is?

14 MR. WETZEL: Okay. This slide number 12 is  
15 also WR-22. This picture was taken from the dam looking  
16 south across the reservoir. The reservoir has an  
17 approximate surface area of 13.6 acres and an estimated  
18 capacity of 183 acre feet.

19 This is slide number 13, and it's WR-22, exhibit.  
20 This picture is taken downstream over the base of the  
21 dam, which is estimated to be 65 feet high.  
22 Unfortunately, during my site inspection, I wasn't able  
23 to visit the downstream channel basically because of the  
24 steep -- general field safety.

25 This is slide number 14 also WR-22. This photo

1 was taken from the reservoir access road facing west  
2 looking over the reservoir, and it does a good job of  
3 capturing the adjacent topography and terrain of the  
4 reservoir.

5           These three photos on slide number 15 are all  
6 WR-22 exhibits. Mrs. Mann said that the water was --  
7 water used in the reservoir was for stock watering, and  
8 it was pretty evident from the cattle and water troughs  
9 throughout the property during my investigation. It is  
10 also my understanding that the water troughs shown in  
11 this picture was used to carry water from the reservoir  
12 to the water troughs.

13           Within about a month of the site inspection, my  
14 results were documented in the site inspection report,  
15 which found Mr. Mann's reservoir to be on stream and  
16 storing water subject to the Board's permitting  
17 authority. Basically, the reservoir collects surface  
18 water without a basis of right from two unnamed  
19 tributaries that have defined dead-end banks.

20           Slide number 16 is Water Right Exhibit 15, a  
21 photo taken from that exhibit. At the time of the  
22 inspection report was completed, we also notified the  
23 Department of Water Resources, Division of Safety of  
24 Dams because, seemingly, the reservoir was within their  
25 jurisdiction. A March 2012 letter from the Division of

1 Safety of Dams to Mr. Mann did find that a dam of this  
2 height and storage is within the State's jurisdiction.  
3 This photo was later taken by a Division of Safety of  
4 Dams inspector on one of his annual inspections in  
5 February of 2013. I included this picture because of  
6 the time of year it was taken. During this time, the  
7 reservoir is full, and there was water in the spillway.  
8 During my inspection, the spillway was dry, and the  
9 reservoir was likely drawn down.

10 The Division mailed Mr. Mann a findings letter on  
11 October 28th, 2011, which basically found the reservoir  
12 to be unauthorized, and copy of the inspection report  
13 was included for his records. Because I conveyed the  
14 need to file a statement to Mrs. Mann during my  
15 inspection, Mr. Mann did submit a statement just about  
16 the same time we mailed the findings letter. The  
17 statement was initially deficient but was later found to  
18 be accepted when Mr. Mann submitted further evidence for  
19 the material. The findings letter provided information  
20 on the North Coast Instream Flow Policy, outlined the  
21 required corrective actions, and also explained the  
22 potential penalties associated with an unauthorized  
23 reservoir. The corrective actions outlined in the  
24 letter were, one, file an application to appropriate  
25 water, two, provide evidence that the reservoir does not

1 store water or can be operated without storing water  
2 subject to the Board's authority, or, three, remove the  
3 reservoir or render it incapable of storing water. The  
4 letter required Mr. Mann 45 days to submit an --  
5 indicate a course of action that he intended to take and  
6 an implementation plan and a schedule. Unfortunately,  
7 Mr. Mann's response did not identify one of the  
8 corrective actions, and at this time, we began to -- we  
9 began to decide to draft the ACL and CDO, which  
10 Mr. Miller will talk more about.

11 MR. MILLER: Okay. So I'll go through the  
12 issuance of the ACL complaint and the proposed  
13 liability.

14 The reservoir at issue is clearly within the  
15 permitting authority of the State Water Board due to the  
16 fact that the reservoir sits on a stream channel with  
17 well defined bed and banks and collects water to storage  
18 on an annual basis. Mann is making unauthorized  
19 diversions of water at said reservoir, which constitutes  
20 a trespass against the State as defined by Water Code  
21 Section 1052, Subdivision A. The draft CDO is based on  
22 past violations of the prohibition in Water Code Section  
23 1052 against the diversion or use of water subject to  
24 State Water Board jurisdiction and the threat of future  
25 unauthorized diversion and use of water. The ACL



1 complaint was issued based on the past unauthorized  
2 diversion of water from an unnamed stream tributary to  
3 Pepperwood Creek in the Gualala River watershed and the  
4 failure to file a statement of water diversion use for  
5 reporting -- for reporting the water diversion from the  
6 reservoir. Enforcement staff referred to the North  
7 Coast Policy Appendix H when considering whether or not  
8 enforcement action was warranted and when developing the  
9 enforcement documents.

10           The maximum ACL amount authorized by statute for  
11 an unauthorized diversion is \$500 for each day on which  
12 trespass occurs. Mann also failed to file a statement  
13 by July 1 of 2010 reporting water use and is therefore  
14 subject to \$1,000 penalty for failing to file a  
15 statement on time. Enforcement staff have reason to  
16 believe the trespass has been occurring since prior to  
17 1978 and Mann appears to have owned the property since  
18 at least 1992. Maximum liability could be based on the  
19 last 19 years of estimated use by Mann, which yields a  
20 maximum liability of \$500 a day times 6,935 days or  
21 \$3,467,000. The staff recommended liability for this  
22 case is \$66,000 based on the last three years of use and  
23 consideration of many factors. In assessing the amount  
24 of civil liabilities, enforcement staff, pursuant to  
25 Water Code Section 1055.3, considered the relevant

1 circumstances, including but not limited to the  
2 following; economic benefit gained from the violation  
3 including avoided costs, extent of harm, nature and  
4 persistence of the violation, length of time over which  
5 the violation occurs, and any corrective action taken.

6 As previously stated, we only considered economic  
7 benefits during the last three years of the violation.  
8 We evaluated the reservoir -- we evaluated for reservoir  
9 losses that would be replaced on an annual basis. This  
10 included evaporation losses based on surface -- 13 acres  
11 surface area of the reservoir, which amounted to  
12 approximately 23 acre feet of water, losses due to stock  
13 watering of 300 head of cattle, which was identified on  
14 inspections, amounts to about five acre feet of water.  
15 This gives a total of 33 acre feet of water lost per  
16 year. Using a UC cooperative extension study for the  
17 North Coast area we identified that pumping costs for a  
18 120 foot deep well with a ten horsepower motor is  
19 approximately \$198 per acre foot. The economic benefit  
20 estimate discussed here does not include benefits such  
21 as increased property values associated with having a  
22 reservoir. The avoided cost of water is approximately  
23 \$6,534 annually or \$19,685 over three years. This was  
24 taken -- or this was estimated using the 33 acre feet  
25 per year annual loss times 198 annual feet of water --

1 or \$198 per acre foot. The additional avoided cost of  
2 water right fees in the last three years has amounted to  
3 \$369. Mann's unauthorized reservoir has provided an  
4 economic advantage conservatively estimated at \$20,054  
5 in the last three years.

6 The other factors considered were extent of harm,  
7 nature and persistence of violation, length of time in  
8 which the violation occurred, and any corrective action  
9 taken. The Gualala River watershed contains threatened  
10 essential California costal steelhead trout fishery, and  
11 unauthorized diversions of water have been shown to  
12 contribute to the cumulative impact of the reducing  
13 water supplies and habitat for the fishery. The  
14 reservoir has existed for many years, and water has been  
15 diverted to storage in each of those years without a  
16 basis of right. Mann is also the holder of Water Rights  
17 License 444, which authorizes the diversion and use of  
18 water from the Pit River. Accordingly, Mann is aware of  
19 the water rights system and the need for diversion --  
20 for the diversion of water in the State of California to  
21 be authorized by a water main.

22 The Division provided Mann with a findings  
23 letter, which identified the reservoir as subject to the  
24 State Water Board's permitting authority and required  
25 Mann to proceed with taking corrective action. Mann

1 responded to the findings letter. However, the response  
2 was not adequate and did not provide the Division with  
3 any of the requested information or indicate any intent  
4 to pursue corrective action. Mann was initially a  
5 cooperative -- cooperative by allowing staff to inspect  
6 the property and did take initial steps by filing  
7 statement and responding to the findings letter though  
8 both were deemed inadequate. Mann had over seven months  
9 prior to issuance of the enforcement actions to provide  
10 an adequate response and diligently follow up on the  
11 matter. However, none was provided. To quantify the  
12 other relevant circumstances in this matter, a  
13 disincentive factor was applied to the estimated avoided  
14 costs for this case. Considering all of the above  
15 factors that I just mentioned and the Division's goal of  
16 deterrence, a factor of three times the estimated  
17 economic benefit was deemed appropriate. After using a  
18 disincentive factor, the adjusted liability was  
19 calculated at approximately \$60,000 before considering  
20 additional violations and associated staff costs.

21 The other violation at issue in the ACL is  
22 failure to a file statement. As previously outlined by  
23 Ms. West, the California Water Code Section 5107  
24 provides the State Water Board may administratively  
25 impose civil liability pursuant to Section 1055 in an

1 amount not to exceed \$1,000 plus \$500 per day for each  
2 additional day on which the violation occurs and the  
3 person fails to file a statement within thirty days  
4 after the State Water Board has called the violation to  
5 the attention of that person. Mann failed to file a  
6 statement for the diversion and use of water for the  
7 unnamed stream for either 2009 or 2010 with a deadline  
8 of July 1 of either year. Mann was provided notice  
9 during the inspection and did file the statement on  
10 October 19, 2011. Therefore, the maximum liability  
11 considered for this violation would be \$1,000.

12 Additional enforcement costs incurred were staff  
13 costs from conducting the initial investigation,  
14 reviewing the existing project, and developing the  
15 enforcement documents. This was estimated at \$5,136.  
16 Additional staff costs have been incurred subsequently  
17 in pursuing compliance and enforcement, but those costs  
18 were not considered as a basis for the liability amount  
19 proposed in the ACL.

20 Given all the factors discussed above, the final  
21 recommendation for the ACL liability was \$66,000.

22 The draft Cease and Desist Order was initially --  
23 is initially needed because the reservoir is subject to  
24 permitting authority of the State Water Board and  
25 collects water storage on an annual basis. The draft

1 CDO issued will bring Mann into compliance and eliminate  
2 the continued unauthorized diversion. Staff CDO  
3 outlines various steps needed to be taken to obtain an  
4 appropriative right for the diversion of water and to  
5 comply with the North Coast Instream Flow Policy or have  
6 the reservoir removed and cease the unauthorized  
7 diversion. Staff recommendations for this case are for  
8 the Board to issue the ACL order as proposed with the  
9 additional staff cost incurred to pursue compliance and  
10 issue the proposed Cease and Desist Order requiring Mann  
11 to take immediate action to bring this matter into  
12 compliance and to ensure diligent pursuit of the  
13 application or other corrective measures by Mann or  
14 future trustees.

15 This concludes our presentation, and we'll take  
16 any questions or comments that you have.

17 THE HEARING OFFICER: This is the  
18 opportunity for you to ask questions and then for staff  
19 and for Stephen and I to ask questions of the  
20 prosecution team.

21 Do you have any questions that you'd like to ask?

22 MS. MANN: Is there water?

23 THE HEARING OFFICER: Is there water. I  
24 think there is.

25 Michael, is there water. Could --

1 MS. MANN: Or a water fountain or something.

2 MS. WEST: By the restrooms, there's a  
3 fountain.

4 MS. MANN: Sorry.

5 THE HEARING OFFICER: Let's do it. Let's  
6 take a little break.

7

8 (Break taken.)

9

10 THE HEARING OFFICER: We will reconvene the  
11 hearing. And the next item on the agenda is for you to  
12 ask questions if you have questions about the statements  
13 that have been presented or evidence that's been  
14 presented if you have any.

15 MS. MANN: Can we ask for clarification of  
16 what they have said?

17 THE HEARING OFFICER: Clarification or --

18 MS. MANN: Can you hear me? I can't hear  
19 you very well.

20 THE HEARING OFFICER: Put your green light  
21 on.

22 MS. MANN: Oh, there you go.

23 THE HEARING OFFICER: There. I can hear you  
24 much better and then speak as close as possible -- yes.  
25 I know it's not very convenient.

1 MR. MANN: My name a Robert Mann, and 29876  
2 Cazadero, California -- excuse me. 29876 King Ridge  
3 Road Cazadero, California. I'm the property owner. And  
4 let me get the page here of what I was supposed to -- my  
5 qualifications, I guess, are the fact that I am --

6 THE HEARING OFFICER: Oh, this is not for  
7 you to --

8 MR. MANN: Oh.

9 THE HEARING OFFICER: This is just to ask  
10 questions. Do you have questions based on --

11 MR. MANN: I'm sorry.

12 THE HEARING OFFICER: -- what you have heard  
13 from the prosecution team?

14 MR. MANN: Well other than --

15 THE HEARING OFFICER: It's essentially your  
16 cross-examination but it's --

17 MR. MANN: I don't really have any  
18 questions. There's some of the content that I don't  
19 feel is accurate, but I don't really have any direct  
20 questions.

21 THE HEARING OFFICER: Okay. That's fine.  
22 Now, do --

23 MS. MANN: I have a couple of questions.  
24 Well, maybe it's more of a comment.

25 THE HEARING OFFICER: Would you identify --



1 MS. MANN: Yes. My name is Lucy Mann.  
2 29876 King Ridge Road Cazadero, California.

3 When Mr. Wetzel was speaking, he talked about  
4 when they started the program about identifying the  
5 different reservoirs, and he said that they had sent out  
6 350 letters to some of the property owners on an  
7 outreach education and compliance measure. We didn't  
8 get that. And my thought is we probably didn't get it  
9 because there was an assumption that we knew about water  
10 rights because of property owned in Modoc County. Well,  
11 Modoc property is irrigated. We don't irrigate. I had  
12 no idea. I think we would not be here today if there  
13 had been more education and outreach. Maybe we would  
14 have wanted --

15 THE HEARING OFFICER: So let me just -- so  
16 your question to the prosecution team is when --

17 MS. MANN: Is why didn't we receive the  
18 letter? There was an assumption maybe that maybe we  
19 knew something that we didn't. I don't know why you'd  
20 sent out 350 letter if you didn't send out all 11  
21 hundred property owners letters.

22 MS. WEST: I'd like to respond to Ms. Mann's  
23 questions.

24 MS. MANN: Yeah.

25 MS. WEST: Mr. Miller did testify to the

1 fact that the 350 letter were sent to property owners  
2 which we did not have contact information for and that  
3 the investigations where we did have, let's say, a phone  
4 number, which was the case for your property because you  
5 were in the water rights system, that instead of -- in  
6 lieu of sending a letter, we made direct telephone  
7 contact and then scheduled an onsite inspection. And  
8 that, subsequently, Mr. Miller testified to the fact  
9 that -- or Mr. Wetzel testified to the fact that at that  
10 inspection, information that was in the letter was  
11 conveyed verbally during inspection. And then  
12 additionally in followup with the findings letter,  
13 contains significantly the same information concerning  
14 both the water rights requirements, the policy, and  
15 statement of filing requirement, which were, again,  
16 discussed at the inspection and provided in the findings  
17 letter.

18 So the different treatment that Mr. Miller  
19 testified to, and he did not mention specifically in his  
20 testimony both here today that, that the letter -- the  
21 initial notice letter was not sent to the Mann's  
22 property or to Mann because we did have contact  
23 information for you and we contacted you directly to  
24 convey that information.

25 THE HEARING OFFICER: Okay.

1 MS. MANN: Also, there was a mention of 300  
2 cattle. At the point he was there, we maybe had a  
3 hundred and thirty total cattle. I actually brought my  
4 cattle records if you want to look at them. On the  
5 property that serves around where the dam is, there's a  
6 herd of maybe 12 that go down and drink out of the  
7 reservoir and then a herd of maybe 32, 34 at the time he  
8 was there that sometimes go down there. The question is  
9 where the 300 head of cattle come from.

10 MR. WETZEL: The number of 300 cattle comes  
11 from my field notes during my site inspection. I  
12 believe it was information provided by you in regards to  
13 how many -- roughly, how many cattle you guys have  
14 roughly on this property.

15 MS. MANN: Okay. Well, that's an error.  
16 That's it.

17 THE HEARING OFFICER: Okay. Do staff have  
18 questions for cross-examination?

19 MR. BUCKMAN: I have a couple questions for  
20 Mr. Miller.

21 In your testimony, at the end of page five  
22 indicates that you used three years to determine the  
23 Administrative Civil Liability, and I was curious as to  
24 why you guys used -- chose three years.

25 MR. MILLER: I think that was at a

1 recommendation from counsel, so I'll let Yvonne answer  
2 that question.

3 MS. WEST: Yes, in response to your  
4 question, the Division, in the past, has, has chosen to  
5 limit its consideration for the purposes of  
6 Administrative Civil Liability to the past three years  
7 of violation. We acknowledge that administrative  
8 proceedings are not subject to a statute of limitations.  
9 We do not have a specific statute of limitations on our  
10 violations. Nonetheless, we chose to limit it to three  
11 years because the civil code contains a general statute  
12 of limitations for civil actions and because the amount  
13 of liability, generally, that is incurred in those three  
14 years is significantly more than what we would seek in  
15 these types of actions, in order to avoid any sort of  
16 legal questions, we tend to limit it to the past three  
17 years -- consideration to the past three years of  
18 liability incurred even though, again, we do not believe  
19 that any sort of statute of limitations applies to our  
20 actions.

21 MR. BUCKMAN: One more question. I have one  
22 more question. Also for Mr. Miller, testimony at the  
23 end of page six, under the heading, the extent of harm  
24 et cetera, you mentioned that the potential harm to the  
25 ESA species was steelhead. I was curious if that was

1 the extent of the potential harm that you evaluated.

2 MR. MILLER: Yes. Essentially, it was more  
3 on a general basis. We know that the fishery exists and  
4 the watershed. It's well established that there's  
5 threatened species. I believe the written testimony  
6 says it wasn't directly quantified for this case, but,  
7 you know, it happens to exist. Cumulatively  
8 unauthorized diversion can cause compacts. It's more of  
9 a general statement.

10 MR. BUCKMAN: Is it limited only to the ESA  
11 species, though, or are there other potential harms that  
12 you looked at?

13 MR. MILLER: We didn't look at any other  
14 potential harm for this case. It was just -- this was  
15 the most relevant potential impact. There could be  
16 impacts on other species I would assume but it depends  
17 on how many of them would be -- we identified this was  
18 one because it is threatened.

19 MR. BUCKMAN: What about outside, just  
20 biology in general, like other water right holders,  
21 other harms that could be --

22 MR. MILLER: I believe it's identified in my  
23 written testimony. There can be other harms to  
24 legitimate water right users when water is diverted.

25 MS. WEST: And just to speak to that, those

1 types of analysis is what we would expect would be done  
2 in a permitting process. There weren't -- this was a  
3 large scale enforcement effort against a number of  
4 reservoirs. We did not go to that level of, let's say,  
5 obtaining a natural resources damage assessment or doing  
6 a water availability study, but we would stress that one  
7 of the benefits of bringing these types of reservoirs,  
8 and specifically Mann's reservoir, into compliance with  
9 the water right permitting system is that in the  
10 application process, those types of analysis would be  
11 done.

12 THE HEARING OFFICER: And, Michael, for the  
13 record, the past two questions, could you identify  
14 yourself as to who you are and --

15 MR. BUCKMAN: Michael Buckman, senior  
16 environmental scientist in the hearings unit.

17 MS. MCCUE: Jean McCue in the hearings unit.  
18 I just had a question for Mr. Miller.

19 On the bottom of the page when you -- I wanted to  
20 know how you calculated the losses -- evaporative  
21 losses because there was a 13.4 acre reservoir and three  
22 feet of water loss and then you came up with 28 acres.  
23 It doesn't seem like just a multiplication there. And  
24 there's another -- how do you calculate that?

25 MR. MILLER: Are you asking where the three

1 feet comes from?

2 MS. MCCUE: No. Is it three feet times  
3 13.4, or is there a different calculation?

4 MR. MILLER: No. It should be three times  
5 13.4.

6 MS. MCCUE: Okay. So that's not 28 feet  
7 then.

8 MR. MILLER: Actually, I take that back. I  
9 believe when doing the calculation, we took into account  
10 side-sloping factors of the reservoir.

11 MS. MCCUE: Oh, okay.

12 MR. MILLER: So there are would be three  
13 times the surface area times a factor accounting for the  
14 fact that it's not -- the reservoir on the side does not  
15 drop straight down.

16 MS. MCCUE: Okay. Okay. Thank you.

17 MR. MEJIA: Good morning, and for the  
18 record, I'm Carlos Mejia. I'm staff counsel of the  
19 Board, advising the hearing officers in this proceeding.  
20 I have a few questions first for Mr. Wetzel.

21 Mr. Wetzel, good morning. I'd like to first  
22 direct your attention to Exhibit WR-6. Do you happen to  
23 have that in front of you?

24 MR. WETZEL: Yes.

25 MR. MEJIA: And during your oral testimony,

1 you referred to a field report that you created and  
2 produced shortly after your investigation. Were you  
3 referring to WR-6 in that testimony?

4 MR. WETZEL: That's correct.

5 MR. MEJIA: Okay. Thank you. If I may, I'd  
6 like to direct your attention to the next exhibit, WR-7.  
7 What, if any, role did you have in the creation of that  
8 document?

9 MR. WETZEL: Well, I believe I, ultimately,  
10 produced it. It stems from a general template that the  
11 Division, kind of, outlined that we can use  
12 post-inspection to generate this letter. And so using  
13 that template, you, you create the letter to be site  
14 specific per your reservoir, per the inspection.

15 MR. MEJIA: And to the best of your  
16 recollection, does it reflect your conclusion at the  
17 time you made your investigation?

18 MR. WETZEL: Yes.

19 MR. MEJIA: I'd like to turn your attention  
20 to Exhibit WR-10 if I may. Are you familiar with that  
21 document?

22 MR. WETZEL: I am familiar with this letter,  
23 yeah.

24 MR. MEJIA: Okay. I'd like to ask you to  
25 take a brief moment to review it if you would.



1 MR. WETZEL: Go ahead.

2 MR. MEJIA: Does the substance of that  
3 document seem at all consistent with the results of your  
4 investigation of the property in question?

5 MR. WETZEL: Well, my inspection was looking  
6 at the storage and diversion of surface water, and this  
7 Division of Safety of Dams Inspection, in his letter  
8 here, is focused on the construction and the impoundment  
9 and the safety factors associated with it. So to your  
10 question, I think the two documents are a slight  
11 disconnect.

12 MR. MEJIA: Do you see any factual  
13 discrepancies in that letter's description of the  
14 property at issue that are in any way inconsistent with  
15 the factual findings you made during your investigation?

16 MR. WETZEL: Without comparing specific --  
17 all the specifics of the letter, no I don't. I -- this  
18 inspector identifies over 100 acre feet of water. I  
19 believe he also in his -- anyway, my estimate was 183  
20 acre feet of water, so there was a slight disconnect  
21 there.

22 MR. MEJIA: But you'd agree they're not  
23 inconsistent.

24 MR. WETZEL: They're not inconsistent. I  
25 think both inspectors identified that this is just an

1 estimate of the storage capacity.

2 MR. MEJIA: Thank you, Mr. Wetzel. I'd also  
3 like to direct your attention to Exhibit WR-15, and I'd  
4 like to, once again, ask you to take just a brief moment  
5 to review that document.

6 MR. WETZEL: Go ahead.

7 MR. MEJIA: Again, are the factual findings  
8 within that document consistent with what you observed  
9 and included following your field investigation of the  
10 property in question?

11 MR. WETZEL: Yes.

12 MR. MEJIA: Thank you, and then finally for  
13 Mr. Wetzel, Mr. Buckman, could I ask you to put up  
14 prosecution team's Slide 16 from their PowerPoint  
15 presentation.

16 Mr. Wetzel, I believe during your testimony, you  
17 said this was a photograph that you received from the  
18 Division of Safety of Dams, Department of Water  
19 Resources.

20 MR. WETZEL: That's correct. Well, it was a  
21 photo attached to their annual inspection report.

22 MR. MEJIA: Do you recognize any features of  
23 the land identified in this photograph?

24 MR. WETZEL: I do. I recognize the dam,  
25 reservoir, and spillway.

1           MR. MEJIA:  As -- what do you recognize them  
2 as?

3           MR. WETZEL:  As the -- it's the same site  
4 that I was on.

5           MR. MEJIA:  Thank you, Mr. Wetzel.

6           And I have just a couple questions for  
7 Mr. Miller, with the hearing officer's indulgence.

8           Good morning, Mr. Miller.  I'd like to direct  
9 your attention to your testimony, that's Exhibit WR-1,  
10 and I'd specifically like to call your attention to  
11 paragraph one on pages six and seven.

12          MR. MILLER:  Okay.

13          MR. MEJIA:  I note that you state in there  
14 that -- and let me read from it, it's conceivable that  
15 the unnamed stream could be a class one stream during  
16 parts of the year due to its proximity to Pepperwood  
17 Creek.  That follows some discussion of maps that you  
18 reviewed.  What, if any, basis do you have for  
19 concluding that that stream might be a class one stream?

20          MR. MILLER:  My prior field experience as a,  
21 you know, enforcement investigator and my prior  
22 experience in the permitting unit -- or in the permits  
23 section within the Division.  I worked on the  
24 development of the North Coast Policy.  I have processed  
25 applications.  I have been in the field.  It's -- you

1 know, primarily from my experience gained working for  
2 the Division of Water Rights. To me, in my opinion,  
3 based on the proximity to Pepperwood Creek, which would  
4 appear to be a, you know, a creek that has water in it  
5 most of the year, which would support a fishery, it's  
6 conceivable that during high flow, during the winter  
7 months, that the unnamed stream with the dam it's built  
8 on could contain water sufficient for some sort of  
9 fishery habitat. It may not be for very long, but it  
10 could. It's a possibility. And so I was drawing from  
11 my own experience when making that statement.

12 MR. MEJIA: And I'd like to ask a few  
13 questions concerning prior times in which you calculated  
14 the economic benefit that was potential violation.  
15 First, just for the record, you have been with the Board  
16 since 2001; is that correct?

17 MR. MILLER: Yes.

18 MR. MEJIA: During that time, have you  
19 previously calculated the economic benefit of an alleged  
20 or potential violation of California Water Rights law?

21 MR. MILLER: Not until I became a senior  
22 water resources control engineer in the course --  
23 taking -- you know, basically running an enforcement  
24 unit was when I was experienced to that.

25 MR. MEJIA: But since that time, have you

1 done so?

2 MR. MILLER: Yes.

3 MR. MEJIA: About how many times would you  
4 say?

5 MR. MILLER: I believe most of the cases in  
6 that summary table in one of my presentation slides,  
7 they're -- almost all of them were issued by my work.

8 MR. MEJIA: I'll like to direct your  
9 attention to Exhibits 21-A, 21-B, and 21-C. Note for  
10 the purposes of my questions, it's necessary that you  
11 review them, but I do want to note that's what I'm  
12 referring to.

13 When you previously calculated economic benefit  
14 of alleged or potential violation of California's water  
15 rights laws, did you rely on studies similar to those in  
16 Exhibits 21-A, 21-B, and 21-C to form your conclusions?

17 MR. MILLER: Yes. In fact, I have relied on  
18 these documents multiple times.

19 MR. MEJIA: And to the best of your  
20 knowledge, are those the types of studies or reports  
21 that other folks with similar expertise might rely upon  
22 in calculating the economic benefit of an alleged water  
23 rights violation?

24 MR. MILLER: I would believe so. I mean, I  
25 specifically went to them not necessarily for the

1 purpose that they were produced for but because of the  
2 information contained within them that led me to be able  
3 to determine approximate costs for pumping groundwater.

4 MR. MEJIA: Thank you, Madame Hearing  
5 Officer.

6 THE HEARING OFFICER: Steve, do you have a  
7 question?

8 MR. MOORE: Yes, I have one question for  
9 Mr. Miller.

10 THE HEARING OFFICER: Identify yourself.

11 MR. MOORE: I'm Stephen Moore, co-hearing  
12 officer on this case.

13 For Mr. Miller, Mr. Buckman, can we bring up the  
14 slide -- I think there was a -- you mentioned that in  
15 the course of correspondence with Mr. Mann, WR-5  
16 indicates an inadequate response. That's Exhibit WR-5  
17 from Mr. Mann. And then we -- in WR-8 the Division's  
18 letter notify -- or that was -- I'm sorry. WR-7 is the  
19 Division's finding letter in response, and then you  
20 received a corrected statement and ultimately WR-16,  
21 Exhibit WR-16 was the corrected statement that you  
22 received from Mr. Mann. And in your presentation, you  
23 indicated that that response was adequate, and could you  
24 explain to me the basis for the determination as to why  
25 the -- Exhibit WR-16, the letter dated February 24th,

1 2013, that you believe that an adequate response had  
2 been received.

3 MR. MILLER: I believe this exhibit is,  
4 which was submitted to the Division's statement  
5 processing unit, and it was a request to what they had  
6 asked after receipt of the initial statement and  
7 additional information that is needed in order for them  
8 to then process, give a statement number, and put it  
9 into our record as a statement we could use.

10 MR. MOORE: Right. So it had to do with the  
11 location.

12 MR. MILLER: Yes.

13 MR. MOORE: And was that the last remaining  
14 piece of information for a complete statement, or were  
15 there other elements, quantities, or use or point of use  
16 that were -- continued to be deficient because that's  
17 part of your overall recommendation is that response has  
18 been inadequate.

19 MR. MILLER: The overall recommendation was  
20 more to the inadequate response to filing an  
21 appropriate water rights application and proceeding  
22 with, you know, obtaining a permit for the reservoir  
23 and/or taking corrective action to stop the unauthorized  
24 diversion of water. The statement is, you know, part of  
25 the law that was passed in 2009. There's an additional

1 requirement that they did eventually come into  
2 compliance with. It's also why the maximum liability  
3 imposed or recommended is only \$1,00 because of the  
4 failure to file it at first but once told, they followed  
5 through. They eventually submitted additional  
6 information.

7 MR. MOORE: Thank you.

8 MS. WEST: I just wanted to speak to that a  
9 little bit. I do believe -- and this is something we  
10 can ask them -- Mann -- about. I do believe there were  
11 subsequent conversations with the statement staff  
12 concerning quantity after this February 24th, 2013  
13 letter, but I believe that this letter was sufficient  
14 for them to accept as a statement and that the  
15 additional conversations occurred after that.

16 MR. MOORE: All right. Okay.

17 MS. WEST: But that's not in our record.

18 MR. MOORE: Okay. That's helpful. Thank  
19 you.

20 THE HEARING OFFICER: So if that is all of  
21 the cross-examination, just in the abundance of caution,  
22 I want to make sure that all the exhibits that you have  
23 submitted are accepted in the record.

24 MS. WEST: Yes, I was going to -- if that is  
25 it for the questions at this time, I was going to move



1 to have the Division's enforcement staff exhibits, Water  
2 Rights -- WR-1 through WR-27, moved into evidence.

3 THE HEARING OFFICER: Mr. Mann, do you have  
4 any objection to that?

5 MS. MANN: No.

6 THE HEARING OFFICER: Indicated no. So  
7 those are accepted.

8 MS. WEST: Thank you.

9 THE HEARING OFFICER: So now we will turn to  
10 the, the statement, opening statement and your testimony  
11 from Mr. Mann.

12 MR. MANN: My name is Robert Mann. I live  
13 at --

14 THE HEARING OFFICER: Is your button pushed?

15 MR. MANN: I'm sorry. I didn't hear  
16 anything there.

17 My name is Robert Mann. I reside at 29876 King  
18 Ridge Road Cazadero, California. I am the property  
19 owner, subject property owner here, trustee of the  
20 trust, and all that.

21 THE HEARING OFFICER: And you also -- this  
22 is for the -- you want to identify your -- any written  
23 material that you have sent in, and I believe we have a  
24 few, that they are yours and that you affirm that they  
25 are true and correct.

1           MR. MANN:  Yes, I submitted a written letter  
2 to the -- to the Water Resources Board and I, I deem  
3 them true and correct.

4           I feel my qualifications for, for -- my  
5 justification for the issues we have here is, is that I  
6 have 42 years of adult direct understanding and  
7 experience in this drainage.  You'll notice there isn't  
8 a counselor here to help me.  I feel that I can speak  
9 the truth from my heart and -- if it doesn't get my  
10 throat.

11           I appreciate the time the Board is taking and  
12 staff time here for this.  It's -- and my apology for,  
13 for some of this time taken.  I think there's a gross  
14 misunderstanding and interpretation of the problems here  
15 on, on what, what is before us.

16           The first one would be the word of "diversion."  
17 And I might back up a bit, because there is a note from  
18 prosecution that I'm supposed to be well aware of, you  
19 know, water rights laws or, or they didn't say "well  
20 aware."  I think they used a little bit more moderate  
21 term, but I did acquire a piece of property in Modoc  
22 County, and it's for irrigating alfalfa.  It seemed  
23 really obvious to me that if you're pumping out of the  
24 river, that you're diverting water.  We have a water  
25 master out there that handles all the details, and I

1 think that's an entirely different situation than this  
2 one here.

3           At no time -- you know, you -- the media, and I'm  
4 not a big one for the news, but the media definitely,  
5 you know, talks about water. And we're in a time now  
6 where, of course, it's a very critical issue, and I'm  
7 well aware of that. But in this unique situation, I  
8 think -- I never felt that there was a water right  
9 issue. And I -- really not until recently when I had a  
10 long discussion with staff member John O' Hagan, did I  
11 really fully understand the -- what the State's  
12 interpretation was of all this.

13           The reservoir was built after a very large local  
14 fire that destroyed a lot of ground in the areas, and  
15 fortunately, at that time, my ancestors had the finances  
16 and the ability to, to do that under, under the, the --  
17 you might say, the urging of, of, of the, the local  
18 soils conservation people. And that was done quite a  
19 bit around in the state at that time. It was done  
20 mostly for ocean control. Although, I know there are a  
21 lot of reservoirs that were -- that were built for stock  
22 watering needs. That was not critical at all in our  
23 situation, certainly, a side benefit, but the reservoir  
24 was built for erosion control and habitat. And my  
25 grandfather and subsequently family members who have --

1 including myself -- feel strongly the same way. And I  
2 think that is in concert with the environmental and  
3 conservation desires of the state. And when I received  
4 the phone call, it was very unfortunate I could not be  
5 in attendance to speak with the young people that came.

6 And, and I think one of the main points here on  
7 this whole thing is that this, this, this -- I think,  
8 generally speaking, a reservoir is built for some sort  
9 of financial gain. That wasn't the consideration here.  
10 It doesn't -- it doesn't water -- it doesn't directly  
11 water any of the cows. We constantly develop water for  
12 them from underground sources. Our troughs on the  
13 property are from, from sources other than the  
14 reservoir. Coincidentally, at the time, we were -- I had  
15 acquired a water truck, and we used this water truck.  
16 We thought it might be helpful for the underground  
17 sources to haul some water in to some temporary troughs.  
18 And that's what was going on at the time. This was not  
19 customary, and after the discussion with my wife at the  
20 field meetings, we, we quit doing that. We don't go in  
21 defiance of what the law is asking, and since that day,  
22 we haven't hauled any water out of there. It wasn't --  
23 as I looked back on it, it wasn't a very practical thing  
24 to do anyway. My energy was much better spent in, in,  
25 you know, getting other sources for, for the cows from

1 underground and --

2           One of the prosecution's points was that there  
3 was some sort of harm done here, and I see it quite  
4 opposite. The uniqueness of this, this area is it has  
5 such very high rainfall, and that's why the erosion  
6 potential is so high. And when the water stops flowing  
7 over the dam, through the spillway, it essentially stops  
8 in that drainage. Now, this drainage, yes, it, it, it's  
9 relatively flat in where the dam is, or obviously it  
10 wouldn't be a good reservoir site. But then it gets to  
11 very critical, steep ground and rough and rocky ground  
12 that no trout have ever navigated, and it goes for quite  
13 some distance before it goes off the property.

14           And when I received the letter after their  
15 finding, their field investigation and the subsequent  
16 violation -- you know, took a while to get over it,  
17 hence, the lack of response. When you know that you're,  
18 you're in concert with what you should do  
19 environmentally, and conservation-wise, it's a real slap  
20 in the face.

21           I'm willing to take practical measures to settle  
22 this issue. I talked with Mr. O'Hagan, and he basically  
23 said that, you know, we're so deep into this now that it  
24 wouldn't make much difference, and I thought, well, at  
25 least I'll have a listening ear of the representation of

1 the -- of the public to hear my side.

2 So that's why we're here. Thank you.

3 THE HEARING OFFICER: And identify yourself.

4 MS. MANN: Yeah, this is Lucy Mann, 29876  
5 King Ridge Road Cazadero, California. Couple additional  
6 items. We felt that the size of the dam was  
7 misrepresented and at one point I thought -- and I'll  
8 have to look. I thought I heard this "65 foot"  
9 somewhere. There's no spillway 65 feet deep if that was  
10 what was mentioned.

11 And also, we're being penalized on 300 cows, and  
12 as I said earlier, at the time Mr. Wetzel was out there,  
13 we may have had maybe 130. We're way down now. And out  
14 of that 130, potentially, 12 on one side of the dam and  
15 some of the other cows on the other side, but there's  
16 not 300 cows drinking out of that reservoir at any time.  
17 We don't have 300 cows.

18 MR. MANN: Yeah, the 130 cows is, is our  
19 total operation and if you reviewed all the -- all the  
20 property, it's considerably more than the drainage of  
21 that dam. I'm not sure -- there was a misunderstanding  
22 obviously about the number of head of cattle. There's a  
23 lot of misunderstanding here. There's, there's  
24 justification for, for, you know, how much I'm saving  
25 from pumping water, and they're using a ten horsepower

1 pump. Well, you know, I'm pretty green on, on growing  
2 hay with irrigated pasture, but I can tell you that,  
3 that from my experience in Modoc County, a ten  
4 horsepower pump is about 20 times what you would need to  
5 pump water into a trough for a cow.

6           The -- I mean, I have a whole list of stuff down  
7 here. I don't know when it's appropriate to go through.  
8 It wasn't really questions, but the different  
9 testimonies here on where the inaccuracies are. And  
10 I -- you know, with a three-hour field inspection and  
11 then you go back and you -- I mean, things like vineyard  
12 and olives were brought up as -- you know, our family  
13 doesn't want to, to convert any of the land into  
14 intensified agriculture. And it's quite a challenge to  
15 not go there. There's more fees than taxes every year,  
16 and, and I don't care for, for all the things that go  
17 with vineyards and the like, everything comes along with  
18 it. And so we tried to hold our own with, with keeping,  
19 you know, with keeping the fire hazards down with the  
20 cows, and I go out and earn money other places to keep  
21 the place afloat, and I hope to continue to do that and  
22 find a family member that can take over as steward of  
23 the land.

24           A comment on the size of the dam, I really should  
25 comment on that. I was there and -- when Mr. Low came

1 in, he had a -- he had a tool that he used, and he said  
2 that it was the latest and greatest, and it was probably  
3 the one used in the field. And he, he -- the way they  
4 measure the dam -- and I don't feel it's fair, but it's  
5 the way they do it, and I talked with the engineer about  
6 it, but this dam was, was put in between two solid rock  
7 structures, and the downside of the berm was in a sloped  
8 area, and he said, "Well, we always measure from the toe  
9 to the top of the dam." Well, I said, "Well, the keyway  
10 of the dam is certainly quite a bit up the hill from  
11 there, and, and then certainly the level of the base of  
12 the dam or the water is, is considerably above that,"  
13 and he said, "No. I'm sorry. That's the way we measure  
14 the dam." Now, I haven't sounded the dam, but I'm sure  
15 it's not over 35 feet. I would be surprised if it's  
16 that much with all the sediment that's come in there  
17 over the years. So when you compile all these different  
18 things, the 300 cows and the size of the dam and the  
19 fact that -- I mean, I can't do anything about water  
20 evaporation. There certainly should be -- we pay  
21 sacrifice for, for, for, for many of our gains and if  
22 we're to conserve water and to stop erosion and all that  
23 and you can take your wetlands and we put water out into  
24 wetlands. Just think of the evaporation there, but the  
25 evaporative loss -- the cost of the evaporative loss



1 certainly offs -- is offset by, by the gain. And I  
2 think that's what applies in this situation, too.

3 The options for me as a landowner, the first two,  
4 I mean, just seem -- to remove the dam, to remove the  
5 habitat to -- I mean, that just didn't make any sense.  
6 I mean, if the reservoir belonged to the State and  
7 somebody came along and suggested they were going to  
8 remove it and take away all the habitat for everything  
9 that -- organism that's been there for sixty years -- I  
10 just, I was confused by it all.

11 I think that concludes my testimony for now. I  
12 deem it to be true and correct.

13 THE HEARING OFFICER: Thank you. And I  
14 think what we'll do is take another five-minute break,  
15 and come back here at -- well -- at roughly a quarter of  
16 11:00 for cross on your testimony. Thank you.

17

18 (Break taken.)

19

20 THE HEARING OFFICER: The two clocks in the  
21 room are a little bit different, but we'll go ahead and  
22 reconvene the proceeding.

23 And now, does the prosecution team have  
24 cross-examination?

25 MS. WEST: Again, this is Yvonne West with

1 the prosecution team. Yes, I'd like to take a moment to  
2 ask a few questions and then I'd like to do a little --  
3 a short redirect if that's the appropriate sequence of  
4 events.

5 Mr. Mann, thank you for coming today. I just had  
6 a few quick follow up questions to some of your  
7 testimony and your submissions.

8 In Exhibit Mann-1 you stated that you were the  
9 individual who owns and maintains the reservoir. I was  
10 wondering if you could tell us a little bit about what  
11 type of maintenance that you do to the reservoir.

12 MR. MANN: Well, first of all, most  
13 important thing is when, when the storms come in, you  
14 have to make sure that the spillway is clear and remove  
15 anything that might cause a potential hazard to the  
16 reservoir, itself. That's probably the most important.

17 MS. WEST: Over the years, have you ever  
18 done any work on the dam portion of the reservoir?

19 MR. MANN: At -- after my grandfather past  
20 away -- let me regress a little bit. For those who may  
21 not understand the hydrology here, there's considerable  
22 amount of water that goes over this dam, and I felt that  
23 it was important to have an emergency spillway and a  
24 little more freeboard on the dam. And, and so yes, I  
25 did include -- I did change it so there was an emergency

1 spillway and increase the -- as you may have noticed in  
2 the photo, you see, kind of, a little bit unusual shape  
3 at the top of the dam. And that was just for an  
4 insurance policy to protect the -- I mean, it never had  
5 had a problem but, you know, I experience some pretty --  
6 some pretty high head on the dam in my lifetime and I  
7 just felt like that was an important thing.

8 MS. WEST: So just to understand a little  
9 better, have you -- when you have -- you raised the  
10 height of the dam?

11 MR. MANN: No.

12 MS. WEST: Okay. But you just modified the  
13 shape of the dam?

14 MR. MANN: I raised the -- when I use the  
15 term "freeboard," that's the amount of dirt that's above  
16 the water level.

17 MS. WEST: Uh-huh.

18 MR. MANN: I increased that amount so that  
19 when you get a heavy storm, that's what's called a  
20 "head" and, and -- at least that's the terminology I  
21 use -- and it's, it's just a, a heavy flow and then it  
22 subsides, and you have to have protection for that. It  
23 seems as though the spillways always, you know, just  
24 don't -- if the spillway was clear across the dam, there  
25 would be no head. But in this case, you know, spillways

1 have their smaller openings, so there's always a little,  
2 head water and then they subside.

3 MS. WEST: Okay. I believe also in Exhibit  
4 Mann-1 you also state that you have come to an agreement  
5 with reporting staff on a reasonable way to calculate  
6 the portion of -- from your livestock use from the  
7 reservoir and you have fulfilled the reporting  
8 requirements to the best of your knowledge, and what I  
9 wanted to ask you is what that calculation is and  
10 whether it's different than this -- well, let's just  
11 start there.

12 MR. MANN: I'm trying to think of the  
13 gentleman name's. Well, anyway, reporting staff and I  
14 talked on the phone and we discussed the difficulties of  
15 measuring and the way that the State wanted me to, and  
16 he said, "Well, we need to get something, and if you can  
17 give a educated estimate on what the use of your cows  
18 are," and I know how many cows go down there. I know  
19 how many -- I know when they use the dam approximately.  
20 I know what, what other sources they use, and so I just  
21 calculated the days of use and the approximate gallons  
22 they drink and gave them as, as honest an estimate as  
23 possibly could on the uses during the time of the year.

24 MS. WEST: And do you remember what those  
25 estimates were?

1           MR. MANN: You know, I meant to bring them  
2 with me. They -- I really meant to bring those with me  
3 in case somebody did ask that question. They're in the  
4 thousands of gallons of -- you know, I think one  
5 month -- or no. I'm sorry. I don't recall but it's --

6           MS. WEST: That's fine.

7           MR. MANN: -- it's much less than what was  
8 discussed in the report.

9           MS. WEST: Okay. In one of our exhibits,  
10 it's labeled Water Right-5, we have the initial  
11 statement that you filed. And just to understand, in  
12 that statement, I don't believe you provide a quantity,  
13 a quantity in there. You listed "unknown." Since the  
14 filing of that statement, you have supplemented that  
15 with additional information in dealing with our  
16 statement staff and revised that and provided a specific  
17 quantity; is that accurate?

18           MR. MANN: That's correct. Yes.

19           MS. WEST: Great. Following along on the  
20 statement, you filed a supplement letter. And I believe  
21 it is -- let's see. In our -- in our exhibits it's  
22 WR-16, and that was, again, to supplement your initial  
23 statement. And in that letter, you state that you have  
24 hired an engineer, Lee Erickson, to work with you on  
25 projects -- with us on projects and have not determined

1 the capacity of the diversion yet. I was wondering if  
2 you have continued to work with that engineer and if you  
3 have established if that engineer has an estimate of  
4 capacity for your reservoir?

5 MR. MANN: The engineer is -- since we were  
6 going to hearing, he has not, you know, concluded his  
7 investigation. I felt that -- I still felt that, you  
8 know, we weren't really taking a -- needing a water  
9 right here and so we have him on hold until we come to a  
10 conclusion here.

11 MS. WEST: Okay. And could you just tell us  
12 a little bit about the property surrounding the  
13 reservoir. Do you know -- do you own the property  
14 that's -- completely surrounds the reservoir?

15 MR. MANN: Yes.

16 MS. WEST: And how large is that?

17 MR. MANN: You mean the, the total acreage  
18 around the reservoir?

19 MS. WEST: Right, that you own.

20 MR. MANN: Or the watershed.

21 MS. WEST: Just -- well, if you could  
22 provide both, that would be great, but specifically,  
23 your property that you own that surrounds -- the total  
24 acreage of the property that you own that surrounds the  
25 watershed -- surrounds the reservoir that's basically

1 connected to the reservoir and surrounds it -- not  
2 that's otherwise separated from --

3 MR. MANN: Well, there are probably two  
4 parcels that -- there are two parcels that the reservoir  
5 sits on. The parcel line goes right down through the  
6 middle of the reservoir, and together, I think there are  
7 like 600 acres.

8 MS. WEST: And you own additional acreage?

9 MR. MANN: Yes.

10 MS. WEST: Next to those?

11 MR. MANN: Yes.

12 MS. WEST: And so the whole acreage  
13 surrounding the reservoir that you own, do you know the  
14 acreage of that?

15 MR. MANN: Yes.

16 MS. WEST: Okay. Do you mind providing it?

17 MR. MANN: It's 25 hundred acres.

18 MS. WEST: Okay. And you only -- you had  
19 mentioned a number of cows that you have, 130 I believe?

20 MR. MANN: Well, that's not on that  
21 property.

22 MS. WEST: Okay.

23 MR. MANN: No. There's probably 75 total on  
24 the 25 hundred acres. This is not, you know, irrigated  
25 Sacramento valley land.

1 MS. WEST: No. I'm just trying to  
2 understand.

3 Okay. Okay. I believe that is all the questions  
4 that I had for Mann for cross-exam. I don't know if you  
5 would like me to move to redirect now or if you had  
6 questions that you'd like to take.

7 THE HEARING OFFICER: Why don't we take  
8 questions from both staff and from us prior to your  
9 redirect.

10 Any staff questions? And Michael.

11 MR. BUCKMAN: Michael Buckman, hearings unit  
12 chief. You mentioned in your testimony on page three of  
13 the last page, first paragraph, that, I'm confident  
14 causes no effect to downstream neighbors, water rights,  
15 nor fish and wildfire but rather provides many times  
16 more value compared to the reservoirs absence in the  
17 headwater of this drainage, and I was curious what is  
18 the basis for your conclusion -- for that conclusion  
19 that's causing no harm to downstream users and no effect  
20 to fish or wildlife.

21 MR. MANN: That's from my lifetime of  
22 experience in the watershed. The, the watershed dries  
23 up in the summertime. Approximately -- this is an  
24 estimate -- of a half a mile downstream is not navigable  
25 for fish and, and the water never reaches that -- the



1 next tributary which comes in, which is just -- I  
2 believe it's Blue Line Stream -- coming in from another  
3 direction. I'm not sure if I answered all your question  
4 there.

5 MR. BUCKMAN: Yes. Thank you. Are you guys  
6 aware of any downstream water rights holders from you  
7 that would --

8 MR. MANN: Oh, that. That's -- thank you.  
9 There's a large ranch, too, surrounding us and, and  
10 there's, there's nothing there. It then dumps into  
11 the -- into House Creek and -- which shortly becomes a  
12 fork of the Gualala River, and, and I, I don't know of  
13 anyone that even draws water out of that other than the  
14 neighbors' cows. And certainly, we're -- our close  
15 proximity to the ocean -- why -- I can't imagine it  
16 ever -- some of them would have probably said something  
17 by now. No, I, I don't think there's anyone being  
18 affected by this. I mean, and the fact that it -- when  
19 it stops raining over the dam, it stops finding its way  
20 to House Creek, and that's the long and short of it.  
21 And it fills the reservoir, which I haven't mentioned,  
22 but the reservoir fills in on the first significant rain  
23 of the year because of our rainfall.

24 MR. BUCKMAN: Are you aware or have you had  
25 any -- have you observed the property in the absence of

1 the dam and what the natural watercourse looked like?  
2 Do you have any knowledge of that?

3 MR. MANN: I'm pretty young at that point,  
4 so, you know, from a child's viewpoint, and I do, kind  
5 of, remember it. And I really don't know why, why you  
6 remember some things and not others, but it was just,  
7 kind of, a small, flat area before the water broke over  
8 and went down this real rough terrain on and off the  
9 property half a mile or so later. That's all I  
10 remember.

11 MR. BUCKMAN: Thank you. The reason why I  
12 ask is because you had mentioned that you had never  
13 observed fish in that area of the stream, and I was  
14 curious if you had a chance to observe that area before  
15 the --

16 MR. MANN: Right. And the only reason I  
17 can -- is, is my father, who was a very a avid  
18 fisherman, as my grandfather was, and if they were to  
19 fish, they got permission from the neighbor. And they  
20 went down to that area off the property where the --  
21 where the terrain gets less steep. And the fish came up  
22 to that -- basically, right to our property line before  
23 it climbed up really steep. And so did I personally  
24 observe it, no. But I mean, we have been, you know, our  
25 family has been there since 1872, so, you know, long

1 before a lot of this stuff.

2 MR. BUCKMAN: Thank you.

3 THE HEARING OFFICER: Any other staff  
4 questions?

5 Yes.

6 MR. MEJIA: Good morning. Once again,  
7 Mr. Mann, I'm Carlos Mejia. I'm an attorney for the  
8 Board, and I'm advising the hearing officers on the  
9 Board in the proceeding. I have a few questions for you  
10 if you don't mind.

11 First, I wonder if you can tell the hearing  
12 officers about the nature of the Robert C. Mann 1999  
13 trust.

14 MR. MANN: About the what?

15 MR. MEJIA: The nature of the trust, which I  
16 understand is called the Robert C. Mann 1999 trust that  
17 owns the property at issue in this case.

18 MR. MANN: The nature of it?

19 MR. MEJIA: Yes. What is it?

20 MR. MANN: It's property that belongs to me,  
21 held in trust to try and protect our family farm.

22 MR. MEJIA: Are you the sole -- oh, excuse  
23 me.

24 MR. MANN: Yes, I am the sole --

25 MR. MEJIA: You're the sole trustee of the

1 trust?

2 MR. MANN: Yes.

3 MR. MEJIA: And are you, at present, the  
4 sole beneficiary of the trust?

5 MR. MANN: No.

6 MR. MEJIA: Who else is a beneficiary of the  
7 trust?

8 MR. MANN: My children and my wife.

9 MR. MEJIA: Okay. The prosecution team has  
10 submitted into evidence a document that they have  
11 labeled as WR-23-A.

12 Mr. Buckman, I wonder if, for Mann's benefit, if  
13 we could put that up on the screen.

14 As you can see, Mr. Mann -- you have it in front  
15 of you? So Mr. Mann I'm glad that you have the document  
16 in front of you. As you see at the top of the document,  
17 the document lists six properties in Modoc County  
18 that -- and identifies them as being owned by the Robert  
19 C. Mann trust. Does that seem accurate to you, sir?

20 MR. MANN: Is that what?

21 MR. MEJIA: Does that seem accurate to you?

22 MR. MANN: Yes.

23 MR. MEJIA: Okay. And the prosecution team  
24 has further identified that the total assessed value of  
25 those properties by the Modoc County assessor is

1 \$1,067,041. Does that seem accurate to you?

2 MR. MANN: That's what I paid for it.

3 MR. MEJIA: Okay. And some similar  
4 questions about what's farther down on the document.  
5 The prosecution team further identifies 23 parcels in  
6 Sonoma County that it states are owned by the Robert C.  
7 Mann trust. Does that seem accurate to you?

8 MR. MANN: There's, there's an error or two  
9 there. Property was sold.

10 MR. MEJIA: Oh, okay. So you have sold one  
11 or more of those parcels?

12 MS. MANN: Right.

13 MR. MEJIA: How many of the parcels have you  
14 sold?

15 MR. MANN: Two, I believe.

16 MR. MEJIA: So the -- to your knowledge, the  
17 Robert C. Mann trust owns 21 parcels in Sonoma County?

18 MR. MANN: Yes

19 MR. MEJIA: Okay. And, again, at the bottom  
20 of the summary of properties in Sonoma County, the  
21 prosecution team has identified a total assessed value  
22 of \$1,430,572, which I presume includes the two parcels  
23 that you indicated the trust sold. Bearing that in  
24 mind, does that total amount seem accurate and  
25 consistent with your recollection?

1 MR. MANN: I guess that's the assessor's  
2 opinion. I don't know how this is relevant to this case  
3 I might ask.

4 MR. MEJIA: So the Board is charged with  
5 considering all relevant factors if -- should the Board  
6 decide to impose Administrative Civil Liability. So I'm  
7 inquiring about factors that may be relevant to the  
8 determination of these amounts, and that's why I'm  
9 asking.

10 MR. MANN: The determination of what? I'm  
11 sorry.

12 MR. MEJIA: The amount of Administrative  
13 Civil Liability should the Board elect to impose any.

14 So you said that that strikes you as an accurate  
15 reflection of how the Sonoma County assessor has  
16 assessed those properties?

17 MR. MANN: Close enough.

18 MR. MEJIA: Okay. And then finally, the  
19 prosecution team has identified two properties that it  
20 claims that you own individually in Sonoma County; is  
21 that accurate?

22 MR. MANN: That's not accurate.

23 MR. MEJIA: That's not accurate. You don't  
24 own those properties?

25 MR. MANN: No. That's a -- one of them that

1 I saw there was a -- was a personal property thing on a  
2 former -- it was equipment is what it was that the  
3 County had assessed. And that's no longer -- that's  
4 been disowned.

5 MR. MEJIA: Okay. So you don't own those  
6 two properties?

7 MR. MANN: Right.

8 MR. MEJIA: Okay.

9 MR. MANN: And I don't really know what --  
10 well, that's probably personal property thing on the  
11 second one. The 123, that's probably also some sort of  
12 personal property, farm equipment and -- that applies to  
13 the ag property tax.

14 MR. MEJIA: Uh-huh.

15 MR. MANN: Familiar with that?

16 MR. MEJIA: Uh-huh.

17 MR. MANN: So is it an asset? Yes.

18 MR. MEJIA: Okay. All right. Thank you,  
19 Mr. Mann.

20 I don't have anything, Madame Hearing Officer.

21 THE HEARING OFFICER: Do you have a  
22 question?

23 MR. MOORE: Thank you, Mr. Mann, for  
24 attending today and your testimony. You mentioned there  
25 was a discussion about Lee Erickson, the engineer.

1     Could you refresh my memory.  He was helping with  
2     some -- to answer some questions that the State Water  
3     Board staff proposed, but was he answering any questions  
4     proposed by the staff from the Division of Dam Safety in  
5     terms of testing the conditions --

6                     MR. MANN:  Yes.

7                     MR. MOORE -- of the dam?

8                     MR. MANN:  He did -- he did answer some  
9     questions there, yes.

10                    MR. MOORE:  Okay.  And so was there more  
11    work that he was planning to do pending, you know, your  
12    direction based on this hearing, or had he completed his  
13    assessment of the dam condition?

14                    MR. MANN:  Well, as I said before, I think  
15    he has completed it until the hearing is concluded, and  
16    then we'll have to proceed from there whatever is  
17    necessary.

18                    MR. MOORE:  And did he provide you an  
19    engineer's report?

20                    MR. MANN:  He has not yet.

21                    MR. MOORE:  Okay.  And I did note in the  
22    record that staff from Division of Dam Safety, the  
23    Department of Water Resources, which is another state  
24    agency, has put together two inspection reports, and  
25    have you had a chance to review those?



1 MR. MANN: Yes.

2 MR. MOORE: Okay.

3 MR. MANN: And I met personally with each  
4 one of those people. Actually, I think they have had  
5 three inspections.

6 MR. MOORE: Okay.

7 MR. MANN: I had a second inspection from  
8 Mr. Low.

9 MR. MOORE: Uh-huh.

10 MR. MANN: And, and at least what he told  
11 me, he was, you know, pleased with how the dam was being  
12 maintained. They had some -- you know, they would like  
13 to have seen a drain on the dam. The dam doesn't have a  
14 drain. The practicality of a drain is not possible. I  
15 mean, not practical and probably a bit risky especially  
16 considering the terrain, but he seemed pleased with what  
17 was there and was being taken care of.

18 MR. MOORE: I'm curious, you know, I'm the  
19 liaison with the North Coast Regional Water Board and  
20 familiar with the Gualala River, water quality  
21 challenges, and community around that. Have you ever  
22 met with or, or folks who are part of the Gualala  
23 Watershed Council, their local watershed group,  
24 landowners that get together and do stewardship in the  
25 watershed?

1 MR. MANN: I have attended meetings, and I'm  
2 not aware of anything recently, but yes, I was aware of  
3 that going on.

4 MR. MOORE: And did the issue of your  
5 reservoir or, you know, reservoir management issue,  
6 management issues come up in those discussions with the  
7 council?

8 MR. MANN: No, no.

9 MR. MOORE: Okay. What were some of the  
10 main land management issues that you recall from  
11 attending the watershed council?

12 MR. MANN: Well, I think first and foremost  
13 would be erosion control and, and concern over  
14 development in the area, and that sort of thing. And  
15 that's -- you know, we're, we're, we're kind of "old  
16 school." We haven't changed clanged anything. So, you  
17 know, I think people are happy with that, and so they,  
18 kind of, you know, are, are agreeable with what you're  
19 doing. So I think that's why we haven't been on the  
20 spotlight.

21 MR. MOORE: Just good to hear that you have  
22 been participating in the watershed related discussions.  
23 Thanks for answering those questions.

24 MR. MANN: Thank you.

25 THE HEARING OFFICER: Any other questions?

1           Okay. Now, we'll move to the rebuttal, and we'll  
2 start with Division of Water Rights, and then we'll move  
3 to -- oh, I'm sorry. You're right.

4           You should be moving your testimony into, into  
5 evidence. You have the email that is Mann-1 piece of  
6 written information.

7           MR. MANN: I'm sorry. I can't hear you very  
8 well.

9           THE HEARING OFFICER: Oh, I'm sorry. Could  
10 you please move your statement into evidence. You  
11 should just --

12           MR. MANN: Oh, yeah. I would like to submit  
13 my statements into evidence to the hearing processor.

14           THE HEARING OFFICER: Right. Thank you.

15           MR. MANN: Robert Mann.

16           THE HEARING OFFICER: Now, we're onto the  
17 rebuttal, and we'll start with the prosecution and then  
18 we'll move to Mann's. Pardon?

19           MR. BUCKMAN: I think Ms. West mentioned  
20 something about redirect.

21           MS. WEST: That's, that's fine. I just  
22 wanted to follow up on -- with a few questions with  
23 staff to qualify some of the issues that we have  
24 discussed here. I don't know if we'd qualify it as a  
25 rebuttal per se. I do not have any additional evidence

1 to submit for rebuttal purposes.

2 I just wanted to take a moment, and call it  
3 redirect or rebuttal, to ask Mr. Miller just to clarify  
4 or to discuss just a little bit for us how much of the  
5 proposed liability is apportioned to, to cattle. It  
6 seems that there's some dispute as to the amount of  
7 cattle on the property. Our statements are based on  
8 what we thought was the number of cattle as conveyed  
9 during the inspection. Of course, Mrs. Mann has  
10 disputed that, and so I would just like to take a moment  
11 to have Aaron, Mr. Miller, clarify how much of our  
12 proposed liability is apportioned to that 300 head of  
13 cattle.

14 MR. MILLER: I think, you know, during my  
15 presentation, I pointed out the annual losses due to  
16 evaporation and to the cattle, and the only information  
17 that I had in front of me at the time was the 300 head  
18 of cattle amount. It only amounted to about five acre  
19 feet of water annual use. Following the calculation  
20 outline for trying to determine what sort of liability  
21 to impose, you know, it doesn't amount to a large  
22 portion of the total recommended liability. If you were  
23 to remove that five acre feet of water in entirety and  
24 said, there's no cattle using the reservoir whatsoever,  
25 you know, you're looking at, you know, five acre feet

1 times \$198 per acre foot over the course of three years  
2 and the -- again, the multiplication of the disincentive  
3 factor, ultimately, I think -- doing a rough calculation  
4 in my head -- it's about \$8900 would be removed from the  
5 total. So there's not -- a significant portion of, of  
6 our recommendation.

7 MS. WEST: With that, the prosecution team  
8 doesn't have anything else to submit. It is my  
9 understanding that --

10 THE HEARING OFFICER: And you're right. It  
11 is redirect.

12 MS. WEST: Okay.

13 THE HEARING OFFICER: So that closes your  
14 case.

15 Do you have any redirect?

16 MS. WEST: I'm sorry. I just want to  
17 clarify that you're not taking oral closing arguments  
18 that you're going to --

19 THE HEARING OFFICER: No, I'm not.

20 MS. WEST: Then with that, we're done.

21 THE HEARING OFFICER: Okay. Did you have  
22 any redirect that you wanted to -- we will not be doing  
23 a closing oral statement, but there will be an  
24 opportunity for you to send something in writing as a  
25 closing.

1 MS. MANN: After this is closed, we'll be  
2 able to?

3 THE HEARING OFFICER: Right. When this is  
4 closed, which will be quite soon, the closing briefs  
5 will be due thirty days following the date the  
6 transcripts are released, which is roughly 11 to 15  
7 business days. So 11 to 15 business days plus thirty  
8 days will be the date for transcript -- for closing  
9 briefs to be received. And they're limited to ten pages  
10 and 12 point font, so not too tiny. So closing briefs  
11 are due in thirty days after you get the transcript.

12 MS. MANN: And that will be emailed to us or  
13 whatever.

14 THE HEARING OFFICER: They'll have to make  
15 a -- give her your card and you have a -- you'll make  
16 the, the agreement between the, the two of you.

17 MR. BUCKMAN: We'll notify the parties when  
18 the hearing transcript is available.

19 MR. MANN: So we don't have closing  
20 statement today?

21 THE HEARING OFFICER: No closing statement  
22 today. It will be in writing in, you know, roughly six  
23 weeks.

24 MR. MANN: Okay. So for --

25 THE HEARING OFFICER: Do you have any

1 redirect?

2 MR. MANN: Can I do some re-clarification on  
3 some kind of --

4 THE HEARING OFFICER: Sure. Go ahead.

5 MR. MANN: Okay. I don't want to make any  
6 assumptions here as far as where people are going, but,  
7 but just fresh on my mind is the questions from counsel  
8 here and, and really why that has anything to do with  
9 this. And I know where you're going because I have  
10 lived with this my whole life. But family farms, the  
11 layman term is you're dirt poor. And as time goes on,  
12 that, that gets more obvious in the liabilities and the  
13 responsibilities. We don't -- we don't own this farm to  
14 sell it and make a big profit, and so the value of the  
15 farm really has no reflection on our ability to, to pay,  
16 and I want to make that point.

17 THE HEARING OFFICER: Thank you.

18 MR. MANN: The size of the dam I think is,  
19 is very questionable. I did not get a report from the  
20 engineer but I, I have a pretty good idea that -- first  
21 of all, I know it isn't 65 feet -- it's closer to half  
22 of that when you're talking about water level. So --  
23 but bottom line is that I don't feel like I'm using a  
24 water right here but if I am, why then, that's, that's  
25 what the State has decided.

1           So another clarification was -- no, I think we  
2 covered that as far as the cows. And the -- we did not  
3 talk about the, the benefits to the State for fire  
4 protection. It seems though the comments made in the  
5 testimony by the prosecution was that this was, was for  
6 my benefit. I don't see it that way at all. I think  
7 that something like this, especially that's accessible  
8 for helicopters -- and CDF has even done their practice  
9 session for their bombers here because of location --  
10 and this is an asset to the State. We really didn't  
11 touch much on this, but there's a lot about this that's  
12 asset to the State of California and the environment.  
13 And so -- and the fact that I have cease and desist from  
14 the time I was made aware that this was not appropriate  
15 thing to do, hauling water out of the reservoir. That  
16 concludes my comments. Thank you.

17           THE HEARING OFFICER: Thank you. And I do  
18 appreciate that you came in for this -- for this  
19 hearing.

20           We will -- the entire board, all five members of  
21 the Water Board, will take this matter under submission.  
22 The staff will prepare a proposed order for  
23 consideration by all board members. The participants in  
24 this hearing will be sent a notice. So you will receive  
25 information of the Board's proposed order in this



1 matter, and the date of the Board meeting -- we'll have  
2 a Board meeting where the entire board will vote on, on  
3 the proposed order -- or where it will be considered and  
4 possibly voted on. And after the Board adopts an order,  
5 any interested party has thirty days within which to  
6 submit a written petition for reconsideration by the  
7 Board. So there's still a fair amount of process.

8 MR. MANN: Right.

9 THE HEARING OFFICER: That we -- in an  
10 abundance of caution. I hope you appreciate that.

11 MS. MANN: Oh, we do.

12 THE HEARING OFFICER: Because this is --  
13 it's a very -- particularly, as you noted, it's very  
14 serious right now at a time when there's so little water  
15 available for the many creatures as well as people who  
16 use the water, and there is such an interconnection of  
17 streams and tributaries to larger streams and  
18 tributaries that it is a -- we think it's a very, very  
19 seriously issue as you can tell. And I thank you for  
20 coming in. I totally appreciate that you are -- that  
21 this is overwhelming but it is -- it is very, very  
22 important. I just want to emphasize that, because it's  
23 not just about you. It really is about the State of  
24 California, the waters.

25 So with that, are there any other -- are there

1 any other things that I have forgotten? No.

2 Then we will close the hearing, and then you  
3 should make sure you make arrangements to, to get the  
4 transcript, and you will be notified when the transcript  
5 is available and also what the deadline is, the  
6 thirty-day deadline for getting your closing statements  
7 in and the same would be for the prosecution team.

8 MS. MANN: Do we come -- you said when the  
9 Board has a discussion, are we going to be coming back?

10 THE HEARING OFFICER: You certainly are  
11 welcome.

12 MS. MANN: "Can" but we don't have to be  
13 here.

14 THE HEARING OFFICER: Correct.

15 And the question was, should they come back, and  
16 they are certainly welcome.

17 MR. MOORE: It's an open public meeting.

18 THE HEARING OFFICER: It's an open public  
19 meeting, and you're welcome, but you aren't required.

20 MR. MOORE: Right.

21 THE HEARING OFFICER: Thank you very much.

22

23 (Whereupon the proceeding concluded at 11:23 a.m.)

24

25

--o0o--

1 I, Brittany Flores, a Certified Shorthand Reporter of  
2 the State of California, duly authorized to administer  
3 oaths, do hereby certify:

4 That the foregoing proceedings were taken before me  
5 at the time and place herein set forth that any  
6 witnesses in the foregoing proceedings, prior to  
7 testifying, were duly sworn; that a record of the  
8 proceedings was made by me using machine shorthand which  
9 was thereafter transcribed under my direction; that the  
10 foregoing transcript is a true record of the testimony  
11 given.

12 Further, that if the foregoing pertains to the  
13 original transcript of a deposition in a Federal Case,  
14 before completion of the proceedings, review of the  
15 transcript ( ) was ( ) was not requested.

16 I further certify I am neither financially interested  
17 in the action nor a relative or employee of any attorney  
18 of party to this action.

19 IN WITNESS WHEREOF, I have this date subscribed my  
20 name.

21

22 Dated:

23

24

25

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Brittany Flores CSR 13460