

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 Wetzels, Division of Water Rights

8 In Pro Per:

9 Mr. Robert Mann
10 Ms. Lucy Mann
11 29876 King Ridge Road

12 Cazadero, CA

13
14 CO-HEARING OFFICERS:

15 Frances Spivy-Weber, Vice-Chair

16 Steven Moore

17
18 STAFF:

19 Carlos Mejia, legal counsel

20 Jane Farwell, environmental scientist

21 Jean McCue, engineer

22 Michael Buckman, senior environmental scientist,
23 hearings unit

24 --o0o--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF WITNESSES

Page

AARON MILLER
DIRECT
CROSS
REDIRECT

22
45
86

JEFF WETZEL
DIRECT
CROSS

28
41

ROBERT MANN
DIRECT
CROSS
REDIRECT

59
67
89

LUCY MANN
DIRECT

63

--o0o--

	INDEX OF EXHIBITS	
2	Description	Page No.
3		
4	Water Rights Exhibit WR-19 - photograph	31
5		
6	Water Rights Exhibit WR-6 - topographic map	31
7		
8	Water Rights Exhibit WR-22 - photograph	31
9		
10	Water Rights Exhibit WR-7 - document	50
11		
12	Water Rights Exhibit WR-16 - statement	57
13		
14	Water Rights Exhibit WR-5 - statement	72
15		
16	Water Rights Exhibit WR-23-A - document	79
17		
18		
19	Exhibit Mann-1 - document	69
20		
21		
22		
23		
24		
25		

1 SACRAMENTO, CALIFORNIA

2 Tuesday, August 26, 2014

3 8:53 a.m.

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

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

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

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

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

25 This is the time and the place for the hearing

1 regarding an Administrative Civil Liability complaint
2 and draft Cease and Desist Order against Robert C. Mann
3 1999 trust and Robert Mann both in his individual
4 capacity and his capacity as trustee of the Robert C.
5 Mann 1999 trust, hereafter referred to collectively as
6 "Mann." The Administrative Civil Liability compliant
7 and draft Cease and Desist Order were issued by the
8 assistant deputy director of the water rights on June
9 14th, 2012.

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

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

1 mounted exit signs. Our evacuation location is caddy
2 corner across the street in Cesar Chavez Plaza.

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

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

1 hear you. And each of you have a microphone, and you do
2 have to punch the button. Turn it green.

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

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

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

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

1 wanting to perhaps add some additional ideas -- or some
2 additional information that was not in the email that
3 was sent to us from Mr. Mann.

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

23 The parties' presentation are subject to the
24 following time limits; opening statements are limited to
25 20 minutes. For oral presentation of direct testimony,

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

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

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

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

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

1 be -- thank you.

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

4

5 (Group responds, "yes.")

6

7 CO-HEARING OFFICER SPIVY-WEBER: Thank you.
8 You may be seated now.

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

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

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

19 CO-HEARING OFFICER SPIVY-WEBER: Identify
20 yourself.

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

25 CO-HEARING OFFICER SPIVY-WEBER: That's new.

1 Hold on just one second. Let's see if there's some --
2 I've never heard that noise before. We have someone who
3 is checking it out, so go ahead and continue.

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

6 CO-HEARING OFFICER SPIVY-WEBER: Sure.
7 Okay. You can certainly move. You should be able to
8 hear. That's fine.

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

10 WOMAN IN AUDIENCE: It may be a minute to
11 find the AV guy.

12 CO-HEARING OFFICER SPIVY-WEBER: Okay.

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

15 MR. BUCKMAN: The wheel.

16 CO-HEARING OFFICER SPIVY-WEBER: Can you
17 hear me now?

18 MR. MANN: I can hear you fine.

19 CO-HEARING OFFICER SPIVY-WEBER: Okay. I'm
20 so sorry.

21 MS. WEST are we -- okay.

22 Again, I'll just restate, my name is Yvonne West.
23 I'm an attorney with the State Water Resources Control
24 Board, Office of Enforcement. I'm here today
25 representing the Division of Water Rights enforcement

1 staff in this matter. The matter before you today is an
2 Administrative Civil Liability complaint and proposed
3 Cease and Desist Order, which were issued to Mr. Robert
4 C. Mann and the Robert C Mann trust, again, collectively
5 referred to in my presentation as "Mann" and this --
6 they were issued on June 14th, 2012.

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

1 application while operating a reservoir in compliance
2 with the North Coast Instream Flow policy or, two,
3 ceasing the diversion of and storing the water subject
4 to the State Water Board permitting authority.

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

19 To start, it is important to understand the
20 regulatory context in which these enforcement actions
21 were issued in 2012. Legislation adopted in 2004
22 requires the State Water Board to develop a policy for
23 maintaining instream flows in northern California
24 coastal streaming for the purpose of Water Rights
25 administration. The policy for maintaining instream

1 flows in northern California coastal stream referred to
2 as "the Policy" was adopted by the State Water Board in
3 response to this legislative mandate initially on May
4 4th, 2010. The policy was readopted without significant
5 changes on October 22nd, 2013, and the readopted policy
6 became effective on February 4th, 2014. The Policy
7 establishes principles and guidelines for maintaining
8 instream flows for the protection of fishery resources.
9 It prescribes protective measures regarding season of
10 diversion, minimum bypass flow, and maximum cumulative
11 diversion. It prohibits the Division from issuing water
12 rights permits for existing on stream dams constructed
13 prior to July 19th, 2006, which are on class one
14 streams, and it requires that applications for water
15 rights permits for existing on stream dams constructed
16 prior to July 19th, 2006, which are located on class
17 one -- or class two streams cannot be accepted unless
18 specific conditions are met.

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

24 Turning back to the specific enforcement actions
25 at issue in these proceedings, Mann was issued an ACL

1 complaint alleging a violation of Water Code Section
2 1052. Water Code Section 1052 prohibits the
3 unauthorized diversion or use of water subject to the
4 State Water Board's permitting and licensing authority
5 and defines that action as a trespass. State Water
6 Board is authorized by the Water Code Section 1052,
7 Subdivision A to impose Administrative Civil Liability
8 of up to \$500 a day for each day that such a trespass
9 occurs.

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

1 jurisdictional surface stream, and the reservoir diverts
2 and stores water for use in a season where water would
3 be natural -- would not naturally be available to the
4 property and it does so without meeting any of the
5 requirements of the policy.

6 The ACL complaint that was issued to Mann also
7 alleges that Mann failed to file an initial statement of
8 water diversion and use. Each person who, after
9 December 31st, 1965, diverts water shall file with the
10 Water Board prior to July 1st of the succeeding year, a
11 statement of his or her diversion and use. Failure to
12 file a diversion -- for a diversion that occurs after
13 January 1st, 2009 is subject to the imposition of
14 Administrative Civil Liability. This liability can be
15 up to a \$1,000 plus -- for the initial violation, plus
16 \$500 a day for each additional day in which the failure
17 to file continues past 30 days after the State Water
18 Board has called the violation to the attention of that
19 person.

20 Today's testimony and evidence submitted prior to
21 the hearing demonstrates that the reservoir on Mann's
22 property diverts and stores water seasonally each year,
23 that Mann does not have a water right permit or license,
24 and Mann does not qualify for any of the exceptions to
25 the Water Code Section 5101 statement filing

1 requirements. Accordingly, an initial statement
2 reporting diversions made in 2009 was required to be
3 filed by Mann prior to July 1st, 2010. Alternatively,
4 Mann could have filed a statement reporting diversions
5 made during 2010 prior to July 1st, 2011. Mann did not
6 timely file a statement of diversion made in either 2009
7 or 2010. Mrs. Mann was informed of the need to file
8 statements during the inspection of the reservoir on
9 September 9th, 2011, and an inadequate initial statement
10 for the diversion and use of the water at the reservoir
11 in 2010 was filed in October 2011 in response to the
12 notice provided at the inspection. A corrected
13 statement was then subsequently filed in February of
14 2013. Accordingly, the State Water Board can impose
15 liability on Mann for failure to file a statement.

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

1 of the violation, the length of time over which the
2 violation occurs, and the corrective action, if any,
3 taken by the violator.

4 In addition, the policy provides further guidance
5 on how relevant circumstances shall be considered in
6 these types of cases and provides the State Water Board
7 will consider the following factors; avoided cost and
8 economic benefit, deterrent amount including culpability
9 and extent of harm, staff cost, ability to pay, and any
10 other appropriate factors when setting the liability
11 amount.

12 In addition, the policy establishes that a
13 minimum -- that at a minimum, the liability shall be
14 assessed at a level that covers the staff cost and
15 economic benefits associated with the acts that
16 constitute the violation.

17 The Division's enforcement staff have considered
18 the above circumstances when determining the liability
19 amount being proposed. The enforcement staff's
20 consideration of the above circumstances is discussed in
21 detail in Mr. Miller's written testimony, which is
22 included as Water Rights Exhibit 1, WR-1 and will be
23 discussed in detail in his presentation. The testimony
24 and evidence submitted establishes that the proposed
25 liability is justified by the facts of this case. Some

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

23 The third and key -- the third and final key
24 issue identified for this hearing is whether or not the
25 State Water Board should adopt, with or without

1 revision, the June 14th, 2012 draft Cease and Desist
2 Order against Mann. Water Code Section 1831,
3 Subdivision D authorizes the State Water Board to issue
4 a Cease and Desist Order when any person is violating or
5 threatening to violate prohibitions against unauthorized
6 diversion use as provided for in Water Code Section
7 1052. As discussed previously, testimony and evidence
8 provided by the Division's enforcement staff at this
9 hearing demonstrate -- will demonstrate that the
10 reservoir is an ongoing violation of Water Code Section
11 1052, that it will continue until the time when the
12 reservoir is authorized through the water right permit
13 license process, or the reservoir is modified to stop
14 diverting and storing water. A Cease and Desist Order
15 is necessary to provide a timeline for obtaining
16 compliance. Staff's testimony will highlight that the
17 Cease and Desist Order in this case is particularly
18 important because the capacity of this reservoir makes
19 it ineligible for the expedited registration process,
20 and its location within the policy area will require
21 stream class determination and other technical studies
22 in order to determine whether or not the Division of
23 Water Rights can authorize -- can issue a water right
24 permit legitimizing the reservoir or if a case specific
25 exemption from the Policy will need to be sought from

1 the State Water Board. Accordingly, the complexity and
2 potential cost of compliance in this specific case
3 support the need for the adoption of a Cease and Desist
4 Order and of a Cease and Desist Order that can be
5 enforced in the future if compliance isn't diligently
6 pursued.

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

1 propose Cease and Desist Order terms, and staff
2 recommendations.

3 And with that, I will turn the presentation over
4 to Mr. Miller and Mr. Wetzel to introduce themselves and
5 provide testimony.

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

1 Okay. So quick overview of the presentation
2 Mr. Wetzel and myself will give. I'm going to start off
3 with general overview of North Coast Unauthorized
4 Reservoir Investigation that we conducted. Mr. Wetzel
5 will go through the site specifics of the investigation
6 related to this case and then I will go -- I will go
7 over the Administrative Civil Liability proposed amount
8 and Cease and Desist Order.

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

22 Reservoirs may be constructed for a variety of
23 reasons. Most common are some sort of beneficial use to
24 the landowner. These uses include irrigation crops or
25 pasture, stock watering, domestic use at a residence,

1 fire protection, and recreational uses such as fishing,
2 swimming, or boating. Water districts may build
3 reservoirs for municipal or industrial use.

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

19 The policy identified 1,771 potential illegal
20 reservoirs in Napa, Marin, Sonoma, Mendocino, and
21 Humboldt counties. Enforcement staff undertook this
22 investigation in 2011, and to date, have closed
23 approximately twelve hundred of these cases. Over
24 twelve hundred of the alleged illegal reservoir cases
25 were closed because the reservoirs were covered either

1 by an existing water right or were not subject to the
2 State Water Board's permitting authority. The remaining
3 unauthorized reservoirs -- or potentially unauthorized
4 reservoirs -- Division staff proceeded with contacting
5 many of the landowners either by phone or by sending
6 notice letters. Approximately 350 letters were sent
7 throughout the policy area. The letters provided
8 information about the need for a water right, the State
9 Water Board's authority to impose a civil liability for
10 unauthorized reservoirs, the need to file a statement of
11 diversion and use, and give property owners an
12 opportunity to provide information concerning the basis
13 or right for the reservoir, or to submit a corrective
14 action plan.

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

1 applications being filed in 2012.

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

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

20 The following table is a summary of the
21 enforcement actions issued in 2012. Summarized here are
22 11 Administrative Civil Liability complaints and propose
23 Cease and Desist Orders to owners of property when
24 unauthorized reservoir has been identified. Nine of
25 these enforcement cases were issued to property owners

1 where no response to the Division's notice letter was
2 received. The other two enforcement cases including
3 Mann were issued due to the lack of inadequate response
4 to the findings letter issued by the Division.

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

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

1 retrospect so that all the testimony that you're
2 represents is true and correct.

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

5 CO-HEARING OFFICER SPIVY-WEBER: And it is
6 your own.

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

9 CO-HEARING OFFICER SPIVY-WEBER: Okay.
10 Thank you.

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

14 MR. WETZEL: Good morning Vice-Chair
15 Spivy-Weber and Board Member Moore. My name is Jeff
16 Wetzel with Division of Water Rights, and my written
17 testimony and testimony here today is true and correct.

18 The policy did identify Mr. Mann's reservoir as
19 potentially unauthorized. However, my initial site
20 inspection -- my initial investigation did review
21 Division records to verify that there was no known basis
22 of right for Mr. Mann's reservoir on file with the
23 Division of Water Rights. My initial investigation also
24 included reviewing USGS topographical maps and aerial
25 imagery much like the one that you see on the slide.

1 Mr. Mann's reservoir is located near the town of
2 Cazadero within the Gualala River watershed in Sonoma
3 County. At the top of the picture, you'll see a single
4 access dam or the impoundment that creates the
5 reservoir. On the bottom of the picture, there are two
6 unnamed tributaries and the drainage areas that produce
7 surface water runoff that the reservoir collects.

8 This is a USGS topographic map. I know it's hard
9 to see, but the blue lines above and below the reservoir
10 are indications of intermittent draining features
11 commonly associated with river, streams, and creeks.
12 This topo map indicates that the reservoir was
13 constructed on a stream channel. The date of this topo
14 map -- is 1978 -- indicating that the reservoir has been
15 in place for some time. Based on this topo map, aerial
16 imagery, and review of Division records, a site
17 inspection was needed to confirm the preliminary
18 findings and also confirm the use of water from the
19 reservoir.

20 In September of 2011, I conducted my site
21 inspection with Mrs. Lucy Mann accompanying me. The
22 majority of the site inspection was spent at the
23 reservoir measuring the dam and the spill way -- the
24 next three slides are pictures taken during my
25 inspection. This picture was taken --

1 CO-HEARING OFFICER SPIVY-WEBER: Hold on
2 just one second. Because all of these are in evidence,
3 can you identify in the -- in your submittals as to each
4 photograph so that we can also get that on the record.

5 MR. WETZEL: The exhibit numbers that were
6 in the submittal?

7 CO-HEARING OFFICER SPIVY-WEBER: Exactly.

8 MR. WETZEL: This photo is Water Rights
9 Exhibit WR-19. This topographic map will be WR-6 at the
10 end of my inspection report.

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

14 CO-HEARING OFFICER SPIVY-WEBER: Thank you.

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

17 CO-HEARING OFFICER SPIVY-WEBER: And this is
18 slide Number 11.

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

20 CO-HEARING OFFICER SPIVY-WEBER: And then
21 we're -- what exhibit it is?

22 MR. WETZEL: Okay. This slide number 12 is
23 also WR-22. This picture was taken from the dam looking
24 south across the reservoir. The reservoir has an
25 approximate surface area of 13.6 acres and an estimated

1 capacity of 183 acre feet.

2 This is slide number 13, and it's WR-22, exhibit.
3 This picture is looking downstream over the face of the
4 dam, which is estimated to be 65 feet high.
5 Unfortunately, during my site inspection, I wasn't able
6 to visit the downstream channel basically because of the
7 steep topography and general field safety.

8 This is slide number 14 also WR-22. This photo
9 was taken from the reservoir access road facing west
10 looking over the reservoir, and it does a good job of
11 capturing the adjacent topography and terrain by the
12 reservoir.

13 These three photos on slide number 15 are all
14 WR-22 exhibits. Mrs. Mann said that the water was --
15 water used in the reservoir was for stock watering, and
16 it was pretty evident from the cattle and water trucks
17 throughout the property during my investigation. It is
18 also my understanding that the water troughs shown in
19 this picture was used to carry water from the reservoir
20 to the water troughs.

21 Within about a month of the site inspection, my
22 results were documented in the site inspection report,
23 which found Mr. Mann's reservoir to be on stream and
24 storing water subject to the Board's permitting
25 authority. Basically, the reservoir collects surface

1 water without a basis of right from two unnamed
2 tributaries that have defined bed and banks.

3 Slide number 16 is Water Right Exhibit 15, a
4 photo taken from that exhibit. At the time of the
5 inspection report was completed, we also notified the
6 Department of Water Resources, Division of Safety of
7 Dams because, seemingly, the reservoir was within their
8 jurisdiction. A March 2012 letter from the Division of
9 Safety of Dams to Mr. Mann did find that a dam of this
10 height and storage is within the State's jurisdiction.
11 This photo was later taken by a Division of Safety of
12 Dams inspector on one of his annual inspections in
13 February of 2013. I included this picture because of
14 the time of year it was taken. During this time, the
15 reservoir is full, and there was water in the spillway.
16 During my inspection, the spillway was dry, and the
17 reservoir was slightly drawn down.

18 The Division mailed Mr. Mann a findings letter on
19 October 28th, 2011, which basically found the reservoir
20 to be unauthorized, and copy of the inspection report
21 was included for his records. Because I conveyed the
22 need to file a statement to Mrs. Mann during my
23 inspection, Mr. Mann did submit a statement just about
24 the same time we mailed the findings letter. The
25 statement was initially deficient but was later found to

1 be accepted when Mr. Mann submitted further evidence
2 further material. The findings letter provided
3 information on the North Coast Instream Flow Policy,
4 outlined the required corrective actions, and also
5 explained the potential penalties associated with an
6 unauthorized reservoir. The corrective actions outlined
7 in the letter were, one, file an application to
8 appropriate water, two, provide evidence that the
9 reservoir does not store water or can be operated
10 without storing water subject to the Board's permitting
11 authority, or, three, remove the reservoir or render it
12 incapable of storing water. The letter required
13 Mr. Mann within 45 days to submit an -- indicate a
14 course of action that he intended to take with an
15 implementation plan and a schedule. Unfortunately,
16 Mr. Mann's response did not identify one of the
17 corrective actions, and at this time, we began to -- we
18 began to decide to draft the ACL and CDO, which
19 Mr. Miller will talk more about.

20 MR. MILLER: Okay. So I'll go through the
21 issuance of the ACL complaint and the proposed
22 liability.

23 The reservoir at issue is clearly within the
24 permitting authority of the State Water Board due to the
25 fact that the reservoir sits on a stream channel with

1 well defined bed and banks and collects water to storage
2 on an annual basis. Mann is making unauthorized
3 diversions of water at said reservoir, which constitutes
4 a trespass against the State as defined by Water Code
5 Section 1052, Subdivision A. The draft CDO is based on
6 past violations of the prohibition in Water Code Section
7 1052 against the diversion or use of water subject to
8 State Water Board jurisdiction and the threat of future
9 unauthorized diversion and use of water. The ACL
10 complaint was issued based on the past unauthorized
11 diversion of water from an unnamed stream tributary to
12 Pepperwood Creek in the Gualala River watershed and the
13 failure to file a statement of water diversion use for
14 reporting -- for reporting the water diversion from the
15 reservoir. Enforcement staff referred to the North
16 Coast Policy Appendix H when considering whether or not
17 enforcement action was warranted and when developing the
18 enforcement documents.

19 The maximum ACL amount authorized by statute for
20 an unauthorized diversion is \$500 for each day in which
21 trespass occurs. Mann also failed to file a statement
22 by July 1 of 2010 reporting water use and is therefore
23 subject to \$1,000 penalty for failing to file a
24 statement on time. Enforcement staff have reason to
25 believe the trespass has been occurring since prior to

1 1978 and Mann appears to have owned the property since
2 at least 1992. Maximum liability could be based on the
3 last 19 years of estimated use by Mann, which yields a
4 maximum liability of \$500 a day times 6,935 days or
5 \$3,467,000. The staff recommended liability for this
6 case is \$66,000 based on the last three years of use and
7 consideration of many factors. In assessing the amount
8 of civil liability, enforcement staff, pursuant to Water
9 Code Section 1055.3, considered the relevant
10 circumstances, including but not limited to the
11 following; economic benefit gained from the violation
12 including avoided costs, extent of harm, nature and
13 persistence of the violation, length of time over which
14 the violation occurs, and any corrective action taken.

15 As previously stated, we only considered economic
16 benefits during the last three years of the violation.
17 We evaluated the reservoir -- we evaluated for reservoir
18 losses that would be replaced on an annual basis. This
19 included evaporation losses based on surface -- 13 acres
20 surface area of the reservoir, which amounted to
21 approximately 28 acre feet of water, losses due to stock
22 watering of 300 head of cattle, which was identified
23 after on inspection, amounts to about five acre feet of
24 water. This gives a total of 33 acre feet of water lost
25 per year. Using a UC cooperative extension study for

1 the North Coast area we identified that pumping costs
2 for a 120 foot deep well with a ten horsepower motor is
3 approximately \$198 per acre foot. The economic benefit
4 estimate discussed here does not include benefits such
5 as increased property values associated with having a
6 reservoir. The avoided cost of water is approximately
7 \$6,534 annually or \$19,685 over three years. This was
8 taken -- or this was estimated using the 33 acre feet
9 per year annual loss times 198 annual feet of water --
10 or \$198 per acre foot. The additional avoided cost of
11 water right fees in the last three years has amounted to
12 \$369. Mann's unauthorized reservoir has provided an
13 economic advantage conservatively estimated at \$20,054
14 in the last three years.

15 The other factors considered were extent of harm,
16 nature and persistence of violation, length of time in
17 which the violation occurs, and any corrective action
18 taken. The Gualala River watershed contains threatened
19 central California coastal steelhead trout fishery, and
20 unauthorized diversions of water have been shown to
21 contribute to the cumulative impact of the reducing
22 water supplies and habitat for the fishery. The
23 reservoir has existed for many years, and water has been
24 diverted to storage in each of those years without a
25 basis of right. Mann is also the holder of Water Rights

1 License 444, which authorizes the diversion and use of
2 water from the Pit River. Accordingly, Mann is aware of
3 the water rights system and the need for diversion --
4 for the diversion of water in the State of California to
5 be authorized by a water right.

6 The Division provided Mann with a findings
7 letter, which identified the reservoir as subject to the
8 State Water Board's permitting authority and required
9 Mann to proceed with taking corrective action. Mann
10 responded to the findings letter. However, the response
11 was not adequate and did not provide the Division with
12 any of the requested information or indicate any intent
13 to pursue corrective action. Mann was initially a
14 cooperative -- cooperative by allowing staff to inspect
15 the property and did take initial steps by filing
16 statement and responding to the findings letter though
17 both were deemed inadequate. Mann had over seven months
18 prior to issuance of the enforcement actions to provide
19 an adequate response and diligently follow up on the
20 matter. However, none was provided. To quantify the
21 other relevant circumstances in this matter, a
22 disincentive factor was applied to the estimated avoided
23 costs for this case. Considering all of the above
24 factors that I just mentioned and the Division's goal of
25 deterrence, a factor of three times the estimated

1 economic benefit was deemed appropriate. After using a
2 disincentive factor, the adjusted liability was
3 calculated at approximately \$60,000 before considering
4 additional violations and associated staff costs.

5 The other violation at issue in the ACL is
6 failure to a file statement. As previously outlined by
7 Ms. West, the California Water Code Section 5107
8 provides the State Water Board may administratively
9 impose civil liability pursuant to Section 1055 in an
10 amount not to exceed \$1,000 plus \$500 per day for each
11 additional day on which the violation occurs if the
12 person fails to file a statement within thirty days
13 after the State Water Board has called the violation to
14 the attention of that person. Mann failed to file a
15 statement for the diversion and use of water for the
16 unnamed stream for either 2009 or 2010 with a deadline
17 of July 1 of either year. Mann was provided notice
18 during the inspection and did file the statement on
19 October 19, 2011. Therefore, the maximum liability
20 considered for this violation would be \$1,000.

21 Additional enforcement costs incurred were staff
22 costs from conducting the initial investigation,
23 reviewing the existing project, and developing the
24 enforcement documents. This was estimated at \$5,136.
25 Additional staff costs have been incurred subsequently

1 in pursuing compliance and enforcement, but those costs
2 were not considered as a basis for the liability amount
3 proposed in the ACL.

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

6 The draft Cease and Desist Order was initially --
7 is initially needed because the reservoir is subject to
8 permitting authority of the State Water Board and
9 collects water storage on an annual basis. The draft
10 CDO issued will bring Mann into compliance and eliminate
11 the continued unauthorized diversion. Draft CDO
12 outlines various steps needed to be taken to obtain an
13 appropriative right for the diversion of water and to
14 comply with the North Coast Instream Flow Policy or have
15 the reservoir removed and cease the unauthorized
16 diversion. Staff recommendations for this case are for
17 the Board to issue the ACL order as proposed with the
18 additional staff costs incurred to pursue compliance and
19 issue the proposed Cease and Desist Order requiring Mann
20 to take immediate action to bring this matter into
21 compliance and to ensure diligent pursuit of the
22 application or other corrective measures by Mann or
23 future trustees.

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

1 CO-HEARING OFFICER SPIVY-WEBER: This is the
2 opportunity for you to ask questions and then for staff
3 and for Steven and I to ask questions of the prosecution
4 team.

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

6 MS. MANN: Is there water?

7 CO-HEARING OFFICER SPIVY-WEBER: Is there
8 water. I think there is.

9 Michael, is there water. Could --

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

11 MS. WEST: By the restrooms, there's a
12 fountain.

13 MS. MANN: Sorry.

14 CO-HEARING OFFICER SPIVY-WEBER: Let's do
15 it. Let's take a five-minute break.

16

17 (Break taken.)

18

19 CO-HEARING OFFICER SPIVY-WEBER: We will
20 reconvene the hearing. And the next item on the agenda
21 is for you to ask questions if you have questions about
22 the statements that have been presented or evidence
23 that's been presented if you have any.

24 MS. MANN: Can we ask for clarification of
25 what they have said?

1 CO-HEARING OFFICER SPIVY-WEBER:

2 Clarification or --

3 MS. MANN: Can you hear me? I can't hear
4 you very well.

5 CO-HEARING OFFICER SPIVY-WEBER: Put your
6 green light on.

7 MS. MANN: Oh, there you go.

8 CO-HEARING OFFICER SPIVY-WEBER: There. I
9 can hear you much better and then speak as close as
10 possible -- yes. I know it's not very convenient.

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

16 CO-HEARING OFFICER SPIVY-WEBER: Oh, this is
17 not for you to --

18 MR. MANN: Oh.

19 CO-HEARING OFFICER SPIVY-WEBER: This is
20 just to ask questions. Do you have questions based
21 on --

22 MR. MANN: I'm sorry.

23 CO-HEARING OFFICER SPIVY-WEBER: -- what you
24 have heard from the prosecution team?

25 MR. MANN: Well other than --

1 CO-HEARING OFFICER SPIVY-WEBER: It's
2 essentially your cross-examination but it's --

3 MR. MANN: I don't really have any
4 questions. There's some of the content that I don't
5 feel is accurate, but I don't really have any direct
6 questions.

7 CO-HEARING OFFICER SPIVY-WEBER: Okay.
8 That's fine. Now, do --

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

11 CO-HEARING OFFICER SPIVY-WEBER: Would you
12 identify --

13 MS. MANN: Yes. My name is Lucy Mann.
14 29876 King Ridge Road Cazadero, California.

15 When Mr. Wetzel was speaking, he talked about
16 when they started the program about identifying the
17 different reservoirs, and he said that they had sent out
18 350 letters to some of the property owners on an
19 outreach education and compliance measure. We didn't
20 get that. And my thought is we probably didn't get it
21 because there was an assumption that we knew about water
22 rights because of property owned in Modoc County. Well,
23 Modoc property is irrigated. We don't irrigate. I had
24 no idea. I think we would not be here today if there
25 had been more education and outreach. Maybe we would

1 have wanted --

2 CO-HEARING OFFICER SPIVY-WEBER: So let me
3 just -- so your question to the prosecution team is when
4 --

5 MS. MANN: Is why didn't we receive the
6 letter? There was an assumption maybe that maybe we
7 knew something that we didn't. I don't know why you'd
8 sent out 350 letter if you didn't send out all 11
9 hundred property owners letters.

10 MS. WEST: I'd like to respond to Ms. Mann's
11 questions.

12 MS. MANN: Yeah.

13 MS. WEST: Mr. Miller did testify to the
14 fact that the 350 letter were sent to property owners
15 which we did not have contact information for and that
16 the investigations where we did have, let's say, a phone
17 number, which was the case for your property because you
18 were in the water rights system, that instead of -- in
19 lieu of sending a letter, we made direct telephone
20 contact and then scheduled an onsite inspection. And
21 that, subsequently, Mr. Miller testified to the fact
22 that -- or Mr. Wetzel testified to the fact that at that
23 inspection, information that was in the letter was
24 conveyed verbally during inspection. And then
25 additionally in follow-up with the findings letter,

1 contains significantly the same information concerning
2 both the water rights requirements, the policy, and
3 statement of filing requirement, which were, again,
4 discussed at the inspection and provided in the findings
5 letter.

6 So the different treatment that Mr. Miller
7 testified to, and he did not mention specifically in his
8 testimony both here today that, that the letter -- the
9 initial notice letter was not sent to the Mann's
10 property or to Mann because we did have contact
11 information for you and we contacted you directly to
12 convey that information.

13 CO-HEARING OFFICER SPIVY-WEBER: Okay.

14 MS. MANN: Also, there was a mention of 300
15 cattle. At the point he was there, we maybe had a
16 hundred and thirty total cattle. I actually brought my
17 cattle records if you want to look at them. On the
18 property that serves around where the dam is, there's a
19 herd of maybe 12 that go down and drink out of the
20 reservoir and then a herd of maybe 32, 34 at the time he
21 was there that sometimes go down there. The question is
22 where the 300 head of cattle come from.

23 MR. WETZEL: The number of 300 cattle comes
24 from my field notes during my site inspection. I
25 believe it was information provided by you in regards to

1 how many -- roughly, how many cattle you guys have
2 roughly on this property.

3 MS. MANN: Okay. Well, that's an error.
4 That's it.

5 CO-HEARING OFFICER SPIVY-WEBER: Okay. Do
6 staff have questions for cross-examination?

7 MR. BUCKMAN: I have a couple questions for
8 Mr. Miller.

9 In your testimony, at the end of page five
10 indicates that you used three years to determine the
11 Administrative Civil Liability, and I was curious as to
12 why you guys used -- chose three years.

13 MR. MILLER: I think that was at a
14 recommendation from counsel, so I'll let Yvonne answer
15 that question.

16 MS. WEST: Yes, in response to your
17 question, the Division, in the past, has, has chosen to
18 limit its consideration for the purposes of
19 Administrative Civil Liability to the past three years
20 of violation. We acknowledge that administrative
21 proceedings are not subject to a statute of limitations.
22 We do not have a specific statute of limitations on our
23 violations. Nonetheless, we chose to limit it to three
24 years because the civil code contains a general statute
25 of limitations for civil actions and because the amount

1 of liability, generally, that is incurred in those three
2 years is significantly more than what we would seek in
3 these types of actions, in order to avoid any sort of
4 legal questions, we tend to limit it to the past three
5 years -- consideration to the past three years of
6 liability incurred even though, again, we do not believe
7 that any sort of statute of limitations applies to our
8 actions.

9 MR. BUCKMAN: One more question. I have one
10 more question. Also for Mr. Miller, testimony at the
11 end of page six, under the heading, the extent of harm
12 et cetera, you mentioned that the potential harm to the
13 ESA species was steelhead. I was curious if that was
14 the extent of the potential harm that you evaluated.

15 MR. MILLER: Yes. Essentially, it was more
16 on a general basis. We know that the fishery exists and
17 the watershed. It's well established that there's
18 threatened species. I believe the written testimony
19 says it wasn't directly quantified for this case, but,
20 you know, it happens to exist. Cumulatively
21 unauthorized diversion can cause compacts. It's more of
22 a general statement.

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

1 MR. MILLER: We didn't look at any other
2 potential harm for this case. It was just -- this was
3 the most relevant potential impact. There could be
4 impacts on other species I would assume but it depends
5 on how many of them would be -- we identified this was
6 one because it is a threatened species.

7 MR. BUCKMAN: What about outside, just
8 biology in general, like other water right holders,
9 other harms that could be --

10 MR. MILLER: I believe it's identified in my
11 written testimony. There can be other harms to
12 legitimate water right users when water is illegally
13 diverted.

14 MS. WEST: And just to speak to that, those
15 types of analysis is what we would expect would be done
16 in a permitting process. There weren't -- this was a
17 large scale enforcement effort against a number of
18 reservoirs. We did not go to that level of, let's say,
19 obtaining a natural resources damage assessment or doing
20 a water availability study, but we would stress that one
21 of the benefits of bringing these types of reservoirs,
22 and specifically Mann's reservoir, into compliance with
23 the water right permitting system is that in the
24 application process, those types of analysis would be
25 done.

1 CO-HEARING OFFICER SPIVY-WEBER: And,
2 Michael, for the record, the past two questions, could
3 you identify yourself as to who you are and --

4 MR. BUCKMAN: Michael Buckman, senior
5 environmental scientist in the hearings unit.

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

8 On the bottom of page five when you -- I wanted
9 to know how you calculated the losses -- evaporative
10 losses because there was a 13.4 acre reservoir and three
11 feet of water loss and then you came up with 28 acre
12 feet. It doesn't seem like just a multiplication there.
13 And there's another -- how do you calculate that?

14 MR. MILLER: Are you asking where the three
15 feet comes from?

16 MS. MCCUE: No. Is it three feet times
17 13.4, or is there a different calculation?

18 MR. MILLER: No. It should be three times
19 13.4.

20 MS. MCCUE: Okay. So that's not 28 feet
21 then.

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

25 MS. MCCUE: Oh, okay.

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

5 MS. MCCUE: Okay. Okay. Thank you.

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

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

13 MR. WETZEL: Yes.

14 MR. MEJIA: And during your oral testimony,
15 you referred to a field report that you created and
16 produced shortly after your investigation. Were you
17 referring to WR-6 in that testimony?

18 MR. WETZEL: That's correct.

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

23 MR. WETZEL: Well, I believe I, ultimately,
24 produced it. It stems from a general template that the
25 Division, kind of, outlined that we can use

1 post-inspection to generate this letter. And so using
2 that template, you, you create the letter to be site
3 specific per your reservoir, per the inspection.

4 MR. MEJIA: And to the best of your
5 recollection, does it reflect your conclusion at the
6 time you made your investigation?

7 MR. WETZEL: Yes.

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

11 MR. WETZEL: I am familiar with this letter,
12 yeah.

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

15 MR. WETZEL: Go ahead.

16 MR. MEJIA: Does the substance of that
17 document seem at all consistent with the results of your
18 investigation of the property in question?

19 MR. WETZEL: Well, my inspection was looking
20 at the storage and diversion of surface water, and this
21 Division of Safety of Dams Inspection, in his letter
22 here, is focused on the construction and the impoundment
23 and the safety factors associated with it. So to your
24 question, I think the two documents are a slight
25 disconnect.

1 MR. MEJIA: Do you see any factual
2 discrepancies in that letter's description of the
3 property at issue that are in any way inconsistent with
4 the factual findings you made during your investigation?

5 MR. WETZEL: Without comparing specific --
6 all the specifics of the letter, no I don't. I -- this
7 inspector identifies over 100 acre feet of water. I
8 believe he also in his -- anyway, my estimate was 183
9 acre feet of water, so there was a slight disconnect
10 there.

11 MR. MEJIA: But you'd agree they're not
12 inconsistent.

13 MR. WETZEL: They're not inconsistent. I
14 think both inspectors identified that this is just an
15 estimate of the storage capacity.

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

20 MR. WETZEL: Go ahead.

21 MR. MEJIA: Again, are the factual findings
22 within that document consistent with what you observed
23 and included following your field investigation of the
24 property in question?

25 MR. WETZEL: Yes.

1 MR. MEJIA: Thank you, and then finally for
2 Mr. Wetzel, Mr. Buckman, could I ask you to put up
3 prosecution team's Slide 16 from their PowerPoint
4 presentation.

5 Mr. Wetzel, I believe during your testimony, you
6 said this was a photograph that you received from the
7 Division of Safety of Dams, Department of Water
8 Resources.

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

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

13 MR. WETZEL: I do. I recognize the dam,
14 reservoir, and spillway.

15 MR. MEJIA: As -- what do you recognize them
16 as?

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

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

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

22 Good morning, Mr. Miller. I'd like to direct
23 your attention to your testimony, that's Exhibit WR-1,
24 and I'd specifically like to call your attention to
25 paragraph one on pages six and seven.

1 MR. MILLER: Okay.

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

9 MR. MILLER: My prior field experience as a,
10 you know, enforcement investigator and my prior
11 experience in the permitting unit -- or in the permits
12 section within the Division. I worked on the
13 development of the North Coast instream flow Policy. I
14 have processed applications. I have been in the field.
15 It's -- you know, primarily from my experience gained
16 working for the Division of Water Rights. To me, in my
17 opinion, based on the proximity to Pepperwood Creek,
18 which would appear to be a, you know, a creek that has
19 water in it most of the year, which would support a
20 fishery, it's conceivable that during high flow, during
21 the winter months, that the unnamed stream with the dam
22 it's built on could contain water sufficient for some
23 sort of fishery habitat. It may not be for very long,
24 but it could. It's a possibility. And so I was drawing
25 from my own experience when making that statement.

1 MR. MEJIA: And I'd like to ask a few
2 questions concerning prior times in which you calculated
3 the economic benefit of a potential violation. First,
4 just for the record, you have been with the Board since
5 2001; is that correct?

6 MR. MILLER: Yes.

7 MR. MEJIA: During that time, have you
8 previously calculated the economic benefit of an alleged
9 or potential violation of California Water Rights laws?

10 MR. MILLER: Not until I became a senior
11 water resources control engineer in the course --
12 taking -- you know, basically running an enforcement
13 unit within the enforcement section was when I was
14 experienced to that.

15 MR. MEJIA: But since that time, have you
16 done so?

17 MR. MILLER: Yes.

18 MR. MEJIA: About how many times would you
19 say?

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

23 MR. MEJIA: I'll like to direct your
24 attention to Exhibits 21-A, 21-B, and 21-C. Note for
25 the purposes of my questions, it's necessary that you

1 review them, but I do want to note that's what I'm
2 referring to.

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

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

9 MR. MEJIA: And to the best of your
10 knowledge, are those the types of studies or reports
11 that other folks with similar expertise might rely upon
12 in calculating the economic benefit of an alleged water
13 rights violation?

14 MR. MILLER: I would believe so. I mean, I
15 specifically went to them not necessarily for the
16 purpose that they were produced for but because of the
17 information contained within them that led me to be able
18 to determine approximate costs for pumping groundwater.

19 MR. MEJIA: Thank you, Madame Hearing
20 Officer.

21 CO-HEARING OFFICER SPIVY-WEBER: Steve, do
22 you have a question?

23 CO-HEARING OFFICER MOORE: Yes, I have one
24 question for Mr. Miller.

25 CO-HEARING OFFICER SPIVY-WEBER: Identify

1 yourself.

2 CO-HEARING OFFICER MOORE: I'm Steven Moore,
3 co-hearing officer on this case.

4 For Mr. Miller, Mr. Buckman, can we bring up the
5 slide -- I think there was a -- you mentioned that in
6 the course of correspondence with Mr. Mann, WR-5
7 indicates an inadequate response. That's Exhibit WR-5
8 from Mr. Mann. And then we -- in WR-8 the Division's
9 letter notify -- or that was -- I'm sorry. WR-7 is the
10 Division's finding letter in response, and then you
11 received a corrected statement and ultimately WR-16,
12 Exhibit WR-16 was the corrected statement that you
13 received from Mr. Mann. And in your presentation, you
14 indicated that that response was adequate, and could you
15 explain to me the basis for the determination as to why
16 the -- Exhibit WR-16, the letter dated February 24th,
17 2013, that you believe that an adequate response had
18 been received.

19 MR. MILLER: I believe this exhibit is,
20 which was submitted to the Division's statement
21 processing unit, and it was a request to what they had
22 asked after receipt of the initial statement and
23 additional information that is needed in order for them
24 to then process, give a statement number, and put it
25 into our record as a statement of water diversion and

1 use.

2 CO-HEARING OFFICER MOORE: Right. So it had
3 to do with the location.

4 MR. MILLER: Yes.

5 CO-HEARING OFFICER MOORE: And was that the
6 last remaining piece of information for a complete
7 statement, or were there other elements, quantities, or
8 use or point of use that were -- continued to be
9 deficient because that's part of your overall
10 recommendation is that response has been inadequate.

11 MR. MILLER: The overall recommendation was
12 more to the inadequate response to filing an
13 appropriative water rights application and proceeding
14 with, you know, obtaining a permit for the reservoir
15 and/or taking corrective action to stop the unauthorized
16 diversion of water. The statement is, you know, part of
17 the law that was passed in 2009. There's an additional
18 requirement that they did eventually come into
19 compliance with. It's also why the maximum liability
20 imposed or recommended is only \$1,00 because of the
21 failure to file it at first but once told, they followed
22 through. They eventually submitted additional
23 information.

24 CO-HEARING OFFICER MOORE: Thank you for
25 that clarification.

1 MS. WEST: I just wanted to speak to that a
2 little bit. I do believe -- and this is something we
3 can ask them -- Mann -- about. I do believe there were
4 subsequent conversations with the statement staff
5 concerning quantities after this February 24th, 2013
6 letter, but I believe that this letter was sufficient
7 for them to accept as a statement and that the
8 additional conversations occurred after that.

9 CO-HEARING OFFICER MOORE: All right. Okay.

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

11 CO-HEARING OFFICER MOORE: Okay. That's
12 helpful. Thank you.

13 CO-HEARING OFFICER SPIVY-WEBER: So if that
14 is all of the cross-examination, just in the abundance
15 of caution, I want to make sure that all the exhibits
16 that you have submitted are accepted in the record.

17 MS. WEST: Yes, I was going to -- if that is
18 it for the questions at this time, I was going to move
19 to have the Division's enforcement staff exhibits, Water
20 Rights -- WR-1 through WR-27, moved into evidence.

21 CO-HEARING OFFICER SPIVY-WEBER: Mr. Mann,
22 do you have any objection to that?

23 MS. MANN: No.

24 CO-HEARING OFFICER SPIVY-WEBER: Indicated
25 no. So those are accepted.

1 MS. WEST: Thank you.

2 CO-HEARING OFFICER SPIVY-WEBER: So now we
3 will turn to the, the statement, opening statement and
4 your testimony from Mr. Mann.

5 MR. MANN: My name is Robert Mann. I live
6 at --

7 CO-HEARING OFFICER SPIVY-WEBER: Is your
8 button pushed?

9 MR. MANN: I'm sorry. I didn't hear
10 anything there.

11 My name is Robert Mann. I reside at 29876 King
12 Ridge Road Cazadero, California. I am the property
13 owner, subject property owner here, trustee of the
14 trust, and all that.

15 CO-HEARING OFFICER SPIVY-WEBER: And you
16 also -- this is for the -- you want to identify your --
17 any written material that you have sent in, and I
18 believe we have a few, that they are yours and that you
19 affirm that they are true and correct.

20 MR. MANN: Yes, I submitted a written letter
21 to the -- to the Water Resources Board and I, I deem
22 them true and correct.

23 I feel my qualifications for, for -- my
24 justification for the issues we have here is, is that I
25 have 42 years of adult direct understanding and

1 experience in this drainage. You'll notice there isn't
2 a counselor here to help me. I feel that I can speak
3 the truth from my heart and -- if it doesn't get my
4 throat.

5 I appreciate the time the Board is taking and
6 staff time here for this. It's -- and my apology for,
7 for some of this time taken. I think there's a gross
8 misunderstanding and interpretation of the problems here
9 on, on what, what is before us.

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

22 At no time -- you know, you -- the media, and I'm
23 not a big one for the news, but the media definitely,
24 you know, talks about water. And we're in a time now
25 where, of course, it's a very critical issue, and I'm

1 well aware of that. But in this unique situation, I
2 think -- I never felt that there was a water right
3 issue. And I -- really not until recently when I had a
4 long discussion with staff member John O' Hagan, did I
5 really fully understand the -- what the State's
6 interpretation was of all this.

7 The reservoir was built after a very large local
8 fire that destroyed a lot of ground in the area, and
9 fortunately, at that time, my ancestors had the finances
10 and the ability to, to do that under, under the, the --
11 you might say, the urging of, of, of the, the local
12 soils conservation people. And that was done quite a
13 bit around in the state at that time. It was done
14 mostly for erosion control. Although, I know there are
15 a lot of reservoirs that were -- that were built for
16 stock watering needs. That was not critical at all in
17 our situation, certainly, a side benefit, but the
18 reservoir was built for erosion control and habitat.
19 And my grandfather and subsequently family members who
20 have -- including myself -- feel strongly the same way.
21 And I think that is in concert with the environmental
22 and conservation desires of the state. And when I
23 received the phone call, it was very unfortunate I could
24 not be in attendance to speak with the young people that
25 came.

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

22 One of the prosecution's points was that there
23 was some sort of harm done here, and I see it quite
24 opposite. The uniqueness of this, this area is it has
25 such very high rainfall, and that's why the erosion

1 potential is so high. And when the water stops flowing
2 over the dam, through the spillway, it essentially stops
3 in that drainage. Now, this drainage, yes, it, it, it's
4 relatively flat in where the dam is, or obviously it
5 wouldn't be a good reservoir site. But then it gets to
6 very critical, steep ground and rough and rocky ground
7 that no trout have ever navigated, and it goes for quite
8 some distance before it goes off the property.

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

16 I'm willing to take practical measures to settle
17 this issue. I talked with Mr. O'Hagan, and he basically
18 said that, you know, we're so deep into this now that it
19 wouldn't make much difference, and I thought, well, at
20 least I'll have a listening ear of the representation of
21 the -- of the public to hear my side.

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

23 CO-HEARING OFFICER SPIVY-WEBER: And
24 identify yourself.

25 MS. MANN: Yeah, this is Lucy Mann, 29876

1 King Ridge Road Cazadero, California. Couple additional
2 items. We felt that the size of the dam was
3 misrepresented and at one point I thought -- and I'll
4 have to look. I thought I heard this "65 foot"
5 somewhere. There's no spillway 65 feet deep if that was
6 what was mentioned.

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

14 MR. MANN: Yeah, the 130 cows is, is our
15 total operation and if you reviewed all the -- all the
16 property, it's considerably more than the drainage of
17 that dam. I'm not sure -- there was a misunderstanding
18 obviously about the number of head of cattle. There's a
19 lot of misunderstanding here. There's, there's
20 justification for, for, you know, how much I'm saving
21 from pumping water, and they're using a ten horsepower
22 pump. Well, you know, I'm pretty green on, on growing
23 hay with irrigated pasture, but I can tell you that,
24 that from my experience in Modoc County, a ten
25 horsepower pump is about 20 times what you would need to

1 pump water into a trough for a cow.

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

20 A comment on the size of the dam, I really should
21 comment on that. I was there and -- when Mr. Low came
22 in, he had a -- he had a tool that he used, and he said
23 that it was the latest and greatest, and it was probably
24 the one used in the field. And he, he -- the way they
25 measure the dam -- and I don't feel it's fair, but it's

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

24 The options for me as a landowner, the first two,
25 I mean, just seem -- to remove the dam, to remove the

1 habitat to -- I mean, that just didn't make any sense.
2 I mean, if the reservoir belonged to the State and
3 somebody came along and suggested they were going to
4 remove it and take away all the habitat for everything
5 that -- organism that's been there for sixty years -- I
6 just, I was confused by it all.

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

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

14

15 (Break taken.)

16

17 CO-HEARING OFFICER SPIVY-WEBER: The two
18 clocks in the room are a little bit different, but we'll
19 go ahead and reconvene the proceeding.

20 And now, does the prosecution team have
21 cross-examination?

22 MS. WEST: Again, this is Yvonne West with
23 the prosecution team. Yes, I'd like to take a moment to
24 ask a few questions and then I'd like to do a little --
25 a short redirect if that's the appropriate sequence of

1 events.

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

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

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

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

16 MR. MANN: At -- after my grandfather past
17 away -- let me regress a little bit. For those who may
18 not understand the hydrology here, there's considerable
19 amount of water that goes over this dam, and I felt that
20 it was important to have an emergency spillway and a
21 little more freeboard on the dam. And, and so yes, I
22 did include -- I did change it so there was an emergency
23 spillway and increase the -- as you may have noticed in
24 the photo, you see, kind of, a little bit unusual shape
25 at the top of the dam. And that was just for an

1 insurance policy to protect the -- I mean, it never had
2 had a problem but, you know, I experience some pretty --
3 some pretty high head on the dam in my lifetime and I
4 just felt like that was an important thing.

5 MS. WEST: So just to understand a little
6 better, have you -- when you have -- you raised the
7 height of the dam?

8 MR. MANN: No.

9 MS. WEST: Okay. But you just modified the
10 shape of the dam?

11 MR. MANN: I raised the -- when I use the
12 term "freeboard," that's the amount of dirt that's above
13 the water level.

14 MS. WEST: Uh-huh.

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

25 MS. WEST: Okay. I believe also in Exhibit

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

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

21 MS. WEST: And do you remember what those
22 estimates were?

23 MR. MANN: You know, I meant to bring them
24 with me. They -- I really meant to bring those with me
25 in case somebody did ask that question. They're in the

1 thousands of gallons of -- you know, I think one
2 month -- or no. I'm sorry. I don't recall but it's --

3 MS. WEST: That's fine.

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

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

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

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

1 capacity for your reservoir?

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

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

12 MR. MANN: Yes.

13 MS. WEST: And how large is that?

14 MR. MANN: You mean the, the total acreage
15 around the reservoir?

16 MS. WEST: Right, that you own.

17 MR. MANN: Or the watershed.

18 MS. WEST: Just -- well, if you could
19 provide both, that would be great, but specifically,
20 your property that you own that surrounds -- the total
21 acreage of the property that you own that surrounds the
22 watershed -- surrounds the reservoir that's basically
23 connected to the reservoir and surrounds it -- not
24 that's otherwise separated from --

25 MR. MANN: Well, there are probably two

1 parcels that -- there are two parcels that the reservoir
2 sits on. The parcel line goes right down through the
3 middle of the reservoir, and together, I think there are
4 like 600 acres.

5 MS. WEST: And you own additional acreage?

6 MR. MANN: Yes.

7 MS. WEST: Next to those?

8 MR. MANN: Yes.

9 MS. WEST: And so the whole acreage
10 surrounding the reservoir that you own, do you know the
11 acreage of that?

12 MR. MANN: Yes.

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

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

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

17 MR. MANN: Well, that's not on that
18 property.

19 MS. WEST: Okay.

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

23 MS. WEST: No. I'm just trying to
24 understand.

25 Okay. Okay. I believe that is all the questions

1 that I had for Mann for cross-exam. I don't know if you
2 would like me to move to redirect now or if you had
3 questions that you'd like to take.

4 CO-HEARING OFFICER SPIVY-WEBER: Why don't
5 we take questions from both staff and from us prior to
6 your redirect.

7 Any staff questions? And Michael.

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

18 MR. MANN: That's from my lifetime of
19 experience in the watershed. The, the watershed dries
20 up in the summertime. Approximately -- this is an
21 estimate -- of a half a mile downstream is not navigable
22 for fish and, and the water never reaches that -- the
23 next tributary which comes in, which is just -- I
24 believe it's Blue Line Stream -- coming in from another
25 direction. I'm not sure if I answered all your question

1 there.

2 MR. BUCKMAN: Yes. Thank you. Are you guys
3 aware of any downstream water rights holders from you
4 that would --

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

21 MR. BUCKMAN: Are you aware or have you had
22 any -- have you observed the property in the absence of
23 the dam and what the natural watercourse looked like?
24 Do you have any knowledge of that?

25 MR. MANN: I'm pretty young at that point,

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

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

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

24 MR. BUCKMAN: Thank you.

25 CO-HEARING OFFICER SPIVY-WEBER: Any other

1 staff questions?

2 Yes.

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

8 First, I wonder if you can tell the hearing
9 officers about the nature of the Robert C. Mann 1999
10 trust.

11 MR. MANN: About the what?

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

15 MR. MANN: The nature of it?

16 MR. MEJIA: Yes. What is it?

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

19 MR. MEJIA: Are you the sole -- oh, excuse
20 me.

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

22 MR. MEJIA: You're the sole trustee of the
23 trust?

24 MR. MANN: Yes.

25 MR. MEJIA: And are you, at present, the

1 sole beneficiary of the trust?

2 MR. MANN: No.

3 MR. MEJIA: Who else is a beneficiary of the
4 trust?

5 MR. MANN: My children and my wife.

6 MR. MEJIA: Okay. The prosecution team has
7 submitted into evidence a document that they have
8 labeled as WR-23-A.

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

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

17 MR. MANN: Is that what?

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

19 MR. MANN: Yes.

20 MR. MEJIA: Okay. And the prosecution team
21 has further identified that the total assessed value of
22 those properties by the Modoc County assessor is
23 \$1,067,041. Does that seem accurate to you?

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

25 MR. MEJIA: Okay. And some similar

1 questions about what's farther down on the document.
2 The prosecution team further identifies 23 parcels in
3 Sonoma County that it states are owned by the Robert C.
4 Mann trust. Does that seem accurate to you?

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

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

9 MS. MANN: Right.

10 MR. MEJIA: How many of the parcels have you
11 sold?

12 MR. MANN: Two, I believe.

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

15 MR. MANN: Yes

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

23 MR. MANN: I guess that's the assessor's
24 opinion. I don't know how this is relevant to this case
25 I might ask.

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

6 MR. MANN: The determination of what? I'm
7 sorry.

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

10 So you said that that strikes you as an accurate
11 reflection of how the Sonoma County assessor has
12 assessed those properties?

13 MR. MANN: Close enough.

14 MR. MEJIA: Okay. And then finally, the
15 prosecution team has identified two properties that it
16 claims that you own individually in Sonoma County; is
17 that accurate?

18 MR. MANN: That's not accurate.

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

21 MR. MANN: No. That's a -- one of them that
22 I saw there was a -- was a personal property thing on a
23 former -- it was equipment is what it was that the
24 County had assessed. And that's no longer -- that's
25 been dissolved.

1 MR. MEJIA: Okay. So you don't own those
2 two properties?

3 MR. MANN: Right.

4 MR. MEJIA: Okay.

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

10 MR. MEJIA: Uh-huh.

11 MR. MANN: Familiar with that?

12 MR. MEJIA: Uh-huh.

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

14 MR. MEJIA: Okay. All right. Thank you,
15 Mr. Mann.

16 I don't have anything further, Madame Hearing
17 Officer.

18 CO-HEARING OFFICER SPIVY-WEBER: Do you have
19 a question?

20 CO-HEARING OFFICER MOORE: Thank you,
21 Mr. Mann, for attending today and your testimony. You
22 mentioned there was a discussion about Lee Erickson, the
23 engineer. Could you refresh my memory. He was helping
24 with some -- to answer some questions that the State
25 Water Board staff posed, but was he answering any

1 questions posed by the staff from the Division of Dam
2 Safety in terms of testing the conditions --

3 MR. MANN: Yes.

4 CO-HEARING OFFICER MOORE: -- of the dam?

5 MR. MANN: He did -- he did answer some
6 questions there, yes.

7 CO-HEARING OFFICER MOORE: Okay. And so was
8 there more work that he was planning to do pending, you
9 know, your direction based on this hearing, or had he
10 completed his assessment of the dam condition?

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

15 CO-HEARING OFFICER MOORE: And did he
16 provide you an engineer's report?

17 MR. MANN: He has not yet.

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

23 MR. MANN: Yes.

24 CO-HEARING OFFICER MOORE: Okay.

25 MR. MANN: And I met personally with each

1 one of those people. Actually, I think they have had
2 three inspections.

3 CO-HEARING OFFICER MOORE: Okay.

4 MR. MANN: I had a second inspection from
5 Mr. Low.

6 CO-HEARING OFFICER MOORE: Uh-huh.

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

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

23 MR. MANN: I have attended meetings, and I'm
24 not aware of anything recently, but yes, I was aware of
25 that going on.

1 CO-HEARING OFFICER MOORE: And did the issue
2 of your reservoir or, you know, reservoir management
3 issue and stockpond issues come up in those discussions
4 with the council?

5 MR. MANN: No, no.

6 CO-HEARING OFFICER MOORE: Okay. What were
7 some of the main land management issues that you recall
8 from attending the watershed council?

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

18 CO-HEARING OFFICER MOORE: Just good to hear
19 that you have been participating in the watershed
20 related discussions. Thanks for answering those
21 questions.

22 MR. MANN: Thank you.

23 CO-HEARING OFFICER SPIVY-WEBER: Any other
24 questions?

25 Okay. Now, we'll move to the rebuttal, and we'll

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

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

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

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

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

13 CO-HEARING OFFICER SPIVY-WEBER: Right.
14 Thank you.

15 MR. MANN: Robert Mann.

16 CO-HEARING OFFICER SPIVY-WEBER: Now, we're
17 onto the rebuttal, and we'll start with the prosecution
18 and then 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 clarify 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 entirely 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 CO-HEARING OFFICER SPIVY-WEBER: And you're
11 right. It is redirect not rebuttal.

12 MS. WEST: Okay.

13 CO-HEARING OFFICER SPIVY-WEBER: So that
14 closes your 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 CO-HEARING OFFICER SPIVY-WEBER: No, I'm
20 not.

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

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

1 closing.

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

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

14 MS. MANN: And that will be emailed to us or
15 whatever.

16 CO-HEARING OFFICER SPIVY-WEBER: They'll
17 have to make a -- give her your card and you have a --
18 you'll make the, the agreement between the, the two of
19 you.

20 MR. BUCKMAN: We'll notify the parties when
21 the hearing transcript is available.

22 CO-HEARING OFFICER SPIVY-WEBER: Okay.
23 Good.

24 MR. MANN: So we don't have closing
25 statement today?

1 CO-HEARING OFFICER SPIVY-WEBER: No closing
2 statement today. It will be in writing in, you know,
3 roughly six weeks.

4 MR. MANN: Okay. So for --

5 CO-HEARING OFFICER SPIVY-WEBER: Do you have
6 any re-clarification?

7 MR. MANN: Can I do some re-clarification on
8 some kind of --

9 CO-HEARING OFFICER SPIVY-WEBER: Sure. Go
10 ahead.

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

23 CO-HEARING OFFICER SPIVY-WEBER: Thank you.

24 MR. MANN: The size of the dam I think is,
25 is very questionable. I did not get a report from the

1 engineer but I, I have a pretty good idea that -- first
2 of all, I know it isn't 65 feet -- it's closer to half
3 of that when you're talking about water level. So --
4 but bottom line is that I don't feel like I'm using a
5 water right here but if I am, why then, that's, that's
6 what the State has decided.

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

23 CO-HEARING OFFICER SPIVY-WEBER: Thank you.
24 And I do appreciate that you came in for this -- for
25 this hearing.

1 We will -- the entire board, all five members of
2 the Water Board, will take this matter under submission.
3 The staff will prepare a proposed order for
4 consideration by all board members. The participants in
5 this hearing will be sent a notice. So you will receive
6 information of the Board's proposed order in this
7 matter, and the date of the Board meeting -- we'll have
8 a Board meeting where the entire board will vote on, on
9 the proposed order -- or where it will be considered and
10 possibly voted on. And after the Board adopts an order,
11 any interested party has thirty days within which to
12 submit a written petition for reconsideration by the
13 Board. So there's still a fair amount of process.

14 MR. MANN: Right.

15 CO-HEARING OFFICER SPIVY-WEBER: That we --
16 in an abundance of caution. I hope you appreciate that.

17 MS. MANN: Oh, we do.

18 CO-HEARING OFFICER SPIVY-WEBER: Because
19 this is -- it's a very -- particularly, as you noted,
20 it's very serious right now at a time when there's so
21 little water available for the many creatures as well as
22 people who use the water, and there is such an
23 interconnection of streams and tributaries to larger
24 streams and tributaries that it is a -- we take it very,
25 very seriously as you can tell. And I thank you for

1 coming in. I totally appreciate that you are -- that
2 this is overwhelming but it is -- it is very, very
3 important. I just want to emphasize that, because it's
4 not just about you. It really is about the State of
5 California, the waters.

6 So with that, are there any other -- are there
7 any other things that I have forgotten? No.

8 Then we will close the hearing, and then you
9 should make sure you make arrangements to, to get the
10 transcript, and you will be notified when the transcript
11 is available and also what the deadline is, the
12 thirty-day deadline for getting your closing statements
13 in and the same would be for the prosecution team.

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

16 CO-HEARING OFFICER SPIVY-WEBER: You
17 certainly are welcome.

18 MS. MANN: "Can" but we don't have to be
19 here.

20 CO-HEARING OFFICER SPIVY-WEBER: Correct.

21 And the question was, should they come back, and
22 they are certainly welcome.

23 CO-HEARING OFFICER MOORE: It's an open
24 public meeting.

25 CO-HEARING OFFICER SPIVY-WEBER: It's an

1 open public meeting, and you're welcome, but you aren't
2 required.

3 CO-HEARING OFFICER MOORE: Right.

4 CO-HEARING OFFICER SPIVY-WEBER: Thank you
5 very much.

6

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

8

9

--o0o--

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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
5 taken before me at the time and place herein set forth
6 that any witnesses in the foregoing proceedings, prior
7 to 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
13 to the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review of
15 the transcript () was () was not requested.

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

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

21

22 Dated:

23

24

25

Brittany Flores CSR 13460