

CERTIFIED COPY

STATE OF NEVADA

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF WATER RESOURCES

BEFORE SUSAN JOSEPH-TAYLOR, HEARING OFFICER

IN THE MATTER OF PROTESTED APPLICATIONS
73783, 73791 THROUGH 73797, 73799, 73800,
73849 THROUGH 73855, 73863 THROUGH 73872,
73908 THROUGH 73915, 73917, 73986, 73987,
74076 THROUGH 74085, 74193 THROUGH 74202
AND RELATED SECONDARY APPLICATIONS (TMWA
APPLICATIONS).

IN THE MATTER OF PROTESTED APPLICATION
78034 AND RELATED SECONDARY APPLICATIONS
(CITY OF FERNLEY APPLICATIONS).

VOLUME I - TRANSCRIPT OF PROCEEDINGS

PUBLIC HEARING

MONDAY, DECEMBER 14, 2009

CARSON CITY, NEVADA

Reported by:

CAPITOL REPORTERS
Certified Shorthand Reporters
BY: MARY E. CAMERON
Nevada CCR #98
1201 North Stewart Street
Suite 130
Carson City, Nevada 89706
(775) 882-5322

CAPITOL REPORTERS (775) 882-5322

APPEARANCES:

For the Division:

TRACY TAYLOR, State Engineer
JASON KING, Deputy State
Engineer
KELVIN HICKENBOTTOM, Deputy
State Engineer
RICK FELLING, Chief Hydrologist
SUSAN JOSEPH-TAYLOR, Chief,
Hearing Section
TIM WILSON, Assistant Hearing
Officer

For the Applicant -
TMWA:

WOODBURN & WEDGE
Attorneys at Law
BY: GORDON DePAOLI
DALE FERGUSON
NICO DePAOLI
6100 Neil Road, Suite 500
Reno, Nevada, 89511

For the Protestant -
TCID:

HANSON BRIDGETT
Attorneys at Law
BY: MICHAEL J. VAN ZANDT
NATHAN METCALF
425 Market Street, 26th Floor
San Francisco, CA, 94105

For the Protestant -
Churchill County:

RUSTY D. JARDINE
Civil Deputy District
Attorney
155 North Taylor Street
Suite 156B
Fallon, Nevada, 89406

For the Protestant -
City of Fallon:

MICHAEL F. MACKEDON
Attorney at Law
Post Office Box 1203
Fallon, Nevada, 89407

INDEX

PROTESTANT'S WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
ERNEST C. SCHANK	40	70	92	94
ROBERT E. ERICKSON	95	104	106	
NORMAN W. FREY	107			
CHRIS C. MAHANNAH	113	153		

(NOTE: Exhibits Listed in Volume IV.)

1 haven't qualified in that, Chris, so I have to let you go.
2 Go ahead.

3 BY MR. VAN ZANDT:

4 Q. Where are you employed, Mr. Mahannah?

5 A. Mahannah & Associates.

6 Q. Speak up a little bit. Do you have Exhibit 227
7 in front of you?

8 A. Yes.

9 Q. Would you detail for the State Engineer your
10 educational background, please?

11 A. I have a BS in civil engineering from the
12 University of Nevada Reno.

13 Q. Could you give a description of your experience,
14 please?

15 A. Since graduation in '86, 25 years of water
16 resource engineering, hydrology experience specifically
17 related to consumptive use issues. I was qualified as an
18 expert in the Hage v. U.S. trial, the Federal Court of
19 Claims, which involved consumptive use issues in Monitor
20 Valley.

21 Also been involved in studies in Churchill County
22 on soil moisture studies on the Wild Goose Farm, consumptive
23 use estimates, crop yields, neutron probe studies on that
24 farm.

25 I was also involved in monitoring weather

1 stations in the south Truckee Meadows to compute
2 evapotranspiration consumptive use estimates for monitoring
3 effluent application on the Monitor Ranch.

4 Also had numerous agricultural clients in
5 assisting them in irrigation system design, including crop
6 water requirements in that regard.

7 HEARING OFFICER JOSEPH-TAYLOR: Mr. Mahannah, try
8 to speak up, please. You're very soft spoken.

9 MR. MAHANNAH: Then one of the first jobs out of
10 school in '86 was working for Sierra Pacific Power Company in
11 the central part of the state monitoring crop yield
12 consumptive use under center pivot sprinklers when they were
13 converting from high pressure to low pressure to try to save
14 power.

15 We monitored yield consumptive use, a variety of
16 variables under center pivot irrigated alfalfa.

17 BY MR. VAN ZANDT:

18 Q. In terms of your being qualified as an expert in
19 ET or consumptive use calculations, how many times has that
20 occurred?

21 A. How many times have I been qualified as an
22 expert?

23 Q. Yes.

24 A. I believe it was just the Hage Case.

25 Q. Could you just give a brief description of the

1 work you did in the Hage Case with regard to consumptive use
2 and ET?

3 A. Well, the issue there was computing consumptive
4 use on the willows in the riparian zone along a number of
5 riparian channels in Monitor Valley. We used a variety of
6 techniques to get at consumptive use. I worked with Dr. Rick
7 Allen on that project to assess the impacts to stream flows
8 as a result of the proliferation of willows.

9 Q. And to your knowledge, were you in fact qualified
10 as an expert by I believe it was the U.S. Court of Federal
11 Claims, correct?

12 A. Yes.

13 Q. And also to your knowledge, was your testimony
14 accepted with regard to ET consumptive use analysis?

15 A. Yes, I believe it was.

16 Q. Actually, I believe the opinion actually cites to
17 some of your analysis, does it not?

18 A. It does.

19 Q. Thank you. You've been previously qualified here
20 before the State Engineer as an expert, correct?

21 A. I have.

22 Q. What about course work on consumptive use and ET?

23 A. I don't know if I've had any specific course work
24 on consumptive use. I've had course work in soils, its
25 available water holding capacity. Most of it has been

1 on-the-job training, 20, 25 years working with my father who
2 specialized particularly in this area.

3 Q. Okay.

4 MR. VAN ZANDT: In addition to Mr. Mahannah's
5 other qualifications, I would like to have him designated as
6 an expert in CU and evapotranspiration.

7 HEARING OFFICER JOSEPH-TAYLOR: Any questions
8 from staff? Nothing? I think based on the Federal Court of
9 Claims qualifying him as an expert in ET and consumptive use,
10 we'll so qualify him.

11 MR. VAN ZANDT: Thank you.

12 BY MR. VAN ZANDT:

13 Q. Now, Mr. Mahannah, were you designated as an
14 expert at this hearing by the Truckee-Carson Irrigation
15 District, county of Churchill and the city of Fallon?

16 A. Yes.

17 HEARING OFFICER JOSEPH-TAYLOR: Hold on, I just
18 did consumptive use and ET. You earlier said water resources
19 and water rights. Is that where you're going?

20 MR. VAN ZANDT: Yes.

21 HEARING OFFICER JOSEPH-TAYLOR: Okay. Thank you.

22 MR. VAN ZANDT: I guess my question for you,
23 Madam Hearing Officer, is has his previous qualification in
24 these areas I believe been accepted. Not yet?

25 HEARING OFFICER JOSEPH-TAYLOR: No. Hydrology

1 several times, ET, remote sensing, surface water and
2 groundwater hydrology, but not water rights and water
3 resources.

4 MR. VAN ZANDT: Thank you.

5 BY MR. VAN ZANDT:

6 Q. Let's talk about your hydrology experience,
7 Mr. Mahannah. Would you give us a brief overview of what
8 that qualification is?

9 A. In hydrology?

10 Q. Uh-huh, yes.

11 A. Starting most currently we're involved with a
12 study of the water resources in Dixie Valley which is a
13 comprehensive water resource study of the hydrologic
14 components of the Dixie Valley and tributary basins. Myself
15 and other consultants, USGS and Bureau of Reclamation have
16 teamed on that study.

17 It didn't go to hearing. I've testified on
18 groundwater, surface water interactions on application 55675
19 which was a TCID protested change application of Westpac's
20 back in the early '90s.

21 HEARING OFFICER JOSEPH-TAYLOR: Mr. Mahannah, I'm
22 going to stop you a second. He's been qualified in
23 hydrology. You said water rights.

24 MR. VAN ZANDT: Water resources and water rights.

25 HEARING OFFICER JOSEPH-TAYLOR: Water resources

1 how? Because I'm not going to spend a lot of time on
2 something he's been qualified on before several times.

3 BY MR. VAN ZANDT:

4 Q. The question has to do with your experience on
5 water resource plans and the management of water resources.

6 A. Yeah, and I've authored Churchill County's, done
7 a large part of their 25/50 year water resource plan as well
8 as their updated plan.

9 In regard to water rights, I'm a licensed water
10 rights surveyor with the State Engineer. I have routinely
11 filed change applications, proofs, been involved in
12 adjudication proceedings before the State Engineer. I taught
13 short courses with Jason, yourself and others on water rights
14 through Norman Seminars.

15 I think I'm well qualified in water rights.

16 HEARING OFFICER JOSEPH-TAYLOR: It's water plans
17 I'm struggling with right now. One water plan doesn't make
18 you an expert.

19 MR. VAN ZANDT: Okay.

20 BY MR. VAN ZANDT:

21 Q. Could you give us some of the tasks that you
22 performed in developing the water resource plans that you
23 have authored, Mr. Mahannah?

24 A. Well, in particular for Churchill County it was
25 looking at their demand, immediate and future demands for

1 their customer base, and then looking at a variety of supply
2 options and evaluating those for their water supply.

3 Q. You indicated you had done this for Dixie Valley
4 as well?

5 A. Well, we're currently involved in a water
6 resource study in Dixie Valley where we're monitoring stream
7 flows. We have a high altitude precipitation network that
8 we've installed and are monitoring. It's a five-year study.
9 We're one year into the study at the moment.

10 Part of that task is to evaluate the surface
11 run-on component onto the Dixie Valley plays. We are also
12 maintaining and monitoring a PT weather station in the
13 valley. The USGS has also installed and monitors Eddie
14 covariant stations in Dixie Valley.

15 Q. Are there any other experiences in your statement
16 of qualifications, Exhibit 2227, that you would like to
17 highlight for the State Engineer regarding water resources?

18 HEARING OFFICER JOSEPH-TAYLOR: I'm going to stop
19 you a second. I know the State Engineer's feelings on this.
20 Are you going to have any objections to him being qualified
21 in water rights and water resources?

22 MR. DePAOLI: I guess I sort of am not exactly
23 sure what that means. My sense is more if I hear a question
24 and I think he's not qualified, I will raise an objection,
25 but I don't know where all this is going because I'm familiar

1 with the two reports that he submitted and the areas that
2 he's going to testify about, and I'm not sure where we're
3 going with water planning and all that stuff in relationship
4 to what was submitted.

5 That would be my sense really. I'm not objecting
6 to him being qualified as an expert, but if he gets asked a
7 question that's outside his expertise, I'm going to object.

8 HEARING OFFICER JOSEPH-TAYLOR: We don't have a
9 problem with Mr. Mahannah being qualified in water rights.
10 Water resources is so broad, Mr. Van Zandt, I think you need
11 to narrow it to something a little more specific.

12 MR. VAN ZANDT: Okay. Well, I don't know that
13 the water resource part of it is particularly germane to his
14 testimony today, so we'll sit on the water rights and the CU
15 ET qualifications at this time.

16 HEARING OFFICER JOSEPH-TAYLOR: Any objections to
17 that, Mr. DePaoli?

18 MR. DePAOLI: No, except to the extent that if
19 water rights includes the ability to give a legal
20 interpretation, I would object.

21 HEARING OFFICER JOSEPH-TAYLOR: As you should. I
22 wouldn't expect otherwise. So, for right now we'll qualify
23 you as an expert in consumptive use, evapotranspiration and
24 water rights in Nevada.

25 MR. VAN ZANDT: I'd like to move for the

1 admission of Exhibit 2227, please.

2 HEARING OFFICER JOSEPH-TAYLOR: Any objection to
3 Exhibit 2227?

4 MR. DePAOLI: No objection.

5 HEARING OFFICER JOSEPH-TAYLOR: It will be
6 admitted.

7 MR. VAN ZANDT: Thank you.

8 BY MR. VAN ZANDT:

9 Q. Now, Mr. Mahannah, in conjunction with your
10 designation to testify here today, were you asked to analyze
11 certain aspects of the Truckee Meadows Water Authority
12 applications?

13 A. Yes, I was.

14 Q. So, let's take the first part of your task first
15 for the protestants. What were you tasked to do with regard
16 to these applications?

17 A. Basically to address issues related, I believe
18 it's State Engineer's interim order number 3, to qualify the
19 amount of consumptive use, and then the timing in which TMWA
20 should be allowed to store that water. That's the thrust of
21 both my direct and the rebuttal.

22 Q. And did you prepare a report in conjunction with
23 the analysis that you performed?

24 A. Yes, I did, Exhibit 801.

25 Q. Thank you. 801 is the report that you prepared

1 in support of the protests in this case; is that correct?

2 A. Correct.

3 Q. And then you separately prepared a rebuttal
4 report, correct?

5 A. Correct.

6 Q. We'll get to that in a few minutes. Now,
7 Mr. Mahannah, in conducting this analysis did you gain an
8 understanding of the TMWA applications that are before the
9 State Engineer today?

10 A. To the extent of the information that was
11 provided on the application, yes.

12 Q. You analyzed these applications. Was there any
13 other purpose besides the consumptive use analysis that you
14 analyzed these applications for?

15 A. As I mentioned, primarily to determine the
16 consumptive use amount and then how to properly store that.

17 Q. Okay. Could we go to your -- you did prepare a
18 power point presentation for the State Engineer, correct?

19 A. I did prepare a power point that very closely
20 follows the written report.

21 Q. Would you summarize the TMWA prime storage
22 application for us, please?

23 A. Yes. Table 1 summarizes the pending storage
24 applications before the State Engineer. It also, the first
25 column there, I've traced the change applications from their

1 successive change apps all the way back to the original Orr
2 Ditch Decree claim number, indicated the filing date, the
3 rate.

4 Of course all these are for storage purposes,
5 duty, who protested, and then if there was a prior State
6 Engineer ruling that dealt with some of the base rights,
7 that's referenced in the second to the last column.

8 In the last column in table 1, that is the date
9 where the conversion was made from the creek to M and I use
10 under the prior change applications.

11 Q. When you say table 1, this is actually a table
12 that's in Exhibit 801, correct?

13 A. Correct.

14 Q. And did you have to revise this table?

15 A. I did. The table that we've inserted should
16 indicate revised at the top. It reflects the withdrawn
17 applications that TMWA withdrew and then I believe there was
18 one that we thought was totally withdrawn, but I guess a
19 portion of it was withdrawn, so that one is included as well
20 which I believe was 73798.

21 The total duty associated with all of these is
22 12,684 acre feet.

23 Q. Did you do some further analysis of these
24 conversions?

25 A. Yes. Table 2, I've basically taken table 1 and

1 sorted it by the date that the base rights were converted
2 from decree to municipal.

3 So, the very first conversion under base right
4 16494 happened in 1955, and then to the present to 2003, and
5 in table 2 I've presented also in a graphical form which is
6 not part of the report but it's on the power point slide
7 here, it plots the cumulative duty, the percent of cumulative
8 duty converted versus the years since converted.

9 As you can see, the first one started in 1955 and
10 by 1973 approximately 40 percent of these had been converted
11 to municipal. By 1992, about 72 percent and then by 2003
12 100 percent of them were converted to M and I.

13 Again, this graphically represents what's
14 included in the last three columns of table 2.

15 Q. How many were converted through 1995,
16 Mr. Mahannah?

17 A. Approximately 11,224 acre feet.

18 HEARING OFFICER JOSEPH-TAYLOR: Approximately?

19 MR. MAHANNAH: It's kind of an oxymoron but you
20 can see in table 2, that's the amount. It's actually listed
21 for 1993, but a conversion for the next one in 1995 occurred
22 I believe in August of 1995.

23 BY MR. VAN ZANDT:

24 Q. Approximately 88 percent of the water rights
25 we're talking about here were converted prior to 1995; is

1 that correct?

2 A. Correct.

3 Q. Now, can you summarize what's shown in tables 1
4 and 2, please?

5 A. I think the salient point is all the pending
6 applications that are before us have previously been
7 converted to M and I and we're not talking about a change of
8 storing the decreed right.

9 MR. DePAOLI: Madam Hearing Officer, I'm going to
10 object to a couple of things related to this testimony and I
11 may as well do it now before we get too far into it so that I
12 will either head it off at the pass or I won't be
13 interrupting.

14 There are a couple of aspects of this portion of
15 Mr. Mahannah's testimony. First of all, I will object to
16 testimony on M and I consumptive use on relevance grounds
17 across-the-board.

18 Second, I will object to Mr. Mahannah expressing
19 any legal opinions as to M and I consumptive use being the
20 appropriate measure of consumptive use here, and I will
21 object to his expressing legal opinions on the meaning of
22 prior State Engineer rulings.

23 In terms of the overall relevance ground, Madam
24 Hearing Officer, first of all, when these rights were
25 converted to M and I use, they were converted for their full

1 duty over a protest, in situations where protests were
2 involved, by TCID that they should be limited to their
3 consumptive use.

4 There has been no limitation on the use of these
5 water rights below their full duty. The entire purpose of
6 getting into a consumptive use analysis is for the purpose of
7 protecting existing rights from injury, legal injury caused
8 by a change from one use to another.

9 The existing rights are not entitled to be any
10 better off than they would have been had the rights been
11 exercised for their original use. These rights were decreed
12 for original use for irrigation purposes and they are
13 entitled to be used, or the consumptive use component, for
14 these original rights as a matter of law in terms of
15 protecting the 1902 claim 3 right is what their consumptive
16 use was when they were used for irrigation.

17 Beyond that, Mr. Mahannah is not qualified to
18 express an opinion that there is an erroneous assumption on
19 anyone's part that consumptive use should be measured by
20 anything other than irrigation. He's also not qualified to
21 interpret prior State Engineer rulings.

22 One other thing that I might as well object to
23 now and that is with respect to attachment 3 which is a
24 136-page transcript of a hearing before the State Engineer on
25 the conversion of some water rights below Derby Dam from

1 irrigation to M and I.

2 The bottom line, Madam Hearing Officer, is that
3 if TCID or anyone feels that direct diversion rights that
4 have been converted from irrigation to M and I are using more
5 water than they should be able to use because of their
6 historic use for irrigation, that matter is a matter that can
7 be taken up with the Water Master, as well as the State
8 Engineer's office.

9 But the fact that these rights have been
10 converted to an M and I use does not change the fact that the
11 measurement of conflict with the existing rights is a measure
12 based upon their historic use to protect that right to
13 conditions that were in existence when the junior right was
14 established.

15 HEARING OFFICER JOSEPH-TAYLOR: Response,
16 Mr. Van Zandt?

17 MR. VAN ZANDT: I take it that was a speaking
18 objection. Obviously Mr. Mahannah has a great deal of
19 technical knowledge about consumptive use and ET, but none of
20 that can be applied in a vacuum. He does have to understand
21 how the State Engineer has previously looked at CU analysis
22 and ET.

23 He has to have an understanding of historic and
24 actual ET, and for him to be able to assist the State
25 Engineer, which is his task here in finding factual

1 information, he has to orient his testimony written in the
2 context of the way the State Engineer has previously decided
3 issues with regard to CU and ET.

4 So, it would not help the State Engineer if
5 Mr. Mahannah merely offered opinions on a technical analysis
6 of a calculation if he did not also put that in the context
7 of how the State Engineer has applied that technical
8 information in his prior rulings.

9 In particular, because we do have a long history
10 in the State Engineer rulings with regard to protection of
11 downstream users by looking at, instead of having this
12 consumptive use issue embedded in the rulings, there is
13 another path, so to speak, the State Engineer has taken which
14 Mr. Mahannah is I think well qualified to be able to talk
15 about, and that is what this tab 3 is all about, is that
16 history of the determination by the State Engineer
17 historically of how to protect downstream users in lieu of
18 limiting people to a consumptive use portion.

19 But, in addition, Mr. Mahannah obviously is
20 qualified I believe to offer opinions on what the amount
21 should be and if he looks at the applications, and this
22 probably goes to the weight, it does not necessarily go to
23 whether he's qualified, he looks at the applications and he
24 interprets their applications to have made an erroneous
25 assumption with regard to what they're doing with these

1 rights, again, that only goes to the weight, it does not go
2 to whether or not he can offer the opinion.

3 So, I believe he is qualified to do this
4 analysis. He's also qualified to put it in a historical
5 context from prior State Engineer rulings because every
6 person in Mr. Mahannah's situation who is assisting clients
7 is going to have to know how the State Engineer has treated
8 this issue in the past in order to assist them in going
9 forward.

10 So, that is part of the function that
11 Mr. Mahannah provides and that's part of the analysis that he
12 has provided here to help put this in context. So, I think
13 this testimony is relevant and he's qualified to give it.

14 HEARING OFFICER JOSEPH-TAYLOR: Anything else,
15 Mr. DePaoli?

16 MR. DePAOLI: The only thing that I would add is
17 that the other previous situations do not involve what is
18 happening here. The previous situations involved the
19 conversion of irrigation rights to municipal, direct
20 diversion from municipal use.

21 The State Engineer was asked at that time to
22 impose a consumptive use limit on what could be converted.
23 In virtually every case the State Engineer simply concluded
24 that the full duty could be converted because the M and I
25 returned to the river.

1 The State Engineer did not have any situation in
2 front of him at that time related to storage of one of these
3 irrigation rights and how much should be stored, and the
4 State Engineer in those situations indicated that if at some
5 point in time there was a problem with how much of that duty
6 was returning to the river, it was a matter that could be
7 brought to the attention of the Water Master and perhaps the
8 State Engineer.

9 They're just different situations.

10 HEARING OFFICER JOSEPH-TAYLOR: As to your
11 objection on the testimony on M and I consumptive use on
12 relevance grounds, the State Engineer hasn't made a
13 determination whether he's going to look at the M and I
14 consumptive use or the historic consumptive use. That
15 objection is going to be overruled. You're going to be
16 allowed to testify, Mr. Mahannah.

17 As to legal opinions on whether M and I is the
18 appropriate consumptive use, that objection is sustained.
19 You can't give a legal opinion.

20 To the objection to the legal opinion on the
21 prior meaning of State Engineer rulings, you can state
22 factually what the State Engineer ruling said. As to a legal
23 opinion, I will sustain the objection. Do you follow me?

24 MR. VAN ZANDT: He hasn't offered any legal
25 opinions, so, this is premature.

1 HEARING OFFICER JOSEPH-TAYLOR: I know he hasn't.
2 Mr. DePaoli said he's trying to save us time, Mr. Van Zandt,
3 and I appreciate that because every time we do one of these
4 we use another 15 minutes.

5 So, Mr. Mahannah, you're allowed to give your
6 testimony on M and I consumptive use. You don't get to
7 decide whether it is the appropriate consumptive use, that's
8 for the State Engineer.

9 You can state factually what the State Engineer's
10 ruling said, but don't give a legal opinion on what they
11 mean. It's a fine line. Now you walk it.

12 THE WITNESS: I'm sure I will be corrected if I
13 deviate.

14 HEARING OFFICER JOSEPH-TAYLOR: Okay,
15 Mr. Van Zandt?

16 BY MR. VAN ZANDT:

17 Q. Probably the best thing to do at this point,
18 Mr. Mahannah, I think you still have some summary testimony
19 you want to fill in here?

20 HEARING OFFICER JOSEPH-TAYLOR: So we will ignore
21 words like erroneously converting.

22 If we can go to tab 1 which was the State
23 Engineer ruling 5791. Are we in Exhibit 801?

24 MR. VAN ZANDT: Exhibit 801, tab 1.

25 HEARING OFFICER JOSEPH-TAYLOR: My exhibit

1 doesn't have tabs, so it's hard for me to follow. You have a
2 slip sheet. I have it. Thank you.

3 MR. MAHANNAH: Ruling 5791 was a relatively
4 recent ruling involving I believe the Tribe's protested
5 applications in the Carson Valley. At page 18 --

6 HEARING OFFICER JOSEPH-TAYLOR: Do you want to
7 clarify. Tribe's protest to applications to in the valley.

8 MR. MAHANNAH: Correct. Reading directly from
9 the ruling, starting on page 18, in the first paragraph,
10 states, "The Town of Minden argues that the issue of
11 availability of water in the source was thoroughly reviewed
12 when the underlying permits were granted and it was at that
13 time that it would have been appropriate to have protested
14 the availability of water. The State Engineer agrees with
15 the applicants that if the protestant had any issue with the
16 granting of these groundwater rights, they should have
17 protested the applications when the notice of original
18 application was made."

19 I won't offer any legal opinions, I will just
20 state that for the record.

21 Similarly in the Dayton Valley ruling that
22 involved both the Tribe and Churchill County protests of
23 changes in Dayton Valley, ruling 5823 at tab 2, at page 21,
24 second paragraph, there's similar language found that states,
25 "The State Engineer finds that protesting the change, "and

1 emphasis on change," of an existing right is not the proper
2 vehicle in which to address the issue of over appropriation
3 in a particular basin. The State Engineer finds that if the
4 protestants had any issue with the initial granting of these
5 groundwater rights, they should have protested when the
6 notice of the original new appropriation was made and
7 appealed that granting of the original base right permit at
8 that time. The State Engineer finds that almost all the
9 applications under consideration in this ruling are changes
10 to existing rights that have been in existence for decades."
11 The exact situation we have before us here.

12 Even more on point on page 33 of this same
13 ruling, under section XIII, second to the last paragraph, it
14 says, "As to the applications under consideration in this
15 ruling, the Tribe alleges that the duty should be limited to
16 the historical consumptive use of 2.5 acre feet per acre.
17 Otherwise the application is requesting a new and additional
18 appropriation in an over-appropriated basin."

19 HEARING OFFICER JOSEPH-TAYLOR: Hold on,
20 Mr. Mahannah. That's not on page 33.

21 MR. MAHANNAH: I'm sorry, on page 32.

22 HEARING OFFICER JOSEPH-TAYLOR: I'm sorry to
23 interrupt you. We're trying to follow you. Do you want to
24 start again?

25 MR. MAHANNAH: Yeah. I apologize. So, second to

1 the last paragraph on page 32, "As to all the applications
2 under consideration in this ruling, the Tribe alleges that
3 the duty should be limited to the historical CU of 2.5 acre
4 feet per acre. Otherwise the application is requesting a new
5 and additional appropriation in an over-appropriated basin."

6 Then I will skip to the last sentence, starting
7 on the bottom of page 32 where it says, "The State Engineer
8 finds that the Applications 74402, 74427, 74611, 75101, 02,
9 03, 04, 75160 and 75283 are not requesting a change from
10 irrigation to some other use and overrules the Tribe's
11 protest claims to those applications."

12 All of those applications had already been
13 converted to municipal. In that case, the State Engineer
14 found that it wasn't appropriate to consider CU or ag in that
15 situation.

16 As Mr. DePaoli had mentioned, TCID had previously
17 protested a conversion from decreed to M and I which were
18 dealt with in the November 14th, 1989 hearing and ruling
19 3739, which is at tab 3. There is a copy of the entire
20 transcript from that hearing.

21 This hearing addressed two conversions from ag to
22 M and I of existing places of use that were below Derby.
23 There was also considerable discussion on the record for
24 areas of conversion of rights above Derby to M and I.
25 Mr. Joe Burns provided extensive testimony, Garry Stone, Pete

1 Morros, Lyman McConnell, Mike Turnipseed.

2 I think the State Engineer is probably pretty
3 familiar with this ruling. If you haven't read this
4 transcript, it provides a lot of good information as to what
5 the State Engineer was considering at the time for protecting
6 return flows and downstream rights.

7 I will highlight some of those discussions.
8 Mr. Burns provided testimony at pages 65 of the transcript
9 where he's presenting some scenarios. I'm starting at line
10 eight on page 65 where it states, "Then we assume that there
11 is a hundred second feet diverted in the Reno/Sparks area for
12 M and I purpose. And assuming a 50 percent return flow from
13 that diversion, so we have 400 second feet, after the hundred
14 second foot diversion; 50 second feet of return flow."

15 He also references a 50 second foot return flow
16 at page 78, lines 10 and 11 and states, "That is because
17 currently the utility company returns approximately
18 50 percent through the treatment plant."

19 In Exhibits 2223 and 2224 there were some
20 diagrams Mr. Burns provided that also showed the 50 percent
21 return flow for M and I use.

22 There was also extensive discussion regarding the
23 water right dedication rule 17 or what's commonly referred to
24 as the 58 percent rule, page 83, and basically my
25 understanding of the 58 percent rule is that at the time up

1 until I believe February 21st, 1995, Sierra Westpac required
2 water right dedication for every one acre foot of demand,
3 actual demand, 1.72 acre feet was required to be dedicated.

4 And again starting at page 83, line 16, there's a
5 question to Mr. Burns.

6 "QUESTION: I believe part of your testimony also
7 involved the Public Service Commission rule with regards to
8 1.72 factor; is that correct?

9 "ANSWER: That's correct.

10 "QUESTION: Would you explain for me what that
11 means?

12 "ANSWER: Well, it means that an applicant for
13 service from Sierra, through Reno and Sparks, would require a
14 1.72 acre feet of water be brought in in order for the
15 company to deliver one acre foot of water.

16 "QUESTION: What is the purpose of that?

17 "ANSWER: The purpose is that Sierra Pacific,
18 with their water supply today, and their stored water, can
19 and are agreeing to support the irrigation rights up to that
20 yield of 58 percent. The 58 percent is the maximum amount of
21 water you can get from an irrigation right in the Truckee
22 Meadows. That's an annual basis."

23 Moving to pages 90 through 92 of the transcript,
24 starting at line 11, Mr. Morros states,

25 "QUESTION: So unless you have got some way to

1 supplement that water supply in those dry years, from sources
2 that are independent from the Truckee River system, you are
3 stuck with that as a water supply."

4 The witness agreed.

5 "MR. MORROS: You can't perceive that unless some
6 other water supply could be developed that would supplement
7 that during your dry years, there would be any reason to
8 change that. We have to deal with reality, and the reality
9 is that water ain't there in dry years. It's as simple as
10 that."

11 Mrs. Oldham states, "It doesn't change the yield
12 or the right. And I don't think we ever said that to the
13 Commission."

14 Mr. Burns states, "No. I think that all this was
15 presented to the Commission. It did not indicate there would
16 be any change to that.

17 "MR. MORROS: I worry about that changing,
18 without the addition of another supply to offset that.

19 "MS. OLDHAM: We would not propose it.

20 "MR. MORROS: I think the 58 percent was adopted
21 and embraced by the PSC as a result of the power company's
22 presentations to the Commission during those series of
23 hearings that they conducted when the Rule 17 was being
24 considered, wasn't it?

25 "MR. BURNS: As a matter of fact, those same

1 studies that were used at that hearing were used today, and
2 still have not changed."

3 Moving on to pages 112 and 113, starting at line
4 22, Lyman McConnell indicates, "Well, our position basically
5 is that the irrigation rights previously had return flows.
6 Those return flows are made up of returns through to the
7 treatment plant. If that is gone, then our position would be
8 that those return flows have to be made up.

9 "MR. MORROS: And I am in full accordance.

10 Garry Stone, Water Master, "I agree."

11 "MR. MORROS: Those return flows have to be
12 accounted for. That has been my position all along. It
13 hasn't changed. And I see no reason to even consider
14 changing it."

15 Mr. Morros issued an oral ruling that was part of
16 the transcript and found that existing rights were protected
17 due to the M and I return flows in combination with the
18 dedication rule, the 58 percent rule.

19 Rule 7, which is the water dedication rule that
20 TMWA is currently operating under, has relaxed that
21 dedication rate from 1.72 to 1.11 for each acre foot of
22 demand under TROA.

23 Following the 1989 ruling, we have 20 years of
24 subsequent rulings by the State Engineer's office that
25 overruled TCID's continued protests and in each one of those

1 rulings there's language that states the Sierra Pacific
2 service area is sewerred and wastewater is treated and
3 returned to the river upstream of the protestant's point of
4 diversion.

5 "The State Engineer finds that the change of the
6 full duty of water from irrigation to municipal will not
7 reduce flow in the Truckee River. The State Engineer further
8 finds that the approval of applications 56732 and 56734 will
9 not conflict with any downstream water rights," and that
10 comes from ruling 4486. That same nearly identical language
11 is found in every other ruling.

12 So, at I believe tabs 4 through 9 which contain
13 rulings 3878, 4005, 4011, 4449, 4486 and 4582, and then under
14 Exhibits 2202 through 2209 include rulings 4008 through 10,
15 4514, 4521, 4729, 5811 and 5938.

16 So, you can see there's been a long history of
17 the State Engineer relying on that 1989 testimony that was
18 provided at that time.

19 HEARING OFFICER JOSEPH-TAYLOR: Mr. Mahannah, you
20 said Exhibits 2202 through 2209. Did you mean to exclude
21 2201? That's ruling 3875.

22 MR. MAHANNAH: Actually 3875, we have a duplicate
23 I believe. That's under my tab 4 in the initial, so it's
24 actually in the record twice.

25 HEARING OFFICER JOSEPH-TAYLOR: Mr. Van Zandt,

1 we're back to you.

2 BY MR. VAN ZANDT:

3 Q. Thank you. Mr. Mahannah, you had mentioned
4 Exhibits 2223 and 2224.

5 HEARING OFFICER JOSEPH-TAYLOR: I think it would
6 be easier if you said 2223.

7 BY MR. VAN ZANDT:

8 Q. Would you describe for the record what those
9 exhibits are?

10 A. I'm sorry, which exhibits?

11 Q. These are the ones referred to, I believe that
12 Mr. Burns had prepared.

13 A. Yes. I don't have the exhibits in front of me,
14 but I'm familiar with what those are generally.

15 Q. You said that those were prepared by Mr. Burns in
16 conjunction with one of the rulings that we're talking about
17 here?

18 A. Yes. That was prepared in reference to the '89
19 hearing under ruling 3739.

20 Q. I believe it's your third bullet on your power
21 point there that makes a reference to these exhibits?

22 A. Correct.

23 Q. What's the significance of these exhibits for the
24 record here?

25 A. The point of including those is there were a

1 number of stick figures that ran through a variety of
2 scenarios and again assumed a 50 percent return flow from M
3 and I in each of those.

4 HEARING OFFICER JOSEPH-TAYLOR: I want to
5 identify those better for the record, Mr. Van Zandt. 2223 is
6 Exhibit 5 from the 1989 hearing and it's called Case A,
7 rights acquired below Derby Dam for hearing in the matter of
8 applications 53092, 53093 and 53669.

9 Exhibit 2224 was Exhibit 6 in the 1989-case and
10 it's titled Case B, rights acquired below Derby Dam for the
11 hearing in the matter of applications 53092, 53093 and 53669.
12 Thank you.

13 BY MR. VAN ZANDT:

14 Q. Now, Mr. Mahannah, were there any prior M and I
15 consumptive use analyses that you investigated?

16 A. Yes.

17 Q. And what was that?

18 A. In 1991 TCID had protested a change application
19 Westpac had made, I believe it was application 55675 which
20 moved a point of diversion of a groundwater right very close
21 to the Truckee River alleging impacts to the river.

22 Part of the -- it never went to hearing. We
23 actually settled it the morning of the hearing. Part of
24 Westpac's argument against the protest was that even if that
25 groundwater well were with intercepting Truckee River water,

1 that 50 percent of that water would return to the river
2 through the treatment plant.

3 So, we had prepared a consumptive or an M and I
4 CU analysis in 1991, we meaning Water Research Development,
5 WRD as it was commonly referred to. We looked at a time
6 frame from 1980 through '88. The average return flow for the
7 entire year was 46 percent.

8 During the summer months when outside watering is
9 occurring the return flow was 27 percent and in January when
10 there was virtually no outflow of water, the return flows
11 obviously are much higher.

12 Another prior CU analysis, M and I CU analysis
13 was done by CES in 1994 and tab 12, this dealt with the city
14 of Reno's -- tab 12 is a letter from Mr. Turnipseed to the
15 city of Reno stating that an M and I return flow analysis
16 needed to be done.

17 It suggested how it should be done. Tab 13 is
18 CES's M and I return flow analysis and they analyzed the time
19 frame from 1983 through 1993 and they found an average return
20 flow percentage of 54 percent which was slightly higher than
21 our analysis in 1991, and that is because they considered or
22 we did not, WRD did not consider which water which was
23 exported out and not returned back to the treatment plant,
24 i.e., water sent to south Truckee Meadows.

25 That in addition to the assumption that ten

1 percent of the power company's customers were still on septic
2 and there was no effluent return flow to the treatment plant,
3 they came up with a slightly higher return flow than we did
4 in 1991.

5 BY MR. VAN ZANDT:

6 Q. Has there been an update of the CU analysis since
7 the CES and the WRD studies?

8 A. Yeah, we did an updated one more recently which
9 looked at flows from 1989 through 2005 that's reported at
10 table 3.

11 Q. Table 3 of Exhibit 801?

12 A. Yes. The end of the text of 801, where we went
13 through a similar procedure that CES did to look at waters
14 that were exported out of the Truckee Meadows, not returned
15 to the treatment plant and then also considered the return
16 flows both with and without effluent reuse, which are on
17 columns 9 and 10 of table 3.

18 The average M and I return flow including
19 effluent reuse is 45 percent. It's slightly lower at
20 44 percent when you exclude effluent reuse.

21 Q. How was this analysis conducted that you used to
22 arrive at table 3?

23 A. How was it conducted?

24 Q. Yes.

25 A. It was using existing data, the sources of which

1 are provided in table 3 to compute the M and I return flow.
2 This analysis is conservative because again, it doesn't
3 consider any unsewered or customers that are still on septic
4 systems.

5 And then also there is return flows from M and I
6 to the river that are not as a result of effluent return
7 flows and that's clearly evident in a recent application that
8 the city of Reno filed to appropriate basically urban runoff
9 from Chalk Creek which is through the urbanization of the
10 northwest part of the Truckee Meadows. There was a creek
11 that became, it was an ephemeral, mostly dry most of the
12 year.

13 The city of Reno tried to appropriate that at tab
14 14. I'd like to read from the attachment to that
15 application. They're referring to Chalk Creek again. This
16 is just upstream -- it's just downstream of where the Orr
17 Ditch diverts from the Truckee River.

18 They state, "This creek flow has developed
19 subsequent to the decree on the Truckee River as a result of
20 urbanization. In 1980 prior to the bulk of development, the
21 Chalk Creek flow was ephemeral. By 2006 most of the
22 watershed has been developed and the creek has become a
23 flowing perennial stream as a result of secondary recharge."

24 Further down they state, "Storm water flow from
25 impervious surfaces, irrigation and over watering has

1 contributed to making this flow continuous."

2 Now, TCID, Churchill County and the Truckee
3 Meadows Water Authority protested this application. I'd like
4 to read one of the protest points that TMWA raised. They
5 state, "The proposed use conflicts with existing water
6 rights, including those granted under 4683," which was the
7 unappropriated water ruling, "And with other Truckee River
8 water rights in that it seeks to appropriate water which
9 should be allowed to return to the river."

10 So, again, this is an M and I return flow to the
11 river that's not an effluent return flow.

12 The State Engineer just this year under ruling
13 5972 denied that application and found that ultimately these
14 applications were approved for full duty rather than for the
15 consumptive use portion of the irrigation under the reasoning
16 that there would remain return flows in the river under the
17 municipal uses. It is these nonconsumptive portions of the
18 upstream rights returning to the river that help to serve
19 those downstream rights.

20 TCID and Churchill County both have identified
21 claims in the Truckee River Decree which serve the Newlands
22 Project as a downstream water right that would be impacted by
23 the new appropriation on the Truckee River. The State
24 Engineer finds that the approval of the application would
25 conflict with existing rights.

1 Q. And did you also look at some analysis done by
2 the Truckee Meadows Water Authority on this issue?

3 A. Yes. I believe at page 107 of their water
4 resource plan, the 2005 through 2025 water resource plan they
5 state, "From 1992 through 2001 the average return flow is
6 48 percent."

7 So, based on past and current M and I return flow
8 analysis, it appears 50 percent annual average is a
9 reasonable number to use.

10 Q. Now, Mr. Mahannah, have you also analyzed monthly
11 distribution of M and I consumptive use and proposed storage?

12 A. Yes. That's included at table 4 which for 1990
13 through 2005 showed the monthly municipal return flow and
14 consumptive use percentages. What I am suggesting for the
15 State Engineer to consider under these storage applications,
16 since these have long been converted to municipal, that TMWA
17 be allowed to store 50 percent of these rights in the same
18 pattern as the M and I uses consumed water.

19 Q. And have you calculated what that pattern might
20 be?

21 A. Yes.

22 Q. Would you describe that, please?

23 A. The slide that's on the overhead now is in the
24 last row of table 4, which shows the percentage by month of
25 consumptive use for M and I water.

1 So, 12,000 acre feet, half of that, 6342, could
2 be stored under these respective percentages to match the
3 time, place and amount of the M and I return flows.

4 Q. So, is there a relationship between that pattern
5 that you just talked about in table 4 and on your overhead
6 slide there and return flows that are available for
7 downstream users?

8 A. I'm sorry, I didn't follow.

9 Q. The question is you've broken up the M and I
10 percentages by a monthly calculation that you derived from
11 historical practices, right?

12 A. Correct.

13 Q. So the question is what would this do for
14 downstream users who are looking to use these return flows
15 potentially as part of their water rights?

16 A. It would continue the return flow practices that
17 have been in place for, in some cases up to, since 1955. On
18 average all of these conversions were made roughly 30 years
19 ago.

20 It would allow the downstream rights to utilize
21 the return flow component during those summer months when
22 flows are lower in the river.

23 Q. Would you summarize for us your conclusions
24 regarding Exhibit 801?

25 A. Again, all of the change applications are seeking

1 to store the consumptive use of base rights which are M and I
2 rights. They've long since been converted from decreed to
3 municipal, as I mentioned, on average nearly 30 years ago in
4 some cases up to a half a century ago.

5 Based on the portions of the rulings I read in
6 Dayton Valley and Carson Valley, the State Engineer must act
7 on the applications before him, not prior changes.

8 The 1989 hearing and for two years the State
9 Engineer rulings considering the decreed M and I changes that
10 downstream rights have been protected due to M and I effluent
11 return flows and the 58 percent dedication rule.

12 Past and current M and I CU analysis is
13 approximately 50 percent. So, to protect historical M and I
14 return flows and limit storage timing of the M and I CU to
15 the historical M and I consumption.

16 MR. VAN ZANDT: I'd like to move for the
17 admission of Exhibit 801 at this time.

18 HEARING OFFICER JOSEPH-TAYLOR: Any objection,
19 Mr. DePaoli?

20 MR. DePAOLI: I would restate my objection.
21 Exhibit 801 does contain legal conclusions and I would object
22 to it. I would continue my objection on relevance. I would
23 object also to the introduction of a transcript, 136-page
24 transcript of a prior proceeding not involving the issues
25 here.

1 I have no objections to the State Engineer
2 rulings. I do object to the admission also of attachment 13
3 as being a hearsay document that this witness had no
4 involvement in the preparation of that document or in the
5 conclusions reached in that document.

6 I also object to attachment 14 as to relevance.

7 HEARING OFFICER JOSEPH-TAYLOR: I'm not sure how
8 to work my way through this. I can't sit here and pencil out
9 sentences in a two-inch high document. So, as to your
10 objection that it has legal conclusions in it, the State
11 Engineer has already ruled that Mr. Mahannah doesn't make
12 legal conclusions.

13 So, we will have to look at those as we go
14 through the document. Objecting to the transcript, that's a
15 public record of this office which I've already taken
16 administrative notice of, so I would overrule that objection.

17 As to attachment 13, I'm just going to have to
18 take that under advisement and see what the State Engineer
19 does with it and rule on it if he uses it, Mr. DePaoli.

20 MR. VAN ZANDT: May I be heard on that, Madam
21 Hearing Officer?

22 HEARING OFFICER JOSEPH-TAYLOR: Yes, sir.

23 MR. VAN ZANDT: Obviously, Mr. Mahannah, as an
24 expert, can rely on hearsay. He's basically relating to the
25 State Engineer a historical event that occurred and resulted

1 in a determination ultimately with regard to the consumptive
2 use portion.

3 So, an expert can rely on hearsay it would go
4 more to the weight than it would to the admissibility, so I
5 think there's no reason to keep it out on that basis.

6 HEARING OFFICER JOSEPH-TAYLOR: I didn't say I
7 was keeping it out. I said it would be ruled on if and when
8 the State Engineer used it, so I'm reserving that.

9 As to attachment 14, that's a public record of
10 this office, the objection will be overruled. Is this a good
11 place, Mr. Van Zandt, to take a break?

12 MR. VAN ZANDT: Yes.

13 HEARING OFFICER JOSEPH-TAYLOR: Let's be in
14 recess for 15 minutes. We're off the record.

15 (A short recess was taken.)

16 HEARING OFFICER JOSEPH-TAYLOR: Let's be on the
17 record. Mr. Van Zandt, you had a few other exhibits you
18 wanted to offer?

19 MR. VAN ZANDT: We did. I'd like to offer
20 Exhibits 2223 and 2224.

21 HEARING OFFICER JOSEPH-TAYLOR: Any objection,
22 Mr. DePaoli?

23 MR. DePAOLI: I need to grab the right binder to
24 see what those are.

25 HEARING OFFICER JOSEPH-TAYLOR: Those are Joe

1 Burns' case scenarios. They're also published records of
2 this hearing office from the earlier hearing.

3 MR. DePAOLI: Same objection.

4 HEARING OFFICER JOSEPH-TAYLOR: So noted, they'll
5 be admitted.

6 MR. VAN ZANDT: Then the collection of rulings
7 2202 through 2209.

8 HEARING OFFICER JOSEPH-TAYLOR: Any objection,
9 Mr. DePaoli?

10 MR. DePAOLI: No objection to those.

11 HEARING OFFICER JOSEPH-TAYLOR: 2202 through 2209
12 will be admitted.

13 MR. VAN ZANDT: And then 2219 which Mr. Mahannah
14 referenced in his testimony regarding the TMWA 2005 through
15 225 water resource plan.

16 HEARING OFFICER JOSEPH-TAYLOR: Mr. DePaoli, any
17 objection?

18 MR. DePAOLI: No objection.

19 HEARING OFFICER JOSEPH-TAYLOR: It will be
20 admitted. Thank you. Is that it, Mr. Van Zandt?

21 MR. VAN ZANDT: On that exhibit, yes.

22 HEARING OFFICER JOSEPH-TAYLOR: Cross-
23 examination, Mr. DePaoli, on Exhibit 801?

24 MR. DePAOLI: I wasn't expecting that, so you
25 need to give me a minute.

1 HEARING OFFICER JOSEPH-TAYLOR: Let's be off the
2 record a minute to let Mr. DePaoli get set up.

3 (A discussion was held off the record.)

4 HEARING OFFICER JOSEPH-TAYLOR: As to
5 Exhibit 801, were you offering that, Mr. Van Zandt?

6 MR. VAN ZANDT: I am.

7 HEARING OFFICER JOSEPH-TAYLOR: Noting
8 Mr. DePaoli's objections and the rulings on them, I will
9 admit Exhibit 801. Go ahead, Mr. DePaoli.

10 **CROSS-EXAMINATION**

11 BY MR. DePAOLI:

12 Q. Mr. Mahannah, with respect to the State
13 Engineer's ruling number 5791, you quoted from page 18, do
14 you happen to have that in front of you? That's tab 1, I
15 believe.

16 HEARING OFFICER JOSEPH-TAYLOR: Is that the
17 Carson Valley ruling in the Carson Valley change apps?

18 MR. MAHANNAH: Yes. I have that in front of me.

19 BY MR. DePAOLI:

20 Q. In that proceeding, the Pyramid Lake Tribe was
21 protesting the applications on the basis that the groundwater
22 basins were over appropriated, were they not?

23 A. I wasn't a party to that proceeding. I think
24 that was one of their arguments.

25 Q. They were contending there was no unappropriated

1 water available, were they not?

2 A. Again, I wasn't a party to it. I believe that
3 was one of their allegations. Those involved change
4 applications.

5 Q. Well, let's first look at it. You quoted from
6 page 18, the second paragraph on that page, second sentence,
7 or first sentence. Isn't the State Engineer simply saying in
8 that sentence that if someone has a problem with the initial
9 appropriation of a water right, they need to protest when the
10 initial appropriation is made, not when a change application
11 is being sought?

12 A. Yes.

13 Q. And tab 2, ruling 5823, isn't that the same thing
14 the State Engineer was saying in that one, the first quote
15 you made from that ruling?

16 A. Yes. It's a very similar quote on page 22.
17 However, it's exactly on point on pages 32 and 33.

18 Q. On what page, page 22 was your first quote, or
19 was it page 21?

20 A. 21.

21 Q. In that one the State Engineer said protesting
22 the change of an existing right is not the proper vehicle in
23 which to address over appropriation, is that the sentence you
24 read?

25 A. Yes.

1 Q. And on page 32 and page 33, the sentence at the
2 bottom of page 32, carrying over to page 33, tell me what you
3 understand that sentence to say.

4 A. Well, I read the prior sentence because the Tribe
5 was alleging that they should apply a two and a half CU
6 limitation on applications that the State Engineer lists in
7 that last sentence on 32, continuing on to 33, that it had
8 already been converted to municipal.

9 Q. Do you interpret that as referring to rights that
10 have already been converted to municipal?

11 A. Yeah. The State Engineer made a determination
12 that those rights had already been converted to municipal.

13 Q. Let's look back in an earlier page of the ruling.
14 Let's just pick out one of those applications. Let's pick
15 out -- I think I'm getting back into too many tabs here.

16 Let's look at page four, application 74402.
17 That's an application to appropriate for commercial purposes,
18 is it not? It's not a change application at all, is it?

19 HEARING OFFICER JOSEPH-TAYLOR: You're losing me
20 here, Mr. DePaoli.

21 MR. DePAOLI: Page four of ruling 5823 and
22 referring back to page 33, one of the applications referenced
23 there is 74402.

24 BY MR. DePAOLI:

25 Q. That's not a change application at all, is it,

1 Mr. Mahannah?

2 A. I guess I'd actually like to look at that
3 application. It appears from the way it's written that that
4 was a new appropriation. The next one down is also
5 referenced in that chain, 74227, which does indicate the
6 proposed use is for quasi-municipal and the existing use is
7 commercial.

8 Again, that's an example where the Tribe is
9 alleging ag CU reduction and the State Engineer found that
10 was inappropriate because the base right was commercial.

11 Q. The original appropriation was commercial. There
12 was no change in any use in that application?

13 A. I'm referring to 74227.

14 HEARING OFFICER JOSEPH-TAYLOR: You guys are
15 losing me, I'm sorry. We're jumping around and it's real
16 hard to pull a ruling without really studying it to do this.
17 You're going into great detail. Try it again for me.

18 BY MR. DePAOLI:

19 Q. Application 74427 was a change from
20 quasi-municipal to commercial. It didn't involve irrigation
21 at all, did it, ever?

22 MR. VAN ZANDT: I'll object. That misstates the
23 ruling.

24 THE WITNESS: That's correct. The point I'm
25 trying to make is the Tribe tried to impose an ag CU on that

1 and the State Engineer found that not to be appropriate.

2 BY MR. DePAOLI:

3 Q. But he didn't find that not to be appropriate
4 because an original irrigation right had been already changed
5 to a commercial use, did he?

6 A. I'd have to dig a little further. I believe a
7 lot of these there was a change, change upon change where --

8 Q. I'm not asking you what you believe. I'm asking
9 you what you know as you sit here today.

10 A. I believe many of these that are listed in the
11 first line of page 33 --

12 MR. DePAOLI: Move to strike the answer as to his
13 beliefs. I'm asking him what he knows as he sits here today.

14 HEARING OFFICER JOSEPH-TAYLOR: Sustained.

15 MR. MAHANNAH: I would need to look at each of
16 those applications.

17 BY MR. DePAOLI:

18 Q. In this ruling as to the applications that sought
19 to change an irrigation right to a municipal use right, the
20 State Engineer did determine consumptive use, did he not, for
21 the Dayton Valley for irrigation?

22 A. Yes, I believe he did.

23 Q. And what number did he come up with?

24 A. I'd have to go through the ruling. It looks like
25 3.2 was the number.

1 Q. And those were water rights that had a four-acre
2 foot duty, were they not, that consumptive use?

3 A. Yes, I believe so. These were groundwater
4 rights, not surface water rights.

5 Q. And actually the State Engineer didn't actually
6 limit the new use to that amount, did he?

7 A. I haven't read the entire ruling cover to cover
8 in some time, so I couldn't adequately answer that.

9 Q. With respect to ruling 3739, and what tab is
10 that, Mr. Mahannah?

11 A. Tab 3.

12 Q. Do you know why Sierra Pacific at that time was
13 requiring a dedication of 1.72 acre feet of water rights for
14 each acre foot of demand?

15 A. I believe it was based on the critical drought
16 period from the late '20s, early '30s that found they needed
17 to dedicate 1.72 acre feet of paper water to deliver one acre
18 foot of water during a drought period similar to that.

19 Q. During the most critical drought year of that
20 extended drought?

21 A. That's my understanding.

22 Q. And that's because the analyses at that time
23 showed that in those kind of years, a Truckee River water
24 right would only yield 50 percent of its face amount --
25 58 percent, I mean?

1 A. That's my understanding, yes.

2 Q. And the reason Sierra Pacific was doing that at
3 that time was because their drought supply storage
4 availability at that time was not adequate to back up Truckee
5 River water rights one for one in that kind of a drought, was
6 it not?

7 A. I believe so.

8 Q. The water rights in that ruling 3739 were water
9 rights that were water rights being changed from irrigation
10 below Derby Dam -- let me back up -- below Vista at the point
11 of the wastewater treatment facility return somewhere below
12 vista and somewhere below Derby Dam, were they not?

13 A. I believe there was three applications, two of
14 which were protested, I believe the two TCID protests were
15 below Derby, but there was discussion beyond just those
16 applications, the diversion from ag to M and I.

17 Q. There was what?

18 A. There was discussion between the State Engineer,
19 Mr. Burns and others I believe for a variety of scenarios,
20 not just two of the three pending applications that were
21 before the State Engineer in that hearing.

22 Q. And what we were talking about with respect to
23 the 58 percent and the 1.72 is actually confirmed by the
24 quotes that you made from pages 83 and 84 of that transcript,
25 are they not?

1 A. Yes. There's other places in the ruling
2 certainly where the 58 percent rule is discussed. It ebbs
3 and flows throughout a good portion of the document.

4 Q. Is it your testimony that Mr. Morros when he made
5 that ruling -- before we get to that, let's look at page 112
6 of the transcript that you quoted from.

7 A. Yes.

8 Q. Mr. McConnell in his statement, he was concerned
9 with the return flows from irrigation, was he not?

10 A. Yes.

11 Q. And Mr. Morros in that proceeding made an oral --
12 before I go to that, when Mr. Morros and Mr. Stone agreed
13 that those return flows have to be made up, were they talking
14 about the return flows from irrigation rights or return flows
15 from the M and I rights, or can you tell?

16 A. Well, the changes that were before them were from
17 decreed to M and I. I believe the subject of the concern was
18 the return flows from ag.

19 Q. And Mr. Morros made an oral ruling that day, did
20 he not?

21 A. He did.

22 Q. Anywhere in that oral ruling which is at page 135
23 did Mr. Morros in any way condition those permits on Sierra
24 Pacific and now TMWA considering to require a dedication of
25 1.72 acre feet of water rights for one acre foot of demand?

1 A. He didn't condition them based on that, but he
2 expressed concern about that changing in the future.

3 Q. But he wasn't so concerned about it that he made
4 it a condition of the permits, did he?

5 A. No.

6 Q. Didn't he specifically say that if a problem
7 developed in the future, that it would be subject to the
8 continuing jurisdiction and regulation of the Federal Water
9 Master as provided in the Orr Ditch Decree?

10 A. I believe he did.

11 Q. Now, all of the rulings that you have referred to
12 which follow this tab, which are tabs -- help me out. What
13 tabs are they?

14 A. Tabs 4 through 10.

15 Q. 4 through 10. Then you also have rulings that
16 are tabs 2202 to 2209.

17 HEARING OFFICER JOSEPH-TAYLOR: Not tabs,
18 exhibits.

19 MR. DePAOLI: Exhibits, I'm sorry.

20 BY MR. DePAOLI:

21 Q. Let's look at Exhibit 2208 which is ruling 5811
22 which was made by State Engineer Tracy Taylor in January of
23 2008. Do you have that?

24 A. Yes.

25 Q. These are similar in terms of their

1 determinations and findings, are they not?

2 A. Yes.

3 Q. And 5811 was to change a portion of Orr Ditch
4 Decree, claim number 208, was it not, from irrigation to M
5 and I?

6 A. Looks like there were several applications under
7 5811.

8 Q. Were they also changing from irrigation to M and
9 I?

10 A. It looks to be that's the case, yes.

11 Q. And TCID had protested these applications. One
12 of the grounds was that the applications should be limited to
13 the consumptive use amount leaving the remaining amount in
14 the Truckee River to meet downstream water rights which rely
15 on these return flows. Do you see that on page two of the
16 ruling at the bottom?

17 A. Yes.

18 Q. But TCID was saying that that was a condition
19 that did not need to be met unless and until wastewater was
20 removed from the Truckee River to land application, did it
21 not?

22 A. Yes, and I believe this is pretty much the
23 identical protest ground that was lodged and heard in the
24 1989 hearing.

25 HEARING OFFICER JOSEPH-TAYLOR: That's not what

1 he asked you.

2 MR. MAHANNAH: Would you restate the question,
3 then?

4 BY MR. DePAOLI:

5 Q. The protest ground was conditioned, the
6 consumptive use was a condition only to be imposed when the
7 wastewater from the municipal treatment plant was removed
8 from the river, was it not?

9 A. Yes.

10 Q. And was this protest ground similar to protest
11 grounds raised both in 1989 and in all of these other rulings
12 that we've been talking about?

13 A. Yes.

14 Q. On page four in paragraph III the State Engineer
15 makes a finding of fact, does he not, that because the Water
16 Authority's service area is sewerred and because wastewater is
17 treated and returned to the river, the State Engineer finds
18 that the change of a full duty from irrigation to municipal
19 as proposed should be allowed and that would not reduce flow
20 in the Truckee River?

21 A. Yes.

22 Q. So, the State Engineer approved the change for
23 the full duty?

24 A. Yes.

25 Q. And he did not impose any condition that there

1 not be any change in dedication case of water rights, did he?

2 A. No.

3 Q. He did not even impose any condition what the
4 quantity of return flow needed to be, did he?

5 A. No, but in all of these rulings he referenced the
6 fact in the findings of fact the administrative record in the
7 '89 hearing.

8 Q. But we just went over the 1989 hearing and he
9 didn't do that there either, did he?

10 A. He didn't condition the permits, no, but there
11 was significant discussion on the record regarding protection
12 of rights based on 50 percent return flow and the 58 percent
13 rule, but he did not go so far as to condition the permits.

14 Q. He did not -- whatever the discussion was, it
15 didn't rise to the level of permit conditions, did it?

16 A. That's correct.

17 Q. The State Engineer apparently was satisfied, was
18 he not, that the consumptive use for municipal would not
19 exceed the consumptive use for irrigation; was he not
20 satisfied with that?

21 A. Yes.

22 Q. The State Engineer also made in all of these
23 rulings, did he not, over on page five, IV, could you just
24 read that, please?

25 A. "The State Engineer finds that the priority and

1 period of use of Orr Ditch decreed rights are unaffected
2 under the approved change permit and regulation of the same
3 is the responsibility of the Federal Water Master."

4 Q. So, in all these decisions and rulings the State
5 Engineer made no finding about the consumptive use for
6 irrigation?

7 A. There was testimony put on by Mr. Burns
8 regarding --

9 MR. DePAOLI: Move to strike as nonresponsive.

10 BY MR. DePAOLI:

11 Q. What I asked is did the State Engineer make any
12 determination as to consumptive use of these Orr Ditch
13 decreed water rights for irrigation?

14 A. He didn't come up with a number in acre foot per
15 acre, but he considered scenarios and testimony that
16 Mr. Burns put forward on his assumptions for ag CU versus M
17 and I CU.

18 Q. And were Mr. Burns' assumptions for ag CU higher
19 than the assumptions for M and I CU?

20 A. Yes, and he acknowledged that they were just
21 assumptions on the record.

22 HEARING OFFICER JOSEPH-TAYLOR: Let's be off the
23 record for a minute.

24 (A discussion was head off the record.)

25 HEARING OFFICER JOSEPH-TAYLOR: We're on the

1 record. Continue, Mr. DePaoli.

2 BY MR. DePAOLI:

3 Q. Mr. Mahannah, attachment 11 to the 1991 WRD,
4 Water Research & Development excerpt, who prepared that
5 report?

6 MR. VAN ZANDT: Are you talking about tab 11 to
7 Exhibit 801?

8 MR. DePAOLI: Yes.

9 THE WITNESS: The M and I return flow analysis, I
10 believe I did that. There was other aspects my father
11 participated in. HCI, another consultant, was involved with
12 some of the groundwater modeling. It was somewhat of a
13 combined.

14 BY MR. DePAOLI:

15 Q. And that reports shows that municipal return flow
16 over a 12-month period fluctuates, does it not?

17 A. Yes, it varies by the month.

18 Q. It shows, for example, that the high during that
19 period of study was 53.8 percent in 1982, the average for the
20 12 months in 1982 was 53.8?

21 A. Yes.

22 Q. And it also shows that the low consumptive use
23 was 40.2 percent in 1985?

24 MR. VAN ZANDT: 40.4 percent?

25 MR. MAHANNAH: 40.4 in 1985.

1 BY MR. DePAOLI:

2 Q. You are right, 40.4 in 1985.

3 A. Yes.

4 Q. So, in 1985, then, the consumptive use would have
5 been 59.6 percent?

6 A. Based on these figures. I mentioned that these
7 were conservative because we did not consider unsewered
8 customers, experts --

9 Q. We'll get to that. We'll get to that. But just
10 based on these figures it would have been 59.6 percent, would
11 it not?

12 A. Yes.

13 Q. And what is 59.6 percent of a four and a half
14 acre foot water duty?

15 A. 2.65 at four and a half.

16 Q. I noticed that in February of 1986 the return
17 flow was 105-point something period. Do you know what that
18 was all about?

19 A. I believe '86 as well as '85, I believe those
20 were extremely wet years and a possible explanation for that
21 is flooding and infiltration of sanitary sewers by storm
22 water. I think I noted that -- I came up with that same
23 situation in the January of 1997 flood in recent work.

24 Q. You think that was a flood, then?

25 A. Without going back and looking at the specific

1 numbers, that's what I'm surmising based on what I observed
2 in 1997.

3 Q. Moving to attachment 13 to Exhibit 801, do you
4 know whose handwriting is on that document?

5 A. I believe that's a copy of the letter that we got
6 from the State Engineer's Office, so perhaps it's the State
7 Engineer's staff. It's certainly not my writing.

8 Q. So you don't know?

9 A. I don't know.

10 Q. Did you have any involvement in the preparation
11 of that letter?

12 A. No.

13 Q. So then you don't have any information at all as
14 to the accuracy of that letter's estimate of there being ten
15 percent, a ten percent estimate of unsewered customers?

16 A. No. I believe CES followed what was directed by
17 them from Mr. Turnipseed's letter to the city of Reno under
18 tab 12.

19 Q. But you don't know?

20 A. Don't know what?

21 Q. You don't have any information on the accuracy of
22 that estimate?

23 A. I was not directly involved in preparing it, no.

24 Q. That estimate and its accuracy will affect the
25 percentage number for consumptive use, will it not?

1 A. I think based on the analysis that was done here
2 in 1991 by WRD and then most recently for this proceeding, as
3 well as TMWA's water resource plan and Mr. Burns' testimony,
4 50 percent is a number that --

5 HEARING OFFICER JOSEPH-TAYLOR: That is not what
6 he asked you. He asked you if the ten percent number was
7 different, would that change the consumptive use figure.

8 THE WITNESS: I apologize. I thought he moved
9 off the ten percent.

10 HEARING OFFICER JOSEPH-TAYLOR: Read the question
11 back, please.

12 (The record was read.)

13 THE WITNESS: Yes.

14 BY MR. DePAOLI:

15 Q. Is there a difference between an estimate of
16 unsewered customers and a percentage of water demand that is
17 unsewered?

18 HEARING OFFICER JOSEPH-TAYLOR: Did you follow
19 that? I didn't.

20 THE WITNESS: I didn't, no.

21 BY MR. DePAOLI:

22 Q. Is there a difference between estimating how many
23 customers are unsewered and estimating how much of a
24 company's water demand is unsewered?

25 A. I'm still having a -- I'm not following you.

1 Q. Let me try again. If TMWA has ten customers and
2 one of them is unsewered, ten percent of the customers are
3 unsewered, are they not?

4 A. In that hypothetical, yes.

5 Q. And if that one customer is using one percent of
6 the water demand, then only one percent of the demand is
7 unsewered?

8 HEARING OFFICER JOSEPH-TAYLOR: Make it a
9 correct.

10 BY MR. DePAOLI:

11 Q. Correct?

12 A. Correct.

13 Q. So, do we know which one of those CES is using in
14 this letter?

15 A. As I stated under item three, unsewered portion
16 of Truckee Meadows area is ten percent, estimate only.

17 Q. They're actually just reducing, taking ten
18 percent off the demand, are they not?

19 A. I would need to take some time to study all their
20 tables here to see, following their math to see exactly how
21 they did that.

22 Q. Well, let's do that. Let's look at the page that
23 is attached that says calculation of available effluent and
24 let's look at number two there, the shaded number under two
25 where it says 68,692 acre feet committed to users of the

1 Truckee Meadows users. Do you see that?

2 A. Uh-huh.

3 Q. And then do you see below that three, unsewered
4 portion of Truckee Meadows portion area, ten percent,
5 estimate only, and then they subtract 6869?

6 A. Okay. So it does look like they took ten percent
7 of that 68,692.

8 Q. So that's ten percent of the demand?

9 A. Yes.

10 Q. Do you have any information as to how much water
11 was actually delivered by Sierra Pacific to unsewered
12 customers in each of the months during each of the years that
13 CES looked at here?

14 A. No.

15 Q. You also presented information in the WRD
16 attachment which I think was attachment 11 to 801 and you
17 presented information from the CES letter which is attachment
18 13 and then you had your own data which is I believe table 3
19 to your report?

20 A. Correct.

21 Q. There's some overlap in the WRD data and the CES
22 data in terms of years, is there not?

23 A. The CES data, you are looking from 1983 to 1993
24 and WRD was 1980 through 1988.

25 Q. So there's an overlap between 1983 and 1988 in

1 the data?

2 A. Yes.

3 Q. If you look at the WRD data, for example, for
4 1987, do you have that?

5 A. Yes.

6 Q. For 1987 WRD shows total use of 63,384 acre feet?

7 A. Uh-huh.

8 Q. And for 1987, what does CES show for surface
9 water, excuse me, just for surface water?

10 A. Production data, 54,214.

11 Q. The number, and I need to clarify the question
12 that I asked you earlier. The number you quoted for 1987 in
13 the WRD data, that was for surface water as well, was it not?

14 A. Yes.

15 Q. That's a substantial difference, is it not?

16 A. Yes.

17 Q. Let's look at 1988. What's the WRD data show for
18 surface water for 1988 for Sierra Pacific?

19 A. WRD is 54,394.

20 Q. And what does the CES show for 1988 for surface
21 water?

22 A. 54,954.

23 Q. One more down.

24 A. I'm sorry. 48,954.

25 Q. Another substantial difference, right?

1 A. 5,000 acre feet.

2 Q. What's the overlap between your recent report and
3 the CIS report in years?

4 A. 1985 through 2005, theirs is 1983 through 1993.

5 Q. So, the overlap there is 1989 to 1993?

6 A. Correct.

7 Q. And what does the Chris Mahannah data show for
8 surface water in 1989?

9 A. 54,554.

10 Q. And what does CES show for that same year?

11 A. 48,234.

12 Q. Another substantial difference, right?

13 A. Yes. And the source of my data for column one in
14 table 3 was provided by the Water Master who in turn received
15 that from TMWA.

16 Q. How about 1991, Chris Mahannah CES surface water?

17 A. Mahannah is 47,934, 44,733 for CES in 1991.

18 Q. So another difference.

19 A. Yes.

20 Q. Who do you think is right, Mahannah's or CES's?

21 A. Again, as I just mentioned, I'm taking my data in
22 table 3 from the Water Master's record.

23 Q. So, do you think you're right?

24 A. I'm taking their records at face value.

25 Q. So, if you're right and CES is wrong, then the

1 consumption in those years would have been higher, would it
2 not, the M and I consumption?

3 MR. VAN ZANDT: Vague as to which years?

4 MR. DePAOLI: The years that we were just talking
5 about.

6 BY MR. DePAOLI:

7 Q. The years in which you had a higher surface water
8 diversion than they did, and when I say the Mahannah, I mean
9 the WRD in 1987 and 1988, and the Chris Mahannah in 1989 and
10 1991.

11 A. That is reflected. The average of all of these
12 years the Mahannah was 44 percent and they came up with
13 54 percent.

14 Q. Let's look at some of your data that you have in
15 your table 3, Mr. Mahannah. For example, in your data, and
16 I'll just use the data from the column without effluent
17 reuse, the low return flow in that column is 36 percent, is
18 it not, for 2003?

19 A. Yes.

20 Q. And there then is a high of 53 percent for 1995?

21 A. Yes.

22 Q. So, in 2003 the consumptive use portion would
23 have been 64 percent, would it not?

24 A. Yes. Again, this does not include unsewered
25 customers.

1 Q. We'll get to that too in a second. What is
2 64 percent times a four and a half acre foot duty?

3 A. He wants me to make a calc with an average duty
4 of four and a half. The average duty of their transfers is
5 four if you go back to the original decreed claim.

6 So what's the calculation again?

7 Q. 64 percent times -- well, go ahead and do it for
8 four.

9 A. 2.5.

10 Q. 2.56?

11 A. Correct.

12 Q. And the numbers would be somewhat close to that
13 for 2004 and 2001, would they not?

14 A. Yes.

15 Q. Again, all of this information that you provided,
16 both in the prior WRD report, the CES report, shows that
17 municipal return flows vary, do they not?

18 A. Yes, they vary from year to year and I think we
19 need to be cautious in cherry picking specific years.

20 Q. But there's no particular -- there's nothing in
21 place that says it can't be 64 percent in 2003, is there?

22 A. I'm sorry, can you repeat the question?

23 Q. There isn't anything that prevents a consumption
24 of 64 percent of the M and I water in a year like 2003, is
25 there?

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

A. No.

Q. So, suppose this municipal return flow consistently went into the '60s, the '70s, or let's say TMWA decided to go to land application and there was no return flow. What would happen then?

A. Well, I think we have an issue with what was addressed in the '89 hearing, that they wouldn't condition the permit at that time on some event which may or may not happen in the future.

Q. And if we had that hearing, what would the State Engineer consider in terms of how to get his arms around this situation?

MR. VAN ZANDT: Calls for speculation.

MR. MAHANNAH: I'm not sure I followed that question.

HEARING OFFICER JOSEPH-TAYLOR: Read that question back, Mary.

(The record was read.)

HEARING OFFICER JOSEPH-TAYLOR: Sustained.

BY MR. DePAOLI:

Q. Wouldn't there be a hearing on the consumptive use of these rights in their original irrigation use?

MR. VAN ZANDT: Calls for speculation.

HEARING OFFICER JOSEPH-TAYLOR: Hold on, Mr. Van Zandt. Do you want to rephrase it, Mr. DePaoli, for

1 me?

2 BY MR. DePAOLI:

3 Q. If a protest ground on all of these applications
4 when they were being changed from irrigation to M and I was
5 that they ought to be limited to consumptive use for
6 irrigation, was that not the protest ground?

7 A. I believe prior to that '89 hearing we attempted
8 to reach settlement with --

9 HEARING OFFICER JOSEPH-TAYLOR: That's not what
10 he asked you. He asked you what was the protest ground in
11 the '89 hearing. Was it limited to a change to consumptive
12 use of irrigation?

13 A. The protest stated limit the application to the
14 consumptive use amount leaving the remaining amount in the
15 Truckee River to meet downstream water rights which rely on
16 these return flows. We attempted before the hearing to have
17 that limit be 50 percent.

18 BY MR. DePAOLI:

19 Q. What does the protest read?

20 A. What I just read.

21 Q. Read it again without the editorial at the end.

22 MR. VAN ZANDT: He's arguing with the witness.

23 HEARING OFFICER JOSEPH-TAYLOR: Well, the witness
24 is elaborating past the question, too. Answer the question.
25 We're going to go about another 15 minutes and then I'm going

1 to break for the day to take a conference call.

2 MR. MAHANNAH: Item one of the TCID protest at
3 the time states, "Limit the application to the consumptive
4 use amount leaving the remaining amount in the Truckee River
5 to meet downstream water rights which rely on these return
6 flows."

7 BY MR. DePAOLI:

8 Q. Thank you.

9 A. Then we go on to state that this condition shall
10 only be met upon removal of the wastewater from the river.

11 MR. VAN ZANDT: What page are you reading from,
12 Mr. Mahannah?

13 MR. MAHANNAH: I'm just reading from page two of
14 ruling 4005 where the State Engineer states TCID's protest
15 ground.

16 HEARING OFFICER JOSEPH-TAYLOR: Exhibit 801, tab
17 what?

18 MR. MAHANNAH: Tab 5.

19 BY MR. DePAOLI:

20 Q. So, if we got into a situation that was consumed
21 in that condition, wouldn't you agree that the hearing would
22 be on the consumptive use of the water right for irrigation?

23 A. Can you restate the question?

24 HEARING OFFICER JOSEPH-TAYLOR: It's a fairly
25 simple question. If they started using, if TCID thinks

1 they're using more consumptive use and you called for a
2 hearing, would your evidence be consumptive use of
3 irrigation? Did I follow you, Mr. DePaoli?

4 MR. DePAOLI: Yes.

5 MR. MAHANNAH: If we called for a hearing after
6 this hearing had already -- the results of this had already
7 been determined?

8 HEARING OFFICER JOSEPH-TAYLOR: Mr. DePaoli posed
9 to you if TMWA starts using more and more effluent and TCID
10 thinks there's injury and wanted a hearing on you're using
11 more than 50 percent, what would TCID's evidence look at for
12 consumptive use to show injury?

13 MR. MAHANNAH: In that case they would probably
14 look at the ag CU and return flow.

15 BY MR. DePAOLI:

16 Q. Mr. Mahannah, if you could look at Exhibit 801 in
17 your conclusions, the first paragraph on page four at the
18 bottom, the last line of heading IV --

19 A. Where on the conclusions?

20 Q. Under IV, the first paragraph, the last line,
21 could you just read that out loud?

22 A. Starting with "Should drought conditions"?

23 Q. Yes.

24 A. "Should drought conditions exist in any given
25 year whereby the water master deems the original municipal

1 duty could not be diverted, then volume stored should be
2 proportionately reduced."

3 Q. So, what is the original municipal duty in
4 connection with these applications?

5 HEARING OFFICER JOSEPH-TAYLOR: Which
6 applications, Mr. DePaoli?

7 BY MR. DePAOLI:

8 Q. The applications that are the subject of this
9 hearing.

10 A. Can you restate that again?

11 Q. You say that if the Water Master deems the
12 original municipal duty could not be diverted then the volume
13 stored should be proportionally reduced. What I'm asking you
14 is what is the original municipal duty you're referring to
15 there?

16 A. The municipal duty that was granted under the
17 base rights on all of the change applications before us
18 today.

19 Q. That would be the full duty of all these water
20 rights?

21 A. Yes.

22 Q. And is it your understanding that the Water
23 Master can regulate the extent to which water would be stored
24 under these change applications if they're approved?

25 A. I believe his office will if TROA has to go into

1 effect and the decree modified.

2 Q. Assuming that happened, it's your understanding
3 the Water Master could regulate those?

4 A. That's my understanding, yes.

5 MR. DePAOLI: I'm about to go into the timing
6 issue. I don't know how much longer you're going to go.

7 HEARING OFFICER JOSEPH-TAYLOR: We've got about
8 five minutes. Do you want to break and come back tomorrow?

9 MR. DePAOLI: Yes, I don't think I can finish in
10 five minutes, so it's a good place to break.

11 HEARING OFFICER JOSEPH-TAYLOR: Okay. Thank you
12 for that. We're still on schedule doing that, correct,
13 Mr. Van Zandt? You're moving along quite well?

14 MR. VAN ZANDT: I believe so. What time do we
15 start?

16 HEARING OFFICER JOSEPH-TAYLOR: Nine o'clock. I
17 believe we're looking at possible weather again tomorrow, so
18 travel safely.

19 We'll be in recess until tomorrow morning at
20 nine o'clock and we'll continue with cross-examination on
21 Exhibit 801. Thanks, everybody.

22

23 (The proceedings recessed at 4:08 p.m.)

24

25

