

STATE WATER RESOURCES CONTROL BOARD

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VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY

PETITION FOR CHANGE

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HELD AT

PAUL BONDERSON BUILDING
SACRAMENTO, CALIFORNIA

THURSDAY, JANUARY 18, 2001
9:00 A.M.

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Reported by:

SANDRA VON HAENEL
CSR No. 11407

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1	INDEX	
2		PAGE
3	RESUMPTION OF HEARING:	640
4		
5	APPLE VALLEY RANCHOS:	
6	OPENING STATEMENT:	
	MR. YAMAMOTO	640
7		
8	DIRECT EXAMINATION:	
	BY MR. YAMAMOTO	
9	FREDERIC A. FUDACZ	643
10	CROSS-EXAMINATION:	
	BY MR. HITCHINGS	651
11	BY MS. MURRAY	673
	BY MR. LEDFORD	675
12	BY MR. KIDMAN	681
	BY STAFF	693
13		
14	REBUTTAL TESTIMONY BY DEPARTMENT OF FISH AND GAME:	
15	DIRECT EXAMINATION:	
	BY MS. MURRAY	
16		
	KIT CUSTIS	695
17		
	CROSS-EXAMINATION:	
18	BY MR. HITCHINGS	700
	BY MR. KIDMAN	701
19	BY STAFF	702
20		
21	REBUTTAL TESTIMONY BY JESS RANCH WATER COMPANY:	
22	DIRECT TESTIMONY:	
	BY MR. LEDFORD	703
23		
	CROSS-EXAMINATION:	
24	BY MR. HITCHINGS	712
25		

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 (Continued)

REBUTTAL TESTIMONY BY SOUTHERN CALIFORNIA WATER COMPANY:

DIRECT EXAMINATION:
BY MR. KIDMAN

THOMAS STETSON 713
BOYD HILL 728

CROSS-EXAMINATION:
BY MR. HITCHINGS 732
BY MS. MURRAY 736
BY MR. LEDFORD 741
BY MR. YAMAMOTO 742

REDIRECT EXAMINATION:
BY MR. KIDMAN 744

---oOo---

1
2
3
4
5
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8
9
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SACRAMENTO, CALIFORNIA

THURSDAY, JANUARY 18, 2001, 9:00 A.M.

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HEARING OFFICER BAGGETT: We are back with the Victor Valley hearing.

Mr. Yamamoto, you are up.

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DIRECT EXAMINATION

BY APPLE VALLEY RANCHOS WATER COMPANY

BY MR. YAMAMOTO

MR. YAMAMOTO: Good morning. My name is Andrew Yamamoto. I'm here on behalf of the Apple Valley Ranchos Water Company.

Apple Valley is a major water producer within the Mojave basin. We serve approximately 46,000 local residents. Like every single member agency of the Victor Valley Waste Water Reclamation Authority, Apple Valley has been a member, has entered into the Stipulated Judgment, adjudicating all of the parties' water rights in the area.

The Stipulated Judgment, which is attached as Apple Valley Exhibit 3, divides the Mojave basin into five subareas. Two of the subareas are particularly relevant to these proceedings. The first area is the Alto Subarea, which is where the VVWRA is located and also where Apple Valley Ranchos is located. The second subarea is the Centro

1 Subarea, which is immediately downstream of the Alto
2 Subarea.

3 The Stipulated Judgment adjudicates a lot of different
4 water rights among the parties but, important to these
5 proceedings, it requires the water producers in the Alto
6 Subarea to provide 23,000 acre-feet of water annually to the
7 transition zone, that part of the Alto Subarea which borders
8 on Centro.

9 Currently, the VVWRA discharges approximately 9,000
10 acre-feet annually into the transition zone. Under the
11 Judgment, all of these discharges are counted toward the
12 Alto Subarea's obligation to provide water to the transition
13 zone.

14 This use of the VVWRA's discharges towards the
15 obligation of the Alto Subarea is indisputably proper. No
16 party, including VVWRA, has disputed the legality of the use
17 of that water as a credit towards the Alto Subarea's
18 obligations. And it's very clear in the Judgment that it's
19 permitted.

20 The use of the VVWRA's discharges as a credit towards
21 the Alto Subarea's obligation to provide water to the
22 transition zone is very fair, because if there was no VVWRA
23 wastewater treatment plant, naturally the waste waters in
24 the Alto Subarea would flow to the transition zone. So all
25 the VVWRA plant does is accelerate the transfer of water

1 from Alto to the transition zone by taking some of the
2 wastewater in pipes and delivering it directly to that area.
3 There is no difference in the amount of water that would be
4 transferred -- just the timing.

5 Naturally enough, the water rights of the various
6 parties, especially the Alto-area parties, as is relevant
7 here, was a major part of the negotiations leading to the
8 Stipulated Judgment. Thus, in addition to creating the Alto
9 Subarea obligation to provide 23,000 acre-feet of water to
10 the transition zone, the Judgment specifically allows water
11 transported to the transition zone, for example, by VVWRA,
12 to count as part of the water rights of Alto and to allow
13 that water to be credited towards the Alto Subarea's
14 obligation.

15 To grant the VVWRA's petition would injure the rights
16 of Apple Valley Ranchos and other Alto Subarea producers in
17 a manner which constitutes an injury to a legal user of
18 water within the plain meaning of Section 1702.

19 Granting the VVWRA petition would also injure the
20 rights of Centro Subarea producers as has been indicated in
21 the prior cases in chief. There are a number of Centro area
22 producers that have water rights that will be prejudiced by
23 the VVWRA's diversion of water from the transition zone, one
24 of them being Southern California Water, which has
25 appropriative license permits from this Board to divert

1 water from the river downstream of the discharge point of
2 the VVWRA plant.

3 Granting the petition will injure the water rights of
4 the Centro Subarea producers, just like it would injure the
5 rights of Alto area's producers in a manner which would
6 violate Section 1702.

7 However, even if you were not to consider the
8 Stipulated Judgment and you were to ignore the rights of the
9 Alto Subarea producers, the rights of the Centro Subarea
10 producers would clearly be violated in a way that
11 contradicts Section 1702. Because, even without the
12 Judgment, they have clearly established water rights which
13 allow them to rely on the natural discharges of the Alto
14 Subarea and the diverted natural discharges that are
15 processed through VVWRA.

16 Therefore, if you grant the petition, you injure the
17 rights of both Alto area producers, such as Apple Valley
18 Ranchos, and injure the rights of Centro area producers who
19 are downstream of the VVWRA plant. And, basically, it's
20 clear that the Board should reject the petition, because
21 they cannot meet the requirements for 1702.

22 And with that, I would go to our direct testimony.

23 Good morning, Mr. Fudacz.

24 MR. FUDACZ: Good morning, Mr. Yamamoto.

25 MR. YAMAMOTO: Could you please state your name for

1 the record.

2 MR. FUDACZ: Frederic Anthony Fudacz.

3 MR. YAMAMOTO: And Exhibit 2 to the Apple Valley
4 exhibits is a true and correct copy of your résumé; correct?

5 MR. FUDACZ: That's correct.

6 MR. YAMAMOTO: And is Exhibit 1 of the Apple Valley
7 exhibits a true and correct copy of your written testimony?

8 MR. FUDACZ: Correct.

9 MR. YAMAMOTO: And do you have any corrections to your
10 written testimony?

11 MR. FUDACZ: Actually, I do.

12 After hearing Mr. Hill's testimony, we looked at some
13 of the figures we had used to calculate the costs involved
14 with having them make up the discharges that would be
15 diverted by the VVWRA, and we found that our calculation was
16 in error. So I direct everyone's attention to paragraph 13
17 of my statement, which indicates that if all the water being
18 discharged in water year 1998-'99 were diverted away from
19 the channel by VVWRA, that the cost to Apple Valley would be
20 \$162,000. That number is in error.

21 We underestimated the amount of that discharge, or
22 understated it. And the correct number should be \$176,191.
23 But we did overstate the price. The price that we indicated
24 in my testimony was \$162. That should be 165. But, still,
25 because we had understated the discharges, the amount still

1 increases.

2 And then, at the end of that paragraph, I state that
3 the current MWA charges are \$171 per acre-foot of imported
4 water. That should be \$191, with an indication by the Board
5 that it may go up to in the range of 225 to 228.

6 But with those corrections, my testimony is accurate
7 to the best of my knowledge.

8 MR. YAMAMOTO: Thank you.

9 Could you please summarize your qualifications to give
10 testimony today.

11 MR. FUDACZ: Well, I've been practicing law now for
12 over 29 years, largely in the area of water and
13 environmental issues. Among my clients has been Apple
14 Valley Ranchos Water Company which, as Mr. Yamamoto
15 indicated, is an investor-owned public utility in the Apple
16 Valley area.

17 I began representing Apple Valley Ranchos, I believe,
18 in 1987, and then I became their lead attorney in 1990 in
19 the Mojave Adjudication.

20 As the lead for Mojave -- for Apple Valley Ranchos,
21 rather, in that litigation, I took a very intimate role in
22 the negotiation of the Stipulated Judgment and actually in
23 the drafting of the Judgment. I was very much involved in
24 the creation of that vehicle, as was Mr. Kidman.

25 I also was one of the principal trial lawyers at the

1 time that the matter was tried in -- I think it was 1995 --
2 in the Riverside Superior Court before Judge Kaiser.

3 Beyond my representation of Apple Valley Ranchos, I
4 represent a whole host of water entities, entities
5 interested in water. Among my clients include the water
6 masters for the upper Los Angeles River area, which is
7 better known as the San Fernando Basin, a water master
8 created by the Los Angeles versus San Fernando case. Also,
9 the Raymond Basin Judgment that was created by the Pasadena
10 versus Alhambra case. And also we serve as general counsel
11 to the main San Gabriel Basin water master.

12 I also serve as, and have helped form an association
13 of groundwater agencies known as, curiously enough, the
14 Association of Groundwater Agencies. That essentially
15 represents all of the major groundwater managers in Southern
16 California, including the water masters I indicated, Orange
17 County Water District, Kern County Water Agency,
18 Tehachapi-Cummings, the Mojave Water Agency, et cetera,
19 et cetera.

20 And, finally, I am general counsel to the recently
21 formed California Assembly -- California -- Southern
22 California Water Caucus.

23 MR. YAMAMOTO: Thank you.

24 Could you please summarize your testimony.

25 MR. FUDACZ: Sure. I'd be happy to, just briefly.

1 Basically, I'm here on behalf of Apple Valley Ranchos
2 because we have a concern that this petition and what this
3 petition may lead to will significantly harm the water
4 rights that were accorded to Apple Valley Ranchos and other
5 right holders in the Mojave River basin. And as a result of
6 that harm, will cause significant increases in rates to our
7 ratepayers.

8 The Judgment, the Mojave Judgment did a lot of things.
9 It adjudicated individual water rights, but it also set up
10 these subbasins that Mr. Yamamoto alluded to: the Alto
11 subbasin in which Apple Valley has its wells and where VVWRA
12 operates; the Centro subbasin, which is immediately
13 downstream of Alto, where the city of Barstow is located.

14 And as part of that Judgment, the Alto Subarea has an
15 obligation to the Centro Subarea. The right holders in Alto
16 have to guarantee certain minimum flows to the Centro
17 subbasin as measured at the Lower Narrows Gage. That number
18 was calculated by engineers that participated in the
19 formulation of the Adjudication. And the number they
20 arrived at was 23,000 acre-feet per year on average. And
21 that excludes storm flows. It's base flow and subsurface
22 flow.

23 And it is very important to understand that, in
24 calculating that number, these engineers looked at historic
25 data, I think, going back to 1930, but included in that data

1 the discharges that were made by VVWRA into the channel
2 since the inception of their operations. So, in other
3 words, that engineering group and all stipulating parties to
4 that judgment did not look at those discharges as if they
5 were foreign water but, rather, as part of the natural water
6 scheme in the basin. An important point.

7 The Judgment also does not require the curtailment of
8 production in Alto to achieve these flows. That's one way
9 we could have gone about it. And, in fact, the initial
10 complaint filed by Mr. Kidman suggested that we simply
11 curtail our production in Alto to assure that these flows
12 got to Centro.

13 But in lieu of that, what was crafted was a physical
14 solution. A physical solution that said that if you -- if
15 you don't meet this minimum subarea obligation, you're not
16 required to curtail production, rather, you're assessed a
17 makeup water assessment. And then that money is put into a
18 fund that is used to buy imported water to make up for the
19 shortfall.

20 The Judgment is also very clear that all the right
21 holders in Alto can rely on the discharges of VVWRA to the
22 channel to help defray that subarea obligation. And, in
23 fact, since 1993, when the judgment became operative, my
24 clients and other right holders within Alto have, in fact,
25 been using that water, relying on that water to meet their

1 subarea obligation.

2 And if this petition is allowed, if water is diverted
3 out of that channel by VVWRA, clearly we will suffer a harm.
4 We have to bring in additional water to make up that
5 differential. And I think under the plain meaning of
6 Section 1702 of the Water Code, harm would then be inflicted
7 upon a legal user of that water.

8 And as Mr. Yamamoto has pointed out, that is a basis
9 in and of itself for the Board to deny this application.

10 In addition, the Judgment creates an obligation on
11 right holders in Alto and, in fact, in the whole basin to
12 address the needs, the water needs and other needs of
13 biological resources in the area, including the transition
14 zone.

15 All water production is assessed as a biological
16 resource assessment to create a fund for biological
17 mitigation purposes. That fund is capped at a million
18 dollars. It can be accessed by Department of Fish and Game,
19 among other reasons, if certain water levels in the
20 transition zone are not met that are specified in the
21 Judgment.

22 My client and other right holders in Alto have relied
23 on these discharges by VVWRA to help meet those water
24 levels. And if this water is, again, diverted out of the
25 system, our obligation for biological resource mitigation

1 will be increased. Again, another harm to a legal user of
2 water. It's violative of Water Code Section 1702. Another
3 reason to deny the petition.

4 Apple Valley Ranchos really had hoped that it didn't
5 have to be here. And, in fact, when the petition was filed,
6 we did not file a protest. And the reason we didn't file a
7 protest was that we were informed that there was agreement.
8 In fact, we participated in some discussions leading to that
9 agreement, where VVWRA indicated that they were willing to
10 condition their proposed project on a condition that they
11 would continue to discharge 8500 acre-feet of water into the
12 channel.

13 8500 acre-feet per year roughly approximates what
14 Ranchos and other right holders in Alto have relied upon
15 since the operation of the Judgment, to defray the subarea
16 obligation and to deal with the biological resource
17 mitigation. It seemed like a fair compromise, a fair way of
18 dealing with the competing interests here.

19 And I guess our concern about the true intent of VVWRA
20 is somewhat heightened when they seem to have backed away
21 from that proposed stipulation. And particularly in light
22 of the fact that the testimony during these proceedings
23 makes it quite clear that they indicate that they can meet
24 that 8500 acre-feet obligation and still do this project and
25 other projects that they claim to be the only ones on their

1 agenda.

2 So I guess I would suggest, first, that if
3 Mr. Hitchings is willing to stipulate to that number, we can
4 all go home right away.

5 But if he's not, that if this Board has any
6 inclination to grant the petition, that it do so only on the
7 condition that they continue to guarantee that 8500
8 acre-foot discharge into the channel. Otherwise, it's clear
9 that my client and other right holders who have rights under
10 1702 will be injured.

11 And that's all I have.

12 MR. YAMAMOTO: Thank you.

13 Apple Valley would move that the exhibits it has
14 already submitted be introduced into evidence.

15 H.O. BAGGETT: Any objection?

16 MR. HITCHINGS: No objection.

17 H.O. BAGGETT: They're admitted.

18 MR. YAMAMOTO: Thank you.

19 H.O. BAGGETT: Mr. Hitchings?

20 MR. HITCHINGS: Thank you.

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22 CROSS-EXAMINATION BY

23 VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY

24 BY MR. HITCHINGS

25 MR. HITCHINGS: Good morning, Mr. Fudacz.

1 MR. FUDACZ: Good morning, Mr. Hitchings.

2 MR. HITCHINGS: Andy Hitchings for VVWRA.

3 Mr. Fudacz, to your understanding, is VVWRA a party to
4 the Adjudication?

5 MR. FUDACZ: It's -- it is not, but all of its
6 constituent members are.

7 MR. HITCHINGS: But VVWRA, as a separate legal entity,
8 is not a party to the Adjudication; is that correct?

9 MR. FUDACZ: Correct.

10 MR. HITCHINGS: Thank you. Is there any term or
11 condition in the Adjudication that requires VVWRA to
12 continue discharging at any level of discharge?

13 MR. FUDACZ: By operation of law, I believe there is.

14 MR. HITCHINGS: And what do you mean "by operation of
15 law"? There's a term in the Adjudication?

16 MR. FUDACZ: I believe if you look at Exhibit G,
17 paragraph 3, you will see that -- well, let's look at it.

18 MR. YAMAMOTO: And just to clarify, you mean Exhibit G
19 to our Exhibit 3?

20 MR. FUDACZ: To the Mojave Adjudication which
21 Mr. Hitchings was referring to.

22 Exhibit 3 -- or Exhibit G, paragraph 3, talks about
23 other water that may be credited to a subarea obligation.
24 And that includes water conveyed and discharged across the
25 boundary. In this case, the Lower Narrows Gage going into

1 the transition zone. That was intended to allow right
2 holders in Alto to rely on the discharges of VVWRA to meet
3 that subarea obligation.

4 MR. HITCHINGS: To be credited for that subarea
5 obligation?

6 MR. FUDACZ: Correct.

7 MR. HITCHINGS: But there is no -- VVWRA, as a
8 separate legal entity that discharges its effluent, is not
9 subject to the terms of this Judgment, is it?

10 MR. FUDACZ: Well, the issue to me is are we a legal
11 user of this water? And under 1702, if you discontinue your
12 discharges, are we harmed? I think this provision makes
13 quite clear that we are a legal user of that water. And if
14 you divert the water away so it can't be credited to that
15 obligation, we are, indeed, harmed within the meaning of
16 1702.

17 MR. HITCHINGS: I understand that that's your
18 interpretation of 1702. But that wasn't my question.

19 My question was whether VVWRA is subject to the terms
20 of the Judgment.

21 MR. FUDACZ: Well, I think --

22 MR. HITCHINGS: As a party.

23 MR. FUDACZ: Well, not as a party. But I think you've
24 got to understand that, you know, the water that finds its
25 way into the VVWRA's plant, only finds its way in there

1 because it's produced by right holders to water in the Alto
2 Subarea, folks that stipulated to the Judgment.

3 MR. HITCHINGS: I understand that --

4 MR. FUDACZ: They stipulated that they had no water
5 rights and were producing no water that finds its way to the
6 VVWRA. VVWRA would be out of business. So anyway --

7 MR. HITCHINGS: I understand that. That really isn't
8 clarifying the answer to the question. My question was
9 simple: whether VVWRA, as a party, is subject to the terms
10 of the Judgment. And it's yes or no.

11 MR. FUDACZ: Well, they aren't a party.

12 MR. HITCHINGS: Okay.

13 MR. FUDACZ: That's true.

14 MR. HITCHINGS: And does the court in the Mojave
15 Adjudication have jurisdiction over VVWRA, given that VVWRA
16 is not a party to the Judgment?

17 MR. FUDACZ: Well, it certainly has jurisdiction over
18 the water that flows into its plant.

19 MR. HITCHINGS: But does it have jurisdiction over
20 VVWRA as a party --

21 MR. FUDACZ: Not as a separate entity.

22 MR. HITCHINGS: Okay. Thank you.

23 Does Apple Valley Ranchos put to beneficial use any of
24 the water that VVWRA discharges?

25 MR. FUDACZ: Yes.

1 MR. HITCHINGS: So does it apply that water for any
2 type of beneficial use?

3 MR. FUDACZ: You bet.

4 MR. HITCHINGS: Okay. What is the beneficial use that
5 they put it to?

6 MR. FUDACZ: Essentially, they put it to beneficial
7 use in recognizing the downstream water rights.

8 MR. HITCHINGS: But --

9 MR. FUDACZ: Rights that VVWRA, absent this Judgment,
10 would have to recognize.

11 So, I mean, the water is being used. Essentially, we
12 didn't create the subarea obligation out of the goodness of
13 our heart. We did it because we were compelled to recognize
14 these downstream rights.

15 MR. HITCHINGS: Well, what is the recognized
16 beneficial use? Is it being used for irrigation?

17 MR. FUDACZ: It's being used for all of the uses of
18 water.

19 MR. HITCHINGS: By Apple Valley Ranchos? Is Apple
20 Valley Ranchos diverting the water that VVWRA discharges,
21 for irrigation purposes?

22 MR. FUDACZ: It is using that water to meet
23 obligations to Centro downstream users that use it for
24 domestic purposes, for irrigation purposes, for recreational
25 purposes. All kinds of uses.

1 MR. HITCHINGS: That's not my question. My question
2 is: Is Apple Valley Ranchos diverting the water that VVWRA
3 discharges and applying it for irrigation purposes?

4 MR. FUDACZ: It's not diverting the water for
5 irrigation purposes, no.

6 MR. HITCHINGS: Is Apple Valley Ranchos diverting any
7 of the water that VVWRA discharges?

8 MR. FUDACZ: It's not diverting the water, no.

9 MR. HITCHINGS: Okay. In paragraph 5 of your written
10 testimony, you refer to a commitment in referring to the MOU
11 that had been executed between VVWRA and Fish and Game to
12 discharge 8500 acre-feet of treated wastewater.

13 Do you see that statement in there?

14 MR. FUDACZ: Yes, I do.

15 MR. HITCHINGS: And you have referred, during your
16 summary of the testimony regarding that, I think you
17 referred to it as a stipulation.

18 Do you recall just testifying to that?

19 MR. FUDACZ: Right.

20 MR. HITCHINGS: Now, that's attached as Exhibit 4?

21 MR. FUDACZ: Yes.

22 MR. HITCHINGS: Are you aware of the conditions
23 associated with the provisions?

24 MR. FUDACZ: I'll grant you there are conditions, and
25 I'm not contesting your right to continue with your petition

1 under these circumstances. My only point is it strikes me
2 all of the testimony you've put on indicates that you think
3 it's well within your means to continue to discharge 8500
4 acre-feet there. And my only question is: If that's the
5 case, and you're willing to commit to it, we can all go
6 home.

7 MR. HITCHINGS: Well, let's read one of the conditions
8 to paragraph 3-A of that MOU that had been determined
9 between Fish and Game and VVWRA.

10 MR. FUDACZ: 3-A?

11 MR. HITCHINGS: If you look at paragraph 3-A. This is
12 on Page 3.

13 MR. FUDACZ: Okay.

14 MR. HITCHINGS: And this will continue on to Page 4.

15 It says: "VVWRA shall continue to discharge not less
16 than 8500 acre-feet annually and not less than 18 acre-feet
17 per day of treated wastewater." And then it goes to
18 "Subject to the following conditions."

19 And the first condition is in the event that the level
20 of inflows is not sufficient to create that level of
21 discharge.

22 The second condition is if VVWRA is enjoined or
23 restrained by a higher entity that has jurisdiction to do
24 that.

25 MR. FUDACZ: Okay.

1 MR. HITCHINGS: And the third is in the event that
2 VVWRA implements, in accordance with other applicable legal
3 and regulatory requirements, one or more reclaimed water
4 reuse projects.

5 So, based upon that condition of the Memorandum of
6 Understanding, is it correct to state, or do you understand
7 that VVWRA was not committing in perpetuity to an 8500
8 acre-feet annual level of discharge?

9 MR. FUDACZ: My understanding was that you committed
10 to it for this project. If you were going to consider other
11 projects, that you would re-engage DFG and hopefully others
12 that are concerned with your discharges, such as my client,
13 and would work out something appropriate under those
14 circumstances. I agree.

15 MR. HITCHINGS: And do you have any understanding as
16 to whether VVWRA was willing to enter into this Memorandum
17 of Understanding with Fish and Game in order to potentially
18 avoid a hearing in this matter?

19 MR. FUDACZ: I -- you never shared to me your
20 intention, so I don't know.

21 MR. HITCHINGS: Okay. Let's look at paragraph 18.
22 This is on Page 7 of the agreement. And if you look at the
23 triple little "i" it talks about the ability to terminate
24 the agreement in the event that an order conditionally
25 dismissing the protest within 60 days of the date first

1 written above.

2 Do you see that provision in there?

3 MR. FUDACZ: Yes.

4 MR. HITCHINGS: So is it fair to state that VVWRA did
5 not enter into a perpetual commitment to discharge 8500
6 acre-feet pursuant to the terms of the agreement?

7 MR. FUDACZ: I agree it was not perpetual, but it was
8 certainly a commitment as to this particular petition, and
9 envisioned further discussions and, hopefully, a rational
10 approach to what their commitment might be in perpetuity for
11 the foreseeable future.

12 MR. HITCHINGS: In paragraph 11 of your written
13 testimony, you state that Apple Valley Ranchos and others
14 have used the VVWRA discharge to fulfill a substantial
15 portion of the Alto Subarea's obligation to provide water to
16 the transition zone.

17 MR. FUDACZ: Correct.

18 MR. HITCHINGS: During your summary of your written
19 testimony, you were referring to the subarea obligation to
20 provide base flows to the Centro Subarea.

21 Do you recall stating that?

22 MR. FUDACZ: As measured --

23 MR. HITCHINGS: At the Lower Narrows.

24 MR. FUDACZ: -- at the Lower Narrows.

25 MR. HITCHINGS: Correct.

1 MR. FUDACZ: Yes.

2 MR. HITCHINGS: In your written testimony you have, as
3 I just stated, "to the transition zone," that that's the
4 subarea obligation?

5 MR. FUDACZ: The subarea obligation is measured at the
6 Lower Narrows, which is the commencement of the transition
7 zone.

8 MR. HITCHINGS: How does the Adjudication articulate
9 the subarea obligation? Does it articulate it as, and is it
10 under the specific wording of the Adjudication: "to the
11 transition zone," or "to the Centro Subarea"?

12 MR. FUDACZ: Well, it is an obligation that's measured
13 at the Lower Narrows Gage for the reasons I think
14 Mr. Stetson articulated, that there wasn't any convenient
15 measuring point at the Helendale Fault, which is the
16 boundary between the two subareas.

17 It also contemplated that certain water levels would
18 be set by MWA in the transition zone, and those would be
19 maintained to facilitate the transfer, the carriage of the
20 water that passed the Lower Narrows Gage on towards Centro.

21 MR. HITCHINGS: And have those groundwater levels been
22 established and maintained?

23 MR. FUDACZ: To my knowledge, MWA has not set those
24 levels yet. That's a task that remains to be accomplished
25 by the water master --

1 MR. HITCHINGS: Do you have any --

2 MR. FUDACZ: -- under the Judgment.

3 MR. HITCHINGS: I'm sorry.

4 Do you have any other understanding as to why they

5 haven't been established yet?

6 MR. FUDACZ: I don't know.

7 MR. HITCHINGS: If you look at the specific wording of

8 Exhibit G2, the Mojave Adjudication -- and this is looking

9 at Exhibit 3 of your testimony -- on Page G2 it's

10 subparagraph E, that's the provision of the Adjudication

11 that specifically articulates what the Alto Subarea

12 obligation area is.

13 MR. FUDACZ: Excuse me. What page are you reading?

14 MR. HITCHINGS: I'm sorry. Page G2.

15 MR. FUDACZ: And what subparagraph?

16 MR. HITCHINGS: This is the first paragraph,

17 subparagraph E, at the top.

18 MR. FUDACZ: Okay. Yes.

19 MR. HITCHINGS: That provision is the provision in the

20 Judgment that specifically articulates the Alto Subarea

21 obligation; is that correct?

22 MR. FUDACZ: Well, the whole -- that whole

23 subparagraph does, yes.

24 MR. HITCHINGS: Right. And in that it refers to -- if

25 you look at the first sentence: "An average annual combined

1 subsurface flow of 23,000 acre-feet to the transition zone";
2 is that correct?

3 MR. FUDACZ: That's correct.

4 MR. HITCHINGS: And later on, it says -- the last
5 sentence in that paragraph is: "An obligation to provide to
6 the transition zone a minimum combined subsurface flow and
7 base flow as follows."

8 And then it talks about the different conditions; is
9 that correct?

10 MR. FUDACZ: Correct. But I think you also have to
11 read that in combination with paragraph 2 that talks about
12 the obligation for transition zone replacement water.

13 MR. HITCHINGS: I understand that. And you probably
14 have to read it in combination with the definition of
15 subarea obligation in the beginning of the Judgment, which
16 is on Page 11, I believe.

17 I'm sorry. Page 13. And that's subparagraph JJ, at
18 the -- near the top of the page. And that defines subarea
19 obligation as the average annual amount of water that a
20 subarea is obligated to provide to an adjoining downstream
21 area or the transition zone. And then deleting or omitting
22 the rest until "as set forth in Exhibit G."

23 MR. FUDACZ: Correct.

24 MR. HITCHINGS: In paragraph 11, when you state that
25 Apple Valley Ranchos has used VVWRA --

1 MR. FUDACZ: We are going back to where?

2 MR. HITCHINGS: I'm sorry. Paragraph 11 of your
3 written testimony.

4 Thank you for clarifying that.

5 When you state that Apple Valley Ranchos has used
6 VVWRA discharges, again, you're not asserting that Apple
7 Valley Ranchos is consumptively using those discharges, are
8 you, Apple Valley Ranchos as an entity?

9 MR. FUDACZ: As an entity, no. But it's certainly
10 utilizing them as provided under the Judgment.

11 MR. HITCHINGS: But you're not putting any of those
12 discharge quantities --

13 MR. FUDACZ: We are not taking that water and putting
14 it into our system and serving it to our customers, no.

15 MR. HITCHINGS: Okay. In referring to paragraph 13 of
16 your written testimony, and you had indicated some
17 corrections --

18 MR. FUDACZ: Uh-huh.

19 MR. HITCHINGS: -- earlier this morning --

20 MR. FUDACZ: Correct.

21 MR. HITCHINGS: -- regarding the price amount and the
22 per-acre-foot number.

23 Those numbers are based upon a calculation that
24 assumes all of the water that VVWRA discharges would no
25 longer be discharged?

1 MR. FUDACZ: That's correct.

2 MR. HITCHINGS: So that would be approximately 9,000
3 acre-feet annually?

4 MR. FUDACZ: For this calculation it was 8,744
5 acre-feet total. Our percentage of the rights is
6 13 percent. So our responsibility would be essentially
7 1,136 acre-feet.

8 MR. HITCHINGS: And this project, though, is only for
9 a maximum of 1680 acre-feet; is that correct?

10 MR. FUDACZ: Yeah. I understand that. If you told me
11 that this was the only project that you were ever going to
12 do, we wouldn't be here today. Our concern is your
13 unwillingness to stipulate to some minimum flow in the river
14 gives rise to some suspicion that you have other projects in
15 mind that might essentially eliminate this discharge from
16 the river, or lead to a situation that the base flow would
17 be decreased markedly into the transition zone.

18 MR. HITCHINGS: To the extent that VVWRA in the future
19 does decide to undergo other projects, do you agree that
20 they would be still subject to their own separate
21 environmental regulatory review?

22 MR. FUDACZ: I agree, yes.

23 MR. HITCHINGS: Did you do a calculation as to what
24 the potential cost would be assuming the maximum amount of
25 water petitioned for in this proceeding, which is 1,680

1 acre-feet?

2 MR. FUDACZ: I could do it with a calculator if I had
3 one. I think it's in the realm of --

4 MR. HITCHINGS: I don't need that.

5 MR. FUDACZ: -- \$60,000, something like that.

6 MR. HITCHINGS: In paragraphs 14 and 15 and during
7 your summary this morning, you had -- you referred to an
8 injury to Apple Valley Ranchos as a legal user of water
9 that's contemplated within the meaning of Water Code Section
10 1702. Do you recall that testimony?

11 MR. FUDACZ: I do.

12 MR. HITCHINGS: Isn't the exact language of Section
13 1702: "any legal user of the water involved"?

14 MR. FUDACZ: "Any legal user of the water involved,"
15 yes.

16 MR. HITCHINGS: Are you aware of any judicial or State
17 Board decisions that treat economic injury as injury to any
18 legal user of water?

19 MR. FUDACZ: Um, well, I don't -- you know, I don't
20 think we're talking about economic injury. We're talking
21 about a physical solution that translates an injury to a
22 water right into an amount of money that's used to buy water
23 to make up for water that we would have been deprived of if,
24 let's say, imported water were not available.

25 So it's not economic injury. It's a direct injury to

1 our water right.

2 MR. HITCHINGS: Okay. Well, then, let's think of it
3 this way. If the petition is granted, will Apple Valley's
4 right to pump and divert water be impacted?

5 MR. FUDACZ: Yes.

6 MR. HITCHINGS: How will it be impacted?

7 MR. FUDACZ: It will be impacted because of -- by
8 virtue of the physical solution in lieu of reducing our
9 pumping, which would have been required without the physical
10 solution, to assure the flows to Centro to meet their water
11 right claims, we are going to be forced to pay additional
12 assessment to buy imported water to bring into the system to
13 make up for that differential.

14 MR. HITCHINGS: Okay. Let me rephrase that.

15 It's -- will it physically impact your ability, Apple
16 Valley Ranchos' ability to pump water at its present points
17 of diversion?

18 MR. FUDACZ: Well, that's a consequence of the
19 physical solution to the judgment, not the matter of the
20 injury.

21 The physical solution to the judgment translates an
22 injury to water right here to a dollar amount that's used to
23 bring in imported water.

24 MR. HITCHINGS: I understand that.

25 MR. FUDACZ: But under the physical solution, what

1 happens is we're assessed additional amounts to buy water
2 for makeup water to meet the needs of the downstream users.
3 And, essentially, we are standing in the shoes of these
4 downstream right holders who, if the Judgment were ignored,
5 your plant would have to deal with them. And so, rather
6 than you dealing with them, we're forced to deal with them.

7 MR. HITCHINGS: My question was: Will it impact your
8 physical ability to divert the maximum quantity of water
9 that you would otherwise divert in the absence of this
10 petition?

11 MR. FUDACZ: No, because of the physical solution.

12 MR. HITCHINGS: And will it affect the quality of
13 water that the Apple Valley Ranchos would otherwise divert
14 in the absence of this petition?

15 MR. YAMAMOTO: Objection. There is no evidence in the
16 record that Apple Valley Ranchos is diverting water, as
17 opposed to pumping groundwater.

18 MR. HITCHINGS: Let me use a different phrase or term.
19 And when I've been saying the word "diverting," I'm using
20 that to refer to pumping water as in the manner that it
21 produces groundwater.

22 Was it your understanding in these questions that I
23 was referring to Apple Valley's ability to pump water under
24 its rights to produce groundwater?

25 MR. FUDACZ: Well, you know, you used the term

1 "divert" a number of times. And I responded in the way that
2 people typically do when you're asked the question about
3 diverting water. I didn't construe that to mean pumping
4 groundwater.

5 MR. HITCHINGS: So to the extent that I was asking
6 about diversions, I was referring to your ability, Apple
7 Valley Ranchos' ability to pump or produce groundwater.

8 Do you understand that?

9 MR. FUDACZ: Well, now I do.

10 MR. HITCHINGS: Would your answers have changed?
11 Because I can go through the questions again.

12 MR. FUDACZ: I don't remember.

13 MR. HITCHINGS: Well, why don't we do this again,
14 then.

15 Would Apple Valley Ranchos' ability to produce
16 groundwater and -- well, let me rephrase this.

17 If VVWRA's petition is granted, will Apple Valley
18 Ranchos still be able to produce the maximum amount of
19 groundwater that it would have otherwise been able to
20 produce in the absence of this petition?

21 MR. YAMAMOTO: Objection. It's an incomplete
22 hypothetical. It's unclear whether Mr. Hitchings is asking
23 hypothetically will there be groundwater available in the
24 subarea to allow production. It's unclear what maximum he's
25 referring to, whether he's referring to the Free Production

1 Allowance under the Stipulated Judgment.

2 H.O. BAGGETT: Sustained. Can you rephrase it.

3 MR. HITCHINGS: I am just asking a simple question
4 whether by granting this petition, whether that will have
5 any effect on the -- the petition itself being granted will
6 have any effect on the groundwater that Apple Valley Ranchos
7 would otherwise be able to pump and produce.

8 It's a pretty simple question.

9 MR. YAMAMOTO: And you're asking physically if there
10 will be an impact on the groundwater Apple Valley is
11 pumping?

12 MR. HITCHINGS: Correct.

13 MR. YAMAMOTO: Mr. Fudacz hasn't been offered as a
14 hydrogeologist testifying about the physical presence of
15 groundwater in a subarea.

16 But if you want to answer --

17 MR. FUDACZ: The only way I can answer it is the
18 physical solution. One of the cornerstones of our Judgment
19 was that we were going to allow everyone to pump to meet
20 their needs. We weren't going to compress this system to
21 conform to the water rights. We were going to allow people
22 to pump above their water rights, and the notion was to find
23 imported water, to bring it into the system to make up for
24 what was produced above the natural yield of the system.

25 In that context, I think the Judgment contemplates

1 that any producer can produce whatever they need from the
2 ground to meet their needs, subject to all of the provisions
3 of the judgment.

4 So I think, in that sense, the answer to your question
5 is yes. I think.

6 MR. HITCHINGS: The question is whether if this
7 petition is granted, whether that is physically going to
8 constrain Apple Valley Ranchos from pumping the maximum
9 quantity of water that it would otherwise pump?

10 MR. FUDACZ: I don't know the hydrogeology. But given
11 that physical solution, I don't think there is any
12 constraint on anyone, anytime, if they are willing to pay to
13 bring the water in to make up for what they overproduce.

14 MR. HITCHINGS: Okay. Thank you.

15 Given that response, is it fair to say that the injury
16 that Apple Valley Ranchos is claiming in this proceeding is
17 an economic injury?

18 MR. FUDACZ: No.

19 MR. HITCHINGS: But the injury that Apple Valley
20 Ranchos is claiming in this proceeding is not an injury that
21 involves its physical ability to pump or produce
22 groundwater, is it?

23 MR. FUDACZ: Well, I've tried to explain this to you.
24 That's only because we set up a system and we have a water
25 master that could bring in imported water.

1 But for that physical solution that you seem to like
2 to rely on when it benefits you. But, you know, you kind of
3 divorce yourself from it when it doesn't.

4 I mean, if we didn't have that Judgment and the
5 physical solution, what would happen is we would have to
6 reduce our production, you know, impair our water right to
7 meet the obligation to the downstream users.

8 The physical solution -- the way physical solutions
9 work -- tries to avoid that kind of deleterious result. But
10 it's an injury to our water right. It's not an economic
11 injury. The economics is translated into an assessment that
12 allows us to buy water to make up for --

13 H.O. BAGGETT: That's a simple yes or no question.

14 MR. HITCHINGS: That wasn't my question. And I move
15 to strike that lengthy discourse or discussion on that.

16 My question was whether it impacted your physical
17 ability to divert the quantity of water that you would
18 otherwise -- to pump or produce the quantity of water that
19 you would otherwise pump and produce.

20 MR. FUDACZ: I think I've answered that question.

21 Because of the physical solution, no. But but for the
22 physical solution, yes.

23 MR. HITCHINGS: And VVWRA is not a party to the
24 Judgment that implements this physical solution; is that
25 correct?

1 MR. FUDACZ: VVWRA itself is not a party.

2 MR. HITCHINGS: Okay. You had in your summary of your
3 testimony earlier this morning had talked about the
4 biological assessment fund.

5 MR. FUDACZ: Yes.

6 MR. HITCHINGS: And you had talked about the
7 obligations to provide assessments -- each of the
8 groundwater producers -- to that fund on an annual basis?

9 MR. FUDACZ: Capped it at a million dollars. Or in
10 1993 dollars. I don't know what it is now. It's something
11 above a million dollars.

12 MR. HITCHINGS: But the assessment that any specific
13 groundwater producer would pay, would be based upon that
14 groundwater producer's exercise of its Free Production
15 Allowance; is that correct?

16 MR. FUDACZ: No.

17 MR. HITCHINGS: If a groundwater producer produces
18 more water, does that result in that groundwater producer
19 paying a higher assessment?

20 MR. FUDACZ: Yes.

21 MR. HITCHINGS: Okay. That's all the questions I have
22 for now. Thank you.

23 MR. FUDACZ: Thank you.

24 H.O. BAGGETT: Ms. Murray?

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CROSS-EXAMINATION

BY STATE OF CALIFORNIA DEPARTMENT OF FISH AND GAME

BY MS. MURRAY

MS. MURRAY: Good morning, Mr. Fudacz.

MR. FUDACZ: Good morning.

MS. MURRAY: I'm Nancee Murray, staff counsel for the Department of Fish and Game. I have just a few questions about --

MR. FUDACZ: Sure.

MS. MURRAY: -- Apple Valley Ranchos' Exhibit 4, the MOU you referred to in your testimony.

MR. HITCHINGS: Could we make sure the mic is on. I'm having a hard time hearing.

H.O. BAGGETT: I don't think mine is either.

MS. MURRAY: Mr. Fudacz, in your testimony you referred to Apple Valley Ranchos' early participation in the negotiation for this MOU. Do you recall that?

MR. FUDACZ: I recall that.

MS. MURRAY: And you said it was your impression that VVWRA had committed 8500 for this project but that there would be other discussions for future projects.

MR. FUDACZ: Well, frankly, based upon our discussions, we were talking about an 8500 commitment. And, frankly, I didn't realize that commitment that I thought it was involving was conditioned in the way it was until I read

1 the Memo of Understanding.

2 MS. MURRAY: Okay. And in your VVWRA -- your Apple
3 Valley Ranchos' Exhibit 4, paragraph 4, could you please
4 read the first sentence out loud. Paragraph 4, entitled
5 "Good-Faith Discussions Regarding" --

6 MR. FUDACZ: There's two paragraph 4s.

7 MS. MURRAY: Sorry.

8 MR. FUDACZ: That's on Page 4, then?

9 MS. MURRAY: Page 4, yes.

10 MR. FUDACZ: "The Good-Faith Discussions Regarding
11 Potential Future Projects."

12 MS. MURRAY: It's the first sentence past that.
13 Sorry.

14 MR. FUDACZ: Okay. "VVWRA and DFG will immediately
15 engage in good-faith discussions to develop mutually
16 agreeable strategies to address future reclaimed water
17 projects by VVWRA that may result in decreased discharge by
18 VVWRA to the Mojave River."

19 MS. MURRAY: And you mentioned that Apple Valley
20 Ranchos, while this was not a perfect agreement or MOU, was
21 willing to accept the 8500 as a compromise?

22 MR. FUDACZ: Yes.

23 MS. MURRAY: Was it your impression, based on Apple
24 Valley Ranchos' participation in the MOU, that it was a
25 compromise on all sides, that 8500 wasn't necessarily what's

1 necessary to protect the public resources, it wasn't exactly
2 what VVWRA wanted to do, but it was a compromise?

3 MR. FUDACZ: Clearly, based upon the discussions and
4 meetings that I attended, DFG, I think, made that quite
5 clear.

6 MS. MURRAY: Okay. Thank you.

7 No further questions.

8 H.O. BAGGETT: Mr. Ledford?

9 ---oOo---

10 CROSS-EXAMINATION

11 BY JESS RANCH WATER COMPANY

12 BY MR. LEDFORD

13 MR. LEDFORD: Good morning, Fred.

14 MR. FUDACZ: Good morning, Gary.

15 MR. LEDFORD: Is it your understanding that all of the
16 water in the Mojave River basin is adjudicated water?

17 MR. FUDACZ: That's my understanding. That's what it
18 says.

19 MR. LEDFORD: And were you a part of the Attorneys'
20 Drafting Committee?

21 MR. FUDACZ: Yes, I was.

22 MR. LEDFORD: Was the City of Victorville represented
23 on the Attorneys' Drafting Committee?

24 MR. FUDACZ: I believe they were.

25 MR. LEDFORD: And is the City of Victorville one of

1 the member agencies of the VVWRA?

2 MR. FUDACZ: Yes, they are.

3 MR. LEDFORD: And is the town of -- was the town of

4 Apple Valley represented on the drafting committee?

5 MR. FUDACZ: Yes.

6 MR. LEDFORD: And is the town of Apple Valley one of

7 member agencies of the VVWRA?

8 MR. FUDACZ: Yes.

9 MR. LEDFORD: And was the City of Hesperia represented

10 on the drafting committee?

11 MR. FUDACZ: Yes.

12 MR. LEDFORD: And is the City of Hesperia one of the

13 member agencies of VVWRA?

14 MR. FUDACZ: Yes.

15 MR. LEDFORD: And was the County of San Bernardino

16 represented on the drafting committee?

17 MR. FUDACZ: Yes.

18 MR. LEDFORD: And is the County of San Bernardino one

19 of the member agencies of the VVWRA?

20 MR. FUDACZ: Yes.

21 MR. LEDFORD: Is there any question in your mind that

22 each of those member agencies had full and complete

23 knowledge of all of the activities of adjudicating the water

24 rights in the Mojave River basin?

25 MR. HITCHINGS: Objection. I don't think that

1 Mr. Fudacz is qualified to speak to the mind frame and
2 intentions of those four separate entities and what their
3 intentions were in drafting the Adjudication.

4 H.O. BAGGETT: I would sustain that. Can you --

5 MR. LEDFORD: That wasn't really my question. My
6 question was whether or not they were informed.

7 H.O. BAGGETT: Whether they were informed.

8 MR. FUDACZ: You know, they participated in the
9 discussions. They participated in the drafting. There were
10 numerous, numerous meetings. And they ultimately signed on
11 to the Stipulation.

12 I think Mr. Hitchings is right. I don't know what was
13 going through their minds except to the extent they
14 articulated.

15 MR. LEDFORD: Well, the question that seems to come
16 around is that VVWRA is not a party. Does the Judgment
17 envision that there will be new parties to this Adjudication
18 as time goes on?

19 MR. FUDACZ: That's a possibility.

20 MR. LEDFORD: I'd like to structure a hypothetical
21 that someone comes to the Victor Valley and purchases 100
22 acres of property without a water right; and drills a well;
23 and begins to farm that 100 acres; and uses 700 acre-feet of
24 water.

25 Would that person be a party to the Adjudication?

1 MR. YAMAMOTO: Objection. Relevance. And it's an
2 incomplete hypothetical.

3 MR. LEDFORD: Okay.

4 H.O. BAGGETT: I would sustain that.

5 MR. LEDFORD: I'll try to define the hypothetical a
6 little more.

7 The hypothetical first is that a party acquires a
8 hundred acres, who is not a party to the Adjudication. That
9 party then drills a well. And that -- that -- I don't want
10 to use the word "party." That individual drills a well and
11 commences production in the use of water on the hundred
12 acres of property.

13 What then happens under the Adjudication?

14 MR. FUDACZ: There is a provision in the Judgment that
15 requires the water master to go and sue any person engaged
16 in unauthorized utilization of water. Depending on the
17 outcome of that kind of lawsuit, the party could be brought
18 into the Adjudication or not.

19 MR. LEDFORD: Aren't there provisions for injunctive
20 relief within that Adjudication?

21 MR. FUDACZ: Yeah. The problem, though, is that the
22 Adjudication is an in persona adjudication. It's not in
23 rem. And you'd have to -- you have to sue the party and
24 bring them into the stipulation or under the Judgment in
25 some fashion. The Court has to assert jurisdiction over it.

1 MR. LEDFORD: And would the same be true for a party
2 that had a change of use?

3 MR. FUDACZ: If there's a party to the judgment that
4 changes its use, that party is already subject to the
5 provisions of the Judgment.

6 MR. LEDFORD: You said that you had a high degree of
7 suspicion about the Memorandum of Understanding. You were
8 here for the first set of hearings in December; is that
9 correct?

10 MR. FUDACZ: Yes.

11 MR. YAMAMOTO: Objection. It misstates prior
12 testimony. The suspicion was as to the intent of the VVWRA.
13 Not as a suspicion as to the MOU.

14 MR. LEDFORD: With that clarification on the intent of
15 the VVWRA, was that suspicion somewhat heightened when the
16 VVWRA proposed to the Department of Fish and Game to set
17 aside between 500 acre-feet of water for them under some
18 kind of an option agreement to sell that water to them?

19 MR. HITCHINGS: Objection. That misstates the nature
20 of the MOU, and assumes facts not --

21 H.O. BAGGETT: Yeah.

22 MR. HITCHINGS: -- in the MOU.

23 H.O. BAGGETT: I would sustain that. Can you --

24 MR. LEDFORD: The question is -- well, okay.

25 Was there an offer made to the Department of Fish and

1 Game, to the best of your knowledge, during these
2 proceedings?

3 MR. FUDACZ: I recollect something along the lines you
4 just said. I don't know all the parameters of what that
5 offer entails.

6 My concern frankly arises from the fact that they put
7 up a number of exhibits that seemed to show that they will
8 have plenty of water to meet this 8500 acre-foot condition
9 that has been agreed to and still meet all of their project
10 goals. And yet they're unwilling, apparently, to commit to
11 continue to discharge that amount.

12 That was the basis. I mean, it wasn't based upon that
13 offer.

14 MR. LEDFORD: Have you had any discussions with VVWRA
15 or with Apple Valley Ranchos in relation to directly
16 purchasing water from the VVWRA?

17 MR. FUDACZ: None that I'm aware of.

18 MR. LEDFORD: Are you aware of any public meetings
19 where VVWRA has discussed that possibility with member
20 agencies?

21 MR. FUDACZ: Only from the testimony, I think, of
22 Mr. Gallagher. And maybe Mr. Hill alluded to it also.

23 MR. LEDFORD: That's all the questions I have.

24 H.O. BAGGETT: Mr. Kidman?

25 MR. KIDMAN: Thank you.

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CROSS-EXAMINATION

BY SOUTHERN CALIFORNIA WATER COMPANY

BY MR. KIDMAN

MR. KIDMAN: Good morning, Mr. Fudacz.

MR. FUDACZ: Mr. Kidman.

MR. KIDMAN: My name is Art Kidman, counsel for Southern California Water Company.

Mr. Fudacz, you testified that you were involved in the Mojave River Adjudication from the outset; is that right?

MR. FUDACZ: That's correct.

MR. KIDMAN: Now, are you familiar, then, with the claims to water rights that persons and entities downstream of the discharge point of VVWRA claimed in that litigation?

MR. FUDACZ: Um, it's been a while, but I do remember their claims. I think, in fact, you're quite aware of them.

MR. KIDMAN: Were there claims to overlying water rights?

MR. FUDACZ: There were.

MR. KIDMAN: And claims to riparian water rights?

MR. FUDACZ: There were.

MR. KIDMAN: And were there claims to water rights licensed to appropriate from the State Water Resources Control Board?

MR. FUDACZ: There were.

1 MR. KIDMAN: And in your experience in a wide variety
2 of water right cases, do those claims appear to have
3 validity?

4 MR. FUDACZ: You know, I represented Alto producers.
5 So, I mean, it's not like we gave the water away. We had a
6 negotiation, we considered everything, and what came out of
7 that was a subarea obligation of 23,000 acre-feet. It
8 was -- so to that extent, I mean, they obviously had
9 credibility. Or I don't think anyone was in the mood to
10 give water away.

11 MR. KIDMAN: Then, hypothetically speaking, if this
12 Judgment, of which VVWRA is not a party, were not in
13 existence, in your view, would there still be legal water
14 users downstream from VVWRA?

15 MR. FUDACZ: Certainly ones vigorously claiming that
16 they have water rights.

17 MR. KIDMAN: And in your view, if there is less water
18 being discharged from the VVWRA plant under those
19 circumstances; that is, no judgment, would the reduction in
20 discharge affect or injure those legal water users?

21 MR. FUDACZ: All I can say is, in my view, given this
22 system -- and we're not talking about foreign water. We're
23 talking about water that's natural water in this system -- I
24 don't think that VVWRA, even if there was no Judgment at
25 all, could operate that plant in derogation of downstream

1 rights. I mean, simply having water right holders produce
2 water, put it through a treatment plant, doesn't give those
3 folks the right to ignore the downstream right holders'
4 claims.

5 MR. KIDMAN: Are you aware that the Mojave River is a
6 fully appropriated stream system?

7 MR. FUDACZ: That's my understanding.

8 MR. KIDMAN: So the State Water Resources Control
9 Board has said there's no more water available for that
10 system?

11 MR. FUDACZ: That would be the implication of their
12 declaration, yes.

13 MR. KIDMAN: And, again, in the absence of the
14 Judgment, does that indicate that parties would be injured
15 if there is an additional use of water in the system?

16 MR. FUDACZ: That would seem to indicate that, yes.

17 MR. KIDMAN: Finally, we have a legal expert here that
18 we can ask a couple of legal questions of.

19 MR. FUDACZ: Do I need to state my hourly rate?

20 MR. KIDMAN: Is it your understanding that the concept
21 of reasonable and beneficial use is a predicate to all water
22 rights in California?

23 MR. FUDACZ: It seems to be what the Constitution
24 says.

25 MR. KIDMAN: And reasonable and beneficial means two

1 different things; right?

2 MR. FUDACZ: Yes.

3 MR. KIDMAN: So, just looking at the beneficial part,
4 is it your understanding, again in your wide experience,
5 that in-stream uses of water to promote riparian vegetation
6 is a beneficial use of water?

7 MR. FUDACZ: That's my understanding.

8 MR. KIDMAN: And in your experience, again, is the use
9 of water for groundwater recharge considered to be a
10 beneficial use?

11 MR. FUDACZ: Yes.

12 MR. KIDMAN: And in the context of the Mojave River
13 and now considering the Judgment to be in place, in the
14 context of Mojave River with the Judgment, is the recharge
15 of groundwater in the transition zone a reasonable use?

16 MR. FUDACZ: That would be my opinion.

17 MR. KIDMAN: And is the recharge of water for the
18 purpose of maintaining groundwater levels in the transition
19 zone a reasonable use?

20 MR. FUDACZ: Assuming those groundwater levels were
21 appropriate, I think, in the context of our Judgment, that
22 is a reasonable, beneficial use of water.

23 MR. KIDMAN: Now, there is -- there has been a lot of
24 talk about the subarea obligation, transition zones, the
25 water bridge, provisions in the Judgment and in the physical

1 solution. And you've heard all of that; is that right?

2 MR. FUDACZ: Whether I recall it all or not, I'm not
3 sure, but I certainly was here while it was being said.

4 MR. KIDMAN: And there's room for disagreement and
5 interpretation about how those provisions work; is that
6 right?

7 MR. FUDACZ: Certainly, as with any judgment of that
8 sort.

9 MR. KIDMAN: And whose job is it to determine the
10 interpretation of that Judgment?

11 MR. FUDACZ: The court's ultimately.

12 MR. KIDMAN: With the assistance of the --

13 MR. FUDACZ: The water master.

14 MR. KIDMAN: The water master appointed under the
15 Judgment; is that correct?

16 MR. FUDACZ: That's correct.

17 MR. KIDMAN: So in your -- regardless of the
18 technicalities of that transition zone and that subarea
19 obligation, it's the court's job to do the interpretation.
20 But is it your view, your opinion as a legal expert that's
21 been involved in this thing from the whole -- from the
22 beginning, that a reduction in the amount of water being
23 discharged into the transition zone by VVWRA will injure
24 legal users of the water involved?

25 MR. FUDACZ: Yes.

1 MR. KIDMAN: Just for a bit of clarification. And I'm
2 not going to go into huge detail and take a lot of time
3 here, but I believe that it would be useful to the Board to
4 point out with someone who is knowledgeable of this Judgment
5 the particular provisions that are involved, a portion of
6 which has been identified by Mr. Hitchings in his questions,
7 but not all of them. And I'm not even sure that I'm going
8 to do all of them, but I do want to point out that there are
9 some others.

10 Mr. Fudacz, referring to -- is it Exhibit 4?

11 MR. FUDACZ: Correct.

12 MR. KIDMAN: The Judgment --

13 MR. YAMAMOTO: No, no. I think it's Exhibit 3.

14 MR. KIDMAN: Exhibit 3?

15 Apple Valley Ranchos Exhibit 3.

16 MR. YAMAMOTO: Exhibit 3, correct.

17 MR. KIDMAN: That's the Judgment in the Mojave
18 Adjudication; is that right, Mr. Fudacz?

19 MR. FUDACZ: Correct.

20 MR. KIDMAN: Okay. Beginning on Page 15. This is
21 where we have the basic declaration of rights and
22 obligations under the Judgment; is that correct?

23 MR. FUDACZ: Correct.

24 MR. KIDMAN: And turning back from there a couple of
25 pages, at Page 17, we have a paragraph 9 which is Mojave --

1 MWA obligations; is that right?

2 MR. FUDACZ: That's what it says.

3 MR. KIDMAN: Would you just read that first
4 paragraph 9, please, into the record.

5 MR. FUDACZ: "The physical solution is intended to
6 provide for delivery and equitable distribution to the
7 respective subareas by MWA of the best quality of
8 supplemental water reasonably available. MWA shall develop
9 conveyance or other facilities to deliver this supplemental
10 water to the area depicted in Exhibit I unless prevented by
11 forces outside its reasonable control, such as an inability
12 to secure financing consistent with sound municipal
13 financing practices and standards."

14 MR. KIDMAN: Thank you. And then would you also --
15 and I apologize for the tedium, but I'll get to the point --
16 read 9-A, please.

17 MR. FUDACZ: "MWA, separate and apart from its duties
18 as the initial water master designated under this Judgment
19 shall exercise its authority under Section 1.5 and 15 of the
20 MWA Act to pursue promptly, continuously, and diligently all
21 reasonable sources to secure supplemental water as necessary
22 to fully implement the provisions of this Judgment."

23 MR. KIDMAN: Thank you. Now, that, paragraph 9-A,
24 imposes mandatory duties upon MWA separate and apart from
25 its duties as water master; is that right?

1 MR. FUDACZ: It says what it says. That seems to be
2 what it says.

3 MR. KIDMAN: It uses the mandatory "shall"?

4 MR. FUDACZ: Right.

5 MR. KIDMAN: And is it your interpretation of those
6 two paragraphs that Mojave Water Agency has a pretty high
7 duty under the Judgment to secure water and use that water
8 to be part of the physical solution?

9 MR. FUDACZ: That was one of the cornerstones of the
10 Judgment, that that was one.

11 MR. KIDMAN: And so, did you hear the testimony that
12 came from Mr. Gallagher and Mr. Hill that MWA State Water
13 Project entitlement might be used for direct delivery into a
14 treatment plant that they or at least somebody's thinking
15 about building? In your interpretation, would that be a use
16 that is contemplated in Paragraph 9 and 9-A of the Judgment?

17 MR. FUDACZ: Well, I think 9 and 9-A requires MWA to
18 use its -- certainly its best efforts to secure sufficient
19 supplemental water to implement the Judgment. And the
20 Judgment is structured so that right holders can produce
21 whatever they wish, or even folks without rights can produce
22 what they wish and then pay to bring in supplemental water.
23 And so it contemplates there being enough supplemental water
24 there.

25 I think to the extent the MWA's use of supplemental

1 water for a purpose that derogates that kind of mission is
2 articulated in these paragraphs. I think that might be
3 inconsistent with a best-efforts approach.

4 MR. KIDMAN: Thank you. So there is a duty imposed by
5 court order upon MWA to secure supplemental water for use in
6 the physical solution?

7 MR. FUDACZ: Yes.

8 MR. KIDMAN: Turning to paragraph 13 on Page 21. Is
9 this, in fact, part of the Judgment that is a declaration of
10 rights and obligations?

11 MR. FUDACZ: It's in the Judgment. It clearly is.

12 MR. KIDMAN: Yeah. But it's in the section that
13 starts on Page 15, that's C, "Declaration of Rights and
14 Obligations"?

15 MR. FUDACZ: I believe that's right, yes.

16 MR. KIDMAN: And that's the heart of the physical
17 solution?

18 MR. FUDACZ: Um, I don't know if it's the heart of
19 the -- the physical solution section begins on Page 24. And
20 I think that's more the Declaration of Rights section. But
21 it certainly is, you know, part of the scheme that the
22 physical solution addresses.

23 MR. KIDMAN: Would you look at paragraph 13, please.

24 MR. FUDACZ: Uh-huh.

25 MR. KIDMAN: And that's entitled "Declaration of

1 Subarea Rights and Obligations"; is that right?

2 MR. FUDACZ: That's what it says.

3 MR. KIDMAN: And that's probably where the Alto to
4 Centro Subarea obligation arises in the Judgment per se; is
5 that right?

6 Let me ask it another way: That obligation doesn't
7 arise out of the definitions that are in Section JJ, I
8 believe it was, that was read to you earlier?

9 MR. FUDACZ: Well, this sets forth the fact that there
10 are subarea rights and obligations, and then it references
11 Exhibit G, which I think articulates those in more detail.

12 MR. KIDMAN: And in the first sentence there is the
13 producers in a subarea that have the right?

14 MR. FUDACZ: I think that's consistent with what I've
15 testified to. We were recognizing the rights of the
16 downstream users when we created --

17 MR. KIDMAN: Right.

18 MR. FUDACZ: -- this subarea obligation.

19 MR. KIDMAN: And those rights, in your opinion, are
20 those an entitlement to the legal use of water?

21 MR. FUDACZ: That's -- that's what we contemplated,
22 yes.

23 MR. KIDMAN: And I just want to make sure that your
24 understanding is that this is a right of producers in a
25 subarea to receive a certain amount of water year by year?

1 MR. FUDACZ: Yes. But insofar as, you know, I think
2 it's being articulated insofar as Centro and Alto is
3 concerned, that obligation is measured at the Lower Narrows
4 Gage. So that's what --

5 MR. KIDMAN: All right.

6 MR. FUDACZ: But it is an obligation owing to Centro.

7 MR. KIDMAN: It is an obligation to Centro?

8 MR. FUDACZ: Right.

9 MR. KIDMAN: And just -- again, there's room for
10 interpretation and disagreement. But, broadly speaking, if
11 water is delivered to the Lower Narrows and delivered into
12 the transition zone and then disappears into phreatophytic
13 consumption and groundwater recharge, and doesn't make it to
14 Helendale, is the subarea obligation being met?

15 MR. YAMAMOTO: Objection. Assumes facts not in
16 evidence.

17 If it's a hypothetical, it's fairly incomplete.

18 H.O. BAGGETT: I would --

19 MR. KIDMAN: Well, you can answer the question.

20 H.O. BAGGETT: No. I would sustain.

21 MR. KIDMAN: All right. I'll try to develop it a
22 little differently. It's not really a trick question.

23 If -- under this section where the obligation is owed
24 from one subarea to the other subarea; that is, from Alto to
25 Centro, and -- the transition zone is in Alto; right?

1 MR. FUDACZ: Correct.

2 MR. KIDMAN: And the transition zone runs from the
3 Lower Narrows along the river to the Helendale Fault?

4 MR. FUDACZ: Correct.

5 MR. KIDMAN: That is right. So if 23,000 acre-feet of
6 surface and groundwater pass the Lower Narrows, that
7 satisfies the subarea obligation on one level.

8 That is the basic duty to deliver water to the
9 transition zone; is that right?

10 MR. FUDACZ: Yes.

11 MR. KIDMAN: Turning, then, to the Exhibit G, on Page
12 G2. And paragraph 2 states the "Obligation for Transition
13 Zone Replacement Water" is the title of that; right?

14 MR. FUDACZ: Yes.

15 MR. KIDMAN: So that's where the Court and where the
16 Board would look to to try to find or figure out what the
17 obligation is of Alto area producers to try to make sure
18 that the subarea obligation gets through the transition
19 zone?

20 MR. FUDACZ: I think these are the provisions that
21 relate to what you've termed the water bridge.

22 MR. KIDMAN: This would be the definition of the water
23 bridge?

24 MR. FUDACZ: Yes.

25 MR. KIDMAN: As in paragraph 2 on -- of Exhibit G.

1 And you have already testified that you believe a
2 reduction in VVWRA discharges would affect this obligation
3 to maintain a water bridge. That's found in this paragraph?

4 MR. FUDACZ: Yes.

5 MR. KIDMAN: Exhibit G.

6 That's all the questions I have.

7 H.O. BAGGETT: Thank you.

8 That's all the parties.

9 Do you have any redirect?

10 MR. YAMAMOTO: No.

11 MR. MONA: I've got one.

12 ---oOo---

13 CROSS-EXAMINATION

14 BY STAFF

15 MR. MONA: If VVWRA's discharging into the Mojave
16 River is such an important component of the physical
17 solution, why doesn't the water master just sue to ensure
18 the water remains in the river?

19 MR. FUDACZ: Well, I can't speak for the water master.
20 I'm not able. I think that the sense is that the court has
21 jurisdiction over the water, and, you know, that's
22 sufficient to deal with the problem.

23 I mean, if it becomes an issue, that may happen. But,
24 you know, VVWRA has no water in its plant that it processes
25 that isn't created as a result of a water right that was

1 adjudicated here. So, you know, if it happened that it was
2 determined that the folks that contributed water to this
3 plant had no water rights, they would essentially be out of
4 business.

5 So I think in that sense the court does exercise very
6 real, meaningful control.

7 MR. MONA: Thank you.

8 H.O. BAGGETT: Any other questions?

9 If not, then let's take a ten-minute recess. We'll
10 come back with rebuttal from Fish and Game.

11 And, Mr. Kidman, you said you had a rebuttal witness.

12 Any other parties?

13 MR. HITCHINGS: We may at the end of that.

14 MR. LEDFORD: I still have a rebuttal witness.

15 H.O. BAGGETT: You have a rebuttal witness?

16 MR. LEDFORD: Yes.

17 H.O. BAGGETT: Okay. We'll recess for ten minutes.

18 (A brief recess is taken.)

19 H.O. BAGGETT: Fish and Game ready?

20 MS. MURRAY: Yes.

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REBUTTAL TESTIMONY

BY STATE OF CALIFORNIA DEPARTMENT OF FISH AND GAME

DIRECT EXAMINATION

BY MS. MURRAY

MS. MURRAY: This is rebuttal testimony of the Department of Fish and Game.

We have already introduced Mr. Custis's qualifications, and are not going to have him summarize that again.

Mr. Custis, could you please state your name, and spell it for the record.

MR. CUSTIS: My name is Kit Custis, K-i-t, C-u-s-t-i-s.

MS. MURRAY: And is DFG Exhibit 16 a correct copy of your rebuttal testimony?

MR. CUSTIS: That's correct.

MS. MURRAY: Could you please summarize this testimony for us.

MR. CUSTIS: Okay. The Department of Fish and Game wants to present this rebuttal testimony to refute one of the statements made by VVWRA.

Specifically, in VVWRA Exhibit 5A, paragraph 20, there was a statement by Mr. Dodson that the volume of surface flow in the transition zone is approximately 24,000 acre-feet annually.

The fact that the volume of surface flow in the

1 transition zone is less than 24,000 feet annually is
2 important to this proceeding, because it more accurately
3 depicts the current physical environment in the vicinity of
4 the VVWRA treatment plant.

5 The volume of base flow into the transition zone is in
6 a steady decline, and the total base flow of VVWRA discharge
7 in the last 10 to 15 years has been well below 24,000
8 acre-feet annually.

9 We think Mr. Dodson incorrectly focused on the surface
10 flows which included infrequent, episodic storm flows in his
11 calculation. The necessary measure of riparian health is a
12 consistent base flow to the area, not the episodic storm
13 flows.

14 Fish and Game would like to introduce two new
15 exhibits, Fish and Game Exhibit 17, which is titled "USGS
16 Lower Narrows Gage Stream Base Flows." This exhibit was
17 produced from the data files from the Mojave water master.

18 What's important and different from the other exhibits
19 is we actually have numbers of these base flows on the
20 chart, and we have drawn a 21,000-acre-feet line across the
21 chart so people can judge where that Judgment number sits.
22 And that's this large, dashed line here (indicating).

23 It should be noted that Mr. Dodson testified to a low
24 base-flow figure of 4,000 acre-feet in 1992. That was done
25 in VVWRA Exhibit 5A, paragraph 13.

1 The Mojave Water Agency water master's records
2 indicate in that year that it was 9257 acre-feet. You can
3 see that on the chart. I'll point to that (indicating).

4 It's right over here (indicating).

5 Mr. Dodson also testified regarding a 12-year data
6 period as being the most recently available, meaning 1982 to
7 1994. VVWRA -- that was done in VVWRA Exhibit 5A, paragraph
8 17. But the current water master files, which are readily
9 available, show that there's data to 1999. And what's
10 important is that '95-to-'99 data clearly shows that there
11 has been a decline in the base flow.

12 Fish and Game Exhibit 17 also demonstrates that the
13 base flow measured at the Lower Narrows Gage has declined
14 since 1985, and is now significantly below the 21,000
15 acre-feet per year. This is contrary to Mr. Dodson's
16 testimony that approximately 15,000 acre-feet of base flow
17 passes the Lower Narrows Gage annually. And that was done
18 in paragraphs 13 and 17.

19 We used the most recent data. It shows that the --
20 and I ran a five-year running average for that data that you
21 have of approximately 8,000 acre-feet annually going through
22 the Lower Narrows Gage today. And if you were to use a
23 ten-year running average, it only changes it to about 8600
24 acre-feet annually.

25 I used these running averages because they dampen some

1 of the variation you're seeing in the data, but they don't
2 destroy the trend that's in the data.

3 If you use these running averages over the last 18
4 years, since 1981, when the five-year running average peaked
5 at about 24,200 acre-feet annually, the base flows decreased
6 approximately 900 acre-feet annually. And during the same
7 time period, especially 1980, the next graph will show us
8 1983, not 1981. VVWRA's discharges increased approximately
9 500 acre-feet per year annually.

10 Fish and Game introduces another exhibit, 18, entitled
11 "Comparison of Lower Narrows Base Flow and VVWRA Discharge."
12 This is basically refinement of what we already presented in
13 Figure 10, Fish and Game's Exhibit 3. It is also contained
14 in Exhibit 4 of Fish and Game.

15 And, essentially, what we are doing is it focuses on
16 the period from 1983, which we have data from the water
17 master on VVWRA's discharge, and the base flow from the
18 water master. Maybe just put those numbers up onto the
19 chart so that they're in the record.

20 Exhibit 18 demonstrates that even with VVWRA's
21 discharge included, base flow of the Alto Transition Zone
22 since 1985 has been well below 21,000 feet, acre-feet
23 annually, except 1988. It's not -- you can see the line.
24 It's not quite to 21,000, but it's close (indicating).

25 And today the discharge, VVWRA's discharge, makes up

1 approximately 50 percent of the total base flow. And that's
2 been consistent over the last -- at least the last five
3 years.

4 And that's the end of my testimony.

5 MS. MURRAY: Mr. Custis, did you want to make a
6 correction in the last, the second to the last sentence of
7 the first paragraph on Page 2, that it be 24,200 acre-feet
8 per year in 1983, instead of '81?

9 MR. CUSTIS: Say it again.

10 I thought we made our corrections.

11 MS. MURRAY: I did, too. I thought we did that.

12 So the first paragraph on Page 2.

13 MR. CUSTIS: Uh-huh.

14 MS. MURRAY: Where it says "approximately 24,200
15 acre-feet per year where it peaked in 1981."

16 MR. CUSTIS: No, that's a correct number. It peaked
17 in 1981.

18 MS. MURRAY: Okay.

19 MR. CUSTIS: Yeah. The problem I have with comparing
20 VVWRA's data is below -- before 1983, we don't have any hard
21 data. There's nothing in the water master's data file. So
22 trying to pick the average rate of drop since the base flow
23 peak, which was in 1981, that's approximately the same time
24 the plant went on line, but we don't have that initial
25 couple of years' worth of data.

1 H.O. BAGGETT: Mr. Hitchings.

2 ---oOo---

3 CROSS-EXAMINATION

4 BY VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY

5 BY MR. HITCHINGS

6 MR. HITCHINGS: Good morning, Mr. Custis.

7 MR. CUSTIS: Good morning.

8 MR. HITCHINGS: Just a couple of questions.

9 My understanding of this rebuttal testimony is that it
10 is providing additional plots and charts based upon more
11 recent data than the data cited by Mr. Dodson; is that
12 correct?

13 MR. CUSTIS: It provides more data, more the actual
14 numbers, and some plots to show the distribution of that.
15 And it is intended to refute some of the numbers that were
16 in Mr. Dodson's testimony.

17 MR. HITCHINGS: None of this, none of the additional
18 testimony here on the plots discuss the occurrence of storm
19 flows during these periods, does it?

20 MR. CUSTIS: No. That's correct.

21 MR. HITCHINGS: And do you have an opinion as to what
22 is causing this decline in the base flows that you've
23 indicated in the -- through this data that you've presented
24 here?

25 MR. CUSTIS: On previous testimony what -- not knowing

1 what all the water uses are, there is a correlation between
2 the drop in base flow and the increase in VVWRA's discharge.

3 If you can assume that the -- I think we have had some
4 testimony to this, that the production that is said to be
5 VVWRA comes from above Lower Narrows, that -- I call it the
6 upper Alto subbasin -- but that a component of that decrease
7 in base flow is due to the -- is due to sending the water to
8 the treatment plant, instead of direct infiltration in the
9 upper basin.

10 MR. HITCHINGS: But VVWRA itself isn't actually
11 producing that water, is it?

12 MR. CUSTIS: It's -- my understanding is they aren't,
13 from the testimony that we've had here.

14 MR. HITCHINGS: Okay. That's all I have. Thank you.

15 H.O. BAGGETT: Mr. Ledford? Mr. Kidman.

16 ----oOo----

17 CROSS-EXAMINATION

18 BY SOUTHERN CALIFORNIA WATER COMPANY

19 BY MR. KIDMAN

20 MR. KIDMAN: Art Kidman for the Southern California
21 Water Company. I just have one question.

22 Would long-term average flows that include storm flows
23 be the same as, greater than, or less than base flows in
24 this same period of time?

25 MR. CUSTIS: If you included storm flows in that

1 long-term average, they would -- the number should be
2 greater than the base flows.

3 MR. KIDMAN: Thank you.

4 H.O. BAGGETT: Mr. Yamamoto?

5 MR. YAMAMOTO: No questions.

6 H.O. BAGGETT: Staff?

7 ---oOo---

8 CROSS-EXAMINATION

9 BY STAFF

10 MS. DIFFERDING: For the record, I'm Dana Differding,
11 staff counsel.

12 I just wanted to follow up on a question that
13 Mr. Hitchings touched on.

14 You testified about the reduction in base flow and a
15 correlation between the increases in Victor Valley's
16 discharges and the decrease in base flow.

17 Do you think that there is a relationship between
18 pumping in the Alto Subarea and the decrease in base flow?

19 MR. CUSTIS: I think you'd have to say yes, because
20 the water -- the assumption is the water that is provided to
21 VVWRA comes from groundwater pumping in the upper Alto
22 Subarea.

23 MS. DIFFERDING: So if there were an increase in
24 pumping in the Alto Subarea, would you expect to see a
25 corresponding decrease in the base flow of the river?

1 MR. CUSTIS: I think that the condition that has
2 changed since the plant went into operation is that the
3 assumed 50 percent recharge from use, of pumping and use of
4 water in the upper Alto basin, that 50 percent is now being
5 redirected around the measuring point, which is the Lower
6 Narrows Gage.

7 And so, even without VVWRA, the pumping would have
8 caused decrease in the base flow, because you have
9 50 percent, assumed 50 percent loss, 50 percent recharge.
10 So if groundwater is what is causing the drop, pumping of
11 groundwater is what is causing the drop in base flow.

12 MS. DIFFERDING: Thank you.

13 H.O. BAGGETT: That's all?

14 Thank you.

15 MR. LEDFORD: I guess I get to be my own witness.

16 ---oOo---

17 REBUTTAL TESTIMONY

18 BY JESS RANCH WATER COMPANY

19 BY MR. LEDFORD

20 MR. LEDFORD: Thank you. Gary Ledford. And this is
21 Jess Ranch's rebuttal on two specific issues that were
22 raised by VVWRA.

23 First would be the mass-balance issue. And the second
24 would be the issue of whether or not VVWRA is somehow exempt
25 from the Adjudication.

1 VWVRA introduced testimony, but no study, on the issue
2 of mass balance. And the relevance of this issue is
3 obvious, and it should be obvious to all of us, and it's
4 certainly void in their CEQA analysis. And I offer the
5 following evidence to further demonstrate the basin is out
6 of balance.

7 I have distributed to the parties here today Jess
8 Ranch's Exhibit No. 21, which is a Declaration by
9 Robert C. Wagner which has been filed in the -- with
10 Judge Kaiser in upcoming hearings relative to ramp down of
11 the basin. And this particular exhibit --

12 MR. HITCHINGS: Excuse me. I'm going to object to
13 introduction of this as a declaration of a witness who is
14 not here, it's hearsay, the witness is not subject to
15 cross-examination, and I move that it be excluded from
16 evidence.

17 H.O. BAGGETT: Anyone seen the -- did they provide us
18 with copies of it?

19 MR. LEDFORD: I haven't provided your staff. I'm
20 sorry. I have another one.

21 MR. MONA: Mr. Baggett, before we proceed, could I
22 spend a few moments identifying some of these with the
23 proper exhibit number to follow the order which Jess Ranch
24 has submitted the previous exhibits.

25 Could you identify it?

1 H.O. BAGGETT: He identified it as 21.

2 MR. MONA: Yes, sir, but Exhibit 21 has already been
3 identified as --

4 MR. LEDFORD: I'm sorry.

5 H.O. BAGGETT: Do you have them numbered?

6 MR. MONA: I've got them all numbered now.

7 H.O. BAGGETT: You do.

8 MR. MONA: Jess Ranch Rebuttal Exhibit No. 22 will be
9 the April 22nd, '99 letter from the Mojave Water Agency to
10 Mark Stretars.

11 Jess Ranch Rebuttal Exhibit No. 23 will be the --
12 looks like a memorandum dated May 25, 1999, to Jo Ann
13 Auerswald, Interim General Manager, from Victor Valley
14 Wastewater Reclamation Authority.

15 Jess Ranch Rebuttal Exhibit No. 24 will be the
16 Declaration of Robert C. Wagner.

17 Jess Ranch Rebuttal Exhibit No. 25 will be the
18 December 22, 2000 copy of a newspaper article.

19 Jess Ranch Rebuttal Exhibit No. 26 will be another
20 copy of a newspaper article, by the Apple Valley News, it
21 looks like.

22 And Jess Ranch Rebuttal Exhibit No. 27 will be the
23 colored map of "Wells and Well Fields."

24 MS. DIFFERDING: So, Mr. Hitchings, your objection is
25 still pending, I assume, as to Exhibit 24, the Declaration?

1 MR. HITCHINGS: Yes. With that numbering now, that's
2 Jess Ranch Exhibit 24.

3 H.O. BAGGETT: And the objection?

4 MR. HITCHINGS: My objection is based on the fact that
5 this is a declaration of Robert Wagner, who is not here for
6 cross-examination. It is all hearsay. And he's not
7 available here to discuss the statements within this. And
8 it's not appropriate for admission into evidence.

9 H.O. BAGGETT: In terms of the hearsay, you know the
10 rules of the Board. We accept hearsay for the weight of it,
11 and we give it the appropriate weight according to the fact
12 that we accept it as hearsay.

13 So that objection, I think we'd have to overrule. In
14 terms of the witness, we'd accept -- I think we will accept
15 it in evidence. You don't have to give advance notice for
16 rebuttal. And we will accept it as hearsay, which is what
17 it is.

18 MR. HITCHINGS: And I assume that the State Water
19 Board, to the extent that it's cited to, it will not rely on
20 this solely to support any proposition or finding, given
21 that it is hearsay, and will abide by its own regulations --

22 H.O. BAGGETT: Correct.

23 MR. HITCHINGS: -- according to the Evidence Code in
24 that regard?

25 H.O. BAGGETT: Correct.

1 MR. HITCHINGS: Thank you.

2 MR. LEDFORD: May I continue?

3 H.O. BAGGETT: You may continue.

4 MR. LEDFORD: Is this ready to go?

5 Specifically looking at the chart that's attached to
6 this testimony, Mr. Wagner testifies that the cumulative
7 basin deficit is more in the range of 2.3 million acre-feet,
8 as opposed to what's previously been testified to in this
9 hearing as about 800,000 acre-feet. The point simply being
10 that the basin is even more out of balance, by his
11 testimony, than what's been previously testified to.

12 And the exhibits are somewhat out of order than what I
13 had anticipated, but it doesn't make a lot of difference.

14 I think this is -- what exhibit did you make this?

15 MR. MONA: That is Exhibit No. 27.

16 MR. LEDFORD: 27. All right. Exhibit 27 is a portion
17 of an exhibit that was submitted to the California Energy
18 Commission in the High Desert Power Plant project. This is
19 a true copy of a portion of it. It was prepared by the
20 Department of Fish and Game, and it shows the well field
21 located in the vicinity of the Turner Fault.

22 And you can -- can see the nine-hole golf course
23 that's a part of the application to place water, and you can
24 see where the well field is that is immediately below that
25 golf course (indicating). And the purpose of this exhibit

1 is to demonstrate where that pumping depression is on the
2 Adelanto wells.

3 My focus here is on mass balance. The testimony was
4 that if they stopped producing water out of the Adelanto
5 wells, that somehow that would balance the basin with this
6 proposed transfer.

7 I suggest to you that the city of Adelanto is a
8 growing city. It's a part of the ramp-down provisions. It
9 will continue to pump the wells, and there are currently two
10 projects I do not have overheads for, but I have made these
11 exhibits available -- I have extra copies -- of two
12 newspaper articles which indicate that there are now two
13 brand-new power plants being proposed. Actually, I do have
14 one overhead.

15 One by the City of Victorville, which would be a
16 beneficiary of this water, and the other one by the City of
17 Adelanto. Both of these water -- both of these power plants
18 would be high consumptive water users and, again, is a part
19 of our concern as to whether or not the issue of mass
20 balance works.

21 And then, finally, there are two letters that I
22 believe are numbered Exhibits 22 and 23. And I have also
23 provided copies of those exhibits to the parties. Probably
24 not enough, too.

25 And the first exhibit is a letter dated April 22nd,

1 1999.

2 Am I correct that that letter from Jo Ann is
3 Exhibit 22?

4 MR. MONA: Correct.

5 MR. LEDFORD: All right. And in that letter, the
6 Mojave Water Agency states -- and I will read from the
7 letter: "The current amount of treated effluent" -- this
8 letter is addressed to Mr. Mark Stretars, State Water
9 Resources Control Board. And a copy of it was sent to the
10 City of Victorville, and Dan Gallagher of VVWRA.

11 Reading from the letter: (Reading)

12 "The current amount of treated effluent
13 discharged by VVWRA upstream from Barstow is
14 an integral part of the total basin supply.
15 The treated effluent supports water levels in
16 an environment of environmental concern
17 immediately downstream of the existing point
18 of discharge. We respectfully request that
19 you consider..."

20 And then item two of that is: (Reading)

21 "The continuing jurisdiction of the Riverside
22 Superior Court over all matters of water
23 supply and use within the basin."

24 And in their closing paragraph: (Reading).

25 "The proposed change to the point and amount

1 of discharge will have a significant financial
2 impact on the water producers and providers in
3 the upper basin in addition to potentially
4 affecting the riparian habitat in the area of
5 discharge."

6 The Victor Valley Water District responded with a
7 letter on May 21st, 1999, which was signed by Mr. Gallagher,
8 in which he acknowledges that these discharge flows are
9 credited annually towards the area, towards the subarea
10 obligation of the Alto basin. And the operative words are
11 "pursuant to the terms of the judgment."

12 It also addresses in this letter a question that was
13 asked of me yesterday about whether or not the VVWRA had an
14 appropriate right to water. And in the second paragraph he
15 says: (Reading)

16 "In fact, the State Water Resources Control
17 Board recently returned and did not accept for
18 filing VVWRA's accompanying application for an
19 appropriative water right permit pertaining to
20 VVWRA's treated wastewater discharges to be
21 reused for the SCIA project."

22 In the next paragraph he states: (Reading)

23 "Also, under the terms of the judgment in the
24 Mojave River Adjudication, the parties to that
25 proceeding in conjunction with MWA are

1 required to ensure that 21,000 acre-feet of
2 water annually..."

3 And in his next -- the last paragraph, he states:

4 (Reading)

5 "It would be irresponsible to continue to
6 overdraft the aquifer and use high quality
7 potable groundwater to irrigate golf courses,
8 parks, and cemeteries when reclaimed water is
9 available. Determining the best use of our
10 resources requires that we make informed and
11 sometimes difficult choices after considering
12 all of the facts. It is appropriate and in
13 the best long-term interest of our Mojave
14 River system to reduce groundwater pumping
15 whenever possible through the use of reclaimed
16 water for nonpotable uses."

17 We respectfully request the State Water Resources
18 Control Board consider that the VVWRA has not met the burden
19 of proof that any change of use would reduce any pumping in
20 the Mojave groundwater basin.

21 Thank you.

22 H.O. BAGGETT: We neglected to move any exhibits into
23 evidence for Fish and Game. So we'll take care of that
24 right now.

25 MS. MURRAY: Right. I would move our additional

1 Exhibits 16, 17, and 18 into evidence.

2 MR. HITCHINGS: No objection.

3 H.O. BAGGETT: No objection. They are so admitted.

4 And move your exhibits --

5 MR. LEDFORD: 22 through 26, I believe.

6 H.O. BAGGETT: Is there an objection --

7 MS. DIFFERDING: 27.

8 H.O. BAGGETT: -- other than that already noted?

9 MR. HITCHINGS: I just have a couple of questions for

10 Mr. Ledford.

11 H.O. BAGGETT: Certainly.

12 ---oOo---

13 CROSS-EXAMINATION

14 BY VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY

15 BY MR. HITCHINGS

16 MR. HITCHINGS: Good morning, Mr. Ledford.

17 MR. LEDFORD: Good morning.

18 MR. HITCHINGS: The Exhibit 22, which is a letter from

19 Mojave Water Agency --

20 MR. LEDFORD: Yes.

21 MR. HITCHINGS: -- to Mr. Stretars of the State Water

22 Board, that's Mojave Water Agency's view of this project;

23 correct?

24 MR. LEDFORD: That's my understanding.

25 MR. HITCHINGS: And as far as you understand, the

1 Mojave Water Agency has elected not to be a party in this
2 proceeding; is that correct?

3 MR. LEDFORD: That's my understanding.

4 MR. HITCHINGS: Okay. And then the letter from
5 Mr. Gallagher, this is Exhibit 23, there are a number of
6 handwritten notations on that letter where provisions are
7 underlined and there is handwritten notations. Are those
8 your handwritten notations on that line?

9 MR. LEDFORD: Some of them are mine, and some of them
10 are Mr. Beinschroth's.

11 MR. HITCHINGS: But all of them are either yours or
12 Mr. Beinschroth's; correct?

13 MR. LEDFORD: That is correct.

14 MR. HITCHINGS: That's all I have. Thank you.

15 H.O. BAGGETT: Mr. Yamamoto?

16 MR. YAMAMOTO: No questions.

17 H.O. BAGGETT: Mr. Kidman?

18 MR. KIDMAN: Thank you.

19 ----oOo----

20 REBUTTAL TESTIMONY

21 BY SOUTHERN CALIFORNIA WATER COMPANY

22 DIRECT EXAMINATION

23 BY MR. KIDMAN

24 MR. KIDMAN: My name is Art Kidman, legal counsel for
25 the Southern California Water Company.

1 I would like to recall Mr. Tom Stetson as a witness on
2 rebuttal. I would also like to call a witness that has not
3 previously been sworn or provided testimony to these
4 proceedings. His name is Mr. Boyd Hill. And I wonder if we
5 could ask to have him sworn as a witness.

6 (The oath is administered by Hearing
7 Officer Baggett)

8 MR. KIDMAN: Thank you. We have two additional
9 exhibits that are offered in rebuttal. The first one has
10 been marked for identification as Southern California Water
11 Company Exhibit No. 12.

12 MR. HILL: Yes.

13 MR. KIDMAN: And it is a certified copy of Ordinance
14 No. 9 for the Mojave Water Agency. And also marked for
15 identification as Southern California Water Company
16 Exhibit 13 is a certified copy of the Regional Water
17 Management Plan adopted by the Mojave Water Agency.

18 First of all, Mr. Stetson, I'm going to show you, or I
19 am showing you a copy of VVWRA Exhibit 4G, which has been
20 previously admitted into evidence.

21 Mr. Stetson, did you attend the initial two days of
22 hearings in this matter?

23 MR. STETSON: Yes, I did.

24 MR. KIDMAN: And did you hear the testimony of
25 Mr. Carlson and Mr. Gallagher?

1 MR. STETSON: Yes.

2 MR. KIDMAN: And in regard to VVWRA Exhibit 4G, which
3 I have given you a copy of, presented by Mr. Carlson, and
4 assuming that the matters set forth in that exhibit depict
5 the actual facts that are in the field for the years
6 studied, in your expert opinion does the exhibit depict a
7 wasting stream between the Lower Narrows and the VVWRA
8 plant?

9 MR. STETSON: Yes, it does.

10 MR. KIDMAN: And if the Mojave River is a wasting
11 stream in that reach, does that mean that all the surface
12 water that passes the Lower Narrows will reach as far
13 downstream as the VVWRA plant?

14 MR. STETSON: Well, it means that a substantial amount
15 will. It does not necessarily mean all of it will.

16 MR. KIDMAN: Some will be lost --

17 MR. STETSON: Some will be lost.

18 MR. KIDMAN: -- along the way --

19 MR. STETSON: Along the way.

20 MR. KIDMAN: -- won't reach VVWRA's plant as surface
21 flow?

22 MR. STETSON: That's right.

23 MR. KIDMAN: And if the Mojave River is a wasting
24 stream in that reach, in your opinion is the water bridge
25 required under the Judgment being maintained in that reach?

1 MR. STETSON: I think it is not being properly
2 maintained --

3 MR. KIDMAN: Thank you.

4 MR. STETSON: -- at this time.

5 MR. KIDMAN: Again, we're talking about the year
6 depicted. And I'm still referring to that same exhibit by
7 Mr. Carlson, and assuming the matters set forth therein are
8 true depictions of the facts in the field, in your opinion
9 is the reach of the Mojave River downstream from the VVWRA
10 plant a wasting stream to the same extent that it is a
11 wasting stream in the reach above the VVWRA plant?

12 MR. STETSON: It is still a wasting stream in part,
13 but not nearly as much as in the area upstream.

14 MR. KIDMAN: And, in your opinion, are the discharges
15 from the VVWRA plant helping to maintain the water bridge
16 required in the Judgment in the reach between the plant and
17 Bryman Road?

18 MR. STETSON: Yes, it certainly has historically.

19 MR. KIDMAN: Hypothetically, and referring to VVWRA
20 Exhibit 4G, if VVWRA discharges were entirely terminated, in
21 your opinion, would there be injury to the water bridge
22 required under the Judgment to be maintained through the
23 transition zone?

24 MR. STETSON: Yes. Because those discharges have been
25 a substantial part of the surface flow through that area,

1 excluding the flood flows.

2 MR. KIDMAN: And still referring to the same exhibit
3 and under the same assumptions, if VVWRA discharges were
4 diminished by 1,680 acre-feet, as purported -- proposed
5 under the petition, in your opinion would the water bridge
6 in the reach between the plant and Bryman Road be
7 benefitted, would there be no effect, or would the water
8 bridge be injured?

9 MR. STETSON: It would be probably injured to some
10 extent. Would not -- but not nearly to the extent as if it
11 were not discharged at all, if none of the water was
12 discharged.

13 MR. KIDMAN: Assuming that reducing the discharges
14 injures the water bridge, in your opinion, based upon your
15 familiarity with the physical conditions and workings of the
16 Mojave River system and your familiarity with the Mojave
17 Adjudication Judgment, would there be injury to water users
18 in the Centro Subarea?

19 MR. STETSON: Yes, there would.

20 MR. KIDMAN: And under the same assumption, in your
21 opinion, would there be injury to water users in the Alto
22 Subarea?

23 MR. STETSON: Yes, there would, too.

24 MR. KIDMAN: Now, remembering that the VVWRA Exhibit
25 4G, prepared by Mr. Carlson, depicts water year 1997-'98,

1 and considering the requirement to maintain a water bridge
2 in the transition zone, in your opinion, does VVWRA
3 Exhibit 4G present a best case-, an average case-, or a
4 worst-case scenario of what's going on in the transition
5 zone?

6 MR. STETSON: Well, it's a better case than average,
7 because that was a wetter year. So there was more water
8 available.

9 MR. KIDMAN: So under an average or dry-year scenario,
10 would the continued discharges of recycled water from the
11 VVWRA plant be more important, or less important, to
12 maintaining the water bridge?

13 MR. STETSON: Well, in dryer years it would be more
14 important because of the lack of natural flow through that
15 area.

16 MR. KIDMAN: So even in this wet year of 1997-'98,
17 there would be injury if 1680 acre-feet were diverted, and
18 that would be worse if it was an average year or a dry year?

19 MR. STETSON: Yes. The impact would be worse if it
20 was a dry year or a normal year.

21 MR. KIDMAN: Now, I too want to come back and revisit
22 these mass-balance diagrams. And, first, I'm going to show
23 you a copy -- I'm going to ask you to put it on the viewer.

24 (A transparency is shown.)

25 MR. KIDMAN: This is a copy of VVWRA Exhibit 1P. And

1 for identification, we have marked it as SCWC Exhibit 1P so
2 that we can keep track of the relationship between 1P from
3 VVWRA and what we've done to modify it.

4 And as Mr. Hitchings did, we'll make sure that
5 everybody gets copies of this as soon as possible.

6 Mr. Stetson, taking a look at SCWC Exhibit 1P, and
7 moving from the bottom of the page toward the top, we have
8 depicted here 1,000 -- or 10,000 acre-feet of water entering
9 the transition zone at the Lower Narrows.

10 Is that your understanding of what is shown here?

11 MR. STETSON: Yes.

12 MR. KIDMAN: And then still moving upstream from the
13 bottom of the page -- excuse me. Moving downstream from the
14 bottom of the page, the next thing we show is 400 acre-feet
15 of water being extracted from the river or by the river to
16 go to irrigate the golf course. Is that right?

17 MR. STETSON: Yes.

18 MR. KIDMAN: And, then, of that 400 acre-feet, 200
19 acre-feet is assumed to have been used. And that's shown as
20 the part that's going off of the squiggly line to the left
21 of the page.

22 MR. STETSON: Yes. That's the return flow, assuming
23 that 200 acre-feet was consumed and that it's application to
24 the golf course.

25 MR. KIDMAN: Let's clarify that the 200 acre-feet

1 that's going off in the squiggly line is the portion being
2 consumed. And let's assume that's what we're trying to show
3 with this. And the 200 acre-feet that's in the arrow going
4 back to the river is what, in the mass balance -- they're
5 saying is a return flow?

6 MR. STETSON: That's what they're saying, yes.

7 MR. KIDMAN: Yes. Okay. Now, going back to
8 Exhibit 4G, we know that in the reach of the stream between
9 the Narrows and the plant we have a wasting stream, in your
10 opinion.

11 MR. STETSON: Yes.

12 MR. KIDMAN: So is it possible, feasible under what's
13 depicted here, that that 200 acre-feet will find its way
14 back to the stream under these conditions?

15 MR. STETSON: It may not, because, as a wasting
16 stream, it would be assumed that the water table slope is
17 toward the golf course, and not away from the golf course.
18 And also it's about a mile between the two. And whatever
19 water is percolating back from the -- as return flow is
20 going to move very, very slowly.

21 MR. KIDMAN: As your experience as a water resources
22 professional, the fact that this is a wasting stream in that
23 reach, does that mean that the groundwater gradient or the
24 direction of gradient is toward the stream, or away from the
25 stream?

1 MR. STETSON: I believe in this condition it would be
2 away from the stream.

3 MR. KIDMAN: And if the -- it would be unlikely, then,
4 that that groundwater that's -- excuse me -- the water
5 that's used at the golf course and returns to groundwater,
6 will get back to the stream?

7 MR. STETSON: Depends upon future conditions between
8 the stream and offstream.

9 MR. KIDMAN: Under these conditions --

10 MR. STETSON: Because it's going to move -- water
11 moving underground moves very, very slowly.

12 MR. KIDMAN: But under these conditions where the
13 gradient is away from the stream, that water isn't going to
14 go back?

15 MR. STETSON: Not in my opinion in this condition.

16 MR. KIDMAN: And that's why, under SCWC Exhibit 1P,
17 there is a cross drawn through that 200, and there is
18 another arrow drawn, in green, for 200 acre-feet that's
19 going away from the golf course to depict that it is not
20 going back to the stream; is that correct?

21 MR. STETSON: Yes.

22 MR. KIDMAN: Okay. So that means -- and continuing to
23 move from the bottom of the page to the top, which is
24 downstream, that we have instead of 9800 acre-feet remaining
25 in the stream, now there's 9600?

1 MR. STETSON: Yes.

2 MR. KIDMAN: Okay. Continuing on with this cartoon.

3 The next thing that we know from your testimony and others
4 is that 9600 acre-feet of water introduced to the transition
5 zone at the Lower Narrows will not reach the VVWRA plant as
6 surface water; is that right?

7 MR. STETSON: Yes.

8 MR. KIDMAN: So just assuming -- because nobody is
9 pretending that these numbers are representative of anything
10 other than an example -- let's assume that 1600 acre-feet of
11 water is lost or does not survive as surface flow or
12 subsurface flow of the Mojave River under this example.

13 Then that would mean that 8,000 acre-feet reaches the
14 plant as surface flow. Is that right?

15 MR. STETSON: Surface or subsurface flow.

16 MR. KIDMAN: As surface and subsurface flow. Part of
17 the stream?

18 MR. STETSON: Yes.

19 MR. KIDMAN: We won't go into -- we won't go there.

20 And then this depicts that 9,000 acre-feet annually is
21 being discharged to the surface stream currently by the
22 VVWRA plant; is that correct?

23 MR. STETSON: That's the estimate, yes.

24 MR. KIDMAN: And then, again, just under this
25 hypothetical cartoon, then that would leave 17,000 acre-feet

1 per year that would be in the stream, downstream of the
2 VVWRA plant?

3 MR. STETSON: Yes.

4 MR. KIDMAN: Under this?

5 MR. STETSON: Yes.

6 MR. KIDMAN: Now, the diagram that was presented by
7 VVWRA is accurate if you look at this as an entire system.
8 That is, that 200 acre-feet that's really the difference in
9 these two diagrams is not lost to the system; is that right?

10 MR. STETSON: No. That 200 acre-feet is in the system
11 somewhere.

12 MR. KIDMAN: It's in the system somewhere. And the
13 1600 acre-feet is in the system somewhere; is that right?

14 MR. STETSON: Well, I'm assuming the 1600 is
15 subsurface flow percolating under the stream. So it's still
16 in the system.

17 MR. KIDMAN: Right.

18 MR. STETSON: It's not in a pipeline going somewhere.

19 MR. KIDMAN: Or it might be -- have gone -- percolated
20 to groundwater?

21 MR. STETSON: Yes.

22 MR. KIDMAN: And become part of the percolating
23 groundwater basin, but is no longer part of the stream.

24 It's no longer part of the stream, but it is part of
25 the system? That's my question.

1 MR. STETSON: Yes.

2 MR. KIDMAN: So on a mass-balance basis, the depiction
3 was correct as presented by VVWRA; is that right?

4 MR. STETSON: As a mass diagram? Yes.

5 MR. KIDMAN: The answer is yes?

6 MR. STETSON: Yes.

7 MR. KIDMAN: Now, in terms of what's happening to the
8 transition zone and water bridge, however, the diagram
9 presented by VVWRA is not correct. Would that be your
10 opinion?

11 MR. STETSON: It's not -- in my opinion, it's not
12 correct to the extent that they assume that they started
13 with the 10,000 acre-feet upstream and it resulted in 18,800
14 acre-feet downstream. Because it takes a long time for the
15 return flow from applied water in these areas to get back
16 into the system. Whereas --

17 MR. KIDMAN: And would you say if ever?

18 MR. STETSON: Well, it would take a long time. I
19 cannot say that it would never get back.

20 MR. KIDMAN: But under the conditions here where the
21 groundwater gradient is away from the stream, it may never
22 occur?

23 MR. STETSON: It may never. But, on the other hand,
24 in other years the stream may be feeding the other way. It
25 just depends.

1 MR. KIDMAN: But just referring to and drawing the
2 connection between 4G, VVWRA 4G and SCWC 1P, under these
3 conditions, that water is never going to get back; is that
4 right?

5 MR. STETSON: That's possible, yes.

6 MR. KIDMAN: Now going to the second cartoon, and,
7 again, this should be -- I didn't get that up -- would you
8 move that over, move it up so we can see the bottom. It
9 was -- I think that I failed to mark it, but it's intended
10 that this would be marked, and we will mark it as SCWC
11 Exhibit 1Q.

12 Now, the VVWRA Exhibit 1Q did not include -- again,
13 now we are moving from the bottom of the page to the top,
14 moving downstream. We again have 10,000 acre-feet
15 entering -- could you move that up just a little bit, Tom.

16 Thank you. 10,000 acre-feet assumed to be entering
17 the transition zone. Now, moving upstream from the bottom
18 of the page toward the top, we have modified exhibit -- the
19 exhibit to show 400 acre-feet coming out of the stream as it
20 did on the previous exhibit.

21 Mr. Stetson, did you hear testimony that where it was
22 indicated, that there is no obligation currently existing
23 for Adelanto to shut off the well that currently serves the
24 golf course?

25 MR. STETSON: Yes, I believe I did.

1 MR. KIDMAN: So, in your opinion, would a proper
2 diagram of what's going on here continue to show that 400
3 acre-feet being produced?

4 MR. STETSON: Well, if it's not being produced, I
5 don't know why it would be shown here.

6 MR. KIDMAN: Let's ask it the other way around. Okay.
7 We have no indication that that water is going to be
8 shut off and that that well is going to be shut off?

9 MR. STETSON: That's my understanding, that there is
10 no indication that it will be shut off.

11 MR. KIDMAN: So a proper diagram here would show that
12 200 acre-feet, in green, being taken out of the stream?

13 MR. STETSON: So that's the well we're assuming would
14 be taking out 400 acre-feet. So that 400 acre-feet was not
15 shown on their version.

16 MR. KIDMAN: But it is shown on Southern California
17 Water Company's version?

18 MR. STETSON: Yes, it is.

19 MR. KIDMAN: And in your opinion, it's appropriate to
20 show that is still being taken away from the stream?

21 MR. STETSON: I don't know what you mean by
22 "appropriate."

23 MR. KIDMAN: Well, there is no evidence that it's
24 going to stop -- they are going to stop producing the well.

25 MR. STETSON: Well, I'm assuming the well is -- I've

1 never seen that well. I'm assuming there is a well there
2 that would produce 400 acre-feet.

3 MR. KIDMAN: Okay. Let's assume that that well will
4 continue to produce. Then would it be appropriate to show
5 that there is a reduction of 400 acre-feet in the surface
6 stream flow or the -- and subsurface stream flow bringing it
7 to 9600 at that point?

8 MR. STETSON: Yes.

9 MR. KIDMAN: Then, still moving up along the stream,
10 the prior diagram shows 200 acre-feet of water returning to
11 the stream.

12 MR. STETSON: Yes. Again, that's return flow after
13 the application to the golf course.

14 MR. KIDMAN: But as we just went through in connection
15 with Exhibit 1P, that is not likely to happen under current
16 conditions?

17 MR. STETSON: Under current conditions, you've got a
18 wasting stream through there at this time.

19 MR. KIDMAN: So we have crossed the 200 acre-feet off
20 and shown that going off to groundwater recharge?

21 MR. STETSON: Yes.

22 MR. KIDMAN: So, then, we're continuing -- we ought to
23 slide that down so we can see the rest of it. Okay.

24 Then 1600 acre-feet would continue to be lost from the
25 stream under both examples. So we are comparing apples to

1 apples; is that right?

2 MR. STETSON: Yes.

3 MR. KIDMAN: And so that would leave 9600, take away
4 1600, 8,000 left in the stream. And that's the same as
5 under the previous example?

6 MR. STETSON: Yes.

7 MR. KIDMAN: And, now, under this example, 400
8 acre-feet is shown going to the golf course from the plant?

9 MR. STETSON: Yes.

10 MR. KIDMAN: And only 8600 acre-feet being recharged
11 to the groundwater -- or excuse me -- to the stream. And so
12 the total is 16,600 below the VVWRA plant, rather than
13 17,000; is that right?

14 MR. STETSON: Yes. It's 16,600.

15 MR. KIDMAN: If, under this example, the amount of
16 water discharged from the plant is reduced by 400 acre-feet,
17 will there be injury to legal water users downstream?

18 MR. STETSON: Yes, there would be that much less water
19 that they can depend upon.

20 MR. KIDMAN: Mr. Hill, would you state your full name
21 and occupation for the record, please.

22 MR. HILL: Boyd Hill. I'm an attorney. I work in the
23 law firm of McCormick, Kidman & Behrens.

24 MR. KIDMAN: And are you familiar with Southern
25 California Water Company Exhibit 12?

1 MR. HILL: Yes, I am. I obtained this exhibit from
2 the Mojave Water Agency, and their staff certified it for
3 me.

4 MR. KIDMAN: And what does Southern California Water
5 Company Exhibit 12 purport to be?

6 MR. HILL: "Mojave River Water Agency Ordinance 9, An
7 Ordinance of the Mojave Water Agency Establishing Rules and
8 Regulations for the Sale and Delivery of State Project
9 Water."

10 MR. KIDMAN: And the Southern California Water Company
11 Exhibit 13, can you tell me where that came from.

12 MR. HILL: Yes. I obtained a copy of this from the
13 Mojave Water Agency as well, which is certified by their
14 staff. And it is the Mojave Water Agency Regional Water
15 Management Plan dated June 1994.

16 MR. KIDMAN: Have you, in your career, ever been
17 engaged as an attorney representing the Mojave Water Agency?

18 MR. HILL: I was employed by the law firm of Brunick,
19 Alvarez & Battersby during the term 1990 through 19-- the
20 end of 1995. And my responsibilities working with -- were
21 chiefly working with Mr. Brunick and chiefly representing
22 the Mojave Water Agency.

23 MR. KIDMAN: Thank you. And were these two
24 documents -- well, let me ask this.

25 Were you familiar with the facts and circumstances

1 that surrounded the adoption of these two documents?

2 MR. HILL: Yes. I was aware of the discussions among
3 staff and board members relating to the adoption of
4 Ordinance No. 9. I also reviewed the Regional Water
5 Management Plan and its Environmental Impact Report, and
6 successfully defended it against challenge in court.

7 MR. KIDMAN: Do you know what the State Water Project
8 entitlement of the Mojave Water Agency is on an annual
9 basis?

10 MR. HILL: Its project entitlement, I believe, is
11 50,800 acre-feet.

12 MR. KIDMAN: And do these two documents depict
13 policies of the Mojave Water Agency about how that water
14 will be allocated?

15 MR. HILL: Yes.

16 MR. KIDMAN: And is it your understanding of Ordinance
17 No. 9 that State Water Project water of the Mojave Water
18 Agency is not available for direct service to particular
19 projects that may occur within the Mojave Water Agency?

20 MR. HILL: Yes, that is my understanding. Section
21 3.02 and 5.13 of the Ordinance indicates that the water is
22 available only for annual purchase and is not a vested right
23 and is interruptible in nature.

24 MR. KIDMAN: Do you know how the Mojave Water Agency
25 has financed its participation in the State Water Project?

1 MR. HILL: Um, I'm not familiar with the specifics. I
2 do know that they have an assessment in place in a portion
3 of the Morongo basin -- the Morongo basin portion of the
4 water agency to which one-seventh of the Project water is
5 dedicated based on that assessment. And then the other
6 six-sevenths of its Project water are dedicated to the five
7 subareas in the Mojave basin.

8 MR. KIDMAN: Have they generally financed
9 participation in the State Water Project through property
10 tax or property-tax type levies?

11 MR. HILL: Yes.

12 MR. KIDMAN: And they haven't financed it through
13 water sales, at least in any significant degree?

14 MR. HILL: Not that I'm aware of.

15 MR. KIDMAN: Did they -- is it your understanding that
16 the policy reflected in Ordinance 9 is to provide State
17 Water Project water to the entire region because of the
18 method of financing that was used or has been used?

19 MR. HILL: I don't know that I understand the
20 question.

21 MR. KIDMAN: Well, let's put it this way: Would it be
22 fair under the method of financing as far as is reflected in
23 Ordinance 9 for a portion of that water to be dedicated to
24 any particular water producer or development?

25 MR. HILL: No. It was specifically discussed that

1 Ordinance 9 was not to guarantee to any particular purchaser
2 a portion of the entitlement. Because the MWA had been sued
3 by the City of Barstow and was required under that -- and
4 the judgment was obtained by the City of Barstow preventing
5 the MWA from selling a portion of its entitlement to the
6 City of Hesperia, I believe it was.

7 MR. KIDMAN: Thank you. I would move introduction of
8 Southern California Water Company Exhibits 12 and 13 and
9 Southern California Water Company Exhibits 1P and 1Q.

10 H.O. BAGGETT: If there is no objection, they will be
11 admitted.

12 MR. HITCHINGS: No objection.

13 H.O. BAGGETT: Cross-examination?

14 ---oOo---

15 CROSS-EXAMINATION

16 BY VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY

17 BY MR. HITCHINGS

18 MR. HITCHINGS: Good morning again, Mr. Stetson.

19 Good morning, Mr. Hill. My name is Andy Hitchings for
20 VVWRA.

21 First, Mr. Hill, are you aware whether the Mojave
22 Water Agency Board has recently approved a request for
23 proposals to modify the Water Management Plan?

24 MR. HILL: I am not acting as counsel for the Mojave
25 Water Agency at this point, so I can't answer whether they

1 have or haven't.

2 MR. HITCHINGS: Are you aware of any current plans by
3 Mojave Water Agency to consider the construction of a
4 treatment plant as part of its regional water management
5 planning efforts?

6 MR. STETSON: You know, I've heard things discussed,
7 but I would be guessing or speculating. So I can't answer
8 that.

9 MR. HITCHINGS: Okay.

10 Mr. Stetson?

11 MR. STETSON: Yes, sir.

12 MR. HITCHINGS: In looking at -- I believe this is
13 one -- I may not have the numbering correct on this. Is it
14 SCWC 1Q?

15 MR. STETSON: I think that's 1Q, yes.

16 MR. HITCHINGS: And this is the modification of
17 VVWRA's 1Q?

18 MR. STETSON: Yes.

19 MR. HITCHINGS: With the additions and other changes?

20 MR. STETSON: Yes.

21 MR. HITCHINGS: If you don't mind, if you could slide
22 that up so you can see the bottom of it for me, I'd
23 appreciate it.

24 In looking at the number at the middle of the bottom,
25 you've got "400" with an arrow pointing down to the lower

1 left.

2 Do you see that?

3 MR. STETSON: Yes.

4 MR. HITCHINGS: And that was described during your
5 rebuttal testimony as an assumed amount of pumping from the
6 Adelanto groundwater wells.

7 MR. STETSON: From an Adelanto well, yes.

8 MR. HITCHINGS: And that 400 acre-feet, under this
9 diagram, it's your understanding that that isn't water
10 that's produced by VVWRA; is that correct?

11 MR. STETSON: That's correct, yes.

12 MR. HITCHINGS: And then the 1600 acre-feet that is
13 assumed as leaving the surface flows, and I'm looking at the
14 double arrows with "1600 acre-feet."

15 MR. STETSON: Yes.

16 MR. HITCHINGS: That would still be present in the
17 system; correct?

18 MR. STETSON: Yes, it would be present in the system
19 somewhere.

20 MR. HITCHINGS: So it would be either in the system as
21 underflow or within the aquifer as percolating --
22 percolating groundwater.

23 MR. STETSON: Yes. It's assumed to have percolated
24 between the 9600 and the 8,000 in that reach. Just an
25 assumption.

1 MR. HITCHINGS: Okay. And would 1600 acre-feet, in
2 still being in the system, contribute to creating the water
3 bridge that we have been discussing?

4 MR. STETSON: No, it would not, unless it moved
5 downstream and became part of the subsurface flow holding up
6 the water bridge.

7 MR. HITCHINGS: So, to the extent that that 1600
8 acre-feet does move down gradient as underflow, it could
9 contribute to benefit the water bridge that we've been
10 talking about?

11 MR. STETSON: Yes, it could. It would take a long
12 time, because groundwater moves very slowly.

13 MR. HITCHINGS: Do you have any estimate as to what
14 the -- if that 1600 acre-feet is becoming subsurface flow or
15 recharging, what the rate of flow downgradient is in that
16 reach of the river where that's depicted?

17 MR. STETSON: I don't know the rate of flow. It's
18 probably in hundreds of feet per year. But I don't know how
19 many hundreds of feet per year. You'd have to use a lot of
20 calculations and probably model it.

21 MR. HITCHINGS: Your rebuttal testimony had discussed
22 whether ceasing the discharges from VVWRA would adversely
23 impact the water bridge.

24 Do you recall testifying to that?

25 MR. STETSON: Yes.

1 MR. STETSON: Good morning.

2 MS. MURRAY: And Mr. Kidman.

3 MR. KIDMAN: Good morning.

4 MS. MURRAY: I have a few questions for you,
5 Mr. Stetson.

6 Do you have a copy, or recall reading VVWRA's
7 Exhibit 1L, which is the CH2M Hill report?

8 MR. STETSON: No.

9 MS. MURRAY: Do you, Mr. Kidman? Do you have the
10 VVWRA exhibits?

11 MR. KIDMAN: I do not.

12 MS. MURRAY: Staff? Well, I'll give you the operative
13 page. And we asked for this -- this was copied directly --
14 it was folded over when it was copied -- of a hydrologic
15 cross section. And hopefully there is enough copied there
16 for you to be able to tell what the soil site types are.

17 Okay. In your opinion, based on this exhibit, VVWRA
18 Exhibit 1L, and that's Figure 7, would the clay soils
19 depicted in the area of the golf course where the -- in
20 SCWC's 1P, where the 400 acre-feet is taken out, would that
21 also prevent -- the clay soils also prevent the return flow
22 of 200 acre-feet to the river?

23 MR. STETSON: Yes, it would. The clay soils would
24 cause the percolating groundwater to move in a different
25 direction. Depending upon the direction of the upper part

1 of the clay soil, it could channel it in a different
2 direction.

3 MS. MURRAY: And given the hydrologic area here as
4 depicted in the CH2M Hill report, would this cause it -- add
5 to the -- to it going away from the river instead of toward
6 the river?

7 MR. STETSON: I can't tell from this, because I
8 can't -- there is not enough detail here to see exactly how
9 and in which direction it would slope.

10 MS. MURRAY: Let me give you Figure 6 and Figure 5.

11 MR. STETSON: See, this is --

12 MS. MURRAY: There's a pullout missing. It was copied
13 incorrectly.

14 MR. STETSON: It's very confusing.

15 MS. MURRAY: Do you have the full --

16 MR. HITCHINGS: I don't know why you don't have a
17 copy.

18 MS. MURRAY: I actually --

19 MR. HITCHINGS: Everyone was given corrected copies.

20 MS. MURRAY: Yeah. I got the wrong one. And we did
21 get a corrected copy.

22 MR. STETSON: Thank you.

23 MR. KIDMAN: I've got the one that he sent out,
24 basically.

25 MS. MURRAY: And I guess another general question is

1 does water move slower in clay soil than in sandy soil?

2 MR. STETSON: Yes.

3 MS. MURRAY: So can you tell from that that there are
4 generally clay soils in that area?

5 MR. STETSON: There's quite a bit of clay soils in
6 this area as I read this index here, this legend, yes.

7 MS. MURRAY: And the idea that there are clay soils in
8 the area would also prevent the return flow of the 200
9 toward the river, in your opinion?

10 MR. STETSON: Yes, unless the clay soil was tilted
11 toward the river. It doesn't appear to be here.

12 MS. MURRAY: Which doesn't appear to be here. Okay.

13 Mr. Hill, I have one question for you.

14 SCWC Exhibit 12, you refer to Section 3.02.

15 MR. HILL: Yes.

16 MS. MURRAY: There had been some testimony earlier by
17 VVWRA that State Water Project water would be available, and
18 that the Department could make -- that we could -- that we
19 could ensure that any environmental concerns related to the
20 transition zone are addressed. That was stated in VVWRA
21 testimony in Exhibit 1.

22 Assuming that the Department was able to buy State
23 Water Project water to make up for the water taken away by
24 VVWRA to go to the golf course, and assuming there wasn't a
25 place to put it anywhere near the transition zone -- I think

1 right now it's Rock Springs, which is quite a ways up. But
2 even if we did buy water, put it in at Rock Springs, would
3 that -- would we be able to ensure that water, that we would
4 be able to purchase that water on enough of a regular basis
5 to maintain habitat, given section 3.02?

6 MR. HILL: I don't know that I am qualified to tell
7 you what supplies might be coming in through MWA. Based on
8 what I have seen in the plan, that's -- there's not an
9 assurance that there would be enough water. And based on
10 what is here, it's only a one-year renewable purchase, so --

11 MR. KIDMAN: What is the "here" you are referring to?

12 MR. HILL: To 3.02, yes. 3.02 of the Water Code.
13 Thank you.

14 MS. MURRAY: And part of what Section 3.02 said is the
15 renewal and sale of any water is for the period of one year
16 and is temporary and interruptible in nature; is that
17 correct?

18 MR. HILL: That's the language.

19 MS. MURRAY: Thank you. No further questions.

20 H.O. BAGGETT: Thank you.

21 Mr. Ledford?

22 MR. LEDFORD: At some risk of making this really
23 brief -- I may give up quickly. This might work.

24 ---oOo---

25 CROSS-EXAMINATION

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BY JESS RANCH WATER COMPANY

BY MS. LEDFORD

MR. LEDFORD: Good morning, Mr. Stetson.

MR. STETSON: Good morning.

MR. LEDFORD: Can you see this plan and this area here (indicating)? This is a --

H.O. BAGGETT: Could we take off one of those exhibits so it's not as confusing?

MR. LEDFORD: Not if I can get away with it.

MR. PELTIER: Are you trying to overlay it?

MR. LEDFORD: Yes, I am.

This particular exhibit that I have overlaid onto Southern California Water Company's last exhibit, which was --

MR. KIDMAN: 1Q.

MR. LEDFORD: 1Q. It shows the Southern California Airport golf course, which is basically the golf course that is depicted on the cartoon, and it shows the river in actuality. And then it shows a well field that has perhaps as many as 20 wells in the well field.

And so my question, based on the cartoon in this one diagram of the water returning to the river is: with this well field that you have in here, if you stop the production of 400 acre-feet out of this well, isn't it true that one of these other wells would actually produce that water as

1 opposed to having it return to the river?

2 MR. STETSON: Well, if you shut down one well and
3 turned on another well in the same area, you'd probably have
4 some overlapping effect.

5 MR. LEDFORD: Are you familiar with Adelanto's
6 production?

7 MR. STETSON: No.

8 MR. LEDFORD: Are you generally familiar with the
9 municipal growth in Victor Valley?

10 MR. STETSON: Generally.

11 MR. LEDFORD: Is it a growing valley?

12 MR. STETSON: Yes, sir. It's growing houses.

13 MR. LEDFORD: And is the municipal production
14 increasing every year?

15 MR. STETSON: Yes.

16 MR. LEDFORD: That's the end of my questions.

17 MR. YAMAMOTO: Just a couple.

18 ---oOo---

19 CROSS-EXAMINATION

20 BY APPLE VALLEY RANCHOS WATER COMPANY

21 BY MR. YAMAMOTO

22 MR. YAMAMOTO: Good afternoon.

23 Mr. Hill, was the VVWRA a party to the proceedings
24 that led to the Stipulated Judgment?

25 MR. HILL: They were a party twice. We named them and

1 served them twice. The first time in 1990, I was the person
2 in charge of service of the cross-complaint for the Mojave
3 Water Agency.

4 The first time we named them and served them, we were
5 told that they were not a water producer; therefore, they
6 should not have been named in the Adjudication.

7 In approximately, I think 1991 or '92, maybe even '93,
8 it was some time while we were still negotiating the
9 Stipulated Judgment, it was determined to name them again
10 because they were contributing to the flow between the
11 subareas. And we'd named them and served them again, at
12 which time there was objection by them and, I think, through
13 their counsel.

14 And it was represented to the agency, the Mojave Water
15 Agency, that they were contributing to those flows and,
16 therefore, should not be named because they were putting
17 water back into the river and, therefore, they weren't
18 taking anything. And that was why we again dismissed them
19 and kept them out.

20 And there were probably other political overtones and
21 other things going on at that time as well, but I can't
22 speculate as to what else was going on.

23 MR. YAMAMOTO: And when did your service for the
24 Mojave Water Agency end?

25 MR. HILL: Sometime in '94, I think.

1 MR. YAMAMOTO: Thank you.

2 H.O. BAGGETT: That's all the parties.

3 MR. KIDMAN: I have redirect on one of these
4 witnesses.

5 H.O. BAGGETT: We haven't given the other parties an
6 opportunity to redirect. It certainly wasn't noticed.

7 I guess I can ask if there is any objection.

8 MR. HITCHINGS: I don't have an objection.

9 H.O. BAGGETT: There is no objection, then.

10 MR. KIDMAN: Thank you.

11 ---oOo---

12 REDIRECT EXAMINATION

13 BY SOUTHERN CALIFORNIA WATER COMPANY

14 BY MR. KIDMAN

15 MR. KIDMAN: Mr. Stetson, in the last hypothetical
16 that was asked of you by Mr. Hitchings, I'd like to clarify,
17 again, and referring to VVWRA Exhibit 4G.

18 MR. STETSON: Oh, this one.

19 MR. KIDMAN: If 21,000 acre-feet of water, surface
20 water were introduced to the transition zone at the Lower
21 Narrows, which is depicted at the left-hand side of the
22 page, and the VVWRA plant ceased all discharges, under
23 current conditions represented in this exhibit, would 21,000
24 acre-feet make it through the transition zone to the
25 Helendale Fault?

1 MR. STETSON: Under this condition, because there are
2 areas where the top of the groundwater is several feet, many
3 feet below the streambed, a large part of it would be
4 absorbed going down towards the VVWRA plant, because there
5 are some gaps in there, spaces that we don't -- if those,
6 the conditions were changed, if the previous years or so
7 were wet and this area was fairly well -- we would have
8 surface flow through there. That part, then, we probably
9 get down -- so it would depend upon the underlying
10 conditions of the stream.

11 MR. KIDMAN: Under current conditions as depicted here
12 where the stream is a wasting stream and in that reach,
13 21,000 acre-feet would not reach the Helendale Fault?

14 MR. STETSON: It would not all reach there.

15 MR. KIDMAN: And under current conditions, there would
16 be phreatophytic consumption, would there not?

17 MR. STETSON: Yes.

18 MR. KIDMAN: And that, again, would prevent the entire
19 21,000 acre-feet from making it across the transition zone;
20 is that right?

21 MR. STETSON: It would have an impact on it.

22 MR. KIDMAN: The impact would be to reduce the amount
23 of water making it through the transition zone as surface
24 flows?

25 MR. STETSON: Yes.

1 MR. KIDMAN: That's all the questions I have.

2 H.O. BAGGETT: Any other parties?

3 Okay. So there is no recross.

4 With that, we've already accepted the originals.

5 MR. HITCHINGS: Mr. Baggett, we do not have a rebuttal
6 case, but I do want to seek Board clarification on the
7 evidence that has been submitted.

8 I wanted to confirm that all of the testimony and
9 exhibits that VVWRA has on their amended exhibit
10 identification index that was circulated to all of the
11 parties as well as, I believe, it was VVWRA Exhibit 8 that
12 was brought in during cross-examination, that those have all
13 been offered and accepted into evidence.

14 H.O. BAGGETT: I want to make sure that you've got
15 them all numbered.

16 It's my understanding that we'd already accepted those
17 into evidence.

18 MR. HITCHINGS: I wanted to make sure there was no
19 misunderstanding since some of those exhibits -- corrected
20 copies have been distributed after the close of our direct
21 case in chief. And I just want the record to be clear that
22 they have been offered and accepted unless there are
23 objections.

24 H.O. BAGGETT: Are there any objections?

25 MR. KIDMAN: No.

1 H.O. BAGGETT: They're all accepted.

2 MR. HITCHINGS: Thank you.

3 H.O. BAGGETT: With that, that's it.

4 I appreciate the parties again considering -- I know
5 we've been a little more informal than some other hearings,
6 but I certainly appreciate the patience that you've all had
7 with it.

8 At this point we'll take this under submission. We
9 will have closing briefs. I don't know that we need to put
10 a page limit on testimony, unless somebody is --

11 MS. DIFFERDING: We need a deadline.

12 H.O. BAGGETT: We need a deadline, though. So it's --
13 I'll ask the parties.

14 Anybody got a reasonable -- three weeks?

15 MR. HITCHINGS: My suggestion was going to be 30 days
16 from the date we receive written transcripts.

17 MS. MURRAY: I agree with that.

18 H.O. BAGGETT: Problem with anyone?

19 MR. YAMAMOTO: That's fine.

20 H.O. BAGGETT: Thirty days from the date that we
21 receive the written transcripts in the Board offices.

22 MR. HITCHINGS: So, perhaps so we all know the date
23 once that's received, maybe Mr. Mona can circulate notice by
24 e-mail to all the parties that it has been received, and
25 then set the date 30 days from whenever that is.

1 H.O. BAGGETT: Yes.

2 MR. HITCHINGS: So we will all be clear on that.

3 H.O. BAGGETT: With that, we'll take it under
4 submission. And all the persons here will be given notice
5 of the Board's proposed order in this matter, and when the
6 Board will meet, and at what meeting the Board will consider
7 it next. And thanks for your help and cooperation. And
8 have a safe trip home.

9 Thank you.

10 (At 12:10 p.m. the proceedings were adjourned.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, SANDRA VON HAENEL, certify that I was the official court reporter for the proceedings named herein, and that as such reporter, I reported in verbatim shorthand writing the named proceedings;

That I thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 635 through 748, inclusive, constitute a complete, true, and correct record of said proceedings:

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on the 31st day of January, 2001.

SANDRA VON HAENEL
CSR No. 11407

