

Public Hearing  
**STATE WATER RESOURCES CONTROL BOARD**  
STATE OF CALIFORNIA

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**Subject:** El Dorado Project Proposed by  
El Dorado County Water Agency and El Dorado Irrigation District,  
Applications 29919, 29920, 29921 and 29922,  
Petition for Partial Assignment of State Filed Application 5645

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Held in  
Bonderson Building  
Sacramento, California

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**Monday, June 21, 1993**  
**9:00 a.m.**

VOLUME IV

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**A L I C E B O O K**  
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1 MONDAY, JUNE 21, 1993, 9:00 A.M.

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3 MR. STUBCHAER: Good morning.

4 We will resume the El Dorado water rights hearing.

5 The order of procedure, the Forest Service has no  
6 more than 20 minutes of testimony. Their witnesses can only  
7 be here today.

8 Are there any objections that we take the Forest  
9 Service out of order first thing this morning?

10 MR. VOLKER: No, Mr. Chairman.

11 MR. STUBCHAER: All right, hearing none, we will  
12 call on the El Dorado National Forest. Is it Ms. Yandoh?

13 MS. GORDON: No, it's Janice Gordon and Karen Leyse,  
14 who will be speaking concerning Lake Aloha.

15 MR. STUBCHAER: As a matter of fact, we might as  
16 well swear all the potential witnesses who intend to give  
17 testimony today.

18 All those persons who intend to testify today who  
19 have not previously taken the oath, will you please stand  
20 and raise your right hand.

21 (The witnesses were sworn.)

22 Ms. Gordon.

23 JANICE GORDON,

24 having been sworn, testified as follows:

25 MS. GORDON: My name is Janice Gordon and I am with  
26 the El Dorado National Forest. There was a statement that  
27 summarized my experience. I do not know if it got into the  
28 record or not and is an exhibit.

29 If there's anyone that requires it, I have copies  
30 here. I have just about a page and a half that was prepared  
31 before, so I will just read it roughly.

32 My name is Janice Gordon. I am the Acting Resource  
33 Officer for the Amador Ranger District of the El Dorado  
34 National Forest.

35 I am responsible for recreation programs on the  
36 District.

37 Any Forest Service employee who works in recreation  
38 can tell you that the most popular campground and recreation  
39 areas in the District are those that are located near lakes.  
40 This is certainly true in my District, as shown by the  
41 tremendous amount of use the campgrounds, the day-use areas,  
42 resorts, recreational residences and organization camps  
43 receive in the Caples and Silver Lakes area.

44 Silver Lake is currently the most intensively  
45 developed recreation area in the District.

1 Concentrated within the basin on National Forest  
2 lands are 78 recreation residences, 3 organization camps, 62  
3 family campground units, and 1 resort with 17 cottages, 2  
4 duplexes and 8 motel rooms.

5 Located on PG&E land are 7 recreation residences, 35  
6 family campground units, 2 day-use sites and 1 resort with 9  
7 cabins.

8 Significant drawdown in the lake basin does not  
9 occur until after Labor Day. This is an important factor in  
10 making the lakes attractive to summer sunbathers, swimmers,  
11 fishermen and boaters.

12 Caples Lake has a somewhat less development. The  
13 area has 13 residences, a 35-unit campground, and a resort  
14 with 7 cabins and 9 lodge rooms.

15 Due to accessibility from Highway 88 which parallels  
16 the west and north shores for two and a half miles, the lake  
17 receives a relatively high proportion of day use compared  
18 with overnight use. This use includes boating, fishing and  
19 hiking along the lake shore.

20 Although the lake drawdown starts in August, Caples  
21 Lake's gentle shore profile makes the drawdown somewhat less  
22 evident.

23 The Forest Service campground at Silver Lake is the  
24 most popular campground on the Amador Ranger District. It  
25 served 18,000 people last year which translates to  
26 approximately 27,000 recreation visitor days of use in 1992.

27 The Caples Lake campground served over 8,000 people  
28 and received 12,000 recreation visitor days of use, the  
29 third highest use campground on the Amador Ranger District.

30 Forest visitors to these lakes enjoy boating,  
31 canoeing, fishing, swimming, picnicking and hiking along the  
32 shores of the lake. All visitors enjoy the spectacular  
33 views of the lakes from Highway 88, and without an agreement  
34 that insures that the historical levels of these lakes will  
35 be maintained during the summer months, future visitors'  
36 recreation experience could be dramatically impacted.

37 If the lakes were close to the Labor levels during  
38 the busy summer months, forest visitors would not be able to  
39 fish from the popular accessible Sandy Cove to Kit Carson  
40 area of Silver Lake. Fishing would be very difficult at  
41 Caples Lake. The beaches and waterfronts at the Boy Scout  
42 camps, Minkalo and Silverado, and the Kit Carson and Caples  
43 Lake resorts could not be used.

44 Also, the floating docks belonging to cabin owners  
45 of the East Silver Lake and South Silver Lake residences

1 could not be used. Boats, canoe and sailboat launching  
2 would be difficult, if not impossible at both lakes. All  
3 forest visitors would have reduced aesthetic enjoyment of  
4 the lakes.

5 During the 1980s, the Forest Service conducted an  
6 extensive study of recreation use at the Caples and Silver  
7 Lake area. This study was published in January, 1987, as  
8 the Draft El Dorado National Forest Highway 88 Future  
9 Recreation Use Determination Environmental Impact Report,  
10 otherwise known as the FRUD.

11 Pages 330 to 334 and 335 to 339 of that report  
12 contain a complete description of the activities and uses at  
13 Caples and Silver Lakes during the summer recreational  
14 season, including locations of beaches, parking, reservoir  
15 operations, history of use, et cetera.

16 Attached to my testimony are excerpts from the FRUD  
17 pertain to Silver and Caples Lakes. Of particular interest  
18 is the chart on page 384 depicting traffic volumes at Silver  
19 Lake.

20 And if I may also add, traffic volumes have steadily  
21 increased since 1984 from an average of 1800 vehicles per  
22 day to 2400 vehicles per day recorded in 1992.

23 MR. STUBCHAER: Thank you.

24 MS. KATZ: Excuse me, could I interrupt for just a  
25 minute so we can get our exhibits straight?

26 MR. STUBCHAER: All right.

27 MS. KATZ: We will call the testimony of Janice  
28 Gordon Exhibit 1 and her Qualifications Statement as Exhibit  
29 2, if she would see to it that staff and everyone else gets  
30 a copy this morning.

31 Karen Leyse's testimony would be Exhibit 3 and her  
32 Qualifications Statement would be Exhibit 4, and then the  
33 excerpt from FRUD would be U. S. Forest Service Exhibit No.  
34 5.

35 MR. STUBCHAER: Was your testimony distributed to  
36 all parties?

37 MS. LEYSE: I believe it was.

38 MS. GORDON: I distributed it when I was here last  
39 week.

40 KAREN LEYSE,  
41 having been sworn, testified as follows:

42 MS. LEYSE: Again, I will read the testimony that  
43 was distributed last week.

44 My name is Karen Leyse and I am the Recreation  
45 Assistant to the Pacific Ranger District of the El Dorado

1 National Forest. I serve as Wilderness Manager for that  
2 portion of the Desolation Wilderness including the Lake  
3 Aloha area within the El Dorado National Forest.

4 I also serve as the interdisciplinary team leader  
5 for the ID team which is currently revising the management  
6 guidelines for the Desolation Wilderness.

7 Testimony regarding the Lake Aloha as admitted  
8 during the prewritten submittal, so I prepared this  
9 testimony and I asked Ms. Gordon to submit it into evidence.

10 In addition, I am now presenting it myself.

11 Desolation Wilderness was created in 1969 by an act  
12 of Congress, Public Law 90-82. It is one of the most  
13 heavily used wilderness areas in the United States on a per-  
14 acre basis.

15 The El Dorado National Forest and Lake Tahoe basin  
16 management unit which share administration of the Wilderness  
17 reported a total of 291,000 recreation visitor days for both  
18 day use and overnight use in 1992.

19 The 1969 Act which created the Wilderness lists the  
20 area's popularity and superb mountain scenery as reasons for  
21 the area's inclusion in the National Wilderness Preservation  
22 System.

23 Public Law 91-82 stipulates that Desolation  
24 Wilderness be administered in accordance with the provisions  
25 of the Wilderness Act of 1964.

26 As defined in the Wilderness Act of 1964, a  
27 wilderness, in contrast with those areas where man and his  
28 own works dominate the landscape, is an area where the earth  
29 and its community of life are untrampled by man, where man  
30 himself is a visitor who does not remain.

31 And the area of a wilderness is further defined as  
32 an area of undeveloped land retaining its primeval character  
33 and influence without permanent improvement or human  
34 habitation, which is protected and managed so as to preserve  
35 the natural condition and where the imprint of man's work is  
36 substantially unnoticed.

37 Due to the FERC license facility, Lake Aloha and the  
38 reservoir were excluded from the Wilderness itself by that  
39 act. However, they are to be managed in a manner which is  
40 consistent with the surrounding Wilderness.

41 Lake Aloha lies at the center of Desolation Valley  
42 within Desolation Wilderness. The valley is a large, open,  
43 glaciated basin approximately three miles long and more than  
44 a mile wide.

1           When at capacity Lake Aloha is approximately two  
2 miles long by one mile wide at its widest point. The valley  
3 and lake are visible from many points within the Wilderness,  
4 including such popular peaks as Pyramid Peak, Mount Price  
5 and Mount Tallac (phonetic).

6           The Pacific Crest Trail, which is a national  
7 recreation trail, extends along three miles of Lake Aloha  
8 shoreline. As such, the lake is a focal point for many  
9 Wilderness visitors.

10          Every visitor to Wilderness Lake is required to  
11 complete a Wilderness permit. We survey those permits to  
12 establish uses each year. And for the period between  
13 October 1, 1991, and September 30, 1992, a survey of those  
14 permits indicates that Lake Aloha was a destination point  
15 for probably ten percent of the overnight use within the  
16 Wilderness.

17          In addition, one-half of day hikers entering the  
18 Wilderness from Echo Lake, which is a popular wilderness  
19 trailhead were destined to Lake Aloha and the surrounding  
20 area.

21          Many other backpackers and day hikers like the three  
22 miles of Pacific Crest Trail along the lake shore on their  
23 way to camping destinations, picnic areas from various trail  
24 heads.

25          Wilderness visitors are attracted by the scenic  
26 beauty to be found in Desolation Wilderness. The lakes  
27 within the Wilderness are the major reason for the high  
28 visitation levels and are the destination point for camping,  
29 swimming, picnicking, fishing and taking photographs.

30          Due to the broad shallowness of the Aloha basin,  
31 increased drawdown levels would expose larger amounts of  
32 shoreline and greatly decrease the attractiveness and  
33 perceived naturalness of the Aloha basin.

34          Without an agreement to assure that the historical  
35 drawdown rates, the historical timing of drawdown and the  
36 historical levels of this lake will be maintained, the  
37 Wilderness experience of future visitors could be  
38 drastically affected.

39          In addition, changed flow regimes could affect the  
40 naturalness of aquatic and riparian environments, both at  
41 Lake Aloha itself and along Pyramid Creek, and the eight  
42 other lakes through the creek flows. These lakes are  
43 downstream from Lake Aloha and are within Desolation  
44 Wilderness.

1 I do attest that this testimony is true based on the  
2 data gathered from yearly reporting purposes.

3 MR. STUBCHAER: All right, thank you.

4 Who wishes to cross-examine these witnesses?

5 Mr. Somach and Mr. Jackson. All right, Mr. Somach.

6 CROSS-EXAMINATION

7 by MR. SOMACH:

8 Q Are you familiar with the Environmental Impact  
9 Report that was prepared for the El Dorado project?

10 MS. GORDON: A Are you referring to the FRUD or --

11 Q No, the Environmental Impact Report prepared by El  
12 Dorado County Water Agency for the El Dorado project, the  
13 project that is the subject of the hearing here today.

14 A I am not that familiar with it, no.

15 Q Are you aware of whether or not the El Dorado County  
16 Water Agency or the El Dorado Irrigation District will be  
17 operating the lakes that you have testified about?

18 A My understanding at this point is that the operation  
19 is by PG&E. I do not know exactly where El Dorado County or  
20 El Dorado Irrigation District would come into that process.

21 Q Is that the same for you?

22 MS. LEYSE: A Yes.

23 Q I noticed in your testimony, Ms. Gordon, that you  
24 indicated that without an agreement that insures historic  
25 levels of these lakes will be maintained during the summer  
26 months, future visitors' recreation experiences could be  
27 dramatically impacted.

28 Is that accurate?

29 MS. GORDON: A Yes.

30 Q So, as I understand, implicit in that statement is  
31 that historic operations during summer months have, in fact,  
32 been sufficient to allow summer recreation around and within  
33 these lakes; is that correct?

34 A For the most part, yes. There is an attempt to  
35 maintain the high levels of the lakes during the summer  
36 months as much as the water situation will allow. These  
37 last six years of drought have affected that somewhat, but  
38 for the most part, they have been maintained fairly full.

39 Q Well, in that regard, would you have an objection if  
40 permittee, El Dorado, in this case El Dorado County Water  
41 Agency and EID, were to agree not to make any requests or  
42 agreements with PG&E for any operational change in these  
43 lakes from what they have been during the historic period,  
44 or the way they have been operated historically? You  
45 wouldn't have any objection to that; would you?

1 A If there was an agreement that the historical levels  
2 would be maintained in those lakes and that the historical  
3 level would be defined as being as, you know, to a full  
4 level, whatever that actual historic level has been, I would  
5 not have any objection.

6 Q Okay. Now, when you say maintained, since PG&E  
7 operates the facilities, El Dorado couldn't do anything to  
8 maintain lake levels; could they?

9 A I don't know, because I do not know the relationship  
10 between PG&E and El Dorado at this point.

11 Q Assuming that El Dorado has no control over the  
12 operation of those lakes and that the lakes would be  
13 operated as they have been historically by PG&E, would you  
14 have an objection at all to El Dorado agreeing to not make  
15 any requests or any other agreements with PG&E to modify  
16 their historic operations?

17 A Again, I don't understand the relationship that much  
18 between El Dorado and PG&E. All I know is that there needs  
19 to be some sort of an agreement that historic levels of the  
20 lakes will be maintained.

21 Q Would you have an objection to an agreement on the  
22 part of El Dorado that would indicate that the only water  
23 that they could take out of the lakes would be water that  
24 PG&E had released on its own without request by the  
25 permittee, and which is released as part of the PG&E's  
26 normal historic operations of the lakes?

27 A Again, it is something a little difficult for me to  
28 answer because I do not understand entirely the relationship  
29 between El Dorado and PG&E. I just know that there needs to  
30 be an agreement that the historic levels of the lakes will  
31 be maintained however that is accomplished.

32 Q I understand that, but the questions I have asked  
33 you really go to that relationship. I am trying to  
34 understand what it is that you would feel comfortable with,  
35 so I have postulated two possible agreement scenarios.

36 One would be that El Dorado would make no attempt or  
37 any request of PG&E to have them operate those lakes in any  
38 other way than the way PG&E had done so historically, and  
39 you have indicated that historic levels were sufficient.

40 Now, do you have any problems with that kind of  
41 agreement?

42 A Well, it is really not my place to say whether I  
43 have a problem with that or not. I am not in a position  
44 within the Forest Service to recommend that that be  
45 acceptable or not. My expertise lies in the recreation and

1 the District, and the recreation use on the District. As  
2 far as any agreement that is reached, and the substance of  
3 that agreement, that would be up to someone other myself.

4 All I can speak to is that there is need to have  
5 some sort of an agreement that will maintain those historic  
6 levels.

7 Q Well, in all fairness to the permittee here, you  
8 have indicated that without agreement that assures historic  
9 levels of these lakes and that they will be maintained,  
10 there will be a problem. And my questions have gone to what  
11 that agreement looks like.

12 Is it your testimony that you don't have any opinion  
13 as to what that agreement would look like?

14 A It is my testimony that I do not have the expertise  
15 to recommend what that agreement will look like. My  
16 expertise, again, lies in the area of recreation and the  
17 recreational use on the District. As far as recommending  
18 what type of agreement it will be and the substance of that  
19 agreement, I do not have the expertise to say.

20 Q If the El Dorado operation will not affect historic  
21 levels which you have testified before were sufficient for  
22 the purposes that you are concerned about, then if the  
23 agreement were to provide that El Dorado diversions would  
24 have no effect upon historic levels, that would be the kind  
25 of agreement you are looking for?

26 A If the agreement would result in historic levels  
27 being maintained, then I would think that that would be  
28 acceptable.

29 MR. SOMACH: I have no further questions.

30 MS. KATZ: Could I just clarify the record for  
31 future references?

32 El Dorado Irrigation District and El Dorado County  
33 Water Agency are the applicants in this proceeding, not the  
34 permittee, so if that confused you or anyone else, no permit  
35 has been issued as yet for those applications and petition.

36 MR. SOMACH: If I could just clarify, I didn't mean  
37 to, other than trying to guess what the State Board might do  
38 ultimately, I was, of course, reading from Exhibit 69, which  
39 was a proposed term or condition which did use the word  
40 *permittee*. That is why I used the term.

41 MS. KATZ: I understand that.

42 MR. STUBCHAER: Thank you both for your clarifica-  
43 tions.

44 Mr. Jackson.

45 MR. JACKSON: Thank you, Mr. Stubchaer.



1 MS. LEYSE: A It was historically a series of small  
2 lakes. The dam that raised the elevation to one large lake  
3 was constructed originally in the late 1800s.

4 Q But there was a lake there prior to its being  
5 enlarged into a reservoir?

6 A There were a series of small lakes called Medley  
7 Lakes.

8 Q Has the Forest Service done any fishery studies to  
9 your knowledge on Caples Creek, Pyramid Creek, and the  
10 Silver Fork of the American River?

11 A Not to my knowledge.

12 MS. GORDON: A I don't know. We often do not know  
13 exactly what our fishery biologists are studying or not  
14 studying. I should say I am not familiar with what they are  
15 or are not studying.

16 Q The U. S. Forest Service has promised to assess  
17 Pyramid Creek's wild and scenic status by June of 1993. Has  
18 that been finished, to your knowledge?

19 MS. LEYSE: A To my knowledge, it has not been  
20 finished.

21 Q And as far as either one of you, you do not manage  
22 the wild and scenic river system within your Forest. I  
23 thought that was a resource officer's duty, or is it?

24 MS. GORDON: A No, it is one of those areas that I  
25 am not as familiar with. Like the exhibit indicates, I have  
26 been working on the District for four years. I have only  
27 been as the Acting Resource Officer for about the last six  
28 months now and it's just not one of those areas that I am  
29 familiar with yet.

30 MR. JACKSON: All right, thank you. I have no  
31 further questions.

32 MR. STUBCHAER: Thank you, Mr. Jackson. Do you wish  
33 to introduce your exhibits into evidence?

34 MS. GORDON: Yes.

35 MR. STUBCHAER: Are there any objections to  
36 receiving these exhibits into evidence?

37 If not, they are accepted. Thank you very much.

38 MR. LAVENDA: Just one moment, please.

39 MR. STUBCHAER: I'm sorry.

40 EXAMINATION

41 by MR. LAVENDA:

42 Q Could you say something about the Forest Service's  
43 involvement in the current status of the water quality  
44 impacts in the South Fork American River as a result of last  
45 year's Cleveland fire? Are you familiar with that incident?

1 MS. LEYSE: A We are familiar with that incident.  
2 However, there is a special ID team that did deal with the  
3 facts of that fire and we are not part of that team, so we  
4 do not have expertise to speak on that.

5 MR. LAVENDA: Thank you.

6 MR. STUBCHAER: Thank you again.

7 Mr. Volker, your expert panel. I am sure the Forest  
8 Service appreciates the courtesy in allowing them to go  
9 first, Mr. Volker.

10 MR. VOLKER: Good morning, Mr. Chairman.

11 MR. STUBCHAER: Before you begin, do you have an  
12 estimate of how much time you might require this morning to  
13 present your direct testimony?

14 MR. VOLKER: About an hour and a half.

15 MR. STUBCHAER: All right.

16 MR. VOLKER: We have three witnesses, all experts on  
17 this panel; Dr. Robert Curry, a professor of geomorphology  
18 and forest hydrology at the University of California in  
19 Santa Cruz. We have Professor Peter Moyle, a professor of  
20 wildlife and fisheries biology at the University of  
21 California at Davis. We have the testimony of Dr. George  
22 Clark, a director of the California Native Plant Society and  
23 an expert in the flora of El Dorado County.

24 They will address the following issues: Dr. Curry  
25 will first address deficiencies in the environmental review  
26 conducted by the applicants, in particular, the absence of  
27 the magnitude, duration and frequency analysis of the  
28 impacts of water diversions which are proposed. In layman's  
29 language, Dr. Curry will address how much, how long and how  
30 frequently water will be taken from the South Fork American  
31 River system with particular attention to the three high  
32 mountain lakes, Silver, Caples and Aloha, in question.

33 Second, Dr. Curry will address the omission of  
34 analysis of the storage requirements of the applicants to  
35 meet the water use demand created by the projected 115,000  
36 population in the first phase, and also, ultimately 150 plus  
37 thousand when Phase II is brought on line.

38 Third, Dr. Curry will address the economic  
39 consequences of the proposed rediversion of water presently  
40 used to produce peak power, for consumptive water uses that  
41 will have differing demands from the use of that water for  
42 the generation of electricity.

43 Fourth, Dr. Curry will address the implications of  
44 the use of straight-line growth rate population projections

1 and suggest that that may be an inappropriate basis for  
2 predicting population growth and demand for water.

3 Finally, Dr. Curry will sum up with an analysis of  
4 the need for a comprehensive operational model of how the  
5 water would be captured and distributed to meet the  
6 projected demand.

7 Dr. Curry has a number of overheads which we will  
8 present during the course of his testimony.

9 In addition, we have a number of exhibits that  
10 supplement those that Dr. Curry prepared for the May 18  
11 distribution. These are largely charts and graphs based on  
12 existing documents with the State of California, Department  
13 of Water Resources, and the USGS, which he has reformulated  
14 them in a manner that makes them more specifically usable  
15 for analyzing this project. In fact, he has done much of  
16 the work or some of the work at least that we feel the  
17 applicants should have done to analyze the project.

18 We will distribute these at the time of his  
19 testimony.

20 Our second witness is Dr. Peter Moyle. He is the  
21 leading expert on California native species. He has  
22 authored over a hundred publications in that field. He has  
23 testified before this Board on a number of occasions, most  
24 recently with regard to the D-1630 hearings, and he will  
25 address three major points:

26 First is the environmental review conducted by the  
27 applicants appears to be incomplete and confusing, and it is  
28 hard for him to make use of the information presented.

29 Second, the impact on the Delta of the first phase  
30 of this project could be very significant.

31 And finally, the cumulative impact of the first and  
32 subsequent phases of this project, together with other  
33 similar water appropriation projects that we can expect to  
34 be proposed and to possibly be approved in the near future,  
35 is considerable.

36 At present, we don't have new water in the Delta to  
37 assure maintenance of adequate populations of fish and  
38 wildlife. Fish are becoming extinct or at least in jeopardy  
39 of extinction at the rate of one every 16 years presently.  
40 And to stem this unhappy turn of events requires the  
41 retention of additional water for instream Delta uses rather  
42 than extraction of additional water from the Delta, which  
43 this project would accomplish.

44 Finally, our third witness is Dr. Clark. He has  
45 served on the El Dorado County Planning Department's Rare

1 Plant Advisory Committee and is familiar with eight plant  
2 species located in the central Sierra foothills, including  
3 El Dorado County, which are presently in jeopardy and which,  
4 if the urban development proposed in this project were to  
5 unfold as projected, would be jeopardized possibly to the  
6 point of extinction.

7 Perhaps this would be a good time to distribute the  
8 additional charts and graphs generated from existing data so  
9 that when Dr. Curry is under way, the audience can follow  
10 along as he explains with his overheads the points that he  
11 presented in his original testimony.

12 MR. STUBCHAER: If they are going to be used, they  
13 will have to be identified as exhibits and subject to  
14 objection.

15 MR. VOLKER: We have numbered them RC-10 through 25.

16 MR. SOMACH: Mr. Stubchaer, I will object to these  
17 exhibits. It is somewhat ironic, of course, that it's this  
18 particular testimony that presents these new exhibits in  
19 light of the fact that Mr. Volker objected so strenuously to  
20 any variation in the testimony by El Dorado when it put on  
21 its testimony.

22 Moreover, I recall specifically a statement made  
23 earlier that if there were to be any more of these types of  
24 situations, that we all ought to know now so we can prepare  
25 for them in some reasonable fashion.

26 Mr. Volker must have had these at least on  
27 Wednesday.

28 I object to the introduction and utilization of the  
29 exhibit with respect to the Geological Survey map and would  
30 have assumed at that time in light of that, that if there  
31 was going to be some anticipated expert exhibit or testimony  
32 of any kind to at least have been given some idea at that  
33 time. I could have had my experts take a look at this over  
34 the last three or four days.

35 At this point, it becomes entirely as a surprise,  
36 and I think it ought to be excluded.

37 MR. VOLKER: Your Honor, if I may respond.

38 MR. STUBCHAER: Yes.

39 MR. VOLKER: Actually, these were generated in the  
40 last couple of days. I have not seen them before today.  
41 Dr. Curry created them to illustrate points presented in the  
42 testimony circulated on May 18. We can certainly limit  
43 their use to their illustrative value, if that would be the  
44 preference of this Board, but they don't add new information  
45 outside the files of the State of California and the USGS,

1 and the information they present is entirely consistent with  
2 the analysis that was distributed on May 18.

3 These are designed purely to aid in the  
4 understanding of the testimony that was distributed back in  
5 May.

6 MR. STUBCHAER: It seems to me that in the interest  
7 of fairness that if these are accepted into evidence, that  
8 we would have to hold this hearing open until tomorrow to  
9 give the parties an opportunity to examine these and cross-  
10 examine on them.

11 MR. VOLKER: That's fine.

12 MS. KATZ: We also need some more copies.

13 MR. VOLKER: How many more do you need? I have two  
14 more right now. We will make more and get them before the  
15 end of this morning.

16 MR. STUBCHAER: I will defer ruling on their  
17 admissibility until after we see.

18 MR. SOMACH: I would also like to bring to the  
19 attention of the Chair at this point, and I have no idea  
20 whether this testimony goes to that or whether this is some  
21 additional testimony.

22 I noted in reviewing the testimony that Mr. Curry  
23 was go offer today that he makes a statement on page 15 of  
24 that testimony in paragraph 18, and in that paragraph he  
25 says: *Since the FEIR and supporting documents do not*  
26 *evaluate any probabilistic streamflow events, I will present*  
27 *some of those should I testify.*

28 I don't understand why that was not in the written  
29 testimony so that it could be evaluated again by the El  
30 Dorado witnesses.

31 MR. VOLKER: It is. It is paragraph 20. He will  
32 limit the examples to that identified in paragraph 20.

33 MR. SOMACH: Thank you.

34 ROBERT R. CURRY,  
35 having been sworn, testified as follows:

36 DIRECT EXAMINATION

37 by MR. VOLKER:

38 Q Dr. Curry, would you please state your name and  
39 address for the record, and spell you last name.

40 A Robert R. Curry, C-u-r-r-y, 302 Otis Street, Santa  
41 Cruz, California.

42 Q What is your present occupation?

43 A I am a Professor of Environmental Geology at the  
44 University of California at Santa Cruz where I teach water  
45 resources assessment and policy.

1 Q I will show you a document we have marked as Exhibit  
2 11 and ask you if this is a correct statement of your  
3 testimony in this proceeding?

4 A Yes, it is.

5 Q Would you please summarize your testimony and feel  
6 free to use the overhead projector as necessary to  
7 illustrate the points that you made in your testimony.

8 A It would be easier if I could approach the podium  
9 and use that microphone.

10 MR. STUBCHAER: You can take that microphone with  
11 you. It comes out of the stand.

12 A My goal here today is to try to summarize five  
13 substantive issues as presented by Mr. Volker. These are  
14 that the statements in the FEIR avoid answering some of the  
15 critical controversial questions, particularly on the range  
16 of future operations of the Sierra lakes.

17 I shall try to show it is impossible to meet the  
18 projected 17,000 acre-feet net yield without drawing upon  
19 those reservoirs in critical summer months.

20 Basically, I am in the middle of grading papers  
21 right now in our dying university system, and the thing that  
22 I keep putting on all my students' papers is *show your work,*  
23 *show your work.* And that's the same basic criticism I have  
24 here of the applicants' materials.

25 The second critical issue as pointed out by Mr.  
26 Volker that I am going to cover is that of storage. To make  
27 this project work as intended, storage is mandatory, but it  
28 is not available. The proposed project is, in my opinion,  
29 either a sequential project or strawman put forward to later  
30 justify an application for storage facilities when this one  
31 is rejected or else it is part of sequential applications  
32 that will, indeed, ultimately lead to new storage  
33 facilities.

34 I will show that the operational history of Sly Park  
35 Reservoir shows that adequate excess capacity for the  
36 required storage was available in only four of the historic  
37 years. The proposed system simply cannot operate without  
38 adequate storage.

39 I will then try to briefly get into the issue of  
40 rediversion of waters used to produce peaking power for your  
41 utilities, and the non-substitutability of that water used  
42 and so vital for public utilities for peaking power. Even  
43 if the utilities were to negotiate such water rights with  
44 the applicants, the economic feasibility of replacing that  
45 kind of peaking power is simply not possible in California.

1 The public would have a case to go to the Public Utilities  
2 Commission, I believe, and reject a pass-through of rate  
3 increases if the PG&E or SMUD had to go out of state for  
4 that peaking power.

5 The growth rate issue you have heard about and I  
6 will briefly touch on that growth rate issue, and then  
7 finally, I will close with the points that the California  
8 Water Resources Control Board, in my opinion, needs  
9 disclosure at the operational model of how the water would  
10 be captured and used to assess in an honest objective  
11 fashion this application. The present information base is  
12 simply inadequate and unsuitable for a reasoned decision at  
13 the present time, basically again, simply show your work.

14 Okay, now moving forward into the first issue, that  
15 of the operational reality of working with the PG&E lakes.  
16 The critical issue here is the issue for flow generation  
17 frequency.

18 If I may, briefly, and these were distributed with  
19 my earlier packets, the issue is not as we have heard in  
20 cross-examination before the Forest Service here today, for  
21 example, can we operate within the confines of the system  
22 that PG&E has operated under, but can we operate in a  
23 fashion that provides the lakes at near full capacity  
24 throughout the summer months.

25 And to get at that issue, what I have done is looked  
26 at the stage duration frequency for the lakes themselves;  
27 that is, how full are the lakes at what point in time at  
28 what months and how are they drawn down? What is the real  
29 historic operational history of the lakes?

30 There's two points we need to consider in looking at  
31 this operational history. One was the normal operating  
32 level and what are the extreme levels to which the lake is  
33 allowed to operate at atypical times, because if the  
34 atypical times were to be used as the standard by which  
35 future operations were to be judged, then indeed, you would  
36 have a much larger leeway than if you were to use the  
37 typical frequency magnitude issues.

38 so, for example, here in late May, in the  
39 springtime, sometimes the lake is not, and we are looking  
40 here at Silver Lake, sometimes the lake is not yet full.  
41 So, we see that here 50 percent of full occurs more than  
42 half the months of historic record and that the lake is full  
43 a significant portion of the record, but that in general in  
44 May, we see a filling-lake condition by the end of May.

1           So that if we look at the distribution of those  
2 stage elevation data, the most frequent condition is one in  
3 which the lake is nearly full, but there are, indeed,  
4 conditions in which the lake is substantially below  
5 completely full.

6           Down here we would be at the 50 percent full level,  
7 not 50 percent of volume but 50 percent of stage, that thing  
8 which recreational users are aware of the degree to which it  
9 is full.

10           The pencilled number in the upper right-hand corner,  
11 by the way, are the new exhibit numbers.

12           MR. STUBCHAER: It would be good if you would refer  
13 them to where the written record is.

14           A           I'm sorry, yes, sir. The last two were RC-10 and  
15 RC- 11. We are now looking at Silver Lake stage for August  
16 at the end of the summer, end of August. RC-12, and here we  
17 see that 50 percent is way down here at the end, full is up  
18 here and the lake is, indeed, operated within 80 percent of  
19 full for most of the end of August. There are, indeed,  
20 times when it has been at the end of August drawn down so it  
21 looks like about 57 percent of full, but never lower than  
22 that at the end of August.

23           So, the August stage duration frequency information  
24 looked like this with the most frequent --

25           MR. STUBCHAER: This is our RC-13?

26           A           Yes, sir. With the most frequent event recorded 28  
27 years out of the historical database, 75 percent full being  
28 the most frequent end of August elevation data.

29           Very quickly then, just swinging through these,  
30 there is RC-14 for late September, the operational history  
31 now is to begin to use that water by PG&E to produce power  
32 when power is still needed in the low country, the hot  
33 country, when irrigation and pumping are still going on, and  
34 when hydropower is available for peaking power demands is in  
35 such short supply in the State of California. This is when  
36 that water is extremely valuable in the high reservoir  
37 storage.

38           So, by the end of September, in 50 percent of the  
39 years we have drawn it down to 50 percent of the level, and  
40 at the very lowest year we have drawn it down to 20 percent  
41 of the level, so that in September, the frequency passes are  
42 in the mid-range of elevations. That was RC-15.

43           RC-16 then is late October when essentially PG&E has  
44 had to use that lake water to produce hydropower and draw

1 down the lake during that late summer, early fall period  
2 that is critical for its power production operations.

3 And in that case, we have drawn the lake down  
4 sometimes by the end of October to as low as a few percent  
5 of the elevational lake capacity. Occasionally, the lake is  
6 virtually full.

7 So, the RC-17 shows us the lake levels in late  
8 October having primarily around the bottom of the  
9 elevational range.

10 And finally then, in January, the lake has  
11 essentially been emptied of its hydro capacity that PG&E is  
12 going to get out of it, and we are down as RC-18 shows,  
13 Silver Lake's stage for late January and the bar graph for  
14 the same frequency distribution shows that it is most  
15 frequently found down around 20 percent of its elevational  
16 range.

17 MR. VOLKER: Referring to RC-19.

18 A Referring to RC-19.

19 So, what I projected is needed here is that with a  
20 direct application to the Water Resources Control Board, we  
21 should show how the operational history has been utilized in  
22 the past and whether or not that is adequate to supply the  
23 needs of -- the needs being provided or suggested to be  
24 provided within the proposed project that the applicants  
25 asked for.

26 To supply summer and fall demands within  
27 insufficient storage downstream, the applicants would have  
28 to release water in a fashion and at times atypical of PG&E,  
29 I will show.

30 The fish and wildlife releases agreed to in 1970 on  
31 the FERC Project 184, El Dorado project, as was shown in  
32 exhibit S of PG&E and El Dorado's submissions, I believe, on  
33 Wednesday called for approximately 420 acre-feet per month,  
34 and those releases do occur and are what we see resulting in  
35 the steady decline in lake levels through the summer, but  
36 those releases would total only 1,260 acre-feet through the  
37 summer. And, indeed, that's not enough to meet the 17,000  
38 or 33,000 acre-feet that we are told will be needed.

39 The fish release regime was modified in '84 but  
40 remains focused to permit minimum instream releases in the  
41 summer months so that maximum generating capacity can be  
42 provided in late summer, September and in October when it is  
43 most needed.

44 Now, I have also very briefly looked at the long-  
45 term record. We have, of course, the historical record

1 here, RC-20, which shows the Silver and Caples Lakes  
2 discharge data from the USGS gages which go back only into  
3 the 1920s.

4 The applicant used the period 1935 to the present to  
5 assess whether or not their needs could be met by the  
6 releases. I did look at long-term records. I reviewed as  
7 many as I could of the long-term records. I reviewed the  
8 records before 1935 and after 1935.

9 Here are the Silver and Caples Lakes combined  
10 releases in RC-21, and the 1924 to 1991 means, and the 1935  
11 to 1991 means. They are essentially the same.

12 The applicants did not -- that is, the use of the  
13 1935 to the present period was, indeed, a valid period, in  
14 my opinion, by the applicants to demonstrate their  
15 operational history.

16 There was one point that was brought up in earlier  
17 testimony. RC-22 is the full long-term reconstructed flow  
18 for the American River at Fair Oaks near the Folsom Dam  
19 site, and this reconstructed record of natural flows is what  
20 would be in the river if we didn't have the upstream dams  
21 and diversions. This is then supplied to me by the  
22 Department of Water Resources across the street and this  
23 record shows that there were periods of time in the past  
24 when drought conditions were greater than those of 1977.

25 While 1977 was the year of greatest individual  
26 drought, the period 1929 to 1931 was, indeed, a three-year  
27 overlapping period that exceeded in drought magnitude the  
28 record for the three-year period that overlaps 1977.

29 I don't think I need to go into those numbers, but  
30 it is those long-term periods of sequential droughts that  
31 really put stress on the system both for hydropower  
32 generation, for pumping groundwater, and for water supply to  
33 domestic people.

34 The longest period of record analysis that I looked  
35 at was that in RC-23, which is a long-term stream flow  
36 record for the American River that I just showed you in the  
37 upper portion of the graph, and superimposed upon that and  
38 correlated with it is a smooth, long-term tree ring record  
39 for the American River basin. This is upstream of Folsom,  
40 but used to reconstruct the flow record for Folsom an,  
41 indeed, in this case, we can see that the drought period of  
42 the twenties and thirties was among the most significant  
43 drought period of the full record that we have going back  
44 into the 1500s.

1           So, if we had included the entire record, which is  
2 easy to synthesize for the upstream discharge of Caples and  
3 Silver Lakes for the Silver Fork flow record, we could have  
4 synthesized that record from the downstream record and we  
5 would have gotten a longer period of record that could have  
6 been used to advantage in this particular period.

7           Now, finally, the storage issue: Storage is  
8 limited. The PG&E operational constraints require late fall  
9 and winter releases from Sierra lakes for summer  
10 consumption. This means that storage is mandatory; that is,  
11 if you are going to consume it in the summer. You can't  
12 release it in the fall if you are going to consume it the  
13 following summer unless you have some way to store it  
14 through the winter and spring.

15           We are told that storage in Folsom Reservoir is out  
16 of the question because of the great pumping cost to return  
17 it to a distribution system above the reservoir level.

18           Slab Creek Reservoir and the two-day storage in the  
19 forebay are essentially in full demand by existing  
20 allocations. Even if all the homes in the future service  
21 area had bathtubs and were filled in December to be used for  
22 domestic water throughout the following summer and no one  
23 could take a bath in the EID service area at all, we would  
24 only add 9-1/2 acre-feet of additional storage.

25           I tried to look everywhere to find the storage that  
26 El Dorado Irrigation District talks about. The only extant  
27 feasible storage that I can find at the present time is the  
28 excess capacity in Sly Park Reservoir. That is the Sly Park  
29 Reservoir data out of the DWR computer across the street.  
30 The top line on my figure RC-24 is full, and each individual  
31 year shows the amount that was ultimately filled by runoff  
32 within that reservoir. The little numbers at the tops of  
33 bars indicate the number of the month of the year that that  
34 maximum level of fullness occurred.

35           My reasoning here in analysis of the Sly Park  
36 storage is that whatever was the maximum amount of runoff  
37 that Sly Park could have stored in a given year and did  
38 store in a given year, it is the excess capacity above that  
39 that would have been available to the applicants should they  
40 have chosen to use that excess storage.

41           So, the issue here is that if we need to store up to  
42 17,000 acre-feet of water in Sly Park Reservoir, there are  
43 relatively few years when that excess storage capacity would  
44 be available.

1           Here is a plot, RC-25, of just that excess storage  
2 capacity in acre-feet, and the needed capacity is the line  
3 at the top, and we see only three years exceeded that needed  
4 capacity. Several years approach it but most years are well  
5 below the needed capacity within Sly Park Reservoir.

6           Now, the critical issue here is not does the excess  
7 capacity exist -- here's another plot, RC-26 that shows in  
8 the cross-hatched area the actual ultimate spring capacity  
9 that Sly Park Reservoir was filled to, and the white bar at  
10 the top shows the unfilled portion of Sly Park Reservoir.

11           The solid line two-thirds of the way up the graph is  
12 the line that represents the amount that would be needed to  
13 hold 17,000 acre-feet of excess capacity.

14           The critical issue here is that, in fact, the use of  
15 Sly Park Reservoir by the applicants might actually waste  
16 water since the operational pattern of Sierra lakes requires  
17 release in the fall and winter before spring runoff begins;  
18 but that water would have to be placed in Sly Park on the  
19 contingency that excess capacity might be available after  
20 the following spring's runoff.

21           Our runoff forecasting system for the State of  
22 California is not so good that we can tell you in September  
23 what next spring's total runoff will be. Therefore, your  
24 only operational scheme is to store your September runoff in  
25 Sly Park Reservoir and hope that the runoff is low next  
26 spring. If the runoff, indeed, fills Sly Park Reservoir  
27 next spring, whatever water you put in Sly Park Reservoir,  
28 by federal rules is owned by the Bureau of Reclamation and  
29 is contributed to the Central Valley Project, and to the  
30 Delta outflows, and to the Delta smelt, and while that's a  
31 very noble gesture on the part of the applicant, I don't  
32 think that's what they had in mind.

33           So, unless we can come up with some very remarkably  
34 different method of snow pack prediction a full year in  
35 advance, I don't see how you can store water on the  
36 contingency that excess storage will be available.

37           We are told in the testimony that the peak summer  
38 demand in July would be about 16 percent of 26,000 acre-  
39 feet, that the incremental 115,000 new residents would be  
40 expected to use by the year 2020. That works out to 4,168  
41 acre-feet for the high demand month for the residential  
42 customers, not the 2,000 acre-feet which was stated in  
43 cross-examination.

44           Since existing storage in the South Fork system is  
45 reported to be about 188 acre-feet to which might be added

1 400 acre-feet. If PG&E were to allow the applicant to  
2 compete for El Dorado forebay capacity, we can, in fact,  
3 meet only 14 percent of the needed storage within the  
4 existing system above Folsom.

5 The only alternatives are (1) reoperate the Sierra  
6 lakes, the existing reservoirs, pump from Folsom Reservoir,  
7 or build new offstream storage. Options 2 and 3 are very  
8 expensive and improbable in today's economic and regulatory  
9 climate. Thus, reoperation of Sierra lakes is, in my  
10 opinion, the only feasible option open to the applicants.

11 We are told storage exists instream and in the  
12 system, but, in fact, there are less than a few days storage  
13 in channel at any point in time when the demands are high  
14 for domestic consumption in the summertime.

15 Competing demands upon the top foot of storage in  
16 Sly Park Reservoir would increase fish release requirements  
17 and peaking power needs, rendering that a poor substitute.

18 Rather than speculating about storage as I have  
19 done, the applicant needs to demonstrate how and when the  
20 storage capacity is available in a straightforward  
21 application.

22 The current application and testimony given before  
23 this Board seemed to imply that autumn releases will  
24 magically remain in channel intact until next summer's peak  
25 demand period. In my opinion, the Board needs and deserves  
26 a more respectful application.

27 And finally, just the last two points, peaking  
28 power: Peaking power is provided by hydro and wind in  
29 California. Wind power capacity is essentially limited by  
30 our grid at the present time. We don't have an ability to  
31 add more peaking power. We have wind potential, but we  
32 don't have the capacity to hook it to the grid and it is  
33 very capital intensive.

34 Hydro is by far the most flexible source of peaking  
35 power within our power grid at the present time. Substitutes  
36 are available as far away as British Columbia and perhaps  
37 Montana, but require huge investments in infrastructure to  
38 wheel that much power rapidly through the interstate and  
39 international grid.

40 New York state has tried to do this with notable  
41 failures.

42 Ratepayers will rightfully protest any proposal to  
43 pass those higher rates on to the consumer when such  
44 capacity was available locally but sold to private  
45 utilities.

1           What we are talking about here is PG&E controls its  
2 own future and the opportunity costs foregone would this  
3 water not be available for hydro would be something that the  
4 public would have a major point to make about.

5           Finally, the State Department of Finance office are  
6 not, to my knowledge, demographers, and I am sure that we  
7 all realize we can't simply project a straight-line growth  
8 projection based upon past growth projections when build-out  
9 and availability of resources are limited.

10          So, in conclusion, gentlemen, I wish that we had a  
11 complete application here to work with, one that would  
12 provide us with information about how the water is to be  
13 captured, when the water is to be captured, where it is to  
14 be diverted, where it is to be stored, and where it is to be  
15 used.

16           Thank you.

17          MR. STUBCHAER: Dr. Curry, can the text you were  
18 reading from be made available to our staff as an exhibit  
19 introduced into evidence?

20          A           If you wish.

21          MR. VOLKER: He made a three-page summary, I think  
22 he referred to during his testimony. We can mark that as  
23 RC-26. We made copies for everyone in the event that was  
24 desirable.

25          MR. STUBCHAER: All right, thank you.

26          MS. KATZ: Mr. Volker, we already have a 26.

27          MR. LAVENDA: We already have one of those.

28          MR. VOLKER: I am sorry, make it 27.

29          MR. STUBCHAER: What number did you give to the  
30 written testimony which was submitted by Dr. Curry? I  
31 thought I heard that referred to as 11.

32          MR. LAVENDA: Yes, it was.

33          MR. STUBCHAER: We have an exhibit that was RC-11.

34          MR. LAVENDA: We have RC identified for Dr. Curry's  
35 testimony without a number identified in the presubmitted.

36          MR. STUBCHAER: All right. Presubmitted is just a  
37 straight number 11 and the graph is RC-11.

38          MR. VOLKER: Mr. Chairman, our next witness is Dr.  
39 Peter Moyle.

40                           PETER B. MOYLE,

41                   having been sworn, testified as follows:

42                           DIRECT EXAMINATION

43          by           MR. VOLKER:

44          Q           Dr. Moyle, would you state your name and address for  
45 the record, spelling your last name, please.

1 A I am Peter B. Moyle, M-o-y-l-e. I live at 612  
2 Eisenhower Street, Davis, California, 95616.

3 Q What is your occupation, sir?

4 A I am a Professor of Fisheries Biology at the  
5 University of California at Davis.

6 Q We have marked as Exhibit 8 a summary of your  
7 testimony. Is that a true and correct statement of your  
8 testimony in this proceeding?

9 A Yes, it is.

10 Q Would you please summarize your testimony?

11 A I will give the shortest summary presented in the  
12 interest of time.

13 My basic points are first, that the Draft EIR is  
14 confusing and incomplete, so it is very hard to evaluate.

15 When I was first looking through it, I was wondering  
16 if I was missing something, and fortunately, I see from the  
17 testimony of Jerry Mensch, that, indeed, the fisheries  
18 information is very incomplete in the report.

19 And also, it's kind of a simple-minded approach to  
20 things. I was looking at water demands in the system and  
21 the applicants say they are only going to use 17,000 acre-  
22 feet, but it looks to me like they will actually be taking  
23 about 40,000 acre-feet because they ask for about 33,000 in  
24 the application, and then they have 7,500 stored in Folsom  
25 which they are not using, and that's probably another 7,500  
26 they might be able to take as well.

27 So, to me, it looks like they are going to be using  
28 at least 40,000 acre-feet in the long run, and that's 40,000  
29 acre-feet that presumably would not be available for use in  
30 the American River and the Delta.

31 That is just one of the many things that confused me  
32 as I was going through this, as well as the fact it is very  
33 difficult to find the numbers in terms of fisheries impacts  
34 or numbers of fish and things of this nature.

35 To me, this is basically a big project disguised as  
36 a bunch of small projects and it seems it will potentially  
37 affect the fish populations in the mountain reservoirs where  
38 fish originate in the various connecting streams and the  
39 Delta and the American River. Even though they keep saying  
40 the impacts are insignificant, I have a hard time buying  
41 that, especially as Dr. Curry points out, it really looks  
42 like the environmental changes are likely to be more severe  
43 than the analysis indicates.

44 A second point that I would like to make is that the  
45 potential impact on the Delta really cannot be dismissed.

1 Despite the fact of what the report says, that it is such a  
2 small number compared to the total Delta outflow, you can  
3 hardly notice it. This is actually one of many small water  
4 projects that affect Delta inflow.

5 I sat through the D-1630 hearings and it was made  
6 clear to me that the combined effects of the big and small  
7 water projects are factors that have caused the major  
8 declines of our fisheries and created endangered species  
9 like the Delta smelt and longfin smelt.

10 During these hearings I have heard this litany of  
11 requests from small irrigation districts and water districts  
12 saying, please don't take our water from us because even if  
13 it is just a few drops, it is going to result in our  
14 economic ruin. Yet, I have the feeling that most of these  
15 districts really didn't realize ultimately they were going  
16 to have to give up some water to help protect the Bay-Delta  
17 system because it is clear that the system is in such bad  
18 shape.

19 And I think this is becoming more apparent with the  
20 passage of the Central Valley Project Reform Act, the  
21 federal legislation, so at this point I just don't see it is  
22 wise to do anything that will reduce Delta inflows, even by  
23 as small amount as this 40,000 acre-feet, at least until we  
24 have done more study and figure out where all this water is  
25 going to come from.

26 Right now we are probably going to need more water  
27 in that system rather than less. From my simple-minded  
28 calculations, it looks to me like if 40,000 acre-feet is  
29 taken away from the system, somebody else has to make it up  
30 somewhere. It is not just water that magically is available  
31 for use.

32 And on the other hand, if we keep assigning 40,000  
33 acre-feet here and 40,000 acre-feet there to various users,  
34 we really will have a severe problem in the system because  
35 we need more freshwater in the Bay-Delta system for various  
36 environmental purposes.

37 The third point I want to make, again very briefly,  
38 is that the overall impacts of the project really cannot be  
39 dismissed. Again, my studies in the last few years have  
40 focused on documenting the decline of California fish and I  
41 am trying to devise conservation strategies, ways to protect  
42 those fish and keep them from declining further. Right now,  
43 65 percent of all freshwater fish species in California are  
44 in really severe trouble and we are losing about a specie  
45 every six years, and the causes of these declines are never

1 simple. It is never one major project typically that causes  
2 an individual extinction.

3 Typically it's cumulative impacts over many many  
4 years of many different projects as species decline over  
5 their fairly large range.

6 You put a small dam here, a small diversion there,  
7 siltation from poor watershed management from logging or  
8 irrigation, you have streambed alteration due to urban  
9 development, there are a whole series of things that all  
10 contribute to the decline of aquatic habitat, and in the  
11 long run, these cumulative effects do result in declines in  
12 fisheries and further declines in the species.

13 And I see the El Dorado project really as being part  
14 of that whole process of general decline in our aquatic  
15 resources, and the attempt, it seems to me, is to treat this  
16 project as a whole bunch of small projects that by  
17 themselves don't seem to have much impact, but they are  
18 typical of small projects all over the state. Together  
19 their impact effect can be fairly large.

20 Basically, my studies indicate we need more water in  
21 our streams, not less, and more water in the Delta, not  
22 less.

23 So, I will conclude my testimony with that. Thank  
24 you.

25 MR. VOLKER: Thank you, Dr. Moyle.

26 The next witness is Dr. Clark.

27 GEORGE CLARK,

28 having been sworn, testified as follows:

29 DIRECT EXAMINATION

30 by MR. VOLKER:

31 Q Dr. Clark, will you state your name and address for  
32 the record, please, and spell your last name.

33 A My name is George Clark, C-l-a-r-k. My address is  
34 6006 Keats Circle, Orangevale, California, 95662.

35 Q What is your present occupation?

36 A My present occupation, my job title is Technical  
37 Principal with the Aerojet, Propulsion Division, Rocket  
38 Missile Manufacturer.

39 Q Would you describe briefly your qualifications with  
40 regard to botany?

41 A I have a fairly extensive background as an amateur  
42 botanist evaluating the plants of the Sacramento area and El  
43 Dorado County. My interests have gotten me into a group  
44 called *Native Plant Society*, and I have participated in El

1 Dorado County in an effort to preserve the rare plants which  
2 I will be describing there.

3 I am fairly familiar with the plants in the area in  
4 question, quite familiar with them.

5 Q How many years of experience do you have in  
6 identifying the flora in the mid-Central Valley region?

7 A Over 15 years. I am not sure of the exact time.

8 Q We have marked as Exhibit 10 your testimony. Is  
9 that a true and correct statement of your testimony in this  
10 proceeding?

11 A Yes, it is.

12 Q Would you summarize your testimony, please?

13 A The principal area of concern that we have with  
14 regard to water use in El Dorado County is with regard to an  
15 area of roughly 4,000 acres extending from Shingle Springs  
16 on the south to Salmon Falls on the north where the soils  
17 are derived from a particular species of rock called gabbro.  
18 Gabbro rock soils exist as an island in this area surrounded  
19 by other types of soils, and because they are rather  
20 difficult for plants to grow on, a suite of unusual plants  
21 has developed there. This includes five that are presently  
22 to be considered by the U. S. Fish and Wildlife Service for  
23 listing as threatened species.

24 The primary threat to these species at present is  
25 the rapid growth occurring in this part of El Dorado County.

26 The five species that I would particularly mention  
27 are the Stebbin's morning glory, the Pine Hill ceanothus,  
28 the Pine Hill flannel bush, which is very localized, the El  
29 Dorado bedstraw, another very localized species, and Layne's  
30 butterweed.

31 There are three other additional species that are of  
32 concern.

33 We did respond to a request by the Fish and Wildlife  
34 Service for information on these plants, and I believe these  
35 have been included as exhibits in my testimony. The request  
36 from the Fish and Wildlife Service is Exhibit 2 and our  
37 response is Exhibit 3.

38 The major concern with regard to these plants is  
39 that they are in a type of habitat called chaparral.  
40 Chaparral in California is almost entirely a habitat type  
41 that's requires fire as a major part of its ecology. In  
42 order to maintain the viability of the plants that we have  
43 in question here rather large preserves are required.

1           We have considerable concern because development in  
2 El Dorado County is basically wiping out any possibility of  
3 establishing large preserves.

4           The protection provided by the California  
5 Environmental Quality Act allows a project-by-project  
6 preservation. This results in the establishment of small  
7 preserves which will not prove viable over the long term.

8           Thus, we feel that large preserves must be  
9 established. We do have great concerns about allowing  
10 excess water being allowed in Western El Dorado County, thus  
11 converting it basically into a city instead of a rural area  
12 that it presently is, and establishing or wiping out the  
13 preserves before we have any chance of establishing them.

14           The County Board of Supervisors has recently given  
15 their approval in principle to the establishment of four of  
16 the five preserves that we feel are necessary.

17           However, funding for the establishment of these  
18 preserves is not available presently. The Board of Super-  
19 visors has not addressed how this would be established and  
20 we don't at present know how it would be established. We  
21 are working on that, but we have not gotten real far.

22           The availability of water is one of the things that  
23 has kept development from proceeding in this area at a rate  
24 that some developers would prefer.

25           We are very concerned that if water becomes  
26 abundantly available that any possibility of preserving  
27 these plants for posterity in a viable preserve will not be  
28 available.

29           It is my understanding that there was some question  
30 with regard to the White Rock diversion structure about  
31 impacts to the El Dorado manzanita previously, a plant  
32 called arctostaphylos missenana.

33           This is not in my testimony, but from the map in the  
34 final EIR it is not apparent that this plant would be  
35 impacted by this structure. It is very close to some  
36 existing populations of the plant, but it does not appear  
37 that it would be affected. However, the map is not in very  
38 good detail, so it is difficult to tell.

39           We also have some concerns about the effects of the  
40 withdrawal on riparian vegetation in both mountain lake  
41 areas and the streams, the drainages that would be affected  
42 by the diversion.

43           That, basically, concludes my testimony.

44           MR. VOLKER: Thank you.



1 Curry's analysis of the environmental impacts associated  
2 with this proposed project. What were you referring to?

3 DR. MOYLE: A I was referring to his general  
4 statement about the effect of the project and specifically  
5 on the fact that it looked to me like these reservoirs in  
6 the high mountain areas would definitely have to be drawn  
7 down in order to meet the demand for that water. It looked  
8 to me like they would have to anticipate PG&E changing their  
9 operation somehow, plus it's just the general effects of the  
10 various water projects, various aspects of it on fish and  
11 fisheries.

12 Q But it is just this assumption that Dr. Curry  
13 apparently has made that this project will draw down those  
14 high lakes was the reason for your statement; is that  
15 correct?

16 A Yes. I don't really want to be quizzed on Dr.  
17 Curry's testimony. I suggest you ask him. I have a high  
18 respect for his --

19 Q Well, I know, but you did make the statement and I  
20 am trying to figure out what you were saying. So, it was  
21 based upon the conclusion that he reached, that those lakes  
22 would be drawn down?

23 A Yes. I haven't much choice in that. I have a hard  
24 time understanding the EIR, what it really says about these  
25 various projects.

26 Q Now, if I understand your concern with respect to  
27 the Delta, it is that the Delta-related system cannot afford  
28 any decrease in flows; is that correct?

29 A Yes.

30 Q And then, there is no threshold. Any diversion,  
31 even an acre-foot of diversion anywhere in the Delta system  
32 would then be adverse; is that correct?

33 A Potentially. I mean, the problem is this is not a  
34 simple system. Obviously, you wouldn't notice one acre-foot  
35 and conceivably you can say you wouldn't notice 20,000 acre-  
36 feet initially, but the problem is you have many projects  
37 like this and somewhere we have been diverting too much  
38 water. We have to increase the amount of water going into  
39 the system. By taking more water out, certainly is not  
40 going to do that, and it's all incremental, whether it is  
41 one acre-foot or 20,000 or 500,000.

42 Q So, the answer is there is no threshold.

43 A No, I don't really think so, not at this stage when  
44 we need more water in the system.

45 Q And any diversion would cause harm?

1 A Yes, if it was taking water out of the system, even  
2 though you would have a hard time saying that a single  
3 diversion was causing the loss of 50 Delta smelt or  
4 something, but still you do have this problem of cumulative  
5 impact of all these various diversions creating problems.

6 Q In your analyses, and I believe it was your words,  
7 simple-minded calculations --

8 A Yes.

9 Q In your analysis, did you assume that the Bureau of  
10 Reclamation would reduce its releases from Folsom by an  
11 amount equal to whatever the diversions of the El Dorado  
12 project would be?

13 A Yes, that was my assumption.

14 Q And if, in fact, that did not happen, that the  
15 Bureau of Reclamation retained or released the amount of  
16 water that it historically has released or had available to  
17 it, would your answer be the same?

18 A My answer would be that if it did not change the  
19 present way we are putting water into the Delta, or did not  
20 reduce the amount of water going into the Delta, then that  
21 would be fine.

22 Q Then that would have no incremental impact?

23 A Presumably not.

24 Q And if, in fact, these mountain lakes were operated  
25 the way they have been historically and there was no  
26 modification of their operations as Dr. Curry prophesized,  
27 then I assume there would be no incremental impact with  
28 respect to the El Dorado project operations?

29 A Not of the lakes, but that's pretty hard for me to  
30 buy.

31 Q What, that there wouldn't be an impact to the lakes?

32 A Based on Dr. Curry's testimony that the lakes would  
33 not continue to be operated the way they were.

34 Q But if they were?

35 A Oh, sure. You are saying things wouldn't change.

36 Q Mr. Clark, can you explain your work with El Dorado  
37 Planning Department?

38 DR. CLARK: A Yes, I would be happy to. In about  
39 1989, the California Department of Fish and Game and the  
40 Native Plant Society realized that development in the gabbro  
41 soils of El Dorado County was proceeding at a very rapid  
42 rate and very little account was being taken of the fact  
43 that there was a large suite of rare plants in this area  
44 becoming increasingly threatened.

1           As a result of these concerns, Fish and Game and the  
2 County began communicating with regard to the possible  
3 establishment of large preserves as a way of avoiding or  
4 mitigating for these impacts so that development could be  
5 allowed to proceed but without threatening the viability of  
6 the plants.

7           In about early 1991, this came to the point that the  
8 Board of Supervisors and the Planning Department realized  
9 that they did not have a good handle on what they should be  
10 doing, so they established a committee to advise the  
11 Planning Department to try to work out a way of possibly  
12 preserving these plants.

13           This committee met a number of times, I don't know  
14 the exact number, over the course from March of 1991 through  
15 late last year, and did come up with a proposed set of  
16 preserves which all parties agreed would probably insure the  
17 viability of the plants in perpetuity, we hope, if the  
18 preserves could be established.

19           I also have personal background from field botany  
20 and things of that nature in the area.

21 Q           But your work with El Dorado County Planning  
22 Department was to assist in figuring out how to preserve  
23 certain plant species in light of the proposed drought?

24 A           Yes.

25 Q           And that was a formal committee of El Dorado County  
26 that you worked with?

27 A           I don't know quite how you define a formal  
28 committee. It was a committee to assist the Planning  
29 Department in trying to establish preserves. It did through  
30 the Planning Department, of course. I don't know if we were  
31 a formal committee or not.

32 Q           And what position has the El Dorado County Board of  
33 Supervisors taken on the preserves?

34 A           They have most recently agreed in principle to  
35 establishing four of the five proposed preserves. Three  
36 large preserves were proposed and two smaller satellite  
37 preserves. They agreed to the two satellite preserves and  
38 the northernmost largest preserve and a preserve centered  
39 around the Pine Hills area.

40           The proposed preserve at the south end of the  
41 complex was not part of the Board of Supervisors'  
42 recommendation. We believe that in order to maintain long-  
43 term genetic viability, we do need a preserve in the south  
44 area, so this remains a matter of concern.



1 Q And if the applicants' project results in reduced  
2 flows, would that impact the Delta smelt?

3 A Yes, it quite likely would. Again, it is one of  
4 these cumulative things because there are lots of projects  
5 that are affecting it.

6 Q What is the current status of the formation of the  
7 Delta smelt recovery plan?

8 A The Delta smelt, as you know, was listed as  
9 threatened species two months ago. I am head of the Delta  
10 -- actually it's called the *Delta Fisheries Recovery Team*,  
11 which makes it very unusual in that the Fish and Wildlife  
12 Service decided that the problems in the Delta go far beyond  
13 the Delta smelt and that to address just the Delta smelt,  
14 you would be getting the same kind of problems we have run  
15 into with the winter run salmon, you kind of have water for  
16 one fish and take it away from something else. Our charge  
17 is to actually develop a Delta fisheries recovery plan and  
18 it is very clear from all this that sufficient water flows  
19 are a major part of the recovery effort and will have to be.

20 Q Thank you. Just one more question. Are you aware  
21 of any studies on Delta smelt losses to silverside  
22 predation?

23 A They haven't been done yet. We have the proposed.

24 Q Do you have any idea what the likely impact of the  
25 introduced fish, the silversides will be on the survival of  
26 the Delta smelt?

27 A Again, all we have is guesses. We have a suspicion  
28 that when Delta smelt are spawning, the silversides may be a  
29 predator, a significant predator on the larvae, but we also  
30 have a suspicion that happens only when inflow is low,  
31 essentially during drought type of conditions, and the smelt  
32 are concentrated in a few areas, so it make it all the more  
33 crucial to have adequate flows during dry and critical  
34 years.

35 MS. FARAGLIA: Okay, thank you very much.

36 MR. STUBCHAER: Mr. Creger.

37 --

38 CROSS-EXAMINATION

39 by MR. CREGER:

40 Q I have one question of Dr. Curry. Could you  
41 describe the advantages, or disadvantages, or the concerns  
42 you evidence over the -- I don't have the reference here in  
43 front of me, but in Appendix A of the EIR, where the  
44 applicant used inflow and outflow to Folsom and developed  
45 averages based on that -- what are the advantages or

1 disadvantages of using that technique and what are the  
2 problems that might be resulting from that technique?

3 DR. CURRY: A I am sorry, I don't fully understand  
4 the question. Tell me specifically what action the  
5 applicant did that you wish me to criticize.

6 A They are basing the amount of water that they  
7 contend is available on the information contained in those  
8 charts, and so, therefore, as a lay person, a member of the  
9 general public, I don't grasp how those particular charts  
10 justify the amount that they can take out.

11 If I had an EIR here, I could be more specific --  
12 Appendix A, final EIR.

13 A I have a copy here.

14 Q This type of presentation -- what my concern --

15 MR. STUBCHAER: Please tell us what page and chart  
16 you are looking at.

17 MR. CREGER: I'm sorry, I am looking Appendix A of  
18 the final EIR. The pages are unnumbered, but it is after  
19 page 16, Figures 2, 3 and 4, for Caples Lake, Silver Lake  
20 and Lake Aloha respectively. Averages are addressed and to  
21 me averages are a smoothing function, and if you are trying  
22 to determine the historical operation as a function, I have  
23 trouble with averages being used to support that kind of  
24 analysis.

25 And after listening to your testimony, I saw more  
26 specific approaches to answering the same type of question  
27 that didn't seem to involve averages.

28 A The point I was trying to make was that it's the  
29 range, not the averages, that's important, that it's the  
30 frequency, duration, magnitude that's important, not the  
31 averages. Averages may gloss over and not present to the  
32 reader the real range of possible drawdowns that could  
33 occur, or the period of time that the lake is maintained in  
34 high condition.

35 This particular presentation the applicants have  
36 done using the 60 percent average runoff figure is a  
37 conventional approach. That is, you classify your year into  
38 drought years or non-drought years, and that's one kind of a  
39 classification, but the envelopes that are described by the  
40 curves in Figures 2, 3 and 4 of that referred to appendix to  
41 not show me the range of variability that we would expect to  
42 find.

43 My biggest problem here is I don't know from the EIR  
44 whether the applicants intend to operate within the range  
45 that PG&E has historically operated or at the frequency

1 duration magnitude that PG&E has historically operated. I  
2 can't establish that point and they are very different.

3 MR. CREGER: Thank you.

4 MR. STUBCHAER: All right. No one else raised their  
5 hand. Anyone else wish to cross-examine besides staff?

6 All right, Mr. Lavenda.

7 EXAMINATION

8 by MR. LAVENDA:

9 A This is concerning Dr. Curry's testimony on the  
10 record at the various reservoirs. Do you have any records  
11 available or information available for Lake Aloha?

12 DR. CURRY: A There are tree-ring data available  
13 for Lake Aloha, but I do not have lake level records. I  
14 could not find those in the State archives, so I was unable  
15 to do the analysis for Lake Aloha that I was able to do for  
16 Caples and Silver.

17 Q for the record, the data set that you used for your  
18 presentation charts is from where?

19 A It is from four sources -- or five sources. The  
20 primary source is the State of California CDEC, California  
21 Data Exchange System Computer on the sixth floor right  
22 across the street that I access remotely.

23 The other source of data, the source of data on  
24 outflow of Caples Lake, Silver Lake and the historic flow  
25 records for Folsom are from the USGS standard published data  
26 sets.

27 The tree-ring record is from Dr. Harold Fritz at the  
28 Tree-ring Lab in Arizona done under contract for the State  
29 of California to look at California's long-term water  
30 problems, and that record was accessed from the Boulder,  
31 Colorado, National Climatic Data Summary Archives with Dr.  
32 Fritz' guidance.

33 He American River tree-ring record was accessed  
34 through the researcher who did the work under contract under  
35 Dr. Fritz' supervision and who is now a faculty member at  
36 the University of Washington School of Forestry, and he was  
37 able to get me that tree-ring record directly for the  
38 American River specifically by computer mail.

39 And lastly, the State Department of Water Resources  
40 provides me the raw data to compare with his analysis for  
41 the reconstructed long-term flows for 1872 through 1906 for  
42 the American River at Fair Oaks.

43 Q Is this type of analysis commonly accepted as  
44 rigorous indication for correlation between present measured  
45 records and extrapolations to the past? You mentioned in

1 your testimony that such a correlation, had we had the  
2 records, such a correlation may be indicative of the 1930s  
3 drought.

4 There were other areas on the tree-ring record that  
5 indicated similar periods of extended drought. What I'm  
6 getting at, is this what is normally used?

7 A This is regularly used. The contracts were let by  
8 our State climatologist here who works for the Department of  
9 Water Resources, Maurice Roos, and Maurie Roos is in charge  
10 of all of these climatological data for the State of  
11 California to figure out these exact kinds of questions.

12 This is very conventional work for the States of  
13 Colorado, New Mexico, Utah, Arizona, Idaho and Texas, but it  
14 is not in as wide a use in California. California has tried  
15 to do this using a very wide variety of records, including  
16 California mission yield records; that is, how much grain  
17 was given to the Indians and how much grain was taken from  
18 them, and California got in trouble with that kind of fuzzy  
19 analysis in the 1930s, and so they have been a little more  
20 cautious than other states, but it is the standard used by  
21 the USGS for reconstructing long-term records and has been  
22 accepted in the federal courts as such.

23 Q Based on the information that you had in your  
24 exhibit RC-23, and I believe in RC-22, which was the  
25 American River gage at Fair Oaks, is there anything there to  
26 lead you to believe that flows in the reach of the South  
27 Fork American River above Folsom, the current Folsom Dam  
28 site, South Fork American River, might have been less than a  
29 measurable amount or at or near zero?

30 A Oh, yes, sir. I actually have the full raw record  
31 here and you can see that there are many months of zero  
32 flow. We reconstructed for Fair Oaks, now that does not  
33 mean zero flow upstream. You would have to do the cross-  
34 correlation to do that, but it means extremely low flows  
35 upstream.

36 Q I'm speaking strictly of the South Fork American  
37 River.

38 A Correct. I did not do that cross-correlation  
39 analysis. I only have the long-term record downstream, but  
40 based upon that long-term record, there are many many months  
41 of zero flow downstream and you have got to have flow coming  
42 from somewhere to get to it.

43 Q Mr. Creger inquired about the use of the Folsom  
44 Reservoir records at I believe 60 percent or thereabouts as  
45 an indicator of events occurring in the watershed to be used

1 by the applicant as an indication of how they would operate  
2 within the envelope of the records for the 58 years  
3 available in Appendix A.

4 In your opinion, how would something like an Auburn  
5 Dam or some other large structure in the watershed someplace  
6 influence the premise to this operating scenario that is  
7 presented?

8 A That's a very tough question. In fact, the flow  
9 records that I presume the applicant used were the  
10 reconstructed flow records, not the actual flow records, but  
11 I don't know that for a fact because I can't establish it  
12 from the EIR, but conventional practice among hydrologists  
13 is to use the reconstructed flow records to which the dams  
14 and diversions are readied to determine what the flow would  
15 in its natural or virgin state had those dams not been in  
16 place.

17 But for each dam put in place, you then increase the  
18 evapotranspiration, you increase the losses into the  
19 groundwater through the dam structure itself, and in fact,  
20 the net downstream yield below dam is, in fact, decreased in  
21 some cases over that which would have occurred had the dam  
22 not been there, even if you reconstructed the flows, so in  
23 point of fact, when we reconstruct flows we always do so  
24 with an assumption that there may be at least five percent  
25 error generated in each large dam.

26 Q Your conception of frequency magnitude and duration  
27 of altered flows as opposed to the envelope of maximum  
28 versus minimum and some average or medium flow, say, for a  
29 month seems to be, in your opinion, the preferred method of  
30 operation.

31 Do you consider a monthly variability adequate to  
32 determine impacts in these reservoirs as they might  
33 influence recreation?

34 A No. It should be at least daily. I only looked at  
35 monthly because I didn't have time to do all this work and  
36 didn't have all the data, but what you would want to look at  
37 is the 20-year return period, 7 consecutive day low August  
38 lake level. That's going to be the limiting issue. You  
39 want to maintain your 20-year return period 7-day low August  
40 lake level. That's the frequency magnitude duration issue.

41 You can look at a three-day duration, you can look  
42 at a seven-day duration, and you can look at a one-day  
43 duration. And this is the conventional way we do this in  
44 water resources.

1 Q Let's assume that there's inflow occurring at the  
2 reservoir and you are specifying a particular time period as  
3 the benchmark, there's flow occurring in the reservoir and  
4 there's withdrawals from the reservoir, and I know PG&E has  
5 records of operations -- this is somewhat hypothetical, but  
6 I want your opinion on this.

7 Would it be possible for the operator of the  
8 reservoir to withdraw in such a manner during a period of a  
9 month, or some other time frame, and then cease withdrawal  
10 capturing inflow and thus affect a particular point that is  
11 used as the operating frame?

12 A It would be feasibly possible, but Fish and Game's  
13 requirement is that a continuous daily flow be maintained at  
14 each reservoir, two cfs below Silver and five cfs below  
15 Caples. Those releases simply have to be made as the  
16 requirement of operating those reservoirs on public land, on  
17 public waterways.

18 Q It is your contention then that there were other  
19 checks and balances in the system that would preclude that  
20 type of operation as it exists now?

21 A As it exists now, but we could envision something  
22 where we had very good flow prediction and we could say, all  
23 right, we are going to release in July and we are going to  
24 make up for it in August.

25 Q I was thinking more like during the month of July,  
26 the second week. There is a demand, there is a tremendous  
27 drawdown, and then for the remainder of the period we would  
28 hold from extractions and let the inflow build up such that  
29 the 20th of July or the end of July record does fall within  
30 some expected mean.

31 A Right, and that's, in fact, the way Switzerland  
32 operates with respect to France. Switzerland operates  
33 reservoirs in France and they sneak tunnels in through the  
34 Alps, and they take the water out of the French lakes and  
35 the French say, okay, on such a date you have to have so  
36 much water in our reservoir, and whatever you do up until  
37 that date is up to you.

38 So, they play that little game in a very heavy  
39 statistically probable computer operation model.

40 MR. LAVENDA: Thank you very much.

41 EXAMINATION

42 by MR. FALKENSTEIN:

43 Q I have a question for Dr. Clark.

44 Will the White Rock conveyance facility impact  
45 threatened or endangered plants?

1 DR. CLARK: A I mentioned that briefly in my  
2 testimony. It is not real easy for me to understand all of  
3 the White Rock facility from the description in the text.  
4 However, the one plant that was of specific concern, in my  
5 understanding, was the Arctostaphylos missenana, El Dorado  
6 manzanita, and one of the major populations of that is  
7 immediately above Slab Creek Reservoir, and there's a  
8 population very near the town of Placerville in Spanish  
9 Ravine, which is fairly close to where the tunnel or the  
10 White Rock diversion structure it looks like will be going.

11 But my knowledge of that particular plant is that  
12 none of the populations would seem to be affected as I read  
13 the map. The terrain there is fairly rugged and I'm not  
14 sure that adequate botanizing has been done to make sure  
15 that there aren't possibly other occurrences there, but I  
16 don't believe, based on my knowledge, looking at that figure  
17 or those figures, I don't believe that any of the plants  
18 that are present in the gabbro soils that I spoke of earlier  
19 would be impacted.

20 Lane's butterweed does extent quite a bit beyond the  
21 immediate gabbro soils in the area of the serpentine. I  
22 don't know if serpentine is present in the White Rock area.  
23 I can't answer that.

24 MR. FALKENSTEIN: Okay, thank you.

25 MR. STUBCHAER: Any more questions by staff?

26 Dr. Curry, I have one question on your RC-23 that  
27 has to do with the reconstructed tree rings. I think you  
28 mentioned this during your testimony, but I didn't note it.

29 What is the average period for this smoother curve  
30 at the lower part of that draft?

31 DR. CURRY: A I believe it's a ten-year running  
32 average. It's actually in the materials which I submitted  
33 to you in my first submission, and I could get that for you  
34 here directly.

35 It's an eight year --

36 MR. STUBCHAER: Referring to RC-8?

37 A It's in RC-8.

38 MR. STUBCHAER: Which isn't too far off from the  
39 historic seven-year drought that is spoken of in --

40 A That is right.

41 MR. STUBCHAER: That does make it appear that the  
42 drought of 1930 was the driest in several hundred years?

43 A Correct.

44 Q Have you attempted to assign a frequency or return  
45 period to that?

1 A I have not, no, sir.

2 MR. STUBCHAER: Okay, thank you.

3 Mr. Volker, do you have any redirect?

4 MR. VOLKER: No, Mr. Chairman.

5 We would renew our request that the Board accept in  
6 evidence the exhibits I enumerated previously.

7 MR. STUBCHAER: We will rule on that after the  
8 completion of the cross-examination after lunch.

9 Mr. Somach, did you wish any of the other panel  
10 members to be here after lunch, or just Dr. Curry?

11 MR. SOMACH: No.

12 MR. STUBCHAER: Thank you very much.

13 Mr. Gallery, Amador County. How much time do you  
14 estimate that your direct testimony will take?

15 MR. GALLERY: Mr. Stubchaer, I would think we could  
16 probably have it all done in 20 minutes or so.

17 MR. STUBCHAER: All right.

18 MR. GALLERY: I would like to just briefly state  
19 Amador's position and concerns in this hearing before  
20 proceeding.

21 Amador comes to the hearing, of course, with a vital  
22 interest in the recreational resources at Silver Lake and  
23 the importance of those to the economy of the County.

24 The lake has been there for much longer than 100  
25 years and there's an enormous amount of recreation that  
26 takes place there every year, and it's probably true in  
27 concept that Amador County feel that it could live with what  
28 is called loosely the historical operation of the lake, and  
29 in concept, that sounds okay, but the reality of it is that  
30 it seems to Amador to be that we just can't look to the  
31 past. What happened in the past is not an indicator of the  
32 future.

33 We heard that the PG&E itself has some flexibility  
34 in the operation of the lake. We have heard that PG&E has  
35 indicated that any kind of agreement that El Dorado might  
36 make with PG&E is going to require FERC approval.

37 We know that the project is coming up for  
38 relicensing in 2002 and we are just four or five years away  
39 from starting the process of relicensing.

40 We think there's a realistic possibility that El  
41 Dorado will have a strong incentive to perhaps take over the  
42 project, either by some kind of outright purchase or  
43 possibly stepping in the relicensing stage and seeking the  
44 project itself.

1           We know that there has to be an agreement between El  
2 Dorado and PG&E. We don't even know if PG&E will make that  
3 agreement at this point, and we certainly don't know what  
4 the terms of this agreement will be.

5           We know that El Dorado must make an agreement with  
6 SMUD and we know that El Dorado must make an agreement with  
7 the Bureau of Reclamation for reoperation of Folsom and Sly  
8 Park, and all of these agreements appear to us to be linked  
9 together, and so, what the final product or the final  
10 project is going to be when all these agreement s are in  
11 place seems to us to be a real unknown, and that's why we  
12 felt at the beginning and still feel that this hearing  
13 shouldn't be concluded until those agreements are concluded  
14 and are brought back before this Board, and we see what we  
15 have as the project at that point.

16           We are also concerned with the fact that El Dorado  
17 County does not have a general plan in place yet. If it is  
18 going to be adopted in the future, we are concerned about  
19 the fact that the White Rock project, which is a vital part  
20 of this whole scheme, the EIR still has to be done on that.  
21 The financing has to be obtained. It perhaps has to be  
22 voted upon, and so the White Rock project, which is assumed  
23 here, is still an unknown.

24           And then, the final part is that the project has  
25 historically been operated for two purposes; for  
26 recreational levels at Silver Lake and Caples Lake, and for  
27 hydropower production, and what El Dorado wants to do is to  
28 come in and graft that third purpose on that, and that  
29 purpose will be for consumptive use for the El Dorado County  
30 115,000 people that will be served, and we see that as  
31 really altering how the project is going to be operated  
32 because El Dorado will have the checkbook.

33           One acre-foot of water will serve roughly two and a  
34 half homes and those two and a half homes can easily afford  
35 to pay PG&E what that power would be worth for power  
36 production.

37           So, you have got three things now driving the  
38 project or the operation of the lakes. You have got  
39 consumptive use on top of power and on top of recreation.

40           And to us the need of El Dorado County and those  
41 people could easily take precedence and certainly when  
42 factored into the overall picture present a definite  
43 possibility of things changing in the future.

1           So, talking about historical operation with all of  
2 these things yet to come that are ahead of us and have to be  
3 done, is an unreliable kind of approach or concept.

4           Now then, we had listed five witnesses and Mr.  
5 Alverson was one of our witnesses and he will not be here  
6 and will not be testifying.

7           So, we have today Stephanie D'Agostini, who is  
8 Chairman of the County Board of Supervisors; and to her  
9 right is Mr. Rod Schuler, who is the Director of the  
10 Department Public Works; and to his right Gary Clark, who is  
11 the head of Planning and Building and Health for the County.  
12 And then, to my immediate right is Mr. John Hahn, who is the  
13 County Counsel for the County of Amador.

14           We are glad were are able to get on today because  
15 tomorrow is the board meeting and there would be no way we  
16 could be here tomorrow.

17           I have a series of exhibits, and with the Board's  
18 permission, I could go ahead and we could run through the  
19 testimony of the witnesses, and then I cold come back and  
20 number and get the exhibits identified unless the Chair  
21 would rather --

22           MR. STUBCHAER: You just need to get each witness to  
23 authenticate their testimony.

24           MR. GALLERY: I will go ahead, and Exhibit 8 is the  
25 qualifications of Mr. Schuler, and we will take him first,  
26 and Exhibit 9 is the testimony of Mr. Schuler.

27   ROD SCHULER,  
28           having been sworn, testified as follows:  
29   DIRECT EXAMINATION

30 by           MR. GALLERY:

31 Q           Mr. Schuler, could you spell your last name for the  
32 record.

33 A           My name is Rod Schuler, S-c-h-u-l-e-r.

34 Q           And your professional qualifications and background  
35 and education areas set forth in Amador Exhibit 8?

36 A           Yes.

37 Q           And Amador Exhibit 9 is a copy of the testimony that  
38 you are presenting in this proceeding?

39 A           Yes, it is.

40 Q           And you have been sworn; correct?

41 A           Yes, I have.

42 Q           Would you give us a summary of your testimony.

43 A           I am going to read a few of the highlights out of  
44 the testimony to shorten up the time.

1           There are three things Amador County is concerned  
2 about: Number one, Amador County is concerned that the El  
3 Dorado project will affect the levels of Silver Lake.

4           Although the EIR for the El Dorado project states  
5 that the project will not alter the way in which PG&E  
6 operates Silver Lake and assumes that PG&E's current mode of  
7 operation will not change, Amador's position is that these  
8 statements contain no commitment.

9           To say that El Dorado will only be taking water  
10 released by PG&E for hydro production may be well meaning,  
11 but actually, that will not be happening when El Dorado  
12 diverts water above PG&E's power plants.

13           To say that water will be released according to  
14 PG&E's power operation schedules is not necessarily true.  
15 It will be released only under any permit issued to El  
16 Dorado and only according to El Dorado's needs for the  
17 water, not PG&E's.

18           The El Dorado project represents a threat to the  
19 recreational uses at Silver Lake unless some effective means  
20 are imposed by the Board in conditioning the permits to  
21 assure that that does not happen.

22           Amador is even more concerned with the absence of  
23 any agreement between El Dorado and PG&E. At this time,  
24 there is no evidence of the contractual arrangements that  
25 will be made between those parties for the El Dorado  
26 consumptive use of water released from Silver Lake. No such  
27 agreement has been executed and apparently is now not even  
28 being negotiated.

29           Amador's position is that this hearing should not be  
30 proceeding until such an executed agreement is provided and  
31 all parties and protestants have the opportunity to review  
32 and comment thereon.

33           Concern number two, Amador's water filings on Silver  
34 Lake should take precedence over El Dorado's plans, to  
35 assure protection and preservation of the high lake levels  
36 during the recreational season, and to supply any additional  
37 water needs Amador County may have as the county of origin.

38           The County of Amador filed with this Board  
39 Application 30218 to appropriate 8,740 feet of water at  
40 Silver Lake for recreation, fisheries, wildlife and fish  
41 protection, together with a petition for the assignment of a  
42 portion of State Filing 5645 for the appropriation of that  
43 same quantity of water for the same purposes.

44           El Dorado's application on Silver Lake and the  
45 requested partial assignment of State Filing of 5645, and

1 any permit issued thereon, should both be subordinate to  
2 Amador's application and to Amador's petition for partial  
3 assignment of State Filing 5645, in addition to containing  
4 conditions assuring that the lake levels will not be lowered  
5 or affected during the recreational season.

6 None of the filings made by the State of California  
7 pursuant to Section 10500 of the Water Code were made on  
8 Silver Lake.

9 In 1957, the California Water Plan, Bulletin 3,  
10 contemplates a reservoir on Alder Creek and diversions from  
11 Silver Fork American downstream from Caples and Silver Lakes  
12 into said reservoir to provide additional water to El  
13 Dorado's service area. It does not propose any utilization  
14 of storage in Silver Lake to provide such water.

15 The California Water Plan expressly sets forth the  
16 value of recreational resources at the upper watershed lakes  
17 such as Silver Lake, and specifically, state as one of the  
18 planned objectives that development of the water for  
19 recreational resources to the highest practical degree and  
20 thus mandates non-interference with or utilization of Silver  
21 Lake.

22 Any interruption or interference with such recrea-  
23 tional uses deprives of the County of water needed for its  
24 development and is thus prohibited by Section 10505 of the  
25 Water Code.

26 Item three, future consumptive water requirements at  
27 Silver Lake should also be a priority over any El Dorado  
28 entitlement. Within the lake-shore area of Silver Lake,  
29 water uses are relatively low. This is mainly due to the  
30 seasonal use of the area. Much of the surrounding area is  
31 Forest Service land which limits the use of the land for  
32 other purposes.

33 Based on the study done by the U. S. Forest Service  
34 and information provided by the local residents and resort  
35 owners in the area, I have made an estimate of the water  
36 needs for the Silver Lake basin to be something less than  
37 200 acre-feet per year.

38 That concludes my summary, Mr. Chairman.

39 MR. GALLERY: Next we will take Mr. Clark.

40 GARY CLARK,

41 having been sworn, testified as follows:

42 DIRECT EXAMINATION

43 by MR. GALLERY:

1 Q Mr. Clark, Amador Exhibit No. 1 is a true statement  
2 of your educational and professional background  
3 qualifications?

4 A Yes, it is.

5 Q And Exhibit No. 11 is your testimony?

6 A Yes, it is.

7 Q Would you, first, tell us your background with  
8 Amador County and the connection that you had with the  
9 County.

10 A I have been the Planning Director for over 13 years  
11 in Amador County and almost from the beginning when I took  
12 the position, I have been working with the Forest Service in  
13 a tri-agreement with the El Dorado and Alpine Counties  
14 working to study the Highway 88 corridor, the lakes on it,  
15 the recreational needs and the future recreational needs on  
16 that part of the El Dorado National Forest.

17 The impetus was a land-use management plan for the  
18 Forest Service and then later a future recreational use  
19 determination, a study that was under way, and Ms. Gordon  
20 from the Forest Service has already reiterated all the main  
21 points of it, along with some of the same testimony I had  
22 about the number of private and public recreational  
23 facilities on the lake and so forth.

24 The Amador County general plan deals mostly with the  
25 private land, the significant amounts of private land around  
26 Silver Lake, but it also was to be an integrated plan with  
27 the Forest Service's plans for the area.

28 There are over 80,000 camper visiting days in the  
29 Highway 88 corridor. This isn't even anywhere near the  
30 calculation of how many days there are tourists who drive  
31 by, and anybody that's driven up Highway 88, Silver Lake is  
32 the gem of Amador County as far as the visual impact it has.

33 The number of people that recreate there, both on a  
34 permanent basis, or the cabin owners, and those that just  
35 visit are an extremely important part of our economy.

36 It's well documented in our literature and the stuff  
37 that we provide the Forest Service that a significant impact  
38 on that would be what we would call the bathtub look of  
39 drawing down the lake earlier than what it has been drawn  
40 down in the past and then sometimes in the past -- we didn't  
41 realize until recently how the PG&E drawdown is not  
42 regulated, that it was basically up to PG&E, so when we  
43 found out about this, that there would be another variable  
44 stuck in there, we became very concerned about the impact on  
45 the recreational part of our economy.



1 recreational aspects, and all parts of the governmental  
2 activities.

3 I have a personal interest in Silver Lake. My  
4 wife's family has had a cabin at South Silver Lake for 52  
5 years. I have been going up there ever since I came to  
6 Amador County in 1974, and I have walked a lot of it, swam a  
7 lot of it, boated a lot of it, fished without any success at  
8 all over a long period.

9 I can certainly testify to you that Silver Lake is  
10 one of the real recreational stars in California, and it is  
11 based on the lake levels being as high as they have been  
12 during the summer recreational season.

13 This particular project, the applications of EID and  
14 the El Dorado County Water Agency, is particularly galling  
15 to Amador County and to me, because all of the benefits that  
16 are derived from Amador County's water will be in El Dorado  
17 County.

18 I heard Mr. Reeb, I believe, testify on the first  
19 day of the hearing that all of the people in El Dorado  
20 County and El Dorado Irrigation District service area were  
21 in favor of this project.

22 Well, they should be, because the environmental  
23 costs to it are going to be in Amador County, and I think it  
24 is particularly insensitive of El Dorado County to call this  
25 water for Silver Lake to be the water from the county of  
26 origin when, in fact, it is Amador County's water, and  
27 that's what the water rights for recreation purposes that  
28 Mr. Schuler testified to is based on.

29 Amador County is the county of origin for Silver  
30 Lake water. We filed a lawsuit against El Dorado Irrigation  
31 District and El Dorado County Water Agency on the  
32 Environmental Impact Report, and one of the principal  
33 thrusts that we make in that challenge is the fact that the  
34 project before you, the applications for water rights based  
35 on the assumption of growth that is contained in a general  
36 plan which is not yet been reviewed pursuant to CEQA as far  
37 as we know, and has not been finally decided by the alter  
38 ego of the Board of Directors of El Dorado County Water  
39 Agency, which is El Dorado's Board of Supervisors.

40 In other words, at this time the two El Dorado  
41 entities are approaching the State Water Resources Control  
42 Board for water from Amador County for growth in El Dorado  
43 County, which growth in El Dorado County hasn't even been  
44 approved by El Dorado County's Board of Supervisors, and we  
45 think that's appalling.

1           If there is a need for water affecting Amador County  
2 or any other part of Central and Northern California from  
3 growth in El Dorado County coming from this general plan,  
4 that we should know the environmental impact, the cumulative  
5 impact, as one of the previous speakers testified to a few  
6 minutes ago, prior to the time that these applications are  
7 heard, and certainly, decided upon.

8       Q           One of the things that a general plan can do is to  
9 restrict growth, and in this case, the general plan when it  
10 is finalized by the El Dorado County Board of Supervisors  
11 may, in fact, restrict growth from what it would have been  
12 under the old general plan, the general plan that now  
13 exists.

14           If that is the case, then there may not be any need  
15 for new water. But it is asserted throughout the EIR and  
16 asserted throughout these hearings that there is an enormous  
17 need for water to fuel this growth on the Bobbie Courts,  
18 Linda Lane and whatever they are going to be called in El  
19 Dorado Hills, and as a result of that, this water from  
20 Amador County is needed to satisfy those needs, the swimming  
21 pools, the front lawns, whatever.

22           But that growth isn't a given yet. It is guided by  
23 and restricted by the 2010 general plan which is still in  
24 draft form and hasn't been approved, nor has it been  
25 reviewed pursuant to CEQA.

26           One of the causes of action in our lawsuit against  
27 El Dorado is that that is a splitting of the project which  
28 violates every concept of what an environmental review is  
29 supposed to be about.

30           The other aspect of the EIR, of course, while we are  
31 all here, is the potential impact, as CEQA states, the  
32 potential impact on Silver Lake.

33           I have gone through Project 184 of PG&E's license.  
34 I have gone through the EIR that El Dorado has produced, and  
35 I don't see what the operating criteria are that PG&E  
36 operates Silver Lake with or by. It simply isn't there.

37           MR. SOMACH: Mr. Stubchaer, if I could pose an  
38 objection at this time, it was my understanding that there  
39 was to be no legal agreement at this hearing, that that was  
40 subject to written closing statement if the parties wished  
41 to do so, and all I have heard now for the last X minutes, I  
42 suspect by reading this testimony that what we will get from  
43 County Counsel of Amador County is additional legal  
44 argument, which he can make but he should make in writing as  
45 opposed to testifying to it as some kind of evidence here.

1 MR. GALLERY: Well, Mr. Stubchaer, of course, he is  
2 certainly entitled to comment on the adequacy or inadequacy  
3 of the information in the EIR, which is supposedly defining  
4 the project, and the point he is speaking to is that the EIR  
5 is assuming an operational criteria and he didn't find that  
6 in the EIR.

7 MR. STUBCHAER: I think there is some merit to the  
8 objection. There have been some legal arguments made, but  
9 all of your testimony has been legal argument, and the  
10 status of your lawsuit is not of concern in this part of the  
11 hearing.

12 But if information is missing from the EIR, you can  
13 state that but without the legalities.

14 A The one point that I want to make, Mr. Chairman, is  
15 that PG&E's historic operation, we think, is not defined.  
16 We wanted to see the future of Silver Lake defined with lake  
17 levels, and in my written testimony that was presented on  
18 May 18, there is an exhibit and that exhibit was at that  
19 time something which our Board of Supervisors had approved  
20 as representing an appropriate level for Silver Lake with  
21 the operation of PG&E in conjunction with El Dorado.

22 I would like to have that withdrawn because it is  
23 going to be in conflict with a subsequent exhibit, I think  
24 it is Exhibit No. 20, which will be introduced by Mr.  
25 Gallery later.

26 The reason for that is that the Board of Supervisors  
27 changed its position after it heard testimony from people  
28 who are represented in some part by the Sierra Club Legal  
29 Defense Fund, by Mr. Creger and others, that this averaging  
30 based on runoff at Folsom Dam was inappropriate to decide on  
31 how Silver Lake should be operated, and that, in fact, there  
32 was no connection between the levels at Silver Lake and  
33 precipitation measured in runoff at Folsom, which is what  
34 the EIR is based on, and so I ask that that exhibit, or that  
35 portion of my testimony be withdrawn for it certainly  
36 doesn't represent the current position either of me or of  
37 the Board of Supervisors which I represent.

38 MS. KATZ: Is that Exhibit 12?

39 A Yes. It is attachment A of Exhibit 12.

40 All of that came from confusion over what PG&E's  
41 historic operations at Silver Lake means. We just don't  
42 know. We just don't know.

43 As Mr. Gallery mentioned in his opening remarks  
44 here, there are a series of contracts that have to be  
45 entered into prior to the time --

1 MR. SOMACH: Objection again. This testimony is  
2 just legal argument. Again, I heard Mr. Gallery say it, I  
3 expect to see it in writing, and I just don't understand why  
4 they are entitled to give testimony on it here. If we are,  
5 I will call Mr. Bartkiewicz as a witness and we will spend  
6 some time talking about the testimony on these issues --

7 MR. GALLERY: Well, Mr. Stubchaer, Mr. Hahn is going  
8 to address what the project consists of. We know with some  
9 certainty what the project consists of from the EIR.

10 His comments, I take it, are to the effect that he,  
11 too, has specific difficulty understanding what the future  
12 project is going to be because of the absence of these  
13 agreements and these certainties.

14 MR. STUBCHAER: I don't know if this last one about  
15 the contracts is a statement of fact or a legal argument.  
16 Why don't you make a statement of fact, as much as you can.

17 A I don't see how El Dorado could take water from  
18 Silver Lake without having some arrangement with PG&E and  
19 SMUD.

20 MR. SOMACH: Objection. He is testifying in some  
21 kind of expert capacity here. If he is not a lawyer, then I  
22 would like to see some qualifications with respect to  
23 whatever it is he is testifying from.

24 MR. STUBCHAER: You are getting into a legal  
25 argument up here again. If you have assumptions you want to  
26 state that lead to conclusions, that isn't legal argument.  
27 Legal argument is not permitted at this stage.

28 MR. GALLERY: Just because a lawyer starts talking  
29 about a need for a contract doesn't mean it is legal  
30 argument. I think a lay person can make a statement that  
31 these contracts are necessary.

32 MR. SOMACH: Now Mr. Gallery is testifying as to his  
33 legal conclusions.

34 MR. STUBCHAER: You can say assuming contracts are  
35 needed or something like that and proceed.

36 A Assuming contracts are needed, Mr. Chairman, it may  
37 very well change the way in which PG&E operates Silver Lake.  
38 There may be in a contract that doesn't now exist, which  
39 may, in fact, be necessary, there may be financial  
40 incentives for PG&E to operate Silver Lake in a different  
41 way from the way it has operated in the past.

42 Silver Lake has been operated to provide revenue  
43 through power generation at El Dorado powerhouse primarily  
44 under Project 184.

1           If the powerhouse is no longer used or is not used  
2 for a period of time because of the El Dorado project, it  
3 strikes us that there is no longer any power generation  
4 criteria that will govern PG&E's operation of Silver Lake,  
5 and a financial incentive may change because of earlier  
6 releases and with serious effects on Silver Lake.

7           MR. STUBCHAER: This appears to be argument. This  
8 phase of the hearing is to present evidence.

9           MS. KATZ: Does Amador County have suggested  
10 criteria?

11 A          Yes, that is Exhibit No. 20.

12           MS. KATZ: Okay. We are getting into argument. We  
13 keep hearing about the need for contracts. We are aware of  
14 that. If Amador County has a position, it needs to have  
15 evidence to go with it. That's what we need to hear.

16 A          It's the absence of evidence, the absence of that  
17 criteria that is before you that we think makes these  
18 hearings on these applications legally unfirm. If that's a  
19 legal conclusion and I am not allowed to give it, I'm sorry.  
20 If you would like me to state my professional credentials, I  
21 can do that.

22           MR. STUBCHAER: No, this just isn't the place for  
23 legal argument.

24 A          I will just quickly sum up by saying that the  
25 decision makers in this case should see Silver Lake now in  
26 June. They should see it again in October after all of the  
27 releases by PG&E have been concluded for production of  
28 power. You should bear in mind that what we don't want to  
29 see happen is have the lake look in June the way it looks in  
30 October.

31           That concludes my testimony. I'm sorry if it was  
32 contentious. I didn't mean it to be.

33           MR. GALLERY: Thank you, Mr. Hahn.  
34 Our last witness is Stephanie D'Agostini.

35                                 STEPHANIE D'AGOSTINI  
36           having been sworn, testified as follows:

37                                 DIRECT EXAMINATION

38 by         MR. GALLERY:

39 Q         Ms. D'Agostini, would you state your name for the  
40 record and spell your last name.

41 A         My name is Stephanie D'Agostini, D-'-A-g-o-s-t-i-n-  
42 i.

43 Q         Ms. D'Agostini, first your background and  
44 involvement with Amador County.

1 A I am not an expert. I am merely an elected  
2 official. I have been Chairman of the board for the entire  
3 of 1993 and I was elected to said board in 1990. Before  
4 that I was a County employee from 1986 on.

5 Q And you have a family history in Amador County?

6 A I am a fourth-generation resident of Amador County,  
7 also the third generation to the Board of Supervisors. My  
8 grandfather and uncle were also on the board specializing in  
9 water issues.

10 Q And is Amador Exhibit No. 15 a copy of the testimony  
11 that you are presenting in this hearing?

12 A Yes, it is.

13 Q Would you give us a summary of your testimony.

14 A Mr. Stubchaer, if I may ask permission to read my  
15 testimony, it is only a page and a half.

16 MR. STUBCHAER: All right.

17 A You have heard from the County's lawyers and  
18 engineers about the environmental and hydrological impact on  
19 Amador County in the event that El Dorado draws down Silver  
20 Lake levels during the summer recreation season below PG&E's  
21 historic lake levels.

22 I wish to address another aspect of this decision,  
23 that of the public trust, which is a part of your mandate as  
24 a member of this board. As an elected official, I am acute  
25 aware of the trusts that the public has placed in us to  
26 guard our special resources. Some resources are beyond  
27 ownership simply because they are too valuable to the public  
28 to be converted into private use. They must remain  
29 available to the public.

30 One of those resources is Silver Lake in my County.  
31 Amador County sits on the western slope of the Sierra  
32 Nevada, astride what has become a major west/east trans-  
33 Sierra route, Highway 88.

34 As a traveler moves from the coast through Central  
35 Valley to the foothills, she or he can only wonder at the  
36 spectacle of California. That wonder increases as the  
37 traveler moves east through Amador County up to the slope of  
38 the Sierras.

39 At nearly the crest of the Sierras, having traveled  
40 across almost all of California, that traveler comes upon  
41 Silver Lake. To put it simply, the lake is the diamond in  
42 the crown of California. The lake is visible to all who  
43 cross the Sierras on Highway 88 and it is used during the  
44 summer recreation months by thousands of people who come

1 from all over the state to use the lake for recreational  
2 purposes.

3 They have the ability to use Silver Lake for all  
4 kinds of recreation, sailing, fishing, swimming, hiking, and  
5 for teaching their children to respect nature. But the key  
6 is that they are able to enjoy these activities in what is  
7 simply the most beautiful alpine setting in California.

8 They are able to enjoy their activities on the whole  
9 lake, not half a lake and half a mud flat.

10 I am a politician elected to provide government in  
11 Amador County at a time when governance and government are  
12 two entirely separate concepts.

13 Government is looked upon with disdain, distrust and  
14 dislike. There is a reason for that. All too often,  
15 government officials do not serve the public but provide  
16 benefits to a small group.

17 Your decision on this application is a perfect  
18 opportunity to govern in a positive sense to provide  
19 governance, not mere government.

20 The way to do that is to protect Silver Lake as it  
21 is now and has been used for the last 130 years and to  
22 prevent El Dorado from doing what government all too often,  
23 to narrowly serve its own constituents at the expense of the  
24 general public.

25 To lose Silver Lake as a whole, beautiful pristine  
26 alpine lake available for use by people from many counties,  
27 many states, and indeed, many nations to serve subdivisions  
28 which are not yet built in El Dorado, would show the  
29 crassest kind of disregard for the public good.

30 I ask you to make sure that El Dorado leaves Silver  
31 Lake alone so that it can continue to be the brightest yule  
32 of the Sierras. The public can only be served by your  
33 maintaining Silver Lake the way it is and has always been.

34 I could make a pitch to you to keep Silver Lake  
35 whole based on economics, but I don't think economics is the  
36 issue here. God gave us something which is unique and  
37 magnificent, and available to everyone. It would be a  
38 tragedy and travesty if that uniqueness, magnificence and  
39 availability are lost through government are lost through  
40 government action so that more subdivisions can be built.

41 Thank you.

42 MR. STUBCHAER: Thank you.

43 It is almost lunchtime.

44 MR. GALLERY: That concludes our testimony, Mr.  
45 Chairman, and my next step is to briefly go through other

1 exhibits that we propose to put into evidence and offer them  
2 in evidence, although because four additional exhibits have  
3 been distributed, perhaps we should wait until after lunch.

4 MR. STUBCHAER: I think it would be wise to wait  
5 until after lunch and after the cross-examination of Dr.  
6 Curry from a previous panel, and then we will resume cross-  
7 examination of your panel, and discussion of the exhibits.

8 Is that all right?

9 MR. GALLERY: That would be all right. I was hoping  
10 to release my witnesses as soon as possible. The exhibits,  
11 other than their testimony, pretty much stand alone and do  
12 not involve their testimony.

13 If it would be possible to get them in in case there  
14 was any question about that --

15 MR. STUBCHAER: They have to be here for cross-  
16 examination. It is a question whether this should occur  
17 right after lunch or after Dr. Curry.

18 MR. GALLERY: I just have one more item, Mr.  
19 Stubchaer. Our Exhibit No. 17 is the 1968 Amador County  
20 Route 88 Scenic Highway Report, and we are offering that by  
21 reference as permitted by the Board's rules. We filed a  
22 copy of the report. It is a green-covered report and we did  
23 not distribute that to the other parties because we are  
24 offering it by reference.

25 I do, however, have seven copies of it if anyone  
26 would like a copy to look at before this afternoon.

27 MR. STUBCHAER: All right. You can leave them on  
28 the table. We can have a show of hands as to who wants a  
29 full copy of this report.

30 Staff, do you have enough copies?

31 MR. GALLERY: That at the resumption of the hearing  
32 after lunch, did you want Dr. Curry to go first, or is that  
33 the --

34 MR. STUBCHAER: Yes. Are you ready for a recess?

35 MR. GALLERY: Yes.

36 MR. STUBCHAER: We will recess until 1:15.

37 (Noon Recess)  
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MONDAY, JUNE 21, 1993, 1:15 P.M.

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MR. STUBCHAER: Good afternoon. We will resume the El Dorado water rights hearing.

First, we will continue with the cross-examination of the Sierra Club Legal Defense Fund expert panel witness, Dr. Curry by Mr. Somach.

CROSS-EXAMINATION continued  
OF ROBERT R. CURRY

by MR. SOMACH:

Q Dr. Curry, would I be accurate in characterizing your testimony to be that in your opinion the project as described by the applicant just won't work?

A That wasn't the intent of my testimony. The intent of my testimony was to say that I didn't have enough information to assess whether the project would work.

Q And in not having enough information to assess whether the project would work, you then postulated that in order for it to work, there would have to be some modification of the reservoir operation or the upper lakes operation; is that correct?

A I came up with three possibilities: One, new storage reservoirs; two, reoperation of Folsom storage; three, or reoperation of the upper lakes.

I said that in my opinion that was the least cost alternative and the most probable one.

Q Do you have a copy of El Dorado County Water Agency Exhibit No. 46 for this hearing?

A I'm sorry, I don't know what that is. Does it have a title?

Q Yes. It is the *White Rock Project, El Dorado Water Requirement, November 9, 1992*, prepared for the El Dorado County Water Agency by Sierra Hydro-Tech.

A I don't have that before me.

Q Do you now have a copy of that?

1 A I do now. Are you referring to a specific exhibit  
2 number?

3 Q Yes, Exhibit No. 46. It is at the beginning.

4 A Yes, those look like the tables that I have seen.

5 Q The tables, but have you reviewed that report in its  
6 entirety?

7 A No, I have not reviewed that report in its entirety.

8 Q So you wouldn't know whether or not that report  
9 described with more specificity the proposed operation of  
10 the El Dorado project; is that correct?

11 A Well, I did read that this project was to be  
12 evaluated at a later time, subsequent to the current  
13 environmental assessment.

14 Q You are confusing the White Rock project, I believe,  
15 with the El Dorado project, which was described in the EIR.  
16 You have indicated you have not read that document, Exhibit  
17 No. 46, in its entirety, so you couldn't tell whether or not  
18 it described how the project that is the subject of these  
19 hearings is to operate; could you?

20 A How the White Rock project is to operate?

21 Q No, how the El Dorado project that is the subject of  
22 these hearings is to operate.

23 A I'm sorry, I am confused because this says the White  
24 Rock project, El Dorado water requirements.

25 Q You have not read that report; have you, is my  
26 question?

27 A I am looking at Appendix A.

28 MR. STUBCHAER: You are not talking about the same  
29 report.

30 MR. SOMACH: He is looking at a report, Exhibit No.  
31 46, and he has indicated he has not read that in its  
32 entirety. All I am asking is whether or not as a  
33 consequence, he can't tell whether or not that report  
34 describes how the project that is the subject of these  
35 hearings is to be operated.

36 MR. VOLKER: I am going to pose an objection at this  
37 point. He has testified he hasn't read the report in its  
38 entirety --

39 MR. SOMACH: My question is not argumentative. It  
40 is fairly simple. As a consequence, you can't --

41 MR. STUBCHAER: You can't just say you can't, say  
42 can you?

43 MR. SOMACH: Q Can you tell me whether or not that  
44 report describes the operation of the project that is the  
45 subject of these hearings?

1 A I cannot tell you that.

2 Q Okay. I apologize for even seeming like I was being  
3 argumentative.

4 Q Could we put on the overhead, your RC-24.

5 A Sure.

6 Q Now, as I understand it, RC-24, that's supposed to  
7 be Sly Park Reservoir; is that correct?

8 A That's the operational data for Sly Park Reservoir,  
9 yes.

10 Q And now there's a hashed line toward the top and it  
11 says *full*?

12 A Correct.

13 Q And where is that line, at what level?

14 A I don't honestly remember what the capacity line is.  
15 I would have to go to my database.

16 Q Can you give me an estimate by looking at your graph  
17 RC-24?

18 A It looks like about 67,500, or something like that,  
19 acre-feet.

20 Q And again, your database for this, where did that  
21 come from?

22 A The California Data Exchange Center, the DWR  
23 database across the street from here.

24 Q And if I told you that the capacity of the Sly Park  
25 Reservoir was actually 41,000 acre-feet, would there be an  
26 apparent error in what is depicted on RC-24 versus what  
27 would, in fact, be the case?

28 A Yes. I am looking at the total storage, not the  
29 live storage.

30 Q Does full not mean when the reservoir is to its  
31 capacity?

32 A Correct.

33 Q If its capacity was, in fact, 41,000 acre-feet --

34 A Forty-one thousand acre-feet could be the live  
35 storage, sir, and there would be a dead storage beneath  
36 that, and if I am not mistaken, there is a very large dead  
37 storage.

38 Q So what you are saying is, whatever is depicted  
39 there, it involves both the dead pool as well as the active  
40 portions of the reservoir?

41 A If what you tell me is correct, that would be my  
42 hypothesis to explain why the DWR data differs from what you  
43 said.

44 Q Now, you indicated, I believe, in your verbal  
45 testimony that Folsom Reservoir could not be used for

1 storage of El Dorado project water because of high pumping  
2 costs; is that correct?

3 A That's what I got out of the EIR and responsive  
4 statements to the EIR from your application agencies.

5 Q And you heard the testimony of Mr. Hannaford?

6 A Yes, I did, on Monday.

7 Q And it's your belief that he testified that the El  
8 Dorado project could not take any water from Folsom  
9 Reservoir?

10 A Let me see. I made notes specifically on Mr.  
11 Hannaford's testimony. Folsom and Sly Park could be used *in*  
12 *our analysis*. We use water from Sly Park to make up any  
13 deficit, is what I believe I quoted Mr. Hannaford as saying.

14 Q And that's what you are referring to in your  
15 testimony that says that it would be too expensive to pump  
16 water back from Folsom Reservoir?

17 A No, sir, that refers to the EIR.

18 Q And was the reference in the EIR to the expense of  
19 pumping all the water back or the incremental cost of  
20 pumping?

21 A It's not clear from the EIR. I know that you  
22 actually do pump water out of Folsom for a portion of your  
23 service area, lower portion of your service area, but what I  
24 interpreted from what you stated in the EIR was that it  
25 would be too expensive to pump the incremental additional  
26 level up to the higher elevation service area that you have  
27 to serve out of Folsom.

28 Q That area then that is outside of the El Dorado  
29 Hills area, the west slope?

30 A I believe that's correct, yes, sir.

31 Q But it was economic to pump into the west slope  
32 area, the El Dorado Hills area?

33 A I don't believe it said that in the EIR, but I know  
34 that you do do that, so, therefore, there must be -- you  
35 aren't in business to lose business.

36 Q So, if you could put on your RC-25 --

37 A Sure. RC-25 is on.

38 Q And do you have RC-26 -- before you sit down, if you  
39 could describe what RC-25 shows one more time, and then RC-  
40 26. I have some questions I want to ask you about both of  
41 those exhibits.

42 A RC-25 changes the scale of the vertical axis here to  
43 simply show the excess reservoir capacity that exists and it  
44 places on that chart a line at 17,000 acre-feet indicating  
45 where that would be so that we can see by years since

1 closure of Sly Park Reservoir what excess capacity exists  
2 and we can see the three years where the excess capacity  
3 exceeded 17,000 acre-feet, and we can see other years where  
4 it's 12,000, 9,000, 6,000, et cetera.

5 Q Now, is the assumption that's built into that  
6 exhibit in terms of its relevance to this hearing the fact  
7 that you can't store 17,000 acre-feet in Sly Park Reservoir,  
8 except in the years where 17,000 acre-feet of reservoir  
9 space is available?

10 A There are no assumptions. This is straight. I  
11 tried to do this without bias. This is straight data out of  
12 the database. And what it shows is that there is more  
13 storage capacity in some years and much less storage  
14 capacity in other years, and that the bulk of the years have  
15 very small amounts of storage capacity.

16 I didn't do a statistical analysis of what amounts  
17 of storage capacity was available on the average, or any  
18 particular recurrence interval of years. I figure that's  
19 the applicants' job.

20 Q Right, but I am still trying to understand the  
21 relevance. I just want to ask you whether or not you  
22 assumed at all in preparing this particular exhibit that the  
23 applicant intended to store or try to store 17,000 acre-feet  
24 of this water in Sly Park Reservoir, and by *this water*, I  
25 mean water under the applications that are the subject of  
26 this hearing.

27 A There is no statement that I could find that says  
28 the applicant intends to store 17,000 acre-feet of water in  
29 Sly Park Reservoir.

30 Q Does this exhibit address at all whether or not Sly  
31 Park Reservoir could be utilized for regulation as opposed  
32 to storage?

33 A It does not.

34 Q So that there is no assumption built into this  
35 exhibit that Sly Park could not be utilized for some kind of  
36 regulation; is that correct?

37 A At seasons other than the demand season, you mean?

38 Q At any time.

39 A There is no assumption -- all this data show are the  
40 springtime high capacities of Sly Park Reservoir, so what  
41 you do at a non-springtime is not included in this analysis.

42 Q Did your analysis at all contemplate utilizing this  
43 reservoir as a reregulation or regulation reservoir for the  
44 utilization of water that would be acquired under these  
45 permits if they were issued?

1 A I didn't see that in the data that I was presented,  
2 so, no, I did not do that analysis. I did the analysis only  
3 as a storage reservoir, as Mr. Hannaford mentioned in his  
4 direct, or perhaps cross-examination testimony.

5 Q Would you put RC-26.

6 A Certainly.

7 Q Now, RC-26 is what?

8 A RC-26 shows graphically the full capacity of, I  
9 guess, dead plus live storage for Sly Park Reservoir, and  
10 shows at the top of that various white bars indicating the  
11 amount of excess capacity that would have been available  
12 during those particular years had the applicant had water in  
13 that reservoir to store.

14 Q Is the assumption here also that it was the  
15 intention of the applicant to store 17,000 acre-feet in Sly  
16 Park Reservoir?

17 A I merely responded to Mr. Hannaford's statement. I  
18 don't know that the applicant intended to store 17,000. I  
19 would imagine they wouldn't intend to store 17,000 acre-  
20 feet, but that they would have to store some substantial  
21 portion of that somewhere.

22 Q Does this exhibit provide information on the  
23 reregulation or regulation capacity of Sly Park Reservoir?

24 A To the extent that this exhibit demonstrates only  
25 the high springtime capacity, it does not discuss the option  
26 to reregulate winter flows in the winter.

27 MR. SOMACH: Thank you.

28 MR. STUBCHAER: Just a point of clarification. You  
29 say it shows the high springtime capacity. Don't you mean  
30 the minimum springtime capacity? Isn't that the capacity  
31 minus the storage?

32 A You are absolutely correct, Mr. Chairman. Thank  
33 you.

34 MR. SOMACH: It is always nice to know someone is  
35 listening.

36 MR. STUBCHAER: Keeps you on your toes.

37 MR. SOMACH: A In your oral testimony, I believe  
38 you indicated, and don't let me put words in your mouth, and  
39 correct me if I am wrong, but you assume the El Dorado  
40 project is expected to meet the full demand of 115,000 new  
41 residents. Is that an accurate statement?

42 A That's my understanding, yes.

43 Q Now, when you make that assumption and I am just  
44 probing the assumption itself, do you assume that the  
45 existing facilities and water supplies of the El Dorado

1 Irrigation District are completely utilized prior to the  
2 first resident of the 115,000 new residents coming in and,  
3 therefore, the entire new demand has got to be satisfied by  
4 the water that's the subject of these hearings?

5 A Okay, that's a fair question. I understand the  
6 question, I believe.

7 No, certainly, I do not. I assume that only during  
8 times of considerable depth of drought do the existing  
9 supplies meet and inadequately meet the demand at the  
10 present, so that the new demand would have to be drawing  
11 upon the new allocations of water which you seek, but not  
12 during wet years, of course not.

13 Q Do you know what percentage of years, in fact, the  
14 project will draw upon these additional supplies as you move  
15 out toward the ultimate 2020 level of demand?

16 A I didn't see data specifically directed to that.  
17 Perhaps I missed that. No, I don't know the answer to that  
18 question.

19 Q You also, I believe, threw in a statement with  
20 respect to demographics.

21 A Yes, sir.

22 Q Do you have any reason to disagree with testimony  
23 that was provided here indicated that the El Dorado  
24 Irrigation District supply demand curve will cross in 1997?

25 A No.

26 Q So, regardless of the 2020 level, you have no reason  
27 to disagree in what three years, four years hence, there  
28 will be a supply demand problem in El Dorado County?

29 A I presume that you are right on target with those  
30 close-in projections and that assumes average precipitation.

31 Q With respect to your oral testimony, you compared  
32 average unimpaired flow in the lower American River during  
33 the 1929-31 period with the 1975-77 period?

34 A Correct.

35 Q I am kind of curious as to why you selected the  
36 1975-77 period?

37 A It may actually not have been the 1975-77 period. I  
38 picked the three overlapping years of release flow that  
39 included 1977, and looked for the totals and then looked  
40 back in the record to see whether there were any other  
41 three-year cumulative periods with lesser flow and found  
42 that 1929 through 1931 was such a period.

43 Q Well, you don't know whether or not you utilized  
44 1975 as one of those years?

1 A According to my notes, it does say 1975-77, although  
2 it obviously came out of the computer and I may not  
3 accurately have gone back to figure out which actual year  
4 represented the three-year overlap.

5 But I do know the amount. The amount was 1,256,000  
6 acre-feet of reconstructed flow at Folsom, was the average  
7 for that three-year period that included 1977; whereas, the  
8 earlier three-year period that had a lower flow was  
9 1,171,000 acre-feet.

10 Q Dr. Curry, can you show me where you showed your  
11 work so that we can go back and understand this?

12 A Sure.

13 Q Did you provide this as part of your testimony?

14 A No, I translated it into these charts and graphs. I  
15 did provide you with -- I am handing him the raw data from  
16 which RC-22 was constructed.

17 Q Okay. I wonder if we could get copies of this. I  
18 won't need it for my cross, but I certainly would like to  
19 see the work that Dr. Curry relied upon.

20 What happens if I told you that in 1975, Folsom  
21 Reservoir filled and spilled?

22 A We are talking water years now?

23 Q Yes.

24 A Well, that may well be. All I am telling you is  
25 that 1975, 1976 and 1977, as you can see from RC-22, were  
26 the three consecutive lowest years around the 1977 drought.  
27 It doesn't matter whether it filled and spilled. These are  
28 reconstructed flows. Pretend like Folsom Reservoir wasn't  
29 there, and I picked three years. I have to be fair. I have  
30 to pick even if it is a big runoff year, I have to pick a  
31 big runoff year. I picked the lowest flow within two years  
32 of 1977, and that was 1975. 1978 was considerably a higher  
33 flow than 1975.

34 Q You are making a comparison, however, if I  
35 understand your testimony, of a series of dry years, and as  
36 I understand what your contention is, is that the '29-  
37 through '31 period was a drier period than the '75-through-  
38 '77 period.

39 A Correct. Exactly correct. That's the way we  
40 analyze drought period demands in water resources.

41 Q But you took three years. Why didn't you take two  
42 years?

43 A Three years is the conventional figure. It has to  
44 do with the amount of time it takes a soil water reservoir  
45 to be used up effectively so that when you get new

1 precipitation after that period of time, it doesn't provide  
2 runoff, but regenerates the soil water reservoir, so the  
3 fourth year of a three-year drought, if it is broken in the  
4 fourth year will not create runoff.

5 So, the three-year period is the critical period for  
6 planning. That's the reason I picked three years. Two  
7 years is too short. The trees and the shallow vadose  
8 groundwater zone still will hold water within two years of a  
9 drought.

10 Q Does the Department of Water Resources in the  
11 context of its work utilize the '29-31 period, or do they  
12 utilize the period including 1977?

13 A I don't know, sir. I only was looking at the  
14 American River basin specifically.

15 Q I am talking about the American River basin. Isn't  
16 it true that they use the period that includes 1977?

17 A I don't know. I got these data and I handed you the  
18 data directly from the Department of Water Resources.

19 Q So you just simply took the data off and made  
20 calculations and you didn't know how the Department of Water  
21 Resources itself, the entity that generates the data,  
22 utilized it; is that correct?

23 A The data are actually generated by the USGS and  
24 tabulated by the Department of Water Resources, and I do  
25 know how Maurie Roos of the Department of Water Resources,  
26 who is in charge of their computation of long-term  
27 streamflow and streamflow deficits, uses the data, but when  
28 you say the Department, I don't know who you refer to or  
29 what you mean; no, sir.

30 Q You used some words in your written testimony like  
31 hedging, and I believe you also indicated that there was  
32 some -- ell, you used other words along that line, that  
33 somehow El Dorado County was hiding the ball.

34 I that an accurate characterization of some of your  
35 testimony?

36 A The words I used in my written testimony were not  
37 intended to be passed out to the group. I'm sure you can  
38 see there were notes to myself, which counsel advised me I  
39 had better have on the table this morning. I used words  
40 like shell game and hedging; yes, I used those words.

41 Q You used some of those words in your written  
42 testimony; isn't that correct?

43 A In the written testimony I submitted originally?

44 Q Originally.

45 A Perhaps so. I don't have a copy of that.

1 Q Did you have anything specific in mind when you  
2 submitted that testimony -- of your own knowledge, do you  
3 know whether or not El Dorado County is hedging or being  
4 involved or being in some kind of shell game?

5 A Of course, I don't know from my own knowledge what  
6 the intent of El Dorado County Water Agency is. All I can  
7 do is look at the written record, look at the availability  
8 of water, look at your demand projections, and from that  
9 make reasonable professional assumptions that, indeed, you  
10 are trying to commandeer as much available water as you  
11 possibly can at the present point in time, and that you will  
12 then later work out how you intend to utilize that water.

13 Q Well, if El Dorado merely relies upon releases from  
14 these upstream lakes whenever PG&E releases, and assuming no  
15 behind-the-scenes game is being played, what adverse impacts  
16 would El Dorado diversion have on these upstream lakes?

17 A Once again, this question has been asked. If,  
18 indeed, the lakes are operated by PG&E and there is no  
19 pressure put on PG&E for any different operational  
20 schedules, then there would be no changed impact upon the  
21 upstream lakes from that operation, with the exception of  
22 the fact that Fish and Game releases will probably be  
23 increased from those lakes anyway as we would anticipate in  
24 the future, so that will have a deleterious effect, but it  
25 has nothing to do with El Dorado Irrigation District.

26 Q Now, you make a statement, and this is on your  
27 written testimony at page 11 at --

28 A I have that before me now.

29 Q -- paragraph 14, where you purport to comment about  
30 a statement made by the watermaster for City and County of  
31 Sacramento. You say the current flows in the middle and  
32 lower American River are adequate at present and county of  
33 origin issues are not yet incorporated into water rights.

34 Are you an expert in water rights?

35 A I teach water rights and water rights issues at the  
36 University of California. John Williams has worked with me  
37 much in the past. I worked with the judge who put together  
38 the decision that appointed John Williams as watermaster.

39 I have talked at length with that judge about those  
40 water rights issues for the American River, and talked to  
41 John Williams, and this was based upon my discussions with  
42 those gentlemen.

43 Q What does this mean, *county of origin issues are not*  
44 *yet incorporated into water rights?*

1 A Well, I am not a lawyer, so I am perhaps not making  
2 myself clear, but what I mean is that the changing climate  
3 of water rights law and water rights decisions in California  
4 is moving toward, in my opinion based upon my readings and  
5 my research, a higher level of recognition of county of  
6 origin issues. Specifically, one that is most interesting  
7 right now in the State of California is the Mono County  
8 origin of water right issues with respect to the water  
9 rights allocation by the City of Los Angeles, and these  
10 issues are becoming a focal point for a number of different  
11 counties in the State of California, and I try to keep track  
12 of the State as a whole, and this was not meant to focus  
13 specifically on what's ongoing in this.

14 I simply said that I didn't see the county of origin  
15 issues coming into play in the EIRs and I did appreciate  
16 that these were becoming important issues statewide.

17 Q Well, isn't it true that El Dorado County is a  
18 county of origin of some of this water?

19 A Yes.

20 Q And so, that their rights, as I understand it, their  
21 consumptive use rights should be incorporated into water  
22 rights; is that accurate?

23 A To the extent that water originates within the  
24 County, but the reservoirs in this case, two of the largest  
25 reservoirs, Caples and Silver, are not in El Dorado County.

26 MR. STUBCHAER: How much more time will you need?

27 MR. SOMACH: Not very much. I just have a couple  
28 more questions.

29 Q Take a look at paragraph 15 of your written  
30 testimony.

31 A I have it before me.

32 Q What do you mean on page -- what are you talking  
33 when you say *maintain an already deleteriously impacted*  
34 *system through cumulative impacts*.

35 If you can answer that question in the context of  
36 this situation.

37 A Certainly, it has to be context specific. In this  
38 particular situation, the Fish and Game, the California  
39 State and Federal fish release regulations that are in place  
40 and that are being contemplated we have hear about here in  
41 these hearings in the last several days, for example,  
42 indicate clearly that the system today; that is, the  
43 watershed system of the South Fork American River and the  
44 other tributaries of the American River, today does not  
45 supply enough flow in parts of the year to maintain the

1 fisheries that the State of California would like to  
2 maintain in the public trust.

3 And, therefore, we are dealing in a system that is  
4 already impacted, that is already optimal, and we are  
5 incrementally adding to that suboptimal condition by once  
6 again taking from that allocation; and in the area of  
7 cumulative effects, of which I am a specialist, that falls  
8 directly in the purview of taking a suboptimal condition and  
9 maintaining it in suboptimal status, or not allowing the  
10 regulatory agencies to try to bring it into an optimal  
11 status because we don't have enough water to bring it into  
12 an optimal status.

13 As you have heard from other testimony, as you have  
14 heard from prior testimony here, as you have heard from Fish  
15 and Game, as you have heard from the Forest Service, as you  
16 have heard from the Fish and Wildlife Service, as you have  
17 heard from the U. S. Bureau of Reclamation, the move at  
18 present is to require more fish releases, and if the  
19 applicants' desire is to take water that could have been  
20 used for those fishery releases and utilize it for projected  
21 growth, then we are maintaining a deleteriously already  
22 affected watershed system.

23 Q Finally, I want to ask a question with respect to  
24 your statement on peaking power. I looked carefully through  
25 your written testimony and I couldn't find any place where  
26 you showed your work in terms of conclusions. You just made  
27 a lot of conclusionary statements there and there was  
28 absolutely nothing that clarified it.

29 Let me ask you, is it your opinion, based upon what  
30 I read and what I heard in terms of your oral testimony,  
31 that we need additional hydropower facilities in California  
32 to make up what appears to be, in your opinion, a lack of  
33 peaking capacity?

34 A That's not my opinion. I believe that through  
35 conservation we can make do with what peaking capacity we  
36 have in the State of California at present.

37 As well as teaching water resources assessment and  
38 policy, I also teach energy resources assessment and policy  
39 because these are intimately connected in the State of  
40 California, and thus, the issues of peaking power and  
41 peaking power demand are, indeed, things that I study very  
42 carefully.

43 I try to evaluate how that demand is driven. One of  
44 the key things that drives peaking power demand at the  
45 present time is the air conditioning load in rooms like

1 this; and second, the pumping demand for irrigation in the  
2 Central Valley, afternoon pumping demands, and those demands  
3 are increasing at a time when our load resources are  
4 stretched to their maximum.

5 And the only way, I believe, that we can get around  
6 that is to have residential and industrial users stop using  
7 as much power at peaking power time.

8 Q Are you familiar with the 1990 marginal cost study  
9 conducted by SMUD?

10 A I am not familiar with the 1990 marginal cost study.

11 Q Would you be surprised that that study reached a  
12 conclusion with respect to the marginal cost of new peaking  
13 power from the one you reached?

14 A I would.

15 MR. SOMACH: I have no further questions.

16 MR. JACKSON: Mr. Stubchaer, I do have some  
17 questions.

18 MR. STUBCHAER: On what?

19 MR. JACKSON: In regard to the question of the  
20 environmental EIR hydrology of the Lotus stretch.

21 MR. STUBCHAER: I'm going to limit additional cross-  
22 examination to the four new exhibits which were introduced  
23 this morning. There was opportunity before lunch for all  
24 those who wanted to cross-examine, and so, if you have  
25 questions on these four specific exhibits, I will permit it.

26 Are there more than four?

27 MS. KATZ: Of Amador?

28 MR. STUBCHAER: I'm sorry, I have the wrong pile --  
29 on the graphs, right.

30 MR. JACKSON: It will be on the graphs, but it will  
31 relate to one specifically identified issue.

32 MR. STUBCHAER: Just on this evidence. All right.  
33 Can you limit to that? Otherwise, we will have to open it  
34 up to all if we go back and revisit what we did this  
35 morning.

36 What are you referring to?

37 MR. JACKSON: I am referring to the final EIR and I  
38 am going to try to relate that to the documents.

39 MR. STUBCHAER: How much time do you think you will  
40 need?

41 MR. JACKSON: Not very much, five minutes, probably  
42 less.

43 CROSS-EXAMINATION continued

44 by MR. JACKSON:

1 Q Dr. Curry, calling your attention to the final EIR  
2 at page 4-8 --

3 A I have that before me.

4 Q Well, we may be looking at --

5 A I have the draft instead of the final. I'm sorry.

6 Q Calling your attention to the only significant  
7 impact identified for the El Dorado project, the reduced  
8 opportunities that would result for white water boating in  
9 the South Fork of the American River, there is a mitigation  
10 measure suggested.

11 MR. SOMACH: That is an incorrect statement. You  
12 said *the only*.

13 MR. JACKSON: That is the only one I could find. Is  
14 there another one?

15 MR. SOMACH: There's growth-inducing impacts,  
16 cumulative impacts.

17 MR. JACKSON: It is the only one listed in the  
18 document.

19 MR. SOMACH: It is the only direct impact. I wanted  
20 to make sure the statement is correct.

21 MR. JACKSON: Q The only direct impact found to be  
22 significant by the final EIR is the reduced opportunity that  
23 would result from white water boating. There is a  
24 mitigation measure which is listed below. It says, *the*  
25 *schedule for diverting consumptive water deliveries should*  
26 *be restructured so that SMUD and PG&E are able to meet white*  
27 *water boating rafting needs.*

28 Can you determine how those flows could be  
29 restructured to meet higher rafting needs on the Lotus reach  
30 given the fact that there's no storage?

31 A Well, again, my conclusions were that they would, in  
32 fact, have to resort to releases from the upper lakes and  
33 that they could use releases from the upper lakes to  
34 mitigate rafting flows, but if we stick to the claim that  
35 they aren't going to change the upper lakes, then we have  
36 only got the little two-day storage issue and they could use  
37 the two-day storage as a mitigation by changing the hours of  
38 release which are difficult because today we use that to  
39 meet peaking power needs, and if you change the hours, you  
40 can't change the hours, that it is hot during the day and we  
41 have to change everybody's air conditioning load, too.

42 Q So, in other words, for this mitigation measure to  
43 work from your expertise as a hydrologist, they would be  
44 required to either change PG&E's method of operation for  
45 peaking power, or lower the upper lakes?

1 A Without additional offstream storage, yes.

2 MR. JACKSON: I have no further questions.

3 MR. STUBCHAER: All right, Mr. Volker.

4 MR. VOLKER: No redirect.

5 MR. STUBCHAER: Do you wish to offer your exhibits  
6 at this time?

7 MR. VOLKER: Yes, I would like to. I will go  
8 through them once again, if this would be helpful. That  
9 would be Exhibits 8, 10, 11 and 12, and 13, I am actually  
10 offering based on a stipulation that I think Mr. Somach and  
11 I can agree to. Exhibit 12 is a Declaration of the Amador  
12 County Surveyor, which authenticates the old Wagon Road as  
13 the Amador/El Dorado County line. And Mr. Somach has agreed  
14 not to object to this Declaration provided that he is given  
15 five days in which to respond as appropriate with a  
16 Declaration of his own, and then subject to my further right  
17 to cross-examine his declarant in the event it becomes an  
18 issue.

19 I just want to bring that up because it is next in  
20 order.

21 The other exhibits --

22 MR. STUBCHAER: Just a moment on that one. Are you  
23 suggesting then that the hearing be held open for five days  
24 so that exhibit would be received, and then you cross-  
25 examine on it?

26 MR. VOLKER: Personally, I think it should be  
27 received today without that proviso. I am willing to agree  
28 to a five-day extension for Mr. Somach. I suggest that  
29 rather than reopen this hearing that any further cross-  
30 examination be conducted on a deposition basis.

31 That's his proposal and I don't object to that, but  
32 my preference would be simply to accept this at present, and  
33 if Mr. Somach wished to present rebuttal testimony, he could  
34 do so before the end of this hearing.

35 MR. SOMACH: Let me address that. As you know, this  
36 testimony came in last week in somewhat -- it came in just  
37 like that. And at that time, Mr. Volker and I talked and he  
38 indicated that he would provide for me some written  
39 statements along the lines of a declaration so I could have  
40 something to look at. He did that today.

41 My problem is I would just simply like to have the  
42 ability -- I don't know whether it is right or wrong. I  
43 don't know whether I would have any cross-examination  
44 questions. I simply don't know.

1 I want the County El Dorado Surveyor to take a look  
2 at it along with County Counsel, and then, all I suggested  
3 was that we could hold the record open for five days and I  
4 would submit an affidavit if I had any differences with  
5 respect to what was in this affidavit. I could submit them  
6 in writing rather than going through the effort of putting  
7 on some kind of rebuttal testimony, which I can't do  
8 tomorrow because I haven't had a chance to talk to the  
9 County Surveyor or the County Counsel on the issue.

10 This is an attempt on my part -- this was surprise  
11 evidence and it's an attempt on my part to allow it to come  
12 in and allow us some ability however not to be blind-sided  
13 by it with the submission of a subsequent written document.

14 I can't even tell you right now whether or not I  
15 would file a document in opposition. I simply don't know  
16 because the first time I saw the information in its detail  
17 was this morning.

18 MR. STUBCHAER: How would the rights of other  
19 parties in this proceeding be handled?

20 MR. SOMACH: My understanding is that we were the  
21 only ones that objected to the testimony.

22 MS. KATZ: We haven't seen the document you are  
23 talking about, staff hasn't.

24 MR. STUBCHAER: He is just going to introduce it.

25 MR. VOLKER: I have offered it, but I was told I  
26 should not offer it to the staff until I offered it in the  
27 open hearing. It is our Sierra Club proposed Exhibit 12. I  
28 would be happy to circulate it now for your examination.

29 MR. STUBCHAER: Well, go ahead. Do you have any  
30 other exhibits that need to be passed out?

31 MR. VOLKER: I don't believe so.

32 MR. STUBCHAER: Will staff distribute that while we  
33 are going over the rest of the exhibits.

34 MR. SOMACH: I will tell you on behalf of the  
35 exhibit it is a pretty straightforward document and I don't  
36 know, again, whether or not we have any objection to it  
37 simply because I need certain people to look at it.

38 MR. STUBCHAER: The other parties need to be able to  
39 look at it, too.

40 Please proceed.

41 MR. VOLKER: Mr. Stubchaer, the other exhibits I  
42 would offer would be PM-1 through PM-4, and the MS-1, GC-1  
43 through GC-3, and RC-1 through RC-27.

44 I will withdraw the MS-1 since Mr. Skinner was  
45 unavailable for testimony. I will withdraw that.

1 MR. STUBCHAER: Also, number the Declaration.

2 MR. LAVENDA: Twelve.

3 MR. STUBCHAER: Is that it, Mr. Volker?

4 MR. VOLKER: Yes.

5 MR. STUBCHAER: Are there any objections to the  
6 receipt of these exhibits other than the one indicated by  
7 Mr. Somach, No. 12? Hearing no objections, all except 12  
8 will be received at this time. I will rule on No. 12 at the  
9 conclusion of Amador County's cross-examination to give the  
10 parties a chance to read the declaration in case there was  
11 objection.

12 MR. VOLKER: Thank you.

13 MR. STUBCHAER: Mr. Gallery, are you ready for  
14 cross-examination?

15 MR. GALLERY: We are, Mr. Stubchaer.

16 My thought was perhaps I could run through briefly  
17 our exhibits, our other exhibits in addition to the  
18 testimony in case there is any cross-examination that might  
19 relate to that.

20 MR. STUBCHAER: All right.

21 MR. GALLERY: Amador's Exhibit No. 1 is a copy of an  
22 excerpt from PG&E's 1968 report to FERC prior to PG&E's  
23 filing its application for a new license.

24 We are asking to put this into evidence, first,  
25 because it has a really nice artist's rendering of the South  
26 Fork. It is in color. It's the fourth page into the  
27 document.

28 But beyond that, there is the statement in here that  
29 PG&E has been operating Silver Lake to hold lake levels up  
30 in the summertime and that appears on page 2 and on page 4,  
31 and other pages in the document describe the recreational  
32 resources at Silver Lake on pages 25 to 33, and then Plate 5  
33 has a map showing the various recreation facilities at  
34 Silver Lake in color, all of which we think shows the  
35 existing conditions up at the lake.

36 Exhibit No. 2 is PG&E's Exhibit S, which was filed  
37 with the application, the renewal application in 1970. And  
38 Exhibit S contains the statement that PG&E has been  
39 operating and will operate Silver Lake to keep the lake  
40 levels up in the summertime, and I have highlighted that on  
41 pages 4 and 5 of that exhibit.

42 PG&E's submitted its license with its exhibits and  
43 stated that Exhibit S was a part of it.

44 MR. STUBCHAER: Which witness testified about these  
45 terms that you are pulling out of the exhibit?

1 MR. GALLERY: Well, actually, Mr. Clark has  
2 testified about the recreational resources at Silver Lake,  
3 but these are documents which we intend to submit as  
4 independent evidence unrelated to the witnesses' testimony  
5 as documents on file with FERC wherein PG&E has described  
6 the recreational facilities at the lake.

7 Now is there a problem with that kind of evidence?  
8 That seems to me to be relevant and appropriate evidence in  
9 describing for the Board what has been happening up there  
10 and what the recreational resources are. And we didn't  
11 intend to have any witness testify to that. The documents,  
12 we think, speak for themselves.

13 MR. STUBCHAER: All right, proceed.

14 MR. GALLERY: And then, I did want to ask, PG&E  
15 claim Exhibit S is part of the license which was in Exhibit  
16 2. I did not find an Exhibit S in my exhibit package. Did  
17 staff find an Exhibit S in PG&E's Exhibit No. 2?

18 MR. LAVENDA: I will have to check.

19 MR. GALLERY: Let's just pass with it. We would  
20 like to put it in because in our exhibit we highlight the  
21 portion we think is the most relevant to the hearing.

22 Our Exhibit No. 3 are excerpts, or has excerpts from  
23 the license that was issued to PG&E in 1980, Project No.  
24 184, and we have highlighted on pages 5, 6 and 7 FERC's own  
25 description of the recreational --

26 MR. LAVENDA: Excuse me, Exhibit S is in PG&E's  
27 Exhibit No. 2.

28 MR. GALLERY: It was a part of yours?

29 MR. LAVENDA: Yes.

30 MR. GALLERY: I couldn't find it in mine. I was  
31 puzzled by it. The FERC license that was actually issued in  
32 1980 did describe in some detail on pages 5, 6 and 7 the  
33 recreational facilities and the potential at Silver Lake,  
34 noting on page 14 and 21 that there was a heavy recreational  
35 demand and, in fact, additional recreational facilities were  
36 needed to satisfy it.

37 MR. SOMACH: Mr. Gallery is testifying with respect  
38 to every one of these exhibits. Do they have numbers? I  
39 will object to the ones he hasn't put in any testimony on  
40 with respect to.

41 MR. STUBCHAER: Yes, it appears you are testifying.

42 MR. GALLERY: Well, I don't mean to. I do want to  
43 draw the Board's attention to the portion of the exhibits we  
44 think are relevant.

1 MR. STUBCHAER: You can say the portions that are  
2 important are highlighted.

3 MR. GALLERY: The next exhibit, No. 4, which is a  
4 revised Exhibit R, the recreational exhibit that was filed  
5 by FERC, and if the Board would note, I have highlighted the  
6 portions in pink in the margin that are relevant, and also,  
7 the maps which are attached to the recreation Exhibit R.

8 Similarly, on Amador's Exhibit No. 5 is the FERC  
9 order approving the revised Exhibit R, and I have  
10 highlighted the portions that are important there.

11 Amador Exhibit No. 6-A and B is the original land  
12 office plot of the survey of the two townships in the  
13 vicinity of Silver Lake ion 1877, and these are certified  
14 copies of the official various plats of the land office and  
15 they show in 1977 there was a Silver Lake there, which had  
16 an acreage of 322 surface acres.

17 Amador Exhibit No. 7 is an exhibit by reference to  
18 the California Water Plan Bulletin No. 3, which was  
19 published in 1957, and we have included pages 112 to 116  
20 which describe what the California Water Plan contemplated  
21 by way of development in the South Fork American.

22 Mr. Schuler did testify as to the contents of the  
23 plan and how Amador sees this plan as assuring the  
24 protection of the lakes there for recreational use. And, of  
25 course, the key issue in here is El Dorado is asking for  
26 assignment of the State filing and our position is that the  
27 assignment could not be inconsistent with this plan.

28 MR. STUBCHAER: Now you are arguing.

29 MR. GALLERY: Excuse me, I will go on, Mr.  
30 Stubchaer.

31 Then, Exhibit 8 and 9 are Mr. Schuler's testimony.

32 Exhibits 8 through 12 and Exhibit 15 are the  
33 qualifications and testimony of our witnesses. Exhibits 13  
34 and 14 relating to Mr. Alverson's testimony, we will  
35 withdraw.

36 Exhibits 16 and 17 relate to the fact that Highway  
37 88 as it goes from Jackson up past Silver Lake into Nevada  
38 County line has been designated by statute as a scenic  
39 highway. And Amador Exhibit 16 is the County adoption of  
40 the scenic highway element in its general plan to conform  
41 with State law. And Exhibit 17 is Caltrans' own report on  
42 the scenic highway, a report on Route 88 as it goes up  
43 through Amador County.

1 MS. KATZ: Mr. Gallery, Exhibit 17 you are offering  
2 by reference. Are there specific pages in there or are you  
3 offering the whole thing?

4 MR. GALLERY: I'm offering the whole thing, Ms.  
5 Katz. However, it is paragraph 2.D in the report which  
6 describes Silver Lake and 13 is the photo of Silver Lake in  
7 the report.

8 And Exhibit No. 18 is the document from the old 1969  
9 survey report describing how PG&E was operating Silver and  
10 Caples Lakes at that time, and Mr. Lynch in this proceeding  
11 testified that's basically how it is being operated today,  
12 and that has been offered into evidence, and then, we come  
13 to the four additional exhibits which we distributed this  
14 morning.

15 Exhibit 19 is a copy of a PG&E map which I filed  
16 with FERC as Exhibit K-4. I have now learned that this map  
17 has been filed by El Dorado as a part of its application, so  
18 it is in the file of the Board with the applications that  
19 are before the Board. So, I think 19 is not needed and does  
20 not need to be offered.

21 MR. LAVENDA: You are withdrawing it?

22 MR. GALLERY: Yes, I will withdraw 19.

23 Amador Exhibit 20 contains conditions that are  
24 proposed by Amador County which it believes the Board needs  
25 to incorporate into a permit in order to protect the  
26 interests at Silver Lake.

27 And finally, Exhibit No. 21 is a decision of this  
28 Board in 1988, wherein the Board granted a temporary permit  
29 to El Dorado County to appropriate an additional 5,000 acre-  
30 feet of this supplemental PG&E water, and the purpose of  
31 that is to show that, in fact, El Dorado County needed  
32 that --

33 MR. SOMACH: Objection.

34 MR. GALLERY: Well, I would like to explain the  
35 relevance of it, Mr. Chairman. It seems to me we can't  
36 object to --

37 MR. SOMACH: There has been no testimony as to any  
38 of this.

39 MR. GALLERY: Well, we have had El Dorado showing  
40 that by the year 2020 it may need -- the testimony is that  
41 it will not need any additional supplemental water until  
42 after 1997, and then there will only be a gradual increase  
43 in the need up to the year 2020, when it has an additional  
44 115,000 people.



1 A I don't know what year PG&E took over the dam. We  
2 were discussing that. The Blue Lake Company and some others  
3 had it before PG&E took it over. We have records when we  
4 were discussing the scenic highway element adoption that  
5 people used to come up from Stockton and Sacramento when  
6 there was a dirt road there and it was the Alpine Highway,  
7 and they used to go to Caples Lake and Silver Lake, and it  
8 goes back to trading with the Indians, as recreation even  
9 those days.

10 Q But prior to PG&E's involvement?

11 A I am not sure what year PG&E became involved, but we  
12 are talking in the early 1900s that we have evidence of the  
13 recreation.

14 Q Has Amador County been able to define PG&E's  
15 historic operation to any level at all, Mr. Schuler?

16 MR. SCHULER: A What we took was what was in the  
17 environmental document as the data that we were going to  
18 base our agreement with El Dorado on, and we referenced that  
19 with the USGS records, too, to get compliance with those  
20 pieces of data.

21 So, to answer your question, that information has  
22 been submitted to the USGS, is what we relied on for the  
23 historical level.

24 Q You are not a neophyte in regard to planning dams,  
25 planning water projects; are you?

26 A Many of our people -- there are many more of our  
27 people that are more experienced than I. I would consider  
28 myself a neophyte.

29 Q Do you have criteria in Amador County that would be  
30 sufficient to set standards for PG&E and El Dorado in the  
31 operation of those lakes that you have proposed either to  
32 the Board or to the developer, the applicant?

33 A If you are speaking of standards being what we  
34 would --

35 Q Flows?

36 A Well, we based everything on lake levels,  
37 elevations, or staff readings on the lake at the outlet of  
38 the dam.

39 Q And have you submitted those here as permit  
40 conditions?

41 A I believe one of those is already in the exhibit.

42 Q One of your proposed conditions is that El Dorado  
43 and PG&E not be allowed to make further agreements. What is  
44 the purpose of that?

45 A John might be the person to answer that.

1 MR. HAHN: A I don't think there's a blanket  
2 prohibition in these conditions that would indicate that  
3 PG&E and El Dorado couldn't make an agreement. It is that  
4 we would like to see the State Water Resources Control Board  
5 recognize the lake levels in that agreement and that there  
6 wouldn't be any kind of reduction of lake levels below  
7 specified levels through that agreement.

8 Q In Condition 3 --

9 MR. GALLERY: Could you point that out, Mr. Jackson,  
10 where you are referring to?

11 MR. JACKSON: Yes, Condition 3-A.

12 A The important word in 3-A, Mr. Jackson, it says  
13 specifically prohibit any further agreement, and then  
14 skimming down, for or which causes any change or  
15 modification in PG&E's operation at Silver Lake temporarily  
16 or otherwise.

17 MS. KATZ: This is exhibit 20?

18 A This is Exhibit 20, and in paragraph 2, it talks  
19 about not entering into an agreement that would, in essence,  
20 change the operation of PG&E of Silver Lake.

21 MR. JACKSON: Q Assuming that the condition in  
22 which the EIR identifies a specific mitigation for the Lotus  
23 reach of the South Fork of the American River that PG&E's  
24 and SMUD's water deliveries need to be reoperated. Would  
25 you agree to a drawdown at the lakes for any purpose even if  
26 it was necessary for PG&E to do for recreation lower on the  
27 river?

28 A You have to understand I am an attorney with a  
29 client. My client is five supervisors. I have only one  
30 here, the chairman, and consequently, I couldn't state  
31 formally a position of the Board of Supervisors at this  
32 time.

33 My inkling, my feeling is that the answer to your  
34 question is that the Board would resist releases for fish  
35 purposes that would impact on Silver Lake as well as for  
36 consumptive water use in El Dorado County.

37 Q And for that you would resist fish purposes, you  
38 would resist the white water rafting purpose if the only way  
39 that those problems could be met was to compound your  
40 problems?

41 A Yes, I would consider those to be El Dorado's  
42 problem with this project, not Amador County's, and that the  
43 solutions to their problems should not come at the expense  
44 of Amador County.

1 MR. JACKSON: Thank you. I have no further  
2 questions.

3 MR. CLARK: A Mr. Jackson, you asked what year and  
4 I have it, 1928 to 1930 is when PG&E took it over.

5 MR. JACKSON: Q And there was recreational  
6 development using --

7 A Highway 88.

8 Q Highway 88 and Silver Lake prior to that date in  
9 your County?

10 A Yes.

11 MR. JACKSON: Thank you. I have no further  
12 questions.

13 MR. STUBCHAER: Staff?

14 EXAMINATION

15 by MR. LAVENDA:

16 Q Mr. Clark, you testified as to some person day uses,  
17 I believe at Silver Lake, in terms of high recreation use.  
18 To your knowledge, did those numbers identify the origin of  
19 any of the day users or the recreationalists at the lake?

20 MR. CLARK: A In about 1986, the County was working  
21 with the U. S. Forest Service on the future recreational use  
22 determination environmental document and the 80,000  
23 recreation visitor days for campground users alone came from  
24 that document, and that was in the Highway 88 corridor.  
25 That wasn't just on Silver Lake. That was probably from  
26 Bear River Resort clear over to Caples and beyond.

27 I believe Janice Gordon testified to the actual  
28 number of Silver Lake, and in that document there are actual  
29 Silver Lake numbers. I have them elsewhere. I could find  
30 them, but I think she testified to that.

31 Q I am curious as to place of origin other than  
32 outside the country, the place of origin of these users.  
33 Specifically, do you have any idea how many of these come  
34 from El Dorado County?

35 A I don't know about El Dorado County, but in the  
36 document I recall, it is in my testimony, I believe, over 80  
37 percent of it comes from the Bay Area, Stockton -- I believe  
38 it is around 80 percent comes from Stockton and the  
39 Sacramento and Bay Area.

40 Q I think you used the term metropolitan areas. Does  
41 the Sacramento metropolitan area include the geographical  
42 areas to the east of us, i.e., El Dorado County?

43 A El Dorado County, probably the western portion there  
44 is some use, but we have noticed that comes up Iron Mountain  
45 Road sometimes. There is a lot of traffic up on Mountain

1 Road. We assume a lot of it would be from El Dorado County,  
2 because that's where it goes through.

3 Q You testified that you have been a planner for how  
4 many years?

5 A Thirteen years.

6 Q And that includes the period of time in which a  
7 slide occurred in the South Fork American River between Iron  
8 Mountain Road turnout and the Kyburz area?

9 A Yes.

10 Q And Pioneer Trail became one of the main routes over  
11 the Sierra into the Tahoe basin, as I recall. Do you have  
12 any idea what the plausible cause of that slide might have  
13 been?

14 A It was a mud slide, I believe, that blocked Highway  
15 50 due to high rainfall. In the period it blocked Highway  
16 50 all the traffic came up 88 that normally would have used  
17 50. That's when we first found out what real traffic would  
18 be on Highway 88, and the recreation use for that matter,  
19 too.

20 Q Mr. Schuler, in your Exhibit 9 on page 3, the item  
21 right after item 2.B., there is a paragraph and let me read  
22 this: Amador County has made these filings, and we are  
23 talking about your application and petition with the State  
24 Board, for the express purpose of retention of a full level  
25 in Silver Lake to protect and assure a high level lake each  
26 year in June through September.

27 Q Is it a full level lake that you are referring to  
28 there, or is it a high level lake from June through October,  
29 or both? Can you clarify that for me, please?

30 MR. SCHULER: A Of course, the desire is a full  
31 level lake.

32 Q Is that the way it has been operated in the past?

33 A There have been times when it has been full, and I  
34 can look that up. More often than not, June, as I recall,  
35 was full at the start of the summer and it dropped off after  
36 that.

37 Q Well, it's through October --

38 A Then it really drops, September and October.

39 Q So there is no inference by your statement that you  
40 would expect a full lake in June through October; is there?

41 A No, that's wishful thinking.

42 Q On that same page you read in its entirety the  
43 paragraph near the bottom speaking about Bulletin 3 of the  
44 Department of Water Resources, the 1957 version.

1           It is my understanding there's about a five-year  
2 cycle for update required by the Department of Water  
3 Resources, and this doesn't always occur, but did you have  
4 some reason for selecting the 1957 version as opposed to a  
5 more recent version?

6           A           No particular reason. The 1957 document was  
7 available.

8           Q           And it is your contention from that document that  
9 the reservoirs, particularly Silver Lake, is not included as  
10 a place of storage in that document?

11          A           That's what I got out of the document by reading it.  
12 There is a small diversion in that plan below Silver Lake,  
13 though on the California Plan.

14          Q           On what streams?

15          A           I believe that was the South Silver Fork. I would  
16 have to look it up.

17          Q           I think there was testimony to the effect that was  
18 being considered for wild and scenic, so we could almost  
19 forget that. I don't know if we could or not.

20                 MR. STUBCHAER: You are testifying. Just ask.

21                 MR. LAVENDA: Q Going to the last page, page 5 of  
22 your testimony, there are some numbers there that you used  
23 in calculations to justify the amount of water that Amador  
24 County was requesting out of Silver Lake, and you make the  
25 statement, to provide a margin of safety you double these  
26 numbers.

27          A           That is correct.

28          Q           What is the source of these numbers?

29          A           The Forest planned future recreation use  
30 determination in 1988, the Highway 88 future recreation use  
31 determination.

32          Q           That gave you the population number, or as you call  
33 it, the persons at one time number?

34          A           That's correct.

35          Q           Where did you get the water consumption numbers?

36          A           Those were assumed. Those broke out the overnight  
37 users from the day users and assumes that 50 gallons per day  
38 per capita would be the overnight visitors and 10 gallons  
39 per days for the day users. That's an assumption on my  
40 part.

41          Q           And then, you proceeded to double these number?

42          A           When I got down to the end, I doubled it for any  
43 unknown factors for land-use management that might come into  
44 the future that we were unaware of, a safety factor of two.

1 Q You are doubling the population or the numbers, or  
2 just the total amount of water requested?

3 A Just the acre-feet.

4 Q Are you familiar with the testimony that was given  
5 as to the per capita consumption rates for the western area  
6 of El Dorado Irrigation District?

7 A I don't remember those numbers offhand. I was here,  
8 I believe, when they stated those numbers.

9 Q And these numbers that you used were just an  
10 assumption on your part?

11 A An assumption on my part in that based on what we  
12 now know in one of our service areas that's considerably  
13 down hill, so to speak, elevation about 3500, the average  
14 consumptive use for the area is about 135 gallons per day  
15 per connection on the average.

16 So, that's based on 2.8 people per connection.

17 So, with that, this is a high number, the 50 gallons  
18 per capita per day for overnight visitors. I believe at  
19 that kind of elevation, that's assuming everybody has dinner  
20 and takes showers and things like that, which probably isn't  
21 the case necessarily in this tourism area.

22 Q Do you feel comfortable with those?

23 A I feel comfortable that those are on the high side.

24 Q On the high side?

25 A Yes, sir, but not unreasonable.

26 MR. LAVENDA: I have no other questions.

27 MR. STUBCHAER: Okay, thank you.

28 Any redirect examination?

29 MR. GALLERY: No redirect.

30 MR. STUBCHAER: All right, we will consider  
31 acceptance of the exhibits. Are there any objections?

32 MR. SOMACH: Yes, Mr. Stubchaer, I object to  
33 Exhibits 1 through 6 on the basis that there was no  
34 foundation at all laid with respect to those exhibits.

35 I also object on the same basis to Exhibit No. 21,  
36 no testimony, no foundation at all.

37 I also object to Exhibit No. 12 and 12-A as being  
38 legal arguments or policy, and No. 15 as being a policy  
39 statement.

40 Finally, I renew my objection to Exhibit No. 18. No  
41 party testified to the truth of the statements contained  
42 within that document. Moreover, it was a surprise document  
43 that was submitted without any prior notice or warning to  
44 any party.

1 MR. GALLERY: Mr. Stubchaer, I will respond. First,  
2 Exhibit 18, I understood Exhibit 18 was admitted into  
3 evidence at the time. Is that not your recollection, Mr.  
4 Somach?

5 MR. SOMACH: I have actually no idea. I said I was  
6 renewing my objection for the record, in any event. I know  
7 there have been some rulings on these exhibits prior to this  
8 time.

9 MR. STUBCHAER: Exhibit 18 was admitted.

10 Mr. Gallery, going back to the objection of Mr.  
11 Somach to exhibits 1 through 6, let me run through 5. Our  
12 documents from that pertain to the FERC license and these  
13 documents have been filed by the PG&E, the holder of the  
14 license, and they illustrate in various ways --

15 MR. STUBCHAER: I think those are in the public  
16 record and haven't been testified to, so the weight may be  
17 less than would be given had they been testified to. I am  
18 talking about 1 through 5.

19 MR. GALLERY: Are you asking for testimony as to  
20 those? My understanding is that documents from the public  
21 records are admissible.

22 MR. STUBCHAER: And we are receiving them.

23 MR. GALLERY: Now, Exhibits 6-A and 6-B are  
24 certified copies of the official survey plats of Silver Lake  
25 in 1877, bearing the official record stamp of the Bureau of  
26 Land Management, and depict the actual existence of a 300-  
27 acre Silver Lake in 1877.

28 It seems to me to be admissible beyond any question.

29 MR. STUBCHAER: I think they are admissible, but Ms.  
30 Katz will give a statement on the weight given to some of  
31 these exhibits at the conclusion.

32 MR. GALLERY: I know of no better way to show the  
33 presence of Silver Lake in 1877 than the official government  
34 survey.

35 MR. STUBCHAER: Right.

36 MR. GALLERY: Then, with respect to Exhibit 5, which  
37 is the testimony of Amador County Supervisor, Chairman  
38 D'Agostini. I think she is stating the concerns of the  
39 County with respect to El Dorado's application, and --

40 MR. STUBCHAER: I believe it is acceptable even  
41 though it may be part policy statement. There have been  
42 similar instances with other presentations and it will be  
43 admitted.

44 MR. GALLERY: All right. Then we come to Exhibit --  
45 I think Mr. Somach's last objection was Exhibit No. 12.

1 MR. SOMACH: Exhibits 12 and 12-A.

2 MR. GALLERY: I'm sorry. The testimony of Mr. Hahn,  
3 County Counsel -- well, as Mr. Hahn testified, he has been  
4 visiting Silver Lake for many years and well knows the  
5 conditions up there, and testified as to his own concern and  
6 need for protective conditions. And I think in and of  
7 itself that's sufficient for the admission of his testimony.

8 He also addressed the adequacy of the EIR and I  
9 think that this Board, in passing on this application, has  
10 to be advised as to whether or not the EIR is adequate. I  
11 believe that you have got to be satisfied as to the adequacy  
12 of the EIR, and if you find that there is any --

13 MR. STUBCHAER: Well, we will respond to that right  
14 now.

15 MS. KATZ: Regarding the adequacy of the EIR, as I  
16 mentioned at the beginning of the hearing, that is not  
17 relevant to this hearing. By law, we must assume it is  
18 adequate until or unless a judge rules otherwise.

19 We have certainly taken notice that there are  
20 lawsuits pending regarding its adequacy, but to the extent  
21 that Mr. Hahn, or anyone else, and there has been some other  
22 testimony submitted with comments regarding the adequacy of  
23 the EIR, but that is not relevant.

24 To the extent that anyone's testimony concerns that,  
25 it is not relevant, but if it is included in other documents  
26 that have been admitted, that's okay. It just goes to the  
27 weight, and certain things we just ignore.

28 MR. GALLERY: With all due respect, I feel the Board  
29 -- it's true that legally you must accept it as an adequate  
30 document, but I think in making your decision you have to be  
31 satisfied that there are adequate mitigation measures set  
32 forth in there and you are not bound by what the applicant  
33 thinks is adequate mitigation or what the applicant thinks  
34 is adequate capacity.

35 The Board can undertake it's own review in its  
36 responsibility as the responsible agency, and the Board will  
37 do that.

38 MR. STUBCHAER: What we are talking about right now  
39 is the admission. I will rule that this will be accepted,  
40 but the portions that are not applicable will have very  
41 little weight.

42 MR. GALLERY: And then, we come to Amador County  
43 Exhibit 21, which is the Board's 1988 decision on the El  
44 Dorado application for temporary permit. I was a little  
45 disturbed that various relevant applications that are in the

1 Board's files were made a part of the record by the staff,  
2 but that here we had a 1988 permit by El Dorado for some  
3 emergency water that was not made a part of the Board's  
4 staff exhibits.

5 It seemed to me it should have been from the  
6 beginning, but it wasn't, and so, my thought was first to  
7 offer the entire record pertaining to this application and  
8 permit into evidence at this hearing. But I didn't. I was  
9 only offering the Board's order itself, which discusses the  
10 problems that El Dorado was having five years ago with  
11 adequacy of supply with its then population and its need for  
12 additional water, and I thought that was pertinent to the  
13 question of whether its estimated future needs which will  
14 not begin for another five years, and then rise gradually --  
15 I thought it was pertinent.

16 MR. STUBCHAER: We can certainly take note of our  
17 own order and we will accept it. It's already in our own  
18 records.

19 MR. SOMACH: There is a difference between accept  
20 and take judicial notice of it. Just in comment, and I know  
21 you have ruled, but if I could be heard --

22 MR. STUBCHAER: Yes, you may.

23 MR. SOMACH: With respect to Exhibits 1 through 6,  
24 as well as this last Exhibit 21, the problem, of course, is  
25 that each one of those exhibits are based upon certain or  
26 are developed based upon certain facts, certain  
27 circumstances, certain issues.

28 This last exhibit is the classic example of that, by  
29 not having any testimony and just having Mr. Gallery argue  
30 its relevance. There is no foundation, there is no nexus  
31 between whatever is in those documents and that's the crux  
32 of the objection that I raise here. I just want to make  
33 sure that the record reflects it. It makes it impossible to  
34 cross-examine. It makes it impossible to really understand  
35 anything other than the argument that Mr. Gallery has made  
36 with respect to those documents.

37 MR. STUBCHAER: I see your point and it has a  
38 certain amount of merit. I am going to ask Ms. Katz to read  
39 a quote from a section of our rules on procedure regarding  
40 the weight given to the evidence.

41 MS. KATZ: To the extent that those documents are  
42 hearsay, I will read from our regulations which are  
43 contained in Title 23, found at Section 761(d) evidence. I  
44 will read it in its entirety:

1           *The hearing need not be conducted according*  
2           *to the technical rules relating to evidence and*  
3           *witnesses. Any relevant, non-repetitive*  
4           *evidence, shall be admitted if it is the sort*  
5           *of evidence on which responsible persons are*  
6           *accustomed to rely on in the conduct of serious*  
7           *affairs. Hearsay evidence, which some of this*  
8           *is, may be used for the purpose of*  
9           *supplementing or explaining any direct*  
10           *evidence, but shall not be sufficient by itself*  
11           *to support a finding unless it would be*  
12           *admissible over objection in civil actions.*

13           There is some more that doesn't apply.

14           MR. STUBCHAER: Is that the key point?

15           MS. KATZ: Yes, but regarding hearsay evidence to  
16           the extent that it has not been testified to, and that there  
17           is nothing else to use with it, it is really of no  
18           consequence, but it's certainly admissible.

19           MR. GALLERY: We think it is highly relevant for  
20           the reason it is describing what conditions are existing up  
21           there and I don't think anybody can reasonably quarrel with  
22           that.

23           I think Mr. Somach's premise is that nothing is  
24           going to happen up there, so whatever is there is there, and  
25           I take it he thinks there is no need to hear any evidence  
26           pertaining to that, but that's where we digress, of course.  
27           We believe --

28           MR. STUBCHAER: I gathered that his objection is  
29           that he hasn't heard the evidence, so he can't cross-examine  
30           on the evidence. These are exhibits which have been  
31           submitted, but not testified to.

32           MR. GALLERY: Well, we view them as akin to being  
33           official documents. Exhibit S, which is on file and which  
34           is apparently part of the FERC license, we consider that to  
35           be an official government record and these other documents  
36           are of the same nature.

37           MS. KATZ: Official documents are admissible. We  
38           can also take notice of them, and again, most of these  
39           objections go to the weight to be given this stuff, and just  
40           because it is admitted doesn't mean that it is something  
41           that the Board can rely upon or should rely upon, or can  
42           legally rely upon, so there is a difference between  
43           accepting something into evidence and what we do with it  
44           once we have gotten it.

1           MR. GALLERY: I certainly hope that the Board will  
2 have no question about the authenticity of the documents  
3 that are from PG&E's FERC license.

4           MR. LAVENDA: They are part of the file.

5           MR. JACKSON: Mr. Stubchaer, could I ask Ms. Katz a  
6 question?

7           MR. STUBCHAER: All right.

8           MR. JACKSON: Ms. Katz, as I understand it, the  
9 document in question is an official Board order.

10          MS. KATZ: Right.

11          MR. JACKSON: And clearly, that's an exception to  
12 the hearsay rule in any court in California that I know of.  
13 Our own records are that it is clearly not hearsay because  
14 it is an exception, the Official Records Act.

15          MS. KATZ: Yes.

16          MR. JACKSON: So, it is probative.

17          MS. KATZ: I wasn't arguing that we shouldn't accept  
18 it.

19          MR. JACKSON: But you were talking about its use.

20          MR. STUBCHAER: She didn't say it was hearsay.

21          MS. KATZ: We have a lot of documents here.

22          MR. STUBCHAER: All right.

23          MR. LAVENDA: Mr. Stubchaer, before we leave this  
24 issue, I would like to clarify for the record Amador Exhibit  
25 No. 20, conditions proposed by the County of Amador,  
26 proposed to whom for what purpose?

27                 Is this an agreement between Amador and El Dorado,  
28 of what is it?

29          MR. GALLERY: No, Mr. Lavenda, these are the  
30 conditions that Amador proposes as necessary to protect  
31 Silver Lake. We are submitting them to the Board as  
32 conditions we think are necessary for the permits.

33          MR. STUBCHAER: Thank you.

34                 Staff, do you have anything more before we excuse  
35 this panel?

36                 Okay, thank you very much. Before you leave, if you  
37 are leaving, you need to get back to the Sierra Club Legal  
38 Defense Fund Exhibit No. 12, the Declaration by the County  
39 Surveyor.

40                 Does anyone object to receipt of that exhibit into  
41 evidence? All right, we will receive it under the terms  
42 outlined by Mr. Somach.

43          MR. VOLKER: Thank you.

44          MR. STUBCHAER: We will take a 12-minute break and  
45 return about five after three.

1 (Recess)

2 MR. STUBCHAER: We will come back to order and  
3 continue the El Dorado water rights hearing.

4 The next party to give testimony is Mr. Paul Creger,  
5 but I understand there may have been a switch reached by the  
6 parties. Is that right?

7 MR. JACKSON: Yes. Mr. Creger said it would be okay  
8 if Friends of the River put on their panel to make sure we  
9 got it over.

10 MR. STUBCHAER: That's hearsay unless he is in here.

11 MR. JACKSON: He went to work on his material.

12 MR. STUBCHAER: All right, go ahead.

13 MR. JACKSON: Mr. Stubchaer, I believe that two of  
14 the witnesses have not been sworn.

15 (The witnesses were sworn.)

16 MR. JACKSON: Mr. Stubchaer, as a matter of house-  
17 keeping, we also have a handout, like everybody else. It is  
18 a summary of the testimony of Steve Evans for Friends of the  
19 River.

20 MR. STUBCHAER: Do you want to assign a number to  
21 it, Mr. Jackson?

22 MR. JACKSON: Mr. Evans, was that to be a  
23 substitution for your original testimony, or in addition?

24 MR. EVANS: It is in addition.

25 MR. LAVENDA: 1-A.

26 MR. JACKSON: 1-A, I believe.

27 I believe it would be useful, Mr. Stubchaer, if I  
28 would make a short opening statement which will be attached  
29 to our time limit here.

30 First of all, Friends of the River is the largest  
31 group of people involving protection of the river in the  
32 State of California.

33 The main part of our testimony will be directed  
34 toward the Lotus reach of the South Fork American River,  
35 which is the single-most popular, and in many ways, the most  
36 important white water rafting river in California.

37 We believe that the EIR correctly identifies the  
38 effects of this project on white water rafting.

39 Our evidence will show that 100,000 people use this  
40 every year and that the major problem with this particular  
41 project is that it will divert water above the area of the  
42 Lotus reach. The 17,000 acre-feet goes out before it comes  
43 into the PG&E powerhouse in Chili Bar.

44 The individuals who are testifying are experts in  
45 their field, and with no further ado, we will get to them.

1                                   STEVEN L. EVANS,  
2                   having been sworn, testified as follows:  
3                                   DIRECT EXAMINATION

4 by           MR. JACKSON:

5 Q           Mr. Evans, is Exhibit No. 1-A a true and correct  
6 rendition of your testimony and qualifications in this  
7 regard?

8 A           That's correct, particularly in terms of the  
9 qualifications in my original submitted testimony, and I did  
10 not repeat that in my summary.

11 Q           Mr. Evans, would you state your complete name and  
12 your occupation, sir.

13 A           Steven L. Evans, Conservation Director of Friends of  
14 the River.

15 Q           Mr. Evans, would you summarize your testimony,  
16 please.

17 A           It can be broken down into three general areas, the  
18 first of which deals with the implied federal water rights  
19 associated with federal protective designations, primarily  
20 wilderness and wild and scenic rivers.

21           Lake Aloha and Pyramid Lake are located in the  
22 Desolation Wilderness areas. Caples Creek and the Silver  
23 Fork American River flow through the Caples Creek wilderness  
24 area, which has been recommended for wilderness designation  
25 by the U. S. Forest Service. Caples Creek and the upper  
26 South Fork American River have been determined eligible for  
27 National Wild and Scenic River status by the U. S. Forest  
28 Service in recognition of the wild trout values of Caples  
29 Creek and the outstanding recreation and historic values of  
30 the upper South Fork.

31           Pyramid Creek is currently under study by the Forest  
32 Service in regard to its wild and scenic potential primarily  
33 as a result of an out-of-court settlement with Friends of  
34 the River.

35           The BLM is expected to assess the wild and scenic  
36 potential of the Lotus reach of the lower South Fork land-  
37 management planning process.

38           Wilderness and wild and scenic designations carry an  
39 implied federal water right associated with the natural  
40 values which the special designation is intended to protect.

41           We believe that the acquisition of water rights for  
42 the El Dorado project should be conditioned to protect the  
43 implied federal rights associated with the special natural  
44 values of the downstream wilderness, recommended wilderness  
45 area in the downstream stretches of the reach, which is

1 eligible for wild and scenic, and for which Congress will  
2 eventually be considering whether they should be designated.

3         The second issue is one of the South Fork being a  
4 navigable waterway and protection of the public trust  
5 values. The South Fork American River is clearly a  
6 navigable waterway within the context of Title 10, Section 4  
7 of the California Constitution.

8         White water recreation on the South Fork is clearly  
9 a public trust value in the context of the Constitution.

10         The El Dorado project will impact this value by  
11 establishing a permanent low flow schedule and by reducing  
12 the period of flow an average of 40 minutes per day, as we  
13 have heard from the applicants' testimony.

14         This will reduce the potential for increased white  
15 water boating and degrade the quality of the current  
16 experience as well as increase the potential for stranding  
17 and accidents.

18         Recreational boating on the South Fork should be  
19 enhanced by the El Dorado project as beneficial use under  
20 California's public trust doctrine. We believe there should  
21 be a condition on their application. This can be  
22 accomplished by restricting the project's diversion to the  
23 lower practicable point which is the Folsom Reservoir and by  
24 establishing an optimum flow schedule, not a minimum flow  
25 schedule, for private and commercial boaters, again  
26 considering that white water recreation is as much a  
27 beneficial use for water in El Dorado County as, say,  
28 filling swimming pools in El Dorado Hills.

29         The third point in my testimony concerns waterways  
30 and conservation. According to the County's own EIR, their  
31 current water system sustains a systemwide loss of  
32 approximately 27 percent. The EIR maintains this loss will  
33 be reduced to 15 percent by the year 2010. Nevertheless,  
34 they are applying here today for considerable additional  
35 water rights.

36         The EIR also states that the County's water  
37 conservation program consists of public awareness efforts,  
38 corrosion control, water meter repair and replacement, and  
39 correction of system losses.

40         We believe that additional water conservation  
41 measures should be required as part of their water rights  
42 acquisition. Friends of the River is a signatory to the  
43 Memorandum of Understanding regarding conservation in  
44 California dated September, 1991, what we call the Urban  
45 Water Conservation MOU.

1           This MOU is a current statewide standard for water  
2 conservation and was adopted by the State Water Board as a  
3 condition of the Draft Decision 1630.

4           Many of the best management practices which are to  
5 be implemented under the MOU are evidently not part of the  
6 El Dorado County water conservation program, at least they  
7 are not listed in the EIR. And some of these best  
8 management practices include incentive programs, plumbing  
9 improvements for new and existing homes such as flow  
10 restriction devices, landscape water conservation  
11 requirements, commercial and industrial water conservation,  
12 and ultra-low flush toilet replacement.

13           El Dorado County and the El Dorado Irrigation  
14 District should be required to sign the MOU and implement  
15 its best management practices to conserve water as a  
16 condition of its water rights acquisition.

17           In addition, the County and the District should be  
18 directed to increase efforts to significantly reduce system  
19 losses before acquiring new sources of water.

20           Thank you.

21           MR. JACKSON: The next witness is Nathan Rangel.

22                           NATHAN RANGEL,

23                           having been sworn, testified as follows:

24                           DIRECT EXAMINATION

25 by           MR. JACKSON:

26 Q           Mr. Rangel, is Exhibit No. 2 a full and complete and  
27 true copy of your testimony in this regard?

28 A           Yes, sir.

29 Q           Would you give us your full name, summarize your  
30 expertise and summarize your testimony.

31 A           Certainly. My name is Nathan Rangel, R-a-n-g-e-l.  
32 I am President of the California Outdoors, an association of  
33 48 professional river outfitters in California.

34           In addition, I am the California representative and  
35 member of the Board of Directors of America Outdoors, a  
36 nationwide association of 300 professional outfitters.

37           I have been a resident of Coloma and El Dorado  
38 County since 1982. My wife and I established our river-  
39 outfitting company Adventure Connection on the South Fork of  
40 the American River in 1982.

41           Through our rafting business, I estimate that we  
42 have facilitated river trips for approximately 30,000 people  
43 on the South Fork, contributing something in the area of 7  
44 million dollars to the local economies, not to me  
45 necessarily, but to the local economies.

1 I have been a member of the State River Advisory  
2 Task Force since 1986 and was a member of the El Dorado  
3 County River Management Advisory Committee from 1985 to  
4 1992.

5 I am currently a member of the California Parks and  
6 Recreation Commission.

7 I have reviewed the final EIR of the El Dorado  
8 County water program and the El Dorado project, particularly  
9 the document's treatment of the river flows in this South  
10 Fork American River.

11 It is my professional opinion as an outfitter as  
12 well as a recreational boater that the proposed flow  
13 schedule delineated in the EIR, page 6-21, is an acceptable  
14 minimum and I emphasize minimum flow schedule for drought  
15 years. It is not a reasonable flow schedule during normal  
16 or high water years.

17 In my opinion, the optimum normal or high water year  
18 flow for boaters in all kinds of levels of experience in the  
19 lower South Fork American River is approximately 1750 cubic  
20 feet per second.

21 He highest proposed flow in the final EIR schedule  
22 is 12000 cubic feet per second, which is only 68 percent of  
23 this optimum flow.

24 Boaters can do with less than 1750 cubic feet per  
25 second, but only by sacrificing quality of recreational  
26 experience. As stated in the FEIR, the proposed flow  
27 schedule maintains the current volume of rafting  
28 particularly on weekend days important to commercial  
29 outfitters. The schedule provides no additional flows for  
30 future growth in the rafting industry, particularly on  
31 Sundays or weekdays.

32 In addition, as a resident, taxpayer and business  
33 owner residing in El Dorado County, I am troubled about the  
34 document's reliance on PG&E and SMUD to make even the  
35 minimum flows outlined in the FEIR.

36 I believe that since El Dorado County is acquiring  
37 20,000 acre-feet of water for beneficial use in the County,  
38 one of those beneficial uses should be to provide optimum  
39 boating flows on the South Fork of the American River.

40 Commercial and private boating on the South Fork  
41 attracts, we believe, somewhere in the area of 30 million  
42 dollars in economic benefits annually to the rural economy  
43 of El Dorado County. Maintenance and growth of this clean  
44 industry is not possible without permanent assurance of

1 optimum flows to protect navigation and public trust values  
2 for current and future users.

3 The water proposed for acquisition in the FEIR can  
4 be conjunctively used simply by allowing it to flow down the  
5 South Fork into Folsom Reservoir. It can then be pumped  
6 from the reservoir to meet the County's growing consumptive  
7 needs.

8 Use of the lowest point of diversion would also  
9 eliminate possible reimbursement to PG&E and SMUD for  
10 possible hydro generation losses caused by the County's  
11 proposed upstream diversions, El Dorado Canal and White Rock  
12 diversion.

13 I urge the Water Resources Control Board to  
14 condition the County's request for water rights from Caples,  
15 Silver and Aloha Lakes by establishing an optimum, not  
16 minimum, flow schedule. Actually, what I really urge would  
17 be both an optimum and a minimum be established on the South  
18 Fork of the American which meets the current and future  
19 needs of commercial and private boaters.

20 I believe this can best be done by using water  
21 conjunctively; that is meeting boaters' needs and flows down  
22 the South Fork to Folsom and diverting it at that point.

23 I also feel, quite frankly, that conservation  
24 efforts needs to be more emphasized as Mr. Evans pointed  
25 out.

26 As a resident of El Dorado County, I support the  
27 need and I want to make this point, that we do support the  
28 need for the County to acquire additional water supply and,  
29 in fact, I have given testimony indicating our support of  
30 this project, but we do want to make sure we can do that  
31 without sacrificing the needs of the folks who utilize that  
32 resource on a daily basis.

33 Q Mr. Rangel, when you indicated that we agree with  
34 this project, you are speaking for whom?

35 A When I say, we agree, I am speaking for the 48  
36 professional river outfitters on the South Fork of the  
37 American River.

38 Q Not Friends of the River?

39 A Not Friends of the River.

40 MARK CHARLES TAYLOR,

41 having been sworn, testified as follows:

42 DIRECT EXAMINATION

43 by MR. JACKSON:

44 Q Mr. Taylor, give us your full name, please.

45 A Mark Charles Taylor.

1 Q And is your testimony as found in Exhibit 3 your  
2 true and accurate testimony in regard to this issue?

3 A It is.

4 Q Would you summarize that testimony, sir.

5 A I am a private rafter and own a white-water  
6 equipment store in San Rafael. I am also a part-time  
7 residence of El Dorado County.

8 Over the past five years, as a volunteer guide for  
9 Friends of the River, I have personally guided and/or  
10 accompanied approximately 2,000 private boaters down the  
11 river. Private rafting is probably the fastest growing  
12 segment of the river use on the South Fork American, and the  
13 proposed low flow schedule in the FEIR, pages 6 and 21, will  
14 make such rafting significantly less safe and less  
15 enjoyable, and I think would ultimately end up resulting in  
16 less use by private rafters.

17 The private rafter does not have the logistical  
18 support that an outfitter does. They have to come a one-  
19 to-three-hour driving time and to set up and organize their  
20 transit around the river by themselves. So, with a three-  
21 hour window of water, it could lead to numerous people being  
22 stranded on the river, increased accidents due to compacting  
23 of traffic, jamming of the boats.

24 Once an accident occurs, generally the boats have to  
25 back up behind -- it is like an accident on the freeway. If  
26 the water was dropping and there were 60 or 70 boats caught  
27 at a certain spot on the river, you might have several  
28 hundred people trapped overnight on the South Fork American.

29 I, like Nathan, would like to see -- ultimately this  
30 would end up in reducing the economic value to the county of  
31 such recreational use of the river. I, like Nathan, would  
32 like to see a minimum optimal flow established and I also do  
33 endorse or agree with Nathan that the best beneficial use is  
34 conjunctive use where the water is allowed to flow down the  
35 river for the recreational use and the economic value of  
36 that, and then taken from Folsom and used in El Dorado  
37 County there.

38 Q Mr. Taylor, what is the difference to an individual  
39 who is running the river if 40 to 50 minutes is cut off the  
40 amount of time daily when there are peak flows?

41 A Isn't that 40 to 50 minutes the average?

42 Q Yes.

43 A I guess what I am trying to say is that if you have  
44 a short window, you have to hurry your trip down the river.

1 Your margin of safety goes down because the river is lower,  
2 there is more damage and wear and tear on the equipment.

3 Basically, an average flow reduction doesn't give  
4 the indication of what it is on a specific case. It kind of  
5 washes over the impact.

6 Q Have you been present on the river when the water  
7 dropped?

8 A Yes.

9 Q What happened?

10 A Well, what happened is more people get hung up.  
11 There is, obviously, less water for the crafts to navigate  
12 and so there's more likelihood a boat is going to get  
13 stopped, more likelihood that the passengers are going to be  
14 closer, there is going to be less padding over the riverbed,  
15 the rocks, more likelihood of injury, and hence, the  
16 stoppage of traffic flow down the river.

17 Obviously, with lower water there is more likely to  
18 be damage, scraping, tear on expensive white water equipment  
19 which also could lead to a traffic jam as such on the river,  
20 and conceivably what has happened -- what has happened to me  
21 when the water has dropped is that we had to get out of the  
22 boats and walk the boats down the river.

23 Once again, six or seven people hiking a raft down  
24 the river is going to be potentially more hazardous and  
25 slower than going down on a flow.

26 Q Mr. Evans, what is the significance of the Mountain  
27 Democrat article that is Exhibit 4?

28 MR. EVANS: A The significance is that it shows the  
29 County's own figures on recreational use on the South Fork  
30 American River. It demonstrates that the County has records  
31 of 77,000 boaters during 1992, a drought year, a low flow  
32 year, and it splits that use up between commercial and  
33 private use, 44,000 user days of commercial use and 33,000  
34 user days of private use, and also, notes that that 33,000  
35 days of private use represents an increase of 9 percent,  
36 again during a drought year, which indicates private boating  
37 is increasing even during a drought year, and is likely to  
38 become the major factor in overall increased boating on the  
39 South Fork.

40 Now, keep in mind that the low flow schedule  
41 published in the FEIR greatly restricts flows during  
42 weekdays which are the primary growth area for private  
43 boaters who tend to not only stay away from boating on  
44 weekends because of the congestion, but as I am sure Nathan  
45 would verify, the river is pretty much maxed out on weekend

1 days. It's difficult to fit another boat in, so the growth  
2 in boating on the South Fork tends to be on weekdays, and  
3 that's when the flow schedule in the FEIR is most  
4 restrictive timewise.

5 Q Mr. Evans, calling your attention to the impact that  
6 has been identified as significant in regard to white water  
7 rafting, would there be an impact to the present white water  
8 rafting if El Dorado water was stored in Folsom Reservoir  
9 and not taken above Chili Bar?

10 A If the lowest diversion point practical was used,  
11 which I assume is Folsom Reservoir, that will allow that  
12 water to flow down the entire stretch of the South Fork into  
13 the reservoir, and therefore, it would be available for  
14 recreation, not only boating, but fishing and other water  
15 uses.

16 So, we feel that's very important. we submitted in  
17 our comments in the EIR that we felt that the County's  
18 consideration of the Folsom diversion alternative was very  
19 lightly considered and was thrown out for no real reason  
20 that we could find in the EIR as not being practical for  
21 some reason, and we felt that was an alternative that should  
22 be looked at in more depth.

23 In addition, I think I remain confused as to how the  
24 EIR treats the flow issues in the Lotus reach and the impact  
25 on recreation. At one point it identifies the flow  
26 reduction as a significant impact. In the very next  
27 paragraph it says if the flow schedule management by PG&E  
28 and SMUD could be restructured, it could be reduced to a  
29 less than significant impact, and in my mind, that means  
30 changing PG&E's and SMUD's FERC license, which seems to be a  
31 big question as to whether that is needed here or not, or is  
32 feasible.

33 Then further on in the list of impacts and  
34 mitigation it says that impacts on white water recreation is  
35 a significant impact.

36 So, it's a very confusing document. They seem to at  
37 least touch on those points, but I don't think they have  
38 gone in depth, as Mr. Rangel and Mr. Taylor pointed out.  
39 They haven't fully considered the true impacts of both the  
40 reduction in time and the reduction in flows on private and  
41 commercial boating.

42 MR. JACKSON: Thank you. That concludes our  
43 testimony. The individuals are available for cross-  
44 examination.

1 We would withdraw Exhibit No. 5, the testimony of  
2 David Fullerton, which when we went over, until this week he  
3 was unable to appear.

4 MR. STUBCHAER: Then you are going to offer the  
5 other exhibits into evidence, and I will rule on that after  
6 cross-examination.

7 MR. JACKSON: 1-A, 2, 3 and 4.

8 MR. STUBCHAER: Who wishes to cross-examine this  
9 panel?

10 Mr. Somach.

11 CROSS-EXAMINATION

12 by MR. SOMACH:

13 Q Mr. Evans, your testimony talks about implied  
14 federal water rights. You are a lawyer?

15 MR. EVANS: No, I am not.

16 Q You appear to mix wilderness and wild and scenic  
17 river related water rights. Can you explain whether or not  
18 there is a distinction between the implied federal water  
19 rights associated with wilderness areas and those associated  
20 with wild and scenic river designations?

21 A To my knowledge, Congress is currently wrestling  
22 with the issue of wilderness water rights. Everybody agrees  
23 there is an implied water right to the federal wilderness  
24 designation. In fact, it's become a major political issue  
25 as to whether or not certain wilderness areas are designated  
26 in the Rocky Mountains in Colorado.

27 So, it seems to be at least to my professional  
28 knowledge dealing with federal land management and everybody  
29 agrees that there are implied wilderness water rights.  
30 Again, to my professional knowledge as someone who is  
31 primarily employed by Friends of the River to monitor  
32 federal land management agencies and encourage them to  
33 conduct wild and scenic river studies, I can state that the  
34 Wild And Scenic Rivers Act does not affect current water  
35 rights, the rights in the law.

36 I can't recall the specific section, but I do know  
37 it is in there. However, there is an implied water right to  
38 designated streams in that if you diverted water upstream of  
39 a designated segment, you obviously could impact the very  
40 values for which that river was designated. In fact,  
41 Section 10-A of the Act mandates the protection of  
42 outstanding values, not just in the designated segment, but  
43 from activities upstream or downstream which could affect  
44 that segment.

1 Q The Wild and Scenic Rivers Act, however, doesn't  
2 deal through implication; does it? It acts through specific  
3 statutory language; isn't that correct?

4 A I believe so, yes.

5 Q So, it is then improper to blend whatever the Wild  
6 and Scenic Rivers Act specifically provides for and the  
7 implied federal water rights that you talk about in  
8 paragraph number 1 of your testimony; isn't that correct?

9 A I am not sure you are saying -- would you rephrase  
10 it, please?

11 Q They are different things?

12 A Essentially what I am saying is federal protection  
13 of downstream acreage and rivers requires the maintenance of  
14 certain instream flows to protect natural values. That's a  
15 definite in both the Wilderness and Wild and Scenic Rivers  
16 Acts.

17 Q Let's stop and probe that. You state that as if it  
18 is an absolute imperative; is that correct?

19 A Oh, yes.

20 Q Are wilderness water rights something different than  
21 federal reserved water rights?

22 A I don't know.

23 Q Do you know whether or not the U. S. Supreme Court  
24 decision in the New Mexico case out of the Rio National  
25 Forest applies to this situation?

26 A I don't know.

27 Q So, you don't know whether federal reserved water  
28 rights are the same type of water rights that apply in the  
29 context of wilderness areas?

30 MR. JACKSON: I have let this go on a bit because  
31 Steve did testify to some of these. Obviously, we are going  
32 to do that in closing argument. We will be glad to lay out  
33 federal reserved water rights in both areas.

34 I mean, I can answer the question.

35 MR. SOMACH: This was submitted under oath and  
36 subject to cross-examination.

37 MR. STUBCHAER: You may answer the question.

38 A Okay, restate it, please.

39 MR. SOMACH: Q Actually, I can't restate it.  
40 (The reporter read the question as follows: *So*  
41 *you don't know whether federal reserved water*  
42 *rights are the same type of water rights that*  
43 *apply in the context of wilderness areas?)*

44 A No, I have just read and heard the context of  
45 wilderness water rights as an implied federal right. I

1 don't know if it is the same thing as a federal reserved  
2 water right.

3 Q With respect to the public trust issues covered in  
4 your paragraph 2, this is the same public trust doctrine  
5 that the California Supreme Court established in the so-  
6 called Mono Lake or Audubon case; is that correct?

7 A I believe so.

8 Q And that public trust doctrine requires a balancing;  
9 does it not, of public trust values versus other reasonable  
10 beneficial uses of water?

11 A I believe that's correct.

12 Q I am not sure which of the two folks, Mr. Taylor or  
13 Mr. Rangel, I should address this to, so I will address it  
14 to both of you.

15 In terms of dry years, I don't understand exactly  
16 your testimony, but in dry years, is it your understanding  
17 that El Dorado will modify the flows provided for currently  
18 by SMUD and PG&E under their agreements?

19 MR. TAYLOR: A Modified for rafting?

20 Q I am not sure of your testimony. Are you testifying  
21 they will make a modification to the existing flows during  
22 dry years on the river, or the agreements with respect to  
23 flows in dry years?

24 A I am confused by the question. Who will?

25 Q El Dorado.

26 MR. RANGEL: A My biggest concern was that I felt  
27 comfortable with the flow schedule as presented as a minimum  
28 flow schedule. As I pointed out in my testimony, my concern  
29 was there was not an optimum flow schedule, and that is  
30 testimony I also gave before the board, El Dorado County  
31 Water Agency board. What I was hoping to see was something  
32 that would stipulate an optimal flow schedule within the  
33 context and with the understanding also they are working  
34 with two other entities that may or may not have much  
35 control or ability to control flows. It's a very  
36 complicated situation.

37 Q With respect to El Dorado, it's in the El Dorado  
38 project that if that project doesn't develop any new water,  
39 no new storage facilities upstream, how can it add water to  
40 what is already flowing through the system?

41 A I'm not asking it to.

42 Q What are you asking it to do then?

43 A I am asking that the Water Resources Control Board  
44 ask El Dorado County as a condition of the water rights  
45 permit, that they stipulate an optimal flow schedule, that

1 they strive to the best of their ability to stick to when  
2 there are years that would allow such a flow schedule.

3 In other words, the flow schedule as stipulated only  
4 deals with a minimum. Minimum is fine. I have problem with  
5 minimum. Minimum is great. We have lived with the minimum,  
6 but I don't want the minimum to be taken as the only flow  
7 schedule that's in writing. It makes me a little nervous to  
8 only see the worst case scenario presented or put forth on  
9 paper. I would like to see a best case also.

10 Q But in order to move toward a best case scenario,  
11 doesn't one have to have some control over the total amount  
12 of water flowing through the system?

13 A Yes. What you are suggesting, I think, is that what  
14 I am asking would be impossible for the Water Agency to do.

15 Q Well, maybe unilaterally impossible. I assume there  
16 is a scenario out there where SMUD, PG&E and El Dorado get  
17 together and somehow decide to reoperate all the facilities  
18 to provide more flows down the Lotus reach, but the question  
19 I am posing is what do you propose that El Dorado does  
20 unilaterally with respect to the Lotus reach in order to  
21 increase flows?

22 A I don't think I am looking for an increase in the  
23 Lotus reach. What we have had over the last ten years has  
24 been pretty good. We have had excellent cooperation with  
25 PG&E and SMUD, and the County when it's been involved in  
26 terms of flows and flow schedules. We are real happy with  
27 that.

28 What we are looking for is something in writing that  
29 puts out those best case scenarios so we are not just  
30 operating on a gentlemen's agreement on a day-to-day basis.  
31 People change, people come and go.

32 We have had an excellent working relationship up to  
33 this point, but we don't want to be put in the position of  
34 having somebody down the line 10 or 15 years from now  
35 saying, well, this is the flow schedule, 1200 is all you  
36 get. That would make me nervous in a series of years when  
37 we had enough water where we could do something with it  
38 beyond the 1200.

39 Q Mr. Evans, just a couple of final questions to you  
40 wish respect to the public trust issue. Is it your  
41 testimony that the flow schedule associated with rafting is  
42 the natural flow of the Lotus reach of the river?

43 MR. EVANS: A No, it is not.

1 Q And, in fact, that flow is basically there during  
2 the important rafting months because of releases from the  
3 PG&E and SMUD facilities; isn't that true?

4 A Are you talking about the flow schedule in the EIR  
5 or just the normal flow schedule that the river experiences  
6 now, the usual flow schedule as opposed to normal?

7 Q Let's use the usual flow schedule, the normal  
8 historic flow schedule.

9 A That flow schedule is the consequence of existing  
10 upstream PG&E projects, but you should understand that it  
11 has taken a seasonally rafted river and extended the season  
12 throughout the summer which has contributed, in fact, to its  
13 value as white water recreation river because there is more  
14 time for people to use it.

15 What we are concerned with in this project are  
16 upstream diversions that would impact that use.

17 Q Impact the use that is afforded by the operations of  
18 SMUD and PG&E facilities?

19 A That's correct.

20 Q So, the impact is built within the benefit provided  
21 by the SMUD and PG&E facilities?

22 A The benefit is not wholly associated with those  
23 projects. Again, it enhanced that benefit, but that benefit  
24 was there prior to the dams being built, dams, diversions  
25 and powerhouses being built on South Fork.

26 Q Well, but we just focused on this recreation period  
27 here and I thought you indicated that there was some  
28 enhancement during that period.

29 A Right.

30 Q And the impacts we are talking about here fall  
31 within the ambit of that benefit; is that correct?

32 A Correct.

33 MR. SOMACH: I have no other questions.

34 MR. STUBCHAER: Staff?

35 EXAMINATION

36 by MR. LAVENDA:

37 Q Mr. Evans, in your Exhibit 1-A, your oral testimony,  
38 item 3, water waste and conservation, you mention that  
39 Friends of the River is a signatory of the MOU regarding  
40 conservation, .

41 MR. EVANS: A That's correct.

42 Q That's used as a model supposedly for purveyors  
43 throughout the State of California. You alluded to 15  
44 percent loss and the applicants' testimony, I believe

1 Exhibit 45, would be a proper place to find the numbers to  
2 substantiate your direct testimony on item 3.

3 May I ask you a question, as a signatory of that MOU  
4 for a system to be built between now and operating in the  
5 year 2030, do you have a feeling for what might be a state-  
6 of-the-art type overall system loss that would be  
7 acceptable?

8 A No, I don't. I do think it is shocking that  
9 currently El Dorado County system loses more than a quarter  
10 of its entire yield, and I recognize a lot of that is due to  
11 its antiquated system, and it has actually taken steps to  
12 correct that, but the point I am making here is that if an  
13 entity is trying to acquire significantly new amounts of  
14 water supply, they should first take steps to correct their  
15 system losses.

16 Q Well, assuming they take steps to correct the  
17 existing system losses, I am focusing on an advanced,  
18 perhaps state-of-the-art distribution system that  
19 incorporates the items that you point out in this MOU for a  
20 system to be built 30 or 40 years from now.

21 What if your feeling about an acceptable loss rate  
22 for a system in that time frame?

23 A I don't have a feeling for it. Unfortunately, Mr.  
24 Fullerton would have more background to answer that  
25 question, but he couldn't be here.

26 MR. LAVENDA: Thank you.

27 MR. STUBCHAER: I just have one item. In your  
28 statement, Mr. Evans, you state that the MOU was adopted by  
29 the Water Board as a condition of D-1630. Since D-1630  
30 wasn't adopted, the MOU was not adopted.

31 MR. EVANS: A That's correct. A condition of draft  
32 D-1630.

33 MR. STUBCHAER: It wasn't adopted.

34 Do you have any redirect?

35 MR. JACKSON: No.

36 MR. STUBCHAER: All right. Any objection to the  
37 receipt of the States?

38 Hearing none, they are accepted. Thank you.

39 The Amador Chamber of Commerce is not appearing, but  
40 their written material will be accepted as a policy  
41 statement. Amador Chamber of Commerce's written exhibit  
42 will not be testified to, but they will be a policy  
43 statement.

44 Yes, Mr. Gallery.

1 MR. GALLERY: We were informed that they were unable  
2 to be here today. The Chamber of Commerce did plan on  
3 appearing, but they could make it in the morning. Would it  
4 be possible if you are going to be here in the morning to  
5 give them an opportunity to appear and testify in support of  
6 their submittal?

7 MR. STUBCHAER: What was the source of staff's  
8 contact with Amador County with their making a policy  
9 statement, the Chamber of Commerce?

10 MS. KATZ: A Terry somebody called.

11 MR. GALLERY: That was today, Ms. Katz?

12 MS. KATZ: Yes.

13 MR. GALLERY: We called them this afternoon and  
14 they said they couldn't make it today, they could make it in  
15 the morning if the hearing was still going on.

16 MR. STUBCHAER: The only party we have remaining is  
17 Mr. Creger. He asked for 15 minutes, so I anticipate we  
18 will complete this afternoon, so I wouldn't want to hold it  
19 open in the morning just for that.

20 MR. GALLERY: We wouldn't ask you to. We were only  
21 assuming it was continuing in the morning.

22 MR. VOLKER: Mr. Stubchaer, may I inquire about  
23 rebuttal evidence? We anticipate calling one witness in  
24 rebuttal and we assumed that would take place tomorrow  
25 morning.

26 MR. STUBCHAER: Is that person here today?

27 MR. VOLKER: No.

28 MR. STUBCHAER: We will see when we get through with  
29 Mr. Creger's testimony, how much time remains.

30 Mr. Creger, please state your name and address for  
31 the record.

32 MR. CREGER: May I ask two administrative questions  
33 first for clarification?

34 MR. STUBCHAER: Sure.

35 MR. CREGER: At the end of Amador County's session  
36 up here the subject was being discussed about EIR rules and  
37 guidelines, and you didn't need a certified EIR to proceed  
38 with these hearings and that sort of thing.

39 MR. STUBCHAER: I don't think that was said. When  
40 it is certified it has to be accepted as valid until the  
41 court tells us otherwise.

42 MS. KATZ: True, we don't have to have an EIR to  
43 proceed.

44 MR. CREGER: My question is, what kind of things are  
45 controlled by the EIR statutes and guidelines versus the

1 reference material that is in the EIR, that's in there for  
2 understanding and use to the task?

3           And a specific example, and the one I will be  
4 addressing in my testimony, is I will be discussing gage  
5 data of the dams and again, datum to me is not an  
6 environmental item, manmade or natural. It's a piece of  
7 reference material that is put in there to make a picture  
8 whole, and so, I am trying to understand it essentially  
9 because the statements were made here that certain things  
10 were judged under EIR rules and regulations and statutes  
11 versus being judged under something else, and there was no  
12 something else defined because that wasn't the subject.

13           For example, since I am going to bring something up  
14 that I do not believe is an environmental issue, is a part,  
15 if you will, of the background of project information that  
16 incidentally is supposed to be briefly described in the EIR.

17           Looking ahead, where does that fit in the rules and  
18 regulations of the hearing here?

19           MS. KATZ: I am not sure I understand the question.

20           MR. STUBCHAER: We heard during the testimony there  
21 are three datum for the dam to determine the water level.  
22 That's what you are referring to?

23           MR. CREGER: That type of thing, yes.

24           MR. STUBCHAER: And what we also heard was various  
25 storage volumes, and you can come up with the same values  
26 having three different levels. I don't know if it is up to  
27 an EIR to get to that level of specificity.

28           MR. CREGER: But that's the only place these data  
29 are presented.

30           MR. STUBCHAER: I don't think we are going to  
31 resolve that here now.

32           MR. CREGER: I presume things of that nature are not  
33 in conflict with the EIR or the EIR rules, they've got to be  
34 judged on some other --

35           MR. STUBCHAER: You can present the evidence which  
36 you have and we will consider that in weighing the evidence.

37           MS. KATZ: Yes.

38                                   PAUL J. CREGER,  
39           having been sworn, testified as follows:

40           MR. CREGER: My second item is very brief and I  
41 would like to read it. After participating in this hearing  
42 for three days --

43           MR. STUBCHAER: You haven't identified yourself yet.

44           MR. CREGER: My name is Paul Creger, C-r-e-g-e-r.

45           MR. STUBCHAER: And your address?

1 MR. CREGER: I live at 501 Magnolia Lane, Santa  
2 Clara, California, 95051.

3 I am a retired Aerospace Systems Engineer and what I  
4 am about to say, I would be happy to affirm the testimony is  
5 mine that I have submitted.

6 MR. STUBCHAER: Well, what are you going to say? Is  
7 this going to be a procedural question or testimony?

8 MR. CREGER: Procedural.

9 MR. STUBCHAER: Are you going to give testimony?

10 MR. CREGER: Yes, sir.

11 MR. STUBCHAER: Did you take the oath the other day?

12 MR. CREGER: Yes, sir, a week ago.

13 After participating in this hearing for three days,  
14 it became obvious that my testimony which I related to the  
15 key issues by reference, should have addressed them  
16 directly.

17 I, therefore, have restructured this more to address  
18 the issues directly.

19 The basis for my testimony is unchanged from that  
20 presented in my protest and testimony dated May 18, 1939. I  
21 would like to have that approach essentially accepted today.

22 MR. STUBCHAER: So you are offering your revised  
23 testimony as a substitute for your original testimony?

24 MR. CREGER: Yes.

25 MR. STUBCHAER: Was that distributed this morning?

26 MR. CREGER: I distributed it this morning.

27 MR. STUBCHAER: All right. You asked for 15  
28 minutes, I think.

29 MR. CREGER: Yes, sir.

30 The revised method may take a tad bit longer, but it  
31 won't be longer than anybody else has taken.

32 MR. STUBCHAER: All right. I am going to start the  
33 clock when you start anyway.

34 MR. CREGER: I would like to identify just a few  
35 items in my original testimony, and also, I would like to  
36 state that there was no intent in my data and anything I  
37 have done to not address Lake Aloha. There just was not  
38 enough time.

39 Although my experience has not been directly  
40 associated with water resources management, it has qualified  
41 me to evaluate constructively the total scope of a project  
42 program or system. Additionally, my experience has a depth  
43 of over 34 years in working with others to achieve common  
44 goals.

1           As members of the general public, my family and I  
2 have vacationed at Silver Lake for 27 years.

3           The applicant is proposing to expand its service  
4 base incrementally without having fully committed resources.  
5 Fully committed resources include documented commitments  
6 from the multitude of boards, agencies, departments, et  
7 cetera, which form a part of existing State and federal  
8 water and electrical power resource management teams.  
9 Incremental expansion can only be acceptable to the general  
10 public when it is shown to be a fully coordinated and  
11 integrated part of a mutually agreeable system.

12           Summary of my objectives for being here is to insure  
13 on behalf of the general public that the water could be  
14 appropriated, it's available in the season requested,  
15 available for the period of beneficial use requested, also  
16 to present testimony on selected issues set forth in the  
17 Notice of Public Hearing.

18           How will the proposed El Dorado project be operated?

19           Specific operating and contingency scenarios are  
20 undefined. By this, I mean detailed, not extremely detailed,  
21 but detailed, what if operating scenarios for various system  
22 configurations; what if operating scenarios for the various  
23 delivery schedules; a detailed what if schedule scenario for  
24 1983 water year similar to 1993. Do the same thing for 1993  
25 after the Cleveland fire.

26           Everybody would like to know what these operations  
27 are. They are not detailed enough to allow any kind of  
28 reasonable logical evaluation.

29           A review of the FERC hydroelectric project  
30 relicensing handbook makes it clear that relicensing is a  
31 new ball game. Electric power, flood control, water supply,  
32 navigation and irrigation are to be balanced against  
33 environmental values and energy conservation.

34           Contingency plans are totally absent.

35           Incremental permit issuance and project level imple-  
36 mentation effectively block any effort to analyze total  
37 program operation.

38           How will the proposed El Dorado project be operated?  
39 Lake level stage gage zero point elevations as described in  
40 the table named PG&E Lakes Significant Elevations on page 14  
41 of Appendix A in the final EIR is incorrect, Exhibits PGC-3  
42 and 4 and State Water Resources Control Board folder 8 File  
43 29919 contain maps from the applicant identified as PG&E  
44 Exhibits K-3 and K-4.

1           The purpose of this schematic sketch, Caples Lake  
2 Dam and gaging station, is to indicate that on the right-  
3 hand side is the PG&E Company datum and on the left side the  
4 National Geodetic Vertical Datum of 1929. As you can see  
5 for the spillway crest the numbers are not the same. There  
6 is a difference of 155.1 feet between the two numbers.

7           The EIR identifies the numbers from the right-hand  
8 side as National Geodetic Vertical Datum of 1920; therefore,  
9 we have a discrepancy.

10          The same thing for Silver Lake. The correction of a  
11 7 to a 9 in red is because --

12          MR. LAVENDA: The previous slide visual that you had  
13 up there, could you please identify it for the record?

14          MR. CREGER: Yes, sir. I am sorry, that was PJC-4.

15          This is PJC-3 and the 9 was an error in reading the  
16 reduced size of PG&E's exhibit. Again, note that the  
17 elevations on the right are not the same as on the left.

18          PG&E Exhibit K-3 and K-4 that have been submitted as  
19 part of the data for this project each contain a note. The  
20 one for Caples Lake reads: Elevations are on PG&E Company's  
21 datum. Elevation 7953.0 PG&E equals elevation 7797.9 on  
22 USGS.

23          So, this document identifies this particular  
24 relationship as the spillway crest level.

25          The same type of thing exists for Silver Lake except  
26 it is a little more complicated getting to. The note on  
27 this document reads: Elevation 7196.25 PG&E equals  
28 elevation 7250.32 USC and GS.

29          MR. LAVENDA: Mr. Creger, would identify that  
30 document?

31          MR. CREGER: This is PJC-3 again.

32          The document I was reading from is PG&E Exhibit K-3,  
33 which is found in the files here that's been submitted by  
34 the applicant.

35          The point of these four slides is that a difference  
36 in datum does exist and of greater significance that in the  
37 EIR and Appendix A at the time of the El Dorado first  
38 hearing on the final EIR, I presented similar information,  
39 not to PG&E maps because I did not have access to them at  
40 the time; however, the conflict of datum was evident at that  
41 time and the response that gets no rebuttal, but the  
42 response in the letter from Sierra Hydro-Tech to the El  
43 Dorado County Water Agency said that they examination of the  
44 USGS reports and these PG&E data show that the information  
45 that was presented in the EIR is correct.

1 My effort here is to show you that it is not  
2 correct.

3 The next thing I have that may be supportive in this  
4 area, and which would serve as corroborating evidence is two  
5 weeks ago approximately I was up at the area and on the dam  
6 at Caples Lake near the spillway is this PG&E Company survey  
7 marking of which this is a simulated facsimile, and at  
8 Silver Lake the same type of marker is there.

9 I'm sorry, the first one was PJC-7. This one is  
10 PJC-8.

11 And just across the road at Silver Lake is a Coast  
12 and Geodetic survey marker with no elevation marked on the  
13 marker itself, but by calling the number at the bottom in  
14 Denver, I obtained the elevation shown at the top.

15 These three different numbers as far as elevations  
16 go all are National Geodetic Vertical Datum of 1929 numbers,  
17 so that I am showing here that PG&E knows where its dam is  
18 and the USGS knows where the big boulder across from Kay's  
19 Store is next to Silver Lake and they are all based on  
20 National Geodetic Vertical Datum.

21 In the process of trying to resolve this relatively  
22 simple technical problem, I have been contacting the USGS  
23 several times in my trips through Sacramento here, and they  
24 had indicated that there's a possibility there was a  
25 discrepancy, and in addition, or along with that, they would  
26 certainly look into. That wasn't a high priority item.

27 When I asked them last Thursday to please provide me  
28 the name of someone that I could subpoena to come and say  
29 those things here, they found time to write a letter. I  
30 have submitted that as PJC-10, and I am the only one at this  
31 point that has a number on it, and basically, I would like  
32 to read the letter -- let me read it in key elements.

33 It is written to the California State Water  
34 Resources Control Board. It is dated July 18, 1993. I  
35 believe the reason for that is not only was there a computer  
36 down, but their telephone system was down, and I didn't  
37 receive this until about a quarter after four Friday.

38 (Reading) Gentlemen,

39 Mr. Paul Creger has asked us to write you in  
40 regard to the datums of gages on Silver and  
41 Caples Lakes near Kirkwood, California.

42 I am going to skip some of this and jump down to:

43 The records for these two lakes have  
44 sufficient hydrologic value that, since the  
45 1986 water year, the survey has opted to

1 publish the data in the survey document  
2 entitled *Water Resources Data for California,*  
3 *Volume 4, North Central Basins and the Great*  
4 *Basin from Honey Lake Basin to the Oregon State*  
5 *line.*

6 The published statements about datum read as  
7 follows:

8 For Silver Lake: Datum of gage is 7184.3  
9 feet above National Geodetic vertical datum of  
10 1929 (levels by Pacific Gas and Electric  
11 Company).

12 For Caples Lake: Datum of gage is 7894.0  
13 feet above National Geodetic Vertical Datum of  
14 1929 (levels by Pacific Gas and Electric  
15 Company).

16 On June 17, 1993, Mr. Creger brought to the  
17 attention of the Survey the fact that in  
18 reality these elevations were above an  
19 arbitrary datum established by PG&E and were  
20 not above National Geodetic Vertical Datum.

21 The Survey researched the matter and found  
22 that Mr. Creger is probably correct. On such  
23 short notice, the Survey cannot determine the  
24 true National Geodetic Vertical Datum.  
25 Information provided by PG&E is not adequately  
26 supported for us to accept their numbers  
27 without further research.

28 According to information in the PG&E license  
29 papers, the elevations above National Geodetic  
30 Vertical Datum for the datum of the two gages  
31 are:

32 Silver Lake 7130.23 feet.

33 Caples Lake 7737.94 feet.

34 The Survey will try to determine the correct  
35 values and include them in future publications  
36 of the data report, beginning with the  
37 publication for the 1993 water year.

38 MR. STUBCHAER: Your 15 minutes are up. How much  
39 more time will you need?

40 MR. CREGER: I believe I can go through the rest in  
41 ten minutes maximum.

42 MR. STUBCHAER: All right.

43 MR. CREGER: The thrust of this whole point is that  
44 the datums are obviously different and that we have been  
45 asked to rely on the information in the EIR and the EIR has

1 been certified with these datum differences there. The  
2 differences have been explained in the letter from Sierra  
3 Hydro-Tech, but the concern on my part is basically the area  
4 of essentially not disclosing this kind of information; and  
5 secondly, the basis for historical lake levels presented in  
6 Appendix A of Tables A through F, in the final EIR is  
7 unverified.

8 This came out in testimony the other day here, that  
9 the data presented for lake levels is not totally taken from  
10 the USGS records, but a combination of data that has been  
11 collected over the years from PG&E and other sources by  
12 Sierra Hydro-Tech, and perhaps others, I don't know.

13 So that the significance is that we are being  
14 presented historical lake levels based upon unverified data,  
15 and gage datums that are in all probability in error.

16 In fact, Mr. Chairman, if you wanted to, I think the  
17 safest thing anybody could do would be to issue a permit for  
18 100 percent of the water at Silver, Caples and Aloha, for  
19 any season and for perpetuity that is located between the  
20 lake stage at zero storage and the maximum water service  
21 elevations specified in the table on page 14 of Appendix A  
22 of the final EIR, because if we grant them all that water,  
23 Mr. Chairman, there is no water there.

24 Are there measures that could be taken to assure  
25 water could be diverted and used in the most efficient  
26 manner? No baseline system goal exists for measuring  
27 conservation. Improvement is being measured from an  
28 arbitrarily selected unacceptable condition. No trade  
29 studies have been presented showing the selection of a  
30 realistic system goal.

31 Additional project works cannot be evaluated without  
32 a baseline operating system being defined.

33 By this, I mean that measurement, and I am not  
34 taking anything away from El Dorado, that improvement is  
35 being made and has been made; however, nothing has been  
36 shown as to what is the maximum improvement. If things are  
37 being compared to conditions where you might say the  
38 conveyance leaks like a sieve in the old days, and now they  
39 leak like a tea strainer, and we think we can achieve some  
40 sort of a condition whereby they will leak less than a tea  
41 strainer, but nobody has started with the opposite side,  
42 what is the best you could possibly do, what trade studies  
43 have you made to examine the best you could possibly do and  
44 find out it is not cost effective to do that, it is  
45 impractical, it has environmental problems, and then work

1 down to a goal, rather than working from the existing  
2 condition up to some limit like 15 percent.

3 Is there unappropriated water available at Silver  
4 Lake, Caples Lake and Lake Aloha for the proposed El Dorado  
5 project?

6 The availability of unappropriated water has not  
7 been addressed, much less proven.

8 A recent item in a California Code of Regulations,  
9 Article 23, stream systems declared to be fully  
10 appropriated, operative on 5/7/93, provides for procedures  
11 for revoking or revising the status of stream systems  
12 declared to be fully appropriated, for adding stream  
13 systems, for public participation.

14 I have added that only for the reason that it's new  
15 and being it is a process by which fully appropriated  
16 streams can be changed. I am not asking for an answer  
17 instantly, but it seems to me to be proper to these hearings  
18 to identify whether that particular process has received  
19 any activity, i.e., either request to change, because one of  
20 the subjects I have heard in the meetings so far is that  
21 certain things are fully appropriated, and this could change  
22 them.

23 Is the proposed El Dorado project in the public  
24 interest?

25 Replacing multi-use hydroelectric power generation  
26 with fossil or atomic fueled power generation, as I said, at  
27 the bottom, I do not believe this is in the public interest.

28 The planned exchange, in time of emergency, of power  
29 generation, recreation, fish and wildlife resources, et  
30 cetera, for consumptive use via the Hazel Creek tunnel is  
31 not in the public interest.

32 Issuance of a water right for perpetuity for one  
33 project of a vaguely defined multiproject system is not in  
34 the public interest.

35 To proceed with a program or program element or  
36 project without an in-depth probability analysis that  
37 supports the assumptions based upon streamflow  
38 reconstruction and tree-ring analysis is falling short of  
39 looking at the big picture.

40 Failure to address the condition of and a  
41 maintenance program for applicable elements of the total  
42 program as they apply to the proposed El Dorado project is  
43 not in the public interest.

44 By this, in my original testimony, I was concerned  
45 about reservoir spilling out. I think I heard today the El

1 Dorado forebay was 540,000 acre-feet, or some number like  
2 that, and I believe it is more like 240 or 250 nowadays.

3 What is going to happen to this total project? We  
4 are going to issue a water right for perpetuity and nobody  
5 has even discussed essentially the general degradation is  
6 power use continuing to be cost effective?

7 MR. STUBCHAER: Mr. Creger, you have three minutes  
8 left on the extended time, and looking at your written  
9 submittals, we don't need to read them into the record.  
10 They are in writing. They are part of the record and if you  
11 could get to your conclusions and recommendations and  
12 summarize, I think that would help.

13 MR. CREGER: All right, sir.

14 Should Applications 29919 through 29920 be approved?

15 The finance, growth data, that have been presented  
16 as the basis for this have not been proven or shown to be  
17 applicable to this project. I don't believe data of this  
18 nature can be accepted at its face value and say, therefore,  
19 because they said, we should.

20 Provision of an affordable water supply within the  
21 EID is only possible at the expense of others.

22 Appendix C of the final EIR does not reflect the  
23 current state of application maturity.

24 The applications to be approved have not been  
25 disclosed. We have only seen in the EIR some older original  
26 applications and they are not in a completed state.

27 Applications 29919 through 29922, Application item 3  
28 is points of diversion and rediversion, and item 7 is  
29 diversion works. Item 3 in Application No. 29921 does not  
30 contain the Hazel Creek tunnel rediversion that can be used  
31 to restore water. I don't know whether they don't need it  
32 or whether it just is an oversight, or whether it is in the  
33 later versions.

34 The basic theme of these applications and the  
35 supporting EIR is trust me. The errors, omissions and  
36 conflicting information identified to date leave serious  
37 doubt that more do not exist or will not be present in  
38 anticipated agreements yet to be made.

39 Approval at this time does not appear to be the  
40 prudent thing to do.

41 MR. STUBCHAER: One minute.

42 MR. CREGER: Should the petition for partial  
43 assignment of State filed Application 5646 be approved?

44 The applicants have indicated, by filing  
45 Applications 29919 through 29922, that a diversion season

1 from November 1 to August 1 can support the proposed El  
2 Dorado project. They have indicated that both the petition  
3 and the applications can provide the 33,000 acre-feet.

4 Approval of the petition carries with it a season of  
5 January 1 to December 31, and since the season from November  
6 1 to August 1 can meet their needs, there is no  
7 justification for extending the season three months.

8 The petition for partial assignment of State filed  
9 Application 5645 should not be approved.

10 MR. STUBCHAER: Your time is up.

11 MR. CREGER: You are really going to cut it that  
12 short, sir?

13 MR. STUBCHAER: I had asked you to speed up. I  
14 granted you ten additional minutes and I suggested you not  
15 read the slides into the record because we have them in  
16 writing, and you continued to read them.

17 I will give you three minutes to summarize, but  
18 please get to your final conclusions, if you would, and we  
19 have the written materials. They are part of the record you  
20 have testified to.

21 MR. CREGER: As a member of the general public, my  
22 purpose in being here is primarily based on becoming aware  
23 of the situation that is being discussed, the water rights  
24 that are being asked for, and not being associated with this  
25 process as my regular daily activities, I find it utterly  
26 inconceivable that a water right to be granted for  
27 perpetuity can be considered to be granted with all of the  
28 total unknowns that are existing with respect to agreements,  
29 what FERC can or will not do in the relicensing process. It  
30 just chokes you up and slows you down to say, is this really  
31 happening? There's got to be a better way.

32 In the slides before us that I did not show, I  
33 suggest that perhaps a condition of a permit, God forbid it  
34 should be granted, but a condition of that permit is to have  
35 representatives from all of the affected groups that are  
36 normally consulted with to meet together around the table  
37 and address this issue technically, if you will forgive me,  
38 leave your attorneys home for a few days, and identify what  
39 really is going on and what would make this work.

40 I am not against the El Dorado having water. I am  
41 for it if it is there. But we are not participating in an  
42 effort that is going to determine that. Somebody is going  
43 to win the argument. Somebody is going to lose the  
44 argument. We are all going to lose if that happens.

45 Thank you, sir.

1 MR. STUBCHAER: Thank you, Mr. Creger.

2 I want to say you did a beautiful job in preparing  
3 your slides. I am just sorry that the time expired.

4 Who wishes to cross-examine Mr. Creger?

5 MR. SOMACH: I just have a question. I don't know  
6 if Mr. Creger offered himself as an expert witness or not.

7 MR. CREGER: Am I to say something?

8 MR. STUBCHAER: You may go back to the podium, if  
9 you wish.

10 MR. CREGER: Yes, sir.

11 MR. STUBCHAER: I don't recall either. Were you  
12 offering yourself as an expert witness in any of these  
13 matters?

14 MR. CREGER: Expert from the point of view of being  
15 a retired systems engineer and believe I understand a  
16 reasonable amount about the technical data. I am able to  
17 comprehend the technical data that has been prepared and  
18 make some presentations related to technical data.

19 MR. STUBCHAER: I think your statement of qualifi-  
20 cations was submitted.

21 MR. CREGER: Yes.

22 MR. STUBCHAER: So, I guess the answer is yes then.

23 MR. SOMACH: I just have a few questions.

24 CROSS-EXAMINATION

25 by MR. SOMACH:

26 Q Mr. Creger, do you have a degree in hydrology?

27 A No, sir.

28 Q Have you taken course in hydrology?

29 A No, sir.

30 Q Do you have a degree in civil engineering?

31 A No, sir.

32 Q Are you a registered civil engineer?

33 A No, sir.

34 Q Are you an expert in the procedures undertaken by  
35 the Federal Energy Regulatory Commission?

36 A No, sir, but I can read their books.

37 Q Have you ever participated in any Federal Energy  
38 Regulatory Commission proceeding?

39 A Not yet, but I will.

40 Q The answer to that question is no?

41 A No, sir.

42 MR. SOMACH: I don't have any other questions.

43 MR. STUBCHAER: All right. Mr. Creger, do you wish  
44 offer your exhibits into evidence?

45 MR. CREGER: Yes, sir.

1 MR. STUBCHAER: Have you assigned numbers to those?

2 MR. LAVENDA: We have, Mr. Stubchaer, and staff has  
3 been provided copies of the latest exhibits with the  
4 exception of 7, 8 and 9, I believe, which are the monument  
5 replicas that were introduced. We have the others.

6 MR. STUBCHAER: How did you duplicate or replicate  
7 those monuments? Was that a computer drawing program?

8 MR. CREGER: No, sir, it happens to be a Microsoft  
9 desk top publishing program. I created them from taking  
10 videos of these markers at the dams at Silver Lake, and if  
11 time wasn't a problem, you could have seen all that in  
12 living color.

13 MR. STUBCHAER: All right. Are there objections to  
14 the receipt of these exhibits?

15 MR. SOMACH: Point of clarification, I guess. I  
16 understand the Board's rules to separate evidence into  
17 expert evidence and lay evidence, and I would object to this  
18 evidence and testimony as being introduced as expert.

19 Mr. Creger isn't an expert in any of the areas that  
20 he testified to, and if there's a distinction, and I believe  
21 there is, in the regulations, I think they must come into  
22 play at this point to segregate the nature of testimony and  
23 what it is being offered for.

24 MR. STUBCHAER: All right. Mr. Creger, your evidence  
25 will be considered as lay evidence and not as expert  
26 evidence, but it will be accepted into the record.

27 MR. CREGER: Thank you.

28 MR. STUBCHAER: Mr. Lavenda, did you have any  
29 questions?

30 MR. LAVENDA: No, sir, I didn't.

31 MR. STUBCHAER: That concludes the direct testimony  
32 in this case.

33 Save the American River Association is not here.

34 How many parties intend to present rebuttal  
35 evidence?

36 One party. As I look around this room, I know I  
37 could see \$3,000 an hour, and if your witness were here  
38 today, we could hear him this afternoon and conclude this  
39 hearing.

40 Is there any way you could present his evidence by  
41 declaration or anything like that, or would that be  
42 acceptable to the parties?

43 Could you perhaps come up and show good cause why we  
44 should hold the hearing on another day to receive rebuttal  
45 evidence?

1 MR. VOLKER: Well, the testimony is in the nature  
2 of rebuttal testimony to evidence presented during the  
3 hearing, obviously. Because it is rebuttal, we were unable  
4 to prepare in advance of the hearing. We retained the  
5 expert who would present this testimony on Friday afternoon.

6 MR. STUBCHAER: Would you care to tell us what part  
7 of the testimony he is going to rebut?

8 MR. VOLKER: This would be rebuttal to the testimony  
9 that the growth projections employed by the applicants in  
10 developing the parameters for their project, the water  
11 demand, that they assumed would exist and would have to be  
12 supplied through this project were predicated on the  
13 Department of Finance growth projections, and further, that  
14 the general plan in preparation in El Dorado County  
15 replicated those Department of Finance growth projections.

16 We would propose to present testimony indicating the  
17 Department of Finance growth projections are not in  
18 themselves an adequate basis for a growth projection under  
19 the circumstances and that the El Dorado planning process  
20 does not adopt, cannot be expected to adopt the Department  
21 of Finance growth projections as is.

22 I think this Board needs to weigh the need for this  
23 project against its potential adverse impacts. If the need  
24 is not as great or as well documented as has been suggested  
25 by the applicant, then obviously, less weight would be given  
26 to the need for the project relative to its adverse effects.

27 MR. STUBCHAER: What is your witness's name?

28 MR. VOLKER: Ms. Terrell Watt. She is a planner.

29 MR. STUBCHAER: Is there anyone else who wishes to  
30 comment on this matter?

31 MR. SOMACH: Yes, Mr. Stubchaer.

32 The testimony that we provided was provided early on  
33 last week, number one. Number two, the testimony we  
34 provided was in our written submissions of May 18.

35 Moreover, it was all part and parcel of the  
36 applications and EIR that was provided both at that date and  
37 prior to that date.

38 There is absolutely no information they intend to  
39 rebut that they haven't known for at least a month, if not  
40 more. Anyone seeks to be ready to go when the hearing is  
41 over. It could be anticipated that we would finish today.  
42 In fact, these are extra days, that originally the hearing  
43 was called for Monday, Tuesday and Wednesday, and if needed,  
44 it would go further, so as a consequence, requiring everyone  
45 to come back here tomorrow because Mr. Volker didn't have a

1 witness here, who he could have anticipated would have been  
2 called today, there is just simply no reasonable excuse for  
3 that, number one; and number two, the idea he didn't know  
4 this testimony was going to be offered just simply doesn't  
5 hold up when we consider how long the basic issue of  
6 population demands has been on the table as a fundamental  
7 aspect of what was being proposed by the project proponents.

8 MR. VOLKER: Well, it wasn't until the cross-  
9 examination Monday that it became apparent that there was no  
10 documentation for the growth projections other than this  
11 apparent reliance on the Department of Finance growth  
12 projection. When it became clear that was the sole basis  
13 for the applicants' projections of water demand, it became  
14 clear that this was something we would have to rebut.

15 MR. STUBCHAER: That was not clear from the written  
16 submittals before the cross-examination?

17 MR. VOLKER: We understood that the growth projec-  
18 tions were based on a calculation of growth based on a  
19 specific history in El Dorado County based on the somewhat  
20 obsolete general plan, which as I indicated, has a 1963  
21 circulation element.

22 Now we have learned that it's apparently based  
23 solely on a Department of Finance projection of growth.

24 MR. STUBCHAER: I am going to ask the applicants to  
25 look in the record and see if there is information there  
26 that indicates that that was the basis for the population  
27 projection.

28 MR. SOMACH: Appendix A to the Draft EIR --

29 MR. STUBCHAER: The draft?

30 MR. SOMACH: Yes, and if I could draw your attention  
31 to the Appendix, and then in particular, if you take a look  
32 at the very top of the Appendix on A-4 where the reference  
33 right there is to the State of California Department of  
34 Finance projection and how population projections beyond  
35 that were based.

36 MR. STUBCHAER: All right. Excuse me, I just want  
37 to read in context. This is Appendix A, background  
38 information on EID population and water demand projections.

39 MR. SOMACH: It just goes down and explains exactly  
40 how each projection was made.

41 MR. STUBCHAER: This talks about the City of  
42 Placerville.

43 MR. VOLKER: May I be heard on this point? I think  
44 page A-3, which has been referenced, makes clear our point.

1           In discussing the El Dorado Irrigation District east  
2 side and west side population projections for 2010 --

3           MR. STUBCHAER: Where on page A-3?

4           MR. VOLKER: It is the ultimate paragraph, the  
5 second from the last. It indicates El Dorado Irrigation  
6 District's east side and west side population projections  
7 for 2010 are based on projected market growth in accordance  
8 with the schematic land-use plan developed by SCA for the El  
9 Dorado 2010 general plan, et cetera.

10           So, we had understood that was based on a planning  
11 process, but we heard testimony that indicated; no, it was  
12 based on the Department of Finance growth projections.

13           I think our testimony is properly rebuttal evidence.

14           MR. STUBCHAER: Mr. Somach, do you find any other  
15 reference other than the City of Placerville, to the  
16 Department of Finance population projection?

17           MR. SOMACH: If you look, for example, again, at the  
18 Draft EIR 3-1, we talk about population projections.  
19 We have a reference, again, to the California Department of  
20 Finance projections.

21           MR. STUBCHAER: That's historic.

22           MR. SOMACH: You are asking me, and I --

23           MR. STUBCHAER: It's very difficult, but  
24 nonetheless, unless I can find evidence of population --

25           MR. SOMACH: Okay. Just give me a moment. I can't  
26 find the references at this point. Nonetheless, you know,  
27 this testimony was presented on Tuesday in its entirety. I  
28 mean, I don't understand -- it had to come out of cross-  
29 examination with the El Dorado witnesses. That took place  
30 on Tuesday. This is Monday afternoon of the week after  
31 that.

32           I still don't understand the reason for the surprise  
33 or the fact that they couldn't provide this until tomorrow  
34 morning.

35           MR. STUBCHAER: It troubles me, Mr. Volker, because  
36 we might get to a certain point in the hearing where it  
37 inconveniences all the parties to the hearing. That does  
38 trouble me.

39           I see your point about not knowing about this,  
40 however, until it came up in cross-examination, so you  
41 couldn't begin that rebuttal a month ago.

42           MR. VOLKER: It wouldn't have helped if I had been  
43 able to predict when the direct would have ended, but had I  
44 been able to predict that, our witness would not be ready  
45 until tomorrow. I was in another hearing on Thursday and

1 Friday in Susanville and I was unable to attend to this  
2 myself.

3 I was here all day Tuesday and Wednesday. We did  
4 the best we could to identify somebody. She worked over the  
5 weekend and thought she would be ready by tomorrow, is the  
6 best we could do under the circumstances.

7 I apologize. I don't want everyone to come back  
8 tomorrow.

9 MR. STUBCHAER: If you don't want everyone to come  
10 back, can the parties suggest a way to handle this without  
11 reconvening the hearing, including myself?

12 Ms. Katz, I don't know if that's possible.

13 MR. VOLKER: I would be happy to offer her testimony  
14 ion a declaration, and if there is a request from the  
15 applicants to file a response declaration, we would  
16 stipulate that is appropriate. We would waive cross-  
17 examination of their declarant if they would waive it of  
18 ours.

19 MR. SOMACH: That's fine.

20 MS. KATZ: If they agree.

21 MR. STUBCHAER: All right.

22 MS. KATZ: Is there anyone else out there who has  
23 anything to say?

24 MR. STUBCHAER: I looked around the audience when I  
25 asked.

26 MS. KATZ: It's like speak now or forever hold your  
27 peace, folks. If you think you might want to be cross-  
28 examining one or both witnesses, now is the time to speak  
29 up.

30 MR. GALLERY: We would only like to get copies of  
31 the declaration.

32 MR. STUBCHAER: They will go to all parties.

33 All right, thank you.

34 MR. SOMACH: Now, my understanding of that  
35 stipulation was Mr. Volker was going to file with the Board  
36 with copies to the parties a declaration or affidavit of  
37 this testimony by Monday.

38 MR. VOLKER: That's fine.

39 MR. SOMACH: And we would have a reasonable time to  
40 respond also in declaration or affidavit form.

41 MR. STUBCHAER: Could you specify a time? Is ten  
42 days enough time?

43 MR. SOMACH: Ten days would be enough time.

44 MS. KATZ: That's ten days -- I want to clarify --

1 MR. SOMACH: From Monday, from the day I receive it,  
2 which I expect will be Monday.

3 MS. KATZ: Steve, you will submit to the Board and  
4 all parties no later than a week from today, Monday?

5 MR. VOLKER: Yes.

6 MS. KATZ: That declaration.

7 MR. VOLKER: Yes.

8 MS. KATZ: Ten days from next Monday, a week from  
9 today, ten days hence you will respond however you want to  
10 respond.

11 MR. SOMACH: Yes.

12 MR. STUBCHAER: If he wishes to respond.

13 MS. KATZ: To Mr. Volker, with copies to the Board  
14 and other parties.

15 MR. SOMACH: To the Board and copies to the parties.

16 MS. KATZ: Okay.

17 MR. STUBCHAER: All right. Are there any additional  
18 exhibits that we haven't covered?

19 MS. KATZ: Yes. Save the American River Association  
20 submits theirs as a policy statement.

21 MR. STUBCHAER: We will accept Save the American  
22 River Association's submittals as policy statements. The  
23 same thing for the Amador County Chamber of Commerce.

24 Any others?

25 MR. CREGER: I have a question. I believe I missed  
26 the boat, but I have got to ask. I believe I ran across  
27 some minor discrepancy between Mr. Bowman's and Mr. Reeb's  
28 testimony which they were adding to the information some  
29 additional exhibits which was what they were reading in  
30 their summaries, and I believe I passed the time I can say  
31 anything about it.

32 MR. STUBCHAER: You passed the time. You are  
33 permitted to submit closing arguments and you could mention  
34 in there, if you wish, anything you didn't get the  
35 opportunity to say.

36 As I said, all your beautiful view foils are in the  
37 record.

38 The administrative hearing record for this hearing  
39 will remain open for 30 days to receive the expected  
40 agreement between SMUD and El Dorado, and to receive any  
41 CEQA document which may be prepared relative to that  
42 agreement. It will require SMUD and El Dorado to provide  
43 copies of the agreement and CEQA documents to the Board and  
44 to all parties pursuant to the instructions contained in the  
45 Notice of Hearing.

1           After the expiration of the 30-day period, on July  
2 21, all parties will have an additional 20 days to submit  
3 any written legal briefs or closing arguments. Such  
4 arguments may be in the form of a legal brief. However,  
5 that format is not required.

6           Persons may also submit written policy statements  
7 prior to the close of the record.

8           After this 50-day period expires on August 10th, the  
9 administrative hearing record for the El Dorado hearing will  
10 close.

11          To repeat, SMUD and El Dorado have until July 21 to  
12 submit their agreement and CEQA documents. All parties have  
13 until August 10th to submit closing arguments and policy  
14 statements.

15          MR. GALLERY: Do we have some reasonable assurance  
16 that there will be a transcript available by July 21?

17          THE REPORTER: I certainly hope to have it done by  
18 the 21st.

19          MR. STUBCHAER: The Board will take this matter  
20 under submission. All persons who participated in this  
21 hearing will be sent notice of any Board action on this  
22 matter and will receive a copy of the Board's decision.

23          I want to thank you all for your interest,  
24 cooperation and participation in this hearing.

25          This hearing is adjourned.

26          (The hearing was adjourned.)  
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