

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of: )  
 )  
 )  
PUBLIC HEARING ON THE ALLEGED WASTE )  
AND UNREASONABLE USE OF WATER BY )  
HIDDEN LAKES ESTATES Homeowners )  
Association )  
~~~~~ )

JOE SERNA JR./CALEPA BUILDING  
1001 I STREET  
COASTAL HEARING ROOM  
SACRAMENTO, CALIFORNIA  
Monday, February 1, 2010  
10:00 A.M.

LINDA KAY RIGEL, CSR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13196

A P P E A R A N C E S

HEARING OFFICER

Arthur G. Baggett, Jr.

HEARING TEAM:

Dana Heinrich, Staff Counsel  
Ernest Mona, Water Resource Control Engineer  
Paul Murphey, Engineering Geologist  
Charles (Larry) Lindsay, Hearings Unit Chief

PROSECUTORIAL TEAM:

David Rose, Staff Counsel

APPEARANCES continued

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STATE WATER RESOURCES CONTROL BOARD:

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P R O C E E D I N G S

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HEARING OFFICER BAGGETT: Good morning. This is the time and place for the hearing regarding the alleged waste and unreasonable use of water by Hidden Lakes Estates Homeowners Association.

I'm Art Baggett, member of the State Water Board, and will be the hearing officer. I'm assisted today by Dana Heinrich, our staff counsel; Ernie Mona, staff engineer; and Paul Murphey, staff geologist.

This hearing is being held in accordance with the Notice of Public Hearing dated November 4th, 2009, revised public notice dated December 8, 2009.

The purpose of this hearing to afford the Division of Water Rights Prosecution Team, Ted Allegra, and the Hidden Lakes Estates Homeowners Association an opportunity to present relevant oral testimony and other evidence which address the key issue specified in the November 4th notice:

Does the misuse of water exist at the Hidden Lakes Estates Homeowners Association northern lake. If the association is misusing water, what corrective action should the State Board require the association to take in accordance with what time schedule to prevent the continued misuse of water?



1           A court reporter is present and will prepare a  
2 transcript of the proceedings. If you'd like a copy,  
3 you can make your separate arrangements with the court  
4 reporter. When you come up, if you could provide the  
5 court reporter with a business card, it will help. And  
6 also speak into the microphone please.

7           Before we get started, I'll explain the order  
8 in which we will conduct the hearing. First, a couple  
9 of words on the exits. If the alarms go off, follow the  
10 exit signs, and exit outside the building, be careful  
11 crossing the streets, and go to the park across the  
12 street.

13           Before we begin the formal hearing, are there  
14 any blue cards for policy statements? Okay.

15           If not, let's proceed to the cases-in-chief.  
16 We have the Division of Water Rights Prosecution Team,  
17 Ted Allegra, Cheri Allegra, and Hidden Lakes Estates  
18 Homeowners Association.

19           At the beginning of your cases-in-chief, a  
20 party may make an opening statement briefly summarizing  
21 the party's position and what the party's evidence is  
22 intended to establish.

23           After the opening, I normally allow witnesses  
24 to provide an oral summary of their testimony. But  
25 given -- in the interest of time, we've got all the

1 evidence, and I think everyone here is familiar with it.  
2 So I would ask that you go straight to  
3 cross-examination.

4 So we'll allow the panels to come up, and then  
5 we will have cross-examination of the witnesses.

6 But before we do begin cross-examination, the  
7 witness does have to verify in fact that the written  
8 testimony is their own and affirm it's true and correct  
9 and also that they have taken the oath.

10 So redirect testimony and recross will not be  
11 permitted in this proceeding.

12 After all the cases-in-chief are completed, the  
13 parties may present rebuttal evidence if you feel it's  
14 necessary.

15 Parties are encouraged to be efficient in  
16 presenting their case and cross-examination. Except  
17 where I approve a variation, we will following the  
18 procedures set forth in Board regulations and the  
19 hearing notice.

20 I would ask parties to limit their opening  
21 statement to 15 minutes, and I will limit the  
22 cross-examination to 30 minutes per panel of witnesses  
23 or individual witness if that's all the party has.

24 We will not have oral closing arguments in this  
25 proceeding. Before we begin the evidentiary portion --

1 well, no policy statements.

2           Next, I will invite the appearances by the  
3 parties who are participating in the evidentiary portion  
4 of the hearing. Will those making an appearance please  
5 state your name, address, and whom you represent so the  
6 court reporter can put this information in the record.

7           Division of Water Rights Prosecution Team.

8           MR. ROSE: David Rose for the Division of Water  
9 Rights Prosecution Team. Last name R-o-s-e. Address  
10 1001 I Street, Sacramento, California.

11           HEARING OFFICER BAGGETT: Hidden Lakes Estates  
12 Homeowners Association.

13           MR. SCHOFIELD: Joseph Schofield. I'm from  
14 Downey Brand. The building is 621 Capitol Mall,  
15 Sacramento, California 95814. For Hidden Lakes Estates  
16 Homeowners Association.

17           HEARING OFFICER BAGGETT: Ted Allegra.

18           MR. WATTS: Richard Watts, Millstone, Peterson,  
19 and Watts, 2267 Lava Ridge Court, Suite 210, Roseville,  
20 California 95661.

21           HEARING OFFICER BAGGETT: We had a couple  
22 procedural issues maybe I'll go through before. We had  
23 a couple witnesses who submitted testimony but did  
24 not -- weren't submitted in the Notice of Intent to  
25 Appear.

1 Ted Allegra, I noticed. I assume you intend to  
2 appear. The witness has submitted testimony. The  
3 attorney, could you --

4 MR. WATTS: Yes, he intends to appear, and I  
5 believe he was listed.

6 HEARING OFFICER BAGGETT: Okay.

7 MR. SCHOFIELD: No, he wasn't.

8 HEARING OFFICER BAGGETT: Could you please  
9 identify yourself and use the microphone.

10 MR. SCHOFIELD: I'm sorry. This is Joe  
11 Schofield. It was my understanding that Mr. Allegra was  
12 not listed as a witness in the list of witnesses to be  
13 presented today.

14 MR. WATTS: Well, it states in the Notice of  
15 Intent to Appear that Ted Allegra -- he's the first  
16 person listed -- plans to participate in the water right  
17 hearing regarding the hearing here today. And then in  
18 addition, we've listed other witnesses.

19 HEARING OFFICER BAGGETT: In addition as a  
20 witness?

21 MR. WATTS: In addition, we've listed other  
22 witnesses.

23 MR. SCHOFIELD: The way that I read that, as  
24 the attorney on the other side, is that Ted plans to  
25 participate in the hearing at whatever level, perhaps

1 generally as an advocate for himself. But since he  
2 wasn't listed as an actual witness who would be  
3 testifying, the actual testimony would come from the  
4 other folks that he listed in support of his position.

5 HEARING OFFICER BAGGETT: Well, if he has  
6 submitted evidence, and if there is no showing of  
7 prejudice, then I will allow him to testify.

8 Is there any objection?

9 MR. SCHOFIELD: Well, inasmuch as his and Mr.  
10 Wood's testimony was presented jointly, I guess no.

11 HEARING OFFICER BAGGETT: Okay. Then we'll  
12 allow him to testify.

13 With that, if there's any other issues with  
14 witnesses, we'll take them up if there are objections.  
15 If not, we'll allow the testimony to proceed as  
16 submitted.

17 With that, the oath. All those who plan to  
18 testify, could you please stand and raise your right  
19 hand if you plan on being a witness.

20 Do you promise to tell the truth in these  
21 proceedings?

22 PROSPECTIVE WITNESSES (collectively): I do.

23 HEARING OFFICER BAGGETT: Thank you.

24 We'll now hear from the Prosecution Team,  
25 opening statement.

1 MR. ROSE: Thank you, Board Member Baggett.

2 Just briefly, a moment ago you asked whether  
3 there were any other objections to specific testimony.

4 At this time, we'd like to object to the  
5 testimony of Scott Barmann for the Homeowners  
6 Association as being labeled expert testimony. Mr.  
7 Barmann is a mechanical engineer and not an expert for  
8 the purposes that he's being asked to testify.

9 And if you'd like me to continue, I have one  
10 other brief objection, or you could deal with that one  
11 first.

12 HEARING OFFICER BAGGETT: We'll deal with that  
13 when he comes up, but it's good to note that for the  
14 record.

15 MR. ROSE: Okay. I'd also like to object that  
16 the testimony -- to the degree that the testimony of  
17 Scott Barmann, Susanne Kraemer, and Frederick Wentz in  
18 each of the written testimonies testifies to legal  
19 conclusions regarding reasonableness, and I'd like those  
20 legal conclusions stricken from the written testimony.

21 Those are my only objections at this time.

22 HEARING OFFICER BAGGETT: Okay. We'll note  
23 those and deal with those when they come up.

24 MR. ROSE: Thank you.

25 Good morning, Board Member Baggett, members of

1 the hearing team. My name is David Rose. I'm here on  
2 behalf of the Division of Water Rights Prosecution Team  
3 for this hearing today.

4 The purpose of this hearing, as you just  
5 mentioned, is to determine whether a waste and  
6 unreasonable use of water is occurring in the Hidden  
7 Lakes Estates northern lake and what corrective action  
8 the Board should require to prevent the continued misuse  
9 of water.

10 To make this determination, you're going to  
11 have to decide whether the seepage occurring from the  
12 northern lake at Hidden Lakes Estates is a reasonable  
13 use of water or not.

14 The Prosecution Team's evidence will show that  
15 water is leaking from the north lake at Hidden Lakes  
16 Estates and is damaging the Wood and Allegra properties  
17 that sit immediately below the lake.

18 Hidden Lakes Estates maintains two lakes for  
19 recreational and aesthetic purposes. The Homeowners  
20 Association owns and controls those lakes, and the  
21 Homeowners Association has known that the northern lake  
22 has been leaking since at least 1990.

23 We'll also show that the lake leaks to the  
24 extent of approximately 85 percent of its total capacity  
25 per year. This leakage is most likely due to improper

1 construction of the berm containing the lake on the  
2 northern side immediately above the Wood and Allegra  
3 properties.

4 We'll also show that the cost of proper  
5 remediation is not excessive when spread amongst 200  
6 properties.

7 Finally, the Prosecution Team's evidence will  
8 show that the region is generally water short, the  
9 Sacramento watershed is drought prone, and customers  
10 have been urged to conserve for several years.

11 And noteworthy, the Hidden Lakes Estates  
12 Homeowners Association imports water from the Sacramento  
13 River to fill its lakes, but the seepage does not drain  
14 back into the Sacramento River.

15 At the end of this case, we'll ask you to  
16 conclude that the seepage occurring from the northern  
17 lake at Hidden Lakes Estates is a misuse of water and  
18 order corrective action to correct this misuse.

19 Thank you.

20 At this point I'd like to call Charles NeSmith  
21 and Charles Rich as witnesses.

22 HEARING OFFICER BAGGETT: We can go off the  
23 record.

24 (Discussion off the record)

25 HEARING OFFICER BAGGETT: Back on the record.



1 Proceed.

2 MR. ROSE: I'd like to start with testimony of  
3 Chuck NeSmith.

4 --o0o--

5 CHARLES NeSMITH

6 Called by PROSECUTION TEAM

7 Direct Examination of Mr. NeSmith By Mr. Rose

8 BY MR. ROSE:

9 Q Mr. NeSmith, would you please state your name  
10 and place of employment for the record?

11 A My name is Charles NeSmith. I work for the  
12 State Water Resources Control Board, Division of Water  
13 Rights, in the Complaint Unit.

14 Q Is your current position with the Complaint  
15 Unit?

16 A Yes.

17 Q How long have you held your current position?

18 A Nine years.

19 Q Mr. NeSmith, have you reviewed your written  
20 testimony for this hearing?

21 A Yes, I have.

22 Q Would you say that it is true and accurate?

23 A Yes.

24 Q Is there anything you would like to correct  
25 from your written testimony?

1           A     No.

2           Q     I'd like to ask you a few questions regarding  
3 your processing of complaints.

4                    What's your normal process for reviewing  
5 complaints?

6           A     When I receive a complaint, I review it, and  
7 then I send out a request for answer.

8                    That includes a copy of the complaint, an  
9 information pamphlet about water rights, and the  
10 complaint investigation process, and an answer to  
11 complaint form.

12          Q     What information do you look at when reviewing  
13 complaints?

14          A     We look at all the information submitted by  
15 both parties and by relevant information in the water  
16 rights database and files.

17          Q     How do you weigh information you receive?

18          A     I give the most weight to a personal witness  
19 when I go out in the field, conditions out in the field;  
20 and then secondly to qualified experts who conduct  
21 studies that are relevant to the matter; then verifiable  
22 testimony from the complainant or the respondent; and  
23 then finally verifiable testimony from others interested  
24 in the complaint.

25          Q     What types of water right complaints do you

1 deal with?

2 A There's four types of water rights complaints  
3 we deal with. The first --

4 MR. SCHOFIELD: I'd like to object, Officer  
5 Baggett. This doesn't -- this is not --

6 HEARING OFFICER BAGGETT: I would agree.

7 If you could -- we've got the written  
8 testimony. I would really like to move to cross, unless  
9 there is something compelling you want to point out.

10 This is all -- I mean I appreciate it, but I  
11 think we understand what the division, how they do these  
12 things. We don't need to hear that.

13 MR. ROSE: Then I'll just ask a few brief  
14 questions, if that would suffice.

15 HEARING OFFICER BAGGETT: Very brief.

16 BY MR. ROSE:

17 Q Mr. NeSmith, briefly, what were the allegations  
18 in the -- I don't need to ask that question.

19 HEARING OFFICER BAGGETT: No.

20 BY MR. ROSE:

21 Q Mr. NeSmith, did the studies that you received  
22 in response to your request for information support the  
23 allegations in the complaint?

24 A Yes.

25 Q Has anything you've seen since you wrote the

1 report of investigation changed your mind about  
2 conclusions you made in that report?

3 A No.

4 MR. ROSE: I have a few brief questions for Mr.  
5 Rich.

6 --o0o--

7 CHARLES RICH

8 Called by PROSECUTION TEAM

9 Direct Examination of Mr. Rich by Mr. Rose

10 BY MR. ROSE:

11 Q Mr. Rich, have you reviewed your written  
12 testimony for this hearing?

13 A Yes, I have.

14 Q Would you say that it is true and accurate?

15 A Yes, I would.

16 Q Is there anything you'd like to correct from  
17 your written testimony?

18 A No, there's not.

19 Q Mr. Rich, what is the source of water that  
20 fills the lakes at Hidden Lakes Estates?

21 A American River via Folsom lake and the San Juan  
22 Water District.

23 Q Where does the seepage from these lakes go?

24 A Into the Linda Creek watershed.

25 Q Is that the same watershed as Folsom?

1           A     No, it is not.

2           Q     Does the water diverted into the lakes at  
3 Hidden Lakes return to the initial watershed?

4           A     No, it does not. It enters the Sacramento  
5 River a few hundred feet upstream of the confluence of  
6 the Sacramento and American River.

7                     In so doing, it bypasses the lower American  
8 River which is declared to be wild and scenic and also  
9 has a number of Public Trust resources including fishery  
10 resources, anadromous fishery resources, that are listed  
11 pursuant to ESA.

12          Q     Mr. Rich, do all dams leak?

13          A     Not all, but a large number of them do.

14          Q     What factors might go into determining whether  
15 a certain amount of leakage is excessive?

16                   MR. SCHOFIELD: Objection. This was not  
17 addressed in Mr. Rich's written testimony.

18                   MR. ROSE: I believe that it was. The  
19 certain -- the topics were brought up, and he's  
20 elaborating on those to the degree necessary for your  
21 edification in these proceedings.

22                   MR. SCHOFIELD: I would contend that Mr. Rich's  
23 testimony had to do with lake leakage and the Public  
24 Trust issues you were talking about, and it didn't have  
25 anything to do specifically with the question that you

1 just asked.

2 MR. ROSE: With whether dams leak and what  
3 factors determine whether it's excessive? I think  
4 that's the exact issue that we're here to decide.

5 MR. SCHOFIELD: It is. But I don't recall any  
6 information in Mr. Rich's testimony that created any  
7 sort of standard for dams leaking.

8 MR. ROSE: Not describing --

9 HEARING OFFICER BAGGETT: There's nothing to  
10 describe the standard. I would concur with counsel.

11 MR. ROSE: We're not describing a standard;  
12 just what factors are relevant. Would you like me to  
13 rephrase the question?

14 HEARING OFFICER BAGGETT: Rephrase the  
15 question. Yeah, that would be fine.

16 BY MR. ROSE:

17 Q Mr. Rich, in your work in the Complaint Unit,  
18 what factors do you look at when determining whether a  
19 certain amount of leakage from a dam is excessive?

20 A Whether the leakage serves beneficial use.  
21 Whether the leakage causes harm. Whether the leakage,  
22 if not allowed to occur, would allow for some other  
23 beneficial use to be -- to occur. And the amount of the  
24 leakage or loss in proportion to the overall use of  
25 water.

1           MR. SCHOFIELD: Again, I want to object. This  
2 is not covered in his testimony.

3           MR. ROSE: He already answered the question.

4           HEARING OFFICER BAGGETT: Okay, proceed. Don't  
5 proceed with the line of questioning, but you can  
6 proceed.

7           MR. ROSE: Did you say do not proceed with the  
8 line?

9           HEARING OFFICER BAGGETT: I'll allow you one or  
10 two more questions, and then I want to get to cross.

11 BY MR. ROSE:

12         Q     Mr. Rich, are any of those factors you just  
13 mentioned present in this case?

14         A     I believe all of them are present. The water  
15 doesn't serve a beneficial use. It goes to a watershed  
16 where all of the uses that are occurring in that  
17 watershed are already accounted for and don't benefit  
18 from the additional flows.

19                 It causes harm along the way to other  
20 properties, and the loss is up to 85 percent of the  
21 capacity of the reservoir which seems to be exceedingly  
22 high.

23         Q     Mr. Rich, just a few final questions. What's  
24 the current status of the source watershed at issue  
25 here?





1 your name correctly?

2 A Yes.

3 Q You testified that you believe there's a misuse  
4 of water resulting from seepage from the Hidden Lakes  
5 Estates northern lake, correct?

6 A I recommended in my report that there was waste  
7 and unreasonable use.

8 Q You specifically used the term "misuse," didn't  
9 you?

10 A In the report? No, I didn't.

11 Q In your testimony?

12 A Well, yes. In the testimony.

13 Q There's no regulatory definition of the term  
14 "misuse" that you are aware of?

15 A No. There is no definition.

16 Q Do you have your testimony in front of you?

17 A Yes, I do.

18 Q Could you turn to page 4 for me.

19 A Yes.

20 Q First I'd like to draw your attention to  
21 paragraph B.

22 A Mm-hmm.

23 Q Generally speaking, would you say that these  
24 are characterizations of the Paragon Geotechnical report  
25 that was submitted by the Hidden Lakes Estates

1 Homeowners Association?

2 A These were extracted from the report, or  
3 paraphrased.

4 Q In the paragraph, you talk about the  
5 construction of the northern lake dam.

6 A Mm-hmm.

7 Q And you state that the as-built drawings of the  
8 dams specified a soil compaction of 95 percent and then  
9 note that the soil compaction tests undertaken by  
10 Paragon indicate that the dam materials were compacted  
11 to a rate of 90 to 91 percent.

12 In your opinion, if a small dam like the  
13 northern lake dam were compacted to 90 or 91 percent as  
14 opposed to 95 percent, would the difference in  
15 performance with respect to stability of the dam be  
16 significantly different?

17 A When you refer to the stability, you talk about  
18 the integrity, whether the dam might fail?

19 Q I am talking about the integrity of the dam.

20 A I don't know.

21 Q If a dam the size of the northern lake dam were  
22 compacted to 90 or 91 percent as opposed to 95 percent,  
23 would the difference in performance with respect to  
24 permeability be significantly different?

25 A It might.

1 Q What do you base that on?

2 A Just the -- that these standards are designed  
3 to meet certain specifications related to the integrity  
4 of the dam.

5 Q Can you give me an estimate of what you would  
6 expect the permeability difference to be in the dam if  
7 it was compacted to 95 as opposed to 91 percent?

8 A No.

9 Q What is the typical permeability for this type  
10 of dam?

11 A I don't know.

12 Q Your paragraph B also states that the dam  
13 includes some of the original soil from a preexisting  
14 drainage swale?

15 A Yes.

16 Q This conclusion, as I understand it, is based  
17 on the boring samples that were taken of material from  
18 the dam; is that correct?

19 A This is based on the report from -- the Paragon  
20 report.

21 Q Okay.

22 MR. SCHOFIELD: Those boring results are in  
23 Hidden Lakes Estates Exhibit 16. Is there any way we  
24 could show that up on the screen?

25 ///

1 BY MR. SCHOFIELD:

2 Q And do you have a copy of that report in front  
3 of you?

4 A No, I don't.

5 Q You're aware that final version of the Paragon  
6 Geotechnical report was submitted to your office, and  
7 you had the opportunity to review it during the  
8 processing of the complaint, correct?

9 A What date -- what report are you referring to?

10 Q It was submitted in May 2008.

11 A Okay.

12 Q You had included the preliminary report in your  
13 exhibits, but the final version of the report's what's  
14 in our Exhibit 16.

15 A Say the question again?

16 Q The final version of the report that was  
17 submitted by Homeowners Association is included as our  
18 Exhibit 16.

19 A Yes.

20 Q You included the preliminary version of the  
21 report?

22 A I did include the preliminary.

23 Q Do you have any problem with us going over the  
24 final version of the report?

25 A No.

1 Q Could you please turn to the plates in the back  
2 of the report. There are 5 through 8. And they cover  
3 soil samples from borings that are identified by the  
4 numbers B1, B1A, B2, and B2A.

5 If we could start with plate 5.

6 In B1, do you note, or did you note in your  
7 review, evidence of any swale material?

8 A I don't remember.

9 Q Do you in B1A? Or can you look at the -- can  
10 you look at it in the plate that you have? I believe  
11 Mr. Rose provided to you so that you can look at it?

12 A It's hard for me to see that from up here. Do  
13 you have a copy?

14 Q I think this is important enough to go through.

15 CHIEF LINDSAY: I can expand it if you just  
16 direct me where to go.

17 BY MR. SCHOFIELD:

18 Q You can see the three layers of soil identified  
19 in that boring?

20 A Yes, I can.

21 Q Do you see any of those three soil samples  
22 characterized in a way that you think would be  
23 consistent with drainage swale material?

24 A Well, that's hard to tell. It's labeled as a  
25 silty clay. That could be drainage swale material.

1 Q Which of the three layers are you talking  
2 about?

3 A The second one.

4 Q In your testimony, did you identify the swale  
5 material as occurring toward the bottom of the dam  
6 embankment directly on top of the granitic material?

7 A In my testimony, no.

8 Q Would you find that the soil material that you  
9 just identified now which is several feet above granite  
10 to be consistent with where you have identified the  
11 swale material as occurring?

12 A I would assume that the swale material would be  
13 near the granite.

14 Q So you probably -- could you assume, based on  
15 your review right now, and the description and what you  
16 know about where you believe the swale material to occur  
17 that it's not in the second soil -- second layer of soil  
18 identified on the boring in front of you right now?

19 A Can you repeat the question?

20 Q The soil -- thank you.

21 The soil sample in front of you right now, you  
22 just said that the middle layer could be consistent with  
23 swale material?

24 A It could be, yes.

25 Q Have you made any sort of conclusion about

1 whether it is from the review of the report?

2 A I could not say for sure. It was identified --  
3 not -- the initial Paragon report identified that the  
4 swale material had not been removed.

5 Q Was the swale material that was -- identified  
6 any boring sample characterized as being black in color  
7 to your recollection?

8 A I don't remember.

9 Q Was it identified as being sandy, to your  
10 recollection?

11 A I don't remember the description of the swale  
12 material.

13 Q Could you read the description of the soil  
14 material that you just identified as possibly being  
15 swale material? Or I'll read it for you. It says:

16 Light gray clayey sand, moist, medium  
17 dense, fine to coarse.

18 Do you believe that would be consistent with  
19 swale material?

20 A Could be.

21 Q Can you advance to the next plate, plate 6.

22 A Okay.

23 Q Do you see anything in this sample that you  
24 would find to be consistent with swale material?

25 A Well, yes. Both of them could be.

1 Q Both of them --

2 A There is no definition of swale material.

3 Q Did you review the -- you reviewed the report,  
4 and you wrote a statement of it that, I believe, leads  
5 to the conclusion that there was swale material on top  
6 of bedrock that was not removed in order to prepare --

7 A I reviewed the report, and I took the  
8 conclusions of the report.

9 Q But you didn't review the boring samples?

10 A I looked at the borings.

11 Q You did. And as you're sitting here today, you  
12 don't recall whether this particular boring in reference  
13 to the conclusion could logically be said to contain  
14 swale material?

15 A Like I say, these materials you have identified  
16 could be. But I couldn't say they would definitely be.

17 Q Do you see anything in here to suggest that  
18 they probably are swale material?

19 A No.

20 MR. SCHOFIELD: Could you advance to the next  
21 plate? Could you move it slightly down so we could read  
22 the title?

23 BY MR. SCHOFIELD:

24 Q This is plate 7, log of boring B2. Do you see  
25 anything in this sample that suggests it might be swale



1 material?

2           A     Again, these are all identified in the same  
3 manner, sandy silts, silty clays. And those are  
4 general -- those are soil classifications, and they  
5 could be swale material, but that doesn't necessarily --

6           Q     Could you look at the bottom sample in  
7 particular, Mr. NeSmith? Does that seem, as you're  
8 sitting here today, to be consistent with what you  
9 believe to be the swale material that was identified in  
10 boring samples?

11          A     It says it's got possible berm material,  
12 organics.

13          Q     Yes.

14          A     That would be -- yes.

15          Q     Would you think that -- would you find that to  
16 be a different compaction nature from other soils that  
17 were in the previous two slides? Would you characterize  
18 it differently from the soil samples that were on the  
19 previous two slides?

20          A     Well, the -- none of the other soils included  
21 organic material.

22               MR. SCHOFIELD: Can you advance to the next  
23 plate? That's boring B2A. Could you slide it back down  
24 so we could see the top? Thank you.

25 ///

1 BY MR. SCHOFIELD:

2 Q Is there anything in this slide that has any of  
3 that berm material or possible organic material in it?

4 A No.

5 Q And do you recall whether any of these borings,  
6 B1, B1A, B2, and B2a, come from the center third of the  
7 dam?

8 A I don't recall.

9 MR. SCHOFIELD: Could you back up the images to  
10 show, I believe it's plate 2, where there are boring  
11 locations located? Back one more. I apologize. Could  
12 you go forward two more? And one more. And one more.  
13 Okay.

14 I withdraw the question for my failure to  
15 identify where the boring -- oh, I apologize.

16 BY MR. SCHOFIELD:

17 Q On this map, it's difficult to read on the  
18 screen, and it is presented sideways, but you can see on  
19 the embankment of the dam borings identified as B1, B1A,  
20 B2, and B2A, correct?

21 A Okay. I see. Yes, I see it now.

22 Q Now those are the four boring samples that we  
23 just looked at, correct?

24 A Yes.

25 Q And those come from what you would

1 characterize, I assume, as generally in the center of  
2 the dam?

3 A Generally.

4 Q And they are adjacent to these lots 71 and 72  
5 that are the subject of this complaint?

6 A Yes.

7 Q And only one of those four, just as a  
8 recollection, contained anything like berm material or  
9 organic material?

10 A Yes.

11 Q Thank you. Can we go back to page 4 of your  
12 report.

13 A Okay.

14 Q Paragraph 4B.

15 MR. ROSE: Can I ask a question. Is this page  
16 4 of his testimony or his report?

17 MR. SCHOFIELD: I apologize.

18 BY MR. SCHOFIELD:

19 Q Your testimony.

20 A My testimony, okay.

21 Q Do you have page 4 in front of you?

22 A Yes.

23 Q You state that the dam dimensions and slope are  
24 different from the as-built drawing for the dam.

25 A Yes.

1 Q You note that the crest is wider, the slope's  
2 flatter, and the dam height lower, correct?

3 A Yes.

4 Q Would you expect that these changes would make  
5 the dam more stable or less?

6 A I wouldn't be able to -- I don't know.

7 Q You wouldn't be able to draw upon your  
8 knowledge in the Complaint Unit that a dam that has a  
9 wider crest with flatter slopes wouldn't be more stable?

10 MR. ROSE: Object, relevance. The stability of  
11 the dam is not at issue here.

12 MR. SCHOFIELD: It goes to the issue of the  
13 performance of the dam. It's related to evidence of  
14 soil compaction and the like, and permeability is  
15 related to soil compaction.

16 HEARING OFFICER BAGGETT: Continue. Overruled.

17 BY MR. SCHOFIELD:

18 Q Can you answer the question?

19 A Repeat the question.

20 Q I'm asking whether or not in your experience  
21 you would find that a dam that has a wider crest and  
22 flatter slopes would be more stable than a dam that did  
23 not?

24 A That would be common sense, yeah.

25 Q Would you also expect that these changes would

1 tend to make a dam less permeable or more permeable?

2 A I wouldn't be able to say.

3 Q You wouldn't be able to say that a dam that is  
4 wider is less permeable?

5 A No. Not if it's built wrong. Not if there are  
6 other factors that could contribute to the seepage.

7 Q Fair enough. Taking all things else being  
8 equal, would a dam that is wider be less permeable or  
9 more permeable than a dam that is thinner?

10 A It could be, or it could not be. Depends on  
11 the materials.

12 Q So a dam of identical materials that's one foot  
13 thick would be equally as permeable as one that's 30  
14 feet thick?

15 A No. The thicker would be -- would, by that  
16 standard alone, likely be less permeable.

17 Q Thank you.

18 Turning to paragraph C page 4, you state that:

19 If the embankment had been completely  
20 stripped of unsuitable materials, the  
21 seepage at the embankment foundation  
22 would probably be quote much less  
23 unquote.

24 The actual report that you cited from for that  
25 proposition states the following:

1           If the dam foundation had been completely  
2           stripped of the suitable -- unsuitable  
3           materials and the bottom of the  
4           embankment keyed several feet into firm  
5           rock, the seepage would probably be  
6           somewhat less than currently exists.  
7           However, all earth dams can be expected  
8           to have some seepage, and the subject dam  
9           does not appear to be performing poorly  
10          based on the results of our  
11          investigation.

12           You read that paragraph and you wrote the words  
13          "much less." What technical basis did you have for  
14          changing the statement in the original Paragon report  
15          from "probably somewhat less" to "probably much less"?

16           A     I don't remember any conscious decision to  
17          change that word.

18           Q     Okay. On page 6 of your testimony you state  
19          that the Allegra property has been devalued by \$80,000  
20          as a result of damage caused by excessive water on the  
21          property.

22           You are aware, are you not, that the Woods and  
23          Allegras executed a settlement agreement with the  
24          Homeowners Association and that in that agreement the  
25          Woods and Allegras accepted a cash settlement in

1 exchange for permanently waiving any claims that they  
2 may have for damage to their property as a result of  
3 seepage from the dam, correct?

4 MR. WATTS: Objection. That misstates the  
5 characterization of that settlement agreement which  
6 expressly reserved the right to pursue remedies under  
7 Civil Code 1668 which does not allow a party to  
8 stipulate to an ongoing interference such as a water  
9 trespass.

10 MR. SCHOFIELD: Section 1668 is for contracts  
11 that were executed in violation of State public policy  
12 to allow unlawful actions to continue, which is, I would  
13 assert, not at all what the settlement agreement between  
14 the Homeowners Association and the Allegras and Woods  
15 was about.

16 But I also concede that that is a matter for  
17 closing briefs in this matter.

18 HEARING OFFICER BAGGETT: I would concur. So  
19 move on. Objection sustained.

20 BY MR. SCHOFIELD:

21 Q The settlement agreement compensated the Woods  
22 and Allegras for damage to their property, correct?

23 MR. WATTS: I might also say that lacks  
24 foundation and calls for opinion, improper expert  
25 opinion.

1           MR. NeSMITH: I'm testifying as a technical  
2 witness. I can't testify to that legal matter.

3 BY MR. SCHOFIELD:

4           Q     You are the complaint officer in this matter,  
5 and you were provided with various documents that effect  
6 considerations about damage to the properties of the  
7 Woods and Allegras, correct?

8           A     But the decision of harm is based on whether  
9 there was -- whether there was a devaluation initially.  
10 How it got compensated later really has nothing to do  
11 with our decision.

12           HEARING OFFICER BAGGETT: I haven't ruled on  
13 the objection yet.

14           Counsel, could you -- I would sustain the  
15 objection to the extent you did not lay a foundation,  
16 did not refer to what settlement. If you could lay a  
17 proper foundation.

18           MR. SCHOFIELD: Thank you, Mr. Baggett.

19 BY MR. SCHOFIELD:

20           Q     Are you aware of there being a settlement  
21 agreement that was executed between the Woods and  
22 Allegras and the Homeowners Association?

23           A     Yes.

24           Q     Did you receive a copy of that settlement  
25 agreement?



1           A     Yes.

2           Q     Did you read that settlement agreement?

3           A     I skimmed through it, but these matters are not  
4 something that's within our authority.

5           Q     Do you usually take into consideration  
6 agreements between various property owners that have a  
7 dispute when you are ruling on complaints that are filed  
8 and the nature of those complaints?

9           A     No.

10          Q     Did you understand that the settlement  
11 agreement was intended to compensate the Woods and  
12 Allegras for possible damage to their --

13          A     I did not pay that close of attention to that  
14 document.

15          Q     Do you recall writing in one of your letters  
16 that you understood there to have been a settlement  
17 between the parties and then making a reference to Civil  
18 Code section 1668?

19          A     I don't recall.

20          Q     Did you take into account when you were  
21 considering alleged damage to the properties of the  
22 Woods and Allegras that they may have been compensated  
23 through the settlement agreement?

24          A     No.

25          Q     On page 2 of your testimony in the first full

1 paragraph you state that seepage from the northern dam  
2 serves no beneficial purpose. Correct?

3 A Yes.

4 Q Do you recognize that storing water in a  
5 reservoir for aesthetic purposes is beneficial? A  
6 beneficial use of water?

7 A That is a beneficial use.

8 Q Would you concede that storing water in a  
9 reservoir to sustain a resident fish population is a  
10 beneficial use?

11 A That could be a beneficial use.

12 Q Would you concede that storing water in a  
13 reservoir to enable fishing within a neighborhood is a  
14 beneficial purpose?

15 A Could be.

16 Q In your staff investigation report of July 13,  
17 2006, you stated:

18 Some seepage is to be expected from any  
19 unlined water containment facility,  
20 especially one overlying porous soils and  
21 fractured bedrock as is the case in the  
22 subject complaint.

23 Is it fair to say that you still consider that  
24 statement to be accurate?

25 A Yes.

1 Q Would you also say in light of that statement  
2 that if water put into a reservoir that has some  
3 seepage, that the water put into that reservoir is for  
4 the beneficial purposes of aesthetics and fish  
5 sustaining and recreation, or that water is put into  
6 there for the nonbeneficial purpose of seepage?

7 A It's put in there for the purposes of a lake.

8 Q In that staff investigation report of July 13,  
9 2006 which is Prosecution Team's Exhibit 9, you stated  
10 that there are three possible sources of water occurring  
11 on complainants' property. They were a spring, which  
12 you dismissed for lack of evidence of a spring.

13 A Yes.

14 Q A leaking pipe, which was dismissed because  
15 there was no evidence of a leaking pipe.

16 A Yes.

17 Q And the lake.

18 A Yes.

19 Q You concur that the lake is a source of seepage  
20 on the property?

21 A The primary source, yes.

22 Q Is it also true that there are native water  
23 sources that could contribute to water on the property  
24 such as precipitation?

25 A Precipitation, yes.

1           Q     The Paragon Geotechnical report that we were  
2 looking at earlier on page 10 includes the following  
3 quote:

4                     Given the shallow bedrock through the  
5                     subdivision, it is likely that perched  
6                     groundwater is present seasonally in many  
7                     areas, and such water will typically  
8                     follow the surface topography.

9           Do you have any reason to disagree with that  
10 statement?

11          A     No.

12          Q     On the same page, the reports states:

13                     Overirrigation in areas of shallow  
14                     bedrock can result in the presence of  
15                     perched water, particularly where highly  
16                     porous soil such as DG, or decomposed  
17                     granite, are present.

18          Do you have any reason to disagree with that  
19 sentence?

20          A     No.

21          Q     Would you concede that perched water from local  
22 precipitation could also be occurring on the  
23 complainants' property?

24          A     Possibly.

25          Q     Is it true that local water sources such as

1 irrigation could also occur on complainants' property?

2 A From other properties?

3 Q From other properties first?

4 A Well, when I visited the site, I did not see  
5 any pathway for surface flow onto his property from  
6 other properties.

7 Q Were there neighboring properties that were of  
8 higher elevation?

9 A There are neighboring properties of higher  
10 elevation.

11 Q Does water tend to flow from higher elevations  
12 to lower elevations?

13 A Of course it does. But that doesn't  
14 necessarily mean it takes a direct line to complainants'  
15 property.

16 Q If somebody were overwatering their property on  
17 one of the neighboring parcels that's on higher  
18 elevation, do you think it's possible that some of that  
19 water could drain over onto the subject property?

20 A Well, anything's possible. It depends on the  
21 route of that surface water flowing. It could flow down  
22 into the gutter and then flow down to the complainants'  
23 property.

24 Q In areas of shallow bedrock, is the soil more  
25 sensitive or less sensitive to the amount of irrigation

1 water applied?

2 A Is the what? The soil?

3 Q Mm-hmm. Is the soil more or less sensitive to  
4 irrigation water in areas of shallow bedrock?

5 A What do you mean by sensitive?

6 Q Would the soil tend to be more saturated if  
7 there were water applied to it when it's on top of  
8 perched bedrock?

9 A Yes.

10 MR. SCHOFIELD: Thank you, Mr. NeSmith. I have  
11 no further questions for you.

12 --o0o--

13 Cross-Examination of Mr. Rich By Mr. Schofield

14 FOR HIDDEN LAKES ESTATES HOMEOWNERS ASSOCIATION

15 BY MR. SCHOFIELD:

16 Q Good morning, Mr. Rich. I have a few questions  
17 for you. You stated in your testimony that you did an  
18 analysis of how much water in acre feet the northern  
19 lake is seeping each year, correct?

20 A Yes.

21 Q You concluded the lake is losing 6.04 acre feet  
22 per year?

23 A I thought it was 6.05, but yeah. It was right  
24 about there.

25 Q You also determined that the lake's volume is

1 seven acre feet, correct?

2 A That was my estimate, yes.

3 Q That led to your determination that the average  
4 loss from the lake on an annual basis was about  
5 85 percent of the lake's volume each year, correct?

6 A Yes.

7 Q Okay. I want to walk through a few questions  
8 about your calculations.

9 You based your calculation in part on the  
10 quantity of water that the Homeowners Association  
11 purchases from the San Juan Water District which is  
12 metered every 60 days or so, correct?

13 A Yes.

14 Q Where did you obtain the records of the  
15 Homeowners Association's water purchases?

16 A Mr. NeSmith provided them to me.

17 Q Is it your understanding they come from the San  
18 Juan Water District's records?

19 A That is my understanding.

20 Q And the records that you relied on are  
21 Prosecution Team Exhibit 24, and they cite a single  
22 meter that's called Hidden Lakes Estates lake?

23 A Yes.

24 Q Did you use the entire volume of water showed  
25 in these records for your calculation of water delivered

1 to the northern lake?

2 A Yes, I did.

3 Q Are you aware that there is a southern lake  
4 that is connected by an overflow to the northern lake?

5 A Yes, I am.

6 Q Are you aware that water is delivered to the  
7 southern lake directly, not to the northern lake, from  
8 San Juan?

9 A Yes.

10 Q And are you aware that the southern lake water  
11 is pumped up to the northern lake? That's how the  
12 northern lake gets its supplemental refill?

13 A No, I'm not.

14 Q Are you aware that there's a weir in the  
15 northern lake that when the northern lake is overfilled  
16 above the level of that water goes back down into the  
17 southern lake?

18 A Yes.

19 Q Why did you not include the southern lake in  
20 your analysis of the volume of water being stored?

21 A I believe I did for evaporation purposes.

22 Q Why did you not refer to the southern lake in  
23 your testimony? Why did you refer only to the northern  
24 lake's evaporation?

25 A I'm not sure that I did.



1           Q     You note that you did a Google Planimeter to  
2 get the surface area of the northern lake, and then you  
3 made reference to evaporation. Did you do a Google  
4 Planimeter reading for the southern lake?

5           A     Yes, I did.

6           Q     You did. If you took into account the entire  
7 volume for evaporation purposes, why didn't you take it  
8 into account for the total volume of water leading to  
9 seepage from the lakes?

10          A     Because I'm not aware of any seepage that's  
11 leaving the southern lake. I'm only aware of seepage  
12 that's leaving the northern lake.

13          Q     Did you do any investigation to determine  
14 whether the northern lake and the southern lake have  
15 different embankment materials?

16          A     No.

17          Q     Did you do any investigation to determine  
18 whether the soils around the northern and the southern  
19 lake are different from each other?

20          A     I didn't do any of that. I did visit the site,  
21 did observe downstream of the southern embankment or the  
22 dam, and I didn't see any seepage at all at the time I  
23 was there.

24          Q     Did you see seepage coming out of the northern  
25 lake?

1           A     I saw evidence of it, yes.

2           Q     You saw evidence of it where?

3           A     In the street, large amounts of rust on manhole  
4 covers. I saw what appeared to be mineralization water  
5 that I would not have expected to come from homes.

6           Q     Did you evaluate downstream from the southern  
7 lake?

8           A     I did. We did follow the creek below the  
9 southern lake for quite a while.

10          Q     Did you see water?

11          A     No significant flows, no.

12          Q     Not in the overflow?

13          A     None.

14          Q     Did you deduct any amount of water used to  
15 maintain landscaping on the Homeowners Association  
16 property?

17          A     There was a second billing record which I  
18 assumed was what covered that.

19          Q     Did you do any investigation to determine  
20 whether the second billing record was for the entirety  
21 of the irrigated -- irrigation on Homeowners Association  
22 property?

23          A     No.

24          Q     Would it surprise you to find out that a lot of  
25 the water that's delivered to the lakes is in fact used

1 to irrigate the area around the lakes?

2 A It could be.

3 Q Did you ask any questions to find out?

4 A No.

5 Q Could you turn to the Humphrey's Report which  
6 is Prosecution Team Exhibit 8?

7 A Okay.

8 Q I believe it's Prosecution Team Exhibit 8.  
9 It's shown on the screen. Are you there?

10 A Yes.

11 Q Can you look at the page 1, the numbered line  
12 D?

13 A Okay.

14 Q Can you read that line for me?

15 A At the bottom, this --

16 Q Yeah. Just line D?

17 A (Reading:)

18 Purchased water to maintain 2.1 acres of  
19 full lake level and 1.5 acres of  
20 landscaping.

21 Q Would you say that 2.1 acres refers to both the  
22 southern and the northern lakes, based on what you know  
23 about their surface areas?

24 A Yes.

25 Q When you were at the lakes, would you say that

1 1.5 acres of landscaping roughly corresponds with the  
2 area surrounding the northern and southern lakes?

3 A That I couldn't tell you because I don't know  
4 what area is irrigated.

5 Q Okay. Could you look at numbered line B -- I,  
6 I take back my question.

7 HEARING OFFICER BAGGETT: How much additional  
8 time do you need, counsel? I requested the parties  
9 limit it to 30.

10 MR. SCHOFIELD: This the guts of the  
11 prosecution against my client, Mr. Baggett. We have a  
12 couple questions about some fundamental points raised in  
13 Mr. Rich's testimony. I apologize for --

14 HEARING OFFICER BAGGETT: Okay. I'll allow you  
15 to continue.

16 BY MR. SCHOFIELD:

17 Q To determine that the northern lake holds seven  
18 acre feet, you used a maximum depth of the northern lake  
19 at ten feet, right?

20 A Yes.

21 Q How did you come up with that depth?

22 A Typically, most lakes of this type, if you take  
23 the capacity of the lake -- and we used 70 percent.  
24 We'll usually overestimate it.

25 Based on long experience and looking at

1 different factors, it's usually about .65 times maximum  
2 depth times the surface area. And I believe I had the  
3 surface area at 1.15, and when I multiplied those out I  
4 came up with about seven.

5 Q How did you come up with the maximum depth of  
6 ten feet?

7 A I talked to Mr. NeSmith, and we made a guess  
8 based on the conditions that we'd seen that it was  
9 approximately ten.

10 Q Could you turn to Prosecution Team Exhibit 7  
11 which is a Youngdahl Consulting Group Geotechnical  
12 Reconnaissance report?

13 A Yes.

14 Q Could you turn to the last paragraph on page 2,  
15 starting with the words "the adjacent Lake 2"?

16 A Where are you at now? What page?

17 Q Page 2, the very bottom paragraph.

18 A Page 2, okay. "The adjacent Lake 2."

19 Q Yeah.

20 A Okay.

21 Q What's the water surface elevation there, of  
22 adjacent Lake 2.

23 A 469.

24 Q And what's the bottom of the lake elevation  
25 described as being?

1           A     455.

2           Q     Did you read that in making your determination  
3     about what the depth of the lake was?

4           A     No, I did not.

5           Q     If you had taken that into account and you  
6     determined that the maximum depth of the lake was 14  
7     feet, would your calculation of the total volume of the  
8     northern lake have been different?

9           A     It would have been different, yes.

10          Q     Would it have been reasonable, based on what  
11     you know about the lake and the general soil conditions  
12     around the northern and the southern lake to have  
13     considered the total volume of water placed into the  
14     southern lake as well as the northern lake for  
15     determining the total amount of seepage?  In --

16          A     I don't understand your question.

17          Q     I apologize.  I'll rephrase.

18                     Knowing what you know about how the northern  
19     and southern lakes are operated, and knowing that the --  
20     or having a general understanding that the soils are  
21     probably not particularly different between the northern  
22     and the southern lakes, given that they're immediately  
23     adjacent to each other, do you think it would have been  
24     a reasonable thing to do to account for some of the  
25     seepage as going from the southern lake?

1           A     No.

2           Q     You think it's reasonable to conclude that  
3     100 percent of the seepage comes from the northern lake?

4           A     I believe the vast majority does, yes.

5           Q     What is the basis for that, other than that you  
6     know that there happens to be -- or you read that  
7     there's some seepage that goes from the northern lake?

8           A     The basis is that the lakes are sitting in --  
9     the lower lake is sitting in a bowl with natural ground  
10    underneath it and a dam embankment.

11                    When I viewed the dam embankment, I saw no  
12    evidence of any significant seepage coming out of that  
13    embankment.

14                    The northern lake is not sitting in a natural  
15    setting. It has an artificial berm that is built across  
16    the northern shore. And because of that, that's what  
17    blocks up the water, and that is where I would expect  
18    more leakage to occur is on a berm, especially if that  
19    berm was not properly keyed in to the surrounding  
20    ground. That's where I would be looking for my leakage.

21                    If the lower dam had not been keyed in to the  
22    ground, then I would have expected to see more seepage  
23    there. My assumption is that the lower dam was properly  
24    keyed in and that the lower berm was not.

25           Q     Have you done any tests to test the assumption

1 that the southern lake was properly keyed in?

2 A None other than to look at the performance.

3 Q You haven't taken any soil samples from the  
4 area of the southern lake that is immediately adjacent  
5 to the overflow?

6 A No, I have not.

7 Q Are you aware of any testing that's been done  
8 in that regard?

9 A No, I'm not.

10 Q Are you -- in visiting the northern and  
11 southern lakes, did you see trees surrounding them?

12 A I recall trees in the neighborhood, yes.

13 Q Is it your understanding that trees draw water  
14 from the groundwater that they grow in?

15 A Yes.

16 Q Did you account for evapotranspiration from the  
17 trees when you calculated the evaporation from the  
18 lakes?

19 A No, I did not.

20 Q You used the Folsom pan evaporation charts to  
21 calculate evaporation from the northern lake and the  
22 southern lake, right?

23 A Yes, I did.

24 Q Those pan evaporation charts are from 1956 to  
25 1979, correct?



1           A     Those are the published ones, yes.

2           Q     The period over which you calculated  
3     evaporation for the Homeowners Association lakes was  
4     from 2005 to 2008?

5           A     Yes.

6           Q     Did you take into account possible temperature  
7     differences between those years?

8           A     No, I did not. I used the average pan  
9     evaporation data from Folsom Lake and assumed that it  
10    would be representative at the period, as that's the  
11    best information I had.

12          Q     Did you -- do you have an understanding that  
13    the years between 2000 and 2008 were some of the hottest  
14    on record?

15          A     They could have been warmer, yes.

16          Q     Can you turn to Hidden Lakes Estates Exhibit 41  
17    for me please.

18          A     Yes.

19          Q     It's a series of photographs. Can you turn to  
20    the photograph that's labeled 21?

21          A     21. Okay. I have it.

22          Q     Can you read the caption for me?

23          A     (Reading:)

24                     Looking north across the southern lake at  
25                     the fountain. The fountain, recently

1                   repaired, operates during daylight hours.

2                   Photocell control.

3           Q     Did you take into account -- well, is it your  
4 understanding that fountains increase the rate of  
5 evaporation?

6           A     They can.

7           Q     If you were to calculate evaporation from the  
8 southern lake would you take into account the  
9 evaporative effects of that fountain in some way?

10          A     You could try.

11          Q     Did you?

12          A     No.

13          Q     You state in your testimony that Mr. Humphrey  
14 calculated the rate of seepage from the northern lake at  
15 about three to four gallons per minute?

16          A     I believe that's what his numbers were  
17 equivalent to.

18          Q     Can you please turn back to Mr. Humphrey's  
19 report and read the last sentence, second full  
20 paragraph?

21          A     What exhibit was that?

22          Q     Prosecution Team 8?

23          A     Okay. I've got what's marked HLE Exhibit 8,  
24 but it's not Mr. Humphrey's report.

25          Q     I'm sorry. Prosecution Team 8.

1           A     Oh, Prosecution Team.  Okay.

2           Q     The last sentence in the second full paragraph  
3 reads:

4                     Measurement of seepage outflow at Jon Way  
5                     on July 25th, 2005 was 1.23 gallons per  
6                     minute or two acre feet per year  
7                     consistent with Wood's pump system  
8                     operation.

9                     Do you recall having read that sentence in  
10 preparing your testimony?

11          A     No, I did not.  I relied on information  
12 Mr. NeSmith provided to me.

13          Q     In reading that sentence now, would you say  
14 that Mr. Humphrey was assuming that 100 percent of the  
15 water coming out Jon Way was originating from the  
16 northern lake seepage?

17          A     Where are we at again?

18                     MR. WATTS:  Objection.  That calls for  
19 speculation.  He's asking for assumptions of a party  
20 who's not present.  You haven't laid a foundation for  
21 how this report was prepared.

22                     MR. SCHOFIELD:  Mr. Rich's job is to review  
23 these kinds of materials and make determinations about  
24 how much water is coming from what source on a routine  
25 basis.

1 HEARING OFFICER BAGGETT: Overruled. Continue.

2 MR. RICH: Can you go back and point out -- I'm  
3 having a hard time finding out exactly where you're at.

4 MR. SCHOFIELD: There are -- if you look up on  
5 the screen, it might help. Thank you for highlighting  
6 the sentence.

7 MR. RICH: Okay.

8 MR. SCHOFIELD: Does that help you?

9 MR. RICH: Okay. Okay, I see it. What's your  
10 question?

11 BY MR. SCHOFIELD:

12 Q Now in reading that sentence with your  
13 knowledge with long experience in the Division of Water  
14 Rights, would you assume from that sentence that  
15 Mr. Humphrey was taking -- assuming that 100 percent of  
16 the water he was measuring at the street was coming from  
17 the reservoir? Seepage from the reservoir?

18 A Are you saying that is 100 percent of the  
19 seepage coming from the reservoir?

20 Q In reading that sentence, do you believe that  
21 Mr. Humphrey believed that 100 percent of the water was  
22 coming from the reservoir? He says measurement of  
23 seepage --

24 A I can't speculate on what he believed.

25 Q Okay. He uses the term "measurement of seepage

1 outflow" at Jon Way was 1.23 gallons per minute. Does  
2 he seem to identify any other source of water that might  
3 be contributing to that 1.23 gallons per minute?

4 A I don't know whether there may have been other  
5 sources. All he's saying, at that one particular point  
6 he measured 1.23 gallons per minute.

7 What it represents is beyond the context here  
8 in that one sentence.

9 Q So as far as you know, some of that water could  
10 come from irrigation in backyards?

11 A Not likely.

12 Q Why not?

13 A Because the backyards that I saw -- I mean  
14 water's going to hit and run very quickly. Especially  
15 if it hits bedrock, it's going to move laterally off the  
16 gutters.

17 I didn't see any backyards when I was out there  
18 in the vicinity of the two homes, Mr. Wood's and Mr.  
19 Allegra's, where I thought seepage water would run  
20 quickly there.

21 There were drainage swales that would cut it  
22 off. There were other things. I didn't expect much of  
23 that water to make it into their yard.

24 Q Is your testimony that if they irrigated their  
25 backyards none of the water would make it into the

1 drainage system in the backyard?

2 A You mean from the Woods and Allegra yard?

3 Q Yeah.

4 A My understanding is they had enough water they  
5 never had to irrigate.

6 Q Do you know they never irrigated?

7 A That was my understanding based on  
8 conversations with Mr. Allegra on the telephone, Mr.  
9 NeSmith, and I believe I've also spoken with Mr. Wood at  
10 one time.

11 Q Did you ask Mr. Wood whether he had arranged to  
12 have an irrigation system installed in his backyard?

13 A He may have had one. I don't know how much he  
14 used it. I don't think he used it very often, based on  
15 the conditions.

16 That was the impression I was left, based on my  
17 conversations with Mr. NeSmith, Mr. Wood, and Mr.  
18 Allegra. They didn't have a whole lot of need for use  
19 for the system even if it was there.

20 Q If water from irrigation did occur in the  
21 backyards of the Woods and the Allegras, do you think  
22 it's reasonably possible that some of it would have  
23 emerged in the drainage system in their backyards?

24 A If they applied it, yes, it could have.

25 Q What if there had been overflow from

1 neighboring irrigation systems? Is that possible?

2 A If there had been overflow, I would have  
3 expected the drainage courses that most -- most  
4 subdivisions require that you drain down the fence line  
5 and that most of that water is going to turn and go that  
6 direction. That's the reason that the County requires  
7 it.

8 Q Did you make an evaluation of the topography of  
9 the neighboring lots immediately adjoining Woods and  
10 Allegras?

11 A I observed them when I was there.

12 Q Did you make any determination at the time that  
13 there was some sort of system to capture irrigation  
14 water from those lots before it might have drained onto  
15 the Woods' and Allegras' property?

16 A I didn't see anything in my recollection that  
17 indicated there was excessive irrigation going on.

18 I saw none of the lots that appeared to have  
19 swampy areas on the lot, which I would have expected to  
20 be on the source lot. I didn't see large amounts of  
21 grass that indicated they'd been overwatered or  
22 anything.

23 There was nothing in my observations while I  
24 was there that led me to believe that it was occurring.

25 Q In your testimony, you compared the seepage

1 from the northern lake to seepage from Folsom Reservoir,  
2 and you concluded that seepage from the northern lake,  
3 which you estimated at having a capacity of seven acre  
4 feet, would be relatively large compared with seepage  
5 from Folsom Lake, correct?

6 A No.

7 Q You did not?

8 A No, I did not.

9 Q Did you say that if Folsom Lake leaked at the  
10 same rate that this -- that the northern leaked that  
11 that would be a waste of water?

12 A Yes, I believe you could make that inference.

13 Q Is it your understanding that Folsom Lake has a  
14 capacity of a million acre feet?

15 A Thereabouts, yes.

16 HEARING OFFICER BAGGETT: I've been very  
17 generous with the time. Can you expedite your cross or  
18 else explain the relevance?

19 MR. SCHOFIELD: I wanted to ask the follow-up  
20 question regarding that, but --

21 BY MR. WATTS:

22 Q Would you assume, or based on your experience  
23 in looking at lakes and seepage, that a lake that has  
24 seven acre feet in capacity would tend to lose more of  
25 its volume on an annual basis than a lake that has a



1 capacity of a million acre feet?

2 A Not necessarily, but --

3 Q If you were to take a lake that was  
4 proportionately smaller than a seven-acre-foot  
5 reservoir, would you say that would be about a cup of  
6 water?

7 A You're comparing seven acre foot to a cup of  
8 water?

9 Q I'm asking you: If the northern lake in  
10 proportion to Folsom, seven acre feet compared to a  
11 million, if you would were to take a relatively -- a  
12 reservoir that was relatively small to the northern lake  
13 as the northern lake is to Folsom, about how much water  
14 would that small reservoir hold, about a cup?

15 A I don't know. I'd have to compute it.

16 Q Okay. And if it were about a cup, and you dug  
17 out a reservoir and poured a cup of water into it, how  
18 long do you think it would take to seep out? Seep into  
19 the surrounding groundwater?

20 A Probably soak up in the ground right off the  
21 bat.

22 Q Based on that comparison, do you think it's  
23 probably more likely that a seven-acre-foot reservoir  
24 would seep more of its volume on an annual basis than a  
25 million-acre-foot reservoir like Folsom?

1           A     It might.

2           Q     I would like to distribute a document for your  
3 review, Mr. Rich. It's an exhibit from the San Juan  
4 WaterGram, November and December 2008. Do you recognize  
5 this as a document prepared and distributed by the San  
6 Juan Water District?

7           A     Yes.

8           Q     It describes the district's obligations under  
9 the Water Forum Agreement to leave water in Folsom  
10 Reservoir during dry periods and to use substitute  
11 groundwater to meet current demand. Doesn't it?

12          A     I'm not sure where it says that, but.

13          Q     The highlighted paragraph in the middle of the  
14 page. It says: Why is water unavailable to San Juan  
15 Water District customers. Says:

16                   As signatory to the Sacramento Water  
17                   Forum Agreement, San Juan Water District  
18                   is required to leave some surface water  
19                   in Folsom Lake during dry years and use  
20                   supplemental groundwater to meet customer  
21                   demand.

22          A     I would agree.

23          Q     If San Juan Water District is leaving water in  
24 Folsom Lake and serving substituted groundwater to its  
25 customers, would that contradict the conclusion that you

1 stated in your testimony that water from Folsom Lake is  
2 serving 100 percent of the water to the Homeowners  
3 Association during dry periods?

4 A No, I don't believe it would.

5 Q Why not?

6 A Well, you could still -- if you didn't have  
7 leakage, you still wouldn't have to pull the water. If  
8 you're not pulling that water, it means that groundwater  
9 would then be available for somebody else, and even more  
10 water theoretically could be left in Folsom.

11 Q What happens to the groundwater when it seeps  
12 out of the northern lake?

13 A It goes into the Linda Creek drainage.

14 Q Where does it go from there?

15 A Linda Creek runs down into Dry Creek which  
16 eventually runs into the Sacramento River.

17 Q Is water in the Sacramento River available for  
18 beneficial use to the City of Sacramento?

19 A They could pump it at the treatment plant  
20 downtown here.

21 Q Is it available for beneficial use in the  
22 Sacramento-San Joaquin Delta area?

23 A Yes.

24 Q The WaterGram separately makes note in the  
25 first article there of a water transfer pilot program

1 under which the District would transfer Folsom Lake  
2 surface water to San Diego and Santa Clara during dry  
3 periods, the premise of the transfer being that they  
4 would use substituted groundwater instead of the use of  
5 Folsom Reservoir. Were you aware of that pilot program?

6 A No.

7 Q You testified that water seeping from the lake  
8 is unreasonable because cumulatively it reduces the  
9 amount of water that may be used in the Sacramento area  
10 and use of water from the Sacramento-San Joaquin Delta.  
11 Do you stand by that statement?

12 A I don't believe I said Sacramento-San Joaquin  
13 Delta. I believe I said it was the American River,  
14 lower American River watershed.

15 Q In the --

16 A Yes, you are correct. It does say that. That  
17 was not my intent though.

18 Q To the extent that it says that the water's  
19 needed to meet domestic needs in the metropolitan  
20 Sacramento area and provide water to the Sacramento-San  
21 Joaquin Delta, would you delete the testimony? Correct  
22 that portion of your testimony?

23 A Yes, I would correct that portion.

24 Q You just stated that the water from -- that  
25 seeps from the northern lake enters the Dry Creek

1 drainage?

2 A Yes. Linda Creek first, which flows into Dry  
3 Creek, which flows into the Natomas main drain which  
4 enters into the Sacramento River.

5 Q Are you aware that Dry Creek is a migratory  
6 corridor for salmon and steelhead?

7 A If it is, it's not nearly as important a  
8 migratory corridor as the lower American River is.

9 Q Have you ever reviewed the Dry Creek Watershed  
10 Plan that has plans for helping to improve passage for  
11 migratory salmon and steelhead and identifies concerns  
12 with water conveyance flows?

13 A No, I have not.

14 MR. SCHOFIELD: I would like to introduce into  
15 the exhibit list Homeowners Association -- Hidden Lakes  
16 Estates Exhibit, I don't know, 47, Dry Creek Watershed  
17 Plan. I'm not going to bother to go through the details  
18 of the report to save time, but I'd put it in the  
19 record.

20 BY MR. SCHOFIELD:

21 Q You identified in your testimony that the San  
22 Juan Water District issued a Stage 3 Water Warning on or  
23 about February 25th, 2009. Do you know how long that  
24 warning was in effect?

25 A No, I'm not sure.

1                   MR. SCHOFIELD: I would like to distribute San  
2 Juan WaterGram, May-June 2009.

3 BY MR. SCHOFIELD:

4           Q     Do you have that in front of you, Mr. Rich?

5           A     Yes, I do.

6           Q     Could you look in the upper right-hand corner  
7 where it says:

8                   Current water conservation warning, Stage  
9                   3, voluntary reductions now requested.

10          A     Yes.

11          Q     Could you read the sentence underneath that?

12          A     (Reading:)

13                   Due to March's increased precipitation  
14                   and snow levels we have moved from a  
15                   mandatory reduction request to a  
16                   voluntary 20 percent water reduction  
17                   request. Please see the back page for  
18                   tips about saving water and money.

19          Q     We all should review those tips regularly.

20                   Did you evaluate any records to determine  
21 whether the Homeowners Association refilled the lake  
22 during the period in which the mandatory water warning  
23 was in effect?

24          A     Only the records that I had that period.

25                   MR. SCHOFIELD: I have no further questions.

1 HEARING OFFICER BAGGETT: Thank you. Any  
2 cross-examination?

3 MR. WATTS: Very briefly.

4 --o0o--

5 Cross-Examination of Mr. NeSmith By Mr. Watts

6 FOR TED ALLEGRA and CHERI ALLEGRA

7 BY MR. WATTS:

8 Q Good morning, Mr. NeSmith. I'm Richard Watts.  
9 I'm the Allegras attorney. I'm going to ask you a  
10 couple quick questions in follow-up. I think a lot's  
11 been covered here today.

12 In doing your analysis on whether or not  
13 there's a beneficial use, do you look at whether damage  
14 is being done to private property?

15 A I consider that, yes.

16 Q What is your conclusion in the -- with regard  
17 to the Allegra property out at Hidden Lakes Estates?

18 A I went out there on my field investigation and  
19 noticed the effect of the water, the soggy lawn, the  
20 drainage system that had been installed. Mr. Wood  
21 showed me some mold on his foundation. And based on  
22 that, yes.

23 Q Earlier in your testimony, you discussed the  
24 issue of groundwater and whether or not that would  
25 contribute to the moisture that's out on this property;

1 is that correct? It was an inquiry that was asked of  
2 you?

3 A Yes.

4 Q In your expert opinion, would the issue of  
5 groundwater present from -- let's start with  
6 precipitation -- be present in the months of June and  
7 July?

8 A No.

9 Q Why not?

10 A Well, it's been a long time since it's rained.

11 Q Okay. What about in August --

12 A No.

13 Q -- same answer?

14 So if there was the presence of groundwater  
15 during that time period -- and again, I'm talking about  
16 groundwater rather than seepage -- that would have been  
17 present because of irrigation issues or something along  
18 that line?

19 A Repeat the question?

20 Q Yeah, it's a poor question.

21 If you found groundwater in July of any year,  
22 absent a significant summer rain which I haven't seen in  
23 my 20 years here, what would be the causes of such  
24 groundwater?

25 A Well, you -- first you look at the most obvious



1 causes, in this particular case, the nine feet of  
2 hydrostatic head next door.

3 Q When you did your review and your analysis -- I  
4 mean we've all seen your report -- you concluded that  
5 there was significant seepage out at this property; is  
6 that correct?

7 A I concluded that based on the technical reports  
8 conducted by both the respondent and the complainant and  
9 my personal observations in the field.

10 Q And you're aware that the association's been  
11 aware of the seepage issue since 1990?

12 A Yes.

13 --o0o--

14 Cross-Examination of Mr. Rich by Mr. Watts

15 FOR TED ALLEGRA and CHERI ALLEGRA

16 MR. WATTS: Mr. Rich, I just have a couple of  
17 questions for you. In fact, I just have one.

18 BY MR. WATTS:

19 Q You were -- earlier, there was questions  
20 regarding Mr. Murphy's report and whether or not --

21 (Interruption by the court reporter)

22 MR. WATTS: Murphy.

23 BY MR. WATTS:

24 Q And the issue that was presented was the line  
25 in his report that referenced the pump that was located

1 on the Woods property; is that correct?

2 A Yes.

3 Q Okay. Giving you the same -- just referencing  
4 that same hypothetical -- the same issue, the same fact  
5 there, you did aware -- you did observe soggy conditions  
6 or extra water conditions on these properties; is that  
7 correct?

8 A Yes.

9 Q Okay. And if the pump was removing all of  
10 these -- all that water to the appropriate drainage  
11 areas, would you in your expert opinion observe those  
12 types of water issues?

13 A Can you rephrase that?

14 Q Sure. If the pump was removing all of the  
15 water that was seeping through the dam, would you see  
16 any water present in the backyards?

17 A No, you would not.

18 Q So in your expert opinion, the pumps -- strike  
19 that.

20 Are you aware the pump on the formerly Wood  
21 property runs 24 hours day?

22 A I know it runs a lot. I couldn't tell you how  
23 much.

24 Q Okay. If the pump's running 24 hours a day and  
25 it's not removing all the water, there is more water

1 coming from the dam than is being pumped away; isn't  
2 that correct?

3 A That would be a logical conclusion.

4 Q What time of year did you observe the streets  
5 when you went out there?

6 A I believe it was in the fall before any  
7 significant rainfall had come.

8 Q Okay. And when you were out there you observed  
9 water -- the presence of water damage on the streets in  
10 the form of the manholes?

11 A Yes, I did.

12 Q And you observed moist conditions in other  
13 parts of the streets?

14 A In the immediate vicinity of Mr. Wood and Mr.  
15 Allegra's home, not anywhere else in the subdivision.

16 Q Okay.

17 MR. WATTS: I have no further questions.

18 HEARING OFFICER BAGGETT: Thank you.

19 Let's take five minutes and allow who is up  
20 next? I think we have 12 witnesses or ten? How many.

21 MR. WATTS: We're only going to present five  
22 witnesses.

23 HEARING OFFICER BAGGETT: Why don't we take a  
24 five-minute break, get your witnesses situated, and come  
25 back with the case-in-chief. Allegra et al.

1 (Recess)

2 MR. ROSE: Board Member Baggett, if now is the  
3 appropriate time, the Prosecution Team would like to  
4 move its exhibits into evidence.

5 HEARING OFFICER BAGGETT: Any objection? Then  
6 so moved.

7 (Whereupon the Prosecution Team Exhibits  
8 were admitted in evidence.)

9 MR. ROSE: I also would like to ask that the  
10 Board take official notice of the 2009 and 2008 drought  
11 proclamations by Governor Arnold Schwarzenegger. I'll  
12 pass out copies if that would assist you.

13 HEARING OFFICER BAGGETT: Any objection?

14 MR. SCHOFIELD: No objection.

15 HEARING OFFICER BAGGETT: No objections. Okay.  
16 Off the record.

17 (Brief recess)

18 HEARING OFFICER BAGGETT: We're back on the  
19 record.

20 MR. WATTS: Good morning Mr. Baggett, Board.

21 I would like to just briefly make an opening  
22 statement, and it will be -- I think what's been  
23 presented by the initial presentation was clear. It was  
24 concise regarding the seepage.

25 I think what's interesting about this case is

1 that if you look at the declarations from the  
2 association and all the experts in this case, the issue  
3 of seepage is not in dispute.

4 Certainly we understand that the HOA is  
5 disputing the amount of seepage that's taking place, but  
6 the issue that water is seeping into these properties is  
7 not at issue.

8 The only issue, from our perspective that needs  
9 to be presented any further is the actual damages that  
10 are being suffered by the owners of lot 71 and 72, Mr.  
11 and Mrs. Allegra, and formerly Mr. and Mrs. Wood.

12 That is -- the property is now owned by new  
13 ownership, and they are present here today to discuss  
14 the damages they're still suffering.

15 So first I want to start with Cheri Allegra.  
16 And she's the owner of lot 72 along with her husband.

17 --o0o--

18 CHERI ALLEGRA

19 Called by TED ALLEGRA and CHERI ALLEGRA

20 Direct Examination of Ms. Allegra by Mr. Watts

21 BY MR. WATTS:

22 Q Mrs. Allegra, have you reviewed your written  
23 testimony submitted here?

24 A Yes, I have.

25 Q And is that true and accurate testimony?

1           A     It is, except that the drainage that we -- the  
2 ditch that was put in was actually three feet deep  
3 instead of two feet.

4           Q     Okay. So with that correction, is your  
5 testimony as submitted true and accurate?

6           A     Yes, it is.

7           Q     Okay. So that is the only changes that you  
8 have to your testimony?

9           A     Yes.

10          Q     Okay. And again, we're not going to rehash  
11 your whole testimony here, but I do want to raise an  
12 issue that was presented in the evidence submitted by  
13 the HOA, and that would be the access that you provided  
14 to the property so that they could conduct their  
15 investigations.

16                   There was certainly an inference made in the  
17 documentation supplied by the HOA that you had blocked  
18 their access or denied them access.

19                   Did you provide the HOA access to your property  
20 to conduct investigations?

21          A     We did, yes.

22          Q     And how did you go about doing that? Did they  
23 come and ask you?

24          A     Yes. There was a letter that was sent to us.  
25 And then Ashley Teegarden, who was the property manager,

1 called me and asked -- say, you know, Paragon wants to  
2 come out this day. Is it all right with you? And I  
3 would agree.

4 Q Okay. Did they actually come out and do any  
5 investigations on your property?

6 A Yes. Dana, one of the Paragon engineers, did  
7 come out. And we had some piezometers installed by Dr.  
8 Thomas -- Dr. Thompson -- and so Paragon, Dana, came out  
9 and tested the water that was in that piezometer.

10 Q What periods did you allow them to come out and  
11 do investigations on your property?

12 A There is a letter giving them authorization  
13 from 3-26-07 to 5-25-07. And then we also gave them  
14 verbal approval until July 30th of '07. And then we  
15 gave them additional permission to come onto our  
16 property from 5-15-08 to 6-30-08. So about six -- a  
17 little over six and a half months.

18 Q Did you have discussions with people from  
19 Paragon about what investigations were actually taking  
20 place?

21 A Just that when I had talked to Dana he said,  
22 you know, he was testing the water level. He would use  
23 a -- what was it -- it wasn't a yardstick. It was some  
24 kind of a device that measured the water that was in our  
25 piezometer.

1 Q Okay. Without going into too much detail --  
2 it's already present in your written testimony -- what  
3 is your backyard like during the months of June and July  
4 of any given year? What's the conditions out there?

5 A It -- it's wet. It's -- and you'll -- well,  
6 you won't see. But our lawn, it's hard to grow grass.  
7 I mean we do have grass. But my husband, he'll put more  
8 grass seeds on our lawn, and it doesn't grow and, you  
9 know, it's because it's just so wet back there.

10 My kids do not play in the backyard. They play  
11 in the front yard. Our front yard, we have lacrosse  
12 nets in the front yard. They -- all of their friends  
13 play in the front yard. They do not play in the  
14 backyard.

15 Q Okay. Have you had any damage to any of your  
16 property in the backyard other than actual real estate?  
17 Your pool, your spa, those types of things?

18 A Yes. Our pool is, from my understanding, is  
19 damaged that we cannot replaster it. Our spa is  
20 sinking. So we definitely have that damage.

21 Q Okay.

22 MR. WATTS: I'm going to move over to Tara  
23 Delaney. Ms. Delaney is the owner of lot 71.

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TARA DELANEY

Called by TED ALLEGRA and CHERI ALLEGRA

Direct Examination of Ms. Delaney by Mr. Watts

BY MR. WATTS:

Q Ms. Delaney, have you reviewed your written testimony in this case?

A Yes, I have.

Q And is it true and accurate to the best of your knowledge?

A I would like to make a correction on the number 1, first paragraph.

Q Okay.

A The birthday party that is in reference was my daughter's birthday party which occurred the end of April.

The July reference is to the second birthday party, my son's birthday party, in which we made the decision not to put up the jumpy house because during the April birthday party it was such a mess.

Q Okay. And when you say such a mess --

A I'm sorry. The vendor was concerned because it's very wet in the back of our property. So he was concerned about putting up the jumpy house just -- they put stakes and stuff.

1           So what he ended up doing was putting down a  
2 lot of like vinyl kind of sheets to cover the surface  
3 before putting down the jumpy house.

4           So in July, it's still wet in the back of our  
5 property, so we made the decision not to do that.

6           Q     Okay. With those exceptions and your  
7 correction, is your testimony accurate and true?

8           A     Yes, sir.

9           Q     Okay. Again, we're going to let your testimony  
10 speak for itself, but I do have a quick question for you  
11 regarding just the general condition of your property in  
12 the summer months.

13           What's it like in your backyard during June,  
14 July, and August of any given year?

15           A     The back portion of our yard is always wet.  
16 Pretty much, it goes between being wet and what I would  
17 call almost marshy-like towards the back where my  
18 children's play area is.

19           Q     Okay. And does that affect your ability to use  
20 that area of your backyard?

21           A     Yes. We were looking at purchasing a  
22 trampoline, and we -- that's the area we would have to  
23 put it in just based on the rest of our yard because  
24 there's a pool and other things, and there's no way to  
25 put it back there because it would sink.

1 Q Okay. The issue of a settlement agreement was  
2 raised earlier today. You didn't sign any settlement  
3 agreement with the HOA, did you?

4 A No. I'm not privy to that --

5 Q Okay.

6 A -- information.

7 Q Have you had any problems with any of your  
8 property other than the ground itself being wet, like  
9 your pool, your spa, anything like that?

10 A Well, we looked into resurfacing our pool  
11 because it's quite old, and we were told by All City  
12 Pools that we can't do that.

13 Because if we drain all the water out of our  
14 pool, because of the pressure underneath the pool, the  
15 water from the lake, it would actually -- the whole pool  
16 would crack.

17 So that's concerning because at some point we  
18 do need to because it's chipping off, the surface area  
19 of the pool.

20 Q Okay. Thank you.

21 MR. WATTS: Next I want to move to Steve  
22 Beveridge.

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STEVE BEVERIDGE

Called by TED ALLEGRA and CHERI ALLEGRA

Direct Examination of Mr. Beveridge by Mr. Watts

BY MR. WATTS:

Q Mr. Beveridge, what is your occupation?

A I'm owner of All Cities Pool, or co-owner. We service, repair, remodel, and plaster swimming pools.

Q Okay. Mr. Beveridge, do you service the Allegra's pool?

A Yes, we do. Not personally, but one of my employees.

Q Okay. Have you reviewed your written testimony in this case?

A Yes, I have.

Q Is it true and accurate to the best of your knowledge?

A Except for repairs resumed on the properties. We have not started any repairs other than regular maintenance.

Q Okay. With that correction, is your testimony true and accurate?

A Yes.

Q Thank you. Mr. Beveridge, what is your opinion of how you can service these pools? You heard the

1 testimony of these two owners of lot 71 and 72 that they  
2 have problems due to water underneath their pools. What  
3 happens from that water? What's your opinion?

4 A Well, as far as repairing them, we can repair  
5 them. We deal with that all the time. It's just a lot  
6 more work. We have to drill holes in to fix it, to  
7 replaster everything else.

8 As far as the Allegras, their problem is their  
9 spa has cracked, and it is actually settled in the  
10 ground more. So what we'd have to do is basically  
11 jackhammer that out, regunite, and reshoot the whole  
12 thing.

13 Q Okay. Are you able to drain their pools at  
14 this time?

15 A We can drain them. But what we have to do is  
16 drain them part way, then we drive down, take out the  
17 hydrostatic valve to allow the water pressure up, then  
18 we put in more pumps, keep them pumping the entire time  
19 we're working on it so it doesn't rise out of the  
20 ground.

21 Q And you're talking about pumping the water  
22 that's coming through the bottom of the pool?

23 A Through the bottom of the pool out into the  
24 sewer or drains.

25 Q Okay.



1 conditions in your backyard?

2 A No, other than we're the lowest lot on the  
3 subdivision. We are the lot that was built last. And  
4 as it was explained earlier today, water does flow  
5 downhill; and if the lake is seeping, it's going to flow  
6 into my property and my neighbor's property first. And  
7 I don't wish to be a conduit for water that's being used  
8 down in the Sacramento River.

9 Q Okay. Is your property suffering damage to --  
10 I heard testimony earlier about your spa and your pool.  
11 Are you able to utilize your backyard with the  
12 conditions back there?

13 A We're not able to utilize the backyard in the  
14 way we utilize the front yard. We do have pool parties  
15 back there, but everybody's confined to the cement  
16 areas.

17 The pool -- the concern I have with the pool if  
18 this lake isn't fixed is that not only the current spa  
19 situation won't ever -- well, if they fix the current  
20 spa situation and the lake is still leaking onto our  
21 property, we're going to see additional damage on the  
22 pool and also the spa if it's not rectified, if the lake  
23 is not sealed.

24 Q Okay. Thank you Mr. Allegra.

25 MR. WATTS: And lastly, Mr. Hugh Thompson.

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C. HUGH THOMPSON, PhD

Called by TED ALLEGRA and CHERI ALLEGRA

Direct Examination of Dr. Thompson by Mr. Watts

BY MR. WATTS:

Q Mr. Thompson, what is your occupation?

A I'm a Registered Professional Civil Engineer.

Q Have you observed the Allegra property?

A Yes.

Q Have you observed the -- formerly the Wood property, now the Delaney property?

A Yes.

Q And what were you retained to do out at those properties?

A Originally started as an engineering assessment of excessive water under the Woods' house as related to causing potential mold amplification, and then that followed with trying to ascertain the source of the water.

Q Mr. Thompson, you provided written testimony to this hearing and this Board. Have you reviewed your testimony?

A Yes. And you're referring to the reports --

Q Yes?

A -- we did? Yeah.



1 Q Are those reports true and accurate?

2 A Yes.

3 Q Okay. You heard the testimony earlier today  
4 talking about surface water and groundwater and whether  
5 or not the permeability issue of how thick a dam might  
6 be, and I just have a question for you:

7 If a dam is one foot thick or 100 feet thick,  
8 is the issue really the permeability of that 100 feet or  
9 is it the issue of the thickness? I mean what causes  
10 seepage with relation to the thickness of a dam? Does  
11 it make a difference how thick a dam is?

12 A Yeah. I think that the -- where I got a little  
13 confused in this morning's discussion was using the term  
14 permeability which is basically flow of water in a  
15 distance per time.

16 And what I think that was missed was that you  
17 could have the same permeability in the thin structure  
18 as well as the thick structure. It's going to take  
19 longer to get through the thick structure of the same  
20 permeability.

21 Q Okay. So once that water has passed through  
22 the structure itself -- so let's say it's a 100-foot dam  
23 and the rate is X per minute, once it's passed through  
24 there, as long as it continues, that rate will continue  
25 whether or not it's 100 feet or one foot thick. Is that

1 correct?

2           A     Yeah.  If the permeability rate is the same,  
3 the permeability rate is the same.  That's the -- that's  
4 the significance of that parameter as opposed to other  
5 parameters such as transmissivity or something like that  
6 that relate to flow through a cross-sectional area.

7           Q     Okay.

8           MR. WATTS:  With that, we're going to just go  
9 ahead and submit the written testimony and then move on  
10 to cross-examination.

11           HEARING OFFICER BAGGETT:  Very good.  Thank  
12 you.  Okay.

13                     Cross-examination?  Prosecution Team?

14           MR. ROSE:  We don't have any cross-examination.

15           HEARING OFFICER BAGGETT:  Hidden Lakes?

16           MR. SCHOFIELD:  Thank you, Mr. Baggett.

17                     Since a couple of the people who submitted  
18 testimony aren't going to be here for cross-examination,  
19 I would request latitude to introduce as exhibits, and  
20 ultimately into evidence, some deposition transcripts  
21 that were part of the depositions that were submitted by  
22 the complainants that should provide some context for  
23 some of the deposition transcripts that they themselves  
24 submitted and I would have asked about on cross had I  
25 been given the opportunity to cross-examine their

1 witnesses.

2 HEARING OFFICER BAGGETT: I appreciate that.  
3 But are we going to -- we haven't had a request to enter  
4 those into evidence.

5 MR. SCHOFIELD: I'm not asking to move them  
6 into evidence now. I merely want to, I guess just as a  
7 housekeeping matter, during the period which we're  
8 cross-examining their panel to let it be -- let it be  
9 understood that we'll have the opportunity to introduce  
10 as exhibits those deposition transcripts that are part  
11 of the same depositions their people submitted.

12 MR. WATTS: Mr. Baggett, we would have no  
13 objection to that.

14 We certainly intend to introduce the sworn  
15 testimony of those witnesses in their depositions, so to  
16 the extent there'd be any prejudice I would have no  
17 objection to allowing him to bring in other statements  
18 out of their sworn testimony.

19 HEARING OFFICER BAGGETT: To the extent you  
20 understand these are hearsay, according to the rules of  
21 this Board. We don't have the witnesses here. They  
22 aren't testifying.

23 MR. SCHOFIELD: They are deposition transcripts  
24 with transcriber certifications and dates.

25 HEARING OFFICER BAGGETT: Yeah. But we will

1 treat them under the Board's hearsay rules which, as you  
2 know, are pretty broad. But we can't make direct  
3 findings on them.

4 Okay. Continue.

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6 Cross-Examination of Ms. Delaney by Mr. Schofield

7 FOR HIDDEN LAKES ESTATES HOMEOWNERS ASSOCIATION

8 BY MR. SCHOFIELD:

9 Q Start with you Ms. Delaney.

10 A Yes.

11 Q My name is Joe Schofield, by the way. Nice to  
12 meet you.

13 A Nice to meet you.

14 Q You stated in your testimony that the prior  
15 owners of your property informed you about wet soils  
16 occurring in the backyard throughout much of the year?

17 A Yes.

18 Q Did they give you a copy of the settlement  
19 agreement that we were talking about earlier?

20 A No. I'm sorry.

21 Q You stated in your testimony that you've done  
22 nothing to affirmatively block the maintaining drainage  
23 easement on your property?

24 A Yes.

25 Q Have you done anything to alter the elevation

1 of the easement so that it slopes gradually from the  
2 back of the property down to the front of the property?

3 A No.

4 Q You haven't done anything to improve the  
5 drainage within that easement, to your knowledge?

6 A No. The only thing that has been done is a  
7 pump system was put in place by the previous owner to  
8 pump the water out from the lake when the water level  
9 got too high. And it runs -- we have it on all the  
10 time.

11 Q Have you hired anybody, an engineer or a  
12 consultant, to design an improved drainage system for  
13 the property?

14 A No, we haven't.

15 Q Have you installed any additional drainage  
16 improvements yourselves?

17 A No, we haven't.

18 Q Did you have an inspection done of the house  
19 before you purchased it?

20 A Yes, we did.

21 Q Did the inspection report reveal any issues  
22 relating to mold on the property?

23 A No. That was actually taken care of, I  
24 believe, by the previous owner.

25 MR. SCHOFIELD: I don't have any further

1 questions for you Ms. Delaney. Thank you.

2 MS. DELANEY: Mm-hmm.

3 MR. SCHOFIELD: Mr. Beveridge.

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5 Cross-Examination of Mr. Beveridge by Mr. Schofield

6 FOR HIDDEN LAKES ESTATES HOMEOWNERS ASSOCIATION

7 BY MR. SCHOFIELD:

8 Q I'm Joe Schofield. Nice to meet you.

9 Have you ever worked on a pool other than  
10 Allegras' that's located in the area of high  
11 groundwater?

12 A Often.

13 Q Have you ever installed a pressure relief valve  
14 in a pool on high groundwater to enable you to work on  
15 it?

16 A Yes.

17 Q Did you successfully replaster the Allegras'  
18 pool when it was owned by the Shupes?

19 A I did not plaster it. I was servicing it at  
20 the time and working with the plasterer that did do it.

21 Q You stated in your testimony that the ground  
22 around the Allegra spa and pool has settled due to soggy  
23 conditions?

24 A Not the ground, the spa.

25 Q Okay. Have you seen evidence of the ground

1 settling near the spa?

2 A I couldn't really tell.

3 Q You don't have a technical background in --

4 A Well, no --

5 Q -- geotechnical engineering?

6 A -- I mean you have to be there -- the spa, you  
7 can see by the tile line, by the water on the tile line.

8 Q Mm-hmm.

9 A The ground -- I mean I'd have to be there over  
10 long periods of time to see where the ground level  
11 started, where it went down to.

12 Q Do you have an engineering background?

13 A I am not an engineer. I am a contractor.

14 Q Do you have any technical basis for concluding  
15 that any settling of the spa is due to soggy conditions  
16 as opposed to movement of the earth based on other  
17 conditions?

18 A I know when it was originally done the first  
19 time, they had to break out some of the gunite because  
20 it was bad, and underneath the spa was soaked.

21 Q Do you have a technical basis for your  
22 conclusion that the spa has settled due to the presence  
23 of water on the property?

24 A No, just an observation.

25 MR. SCHOFIELD: Thank you. Mr. Beveridge.

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Cross-Examination of Ms. Allegra by Mr. Schofield  
FOR HIDDEN LAKES ESTATES HOMEOWNERS ASSOCIATION

BY MR. SCHOFIELD:

Q Ms. Allegra, I'm Joe Schofield.

A Mm-hmm.

Q What year did you buy the house at 8316 East  
Hidden Lakes Drive?

A '99.

Q Before you bought the house, the prior owner  
told you that there was moisture in the yard, correct?

A Yes.

Q During your discussions with the prior owner  
before you bought the house, he also told you that he  
installed drainage improvements on the property?

A Yes, he did.

Q You have two next door neighbors. One's the  
Jon Way house formerly owned by the Woods, right?

A Yes.

Q And that's to the east of your property?

A Mm-hmm.

Q You also have a next door neighbor on the other  
side of the property to the west, correct?

A Mm-hmm.

Q Is that the Black family?



1           A     Mm-hmm.

2           Q     Your backyard has a moist area between your  
3 property and the Black's property, correct?

4           A     Yeah, but it's not -- that area is not that  
5 bad. I mean there's -- they -- yeah. It's sloped  
6 between our properties. There's a pretty good slope, so  
7 we haven't had hardly any problem with runoff from the  
8 property.

9           Q     So I understand you, the slope is -- it's --  
10 the elevation of your property is relatively high near  
11 the property line with the Blacks, and it slopes down  
12 into the rest of your property?

13          A     Yes.

14          Q     Have you ever seen the Blacks' backyard  
15 sprinklers draining onto your property?

16          A     A little bit.

17          Q     You testified in your written testimony that  
18 you had a French drain installed in your backyard to  
19 improve drainage?

20          A     Mm-hmm.

21          Q     Who did you hire to design the system?

22          A     To design it or install it?

23          Q     Design it?

24          A     I don't remember the name of the contractor.

25          Q     What year was that done?

1           A     That it was designed?

2           Q     Yeah.  If you know.  If you don't know, that's

3  fine.

4           A     I don't know.  I know it was installed in 2007.

5           Q     Who did the installation?

6           A     Juan Silva.

7           Q     Is Juan Silva an engineer?

8           A     He's -- no, he's a landscaper.

9           Q     Were you present -- you indicated in your

10 testimony that you were present when at least part of it

11 was installed?

12          A     Mm-hmm.

13          Q     What did the installers use to remove the

14 material in order to form the drainage ditch?  Did they

15 use shovels?

16          A     Uh-huh.

17          Q     Did they use jackhammers?

18          A     Did they use -- they did use some -- I think

19 they did use a jackhammer.  Yeah.  They did, uh-huh.

20          Q     Did they use any other type of heavy equipment

21 that you are aware of?

22          A     No, not that I remember.

23          Q     Since installing the drainage system, have you

24 hired an engineer to consult with you about ways to

25 improve the system's effectiveness?

1           A     No.

2           Q     You and your husband filed a lawsuit against  
3     the Homeowners Association for damages relating to the  
4     alleged seepage coming into your property from the  
5     Hidden Lakes Estates northern lake, correct?

6           A     Yes.

7           Q     The lawsuit included an action alleging that  
8     the lake's seepage constituted a nuisance, right?

9           A     Mm-hmm.

10          Q     It also included an action saying that the  
11     lake's seepage constituted a trespass against your  
12     property?

13          A     Correct.

14          Q     The lawsuit asked for monetary damages to  
15     compensate you for the injury to the improvements to  
16     your property?

17          A     Mm-hmm.

18          Q     Did it also ask for an order requiring the  
19     Homeowners Association to take all steps necessary to  
20     stop the current leakage of lake water over, under, and  
21     across your property?

22          A     I believe so.

23          Q     And you executed a settlement agreement with  
24     the Homeowners Association to resolve that lawsuit,  
25     right?

1           A     Mm-hmm.

2           Q     That settlement agreement was in exchange for a  
3     sum of money that was paid to you and your husband,  
4     correct?

5           MR. ROSE:  Objection, relevance.

6           MR. SCHOFIELD:  It goes to the damage to their  
7     property and the extent to which they have already been  
8     compensated for it.

9           HEARING OFFICER BAGGETT:  I'll overrule.  
10    Continue.

11   BY MR. SCHOFIELD:

12          Q     I'm going to read a quote from the settlement  
13     agreement.  It says that you discharge the Homeowners  
14     Association quote:

15                   From any and all claims, demands, causes  
16                   of action, obligations, damages, and  
17                   liabilities of any kind and nature  
18                   whatsoever, whether in law or in equity,  
19                   which either party ever had, now has, or  
20                   may in the future arising from the claims  
21                   asserted by the complaints that you  
22                   filed.

23                   Does that language sound familiar to you?

24           MR. WATTS:  Objection.  Rereading -- it's the  
25     best evidence rule that governs the document itself.

1 And second, to the extent there's any questioning of  
2 this witness about what the waiver in there would mean  
3 legally would be a legal conclusion she's unable to  
4 give.

5 Other than whether or not it's in the document;  
6 I suppose she could answer that question.

7 But the document speaks for itself.

8 HEARING OFFICER BAGGETT: I would agree and  
9 sustain the objection. So maybe you want to rephrase  
10 the question.

11 The witness should be familiar with the  
12 document if they were signatories to it; but to  
13 interpret it, I would agree, is a legal conclusion.

14 BY MR. SCHOFIELD:

15 Q The complaint is Hidden Lakes Estates  
16 Exhibit 5. Do you have that in front of you?

17 A No, I don't.

18 MR. SCHOFIELD: Could we put Exhibit 5 up on  
19 the screen? Can we turn to the last page. And one  
20 back. I apologize. The signature page.

21 BY MR. SCHOFIELD:

22 Q Is that your signature, Ms. Allegra?

23 A Yes, it is.

24 Q Could you turn to the front page of the  
25 exhibit? Thank you. Does that look like the settlement

1 agreement to you?

2 A It must. I mean, you know, it's been so long I  
3 don't even remember.

4 Q Okay.

5 MR. WATTS: Mr. Baggett, to the extent we're  
6 going to go through the settlement agreement, I think  
7 it's the Board's position, or it should be the Board's  
8 position, this is irrelevant to whether or not the  
9 unreasonable use of water is present here.

10 The damage is one of the elements of it, but  
11 it's not -- the damage -- the fact that there's been a  
12 settlement of damage does not appear to be relevance as  
13 far as the conclusion by the Board that there is an  
14 unreasonable use of water here.

15 MR. SCHOFIELD: To the extent that the  
16 unreasonable use of water is hinged upon damage to  
17 property, I would assert that it's extremely relevant as  
18 to whether or not the people who are allegedly damaged  
19 by it have accepted money in exchange for their claim.

20 HEARING OFFICER BAGGETT: No, I would overrule  
21 it. It's clearly relevant. I mean a lot of your  
22 case-in-chief went to remedy and damage caused. This  
23 does go to the damage portion.

24 It doesn't go to the reasonable use portion,  
25 but the damage portion.

1           So continue to the extent that legal  
2 conclusions are not called for.

3           MR. WATTS: I understand that. But the other  
4 position was it clearly was read by counsel for the  
5 Homeowners Association that there was an obligation to  
6 repair and remediate this.

7           And to the extent that they testified about the  
8 existence of this, again, that damage was not waived.  
9 It's an obligation, an affirmative obligation assumed by  
10 the association.

11           So this document in itself does not relieve  
12 them of that obligation to stop the seepage. So to the  
13 extent it's relevant, it's only relevant to what damages  
14 were present prior to the execution.

15           I understand the 1542 waiver, but there was  
16 also a statement that there was an affirmative  
17 obligation to fix this. So to that extent, it makes  
18 this document irrelevant.

19           HEARING OFFICER BAGGETT: That is not before us  
20 at this point. I assume it will be on rebuttal or at  
21 some point.

22           MR. SCHOFIELD: And we'll have opportunity to  
23 file a closing brief in the matter, I assume. That may  
24 be the appropriate place for that discussion.

25           MR. SCHOFIELD: May be?

1 I don't have any more questions for you, Ms.  
2 Allegra.

3 --o0o--

4 Cross-examination of Mr. Allegra by Mr. Schofield  
5 FOR HIDDEN LAKES ESTATES HOMEOWNERS ASSOCIATION  
6 BY MR. SCHOFIELD:

7 Q Mr. Allegra, I didn't realize that you were  
8 going to be testifying today, so I didn't prepare  
9 cross-examination questions for you. But I will ask the  
10 following: Were you present when in 2007 the drainage  
11 system by Mr. Silva was installed?

12 A No, I wasn't.

13 Q Okay.

14 --o0o--

15 Cross-Examination of Dr. Thompson by Mr. Schofield  
16 FOR HIDDEN LAKES ESTATES HOMEOWNERS ASSOCIATION  
17 BY MR. SCHOFIELD:

18 Q Mr. Thompson?

19 A Yes.

20 Q Joe Schofield. Pleasure.

21 A Good morning.

22 Q I have a few questions for you.

23 A Sure.

24 Q You were retained by the Woods and Allegras to  
25 determine the water quality of the Hidden Lakes Estates



1 northern lake and of the subsurface water on the Woods'  
2 and Allegras' properties, correct?

3 A I think that's a pretty good general statement,  
4 yeah.

5 Q Was another purpose of your retention to  
6 determine the extent to which the water on and under the  
7 Woods and Allegra properties was coming from the  
8 northern lake?

9 A Yeah. Yes.

10 Q You prepared a written report summarizing your  
11 results dated February 4th, 2004, correct?

12 A I don't have it in front of me, but if you read  
13 it, yes.

14 Q It's Allegra Exhibit 7. Could you turn to  
15 that?

16 A I don't have it.

17 MR. WATTS: If we could have that placed on the  
18 screen? Thank you.

19 BY MR. SCHOFIELD:

20 Q Could you turn to the last page for me?

21 A Yeah.

22 Q The last page is page 5, which I think you can  
23 tell if you scroll to the top.

24 This is an incomplete copy of your report. You  
25 also have pages 6, 7, and 8. I would like to distribute

1 a complete copy of the report and have it labeled as  
2 Hidden Lakes Estates 48 or whatever we're up to now?

3 HEARING OFFICER BAGGETT: Okay.

4 MR. WATTS: No objection.

5 BY MR. SCHOFIELD:

6 Q Does this look like the report that you drafted  
7 for the Woods and Allegra properties, Mr. Thompson?

8 A It does. I haven't looked at this for a while.

9 Q Could you look at the last page? Is that your  
10 signature?

11 A Yes, it is.

12 Q Okay. So you would verify this is the complete  
13 report that you prepared?

14 A Yes.

15 Q You took water samples from four locations on  
16 the Woods and Allegra properties, correct? The four  
17 locations are the northern lake, the cobble area below  
18 the center of the lake's dam, a shallow well on the  
19 Woods property, and a shallow well on the Allegra  
20 property. I think you'll find that on pages 4 --

21 A Right.

22 Q -- 5, 6, and 7 you identified constituent  
23 results from those?

24 A I recall it now.

25 Q So you analyzed the samples to determine the

1 presence and concentration of certain chemical  
2 constituents in the water, correct?

3 A That's correct. Well, the laboratory did.

4 Q I want to walk through just a couple of the  
5 concentrations real quick. One of them is barium. Am I  
6 pronouncing that correctly?

7 A Yes.

8 Q And you reported it in micrograms per liter?

9 A Right.

10 Q For the pond, you noted that the pond has  
11 barium in a concentration of 34 micrograms per liter?

12 A Right.

13 Q In the cobbled area below the center of the  
14 dam, the water had 51 micrograms?

15 A Okay.

16 Q In the Woods' shallow well, it was 100  
17 micrograms?

18 A Right.

19 Q And in the Allegras' it was 130 micrograms, or  
20 about four times the level that was in the lake? Is  
21 that correct?

22 A Yeah. I'm just trying to catch up. Yes, okay.

23 Q I draw your attention to another component.  
24 Your report also measured micrograms of nitrate in the  
25 northern lake. And the number in micrograms was 830.

1           A     Yes.

2           Q     And in the shallow well sample on the Woods  
3 property, there was a higher concentration of  
4 1300 micrograms, correct?

5           A     Correct.

6           Q     This cobbled sump area and the Allegras'  
7 shallow well had no detectable level of nitrate,  
8 correct?

9           A     That's right.

10          Q     So we have some constituents that are higher in  
11 the lake than on the Woods and Allegra properties and  
12 some constituents that are lower in the lake than on the  
13 Woods and Allegra properties.

14                   Is it true that one possible explanation for  
15 these varying readings is that there are other sources  
16 of water besides the lake influencing the constituent  
17 levels on the Woods and Allegra properties? Is that  
18 possible?

19          A     It is possible. And the one thing that I think  
20 should -- well, the report tries to include this -- is  
21 these were pretty shallow. What am I trying to say?

22                   I think it's a very generous description to  
23 call them monitoring wells. They were very shallow,  
24 hand dug.

25          Q     They weren't intended to measure lake levels?

1 A No.

2 Q Or groundwater levels?

3 A Not really.

4 Q Your report states there were boggy areas in  
5 the Woods and Allegra yards and that the boggy areas  
6 were of quote limited size unquote?

7 A Yes.

8 Q What did you mean by limited size?

9 A Well, there were parts of the yard that were  
10 dry and stable. There were parts that, if you didn't  
11 have, you know, adequate foot covering, you'd be pretty  
12 uncomfortable after walking around for a while.

13 Q During your site visits at the time, did you  
14 note the ground saturation conditions of other  
15 properties in the vicinity?

16 A Not by walking on them. By observing from the  
17 common area.

18 Q So you wouldn't have walked through any of the  
19 neighbors' backyards besides the Woods' and Allegras'  
20 during that site -- during those two site visits?

21 A I think there was -- there were -- property was  
22 accessible. I'm not sure I have the directions  
23 correctly, but it's uphill and to the -- I think to the  
24 north of the lake.

25 Q Did you walk around the west side of the lake,

1 to your recollection?

2 A Yeah. I walked around the whole lake.

3 Q Do you recall whether or not you saw muddy  
4 conditions around the lake itself?

5 A I don't recall any significant muddy  
6 conditions. I remember not walking around the lower  
7 lake but also walking out in front of the dam and  
8 noticing that that didn't seem to be boggy either.

9 Q On page 7 of your report, you indicated the  
10 samples were taken quote during the season of most  
11 precipitation unquote?

12 A Yes.

13 Q Your site visits, I recall, were December of  
14 2003 and January of 2004; is that correct?

15 A I'd have to verify. If you're reading it, I'd  
16 accept that.

17 Q Your testimony states:

18 The amount of water present on the  
19 Wood/Allegra properties does not vary  
20 with rainfall or other weather  
21 conditions.

22 Did you make that statement?

23 A Can you show that to me, just put it in  
24 context.

25 MR. SCHOFIELD: Could you put Mr. Thompson's

1 testimony up on the screen?

2 CHIEF LINDSAY: Could you give me an exhibit  
3 number for that please?

4 MR. SCHOFIELD: Number 10.

5 BY MR. SCHOFIELD:

6 Q If you could turn to the first paragraph --  
7 well, the only paragraph on the second page.

8 It says you will testify that:

9 The amount of water present on the  
10 Wood/Allegra properties does not vary  
11 with rainfall or other weather  
12 conditions.

13 A Yeah. What was confusing me, I thought you  
14 were referring to this report.

15 Q Oh.

16 A So no. I would agree with that statement, yes.

17 Q Are you familiar with the term perched water?

18 A Yes.

19 Q In shallow bedrock areas overlain by porous  
20 soil such as occur in this Hidden Lakes subdivision,  
21 would you expect perched water to be present during or  
22 after periods of sustained rainfall?

23 A Very dependent upon the nature of that soil,  
24 but -- and also this -- the -- you used the term  
25 bedrock. I'm not -- I'm not aware that there's actual

1 bedrock present. I saw in the borings that there was  
2 degraded granitic materials and things like that.

3 Q Did you see in the borings that there is  
4 granite at the bottom of the --

5 A I did.

6 Q -- embankment?

7 A I did.

8 Q Would you expect that granite is also present  
9 several yards to the north of the embankment as well on  
10 the -- under the Woods and Allegra property?

11 A Well, what's confusing, to be a newcomer, is  
12 there's a lot of boulders in the area. So I don't know  
13 whether the granite that's being referred to in the  
14 Paragon report is just a boulder that is in place or are  
15 we talking about, you know, a monolithic formation.

16 Q Did you look at the borings? There were six of  
17 them?

18 A Yes.

19 Q Do you recall that everything single one of  
20 them had granite at the bottom of them?

21 A No.

22 Q Do you recall installing -- do you recall  
23 installing the piezometers on the Wood and Allegra  
24 properties?

25 A Yes.



1 Q Not the ones that were the samples for water  
2 sampling, but the ones that were installed later to  
3 gauge groundwater elevations?

4 A Yes.

5 Q Do you remember showing Rick Wentz of Paragon  
6 Engineering the locations of those piezometers in late  
7 March 2007 so he could take readings from them?

8 A Yes, I do.

9 Q Could you turn to Hidden Lakes Estates  
10 Exhibit 15. Do you have that in front of you?

11 A I do not have it in front of me.

12 Q Could you turn to the -- I think the third  
13 page.

14 MR. SCHOFIELD: Scope way down. Thank you.

15 BY MR. SCHOFIELD:

16 Q Do you see the four sample locations on the  
17 lower left side of the line graph?

18 A I do.

19 Q And you probably can't tell from the size here,  
20 but there are four sampling dates that run from  
21 April 1st, 2007, to August 1st, 2007. They're the lower  
22 left-hand corner?

23 A Yes. I've looked at those.

24 Q Okay. The legend identifies the piezometers  
25 with the identification HTA. Do you see that?

1 A Yes.

2 Q That's a reference to your company, is it not?

3 A It is.

4 Q And you would understand that to refer to your  
5 piezometers?

6 A Yes.

7 Q Can we go back to the -- a clearer depiction of  
8 the actual piezometer results?

9 The samples all show a water elevation  
10 declining by about a foot between the first and second  
11 reading, between April and July 2007, right?

12 A That's right.

13 Q And the next reading shows a recovery of about  
14 an inch or two, more or less, correct?

15 A Yeah. Maybe a little more.

16 Q The document also shows some additional  
17 readings from piezometers you didn't install, right?

18 A Yes.

19 Q Those are the ones that go largely from  
20 April 1st, 2007 all the way to the far right of the  
21 screen well into 2009?

22 A Yes.

23 Q And you'd indicated before that you were  
24 familiar with this chart? Have you seen this exhibit  
25 before?

1           A     The copy I have doesn't have the spike on it,  
2     but.

3           Q     Could it have been an earlier version?  This  
4     one --

5           A     Yes.

6           Q     This is dated September 2009, I believe?

7           A     Yeah.  This is May 2008 that I'm looking at.

8           Q     Well, since we have this opportunity, can you  
9     take a look at the rises and falls of those four  
10    piezometer readings that go from April 2007 to  
11    September 2009?  The readings are pretty steady from  
12    April 2007 to August 2007; is that fair?

13          A     Yeah, I think so.

14          Q     And you'll note in the upper -- in the legend,  
15    those are identified as being the Paragon Geotechnical  
16    borings?  Or piezometers?  Can you read that?

17          A     Yeah, I really can't see it.

18          Q     Can you see them now?

19          A     Sure, yeah.

20          Q     And you said that you had seen an earlier  
21    version of this in which the Paragon piezometer readings  
22    were depicted, and you had taken take a look at and  
23    observed those readings?

24          A     Yes.

25                MR. SCHOFIELD:  Can you back the image back out

1 a little bit more?

2 BY MR. SCHOFIELD:

3 Q I want to draw your attention to the overall  
4 trend of those four Paragon piezometers which, as you  
5 said, there's a fairly pronounced spike going from about  
6 February 2009 to about April 2009.

7 A I see it.

8 Q And based on your review of the comparison of  
9 the four piezometer data that you have that are trending  
10 down and then up again, and based on the relatively flat  
11 piezometer readings from the Paragon piezometers from  
12 the same period, is it a reasonable conclusion that the  
13 variation in the subsurface water levels on the Woods  
14 and Allegra properties varied due to something other  
15 than the lake levels?

16 A I don't think I could answer that the way you  
17 asked it. Would you mind repeating it?

18 Q If the lake level is constant throughout the  
19 year, would subsurface flow influenced by local  
20 precipitation be the most reasonable explanation for  
21 variation in groundwater levels over time?

22 A Yeah. As I'm looking at it, the 469, which is  
23 the top of the ordinate, that's what I understand to be  
24 taken as the pond level that's maintained at. And so  
25 that kind of puts the lake surface in context with these

1 measurements.

2 Q Well, you're describing what the background  
3 lake elevation level is?

4 A That's right.

5 Q Yeah.

6 A And my point was that -- there -- I believe  
7 it's in the Paragon report. There's the discussion, and  
8 I think you just used it then, that this was -- these  
9 data are representing groundwater.

10 And I don't know that they are, as much as they  
11 are representing surface water which is being found in  
12 the ground at that point.

13 Q But they are measures of the level of water in  
14 soil, correct?

15 A But in this particular case, I think that, at  
16 least to me, that's a little too broad-sweeping because  
17 of the source of the water.

18 And that was the intent of that report that you  
19 called up to begin with, is to see was there any way to  
20 tell the difference between, you know, lake water, lake  
21 water going through the berm, groundwater, that type of  
22 thing. And with the resources I had, it wasn't.

23 Q I'm not questioning about your report anymore.

24 I just want you to note that four piezometers  
25 that were gauging the surface elevation of the water

1 that was in the soil and the dam embankment as monitored  
2 by the Paragon piezometers was flat from April to August  
3 of 2007 during a period when the water levels on the  
4 piezometers that you installed on the Woods and Allegra  
5 properties varied by a foot between April and July and  
6 then came back up by about two inches.

7           And my question for you is: Given that the  
8 piezometer readings in the dam were constant or fairly  
9 constant throughout that period, isn't it a reasonable  
10 conclusion that the variation in levels in the Woods and  
11 Allegra properties could be influenced by something  
12 other than just the dam?

13           A     I think that's too big a jump -- for me,  
14 anyway. What I could agree with is, I would -- it would  
15 be more likely than not that once the little piezometers  
16 that we put in stabilized, that they too would probably  
17 maintain a similar consistent, more of a horizontal plot  
18 and not be jumping around.

19           But with those three samples, I think that --  
20 it was certainly not my intent to indicate that this was  
21 a significant change.

22           Q     It wasn't your intent to indicate that?

23           A     No.

24           Q     Do you have a line graph showing monthly  
25 samples from the Woods and Allegra piezometers for the

1 last few years?

2 A No.

3 Q You've been on the Woods and Allegra property  
4 several times since 2004, correct?

5 A Several times, yes.

6 Q During those site visits, did you notice  
7 whether the lots to the immediate west of the Woods lot  
8 are at a higher elevation than the Woods lot?

9 A And west is opposite from the Allegra property?

10 Q Correct.

11 A Yes. Yes, it is at a higher elevation.

12 Q And conversely, did you also notice that the  
13 properties to the east of the Allegras' lot are at a  
14 higher elevation than the Allegras' lot?

15 A Yes.

16 Q Given that those adjoining properties a higher  
17 elevation, would you expect surface flow to move from  
18 those adjoining properties onto the Woods and Allegra  
19 properties if there is in fact surface flow present?

20 A Unless it's diverted or controlled in some way.

21 Q And that would be true for precipitation as  
22 well as irrigation, sprinkler flow.

23 A Yes.

24 Q Would you expect that subsurface flow from  
25 those adjoining properties would move onto the Woods and

1 Allegra properties, given the gradient?

2 A I don't know that it follows with the -- this  
3 granitic boulder-like subsurface material.

4 Q Is it possible?

5 A I think it's possible.

6 Q Your testimony states that you made a site  
7 visit to the Woods and Allegra properties on January 12,  
8 2010 after a steady rainfall.

9 A Yes.

10 Q You stated that there was no obvious standing  
11 water in the easement area?

12 A Yes.

13 Q Did you look at the cobbled sump during that  
14 visit?

15 A Can you help me define what you mean by the  
16 cobbled sump?

17 Q To be fair, I'm drawing the term cobbled sump  
18 from your 2004 report where you took some of the water  
19 samples from. I believe it could be best characterized  
20 as the point of lowest elevation on the Allegra property  
21 that has sort of a cobbly material down below it?

22 A So the down-gradient one before the culvert, I  
23 guess.

24 Q Yeah. Well, lowest point in elevation?

25 A Okay. Yes.



1 Q Did you see -- did you look at the cobbled sump  
2 during this visit --

3 A I did.

4 Q -- this last month? Was there water in it?

5 A There was water flowing quite freely.

6 Q Do you understand the cobbled sump to be in the  
7 easement area?

8 A Approximately, yes.

9 Q Was -- okay.

10 Are you aware that there is an inlet for a  
11 12-inch corrugated metal pipe in the Allegras' backyard  
12 in the vicinity of the cobbled sump?

13 A Um.

14 Q 12-inch --

15 A No, we're not talking about the 12-inch  
16 corrugated pipe that comes -- that's the overflow for  
17 the dam?

18 Q No. The plan drawings, which I don't know if  
19 you are familiar with, show a 12-inch CMP coming from  
20 the dam, but then there's another one corresponding  
21 roughly with the location that's located on the Allegra  
22 property itself. You're not aware of that?

23 A No. I've seen the one that I have thought was  
24 connected to the overflow, kind of emergency overflow,  
25 that ends up, if it were to discharge, would discharge

1 on the property line. But that's -- that terminates  
2 about at the toe of the berm.

3 Q You're not familiar with another 12-inch metal  
4 pipe that's on the Allegra property that's kind of near  
5 that cobbled sump area?

6 A Yes. There's a -- I didn't know it was 12  
7 inches, but there's one that is coming out in the --  
8 some of the landscaping up towards the boat shed area.

9 Q Are you aware of whether water flows through  
10 that metal pipe?

11 A Yes. It was flowing the day I was there.

12 Q Do you know where that metal pipe discharges  
13 to?

14 A It discharges into the culvert that goes under  
15 the street.

16 HEARING OFFICER BAGGETT: Do you have many more  
17 questions?

18 MR. SCHOFIELD: I have maybe ten, and then I'll  
19 be done.

20 HEARING OFFICER BAGGETT: If you could make it  
21 quick.

22 BY MR. SCHOFIELD:

23 Q The elevation of the cobbled sump is the lowest  
24 elevation point, to your knowledge, in the back of the  
25 Allegras' property?

1           A     Yeah.  I made a crude little survey which I  
2 think you have.  And --

3           Q     Well, you can just say yes if it --

4           A     Yes.

5           Q     Moving from the back of the Allegras' yards to  
6 the center, would you say that the ground surface  
7 elevation increases somewhat?

8           A     It either is reasonably horizontal or it  
9 actually decreases, is what this little low class survey  
10 we performed.

11          Q     Are you familiar with an as-built drawing that  
12 was done for the subdivision that shows groundwater --  
13 well, elevation contour lines that seem to delineate a  
14 swale, a drainage swale, that occurred between the -- on  
15 the property line between the Woods and Allegras?  Does  
16 that sound familiar?

17          A     I think it does sound familiar, yeah.

18               MR. SCHOFIELD:  Could you put that up for me?  
19 It's Hidden Lakes Estates Exhibit 4.  There are a series  
20 of sheets there.  In the lower right-hand corner, one of  
21 them is labeled 7 out of 12.

22 BY MR. SCHOFIELD:

23          Q     While he's finding that, let me ask you a  
24 question, Mr. Thompson, in the interest of time.

25               Have you ever been asked by the Woods or the

1 Allegras or the Delaneys to design an improved drainage  
2 system for their properties?

3 A Not an actual design. Just -- I would describe  
4 it more as a conceptual or feasibility outline.

5 Q Could you describe that conceptual outline for  
6 me?

7 A Well, I think the original thing that I thought  
8 was appropriate was to try to intercept any flow using  
9 perforated pipe drainage and then try to gravity-flow  
10 that out of the back area.

11 I -- and then that was before I knew that Tony  
12 Wood had actually had something like that constructed,  
13 and he produced the pictures for me and showed me some  
14 of the standing water.

15 So I went back to scratching my head. And  
16 eventually in, I think, about 2005, what I concluded --  
17 I think this was after I saw the geophysical  
18 information. I thought that the only rational way to  
19 deal with this was to put well points in with  
20 overlapping area of influence and just capture the water  
21 and put it back in the dam because some of the other  
22 alternatives are -- seem to me to be pretty intrusive  
23 and would destroy a lot of people's quality of life.

24 Q If you could capture the water in those well  
25 points -- and you said your conceptual model was to then

1 pump it back into the dam?

2 A At the toe of the dam.

3 Q Could that water just as easily be pumped to  
4 the front of the Woods and Allegras property into the  
5 large corrugated metal pipe that's there?

6 A Certainly. It could be pumped anywhere.

7 Q Okay.

8 MR. SCHOFIELD: Could you blow up the area  
9 that's sort of to the -- well, that's good.

10 BY MR. SCHOFIELD:

11 Q Can you see the swale between lots 25 and 26 on  
12 that map? Would you like it to be blown up more?

13 A No, I can see it.

14 Q Do you recognize lots 25 and 26 as being the  
15 Woods and Allegra lots?

16 A Yeah. In fact, I use that nomenclature in some  
17 of my reports.

18 Q Are you familiar with the elevation contour  
19 lines that make up that drainage swale on that map?

20 A Not eminently familiar.

21 Q Can you read them from where you are? The one  
22 that's closest to the dam, I think, says 464?

23 A Okay.

24 Q Can you see that now?

25 A Yeah, I -- yeah. I think I used this, some of

1 those elevations to do some inferred groundwater  
2 contours in one of the reports, yeah.

3 Q If the lots were still graded in the way this  
4 map shows today, would you find it likely that the water  
5 would drain more easily out to the front of the lots  
6 than it does today?

7 A I'm not sure of that because when I took the --  
8 that little bit of data that you showed on the time  
9 plot, when I tried to make contours using something like  
10 this, it had an influence -- the water levels had an  
11 influence beyond what that drainage swale would  
12 indicate.

13 So that a larger area was saturated than what  
14 was being presented like kind of at the point of the toe  
15 of the dam there.

16 Q That map shows a pretty constant decrease in  
17 elevation from the back of the lots to the front as well  
18 as from the sides of the lot to the center?

19 A Yes, it does.

20 Q So since water flows down gradient, would you  
21 imagine or would you think it's reasonably likely that  
22 if the lots had that gradient still today that the water  
23 would tend to move more freely toward the center and to  
24 the front of the lots than it does today without this  
25 kind of gradient?

1           A     Surface water, yes.

2           Q     Does subsurface water also move down-gradient?

3           A     There?

4           Q     No, just as a general --

5           A     Just in general? Yes.

6           MR. SCHOFIELD: I don't have any more  
7 questions.

8           HEARING OFFICER BAGGETT: Thank you. Any  
9 questions up here? Exhibits?

10          MR. WATTS: Mr. Baggett, we'd like to move in  
11 Allegra Exhibits 1 through 17.

12          HEARING OFFICER BAGGETT: No objections? They  
13 are so admitted.

14                   (Whereupon the Allegra Exhibits were  
15 admitted in evidence.)

16          HEARING OFFICER BAGGETT: Let's go off the  
17 record.

18                   (Lunch recess)

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AFTERNOON SESSION

--o0o--

HEARING OFFICER BAGGETT: We're ready. Let's go back on the record with the final case-in-chief.

Hidden Lakes Estates, you're up.

MR. SCHOFIELD: I want to make a brief opening and proceed to the direct.

This case is well outside the range of State Water Resources Control Board precedent. It would appear to basically be an attempt to convert the State law and policy against unreasonable use of water into a new kind of private nuisance or trespass action.

The State Board's jurisdiction over this kind of action is at best highly questionable.

The case involves a small earthen dam and reservoir that was built into a natural drainage swale. As expected for an earthen dam, there's some seepage into the surrounding groundwater.

We've heard testimony and will hear more about seepage through that earthen dam being within the range that one would expect for that kind of dam, and the seepage has allegedly caused harm to two lots that bordering the downstream swale is merely an indication of the nuisance or trespass style action that this really is.



1                   Critical to this case is the fact that the  
2 homeowners actually did file actions for trespass and  
3 negligence against the Homeowners Association which had  
4 been deeded the dam and reservoir as part of the  
5 subdivision development.

6                   Those legal actions sought money and an  
7 injunction that would prohibit the dam from seeping any  
8 more. Those actions, however, were settled.

9                   In exchange for a sum of money, the homeowners  
10 discharged the Homeowners Association from any and all  
11 claims, demands, causes of action, obligations, damages,  
12 and liabilities of any kind and nature whatsoever,  
13 whether in law and equity, which either party ever had,  
14 now has, or may in the future have arising from the  
15 claims asserted.

16                   In other words, the homeowners settled their  
17 nuisance and trespass claims, forever giving up any  
18 right they might otherwise have for damage compensation  
19 or have the seepage stopped.

20                   The settlement agreement is backed up by the  
21 fact that there's a public easement for drainage across  
22 their property and an implied easement for drainage that  
23 would have been created when the two residential lots  
24 that they own were sold originally because there had  
25 already been a dam and reservoir built immediately



1 Q Yes. I apologize. It's 42.

2 A All right.

3 Q Was this written testimony prepared under your  
4 direction?

5 A Yes, it was.

6 Q Is this a true and correct copy of the formal  
7 written testimony that you prepared in this matter?

8 A Yes.

9 Q Are there any changes that you wish to make to  
10 this written testimony?

11 A Yes, there is one change.

12 Q On what page?

13 A On page 2.

14 Q What line?

15 A Line 19. It should -- it currently refers to  
16 the northern lake. It should refer to the southern  
17 lake. Just the southern lake.

18 Q Was there also a change regarding the level of  
19 the northern lake remaining constant throughout the  
20 year?

21 A I'm not sure if it's in here, but the northern  
22 lake also remains constant throughout the year, just by  
23 different means.

24 Q Okay. Instead of reading all of this testimony  
25 into the record, do you adopt and affirm the written

1 testimony that you prepared and submitted to the State  
2 Board on January 14, 2010 as you modified it just now?

3 A Yes, I do.

4 Q Mr. Barmann, it's my understanding that you  
5 have some role in water management for the two lakes; is  
6 that correct?

7 A Yes, that's correct.

8 Q Can you describe what role you have in helping  
9 to manage the lakes?

10 A I tend to the subdivision's water pumping  
11 system that operates daily between the lakes, and I also  
12 have kept water meter data for the past -- for quite a  
13 few years.

14 Q Did you install any improvements to the lakes  
15 at some point?

16 A Yes, I have. I added a float valve that -- a  
17 float switch that operates the solenoid valve that feeds  
18 water into the southern lake so that it automates that  
19 system.

20 Q Does that have any effect on the amount of  
21 water used by the lakes?

22 A I think it does.

23 The previous method was a 24-hour timer that  
24 would turn on and off the solenoid periodically  
25 throughout the day, and that needed to be adjusted

1 periodically throughout the year during dryer or wetter  
2 weather, and sometimes it would overflow into the  
3 drainage canal, so this float system prevents that from  
4 happening.

5 Q Have you ever installed a meter to separately  
6 account for deliveries of water from the San Juan Water  
7 District for irrigation as opposed to lake purposes?

8 A Yes, I have.

9 Q Have you prepared spreadsheets that show the  
10 quantities of water that are separately metered from  
11 that meter?

12 A Yes.

13 Q Have you made any conclusions about what the  
14 percentage of water is that goes to irrigation as  
15 opposed to into the lakes?

16 A Yes. I have calculated that based on the  
17 difference between the San Juan water meter and the  
18 downstream meter that measures how much water -- how  
19 much of that water goes into the lakes, that in 2008  
20 85 percent of the water went into the lakes, and in 2009  
21 80 percent.

22 Q Have you prepared any documents that  
23 demonstrate those separate allocations?

24 A Yes.

25 Q I would like to distribute homeowners -- Hidden

1 Lakes Estates Homeowners Association Exhibit 50, if I  
2 may.

3 Did you prepare the document that I just handed  
4 to you?

5 A Yes, I did.

6 Q What does it show?

7 A It shows the -- on various dates, it summarizes  
8 the amount of the water meter readings, both from the  
9 San Juan meter that feeds the Gina Lane Park common  
10 area. And also the lake water meter that I installed,  
11 it summarizes those readings for the years 2008 and  
12 2009.

13 Q Do you have any knowledge about how the  
14 subdivision's lots were developed?

15 A Yes. The original -- talking with neighbors  
16 that have lived there, you know, more from the -- a lot  
17 longer than I have, they told me the original developer  
18 installed the roads and utilities and basically just  
19 wanted to sell the lots. And so although he did  
20 construct a few of the homes, the majority of the lots  
21 were sold to either contractors or private homeowners  
22 who then built homes on them afterwards.

23 MR. SCHOFIELD: Thank you, Mr. Barmann. I have  
24 no further questions for you at this time.

25 Next I'd like to ask some questions of Sue

1 Kraemer.

2 --o0o--

3 SUSANNE KRAEMER

4 Called by HIDDEN LAKES ESTATES HOMEOWNERS ASSOCIATION

5 Direct Examination of Ms. Kraemer by Mr. Schofield

6 BY MR. SCHOFIELD:

7 Q Ms. Kraemer, could you please turn to Hidden  
8 Lakes Estates Exhibit 43 entitled testimony of Sue  
9 Kraemer or Susanne Kraemer?

10 A Yes.

11 Q Was this written testimony prepared under your  
12 direction?

13 A Yes.

14 Q Is this a true and correct copy of the formal  
15 written testimony that you prepared in this matter?

16 A Yes.

17 Q Are there any changes that you wish to make to  
18 your written testimony?

19 A No.

20 Q Instead of reading all this testimony into  
21 record here today, do you adopt and affirm the written  
22 testimony that you prepared and submitted to the State  
23 Board on January 14, 2010?

24 A Yes.

25 Q If you would please turn to Hidden Lakes

1 Estates Exhibit 36, which is your professional resume.

2 A Yes.

3 Q Was this exhibit prepared at your direction?

4 A Yes.

5 Q Can you describe for me some of the background  
6 and work that relate to your knowledge of surface and  
7 subsurface groundwater flow conditions in the Hidden  
8 Lakes Estates subdivision?

9 A Basically we live in Granite Bay for a reason.  
10 We live on top of the Rocklin pluton which is part of  
11 the Penryn complex, I guess.

12 There is very little sediment or soil material  
13 on top of the plutonic material, granitic material.  
14 Basically there is probably -- there is kind of  
15 undulating topography within the subdivision.

16 There is thin soil veneer in various areas, and  
17 generally bedrock, as was alluded to earlier, it does  
18 crop out in numerous places in the neighborhood, and it is  
19 native rock that is in the neighborhood and visible  
20 throughout the neighborhood.

21 And many people encounter bedrock when  
22 installing pools and various other things subsurface in  
23 the neighborhood.

24 Q How does having so much bedrock below the  
25 surface affect subsurface water conditions in the



1 community?

2           A     Well, due to the thin soil veneer, most of that  
3 soil is usually decomposed granite, fairly permeable.  
4 Water infiltrates fairly quickly into those soils and  
5 then will run off downhill following topography which is  
6 generally how subsurface water moves.

7                     And that generally runs through the low areas  
8 in ponds and low-lying areas within the neighborhood.

9           Q     Do you have any reason to believe that these  
10 conditions apply to lot 71 and 72?

11          A     Yes. Lots 71 and 72 are located at the low end  
12 of the two ridges within the neighborhood. As you drive  
13 into the neighborhood, you drive up the berm of the  
14 southern dam, and as you go to the east you'll have sort  
15 of a high ridge that parallels the park.

16                     Then you'll go downhill, and at the base of the  
17 hill you'll be at Jon Way and East Hidden Lakes. So  
18 that's a low area right there. The gradient there  
19 flattens out.

20                     And a similar trend happens on West Hidden  
21 Lakes where you'll go up a slight hill, but then you're  
22 on a ridge. It drops down at the corner of Jon Way and  
23 West Hidden Lakes. It also flattens out.

24                     Then the -- there is -- it slants more towards  
25 Jon Way, and at the lowest areas in and around the area

1 of Jon Way and East Hidden Lakes.

2           So the groundwater moving through that area  
3 moves fairly rapidly with the steeper slopes, and then  
4 when it hits the flatter areas where you have a breaking  
5 grade because as you move through the rest of the  
6 neighborhood the topography slightly increases or is  
7 flat and there's no -- the water tends to pond there and  
8 then takes some momentum and head to push it on further  
9 through the neighborhood.

10           So those two lots are unfortunately located in  
11 what are the lowest areas in the neighborhood and would  
12 have a groundwater problem or an accumulation of water  
13 in those lots.

14           Q     Does water flow to these low-lying lots only  
15 during storms or at other times as well?

16           A     Well, it would have infiltration from  
17 stormwater. There's some lag between stormwater and how  
18 long it takes the water to move through the  
19 neighborhood.

20           So, you know, this would -- you would have some  
21 infiltration post storm activity. We have a lot of  
22 irrigation going on in a lot of areas, so there's  
23 probably neighbors who are supplementing the water that  
24 comes from rainfall.

25           Q     You detailed a number of incidents in your

1 written testimony of drainage problems occurring at  
2 various people's property within the subdivision. Could  
3 you describe one personal example?

4 A On my lot -- I'm located up gradient of the  
5 lake. I'm a few -- maybe a foot or so higher. And I am  
6 two houses down gradient from the large A1 lot. So I'm  
7 at the higher end of the area but down gradient of this  
8 large watershed area we have in the neighborhood.

9 And we decided to expand the house and move a  
10 wall out three feet so when we moved this exterior wall  
11 out, we needed to dig foundations for that.

12 And so during the excavation for the  
13 foundation, water was encountered at 6 to 12 inches  
14 below ground surface, and in order to pour the  
15 foundation they had to pump the water out in order to do  
16 this.

17 Post construction, we had put wood floors in  
18 and started to see mold on our wooden floors. So we had  
19 to then tear out the side yard there and install a  
20 French drain system in between my house and my  
21 neighbor's house because drainage -- they are not --  
22 they are not a slab next door. They are on piers, and  
23 so the water was going subsurface and surface into my  
24 house and then causing me water problems.

25 Additionally in the back I have -- I have

1 meandering drainage in the front, and I have meandering  
2 drainage in the backyard. My neighbor behind me has a  
3 sump pump because he had a subterranean conversational  
4 pit from the '70s and he needed to put a sump pump in  
5 because of water problems.

6           That pumps water onto my neighbor for 4 feet  
7 and comes into my yard. So I had to improve my  
8 meandering drainage because it would plug up and be a  
9 vector problem during the summer because of standing  
10 water in my backyard.

11           So we had to dig up our meandering drainage to  
12 try and get enough gradient to move the water off my  
13 property and onward down to the front creek in the  
14 neighborhood.

15           Q     You were on the Common Area Planning Committee  
16 of the Homeowners Association?

17           A     Yes, I was.

18           Q     What was the purpose of that committee?

19           A     It was two-fold. Initially we had -- basically  
20 had come together to resolve, first off, an insurance  
21 issue because of the lawsuit. We needed to try and  
22 protect the homeowners from additional liability or  
23 future liability, so we spent some time trying to  
24 improve the insurance conditions that we had.

25           And then after we did what we could do with

1 that problem, we moved on to trying to improve the  
2 condition of the lakes, look into better maintenance and  
3 also the seepage issue.

4 Q Did the committee take any actions to try to  
5 improve the Homeowners Association's water management  
6 activities?

7 A Yes. One of the first things I did, I  
8 volunteered to call San Juan Water District and discuss  
9 with them if they had any programs or things that could  
10 possibly help with water management.

11 Speaking with them, I found they had several  
12 grants at that particular time, and that I -- I was able  
13 to get a grant so that we had a pond management expert  
14 come out to the facility and look at the ponds and give  
15 us some recommendations on how to better manage water  
16 and reduce our water usage and general maintenance of  
17 the lakes themselves.

18 His name -- he was -- they recommended a fellow  
19 named Keith Crabtree.

20 Q Is Exhibit 22 the report that he submitted to  
21 the Homeowners Association?

22 A Yes, it is.

23 Q Do you recall some of the recommendations he  
24 made?

25 A He -- there were three general recommendations

1 he made. They were basically to improve the circulation  
2 of the ponds. We do have some algae conditions some  
3 times of the year.

4 It was to install the float valve so we had  
5 better control of the amount of water and inflow into  
6 the lakes because the previous mechanical system  
7 probably resulted in more loss than we should have --  
8 more losses than we would have wanted to have.

9 And the third one was having a point person to  
10 manage the water. And so Scott's that person for us  
11 currently.

12 Q That valve you described is the valve Scott was  
13 describing he installed earlier?

14 A Yes, the float valve for the inflow.

15 MR. SCHOFIELD: Thank you, Ms. Kraemer. I have  
16 no further questions for you at this time.

17 --o0o--

18 FREDERICK J. WENTZ JR.

19 Called by HIDDEN LAKES ESTATES HOMEOWNERS ASSOCIATION

20 Direct Examination of Mr. Wentz by Mr. Schofield

21 BY MR. SCHOFIELD:

22 Q Mr. Rick Wentz. Could you please turn to  
23 Hidden Lakes Estates Exhibit 44 entitled testimony of  
24 Frederick J. Wentz Jr.

25 A Okay.

1 Q Was this written testimony prepared under your  
2 direction?

3 A Yes.

4 Q Is this a true and correct copy of the formal  
5 written testimony that you prepared in this matter?

6 A Yes.

7 Q Are there any changes you wish to make to this  
8 written testimony?

9 A There is a small change. Since preparing this  
10 testimony, I reviewed the testimony of Scott Barmann and  
11 gather that there is this physical mechanism in the lake  
12 to ensure that the lake levels are kept constant  
13 year-round, maybe fluctuating an inch or so.

14 So in my testimony on page 4, line 6 through 8,  
15 where I state that:

16 Fluctuating readings suggest that higher  
17 groundwater levels around the northern  
18 end of the lake are primarily related to  
19 seasonal precipitation, possibly with  
20 limited effect due to higher lake  
21 levels...

22 I would like to delete that part of my  
23 testimony stating possibly with limited effect due to  
24 higher lake levels.

25 Q Instead of reading all this testimony into the

1 record here today, do you adopt and affirm the written  
2 testimony that you prepared and submitted to the State  
3 Board on January 14th, 2010 as you modified it just now?

4 A Yes.

5 Q Could you please turn to Hidden Lakes Estates  
6 Exhibit 40 which is your professional resume?

7 A Okay.

8 Q Was this resume prepared under your direction?

9 A Yes.

10 Q Is it the best resume that you have that  
11 demonstrates the kind of background you have that brings  
12 your expertise into proper light for this proceeding?

13 A Actually, at the time it was prepared, I was in  
14 New Zealand on vacation, and my assistant provided a  
15 resume that doesn't really reflect, as I would like it  
16 to, my experience with respect to lakes and dams and  
17 seepage.

18 MR. SCHOFIELD: I would like to distribute  
19 Hidden Lakes Estates Exhibit 51 which is an updated  
20 version of Mr. Wentz's resume.

21 BY MR. SCHOFIELD:

22 Q The document I just handed to you: Is it your  
23 professional resume?

24 A It is.

25 Q Does it more accurately reflect the work that



1 you did for the Hidden Lakes Estates Homeowners  
2 Association in evaluating dam seepage than the other  
3 one?

4 A Yes.

5 Q Is it your preference it be used to replace the  
6 Exhibit 40?

7 A Yes.

8 Q Mr. Wentz, prior to working on this project,  
9 have you ever worked with me or my law firm?

10 A No.

11 Q Have you ever worked previous to this project  
12 with the Hidden Lakes Estates Homeowners Association or  
13 to your knowledge any of its residents?

14 A No.

15 Q Do you have a personal interest or stake in the  
16 outcome of this matter?

17 A No.

18 Q If you could please turn to Hidden Lakes  
19 Estates Exhibit 15 and 16, I would like to ask you a few  
20 questions that generally relate to those documents.

21 A Okay.

22 Q They were both prepared by you or at your  
23 direction, correct?

24 A Yes.

25 Q They reflect an investigation that you

1     undertook into the seepage groundwater level conditions  
2     in and around the northern lake dam?

3             A     Yes.

4             Q     What was the purpose of your investigation of  
5     the dam and the northern lake?

6             A     To evaluate the extent of seepage through the  
7     dam, if it existed, and then secondarily to offer an  
8     opinion as to whether the amount of seepage was  
9     reasonable from a geotechnical standpoint.

10            Q     Can you describe the setting -- well, strike  
11     that.

12                    What background investigation did you conduct  
13     to address the purposes of your investigation?

14            A     We did an initial site visit to look for drill  
15     rig access, to look at the overall site area and the dam  
16     in particular.

17                    I spoke to our client, a representative of the  
18     Homeowners Association, to get a better feel for what  
19     they were seeing as problems and what had been reported  
20     as problems.

21                    We subsequently drilled a total of six borings  
22     either within or adjacent to the north dam.

23                    And -- well, as part of the background, I  
24     guess, we also looked at some state geologic mapping of  
25     the area, and we also looked at a couple of consulting

1 reports provided by the Homeowners Association.

2 Q Did you encounter groundwater in any of the  
3 homes?

4 A During drilling, we encountered free  
5 groundwater in borings B1 and B1A on a dam.

6 Q Did the water spring from the boring hole in an  
7 artesian-style condition?

8 A No, it did not.

9 Q Could you characterize the water that you  
10 encountered?

11 A Characterize it? It would be, in my opinion,  
12 seepage groundwater and probably seepage from the  
13 reservoir primarily.

14 Q Did you have access to any piezometers other  
15 than the ones you installed in the dam and near the dam?

16 A We did for a period of time. On one of the two  
17 days we were drilling Mrs. Allegra and Hugh Thompson  
18 from HTA both showed me the locations of some  
19 piezometers installed I believe by HTA previous to our  
20 work, and we were allowed to make some measurements of  
21 groundwater levels out of those piezometers.

22 Q The access that Cheri Allegra described earlier  
23 in her testimony, would you say that's fairly accurate  
24 of the access you had of their property and their  
25 piezometers?

1           A     Yes.

2           Q     Can you describe the results of your soil  
3 compaction tests and explain the conclusions they  
4 support about seepage to the dam?

5           A     Well, if we could put up slide 3, plate 5 I  
6 think.

7                   MR. SCHOFIELD:  Sorry, keep going.  Keep going.  
8 Keep going.  One more.

9 BY MR. SCHOFIELD:

10          Q     Is that plate 5?

11          A     Could you repeat the question?

12          Q     Can you describe the results of your soil  
13 compaction and permeability tests and explain what  
14 conclusions they support about seepage through the dam?

15          A     Yes.  Well, first when we were doing the field  
16 investigation and doing the drilling, we did a series of  
17 standard penetration tests and liner samples as we were  
18 drilling.  These are represented in these plates, 5  
19 through 8.

20                   And we attained what's called standard  
21 penetration test blow count which gives you a  
22 standardized measurement of the in place density of the  
23 soil.

24                   We collected some bulk samples out of some of  
25 the borings.  These are bag samples, large samples that

1 we then took back to the laboratory and did some  
2 compaction testing on to develop the theoretical maximum  
3 dry density of the soil used to construct the  
4 embankment.

5 We compared the two to come up with a relative  
6 compaction of the embankment.

7 When we were done with drilling, we installed  
8 piezometers in two of the borings. They are 2-inch PVC  
9 standpipe piezometers. One of the piezometers -- two in  
10 the dam.

11 One of the piezometers was sealed in what is  
12 presumed to be the foundation bedrock, the granite  
13 bedrock of the dam.

14 The other piezometers was drilled I believe to  
15 a depth of 8 feet which we interpret as the bottom of  
16 the embankment. And the screened interval of that  
17 piezometer was sealed above a depth of 5 feet to try to  
18 get a good understanding of the water level or  
19 piezometric pressures of the embankment itself.

20 We also at the end of drilling flushed the  
21 piezometers, let them settle I believe for around a week  
22 or two, and then went out and did falling head -- or,  
23 excuse me -- constant head permeability tests through  
24 the piezometers to try to get an in-place permeability  
25 of the soils.

1           Q     What does it tell you as than engineer that the  
2 results of your testing show a compaction of 90 to 91  
3 percent?

4           A     Well, I believe that the dam overall, the  
5 embankment, is well-compacted. A typical minimum  
6 relative compaction is 90 percent. We measured 91,  
7 roughly, and I would say that that's probably somewhat  
8 conservative by a few percentage points.

9                     Because of the cohesionless nature of the soil,  
10 the sandy nature of the soil, the samples are likely  
11 dilated or slightly loosened during driving, and so the  
12 real compaction is probably a little bit higher than  
13 that. And I would say although it's not the 95 percent  
14 specified in the original plans, for the size of  
15 embankment it is -- i.e., a short embankment -- the  
16 compaction is adequate.

17          Q     Do those test results give you any insight into  
18 whether the dam was constructed properly?

19          A     Based on the results of what we believe the  
20 compaction to be and also what the permeability results  
21 show -- which I should point out the permeability  
22 results that we got in a couple of cases were actually a  
23 bit lower than what I would expect for granitic-type  
24 soils -- but overall, I would say with the exception of  
25 a small zone of -- what appears to be a small zone of

1 topsoil that was left in the foundation, I would say the  
2 embankment overall is well-constructed, yes.

3 Q Based on those results, did you make any  
4 conclusions about the extent of seepage through the dam?

5 A I believe there's definitely seepage occurring.  
6 I think it's primarily in the lower portion of the dam  
7 and probably mostly within the interface between the  
8 underlying rock foundation and the embankment soils  
9 themselves.

10 But I would submit that essentially all earth  
11 dams and unlined reservoirs leak to some degree, and in  
12 my experience this dam and reservoir isn't leaking any  
13 more than I would have expected upon first seeing it,  
14 the type of construction it is.

15 Q Is there a standard for seepage for this type  
16 of dam?

17 A No. I don't believe there's any codified  
18 standard. That would widely vary depending on many  
19 factors.

20 Q Why did you install the piezometers in and  
21 around the dam?

22 A Being that a concern about seepage was the  
23 primary issue driving our work, we wanted to and we  
24 recommended to the Homeowners Association that we  
25 install these piezometers so that we could measure water

1 levels in and around the embankment for the long term to  
2 try to understand better than a single point in time  
3 what is going on out there.

4 MR. SCHOFIELD: Could you advance the slide a  
5 couple -- one more.

6 BY MR. SCHOFIELD:

7 Q Is this a slide that you prepared as part of  
8 your final report in Exhibit 16 that shows groundwater  
9 elevation levels in the piezometers that you installed?

10 A If you could bear with me.

11 Q I apologize. I meant Exhibit 15.

12 A There you go.

13 Q Does this show monthly readings taken from the  
14 piezometers you installed over the course of about two  
15 years?

16 A Yes, it does.

17 Q Have you continued to take monthly piezometer  
18 readings since this report came out?

19 A We have. I believe our last readings were  
20 January 21st and late last week, whatever date, 29.

21 Q Did you prepare an updated version of this to  
22 reflect the last few weeks' worth of data?

23 A We have this plot updated through the  
24 January 21st reading.

25 MR. SCHOFIELD: I would like to distribute



1 Hidden Lakes Estates Exhibit, I believe 52.

2 BY MR. SCHOFIELD:

3 Q Is this the updated graph that you prepared?

4 A It is.

5 Q Is this essentially an extension of the graph  
6 that's in Exhibit 15?

7 A That's correct.

8 Q Can you characterize the results of the  
9 readings from the four piezometers you installed?

10 A Well, generally -- a general characterization  
11 would be that from April 2007 through November, December  
12 of '08 they are relatively steady with a slight increase  
13 in December, February, March of '08 and then a decrease  
14 over the following several months before increasing  
15 again in November to December of '08, falling again to a  
16 low point in and around September of '09 and increasing  
17 rather dramatically in late December through January of  
18 2010.

19 Q What conclusions do you draw from these  
20 readings?

21 A Well, I believe that there's a steady seepage  
22 pattern that has developed within the north dam or its  
23 foundation, and that these peaks that we're seeing,  
24 these rises and falls, correspond to basically the  
25 winter wet months and then the dry months of the summer.

1           And it leads me to believe that its  
2 precipitation, infiltration of surface seepage that's  
3 driving these peaks more than it is anything else.

4           And I base that on the fact that if the lake  
5 level is only changing by an inch or so at any given  
6 point in a year, and we're seeing water level rises of 6  
7 to 12 inches and then fairly dramatic falls right  
8 afterwards, that that's what's occurring.

9           And it's not in our report, but we have  
10 correlated these peaks to significant rainfall events,  
11 significant being an inch or more, close to the time of  
12 the readings.

13         Q     You earlier described taking readings from Dr.  
14 Hugh Thompson's HTA-installed piezometers on the Woods  
15 and Allegra properties?

16         A     Yes.

17         Q     Are those also identified on the exhibit on the  
18 screen right now and in your hand?

19         A     They are, yes.

20         Q     Can you characterize those readings?

21         A     Well, they show a clear fall from early April  
22 to -- through to July, 1st of July, and then a slight  
23 recovery at the late July, early August reading.

24                 As Dr. Thompson pointed out in his earlier  
25 testimony, it is only three data points, but we have an

1 April data point which is again right around the period  
2 of time where we would have expected some precipitation.

3 We have a fall-off into the middle of summer  
4 which I would expect in absence of all else.

5 And then we have a slight rebound. The rebound  
6 could be attributed to irrigation, for example, of the  
7 lawn, but I really -- I don't know because we didn't do  
8 readings for a long enough period of time to get a real  
9 pattern.

10 Q In light of your investigation, have you formed  
11 an opinion about whether the seepage through the dam  
12 needs to be remediated?

13 A I don't think that the seepage from the dam per  
14 se needs to be remediated. At the very least, I would  
15 be wanting to pursue some potential other sources first  
16 before doing something that large.

17 Q One of the questions that the Board will be  
18 considering is if they determine that there's a misuse  
19 of water or an unreasonable use of water associated with  
20 seepage through the dam what possible remediation  
21 actions might be undertaken.

22 Do you have an opinion about what the most  
23 effective method of remediating subsurface drainage  
24 would be on lots 71 and 72?

25 A Are we talking about specific to the dam and

1 the lake or talking about in general?

2 Q Talking about the seepage that moves through  
3 the dam and onto lot 71 and 72.

4 A So I --

5 Q Seepage -- specifically seepage that ends up on  
6 lot 71 and 72.

7 A I would say that the most cost-effective method  
8 would be, at least primarily and firstly, to install an  
9 engineered French drain, a curtain drain along the toe  
10 of the dam, behind the two -- at the back end of the two  
11 lots.

12 Q Why?

13 A Well, I think it would be, relative to lining  
14 the reservoir, for example, or tearing out the dam and  
15 rebuilding it, it would be much less expensive.

16 I think it could be installed for a relatively  
17 reasonable cost and then monitored over time and  
18 possibly extended or modified, depending on what the  
19 results of the monitoring showed.

20 Q Under what circumstances would you recommend a  
21 liner for a reservoir?

22 A In my experience, the only times I've seen  
23 reservoirs be lined is if there's a zero discharge  
24 requirement where there was sewage effluent involved and  
25 it was a State requirement that there be absolutely zero

1 discharge from the dam and reservoir.

2 MR. SCHOFIELD: The only further questions I  
3 have for Mr. Wentz would be in the nature of rebuttal.  
4 I could ask them now and then leave the seat or save  
5 them for a few minutes from now.

6 HEARING OFFICER BAGGETT: I think I would  
7 prefer to see if people have cross first.

8 MR. ROSE: We do have brief cross.

9 HEARING OFFICER BAGGETT: Might change your  
10 rebuttal too. Let's move over and we'll allow the  
11 prosecution to cross.

12 --o0o--

13 Cross-Examination of Mr. Barmann by Mr. Rose

14 FOR PROSECUTION TEAM

15 BY MR. ROSE:

16 Q Mr. Barmann, I'd like to ask you a few  
17 questions first briefly. In your written testimony, you  
18 said that the dues were \$30 when you first moved into  
19 the Hidden Lakes Estates; is that correct? \$30 per  
20 month.

21 A Yes.

22 Q And they're \$50 per month now?

23 A Yes.

24 Q Are you aware of the dues for any other  
25 homeowners associations in your area?

1           A     No, I'm not.

2           Q     Those are the only questions I have for you at  
3 this time.

4                                           --o0o--

5           Cross-Examination of Ms. Kraemer by Mr. Rose

6                                           FOR PROSECUTION TEAM

7 BY MR. ROSE:

8           Q     Ms. Kraemer, I have a few brief questions for  
9 you. On page 3 of your testimony -- that's Exhibit 43,  
10 Hidden Lakes Estates Exhibit 43. Let me know when you  
11 have that in front of you.

12          A     I have it.

13          Q     On page 3 -- we're looking at paragraph  
14 eight -- the lines don't seem to be exactly lined up.  
15 You said some lots, there is seepage from northern and  
16 southern lakes; is that correct?

17          A     Yes.

18          Q     Would that include lots 71 and 72, the former  
19 Woods and Allegra lots?

20          A     Yes.

21          Q     I'd like to turn to page 5 of your testimony.  
22 You state in paragraph 11 at the end:

23                                        It would not be equitable for the  
24                                        Homeowners Association to pay to  
25                                        remediate the drainage issues on lots 71







1 currently?

2 A No, I'm an -- I've been a member of the  
3 committee. I'm not on the board.

4 Q Okay. You have no reason to doubt the  
5 statements that were made by Mr. Wentz that the lake has  
6 been seeping at a steady pace as indicated on this  
7 graph; is that correct? You have no reason to dispute  
8 his testimony?

9 A That is correct.

10 Q Okay. Does a homeowner need approval, to your  
11 knowledge, to make alterations to their meandering  
12 drainage easements from the HOA?

13 A My understanding is that the meandering  
14 drainage easements are County easements and not  
15 controlled by the Homeowners Association at all.

16 Q So it's your understanding that you obtain  
17 permits from the County, not the Homeowners Association?

18 A Right. There are some -- what are they, CC&Rs  
19 that address landscaping and front yards, you know,  
20 visible to the street. So I guess that might cover, you  
21 know, how you might make it look or something like that,  
22 but more of aesthetics, you know. More for aesthetic  
23 reasons.

24 Q Okay. Have you been on either lot 71 or 72 in  
25 the summer months?

1           A     Yes, I believe I have.

2           Q     Did you observe wet conditions towards the dam?

3           A     No, I can't say that I recall wet conditions  
4 during the summer.

5           Q     You state in paragraph 29 of your written  
6 testimony that you -- and I'm going to read this back to  
7 you:

8                     I and the other members of the committee  
9                     ultimately concluded that the amount of  
10                    seepage from the northern lake was  
11                    occurring in an acceptable and reasonable  
12                    level and that the owners of lots 71 and  
13                    72 have available to them the means to  
14                    facilitate removal of much of the water  
15                    from their property.

16           I just want to break that statement down.  If  
17 you want look at it, it's page 6 of your testimony.

18           A     What exhibit is it?

19           Q     Exhibit 42.

20           MR. ROSE:  At this time, I'd like to renew my  
21 objection I made earlier that I don't believe we've  
22 ruled on regarding at least the legal conclusion made in  
23 that statement.

24           HEARING OFFICER BAGGETT:  I don't know that we  
25 have to go through each line of the testimony that --

1           MR. WATTS: I just have a question regarding  
2 the statement and the basis behind it. I'm not looking  
3 for his legal opinion, to be honest with you. I just  
4 want to get his opinion based on his written testimony  
5 that's been submitted here.

6           HEARING OFFICER BAGGETT: Well, let me  
7 continue.

8           We will not allow legal testimony in factual  
9 exhibits. That's for closing briefs.

10           So the Board will not take that into account in  
11 making any ruling. You will get an opportunity in the  
12 closing briefs.

13           I don't know that we have to go through each  
14 line, but it won't be relied upon in any order we craft.

15           So continue.

16           MR. WATTS: Thank you.

17 BY MR. WATTS:

18           Q     I just want to ask you the question on your  
19 opinion because it appears to be your opinion that you  
20 formed that there's an acceptable reasonable level of  
21 water on the property.

22           What would -- what is an unacceptable level of  
23 water on the property in your opinion?

24           A     My personal opinion, I guess it's what you want  
25 to do with your yard, I guess.

1 Q Okay.

2 A You know, if you want it to be dryer, you need  
3 to put drainage in it.

4 I have drains in my backyard in the grassy area  
5 so that -- I mean it was done by a previous homeowner,  
6 but those drains, you know, help it from becoming very  
7 soggy.

8 Q Okay. And we heard testimony earlier that it  
9 is the Association's lake. They control the lake; is  
10 that correct?

11 A Yes. It's the Homeowners Association's common  
12 area lakes.

13 Q But it's your opinion that it's the homeowner's  
14 responsibility to remediate seepage that's coming  
15 through to their properties; is that correct?

16 A Not if it's through a meandering drainage  
17 easement. I have one through my yard, and it flows in  
18 one side of my property and out the other.

19 Q You understand a meandering drainage easement  
20 is established by Placer County for surface water only.  
21 Do you understand that?

22 A No, I don't. I'm not aware of that --

23 Q Okay.

24 A -- that distinction.

25 MR. WATTS: Okay. That's all I have for you,

1 Mr. Barmann.

2 --o0o--

3 Cross-Examination of Ms. Kraemer by Mr. Watts

4 FOR TED ALLEGRA and CHERI ALLEGRA

5 BY MR. WATTS:

6 Q Ms. Kraemer, you also recognize there's seepage  
7 coming through the earthen dam onto lots 71 and 72; is  
8 that correct?

9 A Yes.

10 Q Okay. And just -- you've been basically  
11 tendered here as an expert. If there were no water in  
12 the earthen -- and I'm going to go to some extremes here  
13 with you to get some opinion testimony -- if there were  
14 no water in the northern lake, then that seepage would  
15 cease so exist; is that correct?

16 A No.

17 Q Okay. So if there were no water in the lake --  
18 maybe --

19 A Let me put it this way: If you were to stop  
20 the rain and stop everyone irrigating, you'd have no  
21 water in the lake, then potentially your seepage would  
22 be gone.

23 But you've got rainfall that comes in, drains  
24 into that area and into the lake because the natural  
25 drainage that was there originally would go through

1 those two lots.

2 Q And it would flow on those meandering drainage  
3 easements, correct?

4 A It would flow through there and recharge that  
5 low flat area where there's a break in grade and the  
6 water has nowhere to go. It's sitting in a flat area.

7 Q Okay. So you understand the base of the dam is  
8 at the high point on both lot 71 and 72, correct?

9 A Right.

10 Q So the meter readings were taken at the base of  
11 the dam, correct?

12 A I don't know what meter readings were taken,  
13 which meters.

14 Q With the piezometers that were installed?

15 A The water level measurements?

16 Q Yes.

17 A I'm not sure -- the piezometers I think are in  
18 several places, but where -- if you understand how water  
19 flows through a dam, the groundwater surface and the  
20 head's going through the dam. Where it pops up has a  
21 lot of different controls.

22 So I don't know exactly how the flow lines go  
23 through the dam and where exactly water daylights or  
24 goes into that property. I didn't -- I haven't done  
25 that analysis.

1 Q So it's not your opinion that the reason that  
2 there's water located at the base of the dam on both lot  
3 71 and 72 is because gravity has -- that's the spot it  
4 rests. Is that your opinion here today?

5 A Could you restate that?

6 Q Sure. The lots grade from the level of the dam  
7 towards the street; is that correct? The high point is  
8 at the level of the dam, and the low point is at the  
9 street for both 71 and 72?

10 A I'm not sure exactly how it goes out to the  
11 street. I don't have the topo in front of me. But it's  
12 approximately like that.

13 Q Okay. So it's not your testimony that the  
14 reason that there's water pooling at the base of the dam  
15 at the back portion of the property closest to the dam  
16 is because gravity takes it there. That's not your  
17 opinion today, is it?

18 A Water -- well, one, I don't -- I haven't -- I  
19 haven't visually -- I haven't walked through the Woods'  
20 backyard in detail, or the Allegras', and measured it,  
21 so I don't have -- I feel that there is seepage going  
22 underneath the dam.

23 I'm not sure where -- if it is even  
24 daylighting, but that it comes onto the property. I'm  
25 not sure where it comes onto the property.

1 Q You just don't have an opinion as to that  
2 matter; you haven't done those investigations?

3 A I have reviewed Paragon's report. I haven't  
4 spent hours, you know, exactly mapping out where the  
5 piezometers were and what the water levels were out  
6 there.

7 Q Okay. But you haven't been on the Wood or  
8 Allegra properties -- I think your testimony referred to  
9 being present there in July at a birthday party?

10 A I was present in summer. I don't know exactly  
11 which month.

12 Q Did you observe wet conditions towards the back  
13 of the property near the dam?

14 A I don't recall. I remember they had a clown or  
15 something entertaining the kids in the back on the  
16 grass.

17 Q So as you sit here today, you don't know  
18 whether or not there were wet conditions towards the  
19 back of the property?

20 A I didn't observe any standing water or anything  
21 like that.

22 --o0o--

23 Cross-Examination of Mr. Wentz by Mr. Watts

24 FOR TED ALLEGRA and CHERI ALLEGRA

25 Q Mr. Wentz, good afternoon. I'm again Rich



1 Watts. I just have a couple follow-up questions for  
2 you.

3 Exhibit 52 that we all looked at during your  
4 testimony, I'm not sure that would be on there. But 15  
5 I believe is pretty close. You testified earlier this  
6 is a pretty constant flow of seepage; is that correct?

7 A That's correct.

8 Q Okay. We do see the spike in the February to  
9 April time line on Exhibit 52, and it's also present  
10 here. The high point on the peak there, that's B3, is  
11 it not? That's one of your --

12 A Yes.

13 Q Okay. And that's the shallowest of the  
14 piezometers; is that correct?

15 A If you'll permit me to confirm that. Yes, it  
16 is.

17 Q Okay. And wouldn't the shallowest of those  
18 measuring instruments be the most greatly affected by  
19 rainwater?

20 A That's a possibility. I should point out this  
21 piezometer is not on the dam. It's off to the east.

22 Q Again, my question is: Would the -- if you  
23 have piezometers that are at different depths, and we're  
24 looking at the effect of rainwater, would a shallower  
25 piezometer have a greater variance than a deeper

1 piezometer?

2           A     Well, that would depend on several factors. I  
3 can tell you in the case of this particular piezometer,  
4 since bedrock's at three and a half feet, which is  
5 relatively shallow, it's going to see a more rapid and  
6 probably more pronounced response.

7           Q     Okay. So the actual effect of the -- and I'm  
8 going to ask you this. In your opinion, you made the  
9 comment this is a rather constant seepage, and it  
10 doesn't appear, based on the time line in this graph,  
11 plate 1, Exhibit 15, that other than this month -- the  
12 months of 2-1-09 through 4-1-09 that there's been a  
13 great variance of the amount of seepage coming through  
14 the dam; is that correct?

15           A     I don't know if you can draw that conclusion  
16 because the scale on the left-hand side there, those are  
17 1-foot increments.

18                     So from April of '07 until December or November  
19 of '08, there's only a few inches of difference there.

20                     And then the -- and again, I would say that's  
21 true from June through December of '09, and the peaks  
22 are around a foot to 18 inches of difference at the  
23 most, and only one of them.

24           Q     My question to you is: Is rainwater the cause  
25 of the variance that we see at the peak? Let's start

1 with that.

2 A I believe that -- yes. Infiltration of  
3 rainwater, yes, is primarily causing that.

4 Q So is it also your opinion that for the  
5 remainder of the year, other than the anomaly that we  
6 see, that it's a constant flow of seepage that comes  
7 through the dam into these properties?

8 A I believe there's a constant flow of seepage  
9 through the lower portion of the dam; but based on these  
10 elevations and based on the elevations of the backyards,  
11 I'm not sure you can reach the conclusion it's coming  
12 into the backyards. I guess I -- if you restate the  
13 question?

14 Q Well, is the flow -- let's start with both --  
15 the two points.

16 Is the flow of water through the dam constant  
17 year-around?

18 A I believe it, yes, more or less.

19 Q And -- more or less. It's not really affected  
20 by rainwater; is that correct? Other than the anomaly  
21 that we see?

22 A If you took away rain events, you still have --  
23 as long as there's water in the lake, you would still  
24 have a level of seepage.

25 Q And it would assumably remain constant?

1           A     As long as the lake level stays constant, yes.

2           Q     Okay.  Now you testified earlier also that you  
3 believe something should be done to address the seepage  
4 issue; is that correct?

5           A     No, I don't recall saying that.

6           Q     You testified that a curtain drainage system  
7 would be the first remedy that you would try, I suppose;  
8 is that correct?

9           A     That's accurate, yes.

10          Q     Okay.  And how deep would that curtain drainage  
11 system have to be dug?

12          A     I can't say with certainty because I haven't  
13 done anything in the lots 70 and 71 backyards.  But I  
14 would say, sitting here today, I would make it around 5  
15 or 6 feet deep, at least.

16          Q     Okay.  Does it have to reach the level of the  
17 bedrock, or can it be --

18          A     Ideally you would want it to be a foot or two  
19 into the rock.  It doesn't have to be hard rock, but you  
20 would want to catch -- you would want the drain to be  
21 below the interface of the soil and the rock.

22          Q     Do you understand there are points in the  
23 backyards of lot 71 and 72 that the bedrock is at about  
24 15 feet deep?

25          A     Well, I don't know if I would interpret bedrock

1 to be 15 feet deep.

2 Q But if it's that deep, that's how deep you need  
3 to dig, 1 foot into that area, to adequately install the  
4 curtain drainage you're talking about?

5 A Not necessarily. That previous -- that  
6 conclusion that you would have to go into bedrock would  
7 be presuming that bedrock is shallow.

8 Because the seepage is not going to go -- if --  
9 if the -- if bedrock's deep, the seepage is going to go  
10 where the seepage is going to go, somewhere above the  
11 rock.

12 And all we're going to try to do with the  
13 French drain is to try to dry out those backyards. If  
14 that's the goal, and bedrock truly was that deep, you  
15 wouldn't have to necessarily go that deep to dry out the  
16 backyards.

17 Q And you have to do it on both lots?

18 A Presumably, yes.

19 Q Okay. Are there other solutions that could  
20 remediate the water seepage besides the curtain  
21 drainage? You said that was the first solution. What's  
22 the next line of defense?

23 A With respect to what kind of seepage?

24 Q The seepage coming through the earthen dam into  
25 lot 71 and 72?

1           A     You could try well points such as Dr. Thompson  
2 suggested. You could line the reservoir.

3           Q     Okay. Do you know what the expense of lining  
4 the reservoir would be?

5           A     I do not.

6           Q     Okay. Are there other treatments that you can  
7 place into the reservoir that causes sealing of the  
8 reservoir of this type without a liner?

9           A     I saw a report that suggested that -- I'm not  
10 familiar myself very much with that technology, but I  
11 understand there is a technology that has been used to  
12 do that.

13          Q     Okay. Do you know what the pricing of that  
14 technology is?

15          A     I don't.

16          Q     Okay.

17                MR. WATTS: I don't have any further questions.

18                HEARING OFFICER BAGGETT: Ernie?

19                               --o0o--

20                Questions from Board and/or Board Staff

21                FOR STATE WATER RESOURCES CONTROL BOARD

22                WATER RESOURCE CONTROL ENGINEER MONA: I have a  
23 few clarifying questions for Mr. Barmann relative to  
24 your testimony at paragraphs number four and number  
25 seven.

1           Just so that the record's clear and everyone at  
2 least knows what's going on with regards to the  
3 operation of the lakes: The Homeowners Association  
4 purchased water from San Juan Water District initially  
5 to fill the lake, correct? And since that time they  
6 have purchased refill water in order to maintain the  
7 lakes full. Would that be a correct statement?

8           MR. BARMANN: I don't know when the lakes were  
9 initially filled if that was from rainfall or if it was  
10 from San Juan. I don't know. I didn't live there then.

11           WATER RESOURCE CONTROL ENGINEER MONA: Okay.

12           MR. BARMANN: But I would surmise that it was  
13 partly from rainfall and partly from San Juan.

14           WATER RESOURCE CONTROL ENGINEER MONA: Really.  
15 Okay. Let me go to your testimony where you say that:

16           The HOA purchases water from the San Juan  
17 Water District which meters --

18           And I'll stop right there. Where exactly is  
19 that meter located?

20           MR. BARMANN: It's located on Gina Lane. I  
21 can -- I don't know. We have a -- do you want to know  
22 exactly what lots it's on or just in general?

23           WATER RESOURCE CONTROL ENGINEER MONA: Well in  
24 general relative to either the north or south lake.

25           MR. BARMANN: The Gina Lane park is in between

1 the two lakes. That's where the meter is, along the  
2 street where that park is.

3 WATER RESOURCE CONTROL ENGINEER MONA: So  
4 that's where San Joaquin meters it, and that water from  
5 that meter is then dumped into the south lake, correct?

6 MR. BARMANN: From that meter, the water line  
7 runs over to a hose bib in the common area which doesn't  
8 get much usage, you know.

9 But then it splits off to the irrigation system  
10 and to the replenishment system for the lake. So part  
11 of that water is used to irrigate the common area  
12 that -- the landscaping, and then part of it is used to  
13 refill the lakes.

14 WATER RESOURCE CONTROL ENGINEER MONA: Since  
15 2008, you've tried to distinguish between what's the  
16 amount of use for irrigation and amount used for --

17 MR. BARMANN: Right, so --

18 WATER RESOURCE CONTROL ENGINEER MONA: For  
19 refilling the lake, the south lake?

20 MR. BARMANN: That's true.

21 WATER RESOURCE CONTROL ENGINEER MONA: Okay.  
22 And those records we're talking about are the records  
23 that are shown in Exhibit 31 and 32 of the Homeowners  
24 Association?

25 MR. BARMANN: Yes.



1 WATER RESOURCE CONTROL ENGINEER MONA: Okay.

2 On paragraph seven, you say that:

3 Supplemental water purchased from the San  
4 Juan Water District is piped into the  
5 southern lake, and a pumping system  
6 conveys water from southern lake to the  
7 northern lake.

8 Is there a meter that measures how much water  
9 is pumped from the southern lake to the northern lake?

10 MR. BARMANN: No. That's not metered. The  
11 purpose isn't to -- it's a two-fold reason that  
12 circulation pump is there.

13 One is to replenish water that's evaporated or  
14 seeped. The other is to create circulation in the lake  
15 so that what's pumped to the northern lake, there's  
16 three or four outlets underwater in the far reaches of  
17 the lake, so when that water gets pumped in there then  
18 it circulates back in overflows and goes back to the  
19 southern lake.

20 So it circulates to the northern and back to  
21 the southern again, whenever that pump's operating.

22 WATER RESOURCE CONTROL ENGINEER MONA: So all  
23 you really know measurementwise is what's being pumped  
24 into the southern lake, but you don't know  
25 measurementwise how much is being pumped from the

1 southern lake to northern lake.

2 MR. BARMANN: Right. The water that is  
3 supplied from San Juan into the southern lake is  
4 actually supplementing both lakes.

5 WATER RESOURCE CONTROL ENGINEER MONA: But you  
6 can't --

7 MR. BARMANN: In fact, we don't have any way to  
8 say how much is put into one or the other.

9 WATER RESOURCE CONTROL ENGINEER MONA: Okay.  
10 Just to clarify one statement you made: You said  
11 originally -- and you're not too sure -- you thought  
12 that maybe both lakes were partially filled by natural  
13 runoff and partially filled by purchase water. Is that  
14 your statement?

15 MR. BARMANN: Yeah, that's what I said a few  
16 minutes ago.

17 WATER RESOURCE CONTROL ENGINEER MONA: You're  
18 not sure?

19 MR. BARMANN: I guess the reason I stated it  
20 that way was that my understanding that when the lakes  
21 were being built that there was some pretty wet weather  
22 and, you know, they had some problems completing the --  
23 you know, during the construction of them so that they  
24 might have had -- I mean they get water every winter, so  
25 I'm not sure how long the construction took or what

1 period of time.

2 But it's -- I know that that's -- one of the  
3 lakes I'm familiar with at my work with the Corps of  
4 Engineers, it was filled, you know, like within two  
5 years by natural runoff.

6 WATER RESOURCE CONTROL ENGINEER MONA: Would  
7 you say that to this date that either the south or north  
8 lake is capable of capturing surface runoff? Or are  
9 they built in such a way that's now impossible?

10 MR. BARMANN: No. They certainly collect  
11 surface water. In fact, we don't have to replenish any  
12 water in the wintertime because there's enough surface  
13 runoff.

14 WATER RESOURCE CONTROL ENGINEER MONA: Really.  
15 Okay.

16 Do you, as the -- I guess you maintain both  
17 lakes, so are you aware of any water rights that may be  
18 established for that collection of that natural runoff  
19 for either one of those two lakes?

20 MR. BARMANN: No, I'm not.

21 WATER RESOURCE CONTROL ENGINEER MONA: Thank  
22 you.

23 HEARING OFFICER BAGGETT: Any questions? I  
24 have none.

25 With that, should we take exhibits into

1 evidence? Mr. Schofield? And then.

2 MR. SCHOFIELD: I would like to move into  
3 evidence all the exhibits that I passed out, and I would  
4 also like to pass out copies of various deposition  
5 documents and attachments that are in response to the  
6 testimony that the complainants provided but they didn't  
7 provide any actual people to cross-examine.

8 HEARING OFFICER BAGGETT: Okay. Why don't you  
9 pass those out before we take objections and rule. And  
10 we can go off the record while he's passing those out.

11 (Discussion off the record)

12 HEARING OFFICER BAGGETT: Let's go back on the  
13 record.

14 I would -- before anybody objects, you  
15 understand these are admitted -- these are all hearsay  
16 documents, as is the documents which they are part of.

17 I'm concluding three-fourths of this record is  
18 probably hearsay documents, maybe more by the time we're  
19 done. I haven't calculated that but . . .

20 MR. SCHOFIELD: My assistant has prepared a  
21 list of the additional exhibits that we're asking be  
22 introduced, and I ask permission for her to be able to  
23 read them in order so we can have an understanding how  
24 they are going to be marked.

25 HEARING OFFICER BAGGETT: That will be fine.

1 But in general, do we have objections?

2 MR. ROSE: No.

3 HEARING OFFICER BAGGETT: No objections. Okay.

4 With that, then we'll accept the exhibits from Hidden  
5 Valley into the record, and why don't we clarify the  
6 numbers.

7 MS. KUNTZ: Hidden Lakes, you mean.

8 HEARING OFFICER BAGGETT: Hidden Lakes. I'm  
9 sorry.

10 MS. KUNTZ: Is everybody clear up through  
11 Exhibit 50?

12 MR. SCHOFIELD: Why don't you just read them.

13 MS. KUNTZ: 47 is the WaterGram  
14 November-December 2008.

15 Hidden Lakes Estates Exhibit 48 is the  
16 WaterGram May-June 2009.

17 Hidden Lakes 49 is the HTA report.

18 Hidden Lakes Estates 50 is the Gina Lane SJWD  
19 water meter reading.

20 Hidden Lakes 51 is the updated piezometer  
21 readings graph that essentially replaces our Exhibit 15.

22 Hidden Lakes Exhibit 52 is the updated resume  
23 of Mr. Wentz.

24 Hidden Lakes Estates 53 is depo excerpts of Mr.  
25 Gee, G-e-e.

1           Hidden Lakes Estates 54 is the depo excerpts of  
2 Campbell.

3           Hidden Lakes 55, depo excerpts of Wood.

4           And Hidden Lakes 56 is the general property  
5 information, also known as the inspection report.

6           And 57 is the First Amended Complaint.

7           SENIOR STAFF COUNSEL HEINRICH: I have a  
8 question, actually.

9           So the revised assessment of water supply needs  
10 is -- what number is that? Says City of Sacramento at  
11 the top. Has a picture of Fairbairn.

12           MR. SCHOFIELD: I believe I may have  
13 inadvertently passed out the wrong exhibit.

14           I had two exhibits, one that related to Dry  
15 Creek, one that related to the City of Sacramento's  
16 water supply.

17           Mr. Rich was kind enough to discuss where the  
18 location was of the City of Sacramento's pumping plant.  
19 I had intended to pass out a Dry Creek assessment. I  
20 guess I would like to do that instead and ask you to  
21 discard the liability report.

22           MS. KUNTZ: So the Dry Creek Watershed  
23 Coordinated Resources Management Plan dated December 31,  
24 2003 becomes Hidden Lakes Exhibit 58, please.

25           HEARING OFFICER BAGGETT: Okay. With that,

1 they are admitted as noted.

2 (Whereupon the Hidden Lakes Estates  
3 Homeowners Association Exhibits were  
4 admitted in evidence.)

5 HEARING OFFICER BAGGETT: Rebuttal? You have  
6 one rebuttal witness?

7 MR. SCHOFIELD: Correct.

8 HEARING OFFICER BAGGETT: So the other two are  
9 free to leave, if you know who the rebuttal witness is.

10 MR. SCHOFIELD: This would be for Mr. Wentz.  
11 Mr. Barmann and Ms. Kraemer can go.

12 --o0o--

13 FREDERICK J. WENTZ JR.

14 Recalled by HIDDEN LAKES ESTATES HOMEOWNERS ASSOCIATION

15 Direct Examination of Mr. Wentz By Mr. Schofield

16 BY MR. SCHOFIELD:

17 Q Mr. Wentz, is your mic on?

18 A My mic is on.

19 Q Earlier there was a discussion with regard --  
20 that I had with Mr. Rich regarding leakage from the  
21 southern lake. Do you recall that discussion?

22 A Yes.

23 Q Have you at any time made an evaluation of the  
24 southern lake visually?

25 A Yes, I have.

1 Q Did you evaluate the downstream portion of the  
2 southern lake?

3 A I observed it.

4 Q Is there an embankment there?

5 A There is, yes. There's a very clear  
6 embankment.

7 Q It appears to have been created by whoever  
8 constructed the dam?

9 A Yes. We were originally provided as part of  
10 our background research for the project some as-built  
11 drawings of the subdivision lakes, and there was a dam  
12 shown at the south end of the south lake. When I went  
13 out there during my site reconnaissance, I clearly  
14 identified that dam.

15 Q Could you compare the size of the southern lake  
16 dam to the size of the northern lake dam?

17 A I would say it's a few feet taller.

18 Q It, meaning the southern dam?

19 A Sorry. The southern dam is a few feet taller  
20 and the crest is a bit wider, quite a bit wider.

21 Q So in general, it's larger than the northern  
22 lake dam?

23 A Yes.

24 Q Did you ever have the opportunity to place a  
25 piezometer into the southern lake dam?



1           A     Yes.  We did one exploratory boring and  
2     piezometer installation in that dam similar to what  
3     we've already talked about on the north dam.

4           Q     Have you ever taken water level readings from  
5     the southern lake dam piezometer?

6           A     We have.

7           Q     How frequently?

8           A     Monthly, the same as for the north dam.

9           Q     What are the results of those readings, if you  
10    can recall?

11          A     They show an average phreatic surface of about  
12    7 to 8 feet below the ground surface.

13          Q     Could you, using that piezometer and the  
14    piezometer readings that you have taken from the  
15    northern lake dam, make a comparison about the relative  
16    rates of seepage between the two -- through the two  
17    dams?

18          A     I would say that the seepage through the two  
19    dams is in relative terms probably about the same.

20          Q     Earlier there was testimony by Mr. Beveridge,  
21    and he made reference to gunite in the spa in the  
22    Allegras' backyard, and that the gunite was cracked and  
23    he found water below it.  Does that sound familiar to  
24    you?

25          A     Yes.

1 Q Are you familiar with gunite?

2 A Yes.

3 Q Have you used it in your professional capacity?

4 A Yes.

5 Q If gunite for the spa was in bad shape and had  
6 to be replaced and there was water found below it during  
7 the replacement, would a reasonable source of water  
8 beneath gunited area be from the spa itself?

9 A Yes.

10 Q If the pool in the Allegras' backyard were  
11 cracked and not repaired and was leaking water, could  
12 that be a source of water into their backyard?

13 A Yes.

14 Q Could it ultimately go into a French drain  
15 system that was installed in their backyard?

16 A Yes.

17 Q Earlier you heard questions that I asked of  
18 Mr. NeSmith regarding the width of a dam and how much  
19 water would move through it, and you later heard the  
20 Allegras' attorney asking questions of Dr. Thompson on  
21 the same subject.

22 My question for you is: What's your opinion  
23 about whether the width of the dam -- a dam that is  
24 wider allows or would have a reducing effect on  
25 permeability as opposed to a dam that is narrower?

1           A     Well, I think, as Dr. Thompson pointed out, the  
2 permeability of the two structures could be the same,  
3 but the rate of seepage and the location of the seepage  
4 could be quite different in the wider dam relative to  
5 the narrower dam.

6           Q     By quite different, what do you mean?

7           A     Well, in the wider dam, the phreatic surface --  
8 that is, the top of the saturated ground through which  
9 water is seeping -- would with longer distance, i.e., a  
10 wider dam, drop over that distance. So the amount of  
11 drop due to the hydraulic gradient in the wide dam, at  
12 100 foot wide dam, let's say, might be 5 feet, and in a  
13 10-foot wide dam it might be an inch.

14          Q     So if you had a relatively narrow dam, then you  
15 would expect to see water emanating from the other side  
16 at a relatively high elevation compared with a wider  
17 dam?

18          A     Potentially. You would expect -- all things  
19 being equal, you would expect the narrower dam to have a  
20 seepage path higher than the wider dam.

21                   MR. SCHOFIELD: I have no further questions.

22                   HEARING OFFICER BAGGETT: Any cross-examination  
23 from prosecution?

24                   MR. ROSE: I'll let you know in one second, if  
25 I could just confer.

1 HEARING OFFICER BAGGETT: That's fine. We can  
2 go off the record.

3 (Recess)

4 HEARING OFFICER BAGGETT: Okay. Are we ready?  
5 Prosecution Team, cross-examination of rebuttal  
6 testimony.

7 MR. ROSE: I'll keep this very brief. We're on  
8 the record?

9 HEARING OFFICER BAGGETT: We're on the record.

10 --oOo--

11 Cross-Examination of Mr. Wentz by Mr. Rose

12 FOR PROSECUTION TEAM

13 BY MR. ROSE:

14 Q Just a few very brief questions, Mr. Wentz.

15 In the testimony you just gave, you were  
16 assuming that the south dam is made of the same  
17 materials as the north dam; is that correct?

18 A Generally speaking, yes.

19 Q You were assuming that everything else was  
20 being equal between the two dams other than the size?

21 A Based on the evidence I've seen, yes.

22 Q For the testimony you just gave, you were  
23 assuming that other than size everything else was equal?

24 A Well, it's not an assumption, I guess, because  
25 we drilled a hole out there, and we looked at the

1 material and it's the same as what came out of the  
2 ground on the north end.

3 Q How many holes did you drill on the south dam?

4 A One.

5 Q So you didn't do the same degree of analysis of  
6 the south dam composition as you did of the north dam,  
7 did you?

8 A We did not. Not as far as number of holes, no.

9 MR. ROSE: Okay. I have no other questions,  
10 thank you.

11 MR. WATTS: I have no further questions either.

12 HEARING OFFICER BAGGETT: Any questions from  
13 staff? I have none.

14 Okay. That concludes the -- no new exhibits.  
15 That concludes the cases-in-chief, cross, and rebuttal.

16 At this point, we will allow closing briefs. I  
17 don't feel we need closing oral arguments today. We'll  
18 allow you to brief those.

19 I understand the transcripts will be ready in  
20 approximately two weeks. 30 days beyond that. Why  
21 don't we just set a date now. That's six weeks out.

22 CHIEF LINDSAY: How about Monday, March 22nd.

23 HEARING OFFICER BAGGETT: Is that reasonable?  
24 March 22nd for closing briefs.

25 MR. SCHOFIELD: Fine.

1           MR. ROSE: Fine.

2           MR. WATTS: I think the only issue would be as  
3 long as the transcripts are timely. We're fine.

4           HEARING OFFICER BAGGETT: Assuming they're out  
5 in two weeks.

6           CHIEF LINDSAY: If they're delayed, we'll get  
7 back to you.

8           HEARING OFFICER BAGGETT: From my perspective,  
9 initially, having read the bulk of this testimony prior,  
10 I thought it might be a little simpler. It's not.

11           So here's the question I guess I'm most  
12 interested in, and I don't know -- I think staff would  
13 probably concur, most of these are issues that -- you're  
14 free to brief whatever you want. Ten-page limit.

15           But here's, I guess, to me some significant  
16 issues that we're going to have to resolve.

17           One is: Is there leakage on the two lots in  
18 question, 71 and 72, from the Hidden Lakes Estates  
19 Homeowners Association northern lake.

20           And if so, does that leakage from that lake  
21 rise to a level above that that would be typical of a  
22 lake of similar size, similar geology, you know, similar  
23 climate and so on.

24           And I guess lastly, if that's the case, then  
25 does that amount rise to such a level that this Board

1 should consider it an unreasonable amount based on  
2 Article 10, Section 2 of the California constitution.

3 It's pretty straightforward. It's obvious the  
4 facts aren't. And I'm not clear the unreasonable amount  
5 is either.

6 So ten pages. You can answer whatever you  
7 want. You have all heard what's before us. If you want  
8 to cite to the record in evidence on other issues, you  
9 may. That seems to be the crux.

10 With that, we'll that all this under  
11 submission, and a draft order will be put out for  
12 consideration by the full Board to adopt, and all  
13 parties on the list will be noticed of that.

14 If you believe the order that the Board  
15 ultimately adopts is in error, you have 30 days to file  
16 a motion to reconsider as I think you all know.

17 With that, thank you very much.

18 MS. KUNTZ: Mr. Baggett, may I ask one thing?  
19 I'm told on at least one of the participating parties  
20 lists that Downey Brand is listed as, I think, Downer  
21 Brand, which is funny but unfortunate.

22 Can we make sure that's corrected in the Board  
23 records please.

24 MR. SCHOFIELD: That can be true at times.

25 HEARING OFFICER BAGGETT: There will be no

1 comments from the Hearing Officer on that, but we will  
2 correct that. Thank you.

3 MS. KUNTZ: Thank you.

4 HEARING OFFICER BAGGETT: Now we're done.

5 \* \* \*

6 (Thereupon the WATER RESOURCES CONTROL  
7 BOARD hearing adjourned at 2:37 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, LINDA KAY RIGEL, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify:

4 That I am a disinterested person herein; that  
5 the foregoing WATER RESOURCES CONTROL BOARD hearing was  
6 reported in shorthand by me, Linda Kay Rigel, a  
7 Certified Shorthand Reporter of the State of California,  
8 and thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or  
10 attorney for any of the parties to said meeting nor in  
11 any way interested in the outcome of said meeting.

12 IN WITNESS WHEREOF, I have hereunto set my hand  
13 this February 12, 2010.

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LINDA KAY RIGEL, CSR  
Certified Shorthand Reporter  
License No. 13196