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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

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NATIONAL AUDUBON SOCIETY and MONO LAKE COMMITTEE,

Petitioners,

vs.

STATE WATER RESOURCES CONTROL BOARD,

Respondent.

DEPARTMENT OF WATER & POWER OF THE CITY OF LOS ANGELES

Real Party in Interest.

And Consolidated Action No. 336715

COPY

No. 336712

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DEPOSITION OF ELDEN H. VESTAL

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Napa, California
Thursday, January 11, 1990
10:29 o'clock a.m.

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Reported by: KATHLEEN SOLOAGA, CSR No. 6957

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DEPOSITION EXHIBITS: (Con't.) PAGE

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BE IT REMEMBERED that, pursuant to Notice and on the 11th day of January, 1990, commencing at the hour of 10:29 o'clock a.m. thereof, at the Napa County Library, Community Room, 1150 Division Street, Napa, California, 94559, before me, Kathleen Soloaga, CSR No. 6957, a duly licensed Certified Shorthand Reporter in the State of California, there personally appeared

ELDEN H. VESTAL,

a witness called under the appropriate and applicable provisions of the Codes of the State of California, who, being first duly sworn, was thereupon examined and testified as hereinafter set forth.

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A P P E A R A N C E S

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MORRISON & FOERSTER, Attorneys at Law, 630 Hansen Way, Palo Alto, California, 94304-1014, represented by BRYAN J. WILSON, ESQ., appeared as counsel on behalf of the Audubon Society, Mono Lake Committee and Elden Vestal.

Law Offices of KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD, a Professional Corporation, 770 L Street, Suite 1200, Sacramento, California, 95814-3363, represented by JAMES E. THOMPSON, Attorney at Law, and JANET K. GOLDSMITH, Attorney at Law, appeared as counsel on behalf of the Department of Water and Power of the City of Los Angeles.

Also Present: PETER VORSTER, ETHEL VESTAL, J. EMIL MORHARDT and CARL MESICK.

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MR. WILSON: For the record, Mr. Vestal is recording the deposition just for his own, so periodically we will be stopping and starting.

ELDEN H. VESTAL,

having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. THOMPSON:

Q. All right. Mr. Vestal, for the record, would you

please state your name and present address.

A. Elden H. Vestal, 3042 Donna Drive, Napa, C-a, 94558.

Q. And the spelling of your name is E-l-d-e-n, right?

A. E-l-d-e-n.

Q. And V-e-s-t --

A. V-e-s-t-a-l.

Q. Mr. Vestal, have you ever had your deposition taken before?

A. No.

Q. All right.

Q. The procedure is that we'll take a statement from you about the facts, certain facts that are relevant to the case that we have that involves, among other things, some of the streams in the Mono Basin, the streams from which the Department of Water and Power, whom I represent, diverts water.

And the testimony that you give will be recorded by the court reporter who is here, and she'll make a record, a little booklet that records what your answers were to the questions --

A. I understand.

Q. -- that I ask you.

And then following that, you'll have an opportunity to look at that book, to read through it, and to correct it if there are things that are incorrect or answers that you want to change.

When this case is tried, the deposition may be used as evidence. And if you make changes in the answers, you are likely to be asked about the changes that were made.

The purpose of the deposition is part of what we call a discovery process, which allows the parties to discover what the facts are, what the people who have knowledge of the facts say.

And one of the questions -- one of the issues that comes up is sometimes in asking questions when I'm trying to talk for the record, I talk slowly or choose my words a little bit.

And I have a habit sometimes of stopping before the question is quite finished. And if I start doing that, or if my questions aren't clear, please ask me to clarify, and please try to wait for me to complete my questions, okay?

A. Thank you.

Q. Can you give us a brief description of your employment background?

MR. WILSON: Can I interrupt for a second? I just wanted to make a brief statement, just that I want to note for the record that we have had a discussion regarding the fact that Mr. Vestal wanted to look at several older maps and photos which we have not yet been able to locate but he has seen before to refresh his recollection about some of the subjects that I expect he will be testifying about

today.

And we requested that the deposition be postponed until we could get hold of those, and you desired to go ahead today, and we agreed to do that.

But subject to the understanding that we have a series of questions that we expect we'll want to ask, and we would like to be able to do that at a later date, and also subject to the understanding that you realize that there are certain photos that he still wants to take a look at.

MR. THOMPSON: Yes. You did tell me those things, and I recall that.

BY MR. THOMPSON:

Q. Mr. Vestal, while we're on the subject, perhaps we should just talk about that for a moment. What are those maps and photos that are of concern to you?

A. The maps are -- they are late -- the later maps adjoining one that I have here on a larger scale. It's a provisional map, U.S.G.S., Lee Vining, 1986, and the others are maps that were -- would be adjacent to that map, June Lake, Coip and Mt. Dana, and for the same purpose, general reference back.

Q. And they are -- these maps that you are referring to would be the U.S.G.S. quad sheets; is that it?

A. Yes.

Q. And the designations were just the way those maps are referred to, those particular sheets are referred to; is

that it?

A. That's correct.

Q. In addition to those maps, are there particular dates that are of concern to you on those?

You mentioned 1986 for the Lee Vining map. Are there other additions that you wanted to also refer to?

A. No.

Q. And for June Lake, or Coip, or Madonna, do you know specifically what dates that it is that you are looking for?

A. It's my understanding that they were -- they were produced at about the same time. This is --

Q. Okay. In addition to the maps, sir, there are also some photographs that you've been attempting to locate.

A. Yes. These are aerial photographs that were shown to me by Dr. William C. Putnam during his studies of the Mono Basin on the glacial and -- pleistocene, glacial, and volcanic history of the Basin.

And then it is my understanding that in addition to that, there is another flight that was made by the Forest Service, and I wanted to see those, since they are an early date.

And then I have heard tell of more recent photos taken perhaps by NASA or another agency that produce in color and very accurate a not-too-high altitude that gives -- would give you reference.

Q. Do you know approximately the date of the Putnam

aerial photographs?

A. The ones that Dr. Putnam published show 1930 by Fairchild Aerial Surveys, but I am sure that when I met him, first met him in the field, there was -- there was a set taken in 1939, a very -- very fine photographs.

Q. And then the Forest Service photos, do you know approximately the date, their date?

A. At about that time, about -- just about that time, 1929 or 1930. I'm not quite sure.

Q. The other, the Putnam photos you said about 1939, did you mean '29?

A. No, 1930.

Q. Uh-huh.

A. He published one composite sheet in his publication, the Mono Craters. It indicated the date 1930 in that strip of composite.

Q. What is the subject of these aerial photographs, the Putnam photographs?

A. Well, specifically, my concern was the Rush Creek Basin and especially the loop from June Lake through Gull Lake down through Silver Lake and the connecting stream between Silver Lake and Grant Lake and from Grant Lake down to the delta at Mono Lake.

I also wanted to see the tributaries, Parker and Walker Creek, the course of those streams, and Lee Vining Creek.

Q. And the Forest Service photos might also shed some light on those?

A. Yes.

Q. Depict those same waters?

A. Yes.

Q. And that would also be the case of the more recent photos, the NASA or other agency photos; is that right?

A. I'm quite sure of that.

Q. All right. Mr. Vestal, let me back up a little bit and ask you some, just some general background questions about your education and experience.

First of all, tell me about your education and training, if you could.

A. Well, I was -- took my advanced training at the University of California at Berkeley, a Bachelor of Arts Degree, Letters and Science in 1934.

I took a General Secondary Teacher's Credential in 1935 and took my Master of Arts Degree in Zoology in 1936, and then I did grad work in Zoology from May 1937.

In addition to that, when I first became employed on January 1st, 1938, I was -- I moved to Palo Alto and did some seminar work out of my office there at the North Rotunda of the Natural History Museum.

Q. Okay. In your graduate work, did that have to do with fish?

MR. WILSON: If I could interrupt you just for a

second.

MR. THOMPSON: Sure.

MR. WILSON: One of the documents in that folder is labeled -- it's a resume.

MR. THOMPSON: A resume. Oh, great.

MR. WILSON: That's something that Mr. Vestal prepared for the deposition. I just think it might make things a little easier for you.

MR. THOMPSON: Thank you, Bryan. I appreciate that.

MR. WILSON: Why don't we go back to the last question.

MR. THOMPSON: Yeah. No, that's okay. Just withdraw the question. Why don't you mark this document for us.

(A document entitled Qualifications of Witness for Elden H. Vestal was marked as Deposition Exhibit No. 1 for identification.)

BY MR. THOMPSON:

Q. Mr. Vestal, I want to show you a document that's been labeled as Deposition Exhibit No. 1 and ask you, is Deposition Exhibit No. 1 a copy of a resume that you prepared in preparation for this deposition?

A. Um, yes, to the extent that I changed the last -- the very last line to bring it up to date.

We have just republished a Handbook for Roadsides and Trail, Mammoth Lake Sierra, Fifth Edition, and I just added that to it; otherwise, it has not been changed --

Q. Okay.

A. -- since the original.

Q. And this is a personal resume of yours that you've, with that addition that you just mentioned, you've used before and have for some time; is that correct?

A. That is correct.

Q. Does Exhibit No. 1 accurately set forth your education and experience with the California Department -- Division of Fish and Game?

A. Yes.

Q. All right. So you were employed with the Department of Fish and Game for 41 years, correct?

A. That is correct.

Q. Your first employment with the Division of Fish and Game was in 1938?

A. That is correct.

Q. Where were you stationed at that time?

A. I began at the Natural History Museum, North Rotunda, in Palo Alto under Dr. Needham.

This was an assignment under the California Trout Investigations. And one function of that was to, since Dr. Needham was a recognized fisheries expert with the U.S. Bureau of Fisheries and part of the California Trout Investigations, to indoctrinate me, if you will, on fisheries, technicalities of fisheries, since I had not had, prior to that time, formal fisheries training.

And Dr. Needham posthaste broke me in on food habit studies, and length/weight work, stomach analyses, and so on. This was in preparation for my first field assignment which was at -- which was a creel census study at Convict Lake on marked, catchable trout from Hot Creek Hatchery.

Q. When did you first become involved in this field study, Mr. Vestal?

A. Actually, it began the 1st of May 1938. I moved into the area on the 30th of April and took up cabin residence at Convict Lake to begin actual census on the 1st of May.

Q. And, generally, what was the object of your study at Convict Lake?

A. To check on the survival of these -- survival to the creel, that is, of these catchable fish from Hot Creek Hatchery.

Q. And what type of fish were those?

A. These were Rainbow.

Q. Rainbow Trout. How long were you involved in the field study at Convict Lake?

A. Until early June when I was then transferred to Convict Creek experimental stream which, under Dr. H. John Rainert, to continue intensive work on stream bottom foods, and length/weight studies, and other -- other work.

Q. Then in June you went to Convict Creek and were involved on an experimental stream there for some time?

A. That's correct.

Q. How long were you involved at Convict Creek?

A. To the end of -- almost the end of June.

Q. Of -- we're still in 1938?

A. That's correct.

Q. Okay. And I take it that during this two-month period, you devoted your full time to these studies, correct?

A. That's correct.

Q. And then your employer was the Division of Fish and Game at that point; is that right?

A. My paychecks came from the Division of Fish and Game, but my supervisor was Dr. Needham.

Q. Uh-huh.

A. The subsupervisor under him on the latter days of that assignment was Dr. Rainert.

Q. The next thing that shows on your resume here is some work in the Eel River watershed. That also took place, I guess, in the summer of 1938 through the spring of 1939, correct?

A. That is correct.

Q. So that you left the area at Convict Lake and then went up to the north coast area at that point?

A. Yes, via Stanford University to get briefing and instructions from my next supervisor, who was going to work with me on a very extensive field survey of the entire Eel

River Basin.

This was also in preparation in conjunction with the work on the Eel River with a salmon/steelhead migration study at Benbow Dam which began that fall and carried forward through 1939.

Q. And then the next thing that shows on your resume is that you were assigned as District Biologist in charge of fisheries investigation and Manager of the Inyo-Mono Region of California, and you indicate about a one-year assignment in that capacity; is that right?

A. That is not quite correct. When that assignment was made, it was my understanding about March of 1939 that this, at that time, informal field title, as it were, District Fisheries Biologist, I would then become the, formally, the District Fisheries Biologist for the Inyo-Mono region or the Inyo-Mono District because there was -- I was -- became the first one.

The State was then divided, by that time was divided into various biological districts for fisheries biological work, and Inyo-Mono District lacked a permanent -- lacked permanent personnel. And I was the first to be assigned, and that work actually began late March and into April of 1939.

Q. All right. Now, the territory of the Inyo-Mono District, did that include the Mono Basin?

A. Yes.

Q. Did it also include other territory outside of the Mono Basin?

A. Yes. It included all of Mono County, all of Inyo County. The only work outside of Mono County occurred in Alpine County in connection, just a very short bit of work in connection with Black Spotted Trout, and this was strictly for photographic purposes.

Q. Now, where were you stationed when you were the District Fisheries Biologist for the Inyo-Mono District?

A. In the wintertime, I was stationed at Mt. Whitney Hatchery, and in the summertime, at Fern Creek Hatchery near June Lake.

I might add that later, after my marriage to my wife, I became -- I permanently resided at Gull Lake near June Lake.

Q. What were your principal responsibilities during the time that you were the District Fisheries Biologist for the Inyo-Mono District?

A. It covered a wide range of activities. Investigations and management of multifarious fisheries problems.

One of the primary purposes was to organize and conduct a districtwide inventory of all fishable waters, or all waters that had any potential for angling and fishery productivity, fish productivity, and make records thereof for the permanent files of the District and for the

Department.

In addition to that, I was assigned a creel census, my first large creel census for the Division of Fish and Game at June Lake, which was an enlargement augmentation of the same type of thing that I began at Convict Lake where we were testing the returns to the creel of marked, catchable trout from Hot Creek Hatchery.

This June Lake was one of the most intensively fished waters in the area, lakes, that is, and in the eyes of the Chief of the Bureau and the Supervising Fisheries Biologist, this would be a good place to carry on such work.

Following the work at June Lake, it became apparent that we needed to test the return to the creel of marked, catchable trout, primarily from Hot Creek Hatchery at a -- on a stream situation.

We were planting catchable trout up and down streams in the Inyo-Mono area, elsewhere in California, and not really testing the returns to -- of this hatchery product to the creel.

And it made good sense, certainly economic sense, to carry out that work, and so the testing program was organized, conducted on that basis. In addition to that, there were --

Q. Where was that done? There was -- I take it then you did a creel study on a test stream; is that it?

A. Yes. The test stream that was selected after

considerable study was the lower Rush Creek, portion of lower Rush Creek; the lower-most 3.7 miles from the mouth of the stream up to, and up to the Gorge, what they called the Gorge, a narrow, rocky defile in the geology of the Basin there at the head of the stream.

Q. Let me ask you a question or two then, Mr. Vestal, about this. Was there a creel study of the lower portion of Rush Creek performed during the May 1939 to June 1940 period of time when you were at the Inyo-Mono, when you were the person at the Inyo-Mono region there that we've just been talking about?

A. No.

Q. This is later?

A. That -- this came later.

Q. I see. And we'll get to that in due course.

A. Yes.

Q. And I will ask you some questions about it.

Focusing on this 1939 to June 1940 period of time shown on your resume, in addition to the duties that you've described, what other duties did you have?

A. It was a coordination of activities with those of the District Ranger, the Forest Service; keep up, maintain liaison with -- it was then the Mono National Forest. It later became the Inyo National Forest.

To follow-up problems such as pollution, mining pollution, whatever problems of that nature occurred; to

check on flows as part of the inventory work; to hasten, as rapidly as possible the work, especially in the higher -- higher elevation waters, mostly lakes, but also tributary streams; to follow the spawning for Brown Trout stock at, this was on an annual basis, at the Rush Creek Egg Collecting Station between Silver and Grant Lake; and generally keep track of -- "watch dog" was the word that often applied to each of the District Biologists, even in those early days.

Q. Who did you report to at that time?

A. I reported to Mr. Brian Curtis, who was the Supervising Fisheries Biologist, and, in turn, to Mr. Alan C. Taft, who was the Chief of the Bureau of Fish Conservation.

Q. And is Mr. Curtis still living?

A. Neither Mr. Taft or Mr. Curtis are living.

Q. Were there any employees whose work you supervised during that 1939-1940 period?

A. At that time the Bureau did not have funds to employ temporary help, so we had to borrow help from the -- they called them the Tri C's or Three C's, Civilian Conservation Corpsmen, who were stationed at Mammoth, near Mammoth Ranger District.

And this was another reason for continued liaison with the Forest Service, to make sure that we had a pool of help to help mark fish and carry out the creel

census and so on.

Q. There's also a mention here in your resume of some chemical treatments of inland lakes and streams for the eradication of undesirable fish.

Tell me what work you did along that line at that time.

A. Well, the first -- we called it at that time, we first called it an experiment to remove a large population of Chub Minnows, then called Siphateles Obesus, in Gull Lake.

Q. Are you gonna be able to get that?

A. Cap S-i-p-h-a-t-e-l-e-s, and the species is Obesus, O-b-e-s-u-s. And the purpose of that was that the chubs, or Chub Minnows, the common name for them, was crowding out the -- eating the food and crowding out the game species, making it hard for the game species to continue their existence.

And this work was the first major project of this kind in the State of California. So in 1939, I began a series of experiments using darrus root and these were carried out at, largely at Fern Creek Hatchery with samples of fish from the hatchery and testing the effect and how long it would take to kill them.

And this led to the full-scale work in September of 1940 when the entire lake crew was organized, and the entire lake was chemically treated and the chubs

cleaned out.

Several tons of chubs were removed, and the lake then subsequently, once it recovered after several weeks, it was then replanted with Eastern Brook after the lake had recovered from the treatment.

In the next -- well, you said 1940, but --

Q. Right. I know I'm belaboring this a little bit, and I apologize.

A. This is to lay a foundation for the Angeles National Forest. I had a problem down there at Crystal Lake, and this was laying the foundation for work down there the following fall, in '41.

Q. On your resume it says from 1940 to 1950 you became, in succession, a Junior Fishery Biologist, a Junior Aquatic Biologist, Senior Fisheries Biologist, Assistant Fisheries Biologist, and District Fisheries Biologist.

I take it each one of those is a civil service classification, correct?

A. Yes, they were. They were civil service classifications.

Q. And each one represented a promotion, is that --

A. Hopefully.

Q. Yeah. Sure.

A. The pay -- the paycheck was loomed large in those days. I began at $120 a month and some field expenses.

Q. You were involved -- during this 1940 to 1950 period,

did you continue to be involved in the Inyo-Mono region that entire time?

A. Subject to the War years when I was absent for approximately four years, returning in March of 1946.

Q. When did you go into the Service?

A. 1942. About the 1st of December 1942.

Q. So you were in the Service and away from the Mono Basin from 1942 to 1946?

A. Returning on leaves.

Q. Sure.

A. At just times to see what was going on.

Q. During the time then from 1940 to December 1942, you were stationed in the Mono Basin, correct?

A. Yes, at Gull Lake stationed and residence there, but operating out of there for the -- over the whole Inyo-Mono District.

Q. During that period, 1940 to December of '42, did you have any employees that reported to you at Gull Lake at that time?

A. No, the employment began really after, right after the War. We then employed -- the help, I got rather ready help through the Forest Service that I mentioned.

Q. Then in the period 1940 to December of '42, did you continue to report to Mr. Curtis and Mr. Taft during that time?

A. That is correct.

Q. Focusing on that period 1940 to 1942, can you give me a description of what your principal duties were during that time frame?

A. From 1940 to '42, I was, in that period, I was pretty much involved in the later stages of the creel census work at June Lake and a great deal of involvement with the follow-up to the work at Crystal Lake, the chemical treatment there which -- and then I carried out an assignment by Mr. Nate, assignment or request, really.

It was an assignment request by Mr. Nate Miller to do some work at Little Walker Lake, a variety of duties during that period.

And then in 1942, what I called the laying down, which was making sure that records were completed, and equipment and everything stored at Hot Creek Hatchery during my absence in the military service.

It was an effort to write up reports and clean up that prior to absence on military leave.

Q. During this era that we've been talking about from your first involvement in the Inyo-Mono region until you went into the Service in 1942, are there records that were written at the time that reflect what your day-to-day activities were?

A. Not in every case. As a rule, the reports, we called -- we had what we called special reports that were submitted to, on particular problems, to the Bureau of Fish

Conservation.

For the most part, the records -- reports and records were in those pages in the weekly reports and then the monthly reports, which were routinely submitted to Mr. Curtis and to the San Francisco office, Mr. Taft.

Q. During that period of time, did you have occasion to write a special report on any of the, what I would call the Mono Basin streams on Rush Creek, or Lee Vining Creek, or Parker, or Walker Creek?

A. No.

Q. Do you recall having any specific assignments during that period of time with respect to Rush Creek?

A. No.

Q. Do you recall having any special assignment during that period of time with respect to Lee Vining Creek?

A. No assignment, but there was a -- there was an investigation of a pollution occurrence from the Simpson mine just above the Lee Vining Ranger Station, but no special reports, no special studies or reports to the Bureau of Fish Conservation.

Q. During that period of time, did you have any special assignment with respect to Walker Creek?

A. The only one is the one I mentioned which was at the request of the President of the Fish and Game Commission, Nate Miller.

And this involved a survey of the lake, gill

net samplings of the population to find out how the fish, what condition factors, whether they were good, or fair, or poor, stomach samples, and so forth.

Q. And this work was done at Walker Lake; is that it?

A. Little Walker.

Q. Little Walker?

A. Little Walker Lake. They had -- near the head of Walker Creek.

Q. And with respect to Parker Creek, did you have any special assignments during that period of time concerning Parker Creek?

A. Well, Parker Creek was a problem which developed primarily at my own instigation.

We had, for some time, many years, taken Golden Trout eggs at Cottonwood Lake at a very high altitude. The eggs came in late, and the hatchery season for them short.

And by planting time, the alevins are, or fry, very small trout, were just very plantable sometimes.

Q. Excuse me, Mr. Vestal. Let me interrupt you. You used another word that our reporter may have a little trouble with. You said another word for the fry.

A. Alevin.

Q. And how do you spell that?

A. These are a -- this is spelled a-l-e-v-i-n, and these are primarily yolk-sack fish, very small, and there's a parent yolk sack, a parent sack, or yolk sack still hanging

on to their little bellies.

And these are so small when they are planted that there was a great -- there was a tremendous mortality. And between the cold, and arduous work of the hatchermen up there, and the slow growth rate, and maturity of these fish, I sought to locate a station of the lower elevation.

We could get into the program earlier, and we could get the fish out earlier to be -- to be planted at a larger size.

And so then early on, this involved the work at Parker Lake, preliminary survey of the stream, as much of the Basin that I could cover, including the lake, and to investigate the situation for a temporary seasonal egg taking station and ingress and egress from that station.

This project was approved by the Bureau of Fish Conservation, and I went ahead with other -- with the program as far as I could.

Q. What portion of the stream were you concerned with at Park Creek?

MR. WILSON: You mean with respect to this particular problem?

MR. THOMPSON: Yes. Correct.

THE WITNESS: Well, primarily, the upper area above the inlet area, and the lake itself, and the outlet stream, which would be accessible to the Golden Trout for spawning.

As they showed in Cottonwood Lake, or proved in

the Cottonwood Lake, the trout would go both ways. They would migrate into the inlet to spawn and also drop back out into the outlet to spawn.

So it involved that whole section down through the Meadow, the meanderning section of the Meadows where Parker Lake begins to drop off, or Parker Creek, rather, begins to drop off into the Basin.

BY MR. THOMPSON:

Q. Was this study that you just described in your testimony carried out before the City constructed its diversion works on Park Creek?

A. The early survey was carried out before the aqueduct was completed, yes. Subsequent work following the diversion.

Q. So that you were able then to carry on the work following the completion of the aqueduct?

A. Yes, the investigation.

Q. Is there a report that was written of that particular study?

A. No special report was prepared. All of this work would -- laid foundation for a special report which the work was actually -- the work was actually brought to a close after the War as a result of while it had been approved by the Bureau of Fish Conservation and the U.S. Forest Service had approved it, they -- there were local people, resort owners who objected to it, and the project was indefinitely

postponed.

Q. Just, in general, what was the basis of the objection?

A. The resort owners claimed that it would -- that it would occupy or take over a valuable source of their income.

The principal objection occurred out of Silver Lake. Bill Johnson, who was the owner of the Silver Lake Resort, got to the President of the Commission, for one. And there was a packer there who had packed some of his parties into Parker Lake, and he objected. Mr. L. L. Tatum was his name. It developed shortly that the project was opposed by the Mono County Chamber of Commerce.

Q. Let me see if I understand the basis of the objection, and, again, not to belabor this too much. As I understand, the resort owners had a business where they would take people to the areas where the Golden Trout were to catch them; is that it?

A. That is correct.

Q. They were fearful that if the Golden Trout became accessible in other areas, that this would interfere with their operations?

A. They were primarily concerned with the fact that I had planned to remove the existing population of Eastern Brook from Parker Lake and supplant that with Golden Trout stock.

And they just couldn't see the loss of that --

of the Eastern Brook, which are rather readily caught by anglers. They are easy to catch. And they couldn't just see that loss of a fishery close by, especially Silver Lake.

Q. Okay. Were you, during this period of time, were you a fisherman yourself?

A. I've been a fisherman for many years, right up to recent times. One of the tools of the trade, so to speak, quote, unquote, is a fly rod. I'm primarily a fly fishermen.

Q. Did you have occasion to fish the streams of the Inyo and Mono area while you were up there from 1938 to 1940?

A. Yes. It was --

Q. 1942, I should say.

A. -- part of the operations of investigation to carry that rod with you. Very enjoyable, but it's part of the job.

Q. Somebody had to do it. What was your favorite fishing stream at that time?

A. Favorite fishing stream. This is -- I perhaps could say Hot Creek which was -- which was below the Old Hot Creek Hatchery site, and this was renowned up and down California and across the United States, and -- but there were others that were awfully close to it.

MR. WILSON: Was your question referring to his favorite fishing creek in the world or the fishing creek of those Mono Basin creeks?

MR. THOMPSON: My question was in the Inyo-Mono area, when he was stationed there, where did he -- let me rephrase the question.

BY MR. THOMPSON:

Q. Just where did you usually go fishing when you were stationed there at that time?

A. Well, I didn't have a particular spot because I was -- it was part of my work, and I -- it was hard to make a selection.

I was doing so much fishing that it was -- as far as, say, a postman's holiday, it would be hard to say which would be the favorite during that time. I was fishing quite a bit during my survey operations.

Q. I take it you didn't have any responsibility during that period of time for enforcement of fishing limits and that sort of thing, did you, or is that an improper assumption on my part?

A. No, not entirely. In my first assignment at Convict Lake, I was obligated to collect evidence of illegal fishing activity in the inlet involving Black Spotted Trout.

And the policy was to collect the information, all the information available without it being detrimental to the current project, which being there at that time, the creel census at Convict Lake, and then turn this material over to the nearest warden, of which there were four in the Inyo-Mono area, and which at Convict Lake in this instance I

promptly did.

After that incident, I had very very little to do with law enforcement. Very indirect and very -- had, at times, almost day-to-day liaison with these wardens up and down the District but had very little to do with actual enforcement.

Q. Did you, in the course of your duties there, to the best of your present recollection, have occasion to -- let's strike the question. I got that one so tangled up I don't think I can get it out any which way.

What I wanted to ask you is, in the course of your duties during this initial period before the War, did you have occasion to observe fishing activities of other people on any of the Mono Basin streams?

A. Yes. I observed fishing of people on all of the tributary -- that is, Lee Vining Creek, along Walker Creek, on Walker Creek and on Rush Creek, yes.

Q. Was that observation done pursuant to some task that you were in the process of performing?

A. Actually, that effort, as far as the duties were concerned, involved the opening day angling. We -- it was a matter of custom to join the wardens in the field and try to get as much information as we could from the field on the opening day, few days, on both lakes and streams accessible to the main, main public.

And then from time to time at the times of what

we called the pressure points, the opening day, then came Memorial Day holiday, July 4th, Labor Day, and then the final flurry, if you will, at the end of the season before the season closed at the end of October toward the last few days of October.

Q. Did you ever have, during that period of time, a specific assignment to observe angling on Parker Creek?

A. No specific assignment. The angling on Parker Creek, the obser -- the initial observation was actually in connection with that Parker Creek proposal I described to see just how much fishing was taking place there, the results of the catch, and so forth.

Q. Did you write anything that reflected your observations about how much fishing was taking place there?

A. On Parker Creek?

Q. Yes.

A. There were notes included in my weekly, monthly report, brief, but pointed.

Q. And did you bring those with you today?

A. They are in this group of weekly, monthly reports.

Q. Before the deposition today, have you had an opportunity to review those notes to look at?

A. Yes. Yes, I did. I went through the group from 1938 through 1950.

Q. Did you have occasion, in addition to Parker Creek, to observe angling activity on Walker Creek during that

period of time?

A. Yes. The observations there were as, in times of when flow was there on the lower portion of Walker Creek in the vicinity of the Highway 395, such as when you had a stream there, and then especially upstream, up to the -- and through the Meadows at Little Walker -- Walker Lake.

This did not -- this did not incur very frequently because most of that activity appeared to be a function of the wardens, who was a relationship there between the law enforcement arm and Mr. Miller.

Q. At the time that you were observing angling on these two streams, was any water being taken out of those streams at that time?

MR. WILSON: For any reason at all, you mean?

MR. THOMPSON: Yes.

THE WITNESS: Yes. Water was being taken out for irrigation of the Farrington Ranch and the Meadows, what they called the Meadows, and stock water.

It was, at times, I inferred, considerable in order to wet the Meadows and provide feed for the stock, feed and water for the stock, mainly sheep.

Q. How was the water being taken out for the Farrington irrigation?

A. By what I would call local diversion.

Q. Ditches?

A. Ditches, yes. That's --

Q. And out of what stream was the water being taken?
A. Well, the water we used was taken, to my knowledge, water was taken out of both Walker Creek and Parker Creek.
Q. And this was before the City's aqueduct was completed?
A. Yes.
Q. Was water left in Walker Creek below the place where the ditches --
A. Early in the year, there was sufficient --
Q. Let me finish my question. I just did what I told you I was gonna do. Below the place where the ditches intercepted the flow of the creek? I'm sorry.
A. Early in the area, there was usually sufficient water to maintain a stream below those points in the natural channel.
Q. How long did that condition persist?
A. It generally persisted until summer, and then the streams became intermittent and sections became dry and tarry.
Q. Was that true of both Walker and Parker Creeks?
A. Yes.
Q. And these conditions existed before the completion of the aqueduct; is that correct?
A. Um, generally, yes. It depended upon the water year, but, generally, yes.
Q. Where in relationship to the place where the aqueduct

intercepts Walker Creek do the ditches that you've just described in your testimony intersect the creek?

A. As I recall, the ditches occurred lower down on the streams in the vicinity of the old, above or below the highway, old 395.

Q. And where in relationship to the City's aqueduct structure did the ditches intercept the flow of -- the ditches that you just described in your testimony, intercept the flow of Parker Creek?

A. Below the aqueduct, downstream from the aqueduct.

Q. Did you see any ditches being constructed when you observed either of these two streams?

A. No.

Q. Those ditches --

A. I don't recall any construction of the ditches during that time.

Q. Did you observe any angling activity in the areas below where the ditches obstructed the stream?

A. I did not observe the angling directly in that vicinity. It was only the -- during low down on the streams that I saw the angling, saw angling.

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I got reports of the fishermen, from the fishing activity from several old timers in the area, Mr. Ed Farrington and then Bill Banta from Lee Vining.

Farrington was a, I recall, a member of the Farrington family but a fishing guide and veteran fishermen,

and Bill Bonner was an old timer, and then from the wardens in the area who almost daily patrolled that area through the Mono Basin.

Q. I take it Mr. Farrington is no longer living?

A. Mr. Farrington is deceased.

Q. And the wardens that you got reports from, do you recall any of their names?

A. Yes, Al Crocker, who ranged rather widely, these wardens ranged rather widely up and down the District.

But there was Web Talbott. His last named is spelled T-a-l-b-o-t-t. There was Al Crocker. There was James Londergan from Bishop, and the old veteran, Carl Walters from Independence.

Q. Are any of these gentlemen still living, to your knowledge?

A. Not to my knowledge.

MR. THOMPSON: Excuse me just a second.

MR. WILSON: Why don't we take a quick break.

MR. THOMPSON: Yeah.

(Break taken)

(Various maps were marked as Deposition Exhibit No.'s 2 through 4 for identification.)

MR. THOMPSON: Mr. Vestal, I would like to hand you what the reporter has marked as deposition Exhibit 2 and ask you to identify that document for the record for us, please?

A. This Exhibit 2 is an excerpt from the USGS California

Mt. Lyle quadrangle 1901, revised in 1944, showing the principal tributaries of Mono Lake, including their lower reaches.

Q. Now, in your testimony we were -- right before the break I was asking you some questions about Walker Creek and Parker Creek. With respect to Parker Creek, its location is shown here on Exhibit 2, correct?

A. Yes.

Q. You mentioned that there were some reaches of that creek that in certain water years would become dry. Where, pointing to Exhibit 2, can you describe for the record where those areas are in Parker Creek that became dry?

Q. The areas that became dry would be the areas where there was take-out for irrigation above the highway and below the highway and the lower-most reach down to its junction or mouth, if you will, at Rush Creek.

Q. Now, there's some steep -- I take it there are contour lines on the map here that are shown in the near township one south and perhaps range 26 east on the map.

Parker Creek traverses that particular township and range, and I note that in approximately the western portion of that township and range that the topographical lines seem to become farther apart, and it looks like the topography flattens out a good deal at that point.

A. That's correct.

Q. Is it in that flat area where the irrigation

diversions occurred?

A. Principally, yes.

Q. And is it near the place where the flat area, where the ground flattens out at the base of the hills?

A. Well, the irrigation would spread out in those areas where the terrain is flattened, yes.

Q. On Walker Creek, that also is depicted on Exhibit 2, correct?

A. That is correct.

Q. Do the irrigation ditches show on Exhibit 2 in Walker Creek?

A. I can't tell. I see a spread in Section -- entering -- going into Section 33 of that township and range, and presumably that would represent the irrigation part of the irrigation system.

That would be -- those irrigations in this issue of the quad would be above highway, the old Highway 395.

Q. Does Highway 395 show on this map, Exhibit 2?

A. Yes, it does. It's the line which crosses section -- in that township and range, it crosses Section 34 and then goes into the next township 1(s), tangentially toward Mono Craters.

Q. Mr. Vestal, could you mark with your pencil there on Exhibit 2 the areas where the irrigation diversions took place on Parker and Walker Creeks as you saw them at that

time?

MR. WILSON: You are talking about the point of diversion?

MR. THOMPSON: Approximately, yes. I understand that --

MR. WILSON: But I mean as opposed to the area you were talking about before, the area of the creeks.

MR. THOMPSON: Yes. Right. Where the ditches intersect the creeks.

THE WITNESS: Do you wish me to circle that point?

BY MR. THOMPSON:

Q. Sure. Just put some sort of a mark on that.

A. Okay. On Parker Creek in this area.

(Witness marking map.)

Q. And then could you mark just perhaps either a number or a letter for those two circles?

A. I will put "1" for Parker Creek and "2" for Walker Creek. (Witness marking map.)

Q. Now, in your testimony right before the break, you described that far down on one of those creeks, I believe it was Walker Creek, that you observed some angling activity.

Can you indicate with another circle and the next number, the area that you were talking about?

A. I would indicate as number three the lower-most area of Walker Creek adjacent to the stream where it enters the Gorge, and on Parker Creek, the lower-most reach as number

four. I will mark that as number four. (Witness marking map.)

Q. All right. Now, in these areas between, on Walker Creek between the area that you've identified that you've marked with number two and the area that you've marked with number three, have you ever fished that stretch of the creek yourself?

A. No.

Q. Have you ever seen other people fishing that stretch of the creek?

A. The wardens have, and they would regularly check the ditches and the stream when water ran especially early in the season and then the same for --

Q. No, wait. I will get to that one in a minute.

Have you, yourself, ever observed anyone fishing in the creek itself, Walker Creek itself, between the areas designated here as two and three?

A. No.

Q. Have you observed people fishing in the ditches between areas two and three designated on this map, Exhibit 2?

A. No.

Q. And have you heard reports from the wardens of people fishing in those areas?

A. Yes. The wardens would report from time to time when the water was available and running in the ditches that

there was angling, angling in the ditches, some angling in the ditches.

Q. With regard to Parker Creek in between the areas you designated with a "1" and "3", have you ever, yourself, fished that stretch of the creek?

A. No.

Q. Have you ever observed anyone else fishing in that stretch of the creek?

A. No.

Q. Have you ever heard any reports of anyone fishing in that stretch of the creek?

A. Yes. From the local wardens, one or another of the local wardens who would patrol those sections when water was running in the -- early in the area.

MR. WILSON: Can we back up for just a second?

MR. THOMPSON: Sure.

MR. WILSON: If you can check back on the record, I think you might have said on Parker Creek between one and three.

THE WITNESS: One and three.

MR. WILSON: Am I reading that correctly?

MR. THOMPSON: I'm sorry. I should have said one and four.

MR. WILSON: I don't know if you said that.

MR. THOMPSON: No, I'm sure I did but --

THE WITNESS: One and four.

MR. THOMPSON: Thank you very much.

BY MR. THOMPSON:

Q. You understood me to be speaking of one and four?

A. Yes. Yes. It would be one and four on Parker Creek then and two and three on Walker Creek.

Q. Great. Thanks for clarifying that.

I realize that this map predated the construction or the completion of the aqueduct at the Los Angeles aqueduct structures that intersect those creeks, and that, I take it -- strike the question.

Do the City aqueduct structures show on Exhibit 2?

A. No.

Q. Do you have an understanding, Mr. Vestal, of approximately where on the City's aqueduct intersects Walker Creek?

A. Um, on this, I would have to refer to a more specific map.

Q. Do we have a better exhibit?

A. We should have a craters map that would show it.

Q. All right. I will hand you Exhibit No. 3 and ask you to identify that for us.

A. On Walker Creek --

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MR. WILSON: Well, we're getting ahead. The question was just at this point whether you can identify that as the creek.

THE WITNESS: Yes. Yes.

MR. THOMPSON: And that is the --

THE WITNESS: This is Exhibit 3, Mono Craters Quadrangle U.S.G.S. 15-minute series, 1953.

BY MR. THOMPSON:

Q. All right. Now, can you locate on Exhibit 3 for us approximately the aqueduct structure as it intersects Walker Creek?

A. Yes, it's --

Q. If you could just mark it with a circle.

A. I will mark it with a circle. (Witness marking map.) Do you wish me to number it?

Q. Or give it a letter. Why don't you give it a letter.

A. I will mark it as "A". (Witness marking map.)

Q. Great. Okay. And can you also identify and mark the intersection of the aqueduct at Parker Creek?

A. Yes. And I will mark that as "B". (Witness marking map.)

Q. Thank you. In your testimony, I think you alluded to a couple of structures which, I believe, are on Rush Creek, or may be on Rush Creek.

If I recall correctly, you mentioned an egg taking station. Was there an egg taking station at one time in one of these creeks?

A. Yes. The egg taking station I referred to is the one that was established between the inlet of Grant Lake and the

outlet of Silver Lake.

This became the first -- there was a major -- in the first instance, a major egg taking station for Black Spotted Trout and later became the principal egg taking station for Brown Trout when the Brown Trout eventually dominated the fishery in Rush Creek. And these fish would appear at the station in the fall for -- as a statewide egg source.

Q. Back to Walker and Parker for just a moment. Have you ever observed spawning activity in Walker Creek?

A. Yes. I have in the section of Walker Creek from the outlet down into the Meadow. This is up close to the lake.

And I have seen fish enter Walker Creek low down next to Rush Creek, and presumably they were entering for purposes of spawning, but I couldn't be absolutely sure of the spawning activity.

Q. In between the area designated, marked on Exhibit 2 with the number four, excuse me, if I've got the right creek here. We were talking about Walker, weren't we, and that's the three and two?

A. This is three and two.

Q. The spawning activity that you just described in your testimony, did that occur in approximately the area that you designated here with the three?

A. Within the area that I've designated by the circle marked three.

Q. Have you ever observed any spawning activity in that creek upstream from the area designated with the three on Exhibit 2?

A. No.

Q. And with respect to Parker Creek, have you ever observed any spawning activity in Parker Creek?

A. Yes, for the same -- by the same token, fish entered -- would enter lower Parker Creek for -- for the same, presumably for the same purpose, and that would be within the area that is circled as --

Q. Four?

A. Four.

Q. Thank you. The observations that you made, my question was, had you ever observed spawning activity in those two creeks?

Turning to Walker Creek for a moment, did the spawning activity that you observed occur before or after the completion of the aqueduct, if you recall?

A. As I recall, it occurred before the completion of the aqueduct.

Q. And the completion of the aqueduct was approximately 1940?

A. 1940, '41.

Q. Have you ever observed any spawning activity in Walker Creek near the area designated with the three after the completion of the aqueduct?

A. No.

Q. Have you formed any conclusions at all as to whether the operation of the aqueduct has affected the spawning activity in Walker Creek?

A. No.

Q. With respect to spawning activity in Parker Creek, do you recall whether you observed any spawning activity near, in the vicinity near four as shown on Exhibit 2 before or after the completion of the aqueduct?

A. Before completion of the aqueduct.

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Q. Have you observed any such spawning activity after completion of the aqueduct?

A. I did not.

Q. Have you formed any conclusion as to whether the operation of the aqueduct has any affect on the spawning activity in Parker Creek?

A. No.

Q. Directing your attention again to Deposition Exhibit No. 2, was water taken out of Rush Creek before the completion of the Los Angeles aqueduct? Let me rephrase it if I'm asking a difficult question.

Do you recall whether any water was taken out of Rush Creek by ditches and used for irrigation taken out of Rush Creek?

A. Not specifically, no. It could have been, but I'm not -- I don't -- I don't have a clear recollection of that.

Q. And my question, what I really wanted to focus on was the period of time before the completion of the aqueduct and revise the question whether --

A. I don't have a clear recollection of that.

MR. WILSON: Let's go off the record for just a second.

MR. THOMPSON: Sure.

(Discussion held off the record.)

MR. WILSON: Back on the record.

BY MR. THOMPSON:

Q. What I'm talking -- in my questions, I've been talking about the completion of the Los Angeles aqueduct.

Have you understood me to be asking you about the time when the operation of the aqueduct began to affect the streams by taking water out of the streams?

A. This is my understanding, yes.

Q. Thank you. That's what I meant, but, as usual, my questions probably aren't very precise. Have you, yourself, ever fished Rush Creek?

A. Yes.

Q. In what reaches of the creek have you fished?

A. Well, both above and below Grant Lake Dam, and portions of the stream down in the reach from the Gorge down toward Rush Creek Ranch.

Q. When, approximately, did you fish Rush Creek, over what period of time?

A. Well, it would be -- it would be, let's see, an occasion -- 1940, in the fall and -- and I fished once in 1941 again in the fall, and these were day or evening occurrences when I would be --

Q. You have a specific recollection of two occasions, at least?

A. Yes.

Q. And I take it from your hesitation there may have been other occasions, as well?

A. There could have been other. The general fishing, I would call it fishing foray, was you would start from below Silver Lake and actually test the streams, as it were, with your rod, or sample the stream to above Grant Lake.

And then going down below Grant Lake in the lower reach accessed by the old Rush Creek Ranch, a person could hike up the stream and fish in the evening.

Q. Do you have a recollection of the area of Rush Creek that you fished on the first occasion that you mentioned which you described as the fall of 1940?

A. Yes. I would say -- I would say that tract between Silver Lake and Grant Lake and the lower reach between the Gorge and the mouth of Rush Creek.

Q. Can you identify for me -- going back to Deposition Exhibit No. 2 again, would you designate the location of the Gorge?

A. Yes. The Gorge in Exhibit No. 2 is encircled by a

circle number five. (Witness marking map.)

And in Exhibit No. 3, contours are not too distinct in this reproduction, but I would indicate a circle by a circle marked "B" on this map. (Witness marking map.)

Q. Now, we've probably already got a "B".

A. Yes, at this location. (Indicating.) We can use the original.

Q. No, that's okay. Don't worry about it. We've got it on this one map anyway.

A. We can pinpoint it on the originals, yes.

Q. It's downstream from the highway, correct?

A. That's correct, yes.

Q. All right. You described another occasion in the fall of '41 when you also have some recollection of fishing Rush Creek. Did you fish the same stretch --

A. Yes.

Q. -- that time, as well?

A. Yes.

Q. I take it that the circle five here on Exhibit 2 indicates the point where you commenced your fishing activity and then worked down. That's not --

A. No.

Q. We go upstream, right?

A. That's correct.

Q. That's where you got out?

A. Well, yes. I would approach the section, those

sections where I didn't fish from the downstream and work up.

Q. Sure. But the point -- I wasn't describing it well in my question, but upstream from the area you've designated as circle five up to Grant Lake, have you had occasion to fish that stretch of lower Rush Creek?

A. Not to any extent. My principal fishing was in this section between Silver Lake and Grant Lake and the lower reach of the stream toward Mono Lake. (Indicating.)

Q. And the stream that reached downstream from the circled exhibit, circle number five.

A. Yes.

Q. Why did you fish that? Why did you fish that lower reach?

A. Basically two reasons. One is it began as -- the basis of its reputation over many years and also because of observation of fish actually there in the stream.

And then the -- there's an old expression, the catch is the thing. And as soon as I began to get results, I -- this leads to, there's nothing like success breeding success so --

Q. So you caught some fish, so you went back?

A. That's right.

Q. Do you have a recollection of how many fish you caught the first -- on the first occasion when you fished this stretch?

A. No. I was fishing for large -- primarily for larger fish, and I would not, since we were in the course of my fieldwork, we were getting fish all the time. I didn't keep many.

Q. Do you recall catching fish in 1940 there in that lower portion of Rush Creek?

A. Yes. Catching the fish, and seeing it, and turning it loose.

Q. How large a fish were you able to catch?

A. Well, the largest at that particular time was about 13 or -- right at 13, 14 inches.

I don't recall catching any fish of any size during those times myself that are included in your collection of exhibits that's shown -- oh, let's see.

MR. WILSON: I think there's a picture of a fish. Is that what you are looking for?

THE WITNESS: Yes. Yes.

BY MR. THOMPSON:

Q. Is this the one?

A. That's the one. That's the one.

Q. Let's mark this one.

A. This is a typical -- that was selected for, but it was rather typical of the root stock that came out of Rush Creek Egg Collecting Station and --

MR. WILSON: Let's get that marked.

THE WITNESS: It was selected for photographic

purposes and conditioned -- to get the appearance of the condition. This is a fish that has not spawned out.

MR. WILSON: Stop right there and let her mark the exhibit.

(A picture of a fish was marked as Deposition Exhibit No. 5 for identification.)

BY MR. THOMPSON:

Q. Let me hand you deposition Exhibit No. 5 and ask you if you could identify Exhibit No. 5.

A. The exhibit, the first fish in Exhibit No. 5 is an adult female Brown Trout, the length of 18 inches, which was photographed October 16, 1939, at Rush Creek Egg Collecting Station and quite typical of the stock.

Q. Does that picture accurately depict the fish?

A. This picture accurately depicts the fish, yes. This is a fish that is not spawned out and was selected for photographic purposes.

Q. Where was the fish taken, the fish shown on Exhibit 5?

A. It was -- the first shown on Exhibit 5 was taken at the Rush Creek Egg Collecting Station between Grant Lake and Silver Lake but below the Los Angeles venturi where --

Q. Was it taken above the point diversion of the Los Angeles aqueduct?

A. Yes.

Q. Which is at Grant Lake, right?

A. That's correct.

Q. Do you have any photographs of the fish that you took in lower Rush Creek in the areas that you've previously described in your testimony as downstream --

A. No.

Q. -- from Exhibit 5?

MR. THOMPSON: Off the record for just a second.

(Lunch break taken.)

BY MR. THOMPSON:

Q. Mr. Vestal, during this time frame that we've been talking about, that is, before the War, were you involved in decisions concerning the planting or stocking of trout in the Mono Basin?

A. Yes.

Q. What was your involvement in that activity?

A. It was my responsibility as the biologist to make recommendations for stocking on the streams, all of the tributary streams, and the species, the species and number, and insofar as possible, the sizes; the two principal sizes being fingerlings and catchables.

Q. And that would involve decisions to stock both in both the streams and lakes, also?

A. That is correct.

Q. What sort of criteria would you follow to make recommendations as to which water should be stocked?

A. Um, generally the intensive angling have played a

part. It was primarily revolved around angling. Those waters that were more heavily fished got priority in the stocking allowance.

Waters that were, for one reason or other, went barren were restocked and then perhaps not stocked for a time in order to see what effect, how well they would do through natural propagation.

Q. During the years before the War, were you involved in any decisions to stock any of the four streams that we've been discussing here this morning, any decisions -- let me strike the question and ask you individually.

Were you involved in any decisions with respect to stocking Rush Creek?

A. Yes. Yes.

Q. Do you have a recollection of whether Rush Creek was stocked in that period of time?

A. Yes, Rush Creek was stocked. The section that we were -- of concern was the section below Silver Lake and, oh, right on -- right on down where stocking was necessary because of the natural propagation in lower Rush Creek; that is, and I'm talking now about the section from the Gorge to the -- to Mono Lake.

This did not require -- we could just as well put the fish elsewhere because of that -- the strength of that natural propagation.

Q. Was the section of lower Rush Creek between the Gorge

and Mono Lake stocked during that time frame?

A. It had been stocked, yes. It had been initially stocked.

Q. When you were involved in the decisions as to stocking priorities, was it stocked during those years?

A. Now, these are the early years?

Q. Right. Before the War.

A. No, I wasn't -- I would have decided to put the fish in the section above Grant Lake because of the intensity of angling up there, and the fish that were involved were primarily catchable Rainbow from Lott Creek.

Q. Catchable Rainbow. Catchable refers to size of what, seven inches?

A. Seven inches, averaging about seven inches. And this was a policy -- this was part of the policy of the Bureau of Fish Conservation in their allowing available hatchery product.

Q. During those years before the War, did the Department of Fish and Game also stock Brown Trout or, I guess they also refer to them as Laven trout; is that the same?

A. They all became known as Brown Trout.

Q. All right. During those years, were you involved in any decisions concerning the stocking of Brown Trout?

A. Not back into Rush Creek, no.

Q. With respect to Lee Vining Creek, were you involved in any decisions concerning stocking in Lee Vining Creek --

A. Yes.

Q. -- in those years?

A. I took part in the allocation of fingerlings as advanced as we could get, fingerling Brown Trout and also Rainbow, catchable Rainbow.

Q. I'm gonna have our usual problem with the whereabouts on the stream. Do you have a recollection of the areas of Lee Vining Creek which was stocked during those years?

A. Yes. We decided from, at least from a preliminary surveys, that the catchables, catchable Rainbow would be stocked above the present site of the ranger station up into what they call the Meadow section.

And we also stocked catchable Rainbow below the present diversion site and Brown Trout for a time down below the ranger station down to where they would spread down below Highway 395 crossing.

Q. Directing your attention again to Exhibit No. 2, can you show me on there and point out the area of Lee Vining Creek that was stocked on that map, if that's the right map. You can find another one, if you would like.

A. Would you prefer I refer to Exhibit 3, Mr. Johnson?

Q. That would be fine.

A. Well, Exhibit 3, the Brown Trout would be stocked generally down through, about through here. Since these were fingerlings, these were easy to spread, and they would spread rather well down through the stream.

We did not know at that time the extent of the natural propagation in that section because we had not intensified surveys, but the catchable trout then were stocked --

Q. Wait. So that our record will be clear, can you make a circle into the area where the Brown Trout were stocked during that time?

A. The Brown Trout were stocked from right above the highway crossing, and I will leave this open because on the lower side because it's almost dead certain that the fingerlings that were stocked would extend themselves naturally, as a result of the turbulent flows and the cascading stream, from here on down for a ways opposite the town of Lee Vining.

Q. You indicated here a gravel pit down past the town of Lee Vining. Perhaps you could put an identifying mark of some kind, a letter or number.

A. I will just draw --

Q. Just write area stocked with --

A. I will put "S" here.

Q. Okay.

A. I will mark that with the letter "S", the rough U-shaped area that I marked. And then the catchables were stocked for a ways below the Lee Vining Ranger -- which is below the point of diversion.

Q. Of the Lee Vining aqueduct?

A. Yes. The Department of Water and Power's aqueduct. Below that point down through this lovely grove of lodgepole pine in there.

It is quite -- it was a campground in there, and this was one reason for the stocking there. And then we stocked catchables above the diversion point up in -- up toward the Meadow for a ways.

Q. All right. Was this stocking that you just described in Lee Vining Creek something that was done each year?

A. For a time annually, yes.

Q. Do you recall during which years the stocking took place?

A. Well, the allotments were made each year, to my recollection, that I was there, 19 -- certainly 19 -- I'm not -- I cannot refer specifically to the allotments for 1938 because I wasn't there, but certainly 1939, 1940, 1941 and 1942.

Q. Are there records -- do you have a recollection of how many fingerling Brown Trout were stocked in Lee Vining Creek in those years?

A. I don't have a specific recollection of that. It would be in terms of thousands, though. It would be several thousand of each species.

Q. Are there records that would indicate that?

A. There should be. There should be records in the hatchery section of the Bishop office, and those same

records would be in the files of the Department of Fish and Game fisheries section in Sacramento.

Q. I take it that when -- these were fingerling Brown Trout; is that --

A. They were fingerling Brown Trout and catchable Rainbow, and the catchable Rainbow averaging approximately seven inches.

Q. Now, when fingerling trout were stocked, was it the practice to stock more of them than would be planted if the stocking were to take place with catchable fish?

A. Yes. Generally catchable -- there were less catchables because of the larger size, and the return would be greater because of that size.

You would expect to get at least something out of the greater number of fingerlings in time.

Q. Do you have a feel for approximately what the return, or what kind of return you would expect from fingerling Brown Trout from the stocking of Brown Trout?

A. It would be low, and I -- we suspected that early on prior to the work at Rush Creek test. This was one reason why that project was developed.

Q. I was going to get to that in a few moments. Tell me, though, what you mean by a low return, if you could quantify it.

A. A low return would be perhaps, oh, one or two percent or so, two or three percent. It just didn't -- it just

seemed impractical to continue in heavily fished streams, like Lee Vining, for example, the planting of fingerlings.

And then, of course, when we discovered that the hardiness of the brown and the natural propagation, why, it reenforced that.

Q. And by "return," I take it you mean fish that show up in --

A. In the creel.

Q. In someone's creel?

A. That's right.

Q. So that if you stocked a hundred fingerling Brown Trout, you would expect one of those to eventually be caught, or two or three of them?

A. I would say from one to -- let's say from one to five percent. That would be a fair statement.

Q. And that is pretty typical throughout the area, or are we talking throughout the Mono-Inyo region?

A. Pretty typical. And as time went on, this was reenforced by experimental work.

Q. Based on the experimental work, was the decision made to concentrate your stocking activities on catchable trout?

A. That's right. To meet heavy -- the heavy fishing that was incurred in the Mono-Inyo area.

Q. Was the decision made to concentrate the stocking on Rainbow Trout as opposed to Brown Trout?

A. Yes, because the program at Hot Creek was developed

around that stock through selective breeding.

Q. Did you, during the, again, before the War, did you have any opportunity to participate in any studies in Rush Creek, or Lee Vining Creek, or Parker Creek, or Walker Creek about the availability of food for trout in those streams?

A. No, no food studies. The only food habits related to studies were done up in Walker Creek, in the Walker Creek -- range of Walker Creek. I referred to that earlier under the request of Mr. Miller.

Q. You mentioned a pollution problem on Lee Vining Creek, I think, also, that you were concerned with in your work there.

A. Yes. This was from the Simpson Mine which came into the outlet stream from the mine, entered Lee Vining Creek above the ranger station.

And there was -- we got the reports from people in -- first report on it from people in Lee Vining and then immediately following a report from the local warden.

Q. On Exhibit 3, could you indicate the stretch of Lee Vining Creek that was affected by the pollution problem?

A. Well, it would be -- I don't see the entrance of that tributary into Lee Vining Creek above the ranger station, but it would certainly affect the stream from below that point clear on down to the mouth of the creek at Mono Lake.

Q. Were the fish kills as a result of the pollution?

A. I do not recall any extensive fish kill. There may

have been, but I do not recall any records of that.

Q. Were you able -- excuse me. Was the problem eventually resolved?

A. Yes, it was -- between the Forest Service and our auspices, it was resolved.

Q. And approximately when did that occur?

A. Well, it wasn't -- it was the same year and soon after the reports in 19 -- it was either 1939, late '39 or 1940.

Q. Did you have occasion, yourself, to fish Lee Vining Creek in the areas below the City's present point of diversion?

A. Yes.

Q. Do you have a recollection of specific occasions of fishing that stretch of the creek?

A. Well, a couple of times from the vicinity of the ranger station, it's a beautiful piece of stream on down toward Highway 395, but I did not fish it below Highway 395.

Q. Why not?

A. It's a matter of time and perhaps accessibility. It was just that I just, aesthetics played a part there, I guess.

Q. Approximately when did you fish Lee Vining Creek?

A. In that period, the fall of 1941, and I fished it once in 1942 before I left the area.

Q. These instances when you recall fishing Lee Vining

Creek, do you recall whether that was before or after the completion of the aqueduct? Again, referring to the taking of water out of the --

A. It was after completion of the aqueduct.

Q. How did you do?

A. Um, I would say fairly well. Just -- I caught fish, but I can't say that it was the -- that the stream at that time was a world beater.

Q. How did it compare with, in your own personal experience, with your success at Rush Creek?

A. Not as good as Rush Creek.

Q. Why didn't you fish the portion of Rush Creek on above the area that you indicated previously in your testimony?

MR. WILSON: There's one clarification we should make at this point. I meant to bring this up earlier, and I forgot.

When you were talking at lunch, you had asked about, one of your earlier questions you asked was about specific recollections of fishing.

MR. THOMPSON: Right.

MR. WILSON: When we were talking at lunch, he was interpreting was do you remember specific dates as opposed to having a specific recollection of fishing.

MR. THOMPSON: Oh, okay.

MR. WILSON: So, in other words, I think you may want

to ask that question again. I think he may give you a different answer.

MR. THOMPSON: Thank you. I appreciate that.

BY MR. THOMPSON:

Q. I take it you have then some recollection of other fishing -- I'm searching for a word, fishing trips, or fishing days on Rush Creek, other than those that we've talked about?

A. No specific days, but on the occasions that I did fish, they were basically in the -- late in the season before the season closed.

Q. These recollections that you are talking about now are in the pre-war years?

A. Pre-war years, yes.

Q. How did you come to decide to go fishing in Rush Creek at that time of the year?

A. Well, there are two reasons for that. One is the -- late in the season is, and I was gonna say traditionally, but perhaps habitually, customarily, a good time to go fishing.

And another reason was that up till that time, we were working every day that we could at the higher elevations to get that work done before the snow and the lakes froze up at the higher elevations. So you had that -- you had that time there that was available.

Q. The fishing that you are describing in Rush Creek,

was that done as a recreational activity, or was that part of your job?

A. Like I say, both.

Q. So you had a business purpose in doing it?

A. Yes.

Q. What was your purpose then, your business purpose?

A. My business purpose was to sample, in almost every case where I carried the rod as a professional, I fly fished a sample of the stream, the location, and to see the trout. And whether I kept them or not was inconsequential. But it was to see the trout, what sizes, and their condition, and then the other was a little recreational. It was just very enjoyable.

Q. Did you make any records of your business-related fishing of Rush Creek?

A. No, I was --

Q. Excuse me.

A. Well, I was doing so much fishing all the time that I just --

MR. THOMPSON: Off the record for a minute.

(Discussion held off the record.)

BY MR. THOMPSON:

Q. When you were fishing for a business purpose, as you have just described here on Rush Creek, did you make a decision as to what reach of the creek to fish?

MR. WILSON: Do you understand the question?

MR. THOMPSON: It's not a good question.

MR. WILSON: No.

BY MR. THOMPSON:

Q. You've testified that you were fishing for a business purpose and that one of your purposes was to sample the stream location and see the trout.

My question is, how did you decide what stream location to look at?

A. Well, in the course of time for the purposes of a survey record, I would, at least the objective was to -- was to fish sample sections of the habitat and its fishery from there on down to the mouth. In the case of Rush Creek, this was certainly the case.

Q. The habitat was below the Gorge?

A. Well, it would be -- it would be the habitat and its varience from Grant Lake on down to the mouth.

Q. On some occasion did you fish the stretch of Rush Creek between Grant Lake and the Gorge?

A. Yes. I do recall fishing a section below Grant Lake, between Grant Lake and the old Highway 395. It was a spot fishing.

And I recall fishing, walked up into the stream between the Gorge and Highway 395 at a time when it was flowing and then fished the section of the stream from the Gorge toward the mouth.

I don't recall fishing at any time below the

Old County Highway on the lower Rush River.

Q. Were you able to form a judgment as to the quality of the fish habitat in the various sections of Rush Creek?

A. Yes. Over time, it seemed to me, as a Fisheries Biologist, that the superior habitat was below the Gorge, and varying degrees or quality between there and Grant Lake.

Part of that was perhaps due to grading it, but it seemed to me no question but that the superior habitat for fishing was below Highway 395 certainly, and more specifically, below the Gorge.

Q. Other than grading, were there other, any other factors that made it a superior habitat below the Gorge?

A. There was certainly a better cover. The cover was more dense. The gravels were well sorted and spread out.

The stream was meandering. There was the Meadow section which contributed the foods that came in from the springs, food production certainly appeared to be better in that section judging from the stomach samples that were -- that I saw occasionally.

Q. That reminds me of another line of questions, I guess. Did you do any stomach sampling --

A. No.

Q. -- work that --

A. No formal stomach samples were taken, only spot checks of angler's catches. We could take an angler's catch and rip open a stomach with a pocket knife and examine the

food in that, but this was really not part of the project program.

Q. Were you able to form any judgments as to the quality of the habitat in Lee Vining Creek?

A. Yes. The habitat in Lee Vining Creek made up a good, a very good trout stream down to where it broke off in the very turbulent cascading portion, the rapid section through a jumble of boulders and so on.

Then it was of lesser quality for a ways, and then became better after the stream -- the grading improved from there on down to where it opened out toward Mono Lake.

Q. And in the area down near the mouth of the creek, what was the quality of habitat in that area?

A. Presumably it was good because there were fish -- there were fish caught. Local anglers who had fish had fished it, and fish were caught down to just almost to the mouth.

Q. Now, as to the judgment that you are giving us about the quality of the habitat in Lee Vining Creek, is this a judgment that refers to conditions as they existed before the City began taking water out of Lee Vining Creek?

A. Yes. Yes, it was before major diversion out of the stream.

Q. I take it from your answer a few moments ago that there were some portions of the creek which were not as desirable a habitat as other portions, correct?

A. Lee Vining?

Q. Lee Vining, yes.

A. Yes, and that was -- this was in what we called the bouldery, heavy rubble, plunging section right after the -- right below where the stream broke off.

It makes the bend, and then it broke off, just began to break off just above the highway and then plunged down opposite the power house and then through a rather dense streamside riparian cover, section of riparian cover before it began to -- the gradient lessened before it approached Mono Lake.

Q. What did the stream look like downstream from that section that you've just described in the days before the City was taking water?

A. Well, the cover -- the dense cover did not occur all the way to the lake, and then from that point on the stream opened out, and there was some grading. So there was a part -- there was a section of the stream there that was open right next to the lake.

The lake was certainly higher at this time, and I'm attempting to recall a shoreline which was recorded pretty close to what we have on some of these early maps here on this 1901 Mt. Lyle Quadrangle, for example, 6419, or 6409, or 6419, somewhere in there.

Q. I take it you, yourself, didn't make any measurements of the lake level, did you?

A. No. No.

Q. Let me go back to the grading for a moment. Were there some areas in the portion of Lee Vining Creek downstream from the cascading areas where the stream broke up into braided channels?

A. Well, just before it reached the lake, there were willows, rather extensive willows just before you got to the lake, and it braided out through that section for a ways.

I don't recall any extensive braiding, but it was fairly well concentrated, but there was some braiding and willows lining the stream, scattered willows throughout the Delta, which I -- which we might call the delta of Lee Vining Creek.

Q. Was there a fire that went through that area at some point in the areas where the willows were?

A. A fire?

Q. Yes.

A. I don't recall that.

Q. Is braiding a condition that is generally a good habitat for trout?

A. Well, from the standpoint of a stream like Lee Vining Creek, if you have extensive braiding, it would spread the stream out, and it could be detrimental.

Q. Did you take any water temperature measurements of any of these streams, Lee Vining, Rush, Parker, Walker Creek, during this era that we're talking about before the

War?

A. There were spot records. There's temperatures taken. For example, there would be -- there would have been temperatures taken by me in connection with the Simpson Mine problem.

There would be spot temperatures taken ahead of any planting occurred. This was -- also temperatures would be -- were taken routinely by the hatchmen in their planting process.

Q. Are the records, were those records maintained?

A. The records were maintained by the hatchery people, specificly planting, or at the time of planting, records would have been taken and recorded by the hatchery people.

Q. In your preparation for this deposition, have you had occasion to see any temperature rates?

A. No, I have not.

Q. That's true of any of the streams, any of the four streams?

MR. WILSON: Are you again just talking about the pre 1942 period?

MR. THOMPSON: Right. That's right.

THE WITNESS: 1942, only temperatures that I had access to of my own were in connection with a specific project like Parker Creek that -- and Walker Creek on the request of Mr. Miller. Those are the ones that I -- the only ones that I can recall.

BY MR. THOMPSON:

Q. Are there certain water temperatures which would be of concern to you as biologist that affect Brown Trout or Rainbow Trout?

A. Yes. Temperatures that would -- I would be of -- that would be of concern would be, well, if, for example, Rainbow and Browns, for that matter, in excess of, 82, 83 degrees Fahrenheit, temperatures of above that point are very stressful, actually can cause sudden die-offs.

Q. Would that be, the same temperatures be of concern for each species, or can the Brown tolerate a little bit higher temperature?

A. The Browns can tolerate a little higher temperatures. They are fairly close to like the maximum temperature tolerated by the Rainbow.

The Eastern Brook are not -- they don't -- certainly don't tolerate as high a temperature as those other two species.

Q. The 82 to 83 degrees Fahrenheit, then would that be the temperatures of concern for Rainbows --

A. Yes.

Q. -- or for Brown? For Rainbows?

A. Yes.

Q. Would it be of concern that the temperature reached, that the water temperature reached, say, 82, 83 degrees and remained there for a short period of time, or would it be of

concern that the temperature reached that level and the water remained at that temperature for, say, hours, or days or -- I don't know what the time frame is.

A. Yes. Well, if the temperature persisted, then it would be of great concern.

And the lack of pools, places for the fish -- for shelter toward the bottom of pools and the bottom of streams and under roots and so on would help the trout to tide over that period.

Very high temperature, very high temperature can be tolerated for just a short time. But lacking that shelter, that shade and shelter, then it would be catastrophic.

Q. By a short time, you mean minutes, or hours or --

A. In the case of very high temperatures, just a matter of minutes, but usually just a matter of hours. Time of day is also very important.

Q. How is time of day important?

A. Well, if it occurred, for example, in the late afternoon, if the top temperature reached in the late afternoon for just a short time and you were assured that the temperature would fall by evening, the fish would be relatively safe. So would the other biota from the stream, quadric food organisms.

Q. Did you have occasion, also, to measure flows in any of the four Mono Basin streams that we've been talking about

during the period before the War?

A. Yes, by estimation, estimate the flow in -- certainly in Lee Vining Creek, in, let's see, Walker Creek above the old, I wanted to call it the old weir site, or -- but below Walker, Little Walker Lake, certainly in Parker Creek and estimational flows in Rush Creek.

Q. Do you have records that indicate what your estimates were?

A. Yes. Those records are part of an exhibit which you have a copy.

MR. WILSON: Are you referring to an exhibit, or is it one of the -- in a report that you --

THE WITNESS: The one that's for identification.

MR. WILSON: Can we take a quick break, and we'll figure out where we --

MR. THOMPSON: Sure. Yeah.

THE WITNESS: There would be such records in the Rush Creek test stream portion certainly, and then prior to that would be records that were field records that were collected up to the fall of 1942.

BY MR. THOMPSON:

Q. Did you take any photographs of any of the four Mono Basin streams during that pre-wartime frame?

A. Yes. Oh, I think that the series that you have are in order, and we would go -- let's go through these.

MR. THOMPSON: Let me take just a moment, and let me

just ask you off the record.

(Break taken.)

(Copies of various photographs were marked as Dèposition Exhibit No.'s 6 through 14 for identification.)

BY MR. THOMPSON:

Q. Let me give you a group of documents that have been marked as, I guess I will have to go through these one at a time.

Let me hand you Deposition Exhibit No. 6, and if you can identify Exhibit 6 for us.

A. Yes, I can identify Deposition Exhibit No. 6. The top photograph is a head-on view of the Los Angeles-Venturi Weir on Rush Creek below Silver Lake, and this photograph was made on the 2nd of May 1939.

The other term for that LA-Venturi Weir is a Parshall Flume, which is a term that the City's hydrographer informed me correctly to use. But I -- it seemed -- the photograph -- the second photograph at the bottom is a view looking into the throat of the Parshall Flume at the same, on the same date in the same flow.

MR. WILSON: You will probably need the spelling of Parshall.

THE WITNESS: Parshall is spelled cap P-a-r-s-h-a-l-l.

BY MR. THOMPSON:

Q. Then the Deposition Exhibit No. 7, can you identify

that, please?

A. Yes. Deposition Exhibit No. 7 includes a photograph made in 1940, the exact date I'm not sure, but, again, it's a photograph of the Los Angeles-Venturi Weir between Silver and Grant Lakes. Flow estimated at five second feet.

And the concern here was the modification for fish passage, which was discussed with Harvey Phillips in Independence.

The lower photo is a photograph of low water in Grant Lake on July 10th, 1939. The Department was getting ready to top out their dam and also preparing for, it could even have started a clearance of the very extensive aspen groves at the -- in the inlet portion of the lake.

Q. You said that the concern was the destruction of the aspen groves?

A. Yes. This entire area here, quite a bit of this area in the inlet, I want to say the inlet and delta portion of Grant Lake, was an aspen grove, and that all had to be wiped out before the lake was filled.

Q. Filled with water?

A. With water, that's right. The aspen were bulldozed over, stacked, and burned, and cleared out before the City could fill Grant Lake with water.

Q. That was a matter of concern to you at the time?

A. Yes, it was, because of the pollution of Grant Lake. The lake became very turbid, very muddy and very turbid, and

also the pollution effects from the fires.

As soon as the water inundated that area, why, it was just -- it was a cinch that some of that water would get down into lower Rush Creek and, especially in the fall, affect the spawning trout.

Q. Did you take any action because of these activities?

A. No.

Q. You simply documented them by taking pictures?

A. Let's see. We documented the currents, but we didn't take any -- there was no legal action taken by our law enforcement people as a result of the turbidity.

Q. Did you recommend that any action be taken?

A. No. There were wardens working in the area all the time, and our position was not to really, in a census, not to interfere with their responsibilities.

Q. Now, the writing that appears on Deposition Exhibit No.'s 6 and No. 7, is that writing a transcription of notes that are on the back of the --

A. That's right, yeah.

Q. -- photographs themselves, the original photographs?

A. That's right. And this is my writing. (Indicating.)

Q. Yes. Is it writing that was made soon after the photographs were returned to you from processing?

A. Yes. Yes.

Q. It's verbatim the writing is, what it says?

A. Yes, I --

Q. Here. It's not an edited version.

A. As I recall, it is verbatim from the photograph.

Q. Sure.

MR. WILSON: We have the originals, obviously.

MR. THOMPSON: Oh, yeah. No, that's fine.

BY MR. THOMPSON:

Q. Let me show you Deposition Exhibit No. 8, if you don't mind, Mr. Vestal, if we can just be sure we're on the same page.

I would kind of like to look at this one along when you are looking at that.

A. Yes, that's correct. It is the same exhibit.

Q. Can you identify the photographs that appear there starting from the top on Exhibit No. 8?

A. The top photograph is Grant Lake. It's a view toward the dam on the east side and the Mono Craters. And this was a photo by me circa July 10th, 1939.

And the lake was -- it was down. It wasn't down to an extremely low level, but there was construction work already going on on the top of the dam.

If you look closely, you can see a heavy materials conveyance riding right across of the dam. There's a little --

Q. Black spot?

A. Yeah. There's a little black spot there, and that could be a carry-all or some type of machinery.

Q. And that shows the construction work going on?
A. That's correct.
Q. And then the middle photograph of the page?
A. The middle photograph is a view generally downstream along lower Rush Creek from the bend -- a bend in the road below Grant Lake toward Mono Lake taken July 10th, 1939.
And the purpose of that photograph was to show Pumice Valley, the lay of Pumice Valley and the distribution of trees, what I called heavy cover, clustered trees on down Rush Creek down toward the lower part of the stream.
Q. Now, did the trees appear as the sort of dark objects in the middle of the photograph --
A. Yes, they --
Q. -- above the rocks, right?
A. Yes, above the rocks from right to the left and then back toward, on the stream, travel down toward Mono Lake back toward the right again.
Q. What sort of trees are those?
A. These are mostly Jeffrey Pines, large, some of them very old, in excess of three feet in diameter at the butt.
MS. GOLDSMITH: May I show him the original?
THE WITNESS: Yes. Yes.
MS. GOLDSMITH: It doesn't come out well on the copy.
THE WITNESS: Yeah, unfortunately it didn't show. It is more distinct.
//

BY MR. THOMPSON:

Q. Do you have the negatives of these pictures?

A. The negatives?

Q. Yeah.

A. I may have -- I may have all of them. I could certainly make a search to see. I'm not sure that I have the negatives for all of the pictures shown here but --

MS. GOLDSMITH: You can have copy photographs made.

MR. MORHARDT: Yeah, they would be just as good.

MR. WILSON: Let's go off the record for a second.

(Discussion held off the record; Mr. Morhardt and Mr. Mesick leave conference room.)

MR. THOMPSON: Yeah. One of the -- well, I think we can talk about this later. The photo in the middle of Depo 8 is one of the ones that I think we might be interested in.

MR. WILSON: In copying?

MR. THOMPSON: Yeah.

THE WITNESS: For a copy?

MR. THOMPSON: Yeah.

THE WITNESS: I may -- I just may have the negative of that. I'm not sure, but I will look.

MR. THOMPSON: Well, we don't need to take the reporter's time going over that.

THE WITNESS: The lower photo, continuing.

MR. THOMPSON: Yes. Let's talk about the lower photograph on Depo No. 8.

THE WITNESS: The lower photograph is a view upstream from old U.S. Highway Bridge near Cain Ranch, and this was taken on the 19th of July, 1939 with the flow estimated at five second feet. Mr. Thompson, I might pass this to you for clarity.

MR. THOMPSON: Oh, thank you.

THE WITNESS: Showing up.

BY MR. THOMPSON:

Q. Yeah. Are you able to identify the vegetation that shows up here in this lower photograph on Exhibit 8?

A. Yes. From the right to the left there were -- there were Jeffrey pines, and I can see cottonwoods, some of them already dead.

I can see, it looks like bitterbrush and certainly sagebrush and willows. At this point I can't identify any red alder, but I also see dead snags of cottonwoods to the right of the thread of the creek and to the left of the thread of the creek.

Q. Your estimate of the flow was about five cubic feet per second at the time that this photograph was taken --

A. Yes.

Q. -- in July --

A. Yes.

Q. -- of 1939?

Do you recall why there wasn't more water flowing in Rush Creek at that time?

A. In all probability -- pardon me. In all probability, it was because of stock water, irrigation diversion.

Q. Was that a frequent occurrence on Rush Creek in the years before the City commenced diverting water from Rush Creek?

A. The stock water spread was certainly an annual occurrence, yes.

Q. This section that's shown here in the bottom picture on Exhibit 8 is a section that's well above the Gorge that you mentioned earlier in your testimony, correct?

A. Yes. In terms of mileage, it could not be more than two miles, though, above the Gorge, as I recall my map measurements.

Q. Did you estimate the quality of the habitat in the area depicted in this photograph as a trout habitat?

A. Well, the quality of the habitat in this particular section was pretty good because one can see here there are pools and short runs, and the gravel spread, which goes well out on the, considering a transect of the stream, goes well out from the thread of the stream itself showing well-sorted gravels.

And while the cover in, at least in the visible portion in this picture is comparatively sparse, that is, the living cover, there is additional cover of dead snags and dead material in the stream itself along with even some boulders and rubble.

And so in this portion, it would be habitat, basic habitat would be quite good, not particularly at this flow; but, basically, it would be a good, given normal water.

Q. Jan asked me to ask a question whether this is above or below the present 395.

A. Yes, it's above the present 395 and above the Old 395. As a matter of fact, the picture was taken on the upper side of the Old Highway Bridge, the old -- at Cain Ranch.

MS. GOLDSMITH: Okay.

BY MR. THOMPSON:

Q. Does the Grant Lake Dam show in this photograph?

A. No, it does not. I do not see any part of the structure in this photograph. It would be well to the right behind the Jeffrey pines.

Q. Taking a look at the next group of pictures, Deposition Exhibit No. 9, if we can be sure we're on the same page.

A. Yes, that is correct. We are on the same page, and the top picture shows it's almost a classic picture of Rush Creek egg taking station, as we knew it in those years, for the Brown Trout below the LA-Venturi Weir and Silver Lake.

And it was taken by me on the 10th of October, 1939 at the occasion of same date as the picture of the Brown Trout adult.

Q. That is Exhibit 5?

A. That's Exhibit No. 5.

Q. Um, Exhibit No. 5, the fish that's depicted there hadn't spawned yet; is that right?

A. That's right. It's still gravid. It isn't spawned out. And one reason for selecting this fish, because the fullness of the body, and it would make a better photographic representation of the female of the species.

Q. At the time, did you catch this fish?

A. This fish was actually taken out of the traps shown here in this top photograph by one of the hatchermen and given to me to be placed in a portable photo aquarium, which was approximately 3 feet in length and 12 inches wide and 20 inches high for the purpose.

Q. Brown Trout, I take it, in this Rush Creek area, typically spawn in the fall season of the year; is that correct?

A. Yes. They start the traps in October and go into, through November and into December.

Q. Where do these spawners typically come from?

A. Well, these spawners came from Grant Lake; however, in the early years, Rush Creek was originally planted with black -- with Lahonetin Cut Throat, which later were called Black Spotted, and they, kind of a technicality there between the Lahonetin Cut Throat and the Black Spotted, but there are some differences.

But the Cut Throat migrated up through the system well up even above Silver Lake, and they were later supplanted by the Brown Trout, which took the same course.

And so the Grant Lake stock wasn't entirely from planting. They were originated after 1917 from the early plantings and later dominated, as I pointed out.

Q. Thank you for clearing that up. The reason I was amused a moment ago is I was trying at lunchtime to find out what a Black Spotted Trout was, and now I know.

A. Yes. I will try to find a slide, and sometime perhaps you would be able to see this.

Q. Yeah. Great. Let's talk about the middle picture here on Exhibit No. 9.

A. Now, the middle picture is the delta section of Rush Creek from below the lower bridge looking toward Mono Lake.

Paoha Island is in the left center, and this is a photo taken by me on the 21st of February 1947, and this was at a flow of 152 second feet recorded by the City's hydrographer at Cain Ranch, Mr. Claude James.

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And I found that we had not added to that record that Mr. James gave me because he took his measurement at the head of the Gorge, and that was -- that's indicated in my field notes.

And we did not add to that the 18 second feet which was coming out of the springs area at the head of the Rush Creek test stream area.

Q. Have you measured the flow of the springs, or is that an estimate of --

A. It's partly estimate and partly measurements, because Mr. James later took his measurements downstream above what we called the upper bridge, and he brought all this together in the aggregate.

Q. Determined that the stream was making water in this region?

A. That's -- that's correct. And so the total flow in this photograph had to be 107 second feet that you see here, and that's that middle photograph.

And the photograph shows the fullness of the stream at this -- at this flow, the stream is rising rather high on the grassy banks of the delta.

We are below here, the stream side cover, or the willows and cottonwoods, et cetera, and it fans out -- the main section of the stream is swirling off to the right to join Mono Lake, but there's some braiding down through the delta, what we call the duck blind section, which was utilized by Rush Creek Ranch for the duck hunters.

Q. How far upstream from the mouth of the Rush Creek at Mono Lake was this picture taken?

A. This would be about a half mile. It couldn't -- it couldn't be more -- it couldn't be more than a half mile.

The extreme end of the delta down there is just barely showed. There may be even some little islands out in

there, it looks, in this picture, but it could not be more than a half mile.

Q. This photo was taken in February during a time when the runoff was pretty -- was pretty high, correct?

A. Yes. Yes. Whatever the source of flow, it was pretty high.

Q. Yeah. Then the -- again, the location of the picture, when you talk about the lower bridge; is that a bridge?

A. It was a county road bridge that crossed.

Q. At the county road?

A. Yes, or just below that, below the county road bridge which crossed Rush Creek at -- near that point.

Q. Do you know what the source of flow of the water in lower Rush Creek was at the time when this picture was taken, why there was that water in the creek?

A. It had to be a combination of sources, including the springs. There could be -- there could have been releases for stock water.

There was certainly -- there was certainly runoff from the streams. That early, however, there wouldn't be as much stock water as later, being February, so it had to be mostly runoff from Walker, and Parker, and Rush Creek, and in addition to the augment out of the springs.

Q. Why did you take this photograph, the middle photograph on Exhibit No. 9?

A. Well, I wanted to see the delta at a reasonably high flow.

Q. Directing your attention now to the lowest -- lower-most photograph on Exhibit No. 9, what does that picture show?

A. Yes. The lowest photograph on Exhibit No. 9 is Rush Creek, downstream -- the downstream weir and fish trap, and this was taken on April 10th, 1947 of the estimated flow of about 20 second feet.

And this was at a point just below the lower bridge but upstream of the previous picture to where we were entering the cover of willows and even some cottonwoods there. There is still some cover in this.

Q. So, excuse me just a second. And then the mental picture is below the test section; is that correct?

A. That's right.

Q. And the bottom picture shows the downstream end of the test section?

A. That's right, where the downstream weir was installed to check the outflow downstream of stock fish.

Q. And to prevent their migration further downstream?

A. Yes. The idea was to assess the out movement.

Q. Why was this lower picture on Exhibit 9 taken, just to show the apparatus?

A. Show the apparatus and also the condition of the stream at that time in comparison with the, generally, the

condition of the stream up above.

One reason being is I see what we were up against the downstream weir, fish trap at a much higher flow.

Q. How did you come to select this section of Rush Creek for a study section?

A. We, for some months, we were -- we cast about to find a section that could be, that would be accessible to the public for angling; that could be reasonably well controlled for the purposes that could be -- would be assured time for the flows to do the job, a section that could be, for management purposes, could be manipulated in order to carry out a test stream project.

Q. Referring to your statement about assured for flows to do the job, what do you mean by that?

A. Well, that was for a stream unlike other streams that didn't have perhaps spring feeding, or it had enough water coming in from Rush Creek and other sources to sustain it over the, pretty well through the angling season. This was --

Q. That would be from May through October, approximately?

A. May through October, yes.

Q. So one of the reasons for selecting this portion of Rush Creek was because it had enough water in it from May through October to facilitate your testing?

A. That's right. This was the -- in our prospective for a test stream. Also, I should say that because of the habitat, the spawning gravels, the total transect of the stream as it appeared through the 3.7 miles, it looked like it was going to be, in many ways, somewhat typical for heavily fished streams, at least on the east slope.

Q. And that was --

A. In California.

Q. -- important to you in selecting?

A. Yes. There was -- there was a lot the factors. The point that I want to make is there were a number of factors.

Another factor is the cooperation of the public, including, I must say, we got cooperation from the City's hydrographer, and we got supervisors and local people in Lee Vining, cooperation to help set it up.

Q. Now, you were involved in the studies for a number of years, I take it, correct?

A. Yes. Reconnaisance with the Supervising Fisheries Biologist, Mr. Curtis, was made in the fall of 1946. That was the last reconnaissance.

Prior to that time, I had some knowledge from my own fishing of the section and some detailed knowledge from Mr. Dombrowski, who lived on the stream at the Rustoric Mutual Land Company.

Q. Excuse me. You may have to help her with that spelling.

A. Dombrowski, D-o-m-b-r-o-w-s-k-i, Walter Dombrowski, who had an intimate knowledge of the prior situation and materially aided in the details of the selection of the site; that is, some factors involved, plus the fact that he was available to help run the test stream for the first year or so.

Q. You mentioned a reconnaissance. Can you explain just briefly what --

A. Well, the reconnaissance was typically a brief trip into the area, a walk about with a member of the staff, whether it's the Department of Fish and Game or the Forest Service, or whoever, to get a quick estimate of the situation.

Q. Is there a report of that reconnaissance?

A. No, no report was made. It was -- inasmuch as Mr. Curtis was there on the spot at that time, he took the verbal report, and the decision, the judgment back to Mr. Taft, the Chief of the Bureau.

Q. What judgment was reached at that time?

A. That we should -- we should select this portion for a test stream.

Q. For the reasons that you have just delivered?

A. Yes.

Q. Just said?

A. Yes.

Q. Then you had some role in the testing procedure

itself?

A. Yes. It was my responsibility to outline the project, to following the prospectus, to outline the project and set up the program, hire the people that helped to check anglers in and out, and count cars, and take temperatures, and so on.

Q. The program itself continued on for a number of years, as I understand it?

A. Yes. It continued on, once it began, with the season of 1947, went through 1950, and after I left the area, was carried on in 1951 by proxy from our Bishop office by a man named Mr. Beck.

Q. Now, as I understand, from 1947 through the date, I guess, of your report here, which covers through --

A. '51.

Q. 1951, the emphasis was on Rainbow Trout?

A. Um --

Q. Not exclusively, but --

A. Not exclusively, but the main thrust was on Rainbow Trout because this was the main product from Lock Creek Hatchery.

Q. As Mr. Beck continued on with this work, as I understand, the emphasis shifted to Brown Trout?

A. To Brown Trout, that's right. We wanted to assess that species, the impact on angling of that species.

Q. Were you able to draw any conclusions with respect to

the Browns?

A. Yes.

MR. WILSON: I think, though, you said that that was after you were gone, isn't it?

MR. THOMPSON: Yeah.

THE WITNESS: Yes. That phase with the larger Browns took place after I was gone; however, the data was made available to me and the general assessment was that catchable Browns were satisfactory to a degree.

The returns from the larger Browns leaned, still leaned very heavily on natural propagation. As far as the fingerling Browns were concerned, the tests showed a very poor return, and we were forced to -- it changed the policy all over the state for banning that type of planting, very poor.

BY MR. THOMPSON:

Q. Your statement, the returns on the -- my notes aren't very good here so bear with me. I'm just gonna garble up what you just said, I'm afraid.

You said that the Browns leaned very heavily on natural propagation. Can you explain what you meant by that?

A. Better say the returns of that species, or better, in the aggregate, the yield was greater from the natural propagation than it was out of the planted species.

It just made more sense to not continue to

plant catchable Browns. To supplant the natural propagation might supplement to some degree but --

Q. As I understand, the studies that were being done was that when people would catch fish, they would be checked out as they left the stream, correct?

A. That's right.

Q. So you would look to see how many fish they had and their condition of the fish, perhaps?

A. And the hours fished.

Q. And the hours fished, and the amount of time they spent catching them. And then the fish would be marked in certain ways so that you could identify how the fish got into the stream.

If it had been stocked in one year, you would cut off one fin. And if it had been stocked another year, you would mark it a different way.

A. That's correct.

Q. With respect to the Brown Trout, were there a number of fish that were caught that were unmarked?

A. Yes. Among the Brown Trout, there were -- there was a proportionately greater number of the fish that were unmarked.

Q. What would that signify?

A. This would indicate a higher return from the naturally propagated fish. These were wild fish, in other words. This is the way we turned them.

MR. THOMPSON: Now, with respect to the studies that you were most involved with, I take it are those that are reported in this document, which I'm going to hand to our reporter at this time and ask her to mark it.

(A reprint from California Fish and Game entitled Creel Returns from Rush Creek Test Stream, Mono County, California, 1947-1951 was marked as Deposition Exhibit No. 15 for identification.)

BY MR. THOMPSON:

Q. Can you identify the document that's been marked as our Exhibit 15?

A. Yes. Deposition Exhibit No. 15 is a paper that I wrote, submitted for publication in California Fish and Game, Volume 40, No. 2, April 1954 entitled Creel Returns from Rush Creek Test Stream, Mono County, California, 1947 to 1951.

Q. Does that describe the studies and your conclusions you reached based on the Rush Creek test stream up until that time?

A. Yes. This adequately describes the tests up to -- up to that time.

MR. THOMPSON: This would be a fine.

(Break taken.)

BY MR. THOMPSON:

Q. Let me show you Exhibit 10 and see if we can get our pages coordinated. If I may, so I can look at it, also.

Directing your attention to the top photograph

on Exhibit 10, can you describe for me what is shown in that picture?

A. Yes. The top photograph on Exhibit 10 is Rush Creek at the Gorge, looking right into the -- upstream into the Gorge about some three miles above Mono Lake looking upstream toward the vicinity of the natural drop-off for the proposed barrier site.

And there was indications of high flow there, and this was a photo taken by me on 10 April 1947. And then right --

Q. Excuse me just a moment. Tell me what the indications are of the --

(Pause)

THE WITNESS: Yes, the indications in Exhibit 10 of Rush Creek looking into the Gorge, indications of high flow are shown on the rocks.

There are -- partly on the rocks, there are horizontal lines on the rocks, some scourings from high flows well up on the right-hand side and over on the left, the left side.

I can see rocks there that have been abraded, if you will, or -- by high flows. There is also marks on the bottom of a large cottonwood there that shows that it's been water worked by high flow.

There is a streamline on the left-hand side of the photograph up fairly -- well, line some -- it looks

like -- yes, there is some gravels way back up on the left-hand side toward the base of that tree and around the base of those rocks, all the indications of high water.

Q. Okay. Thank you.

A. The flow at that time was an estimated ten CFS.

Q. Why did you take this picture?

A. Well, we were taking the picture to get a general idea of where -- the Gorge and also where we should try to put this barrier that I spoke of.

Q. Was the flow of ten CFS that was shown your estimate, I understand it's an estimate, is that influenced by any of the springs that you've talked about, or is this upstream of where the springs would feed the creek?

A. This is upstream before the springs; however, there were a couple of spring issues in the lower end of the Walker Creek/Parker Creek complex.

These are smaller issues than the main spring issues in the upper part of the Meadow, essentially.

Q. Is this upstream or downstream from the confluence of Parker and Walker?

A. This is downstream.

Q. From the mouth of each one?

A. That's right.

Q. Oh, was that also a factor in your selection of the test site, the isolation of that stretch of the stream?

A. Stream, yes. To try to prevent, by barrier

construction, if we could, immigration out of the test section with a construction of a seven-foot high barrier.

Q. Why was that important?

A. Well, we didn't want to lose planted fish that should be included in the angling tests out of the 3.7 mile section, at least by natural, you know, by natural cause.

Q. Yeah. You wanted to retain them in the test section.

A. Yes.

Q. See if you could find out whether they would be caught and show up in the creels?

A. Yes. Insofar as practical to confine them in the test section but below the barrier in the Gorge.

Q. Directing your attention to the bottom photograph on page ten, what does that picture show?

A. Well, that picture is a photograph from some height looking right down into the middle section of the Gorge showing the site of the natural barrier.

And, again, there are high indications, indications of high flow in the channel. This picture was also taken on 10 April 1947. It also shows rather extensive right, mostly cottonwoods, some willows. Flowing is estimated at 1073 through that, similar to the one at the top of the page.

Q. Yeah. I take it these two pictures were both taken on the same occasion?

A. That's correct.

Q. And generally at the same place?

A. That's correct.

Q. Just different views?

A. That's right.

Q. Directing your attention to Deposition Exhibit 11.

MS. GOLDSMITH: That's the same exhibit.

MR. THOMPSON: Yeah, this is --

MS. GOLDSMITH: That saves time.

MR. THOMPSON: Right. The top picture appears to me to be as, in fact, this whole page just seems to duplicate Exhibit 8.

THE WITNESS: The next series would be upstream at the very head waters. Oh, that's the one, the last one there. That evidently is a duplicate of Exhibit No. 8, Mr. Thompson.

BY MR. THOMPSON:

Q. Yeah. Thank you. Does that mean we're missing one, or does it just mean we've got a duplicate?

A. It probably means that you have a duplicate because I see in your hands the last one of that group, yes.

Q. Directing your attention to Exhibit No. 12, can you identify the top photograph in that picture?

A. Yes. This is an occasion of fish planting of upper Rush Creek above Gull Lake in the reservoir developed for power purposes.

Two men, I accompanied the two men, the packer

and the hatcherman, on the fish planting. And the flow at this time was about a hundred, estimated a hundred second feet. The picture was taken June 13th, 1939.

And the purpose of this picture was to show all of the undiverted flow above Grant Lake but below what they call Rush Meadows, or the forks where they named five of the main tributaries at the head of Rush Creek come in on that branch.

And here you see all of it together, the magnificence of cover, and so forth. It's a beautiful stream.

Q. And directing your attention to the bottom photograph there.

A. And the bottom picture is, it was taken on the same date of the condition of the stream below Wally Dam, and an estimate of flow of five -- of not more than five second feet.

Q. So that the difference there in flow would be accounted for by the dam, correct?

A. That's right. Evidently, they were filling the dam. They had -- they had pulled it down over winter, and they were, again, with the spring that you -- they were beginning to fill it up for power purposes.

Q. Whose dam is that?

A. That's the -- at that time it was the Southern Sierras. The power company, since, I understand, have

become Southern California Edison Company.

Q. Directing your attention to Exhibit No. 13. On the top photograph there, what does that picture depict?

A. The top picture, this series of a pictures. This and the next page following were taken on the occasion of the survey of Parker Creek.

This was a summer survey for the study for purposes of the Golden Trout Development Project and the -- it shows the riparian cover of predominantly willows.

And the flow at this time in this particular photograph is about ten second feet, very cascading and tumbling down toward the inlet of the lake.

Q. And this picture was taken in June of 1950?

A. That's correct. The 2nd of June 1950.

Q. And the middle photograph there, where was that picture taken?

A. And the middle photograph is Parker Creek, 30 yards above the mouth of Parker Lake. The District Ranger accompanied me on this trip. The photos were taken the 2nd of June 1950.

And here the riparian cover has changed to red alder and willows, and there has been some augmentation of the inlet flow as a result of appearance from percolation, and so on, between that upper photograph, or upper point, rather, and this point. The estimated flow in this lower picture is twelve second feet.

Q. Both of these pictures are well upstream of the City's diversion structure?

A. Yes. Both of the upper pictures are at the head of Parker Lake.

Q. Then the lower picture on Exhibit 13, where was that picture taken?

A. The lower picture on Exhibit 13 is Parker Creek, a half a mile below Parker Lake outlet. Again, photo taken by me on the 2nd of June 1950, and here the riparian cover is chiefly lodgepole pine, willows and red alder, and with an estimated flow of thirty second feet.

A. And the purpose was to show potential spawning area for Golden Trout?

A. Downstream.

Q. Is this area that's depicted in this photograph also above the Los Angeles diversion structure?

A. That is correct.

Q. Exhibit No. 14.

A. Yes.

Q. Directing your attention to the upper photograph, where was that picture taken?

A. Well, that's Parker Creek, a quarter of a mile, approximately a quarter of a mile below the lake outlet.

Again, the photo was taken by me on the 2nd of June 1950 with the flow estimated at thirty second feet, and, again, to show the riparian cover which was indicated

in the previous photograph consisting of lodgepole pine, and willows, and red alder, and some grasses in the lower right-hand corner of the photograph, but also shows riffles, pools, and runs there that are utilized for spawning.

Q. What was the purpose of taking this picture?

A. To show the character of the stream and the availability of gravel areas for spawning, should Golden Trout migrate out of the lake downstream for spawning which they -- which they frequently do.

Q. The area depicted in the top photo here on Exhibit 14 is also above the City's diversion structure, correct?

A. That's correct.

Q. The lower photo in Exhibit 14, where was that picture taken?

A. Well, this picture was taken 400 yards below the -- approximately 400 yards below the lake outlets, again, taken by me on the 2nd of June 1950. Flow estimated at thirty second feet, and, again, the purposes of this picture were the same, to show the stream type, the extent of the stream, the spread of the stream, and riparian cover in this particular -- which is predominantly lodgepole pine.

Q. The scene depicted in this lower photo in Exhibit 14 is also above the City's diversion structure?

A. That is correct.

MR. THOMPSON: If we could mark those as next.

//

(Handwritten notes entitled Rush Creek Test Stream were marked as Deposition Exhibit No.'s 16 and 17 for identification.)

BY MR. THOMPSON:

Q. Directing your attention to the document that's been marked as Defendant's Exhibit 16, can you identify what that document is?

A. Yes. This exhibit represents three field notebook pages under the dates of 10 March 1947, 19 June 1947 and 5 May 1949.

The notes on the field page under 10 March 1949 pertain to Rush Creek test stream noting observed flow of Rush Creek at 1:00 p.m. of about two-hundred and seventy second feet down Rush Creek released several days the past -- in several stages the past few days by the City Department of Water and Power.

And it says, "Evidently to stall work on bridge across the creek, six-tenths mile above Rush Creek Ranch." This had been rumored -- this was rumored that this was the reason for the flow.

We did not really, actually did not know the reason for the high water except that at this -- on this date, there was considerably high water at that point. The flow exceeded the low banks and flooded the upper meadow.

And noted following there, the creek is quite turbulent and fast at the Old Ford, although the stream is only milky at Highway 395 crossing at the City weir at Cain

Ranch.

Then I noticed on the bottom of that -- oh, I guess that's the top of the next note page, 19 June 1947, there are two measurements, one of Brown Trout, age three and a half years, and one of Rainbow Trout, age two and a half years.

The Brown Trout -- or the Rainbow Trout was a little -- or the top figure is 17 and three-quarters, age three and a half years. And the bottom measurement is 15 inches, the Rainbow Trout, age two and a half years from Grant Lake.

And then figures indicated in that note sheet, the average range in Lochleven, all the same Brown Trout being an average of 16.2 inches with a range of 14 inches to 27 inches.

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And then I noted the average range in chubs occurring in Grant Lake, an average of 7.4 inches with a range of 5 inches to 11 inches.

And the purpose of that was to note that this was the size of chubs that were being utilized -- that were utilizing the food in Grant Lake, working on the -- through and in and about the plant beds generally on the east side of Grant Lake, and also we're figuring in live-bait fishing.

They were -- anglers were utilizing these for trolling and so on, and they needed bait of a certain size in order to troll successfully.

Q. Now, the trout that were noted in your field notes there, were those also at Grant Lake, the observations?

A. Yes. They were at Grant Lake in this instance, and then I noticed the average sport catch per gill net hour, which resulted from a gill net set in Grant Lake, was point -- zero point eight seven, which in round figures would be nine-tenths per hour, hour's catch. It would be nine-tenth per unit hour, good for that size of fish, I noted.

Lack of fish under 14 inches conspicuously indicates unbalanced fish due to several causes, one which was under-fishing, under-stocking with low survival of fingerling class, and abnormal, disturbed spawning migration.

Those were by no means the least of factors involved, but I quickly noted in my -- on my note sheet those factors.

Q. These are just some field observations of yours at the time?

A. And inferences therefrom. And the lower note sheet indicates an early observation on Rush Creek, LA-Venturi Weir, which was later discussed with Mr. Phillips in Independence.

The plan there was to, as indicated in that drawing, was to try to sketch field sketch, was to modify the outflow below the throat in a way that would not affect

the measurement of Parshall flume, but would enable freer migration through the weir of upstream migrants, both Browns and, as we later found out, a few Black Spotted Trout.

Q. Cut Throats?

A. Cut Throat.

Q. Yeah.

A. I noted the gradient on the stream at points, and it was -- the gradient was noticed there that despite, if the City would see its way clear to modify that approach below, it would still fall below that modification; that would be a rock ledge there which would enable the water to get away quickly enough to not affect the Parshall flume measurement. The problem --

Q. What area are you talking about?

A. We're talking about the Parshall flume, the measurement between the Grant Lake and Silver Lake, and the problem -- just an additional note.

The problem here was that most of the flows going through the weir created a situation of high velocity through the throat which blocked the fish into these triangles on either side.

And as the flow went down, then fish would sneak through in a velocity arc. Considering the cross section of the flume where the velocity was low, lower, they could get through at lower flows, but at higher flows, they were completely blocked.

Q. Directing your attention to Exhibit 17, could you identify those documents?

A. Yes. Exhibit 17, the top -- or two sheets of the same note from the same notebook, pages one and two, page one they are both dated the 21st of February 1947 and pertain to Rush Creek Test Stream.

In the top sheet I noted that according to Mr. Claude James, the total -- the Los Angeles City of Department of Water and Power's hydrographer at Cain Ranch -- the total flow at the head of the Gorge on this date was approximately a hundred and fifty-two second feet, including a hundred and forty-three second feet from Grant Lake.

Additional flow below was approximately 18 cubic feet per second, and I might add that that is -- was Mr. James' figure, hence the note that made here.

The Gorge was approximately 120 yards long and produced by an ridge of granite running east and west across the stream. The stream flow on the above date was torrential with solid white cataract from the head to the foot of the Gorge.

And then I indicated data, extreme data at three stations on that particular sheet below that point. The data including the average width at a point a hundred yards below the end of the Gorge, the lower end of the Gorge, temperature at 12:10, pH of 7.0.

The fact that the stream was clear, rapid and average width of 25 feet; excellent gravels, and the oxygen content by test was 8.6 parts per million.

At station two, approximately --

Q. Excuse me just a second. I just wanted to clarify a couple of points there.

In the measurements that you've recorded there, there is one for temperature, and what was the temperature, as you measured it?

A. Forty-three degrees Fahrenheit.

Q. And pH was measured, also?

A. PH of 7.0 which is --

Q. Is that suitable for trout?

A. Yes.

Q. In the range of suitability?

A. Yes.

Q. The other measurements that were taken there were what?

A. No, the other measurement was an average width of 25 feet and observation on excellent gravels, and the oxygen content was 8.6 parts per mill, which is quite good for trout.

Q. Thanks. Then there were some other things on the notes as well, that were --

A. Yes. At Station No. 2, which is approximately seven-tenths of a mile below the Gorge, the temperature at

12:35 p.m. was 45 degrees Fahrenheit.

The average width, 20 feet. Stream was fast, excellent gravels, willows and cottonwoods predominated the riparian cover. The pH was 7.2. The oxygen was still 8.6 parts per mill.

At Station three at the Ford downstream from the prior, the previous station, the temperature was 47 degrees Fahrenheit at 1:50 p.m., and the average width, 30 feet, and I noticed the stream was rapid.

I didn't add to that comment on that sheet. Then the, on sheet number two, same date.

Q. Excuse me. Since I don't have that document in front of me, I'm a little confused as to the date. Is this the 1947 measurement?

A. This is 21 February 1947. And page two of those notes continues on as indicated on the previous sheet, the last word was "rapid." The first word on page two was, the pH was 7.2, the oxygen 10.6 parts per mill. The banks were characterized by willows with scattered open places for fishing accessibility.

And at Station four, which is 1200 yards above the mouth, the temperature was, at 2:35 p.m., was 47 degrees Fahrenheit. The stream was less rapid. The average width was 40 feet, and pH 7.2, and oxygen 8.3 parts per mill.

And the stream was slightly murky at this point, and the section here was open and entirely accessible

to the lake on the east side.

And then I closed that page with the notations one inch equals 2,000 feet on the map, and 9.8 inches by map measure equals 19,600 feet or 3.7 miles for the total length of the test stream section.

Q. What is the significance of those field notes?

A. Of these data?

Q. Yes.

A. Well, one of the things was to show the average character of the stream, the cross section, if you will, transection of the stream, the available cover, the character of the gravels, the chemical -- something about the chemistry at these points, temperatures and stream chemistry, collectively showing that it was highly suitable for trout at these -- let's see, this was a hundred and fifty-two second feet.

Q. After the study had been going on for several years, the flow of water that is recorded in the stream went down considerably in the test section; do you recall that?

A. Yes, it gradually declined.

Q. Yeah. And I think that, if memory serves me right, by the end of the years that you were concerned with it was down to, in some locations at least, about 2.5 cubic feet per second.

A. Two to two and a half second feet. This is correct.

Q. All right. Did you make any measurements similar to

those shown on Exhibit 17 there when the flow had declined to that two to two and a half CFS range?

A. I don't recall any measurements made to this extent. The stream had -- we did know, however, that the stream had deteriorated to the point -- declined, deteriorated to the point that we were just, we were just barely hanging on as a test project.

I can safely say that the measurements would not compare very favorably with the ones that I indicated here at the higher flows.

Q. Do you know what the temperature was when the flow was at two to two and a half CFS?

A. Um --

MR. WILSON: At which time of the year?

MR. THOMPSON: I don't know. I suppose it would be --

MR. WILSON: Throughout the year, or throughout the project?

MR. THOMPSON: I'm sure it would vary. I guess the time of year that you would be most concerned would be at the hotter time of the year.

THE WITNESS: July was the prime area. July, and depending upon the day type, into early August.

BY MR. THOMPSON:

Q. And during the years when the flows had declined to the two to two and a half CFS range, do you know what the

temperatures were in the test section of the year?

A. They reached a high point, and if I may refer, I think we have a stream temperature.

MR. WILSON: For the record, what he's referring to is the test stream report.

THE WITNESS: I am referring to the test stream report, Exhibit --

MR. THOMPSON: 15.

THE WITNESS: Exhibit No. 15.

The temperatures at that time would be approaching in their maximum of 87. That was the range, at least instantaneous point of 87 on the air temperatures and the stream temperatures would be 72.

BY MR. THOMPSON:

Q. Seventy-two degrees?

A. Seventy-two degrees.

Q. Fahrenheit?

A. Fahrenheit, that is correct.

MR. WILSON: Your question was about the 1951 season, right?

MR. THOMPSON: Yeah. It's just at the time when the flows were at the lowest.

MR. WILSON: Well, I just wanted to point out that those temperatures were taken in 1948.

THE WITNESS: Yes. This is the season of 1948, and I do not immediately have a record of those temperatures.

MR. THOMPSON: I don't recall it being in here.

THE WITNESS: Well, specifically, the temperatures during that low-water period, the two to two and a half second feet is what you were asking?

MR. THOMPSON: Right.

THE WITNESS: And I cannot, at this moment, locate those figures.

BY MR. THOMPSON:

Q. All right. In your conclusions here, you, if I recall correctly, didn't note any particular problem with water temperature encountered during the --

A. No die-offs occurred at no time during the test project. Even though temperatures got fairly high, there were no die-offs occurring.

Q. All right. In any of the other criteria, when the flows were low in the two to two and a half CFS range, did you notice any problems with dissolved oxygen?

A. Again, they were within tolerable levels. PH and oxygens were both within the tolerable range.

Q. What conclusion did you draw, what overall conclusion did you draw from the study that's reported here in Exhibit 15?

A. Well, basically the low -- we concluded the low overall return from fingerlings in subcatchable plants pointed to such -- to an extent that it became policy, as far as the impracticality, of maintaining satisfactory

angling by fall planting of such fish, the fingerlings and subcatchables, in heavily fished streams.

And number two was the high return in order to meet the onslaught of heavy fishing in season. It was most practical, most economical to plant catchables in stages through the season at the five, what we call the five pressure points near the opening, near Memorial Day, just ahead of July 4th, and just ahead of Labor Day, to get the high rate of return that was demanded by the cost in producing these catchable trout.

That a substantial return in the overall catch could be expected from naturally propagated fish, from a wild fish, as it were, in the stream, especially from the Brown Trout.

That also there was very little carry-over from one season to the next from a planted trout, a very small percentage whether they were planted as catchables in that season, or least of all as fingerlings.

We determined that -- we also determined figures on the extent of the angling use and intensity. We figured that the average catch per angler a day, for example, was two, and the average catch per angler hour was about a half a fish. The average angler day was three and a half hours, about --

Q. Just to get a handle on the significance of these numbers, if I understand what you mean, two fish per angler

day, it means if one person went fishing for the average length of time that a guy would fish in a day --

A. Three and a half hours.

Q. Three and a half hours, he could expect to catch two trout?

A. That's right, on the average.

Q. And that the size of these trout, I guess, would be how big?

A. Catchables would be averaging seven inches.

Q. How does that figure average -- that number of fish per angler data compare to the return on other streams in the area that you were familiar with?

A. About the same. It doesn't vary too much above or below that point.

Q. Other streams?

A. It didn't at that time. Other streams, for example, like Mammoth Creek, like Rush Creek above Grant Lake, Lee Vining Creek, and so forth.

Q. Now, during the time when the flows were the lowest on Rush Creek in the two to two and a half CFS range where -- I guess range isn't quite the right word, but in the vicinity of two to two and a half CFS, were the fishermen still catching approximately two fish per angler day in the test stream?

A. By that time, fishing had become -- had begun to sag off. They weren't -- at the same planting rate, they

were -- fishing had begun to sag off.

It wasn't -- anglers were beginning to complain about the undesirability of recreation at that level.

Q. Do you have a --

MR. WILSON: Were you done with your answer?

MR. THOMPSON: Oh, I'm sorry. Yeah.

MR. WILSON: If you were, that's fine.

THE WITNESS: Yes. Yes.

BY MR. THOMPSON:

Q. No, that's the other, that's my other thing that I do is think of another question and start asking it right in the middle of an answer. Excuse me. I didn't mean to cut you off.

Is there a table in your report here, Exhibit 15, that would indicate the return per angler day?

A. Let's see.

Q. Oh, directing your attention here to --

A. Yes.

Q. -- table 5, I believe, right? Is that the right one?

A. Table --

Q. The table on page 98. Is that what you are looking at?

A. Yes. This is the one I'm -- this is the one I was looking at, and that table includes the combined catches, the combined results, the average catch per angler day is shown on that. It's the fourth line from the bottom on that

table.

Q. So that if I can read it, if I'm reading if correctly then, the average catch per angler day in 1947 was 1.8 fish?

A. That's correct.

Q. In 1948 it was 2.4 fish?

A. That is correct.

Q. In 1949 it was 1.8 fish?

A. That's right.

Q. In 1950 it's 1.5 fish?

A. That's right.

Q. In 1950 it's 2.4 fish? '51 is -- excuse me.

A. '51 is 2.4.

Q. The average being 2.0 fish. That would be the yearly average for all -- for all of the years?

A. For all the years of the test.

Q. Um-hmm. This table that we were just referring to summarizes the number of trout planted each year and the size, whether they were catchable or subcatchable, the percentage of returns to the creel, fingerling trout planted, and the percentage of their return to creel, also?

A. That is correct.

Q. This is kind of the basic data on which you based the conclusions that you were referring to earlier?

A. Yes.

Q. I notice on pages 91 and 92 that there's some information about flows. I would just like to read that, if

I may, and ask you if what's set forth here accurately identifies the information you had about stream flows.

The passage I wanted to read says "As a result, the test stream at the upstream barrier was completely dry by late August in 1948, and by mid July 1949, the entire summer flow had been supplied by the springs just below this barrier."

Perhaps I should have read a little earlier. It says, "Since 1947, the City of Los Angeles has released no water into Rush Creek from the Grant Lake Dam during the entire trout season."

"As a result, the test stream at the upstream barrier was completely dry by late August in 1948, and by mid July in 1949, entire summer flow has been supplied by the springs just below this barrier, without water to replenish the water tables on valley floor."

"These springs have declined steadily the minimum number flow in the 1947 to 12 CFS, 1948, 13 CFS, 1949 and two CFS in 1950 and 1951. Mean flow during the 1951 season was only 2.5 CFS." That passage reflects the information about stream flows, correct?

A. Yes.

MS. THOMPSON: Could we take a short break.

(Break taken.)

(Various documents were marked as Deposition Exhibit No.'s 17 through 22 for identification.)

BY MR. THOMPSON:

Q. Directing your attention, Mr. Vestal, to Exhibit 21. That is a report which concerns some studies of Brown Trout on the Rush Creek test stream; is that correct?

A. That is correct.

Q. Earlier in your testimony you indicated that you were familiar with some studies that had been carried on on the Rush Creek test stream after the things that were reported in Exhibit 15, which is the report that you authored in the fish and game publication.

Is Exhibit 21 one of those studies that you referred to?

A. No. The study that I referred to was particularly the study that was carried on which pertains to this group of studies in 1947 to 1951 which was carried on, like I say, by proxy by R.V. Beck, who was formerly one of my men in that district.

Q. All right. And the studies that --

A. Wait.

Q. -- Beck carried on, is there a document that sets them forth that you are familiar with?

A. There would be a report by Mr. Beck; however, I believe that the results of that study, through his cooperation, were incorporated in the fingerling stage, returns of fingerling and Brown Trout and subcatchable Rainbow stocked in Rush Creek during that period.

It was after this work was done by Mr. Beck that the catchable phase was undertaken by -- this was reported by Mr. Giguere and Mr. Von Geldern.

And while I saw these papers, I was at that time in the Fresno office and intensively involved with water projects, dams and diversion projects, among which was foundation for Fran Dam.

And I was assigned as their Water Project Biologist there and did not have really the time to analyze at that time these reports.

Q. Exhibit 21 then, you do have a recollection of having seen that?

A. I have a recollection of having seen this and a general impression from that study.

Q. Do you recall reading it at the time that you signed it?

A. Probably rapidly, and from -- and from that, deriving the impression that much better returns were obtained from the catchable Brown Trout.

Q. I take it that having been involved in the set up of the test section and in the work that had gone on there for a number of years up until 1951, that you still would have had some interest in what was happening there.

A. Yes. I probably didn't at the time have time to analyze the report, but I certainly did maintain an interest in what was happening there with the onset of the catchable

phase, catchable Brown Trout phase of the extended studies.

Q. Directing your attention to Exhibit No. 22, can you identify that for us?

A. Yes. This is Rush Creek Test Stream, Mono County, Summary Report by C. S. Kabel and R. L. Butler of Inland Fisheries Branch, California Department of Fish and Game.

And the study was performed under the auspices of the name of Johnson Funding California.

Q. Did you also have occasion to see Exhibit 22 previously?

A. Yes.

Q. Again, when you were in the Fresno office?

A. Yes.

Q. Did you read it when you saw it?

A. Yes, I probably read it over in the same fashion as this under the impression of what was happening there.

But because, over that time, even greater intensity in the -- with Special Counsel of the Department of Fish and Game, and Fran was not able to take the studies and analyze it.

Q. Would those studies form some of the information that comprises just your general background or understanding about the Mono Basin streams, those studies being Exhibits 21 and 22?

A. To the extent that I was able to read them and go over them at the time and to get some appreciation of what

was happening there with respect to the catchable phase of the Brown Trout, series.

Q. Was one of the things that was happening with respect to the catchable phase of the Brown Trout that a number of Brown Trout were being caught which were not identified as planted trout?

A. That's correct.

MR. THOMPSON: Oh, you have a copy for his records of those two documents?

MS. GOLDSMITH: I just gave them to him.

MR. THOMPSON: Great.

THE WITNESS: These are for me?

MR. THOMPSON: Yes.

THE WITNESS: Fine.

MS. GOLDSMITH: And if you want, Giguere's was 21, and Kabel's was 22.

THE WITNESS: Giguere was 21.

MS. GOLDSMITH: 21.

THE WITNESS: Yeah, 21. And Kabel?

MS. GOLDSMITH: Was 22.

THE WITNESS: Was Exhibit 22.

BY MR. THOMPSON:

Q. I've got two documents stapled together here, but I guess it doesn't matter. Can you identify Exhibit 17 for us?

A. Yes. Exhibit No. 17 appears to be a letter that was

written by me on March 17, 1941, to Mr. James E. Jones, Department of Water and Power, Los Angeles, California.

Q. Can you describe for me the circumstances under which you wrote Exhibit No. 17?

MR. WILSON: Do you want to take a minute to read it over first?

MR. THOMPSON: Yes. I'm sorry. I have also a typed copy that I can get you if it would help. The thing is awful hard to read.

Well, I don't all together because I got the guy's initial wrong, for one thing.

MS. GOLDSMITH: This is a more legible transcription.

THE WITNESS: It's identical with this Exhibit?

MS. GOLDSMITH: As nearly as we can tell, yes. I think it is. It's not that illegible. It's just hard to read.

THE WITNESS: Except my name is misspelled.

MR. THOMPSON: So's his.

MS. GOLDSMITH: Not in the original, I hope.

THE WITNESS: The last name -- my name is not on this Exhibit, on number 17, no.

MR. THOMPSON: I understand that. But if you look at the second page, you will find that there's --

MS. GOLDSMITH: We figured since it was attached to your Declaration, you probably claimed authorship.

THE WITNESS: Oh, right. Yes, I recall that

correspondence.

BY MR. THOMPSON:

Q. What was your concern at the time that you wrote Exhibit 17?

A. It was -- I examined the Rush Creek below Grant Lake Dam, and the result of the letter was prepared also following reports by people in the area, and I wrote then to Mr. Goodman stating the situation.

Actually, it wasn't in the -- it was a sort of a complaint from the field that little, if any, water had been seen in the stream since about October 15. And the tenor of the remarks was to ask Mr. Jones if it would be possible to release a small flow to sustain the creek, sustain the -- during, at least during the period that negotiations could be, or information could be gotten to the San Francisco office and to decide them there at official levels what really should be done. But this was a field request as a -- kind of an emergency measure.

Q. So your concern at the time was that since the prior fall that all of the water --

A. Yes.

Q. -- that was going down Rush Creek was being impounded in the Grant Lake Reservoir?

A. Yeah, and the water flow cut off.

Q. And no water was being released down Rush Creek at all?

A. No.

Q. You wrote to the Department of Water and Power and complained about that condition?

A. Yes.

Q. Because of your concern or the concern that you had had been reported to you by other people about the effect of that practice on the creek downstream from the Grant Lake Dam?

A. Yes, and the -- this was followed soon after a conference with the District Ranger on stock water requirements in the Basin, and I did not thoroughly understand what those requirements were.

And it was a situation where you were in the field caught between a pillar and a post where you wanted to -- you knew that you were up against it if you cut off the stock rights, and on the other hand, there was -- you had Rush Creek to consider.

And then there was still another facet to this was Grant Lake itself, the fluctuating level in Grant Lake, to try to sustain that at a higher level for purposes of the coming trout season, to try to support angler effort on the Grant Lake, so it was kind of a three-pronged --

Q. Yeah. You had a number of concerns.

A. Yes, we did. That's right.

Q. Let me focus on the concern about the creek itself. What portion of the creek were you most concerned about at

the time you wrote this letter, Exhibit 17?

A. Most concerned there with the section between Grant Lake Dam and the head of any water downstream.

Q. The section between Grant Lake dam and the mouth of --

A. Lower Rush.

Q. -- Lower Rush Creek.

And then it would be the section between Grant Lake Dam and that gorge area?

A. The Gorge. I think that would be a fair statement, yes.

Q. At the time you wrote the letter, you had a view that it would be a good idea to release some water down Rush Creek to protect that area that you were concerned about?

A. That's right. That's correct.

Q. The amount of water that you thought would be satisfactory to protect that area was five CFS?

A. That's, at the time, that was the judgment, as I say, preliminary to any reaction from administration in San Francisco.

Q. That was your best judgment when you wrote the letter?

A. Yes.

Q. If that had been done, would that have been satisfactory to you?

A. Well, as a -- until I heard from my higher-ups and my

superiors, that would have been certainly a stop gap measure.

Q. Was it your view at the time you wrote Exhibit 17 that releasing five cubic feet per second down Rush Creek would assure maintenance of fish life in that portion of Rush Creek that you were concerned with in good condition?

A. It would -- it would eventually help to sustain the fish life. There's a serious question as to, in retrospect, whether it would actually go that far to maintain the -- we're talking the difference here between fish life and a fishery, and there's considerable difference.

Q. Were you drawing that distinction at the time when you wrote Exhibit 17?

A. Referring mainly to fish life.

Q. Were you drawing the distinction between fish life and the fishery?

A. That's correct.

Q. That was in your mind at the time you wrote Exhibit 17?

A. That's correct.

Q. So you wrote here that "I would greatly appreciate the Department turning in and maintaining a flow in this part of Rush Creek at all times of not less than five cubic feet per second. This amount would assure maintenance of fish life therein in good condition, would permit a regular stocking policy for the stream by the Department of Fish and

Game, and would provide for such irrigation as Mono Basin in the vicinity occasionally requires."

Was that your best judgment at the time you wrote it?

A. At the time that I wrote it, it was my best judgment; however, it did not really conform to the requirements of administration, as I realized later.

Q. How did you come to realize that, Mr. Vestal?

A. Well, there was a question -- there was a question in regard to the Fish and Game Code, the significance of then the section which became later 5937 regarding the release, and interpretation by the Attorney General's office.

Q. This was a section --

A. Deputy Attorney General.

Q. This is what Section then, 525, or something like that?

A. It was then 525, as I remember, which became 5937, and I -- I did not have a thorough understanding of the legal involvements and the history of that section, a long history, as it turned out, in the later times.

Q. Was this brought to your attention by Mr. Taft?

A. The legal aspects were not brought to my attention by Mr. Taft. He took exception to my -- the many facets here that were involved in that field judgment and criticized that judgment from the administrative standpoint.

Q. I'm not trying to embarrass you with this, but my

understanding is that Mr. Taft basically said he would appreciate it if you wouldn't write directly to the Department; was that his reaction?

A. That was the end result.

Q. Right. He also made reference to the Hot Creek Hatchery agreement between the Department of Water and Power and --

A. In relation to matters that were going on, political matters which I did not understand.

Q. Yeah. So basically he kind of asked you not to carry on this request any further; is that right?

A. That's right.

Q. All right. Is there anything else that you would like to say about Exhibit 17 that I haven't asked you about that?

Is there any other explanation that you would like to put on the record about it?

A. Except that there was egg on my face.

Q. Oh, well, we've all had that.

MR. WILSON: But you are asking specifically if there's anymore explanation as to --

MR. THOMPSON: Well, not or anything else. He mentioned that there were those three aspects, and I asked him kind of about one.

MR. WILSON: I got lost in the exhibit numbers.

THE WITNESS: It was a several-faceted thing, and

that was a field judgment under the circumstances.

BY MR. THOMPSON:

Q. Let me show you Exhibit 18, and I'm going to ask you to identify the document, and then I'm afraid I'm gonna have to ask you to read it, because it's illegible.

A. Yes. Exhibit No. 18 is entitled "Notes on Tributaries to Mono Lake, 9-29-30, 1986." And it resulted from a side trip which my wife and I took in returning from seeing our family in Boise.

I expressed a desire to her to stop by Lee Vining on the way home to Napa to once again see Mono Lake and Rush Creek, and our places where we used to live up at Gull Lake, et cetera.

And on the 29th, that evening, I drove to Lee Vining Creek and examined the section of the stream below the ranger station and also above the -- this would be below the aqueduct diversion, and also above the aqueduct diversion to compare the stream situation below.

Q. At the time that you did this, were you aware that a lawsuit was on file about any of the Mono Basin environmental --

A. I was aware from the press, from -- from the press, yes, that this was -- this was occurring and --

Q. Had you been in contact with any of the lawyers involved, Mr. Macanerney?

A. No.

Q. Anybody from Morrison & Foerster here?

A. Let's see, I had -- I had -- it was in 1985 that I had been in contact with Mr. Macanerney and Mr. Dodge, so I knew about the litigation.

Q. How did you come to be in contact with them, just out of curiosity?

20

A. I was initially contacted by Mr. Dalton from Mammoth Lake Fly Fishermen. That may not be the exact title of the organization, but in any event, I was called.

Mr. Dalton telephoned me, and I was -- and then subsequent to that, I was contacted by Mr. Macanerney.

Q. Dalton called and asked for your support?

A. Support, or help, or --

Q. Sure.

A. Whatever I could -- knowing that I had been there some years previous and did some work in that region, or the Basin.

Q. Okay. Then the document that's in front of you, or the notes of your trip then, Exhibit 18.

A. It is pertaining to Lee Vining Creek, yes, below the culvert and down through the section. It wasn't until the following morning that I examined the section of Lee Vining Creek, made a reconnaissance examination below Highway 395.

I worked -- worked my way down through that section opposite town, and then following that --

MR. WILSON: Did you have another question?

BY MR. THOMPSON:

Q. I thought of something that I should have asked you a few minutes, and it's out of context with this exhibit, but I would like to go back to No. 17 here just for a moment.

I think -- I know the answers to these questions, but I wanted to ask you anyway. Did you make any request at the time that you wrote Exhibit 17, about that same time frame, did you make any request with respect to a flow in Lee Vining Creek, or Parker Creek, or Walker Creek?

A. No.

Q. Why not?

A. Because there were no -- this was done in response to resident complaints. There was a warden's report and so on, and this was done in response, you might say, a pressure action.

Q. The warden asked you to get involved?

A. And the residents.

Q. That is the people that were living there, just members of the public?

A. Yes. Just people in Lee Vining from -- and also people in June Lake, or fishermen.

Q. Okay. There was no -- no similar complaint about --

A. Lee Vining.

Q. -- Lee Vining Creek --

A. That's correct.

Q. -- at that time?

And there was no complaint about Parker or Walker Creek at that time; is that correct?

A. That's correct. There was no similar complaints.

Q. Now, at any time when you were at the station there in the Inyo-Mono area, were you aware of complaints of a similar nature concerning Lee Vining Creek of a similar nature that caused you to write Exhibit 17?

A. As regards to Lee Vining Creek, no, that is it, in regards to complete cut off.

Q. I didn't mean to cut you off.

A. There was a complaint which I did follow-up on Walker Creek.

Q. What was the complaint there?

A. It was the fact that there was no -- there was some fish stranded or dying below the Walker Creek diversion.

Q. And what --

A. And it was -- you know, it should be investigated. And as a matter of fact, I did investigate that in the field.

And while the results of the investigation on that particular day certainly didn't bear out the complaint that there were like hundreds of stranded and dying fish that occurred. There were a few seen, but not to that extent.

Q. Did you take any action?

A. The amount was, it was to make sure that the report

got to the wardens, law enforcement branch, and then I would assume that the law enforcement branch would bear out, carry it out from there.

Q. So you reported to the wardens that you made an investigatin, observed that there were not hundreds of dying fish, but that there were some.

A. There were some dying fish.

Q. And made the wardens aware of that, and then that was the end of your involvement?

A. That's right. That's correct. It was the policy in -- and experience to turn the information over to them for whatever law enforcement action their chief saw fit to take out of San Francisco, or, let's see, Southern California, primarily, in those days.

Q. Did you ever receive any reports about Parker Creek of a similar nature to those that caused you to write Exhibit 17?

A. No.

Q. Okay. I apologize for your revisiting that. I should have asked you about it a few minutes ago and didn't do it.

(Whereupon, the deposition was concluded at 5:23 p.m.)

--oOo--

I have read the foregoing deposition. The answers to the questions are true of my own knowledge. I declare under the penalty of perjury, that the foregoing deposition is true and correct transcription of my said testimony, except as I have corrected any answer in ink and initialed such correction.

_____
Signature of witness.

_____
Date of signature.

--oOo--

( ) The deponent failed to appear in order to approve or sign his/her deposition.

( ) The deponent refused to approve or sign his/her deposition for the following reason:_____

_____

( ) The deponent approved his/her deposition by the letter attached hereto and made a part of the deposition herein.

--oOo--

STATE OF CALIFORNIA)
) ss.
COUNTY OF NAPA)

I hereby certify that the witness in the foregoing deposition, named

ELDEN H. VESTAL,

was duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause pursuant to Section 2093(b) CCP; that said deposition was taken at the time and place therein named; that the testimony of the said witness was reported by me, a duly licensed Certified Shorthand Reporter under the laws of the State of California and a disinterested person and was thereafter transcribed into typewriting under my direction.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of JANUARY, 1990.

Kathleen Soloaga

KATHLEEN SOLOAGA, CSR No. 6957
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January 26, 1990

Mr. Elden H. Vestal
3042 Donna Drive
Napa, California 94558

Re: National Audubon Society vs. State Water Resources Control Board.

Dear Mr. Vestal:

The deposition you have rendered in the above-entitled matter has been transcribed into typewriting and is ready for your review.

If you wish to read, correct and sign your deposition, the deposition transcript will be available in our Napa offices during business hours for a period of 30 calendar days following your receipt of this letter.

Please phone our offices for an appointment if you wish to review your deposition.

If you have any questions regarding this letter, please contact your attorney.

Yours very truly,

SIMS & SIMS,

Kathy Soloaga

By: Kathleen Soloaga
CSR No. 6957

CES/ks
cc: All Counsel
Original
Date Taken: January 11, 1990