

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
METROPOLITAN WATER	)	
RECLAMATION DISTRICT OF	)	
GREATER CHICAGO,	)	
	)	
Petitioner	)	No. PCB 16-28
vs	)	
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent	)	

REPORT OF THE PROCEEDINGS held in the
above entitled cause before Hearing Officer
Bradley Halloran, called by the Illinois Pollution
Control Board, taken by Steven Brickey, CSR, RMR,
for the State of Illinois, 100 West Randolph
Street, Chicago, Illinois, on the 4th day of
August, 2020, commencing at the hour of 9:02 a.m.

A P P E A R A N C E S

MR. BRADLEY HALLORAN, Hearing Officer
MS. BARBARA FLYNN CURRIE, Chairwoman
MS. MARIE TIPSORD, General Counsel
MR. ANAND RAO, Technical Unit
MS. ESSENCE BROWN, Technical Unit
MS. BRENDA CARTER
MR. TIM FOX
MS. ANASTASIA PALIVOS

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
BY: MS. STEPHANIE DIERS
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Appeared on behalf of the Illinois
Environmental Protection Agency;

BARNES & THORNBURG
BY: MR. FREDRIC ANDES
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 214-8310,

Appeared on behalf of the Metropolitan
Water Reclamation District;

ALSO PRESENT: MR. SCOTT TWAIT
MR. DUSTIN GALLAGHER
MR. EDWARD STAUDACHER
MR. KEVIN FITZPATRICK
MR. THOMAS MINARIK
MR. FRED ANDES
MS. MARGARET CONWAY

E X H I B I T S

Marked for
Identification

None.

1 HEARING OFFICER HALLORAN: I'm going
2 to begin. Mr. Brickey will start transcribing
3 anyway. Good morning. My name is Bradley
4 Halloran. Today is August 4th, 2020. I'm also
5 assigned to this proceeding. It is a Time-Limited
6 Water Quality Standard proceeding. It is
7 captioned Metropolitan Water Reclamation District
8 of Greater Chicago, or MWRD, petitioner, versus
9 Illinois Environmental Protection Agency, the
10 respondent, and we'll refer to them as IEPA or the
11 Agency. This case is docketed PCB 16-28.

12 Can somebody mute? Is somebody
13 coughing? Thank you. In any event, we do -- I'm
14 privileged to announce we do have Board member
15 Carter present.

16 MS. TIPSORD: And Barbara Currie.

17 HEARING OFFICER HALLORAN: And Chair
18 Currie is also present. I'm sorry I missed that
19 and we have various employees of the staff
20 including Chief Environmental Scientist Anand Rao
21 and I'm not sure if we have Essence Brown on.

22 MS. TIPSORD: Yes.

23 HEARING OFFICER HALLORAN: Yes, we
24 do. Thank you.

1 The hearing is governed by the
2 Board's procedural rules and has been noticed up
3 properly. Please bear in mind that any questions
4 posed today by the Board and its staff are
5 intended solely to help develop a clear and
6 complete record for the Board's decision and does
7 not reflect any decision on the proposal,
8 testimony or other questions.

9 And just so you know, we do --
10 the Board does have some follow-up questions.
11 Mr. Rao has forwarded them to me. I have given
12 them to the court reporter and I will read them to
13 the respective witnesses when the time comes.

14 Due to COVID-19, in addition to
15 the video conferencing, we are allowing Webex
16 participation via computer and phone. As a
17 reminder, pre-filed testimony is available to view
18 on our clerk's office online, or COOL, through the
19 Board's website. Simply search the docket number
20 PCB 16-28.

21 For the sake of our court
22 reporter, please speak clearly and avoid speaking
23 at the same time as the other person so that we
24 can help produce a clear transcript. For those of

1 you who are participating by Webex either on the
2 phone or using the call me feature for sound, if
3 you want to speak during the hearing, please take
4 your phone off the speakerphone and talk into the
5 phone normally as it will produce a much clearer
6 sound.

7 If you wish to speak, you will
8 also have to unmute yourself. All individuals
9 entering the Webex feed are muted upon entry. For
10 those on a computer, you can click the microphone
11 symbol to unmute yourself. For those
12 participating as call-in users, you must press
13 Star 6 on your keyboard -- excuse me -- keypad to
14 unmute yourself.

15 I would like to note that there
16 may be a slight delay in the Webex video so be
17 mindful of that when communicating to each other.
18 As -- also as a result of using Webex, we are
19 video recording today's hearing to ensure our
20 court reporter is able to get an accurate
21 transcript. Once the Board receives the
22 transcript --

23 WEBEX: This meeting is being
24 recorded.

1 HEARING OFFICER HALLORAN: Thank
2 you. Once the Board receives the transcript, the
3 recording will be destroyed. Just a little
4 background. We're here today because on July
5 26th, 2018, MWRD filed an amended petition for a
6 dissolved oxygen, or DO, Time-Limited Water
7 Quality Standard or TLWQS. MWRD is seeking TLWQS
8 for discharges from the combined sewer overflow
9 "CSO" outfalls into the Chicago Area Waterway
10 System. MWRD requests TLWQS for CSO outfalls
11 covered under the National Pollutant Discharge
12 Elimination System permits issued to its O'Brien,
13 Calumet and Stickney wastewater treatment plants.

14 On March 28th, 2019, the Board
15 found that MWRD's amended petition is in
16 substantial compliance with the Environmental
17 Protection Act and Board regulations. The Board
18 directed me to go ahead and schedule a public
19 hearing and that's where we are today. The Board
20 is conducting this hearing to allow MWRD, the IEPA
21 and any other interested participants to testify
22 and present comments on the merits.

23 Participants may make relevant,
24 oral statements on the record and must be made

1 under oath and subject to cross-examination. All
2 persons wishing to testify at the hearing will be
3 sworn in and subject to questioning. Any
4 participant may submit written statements relevant
5 to the subject matter at any time before a hearing
6 or at hearing and will be subject to
7 cross-examination. Oral public comment may be
8 made on the record at hearing and is not subject
9 to cross-examination.

10 The way I had it in my notice I
11 had the hearing will proceed as follows. The
12 petition, responses to the questions from the
13 Board, IEPA's responses or replies to the Board
14 and IEPA's questions and responses will be
15 admitted without further testimony as if read.
16 However, anyone may object at hearing regarding
17 these admitted documents.

18 An opening statement will be
19 available to the parties if they choose. The
20 petitioner will commence the hearing with their
21 witnesses. Questions may be directed to the
22 witnesses by including, but not limited to, the
23 Board and the IEPA. After petitioner rests, the
24 IEPA will present its witnesses. Questions may be

1 directed to him by including, but not limited to,
2 the Board and the petitioner.

3 After the IEPA rests, members of
4 the public may ask questions, give testimony or
5 comment and I can make adjustments as needed as
6 the hearing proceeds. I do note for the record
7 that I do -- I see that Fred Andes and Margaret
8 Conway are here on behalf of MWRD -- excuse me --
9 yeah, MWRD and I think Stephanie Diers is here and
10 I think both parties indicated that they have
11 their witnesses available.

12 Mr. Andes, would you like to
13 give an opening statement?

14 MR. ANDES: Thank you, Mr. Halloran.
15 I will only say that we have witnesses available.
16 Which witness answers a particular question will
17 depend on the question.

18 So while Mr. Gallagher was the
19 initial witness who pre-filed testimony, the
20 questions may be appropriately directed at him or
21 to someone else. Once the question is asked, I
22 think that Ms. Conway and I can let you know who
23 among the District witnesses would answer the
24 question.

1 HEARING OFFICER HALLORAN: Thank
2 you, sir. Ms. Diers, Stephanie -- Stephanie
3 Diers, would you like to give an opening
4 statement?

5 MS. TIPSORD: Remind them to unmute.
6 Springfield, unmute. Stephanie, did you want to
7 make -- you were muted. Can you hear us,
8 Springfield? Can you hear us?

9 MS. DIERS: We can hear you.

10 HEARING OFFICER HALLORAN: Would
11 Stephanie Diers like to give an opening statement?

12 MS. DIERS: No, thank you.

13 HEARING OFFICER HALLORAN: Okay.
14 Thank you. I do note for the record that
15 Mr. Albert Ettinger is here and Ms. Stacy Meyers
16 and they may or may not have questions as well.
17 And I guess what I should do now is just,
18 Mr. Andes, do you have any, I guess, direct of
19 your witness? If not, I can go ahead and read the
20 follow-up questions provided to me by Mr. Rao.

21 MS. TIPSORD: You need to swear the
22 witness.

23 MR. ANDES: We have no direct
24 questions of our witnesses.

1 HEARING OFFICER HALLORAN: All
2 right. Thanks. So let me -- let Mr. Brickey
3 swear in I think you said you have two witnesses,
4 potential witnesses. I would like Mr. Brickey to
5 swear in both of them, please.

6 MS. TIPSORD: Your witnesses have to
7 unmute.

8 MR. ANDES: Yes. So that would be
9 Mr. Minarik, possibly myself, Mr. Staudacher,
10 Mr. Gallagher and I'm looking for Mr. Fitzpatrick
11 maybe on the next page.

12 So those four Mr. Staudacher,
13 Mr. Fitzpatrick, Mr. Minarik, Mr. Gallagher should
14 all unmute and say, "I do."

15 MR. FITZPATRICK: I do.

16 MR. STAUDACHER: I do.

17 MR. GALLAGHER: I do.

18 MR. ANDES: I do.

19 WHEREUPON:

20 DUSTIN GALLAGHER, EDWARD STAUDACHER, KEVIN
21 FITZPATRICK, THOMAS MINARIK and FREDRIC ANDES
22 called as a witness herein, having been first duly
23 sworn, depose and saith as follows:

24 HEARING OFFICER HALLORAN: I only

1 counted three.

2 MS. TIPSORD: For the court
3 reporter, that's Dustin Gallagher, Edward
4 Staudacher, S-T-A-U-D-A-C-H-E-R, Kevin
5 Fitzpatrick, F-I-T-Z-P-A-T-R-I-C-K.

6 And Mr. Andes. Don't forget you
7 have to identify yourselves when you speak.

8 MR. ANDES: Mr. Minarik was the
9 fourth.

10 HEARING OFFICER HALLORAN: Okay.
11 Terrific. I believe they're all sworn in and as
12 well as yourself, Mr. Andes.

13 I'm going to proceed with the
14 first question directed towards MWRD and you can
15 decide which witness or witnesses are best -- is
16 best to answer.

17 Number one. In response to
18 Board's follow-up question 3 MWRD submitted
19 responsive information in the reports and
20 documents included in Attachment's A, B as in boy,
21 C, D, as in dog, and E.

22 Please explain how the
23 information presented in Attachment C, Exhibit C,
24 tables relate to green infrastructure.

1 MR. ANDES: Well, let me -- let me
2 make sure I have Attachment C in front of all of
3 us so we're clear on what the Board is asking for.

4 So in -- in -- can staff specify
5 which particular -- as I ramp up the attachment
6 because the attachments are fairly voluminous,
7 which particular attachment you're referring to?

8 HEARING OFFICER HALLORAN:
9 Attachment C. Exhibit C.

10 MR. ANDES: Okay. As we go to
11 Attachment C -- okay. So Exhibit C or Attachment
12 C appears to be a list of permits issued for green
13 infrastructure projects.

14 So let me ask of the District
15 witnesses which -- which one of us would like to
16 answer the question concerning Attachment C, which
17 is the list of green infrastructure permits for
18 projects? I'm thinking that might be Mr. Minarik.

19 MS. TIPSORD: Okay. You're all
20 muted. You have to unmute yourself. Either Star
21 6 on your phone or click the microphone on the
22 computer.

23 MR. MINARIK: Yeah, this is
24 Mr. Minarik here. I don't think I'm the right

1 person to discuss the green infrastructure
2 projects. I think that might be our engineering
3 folks.

4 MR. ANDES: That would be
5 Mr. Staudacher then.

6 HEARING OFFICER HALLORAN: All
7 right. Mr. Staudacher, if you can unmute.

8 MR. STAUDACHER: Can you hear me
9 now?

10 HEARING OFFICER HALLORAN: Yes.

11 MR. STAUDACHER: Okay. I'm looking
12 at it right now. It appears to be what Mr. Andes
13 said it is, the list of permits for green
14 infrastructure projects.

15 MS. TIPSORD: Anand is trying to get
16 a follow up.

17 MR. RAO: Mr. Andes, can you hear
18 me?

19 MR. ANDES: Yes.

20 MR. RAO: Basically what I want from
21 the District was kind of explain what information
22 from the table that you submitted like, for
23 example, GI volume, gallons and permit number, but
24 there are no details about who the permit was

1 issued to and what it means when you say GI volume
2 and gallons. Just an explanation of the table
3 would be helpful.

4 MR. ANDES: Okay. Well, I think,
5 and Mr. Staudacher can feel free to supplement, my
6 understanding is these attachments, including that
7 one, were appendices to Attachment A. Attachment
8 A was the infrastructure chapter in the District's
9 annual report under the consent decree.

10 So Chapter 5 of that annual
11 report describes the District's current green
12 infrastructure plan and program and the additional
13 documents were included in a thumb drive. That
14 was attached to that annual report this particular
15 list of permits for the green infrastructure
16 project which shows the volume captured and the
17 gallons were -- was included in the form as an
18 attachment to that annual report.

19 So I think that it refers back
20 to the annual report Chapter 5, which is
21 Attachment A, and we can provide further
22 information, but this is the form in which this
23 document was attached to Chapter 5 of the decree
24 annual report.

1 MR. RAO: Okay. If you can provide
2 any additional information that links the tables
3 to the report would be helpful. You can do it in
4 writing if that's okay.

5 MR. ANDES: Sure, we can do that.

6 MR. RAO: Thank you.

7 HEARING OFFICER HALLORAN: Okay.

8 I'm moving on to Question 2 and it's in two parts.

9 In response to Board's follow-up
10 question 8, MWRD states that there is no need to
11 reconfirm and revalidate the Marquette Model since
12 the model was based on data from three years;
13 2001, 2003 and 2008.

14 Part A of this question reads
15 "If the information in Dr. Melching's report is
16 outdated and the model is no longer valid for
17 recent data, please explain why MWRD is relying on
18 Dr. Melching's report to support its TLWQS
19 petition."

20 MR. ANDES: Can you repeat that
21 question again? I'm sorry. I want to make sure
22 we get it.

23 HEARING OFFICER HALLORAN: "If the
24 information in Dr. Melching's report is outdated

1 and the model is no longer valid for recent data,
2 please explain why MWRD is relying on
3 Dr. Melching's report to support its TLWQS
4 petition."

5 MR. ANDES: Well, I'll start the
6 answer and then Mr. Fitzpatrick or Mr. Minarik may
7 respond. But, to be clear, the District is not
8 saying that the model is outdated at all. The
9 District is stating there is no need to reconfirm
10 and revalidate. The results are still applicable.

11 We are simply pointing out in
12 the response that if one were to tell the District
13 to rerun the model, you would want to do that
14 again with including data from more recent years,
15 but that is no longer possible because the permit
16 has been discontinued. We still think the results
17 are valid and applicable and no need to reconfirm
18 and revalidate, but I'll defer to Mr. Minarik or
19 Mr. Fitzpatrick for any further elaboration.

20 MR. MINARIK: This is Mr. Minarik.
21 I would agree with what Fred said there. We don't
22 see a reason to rerun the model and it's not
23 possible to do it right now. The Dual Flow Model
24 I think is discontinued. So we'd have to run a

1 new model if we were to do that.

2 MR. FITZPATRICK: This is Kevin
3 Fitzpatrick. The model itself is valid. It's
4 older data, but there's no reason to rerun it with
5 newer data.

6 HEARING OFFICER HALLORAN: Can you
7 repeat that, please?

8 MR. FITZPATRICK: I think we're
9 agreeing with what Fred said, that the model is
10 valid and it just uses previous water year's data
11 as opposed to a more recent water year, but we
12 would get very similar results if we could run it.

13 HEARING OFFICER HALLORAN: Mr. Rao,
14 any follow up?

15 MS. TIPSORD: Mr. Rao, you're muted.

16 HEARING OFFICER HALLORAN: Any
17 follow up, Mr. Rao? I think you're still muted.

18 MS. TIPSORD: He's unmuted now. He
19 should be.

20 MR. RAO: Can you hear me now?

21 HEARING OFFICER HALLORAN: Yes.

22 MR. RAO: Okay. I have a
23 clarification. You mentioned that even if you
24 rerun the model with the current flow conditions

1 the results will be the same.

2 So are you saying in the Calumet
3 System nothing has changed since the last 12 years
4 that will affect the outcome if you run the model?

5 MR. FITZPATRICK: This is Kevin
6 again. I don't think that's the case. Certainly
7 the Calumet System is cleaner than it was before,
8 but I think what we're saying is as long as there
9 is still a chance of combined sewer overflows at
10 some point, we're not going to always be able to
11 meet these DO requirements without putting those
12 expensive, end-of-pipe treatments on also just for
13 the very rare CSO that most likely will occur at
14 some point.

15 MR. RAO: Okay. I will let you,
16 Mr. Halloran, ask the second part of the question
17 which is a follow up to what you just mentioned.

18 HEARING OFFICER HALLORAN: All
19 right. The follow-up question B "Does MWRD plan
20 to conduct modeling using the current flow
21 dynamics and DO conditions, particularly in the
22 Calumet System, to determine if supplemental
23 aeration would be required to comply with the
24 generally applicable DO standards within the terms

1 of the TLWQS if granted?

2 If not, please explain what
3 measures would be undertaken to achieve compliance
4 given that the TCR is fully operational." Mr.
5 Andes? Unmute, please.

6 MS. TIPSORD: He's still muted.

7 HEARING OFFICER HALLORAN: I think
8 you're still muted, Mr. Andes.

9 MR. ANDES: Yes. Sorry. Would you
10 repeat the question so we can get the full
11 question?

12 HEARING OFFICER HALLORAN:
13 Certainly. "Does MWRD plan to conduct modeling
14 using the current flow dynamics and DO conditions,
15 particularly in the Calumet System, to determine
16 if supplemental aeration would be required to
17 comply with the general applicable -- somebody
18 is --

19 MS. TIPSORD: It's Mr. Andes.

20 HEARING OFFICER HALLORAN: If
21 supplemental aeration would be required to comply
22 with the generally applicable DO standards within
23 the terms of the TLWQS if granted.

24 If not, please explain what

1 measures would be undertaken to achieve compliance
2 given that the TCR is fully operational."

3 MR. ANDES: Okay. Well, I think --
4 let me -- let me start to respond and then
5 Mr. Minarik or others can answer more fully. But
6 I do not believe there is a plan to re-do the
7 entire analysis.

8 As was stated, it is possible
9 that there will be future CSO's and can cause
10 violations of the standards. The concept of --
11 this will be re-evaluated at the end of the term
12 of the TLWQS to determine what measures need to be
13 instituted after that, but the concept of
14 evaluating over this time period is to determine
15 will it continue, if so, how many will occur and
16 all will be evaluated at the end of the term when
17 there's a sufficient time period to evaluate the
18 trends and what, in fact, other measures might be
19 necessary. I'll defer to Mr. Minarik or
20 Mr. Fitzpatrick or Mr. Staudacher to add onto
21 that.

22 MR. MINARIK: This is Mr. Minarik
23 here. We will continue to do our monthly ambient
24 water quality monitoring in the Calumet System and

1 the continuous dissolved oxygen monitoring in the
2 waterways and take a look at that over a five-year
3 period and look at the statistics and see what
4 sort of trends we can see. So that is what we
5 would plan on doing. We don't have plans to run
6 an additional model.

7 MR. RAO: So what you're saying is
8 any measures that you may take, the compliance
9 will be after you have the data from this initial
10 period of five years?

11 MR. ANDES: I would say that the
12 information reflected in our most recent responses
13 the data you have heard and including in Board
14 Question 25 so this was No. 9 in the new responses
15 stated that -- that there is a potential for
16 future occurrence of CSO's in the Calumet System,
17 particularly due to the impending permanent loss
18 of transitional reservoir capacity and that would
19 be occurring in the next year or so and, in
20 effect, excuse me, the occurrence of CSO's at some
21 point it's determined that CSO's will not be
22 occurring the TLWQS may not be necessary as to
23 CSO's in the system. That can be evaluated at the
24 end of the initial five-year term.

1 MR. RAO: Thank you.

2 MR. ETtingER: Mr. Halloran, I don't
3 know how you wish to organize this. I'm
4 interested in this model and what has changed in
5 the system now, too.

6 Would you like me to ask those
7 questions now or hold them for later?

8 HEARING OFFICER HALLORAN: You are
9 next, Mr. Ettinger. I was going to do it
10 alphabetically, Mr. Ettinger and Ms. Meyers, but I
11 wanted to ask Chair Currie or Member Carter if
12 they have any questions.

13 If not, we can move to
14 Mr. Ettinger.

15 MS. TIPSORD: Chairman Currie is
16 shaking her head no.

17 HEARING OFFICER HALLORAN: All
18 right. It doesn't appear they have any questions.
19 If they do, they can let me know, but
20 Mr. Ettinger, go ahead, please.

21 MR. ETtingER: I'm sorry. Was that
22 all the questions for the Board now?

23 HEARING OFFICER HALLORAN: No. No.
24 That's just for the MWRD. We still have the IEPA

1 witnesses, a couple of questions.

2 MR. ETTINGER: Okay. But that's all
3 the questions of the Board for MWRD. I'm just
4 trying to figure out where we are in the program
5 here.

6 HEARING OFFICER HALLORAN: Correct.

7 MR. ETTINGER: Okay. Let me first
8 introduce myself for the court reporter. I'm
9 Albert Ettinger. I'm representing the Illinois
10 chapter of the Sierra Club today and I apologize.
11 I guess I should have worn a tie. I wasn't aware
12 that was -- it hadn't occurred to me to wear a tie
13 to go from one side of my bedroom to the other.

14 So I guess I'm interested in
15 this -- the notion as to what hasn't changed since
16 the model was run 15 years ago and I'm trying to
17 just understand that a little better. So as I
18 understand, the model predicted what CSO's there
19 were from a given amount of rainfall and that's
20 what they used those years for and then they
21 predicted what -- what the dissolved oxygen levels
22 would be given that level of rainfall and that
23 level of CSO, is that correct?

24 MR. ANDES: Mr. Minarik, perhaps,

1 can answer the question.

2 MR. MINARIK: Yes. As I understand
3 it, that's correct.

4 MR. ETTINGER: So presumably with
5 the building of TARP, we have a different level of
6 CSO's based on the amount of rain. So because we
7 have it all in storage now, we're going to have
8 fewer CSO's given TARP than we had in 2003, the
9 year for instance, one of the years in which the
10 model was run, isn't that correct?

11 MR. MINARIK: Yes, that would be
12 correct.

13 MR. ETTINGER: So I guess I'm having
14 trouble understanding how nothing has changed when
15 we build the TARP system precisely to change the
16 very things we were modeling.

17 MR. ANDES: Let me start and then
18 Mr. Minarik can add on. Again, I think TARP was
19 discussed as part of the measures the District
20 will be implementing -- is implementing and will
21 be implementing under both the consent decree and
22 the TLWQS, but the need for the variance is not
23 based on, well, we are going to have a specific
24 number of CSO's, but rather as long as there are

1 CSO's in the system, the TLWQS, the variance is
2 needed. So the fact that while in the Calumet
3 River System the number of CSO's occurring is less
4 than it was earlier, that was expected, but
5 there's still the possibility of recurring in the
6 system and as long as those are recurring the
7 variance is still needed.

8 MR. ETTINGER: Okay.

9 MR. ANDES: I'll let Mr. Minarik add
10 on to that.

11 MR. FITZPATRICK: This is Kevin
12 Fitzpatrick. Can I just add a little on to that?

13 MR. ANDES: Sure.

14 MR. FITZPATRICK: I think that
15 was -- I didn't mean to say that nothing is
16 changing in all this. But I think that the point
17 of the report is supplemental aeration would be
18 needed throughout the system and very costly. Now
19 with TARP online, we still have a chance for a
20 CSO, but much, much less frequently. So those
21 very expensive scheduled improvements to increase
22 aeration would still be needed, but much, much
23 less frequently.

24 MR. ETTINGER: Okay. So -- sorry.

1 This is even harder for people to understand who
2 is finished with their answer.

3 So as I started off saying, I
4 thought the second part of the Melching Model was
5 to predict dissolved oxygen levels given a certain
6 level of combined sewer overflow, is that correct?

7 MR. MINARIK: I mean, that's what a
8 model will do. It takes inputs and gives you an
9 output, but at the end of the day it is still a
10 model and, you know, we -- we definitely know
11 there are improvements that have occurred in the
12 Calumet System, CSO's have been significantly
13 reduced, but we need the five years to really try
14 to understand that and see what those improvements
15 are over time. It wouldn't be -- make sense to
16 re-do the model right now because five years from
17 now we're going to know a lot more than we know
18 right now.

19 MR. ETtinger: Okay. I really am
20 not arguing for doing anything. I'm just trying
21 to figure out what has changed and what hasn't
22 changed.

23 And the model -- one of the
24 things the model does is predict dissolved oxygen

1 levels based on a level of combined sewer
2 overflows, that's correct, right? And if that's
3 correct, has anything else changed in terms of
4 sewage treatment for up factors in the system that
5 might alter the prediction of what kind of
6 dissolved oxygen level you would have based on
7 that level of combined sewer overflow?

8 MR. MINARIK: Well, there would be
9 other things that would be influencing the DO
10 beyond the CSO, you know, stormwater runoff.
11 There has been some changes with the diversion of
12 Lake Michigan water coming into the system. So
13 there are other things that have -- can be
14 impacting the DO.

15 MR. ETTINGER: And some of those
16 things may have changed since 2003?

17 MR. MINARIK: Yes, that's possible.

18 MR. ANDES: I think the bottom line
19 laid out in the papers is that as long as the
20 CSO's are occurring there is still the risk of
21 violation of the water quality standards and
22 that's what we're trying to address through the
23 variant if -- if we determine after, A, having
24 additional years of data and, of course,

1 precipitation trends, et cetera, all influence
2 data.

3 So you can't do it just based on
4 a few years, if we have a longer term database
5 over the five-year time period of the variance and
6 have assessed other impacts, including the loss of
7 the transitional reservoir capacity which can
8 affect how much storage capacity is available and,
9 therefore, also the number of CSO's, those all
10 will -- those issues all can be assessed at the
11 end of the time period and we can determine at
12 that point will there be CSO discharges causing
13 violations of the water quality standards or will
14 there not.

15 But the nature of the problem is
16 certainly as we said the CSO's certainly have
17 decreased over the last few years, but predicting
18 what the future course of action is and the
19 possibility of the violations is what we're
20 talking about requiring that time period to study
21 including the changes in reservoir capacity that's
22 included during that time period.

23 MR. ETTINGER: Okay. I wasn't going
24 to quite get there yet, but since you brought up

1 the loss of the transitional reservoir maybe we
2 can discuss that now.

3 Can you explain -- somebody
4 explain when we -- when we determine when there's
5 going to be this loss of additional reservoir?

6 MR. ANDES: Mr. Fitzpatrick I think
7 can take that one.

8 MR. FITZPATRICK: Sure. Did you
9 just ask when we will have this loss or how we
10 determine when we will have the loss?

11 MR. ANDES: Yeah, I'm getting a lot
12 of clicking and banging here. So I'm not sure
13 what anybody is hearing, but actually maybe the
14 best thing for you is to just explain briefly, you
15 know, when you determined you were going to use
16 the transitional reservoir, when it came online,
17 when you learned it was coming offline.

18 Can you just sort of give me the
19 history of the transitional reservoir because this
20 was new to some of us?

21 MR. FITZPATRICK: Sure. The
22 transitional reservoir was --

23 MR. ETTINGER: I'm not hearing
24 anything.

1 MS. TIPSORD: We lost
2 Mr. Fitzpatrick.

3 HEARING OFFICER HALLORAN: Mr.
4 Fitzpatrick, did we lose you? Are you muted?

5 MS. TIPSORD: He's not muted.

6 MR. ANDES: He's not muted and he
7 appears to still be on the system, but we're not
8 hearing him.

9 MR. ETTINGER: He's going through a
10 transitional period.

11 HEARING OFFICER HALLORAN: Maybe
12 he'll jump back on.

13 MS. TIPSORD: It looks like he's
14 back.

15 MR. FITZPATRICK: Hello?

16 MS. TIPSORD: There he is. He's
17 back.

18 MR. FITZPATRICK: I'm sorry. My
19 call dropped out. Can you hear me okay?

20 HEARING OFFICER HALLORAN: Yes.

21 MR. FITZPATRICK: Okay. I heard the
22 initial question. I don't know what happened
23 afterwards, but I can give a little history of the
24 transitional reservoir, is that what you're

1 looking for?

2 MR. ETtinger: That's what you were
3 doing and then you went blank.

4 MR. FITZPATRICK: Okay. So the
5 transitional reservoir was originally conceived by
6 I think it was the Soil Conservation Service back
7 when they were doing reservoirs in the '70s for
8 flood control and the MWRD partnered up with them.

9 So it really never had anything
10 to do with combined sewer overflows and only that
11 it is adjacent to the Thornton Composite Reservoir
12 and at some point I think in the '90s the MWRD
13 came up with the idea to combine the two
14 reservoirs together and put the water into one
15 hole as opposed to two separate holes.

16 So the transitional reservoir
17 was built initially because it was going to take a
18 lot longer to get the combined sewer reservoir,
19 the full signal that was going to take all the
20 flow online. So they were temporarily supposed to
21 use the west slope of the Thornton Quarry to hold
22 this Thorn Creek floodwater from what was the SCS
23 reservoir, the transitional reservoir.

24 Then when the north flow was

1 mined to the capacity needed for the combined
2 reservoir, the composite reservoir, the
3 transitional reservoir was going to be taken
4 offline and flow diverted to the combined
5 reservoir. What happened was when we got the
6 combined reservoir online, we had an opportunity
7 with the mining company, Material Service, to get
8 another five years out of the transitional
9 reservoir before they'd need to start mining it.

10 So we thought it would be a good
11 idea to do that to kind of see how much volume is
12 needed -- composite reservoir and only have CSO's
13 in the composite reservoir and the Thorn Creek
14 floodwater would stay in the transitional
15 reservoir and that would give us an opportunity to
16 sort of work out the kinks in the composite
17 reservoir if there were any and keep the flow
18 separate.

19 So our five years at least ends
20 actually at the end of this year. We are trying
21 to get another year out of Material Service, but
22 they have not -- not agreed to it yet, but they
23 definitely said we cannot have a long-term
24 reservoir there. They need to mine that area in

1 short order. So that is why we're -- I guess
2 we're relocating the Thorn Creek floodwater flow
3 to the same reservoir that the CSO flow water goes
4 into.

5 MR. ETTINGER: Well, when the
6 TARP --

7 MR. FITZPATRICK: And --

8 MR. ETTINGER: I'm sorry. Go ahead.

9 MR. FITZPATRICK: I was just going
10 to ask if that answers your question.

11 MR. ETTINGER: I think so. I can't
12 see you at all so it's hard for me to tell when
13 you're answering my questions. So I'm being even
14 more rude than usual.

15 But the -- when -- what is going
16 to be the final capacity of the southside
17 reservoir without the transitional reservoir
18 compared to what there was when you conceived the
19 system in the first place?

20 MR. FITZPATRICK: The 4.8 billion
21 gallons that is available from combined sewer
22 overflow is --

23 HEARING OFFICER HALLORAN: We lost
24 him again.

1 MR. FITZPATRICK: Flood creek water.

2 MR. ANDES: I think we lost you
3 again.

4 Do we have the full capacity
5 that was planned for when TARP was designed in the
6 southside?

7 MR. FITZPATRICK: Yeah. Can you
8 hear me now?

9 HEARING OFFICER HALLORAN: Yes.

10 MR. ETTINGER: I can now.

11 MR. FITZPATRICK: Okay. So the 4.8
12 billion gallons that we will have for combined
13 sewer overflow is what was conceived of for this.
14 So right now we're borrowing the 3.1 billion
15 gallons of Thorn Creek floodwater, but we have to
16 now give it back because we're giving back the
17 whole -- to Material Service.

18 MR. ETTINGER: So you -- for a while
19 you had 6.9, but now you're going back to the 4.8
20 that the TARP was designed for, is that correct?

21 MR. FITZPATRICK: 7.9 is what we had
22 temporarily, yes.

23 MR. ETTINGER: I'm sorry. 7.9,
24 we're going back to 4.8. So when you -- when you

1 told U.S. EPA in 2012 that it was expected that
2 completion would be -- would end CSO's on the
3 southside, were you anticipating having 8 or 7.9?

4 MR. ANDES: Before he answers that
5 one, I'm not sure that -- I'm not sure that the
6 District ever said this would eliminate CSO's on
7 the southside. So I don't know if, Albert, if
8 there is a particular statement you're referring
9 to that said that the District guaranteed that all
10 CSO's would be eliminated.

11 MR. ETtinger: I'm sorry. I'm going
12 to re- -- it says the response to Board Question
13 25 and the responses of the Metropolitan Water
14 Reclamation District of Greater Chicago for the
15 Pollution Control Board and this document is not
16 paginated, but I think it was filed on July 27th.

17 HEARING OFFICER HALLORAN: Whoever
18 is not -- I'm sorry, Mr. Ettinger. Whoever is not
19 speaking, could they please mute themselves.
20 We're getting a lot of feedback. Thank you.

21 MR. ETtinger: Okay. I don't know
22 how much of that you heard, but I'm looking at
23 Board Question 25 and then there's a response --
24 I'm sorry.

1 A response that is numbered 10
2 below and it says, "Given the U.S. EPA's
3 expectation, completion of the reservoir would
4 mean that CSO's would not be a human cause source
5 of pollution that prevents obtainment from the DO
6 criteria in the Calumet portion of the CAWS.
7 Please explain why MWRD has not discussed the CRS
8 report findings with U.S. EPA" and the response,
9 which I believe is MWRD's response, was "The
10 referenced U.S. EPA letter was written in 2012.
11 It reflects the Agency's understanding of the
12 situation at the time. Since then MWRD has
13 responded to all comments raised by U.S. EPA."

14 My question is in 2012 was the
15 expectation that the 4.8 was going to take care of
16 the CSO's on the southside or that the 7.1
17 whatever it is?

18 MR. ANDES: Well, so let me start
19 the response and then Mr. Fitzpatrick can add to
20 it. In that response, what we are basically
21 saying is while this EPA letter said EPA thought
22 that there would be no CSO's, the District has
23 never said that there would be no CSO's guaranteed
24 in the south end of the system .

1 The EPA statement in that letter
2 was simply incorrect. It reflected in all honesty
3 an incorrect understanding of the situation
4 implying that once the reservoir was completed
5 there would be no more CSO's. The District has
6 never said that there would be no more CSO's
7 period.

8 So basically that EPA letter
9 reflects a misunderstanding of the situation and
10 to be clear about it in a response the exhibits to
11 the amended petition is while the Thornton
12 Reservoir would certainly reduce the CSO's, we did
13 not believe that this would -- we did not in any
14 way guarantee this would eliminate CSO's entirely
15 and, therefore, there is still a need for the
16 variance on part of the system.

17 So if that wasn't clear, what
18 we're trying to say is the EPA in that letter
19 reflected a misunderstanding of the factual
20 situation as to the Calumet River System. We're
21 trying to be clear that because of the fact that
22 there could be CSO's that the variance is still
23 needed for that part of the system and that that
24 report doesn't change the fact that there still

1 could be CSO's.

2 MR. FITZPATRICK: To answer the
3 question a little bit, the 4.8 billion gallons is
4 what is in our consent decree and what we have
5 always represented to the EPA that we would
6 provide and need.

7 HEARING OFFICER HALLORAN: Before
8 you speak, could you please identify yourself? I
9 think this is Kevin Fitzpatrick.

10 MR. FITZPATRICK: Sorry. You're
11 correct. It was Kevin Fitzpatrick.

12 HEARING OFFICER HALLORAN: Thank
13 you.

14 MR. ETTINGER: Okay. One last
15 question. You say that the aggregate company
16 definitely wants the transitional reservoir back
17 or wants to take the aggregates out of there, has
18 anybody ever figured out how much it would cost to
19 leave the aggregates in the ground versus the
20 amount of damage that would be done by the CSO's?

21 MR. FITZPATRICK: Kevin Fitzpatrick
22 again. So we have had this discussion with -- can
23 you hear me?

24 MR. ETTINGER: We can.

1 MR. FITZPATRICK: Okay. We have had
2 discussions with the quarry owner, the Material
3 Service, and notified them that we would be
4 interested in purchasing that property if it was
5 ever available.

6 We have also looked at long-term
7 arrangements where they can continue to mine and
8 get us a hole and then we would take it back some
9 day. They are all very preliminarily, but the
10 cost they said is well north of \$100 million.

11 MR. ETTINGER: So we know --

12 MR. FITZPATRICK: Sorry. They also
13 said -- this is Kevin again. They also said they
14 do not want to sell it. That's their business is
15 mining rock, not selling land. That's what they
16 told us.

17 MR. ETTINGER: Okay. Well, they're
18 businessmen.

19 Have you ever determined what
20 the value or damage done by the CSO's would be?

21 MR. FITZPATRICK: What the damage
22 done by the residual CSO's?

23 MR. ETTINGER: Yes, I don't know.

24 MR. FITZPATRICK: Damage by the

1 CSO's, you're saying?

2 MR. ETTINGER: I'm just saying
3 hypothetically we know the lack of storage
4 capacity is going to have some effect. That's
5 part of your presentation here. I assume they're
6 going to be things like increased combined sewer
7 overflows and, perhaps, some basement flooding and
8 other things like that.

9 Has anyone costed out the loss
10 there compared to the \$100 million that Material
11 Services says they would want?

12 MR. ANDES: Let me correct that.

13 MR. FITZPATRICK: Sorry. This is
14 Kevin Fitzpatrick. They did not say \$100 million.
15 They said well north of a hundred and they're not
16 willing to sell it because I think I asked "Is it,
17 like, somewhere around hundred" and they said,
18 "Way more than that," but to answer your question
19 the residual CSO's that we've seen so far, we have
20 not put a dollar amount to it. I don't know how
21 you'd could.

22 It's been very, very few. We
23 have captured over 99 percent of the CSO's since
24 Thornton came online so the residual is less than

1 1 percent. I don't know that we've tried to put a
2 dollar to any damage that might have been caused
3 if it was by them.

4 MR. ETTINGER: Well, you've had the
5 residual, though, during this period of time which
6 there have been no CSO's. So are the CSO's going
7 to go up when the transitional reservoir --

8 MR. FITZPATRICK: This is again --
9 again in the five years, we've had the extra
10 capacity. We haven't actually gone above 4.8
11 billion gallons in the transitional -- in that
12 composite reservoir. So, you know, in these first
13 five years, if there is any indication, we should
14 be very, very good with the 4.8 billion gallons.

15 MR. ETTINGER: Okay. So -- so the
16 reservoir is not as important as one might have
17 gotten the impression from the --

18 MR. ANDES: Let me partially address
19 that. The question as stated -- the response has
20 been can we guarantee that there won't be CSO's
21 and it's noteworthy that while we have all this
22 extra right now, that capacity will be gone at the
23 end of this year.

24 So if -- and obviously

1 limitation patterns change and if there are events
2 that cause CSO's during that time period, the
3 likelihood of CSO's is greater without that
4 capacity because we don't have that -- we don't
5 have that buffer. I think that was the point.

6 MR. ETTINGER: So you haven't needed
7 it much in the last five years, but you anticipate
8 that you might need it in the next five years and
9 you won't have it?

10 MR. ANDES: I think that's accurate.

11 MR. ETTINGER: Okay. I want to ask
12 kind of another fundamental question and this gets
13 to some of the Board's questions, too, which is
14 whose CSO's are we talking about? Had there been
15 combined sewer overflows that are not owned by the
16 District on the southside?

17 MR. ANDES: I think the answer would
18 be yes, but Kevin or Ed I think can answer that
19 question.

20 MR. FITZPATRICK: This is Kevin. So
21 I think we put -- yes, there have been to answer
22 your question. These are the ones that we listed
23 in some of our responses already.

24 MR. ETTINGER: Okay. So when you

1 say you haven't needed the capacity to take care
2 of CSO's, are we talking about just MWRD CSO's or
3 all of the CSO's?

4 MR. FITZPATRICK: All the CSO's.
5 The few CSO's that we've had have not been from
6 MWRD pipes. They have been from the Village of
7 Phoenix and I believe Dolton and they were not a
8 result of not having enough capacity in the
9 Thornton Reservoir. They were some hydraulic
10 issues that we're fixing right now.

11 MR. ETTINGER: On to something
12 different. Is there -- we know there are
13 continuing to dis- -- be some dissolved oxygen
14 violations on the southside, but we can filter
15 those out whether they're caused by CSO's or not
16 to some extent by looking at whether there was
17 rainfall or CSO's at that time, is that correct?

18 MR. ANDES: This --

19 MR. MINARIK: This is Mr. Minarik.
20 Yes, that's correct.

21 MR. ETTINGER: Is there any way to
22 filter out or determine whose CSO's caused a
23 violation if there are CSO's?

24 MR. MINARIK: I'm not aware of a way

1 that we can do that.

2 MR. ETTINGER: Okay. Well, you know
3 whether you've got a CSO or not, is that correct?

4 MR. MINARIK: Not every CSO has a
5 monitor on it. So there could be CSO's that
6 discharge and they may not be ones that are
7 monitored.

8 MR. ETTINGER: Are all of yours
9 monitored, the MWRD's?

10 MR. MINARIK: I don't know. Ed,
11 would you be able to help me answer that?

12 MR. STAUDACHER: I don't have it in
13 front of me right now. So I can't say yes or no.
14 This is Ed Staudacher.

15 MR. ETTINGER: Let me explain my
16 problem. I'm getting a lot of noise here.

17 This variance covers MWRD CSO's
18 to my understanding and the question is, how will
19 we know whether a dissolved oxygen violation has
20 been caused by an MWRD CSO or not and are you
21 telling me there is no way to filter out whether
22 the DO violation was caused by another entity or
23 an MWRD CSO?

24 MR. ANDES: I think the question,

1 and maybe this is back to Mr. Minarik, is if
2 there's a way to determine which causes CSO's both
3 for the District and for some of the other
4 entities, is it -- is there any way to
5 distinguish, like, well, which caused the DO
6 violation?

7 MR. ETTINGER: Correct.

8 MR. ANDES: I think the answer is,
9 no, there's not, but I will bring it back to
10 Mr. Minarik.

11 MR. MINARIK: Yes, this is
12 Mr. Minarik again. I'm not aware of a way we can
13 do that without sampling every single CSO outfall
14 and then doing some kind of analysis and I don't
15 think that's practical.

16 MR. ETTINGER: Okay. Let's focus on
17 the southside. Is this true for the whole system
18 that we wouldn't be able to filter out --
19 determine what's an MWRD CSO and what's a CSO by
20 another entity?

21 MR. MINARIK: This is Tom Minarik
22 again. I believe there is over 400 CSO's in the
23 Chicago Area Waterway System. So it is just not
24 practical to be able to monitor all those during a

1 wet weather event when they're CSO's.

2 MR. ETTINGER: I guess I'm trying to
3 figure out what we're buying here. Let's say we
4 see a CSO in part of the system or rather -- I'm
5 sorry. Take that back.

6 We see a dissolved oxygen
7 violation in part of the system. We know there's
8 been wet weather. We know -- how will IEPA or
9 anyone else determine whether that CSO was subject
10 to the variance and thus legal because you've got
11 the variance or it's outside the variance because
12 somebody else did it? Is there any way to
13 determine that?

14 MR. ANDES: Well, I think that what
15 you're saying is the purpose of the variance is to
16 address any possible contributions by the District
17 CSO's to violations for water quality standards
18 and to ensure that the District is doing feasible
19 steps, all the different measures it laid out, to
20 reduce its contribution to any possible DO
21 violations.

22 We're not trying to address the
23 contributions by other parties, but we're trying
24 to say the District to reduce its possible

1 contributions is taking over the following steps
2 and that's where the variance involves.

3 We're not trying to -- and, of
4 course, to the extent that TARP and other measures
5 that the District takes to address as a whole
6 operation TARP does that, that should reduce the
7 likelihood of any CSO discharges by anybody. It
8 helps the whole water system. We're trying
9 specifically in terms of legal liability to only
10 address what the District's potential liability is
11 or any of its possible contributions to violation.

12 MR. ETtinger: Okay. Well, I'm
13 going to make up a municipality to not upset
14 anybody. So let's say we have the Municipality of
15 Whoville and Whoville has decided that they're not
16 going to apply for a variance like this one and
17 they're not going to do any green infrastructure
18 like -- like MWRD is committed to doing and
19 they're not going to do anything to reduce flow
20 into the system and there is a violation of DO
21 standards in the area of Whoville, somebody might
22 want to criticize Whoville at that point, but
23 would there be any way to decide whether the CSO
24 was an immune CSO, so to speak, from MWRD or CSO

1 from Whoville who never bothered to get a
2 variance?

3 MR. ANDES: I don't think -- so the
4 issue is if you have a problem after a wet weather
5 event in terms of D0 and if some group wanted to
6 find -- find a violation by some other community.
7 The steps I think you would have to take to
8 determine if that problem was caused by that
9 community I don't think we can speak to that here
10 and I don't think we're trying to speak to that in
11 this variance.

12 That would be an issue to be
13 examined in that particular circumstance in terms
14 of was the CSO from that community, what
15 information shows you that downstream of the
16 discharge that perhaps there was a D0 violation,
17 but proof that -- the level of proof there is not
18 something we're trying to speak to here in this
19 variance. We're only trying to determine
20 potential contributions by the District CSO's and
21 doing things to reduce those.

22 MR. ETTINGER: Let's see.

23 HEARING OFFICER HALLORAN: For the
24 record, I am told that Board member Palivos has

1 also joined the meeting. Sorry, Mr. Ettinger.

2 You may proceed.

3 MR. ETTINGER: That's okay. That's
4 good.

5 MS. PALIVOS: Good morning.

6 HEARING OFFICER HALLORAN: Good
7 morning.

8 MR. ETTINGER: Let's look at your
9 response to IEPA Question 8, which is on -- this
10 is the July 27th filing. My pages aren't
11 numbered, but it's under 16A. It says, "Please
12 comment on how often MWRD closed the gates on
13 their entities during the last five years" and it
14 says, "MWR estimates that it has closed the gates
15 at least 113 times in the last five years."

16 Is that a situation in which
17 there would be a CSO then from an entity other
18 than the MWRD?

19 MR. ANDES: I think Mr. Fitzpatrick
20 can answer that one.

21 MR. FITZPATRICK: Sure. Yes. Yes,
22 there would be CSO's in those situations both from
23 the District and other entities.

24 MR. ETTINGER: And that would be 113

1 times within the last five years?

2 MR. FITZPATRICK: That's what it
3 says, yes. That would be -- we're talking about
4 the full system now, not just Calumet?

5 MR. ETTINGER: Right. And does the
6 District keep a record of when they close the
7 gates on a municipality?

8 MR. FITZPATRICK: We keep records of
9 when we close the gates to TARP. I'm not sure
10 what exactly you mean by gates to the other
11 municipalities, but they're gates to the TARP
12 system.

13 MR. ETTINGER: I'm sorry. Maybe I
14 should just -- however, based on review of the
15 records as to the TARP operating conditions, MWRD
16 estimates that it has closed the gates at least
17 113 times in the last five years. That's closing
18 the whole system.

19 MR. ANDES: No, I don't think so.
20 Let's explain that in a little bit more detail.

21 MR. ETTINGER: Please.

22 MR. ANDES: Because it's -- there is
23 a piece of data on it when the gate is closed, but
24 rather there is certain operating conditions under

1 which we've closed the gates and perhaps you can
2 explain that.

3 MR. STAUDACHER: So one thing to
4 keep in mind is that the TARP system is several
5 different systems. So if we're closing gates on
6 the Des Plaines leg because the conditions warrant
7 closing the gates on the Des Plaines leg, then
8 that would -- the CSO legs would -- on that leg
9 would be activated, but the Calumet side could be
10 wide open, you know. So you can't say that
11 TARP -- closing the TARP system is closing the
12 whole system.

13 MR. ANDES: Also, Ed, talk a little
14 bit about the operating conditions that lead you
15 to close the gates and that's the information
16 you've reviewed in providing this answer.

17 MR. STAUDACHER: So we looked at how
18 often -- for certain legs we looked at, those legs
19 were full and how are the reservoir conditions
20 where we would close the gates to the reservoir.
21 So at that point the system would have been full
22 and then, you know, it would go out as CSO's.

23 MR. ETTINGER: I hate to take up
24 everybody's time on this, but I'm a little

1 confused on this and I think it does go to the
2 basic enforceability of what we're doing here.

3 The question from IEPA was
4 "Please comment on how often MWRD closed the gates
5 on other entities during the last five years." So
6 my impression reading that question and the answer
7 is you closed the gates on particular entities.

8 Are we instead talking about a
9 closure of the reservoir system as a whole or, I'm
10 sorry, a portion of the reservoir system?

11 MR. STAUDACHER: Well, the TARP
12 system is broken up into several different
13 systems. So the Calumet side was probably open
14 the entire time where the mainstream Des Plaines
15 side would be closed.

16 MR. ETTINGER: Okay. Let's say we
17 closed the Des Plaines side and let's say we've
18 got MWRD CSO's going into TARP. We have MWRD
19 pipes that were going into the Des Plaines side
20 and we have pipes from other entities that were
21 going to go into the Des Plaines side.

22 If you close that gate on the
23 Des Plaines Reservoir and you have CSO's, you're
24 going to have CSO's, you're going to have CSO's

1 from the MWRD and other entities, is that correct?

2 MR. STAUDACHER: If I close all the
3 gates from the mainstream Des Plaines system, then
4 we'll have CSO's from other entities and MWRD.

5 HEARING OFFICER HALLORAN:
6 Gentlemen, you've been doing a great job so far,
7 but please any non-speakers mute themselves and
8 then unmute when needed. Thank you.

9 MR. ETTINGER: Okay. So we close
10 the gates, we've got CSO's and some of those CSO's
11 are covered by the variance and others aren't
12 assuming the variance is granted?

13 MR. STAUDACHER: Yes.

14 MR. ETTINGER: Okay. Are there
15 sources of wet weather pollution into the system
16 other than combined sewer overflows?

17 MR. MINARIK: This is Thomas
18 Minarik. There could be stormwater runoff.

19 MR. ETTINGER: That's what I'm
20 asking. Do you know how much stormwater runoff
21 there is in the system?

22 MR. MINARIK: No, not exactly.

23 MR. ETTINGER: Does anybody measure
24 that?

1 HEARING OFFICER HALLORAN: Okay.

2 I'm sorry. Mr. Ettinger, the non-speaker has to
3 mute himself and then, you know, unmute when
4 needed. I think we have at least two, the witness
5 and Mr. Ettinger, on at the same time and it's not
6 working.

7 MR. ETTINGER: I should mute as soon
8 as --

9 MR. ANDES: I think there is some
10 information available as to stormwater sources
11 and/or their extent. That may have been included
12 in the assumptions in the modeling that was done
13 previously in terms of presence of those other
14 sources.

15 I don't believe there has been a
16 measurement of stormwater sources, but I think
17 there were assumptions in the various studies that
18 were done to support the variances as to the
19 extent of those sources.

20 MR. ETTINGER: Okay. Just -- does
21 somebody have a -- can you give me an estimate of
22 what percentage of the wet weather flow into the
23 system is from stormwater as compared to
24 stormwater overflows?

1 MR. ANDES: I think there are
2 numbers on that in previous reports and we can
3 certainly go back and check.

4 MR. ETTINGER: Yeah, I'm just trying
5 to figure out, again, the significance of that
6 flow into the system as opposed to the CS0 flows
7 so that it might be possible to sort out what is
8 causing an issue that is covered by the variance
9 versus what is not covered by the variance. With
10 that, I'm going to conclude and I thank you.

11 HEARING OFFICER HALLORAN: Thank
12 you, Mr. Ettinger. Ms. Meyers, do you have any
13 questions of the District's witnesses?

14 MS. MEYERS: Yes, please.

15 HEARING OFFICER HALLORAN: Proceed.

16 MS. MEYERS: Thank you. For the
17 record, my name is Stacy Meyers, M-E-Y-E-R-S, and
18 I'm senior counsel for Openlands,
19 O-P-E-N-L-A-N-D-S.

20 So I guess the main questions
21 that I would like to pose to MWRD this morning are
22 regarding green infrastructure. The Illinois
23 Environmental Protection Agency asked if MWRD has
24 evaluated other measures to reduce the chance of

1 future CSO discharges into the Calumet System
2 and MWRD pointed towards the green infrastructure
3 work that it is doing in collaboration with many
4 within its jurisdiction.

5 So my confusion is there seems
6 to be a duality to this, the answers that I'm
7 seeing, in the importance of green infrastructure
8 around yet the insignificance of green
9 infrastructure when it comes to CSO's as a
10 solution and I would like to pose my questions
11 with that in mind.

12 So under the Green
13 Infrastructure Program Plan that MWRD submitted as
14 an exhibit to its answers, it says that "Green
15 infrastructure measures employed in conjunction
16 with conventional gray infrastructures --
17 infrastructure measures such as tunnels and
18 reservoirs is the most effective way to reduce
19 flooding and CSO's" and I'm wondering if MWRD
20 outside of that plan to look at the math, right,
21 as to how many billion gallons we need or are we
22 projecting that we will likely need to control
23 CSO's, how much green infrastructure can
24 contribute to reductions in the volume that we

1 need to capture and hold?

2 MR. ANDES: Well, I'll start off and
3 then other folks in the District may add, but I
4 think the statements in that program plan are
5 consistent with the petition here in saying that
6 the District's key measures that it will implement
7 as reduction measures to reduce the levels are the
8 TARP system and the infrastructure plan.

9 The District committed to take
10 measures in the green infrastructure -- in the
11 consent decree on green infrastructure. It is
12 doing those things. It believes those things will
13 continue to reduce the level of CSO's, but
14 there -- again, it has never promised that it will
15 eliminate and I think the history of green
16 infrastructure measures around the country
17 indicates that it is not something that
18 necessarily eliminates CSO's, but the program to
19 reduce them and the District is taking active
20 measures as laid out in the decree and TLWQS to
21 implement those measures.

22 In an adaptive way, green
23 infrastructure is necessarily adaptive where you
24 try some things and you see if they work and then

1 you implement them more fully and that's all part
2 of the plan, but I'll defer to Mr. Staudacher if
3 they have any further comments on that.

4 MR. STAUDACHER: This is
5 Mr. Staudacher. I have no further comments.

6 MR. FITZPATRICK: This is Kevin.
7 Neither do I. I think what you said is accurate,
8 Fred. Let me just clarify.

9 You know, our TARP system is our
10 long-term control plan for CSO's and under the
11 consent decree and as an agency we are always
12 looking to improve what we can do. So we'll
13 always continue to pursue green infrastructure to
14 help reduce CSO's further and further, but like
15 Fred said I don't think it's even possible to
16 eliminate them with all the green infrastructure
17 that would be practicable.

18 MS. MEYERS: Okay. I'm looking at
19 the numbers at this point. My confusion lies in
20 that I'm -- I'm sure that you guys have done a lot
21 of homework in order to determine what is feasible
22 and what is not feasible, but it would be very
23 helpful for us to see the numbers to understand
24 that and as far as the consent decree my

1 understanding is that the consent decree requires
2 10 million of stormwater capture through green
3 infrastructure, right?

4 MR. ANDES: That's correct.

5 MS. MEYERS: And that is part of the
6 way that MWRD is approaching combined sewer
7 overflows as part of the consent decree and also
8 as part of the -- for water quality purposes,
9 correct?

10 MR. FITZPATRICK: This is Kevin.
11 Can you repeat that?

12 MS. MEYERS: Sure. Green
13 infrastructure is part of the solution to reduce
14 CSO's, correct?

15 MR. FITZPATRICK: Yes.

16 MS. MEYERS: And within what you
17 guys produced in 2015 for the 2014 requirement on
18 the green infrastructure plan, on Page 9 it says
19 that you were initiating five pilot studies in
20 2015 with the intent to ultimately develop a
21 stormwater master plan for Cook County to address
22 a hundred year flooding and what I'm wondering is
23 if that plan is underway and being developed and,
24 if so, how you are calculating the volume

1 reductions that green infrastructure can provide
2 in addition to TARP to reduce CSO's?

3 MR. FITZPATRICK: This is Kevin
4 Fitzpatrick. Our stormwater master planning
5 people aren't on the line with us, but they are
6 working on stormwater master plans for Cook
7 County. They did do a study to determine what it
8 would take to protect against the hundred year
9 storm and it was extremely high.

10 I'm not sure what, but they are
11 pursuing green infrastructure throughout Cook
12 County as part of stormwater master planning and
13 efforts. So I think maybe the best thing would be
14 to respond in writing to that one.

15 MS. MEYERS: That would be fine and
16 I think if we can distinguish between the Water
17 Management Ordinance Technical Advisory
18 Committee's work on looking at capture and
19 detention release rates versus how much green
20 infrastructure is feasible throughout the county
21 to reduce CSO's, that would be helpful.

22 MR. FITZPATRICK: Yeah, I don't know
23 if we have that information, but we can check with
24 them.

1 MS. MEYERS: So considering that --
2 Fred, you had mentioned that other cities and
3 other states, you know, Philadelphia's Green City
4 Clean Waters Initiative has reduced volume by 1.7
5 billion gallons through its Green Infrastructure
6 Program and has conducted a pretty comprehensive
7 study as well as plan as to how much green
8 infrastructure can feasibly reduce CSO's as well
9 as how much green infrastructure they can feasibly
10 build in collaboration with others and I would be
11 interested to see what MWRD has done that is
12 comparable and what MWRD could do that is
13 comparable in order for you to understand the
14 numbers that green infrastructure could contribute
15 to CSO's.

16 MR. ANDES: Before we answer on
17 that, and we can certainly provide further
18 information, I have to question why these
19 questions haven't been raised previously? There
20 have been multiple opportunities when we've
21 submitted our testimony to submit questions that
22 we could answer.

23 So we're getting a lot of
24 detailed questions now that in all honesty there

1 were at least two, if not three, opportunities to
2 raise these questions before.

3 MS. MEYERS: I'm responding to the
4 answers to the questions which were put forward by
5 MWRD.

6 MR. ANDES: Our Green Infrastructure
7 Program has been a part of this variance and we
8 have provided information about that throughout
9 the process. So, to me, these questions could
10 have been raised at any point during the process.
11 We will provide further information at this point,
12 but, you know, we did not expect to have someone
13 on to answer these questions since they have never
14 been raised before in the process.

15 MS. MEYERS: I fully appreciate
16 putting them in writing and I have no problem with
17 that. I am following up on questions that the
18 Agency has posited and the answers that you
19 provided and it sparked questions for me to bring
20 forward in this hearing today.

21 MR. ANDES: And we'll provide
22 responses.

23 MS. MEYERS: We appreciate that. So
24 the other question that I had was in the MWRD's

1 responses to some of the questions regarding green
2 infrastructure they point to the comprehensive
3 land use policy that was produced subsequent to
4 the Green Infrastructure Program Plan and, in all
5 candor, Openlands was a part in reviewing that and
6 provided comments to the MWRD Board on that plan
7 as did a lot of our other brethren and we
8 appreciated the opportunity to do that.

9 Framing this question within
10 that plan as mentioned by MWRD rightfully so,
11 the -- the land use policy puts forward how leases
12 by MWRD are to include green infrastructure, both
13 installation and maintenance, and a follow-up
14 question I had in you all raising that because
15 that was a good point was how many leases have
16 since resulted in installation and maintenance of
17 green infrastructure solutions, what percentage as
18 well as how much volume reduction that has
19 contributed to our green infrastructure solution
20 for the county?

21 And if you need to put that in
22 writing since it's a response to the answers that
23 you provided, that also would be great.

24 MR. ANDES: We will do that.

1 MS. MEYERS: Does anyone have any
2 idea now?

3 MR. ANDES: I don't think any of our
4 witnesses have access to that information at this
5 time.

6 MS. MEYERS: I'm just looking over
7 to make sure that I've covered what I wanted to
8 cover so I don't intrude later on. In looking at
9 the feasibility of green infrastructure throughout
10 Cook County as a measurable portion of a CSO
11 solution, I was also wondering whether or not if
12 MWRD has conducted such planning or any planning
13 to that regard whether or not they have looked at,
14 in particular, areas where municipalities are
15 having difficulty connecting to TARP whereas you
16 guys are providing this great solution if
17 municipalities aren't having trouble being able to
18 connect to you all to fully be able to utilize
19 your CSO solution, have you looked at green
20 infrastructure as a way in those hot spots, so to
21 speak, to be able to hold stormwater to basically
22 defray some of the pressure on the system for
23 CSO's?

24 MR. ANDES: I'll try to clarify.

1 You're saying -- you're talking about a community
2 that would have trouble connecting to TARP?

3 MS. MEYERS: Yes.

4 MR. ANDES: So not currently
5 connected, but it wants to and it can't?

6 MS. MEYERS: My understanding -- let
7 me ask this question.

8 Are some of the issues regarding
9 flooding, local flooding, because localities
10 haven't been able to size their infrastructure to
11 fully take advantage of what MWRD has built?

12 MR. FITZPATRICK: This is Kevin
13 Fitzpatrick. If I understand you, you're talking
14 about, like, maybe a community has a two-year
15 storm combined sewer that is coming to us?

16 MS. MEYERS: Yes.

17 MR. FITZPATRICK: And it's backing
18 them up because they -- because they really don't
19 have the capacity to get the flow to the TARP
20 system?

21 MS. MEYERS: Right.

22 MR. FITZPATRICK: I do know we are
23 working with communities through our stormwater
24 plan. Again, we don't have the proper people on

1 to talk much about that. It's really not related
2 to CSO's so much, though. It's really more
3 because they can't -- if they can't get it to us,
4 that means they can't get it out to the waterway
5 as well. But I guess we would have to get back
6 with -- we have -- to answer your question, yes,
7 we are looking at and helping out communities with
8 those issues.

9 MS. MEYERS: Would it be possible to
10 answer how much that is occurring and how -- to
11 the extent to which MWRD is doing that? I'm just
12 looking for metrics here. I'm trying to figure
13 out how much volume --

14 MR. ANDES: After that --

15 HEARING OFFICER HALLORAN: One
16 person.

17 MS. MEYERS: How much volume are we
18 able to produce?

19 HEARING OFFICER HALLORAN: People --

20 MS. MEYERS: And how much volume we
21 know we've got.

22 HEARING OFFICER HALLORAN: People,
23 one at a time and the non-speaker, please mute
24 themselves and when it is time for you to speak,

1 you can unmute. Thank you. We're having a
2 difficult time.

3 MR. ANDES: This is Mr. Andes. I
4 guess I'm not clear whether that's actually a CSO
5 issue. And if the variance is talking about
6 reducing the likelihood of CSO's, I'm not sure --
7 and particularly the District CSO's, I'm not sure
8 that that particular problem factors into whether
9 the District is going to have CSO's or not and
10 Mr. Fitzpatrick can comment on that.

11 MR. FITZPATRICK: Sorry. Yes.
12 You're right, Fred. I don't see how that has
13 anything to do with the CSO issue, but it is
14 something we're working on separately and we'd be
15 happy to provide that information to Openlands or
16 whoever wanted it outside of us if that's the way
17 it has to be done.

18 MS. MEYERS: Let me just look really
19 quickly here. Sorry. I need one moment here. I
20 think I'm good.

21 HEARING OFFICER HALLORAN: All
22 right. Thank you, Ms. Meyers.

23 MS. MEYERS: Thank you.

24 HEARING OFFICER HALLORAN: Before we

1 take a short break, I just wanted to see if anyone
2 out there in Webex-ville had questions of these --
3 of these witnesses and just unmute yourself.

4 MS. TIPSORD: I'm not seeing
5 anybody.

6 HEARING OFFICER HALLORAN: Okay.
7 Let's take a short break, folks, and be back here
8 at, like, 10:45. Is that doable? Thank you. Off
9 the record.

10 (Whereupon, a break was taken
11 after which the following
12 proceedings were had.)

13 HEARING OFFICER HALLORAN: All
14 right. I have about 10:46. We're back on the
15 record.

16 And I believe the District's
17 witnesses are finished and I have, through the
18 Board, some questions for the IEPA witness and I
19 can read that now, but before I do I would like to
20 have Mr. Brickey swear in the IEPA witnesses.

21 MR. TWAIT: Can you hear me?

22 THE COURT REPORTER: Yes.
23
24

1 WHEREUPON:

2 SCOTT TWAIT

3 called as a witness herein, having been first duly
4 sworn, depose and saith as follows:

5 HEARING OFFICER HALLORAN: Thank
6 you. So here we go.

7 In response to Board's Question
8 1C concerning impact of climate change, IEPA
9 states that since TARP is complete, MWRD must
10 evaluate the CSO's and determine if they comply
11 with the U.S. EPA's CSO policy.

12 A, please clarify whether the
13 Agency is referring to the Calumet System
14 regarding the completion of TARP.

15 MR. TWAIT: Can you hear me?

16 HEARING OFFICER HALLORAN: Yes.

17 MR. TWAIT: We were --

18 MS. TIPSORD: Wait a minute. You
19 have to identify yourself for the record.

20 MR. TWAIT: Scott Twait from
21 Illinois EPA. We were talking about the entire
22 system and whether or not they're in compliance
23 with U.S. EPA's CSO policy.

24 So when they get the Calumet

1 System done or the Stickney portion done, they
2 will need to make a decision on -- on whether or
3 not they're compliant with the CSO policy.

4 HEARING OFFICER HALLORAN: Mr. Rao,
5 any follow up?

6 MR. RAO: Yes, I do. So, Mr. Twait,
7 should the District wait until the completion of
8 TARP until 2027 to do this evaluation or do you
9 expect them to do this for Calumet before that?

10 MR. TWAIT: I am not the CSO expert
11 so I don't know the answer to that, but I would
12 think they would do that as they complete the
13 individual groups, the individual systems.

14 MR. RAO: Do you think the District
15 would be in a better position to be able to answer
16 this question as to when such an evaluation would
17 be done?

18 MR. TWAIT: Yes.

19 MR. ANDES: This is Mr. Andes and
20 just to be clear parts of the system are not
21 entirely distinct. They run into each other and
22 the District's compliance with the CSO policy will
23 need to be determined from the system as a whole.
24 They are not independent parts where one part can

1 be in compliance with the CSO policy and another
2 would not. That is going to have to be evaluated
3 on a system-wide basis because that's also the way
4 it is laid out in the consent decree.

5 MR. RAO: Thank you.

6 HEARING OFFICER HALLORAN: All
7 right. This is the second sub question B. B as
8 in boy.

9 "Comment on whether the Agency
10 agrees with MWRD that the compliance evaluation of
11 the Calumet System should be done during the
12 proposed term of the TLWQS." IEPA, do you have
13 your --

14 MS. TIPSORD: They're unmuted.

15 MR. TWAIT: Can you rephrase that
16 question because the District has done one portion
17 of their -- of their analysis? Can you rephrase
18 the question?

19 HEARING OFFICER HALLORAN: Mr. Rao?

20 MR. RAO: I can try. Basically what
21 I was asking was in response the Board question
22 said they need more data and the five-year term of
23 the initial TLWQS will provide them data to do an
24 evaluation of what the current conditions are in

1 the Calumet System and I was just basically asking
2 the Agency whether they agree with the District
3 that the term of the TLWQS and the next five years
4 will allow the District to do a compliance
5 evaluation in the Calumet System.

6 MR. TWAIT: Yeah, the Agency doesn't
7 disagree with that process. We've talked with
8 U.S. EPA and they have some concerns about whether
9 it's needed or not and that's why we asked the
10 questions that we asked.

11 MR. RAO: All right.

12 HEARING OFFICER HALLORAN: All
13 right. Here is the third sub question.

14 "C. Comment on whether the U.S.
15 EPA's CSO policy addresses impact of climate
16 change."

17 MR. TWAIT: I do not know the answer
18 to that.

19 HEARING OFFICER HALLORAN: Mr. Rao,
20 any follow up?

21 MR. RAO: Yes, does the District
22 have any comments on the question?

23 MR. ANDES: Well, I don't think that
24 the District, you know, can provide interpretation

1 of the CSO policy. I think as a general matter
2 what the District is doing under the consent
3 decree to comply with the federal rule CSO
4 requirements is laid out there in the consent
5 decree and I'm not aware of, on a personal level,
6 any requirement specific to the EPA CSO
7 requirements to specifically consider the impact
8 to climate change, but the way that the District
9 is complying with CSO requirements is through TARP
10 and specific TARP-related requirements laid out in
11 the consent decree.

12 MR. RAO: Okay. The question was
13 triggered by IEPA's response to the Board's
14 questions because they brought in the CSO policy
15 in the response. So I was curious whether the
16 policy as a whole discusses climate change, but if
17 there is any additional information, we'd
18 appreciate it if you can put it in writing.

19 MR. ANDES: Sure.

20 HEARING OFFICER HALLORAN: All
21 right. Question 4. Regarding Board's Question 6,
22 please comment on whether the communities listed
23 in the O'Brien and Stickney permits would be
24 subject to potential enforcement action for

1 violating the DO standards if they do not seek
2 relief through individual TLWQS from the Board.

3 MS. TIPSORD: Sorry.

4 MR. TWAIT: I think --

5 MS. TIPSORD: Sorry. That was my
6 fault. Start over, Scott. I screwed up.

7 HEARING OFFICER HALLORAN: You can
8 start over. Thank you.

9 MR. TWAIT: Okay.

10 MS. TIPSORD: Go ahead, Scott. We
11 lost you again. Sorry.

12 MR. TWAIT: I think they do have
13 some liability issues if -- if they are causing or
14 contributing to DO violations.

15 HEARING OFFICER HALLORAN: Mr. Rao?

16 MR. RAO: Did you just say they may
17 have liability issues? Is that the response?
18 That's what I heard.

19 MR. TWAIT: Yes.

20 MR. RAO: But does the Agency have,
21 you know, any plans on bringing these other
22 communities under the TLWQS or it's up to them to
23 decide?

24 MR. TWAIT: I think it's up to them

1 to decide. When this was originally proposed, we
2 had put a class so that others could join and no
3 one else did. No one else joined and so it went
4 back to an individual.

5 MR. RAO: Okay. Thank you.

6 HEARING OFFICER HALLORAN: All
7 right. The last question.

8 "Regarding Board's Question 10B,
9 as in boy, please comment on whether MWRD's
10 responses to the Agency's questions help resolve
11 U.S. EPA's concerns regarding relief of the
12 Calumet System.

13 If so, elaborate for the record
14 how MWRD's responses help address U.S. EPA's
15 concerns.

16 Also, comment on whether the
17 Agency has discussed MWRD's responses with the
18 U.S. EPA." Sorry. That was a compound question,
19 but if you can answer, please do.

20 MR. TWAIT: We haven't -- we haven't
21 discussed with U.S. EPA their responses. We will
22 need to do that. We do think that they may have
23 answered our -- asked -- they have responded to
24 our questions and we do think that helps the

1 record, specifically on the temporary use of the
2 Thornton -- Thornton Reservoir and losing the 3.1
3 billion gallons, but we'll open up discussions
4 with U.S. EPA.

5 HEARING OFFICER HALLORAN: Any
6 follow up, Mr. Rao?

7 MR. RAO: I think not, but just let
8 me look at something before.

9 Mr. Twait, in the Agency's
10 recommendation, you had indicated that, you know,
11 one of the factors for granting the TLWQS, the
12 widespread economic impact, that the District had
13 not made -- you know, to justify the proposed
14 petition based on that factor.

15 Has the Agency changed its mind
16 based on MWRD's responses or are you still
17 recommending that it be considered based on the
18 factor of human cause conditions?

19 MR. TWAIT: We believe it should be
20 based on human cause conditions. We don't think
21 that they have met criteria for the economics
22 because they didn't break it down per user and
23 show that it was not affordable, but we believe
24 they have made the -- met the burden of proof for

1 the human cause conditions.

2 MR. RAO: Thank you. That's all I
3 have.

4 HEARING OFFICER HALLORAN: All
5 right. Thank you, Mr. Rao.

6 And to keep it consistent,
7 Mr. Ettinger, any questions of Mr. Twait?
8 Mr. Ettinger?

9 MR. ETTINGER: Yes. I'm sorry. I
10 will come back on here again. I was trying to
11 save every bandwidth here. I -- I was just going
12 to ask the Agency if you know of any way that we
13 would be able to sort out whether dissolved oxygen
14 violation during a wet weather event was caused by
15 an MWRD CSO that would be protected by this
16 variance from liability or somebody else's CSO
17 that would not be?

18 MR. TWAIT: I think that would be
19 very tough to -- to pin it completely on one
20 person. However, the cause and contribute if you
21 can show that they're contributing to the DO
22 violation, I believe that they would be -- you can
23 make the demonstration that they were the cause or
24 contributing to it, to the violation.

1 MR. ETtinger: Okay. So if we had
2 one of these situations where they had to close
3 part of the system and it resulted in CSO's by
4 both the MWRD and another entity and as a result
5 there was a violation of the D0 standard, we can
6 go after the entity -- other entity as
7 contributing even though we might not be able to
8 sort how much each did?

9 MR. Twait: That's possible, yes.

10 MR. ETtinger: Thank you. That's
11 all I had, Mr. Halloran.

12 HEARING OFFICER HALLORAN: Thank
13 you, Mr. Ettinger. Ms. Meyers?

14 MS. MEYERS: Just a brief follow up
15 on climate change. I did notice the Agency had
16 seen the U.S. EPA study from 2008 regarding a
17 screening assessment of potential impacts of
18 climate change on combined sewer overflow
19 mitigation in the Great Lakes/New England regions
20 and, if so, whether or not that would potentially
21 answer the question as to whether or not U.S. EPA
22 considers climate change in looking at CSO
23 mitigation solutions.

24 MR. Twait: I have not seen that.

1 MS. MEYERS: If that is something
2 that the U.S. EPA evaluated through this report
3 and through its policy, should whatever modeling
4 that was used that you are considering as far as a
5 variance then include climate change as a factor
6 in determining the volume that we should be
7 looking for to curb CSO's?

8 MR. TWAIT: I think that question is
9 for determining the CSO policy and not necessarily
10 the Time-Limited Water Quality Standard because
11 we're not -- we're not adding additional storage
12 at this time for the Time-Limited Water Quality
13 Standard.

14 MS. MEYERS: If we're looking for
15 how much storage is necessary over the duration of
16 the variance and the policy includes consideration
17 of climate change as part of any kind of
18 mitigation, should that then be factored in when
19 evaluating what measures should be taken?

20 MR. ANDES: I'm going to object.
21 I'm going to object to that question before it
22 gets responded to because we don't agree that the
23 CSO policy or the TLWQS process requires
24 consideration of climate change. There are some

1 conditions present in that question that we don't
2 agree.

3 HEARING OFFICER HALLORAN: Okay.
4 Objection noted, but overruled.

5 MR. TWAIT: I'm not sure it's in the
6 policy. So I don't know.

7 MS. MEYERS: If it is in the policy,
8 should it be considered over the next five years
9 in mitigation?

10 MR. TWAIT: Yeah, I don't know
11 what --

12 MR. ANDES: The CSO policy -- it
13 seems --

14 MR. TWAIT: I don't know what they
15 have looked at. I don't know what the CSO policy
16 requires facilities to look at.

17 MS. MEYERS: Thank you.

18 HEARING OFFICER HALLORAN: Thank
19 you. Any questions of this witness from the Webex
20 people? Just unmute yourself if you have a
21 question, please.

22 MR. ANDES: No questions from the
23 District.

24 HEARING OFFICER HALLORAN: Anyone on

1 Webex who would like to give a public statement or
2 public comment now is the time to do it and please
3 unmute yourself.

4 MS. TIPSORD: I'm not seeing anyone.

5 HEARING OFFICER HALLORAN: Okay. I
6 don't see any parties wishing or citizens wishing
7 to give public statement or public comment.

8 You know, I -- I think that's it
9 other than to quickly discuss the post-hearing
10 briefing schedule unless anybody else has any
11 thoughts.

12 I'm thinking like we did in the
13 chlorides TL's post-hearing briefs -- simultaneous
14 post-hearing briefs due September 30th,
15 simultaneous response due November 13th and public
16 comment due September 4th.

17 Mr. Andes, does that sound
18 acceptable?

19 MR. ANDES: Yes, you said public
20 comment due September 4th, then post September
21 30th and reply briefs due November 13th, correct?

22 HEARING OFFICER HALLORAN: Correct.

23 MR. ANDES: All right. No, that's
24 fine with the District.

1 HEARING OFFICER HALLORAN: Ms.

2 Diers?

3 MS. DIERS: That's fine with the
4 Agency.

5 MR. ETTINGER: I'm sorry. I'm a
6 little confused. What is the difference between
7 post-hearing briefs and a public comment?

8 HEARING OFFICER HALLORAN: A
9 public -- a member of the public can file their
10 comment with the Board.

11 MR. ETTINGER: Okay. Well, I guess
12 I'm not sure whether the Sierra Club is public
13 here or whether we're somebody that should file a
14 brief I guess is my question.

15 HEARING OFFICER HALLORAN: Well, I
16 have you down as interested party. I assume if
17 you want to file a brief as an interested party
18 the Board will accept it.

19 MR. ETTINGER: Okay. I just -- I
20 actually am not sure I want to file anything. I
21 just wanted to know whether I was public or brief.

22 HEARING OFFICER HALLORAN: Well,
23 you're not a party. Well, you're an interested
24 party. So you're not either the Agency or the

1 MWRD, but file it, if you wish, and I'm sure the
2 Board will take it under consideration.

3 MR. ETTINGER: Okay. Thank you.

4 HEARING OFFICER HALLORAN: Thank
5 you, Mr. Ettinger.

6 I will issue an order shortly
7 setting these post-hearing briefing schedules and
8 public comment dates and I do want to thank you
9 all for making my job easier.

10 This is my first time at this
11 thing and I especially want to thank my general
12 counsel Marie Tipsord. She was the -- she is the
13 navigator and she controls all things. So thank
14 you, Ms. Tipsord, and everybody out there stay
15 safe and be well. Thank you so much.

16 MS. DIERS: Thank you.

17 MR. ANDES: Thank you.

18 HEARING OFFICER HALLORAN: We're off
19 the record.
20
21
22
23
24

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2
3 I, Steven Brickey, Certified Shorthand
4 Reporter, do hereby certify that I reported in
5 shorthand the proceedings had at the trial
6 aforesaid, and that the foregoing is a true,
7 complete and correct transcript of the proceedings
8 of said trial as appears from my stenographic
9 notes so taken and transcribed under my personal
10 direction.

11 Witness my official signature in and for
12 Cook County, Illinois, on this _____ day of
13 _____, A.D., 2020.

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16
17
18
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24

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