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
1021 North Grand Avenue East
PO Box 19276
Springfield, Illinois 62794
(217) 782-5544,
stephanie.diers@illinois.gov

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.

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

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

MS. TIPSORD: And Barbara Currie.

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

MS. TIPSORD: Yes.

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

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

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

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

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

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

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

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

WEBEX: This meeting is being recorded.

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. DIERS: We can hear you.

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

MS. DIERS: No, thank you.

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

MS. TIPSORD: You need to swear the witness.

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

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

MS. TIPSORD: Your witnesses have to unmute.

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

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

MR. FITZPATRICK: I do.

MR. STAUDACHER: I do.

MR. GALLAGHER: I do.

MR. ANDES: I do.

WHEREUPON:

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

HEARING OFFICER HALLORAN: I only

counted three.

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

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

MR. ANDES: Mr. Minarik was the fourth.

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

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

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

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

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

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

HEARING OFFICER HALLORAN: Attachment C. Exhibit C.

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

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

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

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

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

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

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

MR. STAUDACHER: Can you hear me now?

HEARING OFFICER HALLORAN: Yes.

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

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

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

MR. ANDES: Yes.

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

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

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

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

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

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

MR. ANDES: Sure, we can do that.

MR. RAO: Thank you.

HEARING OFFICER HALLORAN: Okay. I'm moving on to Question 2 and it's in two parts.

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

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

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

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

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

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

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

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

new model if we were to do that.

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

HEARING OFFICER HALLORAN: Can you repeat that, please?

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

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

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

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

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

MR. RAO: Can you hear me now?

HEARING OFFICER HALLORAN: Yes.

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

the results will be the same.

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

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

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

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

of the TLWQS if granted?

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

MS. TIPSORD: He's still muted.

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

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

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

MS. TIPSORD: It's Mr. Andes.

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

If not, please explain what

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

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

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

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

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

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

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

MR. RAO: Thank you.

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

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

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

If not, we can move to Mr. Ettinger.

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

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

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

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

witnesses, a couple of questions.

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

HEARING OFFICER HALLORAN: Correct.

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

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

MR. ANDES: Mr. Minarik, perhaps,

can answer the question.

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

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

MR. MINARIK: Yes, that would be correct.

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

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

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

MR. ETTINGER: Okay.

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

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

MR. ANDES: Sure.

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

MR. ETTINGER: Okay. So -- sorry.

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

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

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

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

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

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

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

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

MR. MINARIK: Yes, that's possible.

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

precipitation trends, et cetera, all influence data.

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

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

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

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

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

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

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

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

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

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

MR. ETTINGER: I'm not hearing anything.

MS. TIPSORD: We lost Mr. Fitzpatrick.

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

MS. TIPSORD: He's not muted.

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

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

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

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

MR. FITZPATRICK: Hello?

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

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

HEARING OFFICER HALLORAN: Yes.

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

looking for?

MR. ETTINGER: That's what you were doing and then you went blank.

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

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

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

Then when the north flow was

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

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

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

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

MR. ETTINGER: Well, when the TARP --

MR. FITZPATRICK: And --

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

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

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

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

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

HEARING OFFICER HALLORAN: We lost him again.

MR. FITZPATRICK: Flood creek water.
MR. ANDES: I think we lost you again.
Do we have the full capacity that was planned for when TARP was designed in the southside?
MR. FITZPATRICK: Yeah. Can you hear me now?
HEARING OFFICER HALLORAN: Yes.
MR. ETTINGER: I can now.
MR. FITZPATRICK: Okay. So the 4.8 billion gallons that we will have for combined sewer overflow is what was conceived of for this. So right now we're borrowing the 3.1 billion gallons of Thorn Creek floodwater, but we have to now give it back because we're giving back the whole -- to Material Service.
MR. ETTINGER: So you -- for a while you had 6.9, but now you're going back to the 4.8 that the TARP was designed for, is that correct?
MR. FITZPATRICK: 7.9 is what we had temporarily, yes.
MR. ETTINGER: I'm sorry. 7.9, we're going back to 4.8. So when you -- when you

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

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

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

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

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

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

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

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

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

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

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

could be CSO's.

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

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

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

HEARING OFFICER HALLORAN: Thank you.

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

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

MR. ETTINGER: We can.

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

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

MR. ETTINGER: So we know --

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

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

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

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

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

MR. FITZPATRICK: Damage by the

CSO's, you're saying?

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

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

MR. ANDES: Let me correct that.

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

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

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

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

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

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

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

So if -- and obviously

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

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

MR. ANDES: I think that's accurate.

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

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

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

MR. ETTINGER: Okay. So when you

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

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

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

MR. ANDES: This --

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

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

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

that we can do that.

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

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

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

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

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

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

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

MR. ANDES: I think the question,

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

MR. ETTINGER: Correct.

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

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

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

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

wet weather event when they're CSO's.

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

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

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

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

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

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

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

from Whoville who never bothered to get a variance?

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

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

MR. ETTINGER: Let's see.

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

also joined the meeting. Sorry, Mr. Ettinger. You may proceed.

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

MS. PALIVOS: Good morning.

HEARING OFFICER HALLORAN: Good morning.

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

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

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

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

MR. ETTINGER: And that would be 113

times within the last five years?

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

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

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

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

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

MR. ETTINGER: Please.

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

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

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

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

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

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

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

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

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

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

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

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

from the MWRD and other entities, is that correct?

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

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

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

MR. STAUDACHER: Yes.

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

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

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

MR. MINARIK: No, not exactly.

MR. ETTINGER: Does anybody measure that?

HEARING OFFICER HALLORAN: Okay. I'm sorry. Mr. Ettinger, the non-speaker has to mute himself and then, you know, unmute when needed. I think we have at least two, the witness and Mr. Ettinger, on at the same time and it's not working.

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

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

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

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

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

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

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

MS. MEYERS: Yes, please.

HEARING OFFICER HALLORAN: Proceed.

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

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

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

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

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

need to capture and hold?

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

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

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

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

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

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

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

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

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

MR. ANDES: That's correct.

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

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

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

MR. FITZPATRICK: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. ANDES: And we'll provide responses.

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

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

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

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

MR. ANDES: We will do that.

MS. MEYERS: Does anyone have any idea now?

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

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

MR. ANDES: I'll try to clarify.

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

MS. MEYERS: Yes.

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

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

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

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

MS. MEYERS: Yes.

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

MS. MEYERS: Right.

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

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

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

MR. ANDES: After that --

HEARING OFFICER HALLORAN: One person.

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

HEARING OFFICER HALLORAN: People --

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

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

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

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

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

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

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

MS. MEYERS: Thank you.

HEARING OFFICER HALLORAN: Before we

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

MS. TIPSORD: I'm not seeing anybody.

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

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

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

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

MR. TWAIT: Can you hear me?

THE COURT REPORTER: Yes.

WHEREUPON:

SCOTT TWAIT

called as a witness herein, having been first duly sworn, deposeth and saith as follows:

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

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

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

MR. TWAIT: Can you hear me?

HEARING OFFICER HALLORAN: Yes.

MR. TWAIT: We were --

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

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

So when they get the Calumet

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

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

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

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

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

MR. TWAIT: Yes.

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

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

MR. RAO: Thank you.

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

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

MS. TIPSORD: They're unmuted.

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

HEARING OFFICER HALLORAN: Mr. Rao?

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

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

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

MR. RAO: All right.

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

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

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

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

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

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

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

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

MR. ANDES: Sure.

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

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

MS. TIPSORD: Sorry.

MR. TWAIT: I think --

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

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

MR. TWAIT: Okay.

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

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

HEARING OFFICER HALLORAN: Mr. Rao?

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

MR. TWAIT: Yes.

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

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

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

MR. RAO: Okay. Thank you.

HEARING OFFICER HALLORAN: All right. The last question.

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

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

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

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

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

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

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

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

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

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

the human cause conditions.

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

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

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

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

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

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

MR. TWAIT: That's possible, yes.

MR. ETTINGER: Thank you. That's all I had, Mr. Halloran.

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

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

MR. TWAIT: I have not seen that.

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

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

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

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

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

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

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

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

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

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

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

MS. MEYERS: Thank you.

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

MR. ANDES: No questions from the District.

HEARING OFFICER HALLORAN: Anyone on

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

MS. TIPSORD: I'm not seeing anyone.

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

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

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

Mr. Andes, does that sound acceptable?

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

HEARING OFFICER HALLORAN: Correct.

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

HEARING OFFICER HALLORAN: Ms. Diers?

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

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

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

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

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

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

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

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

MR. ETTINGER: Okay. Thank you.

HEARING OFFICER HALLORAN: Thank you, Mr. Ettinger.

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

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

MS. DIERS: Thank you.

MR. ANDES: Thank you.

HEARING OFFICER HALLORAN: We're off the record.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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

_____

STEVEN BRICKEY, CSR, RMR
8 West Monroe Street
Suite 2007
Chicago, Illinois 60603
Phone: (312) 419-9292
CSR No. 084-004675