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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PROPOSED EXTENSION OF ADJUSTED AS 07-2  
STANDARD APPLICABLE TO (Adjusted Standard)  
ILLINOIS-AMERICAN WATER COMPANY'S  
ALTON PUBLIC WATER SUPPLY FACILITY  
DISCHARGE TO THE MISSISSIPPI RIVER  
UNDER 35 ILL. ADM. CODE 304.124  
AND 304.106

Deposition of SCOTT A. TOMKINS, taken at the  
instance of the Petitioner, before Dorothy J. Hart,  
CSR, RPR, and Notary Public, on the 16th day of  
August, 2007, at the hour of 9:00 a.m., at 1021 North  
Grand Avenue East, Springfield, Illinois.

CAPITOL REPORTING SERVICE, INC.  
2021 Timberbrook Drive  
Springfield, Illinois 62702  
217-787-6167

1 APPEARANCES:

2 BLACKWELL SANDERS,  
3 BY: MR. BRADLEY S. HILES  
4 Attorney at Law  
5 720 Olive Street  
6 Suite 2400  
7 St. Louis, Missouri 63101

8 on behalf of the Petitioner;

9 MR. SANJAY SOFAT  
10 Assistant Counsel  
11 Division of Legal Counsel  
12 Illinois Environmental Protection Agency  
13 1021 North Grand Avenue East  
14 Springfield, Illinois 62794

15 on behalf of the IEPA.

16 ALSO PRESENT:

17 MS. AMY WALKENBACH  
18  
19  
20  
21  
22  
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24

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SCOTT A. TOMKINS

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HILES:

Q. Please state your name and spell it for the record.

A. Sure. Scott, S-c-o-t-t, A. Tomkins, T-o-m-k-i-n-s.

Q. Where do you live, Mr. Tomkins?

A. I live at 6292 Westwind Drive, Springfield, Illinois.

Q. Where are you employed?

A. I'm employed with the Illinois Environmental Protection Agency.

Q. What is your job title there?

A. I'm environmental protection specialist.

Q. When did you begin working at the Agency?

A. March of 1992.

Q. What jobs have you held at the Agency since starting there?

A. I worked in the Standards Unit and I'm working principally in the watershed Management section, Nonpoint source Pollution Unit.

1 Q. Nonpoint Source Pollution --

2 A. Pollution Unit.

3 Q. -- Unit?

4 A. Correct.

5 Q. When did you begin working in that unit?

6 A. In 1997.

7 Q. So for about ten years now?

8 A. Correct.

9 Q. I'd like you to take us through your post  
10 high school education. I don't need precise dates but  
11 give me --

12 A. Sure.

13 Q. -- years of degrees and graduations.

14 A. University of Dubuque, Dubuque, Iowa, three  
15 years, then MacMurray College in Jacksonville,  
16 Illinois, for one year. I have a bachelor of science  
17 degree in biology, minor environmental science.

18 Q. Was that from MacMurray?

19 A. MacMurray College, correct.

20 Q. Any postgraduate education?

21 A. No.

22 Q. How about education through the Agency,  
23 through programs provided or supplied by the Agency?

24 A. I have taken some courses concerning computer

1 and writing skills.

2 Q. Okay. But nothing directed at nonpoint  
3 source work?

4 A. No.

5 Q. Very good. I'd like you to describe your job  
6 responsibilities as an environmental protection  
7 specialist in the Nonpoint Source Pollution Unit.

8 A. Sure. My primary job is contract  
9 administrator of Section 319 Clean Water Act projects.  
10 That's my primary job.

11 Q. What do you do in carrying out that job?

12 A. I review Section 319 application packages  
13 each year, also draft financial assistance agreements,  
14 and then I administrate those financial assistance  
15 agreements.

16 Q. What is your role on behalf of the Agency  
17 with respect to the Piasa Creek Watershed Project?

18 A. What do you mean by -- clarify role.

19 Q. Well, I'd like you to describe your duties  
20 and responsibilities with respect to that project.

21 A. What I was assigned to in 2001 by Rick  
22 Mollohan, who was the previous unit supervisor for  
23 Nonpoint Source Pollution Unit, was to be involved  
24 with observing, meeting with Great Lakes Land Trust,

1 and reviewing documents.

2 Q. Documents from who?

3 A. Documents from Great Rivers Land Trust as  
4 required in the NPDES permit.

5 Q. I think the first time you mentioned that  
6 entity you may have called it Great Lakes Land Trust.

7 A. It's Great Rivers Land Trust.

8 Q. Very good. I may occasionally refer to it as  
9 GRLT.

10 A. That's fine.

11 Q. As we go into our acronyms today.

12 A. Sure.

13 Q. But we're on the same page there --

14 A. Correct.

15 Q. -- that that means Great Rivers Land Trust.  
16 Very good.

17 By the way, I want to ask you -- and you've done  
18 it already, which is great -- if any question I ask is  
19 not clear to you, will you please --

20 A. Sure.

21 Q. -- pause and just tell me that?

22 A. Sure.

23 Q. And I'll try to rephrase the question.

24 otherwise, I'll assume that you understand the

1 question, unless your answer is maybe not connected to  
2 the question. Then we'll circle back around --

3 A. Okay.

4 Q. -- and make sure we're on the same page.

5 A. Sure.

6 Q. Very good. Thank you.

7 Have you had your deposition taken before?

8 A. No, I haven't.

9 Q. well, a few warnings. I already gave you the  
10 first one about clarity of questions. You do have to  
11 give an audible response to every question. So a head  
12 nod won't do it. Even if the answer is yes, you can't  
13 just shake your head yes. You have to say yes.

14 A. Okay.

15 Q. Very good. Have others assisted you in your  
16 work with the Great Rivers Land Trust with respect to  
17 the Piasa Creek Watershed Project?

18 A. What do you mean by assist?

19 Q. I'm talking about others with the Agency in  
20 connection with the duties that you've described, such  
21 as observing the projects, meeting with GRLT  
22 officials, and reviewing documents. Have other people  
23 within the Agency assisted you?

24 A. The only assistance that I'm aware of is

1 communications with my supervisors what we're doing.

2 Q. Okay.

3 A. But I have strictly met with Great Rivers  
4 Land Trust either by myself or in association with  
5 like a watershed tour, where fellow unit staff and  
6 interns have participated in that.

7 Q. I understand. Do you consider yourself to be  
8 the Agency's primary contact person with the Piasa  
9 Creek Watershed Project?

10 A. For the watershed planning portion of it.

11 Q. All right. Now, what do you understand to be  
12 the watershed planning portion of the Piasa Creek  
13 Watershed Project?

14 A. Nonregulatory aspects, discussions about the  
15 watershed plan and that implementation.

16 Q. What other aspects of the Piasa Creek  
17 Watershed Project do you understand to exist other  
18 than the watershed portion?

19 A. Can you define aspects?

20 Q. Well, I -- I'm looking for you to define it,  
21 because really what I'm looking for here, Scott, is  
22 just kind of the array of work that you do with the  
23 Piasa Creek Watershed Project, and then your  
24 understanding of any other aspects of the project that



1 may be covered or addressed by other Agency  
2 representatives. Why don't we start with just --

3 A. Sure.

4 Q. -- what you do. In case you haven't fully  
5 fleshed out for us what you do --

6 A. Sure.

7 Q. -- I want to give you this opportunity to  
8 explain in greater detail what you do with respect to  
9 the Piasa Creek Watershed Project.

10 A. Sure. I have met with them. I have been  
11 with them for watershed tours. I have discussed items  
12 about the geomorphic inventory assessment that was  
13 done, the five-year review package that Great Rivers  
14 Land Trust put together, and then the watershed plan  
15 and all the components of that.

16 Q. Now, what does that leave that others at  
17 Illinois EPA have covered besides yourself?

18 A. It leaves the regulatory permit section.

19 Q. All right. You don't get involved in  
20 permitting?

21 A. No, I don't get involved with decisions with  
22 the permitting.

23 Q. Now, when we -- when you talk about decisions  
24 with permitting, are you referring actually to

1 Illinois-American Water Company's permit or do permits  
2 apply to the Piasa Creek Watershed Project as well?

3 A. I'm only aware of one NPDES permit that  
4 applies to the Piasa Creek and that's with  
5 Illinois-American.

6 Q. Right.

7 A. Alton plant.

8 Q. For the Alton plant. Okay.

9 A. Correct.

10 Q. Okay. I understand. Very good. I'd like to  
11 focus on a time in either 1999 or 2000, Scott. I'm  
12 not sure exactly when this began, but there was a  
13 point in time officials from Illinois EPA worked with  
14 officials from the Illinois-American Water Company to  
15 establish sort of a baseline or an estimate of the  
16 total suspended solids that were expected to be  
17 discharged from the Alton plant. Are you aware of  
18 that?

19 A. I was not involved with this project at that  
20 time.

21 Q. Great. You just anticipated my question.  
22 When did you start to become involved?

23 A. March of 2001.

24 Q. And what happened then that linked you to the

1 Piasa Creek project?

2 A. I was given it to me by Rick Mollohan to --  
3 as a part of the Nonpoint Source Pollution Unit.

4 Q. Very good. Once you began and after you  
5 began, did you do any kind of critical analysis of the  
6 estimate, the TSS loading estimate from the Alton  
7 plant?

8 A. The only involvement I've had with that is  
9 the watershed plan implementation stated the methods  
10 of determining sediment savings.

11 Q. Okay. So you've looked at it then on the  
12 savings side.

13 A. Correct.

14 Q. And not on the side of the anticipated TSS  
15 discharge from the plant?

16 A. Correct. I have not looked at it from any of  
17 the effluent or influent portion of it.

18 Q. Very good. Are you aware that the estimate  
19 established at the outset of the Piasa Creek Watershed  
20 Project, the estimate for TSS loading from the plant  
21 was approximately 3,300 tons per year?

22 A. Define what you mean when that figure was  
23 given.

24 Q. Well, I believe that figure was given prior

1 to March of 2001, prior to your involvement. But have  
2 you done any critical analysis of that figure since  
3 your involvement?

4 A. No. The only thing that I've seen with  
5 savings is the amount that the Great Rivers Land Trust  
6 reports.

7 Q. Very good. What has been your role, if any,  
8 in selecting specific projects for the Piasa Creek  
9 Watershed Project?

10 A. The role for selection has been the Great  
11 Rivers Land Trust. They have just informed me and  
12 kept me informed of that work.

13 Q. Once you have been informed by the Great  
14 Rivers Land Trust of a new project, did you perform  
15 any kind of critical review of that project?

16 A. No.

17 Q. Did anyone in the Agency perform a critical  
18 review to your knowledge?

19 A. Not that I'm aware of.

20 Q. Have you ever approved projects proposed by  
21 the Great Rivers Land Trust?

22 A. No.

23 Q. Have you ever supplied comments on projects  
24 proposed by the Great Rivers Land Trust?

1           A.    The only comments I've supplied is with the  
2 watershed plan implementation itself.

3           Q.    Now, when a new project was proposed to you,  
4 did you do anything to look into that project and  
5 determine how it might function?

6           A.    What do you mean with function?

7           Q.    Well, how the soil savings would be achieved  
8 as proposed by Great Rivers Land Trust.

9           A.    The way that was informed to me by Great  
10 Rivers Land Trust is they have a working contract with  
11 local soil and water Conservation Districts --

12          Q.    Okay.

13          A.    -- that will do the design, installation, and  
14 inspections.

15          Q.    So you didn't perform any kind of critical  
16 review then of the design --

17          A.    No.

18          Q.    -- or installation?

19                Have you performed any critical review of  
20 inspections of projects once implemented?

21          A.    I have observed practices, but I have not  
22 inspected them.

23          Q.    To your knowledge do your superiors at the  
24 Agency approve projects or comment upon them?

1           A.    Not that I'm aware of.

2           Q.    Have you ever supplied comments to Great  
3 Rivers Land Trust regarding the effectiveness of any  
4 particular project they propose to be implemented or  
5 that they have implemented?

6           A.    Could you repeat that again?

7           Q.    Have you ever supplied comments to Great  
8 Rivers Land Trust representatives concerning projects  
9 they propose to implement or projects they have  
10 implemented?

11          A.    Technical or nontechnical?

12          Q.    Let's start with technical.

13          A.    No.

14          Q.    How about nontechnical?

15          A.    General comments of it may be a good project.

16          Q.    All right.

17          A.    Just general feedback like that.

18          Q.    I understand. How frequently since -- since  
19 you began -- strike that.

20                Since you began working with the Great Rivers  
21 Land Trust folks in March of 2001, how frequently have  
22 you physically gone to the Piasa Creek watershed in  
23 connection with the actual Piasa Creek Watershed  
24 Project?

1           A.    Do you mean -- to clarify that, do you mean  
2           at the office, in the watershed, or what do you mean  
3           by that question?

4           Q.    I mean any kind of professional role that  
5           you've filled that relates to that watershed project,  
6           whether it's in the office or out in the field.

7           A.    So you're wanting to know how many times that  
8           I've associated with them or met with them.

9           Q.    Correct.

10          A.    Ten times.

11          Q.    I see that you're referring to a document  
12          there. Does that document -- is that sort of a log of  
13          your visits?

14          A.    Yes.

15          Q.    I wonder if you'd please just run through for  
16          the record, and feel free to refer to that document if  
17          you'd like, and describe what you did during those ten  
18          visits.

19          A.    The first visit was March of 2001. It was  
20          the first basic meeting that we had. It was Alley  
21          Ringhausen, Mark Johnson, and myself.

22          The second one was June 29th of '04, and I think  
23          that referred to the annual meeting that's required in  
24          the NPDES permits.

1 Q. What did you do at that meeting?

2 A. Discussed the project. Alley presented what  
3 they're doing, what they're meeting, what they  
4 anticipated for meeting.

5 Q. What was the next visit?

6 A. The next visit was April 8th of 2005, and to  
7 my understanding it was the same type of annual  
8 meeting that is required.

9 Q. And did you do the same type of work at that  
10 visit as you did at the second visit?

11 A. Yes. They might have -- at that point we  
12 might have went out to look at some of the practices  
13 in the watershed at that point.

14 Q. When did you meet with them for the fourth  
15 time?

16 A. I have down November 30th of '05.

17 Q. What was the purpose of that visit?

18 A. The same, annual.

19 Q. Annual meeting, all right. And the fifth  
20 visit, when was that?

21 A. The fifth visit was October 18th of '06, and  
22 that was meeting with them to discuss the watershed  
23 process and implementation of the best management  
24 practices.



1 Q. Okay. Let's talk some more about those  
2 discussions. Tell us as much as you can recall  
3 regarding that fifth meeting.

4 A. Just basic information on what Great Rivers  
5 Land Trust is doing with the watershed implementation  
6 plan.

7 Q. You mentioned best management practices.

8 A. Correct.

9 Q. Did you in fact perform any kind of critical  
10 review of the activities of Great Rivers Land Trust to  
11 determine if they were indeed following best  
12 management practices?

13 A. What do you mean by critical review?

14 Q. Well, in your position with the Nonpoint  
15 Source Pollution Unit, did you examine the practices  
16 of Great Rivers Land Trust to conclude that they  
17 either were or were not meeting BMP?

18 A. I have done visual observations.

19 Q. And you did that to determine whether they  
20 were in fact meeting best management practices?

21 A. I was there to basically observe what  
22 practices were being installed.

23 Q. Did you conclude at that time that they were  
24 installing best management practices?

1           A.    Yes.

2           Q.    Have you ever concluded that Great Rivers  
3 Land Trust was not following BMP with respect to the  
4 projects at the Piasa Creek Watershed Project?

5           A.    Can you define not following?

6           Q.    Well, I'm going to have to ask you to do  
7 that, sir, because it's -- I don't know technically  
8 what you might have been thinking, but I'm just trying  
9 to find out if you've ever concluded that the  
10 practices of the Great Rivers Land Trust at the Piasa  
11 Creek Watershed Project failed to be best management  
12 practices.

13          A.    No, I never determined that they failed to be  
14 best management practices.

15          Q.    Did you ever tell Alley Ringhausen or anyone  
16 else at Great Rivers Land Trust that you felt that  
17 they were following best management practices?

18          A.    I told them that they were following the  
19 implementation plan, the watershed implementation  
20 plan.  If that's what you mean by best management  
21 practices.

22          Q.    Well, in your opinion did following the  
23 watershed implementation plan constitute best  
24 management practices?

1           A.    They were involved at the watershed  
2 management plan, yes.

3           Q.    BMP was involved in it?

4           A.    Yes.

5           Q.    Very good. To your knowledge has anyone else  
6 at the Agency ever examined the work of Great Rivers  
7 Land Trust in connection with the Piasa Creek  
8 watershed Project and performed any critical review of  
9 that work?

10          A.    No. Not to my knowledge. The other staff  
11 observed, like I did.

12          Q.    What other staff has observed the Piasa Creek  
13 Watershed Project?

14          A.    A fellow worker. Do I give her name? Okay.  
15 Barb Lieberoff. She also is in my unit.

16          Q.    What has Barb observed?

17          A.    The best management practices in the  
18 watershed tours that were given.

19          Q.    And how many times has she been to the Piasa  
20 Creek watershed?

21          A.    Twice.

22          Q.    Anyone else?

23          A.    The Governor Environmental Corps interns.  
24 They're summer college students.

1 Q. Anyone else?

2 A. No.

3 Q. Let's go back to your visits to the Piasa  
4 Creek watershed. I think we're through visit number  
5 five. When did you visit the sixth time and what did  
6 you do during that visit?

7 A. Okay. There were -- I'm sorry, there were  
8 nine altogether.

9 Q. Very good.

10 A. There were five meetings and three watershed  
11 tours that I attended.

12 Q. Okay. Well, let's look at the sixth --

13 A. Sure.

14 Q. -- visit.

15 A. It was the Piasa Creek watershed tour June  
16 14th, 2002.

17 Q. Oh, okay. So the first five you've told me  
18 about were actual meetings.

19 A. Correct.

20 Q. And now you're going to tell me about four  
21 visits?

22 A. Three water --

23 Q. Three visits?

24 A. Three watershed tours.

1 Q. I'm sorry.

2 A. Correct.

3 Q. I'm with you. I'm not doing the math  
4 correctly.

5 A. That's fine. I might have stated ten, but  
6 when I looked back, it was only nine.

7 Q. Let's talk about that first tour that you had  
8 then in 2002.

9 A. Sure.

10 Q. What occurred at that time?

11 A. We met at Lewis and Clark Community College.  
12 There were Great Rivers Land Trust staff there,  
13 Illinois-American Water Company staff, myself, and  
14 there might have been some either board members or  
15 general public.

16 Q. Okay. What occurred during that visit?

17 A. Basically we got into a school bus. It was  
18 not air-conditioned.

19 Q. Oh-oh.

20 A. And took us around to various sites of the  
21 best management practices in the watershed.

22 Q. Very good. Tell me about your second tour.

23 A. Sure. Second tour was June 25th of 2003, and  
24 we met at the office -- Great Rivers Land Trust

1 office. Met with Alley Ringhausen. It was myself,  
2 Barb Lieberoff from our Agency, and I can't remember  
3 how many interns were with us at that point.

4 Q. What occurred?

5 A. Basically, Alley gave us a little  
6 introduction of the project itself, then we went out  
7 and observed some of the BMPs installed in the  
8 watershed.

9 Q. All right. When was the next tour?

10 A. The next tour was July 20th of '05, and it  
11 was very similar to what would happen -- what we did  
12 in the previous tour, but this time Illinois-American  
13 water Company staff was involved, and there could have  
14 been some representatives from the board of Great  
15 Rivers Land Trust also participated in this. And it  
16 was a general information watershed tour also.

17 Q. And finally, the last tour, when did that  
18 occur and what happened?

19 A. That was the three tours that I was involved  
20 with.

21 Q. Okay. Boy, I'm doing it again. Aren't I?  
22 Doing it again.

23 Let me see if I'm clear on the last meeting. If  
24 you would feel free again to refer to your notes,

1 Scott, when did the last meeting occur?

2 A. The last meeting with Great Rivers Land Trust  
3 was October 18th of 2006.

4 Q. Would you explain what occurred at that  
5 meeting?

6 A. I met with Alley Ringhausen. He gave me an  
7 update of what's happening in the watershed  
8 implementation plan. He gave me a tour of the  
9 different practices, such as the Boy Scout lake  
10 project, which was their big project. We ate lunch  
11 and I came back to Springfield.

12 Q. During that meeting with Alley Ringhausen,  
13 did he -- did the two of you discuss the progress of  
14 the Piasa Creek Watershed Project at the five-year  
15 mark?

16 A. No.

17 Q. Have you ever discussed with Mr. Ringhausen  
18 the five-year progress?

19 A. He gave me at the second watershed tour Great  
20 Lakes -- I'm sorry, there we go again -- Great  
21 Rivers', GRLT, summary. It was a binder that included  
22 these elements.

23 Q. Okay. When was that meeting?

24 A. That was handed to me at the second watershed

1 tour, June 25th -- I'm sorry. No. I correct myself.  
2 That was during the third tour.

3 Q. Third tour, all right.

4 A. Right.

5 Q. And when did the third tour occur?

6 A. I have 7/20/05. Because this document was  
7 produced, according to what I see, March of 2004.

8 Q. Why don't we go ahead and have this marked as  
9 an exhibit, please. Call it Exhibit 1.

10 (Deposition Exhibit Number 1 marked for  
11 identification.)

12 Q. I'll hand Exhibit 1 back to you. I'd like  
13 you to just describe for the record really the full  
14 contents of what Mr. Ringhausen gave you at that tour  
15 on July 20th of 2005.

16 A. Are you asking about the tour itself or about  
17 this review package?

18 Q. Let's focus on the review package. I assume  
19 you've just given us the table of contents --

20 A. Correct.

21 Q. -- to a larger document.

22 A. Correct.

23 Q. Describe the larger document, please.

24 A. Sure. The larger document basically has the



1 table of contents which is involved. If you want me  
2 to describe all that, that's all in --

3 Q. well, let's see if we can't find a shortcut  
4 here. Are you saying that he provided you with the  
5 Piasa Creek Watershed Project report dated March 2004?

6 A. Correct.

7 Q. Very good. So what we have marked as Exhibit  
8 1 is just a -- one of the tables of contents to that  
9 report, is that correct?

10 A. Correct. This is the primary one. This is  
11 just a summary table.

12 Q. Very good. All right. I'll give that back  
13 to you. Except I'm -- the court reporter is going to  
14 need to keep Exhibit 1. Thank you.

15 Have you ever heard the term uncertainty  
16 discount?

17 A. No.

18 Q. You're hearing it for the first time today?

19 A. Correct.

20 MR. HILES: would you please mark this as  
21 Deposition Exhibit 2.

22 (Deposition Exhibit Number 2 marked for  
23 identification.)

24 Q. I'm handing you a document marked Defendant's

1 Deposition Exhibit 2. This is a recent order of the  
2 hearing officer in our adjusted standard case, Scott.

3 A. Yes.

4 Q. And I'm going to just ask you to take a  
5 moment to look it over. I'll give you time if needed  
6 to read the whole thing, but I have a simple question  
7 at the outset. Have you seen this document before  
8 today?

9 A. Yes.

10 Q. When did you first see it?

11 A. Last Friday.

12 Q. What were the circumstances of you seeing  
13 that document for the first time?

14 A. I was asked to address questions a, b on page  
15 8.

16 Q. Have you reviewed at all the questions that  
17 are found prior to page 8?

18 A. I have looked through, but I haven't in  
19 detail reviewed.

20 Q. Have you supplied any information to the  
21 Agency with respect to the questions which precede  
22 page 8?

23 A. In what terms? Can you restate the question  
24 again?

1 MR. HILES: would you please read back the  
2 question?

3 (The reporter read the last question.)

4 A. could you define Agency?

5 Q. Illinois Environmental Protection Agency,  
6 your employer.

7 A. staff?

8 Q. Yes.

9 A. Verbal comment.

10 Q. Okay. which questions did you supply a  
11 verbal comment upon?

12 A. Question 3a.

13 Q. Is that on page 3?

14 A. Correct.

15 Q. What was your comment on question 3a?

16 A. Define -- can you say that again?

17 Q. What was your comment on question 3a provided  
18 to Agency staff?

19 A. I spoke to them about the educational  
20 outreaches.

21 Q. There have been educational outreaches.

22 A. Yes.

23 Q. Haven't there?

24 A. Yes, yes.

1 Q. Did you speak with them concerning habitat  
2 restoration?

3 A. Stream stabilization.

4 Q. So you commented to someone on the Agency  
5 staff about stream stabilization?

6 A. Correct.

7 Q. That that has been an accomplishment at the  
8 Piasa Creek Watershed Project?

9 A. The discussions went back to the geomorphic  
10 inventory that addresses the 30 transections or  
11 cross-sections of the stream that was used.

12 Q. Okay. What specifically was your comment,  
13 Scott?

14 A. That that was used to determine stream -- how  
15 did I -- stream -- it's not bed mode, but the  
16 substance on the stream that is being measured when  
17 they did the cross-sections.

18 Q. Very good. And who did you talk to about  
19 educational outreach?

20 A. My supervisor.

21 Q. Anyone else?

22 A. Not that time.

23 Q. Who did you talk to about habitat  
24 restoration?

1           A.    My supervisor.

2           Q.    I don't understand the link, by the way, of  
3 the geomorphic study to habitat restoration.  Could  
4 you explain that?

5           A.    Sure.  The geomorphic assessment was an  
6 inventory assessment that was done in 2002 by Shannon  
7 & Wilson on behalf of the Great Rivers Land Trust.  
8 What they did is they went out and conducted 30  
9 cross-sections across the stream at various points in  
10 the watershed, established a monument.  And the intent  
11 -- my understanding of the intent is to measure stream  
12 channel movements, composition, vegetation, so they  
13 can come back in further years and use that as a  
14 baseline.

15          Q.    Did you provide comments to any other Agency  
16 staff with respect to question 3a on page 3 other than  
17 the ones you've just told us about?

18          A.    Repeat that question again and define it.

19          Q.    Did you provide any other comments with  
20 respect to question 3a on page 3 of the order other  
21 than the comments you've just told us about?

22          A.    To my knowledge that was the basic  
23 discussions.

24          Q.    Very good.  I'd like you to now look at the

1 rest of this order, Scott. And again my question is  
2 going to be, prior to the questions on page 8, have  
3 you addressed any of the questions with Agency staff?

4 A. Can you clarify if this was on Friday?

5 Q. Really, what I'm interested in knowing is  
6 from the time this order was issued, which was Monday,  
7 the 8th of August, have you discussed any of these  
8 questions with Agency staff other than question 3a on  
9 page 3 and the questions which appear on page 8?

10 MR. SOFAT: Scott, do you need time to go  
11 through this?

12 A. Yes.

13 MR. SOFAT: Can we just give him time?

14 MR. HILES: Sure. Let's go off the record.

15 (Discussion off the record.)

16 Q. You've just taken some time to review the  
17 hearing officer's order. And again I'll return to the  
18 question, and that is which of the questions in that  
19 order, other than 3a on page 3 and the questions on  
20 page 8, have you examined and discussed with Agency  
21 staff?

22 A. I have discussed 2c.

23 Q. For now let's just go through and identify  
24 them. 2c is the first one. What other questions?

1 A. 5 and the paragraphs on the top of page 8.

2 Q. Let's go back to 2c. What have you discussed  
3 with Agency staff with respect to question 2c?

4 A. What we discussed was that we were not aware  
5 of the Illinois State Water Survey's -- well, let me  
6 think a minute, please. I was not aware of any direct  
7 Illinois State Water Survey's involvement with the  
8 BMPs in Great Rivers Land Trust watershed  
9 implementation plan.

10 Q. Has the Illinois State Water Survey been  
11 involved in the BMPs?

12 A. The only knowledge I have is they've been  
13 involved at the beginning of this when -- back in 2000  
14 with the adjusted standards request.

15 Q. Who did you discuss this with at the Agency?

16 A. Supervisor and -- my supervisor.

17 Q. Just with your supervisor?

18 A. With the aspect of Illinois State Water  
19 involvement I've talked to legal people about that,  
20 too, legal section.

21 Q. Have you talked to anyone at the Illinois  
22 State Water Survey about that?

23 A. If I did, it was very informal, short  
24 discussions.

1 Q. What did you discuss with your supervisor?

2 A. I just discussed that Illinois State Water  
3 Survey wasn't to my knowledge involved with the BMP  
4 designs or implementation.

5 Q. Did she tell you that the Illinois State  
6 water survey should have been involved with the BMPs?

7 A. No.

8 Q. Did she have anything critical to say about  
9 the Illinois State Water Survey's lack of involvement  
10 with the BMPs?

11 A. No.

12 Q. So have you just told us the essence of your  
13 discussion with your supervisor --

14 A. Correct.

15 Q. -- concerning question 2c?

16 A. Correct.

17 Q. Very good. And then I think you said the  
18 other question was question number 5, which really  
19 kind of rolls into the questions on page 8, does it  
20 not?

21 A. Correct.

22 Q. All right. Before we get to question 5, I  
23 want to go back to some other issues.

24 Have you ever advised representatives of Great



1 Rivers Land Trust that they should be discounting in  
2 any way the amount of soil saved in the projects they  
3 were implementing at the Piasa Creek Watershed  
4 Project?

5 A. Can you define discounting?

6 Q. Well, let's back up a little bit. Do you  
7 agree with me that on a quarterly basis Great Rivers  
8 Land Trust issues a report examining all of the  
9 projects implemented at the Piasa Creek Watershed  
10 Project?

11 A. The quarterly reports I receive from Great  
12 Rivers Land Trust informed of the projects.

13 Q. And the information contained in those  
14 reports includes information of soil saved on an  
15 annual basis relayed in tons, is that correct?

16 A. Some have, but not all of them.

17 Q. All right. For those where tons of soil  
18 saved have been reported, have you ever concluded that  
19 there should be some discounting of the tons of soil  
20 saved?

21 A. No.

22 Q. Have you ever concluded that Great Rivers  
23 Land Trust might be exaggerating the estimated tons of  
24 soil saved?

1           A.    No.

2           Q.    Have you ever had discussions with others at  
3 the Agency to the effect that Great Rivers Land Trust  
4 might be exaggerating the tons of soil saved?

5           A.    The only discussions I had is the method that  
6 they're determining the sediment reduction.

7           Q.    So you have not had discussions with others  
8 at the Agency concerning some sort of discounting  
9 factor, is that correct?

10          A.    That's correct.

11          Q.    To your knowledge has anyone at the Agency  
12 concluded that Great Rivers Land Trust should be  
13 discounting the estimated tons of soil saved in the  
14 projects at the Piasa Creek Watershed Project?

15          A.    No, I'm not aware of that.

16          Q.    Are you familiar with EPA's final policy on  
17 water quality trading?

18          A.    No, I'm not.

19          Q.    Have you ever read it?

20          A.    What specific document are you talking about?

21          Q.    I'm going to show you a document -- we won't  
22 have it marked as an exhibit -- and the heading is  
23 United States Environmental Protection Agency, Office  
24 of Water, Water Quality Trading Policy, dated January

1 13th, 2003. Have you ever read that policy before?

2 A. I have not read through that policy.

3 Q. Prior to issuing a final policy, the one that  
4 I've just shown you, EPA issued a draft policy in the  
5 1990s. Have you ever read the EPA draft policy?

6 A. Do you have a certain date or a certain  
7 document number to that?

8 Q. I do. I'm going to show you, without  
9 marking, a document that was published in the Federal  
10 Register in May of 1996, and it's entitled Draft  
11 Framework for Watershed-Based Trading. Do you recall  
12 having read that document?

13 Actually, there are many copies in there if you  
14 want to just take the one off the top.

15 A. Okay. No.

16 Q. May I have that back, please?

17 A. Sure.

18 Q. Thank you. Are you familiar with an equation  
19 developed by the United States Department of  
20 Agriculture known as the Revised Universal Soil Loss  
21 Equation?

22 A. Yes.

23 Q. When did you become familiar with that?

24 A. We use that in section 319 BMP workbook to

1 estimate pollutant loading reductions with our Section  
2 319 projects.

3 Q. Rather than read the name of that equation  
4 each time, I'm just going to refer to it as RUSLE.

5 A. RUSLE.

6 Q. RUSLE. Good. That's better yet.

7 Do you work with RUSLE on a regular basis?

8 A. I work with RUSLE within an Excel spreadsheet  
9 that does calculations using RUSLE.

10 Q. So you work with it on the calculation side?

11 A. Correct.

12 Q. Have you ever examined the inputs that go  
13 into or that went into the preparing of the RUSLE  
14 equation?

15 A. I have knowledge of their using like soil  
16 slope, climate data, different elements like that.

17 Q. Do you know if RUSLE is used to calculate  
18 soil savings at the Piasa Creek Watershed Project?

19 A. They have stated that in the watershed  
20 management section -- or, watershed implementation  
21 plan that RUSLE and Universal Soil Loss Equation is  
22 used.

23 Q. Do you believe that RUSLE and Universal Soil  
24 Loss Equation are appropriate for calculating soil

1 savings at the Piasa Creek Watershed Project?

2 A. Yes.

3 Q. Do you consider RUSLE to incorporate  
4 discounting factors to account for uncertainty?

5 A. I'm not aware of those.

6 Q. So they may incorporate discounting factors  
7 and you just don't know?

8 A. The understanding I have with RUSLE  
9 concerning how they use it with United States  
10 Department of Agriculture NRCS, I'm not aware of any  
11 discounting.

12 Q. Have you ever heard the term retirement  
13 credits used in connection with nonpoint source TSS  
14 trading?

15 A. No.

16 Q. Have you ever heard the term retirement  
17 discount used in connection with nonpoint source TSS  
18 trading?

19 A. No.

20 Q. Do you have an understanding of either term,  
21 retirement credits or retirement discounts?

22 A. I do not know the definition to those.

23 Q. To your knowledge has anyone in the Agency  
24 ever suggested to Great Rivers Land Trust that

1 retirement credits or retirement discounts ought to be  
2 applied to TSS tonnage saved?

3 A. Not to my knowledge.

4 Q. The same question with respect to  
5 Illinois-American Water Company.

6 Let me just restate the question.

7 A. Please do.

8 Q. To your knowledge has anyone at the Agency  
9 suggested to Illinois-American Water Company that  
10 retirement credits or retirement discounts ought to be  
11 applied to tons of TSS saved at the Piasa Creek  
12 Watershed Project?

13 A. Not to my knowledge.

14 Q. Let's turn now to Exhibit 2 again, Scott, and  
15 to that question 5, which is on the next to the last  
16 page. I believe you testified earlier that this is  
17 the one question that you were asked to provide  
18 specific input on here at the Agency. Is that  
19 correct?

20 A. 5a, correct.

21 Q. But not 5b?

22 A. 5b also, too, correct.

23 Q. Let's start with 5a. Has the Agency made a  
24 determination of effectiveness?

1           A.    Not to my knowledge.

2           Q.    Why not?

3           A.    To my understanding, that is the Permit  
4 Section's responsibility.

5           Q.    Do you know why the Permit Section did not  
6 make a determination of effectiveness?

7           A.    No, I don't.

8           Q.    Did you urge them to make a determination of  
9 effectiveness?

10          A.    I provided a memo to them November 25th,  
11 2005, overviewing the project.

12          Q.    Do you have a copy of that memo with you  
13 today?

14               MR. SOFAT:  Brad, can we stop here?

15               MR. HILES:  Just to take a break?

16               MR. SOFAT:  No, just to talk about this 5a  
17 and b that you're talking about.  Or do you want to be  
18 on the record?  That's fine, too.

19               MR. HILES:  Let's stay on the record.

20               MR. SOFAT:  Okay.  We are going to submit our  
21 responses on the 21st.  I can understand you want to  
22 know the essence of discussion and stuff.  I don't  
23 have a problem.  But I still haven't, you know,  
24 prepared the responses to these for the Board.

1 MR. HILES: I understand.

2 MR. SOFAT: So I think anything less than  
3 showing everything, I think I'm okay with that, but I  
4 think if you're -- it's in the process of preparation  
5 is what I'm saying.

6 MR. HILES: Well, let me continue to explore  
7 with this witness his inputs on these two questions.

8 MR. SOFAT: Okay. Yeah. I don't have a  
9 problem with the essence of what happened.

10 Q. Scott, let's turn again to the -- I believe  
11 you said memo that you provided to the permitting  
12 section.

13 A. Correct. Internal memo.

14 Q. And that was November 5, did you say, of  
15 2005?

16 A. I'm sorry, November 21st.

17 MR. HILES: while you look through your  
18 documents, I'm going to ask the court reporter to mark  
19 this, please, as Exhibit 3.

20 (Deposition Exhibit Number 3 marked for  
21 identification.)

22 A. Yes, I have it in front of me.

23 Q. I'm going to hand you a document marked  
24 Deposition Exhibit 3. And I think what I'll have you



1 do is compare Deposition Exhibit 3 with the document  
2 that you have just located in your files and tell me  
3 if these are the same documents.

4 A. Yes, they are. Yes, it is.

5 MR. HILES: Now, I would like to also have  
6 the court reporter mark your document, please, as  
7 Deposition Exhibit 4.

8 (Deposition Exhibit Number 4 marked for  
9 identification.)

10 Q. All right. I'm handing your document now  
11 marked Deposition Exhibit 4 back to you and I've put  
12 it side by side with Deposition Exhibit 3. It does  
13 appear to me that there's a notation on Deposition  
14 Exhibit 4 that does not appear on Deposition Exhibit  
15 3. It's in the upper right-hand corner, not the  
16 extreme upper right-hand corner, but it's in all  
17 capitals and it's underscored, and it says: "Illinois  
18 EPA 5-Year Review Memo." Do you see that?

19 A. Correct.

20 Q. Now, that doesn't appear on 3. Is there  
21 anything else in Exhibit 4 that does not appear on 3?  
22 Take all the time you need to review it.

23 A. That's the only difference I can see, also.

24 Q. Thank you. When, if you know, was this added

1 designation put on the document that we see here as  
2 Deposition Exhibit 4?

3 A. I do not know that.

4 Q. Did you put it on there?

5 A. No, I didn't.

6 Q. Do you know who put it on there?

7 A. No, I do not know the person that put that on  
8 there.

9 Q. Exhibit 3 and Exhibit 4, do you consider  
10 these to be a determination of effectiveness?

11 A. No.

12 Q. Why not?

13 A. I consider this document to be an overview of  
14 the project's compliance with the NPDES permit  
15 condition.

16 Q. Which is why you gave it to the Permit  
17 Section?

18 A. Correct.

19 Q. Did you consider the project to be in  
20 compliance with the NPDES permit held by the Alton  
21 plant of Illinois-American Water Company?

22 A. Yes, I put that in my conclusions.

23 Q. Very good. How did you come to prepare this?  
24 What prompted you to do it?

1           A.    I was contacted by Illinois-American Water  
2 Company about their provision and renewal of their  
3 permit.

4           Q.    Who contacted you from the water company?

5           A.    Tim -- I -- I can't pronounce his last --  
6 Genz or -- I have to review my notes to get the  
7 correct spelling of his last name.  Tim G-a-n-z.

8           Q.    Tim Ganz.

9           A.    Ganz, correct.

10          Q.    Very good.  What did Mr. Ganz tell you that  
11 prompted you to prepare the memo?

12          A.    He did not tell me to prepare the memo.  He  
13 was inquiring information about the renewal process.

14          Q.    I understand.  And what was it about that  
15 inquiry that prompted you then to prepare the memo?

16          A.    Blaine Kinsley, k-i-n-s-l-e-y --

17          Q.    Yes.

18          A.    -- from the Permit Section requested me to  
19 prepare this memo for him.

20          Q.    Did you supply any other information to  
21 Mr. Kinsley in connection with Mr. Ganz's inquiry?

22          A.    No other written.

23          Q.    Let's take a look, please, at the second page  
24 of the memo, Table 1.

1           A.    Yes.

2           Q.    The conclusions on Table 1, were those  
3 up-to-date when this memo was prepared in 2005?

4           A.    It was a table that was available with the  
5 Great Rivers Land Trust Web site that I used and just  
6 took it off the web site.

7           Q.    All right. I see in Table 1 that you  
8 actually cite to that web site and cite specifically  
9 to the report of January 2002.

10          A.    Correct.

11          Q.    Did you search for more updated information  
12 at that time?

13          A.    On the web site.

14          Q.    Only on the web site?

15          A.    Correct.

16          Q.    Was there, in fact, more acres benefited as  
17 of the time you prepared this memo, November 21 of  
18 2005, than the acres that are reflected here in Table  
19 1?

20          A.    What I have in front of me is a spreadsheet  
21 that the Great Rivers Land Trust used to document in  
22 years increment the landowners involved, what phase,  
23 detention basins, talking about the different best  
24 management practices, cost involved, cost per ton,

1 government cost. It's basically just a basic  
2 spreadsheet.

3 Q. I'm familiar with that spreadsheet.

4 A. You're familiar with this spreadsheet?

5 Q. I'm just not sure why you put it in front of  
6 you and why you're looking at it right now. Why don't  
7 you tell us that?

8 A. Sure. The date on this spreadsheet was  
9 Wednesday, October 18th, 2006.

10 Q. Very good.

11 A. There is information on that up to 2006, but  
12 I did not have this in my possession when I created  
13 the memo.

14 Q. I understand. Will you agree with me that  
15 the acres benefited as of November 21, 2005, was  
16 greater than the acres benefited as reflected in Table  
17 1 of your memo?

18 A. According to the spreadsheet, in 2005 --  
19 well, as of 2004 it says 2,623 acres.

20 Q. Let's go to tons of soil saved.

21 A. Okay.

22 Q. And what I'm looking for, Scott, is just a  
23 total figure of the tons of soil saved, if you can  
24 find that, as of November 21, 2005, from all sources,

1 whether it's gully erosion or streambank erosion.

2 A. Okay.

3 Q. And if you need to give it to me in pieces,  
4 I'll write them down and we'll add them up.

5 A. Okay. I will give you years, each year on  
6 this sheet.

7 Q. Very good.

8 A. And you can add it up.

9 As of completed projects 2001, soil saved 556  
10 tons.

11 Q. Was that 556?

12 A. 556, correct.

13 Q. All right.

14 A. Completed projects as of 2002, soil savings  
15 932 tons.

16 Q. I have that.

17 A. Year 2004 --

18 Q. Did you skip over 2003?

19 A. Yes. I'm sorry.

20 Q. That's okay.

21 A. 2003, 932 tons.

22 Q. Please continue.

23 A. As of 2004, 2,164 tons.

24 MR. SOFAT: Can you repeat that?

1           A.    2,164 tons.

2           And I do not know an aspect of 2005 when this was  
3 exactly calculated.

4           Q.    Do you have numbers on that spreadsheet from  
5 2005?

6           A.    I do.  It just says summary of year completed  
7 2005, 478.

8           Q.    Tons of soil saved?

9           A.    Correct.

10          Q.    I'm going to add these up.  You'll have to  
11 give me a minute, though.  Hold on.

12          Adding up the figures that you have given me from  
13 2001 through 2005 the total I arrived at was 5,062  
14 tons.

15          MR. HILES:  Sanjay, are you doing the same  
16 drill?

17          MR. SOFAT:  Am I off by -- is it 556, 932,  
18 932, 2,164, and 478?  Those are the numbers?

19          MR. HILES:  Those are the numbers I have.

20          A.    Do you want me to repeat it again?

21          MR. SOFAT:  No, it's okay.  Thank you.

22          Q.    I think we both wrote down the same numbers,  
23 scott.  Now it's just a matter of whether we can  
24 arrive at the same total.

1 MR. SOFAT: I'm getting 5,162.

2 Q. Okay. I think we can agree that the number  
3 is over 5,000 tons. Scott, have you ever supplied a  
4 figure to the permitting section that is an  
5 all-inclusive figure through 2005 that is a figure in  
6 excess of 5,000 tons?

7 A. No.

8 Q. I apologize if I've asked this question  
9 before, but to your knowledge has the permitting  
10 section performed a determination of effectiveness?

11 A. Not to my knowledge.

12 Q. Let's go back to the hearing officer's order  
13 on the last page, please. And I'd like to direct your  
14 attention, Scott, to the second full paragraph set  
15 forth in quotation marks near the top of page 8. Do  
16 you see that paragraph?

17 A. Yes, I do.

18 Q. After the three-dot ellipsis, the wording is  
19 as follows: "In addition to the fifth year review,  
20 the Agency will continue to be involved in the site  
21 selection process for the various aspects of the  
22 project ..."

23 Has the Agency continued to be involved in the  
24 site selection process for the various aspects of the



1 project?

2 A. I was never directly involved with site  
3 selection process. I just reviewed what methods and  
4 what approaches that was used to then.

5 Q. To your knowledge as anyone else at the  
6 Agency been involved in the site selection process?

7 A. Not to my knowledge.

8 Q. Let's go to the rest of that sentence. Have  
9 you or to your knowledge anyone else at the Agency  
10 helped review and implement management practices?

11 A. I have observed and I have received  
12 information about the practices.

13 Q. Do you believe that constitutes the review  
14 and implementation of management practices?

15 A. How do you define review and implementation?

16 Q. I'm just having to ask you to define that for  
17 me because this is a directive to the Agency, Scott,  
18 and so I'm asking for your interpretation of this  
19 right now.

20 A. Like I formerly stated, the design,  
21 implementation, and inspection was through contracts  
22 with Great Rivers Land Trust with Soil and Water  
23 Conservation Districts.

24 Q. I understand that. But my question to you

1 is, have you or others at the Agency helped review and  
2 implement those management practices?

3 A. I have seen those practices.

4 Q. Do you consider that to be a review of those  
5 practices?

6 A. Define review.

7 Q. Again, I'm going to have to just ask for your  
8 definition of it, Scott.

9 A. I have seen those practices through the  
10 quarterly reports and the information provided me  
11 through Great Rivers Land Trust.

12 Q. Do you consider that to be a review of the  
13 management practices?

14 A. I consider that to be review if they're  
15 implementing the watershed management plan.

16 Q. And to your knowledge were they implementing  
17 the watershed management plan?

18 A. To my knowledge.

19 Q. And again, continuing on that same quoted  
20 paragraph on page 8, have you or anyone else at the  
21 Agency analyzed quarterly reports submitted by Great  
22 Rivers Land Trust?

23 A. How do you define analyze?

24 Q. Again, I'm going to have to ask you for your

1 definition, Scott, because this is a directive --

2 A. I have received them and looked at them.

3 Q. Do you consider that to be an analysis of the  
4 quarterly reports?

5 A. I have considered that compliance with the  
6 NPDES permit requirement.

7 Q. And have you met periodically with the Great  
8 Rivers Land Trust staff?

9 A. As I quoted and gave you those meeting dates,  
10 yes.

11 Q. Let's return to question 5a on page 8. Other  
12 than what you've testified to already, what have been  
13 your discussions with Agency staff with respect to  
14 question 3a -- or 5 -- I'm sorry, it is 3a -- no, it's  
15 5a. Let me clear that up so we have a clear question  
16 here.

17 Other than what you've testified to already, what  
18 have been your discussions with Agency staff with  
19 respect to question 5a?

20 A. The discussions with Agency staff, there has  
21 been a quote in the Illinois Pollution Control Board  
22 in their 2000 from Rick Mollohan and Don Roseboom  
23 quoting that determining effectiveness of such  
24 watershed project and similar watershed projects

1 cannot be done until or after ten years.

2 Q. Is that why the Agency has not made a  
3 determination of effectiveness at the five-year mark?

4 A. I don't know.

5 Q. Well, why has that even been discussed that a  
6 determination of effectiveness cannot be made until  
7 ten years?

8 A. Because of this question and me answering  
9 this question.

10 Q. Did anyone at the Agency tell you at the  
11 five-year mark, hey, we need to make a determination  
12 of effectiveness here?

13 A. What do you mean by effectiveness?

14 Q. Well, I'm just using the term that came out  
15 of the Board's order, Scott. I'm going to have to ask  
16 you about that. Has anyone at the agency told you  
17 that the Agency needed to make a determination of  
18 effectiveness at the five-year mark?

19 A. The only discussions about that would have  
20 been with the Permit Section and I was requested to  
21 make that memo review.

22 Q. And the memo you're referring to here is  
23 Deposition Exhibit 3 and Deposition Exhibit 4?

24 A. Correct.

1 Q. Is it your testimony that based upon inputs  
2 in 2000 from those two gentlemen you mentioned that  
3 the Agency declined to make a determination of  
4 effectiveness until the project had run its course  
5 over ten years?

6 A. I do not know the process that the Permit  
7 Section used.

8 Q. What other discussions have you had with  
9 staff with respect to question 5a?

10 A. The term effectiveness, what do you -- what  
11 does this mean by effectiveness.

12 Q. Tell us about those discussions.

13 A. Is effectiveness in the aspects of cost put  
14 into the project? Is effectiveness involved with  
15 sediment savings?

16 Q. And what conclusions were reached?

17 A. Conclusions to my knowledge that both could  
18 possibly be used.

19 Q. In your discussions with Agency staff did  
20 anyone conclude that when effectiveness focuses on  
21 tons of soil saved that the Piasa Creek watershed has,  
22 in fact, been effective?

23 A. They have met goals set forth.

24 Q. Well, they've met the ten-year goal, in fact,

1 haven't they?

2 A. To my knowledge the ten-year goal was 6,600  
3 tons.

4 Q. Are you aware that they have met and exceeded  
5 that goal?

6 A. Through communications by Great Rivers Land  
7 Trust.

8 Q. So your answer is yes?

9 A. With the communications. I have not seen  
10 that on paper yet. I haven't seen it on the  
11 spreadsheet.

12 Q. Do you have any reason to doubt it?

13 A. No.

14 Q. Let's turn to question 5b. Well, actually,  
15 let's go back to question 5a. You also mentioned  
16 effectiveness with respect to cost, did you say?

17 A. Correct.

18 Q. What were the discussions with respect to  
19 cost-effectiveness?

20 A. If the costs -- enough -- if the cost was  
21 appropriate to what practices were installed.

22 Q. And in your discussions with Agency staff  
23 what, if any, conclusions were reached on that topic?

24 A. That the costs were in line.

1 Q. So basically, the conclusion was that the  
2 costs have been effective. Is that correct?

3 A. Effective for what? For tonnage of soil  
4 saved?

5 Q. I don't know. These were your discussions,  
6 so I don't know, Scott. I'm asking you.

7 A. The conclusion was that the total tons saved  
8 in my opinion was in line with costs.

9 Q. Were there any other discussions with respect  
10 to 3a involving you with Agency staff.

11 Let me strike that. I keep getting this number  
12 wrong.

13 Have there been any other discussions with  
14 respect to question 5a involving you other than the  
15 discussions you've already testified to?

16 A. They were the main discussions.

17 Q. Well, were there some ancillary discussions?

18 A. If there was, I can't remember them right  
19 now.

20 Q. Very good. Let's move on to question 5b.  
21 What discussions have you had with Agency staff with  
22 respect to question 5b?

23 A. 5b was discussions concerning how GRLT tracks  
24 and documents the sediment savings within the

1 watershed through the implementation of the best  
2 management practices.

3 Q. And specifically what have you discussed with  
4 Agency staff?

5 A. The methods that they recorded and then the  
6 sediment savings as I have in those documents.

7 Q. Well, let me ask you for your answer to  
8 question 5b right now. As the person from the Agency  
9 who has spent the most time with officials at Great  
10 Rivers Land Trust and the most time reviewing  
11 documents about the Piasa Creek Watershed Project,  
12 what is your answer to question 5b?

13 A. From my perspective, I do not see any problem  
14 with them generating or tracking or documenting  
15 sediment savings within the watershed plan  
16 implementation.

17 Q. Do you mean by that that Great Rivers Land  
18 Trust has accurately tracked the generation of  
19 sediment savings in the Piasa Creek watershed?

20 A. To the best of my knowledge.

21 Q. Have you -- are there any other discussions  
22 that you've had with Agency staff with respect to  
23 question 5b other than what you've told us about?

24 A. The discussions that I can recall have been



1 centered around the methods of generating sediment  
2 savings, the sediment endpoint reduction method, the  
3 way that they have been documented, and then the  
4 reports that have generated them.

5 Q. Now, question 5b also includes a comparison  
6 to the load from the Alton plant. Have you done any  
7 comparison to the load?

8 A. No, I have not compared the load.

9 Q. Who does that at the Agency?

10 A. Bob Mosher from the Standards Unit did that.

11 Q. Have you discussed any of this with  
12 Mr. Mosher?

13 A. I was just involved with conference calls  
14 with you when they were discussed and you were there  
15 when they were discussing that.

16 Q. Okay. So all your discussions with  
17 Mr. Mosher have been in my presence?

18 A. Correct.

19 Q. Or at least over the telephone?

20 A. Correct.

21 Q. Very good. Have you read the Agency's  
22 recommendation pleading in this case?

23 A. You're referring to the 2000?

24 Q. No. I'm actually referring to a pleading

1 filed in 2006 by Mr. Sofat and it's entitled  
2 Recommendation. It is a pleading which opposes  
3 Illinois-American Water Company's request for an  
4 extension of the adjusted standard.

5 MR. SOFAT: It's a recommendation and it's  
6 filed in 2007, so --

7 A. Could I see a copy of that, please?

8 MR. SOFAT: Is this the one?

9 MR. HILES: It is the one.

10 Q. I'm handing you a document, unmarked as an  
11 exhibit, entitled Recommendation of the Illinois  
12 Environmental Protection Agency. I'll ask you to take  
13 whatever time you need to just leaf through that in  
14 order to determine if you've read it prior to today.

15 A. To my understanding, this is the same one  
16 that was produced by Tom, our other attorney.  
17 Correct? Tom?

18 Q. I don't know whether it was or not, Scott.

19 A. If it's the same document as I've seen that  
20 Tom produced, yes.

21 Q. Well, let me direct your attention, please,  
22 to page 8 of that document.

23 A. Yes.

24 Q. You see at the bottom of page 8 there is a

1 table that carries on to page 9.

2 A. Correct.

3 Q. Were you asked to conduct any research into  
4 the soil conservation efforts of those permit holders  
5 identified in pages 8 and 9?

6 A. I was asked by my supervisor to help in the  
7 development of this table.

8 Q. And did you help in the development of that  
9 table?

10 A. Yes, I did.

11 Q. Are you familiar with the soil conservation  
12 practices conducted by those companies?

13 A. The only knowledge I have with them is the  
14 information provided by them, and that was done via  
15 e-mail correspondence.

16 Q. In connection with your provision of this  
17 information for the recommendations brief?

18 A. with this development of this table.

19 Q. Okay. Very good. So prior to conducting  
20 your research into those projects, you did not have  
21 any personal knowledge of the information that's on  
22 that table, is that correct?

23 A. I am aware of the city of Greenville's NP --  
24 I'm aware with Greenville's Section 319 projects, but

1 that was in compliance with a TMDL, total management  
2 discharge limit requirement.

3 Q. Is that the only one you're familiar with?

4 A. I have some knowledge, but very limited, of  
5 the Lake Springfield initiative, but I don't know if  
6 it's directly related to that NPDES. I'm aware that  
7 they're doing shoreline stabilization issues out  
8 there. And the same with Otter -- Otter Lake.

9 Q. I have some questions for you about those  
10 permit holders and their soil conservation efforts.  
11 Let's begin with Otter Lake, please. Are you aware  
12 that the Otter Lake Water Commission uses lime  
13 softening in their treatment process?

14 A. I'm not aware of the methods of what they're  
15 using within the lake.

16 Q. Would you agree with me that a water company  
17 which uses lime softening, if they were to return  
18 their wastewater untreated to the lake, would actually  
19 be adding sediment to the lake that was not originally  
20 in the lake?

21 A. I'm not familiar with the process for  
22 determining that.

23 Q. Are you aware that Otter Lake is listed by  
24 USEPA as an impaired water body?

1           A.    Yes.

2           Q.    And are you aware that that is due to soil  
3 runoff causing excessive algogrowth and manganese  
4 content?

5           A.    It's one of the impairments, yes.

6           Q.    So that Otter Lake Water Commission really  
7 doesn't have a choice but to engage in soil  
8 conservation measures on Otter Lake, does it?

9           A.    I don't know.

10          Q.    Are you aware that the Otter Lake Water  
11 Commission has received a Phase 1 ICLP grant in excess  
12 of \$50,000 to assist in their water -- in their soil  
13 conservation measures?

14          A.    Is that Illinois Clean Lakes Program?

15          Q.    It is.

16          A.    Yes.

17          Q.    And are you aware that they've received a  
18 Phase 2 grant of \$165,000, again from the state of  
19 Illinois, to assist in their soil conservation  
20 measures?

21          A.    Is it a PLWIP grant?

22                    COURT REPORTER:  I'm sorry?

23          A.    Priority Lake -- PLWIP, Priority Lakes --  
24 it's a program through the Lakes Department that

1 provides Section 319 money for restoration work. It's  
2 called PLWIP.

3 Q. And are you familiar with that grant being  
4 given to the Otter Lake Water Commission?

5 A. I'm aware that one was given, but I'm not --  
6 I don't administrate it or I don't have direct contact  
7 with that.

8 Q. And with that grant the Otter Lake Water  
9 Commission was required to use that money for soil  
10 stabilization measures, is that correct?

11 A. I have not seen the agreement between  
12 Illinois EPA and with Otter Lake.

13 Q. Let's turn to the Clinton Lake situation.  
14 And you can feel free to refer to the table that you  
15 helped prepare. Are you aware that Ameren has  
16 experienced sedimentation problem in Clinton Lake?

17 A. If that information was available, it was  
18 through the Soil and Water Conservation District.

19 Q. Are you aware of any actual conservation  
20 measures conducted at Clinton Lake or near its  
21 shoreline by Ameren?

22 A. I was provided information through the soil  
23 and Water Conservation District about practices.

24 Q. Okay. Did any of those practices rise to the

1 level of actual conservation measures, Scott?

2 A. What do you mean by conservation measures?

3 Q. Well, in fact, isn't it true that the money  
4 Ameren has spent with respect to Clinton Lake has been  
5 devoted to survey and monitoring of erosion and  
6 sedimentation in the lake?

7 A. I would have to look at my e-mail  
8 correspondence.

9 Q. So sitting here today, you don't know?

10 A. I'd have to refer back to correspondence.

11 Q. Do you have your e-mail correspondence with  
12 you?

13 A. I will look and see if I have it concerning  
14 that.

15 Q. Let's do that.

16 A. I do not have that information with me.

17 Q. Very good. Well, let's continue.

18 Lake Springfield. I have a number of questions  
19 about Lake Springfield and the efforts of City Water,  
20 Light and Power. Are you aware that City Water, Light  
21 and Power uses lime softening in its water treatment  
22 process?

23 A. No.

24 Q. I apologize if I've asked this question

1 before, but do you know whether lime softening  
2 actually adds total suspended solids to wastewater?

3 Do you know that one way or the other?

4 A. Do you mean have I read it or do I know it to  
5 be fact or what are you asking?

6 Q. Let's start with, have you read it?

7 A. The only -- if I would have heard it, it  
8 would have been possibly with just general information  
9 from permit staff people or engineers. I'm not an  
10 engineer, so -- I'm a biologist.

11 Q. Well, Scott, let me tell you what I'm getting  
12 at here. In the filtering process at a water  
13 treatment plant, when impurities are filtered from the  
14 intake water and from the production process, are you  
15 aware that at plants which soften their water with  
16 lime those plants are adding solids to the wastewater?  
17 Are you aware of that?

18 A. Is that -- is that to remove the solids?

19 Q. Yes.

20 A. I'm aware they do methods to remove solids,  
21 but I don't know what specific methods they do.

22 Q. Are you aware of any water treatment plant  
23 that uses lime softening and then discharges untreated  
24 wastewater into the reservoir from which they drew



1 their water originally?

2 A. No specific plant.

3 MR. SOFAT: Brad, I'm going to object.

4 Do you have personal knowledge of the questions  
5 that opposing attorney is asking?

6 A. I'm just saying that's a treatment process  
7 that I'm not involved with.

8 Q. Very good. Let's move on.

9 Are you aware that Springfield Lake has been  
10 declared impaired by USEPA?

11 A. Yes.

12 Q. And because it's been impaired, isn't it true  
13 that City Water, Light and Power has no choice but to  
14 engage in soil conservation measures on Lake  
15 Springfield?

16 A. How do you define required?

17 Q. Required because it's an impaired waterway.

18 A. Impaired with the 303(d) list?

19 Q. To your knowledge impaired in any way. This  
20 is a federal --

21 A. Right.

22 Q. -- designation of impairment, Scott.

23 A. Right.

24 Q. And does that designation of impairment,

1 based on your research, obligate City Water, Light and  
2 Power to engage in soil conservation measures?

3 A. To the best of my knowledge, impairments on  
4 certain water bodies are on a list generated by the  
5 Illinois Environmental Protection Agency, which are on  
6 the 305(b) and the 303(d) list.

7 Q. And by virtue of being on that list is City  
8 Water, Light and Power obligated to engage in soil  
9 conservation measures to your knowledge?

10 A. They must adhere to the Clean Water Act.

11 Q. Are you aware that Illinois EPA has provided  
12 funds to the city of Springfield specifically for  
13 shoreline stabilization?

14 A. Yes.

15 Q. Are you aware that Illinois EPA has provided  
16 funds to the city of Springfield specifically for  
17 dredging of Lake Springfield?

18 A. I knew they dredged.

19 Q. But you don't know if some of the funding  
20 came from Illinois EPA?

21 A. No, I don't know the specific --

22 Q. Are you aware that Illinois EPA has provided  
23 funding to the city of Springfield for other soil  
24 conservation projects?

1           A.    Yes.

2           Q.    Scott, to your knowledge has Illinois EPA  
3 provided any funding to the Illinois-American Water  
4 Company to be utilized for soil savings measures at  
5 the Piasa Creek Watershed Project?

6           A.    I'm aware of Section 319 applications that's  
7 been submitted to the Agency for consideration of  
8 using Section 319 funding for -- and let me get my  
9 record. I'm aware of both the Alton Lake Heritage  
10 Parkway Advisory Commission, the Southwestern Illinois  
11 Resource Conservation and Development, and also for  
12 the Great Rivers Land Trust Section 319 application  
13 packages.

14          Q.    All right. Those are three entities that I  
15 will tell you right now do not own, operate, control,  
16 or contribute to Illinois-American Water Company.

17          My question to you is, to your knowledge has  
18 Illinois EPA provided any funding to Illinois-American  
19 Water Company to help them with soil conservation  
20 measures in the Piasa Creek watershed?

21          A.    Not directly to my knowledge.

22          Q.    Well, let's talk about indirectly. Has  
23 Illinois EPA provided funding to indirectly help  
24 Illinois-American Water Company with soil conservation

1 measures in the Piasa Creek watershed?

2 A. Not to my knowledge.

3 Q. To your knowledge has Great Rivers Land Trust  
4 received any money from Illinois EPA to assist in soil  
5 conservation measures in the Piasa Creek watershed?

6 A. Not to my knowledge.

7 Q. Let's talk about Lake Decatur. Are you aware  
8 or did you become aware --

9 MR. SOFAT: Just one moment, please.

10 Q. In your research regarding Lake Decatur, did  
11 you become aware that in 1984 one of the lake's basins  
12 had become so shallow due to sedimentation that the  
13 water treatment plant could no longer pump water from  
14 it?

15 A. I was not given that specific information.

16 Q. Are you aware that Lake Decatur is considered  
17 an impaired water by United States EPA?

18 A. I would have to look that up.

19 Q. Are you aware that according to estimates of  
20 the Macon County Soil and Water Conservation District  
21 four dollars is saved in water treatment for every one  
22 dollar that is invested in conservation measures in  
23 Lake Decatur?

24 A. I do not believe that information was

1 provided. I'd have to look at my correspondence.

2 Q. Do you have any reason to doubt it sitting  
3 here today?

4 A. (Shakes head from side to side.)

5 Q. Are you aware that the Decatur water  
6 treatment plant uses lime softening in its treatment  
7 process?

8 A. Goes back to your questions before and my  
9 response.

10 Q. So you're not aware that Lake Decatur uses  
11 lime softening -- I'm sorry -- that the Decatur water  
12 treatment plant uses lime softening?

13 A. We just go back to the discussion we had  
14 about that before.

15 Q. Let's talk about Kincaid Lake. Are you aware  
16 that Kincaid Lake is considered by USEPA to be  
17 impaired?

18 A. Yes.

19 Q. Are you aware that the upper reaches of Lake  
20 Kincaid have been filled with approximately 100  
21 million cubic yards of sediment since the lake was  
22 constructed?

23 A. I do not know specific tonnage.

24 Q. Do you agree with me that they have a serious

1 sedimentation problem in Lake Kincaid?

2 A. Yes, they have a problem.

3 Q. Are you aware that conservation programs have  
4 been funded by the Illinois Department of Natural  
5 Resources at Lake Kincaid?

6 A. What funding mechanism has been used?

7 Q. I'm asking you, are you aware that the  
8 Illinois Department of Natural Resources has provided  
9 funding for conservation measures at Kincaid Lake?

10 A. The only knowledge I would have of that is if  
11 C-2000 monies were used, either associated with  
12 matching the Section 319 program.

13 Q. Has that in fact occurred?

14 A. I'm not directly involved with that project.

15 Q. Have you heard that in 2003 a Phase 2 grant,  
16 this would be a Phase 2 Illinois Clean Lakes Program  
17 grant, was given to that water treatment program in  
18 the amount of \$300,000 and that it was matched by  
19 Section 319 funding in 2006?

20 A. If it was the reference of PLWIP, yes.

21 Q. Let's turn to Governor Bond Lake. Are you  
22 aware that the city of Greenville, their water  
23 treatment plant uses lime softening in its treatment  
24 process?

1           A. I'm not aware of what methods they use. I'm  
2 aware they use methods, but I'm not aware of what  
3 methods they use.

4           Q. Are you aware that Governor Bond Lake is  
5 considered impaired by EPA?

6           A. Yes.

7           Q. And are you aware that the high priority  
8 impairments include total suspended solids?

9           A. Yes.

10          Q. Are you aware that at least half of the upper  
11 lake's capacity has been filled since the lake was  
12 constructed?

13          A. Yes.

14          Q. So really, the city of Greenville doesn't  
15 have any choice but to engage in soil conservation  
16 measures on Governor Bond Lake, do they?

17          A. They have to -- they have to be required or  
18 meet section -- Clean Water Act requirements.

19          Q. Are you aware that the city of Greenville has  
20 received a Phase 1 ICLP grant in excess of \$50,000?

21          A. Yes.

22          Q. Are you aware that they've received a Phase 2  
23 ICLP grant of \$300,000?

24          A. Yes.

1 Q. And are you aware that that \$300,000 grant  
2 has been matched by Section 319 funding?

3 A. Yes.

4 Q. And all of that money goes into reducing the  
5 sedimentation of government -- Governor Bond Lake.  
6 Does it not?

7 A. Correct.

8 Q. Scott, let me ask you, how do you consider  
9 any of these projects -- how do you consider any of  
10 the sedimentation reduction efforts at any of these  
11 projects to be similar to the sediment reduction  
12 efforts that are being conducted at the Piasa Creek  
13 Watershed Project?

14 A. Can you restate the question, please?

15 Q. How do you consider the soil conservation  
16 efforts at these six projects to be similar to the  
17 soil conservation efforts at the Piasa Creek Watershed  
18 Project?

19 A. I can't answer that question.

20 Q. Are you aware of any government funding  
21 provided to my client, the Illinois-American Water  
22 Company, that has been utilized by my client to  
23 implement soil conservation measures in the Piasa  
24 Creek watershed?



1           A.    Can you repeat the first part of that  
2 question?

3           Q.    Are you aware of any government funding,  
4 federal, state, or local, provided to the  
5 Illinois-American Water Company that has been utilized  
6 for soil conservation measures at the Piasa Creek  
7 watershed?

8           A.    I'm not aware of any federal funds directly  
9 given to the Illinois-American Water Company.

10          Q.    How about state funds? I guess we've been  
11 through that already. Haven't we?

12          A.    Right.

13          Q.    Same answer, correct?

14          A.    Correct.

15          Q.    And how about the discharge point at the  
16 Mississippi River, is that an impaired waterway to  
17 your knowledge?

18          A.    That is something that my unit and I do not  
19 have -- it's something that the Standards Unit needs  
20 to make that determination.

21          Q.    So you really don't know if it's an impaired  
22 waterway or not?

23          A.    Are you talking about impairment right at the  
24 discharge point or a segment within the Mississippi

1 River itself?

2 Q. Let's talk about that segment within the  
3 Mississippi River.

4 A. I believe to the best of my knowledge that is  
5 impaired.

6 Q. On what basis?

7 A. I would have to look at the impairments to  
8 tell you that.

9 Q. well, do you recall that it's impaired based  
10 upon sediment?

11 A. When you're talking about impairments, each  
12 year those impairments may change.

13 Q. well, I'm sitting here asking you if it's  
14 ever been impaired during the -- from 2000 -- in this  
15 decade has that segment of the Mississippi River ever  
16 been impaired because of total suspended solids?

17 A. I would have to go back and look at those  
18 reports to see that.

19 Q. How about for iron, do you recall, sitting  
20 here right now, if that segment of the Mississippi has  
21 ever been impaired because of iron?

22 A. I'd have to go back and look at those  
23 reports.

24 Q. Now, I believe if we refer back to your

1 testimony that there were a number of times where you  
2 acknowledged that the efforts of these other point  
3 sources to conserve -- or, rather, to reduce  
4 sedimentation were efforts that had to be taken in  
5 order to preserve their source of water. Do you agree  
6 with that?

7 A. Efforts need to be taken to protect their  
8 source water.

9 Q. To your knowledge does the Illinois-American  
10 Water Company need to undertake any efforts to protect  
11 its source water?

12 A. Source water is the Mississippi River.

13 Q. Yes, it is. Does Illinois-American Water  
14 Company need to undertake any sedimentation control  
15 measures in order to protect its source water, the  
16 Mississippi River?

17 A. The only knowledge I would have is what's in  
18 the NPDES permit conditions.

19 Q. And sitting here today, do you recall if any  
20 of those conditions mandate sedimentation reduction  
21 efforts?

22 A. Mandate total suspended solids.

23 Q. Okay. Now, Scott, here's my question for  
24 you. I'm asking you as a means of a business

1 necessity, in order for that water plant in Alton to  
2 protect its water source, does it have to control  
3 sedimentation in the Mississippi River --

4 MR. SOFAT: Objection.

5 Q. -- in order to obtain clean water? Do you  
6 know that?

7 MR. SOFAT: Objection, Brad. He has no  
8 personal knowledge of that.

9 Do you?

10 A. No. It's the Mississippi River.

11 Q. Which is different from a reservoir like a  
12 lake, isn't it?

13 A. Correct.

14 Q. And water plants that draw from reservoirs  
15 like lakes have a business necessity to protect their  
16 source water. Do they not?

17 MR. SOFAT: Asking for speculation.

18 A. I'm sorry?

19 MR. SOFAT: I'm just objecting. Asking for  
20 speculation.

21 Q. To your knowledge do water plants that draw  
22 their source water from a reservoir have to protect  
23 their source water by conservation efforts at the lake  
24 and at the banks of the lake?

1           A.    That would be the decision of that water  
2 company.

3           MR. HILES:  Can you give me just a moment,  
4 gentlemen?

5           I have nothing further.

6           MR. SOFAT:  Can we take a break?

7           MR. HILES:  Sure.

8                    (A recess was taken.)

9           MR. HILES:  Let's go back on the record.

10          MR. SOFAT:  I have no questions.

11          MR. HILES:  Scott, I believe we've concluded  
12 your deposition.  And you have the right to review  
13 this transcript once it's prepared and find any errors  
14 in it.  It's not an opportunity to correct substantive  
15 testimony or to supplement your testimony.  But if  
16 there are just any mistakes, it's an opportunity to  
17 correct those.  Mistakes in transcription I should  
18 say.

19          A.    Sure.

20          MR. HILES:  Or you can waive that right.  
21 It's your choice.  We do have a very tight time frame,  
22 however, because we have a hearing on the 28th.

23          A.    Sure.

24          MR. HILES:  And the Board has requested

1 written testimony in advance of the hearing, which  
2 would be sometime next week.

3 A. Right.

4 MR. HILES: And so it kind of compresses  
5 everybody's work on this thing.

6 A. Sure.

7 MR. HILES: Starting with the court  
8 reporter's work.

9 A. Sure.

10 MR. HILES: Let me ask you, when could you  
11 have a transcript? I'd like to get it by the middle  
12 of next week.

13 COURT REPORTER: I can do that.

14 MR. HILES: Wednesday delivery?

15 COURT REPORTER: Wednesday.

16 MR. HILES: All right. And then we'd  
17 probably need you to review it within 24 hours.

18 A. I'd like to see it.

19 MR. HILES: Okay.

20 A. A copy of it.

21 MR. HILES: Very good.

22 (Deposition concluded at 11:23 a.m.)

23


24

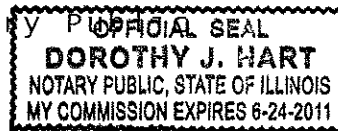
1 STATE OF ILLINOIS )  
2 ) SS  
3 COUNTY OF SANGAMON )

4 CERTIFICATE

5 I, Dorothy J. Hart, affiliated with Capitol  
6 Reporting Service, Inc., do hereby certify that I  
7 reported in shorthand the foregoing proceedings; that  
8 the witness was duly sworn by me; and that the  
9 foregoing is a true and correct transcript of the  
10 shorthand notes so taken as aforesaid.

11 I further certify that I am in no way associated  
12 with or related to any of the parties or attorneys  
13 involved herein, nor am I financially interested in  
14 the action.

15  
16   
17 CSR License No. 084-001390  
18 Certified Shorthand Reporter  
19 Registered Professional Reporter  
20 and Notary Public



21 Dated this 20th day of  
22 August, A.D., 2007, at  
23 Springfield, Illinois  
24

ERRATA SHEET

Illinois-American Adjusted Standard Proposed Extension

I hereby verify that the foregoing is a true and accurate transcription of my deposition taken on 8/16/07, 2007, except for those changes noted below:

Page 4 Line 6 Change 1995

Reason To correct my response to the question posed "When did you begin working in that unit?"

Page 4 Line 8 Change Incorrect, the amount of time in my current position with the Illinois EPA Bow, WMS, VPS unit would be approximately 12 years.

Reason To correct the question posed, when did you begin working in that unit?"

Page 4 Line 17 Change Working towards a minor in environmental science

Reason To clarify my response to the question posed "years of degrees and graduations?" I received a Bachelor of Science degree from Mc Donough College. Mc Donough College did not offer an environmental science program at the time of my enrollment. It was possible my minor was in the environmental science program at the University of Chicago.

Page 15 Line 10 change eight times

Reason I miscounted the total numbers of meeting and watershed tours

Page 20 Line 8 change eight altogether

Reason I again miscounted the total numbers of meetings and watershed tours.

Page 20 Line 22 change three watershed tours

Reason Did not transcript this answer correctly?

Page 21 Line 6 change it was only eight

Reason I again miscounted the total numbers of meetings and watershed tours.

Page 28 Line 15 change it is not bed load

Reason To correct my answer. I said "bed load" not "bed mode"

Scott A. Tompkins  
Scott A. Tompkins  
Tompkins

Dated this \_\_\_ day of \_\_\_\_\_, 2007

Notary Public



ERRATA SHEET

Illinois-American Adjusted Standard Proposed Extension

I hereby verify that the foregoing is a true and accurate transcription of my deposition taken on 8/16/07, 2007, except for those changes noted below:

Page 44 Line 15 Change 1679 tons

Reason I did not correctly read and give the right tons of "oil saved" as presented in the Great River Land Trust, Inc. 10/18/06 data spreadsheet.

Page 58 Line 16 Change that was produced by Tom Andryk, our other attorney

Reason To enter Tom Andryk last name into the record.

Page 58 Line 17 change Correct, Tom Andryk

Reason To enter Tom Andryk last name into the record.

Page 66 Line 21 change No, I don't know the specific funding sources.

Reason The sentence provided in my answer was not completed recorded.

Page 69 Line 4 change No

Reason I should have provided a verbal answer to the question posed.

Page 80 Line 21 change Scott A. Tompkins

Reason My name was misspelled.

Page \_\_\_ Line \_\_\_ change \_\_\_

Reason \_\_\_

Page \_\_\_ Line \_\_\_ change \_\_\_

Reason \_\_\_

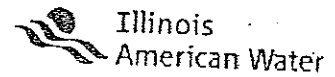
Scott A. Tompkins  
Scott A. Tompkins  
Tompkins

Dated this \_\_\_ day of \_\_\_\_\_, 2007

\_\_\_\_\_  
Notary Public

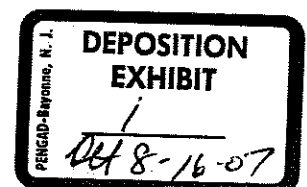


# Piasa Creek Watershed Project



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- I. PCWP Implementation Plan
- II. 2001 Reports
- III. 2002 Reports
- IV. 2003 Reports
- V. 2004 Reports
- VI. Boy Scout Lake Project
- VII. Project Files
- VIII. Press Releases
- IX. Maps



ILLINOIS POLLUTION CONTROL BOARD  
August 6, 2007

IN THE MATTER OF: )  
)  
PROPOSED EXTENSION OF ADJUSTED )  
STANDARD APPLICABLE TO ILLINOIS- )  
AMERICAN WATER COMPANY'S )  
ALTON PUBLIC WATER SUPPLY ) AS 07-2  
FACILITY DISCHARGE TO THE ) (Adjusted Standard)  
MISSISSIPPI RIVER UNDER 35 ILL. ADM.)  
CODE 304.124 AND 304.106 )  
)

**HEARING OFFICER ORDER**

The parties are strongly encouraged to prefile as much testimony as possible by August 21, 2007, including written answers to these questions. This will enable the Board to follow-up with any remaining concerns at hearing. Additionally, to address the possibility that the Board may not decide this matter by October 4, 2007, petitioner may argue for retroactive relief at hearing or in its post-hearing brief.

Questions for IAWC and IEPA  
Pertaining to the Amended Petition AS 2007-2  
To be addressed in Pre-Filed Testimony and/or at Hearing on August 28, 2007

(Docket AS 2007-2)

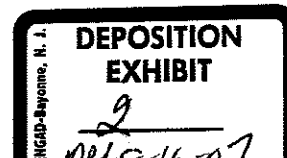
Both parties are invited to address any of the questions posed, whether specifically addressed to that party or not.

**Illinois-American Water Company (IAWC)**

**1. Quantifying and Verifying Sediment Reductions**

USEPA's Water Quality Trading Policy states that "mechanisms for determining and ensuring compliance are essential for all trades and trading programs... States and tribes should establish clear, enforceable mechanisms consistent with NPDES regulations that ensure legal accountability for the generation of (pollutant reductions) that are traded." USEPA (9-13-03) at 10.

USEPA's Water Quality Trading Assessment Handbook states, "In pilot projects, the relatively variable and unpredictable performance of nonpoint source BMPs [Best Management Practices] has been handled by discounting the estimated reductions available for trade. The uncertainty discount is intended to ensure that errors in BMP



performance estimates will not jeopardize the water quality equivalence of trades involving these pollutant control actions.” USEPA (11-04), EPA 841-B-04-001, at 40. The handbook provides an example using an uncertainty discount of 50%, where the nonpoint source must produce 2 pounds of pollutant reductions for every 1 pound it wishes to sell. USEPA (11-04), EPA 841-B-04-001, at 40-41.

In AS 99-6, IAWC explained, “The rate of erosion will be calculated by placing stakes (or other types of monuments) along the stream bank and measuring the rate [of] erosion for one year prior to installation of erosion controls.” Board O&O, 9-7-00 at 15. “During the ten year span of the project, GRLT will submit quarterly reports to the Agency which detail the progress of the monitoring and other project-related activities.” (Board O&O, 9-7-00 at 15.)

**QUESTIONS:**

- a. How does IAWC account for sediment reductions in its reporting to IEPA?
- b. Does IAWC rely entirely on the GRLT quarterly reports to the Agency to quantify and verify its sediment reductions for compliance?
- c. When IAWC states it will maintain a soil savings with a 2 to 1 offset or above 6,600 tons per year (Am. Pet. at 32), does IAWC consider the 2 to 1 ratio as the uncertainty discount? Or is the 2 to 1 ratio intended to produce a greater environmental benefit than compliance with the effluent regulations alone?
- d. If the 2 to 1 ratio is intended to produce a greater environmental benefit, would IAWC please propose an uncertainty discount based on USEPA’s Water Quality Trading Assessment Handbook (November 2004).
- e. Since IAWC is currently seeing a 4.2 to 1 offset ratio for sediment and 3.8 to 1 offset ratio for iron (Am. Pet. at 3), would IAWC consider proposing a ratio higher than 2 to 1 to account for the uncertainty discount and to create an additional environmental benefit?
- f. Since USEPA’s Water Quality Trading Policy stresses the need for clear and enforceable mechanisms to ensure compliance and accountability for the generation of pollutant reductions that are traded, can IAWC propose such mechanisms for inclusion in the wording of its adjusted standard?

**2. Potential New Agreement between IAWC and GRLT**

IAWC discusses the terms of the 10-year Consulting and Performance Agreement between IAWC and Great Rivers Land Trust (GRLT). After the expiration of the 10-year agreement, IAWC indicates it will continue to provide funding to maintain soil savings above 6600 tons per year, but expects the soil savings it has invested in for the Piasa Creek Watershed Project “to reach a point at which it will be sustainable without

future funding from outside sources.” Am. Pet. at 32. IAWC references a potential new contract with GRLT for maintenance only. Am. Pet. at 32.

USEPA’s Water Quality Trading Policy states, “Where trading involves nonpoint sources, states and tribes should adopt methods to account for the greater uncertainty in estimates of nonpoint source loads and reductions.” USEPA supports a number of approaches including, “retiring a percentage of nonpoint source reductions for each transaction or a predetermined number of credits.” USEPA (1-1-3-03 at 9.)

**QUESTIONS:**

- a. For a stream bank that has been stabilized where sediment reductions are not active but passive, is there a point at which that particular project could be retired in terms of accounting for sediment reductions?
- b. When a sediment reduction project is mature and self-sustaining and no longer benefits from continued maintenance and monitoring, is it time to initiate an active sediment reduction project to generate a tradable commodity?
- c. Should IAWC’s adjusted standard contain provisions to maintain the necessary offset by continuing to fund sediment reduction projects beyond those that have already reached maturity? Does IAWC believe this approach would be consistent with funding long term maintenance of a traditional effluent control facility, albeit more financially and environmentally beneficial?
- d. Did IAWC consult with GRLT or the Illinois State Water Survey (which works with the Agency on sediment control projects such as the Lake Pittsfield watershed project—Board O&O, 9-7-00 at 16) to provide insight into this?

**3. Funding for the Sediment Reductions and Maintenance**

The previous AS 99-6 bound Illinois-American to a dollar amount of \$4,150,000 payable over ten years. The AS 07-2 petition specifies only a performance goal of a 2 to 1 offset, or a minimum of 6600 tons of soil per year. The cost of complying with the AS 07-2 is not specified or estimated.

**QUESTIONS:**

- a. Were there other aspects of the Piasa Creek Watershed Project that benefited from IAWC’s funding besides the direct soil savings, such as educational outreach or habitat restoration?
- b. In terms of other aspects besides soil savings, how would the Project as a whole be impacted by committing solely to a performance goal of 2:1 or 6600 tpy rather than a dollar amount?

- c. Does Illinois-American have an estimate for yearly costs and time associated with a maintenance contract?
- d. How would those costs change over the years as the project reaches the point of sustainability without future funding from "outside sources"?
- e. In referring to a future without funding by "outside sources", is IAWC aware of funding that might come from other than outside sources?

**4. Rulemaking Update**

"In the 1980s, the Alton Water Company (the predecessor to IAWC in Alton) applied to the Board for relief from the effluent standards at 35 Ill. Adm. Code 304.104." Board O&O, September 7, 2000 at 4.

**QUESTION:**

The Board engages in ongoing review of 35 Ill. Adm. Code Part 304 and all of its rules to determine whether they are still necessary or accurate. For the sake of any needed cleaning up of 35 IAC Part 304 in a future rulemaking, please comment on whether Section 304.206 Alton Water Company Treatment Plant Discharges is still needed?

**Section 304.206 Alton Water Company Treatment Plant Discharges**

This Section applies to the existing 18.3 million gallons per day potable drinking water treatment plant owned by the Alton Water Company which is located at, and discharges into, river mile 204.4 on the Mississippi River. Such discharges shall not be subject to the effluent standards for total suspended solids and total iron of 35 Ill. Adm. Code 304.124.

(Source: Added at 8 Ill. Reg. 3687, effective March 14, 1984)

**Illinois Environmental Protection Agency (IEPA)**

1. The Agency Recommendation states,

"In making its decision, the Board should also consider the USEPA's efforts to develop categorical effluent limits for water supply treatment plant effluents in federal regulations...Adoption of federal categorical effluent limits would supersede any limits previously adopted by states unless the state limits were more stringent. Federal action would

therefore negate any continued relief granted by the Board regarding Illinois American's petition for extended relief." Ag. Rec. at 11.<sup>1</sup>

Under 40 CFR Subchapter N: Effluent Guidelines and Standards, Parts 402-699 "prescribe effluent limitations guidelines for existing sources, standards of performance for new sources and pretreatment standards for new and existing sources..." 40 CFR 401.10.

40 CFR 403.1

(b) This regulation applies:

(4) To any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which discharge to a sewer which is not connected to a POTW Treatment Plant.

**QUESTIONS:**

- a. Since IAWC is not discharging to a POTW, the 40 CFR Subchapter N: Effluent Guidelines and Standards appear not to apply. Does the Agency agree? Is the Agency Recommendation referring to other federal categorical effluent limits?
- b. The Agency Recommendation also states, "Up-to-date information on [USEPA's efforts to develop categorical effluent limits for water supply treatment plant effluents] was obtained from Mr. Tom Bone of USEPA's Office of Science and Technology..." Ag. Rec. at 11. In the Agency's contact with Mr. Bone, did he indicate that USEPA would be developing categorical effluent limits for sources which do not discharge to a POTW?
- c. Did Mr. Bone indicate for which pollutants USEPA would be setting effluent limitations guidelines for water supply treatment plants? Did they include TSS and iron?

**2. Illinois Water Quality Trading Policy**

**QUESTIONS:**

- a. Is IEPA considering water quality trading as an option for point source discharges in waterways with TMDLs, such as the East Branch of the DuPage River and Salt Creek? If so, please describe.
- b. Is the Agency aware of any other dischargers in Illinois that use or plan to use water quality trading? If so, please describe?

---

<sup>1</sup> The Agency Recommendation dated 6-18-07 will be cited as Ag. Rec.

- c. Did IEPA consult with the Illinois State Water Survey (which works with the Agency on sediment control projects such as the Lake Pittsfield watershed project—Board O&O, 9-7-00 at 16) to provide insight into the prospect of trading and retiring credits for nonpoint source projects that have matured?

**3. USEPA Water Quality Trading Policy**

The Agency Recommendation states,

“In the intervening years since relief was granted, concepts of pollutant trading and the importance of providing reasonable treatment have been refined at the federal level. The Agency thus believes that the requested relief is no [longer] consistent with applicable federal law.” Ag. Rec. at 15.

The Agency’s Recommendation quotes information from the USEPA’s “Frequently Asked Questions about Water Quality Trading.”

“When can trading occur?... the Trading Policy does not allow trading to meet a technology-based effluent limit (TBEL).” Ag. Rec. at 10.  
<http://www.epa.gov/owow/watershed/trading/tradingfaq.html>

Although IEPA states trading has been refined at the federal level, this particular issue of the USEPA’s policy appears to be consistent with USEPA’s previous 1996 “Effluent Trading in Watersheds Policy Statement”.

“To take advantage of trading, a point source must be in compliance, and remain in compliance, with applicable technology-based limits.” 61 Fed. Reg. 4995, February 9, 1996.

The issue is similarly reiterated in the “Water Quality Trading Assessment Handbook: Can Water Quality Trading Advance Your Watershed’s Goals?”, November 2004 EPA 841-B-04-001:

“Under the Clean Water Act, point sources are required to comply with their technology-based limits without trading unless trading is explicitly incorporated in the effluent guidelines.” USEPA (11-04) at App. D-104.

In this regard, the Handbook refers specifically to requirements under the Clean Water Act. The Clean Water Act itself only refers to the federal technology-based limits. Currently, there appear to be no federal effluent guidelines or TBEL for iron or TSS from water supply treatment plant effluents not discharged to a POTW.



**QUESTION:**

Are there federal effluent guidelines or TBEL for TSS and iron discharges not to a POTW that would apply to IAWC?

**4. USEPA Oversight**

AS 99-6 was incorporated into the NPDES Permit, which is subject to federal purview. USEPA's Water Quality Trading Policy (9-13-03) states,

"[US]EPA has various oversight responsibilities under the CWA, including...review of NPDES permits and provisions for reviewing and making recommendations regarding revisions to a state's or tribe's water quality management plans through the continuing planning process. ...However, where questions or concerns arise, EPA will use its oversight authorities to ensure that trades and trading programs are fully consistent with the CWA and its implementing regulations." USEPA (9-13-03) at 11.

So far the record reveals no indication from USEPA that the approach under AS 99-6 that was included in IAWC's NPDES Permit - IL0000299 is inconsistent with the CWA or its implementing regulations.

In USEPA's Office of Water, Water Quality Trading Policy, January 13, 2003 on p. 11, it states, "States and tribes are encouraged to consult with [US]EPA throughout development of trading programs to facilitate alignment with the CWA."

**QUESTIONS:**

- a. Other than discussions with Mr. Bone about possible federal effluent limitation guidelines, did the Agency consult with USEPA specifically about IAWC's adjusted standard petition for cooperation with the Piasa Creek Watershed Project? If so, would you please describe.
- b. Is IEPA aware of any feedback from USEPA regarding IAWC's NPDES Permit and the provisions for AS 99-6? If so, please describe.

5.

**Report on performance of Piasa Creek Watershed Project:**

In AS 99-6, the Board's Opinion and Order read,

“During the ten year span of the project, GRLT will submit quarterly reports to the Agency which detail the progress of the monitoring and other project-related activities...GRLT staff will also meet periodically with Agency staff to discuss the progress of the GRLT Project.” (Board O&O, 9-7-00 at 15.)

“Five years into the GRLT Project (the halfway point), the Agency will make a determination of effectiveness...In addition to the fifth year review, the Agency will continue to be involved in the site selection process for the various aspects of the project, help review and implement management practices, analyzed quarterly reports submitted by GRLT, and meet periodically with GRLT staff.” Board O&O, 9-7-00 at 16.

The Agency's Recommendation did not mention making a determination of effectiveness of the GRLT Project or a synopsis of its involvement as described above.

**QUESTIONS:**

- a. Please provide a copy of an Agency's determination of effectiveness and a summary of the Agency's involvement in the GRLT for the record here.
- b. How has the Agency assessed compliance with AS 99-6 thus far in terms of tracking the generation of sediment savings in Piasa Creek and comparing it to the load from the Alton Plant?

The parties are reminded to participate in a telephone status conference with the hearing officer at 10:30 a.m. on August 13, 2007. The status conference shall be initiated by the petitioner.

IT IS SO ORDERED.



---

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, Illinois 62794-9274  
217/524-8509  
webbc@ipcb.state.il.us



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR      DOUGLAS P. SCOTT, DIRECTOR

Memorandum

Date: November 21, 2005  
To: Blaine Kinsley  
From: Scott Tomkins  
Subject: Piasa Creek Watershed Project Overview

The following information is provided as an overview of the Piasa Creek Watershed Project for the renewal of NPDES Permit IL0000299 (Illinois American Water Company - Alton Public Water Treatment Facility and the Illinois Pollution Control Board (IPCB) Adjusted Standard Provision AS 99-6 issued on September 7, and October 19, 2000).

The Piasa Creek Watershed

The Piasa Creek Watershed drains over 78,000 acres in Madison, Jersey, and Macoupin counties and is a tributary of the Mississippi. The lower reaches of the stream were channelized years ago and are comprised of second growth bottomland deciduous forests. The upper reaches vacate water from the residential landscapes of Godfrey and the agricultural lands of Jersey and Macoupin counties. The watershed's point of discharge into the Mississippi is at the Great River Road, about five miles north of Alton.

Project Background

Illinois American Water Company (IAW) constructed a 16.0 million gallon per day water treatment facility in Alton, Illinois to replace a 100-year old facility that was susceptible to flooding. Illinois EPA determined that the existing site-specific exemption and Permit did not apply to the new facility, and that standard discharge limits would apply unless new regulatory relief was granted.

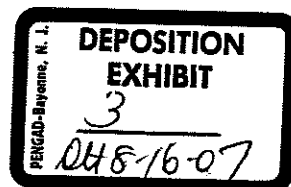
IAW pursued an Adjusted Standard application with the IPCB for relief to the standard discharge limits and to allow direct discharge to the Mississippi River eliminating the need for residual lagoons, mechanical dewatering equipment and hauling the dewatered solids to a landfill. Local residents, government officials and environmental groups were opposed to the siting of lagoons and the hauling of dewatered solids along this roadway, which is a designated National Scenic Byway.

Piasa Creek Watershed Project

IAW developed a unique partnership with Great Rivers Land Trust (GRLT) to implement a watershed project, which will provide a sustainable reduction in overall sediment loading of the Mississippi River. IAW will contribute \$4.15 million dollars over a ten-year period to fund the PCWP. The goal of the project is to meet a 2:1 reduction in sediment load to the Mississippi River. As such, IAW amended its Adjusted Standard application to include this unique suspended solid trading proposal that was subsequently supported by the Illinois EPA and the IPCB issued the adjusted standard (AS 99-6).

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000  
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463  
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120  
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

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**Project Goal**

The Piasa Creek Watershed Project goal is to reduce sedimentation in the watershed by approximately 6,700 tons per year by the end of the ten-year program in 2010.

**Project Benefits**

The Piasa Creek Watershed Project benefits are well beyond the sediment reduction goal. The immediate benefit is that IAW received an NPDES permit from the Illinois EPA that will provide IAW millions of dollars in savings in projected construction and operating expenditures. The lower construction and operating costs could result in lower water bills to area residents. The long-term benefits include reduced erosion, improved water quality, stormwater control, enhanced fish and wildlife habitat, protection of sensitive ecosystems, and financial incentives to farmers and landowners to implement conservation practices.

**Project Sediment Reduction Plan**

Effective measures to reduce sediment are those that reduce eroded sediment at the source before the sediment is transported off site and into creeks, rivers and lakes. Examples of this approach could include vegetative cover; storm water management controls; best management practices for urban, agricultural lands, and construction sites; and land-use changes that will result in a net reduction of erosion potential.

**Accomplished to Date**

The implementation of various sediment reduction tools and practices such as water and sediment control basins, stormwater detention basins, grass waterways, filter strips, stream restoration practices, riparian corridor protection and restoration, land acquisition and protection and wetlands restoration have been completed. As of January 2005, The Piasa Creek Watershed Project has addressed the erosion reductions outlined in the following table.

<b>Table 1: Piasa Creek Watershed Project acres benefited, erosion reductions and streambank stabilization.</b>	
<b>Acres Benefited</b>	<b>1,117</b>
<b>Gully Erosion (tons soil saved)</b>	<b>2,009</b>
<b>Streambank Erosion (tons soil saved)</b>	<b>694</b>
<b>Linear Feet Stabilized</b>	<b>22,147</b>
Source: GRLT Status Report: <a href="http://www.greatriverslandtrust.com/pcwp_status_report_january_2002.htm">http://www.greatriverslandtrust.com/pcwp_status_report_january_2002.htm</a> .	

**Conclusion**

With the information provided in the PCWP overview, the GRLT has provided the required elements to comply with the conditions set forth in the mentioned Permit.

If you would need further information about the Nonpoint Source Unit's role in the PCWP development and implementation, feel free to contact me.

DEPOSITION  
EXHIBIT  
4  
08-16-07  
PENGAD-Byronne



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397  
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ROD R. BLAGOJEVICH, GOVERNOR      DOUGLAS P. SCOTT, DIRECTOR

Memorandum

Date: November 21, 2005  
To: Blaine Kinsley  
From: Scott Tomkins  
Subject: Piasa Creek Watershed Project Overview

ILLINOIS EPA  
5-YEAR REVIEW  
MEMO

The following information is provided as an overview of the Piasa Creek Watershed Project for the renewal of NPDES Permit IL0000299 (Illinois American Water Company - Alton Public Water Treatment Facility and the Illinois Pollution Control Board (IPCB) Adjusted Standard Provision AS 99-6 issued on September 7, and October 19, 2000).

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# Electronic Filing, Received, Clerk's Office, August 30, 2007

Project Goal

The Piasa Creek Watershed Project goal is to reduce sedimentation in the watershed by approximately 6,700 tons per year by the end of the ten-year program in 2010.

## Project Benefits

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## Accomplished to Date

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Source: GRLT Status Report: <a href="http://www.greatriverslandtrust.com/pcwp_status_report_january_2002.htm">http://www.greatriverslandtrust.com/pcwp_status_report_january_2002.htm</a> .	

## Conclusion

With the information provided in the PCWP overview, the GRLT has provided the required elements to comply with the conditions set forth in the mentioned Permit.

If you would need further information about the Nonpoint Source Unit's role in the PCWP development and implementation, feel free to contact me.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PROPOSED EXTENSION OF ADJUSTED AS 07-2  
STANDARD APPLICABLE TO (Adjusted Standard)  
ILLINOIS-AMERICAN WATER COMPANY'S  
ALTON PUBLIC WATER SUPPLY FACILITY  
DISCHARGE TO THE MISSISSIPPI RIVER  
UNDER 35 ILL. ADM. CODE 304.124  
AND 304.106

Deposition of ROBERT G. MOSHER, taken at the  
instance of the Petitioner, before Dorothy J. Hart,  
CSR, RPR, and Notary Public, on the 16th day of  
August, 2007, at the hour of 11:40 a.m., at 1021 North  
Grand Avenue East, Springfield, Illinois.

CAPITOL REPORTING SERVICE, INC.  
2021 Timberbrook Drive  
Springfield, Illinois 62702  
217-787-6167

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ROBERT G. MOSHER

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HILES:

Q. Please state your full name for the record.

A. It's Robert George Mosher.

Q. Where do you live, Mr. Mosher?

A. Near Pleasant Plains, Illinois.

Q. And with whom are you employed?

A. The Illinois Environmental Protection Agency.

Q. What's your position there?

A. I'm the supervisor of the Water Quality standards Unit with the Division of Water Pollution Control.

Q. Who do you report to in that job?

A. Toby Frevert.

Q. I'd like you to describe your job responsibilities as the supervisor of the water quality standards Unit.

A. Okay. The job involves researching and proposing for adoption through the Illinois Pollution Control Board of new and updated water quality standards. It also involves the implementation of

1 those standards through the NPDES permit system and  
2 the 401 water quality standards certification process.

3 Q. Very good. When did you start with the  
4 Agency?

5 A. November 1985.

6 Q. Could you take us through the various jobs  
7 you've held and give us a ballpark of the years where  
8 you changed jobs?

9 A. Initially, I was involved in the Data  
10 Management Unit in the Division of Water Pollution  
11 Control, and I stayed there about six months or so. I  
12 then began working in the Standards Unit, where I  
13 still am.

14 Q. So you've been with the Standards Unit for --

15 A. 21 plus years.

16 Q. 21 years, all right. Great.

17 Would you please take us through your education  
18 following high school, colleges attended, degrees  
19 obtained, and years those degrees were obtained?

20 A. Okay. I got a bachelor of science in  
21 environmental biology and in zoology from Eastern  
22 Illinois University in 1977. In 1979 I got a master's  
23 degree in zoology from Eastern Illinois University.  
24 And then in 1983 I got a teaching certificate from

1 Southern Illinois University at Edwardsville.

2 Q. Did you teach for a while before you joined  
3 the Agency?

4 A. I did at the junior college level for about  
5 four years at what was then known as Belleville Area  
6 College.

7 Q. Sure.

8 A. But I never did use that certificate. I  
9 decided -- I got my job at the Agency before I had a  
10 chance to teach at the high school or other level.

11 Q. All right. What is your role on behalf of  
12 the Agency with respect to the Piasa Creek Watershed  
13 Project?

14 A. Well, back when that began, my role was to  
15 take an overview of the water quality standards issues  
16 in the Illinois-American petition back whenever that  
17 was, 2000.

18 Q. Probably 1999.

19 A. '99, yeah.

20 Q. Okay.

21 A. That went on for a while. The Agency was not  
22 in favor of that petition and we -- I was part of a  
23 team looking at that, and I contributed information on  
24 water quality standards or potential impacts to water

1 quality standards if that relief was granted. There  
2 came a time in that proceeding when the Piasa Creek  
3 project was proposed. And at that point my  
4 participation was reduced drastically to practically  
5 nothing because I -- that was given over to our  
6 nonpoint pollution people, and my services were no  
7 longer needed.

8 Then when the petition was proposed, the one  
9 we're dealing with now, the renewal or the extension  
10 or whatever you want to call it, I again became  
11 involved in again looking at standards issues in that  
12 new petition.

13 Q. Very good. So your renewed involvement then  
14 occurred in 2006, I take it?

15 A. Yes.

16 Q. From the time your role diminished or ended,  
17 which was probably in 2000, through the time you  
18 picked it up again in 2006, did you -- were you  
19 involved in any way in Piasa Creek Watershed Project  
20 or the Alton plant of Illinois-American Water Company?

21 A. No.

22 Q. Help me understand the different departments  
23 or divisions or divisions of responsibilities, if you  
24 will, between your group, the Water Quality Standards

1 unit, and the nonpoint pollution group.

2 A. Well, I interacted with members of that  
3 group. I believe they're now called the watershed  
4 something section. Names change over the years. But  
5 people that deal with nonpoint pollution problems are  
6 in a separate section from me. We interact  
7 occasionally when water quality standards issues arise  
8 with agricultural or urban runoff or any of the  
9 nonpoint source of pollution that they deal with.  
10 It's pretty occasional when we interact.

11 Q. Are there different department heads or  
12 division heads over one and the other?

13 A. Well, they have a section manager, who his  
14 name is Bruce Yurdin. I believe that's recently  
15 changed with a different job that Bruce has been given  
16 recently. But yeah, they're under -- they're not  
17 under Toby Frevert as I am. They're directly under  
18 Marcia Willhite, a bureau chief.

19 Q. Okay. I understand now. Bob, there -- and  
20 you may be aware of this. There was some effort to  
21 estimate the amount of total suspended solids that  
22 would be in the effluent of Illinois-American Water  
23 Company's Alton plant at about the time the original  
24 adjusted standard was granted or immediately following

1 that time. And I think the figure that was arrived at  
2 was 3,300 tons per year. Are you aware of that?

3 A. Well, I'm aware that we were interested in  
4 what that amount was. The number, of course, is  
5 something I'd go back and look in the records, but  
6 I'll take your word for that.

7 Q. My real question here is, were you a part of  
8 a team that helped set that number of 3,300 tons or  
9 whatever number that was?

10 A. Boy, that would have been something that was  
11 just taken from the facility's records, I would guess.  
12 I -- I don't really remember if I was involved with  
13 that back then or not.

14 Q. All right. Have you read the Agency's  
15 recommendation in our present case, Adjusted Standard  
16 07-2?

17 A. Yes, I read it.

18 Q. Did you provide any input into the  
19 preparation of that recommendation?

20 A. Yes, I did.

21 Q. And specifically what was your input?

22 A. Well, I looked into the USEPA Water Quality  
23 Trading Policy. We had some input into that or some  
24 discussion about that in that document. I looked into

1 the USEPA efforts to establish a categorical effluent  
2 limit for the drinking water supply treatment  
3 industry. I think those were the two items that I had  
4 direct involvement in.

5 Q. What do you understand to be your Agency's  
6 primary reason for opposing the extension of the  
7 adjusted standard?

8 A. I think the primary reason would be that  
9 state effluent standards being technology-based limits  
10 should be met in all cases unless there's a really  
11 overridingly important reason that they can't be met.  
12 So we just believe that those limits are across the  
13 board. They should be met by everybody. And when  
14 someone asks for relief from those, there should be a  
15 really good reason why they can't meet those limits.

16 Q. Do you agree with that reason for opposing  
17 the adjusted standard?

18 A. Yeah, I -- I think I do. Of course, I'm well  
19 aware that it's my direct supervisor's wish that that  
20 be the case. And regardless of my personal feelings,  
21 I would be obligated to follow his direction.

22 Q. Are you saying that your personal feelings  
23 are to the contrary?

24 A. No. I'm not saying that. But it's -- I

1 guess that's an odd question because you do what your  
2 boss tells you to do unless it's, you know, morally --  
3 or, illegal or morally wrong.

4 Q. When did you first learn that the Agency  
5 would be opposing the extension on the theory as you  
6 described it that state effluent standards are  
7 technology-based limits that should be met in all  
8 cases?

9 A. I don't remember the date, but I do know that  
10 it was when Toby Frevert told me that would be the  
11 position of the Agency.

12 Q. Let me help with a time frame. Was it after  
13 Illinois-American Water Company filed its initial  
14 petition for an extension of the adjusted standard?

15 A. I believe it was.

16 Q. And was it Mr. Frevert's decision  
17 exclusively?

18 A. I'm not privy to that. All I know is that he  
19 -- I sat down with him in his office and he told me  
20 that that's what he wanted the position to be.

21 Q. Prior to that sit-down meeting with  
22 Mr. Frevert, do you recall having some discussions  
23 with Illinois-American Water Company representatives,  
24 myself included, over the drafting and the ultimate



1 preparation and filing of the petition to extend the  
2 adjusted standard?

3 A. Yes.

4 Q. About how many phone calls did we have?

5 A. There were several. Three or four at least.

6 Q. During those phone calls did you or anyone  
7 else with the Agency express to Illinois-American  
8 Water Company representatives this theory that state  
9 effluent standards are technology-based limits that  
10 should be met in all cases?

11 A. I don't believe so, no.

12 Q. Prior to Illinois-American Water Company's  
13 filing of the petition for an extension of the  
14 adjusted standard, to your knowledge did anyone from  
15 your Agency tell Illinois-American Water Company  
16 representatives that state effluent standards are  
17 technology-based limits that should be met in all  
18 cases?

19 A. I don't recall anything like that way back  
20 until that stage of the initial petition when we were  
21 taking that position.

22 Q. And that position was taken after the initial  
23 petition was filed, is that correct?

24 A. Right. From the filing of the initial

1 petition up until the agreement was reached to do the  
2 Piasa Creek project, our position was you should meet  
3 the technology standard.

4 Q. Okay. And your position changed after the  
5 adjusted standard was granted, is that correct?

6 A. Yes.

7 Q. And then it changed again after  
8 Illinois-American water Company filed its petition in  
9 the present case, is that correct? It changed back, I  
10 assume.

11 A. Well, let -- let's clarify what position  
12 means, what that term means here. We -- I was  
13 participating with a group of Agency employees having  
14 these discussions with you and others from  
15 Illinois-American on the phone.

16 Q. And that was in 2006?

17 A. Right. Working out facts of the case. We  
18 never got to the point where we gave you our position.  
19 I think we would have liked to if we'd have seen a  
20 draft before it was filed with the Board, but we -- we  
21 never really reached that. We -- we had talked and  
22 it's true we didn't talk about the Agency's position  
23 was definitely meeting technology. We didn't say that  
24 we had some other position. We were just fact-finding

1 and discussing, negotiating at that point.

2 Q. Well, isn't it true, Bob, that through the  
3 discussions we had over Illinois-American Water  
4 Company's initial petition, neither you nor anyone  
5 else from the Agency expressed to my client or to me  
6 that the Agency would be taking a position that  
7 technology-based effluent limits had to be met and,  
8 therefore, the Agency would oppose Illinois-American's  
9 position? Isn't that true?

10 A. That's true.

11 Q. Why didn't the Agency tell Illinois-American  
12 Water Company through those discussions that its  
13 position would be technology-based effluent limits had  
14 to be met?

15 A. Because we never got to the point where that  
16 group of employees got what we thought was going to be  
17 the final draft petition in order to bring that to our  
18 management and ask here's where -- you know,  
19 essentially ask our management here's where we are in  
20 these discussions, what's the direction that you're  
21 going to give us, and then we could get back to you  
22 with whatever that answer was.

23 Q. Well, you did get back to us with some  
24 direction before the initial petition was filed.

1     Didn't you?

2             A.    We -- yeah, we had questions, we had requests  
3 all along the way.

4             Q.    well, one of your requests was that  
5 Illinois-American would sustain soil savings of at  
6 least 6,600 tons per year.  Is that correct?

7             A.    We -- yeah, we talked about sort of the  
8 maintenance of conditions in the Piasa watershed, yes.

9             Q.    In fact, you, on behalf of the Agency, told  
10 Illinois-American Water Company that in order to  
11 support the petition the Agency would need to see the  
12 maintenance of 6,600 tons per year.  Is that correct?

13            A.    We could have used language like that.  
14 Again, I was working under a certain -- I was under --  
15 working under my own direction essentially that was  
16 leading me down a path that we could work within the  
17 previous Board relief --

18            Q.    Right.

19            A.    -- and somehow extend it.  I found out  
20 differently when I did get to talk to Toby Frevert  
21 that, no, that wasn't going to be our path.  So I was  
22 asking questions and talking to Illinois-American  
23 based on my own assumptions to where the Agency would  
24 want to go, rather than what my supervisor's position

1 was.

2 MR. HILES: Can we please have this marked as  
3 -- what are we up to now -- Exhibit 5.

4 (Deposition Exhibit Number 5 marked for  
5 identification.)

6 Q. Bob, I'm going to hand you a document that's  
7 been marked Deposition Exhibit 5 and ask you to take a  
8 moment to look at it. And while you're doing that,  
9 I'll predict for you my first question, which is, have  
10 you ever reviewed this document prior to today?

11 A. Yes, I have.

12 Q. When did you first review it?

13 A. It would have been after I had the discussion  
14 with Toby Frevert that said we -- we would not support  
15 the 2006 proposed adjusted standard, and the goal  
16 during that period was to find out what USEPA said  
17 about water quality trading, what policies they had  
18 and whatnot. And, of course, we found this policy  
19 document and that's when I looked at it.

20 Q. Let me direct your attention to page 6,  
21 please. And specifically to the text under paragraph  
22 4. Let's start with the first full sentence in  
23 paragraph 4. And I'll just read it. "EPA does not  
24 support trading to comply with existing

1 technology-based effluent limitations except as  
2 expressly authorized by federal regulations."

3 what is the existing technology-based effluent  
4 limit for the Alton plant of Illinois-American Water  
5 Company?

6 A. well, that's a question you could answer two  
7 ways. One is that they have an adjusted standard from  
8 the Pollution Control Board at the present time that  
9 doesn't set any effluent limitations at all. Or you  
10 could look at it in terms of what would be the  
11 normally imposed technology-based effluent limitation,  
12 and that, of course, would be from Part 304 of the  
13 Board's regulations that sets an effluent standard for  
14 total suspended solids and iron. So to me what they  
15 meant in this policy was what is existing, in other  
16 words what is normally applied. So when I read that,  
17 I would have said that this applies to our  
18 technology-based limits and doesn't apply to what --  
19 the relief previously granted.

20 Q. But in terms of an existing technology-based  
21 effluent limit, would you agree with me that the Alton  
22 plant has always been exempt from section 304.124,  
23 which I believe is that section of Illinois statute  
24 imposing limits?

1           A.    Yeah, I'd agree they've never met that  
2    technology-based limit even in their old plant or the  
3    new one.

4           Q.    And they've never been required to as a  
5    matter of law, isn't that correct?

6           A.    I'm probably not qualified to talk about  
7    matters of law.  But as I understand the regulations  
8    and the relief granted, no, they've never been  
9    required to meet that limit.

10          Q.    I guess my point is, there's -- there is not  
11    now and there never has been an existing  
12    technology-based standard applicable to the Alton  
13    plant.  Would you agree with that?

14          A.    Well, there's -- there are standards  
15    applicable in the absence of that relief, so, again,  
16    you know, it's I guess how you want to look at that.  
17    We have lots of water treatment plants that don't have  
18    relief.  And, of course, all of them are subject to  
19    those technology-based limits.

20          Q.    But for the Alton plant it is not subject to  
21    that technology-based limit, is it?

22          A.    As long as somebody grants relief, they don't  
23    get a permit that has the limits for TSS.

24          Q.    I wonder if you could read out loud the

1 second paragraph under number 4?

2 A. "EPA will consider including provisions for  
3 trading in the development of new and revised  
4 technology-based effluent guidelines and other  
5 regulations to achieve technology-based requirements,  
6 reduce implementation costs and increase environmental  
7 benefits."

8 Q. Let's look at the context of that paragraph.  
9 It's really just one sentence. Do you agree that EPA  
10 is referring to its own regulations with regard to the  
11 statements in that sentence you just read?

12 A. It seems -- it seems that they are. Because  
13 they say they will consider. They must be referring  
14 to their own regulations.

15 Q. Let's add that context to the paragraph that  
16 precedes it, still under number 4. Do you agree that  
17 when EPA is talking with respect to all of number 4  
18 with their -- talking about technology-based effluent  
19 limitations that they're actually talking about  
20 federal standards?

21 A. I wouldn't -- I wouldn't read that that way.  
22 In the first paragraph they don't talk about -- you  
23 know, it's not implied that they're just speaking of  
24 their own federal technology-based effluent



1 guidelines.

2 Q. Did you seek clarification from USEPA about  
3 the meaning?

4 A. Yes. I -- well, I don't -- I didn't go line  
5 by line with them on this paragraph, but I talked to  
6 them about how they regarded trading for  
7 technology-based effluent standards.

8 Q. Who did you talk to?

9 A. I talked to Dave Pfeifer.

10 Q. Could you spell that, please?

11 A. P-f-e-i-f-e-r. He's at Region 5 USEPA,  
12 Chicago. He may have been the one that referred me to  
13 this document. Then I talked to George Acevado.

14 Q. Could you spell that last name?

15 A. A-c-e-v-a-d-o. And I had a --

16 Q. Is he also at Region 5?

17 A. Yes, he is. I had a discussion with him  
18 about, you know, how USEPA looks at trading for  
19 technology-based effluent limits.

20 Q. Anyone else?

21 A. That was it.

22 Q. Let's start with Mr. Pfeifer. What was your  
23 discussion with Mr. Pfeifer about how USEPA looks at  
24 trading for technology-based effluent limits?

1           A. My discussion with Mr. Pfeifer was pretty  
2 short. I asked him, you know, where would I find info  
3 on USEPA's Water Quality Trading Policy and, you know,  
4 who should I talk to essentially or where could I find  
5 it on the web site. And he gave me a web site  
6 address. I'm pretty sure it was him. And then  
7 referred me to George Acevado.

8           Q. So really your substantive discussion then  
9 was with Mr. Acevado, I take it?

10          A. Right, yes.

11          Q. Please explain your discussion with  
12 Mr. Acevado.

13          A. Well, I explained to him the petition that  
14 had been filed, and found that he was aware of the  
15 initial petition and the trading that resulted, and  
16 explained to him how we were looking at it currently,  
17 that we didn't like the idea of trading for something  
18 that is a technology-based limit. And he more or less  
19 said, well, we don't like that sort of thing, either,  
20 and that he didn't really realize that this trading  
21 scheme that is ongoing was a result of relief from  
22 technology-based limits, and that basically the USEPA  
23 policy supports our position, the Illinois EPA  
24 position.

1 Q. Did he explain to you how he did not know  
2 that it was relief from technology-based effluent  
3 limits?

4 A. No.

5 Q. But he did tell you that he was aware of the  
6 initial petition going all the way back to when? 1999  
7 or 2000?

8 A. Well, I don't know how long his involvement  
9 was, but that he, you know, at USEPA had followed this  
10 as an example of trading.

11 Q. For years?

12 A. I don't know that we got into any discussion  
13 about how long he was following it.

14 Q. Let's go back to the Water Quality Trading  
15 Policy, Exhibit 5, paragraph 4, in the second portion  
16 of that paragraph, the one that you read to us.

17 A. Uh-huh.

18 Q. Have you approached USEPA to discuss whether  
19 it might be appropriate to consider the Alton plant as  
20 one of those exceptions mentioned in that second  
21 paragraph?

22 A. No.

23 Q. Why not?

24 A. I don't think my job is to be an advocate for

1 someone's special consideration. I got the answer  
2 from George that he gave me and I didn't see any need  
3 to discuss it further with him.

4 Q. Well, in your discussion with George weren't  
5 you in fact advocating the opposition of my client's  
6 position?

7 A. I told him -- I told him what our stance was,  
8 yeah.

9 Q. All right. Did you explain to him anything  
10 to the contrary and in particular what  
11 Illinois-American Water Company's stance was?

12 A. No.

13 Q. Did you provide him with a copy of  
14 Illinois-American Water Company's petition?

15 A. No.

16 Q. To your --

17 A. I don't believe so, anyway. I don't  
18 remember.

19 Q. To your knowledge, Bob, has anyone at the  
20 Agency approached USEPA to discuss whether it might be  
21 appropriate to consider the Alton plant as one of  
22 those exceptions contemplated in the second part of  
23 paragraph 4?

24 A. Not to my knowledge.

1           Q.    Are you familiar with the term uncertainty  
2 discount?

3           A.    No, I don't believe I am.

4           Q.    How about the term uncertainty credit?

5           A.    No.

6           Q.    I'm going to hand you a document that's been  
7 previously marked as Deposition Exhibit 2 and ask you,  
8 first of all, have you seen that document before?

9           A.    Yes, I have.

10          Q.    It's a series of questions from the hearing  
11 officer in our case. Have you been asked to respond  
12 to any of the questions in the hearing officer's  
13 order?

14          A.    Yes.

15          Q.    I'd like you to go through that order and  
16 point out for us the questions you have been asked to  
17 help prepare responses to.

18          A.    Well, I was asked to read through the  
19 questions and provide any information useful toward  
20 answering those. I don't believe I was assigned  
21 specific ones to answer. But in other words, I was  
22 told to use my judgment and help out with the  
23 information wherever I could for any of the questions.

24          Q.    All right. well, let's go through them. I'd

1 just like to run through them from the start to the  
2 finish and ask if you have any answers yet or if  
3 you're in the process of formulating answers. On page  
4 2, this would be question 1a, do you have any answers  
5 to that or have you begun formulating answers?

6 A. well, I think we -- I'm positive that we  
7 agree that Illinois-American Alton plant isn't  
8 discharging to a POTW.

9 MR. SOFAT: Bob --

10 Q. Bob, we may literally be on the wrong page  
11 here. Let's go to the very beginning of the document.

12 A. Oh, I see.

13 Q. I'm on page 2 of the document.

14 A. I gotcha. The Illinois-American Company  
15 questions.

16 Q. Yes, sir.

17 A. Okay. That was not one that I was -- thought  
18 I could be helpful in. I didn't prepare any answer to  
19 that one.

20 Q. Let's move on to 1b on page 2.

21 A. Not that one, either.

22 Q. How about 1c on page 2?

23 A. Not that one, either.

24 Q. Same question with respect to 1d on page 2.

1           A.    Nope, not that one, either.

2           Q.    Same question for 1e.

3           MR. SOFAT:  Brad?

4           MR. HILES:  Yes.

5           MR. SOFAT:  I can speed up the process for  
6 you, if you don't mind.

7           MR. HILES:  I'd love to speed up the process.

8           MR. SOFAT:  I did not ask them to even look  
9 at these.  This is what -- Illinois EPA questions is  
10 what he's focusing on, so -- you can go through the  
11 whole if you want but -- or you can ask him in  
12 general.

13           MR. HILES:  Can we just establish then that  
14 Mr. Mosher is not going to provide input with respect  
15 to the questions posed to Illinois-American Water  
16 Company?

17           MR. SOFAT:  Can I -- Bob, are you going to --  
18 did you --

19           A.    I think maybe once or twice I had a little  
20 interjection type thing.  And I -- for f -- for 1f on  
21 page 2 I may have said something like keep in mind  
22 that USEPA's Water Trading Policy doesn't allow  
23 trading for technology-based limits.  You know, it was  
24 kind of a little thing to whoever was answering that

1 question, as long as we're talking about USEPA's Water  
2 Quality Trading Policy, make sure you remember that  
3 that policy says you shouldn't trade with  
4 technology-based effluent limits. It wasn't an  
5 answer. It was just like a little comment to try to  
6 help someone else answer.

7 MR. SOFAT: And why would somebody be looking  
8 at Illinois-American's questions?

9 A. Well, I don't know. I just thought we  
10 might --

11 MR. SOFAT: Okay. Brad, just go ahead and do  
12 whatever you want to do because --

13 A. Later on when they answered the question, we  
14 might have a rebuttal or something.

15 MR. SOFAT: Right. That's the difference.  
16 Okay. Anyhow.

17 A. So do you want me to look through the rest of  
18 the Illinois-American questions?

19 Q. I would. I would.

20 MR. SOFAT: Yes.

21 Q. If there's anyplace else in the questions  
22 posed to Illinois-American Water Company where you  
23 have provided input or you intend to provide input,  
24 I'd like to know that right now.



1           A.    Well, I can say for sure we don't intend to  
2 provide any input on Illinois-American's questions  
3 because I heard what my attorney just said.

4           MR. SOFAT:  You can always help me with the  
5 cross-examination questions.  Right now --

6           A.    Right.

7           MR. SOFAT:  -- focus on opposing counsel's  
8 questions, what are they saying -- do you intend --  
9 whatever the question was.

10          A.    So, let's see.  I didn't have any on page 3  
11 of any of those questions for -- that are on page 3,  
12 and no input to any questions on page 4.

13          And now we're into the Illinois EPA-directed  
14 questions.

15          Q.    Yes.  So let's -- I'm going to just pose the  
16 same question, Bob, with respect to the questions  
17 directed at Illinois EPA, beginning with question 1a.

18          A.    Okay.  The Agency does agree that  
19 Illinois-American Alton does not discharge to a POTW.

20          In our filing we referred to potential future  
21 federal categorical effluent limits, so that was  
22 something I remember commenting on that the Board --  
23 you know, are they referring to existing or potential  
24 future federal categorical effluent limits.

1           b --

2           Q.   Just so we're clear on that, there is no  
3 federal categorical effluent limits applicable to the  
4 Illinois-American Water Company's Alton plant, are  
5 there?

6           A.   As I understand from our Permit Section staff  
7 that I believe I heard them refer to just a narrative  
8 statement about best degree of treatment or best  
9 reasonable treatment being what should be applied, but  
10 that was some sort of a narrative.

11          Q.   Bob, I'm talking about federal categorical  
12 effluent limits.

13          A.   Right.

14          Q.   Are you aware of any federal?

15          A.   well, there's no specific federal categorical  
16 effluent limits for this category of discharger.  
17 That's correct.

18          Q.   How about 1b?  Maybe the best way to go at 1b  
19 is to ask you if you've had discussions with Mr. Tom  
20 Bone of USEPA's Office of Science and Technology?

21          A.   Yes, I have.

22          Q.   Tell us about your discussions with Mr. Bone.

23          A.   He's in Washington.  I got his name and phone  
24 number, I believe, off of the web site from USEPA.  I

1 called him and asked him if he could update me on  
2 USEPA's efforts to develop federal categorical  
3 effluent limits for the drinking water treatment  
4 industry type discharger, and he filled me in on where  
5 they were at and gave me some facts that I believe  
6 show up in our Agency response to the petition. And  
7 that was about a ten-minute conversation and that was  
8 the only time I've talked with him.

9 Q. Okay. So is it your testimony that the  
10 information that is in the Agency's recommendation  
11 represents all of the information that Mr. Bone  
12 provided to you that day?

13 A. It's not a word-for-word transcript of what  
14 we talked -- or, our conversation, no.

15 Q. And I'm not looking for that, either, Bob.  
16 I'm just looking for the general subjects that were  
17 addressed.

18 A. Well, my intention was to summarize what he  
19 told me and that summary is pretty much what's in our  
20 -- our response.

21 Q. Did he tell you that the Agency would -- that  
22 USEPA would be developing categorical effluent limits  
23 for sources which do not discharge to a POTW?

24 A. Yeah.

1 Q. Did he indicate which pollutants would be  
2 included in the categorical effluent limits?

3 A. He definitely talked about total suspended  
4 solids being one of those pollutants that they were  
5 working on development. He did tell me that there was  
6 no way to predict what list of pollutants they would  
7 end up with, but certainly total suspended solids was  
8 one of those that they were looking at.

9 Q. So he couldn't confirm to you whether there  
10 would, in fact, be a categorical effluent limit for  
11 TSS, is that correct?

12 A. Yes. He confirmed -- or, he made it plain to  
13 me that he couldn't confirm anything from a developing  
14 project, that until the formalities were complete that  
15 there were no guarantees of what the proposed limit,  
16 if any proposed limit, would be put forward.

17 Q. Did you discuss with Mr. Bone the federal  
18 Agency's consideration, if any, of offset credits in  
19 the compliance scheme in the event categorical  
20 effluent limits were developed?

21 A. I didn't talk with him about that subject,  
22 no.

23 Q. Do you recall if any one of you raised it  
24 during the conversation?

1           A.    I don't believe so, no.

2           Q.    Are you aware that headquarters  
3 representatives have, in fact, stated that they are  
4 considering offset credits and trading credits in the  
5 compliance scheme in the event they develop  
6 categorical effluent limits for water treatment  
7 plants?

8           A.    I don't believe I was aware of that at all,  
9 no.

10          Q.    Well, I think we've covered questions 1a, b,  
11 and c, unless there's anything else you can tell me  
12 about your discussions with Mr. Bone that you haven't  
13 told us already.

14          A.    No, that's pretty much it.

15          Q.    All right. Let's move on to question 2a.

16          A.    This isn't a question that I -- I commented  
17 on, I don't believe.

18          Q.    Are you planning on providing comments on  
19 question 2a?

20          A.    No. That should be up to the people in our  
21 TMDL program.

22          Q.    Let's move on to question 2b, please. Have  
23 you provided comments or do you intend to provide  
24 comments on question 2b?

1           A. I believe I did comment on that one.

2           Q. What are your comments with respect to  
3 question 2b?

4           A. That I wasn't aware of any other discharges  
5 that use trading and that my only knowledge of anyone  
6 planning to use trading was with nutrient trading, and  
7 then I cautioned that the standards that would  
8 possibly bring about someone wanting to use trading  
9 for nutrients weren't -- those standards were not  
10 formulated yet and were quite a ways from being  
11 finished or proposed. So that that was planning that  
12 was in a very early stage kind of anticipation.

13          Q. When you say considered or proposed, would  
14 that be at the state level or the federal level, Bob?

15          A. The state level.

16          Q. Any other comments on 2b?

17          A. No.

18          Q. Let's move on to 2c, please.

19          A. That was one I didn't have any comments on.

20          Q. Then we move on to question 3, which has a  
21 great deal of information preceding the actual  
22 question.

23          A. Yeah. As I read the question, are there any  
24 federal effluent guidelines, this -- and we've covered

1 the fact that there are no federal categorical limits  
2 presently, but when they mention guidelines, that may  
3 be where I heard discussions from our permitting  
4 people that their belief -- this is just -- I guess  
5 this is hearsay, but their belief was that there was  
6 some sort of a statement in federal guidelines that  
7 the federal regulations encouraged states to apply  
8 limits that are reasonable based on available  
9 technology to dischargers that aren't covered by  
10 federal categorical limits.

11 Q. So are you providing a comment on question 3  
12 to that effect?

13 A. I don't really remember if I have commented.  
14 It seems like a question that's best left for the  
15 experts in federal effluent guidelines to answer.

16 Q. Bob, have you reviewed EPA's 1996 Draft Water  
17 Quality Trading Policy?

18 A. I don't believe so.

19 Q. Well, if you'll turn to page 6 in your  
20 exhibit --

21 A. Back a page to --

22 Q. Yes. This is in the questions posed by the  
23 hearing officer. Just past the midpoint of that page  
24 do you see that paragraph there: "Although IEPA

1 states ..."? Do you see that paragraph?

2 A. Uh-huh.

3 Q. And then the hearing officer quotes from a  
4 1996 policy statement, which is the indented quote,  
5 and I'm going to read it to you.

6 "To take advantage of trading, a point source  
7 must be in compliance, and remain in compliance, with  
8 applicable technology-based limits."

9 Do you see that?

10 A. Uh-huh.

11 Q. That quote was pulled from EPA's Draft Policy  
12 on Water Quality Trading which existed in 1996. My  
13 question to you is this, if you know -- let me back  
14 up.

15 Assuming that the hearing officer has accurately  
16 quoted from EPA's draft policy of '96, if you know,  
17 why did the Illinois Environmental Protection Agency  
18 support Illinois-American Water Company's petition in  
19 19 -- pardon me, in 2000 with the existence of this  
20 draft policy statement in '96, which is essentially  
21 the same as the final policy statement in 2003? Do  
22 you know the answer to that question?

23 A. No, I don't.

24 Q. Have there been any discussions -- have you



1 discussed this with any other staff members at  
2 Illinois EPA? And the point I'm driving at here is,  
3 the policy that your Agency is grabbing onto for its  
4 support, the 2003 Water Quality Trading Policy, has  
5 not changed since 1996 on this issue of meeting  
6 technology-based effluent limitations. Have you had  
7 any discussions with other staffers at the Agency  
8 about that?

9 A. Well, I had discussions trying to re-create  
10 Agency thinking or what we were aware of from the time  
11 in '99 when the proposal for the trading came forward.

12 Q. Yes.

13 A. And those discussions were basically to say  
14 I, Bob Mosher, was not in the thick of things at that  
15 point. So I don't know what Agency thinking was that  
16 resulted in us being agreeable to the trading project  
17 and the eventual Board relief. That's -- that's my  
18 extent. I wasn't in those discussions. So I don't  
19 know if people were aware of the '96 draft policy or  
20 not.

21 Q. Do you know if anyone from the Agency, prior  
22 to late 2006, contacted Illinois-American Water  
23 Company at any level just to tell them, hey, this  
24 offset project that's the basis of your adjusted

1 standard is now out of favor with the Illinois  
2 Environmental Protection Agency because of this TBEL  
3 issue?

4 A. I don't recall anyone making that contact.

5 Q. Do you recall anyone at the Agency just  
6 internally, whether a contact was made with  
7 Illinois-American Water Company or not, concluding  
8 prior to late 2006 that the TBEL issue you've been  
9 talking about here was inconsistent with this adjusted  
10 standard?

11 A. I'm not aware of any contact made like that.

12 Q. Now, I'm not talking about outside contact.  
13 I'm just talking about internal discussions at the  
14 Agency along the lines of this adjusted standard here  
15 is inconsistent with EPA's trading policy because of  
16 the TBEL issue. Do you see what I'm driving at?

17 A. Yeah. And I mean I don't recall any  
18 discussions of any kind before we received the first  
19 of the draft petitions, you know, in late '06 or  
20 whenever we got the first one. And then up until the  
21 time of Toby Frevert's decision that we weren't going  
22 to support, I don't remember anybody bringing that up  
23 with Illinois-American at all.

24 Q. All right. So really, the first instance at

1 which the TBEL issue was raised was the instance  
2 raised by Toby Frevert in late 2006. Is that correct?

3 A. Right. I think his instruction was to find  
4 out what federal policy says. And then we looked into  
5 the document here, Exhibit 5, and saw the wording  
6 about technology-based limits.

7 Q. Do you recall attending a meeting with  
8 Mr. Frevert and myself and some representatives of  
9 Illinois-American Water Company in December of 2006?  
10 There were other Illinois EPA staff members present as  
11 well.

12 A. I know there were some meetings I didn't  
13 attend, and I'm trying to remember if I was in the  
14 room when Toby was -- was there. I really don't  
15 remember.

16 Q. Well, let me -- let me identify for you at  
17 least some of the people who were present when I was  
18 present. It was Mr. Frevert. It was the president of  
19 Illinois-American Water Company, Terry Gloriod, and  
20 one of the attorneys from Illinois-American Water  
21 Company, Tracy Elzemeyer.

22 A. Okay. I think I remember that meeting.

23 Q. All right.

24 A. It was in the Sam Cody room. Does that help

1 you?

2 Q. I don't remember your meeting room names.

3 A. Okay.

4 Q. But that is the meeting. There was only one  
5 meeting in which Mr. Gloriod and I attended with you  
6 and Mr. Frevert. To my knowledge there was only one  
7 meeting. I want you to focus on that meeting. Do you  
8 recall at that meeting that Mr. Frevert's position was  
9 that Illinois-American Water Company would need to  
10 continue its financial contributions at a level of  
11 \$415,000 a year in order to garner the support of  
12 Illinois EPA for extending the adjusted standard?

13 A. It's really hard for me to remember what was  
14 said at that meeting. I -- I want to -- I don't  
15 really have a clear recollection.

16 Q. Well, let me ask you specifically if you  
17 recall at that meeting Mr. Frevert telling  
18 Illinois-American Water Company that technology-based  
19 effluent limits had to be met before the Agency would  
20 support extending the offset, extending the adjusted  
21 standard?

22 A. I'm sorry, I just don't have strong  
23 recollections of what was said or what was not said.  
24 I mean I can't tell you that he -- he did or didn't

1 say that. Sorry.

2 Q. Well, can you tell me if the Agency's  
3 position with respect to TBELs was adopted after that  
4 meeting?

5 A. I don't remember whether it was before or  
6 after. I'm sorry.

7 Q. How about your phone call with Dave Pfeifer  
8 at Region 5, was that before or after that meeting,  
9 Bob?

10 A. I can't tell you. I'm sorry.

11 Q. How about the first time you read USEPA's  
12 Water Quality Trading Policy, was that before or after  
13 the meeting?

14 A. I'm sorry, I don't remember.

15 Q. Referring back again to the hearing officer's  
16 questions, which is Exhibit Number 2 in front of you,  
17 I'd like you to focus your attention on page 6 near  
18 the bottom. There's a paragraph that begins with:  
19 "The issue is similarly reiterated ..." Do you see  
20 that?

21 A. Yes.

22 Q. I'd like you to read that through the bottom  
23 of that page. Just read it to yourself, please.

24 A. Okay.

1           Q.    Would you agree with me that that text  
2 concludes that the TBEL issue here focuses upon  
3 federal technology-based limits?

4           A.    You know, I'm -- I'm not certain. I think it  
5 could go either way. I'm not certain that they mean  
6 -- they say: "... point sources are required to  
7 comply with their technology-based limits ..." so  
8 their limits could be based on federal categorical  
9 limits or state effluent standards. So I don't think  
10 I can agree with your statement. I think there's room  
11 there to interpret that as could be state limits.

12          Q.    All right. Let's explore that a little bit  
13 further. First of all, I want to be real clear about  
14 one thing. It is my client's position and my position  
15 that the reference in this handbook and in the federal  
16 water quality trading guidelines refer to only federal  
17 categorical effluent limits when referring to TBELs.  
18 I just wanted to be clear about that.

19          A.    Uh-huh.

20          Q.    That's not a question. I just want you to  
21 understand where I'm coming from.

22          A.    Okay.

23          Q.    And you have just testified that it can be  
24 interpreted differently. Here's what I want you to

1 tell me on the record. who at EPA told you that  
2 Illinois EPA was at liberty to utilize the state's  
3 effluent standard for TSS in application of the  
4 federal Water Quality Trading Policy? Because, Bob, I  
5 don't see those words in the policy. Let's start with  
6 that. Do you see those words in the policy where the  
7 state is given liberty to apply its own effluent  
8 standards? I don't. Do you?

9 MR. SOFAT: Brad, I think Bob has answered  
10 that question.

11 MR. HILES: I don't think he has. I want to  
12 make it clear.

13 A. Well, certainly, states are able to set their  
14 own technology-based limits. They can do it across  
15 the Board, as the Illinois Pollution Control Board has  
16 done, that all dischargers are subject to these  
17 limits. They -- obviously, those limits cover  
18 facilities that have federal categorical limits and  
19 those that do not. Our limits can supersede the  
20 federal categorical limits.

21 Q. My question to you is, what is it about the  
22 federal Water Quality Trading Policy which you and  
23 your counsel are relying upon here to try to defeat my  
24 client's efforts to extend the adjusted standard, what

1 is it about that Water Quality Trading Policy that  
2 tells you you are free to use state-based limits when  
3 applying the federal policy?

4 A. I don't believe we -- we ever apply the  
5 federal policy. I think we try to enact or prevent  
6 regulations from being enacted that would run up  
7 against federal policy. I think that's all we ever  
8 wanted to demonstrate here was that the state can --  
9 the Illinois Pollution Control Board can do whatever  
10 it wants to, I guess, but they're going to have to  
11 answer to federal oversight, federal displeasure. We  
12 don't want to do that. So we try to do things that  
13 are consistent with our policy and their policy.

14 Q. Do all states have effluent limits for TSS?

15 A. I don't know.

16 Q. Well, how do you answer the question for  
17 those -- for a state that doesn't have a TSS effluent  
18 limit? How do you apply the federal water quality  
19 trading guideline to that state?

20 MR. SOFAT: Objection. That's outside his  
21 personal knowledge and even job description.

22 MR. HILES: Let me -- let me rephrase the  
23 question.

24 Q. Is it your testimony that if the state of



1 Illinois did not have a TSS effluent limit, is it your  
2 testimony then that under the federal water quality  
3 Trading Policy offsets could be utilized by  
4 Illinois-American Water Company?

5 Let me withdraw that question and state it  
6 differently.

7 what is it in the federal water quality Trading  
8 Policy that specifically says Illinois's effluent  
9 standards should be applied and technology should be  
10 utilized to meet those effluent standards? what is  
11 it?

12 A. I believe that the federal goal through  
13 requiring certain technology-based limits be met by  
14 certain industries was to make sure that the best  
15 reasonable treatment would be applied everywhere. I'm  
16 sure the Feds -- the USEPA wants treatment applied  
17 everywhere. They haven't covered everything with  
18 their categorical limits and our state has filled the  
19 gap with our effluent standards. So I don't see why  
20 they would -- the USEPA would want to ignore our state  
21 limits.

22 Q. well, what about those states that don't have  
23 limits?

24 MR. SOFAT: objection.

1           A.    I don't know that there's states that don't  
2    have limits.

3           Q.    How do you --

4           MR. HILES:  Well, no, this witness has drawn  
5    a conclusion that the federal agency wants uniform  
6    implementation.  And some states don't have effluent  
7    limits for suspended solids.

8           MR. SOFAT:  Brad, he's not an attorney.  I  
9    mean --

10          MR. HILES:  This isn't a legal conclusion.  
11    I'm asking him if he's reached a conclusion --

12          MR. SOFAT:  It's an interpretation of the  
13    legal documents you're talking about.

14          MR. HILES:  He has made an interpretation of  
15    the federal water quality -- the federal water trading  
16    policy, that it needs to be applied from coast to  
17    coast.  He's determined that's what the Feds want.  
18    And I'm asking how he could reach that conclusion when  
19    some states don't have effluent limits for water  
20    treatment plants on total suspended solids.

21          MR. SOFAT:  That is very specific to the  
22    federal guidance document.  Bob --

23          MR. HILES:  And this witness can answer it.  
24    He's drawn a conclusion that the Feds want

1 consistency.

2 MR. SOFAT: Right. And you --

3 MR. HILES: How can it be consistent?

4 MR. SOFAT: Brad, that's his view.

5 MR. HILES: And I'm entitled to explore that  
6 view.

7 MR. SOFAT: Right.

8 MR. HILES: And that's what I'm doing.

9 MR. SOFAT: But he does not know how Feds  
10 would apply in a case where states doesn't -- that  
11 particular state doesn't have the effluent --

12 MR. HILES: I'm asking him how he has  
13 concluded that the Feds want consistent application  
14 coast to coast when, in fact, some states don't have  
15 effluent standards for TSS at water plants.

16 MR. SOFAT: Okay. Bob, can you give your  
17 basis of your interpretation?

18 And that's where I'm going to ask him to stop.  
19 Because he can say this is how I conclude and I'm okay  
20 with that. But other than that, you know, what will  
21 happen if a state doesn't have a standard which says  
22 Feds, you know, prefer nonpoint source project, that's  
23 outside his -- I mean you can ask him how he concluded  
24 whatever his position is. I'm okay with that. So --

1 and his opinion is not a legal opinion to begin with.

2 MR. HILES: This doesn't call for a legal  
3 opinion.

4 A. Okay. In my thinking on this matter, number  
5 one, I'm not aware of other states' TSS standards. I  
6 just don't know. I don't know that some don't have  
7 them. It never entered into the thought process. The  
8 process was that Illinois has a technology-based  
9 standard. And in my conversation with George Acevado,  
10 who I believe was aware -- he said he wasn't before,  
11 but as I was talking to him, he was aware that that  
12 was an Illinois technology-based standard, and he said  
13 I agree with you, federal trading policy wouldn't  
14 support trade under those circumstances. That's the  
15 basis of -- I'm not -- I'm not an expert on USEPA  
16 water quality trading. That's why I was talking to  
17 George, so he could enlighten me.

18 Q. well, let me explore with you -- and again,  
19 this is in connection with your discussion with  
20 George. Did you share with George that there were  
21 opposing views? And specifically, that there were  
22 opposing views that held that the federal water  
23 Quality Trading Policy applied to federal effluent  
24 limits on this issue of TBELs and not to state limits?

1 Did you discuss that with him?

2 A. No.

3 Q. Do you at least acknowledge, Bob, that at the  
4 end of page 6 the citation from the Water Quality  
5 Trading Assessment Handbook sets forth one of those  
6 opposing views? Do you acknowledge that?

7 MR. SOFAT: Brad, he has answered that  
8 question before.

9 MR. HILES: No, he has not.

10 MR. SOFAT: He has. We need to have some  
11 closing to this pretty soon.

12 MR. HILES: My question stands.

13 Go ahead, Bob.

14 MR. SOFAT: Bob, go ahead.

15 I know -- we can go back to the transcript --  
16 discussion has been asked before.

17 Bob, go ahead and answer this time and after  
18 this --

19 A. As I read that quote, I am not convinced that  
20 it only means federal technology-based limits.

21 Q. Read the paragraph below it, Bob.

22 A. That -- that is the Board's words?

23 Q. Yes.

24 A. Well, so the Board thinks that the handbook

1 refers specifically to federal. Is that what you want  
2 me to say? It seems to me that the Board --

3 Q. Bob, I just want you to acknowledge that  
4 there are opposing viewpoints on this issue, my  
5 clients included. And my real question to you on this  
6 is, did you present opposing viewpoints to George and  
7 engage in a discussion with him about that?

8 A. Of course, I didn't have this Board viewpoint  
9 when I talked to George. And, no, I didn't raise any  
10 opposing viewpoints with George.

11 Q. I don't know if we ever got to your ultimate  
12 answer to the question, which is at the top of page 7,  
13 Bob. What is your answer to that question?

14 A. I think I did answer that, that that one  
15 seems to be in the domain of the -- our experts from  
16 the Permit Section that are familiar with the federal  
17 effluent guidelines, general category of --

18 Q. Let's move to question 4a. Have you prepared  
19 a response to that question or are you in the process  
20 of preparing a response?

21 A. I think I already mentioned that when I  
22 talked to George Acevado, I did mention specifically  
23 Illinois-American Alton situation with the renewed  
24 petition for adjusted standard. And in that regard I

1 talked to someone at USEPA about the adjusted standard  
2 petition in a very just general way, just mentioning  
3 it. I didn't discuss the ins and outs of the petition  
4 with him, by any means. Just said, George, you know  
5 they have a petition to renew that relief. And George  
6 said, yeah, I'm aware of the existing relief. And  
7 that was our discussion.

8 Q. So you did not supply George with any of the  
9 facts or legal conclusions advanced by  
10 Illinois-American --

11 A. No.

12 Q. -- in seeking an extension of the adjusted  
13 standard?

14 A. No.

15 Q. And you did not send him the petition or the  
16 amended petition. Is that correct?

17 A. I'm almost positive I didn't send anybody at  
18 USEPA the petition.

19 Q. Are there any other discussions other than  
20 your discussions with Mr. Bone and other than the  
21 discussions you told us about with George?

22 A. No.

23 Q. Let's move on to question 4b. Have you  
24 prepared a response or are you in the process of

1 preparing a response to 4b?

2 A. I think the gist of this question is some  
3 years ago USEPA was doing a survey about water quality  
4 trading, and I believe I talked to someone about the  
5 Illinois-American, just gave them some just basic  
6 information about what it was all about, long before  
7 '06, you know, when the draft petition was submitted.  
8 Am I aware of any feedback from USEPA? You know, they  
9 might have given me some feedback during that  
10 conversation, like, oh, that's interesting and we want  
11 more information. And I think I passed that person --  
12 I don't remember who I was talking to. I think I  
13 passed them on to probably Scott Tomkins or Amy  
14 Walkenbach. So I guess that's -- that's some  
15 feedback. That's all I can think of.

16 Q. Now, you've testified here about contacts  
17 that you initiated with USEPA concerning this adjusted  
18 standard. Has USEPA ever initiated any contacts with  
19 you concerning the adjusted standard? And in  
20 particular, has anyone from USEPA ever told you that  
21 your Agency needed to oppose it because of the TBEL  
22 issue?

23 A. No. In this survey, which is the only time I  
24 can remember talking to USEPA about this trading until



1 the current petition came forward, was that survey.  
2 And I call it a survey. It was somebody wanting to  
3 know about trading and offsets in our state. And I  
4 said, well, the only thing I know of is this  
5 Illinois-American thing and gave them a few facts  
6 about it and said I think, you know, if you really  
7 want to get some details, you need to talk to somebody  
8 else.

9 Q. Very good. Let's move on to question 5.  
10 Have you prepared a response to question 5 or do you  
11 intend to prepare a response?

12 A. No. Not 5a. And not 5b. Not -- no, not 5b,  
13 either.

14 Q. Do you believe that the tons of soil saved in  
15 the Piasa Creek Watershed Project as reported by Great  
16 Rivers Land Trust have been exaggerated?

17 A. No.

18 Q. Do you have any reason to believe that those  
19 tons of soil saved reported by Great Rivers Land Trust  
20 with respect to the Piasa Creek Watershed Project are  
21 anything other than absolutely accurate?

22 A. well, I -- from my discussions with Amy  
23 Walkenbach and Scott Tomkins, I'm aware that they're  
24 really predictions of soil savings. They're not

1 measured soil savings. But Amy assures me that  
2 everything they've investigated leads to an accurate  
3 prediction, using established methodologies to do the  
4 predicting. So I don't have any doubts really that  
5 they're achieving what they say they achieve.

6 Q. Is it your understanding that what they say  
7 they are achieving at this point is already an offset  
8 in excess of two to one? Do you understand that?

9 A. Yes.

10 Q. Regardless of disagreements you and I may  
11 have, Bob, about whether this TBEL issue even applies  
12 to our case, let me ask you personally, why would you  
13 want to end an offset project that's exceeded two to  
14 one and go to technology-based treatment? My specific  
15 question for you is, how's that better for the  
16 environment?

17 A. Personally, I don't want to see it ended  
18 necessarily. It's probably good for the Piasa  
19 watershed.

20 Q. How about the Mississippi River, which is  
21 what the Piasa watershed feeds?

22 A. Yeah, right. All soil conservation projects  
23 are good and do good. I take direction from Toby  
24 Frevert, and if he directs me to take a stand and, you

1 know, disagree with something on a certain basis, then  
2 that's my job to do so. So that's why I participated  
3 and gathered facts and was part of the team that put  
4 together the Agency response. It's an odd question  
5 that you ask me personally. I mean --

6 Q. You're the supervisor of the water quality  
7 standards unit, and I'd like to know what the  
8 supervisor of the water quality standards unit thinks  
9 about the environmental benefit of an offset project  
10 that eliminates twice as many tons of solids entering  
11 the Mississippi as my client discharges into the  
12 Mississippi. And specifically, I'd like to know how  
13 you think it would be better for the environment if  
14 that offset project were scrapped and we didn't have  
15 the two to one reductions and instead just went to  
16 technology-based treatment. Because in my crude math,  
17 that would mean that we would return to depositing  
18 more solids into the Mississippi River. And I haven't  
19 had anybody else tell me differently. So I'd like you  
20 to tell me why it's better for the environment to  
21 return more solids to the river. Can you?

22 A. You know, there were discussions back in '99  
23 about, you know, what drawbacks a discharge without  
24 treatment from Illinois-American water was going to

1 have on the Mississippi, and there are some drawbacks.  
2 And we explored those then that, hey, that's a nasty,  
3 muddy effluent that shoots out a pipe into the river  
4 and stuff isn't going to want to live there. And that  
5 removes habitat from the river and lessens the quality  
6 of the river in that locality.

7 Q. Bob, my client commissioned a study by ENSR  
8 to look into that and that was fully vetted before the  
9 Board.

10 A. Right.

11 Q. And your Agency concluded when the Piasa  
12 Creek Watershed Project came forward that that was no  
13 longer an issue. The so-called muddy footprint is  
14 what you're talking about.

15 A. Well, that doesn't mean that muddy footprint  
16 doesn't exist or doesn't cause any harm. It just  
17 means that back in '99 the choice by the Agency was to  
18 overlook that.

19 Q. So are you telling me it's better --

20 A. So you're asking --

21 Q. It's better to just treat it and not do  
22 offset projects?

23 A. Well, you know, what I personally think is  
24 both things would be the best for the environment,

1 treat it and do conservation work. That would be the  
2 best.

3 Q. But that's not my question to you.

4 A. You're asking me to weigh the balance and --  
5 given my, you know, knowledge that, you know, I'm not  
6 an expert in nonpoint source, I wish I had the  
7 knowledge that would be able to compare is nonpoint  
8 source soil particles from ag fields any less harmful  
9 than those particulates from a point source like  
10 Illinois-American. Given my -- my frame of reference,  
11 it seems to me that the offset was a benefit to the  
12 environment, net benefit.

13 Q. Are you familiar with the Revised Universal  
14 Soil Loss Equation?

15 A. No, I'm not in any meaningful way, no.

16 Q. The acronym is RUSLE.

17 A. I've probably heard that, but I don't know  
18 much about it or anything about it, really.

19 Q. Are you familiar with the term retirement  
20 credits with respect to offset projects or trading  
21 projects?

22 A. Not in any meaningful way.

23 Q. What do you understand it to mean?

24 A. That's some system that the nonpoint source

1 people can use to gauge effectiveness of projects.

2 MR. HILES: Sanjay, do you have a copy of the  
3 Agency's recommendation that I can show the witness?

4 MR. SOFAT: Uh-huh. Can we take a break?

5 MR. HILES: Sure. Let's take a ten-minute  
6 break.

7 (A recess was taken.)

8 Q. The recommendation, Bob, is in front of you  
9 here. It has not been marked as an exhibit. And I'd  
10 like to direct your attention to -- I think it starts  
11 on page 8, if you can find page 8. I have just a few  
12 questions. There's a table there that begins at the  
13 bottom of page 8 and continues on to page 9. Can you  
14 provide any input for that table?

15 A. No. Other than I suggested that some of  
16 these facilities be investigated, but the actual  
17 information in the table was put together by someone  
18 else.

19 Q. why did you suggest that some of those  
20 facilities be investigated?

21 A. Because they were facilities that met our --  
22 the Board's total suspended solids effluent limit and  
23 had water supplies or uses of public waters,  
24 discharged into those waters and also used those

1 waters for their purposes. And I thought that would  
2 be an interesting thing to explain.

3 Q. All those particular facilities draw their  
4 water from lakes. Is that correct?

5 A. Yes.

6 Q. Isn't that like comparing apples and oranges  
7 when you compare water drawn from a lake, which is a  
8 reservoir, to water drawn from the Mississippi River?  
9 I mean aren't the conditions substantially different  
10 when it comes to a water supply?

11 A. Well, there are some differences, but there  
12 are some similarities, also. All of those are public  
13 waters. Lakes and rivers benefit from nonpoint source  
14 controls. They have similarities.

15 Q. Are you aware that several of those water  
16 treatment plants use lime-based treatment?

17 A. I don't think I knew that, no.

18 Q. More than half of them do. Let's talk about  
19 that. When lime-based treatment is used, that  
20 actually adds solids to the waste stream, does it not?

21 A. Yeah, it does.

22 Q. And were you aware that Illinois-American  
23 Water Company is not using lime-based treatment at  
24 Alton?

1           A.    I was aware of that, yeah.

2           Q.    Does that still make it a comparison of  
3 apples and apples for you, knowing that some of those  
4 water plants use lime?

5           A.    They don't discharge particulate lime above  
6 the effluent standard.

7           Q.    But if they were -- if they were not treating  
8 their effluent, Bob -- in other words, I'm trying to  
9 compare it now to what's happening at Alton. Alton  
10 doesn't treat its effluent, so if these other plants  
11 did not treat their effluent, wouldn't they, in fact,  
12 be adding considerably more solids to their waste  
13 stream than we have being added at the Alton plant?

14          A.    Relative to the amount of solids they start  
15 with, yeah, you're probably right.

16          Q.    And let's talk about sedimentation at those  
17 lakes, those reservoirs. Without conservation  
18 measures there would be considerable sedimentation,  
19 wouldn't there, in the absence of treatment by those  
20 water plants?

21          A.    I don't know if I understood that question.  
22 Could you say it again?

23          Q.    Well, let's start with the Alton plant. We  
24 know that the wastewater is not treated. It's



1 discharged untreated to the Mississippi River. And  
2 that results in some sedimentation. Would you agree?

3 A. Yeah.

4 Q. Now, let's compare that degree of  
5 sedimentation with the degree of sedimentation that  
6 would occur at these lakes, these reservoirs if those  
7 water plants did not treat.

8 A. Okay.

9 Q. It would be considerably greater in the  
10 reservoirs than it would be in the mighty Mississippi,  
11 wouldn't you agree?

12 A. Locally, yes, there would be more local  
13 sedimentation.

14 Q. And in fact, wouldn't you agree with me that  
15 without some dredging or soil conservation measures,  
16 the sedimentation in those lakes would be so great  
17 that the water treatment plant's source of clean water  
18 would eventually become threatened?

19 A. That's -- that's correct. That's why we have  
20 the effluent standard, I think, is to guard against  
21 that sort of thing.

22 Q. But now let's look at the Alton plant. To  
23 your knowledge has the Alton plant's source of clean  
24 water been threatened in any way despite their direct

1 discharge?

2 A. Well, they discharge downstream of their  
3 intake at Alton, so there isn't any way they could  
4 threaten their intake.

5 Q. And the river is moving also, isn't it?

6 A. Right.

7 Q. So it's moving that sediment, correct?

8 A. Correct.

9 Q. Whereas, in the lake environment there's not  
10 a source that moves the sediment out of the lake,  
11 absent some efforts taken by mankind. Is that  
12 correct?

13 A. Well, sediments can move out of the lake when  
14 there's high water conditions, but probably that's  
15 offset by increased sediment load during those  
16 conditions. But, yeah, you're right. Most of the  
17 sediment discharged into a lake would stay there.

18 Q. Bob, were you aware that in each of the six  
19 instances discussed in the Agency's recommendation  
20 funding was provided to the point source by either  
21 federal or state or in some cases both governments to  
22 assist with the soil conservation efforts undertaken  
23 by those point sources?

24 A. I wasn't aware of where the funding came

1 from.

2 MR. HILES: I have nothing further.

3 MR. SOFAT: I have a couple of questions for  
4 Bob.

5 CROSS-EXAMINATION

6 BY MR. SOFAT:

7 Q. Bob, could you for the record describe how  
8 the Agency applies its water quality standards and  
9 effluent standards to an NPDES permit application?

10 A. Yeah. Well, effluent standards have to be  
11 met by any discharger unless the standards exclude  
12 certain ones. Water quality standards are quite  
13 different. You -- you can apply water quality-based  
14 effluent limits to permits in order to ensure that  
15 water quality standard in the receiving stream is met.

16 Q. What dictates in terms of whether it's the  
17 effluent conditions or the stream conditions that  
18 triggers you to include water quality standard limits  
19 or technology-based standard limits? Do you  
20 understand my question?

21 MR. HILES: Well, I'm going to object to the  
22 question actually, because I believe there's no  
23 foundation laid for this witness to determine what  
24 goes in permits.

1           MR. SOFAT: As Bob has testified, one of his  
2 roles at the Agency is to assess -- implement the  
3 Board's regulations, which includes water quality  
4 standards and technology-based standards and that is  
5 part of his regular job that he does when he informs  
6 the Permit Section what standard goes into the permit.  
7 So it's part of his day-to-day job.

8           MR. HILES: I still don't believe that this  
9 witness has laid a foundation on his drafting of  
10 permit conditions.

11          Q. Bob, can you describe your daily role at the  
12 Agency? What do you do?

13          A. Well, the two major things that I do is  
14 develop and propose new or updated water quality  
15 standards to the Board for their adoption, and the  
16 other main category of what I do is to implement  
17 existing standards in NPDES permits.

18          Q. What do you mean by implementing those  
19 standards?

20          A. I have input as to what permit limits will be  
21 based on those standards.

22          Q. Can you describe in detail what that role is?

23          A. Yeah. The 304 section of the Board's  
24 regulations has the effluent standards. That's really

1 pretty straightforward and doesn't take much  
2 interpretation. The standards are laid out. They are  
3 applied as indicated. It's quite a bit simpler than  
4 the water quality standards from 302 of the  
5 regulations, which we have to determine do we need to  
6 regulate a certain parameter in a permit to protect  
7 the water quality standards in the receiving stream.  
8 We do a reasonable potential analysis. Is there a  
9 reason to believe, you know, we need a limit, if the  
10 substance is present in sufficient quantities or not.  
11 Mixing zones enter in how water quality standards are  
12 implemented in NPDES permits. And of course, mixing  
13 zones have nothing to do with effluent standards  
14 whatsoever.

15 Q. So in a given permit can you have both water  
16 quality standards and technology-based standards?

17 A. Yeah.

18 Q. What happens if a particular pollutant has  
19 both technology-based standard and water quality  
20 standard?

21 A. The most stringent side of the standards is  
22 applied.

23 Q. Do you know if TSS has a water quality  
24 standard?

1           A.    No, it does not.

2           Q.    Do you know if TSS has a technology-based  
3 standard in the Board's regs?

4           A.    Yes.

5           Q.    And if a discharger has TSS in their  
6 effluent, how would you recommend the permit limit  
7 should be written?

8           A.    It is strictly taken out of the 304  
9 regulations.  The numbers are provided by the Board.  
10 The particulars of which dischargers get which limits  
11 are provided by the Board.  It's very straightforward.

12          Q.    Do you have the authority to decide when to  
13 apply and not apply a technology-based standard  
14 written in a permit?

15          A.    No.  There's no discretion.

16          Q.    So unless the Board has granted regulatory  
17 leave, whether it's a water quality standard or a  
18 technology-based standard, do you have to consider  
19 those technology-based limits in the permit?

20          A.    Yes.

21          Q.    And let me now switch years to your  
22 discussion with Mr. Bone.  For the record, can you  
23 tell me whether or not Mr. Bone said that they would  
24 be considering effluent limits for TSS in their final

1 rule?

2 A. Yeah. I mean my discussion with Mr. Bone was  
3 that TSS was the primary parameter that was being  
4 looked at. I mean, obviously, that's what is found in  
5 these types of effluents, so our discussion really  
6 revolved around TSS.

7 Q. And this is in context of Illinois, in  
8 context of you recommending what the permits limits  
9 should be. If somebody says what are the existing  
10 technology-based limits for TSS, what would be your  
11 answer?

12 A. 15 milligrams per liter as a monthly average,  
13 30 as a daily maximum, based on the averaging rule in  
14 304.

15 MR. SOFAT: Thank you.

16 MR. HILES: A few follow-up questions.

17 REDIRECT EXAMINATION

18 BY MR. HILES:

19 Q. And your recommendation, of course, would be  
20 no limits in the event that that particular point  
21 source was subject to an adjusted standard granted by  
22 the Illinois Pollution Control Board. Am I correct?

23 A. If that were the case, no one would ask me.  
24 But I would -- if asked, I'd say look at the Board

1 relief and that tells you what to put in the permit.

2 Q. All right. So these questions that Mr. Sofat  
3 has asked you have actually been questions that would  
4 -- that might be applied to a company that did not  
5 have an adjusted standard. My question for you is,  
6 where an adjusted standard exists, as my client has,  
7 and that standard exempts compliance with the TSS  
8 effluent standards, there would, in fact, be no  
9 technology-based limit applicable to that plant, would  
10 there?

11 A. No, no limit at all.

12 MR. HILES: Thank you.

13 MR. SOFAT: I have a follow-up question.

14 RE-CROSS-EXAMINATION

15 BY MR. SOFAT:

16 Q. Bob, are you aware that the adjusted standard  
17 that applies to Illinois-American expires on September  
18 7, 2007?

19 A. Yes.

20 Q. How would you recommend your Permit Section  
21 given that and the circumstances are that the Board  
22 has not extended the adjusted standard? What happens  
23 at that time? On September 8th, 2007, a Permit  
24 Section -- a permit engineer came to you and said,



1 Bob, what do I do about TSS for Illinois-American, how  
2 would you consider the status of the adjusted standard  
3 that was granted to the Illinois-American but it  
4 expired -- it is expiring on September 7th?

5 MR. HILES: Well, I object to the nature of  
6 the hypothetical question. Particularly in light of  
7 the fact that the Board has said it will attempt to  
8 rule before the expiration or it will grant  
9 retroactive relief if it rules after the expiration.

10 MR. SOFAT: And my question goes to your  
11 question that if the adjusted standard has been  
12 granted. And adjusted standards usually are never  
13 sunset. The Board has come up with this sunset  
14 provision that, okay, adjusted standard usually means  
15 it's adjusted forever. In that case Bob will never  
16 have to look at this issue. However, in case of an  
17 adjusted standard that is expiring September 8th --  
18 and that's why I'm using it as a hypothetical. I can  
19 take out Illinois-American out of the reference.

20 Q. But my question is, if the Board's adjusted  
21 standard expires because Board say so, then how do you  
22 -- do you still consider the adjusted standard to  
23 recommend your permit limits?

24 A. No.

1 MR. SOFAT: Thank you. That's all.

2 REDIRECT EXAMINATION

3 BY MR. HILES:

4 Q. So is it your testimony then that you would  
5 impose technology-based limits immediately on  
6 September 8? You would tell the permitting section  
7 impose those technology-based limits starting  
8 September 8, 2007?

9 A. Well, I would have a discussion with Permit  
10 section to talk about compliance schedules. In fact,  
11 they would probably have that discussion among  
12 themselves without my participation necessarily. But  
13 a compliance schedule is sometimes a possibility. I'm  
14 not really expert in knowing when or where compliance  
15 schedules are allowable. But that's an option or an  
16 alternative to instant compliance when the Board  
17 relief expires.

18 Q. Well, in fact, instant compliance is  
19 impossible, isn't it?

20 A. Yeah.

21 Q. Based upon what you know about the Alton  
22 plant, Bob?

23 A. Right. But there again, I -- not being an  
24 expert in compliance schedules, I don't know what the

1 limitations are for the Agency to grant one in this  
2 case.

3 Q. well, let me ask you this. Let's roll back  
4 the clock to any year. I'm going to let you pick the  
5 year, but right now I'll propose 2002. Okay? My  
6 client is paying \$415,000 a year for the  
7 implementation of soil saving projects in the Piasa  
8 creek watershed. Did you tell anybody at  
9 Illinois-American Water Company in 2002 or any other  
10 year of your choice, reconsider your payment of  
11 \$415,000 a year because my Permit Section may pull the  
12 plug on you and require you to meet technology-based  
13 effluent limits once your adjusted standard expires in  
14 2007?

15 A. I would not have any authority to tell them  
16 that.

17 Q. well, did you suggest it that someone else in  
18 the Agency tell them that?

19 A. Not to my knowledge.

20 Q. And in the meantime my client -- strike that.

21 MR. HILES: I have nothing further.

22 Bob, you have the opportunity to read the  
23 transcript of this deposition and read it for errors  
24 in the words but not in the substance. If you do so,

1       however, we have a very short time frame for that  
2       because we have a hearing coming up on the 28th.  But  
3       it's your choice.  The transcript could be available  
4       by the middle of next week, which we think will be  
5       wednesday, and we would have to ask you if you choose  
6       to read it and look for corrections, necessary  
7       corrections, we would ask that you do so within 24  
8       hours to give us all a chance to utilize it.

9             A.  Okay.  All right.

10            MR. HILES:  Or else you can waive that right,  
11       just assume that the court reporter got all the words  
12       right.

13            MR. SOFAT:  My recommendation you can look at  
14       it and get it back to them in 24 hours.

15            A.  All right.  We'll do that.

16            MR. HILES:  Thank you.

17                        (Deposition concluded at 1:40 p.m.)

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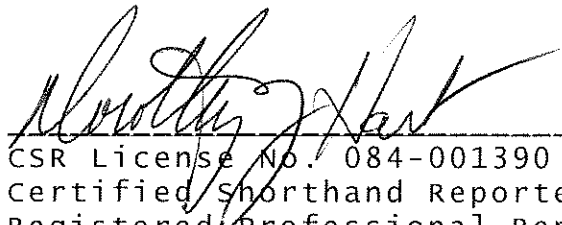
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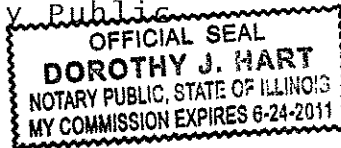
1 STATE OF ILLINOIS )  
2 COUNTY OF SANGAMON ) SS

3  
4 CERTIFICATE

5 I, Dorothy J. Hart, affiliated with Capitol  
6 Reporting Service, Inc., do hereby certify that I  
7 reported in shorthand the foregoing proceedings; that  
8 the witness was duly sworn by me; and that the  
9 foregoing is a true and correct transcript of the  
10 shorthand notes so taken as aforesaid.

11 I further certify that I am in no way associated  
12 with or related to any of the parties or attorneys  
13 involved herein, nor am I financially interested in  
14 the action.

15  
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17 CSR License No. 084-001390  
18 Certified Shorthand Reporter  
19 Registered Professional Reporter  
20 and Notary Public



21 Dated this 20th day of  
22 August, A.D., 2007, at  
23 Springfield, Illinois

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ERRATA SHEET

Illinois-American Adjusted Standard Proposed Extension

I hereby verify that the foregoing is a true and accurate transcription of my deposition taken on 8/16/07, except for those changes noted below:

Page\_\_\_\_ Line\_\_\_\_ Change\_\_\_\_\_

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\_\_\_\_\_  
Robert G. Mosher

Dated this \_\_\_\_ day of \_\_\_\_\_, 2007

\_\_\_\_\_  
Notary Public