

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED EXTENSION OF ADJUSTED STANDARD)	AS 2007-2
APPLICABLE TO ILLINOIS-AMERICAN)	(Adjusted Standard)
WATER COMPANY'S ALTON PUBLIC WATER)	
SUPPLY FACILITY DISCHARGE)	
TO THE MISSISSIPPI RIVER)	

NOTICE OF FILING

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PLEASE TAKE NOTICE that on August 21, 2007, the PETITIONER ILLINOIS-AMERICAN WATER COMPANY'S WRITTEN ANSWERS TO THE BOARD'S QUESTIONS FOR IAWC AND IEPA PERTAINING TO THE AMENDED PETITION AS 2007-2 was filed with the Clerk of the Pollution Control Board. A copy is herewith served upon you.

Respectfully submitted,

ILLINOIS-AMERICAN WATER COMPANY

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**PETITIONER ILLINOIS-AMERICAN WATER COMPANY'S
WRITTEN ANSWERS TO THE BOARD'S QUESTIONS FOR IAWC AND IEPA
PERTAINING TO THE AMENDED PETITION AS 2007-2**

Petitioner, Illinois-American Water Company ("Illinois-American Water"), by its attorneys, Bradley S. Hiles and Alison M. Nelson, hereby submits written answers to the Illinois Pollution Control Board's 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. For the convenience of the Illinois Pollution Control Board (the "Board") and the parties to this matter, each of the Board's questions is set forth in full before Illinois-American Water's corresponding response.

For each of the following responses, Illinois-American Water has identified the individual or individuals who assisted in preparing the response. Each such individual will be present at the Board's hearing on August 28, 2007 and will be available for cross-examination or additional inquiry at that time.

I. QUESTIONS POSED TO ILLINOIS-AMERICAN WATER

The Hearing Officer Order entered in this case on August 6, 2007 (the "Hearing Officer Order") poses four sets of questions to Illinois-American Water. These questions concern Illinois-American Water's method of quantifying and verifying sediment reductions; the potential new agreement between Illinois-American Water and Great Rivers Land Trust

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("GRLT"); Illinois-American Water's estimate of funding for the proposed sediment reductions and maintenance; and a potential rulemaking update to 35 Illinois Administrative Code 304.206. Illinois-American Water's response to each question is set forth below.

1. Quantifying and Verifying Sediment Reductions

The Board's first set of questions concerns Illinois-American Water's method of quantifying and verifying sediment reductions.

a. How does IAWC account for sediment reductions in its reporting to IEPA?

Paul Keck, the Water Quality Supervisor for Illinois-American Water's Alton, Illinois facility (the "Alton facility" or the "facility") reports that Illinois-American Water accounts for sediment reductions in its reporting to the Illinois Environmental Protection Agency (the "Agency" or "Illinois EPA") through GRLT, as required by the facility's NPDES Permit. *See* NPDES Permit No. IL0000299, Special Condition 14 (requiring Illinois-American Water "through the GRLPA [Great Rivers Land Preservation Association]" to submit to the Agency quarterly reports detailing the progress of the Piasa Creek Watershed Project (the "Project"), and to submit to the Agency annual reports detailing "the reductions achieved by implementation of the sediment reduction measures, describing the sediment load reductions achieved for each measure or practice implemented"). In other words, Illinois-American Water itself does not account for the sediment reductions achieved by the Project, and instead relies on GRLT to determine the amount of reductions achieved.

Alley Ringhausen, the Executive Director of GRLT, explains that the method of quantifying sediment reductions into the Piasa Creek is the Sediment Input Reduction Analysis Method (SIRAM). SIRAM measures erosion and sediment trapped through the construction of sediment basins, stream buffers, retention and detention basins, and other best management

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practices. SIRAM is not an official method of calculating soil savings, but rather is a shorthand way of indicating that the sediment calculations from various erosion control practices are added together to produce the total soil savings for a project. The four major forms of erosion (sheet and rill, ephemeral, gully, and streambank) each have different methods of measurement, so slightly different formulas and factors are used for each method of erosion control. All calculations have been and will continue to be based on United States Department of Agriculture (USDA) standards, including USLE (Universal Soil Loss Equation) and RUSLE (Revised Universal Soil Loss Equation). *See* GRLT, Piasa Creek Watershed Project Implementation Plan at 19 (March 2004) (attached to the Petition for Extension as Attachment A) (hereafter, the “Implementation Plan” or the “Plan”).

The U.S. Environmental Protection Agency’s (“USEPA’s”) Water Quality Trading Policy shows that RUSLE is a USEPA-approved method of determining nutrient and sediment load reductions. *See* USEPA, Office of Water, Water Quality Trading Policy at 9 (Jan. 13, 2003) (hereafter, the “Water Quality Trading Policy”) (stating that “[n]umerous methods and procedures to determine nutrient and sediment load reductions associated with conservation practices on agricultural and forest land have been developed or used by the USDA agencies”; stating that “[s]ome of these methods may be applied to water quality trading”; and stating specifically that “the Revised Universal Soil Loss Equation (RUSLE) may be used in some locations to estimate the sediment yield at the end of a slope in agricultural settings”). *See also* USEPA, Water Quality Trading Assessment Handbook: Can Water Quality Trading Advance Your Watershed’s Goals at 40 (2004) (hereafter, “Water Quality Trading Assessment Handbook”) (“Reductions for these control options [for which measuring the control option’s

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impact on pollution loading is either impractical or very costly] may be estimated based on models, scientific tools, or performance data.”).

According to Paul Keck, Illinois-American Water performs periodic internal reviews to ensure that the Alton facility and the Project are satisfying the required 2 to 1 offset. To determine whether the offset requirement is satisfied, Paul Keck compares the sediment reduction amount received from GRLT to the amount of solids in the facility’s effluent. The amount of solids in the facility’s effluent is calculated by assuming that 100% of the Total Suspended Solids (TSS) in the facility’s influent would be discharged in the facility’s effluent. The amount of TSS in the facility’s influent is calculated by multiplying the TSS concentration in the facility’s influent (determined by correlating turbidity data from samples collected approximately three times each day) by the predicted daily flow rate for the facility. (This formula is described in detail in the Affidavit of Paul Keck, attached to the Amended Petition for Extension as Attachment D.) The results of these internal reviews are not routinely reported to the Agency. However, Illinois-American Water is required to notify the Agency of any problems in implementation of the Project or compliance with the terms of the Project, and would therefore report any results that indicated that the facility was not satisfying the 2 to 1 offset. *See* NPDES Permit No. IL0000299, Special Condition 17.

b. Does IAWC rely entirely on the GRLT quarterly reports to the Agency to quantify and verify its sediment reductions for compliance?

As noted above, Paul Keck reports that Illinois-American Water itself does not account for the sediment reductions achieved by the Project, and instead relies on GRLT to determine the amount of reductions achieved. Illinois-American Water does not, however, rely on the GRLT quarterly reports alone to verify sediment reductions. Paul Keck attends annual meetings with GRLT and the Agency to discuss the progress of the Project; tours the Project’s sites to observe

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progress of the implementation of best management practices; and confers with Alley Ringhausen to discuss the progress of various projects. Alley Ringhausen confirms that Illinois-American Water does more than simply receive GRLT's quarterly reports, and that Illinois-American Water has made numerous inquiries to GRLT in an effort to understand, at a conceptual level, the nature of the projects being implemented and the way soil savings are calculated.

- 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?**

Terry Gloriod, the President of American Water's Central Region, was involved in the proceedings on Adjusted Standard 99-6. He believes that the 2 to 1 offset ratio was intended to produce a greater environmental benefit than compliance with the effluent regulations alone.

The record from Adjusted Standard 99-6 does not discuss the method used to select the 2 to 1 ratio, so the parties' intent at the time that adjusted standard was adopted is not entirely clear. *See* Final Brief of Illinois Environmental Protection Agency, AS 99-6 at 9 (June 22, 2000) ("It should also be noted that the proposed adjusted standard goes beyond the proposed Federal policy, which contemplates offsets of 1:1.5 instead of the 1:2 mandated in the proposed adjusted standard."); *see also* Testimony of Thomas G. McSwiggin (attached to the Final Brief of Illinois Environmental Protection Agency, at 2-3) (noting that under USEPA's August 1999 proposed TMDL-related regulations, "major new or significantly expanding dischargers must obtain offsets of 1:1.5 from existing point or non point sources," then noting that "the Agency determined that an offset ratio of 1:2, instead of the federal ratio of 1:1.5, would be appropriate for the Alton replacement plant").

- 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).**

As this Board has observed, USEPA's Water Quality Trading Assessment Handbook states that "the relatively variable and unpredictable performance of nonpoint source BMPs has been handled by discounting the estimated reductions available for trade." *See* Hearing Officer Order at 1. Several other USEPA publications make clear, however, that use of an uncertainty discount to reduce uncertainty is not necessary in all cases. For instance, USEPA's Water Quality Trading Policy states that "EPA supports a number of approaches to compensate for nonpoint source uncertainty." *See* Water Quality Trading Policy at 9. These approaches include:

- monitoring to verify load reductions;
- the use of greater than 1:1 trading ratios between nonpoint and point sources;
- using demonstrated performance values or conservative assumptions in estimating the effectiveness of nonpoint source management practices;
- using site- or trade-specific discount factors; and
- retiring a percentage of nonpoint source reductions for each transaction or a predetermined number of credits.

See id. Use of an uncertainty discount (*i.e.*, a "greater than 1:1 trading ratio between nonpoint and point sources") therefore is simply one of many ways to reduce uncertainty in calculating soil savings. Here, Alley Ringhausen acknowledges that GRLT has employed several of these means of reducing uncertainty.

Alley Ringhausen reports that he uses site-specific discount factors. Rather than using one of the fixed discount ratios described in USEPA's Water Quality Trading Toolkit (for instance, a "delivery ratio" or a "location ratio"), GRLT discounts all soil savings that would be calculated as savings to sheet/rill erosion. *See* Water Quality Trading Toolkit at 30 (discussing several fixed trade- and site-specific discount ratios). Many landowners in the Piasa Creek Watershed with land on which projects have been installed by GRLT are also required to

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develop farm management plans as a result of their participation in USDA programs that encourage no-till farming practices. These practices are not, however 100% effective at controlling sediment loading to streams. In other words, even with these practices in place, some amount of sediments would enter the Piasa Creek Watershed but for the sediment reduction BMPs installed by the Project. To reduce all uncertainty regarding whether the Project was simply duplicating the efforts of the USDA program (*i.e.*, to avoid counting one ton of soil savings twice), GRLT simply discounts all modeled savings from sheet and rill erosion. Alley Ringhausen estimates that this discounted amount is approximately 795 tons per year, or approximately 10% of the Project's soil savings per USLE and RUSLE models. This "uncertainty discount" of approximately 10% discounts soil savings to the same extent as other established water quality trading programs, albeit through different means. The Lower Boise River Pollutant Trading Program, for example, uses an uncertainty discount ranging from 2% to 15%, depending on the type of BMP being implemented. *See* Water Quality Trading Toolkit at Water Quality Trading Scenario: Point Source-Nonpoint Source Trading at 6.

Moreover, USEPA's Water Quality Trading Assessment Handbook identifies "nonpoint source screening criteria" as a method of addressing uncertainty. *See* Water Quality Trading Assessment Handbook at 79. Alley Ringhausen confirms that GRLT carefully screens the sediment reduction project locations before determining which type of sediment reduction project to install. In fact, GRLT makes this determination with the assistance of local Soil & Water Conservation Districts, which visit and inspect every potential project site with GRLT and cooperatively select the appropriate type of sediment reduction project for the site. This nonpoint source screening, together with the periodic monitoring to confirm the modeled sediment savings and the site-specific sheet/rill erosion discount also applied by GRLT,

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adequately reduces uncertainty in GRLT's modeled sediment reduction calculations, so the application of a fixed uncertainty discount is unnecessary.

- 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?**

As noted above, Alley Ringhausen observes that the use of a fixed uncertainty discount is not necessary in this case to address uncertainty because uncertainty is addressed using several other EPA-approved methods.

In addition, Paul Keck states on behalf of Illinois-American Water that even though Illinois-American Water is currently seeing a 4.2 to 1 offset ratio for sediment, and a 3.8 to 1 ratio for iron, these numbers are highly dependent on conditions of the Mississippi River. Wet weather patterns in the Upper Mississippi River Basin like those that occurred in 1993 could produce higher runoff in the watershed and dramatically increase the sediment load in the Mississippi River. Illinois-American Water hopes that these higher-than-anticipated offset ratios will continue indefinitely. But, the River conditions are beyond Illinois-American Water's control. Therefore, Illinois-American Water cannot predict with any certainty whether Illinois-American Water will continue to achieve an offset that goes well beyond that required by Adjusted Standard 99-6. Given the track record of the "new" Alton plant for lower-than-expected TSS loading over the past four years, it would not be unreasonable for the Board to consider 6,600 tons saved as a meaningful margin of safety. Interestingly, USEPA used the term "margin of safety" in its Draft Framework for Watershed-Based Trading, published several years prior to the Board's decision in AS 99-6. *See* USEPA, Office of Water, Draft Framework for Watershed-Based Trading, EPA 800-R-96-001 at 5 (May 1996) (hereafter, "Draft Framework") ("An agency reviewing a trade should ensure that the pollution reductions required of a source

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reflect a margin of safety that is proportional to the uncertainty associated with load reductions over large spatial scales and is adequate to ensure that the reductions will actually attain water quality standards throughout the trading area.”). Illinois-American Water urges caution with such an approach, however. Although turbidity is measured at the Alton plant three times each day (rendering TSS loading calculations reliable), turbidity itself is outside of the Company’s control.

- 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?**

As the Board observes, USEPA’s Water Quality Trading Policy states that “[m]echanisms for determining and ensuring compliance are essential for all trades and trading programs.” *See* Hearing Officer Order at 1 (citing Water Quality Trading Policy at 10). That Policy also provides additional guidance regarding the types of mechanisms that may be used, including “a combination of record keeping, monitoring, reporting and inspections.” *See* Water Quality Trading Policy at 10. The Policy also notes that “compliance audits should be conducted frequently enough to ensure that a high level of compliance is maintained across the program.” *Id.*

The Natural Resources Conservation Service (NRCS) publishes Field Office Technical Guides that contain technical information about soil conservation. Section IV of the Field Office Technical Guide for Madison County, Illinois, titled “Practice Standards and Specifications,” contains documentation and certification standards that apply to all “conservation practices in which NRCS, SWCD [Soil & Water Conservation District] employees working under NRCS authority, or agreement with entities were or are involved with the planning, design, installation

or application, or check out.” See USDA, NRCS, Madison County, Illinois Electronic Field Office Technical Guide, at Section IV (March 2007), available at <http://efotg.nrcs.usda.gov/>. Alley Ringhausen confirms that the Project currently complies with these documentation and certification standards, which require completed work to be checked for compliance with plans and specifications and require certification that all identifiable units of the practice are completed according to the plans and specifications. To address the Board’s concern for having enforceable mechanisms in place, Illinois-American Water recommends revising the proposed Board order to require compliance with the NRCS’s documentation and certification standards. Additional revisions to the proposed order could include requirements that the Agency conduct additional inspections of the projects and conduct annual or bi-annual compliance audits to ensure that the inspections conducted by GRLT meet with Agency approval.

2. Potential New Agreement between IAWC and GRLT

The Board’s second set of questions directed to Illinois-American Water asks Illinois-American Water to describe its position regarding whether a soil savings project with “passive” soil savings should be “retired,” and whether Illinois-American Water should be required to continue funding new sediment reduction projects. Illinois-American Water’s response to each question is set forth below

- 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?**

Terry Gloriod of Illinois-American Water does not believe there is a point at which a stabilized project that continues to effectively (but passively) result in sediment reductions could be retired in terms of accounting for sediment reductions. The concept of “retirement” appears in USEPA guidance in two contexts, and neither context contemplates requiring an entity which

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has purchased a credit to simply stop counting that credit at some arbitrary point during the project's effective life span.

First, as the Board observes, one context in which retiring credits is appropriate and supported by USEPA is to "account for the greater uncertainty in estimates of nonpoint source loads and reductions." *See* Hearing Officer Order at 3 (citing Water Quality Trading Policy at 9). This method of "retirement" involves "retiring a percentage of nonpoint source reductions for each transaction or a predetermined number of credits". *See* Water Quality Trading Policy at 9. In contrast to the type of retirement addressed by the Board's inquiry, retirement of credits in this context occurs immediately, before the trading begins, and is factored into the trading ratio itself.

The other context in which retiring credits is appropriate and supported by USEPA is to "secure[] long-term improvements in water quality through the purchase and retirement of credits by any entity." *See id.* at 3. In the Passaic Valley Sewerage Commissioners Pretreatment Trading Program in New Jersey, for instance, a buyer may use only 80 percent of its purchased quantity of credits, because the Passaic Valley Sewerage Commissioners requires the buyer to retire or reserve 20 percent of the reductions "for environmental benefit or future needs." *See* Water Quality Trading Toolkit at Appendix A: Water Quality Trading Program Fact Sheets, at A-65. The Water Quality Trading Toolkit explains that "[t]herefore, facilities purchasing credits must take this retired/reserved percentage into account when calculating credits." *See id.* Stated differently, because the buyer may use only 80 percent of the purchased credits, the trading ratio is 10:8 (credits purchased : credits needed to offset the purchasing facility's discharge).

If Illinois-American Water were purchasing GRLT's soil savings as "credits," the 2 to 1 offset ratio would be equivalent to "retirement" (at the outset, in the context used in USEPA

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guidance) of 50% of the credits it purchases. In other words, for every two tons of sediment savings generated by GRLT and purchased by Illinois-American Water, Illinois-American Water can only count one ton of such savings against the amount in its effluent. This 50% retirement achieves a greater environmental benefit than treatment alone.

- 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?**

Terry Gloriod states on behalf of Illinois-American Water that initiation of an active sediment reduction project simply to generate a “tradable” commodity because existing projects are “mature” and “self-sustaining” is not appropriate. Not only is the concept of when a project becomes “mature” and “self-sustaining” unclear, Alley Ringhausen states that no project is truly “self-sustaining” (or, stated differently, “maintenance-free”); even farmland that is taken out of production must be inspected periodically to ensure that the landowner is in compliance with any use restrictions on the property.

Also, requiring the generation of new credits simply for the sake of generating credits (or the corollary – requiring the purchase of new credits simply for the sake of purchasing credits) is inconsistent with the concept of a water quality trading program. As noted above, Illinois-American Water’s 2 to 1 offset ratio is equivalent to “retirement” of 50% of the credits it purchases from GRLT. There is nothing in USEPA’s guidance to suggest that a retirement percentage can be arbitrarily increased as the life of the facility progresses. In addition, the Project has successfully achieved an offset of approximately 4.2 to 1 for TSS and 3.8 to 1 for iron – an offset which Illinois-American Water and GRLT hope will continue to be achieved into the foreseeable future. Illinois-American Water’s purchase from GRLT of more credits than it needs to meet the required offset provides Illinois-American Water with greater assurances that it

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will be able to meet the adjusted standard even if the River conditions change. There is nothing in USEPA's guidance to suggest that retirement of a greater percentage of credits is appropriate simply because a facility has purchased more credits than it needs under current conditions.

- 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?**

As noted above, Terry Gloriod states on behalf of Illinois-American Water that "passive" credits (*i.e.*, credits that, in the Board's words, have "reached maturity") should not be taken off the books. Illinois-American Water's adjusted standard therefore should not contain provisions requiring Illinois-American Water to replace the retired, "mature" credits with new, "active" projects.

Further, Paul Keck states on behalf of Illinois-American Water that requiring Illinois-American Water to continue funding new projects even though the existing projects are still effectively reducing sediment loading is not consistent with funding long term maintenance of a traditional effluent control facility. Generally, a facility that installs conventional treatment technology must purchase equipment to reduce sediment loading and must service and maintain that equipment throughout the equipment's life. That facility must only purchase new equipment to replace existing equipment if the existing equipment ceases to work properly or "wears out." If that facility's maintenance involved what the Board is suggesting here, that facility would instead have to continually replace its functioning equipment year after year to reduce the facility's sediment loading by an additional increment each year. The facility's obligation would be to spend a fixed amount of money each year, rather than to ensure that the equipment was effectively reducing the facility's sediment loading. Essentially, the facility could not reap the

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benefits from its investment in effective and long-lasting equipment because it would instead be required to continue spending money simply for the sake of spending it.

Terry Gloriod also states on behalf of Illinois-American Water that requiring Illinois-American Water to continue funding new projects even though the existing projects are still effectively reducing sediment loading would create perverse incentives. If Illinois-American Water would be required to stop counting a project as soon as it was “passively” (rather than “actively”) reducing sediment loading, Illinois-American Water would benefit by making sure that it selected projects requiring extensive or frequent maintenance. Alley Ringhausen states that smaller projects such as farm-through sediment basins have a shorter life span and thus require more frequent maintenance than larger, more permanent sediment reduction projects like large sedimentation basins, filter ponds, or lakes such as Boy Scout Lake. Illinois-American Water’s incentive would therefore be to invest in the smaller, less permanent projects simply so that it could continue maintaining them and thus generating “active” credits.

Finally, Terry Gloriod states that requiring Illinois-American Water to achieve a soil savings greater than 2 to 1 (and at least 6,600 tons per year) transforms this fixed goal into a moving target. He states that if Illinois-American Water had known in 2000 that the adjusted standard would terminate unless Illinois-American Water agreed to an ever-increasing soil savings obligation, Illinois-American Water probably would not have pursued offset trading at that time.

- 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?**

Illinois-American Water consulted with GRLT to provide insight into its answers in this Section 2. Alley Ringhausen confirmed that he was not aware of any instances in which an

entity which has purchased a credit was required to simply stop counting that credit at some arbitrary point during the project's effective life span. He noted that projects that are no longer effectively reducing sediment loading should no longer be counted, but clarified that this is because the projects are no longer working, not that the projects are too effective or are generating only "passive" savings.

3. Funding for the Sediment Reductions and Maintenance

The third set of questions addressed to Illinois-American Water by the Board addresses the benefits of the Project aside from soil savings, the impact that a "maintenance-only" contract would have on such benefits, the estimated cost for maintenance each year and the changes to that annual cost over time, and any known sources of funding other than "outside sources."

Illinois-American Water's responses to each question are set forth below.

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?

Alley Ringhausen reports that there are numerous benefits to the Project other than direct soil savings. These include "reduced erosion, improved water quality, stormwater control, reduction of flash flooding, enhanced fish and wildlife habitat, protection of sensitive ecosystems, public education on watershed management, and financial incentives to farmers and landowners to implement conservation practices." *See* Affidavit of Alley Ringhausen ¶14 (attached to the Amended Petition for Extension as Attachment A). Specifically, GRLT works with the Piasa Creek Watershed Education Team (PC-WET), which develops curricula for schools; takes schoolchildren and other members of the public out into the field to complete hands-on service learning projects such as tree plantings and stream cleanup; educates landowners about the existence of the Project and the benefits of implementing sediment reduction projects on private property by distributing brochures to courthouses, libraries, and

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other public locations; works in close relationship with local colleges such as Lewis & Clark Community College, Principia College, and Southern Illinois University (Edwardsville) and assists students at those schools to develop research issues and topics for student theses; and works with local high schools and organizations to develop educational materials with information about watersheds and watershed events. GRLT has also become involved in other projects that, but for the Project, it would not have had the opportunity to do, such as cultural and anthropological research regarding an underground railroad site located near Boy Scout Lake.

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?

Alley Ringhausen states that some of the Project's benefits other than soil savings will not be affected by a decrease in funding. These include reduced erosion, improved water quality, stormwater control, reduction of flash flooding, enhanced fish and wildlife habitat, and protection of sensitive ecosystems. Funding to implement new projects with these benefits will not be available, but all of the benefits achieved to date will be maintained. Certain educational benefits of the Project will also continue, including educating landowners about the existence of the Project and the benefits of implementing sediment reduction projects on private property by distributing brochures to courthouses, libraries, and other public locations; working in close relationship with local colleges such as Lewis & Clark Community College, Principia College, and Southern Illinois University (Edwardsville) and assisting students at those schools to develop research issues and topics for student theses; and working with local high schools and organizations to develop educational materials with information about watersheds and watershed events.

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Alley Ringhausen also estimates that some of the Project's benefits other than soil savings will not be achieved. For instance, the Project will not have the ability to offer financial incentives to farmers and landowners to implement new conservation practices. Also, certain educational benefits of the Project will not be achieved, including GRLT's work with the Piasa Creek Watershed Education Team (PC-WET), and its leadership in service learning programs that take schoolchildren and other members of the public out into the field to complete hands-on projects such as tree plantings and stream cleanup. Alley Ringhausen estimates that GRLT spends approximately \$5,000 to \$10,000 each year on these educational activities, and GRLT's proposal for maintenance (discussed in section c, below) does not allocate funds from Illinois-American Water's annual maintenance contribution to education.

c. Does Illinois-American have an estimate for yearly costs and time associated with a maintenance contract?

GRLT has estimated that under a 10-year maintenance contract, Illinois-American Water will need to contribute approximately \$136,800 each year to maintain its soil savings. (GRLT's estimate, titled "Great Rivers Land Trust: Piasa Creek Watershed Project Stewardship and Monitoring Plan for Conservation Properties," is attached for the Board's reference as Exhibit 1.) Alley Ringhausen and Terry Gloriod stress, however, that this funding proposal takes into consideration only the annual expenditures necessary to maintain the erosion control measures that are part of the Project. The parties will negotiate the final contract amount during negotiations over the maintenance contract itself, and the terms of the maintenance contract (including technical requirements, insurance and indemnity provisions, and other terms routinely included in service contracts) may affect the dollar amount of Illinois-American Water's annual payment. GRLT and Illinois-American Water urge the Board to structure Illinois-American

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Water's maintenance obligations around the minimum savings the projects must achieve (*i.e.*, a 2 to 1 offset, but in all events at least 6,600 tons of solids each year).

The proposal allocates the \$136,800 annual contribution among five categories: site visits, annual landowner relations, stewardship, legal defense, and endowment. Approximately \$10,800 is allocated to site visits, which accounts for 3 hours per site per year for 80 project sites. Expenses paid out of this amount include staff time and travel, expense reimbursement, photography, mapping, administration, meetings with land owners, associated follow-up reports and correspondence, and maintaining up-to-date records. Approximately \$18,000 is allocated to annual landowner relations, which accounts for 5 hours per site per year for 80 project sites. Third, approximately \$78,000 is allocated to stewardship of lands owned or leased by GRLT or under cooperative agreement with GRLT, including maintenance of groundcover, tree plantings, grade control structures, basins, streambank stabilization, mowing, invasive species control, controlled burns, seed collection, tile and drain structure maintenance, and any other activities necessary to support the intended purpose of the individual projects. Expenses paid out of this amount include labor, equipment and material costs, which accounts for 60 hours per site per year for 20 project sites. Fourth, approximately \$5,000 is allocated to legal fees and courts costs, which may be associated with defending a conservation easement or long-term maintenance agreement or pursuing remedial measures or legal action for violations of agreements between GRLT and private landowners for erosion control structures on their property. Finally, approximately \$25,000 is allocated to an endowment fund, which is discussed in Illinois-American Water's response in subsection e, below.

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- d. **How would those costs change over the years as the project reaches the point of sustainability without future funding from “outside sources”?**

Terry Gloriod and Alley Ringhausen agree that due to the changing conditions in the Mississippi River, which directly effect the soil savings required for compliance with the offset ratio as well as the cost of maintenance, it is impossible to determine with any certainty what the cost of maintenance will be beyond the expiration of the proposed 10-year maintenance plan. The Project is a front-runner in watershed-based trading in the state, so there are no similar projects to which the parties can look for guidance. The amount that Illinois-American Water contributes beyond expiration of the proposed 10-year maintenance plan could increase, decrease, or stay the same. In any case, Illinois-American Water assures the Board that Illinois-American Water is committed to maintaining a 2 to 1 offset with a soil savings of no less than 6,600 tons per year, and that commitment will not end in 2010.

- e. **In referring to a future without funding by “outside sources”, is IAWC aware of funding that might come from other than outside sources?**

The annual contribution under GRLT’s proposal for maintenance earmarks \$25,000 each year for a “stewardship endowment fund” that will grow over the ten-year term of the plan. GRLT estimates that at the time the 10-year maintenance plan expires, the endowment fund will have a sufficient balance to perpetuate the project for years to come. In other words, GRLT and Illinois-American Water hope that this endowment fund will allow the Project to achieve sustainability without future funding from “outside sources.” However, if additional funding is required, Illinois-American Water is committed to financially supporting any maintenance necessary to maintain the 2 to 1 offset with a soil savings of at least 6,600 tons per year or, as a consequence, lose the adjusted standard if the offset is not maintained.

4. Rulemaking Update

The fourth question directed to Illinois-American Water by the Board is whether Section 304.206 of the Illinois Administrative Code (“Alton Water Company Treatment Plant Discharge”) is still needed. That Section provides:

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)

In its order dated September 7, 2000, this Board noted that “since the existing facility will no longer be in use and will be replaced by the new facility, the site specific rule at Section 304.206 of the Board's rules for the existing facility is no longer necessary.” *See* Opinion & Order of the Board, AS 99-6 at 10 (Sept. 7, 2000). Illinois-American Water does not believe this Section is necessary and would not oppose an action by the Agency to repeal it.

II. QUESTIONS POSED TO IEPA

The Hearing Officer Order poses five sets of questions to the Agency. These questions concern the applicability of federal categorical effluent limitations; the Agency's water quality trading policy; the Agency's interpretation of USEPA's water quality trading policy; the Agency's interactions with USEPA regarding Illinois-American Water's petition for an extension of its adjusted standard; and the Agency's determination of effectiveness for the Project and its assessment of Illinois-American Water's compliance with AS 99-6.

The Hearing Officer Order invites both parties to address any of the questions posed, “whether specifically addressed to that party or not.” *See* Hearing Officer Order at 1. Illinois-

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American Water therefore submits testimony regarding those issues known to Illinois-American Water that may assist the Board in making its determination in this case.

1. Existing & Potential Federal Categorical Effluent Limitations

The first set of questions directed to the Agency asks whether 40 CFR Subchapter N applies to Illinois-American Water's Alton facility, whether USEPA has indicated that it will be developing federal categorical effluent limitations that would apply to the facility, and whether the Agency expects those potential limitations to include TSS and iron. Illinois-American Water's response to each question is set forth below.

- 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?**

Illinois-American Water agrees with the Board's determination that 40 C.F.R. Subchapter N (Effluent Guidelines and Standards) does not currently impose any federal categorical effluent limitations on Illinois-American Water's Alton facility. As the Board has observed, 40 C.F.R. Section 401.10 makes it clear that Subchapter N "prescribe[s] effluent limitations guidelines for existing sources, standards of performance for new sources and pretreatment standards for new and existing sources." Part 401 includes "general provisions" that apply to all sources subject to 40 C.F.R. Subchapter N, but this Part does not impose any specific effluent limitation guidelines. The next Part, Part 403,¹ applies to: (1) "[certain] pollutants from non-domestic sources covered by Pretreatment Standards"; (2) "POTWs which receive wastewater from sources subject to National Pretreatment Standards"; (3) certain States; and (4) "any new or existing source subject to Pretreatment Standards." *See* 40 C.F.R. § 403.1(b)(1)-(4). Illinois-American Water's Alton facility does not fall into any of these categories. Illinois-American Water is not a POTW and

¹ Part 402 of Subchapter N is reserved for future regulations.

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does not discharge to a POTW and, as the Board observes, 40 C.F.R. Section 403.1(b)(4) makes it clear that “National Pretreatment Standards do not apply to sources which Discharge to a sewer which is not connected to a POTW Treatment Plant.” *See* Hearing Officer Order at 5 (quoting 40 C.F.R. § 403.1(b)(4)). The remainder of Subchapter N sets forth effluent limitations for specific categories of dischargers. Illinois-American Water’s Alton facility would be categorized as a “drinking water treatment point source,” and there are no effluent limitations applicable to this specific category of discharger.

The Board quotes language from the Agency Recommendation that states, “[i]n 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.” *See* Hearing Officer Order at 4. Illinois-American Water reads this language to refer only to potential categorical effluent limitations that may be developed in the future, and does not believe the Agency intended to refer to any existing federal categorical effluent limitations.

- 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?**

USEPA’s notice of its information collection activities and request for comments states that USEPA has “identified the ‘drinking water treatment point source category’ as a candidate for rulemaking,” and that USEPA “is collecting information from drinking water treatment facilities to determine if effluent guidelines or pretreatment standards are required to control the discharge of toxic and non-conventional pollutants into surface waters of the United States and to publicly owned treatment works (POTWs).” *See* USEPA, Notice, Agency Information

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Collection Activities: Proposed Collection; Comment Request; Technical Survey: Drinking Water Treatment Facilities, 127 Fed. Reg. 38,675, 38,675 (July 5, 2005). USEPA will decide whether the promulgation of effluent guidelines is necessary on the basis of that information. *See* USEPA, Industrial Water Pollution Controls, Effluent Guidelines: Potential Drinking Water Treatment Guidelines, <http://www.epa.gov/waterscience/guide/dw/> (last accessed Aug. 21, 2007).

Illinois-American Water does not believe that Mr. Tom Bone² has indicated to the Agency that USEPA will be developing federal categorical effluent limits applicable to Illinois-American Water's Alton facility. In a deposition on August 16, 2007, Robert Mosher, Supervisor, Water Quality Standards Unit, Illinois EPA, testified that he spoke to Mr. Bone. According to Mr. Mosher's testimony, Mr. Bone did not provide a clear answer to this question, but simply verified that the matter was being examined. *See* Deposition of Robert G. Mosher (Aug. 16, 2007) at 29:21-29:16 (stating first that USEPA would be developing categorical effluent limits for sources which do not discharge to a POTW, but then stating that Mr. Bone "made it plain to me that he couldn't confirm anything from a developing project, that until the formalities were complete that there were no guarantees of what the proposed limit, if any proposed limit, would be put forward") (emphasis added). This is consistent with USEPA's public statements about the status of this rulemaking. *See* USEPA, Industrial Water Pollution

² Illinois-American Water questions whether the Agency has correctly identified the individual at USEPA that the Agency contacted. USEPA's webpage summarizing USEPA's consideration of potential drinking water treatment guidelines states that "[i]f you are interested in learning more about this rulemaking or are interested in helping us with its data needs, please contact: "Tom Born [not Tom Bone] (born.tom@epa.gov), Project Lead: Drinking Water Treatment Effluent Guidelines, 202-566-1001." *See* USEPA, Industrial Water Pollution Controls, Effluent Guidelines: Potential Drinking Water Treatment Guidelines, <http://www.epa.gov/waterscience/guide/dw/> (last accessed Aug. 16, 2007); *see also* Deposition of Robert G. Mosher (Aug. 16, 2007) at 28:23-28:24 (responding to a question regarding his discussions with Mr. Bone that "I got his name and phone number, I believe, off of the Web site from USEPA"). (An excerpt of the Deposition of Robert G. Mosher supporting this and other statements throughout this response is attached hereto as Exhibit 2). If the Agency contacted someone other than Mr. Tom Born, Illinois-American Water asks that the Agency provide Illinois-American with contact information for such other individual prior to the August 28, 2007 hearing on this matter.

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Controls, Effluent Guidelines: Potential Drinking Water Treatment Guidelines, <http://www.epa.gov/waterscience/guide/dw/> (last accessed Aug. 21, 2007) (observing that “we have made no decisions about whether any discharge controls are necessary for residuals produced by drinking water treatment facilities,” and that “[m]ore detailed investigations are warranted in order to support a final action”).

Moreover, USEPA’s Water Quality Trading Policy states that “EPA will consider including provisions for trading in the development of new and revised technology-based effluent guidelines and other regulations to achieve technology-based requirements, reduce implementation costs and increase environmental benefits.” *See* Water Quality Trading Policy at 6 (citing the existing federal categorical effluent limits applicable to the iron and steel industry as an example of limits permitting trading to comply with federal categorical effluent limits in certain circumstances). In other words, even if USEPA decides to promulgate federal categorical effluent limits that would apply to Illinois-American Water’s Alton facility, USEPA may also include provisions for trading in those effluent guidelines that would permit an Adjusted Standard granted by this Board to continue in effect.

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?

USEPA’s webpage summarizing USEPA’s consideration of potential drinking water treatment guidelines states only that after considering all comments on USEPA’s proposed 2004 Effluent Guidelines Program Plan, USEPA concluded “that drinking water treatment facilities may be discharging more than trivial amounts of toxic and nonconventional pollutants.” Illinois-American Water is not aware of any indication by USEPA that specifically identifies the pollutants that would be subject to any newly-promulgated federal categorical effluent

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limitations for drinking water treatment point sources. However, in a deposition on August 16, 2007, Robert Mosher, Supervisor, Water Quality Standards Unit, Illinois EPA, testified that he spoke to Mr. Bone about USEPA's consideration of effluent limits for water supply treatment plants, and that Mr. Bone "talked about total suspended solids being one of those pollutants that they were working on development." *See* Deposition of Robert G. Mosher at 30:3-30:5.

Notably, Mr. Mosher then noted that "[h]e did tell me that there was no way to predict what list of pollutants they would end up with," but that TSS was one of the pollutants they were considering. *See id.* at 30:5-30:8. This leaves open the possibility that USEPA could propose and even promulgate federal categorical effluent limitations applicable to the 'drinking water treatment point source category' that would not impact the validity of the Adjusted Standard proposed here.

2. Illinois Water Quality Trading Policy

The Board's second set of questions directed to the Agency asks whether the Agency is considering water quality trading as an option for point source discharges in waterways with TMDLs, if the Agency is aware of any other dischargers in Illinois that use or plan to use water quality trading, or whether the Agency consulted with the Illinois State Water Survey to provide insight into the prospect of trading and credit retirement. Illinois-American Water is not aware of the Agency's knowledge or actions with respect to these issues, and therefore does not wish to submit any testimony regarding these questions.

3. USEPA Water Quality Trading Policy

The third question addressed to the Agency by the Board is simply, "are there federal effluent guidelines or TBEL for TSS and iron discharges not to a POTW that would apply to IAWC?" The answer to this is clear: NO.

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The Agency clearly supported issuance of AS 99-6 in 1999-2000. Illinois-American Water is not aware that any federal effluent guidelines applicable to Illinois-American Water's facility have been promulgated since AS 99-6 was granted, so the applicable law has not changed. The Agency's suggestion that this Board consider "USEPA's efforts to develop categorical effluent limits for water supply treatment plant effluents in federal regulations," *see* Agency Recommendation at 11, implicitly acknowledges that the Agency also is not aware of any federal effluent limitations applicable to Illinois-American Water's facility promulgated since AS 99-6 was granted. If any federal effluent guidelines or technology-based effluent limitations for TSS or iron discharges currently applied to Illinois-American Water, USEPA's efforts to develop categorical effluents would be of little importance to the Agency's claim.

The Agency appears to base its opposition to an extension of the adjusted standard on its belief that "[i]n 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." *See* Agency Recommendation at 15. Illinois-American Water disagrees. As the Board has observed, USEPA does not approve of trading to meet applicable technology-based requirements, but this is consistent with USEPA's previous 1996 "Effluent Trading in Watersheds Policy Statement." *See* Hearing Officer Order at 6 (citing 61 Fed. Reg. 4995, February 9, 1996). Significantly, this policy did not preclude issuance of AS 99-6 in 2000.

Moreover, applying USEPA's policy to state standards would be inconsistent with the stated purpose of the policy. As USEPA's Draft Framework for Watershed-Based Trading observes, USEPA disfavors trading to meet technology-based requirements because "establishing the principle that *all* trading partners meet applicable technology-based requirements preserves minimum levels of water quality protection mandated by the CWA" and

“promotes fairness.” *See* Draft Framework at 2-4 (emphasis in original). That policy also provides that all facilities participating in water quality trading must first meet technology-based requirements “since national minimum standards are expressed as limits on the amount of a pollutant that can be in the effluent a facility discharges, [and] it is not possible to arrange for comparable pollution controls at another source.” *See id.*

These purposes are not served by extending the policy to state standards because the applicable “minimum standard” varies from state to state. For instance, Illinois’ generally-applicable effluent limitation is 15.0 mg/L for TSS and 2.0 mg/L for iron. *See* 35 Ill. Adm. Code 304.124. In contrast, there are no generally-applicable state effluent limitations for TSS and iron in Missouri applicable to drinking water treatment facilities discharging to the Mississippi River. *See* 10 CSR 20-7.015.³ Extending USEPA policy to include state standards would permit a facility with a discharge identical to that of Illinois-American Water’s Alton facility to conduct trading directly across the River from Illinois-American Water, even though Illinois-American Water would be precluded from participating in such trading. This is clearly in conflict with the policy’s stated intent of promoting fairness and consistency.

4. USEPA Oversight

The Board’s fourth set of questions directed to the Agency asks whether the Agency consulted with USEPA specifically regarding Illinois-American Water’s adjusted standard petition, and whether the Agency is aware of any feedback from USEPA regarding Illinois-American Water’s NPDES Permit and the provisions for AS 99-6. On June 15, 2007, Illinois-American Water’s Cindy Hebenstreit participated in a teleconference with representatives of

³ Illinois-American Water acknowledges that its Meramec and South facilities, which discharge to the Meramec River, have limits for Settleable Solids. However, these facilities do not discharge to the Mississippi River. Moreover, even if effluent limits for TSS are included in permits for facilities that discharge to the Mississippi River, this would not indicate that the state has generally-applicable effluent limits. Such limits could simply be included by the permitting authority following a Best Professional Judgment analysis.

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USEPA and the Agency. The teleconference was arranged by Marsha Willhite, Director of the Division of Water Pollution Control at the Agency. Participating for USEPA were Jim Hanlon (Director, Office of Wastewater Management, from Washington, DC), Marcus Zobrist (Team Leader, Water Permitting Program, from Washington, DC), Nina Badgerfield (title unknown from Washington, DC) and Peter Swenson (Branch Chief, Permits Section, Region V).⁴

Ms. Willhite opened the discussion by stating that the Agency was “uncomfortable” about extending the Adjusted Standard in light of Illinois technology-based standard (35 Illinois Administrative Code Section 304.124). Mr. Hanlon, the Director of the Office of Wastewater Management at EPA headquarters, had this to say in response:

Our national program continues to encourage trading where it will gain improvements. We have seen many. Some are big (and he provided the example of 90-plus municipal wastewater treatment plants involved in a trading program in Connecticut). Others are single facility trading.

At the end of the day, through engineering and water quality analysis, we seek improvement which will be monitored over the term of the permit. In this case, American Water is the permit holder. It must establish and continue a relationship with the land trust. IEPA and Region V need to determine if the offset should continue when your permit expires.

If categorical standards are set, that will change. EPA is working on one. But, that’s several years away. That office is looking at your situation there in Alton.

After some comments from others about possibly applying best professional judgment, Mr. Hanlon stated the following with regard to a possible federal effluent standard applicable to water treatment plants: “Our people are considering trading in developing their guidelines.” Peter Swenson had this to say:

⁴ Also participating were: Brad Hiles, counsel for the Petitioner, and the following Agency representatives: Ms. Willhite, Alec Messina, Toby Frevert, Sanjay Sofat and Robert Mosher.

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What EPA has said is trading in order to meet a technology-based standard isn't appropriate, but we are considering a technology-based standard that may include trading as an option.

Marcus Zobrist added this:

EPA is in the process of looking at standards for water plants and we are considering trading as part of that mix.

Counsel for Illinois-American Water, Brad Hiles, suggested that USEPA ought to consider the Piasa Creek Watershed Project offset arrangement in developing a standard, to which Mr. Zobrist replied: "We already are." Cindy Hebenstreit, Director of Environmental Management & Compliance for American Water Company's Central Region, advised that USEPA's Tom Born had already visited the Alton plant, which was acknowledged by at least one of USEPA's representatives as being part of the federal examination of a possible effluent limit and trading as an option with respect to any such limit.

No one from USEPA advised or implied during the teleconference that the Adjusted Standard should not be extended, that the Adjusted Standard should be terminated, or that the TSS limits in Section 304.124 should be imposed in Illinois-American Water's NPDES Permit. In candor, those specific questions were not posed to USEPA's representatives. Nevertheless, Illinois-American Water's participants in the teleconference came away from the call strongly encouraged that USEPA officials had a favorable view of TSS offset trading and the GRLT – Illinois-American Water offset program, in particular.

Also, Illinois-American Water agrees with the Board's observation that "[s]o far the record reveals no indication from USEPA that the approach under AS 99-6 that was included in [Illinois-American Water]'s NPDES Permit – IL0000299 is inconsistent with

the CWA or its implementing regulations.” *See* Hearing Officer Order at 7. In fact, in the proceedings on AS 99-6, the Agency admitted that USEPA would not object to the adjusted standard. *See* Agency Amended Response to Petition for Adjusted Standard, AS 99-6 (June 20, 2000) at 14 (“The Agency agrees that USEPA would not object to an NPDES permit for the replacement facility that contained no discharge effluent limits; USEPA raised no objections [to] the Illinois-American East St. Louis or East Moline NPDES permits issued by the Agency in the wake of the Section 28.3 adjusted standards. Furthermore, the program that Illinois-American is proposing is consistent with USEPA’s own total maximum daily load (‘TMDL’)-related guidance for obtaining offsets from nonpoint sources.”) (citing 64 Fed. Reg. 46,058, August 23, 1999) (emphasis added); *see also* Opinion & Order of the Board, AS 99-6 (Sept. 7, 2000) (citing the Agency’s admission).

Finally, Terry Gloriod states that he has had conversations with representatives of USEPA regarding the Project. He understands from these conversations that USEPA views the Project favorably and has used the Project in presentations as an example of a successful water quality trading program.

5. Report on performance of Piasa Creek Watershed Project:

The Board’s fifth set of questions directed to the Agency inquires about the Agency’s determination of effectiveness of the Project, the Agency’s involvement in the Project, and the Agency’s method of assessing compliance with AS 99-6. Although the Agency is best situated to provide the Board with comprehensive answers to these questions, Illinois-American Water and Alley Ringhausen have had several interactions with the Agency regarding these issues that

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may be of interest to the Board. Illinois-American Water's response to each question is set forth below.

- 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.**

The Agency did not complete the determination of effectiveness at the five-year mark as required by the Board's September 7, 2000 Order. In a deposition taken on August 16, 2007, Scott Tomkins, an Agency Environmental Protection Specialist, testified that the Agency did not complete a determination of effectiveness, to his knowledge. *See* Deposition of Scott A. Tomkins at 38:23-39:1. (An excerpt of the Deposition of Scott A. Tomkins supporting this and other statements throughout this response is attached hereto as Exhibit 3.) Mr. Tomkins prepared an internal Agency memorandum to Blaine Kinsley dated November 21, 2005, the self-described purpose of which was to provide information "as an overview of the Piasa Creek Watershed Project for the renewal of NPDES Permit IL0000299... and the Illinois Pollution Control Board (IPCB) Adjusted Standard Provision AS 99-6," but this memorandum was not a determination of effectiveness. *See* Deposition of Scott A. Tomkins at 39:10-39:11 ("I provided a memo to [the Permit Section] November 25th, 2005, overviewing the project."); *id.* at 40:13 (referring to the memorandum as an "internal memo"); *id.* at 42:9-42:15 (stating that he does not believe the memorandum to be a determination of effectiveness, but rather "an overview of the project's compliance with the NPDES permit condition"); *see* Memorandum from Scott Tomkins to Blaine Kinsley re: Piasa Creek Watershed Project Overview at 1 (Nov. 21, 2005) (attached hereto as Exhibit D).

In addition, the memorandum from Scott Tomkins to Blaine Kinsley inaccurately reported the sediment reductions achieved by the project as of November, 2005, reporting

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sediment reductions through January 2002 instead. *See* Memorandum at 2. The total sediment reduction for gully erosion and streambank erosion in Scott Tomkins' November, 2005 memo was 2,703 tons. *See id.* In his deposition, however, Mr. Tomkins acknowledged that the total reductions should have been reported as being in excess of 5,000 tons. *See* Deposition of Scott A. Tomkins at 44:16-48:3 (calculating the soil savings through November 21, 2005, per a spreadsheet dated October 18, 2006). Alley Ringhausen reports that he contacted Scott Tomkins to inform him of this inaccuracy, and that Mr. Tomkins acknowledged that the figures set forth in his November 21, 2005 were outdated. Alley Ringhausen reported the accurate figure through the five-year mark as 6,487 tons of soil per year.

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?

Regarding the Agency's methods of tracking the generation of sediment savings in Piasa Creek, Alley Ringhausen reports that to his knowledge the Agency relies on GRLT's calculations of sediment savings. (This is supported by the Agency's citation to GRLT status reports in the November 21, 2005 memorandum described above.) *See* Deposition of Scott A. Tomkins at 56:13-56:16 (stating that "I do not see any problem with [GRLT] generating or tracking or documenting sediment savings within the watershed plan implementation"); *id.* at 56:13-56:16 (affirming that GRLT "has accurately tracked the generation of sediment savings in the Piasa Creek watershed" to the best of his knowledge); *see* Deposition of Robert G. Mosher at 51:14-51:17 (stating that he does not believe "that the tons of soil saved in the Piasa Creek Watershed Project as reported by Great Rivers Land Trust have been exaggerated"); 51:18-52:5 (stating his understanding that GRLT's reported soil savings are "predictions of soils savings" rather than measured soil savings, but that "Amy [Walkenbach] assures me that everything

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they've investigated leads to an accurate prediction, using established methodologies to do the predicting. So I don't have any doubts really that they're achieving what they say they achieve"). Alley Ringhausen also confirms that the Agency had few, if any, questions regarding the way in which GRLT calculates soil savings, and that the Agency has never requested copies of the underlying data to verify GRLT's figures. Alley Ringhausen confirms, however, that all of GRLT's records have been and continue to be open for inspection by the Agency (or by any interested member of the public, for that matter).

Regarding the Agency's methods of determining the solids loading from the Alton facility, Illinois-American Water believes that the Agency uses the formula described in the Affidavit of Paul Keck (attached to the Amended Petition for Extension as Attachment F). This formula assumes that 100% of the TSS in the facility's influent would be discharged in the facility's effluent, and calculates the amount of TSS in the facility's influent by multiplying the TSS concentration in the facility's influent (determined by correlating turbidity data from samples collected approximately three times each day) by the predicted daily flow rate for the facility. On several occasions in the months leading up to Illinois-American Water's filing of its Petition for Extension, counsel for Illinois-American Water, Paul Keck, and the various Agency representatives including Bob Mosher and Tom Andryk discussed the proper method of calculating the loading from the Alton facility. Illinois-American Water discussed this formula with Bob Mosher in some depth, and the parties agreed that this formula presented a more reliable and conservative figure for solids loading than other proposed methods such as calculating the amount of TSS in the facility's influent using the grab samples collected each month by Illinois-American Water as required by the facility's NPDES permit.

Respectfully submitted,

ILLINOIS-AMERICAN WATER COMPANY

By:



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An Attorney for Petitioner

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
 PROPOSED EXTENSION OF ADJUSTED STANDARD) AS 2007-2
 APPLICABLE TO ILLINOIS-AMERICAN) (Adjusted Standard)
 WATER COMPANY'S ALTON PUBLIC WATER)
 SUPPLY FACILITY DISCHARGE)
 TO THE MISSISSIPPI RIVER)

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2007, the attached PETITIONER ILLINOIS-AMERICAN WATER COMPANY'S WRITTEN ANSWERS TO THE BOARD'S QUESTIONS FOR IAWC AND IEPA PERTAINING TO THE AMENDED PETITION AS 2007-2 was filed by electronic transmission with the Office of the Clerk of the Illinois Pollution Control Board, and was served by first class mail, postage prepaid, upon the following persons:

John Therriault, Assistant Clerk
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Respectfully submitted,

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EXHIBIT 1

**Great Rivers Land Trust: Piasa Creek Watershed Project
Stewardship and Monitoring Plan for Conservation Properties**

A. PURPOSE OF THE PLAN

The purpose of the plan is to develop a strategy of long-term funding of stewardship and monitoring of projects designed to control erosion and trap sediment in the Piasa Creek Watershed. Funds dedicated to this purpose may be used to cover the cost of several related activities.

1. *Annual monitoring* of the Piasa Creek Watershed Project (PCWP) sites: expenses include staff time and travel, expense reimbursement, photography, mapping, administration, meetings with land owners, associated follow-up reports and correspondence, and maintaining up to date records.
2. *Stewardship* of lands owned or leased by GRLT. Those activities may include, but are not limited to, maintenance of groundcover, tree plantings, grade control structures, basins, streambank stabilization, mowing, invasive species control, controlled burns, seed collection, tile and drain structure maintenance, and any other activities necessary to support the intended purpose of the individual projects.
3. *Enforcement* expense, primarily legal fees and court cost, in the unlikely event that remedial measures or legal actions are needed to correct a misunderstanding or a willful violation of agreements between GRLT and private landowners for erosion control structures on their property.

B. FUNDING

The funding proposal takes into consideration the annual expenditures necessary to maintain erosion control measures that are part of the Piasa Creek Watershed Project. Another component of the proposal suggests that a portion of the annual funding be earmarked for a stewardship endowment fund that can grow over the ten years of the plan and have a sufficient balance at the end of ten years to perpetuate the project for years to come.

**Estimated Annual Stewardship and Monitoring Costs
for a 10 Year Proposal**

A. Site Visits: 1 site visits per year by GRLT staff (includes preparation and follow-up) 3 hours per visit at each project site @ \$45 /hour X 80 sites =	\$10,800
B. Annual Landowner Relations: 5 hours per site per year @ \$45/hour X 80 sites =	\$18,000
C. Stewardship: costs will be limited to properties owned, leased or under cooperative agreement of GRLT. Labor, equipment and material costs per site average \$65/hour @ 60 hours per site for 20 sites =	\$78,000
D. Legal Defense: funds to cover costs associated with defending a conservation easement of long-term maintenance agreement. (The recommended legal defense fund is \$50,000. An annual contribution of \$5,000/year will achieve the recommended funding level by the end of the 10 year proposal.)	\$5,000
E. Endowment Fund: To achieve project sustainability without future funding from outside sources, an annual contribution of	\$25,000
TOTAL ANNUAL COSTS	\$136,800

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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

EXHIBIT
tabbles
2

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 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

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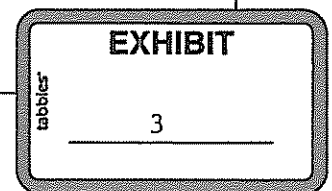
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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
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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 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 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

EXHIBIT 4



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

Memorandum

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

The following information is provided as an overview of the Piassa 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 Piassa Creek Watershed

The Piassa 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.

Piassa 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).

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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.

Acres Benefited	1,117
Gully Erosion (tons soil saved)	2,009
Streambank Erosion (tons soil saved)	694
Linear Feet Stabilized	22,147
Source: GRLT Status Report: http://www.greatriverslandtrust.com/pcwp_status_report_january_2002.htm .	

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.