

1
2
3
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APPEARANCES

Board Members present:

(No board members present.)

Board Staff Members present:

Anand Rao, Senior Environmental Scientist
Alisa Liu, Environmental Scientist

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1		INDEX	
2	WITNESS		PAGE NUMBER
3	Cindy Hebenstreit		18
	Paul Keck		19
4	Jeffrey T. Kaiser		21, 26
	Alley Ringhausen		30, 33
5	Terry L. Gloriod		36
	Donald E. Sandidge		38
6	Michael J. Champion		39
	James E. Schrempf		41
7	Toby Frevert		47, 56
8	Jim Bensman		98
	Anita Cooper		102
9	Tim Garber		103
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			

1		EXHIBITS	
2	NUMBER		ADMITTED
3	Exhibit No. 1		18
	Exhibit No. 2		20
4	Exhibit No. 3		21
	Exhibit No. 4		26
5	Exhibit No. 5		29
	Exhibit No. 6		35
6	Exhibit No. 7		39
	Exhibit No. 8		40
7	Exhibit No. 9		40
	Exhibit No. 10		46
8	Exhibit No. 11		46
	Exhibit No. 12		88
9	Exhibit No. 14		88
	Exhibit No. 15		97
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			

1
2
3
4
5
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7
8
9
10
11
12
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16
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PROCEEDINGS

(August 28, 2007; 9:35 a.m.)

HEARING OFFICER WEBB: Good morning. My name is Carol Webb. I'm a hearing officer with the Pollution Control Board. Joining me today are Anand Rao and Alisa Liu from the Board's technical unit. It is August 28 and we are beginning at 9:30 a.m.

In this petition, Illinois-American seeks an extension of an existing adjusted standard applicable to its public water supply treatment facility in Alton. The current adjusted standard expires on October 16, 2007.

You should know that it is the Pollution Control Board and not me that will make the final decision in this case. My purpose is to conduct the hearing in a neutral and orderly manner so that we have a clear record of the proceedings. I will also assess the credibility of any witnesses on the record at the end of the hearing.

I will note for the record that there are one or two members of the public present. If time permits at the end of the hearing, those present may offer testimony or public comment.

This hearing was noticed pursuant to the Act and the Board's rules and will be conducted pursuant to Sections 101.600 through 101.632 and 104.422 of the

1 Board's procedural rules. At this time I would like to
2 ask the parties to please make their appearances on the
3 record.

4 MR. HILES: Thank you, Your Honor. My name
5 is Brad Hiles. I am with the firm Blackwell Sanders, and
6 we represent the Petitioner, Illinois-American Water
7 Company. With me today is my colleague Alison Nelson;
8 same law firm, same petitioner.

9 MR. SOFAT: Sanjay Sofat representing the
10 Illinois Environmental Protection Agency. With me I have
11 Mr. Frevert, who is the manager of the Division of Water
12 Pollution at the Agency.

13 HEARING OFFICER WEBB: Thank you. Are there
14 any preliminary matters to discuss on the record? Okay.
15 Would the Petitioner like to make an opening statement?

16 MR. HILES: I would, Your Honor. Thank you.

17 Hearing Officer Webb, representatives of the
18 Board and for the benefit of the board members who will
19 be reading this transcript, good morning, and thank you
20 for the opportunity to appear here today. I want to
21 begin by thanking the Board for scheduling this hearing
22 so promptly and for putting this case on a fast track for
23 decision.

24 The adjusted standard adopted by this board in

1 September of 2000 and modified by the Board on October 19
2 of 2000 is set to expire on October 16 of 2007.
3 Illinois-American Water Company is grateful that the
4 Board will be attempting to rule on this matter. I know
5 it has a very busy schedule, but my understanding is that
6 they will be considering it quite possibly in their
7 October 4 meeting.

8 The Board has invited Illinois-American Water
9 Company to argue for retroactive relief at today's
10 hearing, and maybe I should have taken this up as a
11 preliminary matter. I apologize, Your Honor, but on
12 behalf of the Petitioner, I do want to move right now for
13 retroactive relief, and specifically our motion is as
14 follows: In the event the Board is unable to render a
15 decision in case AS 07-02 on or before the expiration of
16 the adjusted standard on October 16 of 2007,
17 Illinois-American Water Company requests that the Board's
18 order whenever issued apply retroactively. We ask that
19 it be applied nunc pro tunc, as though it were effective
20 as of October 16, 2007. On behalf of Illinois-American
21 Water Company, I thank the Board for affording us the
22 opportunity to have retroactive relief.

23 Almost all of the evidence presented by my client
24 in this case has been prefiled. I would like to

1 summarize some of that evidence right now without going
2 into it in great detail. Much of it -- in fact, I
3 believe most of it -- is and will be uncontradicted. The
4 most important evidence in this case involves the success
5 of an offset project that has come to be known as the
6 Piasa Creek watershed project. When the Board launched
7 this offset project nearly seven years ago, it was
8 embraced by all parties involved as an innovative and
9 environmentally beneficial alternative to lagoon
10 treatment of solids.

11 My client embraces the Piasa Creek watershed
12 project as a means of reducing the loading of solids into
13 the Mississippi without traditional lagoon treatment.
14 It's good for rate payers, who certainly embrace it, and
15 customers of Illinois-American Water Company, or the rate
16 payers, because the cost of constructing lagoons and
17 shipping solids to landfills would be higher. Our
18 neighbors embrace the offset trading because they don't
19 want lagoons in their back yard, obviously, but it's not
20 just the neighbors. It's the communities. It's the
21 Godfrey community and the Alton community, who have a
22 park and a bike trail and a scenic highway, the Great
23 River Road, just on the edge of my client's property.
24 All of those public parcels would be impacted in a

1 negative way with lagoon treatment and are not impacted
2 in a negative way with offset trading.

3 When the Board launched this project -- and
4 really, we consider the Board to have been the launching
5 pad for the Piasa Creek watershed offset trading
6 project -- no one really knew if it would succeed. A
7 goal of two to one was set by the Board, and all parties
8 hoped that it might be accomplished by October of 2010.
9 Well, the evidence that we've prefiled establishes
10 without question that that goal has been met and has
11 already been met ahead of schedule. The evidence
12 presented by our witnesses -- Alley Ringhausen, Great
13 Rivers Land Trust; and Jeff Kaiser with Black & Veatch --
14 establishes that right now, over 6,600 tons of soil have
15 been saved, and that's an annual figure. Each year,
16 6,600 tons of soil are prevented from entering the
17 Mississippi River watershed through the Piasa Creek
18 watershed. No one, the Agency included, refutes that
19 number.

20 Another number which stands as uncontradicted in
21 this case is the solids loading from Illinois-American's
22 Alton plant. The testimony and affidavit prefiled by
23 Paul Keck established that on the average over the past
24 four years, solids loading has been about 1,500 tons per

1 year. So our evidence establishes that seven years into
2 a ten-year program, we've achieved a net savings of 5,100
3 tons per year, a ratio of about four to one. These
4 figures are not only uncontradicted; no party or agency
5 has stepped forward to even suggest that these numbers
6 might be inaccurate.

7 The testimony of our witnesses confirms benefits
8 beyond these environmental benefits. Alley Ringhausen
9 has prefiled testimony establishing there have been
10 educational opportunities provided for grade school, high
11 school and even college students. Terry Gloriod, the
12 president of the American Water Central Region, has
13 testified about the beneficial impact to rate payers and
14 of course the environment. Mayors Campion from Godfrey
15 and Sandidge from Alton have prefiled testimony in which
16 they champion the lower rates which their residents,
17 their citizens, enjoy, and they've also championed the
18 employment opportunities that are presented in the region
19 as a result of this offset project and the positive
20 impact that the project has had on their scenic highway,
21 a beautiful new park, Piasa Park, and a bicycle trail.

22 There's a wonderful story to be found in the
23 testimony of Alley Ringhausen, and, Your Honor, I'm
24 expecting that this hearing will certainly be finished in

1 one day, so I'd like to have Mr. Ringhausen expand just a
2 little bit on the story of an Underground Railroad that
3 was discovered as part of the Boy Scout Lake project.
4 The Boy Scout Lake story alone is remarkable. That can
5 be found in Mr. Ringhausen's affidavit and his testimony.

6 The Agency opposes extending the adjusted
7 standard for reasons which I still don't fully understand
8 and I'm sure will be explained today by the Agency's
9 witness. The Agency's position seems to be that USEPA
10 has taken a stance against offset projects when
11 technology could be used to treat wastewater. Don't
12 believe it. Cindy Hebenstreit has prefiled testimony
13 describing a teleconference with officials from USEPA who
14 speak highly about offset trading as a means of
15 compliance, and this board has already put offset trading
16 into play in the state of Illinois. It's a fabulous
17 idea, and from this project, which I think may be the
18 pioneer project, we've seen that it's worked remarkably
19 well. If USEPA really opposed offset trading, we might
20 see it. We might see it in federal regulations, but we
21 don't. We might see it established by congress in the
22 Clean Water Act. We don't see that either.

23 The adjusted standard this board adopted seven
24 years ago ought to be extended. We're here today to ask

1 you to do that and to ask you to extend it indefinitely.
2 Piasa Creek watershed project has exceeded expectations.
3 More soil savings will be achieved after this hearing
4 through the year 2010, and beyond 2010, my client will do
5 whatever it takes to maintain soil savings at a ratio of
6 two to one or higher, and as an extra margin of safety,
7 we're also proposing to keep the total tons saved at
8 least at levels of a minimum level of 6,600 tons per
9 year.

10 Extending the adjusted standard guarantees a net
11 decrease in solids going into the river year after year.
12 Terminating the adjusted standards would end one of the
13 nation's finest offset projects and it will return the
14 Alton region to a lagoon, dredge, haul and dump scenario
15 that will slowly but over time see these projects that
16 have been implemented in the Piasa Creek watershed
17 deteriorate and lose their effectiveness. Thank you.

18 HEARING OFFICER WEBB: Thank you. Would the
19 Agency like to make an opening statement?

20 MR. SOFAT: Yes. Good morning. My name is
21 Sanjay Sofat, and I'm here to represent Illinois
22 Environmental Protection Agency. Our agency has had
23 opportunities to review Illinois-American's petition for
24 an adjusted standard from the Board's effluent

1 limitations pertaining to TSS and iron.

2 HEARING OFFICER WEBB: Excuse me. Mr.
3 Sofat, can you please move the microphone a little
4 closer?

5 MR. SOFAT: I will restate what I said
6 earlier. Our agency has had the opportunity to review
7 the Illinois-American's petition for an adjusted standard
8 from the Board's effluent limitations for TSS and iron.
9 Based on the Agency's interpretation of the federal and
10 state law, the Agency has concluded that
11 Illinois-American's request for an adjusted standard is
12 neither consistent with the Clean Water Act, nor is a
13 good policy for Illinois.

14 The Clean Water Act requires two different kinds
15 of pollution control programs. Water quality standards
16 are the basis of the water quality control programs. The
17 second program involves the application of effluent
18 limits. These effluent limitations are technology-based
19 rather than harm-based; that is, they reflect the
20 capabilities of available pollution control technologies
21 to prevent or limit different contaminants rather than
22 the impact of these contaminants on the waters. The
23 effluent limits are based on how low current technology
24 can push pollution levels, and those limits are to be

1 lowered as pollution-reducing technology improves. Both
2 technology-based controls and water quality based
3 controls are implemented through the National Pollutant
4 Discharge Elimination System -- NPDES -- permitting
5 process.

6 The Illinois EPA is designated as water pollution
7 control agency for the State of Illinois for all purposes
8 of Clean Water Act. Section 11 of the Illinois
9 Environmental Protection Act prohibits the Agency from
10 issuing permits which do not contain terms and conditions
11 consistent with the federal and state law. To ensure
12 that the Agency complies with the mandates of Section 11,
13 the Board adopted its water pollution regulations,
14 including Effluent Standards at Part 304. These effluent
15 standards are the minimum level of controls that must be
16 imposed in an NPDES permit.

17 There are essentially two methods of imposing
18 technology controls in permits: First, by applying the
19 EPA-promulgated effluent limitations, or, in the absence
20 of a federal promulgated effluent limitation, on a
21 case-by-case basis according to EPA's best professional
22 judgment. Where the federally promulgated effluent
23 limitations are not available, the Agency has always
24 considered the Board's Part 304 standards as equivalent

1 to the EPA's best professional judgment. These
2 regulations provide the maximum concentrations of various
3 contaminants that may be discharged in the waters of the
4 state. Therefore, in issuing NPDES permits, the EPA --
5 or sorry -- the Illinois EPA must not only ensure
6 compliance with the federal regulations but also must
7 apply the Board's regulation -- water pollution
8 regulations, including Part 304.

9 Essentially, Illinois-American is requesting the
10 Board to grant relief from TSS and iron effluent
11 limitations on the basis that it is funding a
12 sedimentation control project. However, discussions
13 related to this project are irrelevant to the question of
14 whether the Board should grant the requested relief.
15 Also, this proceeding is neither about what is the
16 appropriate method of calculating soil savings, nor about
17 determining the most appropriate offset ratio for this
18 project, or about the national recognition that this
19 project may have achieved. Further, this proceeding is
20 not about whether the project has been consistent with
21 the USEPA's trading policy. The Illinois EPA has
22 traditionally supported nonpoint source pollution control
23 projects under Section 319 of the Clean Water Act.
24 However, the Illinois EPA has never promoted these

1 projects as a substitute to the application of the best
2 treatment technology. The Agency considers Piasa
3 watershed project a successful nonpoint source
4 sedimentation control project. Use of this project,
5 however, as a substitute for best available technology
6 controls is inconsistent with the basic intent of the
7 Clean Water Act and the State's long-standing policy of
8 imposing technology-based effluent limitations on point
9 sources.

10 Illinois-American's -- sorry. Illinois-American
11 calls this sedimentation project a trading project.
12 Illinois-American argues that since the sedimentation
13 control project funded by it provides greater reductions
14 than the technology control, the Board should grant the
15 requested standard. However, Illinois-American's
16 argument is neither permissible under the Clean Water
17 Act, nor is it good policy for Illinois. Further, this
18 argument even runs afoul to the EPA's trading policy.
19 One of the stated purposes of this policy is to encourage
20 stakeholders to find innovative supplementary ways to
21 achieve federal, state or local water quality goals.
22 Thus, the policy encourages use of trading when it will
23 provide additional or supplement reductions, not as a
24 substitute to the minimum levels of controls, as

1 Illinois-American is recommending here.

2 Further, whether USEPA would consider this
3 project in adopting future categorical effluent standards
4 is again irrelevant to this adjusted standard proceeding.
5 The simple fact is that Illinois does not have a
6 promulgated trading policy. If and when Illinois decides
7 to adopt a trading policy, some of the points raised by
8 Illinois-American may become relevant in drafting of the
9 policy. However, this adjusted standard proceeding is
10 surely not a proper forum to discuss the details of such
11 a policy.

12 Illinois-American's request compels the Board to
13 adopt a policy that would encourage other point sources
14 in Illinois to seek regulatory relief to avoid
15 application of minimum technology controls. The Illinois
16 EPA recommends that the Board adheres to the
17 well-established policy of requiring all point sources to
18 comply with the Board's adopted effluent standards and
19 thus requests the Board to deny Illinois EPA -- sorry --
20 Illinois-American's requested relief.

21 The Agency appreciates this chance to respond to
22 the Board's questions. I have here Mr. Frevert, manager
23 of the Division of Water Pollution, to answer any
24 questions that the Board may have. Thank you.

1 HEARING OFFICER WEBB: Thank you. We are
2 ready to proceed with the Petitioner's case. We had a
3 conversation before the hearing started about how we were
4 going to do this in light of the fact that we received
5 prefiled testimony from the witnesses in this matter, so
6 in accordance with that discussion, I would ask the
7 Petitioner to please move to introduce testimony that is
8 labeled as Exhibit 1 of Cindy Hebenstreit.

9 MR. HILES: Hebenstreit.

10 HEARING OFFICER WEBB: Hebenstreit?

11 MR. HILES: Your Honor, may I approach?

12 HEARING OFFICER WEBB: Yes.

13 MR. HILES: Your Honor, our first witness
14 with prefiled testimony is Cindy Hebenstreit, and I would
15 like to offer at this time her prefiled testimony as
16 Exhibit 1. I have the original exhibit with me, and I
17 would like to just note for the record that in the
18 prefiled testimony that we submitted last Friday, I had
19 inadvertently failed to have Miss Hebenstreit sign the
20 last page of her testimony. She did sign the affidavit,
21 but today I have a fully executed document to offer as
22 Exhibit 1, and I would do so at this time.

23 HEARING OFFICER WEBB: Is there any
24 objection?

1 MR. SOFAT: No.

2 HEARING OFFICER WEBB: Exhibit 1 is admitted
3 into evidence. I will ask if the Agency has any
4 questions for this witness.

5 MR. SOFAT: No.

6 HEARING OFFICER WEBB: I'm sorry. I should
7 have asked Petitioner first. Petitioner, do you wish to
8 call this witness to add anything further to the prefiled
9 testimony?

10 MR. HILES: No, Your Honor.

11 HEARING OFFICER WEBB: Okay. The Agency has
12 no questions. Does the Board have any questions for this
13 witness? No, the Board does not have any questions, so
14 we will move on to Exhibit 2.

15 MR. HILES: Fine. Your Honor, just as a
16 housekeeping matter, what would you like me to do with
17 the original exhibits?

18 HEARING OFFICER WEBB: I'll -- Do you need
19 them? Okay. I'll take them.

20 MR. HILES: Thank you, Your Honor. Our
21 second witness is Paul Keck, and we would offer the
22 prefiled testimony of Paul Keck into evidence as
23 Exhibit 2, Your Honor.

24 HEARING OFFICER WEBB: Any objection?

1 MR. SOFAT: No.

2 HEARING OFFICER WEBB: Would you like to
3 call this witness for any purpose?

4 MR. HILES: No, Your Honor.

5 HEARING OFFICER WEBB: Okay. Does the
6 Agency have any questions for this witness?

7 MR. SOFAT: No.

8 HEARING OFFICER WEBB: Does the Board have
9 any questions for this witness?

10 MR. RAO: No.

11 HEARING OFFICER WEBB: The Board does not
12 have any questions. Exhibit 2 is admitted into evidence.

13 MR. HILES: Your Honor, I probably should
14 mention that Petitioner would reserve the right to call
15 any of these witnesses -- to recall any of these
16 witnesses in rebuttal depending upon the evidence
17 presented by the Agency.

18 HEARING OFFICER WEBB: Okay.

19 MR. HILES: Petitioner's next witness is
20 Jeff Kaiser. He has prefiled testimony, and I would
21 offer that testimony now as Exhibit 3, but, Your Honor, I
22 would also like to call Mr. Kaiser for two reasons.
23 First, I would like to qualify him, pending objection and
24 pending your ruling, as an expert witness in this case,

1 and secondly, I do need to introduce through Mr. Kaiser
2 an exhibit, which is an attachment to his testimony, and
3 that exhibit will be Exhibit 4.

4 HEARING OFFICER WEBB: Okay. Would you like
5 to call him now?

6 MR. HILES: I would, but may I just at this
7 time offer Exhibit 3 into evidence, which is his prefiled
8 testimony?

9 HEARING OFFICER WEBB: Is there any
10 objection?

11 MR. SOFAT: No.

12 HEARING OFFICER WEBB: Exhibit 3 is admitted
13 into evidence. Would the court reporter please swear in
14 the witness?

15 (Witness sworn.)

16 JEFFREY T. KAISER, produced, sworn and examined
17 on behalf of the Petitioner, testified as follows:

18 EXAMINATION OF JEFFREY T. KAISER

19 BY MR. HILES:

20 Q. Would you please state your full name for
21 the record?

22 A. My name is Jeffrey Thomas Kaiser.

23 Q. And, Mr. Kaiser, are you the Jeffrey Thomas
24 Kaiser who has prefiled testimony in this case?

1 A. Yes, I am.

2 Q. Great. I have a few questions for you,
3 Jeff, regarding your qualifications as an expert witness,
4 so let me begin by asking you to please tell us something
5 about your education.

6 A. I have a bachelor of science degree in civil
7 engineering from Washington University in St. Louis.

8 Q. Do you have any professional licenses?

9 A. I am licensed as a professional engineer in
10 Illinois, Missouri, Arkansas and Indiana.

11 Q. What work have you done since receiving your
12 engineering degree?

13 A. The bulk of the work I've done has been
14 related to water/wastewater and some environmental
15 projects. Starting out of school, I worked for a firm
16 called Havens & Emerson, which was a water and wastewater
17 consulting firm since bought by Montgomery Watson, which
18 is another water/wastewater firm. I worked for a few
19 other firms, including Horner & Shifrin in St. Louis,
20 which is a regional water/wastewater firm; Burns &
21 McDonnell, which is a national water/wastewater firm;
22 Earth Tech, which is another national firm; and now I'm
23 employed by Black & Veatch, which is a nationally
24 recognized water/wastewater firm.

1 Q. Where does Black & Veatch rank in terms of
2 size and experience in providing consulting and
3 engineering services to water treatment plants?

4 A. We are ranked nationally by Engineering
5 News-Record, which is an industry publication, in I
6 believe the top five in water treatment and top ten in
7 wastewater treatment.

8 Q. Would you please describe your project
9 experience specifically with water treatment facilities?

10 A. Sure. Starting right out of school, some of
11 the first work I did was actually surveying sludge
12 lagoons for removal quantities from water treatment
13 plants. Since that time have been involved in numerous
14 projects, water and wastewater mainly, that have dealt
15 with treatment processes, disposal of residuals,
16 dewatering, storage of residuals, just a variety of water
17 and wastewater type projects.

18 Q. Can you quantify for us the number of
19 projects or at least give us a ball-park figure that
20 would involve water and wastewater projects?

21 A. Over the last twenty, twenty-one years, it's
22 been four or five, six projects a year, so in the range
23 of 100 projects probably.

24 Q. And have you specifically been involved in

1 water treatment plants in the state of Illinois?

2 A. I have. I have done work for several
3 projects, facilities that are owned by Illinois-American
4 Water; East St. Louis treatment plant, Granite City
5 treatment plant, Cairo, Peoria, some minor work in
6 Sterling and Streator. Also done some work for the City
7 of Chicago on their two water treatment plants. We
8 developed some improvement plans for those projects -- or
9 for those facilities which covered the whole range of the
10 process from intakes through residual disposal.

11 Q. Has any of your work involved residuals
12 handling for water treatment facilities on large rivers?

13 A. I've done work with -- on a few projects
14 there. One would be the Illinois-American's East
15 St. Louis and Granite City plants. They take water in
16 from the Mississippi River and have different treatment
17 processes there. Also done work and am currently doing
18 work for Cairo, Illinois, looking at their residual
19 disposal there. That plant is on the Ohio River.

20 Q. Do you consider yourself to have a specialty
21 within the fields of residuals handling and discharge
22 from water treatment plants?

23 A. I would. I've done quite a few projects
24 that deal specifically with residuals. I've also done a

1 large number of projects that the residuals were part of
2 an overall plant improvement or plant expansion project.

3 MR. HILES: Thank you, Mr. Kaiser.

4 Your Honor, at this time I'd tender Mr. Kaiser as
5 an expert witness in the field of residuals handling and
6 the discharge of residuals.

7 HEARING OFFICER WEBB: Any objection?

8 MR. SOFAT: No objection.

9 HEARING OFFICER WEBB: Okay.

10 MR. HILES: Thank you.

11 Q. (By Mr. Hiles) Mr. Kaiser, I've placed in
12 front of you there at the podium an exhibit that's been
13 marked as Exhibit 4. Can you please identify this
14 document?

15 A. It's a list of -- It's a funding summary
16 that we obtained, Black & Veatch obtained, basically
17 Illinois EPA Clean Lakes Program project summary, and
18 it's -- from what we understand at Black & Veatch, what
19 we've obtained is just a summary of project grants that
20 have been provided to various agencies in Illinois for
21 lake improvement projects.

22 Q. And is this document attached to your
23 prefiled testimony?

24 A. Yes.

1 MR. HILES: Your Honor, at this time I move
2 for admission of Exhibit 4.

3 HEARING OFFICER WEBB: Any objection?

4 MR. SOFAT: No.

5 HEARING OFFICER WEBB: Exhibit 4 is
6 admitted. This -- The official --

7 MR. HILES: I have a copy, Your Honor. I
8 have nothing further on direct examination for
9 Mr. Kaiser.

10 HEARING OFFICER WEBB: Okay. Does the
11 Agency have any questions for this witness?

12 MR. SOFAT: No.

13 HEARING OFFICER WEBB: Does the Board have
14 any questions for this witness?

15 MR. RAO: Yes. I just have a couple of
16 clarifying type questions.

17 EXAMINATION OF JEFFREY T. KAISER

18 BY MR. RAO:

19 Q. Mr. Kaiser, on page 7 of your prefiled
20 testimony, in response to the first question --

21 A. Yes, sir.

22 Q. -- you generally explain the differences
23 between Alton plant and the other six facilities
24 identified by the Agency.

1 A. Correct.

2 Q. You mentioned that the Alton plant draws its
3 source water from Mississippi River while the other
4 plants identified by the Agency draw their source water
5 from man-made lakes. Just wanted you to clarify whether
6 these six facilities identified by IEPA also discharge
7 their residuals into these same lakes that they draw
8 their water from.

9 A. It's my understanding they do not discharge
10 the residuals; that they do have -- their discharge
11 permits allow them to discharge the supernatant off their
12 lagoons or other dewatered -- the water from the
13 dewatering process back into their reservoirs.

14 Q. Okay. How do they handle their residuals,
15 these plants?

16 A. I'm not sure how they all handle them. My
17 understanding is that, you know, they pretreat their
18 residuals more than likely through settling, but I'm not
19 completely familiar with their -- with the facilities, so
20 I can't answer that directly.

21 Q. Okay. And one of the things you mentioned
22 in response to the questions we had -- I mean the
23 questions that were asked of you in your prefiled
24 testimony is that these facilities have a

1 self-preservation interest in discharging residual
2 discharge into these lakes, so when you say that, it's
3 more for making the quality of the source water rather
4 than they themselves discharging the residuals into those
5 places.

6 A. Right. It's a matter of quality and
7 quantity in the lake. If you discharge residuals back in
8 the lake, a lot of these lakes have problems with
9 sedimentation and the feeding streams have low flow
10 seasonally, so if you are discharging a lot of residuals
11 in there, you fill up a lake with solids, there's less
12 water to use during drought periods. Also can have
13 impacts on the water quality. As you shallow up the
14 lake, you have more algae growth, and there could be
15 other issues with water quality that can impact the plant
16 operations.

17 Q. The other question I had related to the
18 Kinkaid Lake. On page 16 you describe how -- you
19 describe the Kinkaid Lake system that they have, but
20 something that was not mentioned there was about how does
21 the Kinkaid area water system -- whether it uses lime
22 softening as a part of their treatment process.

23 A. On that lake, I am not sure that -- the
24 treatment of all the facilities that we looked at. I

1 would have to go back and review some notes and see if we
2 found that again, to talk to the manager of the facility
3 down there and look at some notes and see what the answer
4 to that is, if they use lime softening or not. I'm not
5 sure off the top of my head.

6 MR. RAO: All right. If you could include
7 that as part of your brief if you get that information.
8 That's all I have. Thank you very much.

9 HEARING OFFICER WEBB: No further questions
10 for this witness? Okay. Thank you very much.

11 MR. HILES: Our next witness, Your Honor, is
12 Alley Ringhausen with Great Rivers Land Trust, and we
13 would offer his prefiled testimony as Exhibit 5. In
14 addition, Your Honor, another housekeeping matter,
15 Mr. Ringhausen's prefiled testimony may not have
16 contained his affidavit, and so I am offering it now with
17 Exhibit 5, a copy of his signed affidavit, and I'd move
18 for admission of Exhibit 5 at this time.

19 HEARING OFFICER WEBB: Any objection?

20 MR. SOFAT: No objection.

21 HEARING OFFICER WEBB: Exhibit 5 is
22 admitted. Do you have any questions for Mr. Ringhausen,
23 Mr. Hiles?

24 MR. HILES: I do have just a few questions,

1 if I could, Your Honor.

2 HEARING OFFICER WEBB: Okay.

3 (Witness sworn.)

4 ALLEY RINGHAUSEN, produced, sworn and examined on
5 behalf of the Petitioner, testified as follows:

6 EXAMINATION OF ALLEY RINGHAUSEN

7 BY MR. HILES:

8 Q. Please state your name for the record.

9 A. Alley Ringhausen.

10 Q. What job do you hold, Mr. Ringhausen?

11 A. I am the executive director of Great Rivers
12 Land Trust.

13 Q. Are you the same Alley Ringhausen who has
14 prefiled testimony which is now Exhibit 5?

15 A. I am the same.

16 Q. Good. I can't imagine that there's more
17 than one.

18 A. I wouldn't think so.

19 Q. I'd like to explore with you and allow you
20 to elaborate on one issue that was touched upon in
21 Illinois-American's responses to questions posed by the
22 Board, and that is the issue of Boy Scout Lake and, in
23 particular, I believe it is Rocky Fork Creek, and an
24 Underground Railroad discovery that was made during the

1 construction of Boy Scout Lake. Would you please explain
2 to the Board how the Underground Railroad was discovered?

3 A. Well, it was kind of a ripple effect, Brad.
4 We were working on the Piasa Creek watershed, and it's
5 broken down into a number of sub-watersheds, as we state
6 it, and one of them is the Rocky Fork Creek, and on the
7 Rocky Fork Creek was the -- what had one time been the
8 Boy Scout Lake, and of course it had been silted in and
9 they breached the levy and it was an empty, dried-up lake
10 bed and had been so for about 18 years, and we reached an
11 agreement with the Boy Scouts to restore that in exchange
12 for a conservation easement and constructing wetlands and
13 restoring the lake, which is all being completed.

14 But along the way the Boy Scouts leadership at
15 the time had asked us to look at additional properties
16 around the Boy Scout Lake as buffers to this easement,
17 and as we got to looking into this, we discovered that
18 there was a history of Underground Railroad that existed
19 in this area. The Boy Scouts brought it to our attention
20 first, saying that, you know, there's some Underground
21 Railroad issues here that you should know about, and as
22 we got to looking into it, it turns out that there -- in
23 the history of the Underground Railroad, Missouri, on the
24 opposite side of the river from us, escaped slaves would

1 come across the river and they were told to take the
2 first major stream north of Alton -- and that was Piasa
3 Creek -- go up it and take the next major stream, which
4 was Rocky Fork Creek, and there was a safe haven in that
5 area, but what we came to find out is that -- and in a
6 lot of cases in the Underground Railroad, the slaves
7 would stay for a while and then they would move on when
8 it was safe again, but in this case they stayed and
9 lived, and a number of the current landowners are
10 descendents of those same runaway slaves in this area,
11 which made it extremely unique.

12 We wrote some grants, did some archeological
13 studies and found that there were over 100 foundations, a
14 number of wells and cemeteries that had belonged to this
15 black community of runaway slaves, and we researched it
16 further and got the area designated as one of the seven
17 designated Underground Railroad sites in Illinois as
18 recognized by the National Park Service, and then this
19 opens up additional grant opportunities for land
20 protection in this community and protection of open space
21 in addition to other Underground Railroad opportunities,
22 so it's just this spiral of events that led to this
23 designation.

24 MR. HILES: Thank you, Mr. Ringhausen. I

1 have nothing further on direct for this witness.

2 HEARING OFFICER WEBB: Does the Agency have
3 any questions for this witness?

4 MR. SOFAT: No.

5 HEARING OFFICER WEBB: Does the Board have
6 any questions for this witness? Okay.

7 EXAMINATION OF ALLEY RINGHAUSEN

8 BY MS. LIU:

9 Q. I have a couple of questions.

10 A. Sure.

11 Q. In the written answers on page 4 to the
12 Board's questions, you refer to four major forms of
13 erosion, sheet and rill, ephemeral, gully and streambank?

14 A. Yes.

15 Q. I was wondering if you could elaborate on
16 those kinds of erosion now.

17 A. Okay. There are different levels of
18 erosion. Like, the sheet and rill is up in more level
19 type fields, and it's the little fingers of erosion that
20 begin if you had just, like, an open dirt field and after
21 rain you get these little -- tiny little gullies, and
22 then as you move on, ephemeral becomes larger. The gully
23 erosion are the huge deep ditches that can be anywhere
24 from a foot to ten feet deep, and then streambank

1 stabilization is when you get down into the stream itself
2 and the streambanks become sheared off and straight
3 up-and-down streambanks and they continue to tumble off,
4 and that's when you see streambank erosion.

5 Q. Thank you. I have one more question.

6 A. Okay.

7 Q. In your prefiled testimony you refer to the
8 farmers benefitting from implementing sedimentation
9 projects, and there is a program for them as well as
10 funds from Great Rivers Land Trust. I was wondering what
11 type of program funds you're referring to.

12 A. Well, farmers have access to a number of
13 different erosion control practices that are out there
14 through either the federal government or state government
15 or possibly the county, and some of those programs fall
16 under the Conservation Reserve Program, which is a
17 federal USDA program. Also they have a state program,
18 the CPP program, Conservation Practices Program. There's
19 also another federal program called EQIP, which is
20 Environmental Quality Incentive Program. Some of these
21 programs may pay a percentage. Some farmers may qualify,
22 some may not, but in a lot of the cases it's not enough
23 of an incentive to get farmers to implement a practice.

24 MS. LIU: Okay. Thank you very much.

1 HEARING OFFICER WEBB: If there are no
2 further questions for this witness, you may step down.
3 Thank you.

4 MR. RINGHAUSEN: Thank you.

5 MR. HILES: Our next witness, Your Honor, is
6 Terry Gloriod, who has prefiled testimony, and at this
7 time I would offer his testimony as Exhibit 6.

8 HEARING OFFICER WEBB: Is there any
9 objection?

10 MR. SOFAT: No.

11 HEARING OFFICER WEBB: Exhibit 6 is admitted
12 into the record. Mr. Hiles, do you have any questions
13 for this witness?

14 MR. HILES: I do not, but I understand the
15 Board representatives may.

16 HEARING OFFICER WEBB: Yes. So we -- you
17 want to -- is -- yeah, let's go ahead and bring him up.

18 (Witness sworn.)

19 HEARING OFFICER WEBB: Mr. Sofat, do you
20 have any questions for this witness?

21 MR. SOFAT: No.

22 HEARING OFFICER WEBB: Okay. Then we'll
23 proceed with the Board's questions.

24 TERRY L. GLORIOD, produced, sworn and examined on

1 behalf of the Petitioner, testified as follows:

2 EXAMINATION OF TERRY L. GLORIOD

3 BY MR. RAO:

4 Q. Good morning, Mr. Gloriod.

5 A. Good morning.

6 Q. I have a couple of questions. The first one
7 is regarding your prefiled testimony on page 10 where you
8 talk about whether the requested relief is consistent
9 with the federal regulations and policies, and page 10
10 you state that if there's any inconsistency today, the
11 same inconsistency existed in 1999, when the Agency
12 supported and the Board agreed to that adjusted standard;
13 the Agency has changed its position, but it's not
14 accurate to say USEPA has also changed its position. In
15 this regard, has Illinois-American made any effort to
16 seek any guidance from USEPA as to whether what you're
17 requesting is consistent with USEPA's policy?

18 A. We have had conversations with USEPA, and I
19 think Miss Hebenstreit relates some of that in her direct
20 testimony. I had general discussions with USEPA not
21 specifically about regulations, but just about policy
22 aspects and just a general view of this type of a project
23 from the beneficial aspects.

24 Q. And can you tell us if these discussions

1 support your statement here?

2 A. Well, the -- Well, actually, the USEPA had a
3 trading policy in 1996 which discussed trading and where
4 it was applicable and where not, and it's essentially the
5 same policy that exists today, so they haven't changed
6 their written policy, and in conversations with them,
7 they've been supportive of the policy. They recognize
8 that there are no categorical standards under the Clean
9 Water Act which would trigger application of this policy,
10 and so since there are no categorical standards for
11 drinking water plants, their policy is not triggered, so
12 it is the same in '96 as it is today.

13 Q. Moving on to page 13, in response to a
14 question about what happens after the end of the ten-year
15 maintenance period, you responded that a lot can change
16 over the period and if Illinois experiences flooding like
17 it did in early 1990s, some of the existing soil sediment
18 savings project may wash out and need to be replaced, and
19 you also state that if continued projects and maintenance
20 are necessary beyond ten-year maintenance period, then
21 the company will take action to ensure two to one offset
22 and you may have to enter into a new contract for
23 maintenance with GRLT if needed. And my question is, in
24 light of this view, you believe if the Board grants the

1 requested relief, should there be another sunset in that
2 adjusted standard like they had in the current adjusted
3 standard?

4 A. I don't really think there's a need for an
5 additional sunset. I mean, you don't -- the NPDES permit
6 runs on a five-year cycle, and so every five years we're
7 going to come up for renewal of our NPDES permit, and
8 clearly, if the permit condition is compliance with the
9 adjusted standard and maintaining two to one offset or at
10 least 6600 tons, that's going to get reviewed every five
11 years, you know, and so we're committed to the permits of
12 this project and that there will be ample opportunity for
13 a review by the Agency on -- I think today they received
14 part of the reports. I suspect that will continue. They
15 are free to, you know, visit the site and inspect at
16 their leisure, and again, as I say, I think in our NPDES
17 application we will have to demonstrate that we're
18 meeting the conditions of the adjusted standard.

19 MR. RAO: Thank you very much. That's all I
20 have.

21 HEARING OFFICER WEBB: Thank you. You may
22 step down.

23 MR. HILES: Our next witness, Your Honor, is
24 Donald E. Sandidge, mayor of the city of Alton. He has

1 prefilled testimony, and at this time I would offer Mayor
2 Sandidge's testimony into evidence as Exhibit No. 7.

3 HEARING OFFICER WEBB: Is there any
4 objection?

5 MR. SOFAT: No.

6 HEARING OFFICER WEBB: Exhibit 7 is
7 admitted. Mr. Hiles, do you have any questions of this
8 witness?

9 MR. HILES: I do not, Your Honor.

10 HEARING OFFICER WEBB: Does the Agency have
11 any questions of this witness?

12 MR. SOFAT: No.

13 HEARING OFFICER WEBB: Does the Board have
14 any questions of this witness? Okay. Nobody has any
15 questions for this witness, so we will move to Exhibit 8.

16 MR. HILES: Exhibit 8 pertains to our next
17 witness, Michael J. Champion, who is the mayor of the
18 village of Godfrey, and Mayor Champion has prefilled his
19 testimony, and I would move at this time that Exhibit 8
20 be accepted into evidence.

21 HEARING OFFICER WEBB: Is there any
22 objection?

23 MR. SOFAT: No.

24 HEARING OFFICER WEBB: Does anyone have any

1 questions for this witness? Agency?

2 MR. SOFAT: No.

3 HEARING OFFICER WEBB: Board? Okay.

4 Exhibit 8 is admitted.

5 MR. HILES: Our next witness, Your Honor, is
6 James E. Schrempf, who is a local resident in Alton,
7 Illinois, living near the plant. He has prefiled
8 testimony, which I've marked as Exhibit 9, and I would
9 offer Exhibit 9 at this time and ask that it be accepted
10 into evidence.

11 HEARING OFFICER WEBB: Is there any
12 objection?

13 MR. SOFAT: No.

14 HEARING OFFICER WEBB: Exhibit 9 is admitted
15 into evidence. Mr. Hiles, do you have any questions of
16 this witness?

17 MR. HILES: I do not, Your Honor, but I
18 understand that Board representatives may.

19 HEARING OFFICER WEBB: Yes. Does the Agency
20 have any questions of this witness?

21 MR. SOFAT: No.

22 HEARING OFFICER WEBB: Okay. Mr. Schrempf?
23 (Witness sworn.)

24 HEARING OFFICER WEBB: We'll proceed with

1 the Board's questions for this witness.

2 JAMES E. SCHREMPF, produced, sworn and examined
3 on behalf of the Petitioner, testified as follows:

4 EXAMINATION OF JAMES E. SCHREMPF

5 BY MR. RAO:

6 Q. Good morning, Mr. Schrempf. I have just one
7 question for you. In your prefiled testimony, you
8 express concern regarding potential truck traffic on the
9 Great River Road if Illinois-American was required to
10 build lagoons for controlling their suspended solids, and
11 I wanted to know if you could characterize how the
12 current, you know, traffic pattern is, if you have any
13 idea, you know, being a resident close to this road right
14 now in terms of extensive truck traffic or --

15 A. Sure. The -- I'll try to speak up because
16 she asked me to sit back. The truck traffic is of
17 concern to me on really two different aspects. One is
18 the immediate concern to myself and my neighbors and the
19 truck traffic actually after it enters the property of
20 Illinois-American and going back to the lagoons.
21 Currently the Illinois-American has almost no traffic in
22 and out. I see occasionally small truck, pickup truck
23 type things, and I think they might get a large delivery
24 truck once a month. All of that is at the forward

1 portion of the property. That is the property closest to
2 the river where their buildings are. It's my
3 understanding the lagoons would be to the rear of the
4 property immediately adjacent to our yards and my
5 neighbors' yards. If they had that truck traffic back
6 there, our concern is that that's going to of course
7 create a -- more noise. They will have to load those
8 trucks. I presume that'll be some sort of big heavy
9 equipment loading trucks, in-and-out traffic that just
10 currently doesn't exist. Currently, our agreement with
11 Illinois-American is that they maintain that property as
12 prairie grass, so we are concerned about the potential of
13 that truck traffic directly affecting our residences.

14 As to the River Road, currently the River Road
15 sees very little truck traffic. As I hope you know, it
16 is a scenic highway. Alton consistently tries to promote
17 it as a major reason for tourism to our area, and there
18 is no real reason for truck traffic up and down that
19 highway presently. The highway ultimately more or less
20 ends in the city of Grafton, which I also represent, and
21 Grafton has no industrial base at all. There is no
22 manufacturing upriver from Alton that requires truck
23 traffic. The only truck traffic that the River Road
24 really experiences would be during harvest time, the

1 farmers bringing grain trucks down the River Road and
2 maybe making the return trip.

3 The River Road, again, is this scenic road, and
4 those of us who've lived in the area forever have to be
5 somewhat on alert because you get a lot of tourists.
6 They don't pay that much attention. They're looking
7 around. You have beautiful bluffs on the right going
8 upstream and the river on the left, and I think it would
9 be a bit of a danger to have increased truck traffic on
10 what is a -- almost like a scenic trail road. It also
11 does experience a lot of motorcycle traffic, also
12 increasing danger.

13 The other aspect of the truck traffic that would
14 be a problem that I mentioned in this testimony has to do
15 with our park. The only entrance to Illinois-American's
16 property would be through a park, the Piasa Park. Again,
17 Mayor Sandidge has spent his ten years trying to make
18 sure that the Piasa bird returns to the bluffs. I assume
19 you know what the Piasa bird is. He recently led an
20 effort to have that repainted with volunteer effort, and
21 it's a big deal, and that Piasa bird actually is right at
22 the entrance to the Illinois-American property. You
23 can't see the Illinois-American property from the Piasa
24 Park, but their only entrance is right there, and trucks

1 in and out would obviously distract from the beauty of
2 the park, the serenity of the park and the safety of the
3 park. So it's -- it is -- to me it's a big deal to think
4 that we would have this increased truck traffic through
5 the park, in our back yard and on the River Road.

6 MR. RAO: Thank you very much. That helps.

7 MR. SCHREMPF: Okay.

8 HEARING OFFICER WEBB: No more questions?

9 Okay. Thank you.

10 MR. SCHREMPF: Thank you.

11 HEARING OFFICER WEBB: Mr. Hiles, do you
12 have any further testimony you'd like to present at this
13 time?

14 MR. HILES: I do, Your Honor. Your -- You
15 know, Your Honor, last week depositions were taken in
16 this case, and I would like to offer as part of
17 Petitioner's case in chief select deposition testimony
18 from Scott Tompkins and from Robert Mosher. I have
19 prepared as Exhibit 10 the designation of Mr. Tompkins'
20 testimony, and attached to that designation page are the
21 actual deposition transcript pages from his deposition.
22 And I will also at this time hand you Exhibit 11, which
23 is the same thing except for the deposition of Robert
24 Mosher, and I would offer both of those exhibits into

1 evidence at this time on behalf of the Petitioner.

2 HEARING OFFICER WEBB: Does the Agency have
3 any objection?

4 MR. SOFAT: Yes. The Agency objects to the
5 select testimony filed by Illinois-American. We will ask
6 that Illinois-American provide us the complete testimony
7 of Scott Tompkins and Robert Mosher.

8 MR. HILES: Well, I think the proper
9 procedure would -- for that would simply be for the
10 Agency to designate those pages and lines that we have
11 not designated, but just to keep this as simple as
12 possible, we'll be glad to do that, Your Honor. I do not
13 have with me full copies. I have the original deposition
14 transcript of these gentlemen, but I don't have full
15 copies. If it would be easier for the Board and for you,
16 Your Honor, I will file those tomorrow electronically.

17 HEARING OFFICER WEBB: Okay. And this is
18 for 10 through 14 or just 10 and 11? I'm sorry.

19 MR. HILES: It's just 10 and 11, so
20 Exhibit 10 then -- I'm not sure how you want to do this.
21 I'd still offer Exhibit 10 and Exhibit 11 into evidence,
22 but I will in order to eliminate this objection file
23 tomorrow --

24 HEARING OFFICER WEBB: An amended 10 and

1 amended 11 or something, or what do you want to call --
2 B -- or I don't know what -- whatever you want to call
3 it.

4 MR. HILES: Okay. Why don't we call it
5 amended 10 and amended 11. That would be fine.

6 HEARING OFFICER WEBB: Okay. Does that
7 satisfy the Agency's concerns?

8 MR. SOFAT: Yes.

9 HEARING OFFICER WEBB: Okay. Then we will
10 admit 10, 11, and amended 10 and amended 11 when they
11 arrive, which will just be the full copies.

12 MR. HILES: Great. And that concludes
13 Petitioner's case in chief. We reserve the right to call
14 any of these witnesses in rebuttal.

15 HEARING OFFICER WEBB: Okay. At this time
16 I'd like to ask the Agency to call their witness to
17 answer Board questions.

18 MR. SOFAT: Can we take a five-minute break?

19 HEARING OFFICER WEBB: Oh. Yes, we can take
20 a five-minute recess.

21 (Brief recess taken.)

22 HEARING OFFICER WEBB: We are back on the
23 record. We are calling Toby Frevert to answer the
24 Board's prefiled questions.

1 (Witness sworn.)

2 TOBY FREVERT, produced, sworn and examined on
3 behalf of the IEPA, testified as follows:

4 HEARING OFFICER WEBB: Mr. Frevert, you work
5 for the Illinois Environmental Protection Agency?

6 MR. FREVERT: That is correct.

7 HEARING OFFICER WEBB: Okay. You may go
8 ahead and proceed with your responses to the Board's
9 questions.

10 MR. FREVERT: I will read the question and
11 then the answer. Question 1a -- these are prefiled
12 questions from the Board -- Since IAWC is not discharging
13 to a POTW, the 40 CFR Subchapter N, Effluent Guidelines
14 and Standards, appear not to apply. Does the Agency
15 agree? Is the Agency recommendation referring to other
16 federal categorical effluent limits?

17 Answer: 40 CFR Subchapter N pertains to
18 pretreatment requirements for industrial users
19 discharging wastewater into publicly owned treatment
20 works, or POTWs. These regulations do not apply to
21 facilities discharging their wastewater directly to
22 waters of the nation.

23 However, 40 CFR 122.44 specifies that, quote,
24 each NPDES permit shall include conditions meeting the

1 following requirements when applicable, colon;
2 technology-based effluent limits and standards
3 promulgated under Section 301 of the Clean Water Act, or
4 new source performance standards promulgated under
5 Section 306 of the Clean Water Act, on case-by-case
6 effluent limitations determined by Section 402(a)(1) of
7 the Clean Water Act, or a combination of the three, end
8 quote. In situations or activity classifications where
9 EPA has yet to promulgate effluent standards, the
10 permitting authority must rely solely upon case-by-case
11 effluent limitations, the only remaining applicable
12 component of this three-tiered approach. To achieve
13 program efficiency and avoid potential conflicts in
14 position and perspective between the Agency and the
15 Board, the Agency has historically relied upon effluent
16 limitations contained in the Board's pollution control
17 regulations to meet its NPDES permitting
18 responsibilities.

19 Question 1b: The Agency recommendation also
20 states, "Up-to-date information on USEPA's efforts to
21 develop categorical effluent limits for water supply
22 treatment plant effluents was obtained from Mr. Tom
23 Bone" -- I believe that's supposed to be Born -- "of
24 USEPA's Office of Science and Technology." In the

1 Agency's contact with Mr. Born, did he indicate that
2 USEPA would be developing categorical effluent limits for
3 sources which do not discharge to a POTW?

4 Mr. Born of the USEPA's Office of Science and
5 Technology indicated that the USEPA would be developing
6 categorical effluent limits for sources which do not
7 discharge to a POTW.

8 Question 1c: Did Mr. Bone indicate for which
9 pollutants USEPA would be setting effluent limitation
10 guidelines for water supply treatment plants? Did they
11 include total suspended solids and iron?

12 Mr. Born communicated that total suspended solids
13 would be among the parameter of focus in establishing
14 effluent limitation guidelines for this industry.

15 Question 2 is a series of questions, number 2.
16 2a: Is Illinois EPA considering water quality trading as
17 an option for point source discharges in waterways with
18 TMDLs, such as the east branch of the DuPage River and
19 Salt Creek? If so, please describe.

20 At this time, the Agency is not considering water
21 quality trading as an option for point source discharges
22 in waterways with TMDLs. An analysis of the
23 applicability of trading has not been evaluated by the
24 EPA yet.

1 Question 2b: Is the Agency aware of any other
2 dischargers in Illinois that use or plan to use water
3 quality trading? If so, please describe.

4 No, the Agency is not aware of other dischargers
5 in Illinois that use or plan to use water quality
6 trading.

7 Question 2c: Did IEPA consult with the Illinois
8 State Water Survey, which works with the Agency on
9 sediment control projects such as the Lake Pittsfield
10 watershed project, Board O&O, 9-7-00 at 16 -- I guess
11 that's the reference to a Board proceeding -- to provide
12 insight into the prospect of trading and retiring credits
13 for nonpoint source projects that have matured?

14 HEARING OFFICER WEBB: Mr. Frevert, could
15 you speak a little more loudly?

16 MR. FREVERT: I don't know if I can or not,
17 but I'll try.

18 HEARING OFFICER WEBB: Okay.

19 MR. FREVERT: No, the Agency has -- did not
20 consult with the Water Survey regarding the prospect of
21 trading or retiring credits for nonpoint source projects
22 that have matured.

23 Question 3, USEPA water quality policy trading
24 question: Are there federal effluent guidelines or TBEL

1 for total suspended solid and iron discharges not to a
2 POTW that would apply to Illinois-American Water Company?

3 There are no federal effluent guidelines for
4 total suspended solids and iron discharges; however, 40
5 CFR 122.44 specifies that, quote, each NPDES permit shall
6 include conditions meeting the following requirements
7 when applicable: Technology-based effluent limitations
8 and standards promulgated under Section 301 of the Clean
9 Water Act, or new source performance standards
10 promulgated under Section 306 of the Clean Water Act, on
11 case-by-case effluent limitations determined under
12 Section 402(a)(1) of the Clean Water Act, or a
13 combination of the three. In situations or activity
14 classifications where EPA has yet to promulgate effluent
15 standards, the permitting authority must rely solely upon
16 case-by-case effluent limitations, the only remaining
17 applicable component of this three-tiered approach.

18 Question 4, USEPA oversight questions: Other
19 than discussions with Mr. Bone about the federal -- about
20 possible federal effluent limitation guidelines, did the
21 Agency consult with USEPA specifically about
22 Illinois-American Water Company's proposed adjusted
23 standard for cooperation with the Piasa Creek watershed
24 project? If so, would you please describe?

1 The Agency contacted Mr. Peter Swenson and
2 Mr. George Acevado, both employees of USEPA's Region 5
3 Office. Mr. Peter Swenson, Branch Chief, Permits
4 Section, USEPA Region 5, was contacted to seek his
5 professional opinion of whether funding trading is an
6 acceptable alternative to applying minimum technology
7 controls to a wastewater source. After checking into the
8 issue, Mr. Swenson said that what his understanding of
9 what Illinois-American was requesting was inconsistent
10 with his understanding of what federal policy and good
11 practice requires. It is the Agency's understanding that
12 Mr. Swenson also believes that minimum technology-based
13 controls are a sound anchor in the environmental -- of
14 the environmental program and they should be routinely
15 adhered to.

16 The Agency also had a conversation with
17 Mr. George Acevado, employee of Mr. Swenson, USEPA Region
18 5. Mr. Acevado indicated that he was familiar with
19 Illinois-American's Great Rivers Land Trust project that
20 in prior years had been touted as a big trading success
21 story. However, Mr. Acevado had recently familiarized
22 himself with the way the project was structured and was
23 surprised that the project was structured to fund a
24 nonpoint source program in lieu of meeting minimum

1 technology requirements versus a supplement to that.
2 Mr. Acevado was surprised and disappointed that that was
3 the nature of the program. At one point he said that
4 this was a prime example of misuse of a trading concept,
5 a good example of what trading should not be.
6 Mr. Acevado's fundamental understanding was trading is a
7 mechanism that should be used to get additional
8 environmental gain over and above basic regulatory and
9 technology-based requirements, not in lieu thereof.

10 Is Illinois EPA aware of any feedback from USEPA
11 regarding Illinois-American Water Company's NPDES permit
12 and the provisions for Adjusted Standard 99-6? If so,
13 please describe.

14 The Agency is not aware of any feedback from
15 USEPA regarding Illinois-American's NPDES permit and the
16 provisions of Adjusted Standard 99-6.

17 Piasa Creek watershed performance questions:
18 Please provide a copy of an Agency's determination of
19 effectiveness and a summary of the Agency's involvement
20 in the GRLT for the record.

21 The Agency has attempted to track the various
22 activities that Great Rivers Land Trust has undertaken as
23 a term of the Board order in Adjusted Standard 99-6. The
24 Agency has no practical method to exercise an independent

1 opinion of the level of effectiveness on any or all of
2 the various actions that have been undertaken.

3 Has the Agency assessed compliance with Adjusted
4 Standard 99-6 thus far in terms of tracking the
5 generation of sediment savings in Piasa Creek and
6 comparing it to the load from the Alton water plant?

7 The Agency has assessed compliance with the order
8 in Adjusted Standard 99-6 through specific reporting and
9 submissions called for in the order. The Agency has not
10 attempted to speculate on what actual reduction in
11 pollutant loading these projects may or may not have
12 accomplished in the Mississippi River proper and its size
13 relative to the direct discharge from the
14 Illinois-American Water Company Alton water treatment
15 plant.

16 That concludes my answers.

17 HEARING OFFICER WEBB: Mr. Hiles, do you
18 have any questions of this witness?

19 MR. HILES: I do, Your Honor. If I could,
20 just as a housekeeping matter, I noticed that Mr. Frevert
21 was reading from a document, and I was wondering if that
22 document might be made available or made part of the
23 record. If it's his own personal notes, I understand
24 there might be a problem with that, but if we've got

1 pre-prepared text --

2 HEARING OFFICER WEBB: He didn't prefile it,
3 so I don't know if you have -- if you want to do that or
4 not.

5 MR. SOFAT: That document is Toby's notes,
6 so we don't have a prepared document for the Board.

7 HEARING OFFICER WEBB: You'll be able to
8 read it in the transcript, but I know that doesn't help
9 you right now.

10 MR. HILES: It really doesn't. My concern
11 is -- and I'm not trying to pick a fight with anybody
12 here, but we have a short tail. We have ten days to file
13 post-hearing briefs, and this is the one and only
14 witness, I suspect, who's going to offer testimony
15 contrary to our petition, and no disrespect to
16 Mr. Frevert, but he's a soft-spoken man and I had trouble
17 hearing everything he had to say.

18 MR. SOFAT: I can share a copy right now.

19 HEARING OFFICER WEBB: Thank you, Mr. Sofat.

20 MR. SOFAT: Then I will take it back with
21 me, if that's okay with you. You can use this for this
22 proceeding and then --

23 HEARING OFFICER WEBB: Is that what you
24 meant? Did you want something to ask questions right now

1 or were you thinking about preparing your brief?

2 MR. HILES: I'm really thinking about
3 preparing my brief.

4 HEARING OFFICER WEBB: Okay. Well, the
5 transcript will be on our Web site on Friday, so -- which
6 will have --

7 MR. HILES: This Friday?

8 HEARING OFFICER WEBB: Yes, this Friday.

9 MR. HILES: Good. That's going to cover it
10 for me.

11 HEARING OFFICER WEBB: Okay.

12 MR. HILES: Great.

13 HEARING OFFICER WEBB: Great.

14 MR. HILES: I do have questions on cross
15 examination, Your Honor.

16 HEARING OFFICER WEBB: Okay.

17 EXAMINATION OF TOBY FREVERT

18 BY MR. HILES:

19 Q. Good morning, Mr. Frevert. You testified
20 regarding discussions that you had with two EPA
21 representatives, Peter Swenson and George Acevado, both
22 of Region 5, I believe; is that correct?

23 A. That's correct.

24 Q. In your discussions with Mr. Swenson and

1 Mr. Acevado, did you share with them a copy of my
2 client's petition for the adjusted standard?

3 A. No, I don't believe I did.

4 Q. Did you provide to them a copy of my
5 client's amended petition?

6 A. No, I don't believe I did.

7 Q. Are you aware that a stream study was
8 performed, a site specific impact study, by ENSR in 1999
9 specifically studying the discharge from the new Alton
10 plant and the effects of that discharge on the river?

11 A. I have a general familiarity that back in
12 1999 some work was done. I don't recall that specific
13 study.

14 Q. Well, did anyone from your agency to your
15 knowledge provide copies of that study to Mr. Swenson or
16 Mr. Acevado before your telephone conference with those
17 gentlemen?

18 A. Not to the best of my knowledge.

19 Q. Did you or anyone else from the Agency
20 provide Mr. Swenson or Mr. Acevado the latest report from
21 Great Rivers Land Trust on the Piasa Creek watershed
22 project?

23 A. I did not, and I have no knowledge that
24 anyone else did.

1 Q. Did you tell them that -- well, let me ask
2 you, when did you have these telephone discussions with
3 Mr. Swenson and Mr. Acevado?

4 A. Probably back in the time frame when we were
5 formulating our original recommendation to the Board.

6 Q. So that takes us back, what, about three
7 months ago?

8 A. Possibly, yes.

9 Q. Is that a fair time frame?

10 A. I think so.

11 Q. April or May?

12 A. I think so.

13 Q. Very good. Did you explain to Mr. Swenson
14 or Mr. Acevado that the Piasa Creek watershed project as
15 of that time had reached a soil savings level over 6,700
16 tons?

17 A. No, I did not.

18 Q. Did you explain the net savings that had
19 been achieved when factoring in the loading from the
20 plant to the savings achieved in the Piasa Creek
21 watershed?

22 A. No, I did not.

23 Q. Why didn't you tell them any of those
24 things?

1 A. I was trying to get clarification on their
2 understanding of their -- of federal policy and good
3 environmental control practice, not the specifics of an
4 individual project out in the field regarding a nonpoint
5 source program. The -- Our agency and USEPA are both
6 strong supporters of nonpoint source programs. We
7 provide funding, all sorts of support for those programs.
8 We're not anti nonpoint source program. We are
9 opposed -- I am personally opposed, the Agency is
10 personally opposed to abandoning what is the basic anchor
11 that has accomplished so much for us in the last 50
12 years. That's technology-based controls. That was the
13 first and the foremost approach to the antidegradation
14 policy that seems to be driving things today. That's the
15 policy question I posed to them, not the specifics of one
16 individual application.

17 Q. And I'll be glad to explore that with you in
18 a moment. Did you invite -- well, let me ask you first
19 of all, who else participated in these phone calls?

20 A. No one.

21 Q. So when you spoke with Mr. Swenson, was that
22 a one-on-one call?

23 A. I believe it was, yes.

24 Q. And when you spoke to Mr. Acevado, was that

1 a one-on-one call?

2 A. I believe it was, yes.

3 Q. Why didn't you invite a representative of my
4 client to participate?

5 A. I was doing basic information seeking to
6 help the Agency formulate its independent opinion and
7 recommendation to the Board, not to negotiate some kind
8 of a different type situation with the Petitioner.

9 Q. Well --

10 A. My obligation, I felt, was to understand as
11 best I can what the federal perspective is and help
12 communicate that to the Board.

13 Q. And in doing so, you did not provide any of
14 the specific data regarding Piasa Creek watershed?

15 MR. SOFAT: Objection. Witness has already
16 responded to that question.

17 HEARING OFFICER WEBB: I didn't hear. Can
18 you repeat it? I'm sorry.

19 Q. (By Mr. Hiles) In trying to get an
20 understanding of the federal agency's position, isn't it
21 true that you did not provide any details regarding the
22 success of the Piasa Creek watershed project?

23 A. I was not attempting to understand the
24 federal perspective on the Piasa Creek watershed project.

1 I was attempting to understand the federal perspective
2 and policy on application of technology-based controls
3 for point sources and the extent of which those were or
4 were not prudent encouragements to offer or to trade in
5 lieu of a nonpoint source program, which is also a stated
6 goal of both agencies.

7 Q. Let me see if I understand correctly, then.
8 In your conversations with them, you really did not even
9 try to factor in that there was an offset trading program
10 going on here? You only spoke about technology-based
11 effluent limits?

12 MR. SOFAT: Objection. We have gone through
13 this line of questioning before.

14 MR. HILES: I don't think -- I think the
15 witness has --

16 MR. SOFAT: Witness has answered he did not
17 talk about the project at all.

18 MR. HILES: But I'm entitled to explore
19 that.

20 MR. FREVERT: Let me -- I'd be happy to --

21 HEARING OFFICER WEBB: Pardon me?

22 MR. FREVERT: I would be happy to try to
23 answer.

24 HEARING OFFICER WEBB: Thank you.

1 A. I spoke to Mr. Swenson specifically to get
2 his understanding and reinforce my understanding or
3 correct my understanding if it was wrong relative to
4 federal policy on the NPDES permitting program and the
5 obligation of the delegated permitting authority to apply
6 technology-based controls. I spoke to Mr. Acevado
7 specifically regarding his understanding of federal
8 perspective and guidance and policy regarding trading
9 programs.

10 Q. (By Mr. Hiles) Then let's focus on
11 Mr. Acevado's discussion. When you discussed trading
12 programs with him, is it accurate to say that you did not
13 provide him either in advance in writing or during that
14 telephone discussion with details regarding the success
15 of this particular trading program, the Piasa Creek
16 watershed project?

17 A. Yes, that is correct.

18 Q. Thank you. I apologize, Mr. Frevert, if you
19 covered this in your prepared statement, but let me ask
20 you what I think is a pretty simple question. Are there
21 federal category-based effluent limits applicable to
22 water treatment plants in Illinois?

23 A. At the present time, there are no federally
24 published categorical effluent standards in place.

1 Q. And is that the reason or at least part of
2 the reason that you are proposing today that Illinois'
3 general effluent limit be applied to the Alton plant?

4 A. Yes. I believe I've answered that already
5 in my response to the Board's questions.

6 Q. Thank you. And again, I'm not trying to
7 pick at this, but I couldn't pick up everything that you
8 said earlier. Is it your position that the general
9 effluent limit for total suspended solids in Illinois was
10 developed using BPJ?

11 A. That particular standard was the outcome of
12 a fairly lengthy board regulatory process where testimony
13 from numerous parties was presented, and they evaluated
14 and reached a decision on what I thought was prudent,
15 generally available, reasonable, affordable technology to
16 be applied across the board to all point sources.

17 Q. Is that technology -- I'm sorry. Is that
18 TSS effluent limit a limit of general applicability to a
19 variety of point sources, not just the water treatment
20 plants?

21 A. That's my understanding, but you can read
22 the regulations themselves and reach your own conclusion.

23 Q. Well, I'm interested in your understanding
24 today, sir.

1 A. I will try to help you clarify. In those
2 cases where there are no federal categorical standard, we
3 have -- the Agency in carrying out our delegated NPDES
4 authorities have historically and routinely adhered to
5 those Board effluent standards as our judgment on what
6 best available and practical technology is.

7 Q. Thank you.

8 I'm sorry, Your Honor. I am going to have a few
9 exhibits for Mr. Frevert, and if you'll give me just a
10 moment to walk around.

11 Mr. Frevert, I'm going to hand you a document
12 marked as Exhibit 12, which consists of about five or six
13 pages pulled from EPA's regulations. Specifically, these
14 are regulations found at 40 CFR, Sections 125 -- I'm
15 sorry. Section 125. Are you familiar with these
16 regulations, sir?

17 A. Only in a general sense.

18 Q. I'd like to direct your attention, please,
19 to Section 125.3(c)(2), and I'm going to read that
20 regulation into the record. "On a case-by-case basis
21 under Section 402(a)(1) of the Act, to the extent that
22 EPA-promulgated effluent limitations are inapplicable,
23 the permit writer shall apply the appropriate factors
24 listed in 123" -- I'm sorry -- "125.3(d) and shall

1 consider" -- and there are two subpoints here. First is,
2 "The appropriate technology for the category or class of
3 point sources of which the applicant is a member based
4 upon all available information." Do you agree that what
5 I've read so far applies to the Illinois-American water
6 plant in Alton, Illinois?

7 A. Again, my familiarity with this is only in a
8 general sense, but that appears to be what it says.

9 Q. All right. And then I want to read
10 Romanette ii. Romanette ii, which is another matter that
11 the permit writer shall consider, is this: "Any unique
12 factors relating to the applicant." I'd like to ask you
13 some questions about Romanette ii, Mr. Frevert. Do you
14 consider the Piasa Creek watershed project to be a unique
15 factor relating to Illinois-American Water Company?

16 A. I do not think that project is a unique
17 factor or even a factor in considering what the available
18 prudent technology is to control the individual point
19 source. The Piasa Creek watershed project we believe is
20 a wonderful project. We encourage and support projects
21 similar to that all across the state and indeed even
22 encourage them on a nationwide basis.

23 Q. Well, let's explore uniqueness for just a
24 moment, if you'll bear with me.

1 A. Okay.

2 Q. In the first case, which your agency and my
3 client participated in back in 1999, a hearing was held
4 similar to this one on November 30 of 1999, and at that
5 hearing your agency was represented by Lisa Moreno. I'm
6 going to read to you from Miss Moreno's opening
7 statement, which is found in the transcript of that day
8 on page 8. "Initially, we filed our response to the
9 Water Company's petition" -- I'm sorry. "Initially, when
10 we filed our response to the Water Company's petition, we
11 did not support their request to be able to discharge
12 without treatment, and we believe that the technology
13 exists for them to treat. However, having said that,
14 since the meeting that we had and the proposal that was
15 made, we are enthusiastically looking at this opportunity
16 to try out something, to be honest with you, that is new
17 for us too." In light of that testimony, Mr. Frevert,
18 made by the Agency's counsel, wouldn't you agree with me
19 that Piasa Creek watershed project, which hadn't really
20 gotten off to a start back in 1999, was considered to be
21 unique by your agency?

22 A. I don't believe the project itself was
23 unique. I have to believe that she was saying there's a
24 unique factor here that was making a tie from a nonpoint

1 source project to a traditional point source project.
2 We've had years and years of experience in watershed
3 projects. That in and of itself is not unique to the
4 Agency.

5 Q. But, sir, you've never had one that was used
6 as an offset trading project.

7 A. That is correct, and I'm happy to say there
8 are no others.

9 Q. So it's certainly unique in that sense,
10 isn't it, sir?

11 A. It's definitely unique in the fact that we
12 deviated from what I believe is good, sound policy and
13 historic policy of applying technology controls, yes.

14 Q. Have you had any offset projects in the
15 state of Illinois that received the Governor's Pollution
16 Prevention Award other than the Piasa Creek watershed
17 project?

18 A. I don't have an answer to that question. I
19 don't know from personal knowledge. Please don't anyone
20 think that we are not supportive of the Piasa Creek
21 watershed project. We are supportive of that and all
22 sorts of projects like that.

23 Q. Well, it strikes me as odd that you say
24 you're supportive but you won't even concede that it's

1 unique, having been the only offset project to receive
2 the Governor's Pollution Prevention Award and having a
3 statement from your counsel in the 1999 case saying, to
4 be honest with you, we've never dealt with a project like
5 this. I'm sorry, Mr. Frevert, but why won't you concede
6 the uniqueness of the Piasa Creek watershed offset
7 trading project?

8 A. In my personal opinion, we have dealt with a
9 number of projects like this. We've always been
10 supportive of them. It's not unique in that sense.
11 Watershed projects are good. We continue to support
12 them. We continue to think they're wonderful and do what
13 we can to grow them. We stop short of relaxing otherwise
14 applicable point source control technologies. We're not
15 going to sacrifice the resources dedicated to point
16 source controls to divert those resources to nonpoint
17 source controls. I and the Agency believe that's bad
18 policy.

19 Q. Has your agency conducted a study of the
20 offset trading project to determine its impact on a TSS
21 effluent limit for the Alton water plant?

22 A. I have no personal knowledge of that study.

23 Q. So you haven't done -- actually done a BPJ
24 analysis, then, have you?

1 A. You're going to have to clarify your
2 question. I'm not sure what you're referring to.

3 Q. Well, you testified earlier, I think, that
4 in the absence of a federal effluent limit, which is the
5 situation we face now, your agency performs a BPJ
6 analysis.

7 A. We perform an analysis --

8 MR. SOFAT: I believe that's not what the
9 witness said.

10 MR. HILES: Well, then let's clear it up
11 right now. I'm sorry. I didn't mean to misstate his
12 testimony, but I thought that's what he said.

13 Q. (By Mr. Hiles) Go ahead, Mr. Frevert.

14 A. We have an obligation as the delegated NPDES
15 authority to apply technology-based controls. Lacking
16 specific promulgated effluent limitations, we apply a
17 best professional judgment exercised to identify those
18 controls for that source. We do not identify efforts to
19 manage or control alternate sources as part of that
20 technology.

21 Q. Well, let me just make sure I understand it,
22 whether the record's clear or not. Are you -- Is it your
23 testimony, then, that your agency simply wants to stand
24 upon the technology-based effluent limit adopted by this

1 board in 1972, or is it your testimony that your agency
2 intends to conduct some BPJ and propose a different
3 effluent limit for my client?

4 A. Again, to keep with the historical and
5 consistent practice of our agency in those areas where we
6 have an obligation to exercise BPJ judgment in carrying
7 out point source permitting activities, we have
8 recognized Board-promulgated general effluent standards
9 as the appropriate reasonable technology to apply to
10 those sources, and we're not treating this source
11 differently.

12 Q. Thank you for clarifying that. And that
13 Board standard is -- was the standard set in 1972; am I
14 right?

15 A. I believe it was in that time frame, yes,
16 and that standard has stood the test of time and is
17 routinely applied in numerous permits throughout the
18 state.

19 Q. I want to go back to this Piasa Creek
20 watershed project now, Mr. Frevert, being a unique factor
21 as recognized to be considered under federal regulations.
22 Do you recall that your agency told the Board in the year
23 2000 that the Piasa Creek watershed project was a
24 different factor from the factors the Board had

1 considered previously when it adopted that TSS standard
2 in 1972?

3 A. I don't recall that statement, but it may
4 have been there.

5 Q. Mr. Frevert, I'm going to hand you a
6 document that I'm not marking for evidentiary purposes
7 because it's already in the record. This is the Board's
8 order of September 7, 2000, in case AS 99-6, and I'll ask
9 you, please, to turn to page 9 of that order under the
10 heading "Substantially Different Factors." I'm going to
11 read for you from the paragraph beginning with the word
12 "however." "However, in the amended response, the Agency
13 changed its position. It said that the Great Rivers Land
14 Trust project, which will offset the residuals in the
15 untreated discharge from the new facility by a two to one
16 margin, is a substantially different factor than those
17 that the Board were concerned with in adopting the three
18 standards at issue herein." Having read that statement
19 from the Board's order, Mr. Frevert, does that now
20 refresh your recollection that the Agency indeed told the
21 Board in 2000 that the offset project was a different
22 factor?

23 A. That may well be. Unfortunately, I don't
24 believe that's the best advice we've ever given the

1 Board.

2 Q. Well, you participated in that case, didn't
3 you, sir?

4 A. I don't believe I participated in developing
5 this draft for the hearing. I participated in some
6 discussions at various times, and I know I was supportive
7 of their original position. This was not a prudent thing
8 to do.

9 Q. So you did participate in that case.

10 A. I did not participate in the actual
11 preparation of the recommendation. I participated in
12 some discussions prior to that, and I believe based on
13 some of those discussions I consciously stayed away from
14 participation in that actual drafting of that
15 recommendation.

16 Q. Somebody overruled you?

17 A. I believe --

18 MR. SOFAT: Objection. What is the
19 relevance here?

20 MR. HILES: Well, let's --

21 HEARING OFFICER WEBB: I'll let you go on.

22 Q. (By Mr. Hiles) Mr. Frevert, did somebody
23 overrule your opinion?

24 A. There were some fairly strong differences of

1 opinion back then, and certain individuals who were
2 indeed aligned with me sort of got worn down over time
3 and basically decided this was the proper way to get this
4 case resolved and off the books.

5 Q. Well, let's be clear about your
6 participation in that case, however. You did in fact
7 review the site specific impact study that was performed
8 at that time, did you not?

9 A. I honestly don't remember that I did. I
10 don't know.

11 MR. SOFAT: Can I ask, where are we going
12 with this line of questioning? What is the purpose here?

13 HEARING OFFICER WEBB: Mr. Hiles?

14 MR. HILES: I think the purpose ought to be
15 obvious. We have a federal regulation that establishes a
16 mandate for the Illinois Environmental Protection Agency
17 and arguably for the Pollution Control Board. That
18 mandate is, in the absence of a federal effluent limit,
19 which is the case we have here, permit writers need to
20 look at unique factors applicable to the applicant.
21 We've seen that statutory section. And by the way, I
22 believe I failed to do so. I'm going to move for
23 admission at this time of Exhibit 12 into evidence.

24 MR. SOFAT: I would like to hear where we're

1 going with this. Mr. Frevert has responded to that
2 question, clearly stating we consider the Board's Part
3 304 as the BPJ. That is our response. This is a board
4 proceeding. We are here to file argument and we are here
5 to respond to our -- the questions that the Board had.
6 We have filed our recommendation. I would say that let's
7 have the questions that pertain to our recommendation,
8 that pertain to our responses. That's what I see this
9 hearing to be about, not about what happened in 2000. We
10 are stating our position in 2007 totally different than
11 2000. It's obvious. It's in the board record. So I
12 would suggest that we stay focused on the questions that
13 the Board asked, on the questions that -- or rather on
14 the responses that Mr. Frevert had today.

15 MR. HILES: Well, Your Honor, I'd be
16 delighted to respond to that. Mr. Frevert has
17 steadfastly refused to acknowledge that the Piasa Creek
18 watershed project is a unique factor to the applicant in
19 this case, and therefore, I think I'm entitled to put
20 into evidence statements made by this agency -- and I'm
21 coming up on some under oath -- in the original case
22 where they acknowledged indeed that this was a unique
23 factor and where they acknowledged indeed that this
24 offset trading program was consistent with federal and

1 state NPDES regulations. That's where I'm going with
2 this.

3 MR. SOFAT: It is the Board, not the Agency,
4 who decides whether or not this is unique. We have an
5 opinion. We put our opinion in the recommendation.
6 Board decides, so therefore, asking the Agency witness to
7 agree or disagree on that point, it does not get us
8 anywhere. The Board has to make the final decision on
9 this case.

10 HEARING OFFICER WEBB: How much do you have?
11 I don't want to spend a tremendous amount of time on
12 this, but if you can make your point --

13 MR. HILES: I'll move along.

14 HEARING OFFICER WEBB: -- quickly, I'll give
15 you leeway.

16 MR. HILES: I'll move along.

17 Q. (By Mr. Hiles) I take it from your
18 testimony, Mr. Frevert, that you did not testify at the
19 original proceeding in 1999 and 2000?

20 A. That's to the best of my recollection, yes.

21 Q. Do you recall that Mr. McSwiggin testified
22 on behalf of the Agency?

23 A. I do not -- I believe Mr. McSwiggin entered
24 some written testimony. I don't know that he actually

1 testified in person or not.

2 Q. I think you're correct. I think it was
3 written testimony. I'll show you now what has been
4 marked as Exhibit 14, the testimony of Thomas G.
5 McSwiggin submitted in case AS 99-6, and to cut to the
6 chase, sir, let me ask you to turn to the third page of
7 his testimony. I'm going to read for you the final
8 paragraph on that page. Before I do, let me ask you,
9 what position did Mr. McSwiggin hold back in 2000, if you
10 know?

11 A. He was manager of our Water Pollution Permit
12 Section.

13 Q. Well, in 2000, the manager of your Water
14 Pollution Permit Section told the Board, "Finally, based
15 on my knowledge of the state and federal NPDES programs
16 as manager of the Permit Section for 22 years, it is my
17 opinion that the implementation of the Piasa Creek
18 sediment reduction program through Illinois-American's
19 NPDES permit is consistent with the Illinois and federal
20 NPDES regulations." Do you see that?

21 A. Yes, I do.

22 Q. And today you're testifying before the Board
23 contrary to Mr. McSwiggin's testimony; is that correct?

24 A. I think that is correct, yes.

1 Q. Who's the Permit Section head of the Agency
2 right now?

3 A. Sidney Alan Keller.

4 Q. Why didn't you bring him?

5 A. Believe it or not, we have other chores to
6 do. Our obligation is to review and give the Board our
7 best and honest recommendation. We're doing that. We
8 can't drop everything we have and entertain your
9 continual questions. We, including my director, have
10 personally given you and your client an audience multiple
11 times. We've discussed this with you multiple times.
12 You should know what our position is now. Continuing to
13 hammer and badger me on the same issues doesn't change
14 the fact that in the year 2007, my agency and my
15 testimony is this is not good policy and it is not
16 consistent with what we believe the Clean Water Act is
17 intended.

18 Q. What position does Robert Mosher hold at the
19 Agency?

20 A. He's our senior standards -- Water Quality
21 Standards technical person.

22 Q. Are you aware that in his deposition last
23 week Mr. Mosher testified that the offset project
24 delivers a net benefit to the environment?

1 A. Until now, I was not aware of what he said
2 in that deposition, no.

3 Q. Do you agree with that statement?

4 A. I have no basis to form such a conclusion.
5 However, I will comment that I don't think net benefit,
6 whether it be positive or negative, is the point here.
7 The point here is for the State of Illinois to reach its
8 environmental goals, we need both point source control
9 programs and nonpoint source control programs, not one in
10 lieu of the other.

11 Q. Well, let's explore that net benefit for a
12 moment, because I have a few questions for you on that.
13 Great Rivers Land Trust reports that over 6,600 tons of
14 solids are prevented each year from entering the river.
15 Do you have any reason to disagree with that figure?

16 A. I have no basis for an opinion one way or
17 another.

18 Q. My client reports and has reported to your
19 agency and now to the Board in this case that on the
20 average, my client deposits 1,500 tons of solids per year
21 into the river. Do you have any basis to disagree with
22 that?

23 A. I have no personal knowledge one way or
24 another how accurate that number is.

1 Q. Well, I'm going to ask you to assume that
2 that number is accurate and also that the number being
3 reported by Great Rivers Land Trust is accurate, sir.
4 Just to kind of review those, Great Rivers Land Trust
5 says 6,600 tons of solids are prevented from entering the
6 river, and my client reports 1,500 tons are loaded into
7 the river from the Alton plant. If my math is correct,
8 that's a net savings of 5,100 tons per year. Would you
9 agree with that?

10 A. Sounds reasonable.

11 Q. Let me ask you for your ball-park estimate
12 of --

13 MR. SOFAT: I object.

14 Q. -- of the solids loading --

15 HEARING OFFICER WEBB: Just a moment. What
16 is your objection?

17 MR. SOFAT: This line of questioning does
18 not serve any purpose. As far as the Agency is
19 concerned, we have explicitly said this project -- the
20 discussion or the details of this project are irrelevant
21 to the adjusted standard proceeding. Illinois-American
22 has all the rights to tell the Board what they think
23 about this project. This witness does not have specific
24 knowledge. We are not here to talk about the project.

1 We are here to talk about our recommendation and his
2 responses.

3 HEARING OFFICER WEBB: Mr. Hiles? I think
4 we are here somewhat to talk about the project.

5 MR. HILES: The project is the case, Your
6 Honor. The project is the case. If the project didn't
7 exist, none of us would be here.

8 MR. SOFAT: Okay.

9 MR. HILES: The Board put this project in
10 play, and that is at the heart of our adjusted standard,
11 and I -- I'm just --

12 HEARING OFFICER WEBB: I think I'm just
13 going to allow Mr. Hiles --

14 MR. SOFAT: I have another point, if you'd
15 allow me.

16 HEARING OFFICER WEBB: Okay. Yes.

17 MR. SOFAT: We have not contradicted any of
18 the facts that you have about the project. What is the
19 point? The facts are as stated by Illinois-American.
20 What is the purpose asking the Agency those questions
21 now? They are in the record and the Board can see they
22 are 100 percent true in favor of Illinois-American.

23 HEARING OFFICER WEBB: Well, I think the
24 Board did feel that there were some questions of fact,

1 and so we do want to get as much as we can into the
2 record so that the Board can make a determination.

3 MR. SOFAT: Then those questions should
4 be not -- Toby Frevert should not be responding to those
5 questions, then.

6 MR. HILES: Your Honor, I'm not trying to
7 establish through this witness that 5,100 net tons of
8 soil savings a year is a fact. It happens to be a fact.
9 I'm merely laying a foundation for some questions that
10 I'm going to pose to this witness in a moment. We've
11 got -- Let's -- We ought to stipulate to it, that at
12 least 5,100 tons per year are saved, but this is a
13 foundation point. That's all. I'd like to proceed and
14 I'll get to my specific questions for this witness
15 momentarily.

16 MR. SOFAT: Let's get to the questions. If
17 we don't understand the question, we'll ask for the --

18 Q. (By Mr. Hiles) Mr. Frevert, I would like
19 your best estimate of the annual TSS loading by the new
20 Alton plant if technology-based effluent limits are
21 applied. Can you give us an estimated number?

22 A. I can tell you the technology-based
23 requirements, that technologies are available.

24 Q. Oh, I absolutely agree with you. Let's pick

1 a number. Can we say 20 tons a year would be discharged
2 into the river if my client applied technology-based
3 effluent limits?

4 A. If your client applied the technologies that
5 most other facilities in the state of Illinois use, there
6 would be an approximate 15 milligram per liter
7 concentration range given whatever flow you discharge.
8 You can calculate the tonnage yourself. It's a simple
9 calculation. I have not done that.

10 Q. And I'm not looking for a pinpoint precise
11 number, sir. I'm just looking for an estimate. Would it
12 be 10 million, 15 million, 20 million tons a year? Let's
13 be conservative.

14 A. I don't know how much clarifier sludge you
15 generate in that water treatment facility, but my
16 understanding is basic waste material that's left over
17 from your producing a water product is currently
18 discharged untreated into the Mississippi River. I think
19 that's a bad policy, I think that's a bad precedent, and
20 I don't believe our environmental program in Illinois
21 would be where it is today if everybody chose this route.

22 Q. Well, while you're on the subject of bad
23 policy, then, let me ask you a few questions. If we're
24 currently saving over 5,000 tons a year operating under

1 this adjusted standard, if we were to drop the Piasa
2 Creek watershed project and ignore all of those savings
3 but go back to technology-based effluent limits, isn't it
4 true, sir, that there would be a net gain of solids
5 loading into the river?

6 A. Are you asking me to speculate that the
7 Piasa Creek project would die and there is no community
8 support for that project or federal or state funds
9 available to support that?

10 Q. That's not what I'm asking. That's not what
11 I'm asking.

12 A. That sounds to me like what you're asking.

13 Q. Well, it's not --

14 A. The presumption is the project goes away if
15 you have to spend your money on treating your effluent.
16 That's what I'm interpreting you asking me.

17 Q. That is what I'm asking you.

18 A. I'm not going to speculate on -- I would
19 hope this community cares more about their nonpoint
20 source programs and their environment that they can get
21 things done without offering up other long-standing
22 regulatory controls just to accomplish that.

23 Q. Let's turn back the clock, Mr. Frevert, and
24 let's assume that you got your way with the Agency in

1 1999 and 2000 and this offset project was opposed, and
2 let's assume that the Board agreed with you that it
3 should be opposed and did not grant the adjusted
4 standard. If that were the case, then we would not have
5 5,100 tons per year of soil savings in the Mississippi
6 watershed. What I want you to tell the Board about
7 policy, good or bad, is this: How is it better to have
8 some solids discharge from my client's plant compared to
9 a net savings of 5,100 tons per year not deposited into
10 the river?

11 A. I think you're asking me to speculate or to
12 admit lacking your money there would be no other support
13 available for this project and this project would not
14 have any opportunity, local effort, to go out and raise
15 revenues the way their counterparts of watershed projects
16 otherwise and to grant applications or foundation
17 applications rather than a quid pro quo of trading one --

18 Q. You didn't listen to my question, because
19 that's not my question at all.

20 A. Your question required me to speculate on
21 that, as I understand it.

22 Q. I am asking you to assume that there's no --

23 A. I'm not going to make that assumption.

24 Q. I'm asking you to, sir.

1 A. I will not.

2 Q. With my client's contribution, we know this
3 much. There has indeed been a savings of 5,100 tons per
4 year, and I want to know why you think it's better to
5 direct discharge and not have a net savings.

6 A. I believe my agency and myself have stated
7 our recommendation to the Board, our policy
8 ramifications, our perspective on this case. Quite
9 frankly, I feel at this point this line of questioning is
10 more a matter of harassment than seeking new information.

11 MR. HILES: Your Honor, would you please
12 instruct the witness to answer the question?

13 HEARING OFFICER WEBB: Well, it may be a
14 little hypothetical. I don't know what --

15 MR. HILES: Well, here's -- your client --
16 it's not hypothetical that my client has duly complied
17 with the Board order now for seven years, contributing
18 \$415,000 per year to an offset project that's been wildly
19 successful. This is a simple inquiry of the witness that
20 he wants to make complicated. We know beyond doubt that
21 5,100 tons every year are prevented from going into the
22 river. But for the adjusted standard that we're here to
23 discuss today, that tonnage would go into the river every
24 year, and we've saved it. It's a net savings. With this

1 witness' scenario, if we had done treatment only from the
2 time that plant opened, we would have a net gain of some
3 volume. He's unwilling to speculate as to what that
4 volume would be. Five, ten, fifteen, maybe twenty
5 million tons a year of solids --

6 MR. SOFAT: The record --

7 MR. HILES: May I finish, please? -- will
8 be going into the river, and I'm asking this witness, who
9 insists on telling us what's good policy and bad policy,
10 how it can be good policy to go from 5100 tons a year
11 savings to 20 or so tons a year loading. That's the
12 question that he insists on ducking here.

13 MR. SOFAT: And a couple of points. The
14 record shows that how many tons of TSS this project
15 removes. The main point here is Petitioner has to
16 convince the Board, not the Agency, so it's unnecessary
17 to ask the same question over and over. We have stated
18 our position. We have stated what our interpretation of
19 the state and the federal law is. Let the Board decide
20 which side they want to take. It's of no use to talk
21 about the project. The project is the project.
22 Mr. Frevert has responded saying, look, this project
23 could go forward with Illinois-American's money, and let
24 the Board decide what they think is the right course

1 here. They're the ones who are going to decide the
2 policy for Illinois. We are just here as advisors of
3 what we believe is the right policy. I see no reason to
4 go into this line of questioning, why did you say this in
5 2000 and why did you change. We are changing, and it is
6 public information. It's not, like, behind doors. So
7 therefore, I really don't see any reason to go forward
8 with this line of questioning. There has to be a very
9 strong reason.

10 HEARING OFFICER WEBB: I think there is
11 enough evidence in the record for the Board to
12 determine -- to make a policy determination, and I don't
13 think we need this witness to do that if he's unable to
14 do that --

15 MR. SOFAT: Thank you.

16 HEARING OFFICER WEBB: -- as he seems to be.

17 MR. HILES: Let me have a moment, Your
18 Honor.

19 MR. SOFAT: We need a five-minute break.

20 MR. HILES: Let's take a break.

21 (Brief recess taken.)

22 HEARING OFFICER WEBB: We will pick up where
23 we left off.

24 MR. HILES: Great. Your Honor, I think I

1 may have neglected to offer into evidence Exhibit 14, and
2 so I will do so right now. I'll offer Exhibit 14 into
3 evidence. It's the testimony of Mr. McSwiggin in the
4 prior case.

5 HEARING OFFICER WEBB: Did we have a 13?

6 MR. HILES: We did not.

7 HEARING OFFICER WEBB: Okay. There's no
8 exhibit labeled 13. Okay.

9 MR. HILES: I actually have an exhibit
10 labeled 13 and I've elected not to use it.

11 HEARING OFFICER WEBB: Okay.

12 MR. HILES: It's not a superstition thing
13 either, by the way. I'm not superstitious at all.

14 HEARING OFFICER WEBB: So you have moved 12
15 and 14 but not 15.

16 MR. HILES: That's correct.

17 HEARING OFFICER WEBB: Exhibit 14, Mr.
18 Sofat, do you have any objection? No?

19 MR. SOFAT: No.

20 HEARING OFFICER WEBB: Okay. I will go
21 ahead and admit Exhibits 12 and 14.

22 MR. HILES: Thank you, Your Honor, and I've
23 just now handed the witness Exhibit 15.

24 Q. (By Mr. Hiles) Mr. Frevert, do you

1 recognize the document I've handed you?

2 A. It says it's the Office of Water's water
3 quality trading policy.

4 Q. Have you read this document prior to today?

5 A. I've probably read pieces of this over the
6 course of time.

7 Q. Let me direct your attention to page 6 of
8 the document, and specifically paragraph 4. I'm going to
9 read that first part of paragraph 4 to you, sir.

10 "Technology-based trading. EPA does not support trading
11 to comply with existing technology-based effluent
12 limitations except as expressly authorized by federal
13 regulations," and then it goes into an explanation of the
14 steel industry regulations. Do you interpret that
15 sentence that I just read to include federal
16 technology-based effluent limits and state
17 technology-based effluent limits?

18 A. I interpret that to mean technology-based
19 effluent limits required in the NPDES program, point
20 sources.

21 Q. So in this case, really the only
22 technology-based effluent limit in the NPDES program is
23 that TSS limit and the iron limit adopted by the
24 Pollution Control Board in 1972; am I right?

1 A. That's the guideline I'm operating under.

2 Q. Great. Which one of those technology-based
3 effluent limits is applicable to my client's plant right
4 now?

5 A. In terms of attainability and reasonable
6 accuracy, I believe they both constitute readily
7 available best practical judgment technology, but I do
8 understand your point that at points in the past the
9 Board has consciously relieved you of that technology in
10 lieu of other conditions.

11 Q. So right now, really there is not a
12 technology-based effluent limit applicable to the Alton
13 plant of Illinois-American Water Company, is there?

14 A. Not in Pollution Control Board regulation,
15 no, there is not.

16 Q. Because the Pollution Control Board has
17 relieved my client of that obligation.

18 A. That's correct.

19 Q. In fact, Illinois' standard of general
20 applicability for TSS and iron have never applied to the
21 Alton plant, have they?

22 A. Unfortunately, that's correct.

23 Q. To your knowledge, does Missouri have a
24 technology-based effluent limit for TSS?

1 A. I know that the State of Illinois and
2 Missouri differ on environmental policies and
3 requirements in a number of ways, but I don't know the
4 specific answer to that focus point.

5 Q. Well, let's focus, if we can, just on the
6 Mississippi River right now at Alton, and really, why
7 don't we just focus on that segment where the Piasa --
8 between the Piasa Creek discharge to the Mississippi and
9 my client's discharge point to the Mississippi, and just
10 going across the river now to Missouri, I believe the
11 city is called West Alton, Missouri. Is there, to your
12 knowledge, a technology-based effluent limit for TSS
13 applicable to discharges of any kind into the Mississippi
14 River at West Alton, Missouri?

15 A. I don't have specific knowledge in terms of
16 what Missouri's requirements are for discharges into the
17 Mississippi River.

18 Q. Would it surprise you to learn that Missouri
19 has no TSS limit for discharges to the Mississippi River,
20 sir?

21 A. Unfortunately, that would not surprise me.

22 Q. Well, I'd like you to assume that that's the
23 case, and if you've had an opportunity to read the
24 prefiled testimony, you'll see that our witnesses have in

1 fact established that, and so here's where I'm going with
2 that point, sir. If your sense in this case prevails
3 upon the Board and the technology-based effluent limit is
4 imposed on my client, there would be this great irony
5 that a water treatment plant built right across the river
6 could direct discharge with no limitations whatsoever in
7 TSS or iron, and I'm going to ask you, sir, again back to
8 this issue of good policy, if that would be good policy
9 to impose limitations on the Alton, Illinois, plant when
10 there would in fact be no limitations imposed if that
11 plant was right across the river.

12 A. I would have to respond, I don't think it's
13 good policy for the Pollution Control Board or the State
14 of Illinois to set its environmental goals based on
15 whatever Missouri does or does not do.

16 Q. I'm sorry, Mr. Frevert. These chairs are
17 squeaky and I missed the last part of your answer.

18 A. I'll allow the court reporter to repeat it,
19 read it back.

20 (Answer read back by the reporter.)

21 Q. Sir, that's really not my question. My
22 question goes to the fundamental fairness of having a
23 successful offset project in Missouri killed and millions
24 of dollars of treatment obligation imposed on my client

1 when in fact right across the river, the very same river
2 that you're trying to clean up, I suppose, there could be
3 direct discharge of unlimited volumes of total suspended
4 solids. Is that good policy in your field?

5 A. If the State of Missouri allows that
6 practice, I don't want to pass judgment on the State of
7 Missouri, but I don't believe that's good policy for
8 Illinois and I don't believe that's good policy for the
9 State of Missouri either. My obligation is to advise the
10 Board on Illinois policy, not the State of Missouri on
11 Missouri policy.

12 Q. Sir, I'd like to also examine the capital
13 costs, which have been considerable or which will be
14 considerable if treatment is imposed. What kind of
15 policy do you believe it is to have my client spend over
16 four million dollars in the last four years and then have
17 to double up and spend additional millions at this point
18 after putting in place a successful watershed project?

19 A. Had your client controlled their suspended
20 solids the way the generally applicable suspended solids
21 in the state of Illinois are, you would have spent more
22 than four million dollars. There's a very direct and
23 significant financial savings to your client by placing
24 some money in the land trust program in lieu of treating

1 their own sludge. I think that's bad policy.

2 Q. Well, I would love for you to explain that
3 very significant financial savings to my client. Sir,
4 what is the financial savings to my client?

5 A. At the present time, you're not applying any
6 controls of your own waste, your own sludge. I believe
7 you're discharging directly back into the river. To
8 dispose of that responsibly in whatever technology you
9 choose would require an investment of some money and some
10 time and attention on the part of your staff, which I
11 assume is disruptive from their other operations. Yes, I
12 understand that would be a burden, and everybody in the
13 state of Illinois that manages and disposes of their
14 waste and their wastewater in a responsible fashion
15 incurs some burden and some financial cost. That's part
16 of the environmental program in Illinois. The
17 environmental policy has taken that into account when it
18 set those performance standards.

19 Q. Do you acknowledge -- maybe you don't
20 acknowledge that the expenditure of over four million
21 dollars for the Piasa Creek watershed project would not
22 have been necessary had my client built the treatment in
23 2000 which you seem to insist they ought to build today.
24 Sir, to me, that's four million that wouldn't have been

1 spent, and to you, I think you said my client has saved
2 money, and I just don't get it, so I'm asking you to
3 explain it.

4 A. I think I have explained it.

5 Q. Well, I don't get it. Explain it again.

6 A. I appreciate that you don't get it.

7 MR. SOFAT: Objection. Argumentative.

8 HEARING OFFICER WEBB: It is. I don't
9 know -- Is there -- I thought he'd explained it somewhat.
10 Was there another -- Was there something more specific
11 you can ask?

12 MR. HILES: Maybe he could do the math for
13 me and tell me how four million expended is a savings.
14 That's just what I don't get. It's a complete disconnect
15 for me.

16 MR. SOFAT: Again, the Agency has stated
17 their position. They have said if Illinois-American had
18 to install the technology and had to handle and manage
19 the wastelike others do, it may be more than four
20 million dollars. He does not know that, what the exact
21 number is, and again, I just don't understand how this is
22 helping the Board. You can make all your points to the
23 Board in your brief and we will respond to whatever we
24 want to respond and then the Board will take and decide

1 what arguments and what facets they believe are correct.
2 We have not disputed as to the project, the details of
3 the project and the savings and all the formulas and the
4 programs. None of that we have objected simply because
5 we do not believe this is about the project.

6 HEARING OFFICER WEBB: Okay. I think a lot
7 of this is in the record and the Board is going to be
8 able to draw conclusions. I don't think we need to
9 continue to hammer this point with this particular
10 witness.

11 MR. HILES: Thank you, Your Honor. I have
12 nothing further on cross.

13 HEARING OFFICER WEBB: Thank you.
14 Mr. Sofat, would you like to clarify any testimony that's
15 been -- no?

16 MR. SOFAT: No.

17 HEARING OFFICER WEBB: Does the Board have
18 any additional questions for this witness in response to
19 any testimony he's just given?

20 MR. RAO: No.

21 MR. FREVERT: I thank you.

22 HEARING OFFICER WEBB: Thank you,
23 Mr. Frevert.

24 MR. HILES: Your Honor, I did fail to move

1 into evidence Exhibit No. 15, so I'll do so at this time,
2 please.

3 HEARING OFFICER WEBB: Does the Agency
4 object to Exhibit 15?

5 MR. SOFAT: No.

6 HEARING OFFICER WEBB: Exhibit 15 is
7 admitted. Does the Agency have anything further?

8 MR. SOFAT: The Agency has no more witnesses
9 or comments.

10 HEARING OFFICER WEBB: Okay. Before we hear
11 any closing arguments -- and I haven't forgotten that
12 you'd like to testify -- I will remind everyone -- I've
13 already mentioned that the transcript will be available
14 from the court reporter and we will have it on August 31,
15 and we'll get that on our Web site as quickly as
16 possible. The public comment deadline is September 14.
17 Public comment must be filed in accordance with
18 Section 101.628 of the Board's procedural rules. The
19 parties have previously agreed that concurrent briefs
20 will be due by September 10 and concurrent responses are
21 due by September 18. The mailbox rule will not apply,
22 but documents may be electronically filed with the Clerk
23 of the Board.

24 Mr. Hiles, would you like to make any closing

1 statement or would you like to reserve that for your
2 brief?

3 MR. HILES: I'll reserve it for our brief,
4 Your Honor.

5 HEARING OFFICER WEBB: Mr. Sofat?

6 MR. SOFAT: The Agency will do the same.

7 HEARING OFFICER WEBB: Thank you. At this
8 time I would like to take testimony or comments from
9 members of the public. Mr. Bensman from the Sierra Club
10 is here. He has indicated that he would like to make a
11 statement. Mr. Bensman, would you like to make a public
12 comment or would you like to offer testimony?

13 MR. BENSMAN: Public comment.

14 HEARING OFFICER WEBB: Public comment.

15 Okay. Thank you. Come on down. Have a seat next to the
16 court reporter. You do not need to be sworn in.

17 MR. BENSMAN: Okay. My name is Jim Bensman.
18 I'm conservation chair for the Piasa Palisades group of
19 the Sierra Club. We have about five, six hundred members
20 in the area of Alton, and our ex com has been discussing
21 this quite a bit, and, you know, what -- you know, our --
22 you know, one of the purposes of the Sierra Club is to
23 protect and restore the quality of the natural and human
24 environment, and, you know, one of the things we've been

1 doing with this is looking at that and saying, well, is
2 this accomplishing that. You know, we -- I went to
3 consider some of these things with -- you know, I read
4 IEPA's brief and I left failing to understand how this
5 doesn't accomplish -- what's being done here doesn't
6 accomplish that. I talked to Mr. --

7 MR. SOFAT: Sofat.

8 MR. BENSMAN: Okay. You know, and tried to
9 get an understanding of what's the environmental problem
10 with what is going on, and I left that conversation still
11 not knowing what the environmental problem was. I then
12 had a conversation with him and also left with a lack of
13 understanding of what the environmental problem was with
14 this. You know, we have thought about some things, you
15 know, that might be a problem, was, like, are they -- you
16 know, is this just them taking -- putting back in what
17 they're taking out. I know Mr. -- what's -- he wouldn't
18 even answer -- he wouldn't even tell me, you know, if
19 that -- if they were just taking out what they were
20 putting back in, saying it was irrelevant, and they're,
21 you know, both saying, you know, the same things, that
22 this -- you know, the success of this Piasa Creek
23 watershed project was irrelevant, and that just didn't
24 seem to make any sense.

1 You know, one thing, you know, when I read IEPA's
2 brief and they were talking about, you know, these --
3 comparing it to all these other projects where these
4 other water companies are putting in -- are doing
5 watershed projects, you know, the one thing we think is
6 much different about this one is none of those other ones
7 have to deal with barges. You know, the Alton Water
8 Company is on the Mississippi River, and, you know,
9 because of billions of dollars in government subsidies to
10 the navigation industry, we have all these barges running
11 up and down the river, and one of the reasons why the
12 barges are the most environmentally destructive form of
13 transportation is because they have these big propellers
14 and they stir up all the sediment, and, you know, that's
15 what causes a lot of environmental problem.

16 So it kind of seems to us, you know, part of the
17 issue we're dealing with here is Alton Water Company is
18 unfairly having to deal with the sediment the barges are
19 stirring up, and, you know, that's -- just doesn't
20 seem -- you know, it seems to me, you know, the problem
21 is the barges stirring up the sediment. The biggest
22 problem is the barges stirring up the sediment in the
23 first place and the sediment getting in the river in the
24 first place, and the project that -- you know, the Piasa

1 Creek watershed project seems to be doing a really
2 outstanding job of dealing with the problems of the
3 sediment going in.

4 You know, like I said, we think the -- you know,
5 that the -- you know, what's happened with Piasa Creek is
6 a really good project and it's doing an awful lot of
7 good, and, you know, the Sierra Club, we do have a lot of
8 problems with pollution trading, and, you know, to me,
9 what's going on here just doesn't seem like your typical
10 pollution trading. I know we had a problem, you know,
11 with the -- you know, the ConocoPhillips. They were --
12 You know, IEPA granted them the permit for that and they
13 were, you know, paying some other company not to because
14 they weren't polluting or something like that, but this
15 just seems like something totally different than that.
16 It just doesn't come across to me as that.

17 And, you know, we also are really concerned about
18 the River Road. We have been -- You know, that has been
19 so important to our group. We have fought. You know,
20 we've done lawsuits over it to protect the River Road.
21 We've -- You know, we helped get established a -- the
22 Alton Lake National -- it's the State -- it's the Alton
23 Lake Heritage Parkway established by the State. It's a
24 national scenic byway. And, you know, so it's a really

1 beautiful and important area and, you know, we got
2 concerns about trucks on the road. I know when the IDOT,
3 you know, raised the weight limit on the River Road to
4 allow trucks, and I know we opposed that and we were
5 upset about that because, you know, we did not think it
6 was appropriate for -- to have all these trucks down on
7 the River Road, you know. This is a good point about
8 Piasa Park too. That's a really -- a nice park and it
9 ought to be kept that way.

10 So, you know, we -- you know, these are the
11 things our executive committee has been weighing, and,
12 you know, we're going to -- we'll submit something more
13 on final comments, but, you know, all I can say is I just
14 have not been -- I've listened to what's happened, I've
15 read that stuff, and I just haven't -- I still don't
16 understand what the problem is with this. Thank you.

17 HEARING OFFICER WEBB: Thank you. Is there
18 anybody else present who would like to testify or
19 comment?

20 MS. COOPER: I'd like to make a comment.

21 HEARING OFFICER WEBB: Okay. If you could
22 please state and spell your name.

23 MS. COOPER: My name is Anita Cooper,
24 A-N-I-T-A, C-O-O-P-E-R. I live along the River Road. I

1 live in Godfrey. I am also a volunteer with Great Rivers
2 Land Trust. I am just speaking as a member of the
3 public. The importance and the benefits of the Piasa
4 Creek watershed project in the community cannot be
5 underestimated. It has benefits that are far-reaching
6 beyond the savings in the pollution; the education of the
7 public, the interest it has generated among the public in
8 environmental issues. The -- It is important to remember
9 that this wonderful project did not exist before the
10 funding by Illinois-American Water. It is grossly unfair
11 to assume that if the funding by the Water Company should
12 go away that the community would somehow come up with the
13 missing funding and continue the project. I don't
14 believe in any sense that that is an appropriate
15 assumption by a governmental entity. The entire theme of
16 the Agency in this proceeding has to me been totally
17 illogical. You have a wonderful project that is
18 improving the environment, improving the community, and
19 you want to throw it away. Thank you.

20 HEARING OFFICER WEBB: Thank you. Sir?

21 MR. GARBER: I'd like to comment too.

22 HEARING OFFICER WEBB: Okay. And if you
23 could please state and spell your name, please.

24 MR. GARBER: Certainly. My name's Tim

1 Garber, G-A-R-B-E-R. I'm the executive director for the
2 local Boy Scout Council, the Trails West Council, which
3 has a major impact from the benefits of this project.
4 Whatever environmental controls were in place during
5 the '70s obviously weren't working, because during that
6 time our beautiful lake silted in to the point where it
7 was unusable and it had been unusable for a couple of
8 decades, and thanks to this project and the Great Rivers
9 Land Trust, we now have a working body of water and a
10 wetland at our camp that literally close to 1,000 people
11 in one year have already had the opportunity to enjoy.

12 And I couldn't agree more with what this young
13 lady said a minute ago. It seems to me that we're trying
14 to hope that the general public would come up with the
15 funds when we have a guaranteed funding program that I
16 can attest that's from my point of view already affected
17 close to over 1,000 kids in environmental protection and
18 education through the use of our Boy Scouts, so I would
19 commend the American Water Company for what you've done
20 and I'd hope that you would allow them to keep doing it.

21 HEARING OFFICER WEBB: Thank you. Is there
22 anybody else? Okay. Seeing no one further who wants to
23 make public comment, I will proceed to make a statement
24 as to the credibility of witnesses testifying during this

1 hearing. Based on my legal judgment and experience, I
2 find all of the witnesses testifying to be credible. At
3 this time I will conclude the proceedings. We stand
4 adjourned. I thank you all for your participation.

5 (Hearing adjourned.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF BOND)

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4 I, KAREN WAUGH, a Notary Public and Certified
5 Shorthand Reporter in and for the County of Bond, State
6 of Illinois, DO HEREBY CERTIFY that I was present at the
7 Madison County Administration Building, Edwardsville,
8 Illinois, on August 28, 2007, and did record the
9 aforesaid Hearing; that same was taken down in shorthand
10 by me and afterwards transcribed, and that the above and
11 foregoing is a true and correct transcript of said
12 Hearing.

13 IN WITNESS WHEREOF I have hereunto set my hand
14 and affixed my Notarial Seal this 30th day of August,
15 2007.

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Notary Public--CSR

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#084-003688

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