

ILLINOIS POLLUTION CONTROL BOARD  
October 5, 2009

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STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF:	)	
	)	
WATER QUALITY STANDARDS AND	)	
EFFLUENT LIMITATIONS FOR THE	)	R08-9
CHICAGO AREA WATERWAY SYSTEM	)	(Rulemaking -
AND LOWER DES PLAINES RIVER	)	Water)
PROPOSED AMENDMENTS TO 35	)	
ILL. ADM. CODE 301, 302, 303,	)	
and 304	)	

REPORT OF PROCEEDINGS at the hearing of the above-entitled cause before Hearing Officer Marie Tipsord, taken before Rebecca A. Graziano, Certified Shorthand Reporter within and for the County of Cook and State of Illinois, at the Michael A. Bilandic Building, Room N-505, Chicago, Illinois, commencing at the hour of 10:00 a.m. on the 5th day of October, A.D., 2009.

A P P E A R A N C E S

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THE ILLINOIS POLLUTION CONTROL BOARD,

Ms. Marie Tipsord, Hearing Officer  
Mr. Anand Rao, Senior Environmental Scientist  
Ms. Alisa Liu, Environmental Scientist  
Mr. G. Tanner Girard, Acting Chairman  
Ms. Andrea Moore, Member  
Mr. Thomas Johnson, Member  
Dr. Shundar Lin, Member

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
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BY: MS. STEFANIE DIERS  
MS. DEBORAH WILLIAMS

BARNES AND THORNBURG LLP  
1 North Wacker Drive  
Suite 4400  
Chicago, IL 60606  
(312) 357-1313  
BY: MR. FREDRIC ANDES

Appeared on behalf of the Metropolitan Water  
Reclamation District of Greater Chicago,

FRANZETTI LAW FIRM P.C.  
10 South LaSalle Street  
Suite 3600  
Chicago, IL 60603  
(312) 251-5590  
BY: MS. SUSAN FRANZETTI

Appeared on behalf of Midwest Generation, L.L.C.

1 MS. TIPSORD: Good morning. My name  
2 is Marie Tipsord, and I've been appointed by the  
3 Board to serve as hearing officer in this proceeding  
4 entitled Water Quality Standards and Effluent  
5 Limitations for the Chicago Area Waterway System and  
6 Lower Des Plaines River, Proposed Amendments to 35  
7 Ill. Admin Code 301, 302, 303 and 304. The docket  
8 number is R08-9.

9 With me today to my immediate left  
10 is presiding Board member, acting chairman,  
11 G. Tanner Girard. To his left, Board member Andrea  
12 Moore, and to her left, Board member Shundar Lin.  
13 To my far right is Board member Thomas Johnson. To  
14 my immediate right is Anand Rao, and to his right,  
15 Alisa Liu from our technical union. Also today,  
16 Claire Frederick, one of our externs this semester  
17 from Kent, is with us.

18 This is day 33, and we are  
19 continuing to hear testimony from members of the  
20 public. And today the purpose of the hearing is to  
21 hear the testimony of Victor Crivello and Laura  
22 Barghusen. Is that correct?

23 MS. BARGHUSEN: Barghusen.

24 MS. TIPSORD: Barghusen and Gerald

1 Adelmann, who will appear as a panel, and the  
2 testimony will be marked as an exhibit entered as if  
3 read. After marking the pre-filed testimony as an  
4 exhibit, we will then proceed to questions for the  
5 testifier, and we'll start with the District and go  
6 to the IEPA with Mr. Crivello.

7           Anyone may ask a follow-up  
8 question. You need not wait until your turn to ask  
9 questions. I do ask that you raise your hand, wait  
10 for me to acknowledge you. After I have  
11 acknowledged you, please state your name and whom  
12 you represent before you begin your questions.

13           Please speak one at a time. If  
14 you're speaking over each other, the court reporter  
15 will not be able to get your questions on the  
16 record. Please note any questions asked by a Board  
17 member or staff are intended to build a complete  
18 record for the Board's decision and not express any  
19 preconceived notion or bias.

20           With that, Mr. Harley, if you'd  
21 like to introduce your witness.

22           MR. HARLEY: My witness is Mr. Victor  
23 Crivello.

24           MS. TIPSORD: And could we have him

1 sworn in, please?

2 (Witness sworn.)

3 MS. TIPSORD: And with that, we'll  
4 mark his testimony. If there's no objection, we  
5 will mark the pre-filed testimony of Victor Crivello  
6 as Exhibit 333. Seeing none, it's Exhibit 333. And  
7 with that, Mr. Andes.

8 MR. ANDES: Good morning.

9 MR. CRIVELLO: Good morning.

10 MR. ANDES: Let's start with question  
11 number one. You've indicated your testimony that  
12 you recreate in the Calumet River System three or  
13 more weekends a month. Have you gotten sick from  
14 recreating in these waters?

15 MR. CRIVELLO: There was one year  
16 about ten years ago that I was in Lake Michigan -- I  
17 mean the waters there of Calumet, and I got an  
18 infection in my knee that developed into a blood  
19 infection. So I had been in the water and I had cut  
20 my knee as I got out of the water climbing back into  
21 the boat. Now, I never said that I was -- for sure  
22 knew that that came from that exposure, but it was  
23 an exposure that I did experience.

24 MR. ANDES: In what area were you --

1 MR. CRIVELLO: In the harbor where my  
2 boat is kept in Dolton at Marine Services.

3 MR. ANDES: So that's on which segment  
4 of the system?

5 MR. CRIVELLO: It's on the Lower Cal,  
6 west of Highway 94.

7 MR. ANDES: You've observed a great  
8 deal of recreation in the Calumet area. Have you  
9 ever heard of a documented disease outbreak  
10 resulting from the recreation?

11 MR. CRIVELLO: No.

12 MR. ANDES: On Page 2, Paragraph 1,  
13 you state there's always been a large boating  
14 community on the Calumet waterways. Can you explain  
15 what you mean by large boating community?

16 MR. HARLEY: Madam Hearing Officer, at  
17 this point we've prepared an exhibit that we believe  
18 will be helpful.

19 MS. TIPSORD: Okay.

20 MR. ANDES: It's a picture of the  
21 boating community?

22 MR. HARLEY: And another exhibit as  
23 well.

24 MS. TIPSORD: The first exhibit I was

1 handed is a map, which appears to be identifying  
2 boat launches and marinas along a segment -- what  
3 exactly is that, Mr. Crivello? A segment of --

4 MR. CRIVELLO: Of the Lower Calumet  
5 River.

6 MS. TIPSORD: Okay.

7 MR. CRIVELLO: And it's the -- by  
8 O'Brien Locks.

9 MS TIPSORD: All right. If there's no  
10 objection, we will mark that as Exhibit 331. Seeing  
11 none, it's Exhibit 331.

12 MR. HARLEY: Madam Hearing Officer,  
13 perhaps it would be helpful if I ask some clarifying  
14 questions of my witness to help us further identify  
15 the exhibits.

16 MS. TIPSORD: And that's cool, but  
17 we're going to mark them first so that we know which  
18 exhibit you're talking about when you're asking the  
19 clarifying questions.

20 MR. ANDES: This will all go back to  
21 my question about what a large boating community is?

22 MR. HARLEY: Yes.

23 MS. TIPSORD: And the second one has  
24 the cover page, "Facilities," and lists the

1 facilities and descriptions, and we will mark that  
2 as Exhibit 332, if there's no objection. Seeing  
3 none, it's Exhibit 332. Okay. Go ahead,  
4 Mr. Harley.

5 MS. FRANZETTI: I'm sorry. But Madam  
6 Hearing Officer, what exhibit was his testimony? I  
7 may have misheard you.

8 MS. TIPSORD: 330.

9 MS. FRANZETTI: 330. Okay. We heard  
10 333. Okay. Sorry.

11 MR. ANDES: So did I.

12 MS. TIPSORD: Oh, sorry. It's 330.  
13 Too many 3s. Sorry.

14 MS. FRANZETTI: If we got off number,  
15 I wanted to alert you. Thank you.

16 MR. HARLEY: Mr. Crivello, what I  
17 would like you to do would be to just have you  
18 identify the segments of the Calumet River System,  
19 which are displayed on this map, starting near the  
20 flag on the upper right hand number four. Can you  
21 describe what section of the Calumet River System  
22 extends in from the far right-hand-side?

23 MR. CRIVELLO: Sure. If you see  
24 number four, that's close to the mouth of the



1 Calumet River that runs six miles down river to  
2 O'Brien Locks and Dam. That includes Lake Calumet,  
3 a waterway, as well as the Calumet River.

4 MR. HARLEY: And then as we move west,  
5 starting around the number two banner on this  
6 exhibit, what waterway are we then entering into?

7 MR. CRIVELLO: Well, that is the  
8 Little Calumet River right there, and number two is  
9 where my boat is currently kept in the summer time  
10 for the last six or -- six years.

11 MR. HARLEY: And then as we --

12 MR. CRIVELLO: I've had a motor boat  
13 for six years and then a sailboat at that marina  
14 since 1984. So I've been continually at that marina  
15 since 1984.

16 MR. HARLEY: And then as we continue  
17 west and we see these additional numbers arrayed,  
18 six, seven, three, eight, ten, nine, five, what is  
19 the waterway as we continue to go west?

20 MR. CRIVELLO: That continues to be  
21 the Little Calumet River through number five.

22 MR. HARLEY: And after that point?

23 MR. CRIVELLO: After that point I'm  
24 not sure exactly, but I believe it's the

1 Little -- the Calumet -- the Cal Sag Channel starts  
2 there, and then the Calumet Channel runs west all  
3 the way out to the Illinois Michigan Canal. And  
4 that, of course, runs north to downtown Chicago and  
5 out Lake Michigan.

6 MR. HARLEY: And on this exhibit,  
7 which is Exhibit 332, there is a list of 12 specific  
8 boating facilities, starting with the Alsip Boat  
9 Launch through number 12, the Worth Boat launch.  
10 Have you had any -- an opportunity to review that  
11 list of boating facilities?

12 MR. CRIVELLO: Yes, I have.

13 MR. HARLEY: And to your knowledge,  
14 does this map accurately depict the location of  
15 these boating facilities?

16 MR. CRIVELLO: Yes, it does. Yes, it  
17 accurately -- for this purpose.

18 MR. HARLEY: And so in terms of  
19 understanding what this exhibit is, if we look at  
20 number four, the banner in the upper right-hand  
21 corner, that would be Crowley's Yacht Yard?

22 MR. CRIVELLO: Correct.

23 MR. HARLEY: And going to the west,  
24 the furthest facility we have to the west is number

1 12, and that would be the Worth Boat Launch. Is  
2 that correct?

3 MR. CRIVELLO: Yes, that's correct.

4 MR. HARLEY: Okay. I wanted to call  
5 your attention to Exhibit 332, where we've provided  
6 a description of each of these facilities, starting  
7 with the Alsip Boat Launch on Page 1, the Beaubien  
8 Woods facility on Page 2, on down through the Worth  
9 Boat Launch on Page 21. Are you personally familiar  
10 with each of these facilities?

11 MR. CRIVELLO: Well, yes. I'm firstly  
12 familiar -- I've gone by them or I've stopped at  
13 them and bought gasoline or had lunch at their  
14 restaurant along the way.

15 MR. HARLEY: And mindful of the fact  
16 that we are responding to the question about what a  
17 large boating community is, I would like to take  
18 this packet and just ask you to describe some of the  
19 boating facilities that you're familiar with along  
20 the Calumet River System, and I'd like to start with  
21 the facility which is described on Page 1 of our  
22 packet.

23 MR. CRIVELLO: Okay.

24 MR. HARLEY: And you'll notice that

1 the numbers are in the center, and could you  
2 please -- are you familiar with the Alsip Boat  
3 Launch, which is --

4 MR. CRIVELLO: Yes.

5 MR. HARLEY: And could you describe  
6 what the Alsip Boat Launch is?

7 MR. CRIVELLO: Well, it's a Riverside  
8 marina that basically acts as winter storage and  
9 river access to daily access. If you want to go in  
10 the water you can put your boat in there. And yes,  
11 then there's a small marina there where they -- as I  
12 say, where they put the boats and stuff.

13 MR. ANDES: We're talking mainly about  
14 powerboats, sailboats, canoes, kayaks?

15 MR. CRIVELLO: Well, these are -- for  
16 storage, it's sailboats and motorboats. For  
17 recreation, it's primarily motorboats. And there  
18 are other marinas where I've seen canoes and kayaks,  
19 but I'm not -- not this particular one.

20 MR. ANDES: Thank you.

21 MR. HARLEY: And then just to the west  
22 of the Alsip Boat Launch, the banner 12, is listed  
23 as the Worth Boat Launch, which is actually the last  
24 page of our packet, Page 21.

1 MR. CRIVELLO: Right.

2 MR. HARLEY: Are you familiar with the  
3 Worth Boat Launch?

4 MR. CRIVELLO: Yes, I am. It's a  
5 municipally run public access point to the Calumet  
6 River. It is the prime -- I would have to say  
7 that's the primary access point for small boat  
8 fishermen. And I did see no kayaks or canoes, but I  
9 have seen ski-doo's or jet skis there. And it  
10 is -- for example, on a weekend when they have a  
11 boat -- rather a bass contest, there will be over  
12 1,200 bass boats that come in at that point, in my  
13 experience.

14 MR. HARLEY: Mr. Crivello, I just want  
15 to ask you about a couple other of the locations  
16 along the river. I wanted to ask you about the  
17 facility which is described as Fay's Point, which is  
18 flag five along the river, and which is described in  
19 the packet between Pages 5 and 9.

20 MR. CRIVELLO: Let me double check  
21 that. What are we looking for again?

22 MR. HARLEY: Fay's Point. I just  
23 wanted to ask you could you please describe Fay's  
24 Point?

1 MR. CRIVELLO: Sure. This is the  
2 newest development on the Calumet River System that,  
3 as you can see from this map, they have a mixed use  
4 development project with river access and boating  
5 access, and this community has -- is a modern  
6 recreation -- you know, where water recreation is a  
7 component of their plan to develop this property.

8 So they dredge this channel that  
9 you see and put in docks, and it is quite nice. You  
10 know, it's new, you know, so it's very -- there's  
11 not many new facilities on the Calumet, and this is  
12 a good example of modern development that's  
13 tentative to its location and environment.

14 MR. HARLEY: On Page 7, there's a  
15 description of the Fay's Point NCAA Division 1  
16 women's rowing competition.

17 MR. CRIVELLO: Yeah.

18 MR. HARLEY: Can you please describe  
19 what you know about that rowing competition?

20 MR. CRIVELLO: Well, this was a great  
21 event for the Calumet Waterway System, because it  
22 really -- it's shown the transition from its  
23 historical and industrial use to its new use where  
24 water recreation is a part of the package. It was a

1 national crew event that was promoted. I wasn't  
2 able -- I was out of town that weekend. I wasn't  
3 able to attend. But from what I have heard, it was  
4 a great success, and the Calumet River System is a  
5 tremendous rowing resource, because it's long and  
6 straight, and generally the waves -- it's very rare  
7 that there's rough water on it.

8                   So it's -- so that -- and I have  
9 seen -- there's a women's team there that practices,  
10 and I have seen them out on the water, and  
11 it's -- it really was inspirational for me to see  
12 that.

13                   MR. ANDES: Mr. Crivello, does that go  
14 at all into the Cal Sag Channel where there would be  
15 barge traffic?

16                   MR. CRIVELLO: Yes. And for this  
17 particular event, they stop barge traffic, because  
18 they were using the whole river.

19                   MR. ANDES: Okay. So for this  
20 particular event, there was no barge traffic?

21                   MR. CRIVELLO: No.

22                   MR. ANDES: Why would that be?

23                   MR. CRIVELLO: Well, it's -- the river  
24 was too congested with rowing boats, and so the

1 Calumet River is generally -- not generally -- is  
2 wide enough. It is a deep channel, and two barges  
3 can pass easily, you know, side by side. So most of  
4 the time existing barge traffic is on the river.  
5 But in this particular case, it basically would fill  
6 up the whole river.

7 MR. ANDES: Do you know if that's the  
8 case with other rowing events that take place in  
9 this area? Do they usually stop all the barge  
10 traffic?

11 MR. CRIVELLO: Well, this was the  
12 first one. It was the first one, so --

13 MR. ANDES: The first Southland  
14 Regatta?

15 MR. CRIVELLO: Yes, the first rowing  
16 regatta on the Calumet River System.

17 MR. ANDES: Okay. And so you don't  
18 know about rowing events in other parts of the  
19 Chicago Area Waterways?

20 MR. CRIVELLO: No. I have no  
21 experience in those areas.

22 MR. ANDES: Okay.

23 MR. HARLEY: Just a couple other  
24 points along the river that I wanted to ask you



1 about. Based on Exhibit 331 and Exhibit 332, where  
2 do you keep your motorboat?

3 MR. CRIVELLO: At the Marine Services,  
4 which is number seven. And if I cover up -- it's  
5 actually a -- it's a harbor created by a clay mining  
6 operation for a brick factory that was there. So  
7 when the brick factory left, they have this  
8 beautiful little harbor for motorboats and water  
9 access for smaller boats.

10 MR. HARLEY: The final thing that I  
11 wanted to ask you about in terms of Exhibits 331 and  
12 332 relates to the area which is by flag number two,  
13 which is the Beaubien Woods site.

14 MR. CRIVELLO: Yeah.

15 MR. HARLEY: Who is the owner of  
16 Beaubien Woods? What entity is the owner of  
17 Beaubien Woods?

18 MR. CRIVELLO: That's the Cook County  
19 Forest Preserve.

20 MR. HARLEY: And that's immediately  
21 adjacent to the Calumet River System?

22 MR. CRIVELLO: Yes.

23 MR. HARLEY: And there's a boat launch  
24 there?

1 MR. CRIVELLO: Yes, there is.  
2 Actually, there's two launches into the water, as  
3 well as the remnants of what were piers. It  
4 currently is closed.

5 MR. HARLEY: And at the far  
6 left-hand-side of the map, which is Exhibit 331, we  
7 see along the Cal Sag Channel two other large green  
8 areas. Are you familiar with that portion of the  
9 Cal Sag Channel?

10 MR. CRIVELLO: Are you talking about  
11 Highway 45?

12 MR. HARLEY: Just west of Highway 45,  
13 yes.

14 MR. CRIVELLO: Oh, yeah. No, that's  
15 the -- one of the most beautiful forest preserve  
16 properties with some beautiful remnants of the  
17 geology and full of hiking trails and such.

18 MR. HARLEY: And so when you  
19 considered your answer to the question a large  
20 boating community, question number three, is this  
21 what you meant by a large boating community?

22 MR. CRIVELLO: Yes. The large -- the  
23 current boating community -- that was a pretty good  
24 description of the current boating community on that

1 portion of the waterway. Historically, it has  
2 been -- those marinas have been there for many  
3 years. The owner of the marina where I am has owned  
4 the property for 30 years, and has just a wealth of  
5 that historical view of what the river -- the  
6 changes in the river from the days 30 years ago to  
7 what it is now. And there are a continually -- the  
8 water quality has continued to improve over the  
9 years, and that has just fostered the boating  
10 community more.

11                   And it starts back in 1975, I  
12 worked for the first time in the Calumet and  
13 organized a -- when I was with the Northeastern  
14 Illinois Planning Commission, and on Earth Day we  
15 organized a boating cruise to celebrate Earth Day.  
16 And we started at the marina where I keep my boat  
17 today, and there were over 150 motorboats that  
18 participated in that event that day, and we  
19 met -- oh, God, there must have been 50 kayakers  
20 from the Sierra Club under the bridge of Michigan  
21 Avenue when we got there.

22                   So that's, sort of, the history of  
23 the area, because it has a long tradition, a  
24 maritime tradition. And every major waterway,

1     wherever you are in the world, there's a culture  
2     that goes along with that river. That's been my  
3     experience in traveling. I love the water, and I've  
4     been on many different rivers and boating in many  
5     different waterways across the United States and  
6     some places around the world.

7                     MR. HARLEY: All right. Thank you.

8                     MR. ANDES: Let's move onto the next  
9     question, question number four. On Page 2 of your  
10    testimony, you indicate that you have primarily  
11    observed waterway uses from Ashland Avenue east  
12    along the Grand Calumet River. Can you clarify  
13    exactly where?

14                    MR. CRIVELLO: Yeah, that was my  
15    mistake. It is somewhat confusing with three  
16    Calumets, but now I -- the Calumet -- the area that  
17    I'm most interested in that I have spent -- you  
18    know, my testimony was -- about this 20 years was on  
19    the waterway from number 12, Highway 43, down the  
20    Cal Sag Channel to the Little Calumet River, and  
21    then to O'Brien Lock and Dam. And then we have the  
22    other waterway, which is the mixing zone, which  
23    has -- there's some impact from the river left in  
24    that comes from the river, and then mixing up Lake

1 Michigan waterways.

2 MR. ANDES: Well, when you talk in the  
3 testimony about you've primarily observed waterway  
4 use from Ashland Avenue east along -- and whether  
5 it's the Grand Calumet or the Calumet or the little  
6 Calumet, Ashland Avenue goes north and south right  
7 around number five, correct? Isn't that -- I see  
8 Ashland Avenue.

9 MR. CRIVELLO: It's further west. Oh,  
10 you're right. There it is. It's just west of  
11 number five.

12 MR. ANDES: Okay. So when you talk  
13 about you've primarily observed waterway use from  
14 Ashland Avenue east, you're talking about from  
15 number five east all the way back up the system to  
16 number four, correct?

17 MR. CRIVELLO: Yes. That would  
18 be -- because of my -- the years that I've traveled  
19 on the Calumet -- primarily by sailboat. That was  
20 twice a year -- from Lake Michigan down the Calumet  
21 River through O'Brien Lock, and then overpassed all  
22 the marinas. And then for the last ten years, I've  
23 been -- my boating interest and interests in the  
24 Calumet natural areas has increased, and so I have

1 spent a lot of time from Lake Calumet through five.

2 But then there's some days where  
3 you either go out to the lake and boat if the  
4 weather's good, or if the weather is iffy and  
5 there's four-foot waves, then you stay on the river  
6 and then you go west. And so I go west out to --  
7 basically and turn around at the I & M Canal and  
8 then come back for an afternoon.

9 MR. ANDES: Okay.

10 MR. CRIVELLO: I'm sorry for that  
11 mistake. I apologize.

12 MR. ANDES: That's all right. There  
13 are many Calumets.

14 MR. CRIVELLO: Yeah.

15 MR. ANDES: Let me move to number  
16 five. You mention that you observed swimming and  
17 tubing in the Calumet System. Can you tell us where  
18 that would have happened?

19 MR. CRIVELLO: I've seen tubing down  
20 by the O'Brien Lock and Dam, which is by number two,  
21 and then I've also seen it -- I've seen them go by  
22 on the river from my marina a couple of times, and  
23 swimming was by -- actually, it was by number five.  
24 Yeah, in that area there I saw some kids -- some

1 people in the water there, because there's actually  
2 some lake -- I mean riverside properties that have  
3 private piers out there, and so I've seen -- that's  
4 where I saw some of the people swimming. And then  
5 I've also seen them out -- further west out between  
6 number one and number 12. I saw some kids in the  
7 water there.

8 MR. ANDES: How often did that happen?

9 MR. CRIVELLO: Not very often. You  
10 know, boating and swimming, not very often. I'm  
11 trying to come up with a number, but I would say  
12 it's less than 20 combined.

13 MR. ANDES: Over the years?

14 MR. CRIVELLO: Over the years.

15 MR. ANDES: Over the years.

16 MR. CRIVELLO: Yeah.

17 MR. ANDES: Okay.

18 MR. CRIVELLO: Now jet skiing -- but  
19 you didn't ask me about jet skiing, did you?

20 MR. ANDES: No.

21 MR. CRIVELLO: Okay.

22 MR. ANDES: I think you already  
23 mentioned it.

24 MR. CRIVELLO: Okay.

1 MR. ANDES: Now, when you -- I'm going  
2 to question number six. You talked about the barge  
3 traffic. And even though occasional barge traffic  
4 does exist, there's always more than enough room to  
5 pass in a safe way. And what was the basis for that  
6 statement?

7 MR. CRIVELLO: That statement is based  
8 on my personal experience and my observations of the  
9 Calumet River. And the barge traffic is more  
10 important than just barges. It's the number of  
11 tugs, because that means that's the number of water,  
12 you know, units that are -- there's barges and tugs.  
13 And so when you -- you never just run into a barge,  
14 you know, you run into a raft of them being pushed.

15 And so over the course of all of  
16 the time at O'Brien Locks, I have never seen a  
17 backlog of raft tows of tugs, and I have  
18 never -- and I have only been prevented from locking  
19 through because commercial shipping has priority.  
20 So if there's a barge coming through, they'll hold  
21 the pleasure crafts out and then the barges go on.  
22 And that's only happened a couple of times in all  
23 the years that I've been there.

24 And the -- being on the water is



1 different than being on the land, because you have a  
2 different set of responsibilities. And every  
3 skipper is -- there's three things. You have to  
4 know the maritime law and who is burdened and who  
5 has right of way, you must have the seamanship and  
6 skills to handle your craft, and then you have to  
7 realize that you are responsible for the people and  
8 the things that they bring on board. And so in that  
9 context, you have the skills, and I have never run  
10 into a problem on the river with the barge being  
11 pushed.

12 MR. ANDES: So we have people who are  
13 there in canoes or kayaks who might enter into the  
14 system at one of the boat ramps so they're not at  
15 the lock and dam. How do we make sure they have  
16 those -- that they know the rules, that they have  
17 the skills, that they're safe, that they don't  
18 interact with the barges in a problematic way?

19 MR. CRIVELLO: Well, it's -- they,  
20 too, have the same responsibilities, and the people  
21 that I've kayaked with on these rivers, I had no  
22 questions of our -- the seamanship of our boaters or  
23 the ability of our crew.

24 And also the river system is wide

1 enough that the small boats are over on the side  
2 where the barges stay in the middle, and so there's  
3 always room for them, you know, in their crossing  
4 situation. There aren't accidents. You know,  
5 people make mistakes. But talking to the marina  
6 owner who's been there for 30 years, I asked him if  
7 there had ever been any accidents between barges and  
8 boats, and he said only one that he could remember,  
9 and that was somebody's boat ran out of power and  
10 they got nicked by a barge and no one was -- the  
11 boat didn't sink.

12 But that was -- and so it is  
13 not -- congestion is the difficult part. You know,  
14 that's when it gets dangerous. Now, part of this  
15 rulemaking is the six-mile channel north of the dam.  
16 And that's the area that is tricky, and I would not  
17 recommend that anybody but expert kayakers use that  
18 six-mile channel. We're talking about south of the  
19 dam, and that's a different waterway system.

20 MR. ANDES: Okay.

21 MR. HARLEY: If I could follow up?

22 MR. ADAMS: Excuse me. What do you  
23 mean by the --

24 MR. CRIVELLO: I'm sorry. It's not a

1 dam. It's a lock.

2 MR. ETTINGER: The O'Brien Locks?

3 MR. CRIVELLO: Right, the Locks.

4 MS. TIPSORD: And for the record, you  
5 need to identify yourself.

6 MR. ETTINGER: I'm Albert Ettinger.  
7 I'm counsel for various environmental groups. I  
8 just wanted to be clear to the area you were talking  
9 about.

10 MR. CRIVELLO: I appreciate that.  
11 Thank you.

12 MS. TIPSORD: Thank you.

13 MR. CRIVELLO: O'Brien Locks.

14 MR. HARLEY: If I may follow up, is it  
15 your testimony that these are bodies of water that  
16 are used by the public?

17 MR. CRIVELLO: Oh, yeah, yeah, yeah.

18 MR. HARLEY: And is it your testimony  
19 that you believe that it is appropriate for these  
20 bodies of water to be used by the public?

21 MR. CRIVELLO: Yes.

22 MR. HARLEY: I have an exhibit that I  
23 would like to introduce at this point.

24 MS. TIPSORD: Sure.

1 MR. ANDES: Does this relate to one of  
2 my questions?

3 MR. HARLEY: Yes, boating safety.

4 MR. ANDES: Okay.

5 MS. TIPSORD: I have been handed Joint  
6 Committee and Administrative Rules, Administrative  
7 Code, Title 17 Conservation. It's Section 3704,  
8 Appendix A, which would make it 17IAC, 3704 Appendix  
9 A. If there's no objection, we will mark this as  
10 Exhibit 333. Seeing none, it's Exhibit 333.

11 MR. HARLEY: Mr. Crivello, I would  
12 like to ask you if you would please read the  
13 paragraph -- the narrative paragraph immediately  
14 following the citation, Section 374 Appendix A,  
15 public bodies of water.

16 MR. CRIVELLO: "The following public  
17 bodies of water were navigable in their natural  
18 condition or were improved for navigation and open  
19 to public use. The entire length and surface area  
20 in Illinois, including all backwater lakes and  
21 sloughs open to the main channel or body of water at  
22 normal flows or stages are open to the public,  
23 unless limited to a head of navigation as stated."

24 MR. HARLEY: That's fine. Thank you.

1 And as you look at the list of public bodies of  
2 water identified by the Department of Natural  
3 Resources in this appendix, do you see the Calumet  
4 River?

5 MR. CRIVELLO: Yes, I do.

6 MR. HARLEY: Is it designated as  
7 eight, as a public body of water in this appendix?

8 MR. CRIVELLO: Yes, it is.

9 MR. HARLEY: Do you see Lake Calumet  
10 and the entrance channel to the Calumet River?

11 MR. CRIVELLO: Yes, I do.

12 MR. HARLEY: Is that number nine?

13 MR. CRIVELLO: Yes.

14 MR. HARLEY: Do you see the Grand  
15 Calumet River?

16 MR. CRIVELLO: Yes.

17 MR. HARLEY: And is that number ten?

18 MR. CRIVELLO: Yes.

19 MR. HARLEY: Do you see the Little  
20 Calumet River?

21 MR. CRIVELLO: Yes.

22 MR. HARLEY: Is that number 11?

23 MR. CRIVELLO: Yes.

24 MR. HARLEY: I wanted to call your

1 attention, Mr. Crivello, to Page 4 of 5 in  
2 Exhibit 333, and there is a short introductory  
3 statement about three quarters of the way down the  
4 page. Could you please read that into the record?

5 MR. CRIVELLO: "The following public  
6 bodies of water are primarily artificial navigable  
7 waters that were opened to public use."

8 MR. HARLEY: And do you see as an  
9 artificial navigable water that is not open to  
10 public use the Cal Sag Channel?

11 MR. CRIVELLO: Yes, I do.

12 MR. HARLEY: And is that number seven?

13 MR. CRIVELLO: Yes, it is.

14 MR. ANDES: Mr. Crivello, do you know  
15 what public use means in the context of these  
16 particular regulations?

17 MR. CRIVELLO: Well, navigable waters  
18 is that you, as a citizen, have a right to use those  
19 waterways for transportation.

20 MR. ANDES: Really? Where is that  
21 here?

22 MR. CRIVELLO: Well, that is the  
23 seaman's knowledge. That is what -- that is the way  
24 I understand it from my experience on the waters,

1 that the public has a right to access the water and  
2 be on the water. Can I give an example?

3 MR. ANDES: For any use?

4 MR. CRIVELLO: Well --

5 MR. ANDES: Including swimming?

6 MR. CRIVELLO: Well, it -- there's  
7 nothing under that law that says you can or cannot  
8 swim, that is, that you have access to the water.  
9 But you can -- you know, so of course there's a lot  
10 of swimming, and then there's a lot of places where  
11 there's not swimming.

12 MR. ANDES: So you wouldn't recommend,  
13 for example, that people be swimming in the Chicago  
14 River Main Branch?

15 MR. CRIVELLO: No. No swimming, no.

16 MR. ANDES: Even though it says it's  
17 open for public use?

18 MR. CRIVELLO: Yes.

19 MR. ANDES: Thank you. Ready to move  
20 on?

21 MR. HARLEY: Ready to move on.

22 MR. ANDES: Okay. Mr. Crivello, my  
23 next question -- and I'll cut to the chase on these  
24 regarding disinfection -- you talked about

1 disinfection being vital to the success of the  
2 plant. What's your basis for saying that in terms  
3 of what is disinfection going to do that would be  
4 vital to the success of the plant?

5 MR. CRIVELLO: Disinfection would  
6 allow the water quality standard to change to being  
7 occasional use, I believe, and that would -- and it  
8 would also complete --

9 MR. ANDES: Can you restate that? I'm  
10 not --

11 MR. CRIVELLO: That the public  
12 use -- ask the question again. I'll do a better  
13 job.

14 MR. ANDES: Can you explain why you  
15 believe disinfection is vital to the success of your  
16 plant? What will disinfection do?

17 MR. CRIVELLO: Well, it will improve  
18 the water quality, and it will decrease the public's  
19 perception of the south side waterways as being  
20 industrial only and dead waterways and the old  
21 history of they're just sewers. The final addition  
22 of disinfection to the wastewater treatment scheme,  
23 it would improve significantly, I believe, the  
24 ability of the public to safely feel -- to safely



1 and feel comfortable about accessing the water.

2 MR. ANDES: Will the public -- so  
3 given that -- you're aware that disinfection  
4 requirements for the three plants would not affect  
5 the 400 or so combined sewer overflow discharges and  
6 still would go into the system, correct?

7 MR. CRIVELLO: That's correct.

8 MR. ANDES: Okay. So -- and you're  
9 aware that the plants -- the Calumet plant is on the  
10 Cal Sag Channel, so it's downstream from a  
11 significant portion of the Calumet System that  
12 you're referring to. So disinfection is occurring  
13 downstream from the area that you're talking about  
14 in terms of Lake Calumet, et cetera, correct?

15 MR. CRIVELLO: Mm-hmm.

16 MR. ANDES: So how exactly -- put  
17 aside perception for a moment. Do you have any  
18 basis for believing -- and if you do please explain  
19 it -- that disinfection at Calumet, North Side, and  
20 Stickney will significantly affect the actual public  
21 health risk to recreators?

22 MR. CRIVELLO: Let me just -- I don't  
23 think -- well, no. I just want to make the  
24 statement that this is an area of great controversy

1 over what are the public affects, whether  
2 it's -- we're talking about a real safety health  
3 based impact, and the other is a perceived impact.  
4 So I just want -- and so --

5 MR. HARLEY: We've prepared a series  
6 of exhibits to help answer this question. I'd like  
7 to introduce two of the exhibits at this time.

8 Madam Hearing Officer, the first  
9 exhibit that we've prepared is actually taken from  
10 the Water Reclamation District's website. The URL  
11 where this exhibit can be found is on the fourth  
12 page of the exhibit. I'm just mentioning this  
13 because you had previously indicated and Mr. Andes  
14 had agreed that information that was available on  
15 the Water Reclamation District's website was  
16 appropriate to be entered into this proceeding.

17 MS. TIPSORD: And for the record, this  
18 is WW Code Location Description starting with WW\_12  
19 Buffalo Creek at Lake Cook Road. We will mark this  
20 as Exhibit 334, if there's no objection. Seeing  
21 none, it's Exhibit 334.

22 The second exhibit I've been  
23 handed is another map with WW\_49 Calumet River at  
24 Ewing Street as part of the legend with numbers 49,

1 55, 56, 76, 57, 58, 59, and 43 marked on it. If  
2 there's no objection, we will mark this as  
3 Exhibit 335. Seeing none, it's Exhibit 335.

4 MR. HARLEY: Mr. Crivello, on  
5 Exhibit 33, is this -- Madam Hearing Officer, I'm  
6 sorry. The --

7 MS. TIPSORD: The WW code location  
8 description is Exhibit 334.

9 MR. HARLEY: Okay. On Exhibit 334, of  
10 this list of locations where there's sampling in the  
11 CAWS, I wanted to draw your attention to number 49.

12 MR. ANDES: Can I ask is the witness  
13 going to testify?

14 MR. HARLEY: Yeah, right now. I'm  
15 just --

16 MR. ANDES: Okay.

17 MR. HARLEY: That sampling location,  
18 WW\_49, Calumet River at Ewing Street, are you  
19 generally familiar with where Calumet River and  
20 Ewing Street is? If not the exact sampling site, at  
21 least generally.

22 MR. CRIVELLO: Generally in the area.

23 MR. HARLEY: And then calling your  
24 attention to the map, Exhibit 335, that number 49,

1 which is to the far right of the map, is that  
2 actually an accurate depiction of where Calumet  
3 River and Ewing Street is?

4 MR. CRIVELLO: Yes.

5 MR. HARLEY: And then as we look at  
6 WW\_55, Calumet River at 130th Street --

7 MR. CRIVELLO: Yes, that's -- yes.

8 MR. HARLEY: Is that an accurate  
9 depiction?

10 MR. CRIVELLO: Yes, it is.

11 MR. HARLEY: Have you had an  
12 opportunity to review this map in anticipation of  
13 today's testimony?

14 MR. CRIVELLO: Yes, I've looked at  
15 this map.

16 MR. HARLEY: And the WW -- the  
17 testing, the sampling locations, are they accurately  
18 portrayed on this map?

19 MR. CRIVELLO: Yes.

20 MR. HARLEY: And then there's only one  
21 other feature on this map that I would like for you  
22 to identify, and that is Calumet WWTP. Is that the  
23 location of the Calumet Wastewater Treatment Plant?

24 MR. CRIVELLO: Well, it's -- it isn't

1 quite all of that area, but it's generally -- yeah,  
2 the corner, that's about where it is.

3 MR. HARLEY: Thank you. Madam Hearing  
4 Officer, I'm entering an exhibit now, again, based  
5 on information which is available on the Water  
6 Reclamation District's website.

7 MS. TIPSORD: I've been handed Fecal  
8 Coliform CFU/100 ml. If there's no objection, we  
9 will mark this as Exhibit 336. Seeing none, it's  
10 Exhibit 336.

11 MR. HARLEY: Mr. Crivello, what I  
12 would like for you to do in terms of answering the  
13 question as to the impact -- the potential impact of  
14 disinfection, does the river system flow into Lake  
15 Michigan or away from Lake Michigan?

16 MR. CRIVELLO: Away from Lake Michigan  
17 at O'Brien Lock and Dam.

18 MR. HARLEY: So when we look at  
19 sampling location 49 from Exhibit 334 plotted on  
20 Exhibit 335, is that upstream or downstream of the  
21 Calumet Wastewater Treatment Plant?

22 MR. CRIVELLO: Well, this is --  
23 it's -- the Calumet Water Treatment Plant is both  
24 upstream and downstream.

1 MR. HARLEY: If water flows from Lake  
2 Michigan, is sampling location 49 upstream or  
3 downstream from the Calumet Wastewater Treatment  
4 Plant, in light of your testimony that water flows  
5 from Lake Michigan toward the west?

6 MR. CRIVELLO: Well, it's upstream.

7 MR. HARLEY: And sampling location 55,  
8 is that upstream or downstream?

9 MR. CRIVELLO: That, too, is  
10 downstream.

11 MR. HARLEY: I beg your pardon?

12 MR. CRIVELLO: Upstream.

13 MR. ANDES: Can I ask --

14 MR. CRIVELLO: Upstream from --

15 MS. TIPSORD: I'm sorry. I didn't  
16 hear that.

17 MR. CRIVELLO: From 49. It is  
18 downstream from 49.

19 MR. HARLEY: No, no. My question was  
20 is it upstream or downstream from the Calumet  
21 Wastewater Treatment Plant?

22 MR. CRIVELLO: Downstream, because the  
23 water -- the Calumet water treatment plant enters  
24 the Calumet River, which is going -- which is going

1 south. But at this point at 55 is -- that's on the  
2 river.

3 MR. HARLEY: If water is flowing from  
4 Lake Michigan in a westerly direction, and the  
5 wastewater treatment plant is located here at the  
6 sampling location upstream, is it down or upstream?

7 MR. CRIVELLO: It is upstream.

8 MR. HARLEY: Thank you.

9 MR. ANDES: Is it also upstream from  
10 any combined sewer overflows that would be in this  
11 area?

12 MR. CRIVELLO: From sanitary -- yes.  
13 Well, 55 -- the sanitary -- I don't know if the  
14 sanitary overflows only come from the plant or if  
15 there's other discharge points.

16 MR. ANDES: Okay. So you don't know  
17 where the combined sewer over flow --

18 MR. CRIVELLO: Meets the river.

19 MR. ANDES: -- would be located?

20 MR. CRIVELLO: No, I don't.

21 MR. ANDES: Okay.

22 MR. HARLEY: Now, as we look at  
23 sampling location 76, 57, and 58, as you look along  
24 this map, which is Exhibit 335, are those upstream

1 or downstream from the discharge of the Calumet  
2 Wastewater Treatment Plant?

3 MR. CRIVELLO: Downstream.

4 MR. HARLEY: And that would also be  
5 true then of sampling location 59?

6 MR. CRIVELLO: Yes.

7 MR. HARLEY: And then 43?

8 MR. CRIVELLO: Correct.

9 MR. HARLEY: Using as an example the  
10 sampling which took place on 8/25/2003, do  
11 you -- which is the first column -- do you see any  
12 difference between the levels of fecal coliform for  
13 the sampling points upstream and downstream of the  
14 wastewater treatment plant?

15 MR. CRIVELLO: Yes.

16 MR. HARLEY: And let's turn the page  
17 to Page 2.

18 MR. ANDES: If I can stay on Page 1  
19 for a moment. So Mr. Crivello, you're saying that  
20 all the points from 56, 76, 57, 58, those are all  
21 downstream of the Calumet plant, correct?

22 MR. HARLEY: No. That -- if I can  
23 object, he did not testify as to sampling location  
24 56.



1 MR. ANDES: Okay. But 76, 57, 58, all  
2 downstream of the plant?

3 MR. CRIVELLO: Yes.

4 MR. ANDES: Okay. Do you have  
5 any -- and you had noticed that while 76, on  
6 11/24/2003, is at 5,200, the next downstream sample  
7 is actually far larger, which is 12,000. Would you  
8 have any idea would that would be?

9 MR. CRIVELLO: What date was that  
10 again, please?

11 MR. ANDES: 11/24/2003. And then it  
12 goes down, and then it goes up.

13 MR. CRIVELLO: All right. Well, it  
14 looks like the range that is between the sampling  
15 points is between 2,700 and 5,200 with a high of  
16 24,000. So that --

17 MR. ANDES: But it's not -- in fact,  
18 it looks like the levels go back up well downstream  
19 of the Calumet plant, perhaps due to other sources.

20 MR. CRIVELLO: Yes, or the activity of  
21 the bacteria in the water itself, the growth of the  
22 bacteria depending on the weather.

23 MR. ANDES: But you're not an expert  
24 on the growth of bacteria, correct?

1 MR. CRIVELLO: No, other than the pond  
2 that I have maintained in my backyard for ten years.

3 MR. ANDES: Thank you.

4 MR. HARLEY: Let's stick then -- was  
5 that November of 2003 that you were pointing to?

6 MR. ANDES: Yeah.

7 MR. HARLEY: The levels upstream and  
8 downstream of the wastewater treatment plant, taking  
9 49, the Calumet River at Ewing Street, in November,  
10 what was the sampled level of fecal coliform?

11 MR. CRIVELLO: 11/24 is 30.

12 MR. HARLEY: And then what was the  
13 level of fecal coliform in sample 76, which is  
14 immediately downstream of the facility?

15 MR. CRIVELLO: 50 -- No, 5,200.

16 MR. HARLEY: 5,200.

17 MR. ANDES: Do you have any idea why  
18 sample 55, which is upstream of the facility, went  
19 from 30 to 810?

20 MR. CRIVELLO: No.

21 MR. HARLEY: I'd like to call your  
22 attention to the -- to Page 2, fecal coliform  
23 levels, and looking at March 2005, could you please  
24 say what the level is in March 2005 at 49, March

1 28th, 2005?

2 MR. CRIVELLO: Less than ten. March?

3 MR. HARLEY: Yes.

4 MR. CRIVELLO: Yeah, less than ten.

5 MR. HARLEY: March.

6 MR. CRIVELLO: Oh, I'm sorry. Nine.

7 MR. HARLEY: And then at sample  
8 location 76, which is immediately downstream of the  
9 Calumet Wastewater Treatment Plant, what was the  
10 observed level?

11 MR. CRIVELLO: 2,100.

12 MR. HARLEY: And let's turn the page  
13 again.

14 MR. ANDES: Before you turn the page,  
15 on 9/26/2005, am I correct that the downstream  
16 sample at 76 is 3,400, but the next downstream  
17 sample is 3,200?

18 MR. CRIVELLO: Yes. There's -- well,  
19 there's a temporal difference between the time you  
20 take the sample and the level of discharge from the  
21 plant. I think to answer that with great surety  
22 you'd have to know more information about --

23 MR. ANDES: Wouldn't that be the case  
24 for any of these samples?

1 MR. CRIVELLO: Yes, primarily.

2 MR. ANDES: Thank you. But you don't  
3 know why the levels would increase significantly for  
4 that sample, for example, for the 10/24/05 sample,  
5 for the 11/28/05 sample, increase significantly well  
6 downstream of the plant? There could be other  
7 sources, correct?

8 MR. CRIVELLO: Yes, there could be.

9 MR. ANDES: Okay. Thank you.

10 MR. HARLEY: Do you see a difference  
11 in the levels of fecal coliform between the upstream  
12 samples that is upstream of the Calumet Wastewater  
13 Treatment Plant and the samples, which is  
14 downstream?

15 MR. CRIVELLO: Yes. Generally they  
16 are higher. They are higher in all cases, and they  
17 vary -- they do vary from different points.

18 MR. HARLEY: Is this the type of data  
19 that led to your testimony that disinfecting  
20 wastewater would be important to achieving water  
21 quality standards in the Calumet River?

22 MR. CRIVELLO: Yes.

23 MR. ANDES: So you haven't done any  
24 assessment of bacterial risk in any way? You're

1 just looking at the levels of fecal coliform?

2 MR. CRIVELLO: That's correct.

3 MR. HARLEY: To follow up on that  
4 question, another exhibit, Madam Hearing Officer.

5 MS. TIPSORD: I've been handed E. Coli  
6 CFU/100 ml. If there's no objection, we will mark  
7 this as Exhibit 337. Seeing none, it's Exhibit 337.

8 MR. HARLEY: Mr. Crivello, as to Mr.  
9 Andes' point about this being fecal coliform --

10 MR. ANDES: Excuse me. I was just  
11 citing the fact that your table said fecal coliform.  
12 I don't think I made a point of it.

13 MR. HARLEY: This exhibit, taken from  
14 the Water Reclamation District's website and  
15 identified on Page 4 of this exhibit, the specific  
16 URL where any person could obtain this data, is not  
17 for fecal coliform, it is for E. Coli. And what I  
18 would like to do is ask you to look at the observed  
19 levels of E. Coli again upstream and downstream of  
20 the Calumet Wastewater Treatment Plant.

21 MR. CRIVELLO: Yes.

22 MR. HARLEY: What is -- in the first  
23 sample that we see here from October 2003, which is  
24 the observed level of fecal coliform in sampling 49

1 upstream of the Calumet plant?

2 MR. CRIVELLO: Less than ten.

3 MR. HARLEY: And what is the level in  
4 sample 55 upstream of the Calumet Wastewater  
5 Treatment Plant?

6 MR. CRIVELLO: 2,800.

7 MR. HARLEY: No, sample 55.

8 MR. CRIVELLO: Oh, I'm sorry. Ten.  
9 Less than ten -- less than 40.

10 MR. HARLEY: And what is the level  
11 then at sample 76, which is downstream of the  
12 Calumet Wastewater Treatment Plant?

13 MR. CRIVELLO: Forty.

14 MR. HARLEY: I'm sorry. You're  
15 not -- sample 76.

16 MR. CRIVELLO: 76?

17 MR. HARLEY: Yes.

18 MR. CRIVELLO: On 10/27?

19 MR. HARLEY: Yes, on 10/27. That's  
20 correct.

21 MR. CRIVELLO: Is 40.

22 MR. HARLEY: On the table.

23 MR. CRIVELLO: Oh, I'm sorry. 57.

24 I'm having a problem reading the -- okay. 2,800.

1 I'm sorry. 2,800.

2 MR. HARLEY: And as you look through  
3 this table, do the levels upstream and downstream of  
4 the Calumet Wastewater Treatment Plant for E. Coli  
5 appear different to you?

6 MR. CRIVELLO: Well, they are -- let  
7 me just look at this last one. They go from number  
8 49 to number 57. There's a great difference there  
9 in the ones -- 76, 75, 76, 56, 55, and 49 are all  
10 lower and the balances are higher.

11 MR. HARLEY: So is it safe -- is it a  
12 correct characterization of your testimony that the  
13 levels of E. Coli upstream and downstream of the  
14 wastewater treatment plant are dramatically  
15 different?

16 MR. CRIVELLO: Yes.

17 MR. HARLEY: And that the samples  
18 immediately downstream of the wastewater treatment  
19 plant for E. Coli are dramatically higher?

20 MR. CRIVELLO: Yes.

21 MR. ANDES: Let me follow up on that,  
22 please. On 8/25/03, the first sample, Mr. Crivello,  
23 I can see we don't have any data points until number  
24 57, which is downstream of the treatment plant,

1 correct?

2 MR. CRIVELLO: Yes.

3 MR. ANDES: And that number is 660?

4 MR. CRIVELLO: Yes.

5 MR. ANDES: But the next downstream  
6 sample point is far higher at 3,100, correct?

7 MR. CRIVELLO: Yes, it is.

8 MR. ANDES: So that might be other  
9 sources. Am I right?

10 MR. CRIVELLO: That is -- well, yes,  
11 that's correct.

12 MR. ANDES: Okay. On 11/24/03, where,  
13 again, we don't have samples immediately downstream  
14 of the plant, but at 57 it's 12,000, goes down to  
15 4,400, then back up to 15,000. Am I right?

16 MR. CRIVELLO: Mm-hmm, yes.

17 MR. ANDES: Well downstream of the  
18 treatment plant?

19 MR. CRIVELLO: Yes.

20 MR. ANDES: Okay. So other sources  
21 possibly. So you don't know really whether the  
22 increases or decreases are due to the treatment  
23 plant or other sources? You haven't done any kind  
24 of assessment of the various sources, where they're



1 located and what their contributions are. Am I  
2 right?

3 MR. CRIVELLO: That's correct.

4 MR. ANDES: Thank you.

5 MR. HARLEY: The dramatically  
6 higher -- Mr. Crivello, is it true that the  
7 dramatically higher levels of E. Coli, which are  
8 found downstream of the Calumet Wastewater Treatment  
9 Plant, is part of the reason why you testified that  
10 disinfecting the Calumet Wastewater Treatment Plant  
11 is important to improve water quality?

12 MR. CRIVELLO: Yes, I did. Looked at  
13 the numbers. I didn't study the numbers, but I  
14 reviewed the numbers and found that generally the  
15 levels of fecal coliform and E. Coli were  
16 significantly higher below the wastewater treatment  
17 plants than upstream.

18 The dynamics of fecal coliform and  
19 bacteria in the water and the sources -- the urban  
20 storm water runoff is a source that has been  
21 documented as being a significant source of water  
22 quality problems. And depending on the land use,  
23 there could be fecal coliform and bacteria that come  
24 up in that discharge.

1 MR. ANDES: In the combined sewer  
2 overflow as well?

3 MR. CRIVELLO: And of course the  
4 combined sewer overflows, which have, in fact,  
5 decreased significantly with the opening of the deep  
6 tunnel to the point that water quality has improved  
7 in the Calumet section where there are actually  
8 fresh water sponges, species of fresh water sponges  
9 that have come back. Which they're pretty ugly  
10 little animals, but they are, in fact, very  
11 high -- they require a very high level of water  
12 quality. So we have --

13 MR. ANDES: So you believe there's a  
14 very high level of water quality in the Calumet  
15 System?

16 MR. CRIVELLO: If you're a fresh water  
17 sponge, yes.

18 MR. ANDES: Thank you. Have  
19 you -- and have you done any assessment of the  
20 extent to which disinfection would reduce the  
21 bacteria levels in the Calumet System?

22 MR. CRIVELLO: No, but I have reviewed  
23 different technologies and kept track as I've worked  
24 in the water quality planning section at Illinois

1 EPA and the Northeastern Illinois Planning  
2 Commission. So I've been, you know, staying not  
3 totally technically current, but I've been watching  
4 it. And yeah, there are a number of technologies  
5 that will significantly improve the water quality by  
6 eliminating the bacteria in the discharge.

7 MR. ANDES: Do you believe  
8 disinfection will eliminate the bacteria in the  
9 discharge?

10 MR. CRIVELLO: It would greatly reduce  
11 it. You can never eliminate bacteria.

12 MR. ANDES: Have you reviewed the  
13 testimony of the experts who have testified in this  
14 case as to the level of reduction that we've brought  
15 about disinfection, Dr. Blatchly, for example?

16 MR. CRIVELLO: No, I haven't. No, I  
17 haven't. I'll leave that for other experts. I have  
18 opinions about their positions that I've made from  
19 listening to their -- some of their testimony, a  
20 cursory reading a very complex issue, and I am not  
21 an expert.

22 MR. ANDES: Okay. Let me move on to  
23 the next question then. I'm going to move to  
24 question number nine. You talked about continuing

1 unsafe water conditions of the Calumet waterways.  
2 What unsafe water conditions are you speaking of?

3 MR. CRIVELLO: Well, primarily  
4 current -- there's -- bacteria is the significant  
5 source of the problem that we're talking about  
6 today. There are other problems in the waterway.

7 MR. ANDES: So if you believe that the  
8 water conditions in the Calumet waterways are  
9 unsafe, do you think people shouldn't recreate,  
10 canoe, kayak, in those water bodies, considering  
11 they may fall in?

12 MR. CRIVELLO: That is a choice that  
13 you have -- that people have to do based on the  
14 risk, and the risk -- there is a risk for coming in  
15 contact with that water.

16 MR. ANDES: But since you've recreated  
17 in these waters at least three times a month, you  
18 don't believe they're personally unsafe?

19 MR. CRIVELLO: No, not for incidental  
20 contact, you know.

21 MR. ANDES: Okay.

22 MR. CRIVELLO: But I wouldn't swim in  
23 it.

24 MR. ANDES: Thank you. Are there

1 protocols you personally employ to minimize the  
2 potential for illness when you're recreating the  
3 waters -- in these waters?

4 MR. CRIVELLO: Sanitation primarily,  
5 keeping everything clean and washing hands, you  
6 know, and eating -- food sanitation and food safety  
7 in those conditions. But primarily wash your hands.

8 MR. ANDES: Are those procedures you  
9 generally employ when recreating in waters, even  
10 others, Lake Michigan or the Fox River?

11 MR. CRIVELLO: No, no. Lake Michigan  
12 I don't. The Fox River I would. I don't recreate  
13 there, but I would in the Fox River.

14 MR. ANDES: Why?

15 MR. CRIVELLO: Well, I don't  
16 know -- personally I -- the water is brown. And I  
17 don't have any background on its water quality, so  
18 until I'd find out what it was I wouldn't go in it.

19 MR. ANDES: So these are basic  
20 precautions you would want to take?

21 MR. CRIVELLO: Yes.

22 MR. ANDES: And those are precautions  
23 you would generally recommend to people?

24 MR. CRIVELLO: Absolutely.

1 MR. ANDES: Okay. Are there any times  
2 when you particularly would avoid contact --  
3 recreating in the Chicago Area Waterways during wet  
4 weather events or any other time?

5 MR. CRIVELLO: Well, since I now have  
6 a motorboat that is very dry, there's few safety  
7 precautions that I would need to take on the  
8 waterways. But if I had a canoe, after rain events  
9 I wouldn't go if there was potential heavy rain  
10 events and combined sewer overflows. That would be  
11 another time if I was in a small boat I wouldn't  
12 recreate.

13 MR. ANDES: Okay. That's all the  
14 questions I have.

15 MS. TIPSORD: Thank you. IEPA, you  
16 had a question for Mr. Crivello?

17 MS. WILLIAMS: I'm going to move up.  
18 Good morning, Mr. Crivello. I'm Deborah Williams  
19 from the Illinois EPA.

20 MR. CRIVELLO: Good morning, Deborah.

21 MS. WILLIAMS: I think Mr. Andes  
22 addressed my one pre-filed question. I just have a  
23 quick follow-up, and I'm going to refer you to  
24 question 14 from Mr. Andes' pre-filed questions.

1 I'm not sure if this was asked exactly, but I'll  
2 reread it to give you time to see where I'm at. It  
3 says, "Should certain areas be avoided due to barge  
4 and motorized traffic, absence of safe entry and  
5 exit locations, and/or other issues incompatible  
6 with recreational uses?"

7 I know you answered specifically  
8 about the barge traffic and how you felt there was  
9 plenty of room on either side. Can you address this  
10 issue of entry and exit locations a little bit for  
11 me?

12 MR. CRIVELLO: Entry and exit -- where  
13 there is a marina -- or the numbers that were listed  
14 on my testimony, the marinas, and at those access  
15 points there, those are safe. Any other access  
16 point, which there are some non-public, sort  
17 of -- they're just -- where a road will meet a river  
18 and not have a bridge, people will find a way to put  
19 a boat in the water there or go fishing.

20 MS. WILLIAMS: I mean, can you just  
21 explain for the Board whether along the Calumet  
22 River System you typically see steep-walled sides  
23 that would prevent entry and exit?

24 MR. CRIVELLO: Much of it -- yeah,

1 there is a lot of it that has seawalls, metal  
2 seawalls. But a lot of is it not seawalls. A lot  
3 of is it natural geologic formation, which is  
4 the -- they cut through the limestone when  
5 they -- so the limestone is at the surface and much  
6 of the channel.

7 And so those areas you can access.  
8 There's always -- and there's a number of drainage  
9 access points. There are places -- as I say,  
10 bridges and rivers -- where people can access and  
11 get a canoe in there.

12 MS. WILLIAMS: And the only other  
13 thing I wanted to ask, I know your testimony said  
14 that you had been recreating on the system for about  
15 25 years?

16 MR. CRIVELLO: Yeah.

17 MS. WILLIAMS: Can you just tell us  
18 about any changes that you've noticed in that time,  
19 either in terms of recreational uses or in terms of  
20 wildlife plant life?

21 MR. CRIVELLO: There has been a  
22 continued improvement of the water in that the  
23 habitat -- water habitat and the bird populations,  
24 the water bird migratory bird populations have



1 always been strong. The amount of large bass in the  
2 river that now they have national bass tournaments,  
3 that wasn't the case when I first started.

4 The -- most of the heavy  
5 industry -- all of the steel mills and coal plants  
6 have all closed. So these sites have been cleaned  
7 up, so there's less point source pollution and  
8 non-point storm water pollution from those sites.

9 There has been a significant  
10 increase in the number of small boats, even though  
11 it's still a small number of small boats that I see,  
12 you know, canoes. But there has been a significant  
13 increase in those from none -- from absolutely  
14 none -- to now in the last five or six years I  
15 definitely have seen more of them.

16 MR. ANDES: And all of that has  
17 occurred without disinfection, all those  
18 improvements, correct?

19 MR. CRIVELLO: Right. That's  
20 primarily because of the increase in oxygen levels,  
21 due to the deep tunnel removal of combined sewer  
22 overflows, basically.

23 MR. ANDES: So you're commending the  
24 District for that action?

1 MR. CRIVELLO: The deep tunnel  
2 has -- in fact, that's why we're here today arguing  
3 over this is because they've done such a good job  
4 bringing the water to the point that it is today and  
5 the habitat has come back. Even the freshwater  
6 sponges have come back. So now we have to finish  
7 the last few inches and do the disinfection and then  
8 we'll have a complete system.

9 MR. ANDES: Except for all the  
10 combined sewer overflows?

11 MR. CRIVELLO: But those will go away  
12 eventually and so will the storm water erosion  
13 control, because there's -- that's another growing,  
14 you know, change that I've seen. From when I  
15 started, there were no storm water in the  
16 construction site storm water controls, erosion  
17 controls, but today there are. And those are  
18 continuing to get stiffer, and people are finding  
19 better ways to implement them more economically, and  
20 so we're going to see a continued decrease in the  
21 amount of the impact of storm water on the river  
22 system.

23 MR. ANDES: So we're really talking a  
24 long term process over years of improvements. For

1 example, with combined sewer overflows, you're not  
2 aware that all overflows will be eliminated, right?

3 MR. CRIVELLO: Well, if they ever  
4 finish the reservoir section of the deep tunnel, we  
5 will have pretty much come close to never having  
6 another one again.

7 MR. ANDES: And do you know how long  
8 that's going to take?

9 MR. CRIVELLO: Well, if I had a  
10 crystal ball I would tell everyone and then we would  
11 stop worrying about it and just wait, but I can't.

12 MR. ANDES: Thank you.

13 MS. TIPSORD: Is there anything else?

14 MS. WILLIAMS: I'm done. Thanks.

15 MS. TIPSORD: Anything else for  
16 Mr. Crivello? Thank you very much for your  
17 statement and for coming back. It's been a  
18 pleasure. Thank you, Mr. Crivello.

19 MR. CRIVELLO: My pleasure. Thank you  
20 very much.

21 MS. TIPSORD: We'll take a very brief  
22 recess so that you can get set up, Ms. Meyers, and  
23 then we'll start with the panel.

24

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

4 MS. TIPSORD: At this point we're  
5 going to go ahead with Laura Barghusen, and we'll  
6 need to have her sworn in.

7 (Witness sworn.)

8 MS. TIPSORD: And could we have her  
9 testimony, please?

10 MS. MEYERS-ELEN: At this time I'd  
11 like to offer into evidence the testimony that we  
12 filed for Laura Barghusen.

13 MS. TIPSORD: If there's no objection,  
14 we will mark that pre-filed testimony as  
15 Exhibit 338. Seeing none, it's Exhibit 338.

16 And with that, we'll begin with  
17 the questions for Ms. Barghusen, and we will start  
18 with Midwest Generation, then I believe we will go  
19 to the District, and then the IEPA.

20 MS. FRANZETTI: Thank you, Madam  
21 Hearing Officer.

22 Good morning, Ms. Barghusen. My  
23 name is Susan Franzetti, and I am counsel for  
24 Midwest Generation in this proceeding. I'm just

1 going to get right to my questions that I'm sure  
2 you've already reviewed, so we'll start with  
3 question one.

4 Please provide the stream size of  
5 Jackson Creek and compare it to the stream size of  
6 the Upper Dresden Pool.

7 MS. BARGHUSEN: Jackson Creek's  
8 watershed measures approximately 54 square miles.  
9 The main stem of Jackson Creek is approximately  
10 25 miles long. About seven miles of Jackson Creek  
11 is near the National Tall Grass Prairie and the  
12 Joliet Army Training Facility. The width and the  
13 depth of the creek vary in different locations, but  
14 two averages that I am familiar with place the width  
15 between 34 and a half and 36 and a half feet, and  
16 the depth -- average depth from about one half to  
17 two feet.

18 So that's Jackson Creek. In terms  
19 of the Upper Dresden Pool, you're looking at a much  
20 deeper and wider area up to -- you can have, like,  
21 300 feet wide at its center between 22 and 28 feet  
22 deep. The length of the Pool is about 7.73 miles.  
23 But I would like to point out that this is a section  
24 of the Des Plaines River, which has a watershed size

1 of 1,000 square miles. So it's part of a much  
2 larger system.

3 MR. ADELMANN: Thank you. We'll move  
4 on to question two. And I'm going to caveat ahead  
5 of time, I know we've had issues with page numbers,  
6 and my cited page numbers and the questions may be  
7 different, depending on whether it was printed off  
8 via electronic filing or using the hard copy.  
9 Hopefully you were able to find the references I was  
10 making in my questions, and if not, I'm sure you'll  
11 let me know.

12 So moving on to question two on  
13 Page 6, section Roman 6A of your pre-filed  
14 testimony, "Please identify the index of biotic  
15 integrity, IBI, values for Jackson Creek referenced  
16 in the 2002 basin survey identified in your  
17 testimony."

18 Let's take the first part of that  
19 question first. This is really in the first  
20 paragraph after your heading Roman 6A,  
21 Interconnected Health of Jackson Creek and the Lower  
22 Des Plaines River.

23 MS. BARGHUSEN: Okay. So I'll take  
24 that part separate from Exhibit 42, which is the

1 second part of the question.

2 MS. FRANZETTI: Right. Can we go one  
3 at a time?

4 MS. BARGHUSEN: Yeah. Okay. So I'm  
5 just turning to the Jackson Creek Basin Survey, if I  
6 can read them all.

7 MS. FRANZETTI: And Ms. Barghusen, to  
8 the extent you're referring to a document, is it  
9 already an exhibit in the record, if you know?

10 MS. BARGHUSEN: I think we need to  
11 introduce the Jackson Creek Basin Survey report.  
12 Okay. So there were nine stations sampled by --

13 MS. TIPSORD: Excuse me, Ms. Barghusen  
14 if you're going to be using this for your response,  
15 we needed to get this admitted into the record.

16 MS. MEYERS-ELEN: We now offer into  
17 evidence an august 2005 report by IDNR titled  
18 Evaluation of Fish Communities and Stream Quality in  
19 the Jackson Creak Watershed (Des Plaines River  
20 Basin), data from September 2003.

21 MS. TIPSORD: Is this all you have of  
22 these?

23 MS. MEYERS-ELEN: That is.

24 MS. TIPSORD: All right. We'll have

1 to get more made after.

2 MS. MEYERS-ELEN: Actually, wait a  
3 minute. I actually have more. I'm sorry.

4 MS. TIPSORD: And we will mark this  
5 Evaluation of Fish Communities and Stream Quality in  
6 the Jackson Creek Watershed as Exhibit 339 if  
7 there's no objection. Seeing none, it's  
8 Exhibit 339.

9 MS. FRANZETTI: Ms. Barghusen, it  
10 would be helpful if you are going to refer to  
11 Exhibit 339 for your answer if you can direct us to  
12 pages or appendices.

13 MS. BARGHUSEN: All right. I'd first  
14 like to direct people to Page 14, and you see on  
15 that page a number of columns at the top row, you'll  
16 see JC-1, JC-3, JC-3, et cetera. Those are the  
17 stations that the Illinois Department of Natural  
18 Resources sampled on Jackson Creek in 2003.

19 MS. FRANZETTI: And those are the nine  
20 stations you were just referring to in your prior  
21 answer?

22 MS. BARGHUSEN: Right. And if you'd  
23 like to see a map of those, you can flip to Page 19,  
24 which shows Jackson Creek, including its tributary



1 the Manhattan Branch and Jackson Branch, and shows  
2 where those stations are located.

3 And so if you look at the -- for  
4 the IBI scores, if you look along the bottom row of  
5 the table on Page 14, you can see that at station  
6 JC-1 there is an IBI score of 45 in 2003, JC-2, 46,  
7 JC-3, 40, et cetera. Should I read them all off?

8 MS. FRANZETTI: No.

9 MS. BARGHUSEN: Okay.

10 MS. FRANZETTI: And do you know if the  
11 dates at the top of each of those sampling station  
12 columns indicate the date on which the data was  
13 collected that forms the basis for the IBI score?

14 MS. BARGHUSEN: That's correct. That  
15 was the date of the sampling.

16 MS. TIPSORD: Ms. Barghusen, I'm going  
17 to ask that you keep your voice up. I'm not sure  
18 they can hear you in the back.

19 MS. BARGHUSEN: Okay.

20 MS. FRANZETTI: Have you finished your  
21 answer to the first part --

22 MS. BARGHUSEN: I believe I have.

23 MS. FRANZETTI: -- of question two?

24 MS. BARGHUSEN: Yeah.

1 MS. FRANZETTI: We can please identify  
2 where the IBI data you are referring to by reference  
3 of the 2003 Basin Survey, which has now been marked  
4 as Exhibit 339, is the same as the data contained in  
5 the document that has been marked and entered as  
6 Exhibit 42 in this rulemaking proceeding? Do you  
7 need a copy of Exhibit 42?

8 MS. BARGHUSEN: I have that.

9 MS. FRANZETTI: Okay. Madam Hearing  
10 Officer, do you want a copy?

11 MS. TIPSORD: No, thanks.

12 MS. BARGHUSEN: Okay. Exhibit 42 is  
13 basically the same as table five in the 2003 Des  
14 Plaines Basin Survey.

15 MS. FRANZETTI: Exhibit 339?

16 MS. MEYERS-ELEN: No, actually that's  
17 another one we would like to introduce into  
18 evidence.

19 MS. FRANZETTI: Okay. I'll tell you  
20 what, let's let your counsel do that, and then we  
21 can keep going.

22 MS. MEYERS-ELEN: Now offering into  
23 evidence an IDNR report from December of 2005,  
24 Status of Fish Communities and Stream Quality in the

1 Des Plaines and DuPage Rivers, 2003 Basin Survey.

2 MS. TIPSORD: If there's no objection,  
3 we will mark that study as identified by counsel as  
4 Exhibit 340. Seeing none, the IDNR Status of Fish  
5 Communities and Stream Quality in the Des Plaines  
6 and DuPage Rivers, 2003 Basin Survey is Exhibit 340.

7 MS. BARGHUSEN: And for anyone wanting  
8 to look at table five, it's on Page 21 of the report  
9 that's coming around.

10 So basically in this Des Plaines  
11 River Basin Survey, tributary stations to the  
12 Des Plaines River were also sampled. There was one  
13 sample taken on Jackson Creek and one on the  
14 Manhattan branch, which is a tributary to Jackson  
15 Creek. The station on Jackson Creek is GC-03, and  
16 that is the same -- in the same location as JC-04  
17 from the Jackson Creek Basin Survey.

18 So what IDNR did when they were  
19 surveying the entire Des Plaines River Basin, they  
20 basically just took one sample from Jackson Creek,  
21 and that sample's location corresponds to one of the  
22 locations in the nine they sampled when they did a  
23 Jackson Creek study. And that's JC-04 from the  
24 Jackson Creek study.

1 MS. MEYERS-ELEN: If I may clarify --

2 MS. FRANZETTI: Oh, would you like to?  
3 Go ahead. I was going to try.

4 MS. MEYERS-ELEN: Just to follow up  
5 real quick, are you saying that the 2003 Jackson  
6 Creek report is specific to Jackson Creek and so,  
7 therefore, has many more samples of Jackson Creek  
8 specifically in that, and then the Des Plaines Basin  
9 sampling is for the entire basin and has only one  
10 sample from Jackson Creek, including in a much  
11 larger study?

12 MS. BARGHUSEN: That's right.

13 MS. FRANZETTI: And again, just so  
14 we're clear, the sampling station in Exhibit 339,  
15 table three that is denoted as JC-4 is the -- you're  
16 saying is the same sampling location as on  
17 Exhibit 340, Page 21, the sampling location denoted  
18 GC-03, correct.

19 MS. BARGHUSEN: That is correct.

20 MS. FRANZETTI: Okay. How do you know  
21 that? And it may be explained in these documents,  
22 but given that I haven't had a chance to review  
23 them, I don't know.

24 MS. BARGHUSEN: Yeah. I think we can

1 probably see that from the map locations. I may  
2 have also known that from direct communication with  
3 IDNR --

4 MS. FRANZETTI: Okay.

5 MS. BARGHUSEN: Based on that  
6 question --

7 MS. FRANZETTI: Okay. Did you talk to  
8 someone at IDNR in order to prepare your answer that  
9 you've just given the question to?

10 MS. BARGHUSEN: I may have. I work  
11 with IDNR to do these fish samples a lot.

12 MS. FRANZETTI: Okay.

13 MS. BARGHUSEN: I may have located  
14 that on a map once I saw Exhibit 42 or I may have  
15 asked them. I'm actually not sure which I did at  
16 this point.

17 MS. MEYERS-ELEN: May I ask a  
18 follow-up to possibly clarify as well? All of the  
19 numbers in the column GC-03 for Jackson Creek in  
20 Exhibit 340 in the Des Plaines Basin Survey, are  
21 they the same for each type of fish and have the  
22 total fish species and total species numbers? Are  
23 all of those identical, that column, to the column  
24 in the Jackson Creek report, which is Exhibit 339,

1 under JC-04?

2 MS. BARGHUSEN: Yes, they are.

3 MS. MEYERS-ELEN: And they have the  
4 same IBI figure?

5 MS. BARGHUSEN: Yes. And we can also  
6 reference maps.

7 MS. FRANZETTI: Okay.

8 MS. BARGHUSEN: We can do that.

9 MS. FRANZETTI: All right. Now,  
10 actually to make sure we're clear in the record, on  
11 the answer to your question of please identify where  
12 the IBI data you are referring to by reference to  
13 the 2003 Basin Survey is the same as the data  
14 contained in the document that's been marked as  
15 Exhibit 42 in this rulemaking.

16 So we are basically taking the  
17 column GC-03 from Exhibit 340 and saying that is the  
18 same information -- that's the source of the  
19 information in Exhibit 42 on the last column, GC-03  
20 Jackson Creek, right?

21 MS. BARGHUSEN: Yeah.

22 MS. FRANZETTI: Okay. And we move on  
23 to question three, please identify the species that  
24 contribute to Jackson Creek having the, quote,

1 "highest species diversity," end quote, for the Des  
2 Plaines River tributary stations versus the lower  
3 species diversity of the Upper Dresden Island Pool  
4 as referenced in your pre-filed testimony at Page 6,  
5 section Roman 6A. And that's in the same paragraph  
6 we were previously referencing, that first paragraph  
7 after the heading 6A.

8 MS. MEYERS-ELEN: Before we start  
9 that, since there's an exhibit that she's going to  
10 be referring to, I'd like to offer that in evidence  
11 at this time.

12 We have a chart that's titled  
13 Summary of Fish Species in Jackson Creek that are  
14 also found in the Lower Kankakee, DuPage, and Lower  
15 Des Plaines River as an exhibit that she's going to  
16 be referring to throughout her testimony with  
17 Midwest Generation.

18 Before we answer, if you don't  
19 mind, Laura, if you can explain what we are  
20 disseminating so people know what they've got in  
21 their hands.

22 MS. BARGHUSEN: Okay.

23 MS. FRANZETTI: Tell you what, you  
24 want to hold off and get an exhibit number?

1 MS. TIPSORD: Yeah. Let's go ahead  
2 and mark this as Exhibit 341. If there's no  
3 objection, we'll mark it. Summary of Fish species  
4 in Jackson Creek that are also found in Lower  
5 Kankakee, DuPage, and Lower Des Plaines River, that  
6 is submitted by Laura Barghusen, Openlands,  
7 October 5th, 2009. If there's no objection, we'll  
8 mark that as Exhibit 341. Seeing none, it's  
9 Exhibit 341.

10 MS. BARGHUSEN: Okay. What you see  
11 here in Exhibit 341 along the left most column is a  
12 list of the species of fish that were found in  
13 Jackson Creek in 2003. There's a green dot next to  
14 a species if it was also collected at the GC-03  
15 station, i.e., if it was also -- if it was  
16 represented in an Exhibit 42.

17 The reason there's some species on  
18 there without the green dot is because the Jackson  
19 Creek specific report sampled nine stations and  
20 found additional species to the ones that were  
21 reported at the one station, GC-03.

22 MS. FRANZETTI: Can I stop you there  
23 just for a second?

24 MS. BARGHUSEN: Sure.



1 MS. FRANZETTI: Again, just because it  
2 helps us down the road to have references back to  
3 the exhibit numbers if they exist. So basically the  
4 list of species that's in the first column on  
5 Exhibit 341 is the combined results from the Jackson  
6 Creek information in Exhibits 339 and 340, correct?

7 MS. BARGHUSEN: Yes, that's correct.  
8 Yes. And if -- yes. And there were several  
9 intolerant species, meaning they're intolerant of  
10 polluted degraded conditions, that were found in  
11 Jackson Creek. Those are blue in the species list.

12 There were also some species that  
13 are considered to be species of special concern by  
14 Chicago Wilderness, meaning they have a limited  
15 distribution in northeastern Illinois, or they're  
16 especially vulnerable to degradation associated with  
17 urbanization. Those have a little asterisk by them  
18 just for easy identification.

19 And this exhibit basically shows  
20 where else in proximity to Jackson Creek the species  
21 that were found there in 2003 exist. So if you look  
22 across the top column --

23 MS. FRANZETTI: And you know what, can  
24 I stop you one more time? I'm sorry. Again, it

1 just is easier to have it right in the record. And  
2 since there really aren't that many of them, would  
3 you mind if I read off the intolerant species that  
4 are in blue on the exhibit?

5 MS. BARGHUSEN: Yes.

6 MS. FRANZETTI: Okay. Because when  
7 people start copying it, we're going to lose that  
8 blue. So it's Southern redbelly dace.

9 MS. BARGHUSEN: Yes.

10 MS. FRANZETTI: Thank you. Hornyhead  
11 chub.

12 MS. BARGHUSEN: That's right.

13 MS. FRANZETTI: Must be a good looking  
14 fish. Black redhorse, Slender madtom, Smallmouth  
15 bass, and Rainbow darter. Did I get them all?

16 MS. BARGHUSEN: That's correct. Yes,  
17 you got them.

18 MS. FRANZETTI: Okay. Go ahead.

19 MS. BARGHUSEN: And if you look across  
20 the top column, what we've done is listed where, in  
21 proximity to Jackson Creek, these species also  
22 exist, and so we've listed three stations from the  
23 lower Kankakee river. I notice it's a yes next to  
24 the species if it was collected, and the Illinois

1 Department of Natural of Resources 2005 report -- or  
2 collection for the Kankakee River Basin.

3           There's a yes if it was collected  
4 in the Lower DuPage River below Channahon Dam, and  
5 then the next one is Hickory Creek, which is another  
6 tributary in the Lowe Des Plaines. It's actually a  
7 little bit north of Jackson Creek where it  
8 confluences with the Lower Des Plains. And then  
9 there's the Lower Des itself, both upstream and  
10 downstream of I-55, based on the Illinois Department  
11 of Natural Resource data, and then we've also listed  
12 whether it was found in the MBI surveys both  
13 upstream and downstream of the I-55 bridge and  
14 whether it was found in the EA surveys, again, both  
15 upstream and downstream of the I-55 bridge.

16           And here the purpose of this is to  
17 get an idea of the distribution of these species in  
18 the -- in proximity to Jackson Creek so that we can  
19 get a sense of where they might come from if they  
20 were going to colonize in Jackson Creek.

21           MS. MEYERS-ELEN: Are the sources for  
22 all of the reports that are footnoted with all the  
23 sampling stations on the back of the chart?

24           MS. BARGHUSEN: Yes. The sources from

1 where this data comes are the data sources on the  
2 back of the chart.

3 MS. MEYERS-ELEN: And if you can also  
4 explain what else is on the back of the chart, just  
5 so that we have it all on the record.

6 MS. BARGHUSEN: Okay. Also on the  
7 back of the chart we listed IBI scores from these  
8 rivers, and you can see the first ones are from  
9 Jackson Creek. And what we did here is took the  
10 lowest three stations, and you can see their IBI  
11 scores, and then also from the Kankakee River,  
12 again, the lower three stations closest to the  
13 confluence of the Lower Des Plaines you can see  
14 their IBI scores.

15 The station below the Channahon  
16 Dam on the DuPage closest to the confluence with the  
17 Lower Des Plaines, you can see it's IBI score. We  
18 also took the station on Hickory Creek closer to the  
19 confluence of the Lower Des Plaines and reported the  
20 IBI score, and those are all from DNR's data.

21 We also took the Lower Des Plaines  
22 River above I-55 IBI scores from the MBI data, and  
23 also below I-55 bridge from, again, the MBI data.  
24 We couldn't use EA data for IBI scores because they

1 actually did not do -- calculate IBI scores. But we  
2 looked at some 2008 IDNR data, both above and below  
3 the I-55 bridge, and also reported those IBI scores.

4 MS. MEYERS-ELEN: And is there  
5 anything else on that chart that you want to  
6 introduce?

7 MS. BARGHUSEN: Well, we have pictures  
8 of some of the species that we'll be talking a  
9 little bit more about. That's on the back. You can  
10 see a Golden Redhorse, which is a species of special  
11 concern from Chicago Wilderness that was recorded in  
12 Jackson Creek in 2003. You can also see a Rainbow  
13 Darter that was recorded in Jackson Creek in 2003,  
14 and a river red horse, which is a state-threatened  
15 fish that was recruited into the Lower DuPage River  
16 and found there in 2003 below the dam in Channahon.

17 So those are pictures of some of  
18 the species that we're going to be talking more  
19 about as we get into the questions and the ones that  
20 follow.

21 MS. TIPSORD: And if I may, when  
22 you -- on this chart, you have references to  
23 exhibits, for example, Exhibit 20 and Exhibit 43.  
24 Those are exhibits in this proceeding, correct?

1 MS. MEYERS-ELEN: Yes.

2 MS. BARGHUSEN: That's correct.

3 MS. TIPSORD: Thank you.

4 MS. BARGHUSEN: Okay. All right. So  
5 in answer to the question, basically all the species  
6 in Jackson Creek are going to contribute to species  
7 diversity and going to contribute to it having the  
8 highest species diversity of any tributary station  
9 to the Des Plaines River.

10 And I also want to just clarify  
11 from the original question that was answered. I  
12 actually didn't state in my testimony that the Upper  
13 Dresden Pool has a lower species diversity than  
14 Jackson Creek. I didn't make that statement, but  
15 just said that Jackson Creek, as reported by IDNR,  
16 had the highest species diversity of the tributary  
17 stations. So I just wanted to clarify that.

18 MS. FRANZETTI: Okay. Now, with that  
19 clarification, do you have any opinion as to whether  
20 the species diversity in Jackson Creek is, in fact,  
21 higher than the species diversity of the Upper  
22 Dresden Island Pool?

23 MS. BARGHUSEN: You know, I actually  
24 didn't put that data together. But one thing that I

1 would like to point out is that species diversity  
2 isn't the whole story. You can have a lot of  
3 different species that are -- and all of them may be  
4 pretty tolerant of the graded conditions.

5 So species diversity is definitely  
6 not the whole story in terms of how high quality a  
7 system is. And if you want a more complete picture,  
8 you're better off looking at the IBI score tally  
9 because it looks at many different records,  
10 including how many intolerant species you have.

11 But as this question is focused on  
12 species diversity -- but I want to make that point,  
13 that I didn't put together a number of what species  
14 diversity was in the Upper Dresden Island Pool.

15 MS. FRANZETTI: Does Exhibit 341 put  
16 together a number of species diversity? I mean,  
17 is --

18 MS. BARGHUSEN: Yeah, I can look it  
19 up.

20 MS. FRANZETTI: When you refer to  
21 that, do I add up all the rows that are marked?

22 MS. BARGHUSEN: No, I think we can get  
23 a total from it actually. Let's see. Actually,  
24 this isn't going to tell us the whole species

1 diversity in the Dresden Island Pool because we're  
2 only looking here at species that were also in  
3 Jackson Creek. So we're just looking at the subset  
4 of those species. So we can't get it from this, but  
5 I think it's --

6 MS. FRANZETTI: And why did you do  
7 that? Why did you set up the chart that way?

8 MS. BARGHUSEN: The reason I set up  
9 the chart in this way is because what I'm really  
10 concerned with in the testimony is making sure that  
11 species diversity in Jackson Creek does not lower or  
12 degrade over time. Jackson Creek is a creek that  
13 I've done sampling in that I'm familiar with. And  
14 so basically this chart is to look at where in the  
15 system you could have immigration of species back in  
16 the Jackson Creek that are there already.

17 So say you've got a situation  
18 where you had a decline in your population of a  
19 certain species of fish in Jackson Creek, for some  
20 reason like a drought or some other natural  
21 variation, the way that systems recover from that  
22 and continue to have sustained low populations of  
23 animals over time is that animals immigrate back  
24 into that system from some nearby place that has



1 that species.

2                   And so what I was really  
3 interested in here is looking at whether species  
4 could migrate back into Jackson Creek to bolster  
5 species numbers there. And what I'm really  
6 concerned with in my testimony for Jackson Creek is  
7 to ensure that the water quality in the Lower Des  
8 Plaines River is adequate to act as a corridor for  
9 species to travel from other places like the  
10 Kankakee River, for example, the Lower DuPage River,  
11 that confluence of the Lower Des Plaines near  
12 Jackson Creek, to make sure it's an adequate  
13 corridor for them to travel through into Jackson  
14 Creek, and for species to move back and forth  
15 between tributaries.

16                   MS. FRANZETTI: Okay.

17                   MS. BARGHUSEN: So we're looking  
18 at -- what I'm concerned about here is the  
19 conductivity of these tributaries or other rivers in  
20 confluence with the Lower Des Plaines to the Jackson  
21 Creek.

22                   MS. FRANZETTI: Right. Can I ask you  
23 to pause there for a moment so I can ask you some  
24 questions? So with respect to Exhibit 341, are

1 these other water bodies, besides Jackson Creek,  
2 that you have listed here on Exhibit 341, in your  
3 opinion, water bodies that can, as you say, supply  
4 fish to Jackson Creek from which fish migrate to  
5 Jackson Creek?

6 MS. BARGHUSEN: Yes. In my opinion,  
7 they, at least potentially, can offer species to  
8 Jackson Creek.

9 MS. FRANZETTI: And what is that based  
10 on? How did you make the judgment that the Lower  
11 Kankakee River, DuPage River below the Channahon  
12 Dam, Hickory Creek, and then the Lower Des Plaines  
13 upstream and downstream of I-55 would be supply  
14 sources for fish in Jackson Creek?

15 MS. BARGHUSEN: Well, basically  
16 because in terms of not having blockages, such as  
17 dams. These areas are freely, if you will say,  
18 connected to the Lower Des Plaines, which is then  
19 connected to Jackson Creek. You're also not looking  
20 at huge distances here. The tributaries and rivers  
21 and confluence through the Lower Des Plaines are  
22 all, you know, in fairly close proximity to Jackson  
23 Creek. And we know that basically --

24 MS. FRANZETTI: I was just going to

1 ask you -- did you have any, sort of, you know,  
2 reasonable distance cut off that you used in trying  
3 to decide?

4 MS. BARGHUSEN: Well, actually I used  
5 a lot of different things. The Kankakee River  
6 confluence the the Lower Des Plaines is  
7 approximately six and a half miles of the confluence  
8 of Jackson Creek, and I know that, you know, several  
9 species have been documented to move that far.

10 I also looked at where dams are.  
11 Like for the Kankakee River, for example, the three  
12 stations that we listed there are both closer to the  
13 confluence, and there is one dam at Wilmington, but  
14 there's some fish passage around it. So I looked  
15 at, basically, potential conductivity, cause and  
16 terms of not having physical obstacles, and ones  
17 that I thought were in a reasonable distance.

18 And I'm not saying that fish  
19 couldn't go a further distance. I think they  
20 probably could, but I was being kind of conservative  
21 in terms of -- and we know fish that are in  
22 tributaries to a river, ultimately the place they  
23 come from is the river. We have, you know, evidence  
24 that fish have been recruited into other tributaries

1 from the Lower Des Plaines, which I was going to get  
2 into in a later question.

3 MS. FRANZETTI: Right.

4 MS. BARGHUSEN: So that's my basis.  
5 And basically, you know, that's how fish colonize  
6 tributaries, is by coming through the river systems  
7 that they're attached to.

8 MS. MEYERS-ELEN: If I may make a  
9 quick follow-up -- I know that you're going to get  
10 into this more later, provided that we're going  
11 through these questions -- but in the Jackson Creek  
12 report, is there anything that really speaks to what  
13 you're talking about as far as recruiting fish out  
14 of the Des Plaines into Jackson Creek? And then I  
15 think it also talks about Hickory Creek on Page 9  
16 and 10.

17 MS. TIPSORD: Is that Exhibit 339?

18 MS. MEYERS-ELEN: Yeah. Actually it's  
19 just Page 10.

20 MS. BARGHUSEN: Okay. Yeah. On  
21 Page 10 -- this is the Jackson Creek report -- it's  
22 kind of near the end of the first paragraph. The  
23 Illinois Department of Natural Resources has stated  
24 that, "The Jackson Creek Watershed, which is a

1 tributary to the degraded Des Plaines River, is  
2 somewhat isolated from quality recruitment sources  
3 and is more vulnerable to local extirpations  
4 resulting from droughts, floods, or water quality  
5 problems. Therefore, routine monitoring of fish  
6 communities and the sensitive species groups in  
7 particular, is recommended."

8                   So what we're looking at here is,  
9 you know, some really high quality systems, like the  
10 Kankakee River and the Lower DuPage River, that  
11 could provide species to Jackson Creek, and we're  
12 looking to ensure, again, that the Lower Des Plaines  
13 River has adequate water qualities to the corridor  
14 through which the species will travel into Jackson  
15 Creek.

16                   MS. FRANZETTI: You know what's a  
17 little confusing, actually, is that the part you  
18 just read from Exhibit 339 speaks about the fact  
19 that the Jackson Creek Watershed is somewhat  
20 isolated from quality recruitment sources. And  
21 that -- my question is: Is that statement -- does  
22 that statement conflict at all with your selections  
23 of sources --

24                   MS. BARGHUSEN: No. I don't --

1 MS. FRANZETTI: -- of fish to Jackson  
2 Creek, such as the Lower Kankakee or DuPage River  
3 below the Channahon Dam?

4 MS. BARGHUSEN: No. I believe that  
5 statement -- that the reason it's somewhat isolated  
6 is because of water quality problems in the Lower  
7 Des Plaines River. That's what isolates it. That's  
8 what fragments it from the other high quality  
9 habitats. That's the way I interpret that  
10 statement.

11 MS. FRANZETTI: Okay. That's your  
12 interpretation, solely talking about the Lower Des  
13 Plaines?

14 MS. BARGHUSEN: Right.

15 MS. MEYERS-ELEN: There is also a  
16 quote on Page 3 that's also similar, which --

17 MS. BARGHUSEN: Yeah, this is the  
18 bottom of Page 3 of the IDNR Jackson Creek report  
19 starting, "As a tributary to the greater Des Plaines  
20 River, stream quality and distribution of fishes in  
21 Jackson Creek may be affected by the lack of  
22 connection to a high quality river system."

23 MS. FRANZETTI: Okay. Well, so I take  
24 it then that it's your opinion that the Kankakee is

1 not a high quality river system?

2 MS. BARGHUSEN: Not the Kankakee, the  
3 Lower Des Plaines. The Kankakee is a very high  
4 quality river system.

5 MS. FRANZETTI: Right.

6 MS. BARGHUSEN: What this is saying  
7 is --

8 MS. FRANZETTI: But this appears to be  
9 saying that the only system that would feed Jackson  
10 Creek is the degraded Lower Des Plaines, not the  
11 Kankakee.

12 MS. BARGHUSEN: But that's because the  
13 Kankakee is only connected to Jackson Creek through  
14 the Lower Des Plaines. So any fish that's going to  
15 come out of the Kankakee River and enter Jackson  
16 Creek has to pass through a section of the Lower Des  
17 Plaines.

18 MS. FRANZETTI: Okay. And is it your  
19 opinion that none of those fish that are of what you  
20 would consider quality, that is, better than a  
21 tolerant species, can make the passage through the  
22 Lower Des Plaines to get to Jackson Creek from the  
23 Lower Kankakee?

24 MS. BARGHUSEN: It's not necessarily

1 my opinion that that's true. It's my opinion that  
2 there are certainly more sensitive groups in Jackson  
3 Creek that are represented by not very many  
4 individuals.

5                   So in other words, they may be  
6 found, but they're found in small population sizes.  
7 And it's my opinion that if the water quality  
8 improved, that we would be able to see greater  
9 numbers of them and that's what we'd like to see.  
10 It's not absolutely that there could never be some  
11 individuals recruited out of the Lower Des Plaines  
12 River. I think there's evidence they could, because  
13 I think there's evidence that some individuals have  
14 been recruited out of the Lower Des Plaines River  
15 into the DuPage River and also into Hickory Creek.

16                   But we'd like to see higher  
17 numbers of them and more consistent recruitment, and  
18 I think that's what we could move closer to if we  
19 ensured that the water quality was adequate for  
20 those animals to travel. There's not an absolute,  
21 but we're --

22                   MS. FRANZETTI: All right. So it's  
23 your opinion that the species you're talking about  
24 are in Jackson Creek but at lower numbers than you



1 think could be there?

2 MS. BARGHUSEN: Right.

3 MS. FRANZETTI: All right. Let's stop  
4 there for a moment. What species are those? Can  
5 you give us examples here? Is it the blue-lettered  
6 ones and some others? I mean, can you define that a  
7 little better for us what you're talking about?

8 MS. BARGHUSEN: Sure.

9 MS. MEYERS-ELEN: Actually, I think  
10 we're on question 17, if you just want to -- it's  
11 the same. I think you answered that.

12 MS. FRANZETTI: Okay.

13 MS. BARGHUSEN: Yeah, yeah. I think  
14 that's where we're at too, yeah. So as examples,  
15 sucker species, which include the Redhorses in 2003,  
16 were noted in the Jackson Creek report to be at  
17 lower levels than expected, and darter species were  
18 as well, based on available habitat for them in the  
19 creek.

20 And so some examples of species  
21 that we'd like to see more of are the Black  
22 redhorse. One individual Black redhorse was found  
23 during the 2003 Basin Survey of Jackson Creek. We'd  
24 certainly like to see more of those. We have 23

1 individual Black redhorses that were collected at  
2 the three stations of the Lower Kankakee that are  
3 referenced in the chart, and we've got 33 of them  
4 throughout the Kankakee main stem.

5                   And there's evidence from the  
6 Lower DuPage River that one Black redhorse was  
7 recruited into the lower DuPage River and found in  
8 2003. So that's a species that, you know, clearly  
9 you have in low levels in Jackson Creek, but we'd  
10 like to see more of them. Another species which --

11                   MS. FRANZETTI: And can I just ask you  
12 a quick question there to make sure I understand?  
13 So you're saying that in the Lower Kankakee for the  
14 Black redhorse, 23 of them were found in this 2005  
15 survey --

16                   MS. BARGHUSEN: Sample, yeah.

17                   MS. FRANZETTI: Okay. Whereas there's  
18 only one found in Jackson Creek in the 2003 survey  
19 there. Is it -- it's your opinion that the higher  
20 number of redhorse in the Lower Kankakee are not  
21 migrating to Jackson Creek because of the poor water  
22 quality conditions in the Lower Des Plaines River?

23                   MS. BARGHUSEN: I think that we would  
24 be addressing one of the issues that's keeping

1 Jackson Creek from recruiting higher numbers of  
2 these species, yes. I think that that's at least  
3 part of it.

4 MS. FRANZETTI: If we raise the water  
5 quality standards, we make them stricter north of  
6 the I-55 bridge, right? I mean, that's what you're  
7 saying?

8 MS. BARGHUSEN: (Nodding).

9 MS. FRANZETTI: You have to answer yes  
10 or no.

11 MS. BARGHUSEN: Yes. I mean, I think  
12 that you're going to improve certainly the chances  
13 that you'll have greater numbers of these animals  
14 able to colonize Jackson Creek from other high  
15 quality recruitment sources, like the Kankakee, like  
16 the Lower DuPage if water quality improves. I'm not  
17 saying it's the only issue. It may not be, but I  
18 think it's an important one.

19 MS. MEYERS-ELEN: If I can follow up,  
20 you're talking about sucker species and Black  
21 redhorse being intolerant. Do they migrate?

22 MS. BARGHUSEN: They do migrate, yeah.  
23 They're migratory species.

24 MS. MEYERS-ELEN: And are there any

1 barriers between the Lower Kankakee River and the  
2 Lower DuPage and Jackson Creek that would bar the  
3 Lower Des Plaines River from acting as a corridor?

4 MS. BARGHUSEN: No, there aren't.

5 MS. MEYERS-ELEN: And are there any  
6 other intolerant fish species found in Jackson Creek  
7 but not in the Lower Des Plaines River that are  
8 intolerant that you would also like to see in  
9 Jackson Creek that are, say, either in the Lower  
10 Kankakee or DuPage?

11 MS. BARGHUSEN: Yeah. The river  
12 redhorse, which is a state-threatened species, was  
13 recruited into the Lower DuPage River and found  
14 there in 2003 in an IDNR survey, and their  
15 conclusion was that those river redhorse had to have  
16 come from the Lower Des Plaines River and been  
17 recruited in.

18 We'd like -- we haven't had  
19 reports during sampling of river redhorse from  
20 Jackson Creek, but that's an example of a fish that  
21 was recruited into the Lower DuPage and that we  
22 think could be recruited into -- potentially into  
23 Jackson Creek as well, and that's a state-threatened  
24 species.

1                   And we feel that, again,  
2   improvement in water quality in the Lower Des  
3   Plaines is going to improve the ability to act as a  
4   corridor for fish. And fish, they do -- they move  
5   around. The sucker species are migratory species.  
6   Even species that aren't migratory do disperse, and  
7   the way these tributaries get these species is from  
8   the rivers to which they connect.

9                   MS. FRANZETTI: Okay. Move on?

10                  MS. BARGHUSEN: Sure.

11                  MS. FRANZETTI: With respect to your  
12   chart, it seems visually -- you'll correct me if I'm  
13   wrong -- that the 2004 -- second to last  
14   column -- 2004 species list for the Lower Des  
15   Plaines River upstream of I-55, which is the section  
16   involved in this proceeding, has perhaps just  
17   seconds to Jackson Creek in terms of number of  
18   species collected in that survey. Would you you  
19   agree with that?

20                  MS. MEYERS-ELEN: Are you talking  
21   about the EA report?

22                  MS. FRANZETTI: The second to last  
23   column, mm-hmm.

24                  MS. BARGHUSEN: Yeah. I mean, there

1 were definitely many species collected in the EA  
2 report. However, there were some that were not  
3 collected in which we're interested in. And an  
4 example, this is a Black redhorse, which you were  
5 just talking about. And again, I -- you know, I  
6 think that clearly there is evidence that the Lower  
7 Des Plaines has improved in water quality over time,  
8 and we'd like to see it continue to improve and act  
9 as a better corridor, and protect the species that  
10 are there and allow other species in greater numbers  
11 to move through as they migrate from high quality  
12 habitat to high quality habitat.

13 MS. MEYERS-ELEN: Can I ask a --

14 MS. FRANZETTI: I understand that.  
15 Counsel, give me a moment, please, to finish the  
16 point.

17 But those species are right there  
18 right now in the Upper Dresden Island Pool area and  
19 can, therefore, serve as a supply to Jackson Creek,  
20 right, the ones that are marked yes on here?

21 MS. BARGHUSEN: Yes.

22 MS. FRANZETTI: Okay.

23 MS. BARGHUSEN: But that's not --

24 MS. FRANZETTI: Okay. Bear with me.

1 And, for example, some of the species that you'd  
2 find in Jackson Creek, you don't find in these other  
3 water bodies, Lower Kankakee, for example, that have  
4 better water quality. They're not marked here yes  
5 on your list.

6 So that seems to undercut your  
7 opinion that if we raise the water quality standards  
8 in the lower Dresden -- the Upper Dresden Island  
9 Pool, these species are then going -- the result is  
10 going to be that these species are going to be  
11 present and migrate into Jackson Creek.

12 MS. BARGHUSEN: Let me say this, and  
13 you can tell me if this addressed most of your  
14 concern. If you look at -- as we said before, one  
15 of the reasons that Jackson Creek is of such concern  
16 is that it has several intolerant species in it.  
17 And again, those are listed in blue. We've got the  
18 Southern redbelly dace, which -- and if you look  
19 at --

20 MS. FRANZETTI: It doesn't show up at  
21 any of the other ones, right.

22 MS. BARGHUSEN: Right. It is in the  
23 Kankakee, but it's not in one of those three  
24 stations that was in close proximity. But it is in

1 the Kankakee.

2                   And then again, if you look at the  
3 Hornyhead chub, you don't see it in the upstream  
4 I-55 2004 data. If you look at the Black redhorse,  
5 you don't see it in the upstream I-55 EA data. If  
6 you look at the Slender madtom, again, you don't see  
7 it. You do see small mouth bass. If you look at  
8 rainbow dart, you don't see it.

9                   So a lot of the species that we're  
10 really concerned with that are most intolerant and  
11 that make Jackson Creek something really special  
12 you're actually not seeing there.

13                   MS. FRANZETTI: Did you do any review  
14 to determine whether or not the habitat in the Upper  
15 Dresden Island Pool is conducive to those species?

16                   MS. BARGHUSEN: I am not -- I did not  
17 study the habitat of Upper Dresden Island Pool. But  
18 again, species move around and come into tributaries  
19 through the river. We know these are intolerant  
20 species of degraded and polluted conditions. And,  
21 you know, again, we believe that improving water  
22 quality would improve their ability to safely travel  
23 through the system.

24                   And one thing that -- and again,



1 the fact that they're in low quantity in Jackson  
2 Creek, I think, you know, could be evidence of  
3 they're not moving -- let me turn that around.

4                   What we'd like to see is them  
5 being in higher quantity in Jackson Creek, and we  
6 believe that improving the water quality in the  
7 Lower Des Plaines is going to improve their chance  
8 of them safely traveling through it from areas like  
9 the Kankakee where they are in higher quality. And  
10 the fact that they're in lower quantity in Jackson  
11 Creek is one of the things that IDNR points out in  
12 the Jackson Creek report and links possibly to  
13 the -- to lower quality in the Lower Des Plaines  
14 River.

15                   MS. MEYERS-ELEN: Can I follow up just  
16 briefly?

17                   MS. FRANZETTI: Yes.

18                   MS. MEYERS-ELEN: Thanks. If you look  
19 at the chart and you look at the EA report, in 2004,  
20 first of all, who was that report constructed for?

21                   MS. BARGHUSEN: I think it was  
22 constructed for Midwest Generation.

23                   MS. MEYERS-ELEN: Okay. And then  
24 there's also a report on here from IDNR, correct,

1 the Lower Des Plaines River?

2 MS. BARGHUSEN: That's right.

3 MS. MEYERS-ELEN: And there are ones  
4 both upstream and downstream of I-55?

5 MS. BARGHUSEN: Yes.

6 MS. MEYERS-ELEN: Why do you have  
7 more -- albeit tolerant -- but more species for the  
8 EA 2000 report than you do for the IDNR one?

9 MS. BARGHUSEN: Basically EA did a  
10 much more intensive sampling in that area. There  
11 were many more sample points than IDNR had in that  
12 area, since IDNR was doing a much broader survey.  
13 So the efforts by EA sampling that small area  
14 upstream of the I-55 bridge was much greater, and so  
15 you would expect that they would collect more  
16 species.

17 MS. MEYERS-ELEN: Does the number of  
18 species collected -- are you saying that even though  
19 you got a lot more tolerant species collected, that  
20 doesn't mean that the balance of intolerant species  
21 or species indicative of higher quality water is,  
22 for in the EA report, anywhere near where it would  
23 be for Jackson Creek. Is that correct?

24 MS. BARGHUSEN: Yeah. As I was saying

1 before, species diversity for a number of species is  
2 definitely not the whole story. You also look at  
3 other metrics, like how many of them are tolerant  
4 and intolerant of degraded conditions. You look at  
5 the number of each kind that you find, and then you  
6 generate an IBI score. And the EA actually did not  
7 generate IBI scores from their data, so I cannot  
8 compare them to the IBI scores that IDNR generated.

9 But above I-55 for the Lower Des  
10 Plaines River, IDNR came up with an IBI score of 29.  
11 You can see it in your chart.

12 MS. MEYERS-ELEN: It's on the back of  
13 341.

14 MS. BARGHUSEN: It's on the back of  
15 the chart. Again, EA -- we didn't report what IBI  
16 score they got from the fish they collected because  
17 they didn't generate it.

18 But what you're looking at is a  
19 system with a much lower IBI score than Jackson  
20 Creek had based on the IDNR data. And again, we'd  
21 like to see water quality improve so that, you know,  
22 some of the more sensitive species can more  
23 effectively use the Lower Des Plaines.

24 MS. MEYERS-ELEN: And the IBI data is

1 the same, as far as showing that the Lower Des  
2 Plaines River has -- the Jackson Creek IBI figures  
3 are higher than those for the Lower Des Plaines  
4 River. Is that correct?

5 MS. BARGHUSEN: Right. That's  
6 correct.

7 MS. FRANZETTI: May I continue now,  
8 Counsel?

9 MS. MEYERS-ELEN: Yes.

10 MS. FRANZETTI: Thank you. With  
11 respect to the Lower Kankakee River stations and  
12 Jackson Creek, for a fish to get from the Lower  
13 Kankakee River stations you've got here to Jackson  
14 Creek, how much of the Upper Dresden Island Pool  
15 north of the I-55 bridge does that fish have to  
16 traverse?

17 MS. BARGHUSEN: Well, it's about six  
18 and a half miles from the confluence of the Kankakee  
19 to the confluence of Jackson Creek. In terms of  
20 exactly how much --

21 MS. FRANZETTI: And how much of that  
22 mileage is north of the I-55 bridge, Ms. Barghusen?

23 MS. BARGHUSEN: Let's see if we can  
24 get that.

1 MS. FRANZETTI: Approximately.

2 MS. BARGHUSEN: Well, I think it's  
3 about two and a half -- well, yeah, it's somewhere  
4 probably between one and a half and two miles I  
5 would say.

6 MS. FRANZETTI: From the I-55 bridge  
7 to get to Jackson Creek?

8 MS. BARGHUSEN: I think so, because I  
9 think you're looking at about four and a half miles  
10 from the Kankakee confluence to the DuPage River  
11 confluence, and then you're looking at about two and  
12 a half -- actually, you know what, I'd rather look  
13 at --

14 MS. MEYERS-ELEN: Can we just have a  
15 second so we can get the right map?

16 MS. BARGHUSEN: We're going to have a  
17 second so we can do something other than estimate.  
18 It looks like it's about a mile.

19 MS. MEYERS-ELEN: We're looking at the  
20 EA report generated from Midwest Generation.

21 MS. BARGHUSEN: We have a close up of  
22 this.

23 MS. FRANZETTI: And what is it in that  
24 mile right now and what are the conditions that

1 you're saying are a barrier to any of the fish from  
2 these downstream locations that are on your chart  
3 going through that mile of water into Jackson Creek?

4 MS. BARGHUSEN: Well, we'd like to see  
5 higher water quality standards in that area.

6 MS. FRANZETTI: For what? What's  
7 going -- what do you think needs to change? Which  
8 parameters are you talking about that you think in  
9 that mile run are preventing these fish from  
10 swimming through?

11 MS. BARGHUSEN: Well, I think that the  
12 higher water quality standards for a number of  
13 parameters would have a positive impact.

14 MS. FRANZETTI: Okay. Which ones?

15 MS. BARGHUSEN: For example, dissolved  
16 oxygen to the extent that the aquatic life -- using  
17 oxygen needs -- that higher dissolved oxygen levels,  
18 I think, would be more protective, and ammonia  
19 nitrogen levels, I think, would be more protective  
20 and are important for fish in early life  
21 stages. They're also important for other aquatic  
22 life, like muscle larva are very sensitive to that.

23 So I think, you know, the number  
24 of the constituents and having higher water quality

1 standards as proposed by IEPA would improve the  
2 ability of that to sustain the more sensitive  
3 species.

4 MS. FRANZETTI: Okay. Do you know  
5 whether there's any sampling stations in that  
6 corridor, that one-mile corridor we're talking about  
7 that have recorded what the D.O. or ammonia nitrogen  
8 levels typically are?

9 MS. BARGHUSEN: I'm not familiar with  
10 that.

11 MS. FRANZETTI: Okay.

12 MR. ETTINGER: Can I ask whether  
13 you're aware there are currently dissolved oxygen  
14 violations at the I-55 bridge or whether there have  
15 been dissolved oxygen violations at the I-55 bridge  
16 over the last five years?

17 MS. BARGHUSEN: I actually don't know.

18 MS. FRANZETTI: Okay. Why don't we  
19 move to question four. I think you've answered this  
20 in part, but I just want to make sure you have told  
21 me everything you do want to respond to question  
22 four with, and this is the request for you to  
23 explain further what you mean by the statement,  
24 quote, "Tributaries recruit species from connecting

1 rivers when local events, such as pollution or  
2 drought, result in a decline in numbers."

3 MS. BARGHUSEN: Okay. Yeah, what I  
4 mean is basically that species are going to be  
5 susceptible to extinction if they're isolated from  
6 other areas that could supply new species if some  
7 kind of event, such as a drought, caused the decline  
8 in species number in that location. And the smaller  
9 the isolated population is, the more likely and the  
10 more quickly that population can disappear as a  
11 result of local events.

12 MS. FRANZETTI: So this really ties  
13 back to your belief that in that approximately  
14 one-mile corridor there is currently a barrier  
15 to -- and the barrier being the lower water quality,  
16 as you've termed it, in that section of the Upper  
17 Dresden Island Pool, that that would prevent, in the  
18 event of drought hitting Jackson Creek, any of the  
19 same species of fish getting there to repopulate it?

20 MS. BARGHUSEN: I'd probably change  
21 your statement in some places. Basically a drought  
22 is an example of a type of damaging local event that  
23 can happen. And yes, we're -- you know, we do think  
24 that water quality in the Lower Des Plaines River



1 does, at least to a certain extent -- and again,  
2 probably not absolutely -- but to a certain extent  
3 results in lower numbers of fish in Jackson Creek  
4 that we would like to see, and does -- and we are  
5 concerned that if there were damaging local events  
6 that some of those species either couldn't be  
7 recruited back into Jackson Creek or, you know,  
8 they're already at pretty low numbers. We don't  
9 have the numbers that we'd like to see for a  
10 sustainable population over time.

11 MS. MEYERS-ELEN: Does Hickory Creek  
12 provide a healthy correlation for this point?

13 MS. BARGHUSEN: Yeah, it does, and I  
14 actually have a quote. Do we need to introduce  
15 Hickory Creek?

16 MS. MEYERS-ELEN: Yeah? At this point  
17 I'd like to offer into evidence an IDNR report for  
18 Hickory Creek called Status for Fish Communities and  
19 Stream Quality in the Hickory Creek Watershed in  
20 June 2006 from the Division of Fisheries, Region 2  
21 Streams Program.

22 MS. BARGHUSEN: Here we're going to  
23 look at --

24 MS. TIPSORD: Excuse me, wait. If

1 there's no objection, we will admit the IDNR Status  
2 of fish Communities and Stream Quality in the  
3 Hickory Creek Watershed, June 2006, as Exhibit 342.  
4 Seeing no objection, it's Exhibit 342. Okay. Go  
5 ahead, Ms. Barghusen.

6 MS. BARGHUSEN: Okay. So the Illinois  
7 Department of Natural Resources, in this 2006  
8 Hickory Creek report, basically underscores the  
9 importance of conductivity and water quality when it  
10 says -- and again, this is Page 3, first  
11 paragraph, "In addition to the existing habitat  
12 problems and possible water quality limitations,  
13 Hickory Creek is also affected by lack of connection  
14 to a high quality large river recruitment source.  
15 The Lower Des Plaines River is water quality  
16 impaired and has reduced fish diversity compared to  
17 unimpaired rivers in a region, e.g. the Kankakee  
18 River. As a result, Hickory Creek has fewer species  
19 than many similar small sized watersheds with only  
20 four intolerant species present." This is the  
21 tributary to the Lower Des Plaines just north of  
22 Jackson Creek.

23 So they -- the Illinois Department  
24 of Natural Resources called out the Lower Des



1 is it's not clear whether or not pollution is  
2 currently causing the decline in species numbers in  
3 Jackson Creek?

4 MS. BARGHUSEN: Right.

5 MS. FRANZETTI: All right. So the  
6 rest of that question you can't answer, because you  
7 don't know whether it is the case.

8 All right, number six, have  
9 drought conditions caused a decline in aquatic  
10 species numbers in Jackson Creek?

11 MS. BARGHUSEN: Yeah. In 2003, IDNR  
12 found -- well, let me preface this to say that  
13 there's actually not a stream gauge station, a U.S.  
14 GS gauging station for Jackson Creek, but there is  
15 on Hickory Creek, which is an adjacent watershed.  
16 And records from the Hickory Creek station show a  
17 period of below average flow in 2002 during the  
18 winter and also during the spring of 2003.

19 MS. FRANZETTI: And in your opinion,  
20 was the below average flow a drought condition?

21 MS. BARGHUSEN: Yes, or at least  
22 a -- I'm not sure exactly how to define drought, but  
23 certainly --

24 MS. FRANZETTI: Well, that's a term

1 you used in your testimony. So why don't you tell  
2 me how you define drought.

3 MS. BARGHUSEN: Yes. All right. It  
4 was enough that during some pre-survey recognizance  
5 that IDNR did in Jackson Creek in the upper  
6 Watershed. They observed very low water levels and  
7 fish mortality as a result of those low water  
8 levels.

9 MS. FRANZETTI: And are you relying on  
10 one of those exhibits for that information?

11 MS. BARGHUSEN: Yeah, that's the  
12 Jackson Creek Basin report.

13 MS. MEYERS-ELEN: It's Page 9 of  
14 Exhibit 399?

15 MS. BARGHUSEN: Yes.

16 MS. FRANZETTI: Now, moving on to  
17 question seven, in the event of a drought in Jackson  
18 Creek -- whether or not that 2003 level qualifies or  
19 not is, I think, immaterial for this question -- but  
20 in the event of a drought in Jackson Creek, will the  
21 adverse affects on aquatic life from such drought  
22 conditions also be present in the Upper Dresden  
23 Pool?

24 MS. BARGHUSEN: And I would say no,

1 because it's such a larger and deeper system. But  
2 you could, you know, easily get a situation where  
3 Jackson Creek is suffering from very low flow  
4 conditions due to drought, where the Lower Des  
5 Plaines would not be suffering from that.

6 And in that case, you know,  
7 obviously we'd like to see the Lower Des Plaines  
8 acting as a corridor where mixed species can  
9 recolonize or perhaps even as a refuge for species  
10 in Jackson Creek.

11 MS. FRANZETTI: Right. Did you, by  
12 any chance, compare the 2003 water levels that you  
13 were talking about in your prior answer to 2003  
14 levels in Upper Dresden Pool to see if there was any  
15 similarities?

16 MS. BARGHUSEN: No.

17 MS. FRANZETTI: Okay.

18 MS. BARGHUSEN: But as I said before,  
19 it's such a deeper system that you would not expect  
20 to see the same kind of -- the same kind of  
21 reduction in water levels.

22 MS. FRANZETTI: Moving on to question  
23 eight, do you know what the extent of the good or  
24 high quality aquatic habitat is in Jackson Creek?

1 MS. BARGHUSEN: I have a general  
2 understanding of the habitat from my fish  
3 composition work there.

4 MS. FRANZETTI: All right. First,  
5 what do you mean by a general understanding? Just  
6 from visual observation from your personal trips to  
7 Jackson Creek?

8 MS. BARGHUSEN: Yeah. We have an  
9 exhibit coming around of photos that I and a  
10 colleague took of the Lower Jackson Creek as it runs  
11 through the Joliet army training facility --

12 MS. MEYERS-ELEN: If you just can hold  
13 on just one second. We would offer into evidence  
14 some photographs entitled Jackson Creek Joliet  
15 Training Area, 2005, Laura Barghusen, Openlands,  
16 October 5th, 2009.

17 MS. TIPSORD: If there's no objection,  
18 we will admit these photographs as described by  
19 counsel as Exhibit 343. Seeing none, the Jackson  
20 Creek Joliet Training Area pictures from 2005 are  
21 admitted as Exhibit 343.

22 MS. BARGHUSEN: So if you look at  
23 these pictures, you can see that the lower part of  
24 Jackson Creek has a lot of ripple development,

1 cobble and gravel bottoms, low non-eroded banks, as  
2 we saw as we walked along the creek. And basically,  
3 the -- as it is reported in the Jackson Creek 2003  
4 IDNR report, you've got a higher grading in the  
5 downstream areas, and I think that's reflected in  
6 these pictures.

7 So yes, it's based on my  
8 observations of looking at the creek in areas I've  
9 walked or in areas that I've been sampling with IDNR  
10 and also in reviewing reports.

11 MS. MEYERS-ELEN: Does that also  
12 correlate with the IBIs that you saw for this area?

13 MS. BARGHUSEN: Yes. It's a  
14 habitat -- yes. The lower -- the IBIs from the  
15 lower part of Jackson Creek are higher, and this is  
16 also where I observed high quality has been at that  
17 time of good ripple development and where the  
18 grading was higher.

19 MS. FRANZETTI: Can you just give me  
20 some idea of what the stretch is we're talking  
21 about, the length of the stretch you're talking  
22 about that's illustrated by the photos you've taken  
23 in Exhibit 340?

24 MS. BARGHUSEN: Yeah. Let me just



1 check out the Jackson report to make sure. I think  
2 that was Page 14.

3 All right. And I'm looking at  
4 Page 19 of the Jackson Creek Basin Survey report.

5 MS. TIPSORD: Which is Exhibit 339.

6 MS. BARGHUSEN: And you've got stipple  
7 in the lower part of the map, the Joliet training  
8 area, and that is kind of windy. I think it's  
9 probably at least five miles of creek, it looks like  
10 from the scale bar here.

11 MS. MEYERS-ELEN: And that's the  
12 portion that actually connects to the Lower Des  
13 Plaines, correct?

14 MS. BARGHUSEN: Right. That's the  
15 portion that's close to the confluence of the Lower  
16 Des Plaines.

17 MS. FRANZETTI: Okay. So do I  
18 understand correctly that Exhibit 340 represents  
19 those five miles of Jackson Creek, what they look  
20 like?

21 MS. TIPSORD: Exhibit 343.

22 MS. FRANZETTI: 343, I'm sorry.

23 MS. TIPSORD: 340 is the Des Plaines  
24 report.

1 MS. FRANZETTI: Right. Thank you.

2 MS. BARGHUSEN: Yes.

3 MS. FRANZETTI: Okay. Now, with  
4 respect -- and so that entire five-mile stretch, in  
5 your opinion, has good or high quality of flat  
6 habitat. Is that what you're telling us?

7 MS. BARGHUSEN: Certainly the stations  
8 JC-2 and JC-1 do on the map. Once you get towards  
9 the margin of it towards the east at JC-3, the  
10 aquatic habitat is not as good, but yes.

11 MS. FRANZETTI: Okay. I'm sorry.  
12 Again, let me just make sure I understand. Is the  
13 stretch from JC-1 to JC-2, is that the five-mile  
14 stretch?

15 MS. BARGHUSEN: The five-mile stretch  
16 I was talking about would be from JC-2 all the way  
17 to the confluence with the Lower Des Plaines. And  
18 the Lower Des Plaines is not noted on this map, but  
19 if you just follow the creek west from JC-1 and then  
20 north, it shows at the end of the confluence.

21 MS. FRANZETTI: Okay.

22 MS. BARGHUSEN: So basically if you  
23 take JC-2 to the confluence.

24 MS. FRANZETTI: All right. That's --

1 from JC-2 to the confluence with the Lower Des  
2 Plaines River, that's the area you believe as either  
3 good or high quality habitat?

4 MS. BARGHUSEN: Yes.

5 MS. FRANZETTI: Okay. That's what I  
6 was trying to understand.

7 MS. BARGHUSEN: Okay.

8 MS. FRANZETTI: Now I think we can  
9 move on to question nine.

10 MS. BARGHUSEN: Okay.

11 MS. FRANZETTI: Please describe  
12 generally the gradient, the extent of the  
13 availability of ripples, and the typical substrate  
14 composition of Jackson Creek. And if you want to  
15 divide again, you know, based on Page 19 of  
16 Exhibit 339, you know, what area you're talking  
17 about, please feel free to do so.

18 MS. BARGHUSEN: Okay. All right.

19 Yeah, JC-1 and JC-2 have diverse habitat, abundant  
20 ripples, and, of course, substrate. When you get to  
21 JC-3 and JC-4 a little bit higher in the watershed,  
22 you're getting areas with less diverse habitat.  
23 They have a lower gradient and not much ripple  
24 development there, a substrates of sand, silt,

1 gravel, and cobble.

2                   And stations JC-5 and JC-,2 which  
3 is a branch station not the main stem, mostly have  
4 fine substrate and poor channel stability. All the  
5 tributary stations that were sampled on Jackson  
6 Creek were influenced by lack of diverse habitat,  
7 based on channel modifications in the past.

8                   So basically what you're looking  
9 at is the lower part of Jackson Creek having really  
10 diverse and high quality habitat, and as you go up  
11 the watershed and get more into the tributaries,  
12 you're seeing a less diverse habitat.

13                   MS. FRANZETTI: Okay. Moving on to  
14 question ten.

15                   MS. MEYERS-ELEN: If I may just really  
16 quickly follow up, I just have one question. When  
17 you were talking before about the drought and  
18 pollution -- strike that.

19                   When you were talking about  
20 pollution, and you were referencing how there were  
21 some dips in the IBIs in the Manhattan General  
22 Branch, however, you saw a rise in IBIs actually  
23 around JC-2, can you -- now that we have context,  
24 can you describe then where you saw the IBIs go up

1 compared to where they went down in that river  
2 system?

3 MS. BARGHUSEN: I'm not sure I  
4 understand your question.

5 MS. MEYERS-ELEN: Probably because it  
6 wasn't very clear. When you were talking right now  
7 about JC-1 and JC-2 in the JT area, is that the area  
8 where you actually saw the IBIs go up?

9 MS. BARGHUSEN: You mean where they  
10 had higher IBIs?

11 MS. MEYERS-ELEN: Correct.

12 MS. BARGHUSEN: Yes.

13 MS. MEYERS-ELEN: And when you were  
14 talking about habitat not being as good, that's  
15 where you saw the IBIs go down?

16 MS. BARGHUSEN: Right, they have lower  
17 IBIs -- yes, the downstream stations, JC-1, JC-2,  
18 JC-3, have higher IBIs.

19 MS. MEYERS-ELEN: Thanks.

20 MS. FRANZETTI: Moving on to question  
21 ten, if you can, would you please compare the  
22 information you've just provided in response to my  
23 questions eight and nine above to the stream  
24 characteristics of and the amount and extent of good

1 quality aquatic habitat in the Upper Dresden Island  
2 Pool?

3 MS. BARGHUSEN: And I haven't studied  
4 the structural habitat of the Upper Dresden Island  
5 Pool.

6 MS. FRANZETTI: Okay. So you can't do  
7 that comparison?

8 MS. BARGHUSEN: Right.

9 MS. FRANZETTI: That's fine. Moving  
10 on to question 11, do you know what the extent of  
11 sedimentation siltation deposits are in Jackson  
12 Creek? Let's start with that one.

13 MS. BARGHUSEN: You know, besides  
14 talking about the substrate at the different  
15 stations, no.

16 MS. FRANZETTI: So your information is  
17 limited to what was reported in the IBI --

18 MS. BARGHUSEN: That's right.

19 MS. FRANZETTI: -- information at  
20 those specific stations?

21 MS. BARGHUSEN: That's right. In  
22 terms of sedimentation, yes.

23 MS. FRANZETTI: And now that we've got  
24 those reports, we can all read that, so I'm not

1 going to tread you through that, which I'm sure  
2 you'll be happy to hear. And so we'll skip the  
3 second part of 11.

4 MS. BARGHUSEN: Okay.

5 MS. FRANZETTI: Because I don't  
6 think -- you can't do that? You haven't compared  
7 that?

8 MS. BARGHUSEN: No, no.

9 MS. FRANZETTI: Okay. Moving on to  
10 number 12, do you know if CFO events affect the  
11 levels of dissolved oxygen in Jackson Creek?

12 MS. BARGHUSEN: I have not monitored  
13 water chemistries, so I don't know.

14 MS. FRANZETTI: Okay. Number 13, is  
15 there barge traffic in Jackson Creek?

16 MS. BARGHUSEN: No. There is no barge  
17 traffic in Jackson Creek.

18 MS. FRANZETTI: 14 -- we're really on  
19 a roll here. Let's keep going because I know  
20 everybody's getting hungry, including me, but I'd  
21 like to finish my questions.

22 Number 14, is Jackson Creek an  
23 impounded waterway like the Upper Dresden Island  
24 Pool?

1 MS. BARGHUSEN: No, it isn't.

2 MS. FRANZETTI: Number 15, explain how  
3 improving the water quality of the Upper Dresden  
4 Island Pool will, quote, "Help maintain the higher  
5 degree of biological diversity." You know, I think  
6 we've already answered that question. Do you agree?

7 MS. TIPSORD: Yeah, we've already  
8 answered that.

9 MS. FRANZETTI: Exactly. Skipping 15.  
10 16, let me read it to myself for a movement. Maybe  
11 we've covered it too. We maybe touched on this, but  
12 I'm just going to give you the opportunity to  
13 respond to it fully, to the extent you don't think  
14 you have in our previous questions here.

15 So number 16, explain how the  
16 proposed aquatic life use designation for the Upper  
17 Dresden Island Pool will result in better habitat  
18 conditions in the Pool as referred to in the last  
19 paragraph of your testimony on Page 7.

20 MS. BARGHUSEN: Here I was really,  
21 again, referring to improving the conductivity of  
22 the areas that attach to the lower Des Plains, as  
23 we, I think, we have gone through.

24 MS. FRANZETTI: So did you really not



1 intend so say better habitat conditions, but rather  
2 better water quality conditions.

3 MS. BARGHUSEN: You know, from my  
4 perspective, conductivity is a really important part  
5 of habitats. If you have isolated habitats and you  
6 can't get immigration of species, then you have a  
7 habitat problem. It's not the same thing as  
8 structural habitat.

9 MS. FRANZETTI: I understand, but how  
10 will increasing --

11 MS. MEYERS-ELEN: I'm sorry. Can you  
12 just let her answer?

13 MS. FRANZETTI: Well, you know what,  
14 in light of the hour, you can bring out more if  
15 you'd like. But I'd like to actually get to the  
16 point of my question, which is how does raising the  
17 use classification in the Upper Dresden Island Pool  
18 itself result in better habitat conditions?

19 MS. BARGHUSEN: Because if it creates  
20 a corridor through which sensitive species can  
21 travel into Jackson Creek, it improves the  
22 conductivity of high quality habitats in Jackson  
23 Creek to high quality habitats close by that could  
24 supply species to Jackson Creek.

1 MS. FRANZETTI: And so in your  
2 opinion, the way you use the term, having that  
3 connection between the two bodies of water means  
4 having better habitat conditions where the  
5 connection now is?

6 MS. BARGHUSEN: Yes.

7 MS. FRANZETTI: Okay.

8 MS. BARGHUSEN: I think the connection  
9 conductivity is an extremely important part of  
10 habitats.

11 MS. FRANZETTI: All right. Moving on  
12 to question 17, I think we have answered that  
13 question, unless there's anything you wanted to add.

14 MS. BARGHUSEN: I also feel we've  
15 answered that question.

16 MS. FRANZETTI: Okay. Question 18,  
17 assuming there are fundamental differences between  
18 the characteristics of and availability of good  
19 quality habitat as to Jackson Creek and the Upper  
20 Dresden Island Pool, do you still expect the Upper  
21 Dresden Island Pool so serve as a significant  
22 recruitment source for fishes, in particular, small  
23 stream specialist fishes?

24 MS. MEYERS-ELEN: I would object to

1 the point that this does call for speculation. If  
2 she wants to answer based on the fact that it is an  
3 assumption --

4 MS. FRANZETTI: She doesn't have to  
5 answer it if she doesn't feel comfortable answering  
6 it.

7 MS. BARGHUSEN: I'll answer it. Yes.  
8 I mean, even assuming it's true that there is less  
9 quality habitat in the Upper Dresden Pool -- and I'm  
10 not saying there is because I haven't studied  
11 it -- but even assuming that, I think one of the  
12 things we're really concerned with, as I've said  
13 before, is the ability of the Upper Dresden Island  
14 Pool to act as a corridor through which fish can  
15 travel from other high quality habitats into the  
16 high quality habitat of Jackson Creek.

17 And the fact that the fish  
18 sampling site below the Channahon Dam on the DuPage  
19 River -- they found nine additional species that  
20 were recruited out of the Lower Des Plaines below  
21 the I-55 bridge into the DuPage River. We basically  
22 would like to -- you know, I think that that shows  
23 that species are recruited out of the river into  
24 tributaries, and we'd like to see the Lower Des

1     Plaines -- or the Upper Dresden Island Pool have  
2     improved water quality to better act as this  
3     corridor.

4                     And I think in terms of talking  
5     about whether -- I think in terms of the small  
6     stream specialist question, that's not quite as  
7     clear-cut as that, because even if a species might  
8     be -- might not live in a small creek for its entire  
9     life, you still may have juveniles using that creek  
10    as a nursery ground. So it's not clear-cut that  
11    only small stream specialists will come into small  
12    streams. Again, fish migrate. Fish move around.  
13    The way the fish colonize in these tributaries is  
14    through the river to which they connect.

15                    And so yes, I think that even if  
16    there are fundamental habitat differences between  
17    the Upper Dresden Island Pool and Jackson Creek that  
18    the Upper Dresden Island Pool still supplies species  
19    to the creek and acts as a corridor for species  
20    coming out of other tributaries into the creek, and  
21    that that can be enhanced if the water quality in  
22    the Upper Dresden Island Pool is improved.

23                    MS. FRANZETTI: Any data you can point  
24    us to that shows that Jackson Creek is used as a

1 nursery ground by fish that don't -- they're not  
2 suitable to stay there once they're grown?

3 MS. BARGHUSEN: I don't have evidence  
4 that they are now. This is something that I'd like  
5 to see with the River Redhorse. But River Redhorses  
6 have not been found in Jackson Creek. That was one  
7 of the species that was recruited into the Lower  
8 DuPage and found during the 2003 sample we'd like to  
9 see also in Jackson Creek, which is not currently in  
10 Jackson Creek.

11 MS. FRANZETTI: All right. So the  
12 answer to my question is no, there's no data showing  
13 that juveniles of non-small stream specialist fishes  
14 are using Jackson Creek as a nursery ground?

15 MR. ETTINGER: Excuse me. I think the  
16 question was misunderstood here. I'd like to  
17 object. I believe Ms. Franzetti is talking about  
18 the potential impact on the Lower Des Plaines of  
19 breeding grounds in Jackson Creek, and you're  
20 talking about how the river is affecting Jackson  
21 Creek.

22 MS. FRANZETTI: Let me clarify my  
23 question. You made the comment that with respect to  
24 small stream specialist fishes, you didn't believe

1 that the inquiry here should be limited to small  
2 stream specialist fishes residing in Jackson Creek,  
3 right?

4 MS. BARGHUSEN: Yeah.

5 MS. FRANZETTI: Because -- stay with  
6 me --

7 MS. BARGHUSEN: Like you can't take a  
8 fish and say this is a small stream specialist or  
9 this is a large river specialist because --

10 MS. FRANZETTI: Okay.

11 MS. BARGHUSEN: -- they may be using  
12 different areas and different life phases.

13 MS. FRANZETTI: Okay. But weren't you  
14 also making the point that you thought even the  
15 large stream specialist fishes, whatever species may  
16 be included in that group, may use Jackson Creek as  
17 a nursery? I thought that was your other point,  
18 that there can be juveniles who are there  
19 temporarily before they move on as adults, right?  
20 Isn't that what you said?

21 MS. BARGHUSEN: Right.

22 MS. FRANZETTI: Okay. So my question  
23 is: What of those types of fish do you believe use  
24 Jackson Creek as a nursery ground? That's all I'm

1     trying to ask.  Is that just theory or is that  
2     reality?

3                   MS. BARGHUSEN:  I would not want to  
4     make the statement that there are none.  If there  
5     are, I don't know.

6                   MS. MEYERS-ELEN:  Have you looked for  
7     data on this point previously?

8                   MS. BARGHUSEN:  No.

9                   MS. MEYERS-ELEN:  Okay.

10                  MS. BARGHUSEN:  Basically -- right,  
11     no.

12                  MS. FRANZETTI:  And from your personal  
13     observations out in the stream, knowing Jackson  
14     Creek, I take it, fairly well?

15                  MS. BARGHUSEN:  (Nodding).

16                  MS. FRANZETTI:  You got to answer yes  
17     or no.

18                  MS. BARGHUSEN:  Oh, sorry.  Yes.

19                  MS. FRANZETTI:  All right.  From those  
20     observations, you haven't observed the presence of  
21     such juveniles?

22                  MS. BARGHUSEN:  That's true.  But to  
23     really answer that question, I would actually need  
24     to refer you to the IDNR.  I don't think I have the

1 background to actually answer that question.

2 MS. FRANZETTI: Okay. That's all the  
3 questions I have.

4 MS. TIPSORD: All right. We'll take  
5 an hour for lunch. We need to be back here at 2:00  
6 right on the dot. We have a lot of questions to get  
7 through and we need to get through them today.

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

11 MS. TIPSORD: Good afternoon. It's my  
12 understanding now we're going to add Mr. Adelman to  
13 the panel. Can we have him sworn in, please?

14 (Witness sworn.)

15 MS. TIPSORD: And do we have his  
16 testimony?

17 MS. MEYERS-ELEN: We do. I'd like at  
18 this time offer into evidence the testimony of  
19 Gerald Adelman, Openlands, as pre-filed on August  
20 4th, 2008, with the Board.

21 MS. TIPSORD: If there's no objection,  
22 we will mark the pre-filed testimony of Mr. Adelman  
23 as Exhibit 344. Seeing none, it's Exhibit 344. And  
24 with that, do you want to proceed directly to



1 questions?

2 MS. MEYERS-ELEN: Please.

3 MS. TIPSORD: Okay. And then we're  
4 going to go to the District. Welcome back, Mr.  
5 Andes.

6 MR. ANDES: Thank you. Good  
7 afternoon.

8 MR. ADELMANN: Good afternoon.

9 MR. ANDES: I'll start with the  
10 questions to Ms. Barghusen. If there are questions  
11 that one of you is better to answer than the other,  
12 feel free. And I'm going to start with question  
13 two.

14 In section two of your testimony,  
15 you state that the waterways were prioritized based  
16 on whether the trails were paddleable with  
17 relatively low cost improvements. Could you explain  
18 what kind of improvements you're talking about and  
19 what a low cost is?

20 MS. BARGHUSEN: Yes. Basically the  
21 Northern Illinois Regional water trail plan pointed  
22 out that many of the sites that were prioritized for  
23 inclusion in the water trail plan -- these would be  
24 access launch sites -- needed only low cost

1 improvements, for example signage, perhaps, or maps.  
2 Basically they were already conducive to getting in  
3 the water.

4 The plan does give some examples  
5 of cost for launch development. For example, they  
6 give an example of doing a simple gravel launch,  
7 signs and trash cans at about \$16,000. So that was  
8 within the range of what would be considered low  
9 cost.

10 MR. ANDES: In looking at prioritizing  
11 the waterways, was there any consideration given to  
12 safety issues, such as commercial barge traffic?

13 MS. BARGHUSEN: There was  
14 consideration, yes, given to a whole range of  
15 things, yes. With commercial -- and stretches in  
16 the water trail plan that have commercial -- I'm  
17 sorry. Hold on.

18 Yeah, so the water trail plan does  
19 include a risk management section, and in there it  
20 discusses potential safety considerations, and it  
21 begins by stating that it really doesn't consider  
22 development of water trails to be a jump into high  
23 risk sports, and it likens water trail construction  
24 more to walking paths and bicycle trail systems, and

1 it does specifically address areas heavily used by  
2 motorboats and jet skis and other motorized traffic,  
3 and it generally advises that paddlers avoid these  
4 areas, and it reserves them for more experienced  
5 paddlers.

6 MS. MEYERS-ELEN: Before you follow  
7 up, if I may offer into evidence the water trail  
8 plan itself. It's voluminous, and so we offer the  
9 plan on DVDs -- or CDs, actually. It's just a  
10 little less cumbersome.

11 MR. ANDES: So does it specifically  
12 discuss commercial barge traffic and whether a water  
13 body might be ranked lower in priority because of  
14 commercial barges being in the vicinity?

15 MS. BARGHUSEN: You know, I don't  
16 think it ranked water trails lower in priority  
17 because of commercial barges. Necessarily, there  
18 were a bunch of things that went into, you know,  
19 what trails were included, including things like  
20 what kind of experience it offered to the user, and  
21 motorized traffic was one of the considerations.

22 MR. ANDES: That was more powerboats  
23 and more interference from powerboats. Is that what  
24 you're saying, that was considered? It sounds

1 like --

2 MS. BARGHUSEN: No, a barge is any  
3 kind of motorized traffic.

4 MR. ANDES: But barges are a lot  
5 bigger than powerboats. I'm just looking at two  
6 separate issues, and I was just trying to get a  
7 sense of what -- the issue of commercial barge  
8 traffic, large ships taking up a large portion of  
9 the water body, that's a little different risk than  
10 powerboats, which go very fast and could create a  
11 different kind of problem. So I'm just trying to  
12 get a sense of were both of those discussed or just  
13 the powerboats.

14 MS. MEYERS-ELEN: I would object to  
15 the characterization as to how this is portrayed in  
16 the plan. If you -- I think what may be better is  
17 for you to characterize how a plan would discuss  
18 motorized traffic, rather than having it be an  
19 either or situation as presented.

20 MS. BARGHUSEN: Yeah. And in terms of  
21 whether the plan talked about barges, the south  
22 branch of the Chicago River, it talked about both  
23 powerboats and barge traffic, and it recommended  
24 that stretch for more experienced paddlers, but

1 didn't address barge traffic.

2 MR. ANDES: Did it mention that issue  
3 as to the Cal Sag or the Ship Canal?

4 MS. BARGHUSEN: The Chicago Sanitary  
5 and Ship Canal really is not part of the water  
6 trails plan.

7 MR. ANDES: Okay.

8 MS. BARGHUSEN: And the Cal Sag  
9 Channel, yes, it recommended it a place for more  
10 experienced paddlers because of industrial traffic  
11 and because of the jet skis.

12 MS. TIPSORD: Before we get too far,  
13 let's mark the Northeastern Illinois Regional water  
14 trail plan as Exhibit 345, if there's no objection.  
15 Seeing none, it's Exhibit 345.

16 MS. MEYERS-ELEN: If I may briefly  
17 follow up. So instead of not prioritizing the water  
18 plans, what the water plan actually does  
19 then -- please tell me if this is correct -- is to  
20 reserve certain areas for different experiences,  
21 based on what may or may not be present in that  
22 waterway.

23 MS. BARGHUSEN: That's right. And the  
24 water trail plan was really trying to offer a

1 variety of experiences to a variety of different  
2 types of users, and that was one of the criteria  
3 that went into choosing different waterways. So  
4 there would be -- so some water trails that only  
5 certain types of users, like very experienced  
6 paddlers are going to be going on. There are other  
7 ones that are, you know, easier for the general  
8 public or less experienced users to go on the ones  
9 picked for historic value. So many things are  
10 considered with a variety of experience.

11 MS. MEYERS-ELEN: On the Cal Sag  
12 Channel, what does it state about that type of  
13 experience when it balances out that more  
14 experienced users are --

15 MS. BARGHUSEN: Yeah. The Cal Sag  
16 Channel was -- yeah. The Cal Sag Channel and the  
17 Calumet River were noted for their interesting views  
18 of our industrial paths, and the monumental -- so  
19 the rivers and industrial paths create an  
20 interesting and unique river trip, and this is part  
21 of why these waterways were include in the plan.

22 MR. ANDES: Okay. And then you said  
23 as to the Cal Sag, the presence of industrial  
24 traffic counts for it being limited to more

1 experienced users. Is that correct?

2 MS. BARGHUSEN: That's correct.

3 MR. ANDES: Okay. Let's move on to  
4 question number five in section three of the  
5 testimony. You stated that paddlers heavily use the  
6 Chicago River. Can you clarify what you mean by the  
7 Chicago River? Are we talking about the main stem,  
8 the north branch, south branch?

9 MS. BARGHUSEN: You know, basically by  
10 the Chicago River, the water trail plan includes the  
11 Skokie Lagoons and the branch of the North Branch  
12 that goes from the Skokie Lagoons to the Albany Dam  
13 at River Park. It includes the North Shore Channel  
14 from its confluence of Lake Michigan to the Albany  
15 Dam. It includes River Park from the Albany Dam  
16 down to the main stem, and then down into the south  
17 branch to just a little bit past Western Avenue.

18 MR. ANDES: Okay. And the -- so there  
19 are some parts there, such as the Skokie Lagoons,  
20 down to the dam that are not part of the CAWS?

21 MS. BARGHUSEN: That's right. The  
22 ones that are part of the CAWS are the North Shore  
23 Channel and the Albany Dam all the way down to just  
24 west of Western Avenue.

1 MR. ANDES: And you have a sense -- so  
2 if the statement refers to the whole area, do you  
3 have a sense of more use in some part of it versus  
4 other parts, in the Skokie Lagoons area, for  
5 example?

6 MS. BARGHUSEN: I do have a sense of  
7 areas of heavy use. Would you like me to discuss  
8 those now?

9 MR. ANDES: Sure.

10 MS. BARGHUSEN: Okay. And these are  
11 based on several things. Part of my assessment of  
12 heavy use is based on liveries, where they're  
13 located, and what they report in terms of use.  
14 There is a livery at Clark Park.

15 MR. ANDES: Can you explain a livery?  
16 You mean a rental location?

17 MS. BARGHUSEN: Yeah, right. A livery  
18 is a location where you can rent canoes and kayaks,  
19 which, you know, then opens up that area for  
20 paddling not only to people who own their boats but  
21 people who don't.

22 Okay. So there is a livery at  
23 Clark Park owned by Chicago River Canoe and Kayak.  
24 Clark Park is approximately a mile and a half south



1 of River Park, so it's on the CAWS in the rulemaking  
2 area on the North Branch. And Chicago River Canoe  
3 and Kayak also owns livery at Oakton Street on the  
4 North Shore Channel.

5 Do you have an objection if I  
6 introduce the map at this point?

7 MS. MEYERS-ELEN: No. If we're going  
8 to do that, if we offer it into evidence, if we  
9 could have the opportunity to explain what this is  
10 briefly and then go back to the question if that's  
11 okay. I think that it's a good illustration.

12 I would offer into evidence what  
13 we pre-filed as Chicago Area Waterway System  
14 Recreational Access Points and Proposed Uses. This  
15 is the same map that we have submitted previously  
16 except blown up with the same proportions.

17 MR. ANDES: Let me ask you a question.  
18 My question was about the larger point. Does this  
19 include the Skokie Lagoons, the other areas that are  
20 outside of the CAWS, where you talked about  
21 significant recreational use?

22 MS. BARGHUSEN: The real significant  
23 recreational use that I have evidence for is in the  
24 rulemaking area.

1 MR. ANDES: Okay. But I asked --  
2 okay. Well, then I guess that's the answer to my  
3 question. I wanted to get a sense of how much is  
4 outside the rulemaking area versus how much is  
5 inside. If that map doesn't show both --

6 MS. MEYERS-ELEN: It does.

7 MR. ANDES: I just asked is the Skokie  
8 Lagoon on it.

9 MS. MEYERS-ELEN: Laura, does the map  
10 show areas outside of the rulemaking?

11 MS. BARGHUSEN: It does, and the  
12 Skokie Lagoon is right here.

13 MS. TIPSORD: And for the record, this  
14 was a map that was attached to Ms. Barghusen's  
15 testimony which was admitted as Exhibit --

16 MS. MEYERS-ELEN: 338.

17 MS TIPSORD: Thank you. 338.

18 MS. MEYERS-ELEN: If we could have a  
19 second just to introduce what this is before we  
20 start using it for scale and description of places,  
21 I think it will set context a little bit about what  
22 it does and does not include, and then that way if  
23 she uses it throughout testimony, we don't have to  
24 keep introducing small parts of it, if that's okay.

1 MR. ANDES: As long as it shows access  
2 points in the CAWS and outside of the CAWS, that's  
3 fine.

4 MS. MEYERS-ELEN: Yes.

5 MS. BARGHUSEN: All right.

6 MS. MEYERS-ELEN: Do you want to talk  
7 about the map?

8 MS. BARGHUSEN: Yeah. So this map  
9 shows the rulemaking area plus adjacent areas. The  
10 rulemaking area you can see outlined in the blue and  
11 orange.

12 MS. TIPSORD: Ms. Barghusen, can you  
13 stand on the other side?

14 MS. BARGHUSEN: Yeah, sorry. You can  
15 see outlined in the blue and orange coded by its  
16 proposed recreational use. I've put on the map as  
17 stars access points. If the star is red with a  
18 whiteout line, that's an established point that is  
19 included in the water trail plan for canoe and kayak  
20 access. If the star is yellow with a white out  
21 line, that means it's an unimproved launch, which  
22 basically means that it's being used as a launch and  
23 there's a conducive bank, but it hasn't actually  
24 been developed.

1 MR. ANDES: I'm sorry. Just to make  
2 sure I can --

3 MS. MEYERS-ELEN: Actually, I also  
4 have this in a version that I can pass out if it  
5 would be easier for people to see.

6 MR. RAO: Is it in color?

7 MS. TIPSORD: If it's in color, that  
8 would be helpful as well, because we have black and  
9 white up here.

10 MS. MEYERS-ELEN: It's in color, 11 by  
11 17. So if you could pass these out as well.

12 MS. BARGHUSEN: Did you have a  
13 question?

14 MR. ANDES: I just want to make sure.  
15 So the red dots along the lake --

16 MS. BARGHUSEN: Along the lake, yes,  
17 are water trail access points to Lake Michigan.

18 MR. ANDES: Okay.

19 MS. BARGHUSEN: Yes. So and then  
20 we've got construction proposed launch that is white  
21 on the inside, which means it's proposed  
22 pre-construction by the water trail plan but it's  
23 not yet in place. We also put other launches that  
24 weren't included in the water trail plan, but that

1 we know of on this map, and those are shown as red  
2 stars with the black outline.

3                   And again, if they are -- I think  
4 actually there are no construction proposed launches  
5 like that, but that would have a clear center, and  
6 an unimproved launch not in the water trail plan  
7 would have a black outline and the yellow center.  
8 We also, for reference, put points of interest to  
9 this hearing on the map, like the location of MWRD  
10 water treatment plants and Midwest Generation  
11 plants. The I-55 bridge --

12                   MR. ANDES: Can I ask -- I'm sorry.  
13 Midwest Generation plants?

14                   MS. BARGHUSEN: We did put them on  
15 just for reference.

16                   MR. ANDES: Okay.

17                   MS. BARGHUSEN: And I actually  
18 have -- this map reflects a couple of corrections  
19 from the one that was filed with my testimony. Part  
20 of what we put on this map was IEPA's inventory of  
21 public access sites, and we misinterpreted one at  
22 Whistler Preserve, which I put on the original map  
23 as an access point, when really it was a stream side  
24 point. So we took off a site at Whistler Preserve.

1                   We also added a site on the south  
2 branch at Lawrence Fishery, because that has  
3 recently become a public access site, whereas it was  
4 not before. So we added one on the south branch,  
5 and we also had mistakenly shown Alsip and Howe's  
6 Landing as two separate sites. They are actually  
7 different names for the same site. So those have  
8 been consolidated into one site.

9                   MR. ANDES: May I ask --

10                  MS. TIPSORD: Excuse me. Before we go  
11 any further, since there are changes to this from  
12 what was prefiled, we need to mark this as an  
13 exhibit and enter it. So if there's no objection,  
14 we will mark this Chicago Area Waterway System  
15 Recreational Access Points and Proposed Uses as  
16 Exhibit 346. Seeing no objection, it's Exhibit 346.

17                  MS. MEYERS-ELEN: I actually have just  
18 two very quick foundation questions. Was GIS data  
19 utilized in order to ensure where these points are  
20 placed and how the map is laid out?

21                  MS. BARGHUSEN: Yeah. This was done  
22 in GIS. The points were placed using descriptions  
23 of locations and a Rhodes file for location. The  
24 actual waterways are from the national hydrography

1 data site by USGS and USEPA.

2 MS. MEYERS-ELEN: And as far as  
3 verifying these points, the corrections that you  
4 made in the update, was that after you verified a  
5 boat trip this July 2009 as well as a tour of  
6 different launch sites that were separate of that to  
7 ensure that all of this was correct?

8 MS. BARGHUSEN: Yes.

9 MR. ANDES: And there was other -- so  
10 some information was from a Friends boat trip  
11 in July -- it looks like '08, and then also personal  
12 communications with Friends of the Chicago River  
13 regarding access locations for which they were  
14 aware?

15 MS. BARGHUSEN: Right. Exactly, yes.

16 MS. MEYERS-ELEN: Did you verify all  
17 that as well when you were on the 2009 trip?

18 MS. BARGHUSEN: Yes, we verified those  
19 sites on a July 30th, 2009, trip.

20 MR. ANDES: And what are the -- when I  
21 see an uncolored star, what does that represent?

22 MS. BARGHUSEN: Is it a Midwest  
23 Generation -- no. An uncolored star, does it look  
24 like this, construction proposed?

1 MR. ANDES: Well, say if you go all  
2 the way up the Des Plaines.

3 MS. BARGHUSEN: The Des Plaines?  
4 Okay.

5 MR. ANDES: Up north there are some  
6 uncolored stars.

7 MS. TIPSORD: Next to Joliet 9 and  
8 Joliet 29? Is that where you're looking at? Are we  
9 looking at the same uncolored stars?

10 MR. ANDES: I was looking way up  
11 north.

12 MS. BARGHUSEN: Oh, you're looking at  
13 this star here?

14 MR. ANDES: For example, yeah.

15 MS. BARGHUSEN: That is a construction  
16 proposed site, which means it's not there yet but it  
17 is proposed for construction.

18 MR. ANDES: Okay.

19 MS. BARGHUSEN: Yeah. To get to your  
20 question about areas of intense use, Clark Park is  
21 right here, and so this is in the rulemaking area,  
22 and this is a location of a livery owned by Chicago  
23 River Canoe and Kayak. Oakton Street is up here.  
24 It's actually just downstream of the North Side



1 water treatment plant, and that also has a livery  
2 owned by Chicago River Canoe and Kayak.

3 And in terms of evidence of  
4 intense use, the owner of Chicago River Canoe and  
5 Kayak, Ryan Chew, reported that basically his  
6 business has grown since he opened it in 2001 from  
7 20 to 30 percent each year.

8 MR. ANDES: My question was just  
9 trying to get a sense of when you talked about heavy  
10 use by paddlers of the Chicago River, and you talked  
11 about that encompassing a fairly broad area, sort  
12 of, everything from the Skokie Lagoons down to the  
13 dam at Albany Avenue.

14 And I was just trying to get a  
15 sense of do you have a feel for how much use  
16 is -- not is it intense in particular areas, but,  
17 sort of, how much use is in areas that are outside  
18 of the CAWS, like the Skokie Lagoons, down the North  
19 Shore Channel from there, versus areas that are in  
20 the CAWS. Is there any comparison of amount of  
21 usage in particular segments?

22 MS. BARGHUSEN: Okay. Yeah, and the  
23 comparison between segments that I have is actually  
24 from the paddling survey, which is a mail survey

1 that we did with Friends of the Chicago River and  
2 the Northeastern Illinois Water Trail Counsel where  
3 we asked people how to say what river in  
4 northeastern Illinois they had paddled the year  
5 before.

6 The north branch of the Chicago  
7 River, by which we meant everything from the Skokie  
8 Lagoons down to the main stem, basically, ranked  
9 second in terms of 17 rivers that we asked about in  
10 terms of the number of people who reported that they  
11 had paddled it the year before. And that was 86  
12 respondents who said that they had.

13 So that -- and the reason that  
14 that let us know something about intensity of use in  
15 the rulemaking area versus outside of it is because  
16 we then also had the question in the survey that  
17 asked people where they usually put in and took out  
18 on the rivers that they had paddled in the last  
19 year, and most of the respondents who responded to  
20 that question -- we had 76 people respond to that  
21 question, and 43 percent of them indicated that they  
22 usually put in at Clark Park.

23 MR. ANDES: Could you -- but you  
24 didn't correlate the two? I mean, you asked a broad

1 question about the North Branch of the Chicago  
2 River, which now you're explaining you meant  
3 everything from the Skokie Lagoons down. So some  
4 areas are in the CAWS and some areas are not?

5 MS. BARGHUSEN: Right.

6 MR. ANDES: You didn't ask a specific  
7 question that got to -- were you using the  
8 areas -- to what extent you were using the areas in  
9 the CAWS versus inside the CAWS?

10 MS. BARGHUSEN: That's right.

11 MR. ANDES: You then -- you're  
12 implying, based on the fact that when you asked  
13 another question regarding the lower section, a lot  
14 of people said they used that area?

15 MS. MEYERS-ELEN: I would object to  
16 the word implying, but go ahead.

17 MS. BARGHUSEN: It wasn't another  
18 question about the lower area. It was -- basically  
19 the question was did you paddle the North Branch in  
20 2005, and if so, where did you usually put in and  
21 take out.

22 MS. MEYERS-ELEN: If I may, just for a  
23 second, let me help and actually pass out the 2006  
24 paddling survey report. It's in connection with

1 questions that are going to be later under nine.  
2 But I think since we're getting into this at this  
3 point, it may be helpful to actually see the report.

4 So I would offer into evidence  
5 what is titled 2006 Paddling Survey, which is a  
6 survey that was conducted by Friends of the Chicago  
7 River together with Openlands.

8 MS. TIPSORD: If there's no objection,  
9 we will mark the 2006 Paddling Survey as Exhibit  
10 No. 347. Seeing none, it's Exhibit 347.

11 MS. BARGHUSEN: All right. So  
12 basically for the entire Chicago River -- north  
13 branch of the Chicago River, we were asking people  
14 where they usually put in and took out. And in  
15 terms of peoples's answers, 43 percent of them  
16 indicated that they usually put in at Clark Park,  
17 which is -- indicates that Clark Park, which is in  
18 the rulemaking area, is among those surveyed  
19 respondents basically the most popular place to put  
20 in.

21 MS. MEYERS-ELEN: And does that  
22 correlate with anything else you've heard about  
23 heavy use along that stretch of the north branch of  
24 the Chicago River?

1 MS. BARGHUSEN: Yeah. I mean, since  
2 there's also a livery that rents boats at Clark  
3 Park, you also get a lot of renters in that  
4 location. And as I was saying before, the owner of  
5 that livery has reported growth in business since he  
6 opened in 2001.

7 MR. ANDES: Are there other --

8 MS. MEYERS-ELEN: Excuse me. If you  
9 can let her finish, because I believe there's a  
10 little more to that.

11 MS. BARGHUSEN: Yeah. He reported  
12 that he's done 55,000 trips since he opened in 2001.

13 MR. ANDES: Okay.

14 MS. MEYERS-ELEN: And if I may follow  
15 up, is there any other evidence regarding -- you  
16 were asked two questions, I believe, by Mr. Andes,  
17 not only above the rulemaking area but also below.  
18 And is there any evidence which would basically  
19 state that further south there's also heavy use  
20 within the rulemaking area compared to the Albany  
21 Dam?

22 MS. BARGHUSEN: Yeah.

23 MR. ANDES: I'm still waiting to ask  
24 my own questions, but go ahead.

1 MS. BARGHUSEN: All right. There's  
2 another livery located at North Avenue on the  
3 Chicago River further down towards the main stem,  
4 and that's Kayak Chicago, and the owner of that  
5 livery, they've also reported putting 10,000 people  
6 on the water during the summer of 2008, and also  
7 reported that his business grows by about 1,000  
8 people per year. And that business putting people  
9 on the water here, you know, includes paddling along  
10 the main stem of the Chicago River.

11 MR. ANDES: So first fellow is  
12 reporting 55,000 trips, the second one 10,000 in one  
13 year, and it's growing by 10,000 in one year, and  
14 all that is happening without disinfection?

15 MS. BARGHUSEN: Yes.

16 MR. ANDES: Are they providing  
17 warnings to people about potentially unsafe  
18 conditions in the water body?

19 MS. MEYERS-ELEN: Are we getting to --

20 MR. ANDES: It's a follow-up question.

21 MS. MEYERS-ELEN: It's also one of the  
22 questions we've got.

23 MR. ANDES: I'd like my question  
24 answered. Are these people promoting use of the

1 water body?

2 MS. BARGHUSEN: Yeah. In terms of the  
3 warning that the livery owners give, I'm actually  
4 not sure what they do.

5 MR. ANDES: But even though there's  
6 not disinfection, they're certainly not discouraging  
7 people from going into the water.

8 MS. BARGHUSEN: Well, that's true.

9 MS. MEYERS-ELEN: As far as warnings,  
10 have you seen any signage or any warnings that have  
11 been posted, however, by boat launches and other  
12 entities in order to warn people of the conditions  
13 in the water?

14 MS. BARGHUSEN: Yeah. We have seen  
15 signage placed by site owners at the launches and we  
16 have an exhibit.

17 MS. MEYERS-ELEN: Thank you.

18 MR. ANDES: So does that mean --

19 MS. MEYERS-ELEN: At this time -- just  
20 one second so we can get this in -- I'd offer into  
21 evidence Examples of Signage Viewed Along the  
22 Chicago Area Waterway System, submitted by Laura  
23 Barghusen, Openlands, October 5th, 2009.

24 And are these some of the signs

1 that you've seen as far as warnings or precautions  
2 that have posted by the launch by owners or others  
3 along the waterways or just signage in general,  
4 which would potentially be read by recreational  
5 users?

6 MS. BARGHUSEN: Are you talking about  
7 this exhibit number?

8 MS. MEYERS-ELEN: I'm sorry. Did we  
9 not get an exhibit number?

10 MS. TIPSORD: No, we did not, but I  
11 think I'm really confused by some of the questions.  
12 But let's mark this.

13 If there's no objection, we will  
14 mark Examples of Signage Viewed Along the Chicago  
15 Area Waterway System as Exhibit 348. Seeing none,  
16 it's Exhibit 348.

17 And perhaps before you answer  
18 Ms. Meyers' question, I'm a little confused, because  
19 I heard in your question -- and maybe I just  
20 misheard your question. I thought the answer was  
21 that the liveries are not warning people, but then I  
22 just thought I heard in Ms. Meyers' question to you,  
23 aren't these examples of signs posted by owners of  
24 the property. Does that mean other than the



1 liveries? The liveries aren't posting these signs  
2 but other people are?

3 MS. BARGHUSEN: Yeah. Just to  
4 clarify, I'm not saying that the liveries don't warn  
5 people. I'm saying I'm not sure what warnings the  
6 liveries give people.

7 And in terms of this exhibit,  
8 yeah, these signs were placed by site owners, which  
9 indicate at least the Chicago River canoe and Kayak  
10 at Clark Park and Oakton Street is not same as the  
11 livery owners. The Chicago Park District operates  
12 this site at Clark Park, and they are the ones who  
13 post -- who had posted signage.

14 MS. TIPSORD: So the owner is not  
15 posting signs, but the -- the person giving you the  
16 boat --

17 MR. ADELMANN: The site owner.

18 MS. TIPSORD: Right.

19 MR. ADELMANN: The site owner.

20 MS TIPSORD: The person giving you the  
21 boat is not warning you, but where you're going to  
22 put your boat in the water there is a warning.

23 MR. ADELMANN: Right.

24 MS. TIPSORD: Okay. Just to clarify.

1 MS. BARGHUSEN: But the entity that  
2 installed the launch, which actually isn't always  
3 the same as the owner of the land, because, for  
4 example, in Clark Park the land is actually least --

5 MR. ADELMANN: They are a concession  
6 there for the park district. They are publicly  
7 owned property by the Chicago Park District.

8 MS. BARGHUSEN: And the Chicago Park  
9 District installed the launch and posted the  
10 signage.

11 So in terms of the signage that  
12 we've seen out there, there's an example on the  
13 first page of this exhibit of something the park  
14 district -- the Chicago Park District posted at  
15 Western Avenue. And we also saw similar signs at  
16 Clark Park and River Park of river safety  
17 precautions where they do address water quality and  
18 they do address things like wearing life vests,  
19 using designated launch sites, rules and  
20 regulations.

21 In some cases, MWRD has also  
22 posted signs. There's a picture of a sign by MWRD  
23 from the Oakton Launch on the North Shore Channel,  
24 where they basically are giving warnings of what the

1 water is not suitable for, and we saw these at many  
2 other launches, too, including Clark Park, River  
3 Park, and some others.

4                   There was a Chicago Area Waterways  
5 health precaution brochure -- which I think has  
6 already been submitted into evidence in these  
7 hearings as Exhibit 261 -- that we saw posted at the  
8 Oakton Street Launch for people to see. There's a  
9 sign that we saw at the Western Avenue Launch posted  
10 by the Coast Guard about channelling ramp safety and  
11 how to behave around commercial vessels while  
12 waiting to take out or put in.

13                   And there were also other types of  
14 signage that we saw showing community support for  
15 the launches and commemorating MWRD. We have a  
16 couple -- we have one from Clark Park that, you  
17 know, indicates MWRD is providing the facility of  
18 private community service with the cooperation of  
19 the -- yeah, basically it was -- basically  
20 commemorating and thanking MWRD for their  
21 cooperation.

22                   MR. ANDES: You're welcome.

23                   MS. BARGHUSEN: And there's another  
24 sign to that effect of the Summit Boat Launch on the

1 Chicago Sanitary and Ship Canal. And then finally,  
2 there's also signage at the launches about natural  
3 features of the -- that you see on the waterways,  
4 such as bird and butterfly signage at Clark Park.  
5 So that's an example of signage.

6 MR. ANDES: So is it your  
7 understanding then that if one follows, for example,  
8 the river safety precautions on the first sign  
9 posted by the park district, which then has a list  
10 of precautions and then says enjoy the river safely,  
11 that if you follow the precautions you're safe?

12 MS. BARGHUSEN: I think that it  
13 certainly -- following the precautions, you know,  
14 would be conducive to safety, but the other piece of  
15 this is that, you know, the water plan, as we went  
16 over before, does reserve certain areas for more  
17 experienced paddlers. And I feel that paddlers also  
18 need to follow those recommendation and make sure  
19 that they are selecting a water trail that's in  
20 their level.

21 MS. MEYERS-ELEN: Regardless of any  
22 other warnings, are people out there?

23 MS. BARGHUSEN: Yeah, definitely  
24 people are out there paddling on the river.

1 MS. MEYERS-ELEN: Does that include  
2 kids?

3 MS. BARGHUSEN: Yeah, it does include  
4 children. And if we want to talk about children on  
5 the river, we have some other exhibits.

6 MR. ANDES: I didn't ask about  
7 children on the river. But my question I can ask  
8 is: So you're saying from your organization's  
9 perspective that it -- as long as precautions are  
10 followed, it's safe for people, including children,  
11 to use this water body including for canoeing and  
12 kayaking. Am I right?

13 MS. MEYERS-ELEN: I would object as  
14 far as to say -- as far as I don't know what  
15 statement to use, and we've been talking a lot about  
16 relative risk. And so if you could define, please,  
17 what you mean by that.

18 MR. ANDES: Is your group telling  
19 people not to go in the water because it's not  
20 disinfected?

21 MS. BARGHUSEN: You know, what our  
22 group is doing -- I do think it's important to note  
23 that people are already out on the waterways. The  
24 water travel plan, you know, is meant to assist them

1 and try to improve conditions for them. We do have  
2 warnings on our website about water quality, about  
3 washing your hands after you've been on these  
4 rivers.

5 MR. ANDES: But isn't your group  
6 trying to promote people going on the water body, or  
7 are you taking a neutral position? Isn't your group  
8 trying to get more people out on the water? Doesn't  
9 your group --

10 MR. ADELMANN: I can answer that,  
11 Counsel. We do not organize tours. We don't  
12 actually promote use. We see it as an important  
13 open space and recreational resource, and we've  
14 tried to systematize it, you know, and improve  
15 access, but we aren't promoting it in an active way  
16 that I'm aware of.

17 MR. ANDES: If you're improving  
18 access, aren't you enabling people to use it?

19 MR. ADELMANN: Enabling is different  
20 from promoting, in my mind.

21 MR. ANDES: So you're enabling greater  
22 use of the water?

23 MR. ADELMANN: More use, easier use.

24 MS. MEYERS-ELEN: And isn't that why

1 you're here today, in order to ensure that when  
2 people are out on those waterways that the risk that  
3 would be reduced by disinfecting effluent at MWRD's  
4 plants would be reduced to those users?

5 MR. ADELMANN: Correct.

6 MR. ANDES: Given that --

7 MS. MEYERS-ELEN: If I may just  
8 briefly --

9 MR. ANDES: No, I have a question to  
10 ask.

11 MS. MEYERS-ELEN: And this relates  
12 to what you were -- it's an appropriate follow-up.

13 MS. TIPSORD: Let him follow up first,  
14 and then we'll see if your exhibit is appropriate.

15 MS. MEYERS-ELEN: Sure.

16 MR. ANDES: Given that under this  
17 rulemaking it would be several years, at best, for  
18 disinfection to be actually put in place, is  
19 it -- so even if this rulemaking went through, it  
20 would be some time before disinfection would  
21 actually happen. Would your group feel that people  
22 should continue to use the water body during that  
23 time period, or should they be told that it's not a  
24 safe condition because there's no disinfection?

1 MS. BARGHUSEN: You know, as I said  
2 before, there's already people out on the water, and  
3 our recommendation -- there are people out there.  
4 What we try to do is coordinate site planning so  
5 that we can have situations that are safer.

6 MR. ANDES: But if you really feel  
7 it's unsafe --

8 MS. MEYERS-ELEN: If she can answer --

9 MR. ANDES: -- why not tell them not  
10 to?

11 MS. MEYERS-ELEN: If she could just  
12 answer the question.

13 MS. TIPSORD: You know what, I agree  
14 that Mr. Andes shouldn't be interrupting so much,  
15 but he's also trying to get to a point and we're  
16 doing a lot of wandering. So let's let him get to  
17 his point as well. Could you answer Mr. Andes'  
18 question?

19 MS. BARGHUSEN: Yeah. So  
20 basically -- you know, maybe we should back up a  
21 little and talk about the water trail plan and who  
22 was involved in its formation and what Openlands'  
23 role has been in trying to implement it, because  
24 that would give a broader foundation.



1 MR. ANDES: But I'm not asking the  
2 broader question. It's a very simple question. If  
3 your organization believes that the un-disinfected  
4 water bodies pose an unsafe condition, then why  
5 aren't you telling people not to go into the water?

6 MS. MEYERS-ELEN: I would object to  
7 the characterization of what Openlands does and does  
8 not believe. That's not what she said. And if you  
9 would like to ask her how she feels that Openlands  
10 plays a role as far as people out in the waterway,  
11 that's one thing. But you keep trying to put this  
12 phrase on her testimony, which does not exist.

13 MR. ANDES: Can you state for yourself  
14 what the group's position is as to the safety of  
15 recreating in this water body?

16 MS. BARGHUSEN: Well, the water trail  
17 plan, you know, discusses un-disinfected -- or water  
18 quality problems in some of the streams and rivers  
19 that are in the plan. It does have, you know,  
20 warnings about not ingesting the water, that there  
21 are water quality problems. And basically --

22 MR. ADELMANN: Be careful if you have  
23 an open wound, washing your hands, those are the  
24 kinds of precautions that we have on our website and

1 that were part of this whole program.

2 MS. BARGHUSEN: Right. And that  
3 is -- you know, in light of the water quality  
4 issues, those are warnings that we feel people  
5 should have.

6 So we deal with it through  
7 information, but -- and yes, we try to -- we try to  
8 follow the water trail plan in making the water  
9 trails, which are already, as we said before, in  
10 use --

11 MR. ADELMANN: And we don't own or  
12 manage the launch sites. We facilitated the  
13 planning with Northeastern Illinois Planning  
14 Commission. It's public Agencies, park districts,  
15 forest preserve districts, who already had an  
16 interest, and in many cases, had launches, but the  
17 distance was great between them. There were safety  
18 issues there about the distance between launches.

19 So we facilitated a regional  
20 planning effort. We're a regional land conservation  
21 organization. We don't own, manage, we don't  
22 promote.

23 MS. BARGHUSEN: Right. So our role  
24 has been basically to assist governments who want to

1 put in launches. But ultimately, the question of  
2 whether to put in launches and where to put in  
3 launches. You know, the final decision is made by  
4 the site owner.

5 MR. ADELMANN: Correct.

6 MR. ANDES: Okay.

7 MS. MEYERS-ELEN: When you say that  
8 people are out there, what are the -- are the  
9 liveries that rent canoes and kayaks the primary  
10 source of getting a lot of the people out on the  
11 waterway?

12 MS. BARGHUSEN: Yeah. I mean, the  
13 liveries certainly put very many people on the  
14 waterways based on, you know, their own numbers.

15 MR. ANDES: Are there --

16 MS. MEYERS-ELEN: And is that separate  
17 from what you would be doing as far as trying to  
18 actively plan for the most protective use or the  
19 best use and the most informed use through the water  
20 transplant? Do you want me to rephrase?

21 MS. BARGHUSEN: Yeah.

22 MS. MEYERS-ELEN: The water trail  
23 plan, is it there to basically assist all of the  
24 people that are out there anyway, based on liveries

1 and other forms that the public is drawn to the  
2 water and actually using these waterways for  
3 paddling and kayaking experiences?

4 MR. ADELMANN: Maybe I'll try to  
5 answer that. For many years, our waterways have  
6 been used for canoeing and kayaking, and many public  
7 agencies, forest preserve districts, park districts,  
8 municipalities, have had access points. We're a  
9 very complicated region with so many units of  
10 government that there's often little coordination.

11 And so we saw a huge issues. We  
12 care about green infrastructure, parks, trails,  
13 access to nature. And clearly there was a gap. No  
14 one was providing that coordination and that  
15 planning function, so we partnered with Northeastern  
16 Illinois Planning Commission. We didn't come up  
17 with the idea of water trails. They were already  
18 there, but they were -- excuse me. I apologize.  
19 I've got a sinus infection and my voice will, kind  
20 of, waver hear.

21 So I think that's quite different  
22 than we came up with the idea, that let's do a water  
23 trail plan for northeastern Illinois, and let's  
24 promote people using our waterways. The use was

1 already there.

2 MR. ANDES: My question then -- thank  
3 you. My question then goes toward -- and I have a  
4 page number. In the testimony, there's a  
5 statement -- I guess that would be Page 1, 2, 3,  
6 4 -- Openlands considers the dramatic reduction in  
7 bacterial levels that would result from disinfection  
8 to be an integral step forward in fostering safe  
9 access to the Chicago River and Calumet area water  
10 trails.

11 MS. MEYERS-ELEN: I'm sorry. Whose  
12 testimony are you referring to so we can --

13 MR. ANDES: I'm sorry. Ms.  
14 Barghusen's.

15 MS. WILLIAMS: This is question eight,  
16 right?

17 MS. TIPSORD: Yes, it is.

18 MR. ANDES: That's where we are, yes.  
19 Thank you. So my question then is -- because we've  
20 sort of wandered -- that implies that it's not -- is  
21 that saying it's not safe now so you're fostering  
22 safe access, and my question then was if you want  
23 there to be safe access so there's not safe  
24 access -- either it's safe now, in which case it's

1 safe without disinfection, or it's not safe, in  
2 which case I'm asking if you really, as a group,  
3 think it's not safe, why aren't you telling people  
4 not to go in? One or the other.

5 MS. BARGHUSEN: We feel that it will  
6 make it safer to have disinfection. We're not  
7 really, you know, experts in relative risk, but we  
8 feel that it's a step -- it's an important step  
9 towards making it safer for paddlers.

10 MS. MEYERS-ELEN: Are we going to be  
11 able to control who's out in the waterway?

12 MS. BARGHUSEN: No.

13 MS. MEYERS-ELEN: And in as much, are  
14 we trying to control who's out in the waterway?

15 MR. ADELMANN: No.

16 MS. MEYERS-ELEN: So what is our role  
17 then as far as people already out in the waterway?

18 MS. BARGHUSEN: We're trying to make  
19 the water trails safer for them, and we have -- at  
20 this point, you know, the information on their  
21 website, we've basically followed, you know, the  
22 water trail's plan in warning people about pollution  
23 and --

24 MR. ANDES: But if your group -- I'm

1     sorry.  If your group honestly believed that it  
2     wasn't safe, even with precautions, you would say  
3     that, right?  You wouldn't tell people precautions  
4     if you thought it was not safe even with  
5     precautions.

6                   MS. MEYERS-ELEN:  I'm going to say  
7     this is asked and answered at this point.  We've  
8     discussed --

9                   MS. TIPSORD:  Actually, I have to tell  
10    you, quite honestly, I haven't heard you answer  
11    whether or not you -- I mean, I've heard -- let me  
12    try this:  Is it Openlands' position that you don't  
13    want to comment on the safety of the river right  
14    now?

15                   MR. ADELMANN:  We're talking health  
16    issues here?

17                   MS. TIPSORD:  Yes.

18                   MR. ADELMANN:  Health risks versus  
19    other forms of safety?

20                   MS. TIPSORD:  Yes.

21                   MR. ADELMANN:  I don't think we're  
22    experts in that, to be honest.  And as we said, you  
23    know, people are using it already, and I don't think  
24    that's our area of expertise.  So I think it would

1 be better for us to not comment on public health  
2 issues. There are other people who are much more  
3 qualified.

4 MR. ANDES: Okay.

5 MS. MEYERS-ELEN: Why do you think  
6 maybe this will be helpful?

7 MR. ANDES: But I'm done with that  
8 line of questioning.

9 MS. MEYERS-ELEN: Well, I'd like one  
10 follow-up then, maybe to clarify the position.

11 MS. TIPSORD: Ask your question,  
12 Ms. Meyers.

13 MS. MEYERS-ELEN: Thank you. On  
14 question 8D, Mr. Andes had written, "Can you provide  
15 evidence that the current levels of bacteria are  
16 unsafe for paddling." I think that directly is  
17 relevant to this point.

18 MS. TIPSORD: Yes, except they just  
19 told us they weren't going to comment on whether or  
20 not the river was currently safe.

21 MS. MEYERS-ELEN: And what I'm asking  
22 is: Why do you feel that it is important to  
23 basically testify here today regarding disinfection  
24 being that our position is what it is?



1 MR. ANDES: I'm going to object.  
2 That's not a follow-up to anything I asked. I'm  
3 done with that line of questioning. I got my  
4 answer.

5 MS. MEYERS-ELEN: Well, and I'm asking  
6 for a follow-up?

7 MS. TIPSORD: Well, if they can answer  
8 it briefly. But I do think you're skating a thin  
9 line, Ms. Meyers. Because on the one hand, they're  
10 not willing to answer Mr. Andes' questions about  
11 safety, and you've rephrased this, which is  
12 virtually the same question. But please let them  
13 answer the question. They may answer the question.

14 MS. BARGHUSEN: Okay. I mean,  
15 basically it's our feeling that it's bad for people  
16 to ingest un-disinfected wastewater. We don't want  
17 people, you know, getting it in their mouth or  
18 wading through it, and we know that people do get  
19 wet as they paddle. When kayaking you may splash,  
20 you may step into the water when getting in and out  
21 of the canoe. And so basically, you know, we feel  
22 that the water will be made safer through  
23 disinfection.

24 MR. ANDES: Subject, of course, to

1 Mr. Adelman's statement that you're not taking a  
2 position on safety?

3 MR. ADELMANN: In public health.

4 MS. BARGHUSEN: Yeah, but we're not  
5 qualified.

6 MR. ADELMANN: I mean, we are experts  
7 in it, and I think you're trying to, you know, get  
8 at --

9 MR. ANDES: She just said safer.  
10 Safer in what way, if it's not public health?

11 MR. ADELMANN: Well, we do have  
12 warnings. I mean, I think we've been through this.  
13 This has already been stated. We do say it's  
14 dangerous to ingest it, you should wash your hands,  
15 don't have open wounds, be careful if you're eating,  
16 et cetera. I mean, obviously there are concerns.

17 But, I mean, you were trying to  
18 get, I think, basic questions of public health, and  
19 I guess I just don't think that -- beyond those  
20 concerns, we feel that it's not great, yeah. People  
21 are doing it. And if they follow those precautions,  
22 they're probably all right. But, you know, beyond  
23 that, I think it's really something that at least I  
24 personally don't have expertise on.

1 MS. MEYERS-ELEN: Is your discomfort  
2 responding as if you were a microbiologist --

3 MR. ADELMANN: Yeah, exactly.

4 MS. MEYERS-ELEN: -- or an  
5 epidemiologist?

6 MR. ADELMANN: Exactly.

7 MS. TIPSORD: But Ms. Meyers -- I'm  
8 sorry, but that's not the way the question was  
9 asked. What we have been getting at and what we've  
10 spent practically since we came back from  
11 lunch -- and I'm not -- I don't know that there's  
12 any point in continuing. Mr. Andes, go ahead.

13 MR. ANDES: No, I'm done.

14 MS. TIPSORD: Let's go on to the next  
15 question.

16 MR. ANDES: I'm done with that line of  
17 questioning.

18 Let's go to a different type of  
19 safety on question number six. You stated in your  
20 testimony, Ms. Barghusen, that the water trail plan  
21 recommends an access plan every three to five miles  
22 on a trail. Can you tell me what the distance  
23 between access points is in various waterways of the  
24 CAWS?

1 MS. BARGHUSEN: Yeah. We actually  
2 have an exhibit that we've prepared that we're  
3 handing around.

4 MS. MEYERS-ELEN: I'd like to offer  
5 into evidence what's entitled Answer to MWRD  
6 Pre-filed Question Number 6A for Laura Barghusen.

7 MS. TIPSORD: If there's no objection,  
8 we will mark the Answer to MWRD Pre-filed Question  
9 Number 6A for Laura Barghusen as Exhibit No. 349.  
10 Seeing none, it's Exhibit 349.

11 MS. BARGHUSEN: Okay. So as you  
12 stated in your question, basically it's the goal of  
13 the water trail plan to have designated access  
14 points every three to five miles along the water  
15 trail. A lot has been accomplished, and on a number  
16 of stretches of the CAWS we already have  
17 that -- launch sites spaced at those distances.

18 There were also some launch sites  
19 outside the rulemaking area that offer convenient  
20 access to waterways within the rulemaking area and  
21 are used in that way. There's marinas, private  
22 docks, and other places where a paddler could get  
23 out of the dock in an emergency that are actually  
24 not on this exhibit, but --

1 MR. ANDES: Is there -- if you can  
2 clarify for me, on the Chicago Sanitary and Ship  
3 Canal, is Jobs Corps, is that a launch?

4 MS. BARGHUSEN: That is a proposed  
5 launch. If you look at this exhibit, existing sites  
6 are in normal text, proposed launch sites are in  
7 italics, and launch sites near the waterways in the  
8 rulemaking area are in blue.

9 MR. ANDES: So on the -- okay. So on  
10 the Ship Canal then, they're right now about eight  
11 miles between South Western Avenue and Summit?

12 MS. BARGHUSEN: Yes.

13 MR. ANDES: And another nine and a  
14 half miles between there -- between Summit and the  
15 Cal Sag?

16 MS. BARGHUSEN: Right.

17 MR. ANDES: Okay.

18 MS. BARGHUSEN: That's right. So  
19 yeah, if you look at this, in a lot of areas you are  
20 within the three to five-mile recommendation. For  
21 example, on the North Shore Channel and the north  
22 branch of the Chicago River, and then there are some  
23 areas where clearly more launch sites would be  
24 needed to meet that. So good areas for more launch

1 site developments would be in these longer areas of  
2 the Sanitary and Ship Canal.

3 MR. ANDES: And does --

4 MS. BARGHUSEN: And then as you get  
5 into the Calumet area on the Little Cal and the Cal  
6 Sag Channel, you start seeing them to be closer  
7 together again.

8 MR. ANDES: The -- does the plan  
9 recommend there be other exit points as well in case  
10 of capsize?

11 MS. BARGHUSEN: You know, the water  
12 trail plan really doesn't -- they really focus on  
13 the three to five-mile access point. There's a  
14 couple of -- or one waterway in particular, which is  
15 Salt Creek, where there's a couple of non-launch  
16 exit points flagged. But really on these waterways  
17 in the CAWS, no. They focus on the three to  
18 five-mile exit point.

19 MR. ANDES: And what's the basis for  
20 the three to five? Is that safety or is that more  
21 access, you want more access?

22 MS. BARGHUSEN: That was basically  
23 what they considered to be conducive to safe access,  
24 yes. It was a consideration.

1 MR. ANDES: I guess my -- I have  
2 two -- I have two possibilities, one was safety and  
3 one was access. I guess part of the question is:  
4 Are they saying that -- what if people capsize and  
5 they're three miles from -- or two and a half miles  
6 from a safe exit point? What's the -- isn't that a  
7 concern? If there are only access points or places  
8 to leave the water body every three to five miles,  
9 typically in something like a Ship Canal where it's  
10 got steep-walled concrete sides, and they've got to  
11 swim two or three miles to the next exit, isn't that  
12 a safety concern if they capsize?

13 MS. BARGHUSEN: Yeah. Basically if  
14 you -- as I said, we didn't show private docks,  
15 marinas, et cetera, other places that are conducive  
16 to get out of the water along the CAWS.

17 And also I think it's important to  
18 keep in mind if you do capsize, you're not always  
19 going to be getting out of the water. You know, you  
20 may be using your boat as a floatation device,  
21 flipping it, and continuing on. But in cases where  
22 you would need to get out of the water, there are,  
23 you know, areas along these waterways where you  
24 could do so, even though -- even if it's not a

1 designated access site.

2 MR. ANDES: Around the Ship Canal?

3 MS. BARGHUSEN: We're going to  
4 be -- yeah, we're going to be taking some --  
5 bringing an exhibit around. The first one is more  
6 on the main stem of the south branch of the Chicago  
7 River -- it's an exhibit on ladders -- and then  
8 we're also going to be bringing around an exhibit of  
9 low bank -- or lower bank areas, or areas that are  
10 not -- that do not have the steep walls.

11 MR. ANDES: Are those on the Ship  
12 Canal or other parts of the system?

13 MS. BARGHUSEN: I think we  
14 have -- yeah, we've got a ladder at Loomis Street on  
15 the Ship Canal. And in terms of the other  
16 exhibit --

17 MS. MEYERS-ELEN: Before we actually  
18 start talking about the exhibits, I'm going to offer  
19 them into evidence so we can get an exhibit number.

20 MS. TIPSORD: Right. Examples of  
21 Ladders Along the Chicago Area Waterway System we  
22 will mark as Exhibit 350 -- yet another milestone --  
23 if there's no objection. Seeing none, it's  
24 Exhibit 350.



1                   And Gradually Sloping Banks and  
2 Shallow Water in the Chicago Area Waterway System,  
3 again pictures, we will mark as Exhibit 351 if  
4 there's no objection. Seeing none, it's  
5 Exhibit 351.

6                   MS. BARGHUSEN: Okay. All right.  
7 Starting with the ladders exhibit, what we did was  
8 during a boat trip on the Chicago River Sanitary and  
9 Ship Canal and also into the Calumet area, we -- on  
10 July 30th, 2009, we took note of some of the areas  
11 that we saw ladders up the seawalls and areas where  
12 there were seawalls. And we have a map on the front  
13 basically, and this is not indicative of all the  
14 ladders that are out there, but these are ones that  
15 we noted the locations of, either through streets or  
16 GPS.

17                   And so you can see -- and then  
18 we've got a list on Page 2 of streets that these  
19 ladders -- that we noted were near, and we also have  
20 some pictures. And these kinds of ladders could be  
21 used in an emergency to either steady yourself and  
22 get back into your boat or to actually exit the  
23 waterway if you needed to.

24                   MR. ANDES: And -- I'm sorry. And

1 correct me if I'm wrong, but eight out of the 12 are  
2 basically downtown, right between the main stem --  
3 either on the main stem or the south branch, sort of  
4 between Wacker Drive and Congress, right?

5 MS. BARGHUSEN: Mm-hmm. Yeah, that's  
6 right.

7 MR. ANDES: It's a very compressed  
8 area. Pretty much at every bridge there's a ladder?

9 MS. BARGHUSEN: Yeah.

10 MR. ANDES: Okay. On the Chicago  
11 Sanitary and Ship Canal, there's only one near  
12 Loomis?

13 MS. BARGHUSEN: Right. There's only  
14 one.

15 MS. MEYERS-ELEN: Did you see other  
16 ladders on the Chicago Sanitary and Ship Canal that  
17 you couldn't catch the GPS points for or there was  
18 no reference that are not on this list?

19 MS. BARGHUSEN: We did have some  
20 pictures of ladders from the Sanitary and Ship  
21 Canal, yes, but we didn't have their location pinned  
22 down well enough to produce it into evidence.

23 MS. TIPSORD: Go ahead.

24 MS. FRISBIE: Margaret Frisbie,

1 Friends of the Chicago River. In your experience,  
2 what do most people do if they capsize a canoe or  
3 kayak?

4 MS. BARGHUSEN: Most of the time you  
5 wouldn't actually be looking to get out of the  
6 water, and you would be using the boat as a  
7 floatation device, flipping the boat and going on.  
8 So it's not -- it's not every instance or even most  
9 instances that you would be looking to exit the  
10 water.

11 MS. MEYERS-ELEN: When people are  
12 taught to kayak, are they taught to stay with the  
13 boat?

14 MS. BARGHUSEN: Yeah, yeah. In the  
15 beginning kayaking classes, if you flip and come out  
16 of your boat, you are taught to use it to float on,  
17 how to ride it, and get back in.

18 MR. ANDES: And that --

19 MS. BARGHUSEN: And then in terms --  
20 I'm sorry.

21 MR. ANDES: I'm sorry. At the same  
22 time, you do have signs, like the Coast Guard sign  
23 at Western Avenue, that says, "Launch at your own  
24 risk, be aware of oncoming vessels, yield to

1 commercial vessels." So there's certainly issues to  
2 be aware of. So it would be good to have places to  
3 leave the water body if you needed to if there was  
4 barge traffic.

5 MS. TIPSORD: And for the record,  
6 you're reading from Exhibit 348?

7 MR. ANDES: Yes.

8 MS. BARGHUSEN: Yeah. Obviously it's  
9 good to have areas that you can leave the waterway.  
10 And as we said --

11 MS. MEYERS-ELEN: Is barge traffic a  
12 reason that you would feel is necessary to leave the  
13 water?

14 MS. BARGHUSEN: No. I mean, usually  
15 no. Barge traffic in itself is not a reason to  
16 leave the water.

17 MR. ANDES: Even though maybe there's  
18 an incident with the barge and you might want  
19 to -- might need to leave the water?

20 MS. MEYERS-ELEN: Objection.  
21 Speculation.

22 MS TIPSORD: It's a follow-up to the  
23 question you just asked her about leaving the water,  
24 though, I think. Go ahead and answer the question,

1 please.

2 MS. BARGHUSEN: Yeah. We actually  
3 really haven't heard of incidents involving barges  
4 and boats and people, you know, being -- colliding  
5 with them or being injured.

6 But in the event that this would  
7 happen, basically what we're trying to do is ensure  
8 that there are frequent access points on the  
9 waterways, you know, in accordance with the  
10 recommendations of the water trail plan. And we  
11 have documented several places along the  
12 waterways -- I'm actually not sure we have pictures  
13 of the CSC though -- of places where, you know, it's  
14 not really right to characterize the waterways as  
15 being all steep-walled, because it's really quite a  
16 mix of steep walled and, you know, areas that you  
17 could get out of the water, shallow areas, water  
18 areas where the, you know, banks would be conducive  
19 to getting out.

20 We have several pictures on the  
21 Calumet, on the Cal Sag Channel, the Calumet River,  
22 and some of the north branch and -- let's  
23 see -- yeah, some on the north branch.

24 MS. MEYERS-ELEN: In all the places

1 that you have -- all the photos that you have, as  
2 far as graduate slopes and banks, would you feel  
3 comfortable being able to get out of your canoe and  
4 stand up and either leave and flip your canoe and go  
5 on your way if it was in one of those rare instances  
6 where you needed to?

7 MS. BARGHUSEN: Yes.

8 MS. MEYERS-ELEN: And also on the  
9 Chicago Sanitary and Ship Canal, were there places  
10 that you just don't have photographs here where  
11 there were actually breaks in the walls where you  
12 also were able to get out of the water?

13 MS. BARGHUSEN: Yeah, there were. And  
14 let's see, where's the exhibit? Here it is. Yeah,  
15 you can see if you look at the last picture of the  
16 ladder near Loomis along the Sanitary and Ship  
17 Canal, you can see how the seawall is beginning to  
18 dip as you go past there. And when we were doing  
19 this boat trip, I mean, I was really quite struck by  
20 the way all these waterways really are quite a mix  
21 of seawalls and then areas where the seawalls, you  
22 know, disappear.

23 MR. ADELMANN: I was not in any way  
24 involved with any of this recognizance, and we

1 didn't study this in a comprehensive way, but I am  
2 familiar with the Sanitary and Ship Canal, to some  
3 extent.

4                   There are slips -- there are a  
5 variety of conditions, as we suggest, where you can  
6 get out of it and where you can get away also from  
7 the main channel. So I think it's much more diverse  
8 than one would expect.

9                   MR. ANDES: Okay. A number of the  
10 questions I have have already been asked by  
11 Ms. Franzetti or the issues have been touched with  
12 regard to aquatic use.

13                   On question 14, in the last  
14 paragraph of your testimony, you stated the  
15 strengthening aquatic life use designations will  
16 contribute to better water quality and aquatic  
17 habitat. Can you explain exactly how this  
18 rulemaking would approve aquatic habitat?

19                   MS. BARGHUSEN: Yeah. I mean,  
20 basically I was talking about conductivity of  
21 habitats -- of high quality habitats, and I envision  
22 that the -- actually, give me a minute.

23                   MR. ANDES: Changing the use  
24 designations -- I understand the water quality

1 connection --

2 MS. MEYERS-ELEN: Just one minute.

3 Thank you.

4 MS. BARGHUSEN: Okay. Yeah, basically  
5 the point of my statement there was that water  
6 quality is an important part of aquatic habitat, and  
7 I do realize that the rulemaking doesn't require  
8 improvements to structural habitat, but I do think  
9 that improvements to water quality can help  
10 encourage further efforts to improve water quality  
11 habitat and improve projects, such as Friends of the  
12 Chicago River, and other examples, you know, of  
13 investment in improving habitat throughout the  
14 region.

15 MR. ANDES: Okay. That's all I have.

16 MS. TIPSORD: All right. Why don't we  
17 take about a ten-minute break. And you have  
18 questions for Mr. Adelman?

19 MR. ANDES: Yes.

20 MS. TIPSORD: Let's take about a  
21 ten-minute break and we'll come back with those.

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



1 MS. TIPSORD: Mr. Andes, you had some  
2 questions for Mr. Adelman, I believe?

3 MR. ADELMANN: I'd be disappointed if  
4 there weren't some. My head isn't too clear though,  
5 so I guess that's not good to say at the beginning,  
6 is it?

7 MR. ANDES: Just a moment. First off,  
8 I wanted to just ask a few questions about the  
9 paneling survey.

10 MS. TIPSORD: Exhibit 347.

11 MR. ANDES: Yes. So the -- am I right  
12 that the survey was mailed to 1,500 individuals who  
13 had registered their canoes or kayaks with the state  
14 of Illinois?

15 MR. ADELMANN: This would be my  
16 colleague, Ms. Barghusen, who could answer that.

17 MS. MEYERS-ELEN: Are you asking  
18 Laura's questions now or Gerry's? I'm sorry.

19 MR. ANDES: It's a follow-up on the  
20 survey.

21 MR. ADELMANN: Laura was involved  
22 directly, so I defer to her.

23 MR. ANDES: So it was mailed to 1,500  
24 households who had registered their canoes or kayaks

1 with the state?

2 MS. BARGHUSEN: That's right.

3 MR. ANDES: And then also to members  
4 of paddling clubs, participants in the Flat Water  
5 Classic, and members of the public who have  
6 requested maps from the Water Trail Counsel?

7 MS. BARGHUSEN: That's right.

8 MR. ANDES: So that was an additional  
9 number of people?

10 MS. BARGHUSEN: Yeah.

11 MR. ANDES: Do you have any idea how  
12 many?

13 MS. BARGHUSEN: We don't have a firm  
14 number on that, because it was distributed through  
15 the club electronically through Friends of the  
16 Chicago River. So we don't know how many people it  
17 went to, just because it was very decentralized in  
18 terms of its distribution.

19 MR. ANDES: And correct me if I'm  
20 wrong, but I think -- and I'm sure Ms. Meyers will  
21 correct me if I'm wrong -- but there has been  
22 earlier testimony about thousands of people that are  
23 members of these paddling clubs or participants in  
24 the Flat Water Classic. I believe there were

1 several thousand who participated in the Flat Water  
2 Classic. I guess we'll go back --

3 MS. BARGHUSEN: Yeah, I don't know how  
4 many people have participated in the Flat Water  
5 Classic. That would be --

6 MR. ADELMANN: We have no direct  
7 involvement with that.

8 MR. ANDES: You don't know?

9 MR. ADELMANN: No.

10 MR. ANDES: Okay. And you got how  
11 many responses back?

12 MS. BARGHUSEN: We got 250.

13 MR. ANDES: Okay. And if I read the  
14 table in question number five correctly, when you  
15 asked the most important qualities in choosing a  
16 location for a paddling trip, proximity, scenery,  
17 length of time on the water were the first three,  
18 and water quality was fourth, correct?

19 MS. BARGHUSEN: That's right.

20 MS. MEYERS-ELEN: If I may ask a  
21 follow-up to that, was this survey given to  
22 everybody on all the northeastern water trails, or  
23 just specific to the CAWS?

24 MS. BARGHUSEN: We sent it throughout

1 the northeastern Illinois area, yes. So it was  
2 given to people right -- all over northeastern  
3 Illinois, yes.

4 MS. MEYERS-ELEN: So it involved a lot  
5 of other waterways outside of just the Chicago River  
6 Waterway System?

7 MS. BARGHUSEN: Yeah, and we actually  
8 specifically asked about 17 different rivers or  
9 river segments on the survey.

10 MR. ANDES: We'll get to those in a  
11 moment. So from the -- questions ten through 12 or  
12 13, I'm gathering that the average age of paddlers  
13 was 52, 76 percent of them had college degrees, and  
14 over half of them made more than \$70,000 a year?

15 MS. BARGHUSEN: That's right.

16 MR. ANDES: Okay. Now, in terms of  
17 the 17 water bodies, you have two sets of rankings.  
18 The first one is people answering whether they had  
19 paddled that river?

20 MS. BARGHUSEN: That's right.

21 MR. ANDES: At all?

22 MS. BARGHUSEN: At all in the past  
23 year.

24 MR. ANDES: And the top rank was the

1 Fox River?

2 MS. BARGHUSEN: That's right.

3 MR. ANDES: When you have the north  
4 branch of the Chicago as the second with 86, you  
5 mean, by your earlier testimony, the whole area from  
6 the Skokie Lagoons down through the -- what we  
7 usually call the north branch of the Chicago River?

8 MS. BARGHUSEN: Right. Skokie is  
9 basically to the main stem.

10 MR. ANDES: All the way down including  
11 the main stem?

12 MS. BARGHUSEN: Not including. To the  
13 main stem.

14 MR. ADELMANN: To the main stem.

15 MR. ANDES: Right.

16 MR. ADELMANN: Up to.

17 MS. BARGHUSEN: Right.

18 MR. ANDES: And then the next part of  
19 the CAWS listed here would be number eight, the  
20 Lower Des Plaines. Are we talking about the lower  
21 Des Plaines?

22 MS. BARGHUSEN: Yeah, although the  
23 Lower Des Plaines in this instance would include  
24 more than what's in the rulemaking area.

1 MR. ANDES: Can you --

2 MS. BARGHUSEN: I think that the Lower  
3 Des Plaines -- yeah. If we look at this, you know,  
4 we'd basically be looking at everything from  
5 Columbia Woods on down. So it's a larger area.

6 MR. ANDES: Okay.

7 MS. TIPSORD: And you're looking at  
8 Exhibit 336 when you're pointing that out?

9 MS. BARGHUSEN: That's right.

10 MR. ANDES: Okay. And then the next  
11 one on this ranking in the CAWS is in the south  
12 branch of the Chicago River, number 11?

13 MS. BARGHUSEN: Yes. That's right,  
14 yeah.

15 MR. ANDES: And is that -- and how is  
16 that defined?

17 MS. BARGHUSEN: The south branch  
18 basically below the main stem. You know, the main  
19 stem down to just past Western Avenue.

20 MR. ANDES: Okay. And then 14 through  
21 17, are Chicago River -- well, when it says Chicago  
22 River other, what are we speaking about?

23 MS. BARGHUSEN: Yeah, we were, kind  
24 of, getting other -- I don't think we specifically

1 asked about the main stem. Let me just look at the  
2 survey to remind myself here. Yeah, we didn't  
3 specifically ask about the main stem. People might  
4 also have indicated Skokie Lagoons there. Parts of  
5 the river that, you know, weren't necessarily  
6 captured under the north and south branch, maybe  
7 Bubbly Creek. I guess strictly speaking that would  
8 be the south branch.

9 MR. ANDES: How is it listed in your  
10 survey?

11 MS. BARGHUSEN: But actually -- yeah,  
12 since we didn't ask people about Bubbly Creek, they  
13 may have listed that as Chicago River other.

14 MR. ANDES: Okay.

15 MS. BARGHUSEN: Chicago River other is  
16 basically anything that's not captured by the term  
17 north branch or south branch.

18 MR. ANDES: And then the Cal Sag is  
19 next, the Calumet River and the Little Calumet, all  
20 within the CAWS?

21 MS. BARGHUSEN: There are portions of  
22 the Little Calumet that are not within the CAWS.  
23 From its crossing the border of Indiana up to Blue  
24 Island where it confluences with the Cal Sag, that

1 whole portion, which I can show you here. This is a  
2 portion of the Little Calumet. You can see it  
3 winding up here. It's not in the rulemaking.

4 MR. ANDES: Okay. But in terms of  
5 your other ranking, this is by the total number of  
6 trips taken on particular segments, correct?

7 MS. BARGHUSEN: That's right. Because  
8 we ask people not only did you paddle it last year  
9 but how many times.

10 MR. ANDES: So there, the Fox River,  
11 the Upper Des Plaines, Lake Michigan were the top  
12 three. The north branch assemblage is fourth?

13 MS. BARGHUSEN: Mm-hmm.

14 MR. ANDES: The lower Des Plaines is  
15 fifth, which, as you said, includes parts that  
16 aren't in the CAWS?

17 MR. ADELMANN: Right.

18 MR. ANDES: And the next one would be  
19 CAWS, the south branch of Chicago. And then again,  
20 14 through 17 are at least partially within the  
21 CAWS?

22 MS. BARGHUSEN: Mm-hmm.

23 MR. ANDES: Okay.

24 MS. MEYERS-ELEN: When you talked



1 about the rankings of the rivers, did you also  
2 ask and did people also respond what launch sites  
3 they used along these rivers?

4 MS. BARGHUSEN: Yeah, and I believe I  
5 was talking about that a little bit earlier. For  
6 rivers they had paddled in the last year, we asked  
7 them to indicate where they usually put in and took  
8 out. And for the north branch, Chicago, Clark Park  
9 was the most often.

10 MR. ANDES: Beyond those two liveries  
11 that you identified, are there other liveries north  
12 of there?

13 MS. BARGHUSEN: There's a livery at  
14 Oakton Street on the North Shore Channel, which is  
15 open right here.

16 MR. ANDES: And if people are  
17 recreating in the Skokie Lagoons, where would they  
18 generally get their boats? Or would they bring  
19 them?

20 MS. BARGHUSEN: They would generally  
21 bring their boats.

22 MS. MEYERS-ELEN: Is Oakton Street in  
23 the rulemaking?

24 MS. BARGHUSEN: Yes, it is. They

1 might rent somewhere and transport the boat, but  
2 they would probably generally bring their own boat  
3 or be paddling with a club. There's a club that  
4 paddles in the Skokie Lagoon that provides boats.

5 MR. ANDES: Okay. Well, let's move to  
6 some of the questions for Mr. Adelman.

7 MS. MEYERS-ELEN: If I can ask one  
8 follow-up on the 2006 paddling survey -- we're going  
9 to discuss the content now -- on number three, we  
10 talk about the majority of trips in northeastern  
11 Illinois and the time. How long did you -- did the  
12 survey reply state the majority of the trips took in  
13 northeastern Illinois?

14 MS. BARGHUSEN: For 48 percent of  
15 respondents, the majority of their trips would last  
16 from two to four hours. For 30 percent, it was four  
17 to six hours. So those are the two highest  
18 responses.

19 MR. ANDES: Okay. Mr. Adelman, in  
20 question number three, you state the regional vision  
21 calls for safe and adequate paddling access to ten  
22 rivers in northeastern Illinois and identified  
23 480 miles of water trails and 174 access points for  
24 paddle. Can you tell us what the ten rivers are?

1 MR. ADELMANN: I'd defer to my  
2 colleague.

3 MS. BARGHUSEN: Yeah, and we actually  
4 have an exhibit.

5 MR. ADELMANN: I think we went through  
6 this.

7 MS. BARGHUSEN: Yeah, we actually have  
8 an exhibit to pass around and then I'll go through  
9 it. Do we want to submit this statement?

10 MS. MEYERS-ELEN: Sure.

11 MS. BARGHUSEN: We also have  
12 photographs of some of the launch sites.

13 MR. ANDES: Well, let's take one  
14 question at a time.

15 MS. MEYERS-ELEN: They both pertain to  
16 the question.

17 MR. ANDES: Well, I didn't ask about  
18 launch sites. I wanted to identify the rivers  
19 first.

20 MS. MEYERS-ELEN: Okay.

21 MS. BARGHUSEN: Okay. I'll wait for  
22 the exhibit number.

23 MS. MEYERS-ELEN: Would you mind  
24 if -- just for ease, so we don't have to end up

1 running around twice, if we just handed both of them  
2 with the understanding -- are you going to be asking  
3 about launch sites?

4 MR. ANDES: I have a question about  
5 access points.

6 MS. MEYERS-ELEN: Right.

7 MR. ANDES: That's fine.

8 MS. MEYERS-ELEN: Thank you. It will  
9 make it go a little quicker.

10 MR. ANDES: We're all for that.

11 MS. TIPSORD: The first exhibit I've  
12 been handed is Water bodies Identified in the  
13 northeastern Illinois Water trails Plan. We'll mark  
14 that as Exhibit 352 if there's no objection. Seeing  
15 none, it's Exhibit 352. Let's go ahead and talk  
16 about that.

17 MS. BARGHUSEN: Okay. All right. So  
18 the ten rivers that are identified in the water  
19 trail plan I have listed here, Lake Michigan, the  
20 Chicago River, including the North Shore Channel,  
21 the Des Plaines River, the DuPage River, Salt Creek,  
22 Nippersink Creek, the Fox River, the Calumet  
23 Waterways, including the Calumet River, the Little  
24 Calumet River, the Calumet Sag channel, Lake

1 Calumet, and Thorn Creek, the Kankakee River, and  
2 the Kishwaukee River.

3 MR. ANDES: Okay. And the next  
4 question is which are including in the rulemaking  
5 and which are are not. And I gather that answer is  
6 on the second page?

7 MS. BARGHUSEN: That's right, the  
8 answer to question 3B. So the following rivers  
9 identified in the water trail plan are included in  
10 the rulemaking area, and that's the north branch of  
11 the Chicago River from River Park where Albany Dam  
12 is, to the confluence of the main stem of the  
13 Chicago River, the North Shore Channel, the main  
14 stem of the Chicago River to its confluence with the  
15 south branch of the Chicago River, the Chicago  
16 Sanitary and Ship Canal to approximately two miles  
17 west of Western Avenue, the Calumet River from its  
18 confluence with Lake Michigan to its confluence with  
19 the Little Calumet River, the Little Calumet River  
20 from its confluence with the Calumet River west of  
21 the Cal Sag Channel, and the Cal Sag Channel from  
22 its confluence of the Little Calumet River west to  
23 the Alsip Boat Launch, which is also Howe's landing,  
24 and the Lower Des Plaines from the confluence to

1 the -- from the Chicago Sanitary and Ship Canal to  
2 the Illinois I-55 bridge.

3 So those are all within the  
4 rulemaking area, and the following water bodies are  
5 outside of the rulemaking area: The north branch of  
6 the Chicago River from Skokie Lagoons to River Park,  
7 the Des Plaines River from the boarder of Wisconsin  
8 to the confluence with the Chicago Sanitary and Ship  
9 Canal, and from below the I-55 bridge to the  
10 confluence of the Illinois River, the branch of the  
11 Little Calumet River that extends from the Indiana  
12 Boarder at Blue Island, Thorn creek, lake Michigan,  
13 the Kankakee River, the Kishwaukee River, Nippersink  
14 Creek, the Fox River, Salt Creek, and the DuPage  
15 River.

16 MR. ANDES: Okay. And the next  
17 question was about how many of the miles of water  
18 trails and access points are in the CAWS or on -- or  
19 outside of the CAWS?

20 MS. BARGHUSEN: Okay. So if you look  
21 at the next page here, you've got miles and  
22 identified launch sites within the rulemaking area  
23 of the CAWS and the Lower Des Plaines River. And so  
24 for the Chicago and Calumet systems, in terms of

1 launch sites from the water trail plan that are in  
2 the rulemaking area, you've got 16 total, 11 of  
3 which are established, none of which are unimproved,  
4 and five of which are construction proposed. And we  
5 have examples of those in the other exhibit,  
6 Exhibit 353.

7 MS. TIPSORD: Right. If there's no  
8 objection, we will mark Examples of Boat Launches in  
9 and Near the Chicago Area Waterways System as  
10 Exhibit 353. Seeing none, it's Exhibit 353.

11 MS. BARGHUSEN: So these are -- you  
12 can see the Oakton Street Boat Launch in the top  
13 picture. That's on the North Shore Channel. That's  
14 one of the ones that has a livery. You can see the  
15 Lincoln Village Boat Launch on the North Shore  
16 Channel right below in the photo, and then some  
17 other photos on the next page are of River Park Boat  
18 Launch along the north branch of the Chicago River  
19 and in the rulemaking area, and also the Clark Park  
20 Boat Launch.

21 MR. ANDES: So let me -- if I can  
22 interrupt for a moment, you have pictures here of  
23 boat launches in or near the Chicago Area Waterway  
24 System. Do you have any pictures of boat launches

1 outside of the CAWS?

2 MS. BARGHUSEN: Outside of the CAWS in  
3 terms of the rulemaking area?

4 MR. ANDES: Right.

5 MS. BARGHUSEN: No. They're all  
6 within -- well, actually let me caveat that. On  
7 Page 6, the bottom picture, the Little Calumet River  
8 Boat Ramp is nearby access to the CAWS rulemaking  
9 area. It's probably between a fourth and a half  
10 mile down this branch of the Little Calumet. But  
11 it's used to access --

12 MR. ANDES: My question -- what I'm  
13 trying to get to is how much of the system -- how  
14 much of these miles and launch sites are within the  
15 rulemaking area versus outside of the rulemaking  
16 area?

17 So since you have pictures of boat  
18 launches inside the rulemaking area but not outside,  
19 let's put that aside for a moment and let's focus on  
20 the information you're providing in answering the  
21 question.

22 MS. BARGHUSEN: Okay. All right. So  
23 in terms of miles inside the rulemaking area, we've  
24 got approximately 41 miles of water trail. And



1 within the rulemaking area on the Lower Des Plaines,  
2 below the confluence of the Chicago Sanitary and  
3 Ship Canal to the I-55 bridge, we've got one total  
4 launch site, which is construction proposed, and  
5 approximately 12 and a half miles of trail. Then if  
6 you look it identifies sites along the CAWS and  
7 Lower Des Plaines River, including the areas both  
8 inside and outside the rules of the rulemaking area.

9 MR. ANDES: These are all areas in the  
10 trail plan --

11 MS. BARGHUSEN: Yes.

12 MR. ANDES: -- on those waterways?

13 MS. BARGHUSEN: Yes.

14 MR. ANDES: Okay.

15 MS. BARGHUSEN: Exactly. Both in and  
16 out, yes.

17 Okay. So the Chicago and Calumet  
18 System or the CAWS, you would have 26 total launch  
19 sites in the water trail plan, 16 of which are  
20 established, three of which are unimproved, and  
21 seven of which are construction proposed, and in  
22 terms of miles you've got approximately 75 miles of  
23 water trail.

24 In the Lower Des Plaines River,

1 you've got five total launch sites, two of which are  
2 established, one is unimproved, two are construction  
3 proposed, and the miles of water trail are  
4 approximately 29.

5 And to finish up the question, the  
6 other areas not included above in the water trail  
7 plan in terms of mileage and launch sites on the  
8 other waterways, launch sites would be 145 and miles  
9 would be approximately 376.

10 MR. ANDES: Okay. Thank you. Let's  
11 move --

12 MS. MEYERS-ELEN: Did you have  
13 anything else you wanted to finish up as far as the  
14 exhibit on launches. As far as -- you had begun to  
15 discuss that. Did you have anything further that  
16 you wanted to discuss prior to moving on?

17 MR. ANDES: How is that a follow-up,  
18 Do you have any else you want to say?"

19 MS. MEYERS-ELEN: When you  
20 were -- strike that. I'll make it more specific.

21 When you were discussing launch  
22 sites existing either in or near the CAWS in  
23 relation to the 11, I believe, in 3C, the 11  
24 established boat launches, did you have anything

1 further that you wanted to introduce when you were  
2 walking through Exhibit 353 prior to moving on to a  
3 different topic?

4 MS. BARGHUSEN: No, I don't think so.

5 MS. MEYERS-ELEN: Okay.

6 MR. ANDES: Let's move to question  
7 number five for Mr. Adelman, although either can  
8 answer.

9 On Page 2, you talk about  
10 improving water quality and aquatic habitat. Have  
11 you assessed the feasibility and cost of affecting  
12 habitat improvements that would provide ecological  
13 benefits.

14 MS. MEYERS-ELEN: Would this --  
15 actually, this one --

16 MR. ADELMANN: Number five.

17 MS. MEYERS-ELEN: This one is 5A?

18 MR. ANDES: Yes, 5A.

19 MS. MEYERS-ELEN: Actually, would you  
20 like for me to have them introduce the project list  
21 in order to discuss the restoration? Would that  
22 help you?

23 MR. ADELMANN: Oh, I suppose we could  
24 do it later, yeah.

1 MS. MEYERS-ELEN: You want to do it  
2 now? That way you can refer to it. Otherwise you  
3 won't be able to refer to it.

4 MR. ADELMANN: All right. Fine. We  
5 should do that.

6 MS. MEYERS-ELEN: We have an exhibit  
7 that we would offer into evidence offered by Gerry  
8 Adelman. It's actually to pre-filed question one,  
9 however, it pertains to restoration projects, giving  
10 lists as well as cost figures and types along the  
11 Chicago Area Waterways that are pertinent to this  
12 question. So we would offer this into evidence at  
13 this time.

14 MS. TIPSORD: If there's no objection,  
15 we will mark Answer by Jerry Adelman to Openlands  
16 MWRD pre-filed Question Number One in R08-9 as  
17 Exhibit 354. Seeing no objection, it's Exhibit 354.

18 MR. ADELMANN: Well, in answer to your  
19 question, it's rather vague exactly what kind of  
20 improvements, you know, you mean. And I think they  
21 could range from very straightforward restoration to  
22 a very complicated, you know, re-meandering of the  
23 river.

24 We have given examples, and that's

1 on Page 9 of the exhibit. There are quite a few  
2 that are listed there, and you can see that there's  
3 quite a breadth and scope to the types of projects  
4 that have been undertaken to date.

5 MR. ANDES: I'm sorry. You're talking  
6 about --

7 MR. ADELMANN: This is the exhibit you  
8 just received.

9 MR. ANDES: Right.

10 MR. ADELMANN: Page 9, restoration  
11 educational projects.

12 MR. ANDES: Okay.

13 MR. ADELMANN: And there's quite a  
14 long list of them. And, you know, 81 restoration  
15 infrastructure projects, for instance, along the  
16 north branch, and things that were done by the Lake  
17 County Storm Water Management Commission, activity  
18 undertaken by Friends of the Chicago River, like  
19 their Michigan Avenue fish hotel, Chicago -- the  
20 U.S. Corps of Engineers, the Park District,  
21 Ecosystem Restoration projects at Van Stuben, at  
22 North Side Prep School. The list goes on of various  
23 other initiatives that have been undertaken, you  
24 know, along the CAWS.

1 MS. MEYERS-ELEN: Are some of these  
2 ongoing?

3 MR. ADELMANN: And many of them are  
4 ongoing projects, exactly.

5 MR. ANDES: So the --

6 MR. ADELMANN: So we have not, you  
7 know, assessed the cost of everything that would be  
8 done. I mean, this is an evolving, you know,  
9 situation. But you can see there's a great deal of  
10 activity. Much work that has been completed at  
11 great cost, but there also many projects that are  
12 either underway or being planned, but we don't have  
13 a comprehensive list of everything that could be  
14 done or that agencies have proposed.

15 MR. ANDES: Okay. Are there reports  
16 on the effectiveness of any of these projects with  
17 regard to the ecological benefits that would be  
18 provided?

19 MR. ADELMANN: I'm sure that some of  
20 these have had monitoring done. You know, we're  
21 seeing a tremendous increase in the number of bird  
22 species. You know, I don't have specific examples  
23 of those reports for these specific projects.

24 MR. ANDES: Okay.

1 MS. MEYERS-ELEN: So if they exist,  
2 you just don't have them here today?

3 MR. ADELMANN: Right. But I expect  
4 many of these agencies, in some cases, are required  
5 to do monitoring over time to see the quality of the  
6 wetland restoration, what kind of impact the habitat  
7 improvements have had. I don't have copies of those  
8 reports.

9 MR. ANDES: And you're not aware of  
10 any reports?

11 MR. ADELMANN: It's anecdotal. I'm  
12 sure there are reports. I don't have them.

13 MS. MEYERS-ELEN: With Hegewisch  
14 Marsh, have you heard of anything regarding the  
15 success of restoration efforts there bringing back  
16 migratory birds and other birds to the area?

17 MR. ADELMANN: Yeah. I mean, in the  
18 case of Hegewisch Marsh, you've seen a number of  
19 species come back that have not been seen in the  
20 area.

21 MR. ANDES: Those are birds?

22 MR. ADELMANN: Pardon me?

23 MR. ANDES: Those are birds?

24 MR. ADELMANN: Exactly, birds.

1 MR. ANDES: Are you aware of any  
2 changes in the aquatic community as a result of any  
3 of these projects?

4 MR. ADELMANN: We do have a  
5 representative for Friends of Chicago River, and I  
6 suspect that the fish hotel that you will be  
7 beginning to see some impact, you know, with habitat  
8 improvement there, although I don't know if you have  
9 report, you know, or document that.

10 MS. FRISBIE: Am I allowed to talk?

11 MR. ADELMANN: Am I allowed to turn to  
12 someone?

13 MS. TIPSORD: I mean --

14 MR. ADELMANN: I don't have these  
15 reports myself --

16 MS. TIPSORD: Ms. Frisbie has been  
17 previously sworn in.

18 MR. ADELMANN: -- and you have an  
19 expert in the room. I don't know in that particular  
20 project if anything to date, you know, has been  
21 documented. But I don't have, myself, access to  
22 reports that were done, no. We didn't undertake  
23 them ourselves.

24 MS. MEYERS-ELEN: Is the list that you



1 had us tender here for all the restoration projects  
2 and for all the infrastructure projects projects  
3 done by other agencies, organizations, both public  
4 and private, throughout the region over the span of  
5 decades, whereas you, Openlands, was not necessarily  
6 a part of those projects?

7 MR. ADELMANN: That's correct, yeah.

8 MR. ANDES: But the statement in your  
9 testimony is in improving the water quality, aquatic  
10 habitat will benefit ecology. I'm saying do you  
11 have information that shows that? Do you have  
12 information as to any particular habitat improvement  
13 projects which shows how it's going to benefit the  
14 aquatic community? And if you don't, that's okay.  
15 I'm just asking if you have any documentary  
16 information on that.

17 MR. ADELMANN: I have anecdotal  
18 information. I don't have documentary information  
19 with me.

20 MR. ANDES: Okay. This may  
21 have -- we'll go to 5C. And this may be -- this may  
22 get back to Ms. Barghusen's testimony. I wanted to  
23 find out what the specific high quality streams are  
24 that are hydrologically connected to the system that

1 you're referring to here. I wasn't sure if those  
2 are the same same ones that Ms. Barghusen was  
3 talking about in her testimony, or if that's a  
4 different set.

5 MS. BARGHUSEN: No. That would be  
6 basically the examples that I would use would be  
7 Jackson Creek. I can go through -- basically it's a  
8 high quality tributary to the Lower Des Plaines  
9 that --

10 MR. ANDES: If they're the same ones  
11 as before, you can just say that and we'll move on.

12 MS. BARGHUSEN: Okay. Same ones.

13 MR. ANDES: Okay.

14 MS. MEYERS-ELEN: Is Hickory Creek  
15 included in -- because we talked about Hickory  
16 Creek, but not Openlands' involvement in Hickory  
17 Creek. Is Openlands involved in any restoration or  
18 monitoring efforts on Hickory Creek?

19 MS. BARGHUSEN: Yeah. Openlands just  
20 this summer has started -- has undertaken some  
21 monitoring at re-meandered segments of a tributary  
22 to Hickory Creek called Spring Creek. It was  
23 remanded by the Forest Preserve District of Will  
24 County. And we're looking at all the effects -- the

1 effects of the re-meandering on macro invertebrate  
2 fish and muscle species. We've just started that  
3 project, and we'll be undertaking that project for  
4 the next three years.

5 MR. ANDES: And re-meandering means  
6 changing the --

7 MR. ADELMANN: It was straightened,  
8 and so it's putting it back in its original course,  
9 which is a meander, rather than a straight line.

10 MS. BARGHUSEN: Exactly.

11 MR. ANDES: I assume that's not an  
12 option that we'd be able to work with for the North  
13 Shore Channel, Chicago River, Sanitary and Ship  
14 Canal, or Cal Sag Channel, am I right? Given the  
15 barge traffic and the locks and dams, that would not  
16 seem like a possible option.

17 MR. ADELMANN: Certainly with the main  
18 stem and the sanitary and Ship Canal and the Cal  
19 Sag, I don't think we'll be in the near future  
20 re-meandering. But the Chicago River, I don't know  
21 if there's any opportunity for minor changes.

22 MS. MEYERS-ELEN: With the Chicago and  
23 Sanitary and Ship Canal, though, aren't there  
24 projects such as the wetlands project that MWRD is

1 taking --

2 MR. ADELMANN: But it's not  
3 re-meandering. I mean, there are opportunities to  
4 improve water quality through wetland creation and  
5 use of some of the slips and so forth. It's not a  
6 re-meandering as such.

7 MS. MEYERS-ELEN: Would it divert  
8 water out, though, into those wetland projects in  
9 order to do things that nutrient renewal programs?

10 MR. ADELMANN: It would, it would.

11 MS. MEYERS-ELEN: And then it would  
12 move back in?

13 MR. ADELMANN: In a similar affect.  
14 But to answer your question, it would not be a  
15 re-meandering.

16 MR. ANDES: Okay. I'm all through  
17 with my questions.

18 MS. TIPSORD: The Agency had some  
19 questions they pre-filed for both.

20 MS. DIERS: Just a couple. Stephanie  
21 Diers for Illinois EPA. I will begin with  
22 Mr. Adelman. Am I pronouncing your name correctly?  
23 Is it Adelman?

24 MR. ADELMANN: Adelman.

1 MS. DIERS: Adelman. I'm going to  
2 ask you pre-filed question number one. Can you  
3 please give us the names of the water fowl migrating  
4 through this region?

5 MR. ADELMANN: Sure. We have an  
6 exhibit.

7 MS. TIPSORD: You know what,  
8 Stephanie, come on up, because we can hardly hear  
9 you.

10 I've been handed Answer by Jerry  
11 Adelman, Openlands to IEPA Pre-filed Question  
12 Number One. If there's no objection, we will mark  
13 that as Exhibit 355. Seeing none, it's.

14 And I've also been handed Bald is  
15 Back from Chicago Life Magazine, summer of 2009. If  
16 there's no objection, I will mark that as Exhibit  
17 No. 356. Seeing none, it's Exhibit 356.

18 MR. ADELMANN: So as you can see in  
19 this exhibit, there's a long list of migratory birds  
20 that use the CAWS area, and there are about 200  
21 species of water fowl -- I'm sorry -- 20 species of  
22 water fowl, over 200 species of birds in the Calumet  
23 area alone that have been identified. I can read  
24 through this list if you'd like.

1 MS. DIERS: No, that's okay.

2 MS. MEYERS-ELEN: Could you  
3 please -- would it be possible to go over -- on the  
4 third page there are some photographs.

5 MR. ADELMANN: Yeah, we have here, for  
6 instance, you know, the Great Blue Heron, the Great  
7 Egret, the Black Crowned Night Heron, is endangered,  
8 but populations have increased. You know, the  
9 Sandhill Crane, which is very exciting to see them  
10 coming back into our region, and the American  
11 Bittern. These are all birds that are found within  
12 the CAWS.

13 MS. MEYERS-ELEN: On the Bald is Back,  
14 could you discuss why we submitted this article?

15 MR. ADELMANN: Well, yeah. I mean, I  
16 think to have the Bald Eagle back in the city of  
17 Chicago nesting in the Calumet region is rather  
18 extraordinary. This was the first time in -- I  
19 forgot if it was 100 years or 75, but it  
20 was -- well, over 100 years. It was last recorded  
21 in 1897. We were instrumental in getting that site  
22 donated, actually, and protected.

23 And so I think we're seeing the  
24 potential in an urban area like this to bring

1 wildlife back. I happen to Share Mayor Daley's  
2 Nature Wildlife committee. There's a great deal of  
3 activity to look, especially the Chicago River and  
4 the Calumet Area and within our parks and along the  
5 lake front, and we're seeing results definitely.

6 I couldn't give you specifics on  
7 the aquatic habitat, but we do have reports on bird  
8 life, in particular, that's rather dramatic, and of  
9 course Audubon does their bird counts every year,  
10 and so we're seeing some dramatic increases and  
11 seeing species we haven't seen in a long time. And  
12 of course the Bald Eagle nesting in the city proper  
13 in the Calumet area is a dramatic example.

14 MR. ANDES: And if I can follow up,  
15 that's all happening without it's disinfection and  
16 without changing the water quality standard?

17 MR. ADELMANN: Well, the water quality  
18 has improved, obviously, and habitat has improved  
19 dramatically. There are concerns --

20 MR. ANDES: I'm sorry --

21 MR. ADELMANN: -- relative to the  
22 quality of the water, however. And nevertheless,  
23 this has happened without disinfection.

24 MR. ANDES: When you say habitat is

1 improving, you're talking about habitats for, say,  
2 Bald Eagles?

3 MR. ADELMANN: Well, habitat in  
4 general. There's been -- we documented, I mean,  
5 many of those projects in exhibit whatever number it  
6 is that you just handed out. The earlier one that  
7 had the restoration efforts and so forth, I mean,  
8 those restorations on the stream banks and in the  
9 vicinity of our waterways have had dramatic impact.  
10 We're on a major migratory route, and so you're  
11 creating habitat.

12 MR. ANDES: Let me stop you there. I  
13 asked if you had nay reports indicating improvements  
14 in habitat and what they were doing from a  
15 standpoint of improvements to the fish community.

16 MR. ADELMANN: Right, and I said I  
17 didn't have -- I have anecdotal information. I  
18 don't have -- personally have reports.

19 MR. ANDES: You said --

20 MS. MEYERS-ELEN: If I may interject  
21 something that may help?

22 MR. ADELMANN: I was talking about  
23 habitat improvements, I was talking about birds.

24 MR. ANDES: Okay. Thank you.



1 MS. MEYERS-ELEN: If I may quickly  
2 follow up. The evidence that -- although we don't  
3 have a report with data, is there anything that MWRD  
4 has released to discuss how water quality  
5 improvements, such as SEPA, SEPA stations, and  
6 putting more oxygen into the water has actually  
7 helped to actually bring some of the rare species of  
8 birds back, as well as to create healthier waterway?

9 MR. ADELMANN: Yes, there is. The  
10 SEPA stations have won awards, and in their  
11 proclamation for the American Society of Civil  
12 Engineers, it's singled out that rare species of  
13 birds are returning as the water becomes more  
14 pristine, and I think Richard Lanyon (phonetic), in  
15 his own statements, has indicated the dramatic  
16 increases in water quality due to TARP, due to SEPA,  
17 and other improvements that they're doing.

18 But, you know, 70 percent of the  
19 waterways -- 70 percent of the water in the CAWS is  
20 effluent. Obviously if you're going to disinfect  
21 that, you're going to improve the water quality  
22 dramatically. So we've seen improvements because of  
23 best practices because of the impact of TARP and  
24 SEPA. One can imagine, you know, what that could

1 mean if the effluent is dramatically --

2 MR. ANDES: Well, do you think the  
3 levels of bacteria have an impact on aquatic or  
4 fish? You know, the focus here in terms of bacteria  
5 levels has been humans. You're saying -- are you  
6 now arguing that disinfection will help the birds?

7 MR. ADELMANN: Well, I think it would  
8 help all living creatures that have contact with  
9 that water. And we heard from my colleague the  
10 importance of the migratory route for fish, as an  
11 example, where the water quality does take -- has a  
12 huge impact on Jackson Creek as an example.

13 MR. ANDES: Bacteria levels or levels  
14 of other parameters?

15 MR. ADELMANN: I suppose it's a range.  
16 Again, it's not my area of expertise, so I really  
17 would rather not comment on that.

18 MS. TIPSORD: Ms. Frisbie, you had a  
19 question.

20 MS. FRISBIE: I just wanted to ask in  
21 your reference to the specific bird species, you  
22 named the Bald Eagles and the other ones from  
23 multiple -- what do those birds eat?

24 MR. ADELMANN: Well, the Eagle eats

1 fish, and many of the others, the herons and egrets  
2 and bitterns and so forth are largely horticultural,  
3 and again, eats largely aquatic life. So clearly  
4 their health is tied to the health of those waters  
5 in a very direct way.

6 MS. MEYERS-ELEN: If we could offer  
7 into evidence -- because we've referenced it -- I  
8 actually have the website URL listed on the bottom  
9 of the exhibit for reference, which was the quote  
10 that -- where species of birds residing in the water  
11 becomes more pristine.

12 MS. TIPSORD: We'll mark Sidestream  
13 Elevated Pool Aeration Stations as Exhibit 357 if  
14 there's no objection. Seeing none, it's  
15 Exhibit 357.

16 And I believe we're ready to go  
17 back to Ms. Diers.

18 MS. DIERS: Pre-filed question two, on  
19 Page 2 of your pre-filed testimony, you state,  
20 quote, "And will help shape smart growth throughout  
21 the greater Chicagoland area for years to come."  
22 How will this proposal help shape smart growth?

23 MR. ADELMANN: Well, let me  
24 just -- I'm just getting to my section here so I

1 have my references. You know, we've seen that  
2 communities increasingly are seen in the CAWS as  
3 tremendous assets that are tied to the economic  
4 development strategies for our region. And we've  
5 seen billions of dollars invested in infrastructure,  
6 you know, projects like TARP and others, but also in  
7 improving habitat and linking recreational and  
8 commercial development.

9 And it's a trend that we've seen  
10 around the country, actually, and I think that, you  
11 know, over the last 30 years, communities have  
12 embraced this, certainly the city of Chicago in a  
13 dramatic way. And, you know, Mayor Richard Daley in  
14 his 2005 Chicago River Agenda said, "The Chicago  
15 River today is Chicago's second shoreline, a natural  
16 cultural resource that plays many vital roles --

17 MS. TIPSORD: Slow down.

18 MR. ADELMANN: Excuse me. "The  
19 Chicago River today is Chicago's second shore line,  
20 a natural and cultural resource that plays many  
21 vital roles in the life of our city."

22 MS. MEYERS-ELEN: I'm sorry. For  
23 reference, that's Exhibit 276 that's already been  
24 submitted.

1 MR. ADELMANN: "The Calumet region in  
2 particular has undertaken a number of plans and  
3 studies to look at improving the quality of life,  
4 the environment, the economy, the recreational  
5 opportunities. I think that we have several  
6 exhibits for that as well. We'll introduce this  
7 before I continue.

8 MS. MEYERS-ELEN: We have a number of  
9 Calumet initiative reports that we would like to  
10 submit regarding all of the efforts that have  
11 occurred.

12 MR. ANDES: If I have a question, do  
13 you want to introduce all of the exhibits first?

14 MS. TIPSORD: Yeah, let's do that.

15 MR. ADELMANN: I think we better hand  
16 the exhibits out.

17 MR. ANDES: That's fine.

18 MR. ADELMANN: That seems to be the  
19 procedure.

20 MS. MEYERS-ELEN: Actually, we've got  
21 one more.

22 MS. TIPSORD: I'm going to start with  
23 these while she's continuing to hand them out. The  
24 Calumet Sag Trail: It's About Connections, with a

1 picture of a young family, it looks like, biking  
2 will be Exhibit 358. It's a brochure.

3 A second brochure, Discover the  
4 south Suburban Calumet Region; Notes on the Natural  
5 Areas, Rivers, and Trails, we will mark as  
6 Exhibit 359.

7 Then as Exhibit 360, a printout of  
8 a website, it looks like, the City of Blue Island,  
9 Discover Blue Island, the Historic Part of Chicago  
10 Southland.

11 MS. MEYERS-ELEN: For clarification  
12 for the record, the URL is on there as well so you  
13 have a reference it.

14 MS. TIPSORD: Yes, thank you. That's  
15 at the bottom of the page. The Calumet River  
16 Corridor Economic Development Vision and Strategy is  
17 Exhibit 361.

18 Exhibit 362, Green River Pattern  
19 Book, an Illustrated Guide to Sustainable Urban  
20 Planing and Design Principles is Exhibit 362.

21 And then the last exhibit that  
22 I've been handed is Calumet Open Space Reserve Plan,  
23 and looks like a folder, just for further  
24 description purposes. That will be Exhibit

1 362 -- 363, sorry. Even when I'm reading them I  
2 can't read them.

3                   Okay. Is there any objection to  
4 admitting any of these exhibits? Seeing none, the  
5 exhibits are admitted as described.

6                   MR. ADELMANN: Thank you. Well, I  
7 will continue with my answer then. And just to  
8 complete the quote from Mayor Daley in the 2005  
9 Chicago River agenda, he says, "The Chicago River,  
10 and I quote, is a recreational resource for  
11 Chicagoans who paddle on its waters or bicycle along  
12 its banks. It also plays an important roll in our  
13 economy as a transportation link and a destination  
14 for tourism."

15                   Now, in the Calumet region you  
16 received all of these different reports and plans,  
17 you know. But clearly the seven communities that  
18 have worked closely with the South Suburban Mayors  
19 and Managers Association see it both as an  
20 environmental amenity, but also very much an  
21 economic asset. And they really want to, you know,  
22 link job creation and community development with  
23 environmental quality, and in particular, the  
24 waterway.

1                   Let me read a quote from the  
2 Calumet River Corridor Economic Development Vision  
3 and Strategy, which is from 2007, Page 3.

4                   MS. MEYERS-ELEN: And it is  
5 Exhibit 361.

6                   MR. ADELMANN: "The Little Calumet  
7 River and the Calumet Sag Channel provide unique and  
8 valuable assets for the future development of the  
9 area. They flow through forest preserves and parks,  
10 natural habitats, undeveloped open space, farmland,  
11 and cultural and recreational areas."

12                   "In addition, there are a number  
13 of public parks, forest preserves, and important  
14 cultural amenities, such as Ton Farms, adjacent to  
15 the corridor. Several projects have been proposed  
16 and initiated in an effort to take full advantage of  
17 the assets."

18                   "The significant amount of vacant  
19 land and open space provides opportunities to  
20 develop the corridor as a recreational natural  
21 asset, as well as a magnet for development and  
22 redevelopment near the river."

23                   And I think that's the operative  
24 word is magnet. I mean, people are beginning to see



1 the Chicago River, as the mayor said, our second  
2 waterfront and our forgotten waterfront, as a magnet  
3 for development, and communities along the CAWS are  
4 embracing it.

5 One of the most dramatic examples  
6 is with Blue Island. I think we heard earlier this  
7 morning about phase point development. They have  
8 developed a marina on the Cal Sag. \$20 million has  
9 been spent already developing 30 homes. They just  
10 received funding from the state, another \$20 million  
11 for a senior citizen development, and ultimately in  
12 that entire development of phase point, over  
13 \$140 billion is projected to be spent there. And  
14 the catalyst for it is the waterway.

15 Now, the perception is that water  
16 quality has improved. I think the reality is, as  
17 documented by Richard Lanyon and others, water  
18 quality has improved. But clearly we have a long  
19 way to go. And so I think that you can see there is  
20 a linkage here, and more clean water, I think,  
21 encourages more smart growth, and lack of it, you  
22 know, doesn't. And this is a trend we see across  
23 the country, cities improving water quality and  
24 developing access to their waterfronts have been

1 engines for economic development.

2 MS. MEYERS-ELEN: Is the project list  
3 one that we handed out the initially referenced --

4 MR. ADELMANN: Exhibit number whatever  
5 it was.

6 MS. MEYERS-ELEN: I'm trying to pull  
7 the exhibit number. I apologize. 354, Answers by  
8 Jerry Adelman, Openlands to MWRD Pre-filed Question  
9 Number One, which actually wasn't in relation to  
10 pre-filed question number one, are all of the  
11 examples in here examples of how you can link smart  
12 growth to infrastructure and all these projects  
13 which better the waterways and then improve the  
14 quality of life within the region?

15 MR. ADELMANN: Certainly many of them,  
16 if not most of them. And we've divided these up  
17 into seven different categories. But I think you  
18 can see that there's been tremendous public and  
19 private investment along our waterways, and they  
20 wouldn't have done it, many of them will tell us,  
21 had it not been, again, for the perception and we  
22 hope the reality of improved water quality.

23 But again, the better the water  
24 quality, the more investment one would see. And so

1 I think that, you know, we have great assets here  
2 and communities are recognizing that, no question.

3 MR. ANDES: Can I ask a question?

4 MS. TIPSORD: Yes, Mr. Andes. You had  
5 a follow-up.

6 MR. ANDES: A couple. One was first,  
7 to clarify, all of these improvements, all of these  
8 investments are being made without any changes to  
9 the water quality standards, correct?

10 MR. ADELMANN: That is correct.

11 MR. ANDES: Okay. Secondly --

12 MR. ADELMANN: Not without changes to  
13 water quality, but not with standards. That's  
14 right.

15 MR. ANDES: Okay. Second, have you  
16 assessed the feasibility and cost of meeting the  
17 proposed water quality standards?

18 MR. ADELMANN: I haven't myself, no.

19 MR. ANDES: Okay. Do you have  
20 any -- now, there's been testimony presented  
21 concerning SEPA stations and having to install an  
22 additional 18 SEPA stations, and even that not  
23 getting to 100 percent compliance within the  
24 standards at a cost of about \$1 billion. Have you

1 read any of that testimony?

2 MS. MEYERS-ELEN: I'm sorry. I  
3 apologize. I was distracted. Have you read any of  
4 the testimony, I believe, was Mr. Andes' question.

5 MR. ADELMANN: No, I haven't read any  
6 of the testimony, and it's not my area of expertise  
7 or my principal concern. I'm here to comment on  
8 other things. I had a conservation organization  
9 and --

10 MR. ANDES: So you don't know if --

11 MR. ADELMANN: -- a lands preservation  
12 organization, yes.

13 MR. ANDES: But you're opining as to  
14 issues in this rulemaking as to these water quality  
15 standards, but you don't have any opinion in terms  
16 of whether these proposed water quality standards  
17 are even feasible to meet?

18 MR. ADELMANN: No, I didn't say I have  
19 no opinion. I don't have the expertise to comment  
20 on that. There's a difference.

21 MR. ANDES: If you have an opinion,  
22 what would be the basis for that opinion? Whether  
23 the standards, the proposed standards for DO,  
24 temperature, et cetera, are feasible --

1 MR. ADELMANN: That is not my area of  
2 expertise. I would not like to answer that  
3 question.

4 MS. MEYERS-ELEN: Are you asking for a  
5 legal opinion, or are you asking whether or not  
6 certain things are possible? Because, I mean, if  
7 you're talking about economic feasibility, I'd like  
8 to know whether or not you're discussing that as a  
9 threshold, or whether or not you think that there  
10 are certain things that can be done along the  
11 waterway, like put more SEPA stations in and whether  
12 or not that's possible.

13 MR. ANDES: No, that's not my  
14 question.

15 MR. ADELMANN: I've shown the  
16 feasibility, if you want, of -- maybe the word isn't  
17 feasibility. The reality of people discovering  
18 these waterways because their perception is that  
19 water quality has improved. And so we can see that  
20 it is a catalyst for investment and development.  
21 Talking about the cost benefit analysis of what's  
22 proposed, that's not my area of expertise. I'm not  
23 an economist.

24 MR. ANDES: I'm just trying to narrow

1 what your testimony is relevant to, because the  
2 question at hand here is there's a set of proposed  
3 water quality standards.

4 MR. ADELMANN: Right.

5 MR. ANDES: The first question is do  
6 you know if those are technically feasible to be  
7 met, and you have no opinion on that?

8 MS. MEYERS-ELEN: Objection. That's  
9 calling for a legal conclusion.

10 MR. ADELMANN: I have no expertise. I  
11 mean, that's something for EPA.

12 MS. MEYERS-ELEN: Just a second.  
13 That's calling for a legal conclusion, and I would  
14 object on those grounds. If you're trying to figure  
15 out through this witness whether or not something is  
16 economically feasible and would meet the  
17 requirements of a law that you're discussing, I  
18 would say that that's a legal opinion to be  
19 rendered. If you'd like him to discuss the ins and  
20 outs what could get done on the waterways, I think  
21 that that's an appropriate question.

22 MR. ANDES: Well, I'm asking do you  
23 think that things could be done in the waterways  
24 that would result in compliance with this proposed

1 set of standards?

2 MR. ADELMANN: I believe that. But  
3 again, it's not my area of expertise.

4 MR. ANDES: Well, what basis do you  
5 have for believing that? Has somebody told you  
6 that?

7 MR. ADELMANN: Other experts who have  
8 already commented, either formally or informally.  
9 But again, it's really something I'm not comfortable  
10 commenting on.

11 MR. ANDES: But you just did. Which  
12 experts have you talked to that said these standards  
13 are technically feasible --

14 MR. ADELMANN: I'm not prepared to  
15 answer that question.

16 MS. TIPSORD: I don't -- first of all,  
17 I think you're mischaracterizing his testimony. He  
18 said his opinion was there are things that could be  
19 done, and he's basing that opinion on things that he  
20 has heard in testimony. You then asked him what was  
21 technically feasible and economically reasonable.

22 I do think -- Mr. Adelman, let me  
23 ask you this: You believe there are things that can  
24 be done to improve the water quality on the CAWS?

1 Is that correct?

2 MR. ADELMANN: Absolutely.

3 MS. TIPSORD: That's your opinion?

4 MR. ADELMANN: The SEPA stations  
5 document that. The TARP project to date documents  
6 that. I do believe there are things that can be  
7 done to improve water quality, absolutely.

8 MS. TIPSORD: And the basis for that  
9 is the SEPA stations, the TARP and --

10 MR. ADELMANN: And what many  
11 experts -- I don't have the list in front of me.

12 MS. TIPSORD: That's fine.

13 MR. ADELMANN: But there's been things  
14 written in the papers, there's been commentary,  
15 there's been discussions. I'm not prepared today to  
16 give you a list of who those experts are.

17 MS TIPSORD: That's sufficient.

18 MR. ADELMANN: Including EPA, I might  
19 add.

20 MS. TIPSORD: That's sufficient.

21 Thank you.

22 MR. ANDES: And you're not trying to  
23 opine as to compliance with water quality standards,  
24 correct?



1 MR. ADELMANN: I think they should be  
2 in compliance. Why shouldn't they?

3 MR. ANDES: No, no. I'm sorry. Let  
4 me --

5 MS. MEYERS-ELEN: I will object. This  
6 is getting into legal, and I --

7 MS. TIPSORD: No, I don't think so. I  
8 think what -- I think you're taking it -- I think  
9 you're both taking it -- let me try.

10 MR. ANDES: Go ahead.

11 MR. ADELMANN: Maybe you can interpret  
12 it.

13 MS. TIPSORD: Let me try. I think  
14 what he's asking is you're not here offering an  
15 opinion as to whether or not the proposed water  
16 quality standards are either technically feasible or  
17 economically reasonable. You just are saying that  
18 there are things that can still be done to improve  
19 the water quality?

20 MR. ADELMANN: Yes.

21 MS. TIPSORD: Based on the testimony  
22 you've heard and --

23 MR. ADELMANN: That is correct.

24 MS. TIPSORD: Thank you.

1 MR. ADELMANN: That is correct.

2 MR. ANDES: Okay. Thank you.

3 MS. TIPSORD: I think you were looking  
4 too specific for what was a much more general  
5 question.

6 MR. ADELMANN: I see.

7 MR. ANDES: Okay. I'm done.

8 MS. TIPSORD: All right. Ms. Diers?

9 MS. DIERS: Okay. I'm going to strike  
10 question three and four and go to question five.  
11 What is the May 2000 CAWS study you site in your  
12 pre-filed testimony?

13 MR. ADELMANN: This is five?

14 MS. DIERS: Yes.

15 MR. ADELMANN: I was looking at  
16 another five. I'm sorry. This is a three part  
17 study that's entitled Waterways for our Future, and  
18 it was jointly undertaken by Openlands, Friends of  
19 the Chicago River, and the Civic Federation, and it  
20 looked at water, land use, you know, relative to the  
21 Metropolitan Water Reclamation District and their  
22 impact on the Chicago Area Waterways.

23 There was a second part to that,  
24 the Metropolitan Water Reclamation District

1 wastewater treatment in the Chicago area, and that  
2 was the Friends of the Chicago River report.  
3 Openlands, where they looked at the land use site of  
4 that, that was our area of expertise.

5 MS. MEYERS-ELEN: Is that Exhibit 288  
6 already in the record?

7 MR. ADELMANN: I believe it is.

8 MS. DIERS: That's all I have for  
9 Mr. Adelman, and I have just a couple questions for  
10 the other witness.

11 I'm going to go to pre-filed  
12 question six. When do you think the seven proposed  
13 launch sites along the stretches of the CAWS and the  
14 Lower Des Plaines River will be approved?

15 MS. BARGHUSEN: I'm going to say I  
16 really don't have projected time frames for those.  
17 I've seen, you know, projected time frames given by  
18 site owners. I mean, I've seen them be given and  
19 then it really takes years longer for them to  
20 appear, and I've seen it the other way, too, where  
21 they appear a lot faster than expected. So that's  
22 just to say that I don't know.

23 MS. DIERS: Is it five years,  
24 ten years?

1 MS. BARGHUSEN: I think it could,  
2 yeah.

3 MS. DIERS: Or even longer?

4 MS. BARGHUSEN: Yeah.

5 MS. DIERS: Or less?

6 MS. BARGHUSEN: Some of them could  
7 never be developed and alternative sites could be  
8 found. I've seen that happen a lot, too,  
9 where -- yeah.

10 MS. MEYERS-ELEN: Could it also be a  
11 lot quicker?

12 MS. BARGHUSEN: It could also be a lot  
13 quicker, yeah.

14 MR. ADELMANN: I think we're finding  
15 that there's some significant opportunities with  
16 stimulus money, whatever happens in Springfield, the  
17 capital budget and so forth. So these things are  
18 very volatile. Even though they're limited public  
19 resources, there are some opportunities we didn't  
20 that anticipate before that relate to shovel-ready  
21 projects. These are shovel-ready projects.

22 MS. DIERS: And I'm going to go down  
23 to question nine. On Page 8 of your pre-filed  
24 testimony, you state the interest that college and

1 high school rowing teams are showing in using the  
2 Calumet Sag Channel for regattas indicates this use  
3 is very likely to continue to increase in the  
4 future. Do you know what information is given to  
5 the participants about water quality and safety  
6 precautions?

7 MS. BARGHUSEN: Again, I don't know.  
8 We don't coordinate those events, and the regatta is  
9 coordinated by the City of of Blue Island, and  
10 I -- you know, they would be a better source.

11 MS. DIERS: That's all I have.

12 MS. TIPSORD: Are there any other  
13 questions for Mr. Adelman or Ms. Barghusen? Thank  
14 you very much, Mr. Adelman and Ms. Barghusen. It's  
15 a pleasure to have finally gotten to you.

16 Before we go off the record, I  
17 spoke with Ms. Franzetti. We will begin again on  
18 our next hearing on November 9th and November 10th.  
19 We're back over here in 502. We are going to start  
20 with miss Julie Wozniak, and then we'll go to Greg  
21 Siefert (phonetic). I did tell Ms. Franzetti that  
22 in looking at the questions, I think it's unlikely  
23 we'll get to her third witness, how is coming in  
24 from Michigan in those two days. I asked her to get

1 prepared for hearing dates in December. I ask all  
2 of you to look at December and January as well to  
3 hopefully finish up the Lower Des Plaines so we can  
4 move on to the water quality standards.

5 Thank you all very much. Thank  
6 you again, and we're adjourned today.

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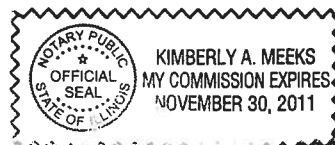
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