

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
METROPOLITAN WATER)
RECLAMATION DISTRICT OF)
GREATER CHICAGO,)
)
)
Petitioner) No. PCB 16-28
vs)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
)
Respondent)

REPORT OF THE PROCEEDINGS held in the above entitled cause before Hearing Officer Bradley Halloran, called by the Illinois Pollution Control Board, taken by Steven Brickey, CSR, RMR, for the State of Illinois, 100 West Randolph Street, Chicago, Illinois, on the 4th day of August, 2020, commencing at the hour of 9:02 a.m.

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A P P E A R A N C E S

MR. BRADLEY HALLORAN, Hearing Officer
MS. BARBARA FLYNN CURRIE, Chairwoman
MS. MARIE TIPSORD, General Counsel
MR. ANAND RAO, Technical Unit
MS. ESSENCE BROWN, Technical Unit
MS. BRENDA CARTER
MR. TIM FOX
MS. ANASTASIA PALIVOS

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
BY: MS. STEPHANIE DIERS
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Appeared on behalf of the Illinois
Environmental Protection Agency;

BARNES & THORNBURG
BY: MR. FREDRIC ANDES
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 214-8310,

Appeared on behalf of the Metropolitan
Water Reclamation District;

ALSO PRESENT: MR. SCOTT TWAIT
MR. DUSTIN GALLAGHER
MR. EDWARD STAUDACHER
MR. KEVIN FITZPATRICK
MR. THOMAS MINARIK
MR. FRED ANDES
MS. MARGARET CONWAY

E X H I B I T S

Marked for
Identification

None.

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

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

16 MS. TIPSORD: And Barbara Currie.

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

22 MS. TIPSORD: Yes.

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

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

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

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

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

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

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

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

23 WEBEX: This meeting is being
24 recorded.

1 HEARING OFFICER HALLORAN: Thank
2 you. Once the Board receives the transcript, the
3 recording will be destroyed. Just a little
4 background. We're here today because on July
5 26th, 2018, MWRD filed an amended petition for a
6 dissolved oxygen, or DO, Time-Limited Water
7 Quality Standard or TLWQS. MWRD is seeking TLWQS
8 for discharges from the combined sewer overflow
9 "CSO" outfalls into the Chicago Area Waterway
10 System. MWRD requests TLWQS for CSO outfalls
11 covered under the National Pollutant Discharge
12 Elimination System permits issued to its O'Brien,
13 Calumet and Stickney wastewater treatment plants.

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

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

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

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

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

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

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

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

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

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

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

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

9 MS. DIERS: We can hear you.

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

12 MS. DIERS: No, thank you.

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

21 MS. TIPSORD: You need to swear the
22 witness.

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

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

6 MS. TIPSORD: Your witnesses have to
7 unmute.

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

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

15 MR. MINARIK: I do.

16 MR. FITZPATRICK: I do.

17 MR. STAUDACHER: I do.

18 MR. GALLAGHER: I do.

19 MR. ANDES: I do.

20 WHEREUPON:

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

1 HEARING OFFICER HALLORAN: I only
2 counted three.

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

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

9 MR. ANDES: Mr. Minarik was the
10 fourth.

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

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

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

23 Please explain how the
24 information presented in Attachment C, Exhibit C,

1 tables relate to green infrastructure.

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

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

9 HEARING OFFICER HALLORAN:
10 Attachment C. Exhibit C.

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

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

20 MS. TIPSORD: Okay. You're all
21 muted. You have to unmute yourself. Either Star
22 6 on your phone or click the microphone on the
23 computer.

24 MR. MINARIK: Yeah, this is

1 Mr. Minarik here. I don't think I'm the right
2 person to discuss the green infrastructure
3 projects. I think that might be our engineering
4 folks.

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

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

9 MR. STAUDACHER: Can you hear me
10 now?

11 HEARING OFFICER HALLORAN: Yes.

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

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

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

20 MR. ANDES: Yes.

21 MR. RAO: Basically what I want from
22 the District was kind of explain what information
23 from the table that you submitted like, for
24 example, GI volume, gallons and permit number, but

1 there are no details about who the permit was
2 issued to and what it means when you say GI volume
3 and gallons. Just an explanation of the table
4 would be helpful.

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

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

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

1 annual report.

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

6 MR. ANDES: Sure, we can do that.

7 MR. RAO: Thank you.

8 HEARING OFFICER HALLORAN: Okay.

9 I'm moving on to Question 2 and it's in two parts.

10 In response to Board's follow-up
11 question 8, MWRD states that there is no need to
12 reconfirm and revalidate the Marquette Model since
13 the model was based on data from three years;
14 2001, 2003 and 2008.

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

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

24 HEARING OFFICER HALLORAN: "If the

1 information in Dr. Melching's report is outdated
2 and the model is no longer valid for recent data,
3 please explain why MWRD is relying on
4 Dr. Melching's report to support its TLWQS
5 petition."

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

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

21 MR. MINARIK: This is Mr. Minarik.
22 I would agree with what Fred said there. We don't
23 see a reason to rerun the model and it's not
24 possible to do it right now. The DuFlow Model I

1 think is discontinued. So we'd have to run a new
2 model if we were to do that.

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

7 HEARING OFFICER HALLORAN: Can you
8 repeat that, please?

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

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

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

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

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

21 MR. RAO: Can you hear me now?

22 HEARING OFFICER HALLORAN: Yes.

23 MR. RAO: Okay. I have a
24 clarification. You mentioned that even if you

1 rerun the model with the current flow conditions
2 the results will be the same.

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

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

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

19 HEARING OFFICER HALLORAN: All
20 right. The follow-up question B "Does MWRD plan
21 to conduct modeling using the current flow
22 dynamics and DO conditions, particularly in the
23 Calumet System, to determine if supplemental
24 aeration would be required to comply with the

1 generally applicable DO standards within the terms
2 of the TLWQS if granted?

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

7 MS. TIPSORD: He's still muted.

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

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

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

20 MS. TIPSORD: It's Mr. Andes.

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

1 If not, please explain what
2 measures would be undertaken to achieve compliance
3 given that the TCR is fully operational."

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

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

23 MR. MINARIK: This is Mr. Minarik
24 here. We will continue to do our monthly ambient

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

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

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

1 end of the initial five-year term.

2 MR. RAO: Thank you.

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

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

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

14 If not, we can move to
15 Mr. Ettinger.

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

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

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

24 HEARING OFFICER HALLORAN: No. No.

1 That's just for the MWRD. We still have the IEPA
2 witnesses, a couple of questions.

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

7 HEARING OFFICER HALLORAN: Correct.

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

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

1 MR. ANDES: Mr. Minarik, perhaps,
2 can answer the question.

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

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

12 MR. MINARIK: Yes, that would be
13 correct.

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

18 MR. ANDES: Let me start and then
19 Mr. Minarik can add on. Again, I think TARP was
20 discussed as part of the measures the District
21 will be implementing -- is implementing and will
22 be implementing under both the consent decree and
23 the TLWQS, but the need for the variance is not
24 based on, well, we are going to have a specific

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

9 MR. ETTINGER: Okay.

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

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

14 MR. ANDES: Sure.

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

1 MR. ETTINGER: Okay. So -- sorry.

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

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

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

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

24 And the model -- one of the

1 things the model does is predict dissolved oxygen
2 levels based on a level of combined sewer
3 overflows, that's correct, right? And if that's
4 correct, has anything else changed in terms of
5 sewage treatment for up factors in the system that
6 might alter the prediction of what kind of
7 dissolved oxygen level you would have based on
8 that level of combined sewer overflow?

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

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

18 MR. MINARIK: Yes, that's possible.

19 MR. ANDES: I think the bottom line
20 laid out in the papers is that as long as the
21 CSO's are occurring there is still the risk of
22 violation of the water quality standards and
23 that's what we're trying to address through the
24 variance if -- if we determine after, A, having

1 additional years of data and, of course,
2 precipitation trends, et cetera, all influence
3 data.

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

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

24 MR. ETTINGER: Okay. I wasn't going

1 to quite get there yet, but since you brought up
2 the loss of the transitional reservoir maybe we
3 can discuss that now.

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

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

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

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

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

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

24 MR. ETTINGER: I'm not hearing

1 anything.

2 MS. TIPSORD: We lost

3 Mr. Fitzpatrick.

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

6 MS. TIPSORD: He's not muted.

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

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

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

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

16 MR. FITZPATRICK: Hello?

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

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

21 HEARING OFFICER HALLORAN: Yes.

22 MR. FITZPATRICK: Okay. I heard the
23 initial question. I don't know what happened
24 afterwards, but I can give a little history of the

1 transitional reservoir, is that what you're
2 looking for?

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

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

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

17 So the transitional reservoir
18 was built initially because it was going to take a
19 lot longer to get the combined sewer reservoir,
20 fully mined that was going to take all the flow
21 online. So they were temporarily supposed to use
22 the west lobe of the Thornton Quarry to hold this
23 Thorn Creek floodwater from what was the SCS
24 reservoir, the transitional reservoir.

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1 Then when the north lobe was
2 mined to the capacity needed for the combined
3 reservoir, the composite reservoir, the
4 transitional reservoir was going to be taken
5 offline and flow diverted to the combined
6 reservoir. What happened was when we got the
7 combined reservoir online, we had an opportunity
8 with the mining company, Material Service, to get
9 another five years out of the transitional
10 reservoir before they'd need to start mining it.

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

20 So our five-year lease ends
21 actually at the end of this year. We are trying
22 to get another year out of Material Service, but
23 they have not -- not agreed to it yet, but they
24 definitely said we cannot have a long-term

1 reservoir there. They need to mine that area in
2 short order. So that is why we're -- I guess
3 we're relocating the Thorn Creek floodwater flow
4 to the same reservoir that the CSO flow water goes
5 into.

6 MR. ETTINGER: Well, when the
7 TARP --

8 MR. FITZPATRICK: And --

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

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

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

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

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

24 HEARING OFFICER HALLORAN: We lost

1 him again.

2 MR. FITZPATRICK: Flood creek water.

3 MR. ANDES: I think we lost you
4 again.

5 Do we have the full capacity
6 that was planned for when TARP was designed in the
7 southside?

8 MR. FITZPATRICK: Yeah. Can you
9 hear me now?

10 HEARING OFFICER HALLORAN: Yes.

11 MR. ETTINGER: I can now.

12 MR. FITZPATRICK: Okay. So the 4.8
13 billion gallons that we will have for combined
14 sewer overflow is what was conceived of for this.
15 So right now we're borrowing the 3.1 billion
16 gallons of Thorn Creek floodwater, but we have to
17 now give it back because we're giving back the
18 hole to Material Service.

19 MR. ETTINGER: So you -- for a while
20 you had 6.9, but now you're going back to the 4.8
21 that the TARP was designed for, is that correct?

22 MR. FITZPATRICK: 7.9 is what we had
23 temporarily, yes.

24 MR. ETTINGER: I'm sorry. 7.9,

1 we're going back to 4.8. So when you -- when you
2 told U.S. EPA in 2012 that it was expected that
3 completion would be -- would end CSO's on the
4 southside, were you anticipating having 8 or 7.9?

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

12 MR. ETTINGER: I'm sorry. I'm going
13 to re- -- it says the response to Board Question
14 25 and the responses of the Metropolitan Water
15 Reclamation District of Greater Chicago for the
16 Pollution Control Board and this document is not
17 paginated, but I think it was filed on July 27th.

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

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

1 I'm sorry.

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

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

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

1 in the south end of the system.

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

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

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

1 report doesn't change the fact that there still
2 could be CSO's.

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

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

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

13 HEARING OFFICER HALLORAN: Thank
14 you.

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

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

1 MR. ETTINGER: We can.

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

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

12 MR. ETTINGER: So we know --

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

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

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

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

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

1 MR. FITZPATRICK: Damage by the
2 CSO's, you're saying?

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

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

13 MR. ANDES: Let me correct that.

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

23 It's been very, very few. We
24 have captured over 99 percent of the CSO's since

1 Thornton came online so the residual is less than
2 1 percent. I don't know that we've tried to put a
3 dollar to any damage that might have been caused
4 if it was by them.

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

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

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

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

1 So if -- and obviously
2 precipitation patterns change and if there are
3 events that cause CSO's during that time period,
4 the likelihood of CSO's is greater without that
5 capacity because we don't have that -- we don't
6 have that buffer. I think that was the point.

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

11 MR. ANDES: I think that's accurate.

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

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

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

1 MR. ETTINGER: Okay. So when you
2 say you haven't needed the capacity to take care
3 of CSO's, are we talking about just MWRD CSO's or
4 all of the CSO's?

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

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

19 MR. ANDES: This --

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

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

1 MR. MINARIK: I'm not aware of a way
2 that we can do that.

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

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

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

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

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

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

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

1 MR. ANDES: I think the question,
2 and maybe this is back to Mr. Minarik, is if
3 there's a way to determine which causes CSO's both
4 for the District and for some of the other
5 entities, is it -- is there any way to
6 distinguish, like, well, which caused the DO
7 violation?

8 MR. ETTINGER: Correct.

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

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

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

22 MR. MINARIK: This is Tom Minarik
23 again. I believe there is over 400 CSO's in the
24 Chicago Area Waterway System. So it is just not

1 practical to be able to monitor all those during a
2 wet weather event when they're CSO's.

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

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

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

23 We're not trying to address the
24 contributions by other parties, but we're trying

1 to say the District to reduce its possible
2 contributions is taking all of the following steps
3 and that's what the variance involves.

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

13 MR. ETTINGER: Okay. Well, I'm
14 going to make up a municipality to not upset
15 anybody. So let's say we have the Municipality of
16 Whoville and Whoville has decided that they're not
17 going to apply for a variance like this one and
18 they're not going to do any green infrastructure
19 like -- like MWRD is committed to doing and
20 they're not going to do anything to reduce flow
21 into the system and there is a violation of DO
22 standards in the area of Whoville, somebody might
23 want to criticize Whoville at that point, but
24 would there be any way to decide whether the CSO

1 was an immune CSO, so to speak, from MWRD or CSO
2 from Whoville who never bothered to get a
3 variance?

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

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

23 MR. ETTINGER: Let's see.

24 HEARING OFFICER HALLORAN: For the

1 record, I am told that Board member Palivos has
2 also joined the meeting. Sorry, Mr. Ettinger.
3 You may proceed.

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

6 MS. PALIVOS: Good morning.

7 HEARING OFFICER HALLORAN: Good
8 morning.

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

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

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

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

1 MR. ETTINGER: And that would be 113
2 times within the last five years?

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

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

9 MR. FITZPATRICK: We keep records of
10 when we close the gates to TARP. I'm not sure
11 what exactly you mean by gates to the other
12 municipalities, but there are gates to the TARP
13 system.

14 MR. ETTINGER: I'm sorry. Maybe I
15 should just -- however, based on review of the
16 records as to the TARP operating conditions, MWRD
17 estimates that it has closed the gates at least
18 113 times in the last five years. That's closing
19 the whole system.

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

22 MR. ETTINGER: Please.

23 MR. ANDES: Because it's -- there is
24 a piece of data on it when the gate is closed, but

1 rather there is certain operating conditions under
2 which we've closed the gates and perhaps you can
3 explain that.

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

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

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

24 MR. ETTINGER: I hate to take up

1 everybody's time on this, but I'm a little
2 confused on this and I think it does go to the
3 basic enforceability of what we're doing here.

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

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

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

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

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

1 going to have CSO's, you're going to have CSO's
2 from the MWRD and other entities, is that correct?

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

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

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

14 MR. STAUDACHER: Yes.

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

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

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

23 MR. MINARIK: No, not exactly.

24 MR. ETTINGER: Does anybody measure

1 that?

2 HEARING OFFICER HALLORAN: Okay.

3 I'm sorry. Mr. Ettinger, the non-speaker has to
4 mute himself and then, you know, unmute when
5 needed. I think we have at least two, the witness
6 and Mr. Ettinger, on at the same time and it's not
7 working.

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

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

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

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

1 stormwater overflows?

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

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

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

15 MS. MEYERS: Yes, please.

16 HEARING OFFICER HALLORAN: Proceed.

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

21 So I guess the main questions
22 that I would like to pose to MWRD this morning are
23 regarding green infrastructure. The Illinois
24 Environmental Protection Agency asked if MWRD has

1 evaluated other measures to reduce the chance of
2 future CSO discharges into the Calumet System
3 and MWRD pointed towards the green infrastructure
4 work that it is doing in collaboration with many
5 within its jurisdiction.

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

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

1 contribute to reductions in the volume that we
2 need to capture and hold?

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

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

23 In an adaptive way, green
24 infrastructure is necessarily adaptive where you

1 try some things and you see if they work and then
2 you implement them more fully and that's all part
3 of the plan, but I'll defer to Mr. Staudacher if
4 they have any further comments on that.

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

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

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

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

1 that and as far as the consent decree my
2 understanding is that the consent decree requires
3 10 million of stormwater capture through green
4 infrastructure, right?

5 MR. ANDES: That's correct.

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

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

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

16 MR. FITZPATRICK: Yes.

17 MS. MEYERS: And within what you
18 guys produced in 2015 for the 2014 requirement on
19 the green infrastructure plan, on Page 9 it says
20 that you were initiating five pilot studies in
21 2015 with the intent to ultimately develop a
22 stormwater master plan for Cook County to address
23 a hundred year flooding and what I'm wondering is
24 if that plan is underway and being developed and,

1 if so, how you are calculating the volume
2 reductions that green infrastructure can provide
3 in addition to TARP to reduce CSO's?

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

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

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

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

1 them.

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

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

24 So we're getting a lot of

1 detailed questions now that in all honesty there
2 were at least two, if not three, opportunities to
3 raise these questions before.

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

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

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

22 MR. ANDES: And we'll provide
23 responses.

24 MS. MEYERS: We appreciate that. So

1 the other question that I had was in the MWRD's
2 responses to some of the questions regarding green
3 infrastructure they point to the comprehensive
4 land use policy that was produced subsequent to
5 the Green Infrastructure Program Plan and, in all
6 candor, Openlands was a part in reviewing that and
7 provided comments to the MWRD Board on that plan
8 as did a lot of our other brethren and we
9 appreciated the opportunity to do that.

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

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

1 MR. ANDES: We will do that.

2 MS. MEYERS: Does anyone have any
3 idea now?

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

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

1 MR. ANDES: I'll try to clarify.
2 You're saying -- you're talking about a community
3 that would have trouble connecting to TARP?

4 MS. MEYERS: Yes.

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

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

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

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

17 MS. MEYERS: Yes.

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

22 MS. MEYERS: Right.

23 MR. FITZPATRICK: I do know we are
24 working with communities through our stormwater

1 plan. Again, we don't have the proper people on
2 to talk much about that. It's really not related
3 to CSO's so much, though. It's really more
4 because they can't -- if they can't get it to us,
5 that means they can't get it out to the waterway
6 as well. But I guess we would have to get back
7 with -- we have -- to answer your question, yes,
8 we are looking at and helping out communities with
9 those issues.

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

15 MR. ANDES: After that --

16 HEARING OFFICER HALLORAN: One
17 person.

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

20 HEARING OFFICER HALLORAN: People --

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

23 HEARING OFFICER HALLORAN: People,
24 one at a time and the non-speaker, please mute

1 themselves and when it is time for you to speak,
2 you can unmute. Thank you. We're having a
3 difficult time.

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

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

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

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

24 MS. MEYERS: Thank you.

1 HEARING OFFICER HALLORAN: Before we
2 take a short break, I just wanted to see if anyone
3 out there in Webex-ville had questions of these --
4 of these witnesses and just unmute yourself.

5 MS. TIPSORD: I'm not seeing
6 anybody.

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

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

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

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

22 MR. TWAIT: Can you hear me?

23 THE COURT REPORTER: Yes.

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WHEREUPON:

SCOTT TWAIT

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

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

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

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

MR. TWAIT: Can you hear me?

HEARING OFFICER HALLORAN: Yes.

MR. TWAIT: We were --

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

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

1 So when they get the Calumet
2 System done or the Stickney portion done, they
3 will need to make a decision on -- on whether or
4 not they're compliant with the CSO policy.

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

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

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

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

19 MR. TWAIT: Yes.

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

1 They are not independent parts where one part can
2 be in compliance with the CSO policy and another
3 would not. That is going to have to be evaluated
4 on a system-wide basis because that's also the way
5 it is laid out in the consent decree.

6 MR. RAO: Thank you.

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

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

15 MS. TIPSORD: They're unmuted.

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

20 HEARING OFFICER HALLORAN: Mr. Rao?

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

1 evaluation of what the current conditions are in
2 the Calumet System and I was just basically asking
3 the Agency whether they agree with the District
4 that the term of the TLWQS and the next five years
5 will allow the District to do a compliance
6 evaluation in the Calumet System.

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

12 MR. RAO: All right.

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

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

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

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

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

24 MR. ANDES: Well, I don't think that

1 the District, you know, can provide interpretation
2 of the CSO policy. I think as a general matter
3 what the District is doing under the consent
4 decree to comply with the federal rule CSO
5 requirements is laid out there in the consent
6 decree and I'm not aware of, on a personal level,
7 any requirement specific to the EPA CSO
8 requirements to specifically consider the impact
9 to climate change, but the way that the District
10 is complying with CSO requirements is through TARP
11 and specific TARP-related requirements laid out in
12 the consent decree.

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

20 MR. ANDES: Sure.

21 HEARING OFFICER HALLORAN: All
22 right. Question 4. Regarding Board's Question 6,
23 please comment on whether the communities listed
24 in the O'Brien and Stickney permits would be

1 subject to potential enforcement action for
2 violating the DO standards if they do not seek
3 relief through individual TLWQS from the Board.

4 MS. TIPSORD: Sorry.

5 MR. TWAIT: I think --

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

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

10 MR. TWAIT: Okay.

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

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

16 HEARING OFFICER HALLORAN: Mr. Rao?

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

20 MR. TWAIT: Yes.

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

1 MR. TWAIT: I think it's up to them
2 to decide. When this was originally proposed, we
3 had put a class so that others could join and no
4 one else did. No one else joined and so it went
5 back to an individual.

6 MR. RAO: Okay. Thank you.

7 HEARING OFFICER HALLORAN: All
8 right. The last question.

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

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

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

21 MR. TWAIT: We haven't -- we haven't
22 discussed with U.S. EPA their responses. We will
23 need to do that. We do think that they may have
24 answered our -- asked -- they have responded to

1 our questions and we do think that helps the
2 record, specifically on the temporary use of the
3 Thornton -- Thornton Reservoir and losing the 3.1
4 billion gallons, but we'll open up discussions
5 with U.S. EPA.

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

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

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

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

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

1 they have made the -- met the burden of proof for
2 the human cause conditions.

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

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

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

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

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

1 contributing to it, to the violation.

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

10 MR. TWAIT: That's possible, yes.

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

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

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

1 MR. TWAIT: I have not seen that.

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

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

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

21 MR. ANDES: I'm going to object.
22 I'm going to object to that question before it
23 gets responded to because we don't agree that the
24 CSO policy or the TLWQS process requires

1 consideration of climate change. There are some
2 conditions present in that question that we don't
3 agree.

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

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

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

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

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

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

18 MS. MEYERS: Thank you.

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

23 MR. ANDES: No questions from the
24 District.

1 HEARING OFFICER HALLORAN: Anyone on
2 Webex who would like to give a public statement or
3 public comment now is the time to do it and please
4 unmute yourself.

5 MS. TIPSORD: I'm not seeing anyone.

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

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

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

18 Mr. Andes, does that sound
19 acceptable?

20 MR. ANDES: Yes, you said public
21 comment due September 4th, then post September
22 30th and reply briefs due November 13th, correct?

23 HEARING OFFICER HALLORAN: Correct.

24 MR. ANDES: All right. No, that's

1 fine with the District.

2 HEARING OFFICER HALLORAN: Ms.

3 Diers?

4 MS. DIERS: That's fine with the

5 Agency.

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

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

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

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

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

23 HEARING OFFICER HALLORAN: Well,
24 you're not a party. Well, you're an interested

1 party. So you're not either the Agency or the
2 MWRD, but file it, if you wish, and I'm sure the
3 Board will take it under consideration.

4 MR. ETTINGER: Okay. Thank you.

5 HEARING OFFICER HALLORAN: Thank
6 you, Mr. Ettinger.

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

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

17 MS. DIERS: Thank you.

18 MR. ANDES: Thank you.

19 HEARING OFFICER HALLORAN: We're off
20 the record.

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