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BEFORE THE ARIZONA CORPORATION

IN THE MATTER OF THE APPLICATION OF)
FAR WEST WATER & SEWER COMPANY, AN)
ARIZONA CORPORATION, FOR APPROVAL OF)
INTERIM RATES AND CHARGES.)

DOCKET NO.
WS-03478A-08-0608

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter reconvened before the Arizona
3 Corporation Commission, in Hearing Room 222 of said
4 Commission, 400 West Congress, Tucson, Arizona,
5 commencing at 9:05 a.m. on the 7th of April, 2009.

6

7 BEFORE: PAUL NEWMAN, Commissioner

8 JANE L. RODDA, Administrative Law Judge

9

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1 MR. SHAPIRO: Good morning, Judge Rodda. We
2 have some of the exhibits you requested today. Do you
3 want them introduced now or introduce them on redirect?
4 I don't know if you wanted some of those that you
5 requested.

6 ALJ RODDA: Let's do it now while we are
7 thinking about it. And then --

8 MR. SHAPIRO: I guess now is qualified by the
9 fact that Richard is kindly making some copies.

10 ALJ RODDA: Okay. So not quite now.

11 MR. SHAPIRO: I do have two of them, and I am
12 happy to bring those and pass those around. And do you
13 want me to mark these as R exhibits?

14 ALJ RODDA: Let's go on the record then to make
15 sure that -- I think you were writing it down anyway. I
16 never did say let's do it.

17 MS. WOOD: I think I found that attached as R-6,
18 that top page.

19 (Brief pause.)

20 MR. SHAPIRO: Are we on the record now, Judge
21 Rodda?

22 ALJ RODDA: We are.

23 MR. SHAPIRO: It turns out that the accounts
24 payable summary that you had requested is attached to
25 RUCO Exhibit R-6. And it is the last three, the second

1 and third last page, maybe just the third to last page,
2 yes.

3 ALJ RODDA: So that's the vendor balance
4 summary?

5 MR. SHAPIRO: Correct. And I have separate
6 copies if anybody would like a separate copy for
7 convenience.

8 ALJ RODDA: Okay.

9 MR. SHAPIRO: The second document that you
10 requested, which we will mark as Exhibit A-4, because we
11 don't want to go in order either --

12 ALJ RODDA: Right, why buck a trend.

13 MR. SHAPIRO: -- is a two-page exhibit, Judge
14 Rodda. And that is the wages and salaries summary. And
15 that's the first page.

16 ALJ RODDA: Someone remind me next time we come
17 back after a break to bring my glasses.

18 MR. SHAPIRO: I think everybody has a copy of
19 Exhibit A-4, which is a two-page exhibit, salary and
20 wages.

21 We also have coming information on some of that
22 work H&S did, is that correct, Mr. Capestro?

23 MR. CAPESTRO: That is correct.

24 MR. SHAPIRO: And then the property tax
25 information Mr. Martinez is kindly copying so we have

1 will have momentarily.

2 ALJ RODDA: Okay. Thank you, Mr. Shapiro.

3 MR. SHAPIRO: And I will not move A-4 until
4 Mr. Bourassa takes the stand since he is the person that
5 created the exhibit.

6 ALJ RODDA: Okay. Thank you. Thank you for
7 providing that.

8 Here we are. And, Ms. Wood, you have been very
9 patient with all the interruptions and we appreciate
10 that.

11 MS. WOOD: You are generous.

12 ALJ RODDA: In fact, it is still your turn.

13 MS. WOOD: Your Honor, I was talking with
14 Colette earlier. I was speaking earlier with the court
15 report to make sure that I moved everything. And I
16 believe R-8 might not be in, which is a copy of the ADEQ
17 Section 14 APP, I believe.

18 ALJ RODDA: You are right. I don't have R-8
19 admitted yet.

20 And is there any objection to R-8?

21 MR. SHAPIRO: No.

22 ALJ RODDA: Okay. Then R-8 has admitted.

23 (Exhibit No. R-8 was admitted into evidence.)

24

25

1 ANDREW J. CAPESTRO,
2 a witness herein, having been previously duly sworn by
3 the Certified Reporter to speak the truth and nothing
4 but the truth, was further examined and testified as
5 follows:

6

7 CROSS-EXAMINATION CONTINUED

8 BY MS. WOOD:

9 Q. Good morning, Mr. Capestro.

10 A. Good morning, ma'am.

11 Q. You hired a gentleman named Gary Lee to do some
12 work on the expansion improvement project done for Far
13 West, right?

14 A. I hired Mr. Lee as an expert to be able to file
15 the appropriate papers with the State of Arizona,
16 including the APPs and engineering.

17 ALJ RODDA: Can you move your microphone. You
18 have to get kind of close to these.

19 THE WITNESS: There we go.

20 ALJ RODDA: That's much better. Thank you.

21 BY MS. WOOD:

22 Q. I am going to show you a copy of what is marked
23 as Exhibit R-9 and have you identify it for me.

24 (Brief pause.)

25 BY MS. WOOD:

1 Q. What you have in front of you is a copy the
2 direct testimony and the report of update of engineering
3 report dated August 2008 of Mr. Lee?

4 A. Yes.

5 Q. Okay. Turning to the attachment to the
6 testimony, Exhibit R-9 has an attachment to it which
7 says Exhibit 2, the update of engineering report. It
8 has a flow chart. The pages are not numbered. And it
9 is called Appendix B, Permitted Capacity Exhibit &
10 Summary.

11 A. I have it.

12 Q. You have it?

13 Is everybody else on the same page?

14 ALJ RODDA: Thank you.

15 MS. WOOD: I apologize, the pages are not
16 numbered.

17 BY MS. WOOD:

18 Q. With regard to Marwood, the existing, it says
19 before is 340,000 gallons per day.

20 A. Correct.

21 Q. Okay. Now, did Marwood have capacity sufficient
22 to handle the El Rancho Encantado development at full
23 buildout?

24 A. It has the capacity at the present time for --
25 just, when you are talking about full buildout, are you

1 talking about the entire 160 acres?

2 Q. Okay. Let me -- you responded to a data request
3 identifying projects, correct?

4 A. Correct.

5 Q. And one of the data requests to which you
6 responded was 5.07, correct?

7 A. I don't have it in front of me.

8 Q. Okay. Let me provide you a copy of a document
9 marked as R-10.

10 (Brief pause.)

11 BY MS. WOOD:

12 Q. RUCO asked you two sets of data requests related
13 to the expansions. One of them was 5.07 and the other
14 was 5.08, correct?

15 A. Correct.

16 Q. In response to the data request you provided
17 charts which identified the expansions by subdivision,
18 both the currently serve as well as projections,
19 correct?

20 A. Correct.

21 Q. If you look at the page that talks about
22 Marwood --

23 A. Correct.

24 Q. -- on the bottom of the page, you have a
25 projection for Rancho Encantado 1 through 4, correct?

1 A. Correct.

2 Q. And there are 460 new lots projected, correct?

3 MR. SHAPIRO: Excuse me. Ms. Wood, what
4 page are you on of this exhibit?

5 MS. WOOD: The subdivisions serviced by Marwood
6 wastewater treatment plant.

7 MR. SHAPIRO: Thank you.

8 MS. WOOD: Okay.

9 ALJ RODDA: I still haven't found it.

10 MS. WOOD: I think it will help, Your Honor, it
11 is the third from the end.

12 ALJ RODDA: Okay.

13 THE WITNESS: It is the one with the small print
14 that you need your glasses for.

15 ALJ RODDA: It is a conspiracy.

16 MR. SHAPIRO: I have an extra pair if you want.

17 MS. WOOD: So do I.

18 ALJ RODDA: I can see. I am fine.

19 BY MS. WOOD:

20 Q. So buildout you have 460 units at El Rancho
21 Encantado.

22 A. Correct.

23 Q. Okay. According to the company's, and by the
24 company I mean Far West Water & Sewer, answers to
25 questions 5. -- or data request 5.07 and 5.08, Marwood

1 already had, existing subdivision, 2,793 homes either
2 with service or with a meter set, correct?

3 A. That is correct.

4 Q. Now, I have put a calculator up there in front
5 of you. Do you see it?

6 A. I see it.

7 Q. Okay. With the existing homes, using the DEQ
8 gallons per day of 187.2 times the existing homes of
9 2,793, subject to check, would you agree that would be
10 approximately 522,291 gallons per day?

11 MR. SHAPIRO: I am going to object, Your Honor.
12 We were quite patient yesterday but I am having a very
13 difficult time understanding how the capacity of these
14 plants and what they are built for in the future or past
15 or present are relevant to a case where we are not even
16 dealing with rate base. RUCO seems to be spending a lot
17 of time testing the prudence and reasonableness and used
18 and usefulness of plant that we admit is not even in
19 service yet and is an issue in the permanent case and
20 not really in this case.

21 ALJ RODDA: I am going to allow the questioning,
22 though.

23 MS. WOOD: Thank you.

24 THE WITNESS: Okay. This goes back --

25 BY MS. WOOD:

1 Q. Wait a minute. The only question I have before
2 you is: Does this or does it not already have 522,291
3 gallons per day using the 187.2 gallons per day supplied
4 by ADEQ?

5 A. Depends on what you are talking about required
6 by ADEQ.

7 Q. No, I am not --

8 A. That's the same question I had yesterday from
9 the Commissioner.

10 Q. Mr. Capestro, you misunderstood my question.

11 MR. SHAPIRO: Ms. Wood, if you could let --

12 BY MS. WOOD:

13 Q. I am not asking you to talk about other gallons
14 per day. I am saying 187.2 applies and there are 2,793
15 homes, as you have answered, the gallons per day
16 required using the DEQ requirement of 187.2 is 522,000
17 plus.

18 MR. SHAPIRO: I am going to object. Now we are
19 assuming facts not in evidence. Mr. Capestro was very
20 specific about where the 187.2 came from yesterday. Now
21 it appears Ms. Wood is applying it generically.

22 ALJ RODDA: Well, you can answer the question.
23 You can explain it later with your attorney.

24 THE WITNESS: With the present requirement from
25 ADEQ, you are correct, not with the requirement when

1 ADEQ first commissioned this plant.

2 BY MS. WOOD:

3 Q. You have already indicated Rancho Encantado
4 would be 460 units at buildout. Using the DEQ's
5 required flows of 187.2 times 460 units, subject to
6 check, you would need an additional 86,112 gallons per
7 day, correct?

8 A. Whenever it is built out --

9 Q. Correct, yes or no?

10 A. Yes.

11 Q. To develop El Rancho Encantado you would need to
12 explain Marwood -- or you would need to expand Marwood
13 or find an alternative, correct?

14 A. Yes and no.

15 Q. And it is yes because?

16 A. If you were taking 187.2 times the number of
17 homes that are attached, that would be correct. If you
18 were taking historic flows which ADEQ used to use, and
19 it was 90 gallons per household with historic flows, you
20 are at about 2700 gallons per day.

21 The intent is to divert 130 gallons a day over
22 to Section 14. And the El Rancho Encantado I and II,
23 and III and IV will be paying their share of the
24 off-site improvements.

25 Q. The number you just said is 2700 gallons per

1 day?

2 A. It is 270,000 gallons a day, excuse me. It was,
3 the peak that we have gotten up to is around 300. And
4 we recognize that fact that we do have capacity right
5 now. But Rancho Encantado, just like everybody else, is
6 going to pay for its share of the off-site improvements.

7 Q. So even if you took your figure of 270,000
8 gallons per day and added to it 86,000 gallons per day
9 you would still be over the 340,000 gallons per day,
10 which Marwood is approved for?

11 A. Rancho Encantado III and IV is just bare dirt,
12 no plans have even --

13 Q. You know, Mr. Capestro, this will go a whole lot
14 better if you actually answer the question I ask you.

15 A. Well, I think you are taking things out of
16 context.

17 Q. I asked you a very specific question. The
18 question I asked you before was, if you use your figure
19 of 270,000 gallons per day, which you say it already is
20 using in its daily flows, and add to it 86,000 gallons
21 per day which would be needed using the 187.2 that DEQ
22 is currently requiring, you would be at 356,000 gallons
23 per day over the current permitted capacity at Marwood?

24 A. That is why we have a plan to move a hundred --

25 Q. Would you answer the question, yes or no?

1 A. What was your question?

2 ALJ RODDA: Answer her question and it will go
3 much faster. I know you are not happy with it, but
4 Mr. Shapiro is taking notes.

5 THE WITNESS: Okay.

6 BY MS. WOOD:

7 Q. Can you answer it?

8 A. What is the question?

9 Q. One more time. If you take your 270,000 gallons
10 per day, which you contend is the flow from Marwood, and
11 you add to it the 86,000 gallons per day which will be
12 required if the 187.2 is required by ADEQ, you end up at
13 356,000 gallons per day at Marwood, which is more than
14 the permitted capacity today?

15 A. Yes.

16 MR. SHAPIRO: Object; calls for speculation as
17 to what ADEQ may require for a future expansion not yet
18 planned.

19 ALJ RODDA: Okay. I understand. I will allow
20 the question, which I think you answered already.

21 THE WITNESS: I answered.

22 MS. WOOD: Okay, thank you.

23 BY MS. WOOD:

24 Q. Now, looking at Section 14 in your answers, or
25 responses of 5.07, which I believe would be the last

1 page, according to your answers the total lots with
2 meters set is 1,254, is that correct?

3 A. That's correct.

4 Q. And the lots in subdivisions with no meter set
5 but already in platted subdivisions is 498, is that
6 correct?

7 A. That's correct.

8 Q. Using the DEQ required gallons per day, 187.2,
9 times 1,254 gallons, those are the houses already in
10 place with meters, that gallons per day effluent to be
11 produced would be in excess of 234,498, correct?

12 A. That's correct.

13 Q. Now, if you develop the remaining lots which are
14 in the subdivisions but don't have a meter yet, that's
15 498 lots, and you use the gallons per day required,
16 currently required by DEQ, which is 187.2, you would
17 need an additional 93,223 gallons per day, correct?

18 MR. SHAPIRO: Objection; calls for speculation.

19 ALJ RODDA: You can answer.

20 THE WITNESS: I didn't understand the question
21 about the developing additional lots, about 498 lots
22 that still have to be developed. That part of the
23 question I didn't understand so I couldn't answer your
24 question.

25 BY MS. WOOD:

1 Q. What does the 498 lots represent to you?

2 A. Those are lots within the subdivision that have
3 not the meters set but they are not to be developed.
4 They are already there, sitting there existing.

5 Q. Okay. So if you were adding those to the
6 system --

7 A. Correct.

8 Q. -- they would add gallons per day in excess of
9 93,000 gallons?

10 A. They are already part of the system but there is
11 no flows going through it. With that, yes, I believe
12 your numbers are correct.

13 Q. Down below you detailed some developments which
14 are projected connections, correct?

15 A. Correct.

16 Q. Now, of those developments, some of them are
17 with related entities. The first is the Ravines II and
18 III, which is 361 units. And that's owned by H&S,
19 correct?

20 A. That is correct.

21 Q. Which is a related entity, correct?

22 A. That is correct.

23 Q. And you properly note that there on the answer.
24 Now, down below there is Las Barrancas II and III,
25 correct?

1 A. That is correct.

2 Q. And that's 105 units for Las Barrancas II and
3 264 units for Las Barrancas III?

4 A. That's correct.

5 Q. Those are both owned by Schechert trust?

6 A. That's correct. And none of those four have
7 been developed at all.

8 Q. Correct. Thank you. But if you wanted to
9 develop them, that would be approximately 730 units that
10 are with related entities for development, correct?

11 A. That comes with the next phase, which we would
12 have to pay a million three to 2 million. It is off in
13 the future.

14 Q. Is it 730 units comprised in all of those
15 subdivisions which are related to H&S or an affiliate?

16 A. There are projected units. There is no lots in
17 there. They are just on a map on there. That's what we
18 project will be there.

19 ALJ RODDA: Are they approved plats?

20 THE WITNESS: No.

21 ALJ RODDA: Or just --

22 THE WITNESS: We don't have construction
23 approved for Ravines II and III nor Las Barrancas II and
24 III.

25 ALJ RODDA: They are just dirt?

1 THE WITNESS: They are dirt. There might be a
2 road connecting things for APS and things like that.
3 They are dirt roads.

4 BY MS. WOOD:

5 Q. Would you acknowledge, Mr. Capestro, that you
6 have signs up listing these properties for sale at the
7 Ravines?

8 A. No.

9 Q. No?

10 A. We do not have any lots for sale at Ravines II
11 and III nor any lots for sale at Las Barrancas II and
12 III. There is lots for sale on Ravines No. I, which is
13 their FME 31, aka the Ravines. It is on the top part
14 where it shows that. A portion of them have already
15 been set.

16 MS. WOOD: Judge, I have a picture but I only
17 have one copy. I am going to show them to each of the
18 parties and then bring them up, if I may.

19 ALJ RODDA: Okay.

20 (Brief pause.)

21 MS. WOOD: May I approach?

22 ALJ RODDA: Yes.

23 BY MS. WOOD:

24 Q. The first picture I am going to show you,
25 Mr. Capestro, is the one which is marked R-14. Have you

1 had a chance to look at it?

2 A. Yes, I have. I am familiar with it.

3 Q. This is a copy of the billboard that is on the
4 sites of Ravines II and III.

5 A. No, it is not.

6 Q. When you think --

7 MR. SHAPIRO: Excuse me. I am going to object.
8 Ms. Wood is now testifying.

9 MS. WOOD: Cross-examining.

10 MR. SHAPIRO: No. You stated this is, you
11 stated what a document is. That's testimony. And I
12 object.

13 MS. WOOD: I am allowed to ask leading questions
14 when I am cross-examining.

15 THE WITNESS: I believe this sign is at the
16 corner of the frontage road and 15 E, which is not part
17 of Ravines II and III. I think it is directing where to
18 go for that, but I can't see any landmarks. But looking
19 at it I believe this is the sign that is right at that
20 corner.

21 BY MS. WOOD:

22 Q. Okay. I am going to give you a copy of what is
23 marked as R-15. That is a sign that's located on
24 Ravines Phase III, correct?

25 A. That's required by ADEQ for dust control.

1 Q. Okay. And what does it talk about there?

2 A. Just says Ravines Phase III, and if you have any
3 dust complaints, please call Yuma County Dust Control.
4 And then it has H&S Developers.

5 Q. Okay. If you are not doing any development
6 there, why does ADEQ require you to put a dust control
7 sign up?

8 MR. SHAPIRO: Objection; calls for a legal
9 conclusion regarding ADEQ's requirements.

10 THE WITNESS: I really don't know except for
11 ADEQ came out and said we needed signs. I don't know
12 their regulations that well.

13 BY MS. WOOD:

14 Q. Okay. And this is an exhibit which is marked
15 R-16. What is this?

16 A. It is, once again, it is the requirement of ADEQ
17 to have your dust control signs to make sure that the
18 dust is not blowing around.

19 Q. And that's for Las Barrancas Phase III, correct?

20 A. That's true, but doesn't mean it is under
21 development.

22 Q. Okay. Who is Tim Lathan?

23 A. He is the superintendent of construction for H&S
24 Developers.

25 Q. Okay. And his name appears on each of these

1 signs, correct?

2 A. As somebody to contact if they have dust
3 complaints.

4 Q. And another point here on the sign, on the
5 Exhibit marked R-14, it says the Ravines, and it has a
6 sales company called Arizona Land Sales, correct?

7 A. Correct.

8 Q. And Arizona Land Sales is a real estate company
9 owned by your sister-in-law?

10 A. That's correct.

11 Q. Okay. And she is selling homes at the Ravines,
12 correct?

13 A. At the Ravines, yes.

14 Q. I am going to have to leave these up here.
15 So is it your testimony here today that you have
16 done no development whatsoever on the sites of
17 Ravines --

18 A. As I stated before --

19 Q. I haven't finished the question.

20 ALJ RODDA: She needs to finish the question to
21 be clear.

22 BY MS. WOOD:

23 Q. -- II and III and Barrancas II and III?

24 A. That is --

25 MR. SHAPIRO: Excuse me, Mr. Capestro, please.

1 I am going to object. I don't think the term
2 development is adequately defined in the context of the
3 question.

4 MS. WOOD: The question is no development. I
5 think that it is fairly clear, you have done nothing. I
6 mean, if I asked him if he had done some development, I
7 would have to clarify. But I said you have done
8 nothing.

9 MR. SHAPIRO: Actually she said any development,
10 I believe, which is why I objected.

11 THE WITNESS: If I --

12 ALJ RODDA: Can you tell me what, just tell me
13 what you did.

14 THE WITNESS: There are roads cut through there
15 to be able to get in and out. There are some roads for
16 APS. They are dirt roads. They have cuts in the
17 ground. As far as lot development itself, there is no
18 lot development. And so it is a question of whether or
19 not any development at all or lot development.

20 It is not a beginning of lots so that they could
21 sell the lots with any type of sewer or water going to
22 it but there are some water mains going through
23 connecting Ravines I with Las Barrancas I, which both
24 are finished, and you had to have a road to get through
25 there. And there are some things going to 15 E for

1 electricity and you need roads to do that. But as far
2 as development of lots, there is no development of lots
3 for Ravines No. II and III and no development of lots
4 for Las Barrancas II and III.

5 ALJ RODDA: And those developments serving that
6 are -- and those improvements that are serving the
7 developments that have been developed --

8 THE WITNESS: The ones that have been
9 developed --

10 ALJ RODDA: -- will they eventually, eventually
11 assist the Ravines II and III?

12 THE WITNESS: Eventually, but there is lot more
13 work that has to go in there.

14 ALJ RODDA: I understand.

15 THE WITNESS: -- including your infrastructure
16 and on-site improvements and the like.

17 ALJ RODDA: And so --

18 THE WITNESS: The only thing that has gone
19 through are some mains and things like that that are
20 required to be there.

21 ALJ RODDA: And when you made those responses to
22 the data request about future development, that's number
23 of lots, how did you come up with those number of lots?

24 THE WITNESS: The developers, including the
25 Arroyo de Fortuna, which is the Elliott Group and the

1 Payson Street development, all the rest, they present
2 plans to Far West water so that Far West water can state
3 whether, whether or not those would fit within our
4 plans. Then after that, they are required to go forward
5 and we are supposed to have letters of capacity and the
6 like, which we cannot issue to these because we didn't
7 have the capacity for these. But this comes from plans
8 that have been delivered to the company itself, every
9 single one of these. That's where I came up with the
10 numbers.

11 ALJ RODDA: Okay. So whether it is from H&S
12 development or the Schechert trust or these unrelated
13 entities --

14 THE WITNESS: Everybody gives their plans before
15 they submit them to the county, city.

16 ALJ RODDA: Okay. And has H&S development or
17 the trust submitted any plans yet to the county?

18 THE WITNESS: There were plans submitted for Las
19 Barrancas II and III and there were plans submitted for
20 Ravines II and III, and they have expired because no
21 development has gone forward.

22 ALJ RODDA: Okay. Thank you for that
23 clarification.

24 BY MS. WOOD:

25 Q. When you submitted those plans to the county,

1 did it have the 730 lots platted out or identified? I
2 mean, how do you do that? What do you submit to the
3 county?

4 A. You have to talk to the engineers. The
5 engineers develop the original plans and they go through
6 various mazes.

7 Q. Okay.

8 A. And as it goes through, the size of the lots
9 change, whatever the county wants to do. It goes
10 through various incarnations.

11 Q. Okay.

12 A. It is a long process.

13 Q. When you responded to the data request, though,
14 you had clearly identified 730 units.

15 A. Correct.

16 Q. And if you use ADEQ's required gallons per day,
17 which is 187.2, subject to check, would you agree that
18 would require an additional 136,510 gallons per day?

19 MR. SHAPIRO: Again object; question calls for
20 speculation.

21 THE WITNESS: For which part?

22 ALJ RODDA: You can answer.

23 BY MS. WOOD:

24 Q. For the 730 units.

25 A. I believe so, yes.

1 Q. Thank you.

2 Section 14 was permitted at 150,000 gallons per
3 day, correct?

4 A. Correct.

5 Q. To develop the 730 lots in the projected
6 connections and the 498 in the existing subdivisions,
7 H&S would need more capacity at Section 14, correct?

8 A. No, H&S wouldn't.

9 Q. Who owns the 730 units?

10 A. Schechert trust owns some of them, H&S
11 Developers owns the other.

12 Q. Well, let me clarify. H&S would need for Far
13 West to have additional capacity, correct?

14 A. That is correct.

15 Q. Thank you.

16 Current ratepayers should not have to pay to
17 develop Section 14 for the benefit of H&S or any other
18 developer, should they?

19 MR. SHAPIRO: Objection; calls for a legal
20 conclusion.

21 ALJ RODDA: Can you rephrase that.

22 BY MS. WOOD:

23 Q. Okay. Let me ask you this way: Should the
24 current ratepayers have to pay for the expansion of
25 Section 14 if it is for the benefit of development,

1 future development?

2 MR. SHAPIRO: I will object. First, assumes
3 facts not in evidence. I am not aware of any evidence
4 that Section 14 is being expanded for the purpose of
5 future development. And second of all, it calls for a
6 legal conclusion regarding the obligations of a public
7 service corporation to finance plant.

8 MS. WOOD: I would like to point to his
9 testimony, I believe it is on page 29, where he talks
10 about the very issue, Your Honor.

11 BY MS. WOOD:

12 Q. On line 13 you were asked the question what
13 about new developments, does the company require that
14 developers provide funding for the background
15 infrastructure. You basically are talking there about
16 the issue of who should pay for future development. So
17 you already expressed an opinion. So can you now answer
18 my question?

19 MR. SHAPIRO: Excuse me.

20 ALJ RODDA: Wait.

21 THE WITNESS: I didn't object to it.

22 MR. SHAPIRO: Mr. Capestro, please wait.

23 ALJ RODDA: Why don't you, why don't we ask
24 him -- would you -- well, I will ask him.

25 MS. WOOD: Thank you.

1 ALJ RODDA: Do you have that page 29 in front of
2 you of your testimony?

3 MS. WOOD: It is Exhibit A-1.

4 ALJ RODDA: Do you have that in front of you?

5 THE WITNESS: I do.

6 ALJ RODDA: There is the question on line 13,
7 does the company require that developers provide funding
8 for backbone infrastructure. And then you say yes.

9 Why does the company provide it? What do you
10 mean by that? What was your intent in that question and
11 answer?

12 THE WITNESS: My intent was to make sure that
13 the developers, including H&S, pay for a share of all of
14 these plants. And I have had Mr. Lee, the engineer,
15 calculate what is necessary per gallon, per hundred
16 gallons, per thousand gallons as far as the cost of
17 these plants.

18 And Las Barrancas No. I paid, according to the
19 schedule that he provided for the off site. Harry
20 Elliott and Arroyo de Fortuna I paid for his share of
21 the off sites. It is our intention, if anything else
22 goes on, including Rancho Encantado, that it pay for its
23 share.

24 Now, that amount has changed as the budget keeps
25 on going up. So at one time it was, it was about \$500

1 per unit less than it is right now.

2 ALJ RODDA: Why do you require developers to pay
3 for their fair share? You keep saying their fair share.
4 What are they paying for? Are they paying for the
5 expansion of the plant?

6 THE WITNESS: They are paying for expansion of
7 the plant. The other part that we have there is the
8 ADEQ requirements to remove nitrates and the like.

9 ALJ RODDA: When do they pay?

10 THE WITNESS: Pardon me?

11 ALJ RODDA: When in the process do they pay?

12 THE WITNESS: Before we give them approval and
13 capacity, saying that we are going to have capacity, I
14 am requiring payment, because we have to give the
15 capacity letter to the County of Yuma.

16 ALJ RODDA: Is the reason you do that because
17 you don't think it is fair or the Commission wouldn't
18 allow you to have current ratepayers pay for that
19 expansion?

20 THE WITNESS: I think --

21 MR. SHAPIRO: Excuse me, Mr. Capestro, excuse
22 me.

23 Judge Rodda, I am concerned about this because
24 there are Commission rules. And those Commission rules
25 provide for when somebody may or may not charge

1 developers. And so I mean I think what the Commission
2 requires in a future rate case isn't known but what the
3 rules allow somebody to do is known. And that's my
4 concern here.

5 I don't want to get into a legal argument, but I
6 am happy to do so. And the legal argument is that a
7 public service corporation is not required by the
8 Commission's rules to do a main extension and include
9 off-site facilities --

10 ALJ RODDA: Okay.

11 MR. SHAPIRO: -- in its --

12 ALJ RODDA: All right. But if they are not
13 required, we are -- I am just trying to figure out what
14 did you do.

15 MR. SHAPIRO: Okay.

16 ALJ RODDA: All right? So --

17 MR. SHAPIRO: And we have no problem with that.
18 I am just concerned about requirements that -- I mean
19 the company may require something. That's different
20 than the Commission requiring something or the
21 Commission's rules or Arizona law. And that's the
22 distinguishment I want to make sure the record reflects.

23 ALJ RODDA: Okay. I am sorry.

24 MR. SHAPIRO: Thank you.

25 ALJ RODDA: I was just trying to understand,

1 when you make the statement developers are required to
2 pay their fair share, what that fair share is and who is
3 determining what that fair share is. And so explain to
4 me again. I think you did.

5 THE WITNESS: That is based upon the projection
6 of flows that they are going to have for that
7 subdivision. And that's broken down into units as to
8 what it costs for the overall plant to be built. And if
9 you have, say, 495,000 gallons total, you break it down
10 as to what their share should be, as to what portion of
11 their capacity is going to be.

12 And I did not do those calculations. Mr. Lee
13 and his staff did those calculations based upon the
14 flows that we were given by the various subsidiaries.
15 That's why when the subsidiaries are telling me that
16 they are going to need a bigger portion of the flows
17 that their costs are going to be higher.

18 We have been doing that ever since the second
19 consent order came out and we realized what we had to
20 do. And we have charged every developer that's hooked
21 up or wanted to hook up since then for their share and
22 put it into the construction account.

23 ALJ RODDA: So prior to the consent order you
24 weren't doing it that way.

25 THE WITNESS: Before the consent order, the

1 guideline was 80 to 90 gallons per household. And it,
2 if you did the numbers back then, you looked like you
3 had capacity. If you took a look at Marwood, it still
4 had capacity. And yet that was all CIAC that was given
5 to the company by H&S. If you looked at Palm Shadows,
6 that was CIAC. If you looked at Seasons, it was all
7 CIAC. So we did charge the developers. The developers
8 paid for those plants themselves and we took them over.
9 The Del Oro we took over from an earlier developer that
10 had it there for a number of years.

11 ALJ RODDA: Okay. So then the timeline goes
12 then the consent order came down and that changed what
13 ADEQ was using to calculate capacity?

14 THE WITNESS: That's correct. When the
15 engineers were going in with 90, they no longer accepted
16 it. We got them to 240 gallons and we fought hard to
17 get to the 187 so we did not have to build more plant
18 than was necessary, and we got within as much of the
19 guidelines as we could to be able to reduce the cost to
20 the consumer.

21 And we, we are taking part of this cost and
22 having the developers pay it. That's the only way we
23 were going to be able to do the gap between the amount
24 of the loan and the amount that it is going to cost us
25 to put these plants in.

1 ALJ RODDA: Okay. Ms. Wood, I think the issues
2 of capacity are relevant to the -- I think the
3 Commissioners are going to be interested in that. But
4 can you --

5 MS. WOOD: I can try.

6 ALJ RODDA: -- try to move on or summarize?
7 Because we are really --

8 MS. WOOD: I am happy to move forward as quickly
9 as possible.

10 BY MS. WOOD:

11 Q. Looking at the report drafted by Mr. Lee, and I
12 am looking at, I think it is, page 2 --

13 A. Are we still in exhibits or are we on --

14 Q. I am on Exhibit R-9. There is an attachment to
15 that which is Mr. Lee's resumé, I guess, his
16 professional qualifications.

17 A. Okay.

18 Q. It would be after the direct testimony. It
19 would be the first attachment, page 1.

20 A. Okay.

21 Q. Do you have that?

22 A. I do.

23 Q. Okay. The second page of this attachment he is
24 listing his work with Far West Water & Sewer as one of
25 his accomplishments, correct?

1 A. Correct.

2 Q. Okay. He not only mentions being the principal
3 in charge of overseeing the debt of three wastewater
4 treatment plants' design, five wastewater pump station
5 upgrades, and a system-wide odor control problem but he
6 also said this project was also expended -- which I
7 believe is expanded from the context, but you tell me --
8 to include the design of low pressure sewer systems for
9 two new subdivisions.

10 A. Correct.

11 Q. Where were these low pressure sewer systems put
12 in place?

13 A. Over in Rancho Encantado I and II.

14 Q. Who were they put in place by?

15 A. They were installed by H&S Developers under the
16 direction of Universal Asset Management.

17 Q. Was or is, is any portion of the cost associated
18 with installation of the low pressure system being
19 reimbursed through developers through CIAC, either
20 contributions in aid of construction, or advances in aid
21 of construction, is there any way Far West is
22 compensating for these?

23 MR. SHAPIRO: I am going to object. AIAC and
24 CIAC are not compensation by a utility to a developer.
25 In fact, CIAC, there is no refunds at all.

1 BY MS. WOODS

2 Q. Is there any way in which Far West is
3 compensating H&S or Rancho Encantado for the systems
4 that have been put in place?

5 ALJ RODDA: Do you mean at all, like paying them
6 for their work?

7 BY MS. WOOD:

8 Q. Any way at all, because according to Mr. Lee, he
9 did it for Far West Water & Sewer company.

10 A. Well, I am trying to explain it without saying
11 yes and no.

12 Q. Please just explain it in whatever way is
13 easiest for you.

14 A. Okay. Far West was experiencing a serious
15 problem with its sewer system. The biggest problem that
16 we have is the fact that we do have a fairly older
17 population that tend to flush Depends down their
18 toilets. Those would get into the system and clog up
19 our lift stations. We have had testimony before about
20 did you have problems with the stations backing up and
21 things like that. And it would be a number of Depends
22 that go through it.

23 What Mr. Lee came up with is something that he
24 said he had seen other places, and I believe he has done
25 other places, is a low pressure system that has a

1 grinder pump at each location. There is two per --
2 there is one for every two lots. And what it is
3 supposed to do is grind up all of this stuff that goes
4 into the sewer system before it goes into the sewer
5 system and let's it flow easily.

6 The other problem was that with gravity, this is
7 very rocky soil, and it was much more expensive to go
8 down. And if you were doing it as an expense to Far
9 West, it was more expensive. If it was done for the
10 developer, it was more expensive. And if you are doing
11 any type of refunds, the amount on there was higher. So
12 the biggest problem was the Depends. And he developed a
13 system on that.

14 As far as the contract between El Rancho
15 Encantado and the company, I think that part of the
16 system is AIAC with parts of it as CIAC.

17 ALJ RODDA: Just to follow up on that, I am
18 sorry, I didn't understand what you were saying about
19 the, why would the cost be any different than -- I
20 didn't, I didn't follow that.

21 THE WITNESS: When you put in a system and you
22 attach it to your line extension agreement, you show the
23 cost to go on the books as to how much it is. When you
24 have a higher cost, it is a higher cost if you have to
25 go deeper. And with a low pressure there are smaller

1 lines. Another issue is that they are all sealed and no
2 openings and no smell.

3 So as far as the cost is concerned, I guess if
4 you are only giving 5 percent per annum, you know,
5 return, I guess it doesn't make much of a difference. I
6 was just thinking of the AIAC that was on our balance
7 sheet as to how much we have to refund over a period of
8 time. That's all I was saying. And maybe I am
9 incorrect understanding AIAC and CIAC and all these
10 other rules.

11 ALJ RODDA: So H&S development put in the actual
12 facilities?

13 THE WITNESS: Correct.

14 ALJ RODDA: And then Far West makes a refund at
15 5 percent?

16 THE WITNESS: Correct.

17 ALJ RODDA: Annually?

18 THE WITNESS: 5 percent of the actual income
19 received by Far West.

20 ALJ RODDA: From?

21 THE WITNESS: From the sewer.

22 ALJ RODDA: Okay.

23 THE WITNESS: For 20 years.

24 ALJ RODDA: And is that the -- is that the only
25 compensation that H&S is getting from that system you

1 just described?

2 THE WITNESS: That's correct. They get a lot
3 more if they build out a lot more.

4 ALJ RODDA: Okay.

5 THE WITNESS: That's the same thing for
6 everybody. Everybody has a 20-year line extension
7 agreement for sewer, and I think they are all at
8 5 percent --

9 ALJ RODDA: Okay.

10 THE WITNESS: -- just the same for everybody.
11 But it does cut down on the other problems that we had.
12 It cuts down on the smell and odor and it cuts down on
13 the back-ups.

14 ALJ RODDA: Okay.

15 BY MS. WOOD:

16 Q. So when Mr. Lee said he did this project for Far
17 West, he actually did the project for H&S?

18 A. He did it at the request of Far West because Far
19 West had problems. The developer that actually took
20 advantage of the system and paid for putting in the
21 system was H&S.

22 ALJ RODDA: Who paid for the engineering?

23 THE WITNESS: I believe originally it was paid
24 for by Far West. When it was determined that it was
25 part of the Rancho Encantado H&S reimbursed Far West.

1 BY MS. WOOD:

2 Q. How much did H&S pay Far West for the
3 engineering?

4 A. I believe it was 228,000 or 256,000, whatever
5 the cost was.

6 Q. And when was that paid?

7 A. I don't know the date.

8 ALJ RODDA: What year?

9 THE WITNESS: It was either 2007 or 2008. I am
10 not sure. All this fun has been pushing together.

11 MS. WOOD: I think that when we were speaking
12 yesterday I asked you about an exhibit or a data
13 response for 5.09. And Mr. Shapiro asked me to place
14 that exhibit into the record.

15 I think I am at the end here, Your Honor, but I
16 would just like to do housekeeping, see which exhibits
17 are in and which aren't.

18 THE WITNESS: Can I get down afterwards?

19 ALJ RODDA: You can take a break but you still
20 have Staff and me.

21 MR. SHAPIRO: And me.

22 MS. WOOD: I think we have Exhibits R-9 and 10,
23 which are Mr. Lee's report and then the responses to
24 5.07 and 5.08, is that correct?

25 ALJ RODDA: Right, that's what we have marked.

1 MS. WOOD: Okay. I would like to move for the
2 admission of those exhibits.

3 ALJ RODDA: Okay. Mr. Shapiro, do you have an
4 objection to Exhibit R-9 or R-10?

5 MR. SHAPIRO: I don't have an objection to R-10.
6 Well, I think it is a little unusual to introduce
7 another witness' testimony in another case. It seems to
8 me it should be limited to only those pages that
9 Ms. Wood referred to. But I guess it is easier just to
10 put the whole thing in. So we won't object.

11 ALJ RODDA: I guess the testimony probably
12 explains what the attachments are.

13 MR. SHAPIRO: Yes, okay.

14 ALJ RODDA: We will admit R-9 and R-10 since you
15 probably are offering that testimony in the other case.

16 (Exhibits Nos. R-9 and R-10 were admitted into
17 evidence.)

18 MR. SHAPIRO: Yes, this is from the permanent
19 rate case.

20 MS. WOOD: Now, you also asked yesterday,
21 Mr. Shapiro, asked for the data request for 5.09. And I
22 have that to put in the record, which at this point I am
23 not sure which exhibit we are on, probably R-17.

24 MR. SHAPIRO: I think that would go just as a
25 part of R-7. Isn't that the response to that data

1 request?

2 MS. WOOD: Whichever way you want to do.

3 ALJ RODDA: Let's attach it to R-7.

4 MS. WOOD: Okay. The last question I just have
5 is on an exhibit that I would like Mr. Capestro to
6 identify.

7 (Brief pause.)

8 BY MS. WOOD:

9 Q. Mr. Capestro, in front of you you have an
10 exhibit identified as Exhibit R-17?

11 A. Yes, ma'am.

12 Q. This is a copy of the individual, an individual
13 aquifer protection permit application signed by your
14 wife, correct, it looks like on December 31st, 2008?

15 A. Yes.

16 Q. And you provided this in response to a data
17 request that we requested copies of all permits that you
18 had either submitted or pending with DEQ, correct?

19 MR. SHAPIRO: I am sorry, is this -- I can't
20 read this. Is this R-17?

21 MS. WOOD: R-17, I apologize.

22 MR. SHAPIRO: And I apologize. Can I have that
23 question read back?

24 MS. WOOD: I can rephrase.

25 BY MS. WOOD:

1 Q. Is this a copy of the individual aquifer permit
2 application that you supplied in response to our data
3 request for copies of all APPs?

4 A. It is the portion that Far West had of the
5 permit application.

6 Q. And it was executed by your wife on
7 December 31st?

8 A. That is correct.

9 Q. Okay. And it relates to the expansion of --
10 what is the nature of this application?

11 A. It is the request to have a permit to expand
12 from one million three gallons per day for Section 14 to
13 2 million gallons per day.

14 Q. Okay, thank you.

15 Between 2007 and 2008, is it true that H&S
16 received \$918,000 from the company Far West Water &
17 Sewer?

18 MR. SHAPIRO: Objection. Received in what
19 context?

20 BY MS. WOOD:

21 Q. I was just talking about the notation on your
22 financial documents, but I can pull it out. I just
23 thought you might know that. Do you know, Mr. Capestro?

24 A. I don't know what the amount was.

25 Q. Okay.

1 A. Is that on R-2?

2 Q. Actually, let's just hand out the exhibits.

3 They are marked R-2 and R-3. R-2 is a response to data
4 request one point --

5 MR. SHAPIRO: We have an R-2 from yesterday.

6 MS. WOOD: You have an R-2 already?

7 ALJ RODDA: This was on an anticipation loan.

8 MR. SHAPIRO: Construction funds balance sheet.

9 MS. WOOD: Then let's make these, let's go to
10 the end, R-18 and R-19 then. R-18 will be the response
11 to 1.1, which is the 2007 financials. And R-19 will be
12 the response to data request 1.2, which is 2008
13 financials. And --

14 ALJ RODDA: And then, Mr. Rigsby, did you just
15 hand one of those?

16 MR. RIGSBY: Yes. I handed out GWB 1.2.

17 (Brief pause.)

18 MS. WOOD: Before we move on from R-17, I move
19 for admission of Exhibit R-17.

20 ALJ RODDA: Okay. So R-17 was the aquifer
21 protection permit?

22 MS. WOOD: Application.

23 ALJ RODDA: Application.

24 Do you have an objection to that, Mr. Shapiro?

25 MR. SHAPIRO: Yes. I am trying to figure out

1 what relevance that document has to this proceeding
2 since you didn't ask any questions except to identify
3 it. So I object, not relevant.

4 MS. WOOD: Actually I wanted to use Mr. Capestro
5 as a custodian witness for the exhibit because I am
6 going to ask questions of a subsequent witness about it.

7 MR. SHAPIRO: Okay.

8 ALJ RODDA: Well, all right, I will admit it.

9 (Exhibit No. R-17 was admitted into evidence.)

10 BY MS. WOOD:

11 Q. Looking at Exhibit R-19, which is a, this is
12 your response to Staff's first set of data requests,
13 GWB 1.2, correct?

14 A. Correct.

15 Q. And if you look at, well, attached to it is a
16 copy of the December 31st, 2008 audited financials,
17 correct?

18 A. Correct.

19 Q. Well, actually they are not audited, are they?

20 A. No, they are not.

21 Q. The request was for audited and you responded
22 that these are our financial statements for the period
23 ending December 31st. Are they actually audited
24 statements?

25 A. Pardon me?

1 Q. Okay. The data request was for audited
2 financial statements.

3 A. And.

4 Q. You provided financial statements for the period
5 ending December 31st, 2008 but you indicate that they
6 are not audited, correct?

7 A. That is correct. And I believe there was an
8 objection to the data request stating that traditionally
9 we do not have audited financials.

10 Q. Yes, correct. I just wanted to correct my
11 misstatement.

12 A. These were done by a certified public accountant
13 but they were not audited.

14 Q. Okay. Thank you.

15 Turning to page 5 of the financial statements --

16 A. Page 5?

17 Q. Yes.

18 ALJ RODDA: Which one?

19 MS. WOOD: It is on page 5.

20 ALJ RODDA: I mean which, 18 or 19?

21 MS. WOOD: 19.

22 BY MS. WOOD:

23 Q. It notes there accounts payable associated
24 companies, 918,871 --

25 A. Correct.

1 Q. -- in parentheses. What does that mean?

2 A. That means that the accounts payable to
3 associated companies went down during 2008.

4 Q. Which would result to -- as a result of a
5 payment from Far West to the company?

6 A. As a result of multiple payments I would think.

7 Q. Okay. Do you know what it was for?

8 A. For accounts payable.

9 Q. You don't know the detail of what it was for?

10 A. The detail is kept by the comptroller. And
11 there is individual statements. There is not one single
12 statement there. There is an accumulation of various
13 accounts payable.

14 Q. Was any of it for compensation for you?

15 A. No.

16 Q. I don't have any further questions about R-19 at
17 this time.

18 Looking at R-18, this is a copy of your response
19 to Staff's first set of data requests in GWB 1.1.

20 Although we asked for audited financials, you objected
21 indicating that's not required and you don't keep them.

22 But you did provide a copy of unaudited financial
23 statements for the period ending December 31st, 2007,
24 correct?

25 A. Correct.

1 Q. And that is what is attached?

2 A. Correct.

3 Q. Okay. And you provided these responses?

4 A. Pardon me?

5 Q. And you are the responding party, correct?

6 A. Correct.

7 Q. And that's also true for R-19, correct?

8 A. That's correct.

9 MS. WOOD: I move for the admission of Exhibits
10 R-18 and R-19.

11 ALJ RODDA: Any objection?

12 MR. SHAPIRO: Well, yes. R-18 and R-19 have an
13 objection in there. As long as RUCO is accepting that
14 they are unaudited, then we don't have an objection.
15 But if RUCO is continuing to request audited statements,
16 then our objection stands and needs to be ruled on.

17 MS. WOOD: These were not RUCO's request. They
18 were requested by Staff. And we are submitting these
19 exhibits for the condition they are currently in, which
20 is an unaudited financial statement.

21 MR. SHAPIRO: Okay. No objection.

22 ALJ RODDA: Great. Then 18 and 19 are admitted.
23 (Exhibits Nos. R-18 and R-19 were admitted into
24 evidence.)

25 MS. WOOD: I think actually we have the three

1 pictures which are R-14, 15, and 16 which we would ask
2 for the admission of.

3 ALJ RODDA: I wrote down 13, 14 and 15, but you
4 have -- it is not 13; it is 14, 15 and 16?

5 MS. WOOD: I believe so. Let's pick them up and
6 see.

7 MR. SHAPIRO: Yes, 14, 15 and 16.

8 ALJ RODDA: Okay.

9 MS. WOOD: Thank you very much, Mr. Capestro.

10 ALJ RODDA: Okay. Mr. Shapiro, did you have an
11 objection to --

12 MR. SHAPIRO: Yes. They lack foundation and we
13 don't even have copies.

14 ALJ RODDA: We will make copies. And I will
15 admit them for what they are worth.

16 MS. WOOD: I understand.

17 ALJ RODDA: But remind me to go into the office
18 to get copies for everyone.

19 (Exhibits Nos. R-14 through R-16 were admitted
20 into evidence.)

21 MS. WOOD: I don't have any further questions
22 for Mr. Capestro at this time.

23 ALJ RODDA: Okay. Thank you. Let's take a
24 break --

25 THE WITNESS: Thank you.

1 ALJ RODDA: -- ten-minute break and we will be
2 back. But you still have to come back.

3 THE WITNESS: I will come back. I promise.

4 (A recess ensued from 10:12 a.m. to 10:29 a.m.)

5 ALJ RODDA: So we are all here. Let's go on the
6 record. And Ms. Wood says she has one more question,
7 but because it is for Commissioner Newman, I will let
8 her go ahead.

9 Better be a good one.

10 MS. WOOD: And now, because, you know, I am
11 catholic, I am into the confession thing, I am going to
12 tell you it is going to be one series of questions.
13 Because I am feeling guilty because I know I wasn't
14 complete in my disclosure.

15 Did you want me to start?

16 ALJ RODDA: Yes. I was waiting for you. I
17 thought Mr. Rigsby did his thing. Go ahead.

18 BY MS. WOOD:

19 Q. Yesterday Commissioner Newman asked a question
20 about the, you know, various parties with which Far West
21 had a relationship. And I had remembered looking at
22 your website, which is a pretty comprehensive kind of
23 analysis and disclosure of all the relationships.

24 So I just want to go over with you, you have a
25 website, it is called GoToYuma linked to

1 TheFoothillsOnline, is that correct?

2 A. That's correct.

3 Q. And it is maintained by Jason Frost, who is with
4 H&S Developers, correct?

5 A. That is correct.

6 Q. Okay. Now, if you turn -- you have in front of
7 you an exhibit which is identified as R-20. This is the
8 contact or webmaster page from the computer website that
9 you have. And along the left-hand side is an
10 identification of various interests Far West Water &
11 Sewer and H&S Developers has. It says on this --

12 MR. SHAPIRO: I am going -- I am sorry.

13 ALJ RODDA: Maybe you should ask a question.

14 MS. WOOD: I will if we get there.

15 BY MS. WOOD:

16 Q. What is the relationship between Far West Water
17 & Sewer and the Ravines?

18 A. And the Ravines?

19 Q. Uh-huh.

20 A. The Ravines are owned by H&S Developers. And
21 they have the same officers as Far West but not
22 completely the same ownership.

23 Q. And H&S Developers also owns Las Barrancas II
24 and III?

25 A. I believe the Schechert trust owns Las Barrancas

1 II and III.

2 Q. Okay. So Schechert trust beneficiaries, aside
3 from Mrs. Schechert, Dorothy Schechert, Mrs. Capestro's
4 mother, Mrs. Capestro, Mrs. Braden are also
5 beneficiaries of the trust?

6 A. As long as she doesn't cut them out.

7 Q. Okay, thank you.

8 In addition to H&S Developers, the principals of
9 Far West, also own a company called Arizona Land Sales,
10 correct?

11 A. That is correct.

12 Q. And Arizona Land Sales is a real estate firm
13 which is run by Mrs. Braden who is one of the officers
14 of Far West Water & Sewer as well as H&S Developers?

15 A. That is correct, but Arizona Land Sales only
16 handles the Ravines. It does not handle El Rancho
17 Encantado.

18 Q. Rancho Encantado is owned by you and your wife,
19 correct?

20 A. That is correct.

21 Q. Now, H&S Developers is a development company,
22 but in addition to that, they also do some sort of
23 construction or general contracting?

24 A. That is correct.

25 Q. And if you look at the third page of the

1 exhibit, some of the general contracting work they do is
2 excavating and grading underground utilities, low
3 pressure sewer systems, engineering and construction,
4 road base, sand and gravel and landscaping?

5 A. Correct.

6 Q. Now, in addition to that H&S development also
7 has an interest in, or you explain to me their interest
8 in the golf courses. Who has the golf courses?

9 A. The golf courses are under an LLC with its
10 members H&S Developers.

11 Q. Okay. In addition to that there is a hardware
12 store and a mini mart. Who owns those?

13 A. The hardware store is a partnership owned by
14 Paula Capestro and Sandy Braden.

15 The question was a financial interest between
16 Far West and other entities. There may be a continuity
17 of people, but I thought the question was of financial
18 interest.

19 Q. Just trying to define relationships. You tell
20 me what it is.

21 A. Fine. Foothills Hardware is a partnership of
22 Paula Capestro and Sandy Braden. The Development Place
23 is part of the hardware store, which would, which is
24 Foothills Hardware, which is the second partnership.

25 Q. Okay. And then there is the mini mart?

1 A. There is a mini mart and a grocery store both
2 run by the same person. And both of those are owned by
3 H&S Developers.

4 Q. So are there two shopping retail outlets that
5 sell food, it is the mini mart and the grocery store?

6 A. The mini mart is just like, you know, most
7 little stores next to a gas station.

8 Q. Okay.

9 A. It has a little, some goods in it. They both
10 sell gas. They both sell diesel. And only one of them,
11 the mini mart, sells propane.

12 Q. Okay. I guess I didn't realize going through
13 this there were two facilities. But there are two,
14 okay.

15 A. That's correct.

16 MS. WOOD: That was the only question I had,
17 Your Honor. And I would ask for the admission of R-20.

18 ALJ RODDA: Mr. Shapiro, any objection to R-20?

19 MR. SHAPIRO: No.

20 ALJ RODDA: All right. R-20 is admitted.

21 (Exhibit No. R-20 was admitted into evidence.)

22 ALJ RODDA: And with that, Ms. Wood, that was
23 your last question.

24 Mr. Torrey.

25 MR. SHAPIRO: Do you want me to --

1 ALJ RODDA: Before we go with Mr. Torrey,
2 let's -- thank you, Mr. Shapiro.

3 MR. SHAPIRO: Should I just go ahead and
4 introduce these through Mr. -- okay.

5 ALJ RODDA: If that works for you.

6 MR. SHAPIRO: Yes, it does.

7 (Brief pause.)

8

9 FURTHER DIRECT EXAMINATION

10 BY MR. SHAPIRO:

11 Q. Mr. Capestro, I have handed you a document
12 marked as Exhibit A-5. Do you have that?

13 A. Yes, I do.

14 Q. And was this document sent to you by your
15 controller this morning in response to a request
16 yesterday?

17 A. Yes, it was. It shows the real property taxes
18 for Far West Water & Sewer, Inc.

19 Q. This is for the current year?

20 A. That is correct.

21 Q. The current property tax year?

22 A. The current year, the first half due November
23 3rd and the second half due May 1st.

24 Q. There are actually four pages here and they show
25 total tax due of 239.56, 77,310.98, 944,48, and

1 239,787.14?

2 A. Did I hear three of them or four of them?

3 Q. Four.

4 A. Okay. I missed one.

5 Q. You have four there now?

6 A. I have four here.

7 Q. Do you still have the calculator that Ms. Wood
8 provided you?

9 A. No. But I will take your addition.

10 Q. I haven't done any addition. That is what
11 Mr. Bourassa is for.

12 Subject to check, Mr. Capestro, would you accept
13 that these four total tax due amounts are \$318,282.16?

14 A. Yes.

15 Q. Have you paid any of these amounts?

16 A. No.

17 Q. Only the first half of these amounts were due
18 and not paid, correct?

19 A. That is correct.

20 Q. The second half --

21 A. However, if you paid the full amount by
22 December 31st, there would not have been any interest or
23 penalties.

24 Q. Okay. But the second amount, the second half is
25 due May 1?

1 A. It is.

2 Q. And do you have the funds to pay the second half
3 or the first half by May 1?

4 A. No, I do not.

5 Q. The other exhibit that you should have there in
6 front of you should be marked Exhibit R-6.

7 ALJ RODDA: A-6.

8 MR. SHAPIRO: Thank you. Thank you very much.

9 BY MR. SHAPIRO:

10 Q. This is a response to a request yesterday for
11 information regarding work performed by H&S on the
12 company's improvement project to comply with the ADEQ
13 consent order, correct?

14 A. These were, these two are limited to buildings
15 that I testified to yesterday.

16 Q. Okay. And those buildings were part of the
17 project to upgrade the system to bring it into
18 compliance with ADEQ's consent order?

19 A. That is correct.

20 Q. Okay. And these two documents show amounts that
21 were paid by Far West Water & Sewer to H&S for work
22 performed?

23 A. That is correct.

24 MR. SHAPIRO: Your Honor, with that, I will move
25 these two exhibits.

1 ALJ RODDA: Any objections to A-5 or A-6?

2 (No response.)

3 ALJ RODDA: Hearing none, A-5 and A-6 are
4 admitted.

5 (Exhibits Nos. A-5 and A-6 were admitted into
6 evidence.)

7 MR. SHAPIRO: We will retender Mr. Capestro for
8 cross.

9 ALJ RODDA: Now, Mr. Torrey.

10 MR. TORREY: At long last.

11

12

CROSS-EXAMINATION

13 BY MR. TORREY:

14 Q. Good morning, Mr. Capestro.

15 A. Good morning, sir.

16 Q. I would like to -- well, frankly I am a little
17 confused about an awful lot of things that you have
18 testified about so far so I am going to try and ask some
19 questions here to clarify some issues. I am
20 intentionally going to avoid going over anything you
21 have already answered to the best of my ability. So if
22 I ask you something that you already answered, please
23 just bear with me. Okay?

24 A. Thank you very much.

25 Q. Now, in approximately February of 2007, the

1 Commission approved new sewer rates for Far West, that
2 is correct?

3 A. That is correct.

4 Q. And then on July 26 of 2007, Far West submitted
5 a financing application to the Commission requesting
6 approximately \$25,215,000, is that correct?

7 A. That is correct.

8 Q. The stated purpose of the financing application
9 was primarily to comply with some requirements from ADEQ
10 for some violations on behalf of the sewer division, is
11 that correct?

12 A. That is correct.

13 Q. Now, according to the application, approximately
14 \$17 million and some change was to be used to make the
15 necessary upgrades to the sewer system, correct?

16 A. That is correct.

17 Q. And then about another \$4 million and some
18 change was going to be used to pay down an already
19 existing loan from WIFA, is that right?

20 A. Correct.

21 Q. Now, that adds up to a total of roughly about
22 \$23 million. And so in my mind, my question is: These
23 about -- I am sorry, that adds up to about \$22 million.
24 That leaves about \$3 million that I am not sure I can
25 account for.

1 Can you give me some kind of a breakdown of
2 where the remainder of those requested funds would have
3 been spent?

4 A. If you will give me a moment.

5 Q. Sure.

6 A. In answer to your question, \$960,021 was
7 required to go into a debt service fund with an
8 additional \$960,021 to be paid over the next 24 months
9 at the rate of \$41,001 per month. Underwriting discount
10 totaled 4.233 percent, and that was \$1,066,287. The
11 payoff of the WIFA loan was \$4,449,740.62. There was an
12 interest payment, and I don't see it broken down but we
13 provided that, where there was interest on the interim
14 BAN that had to be paid.

15 Q. If I can ask you, which exhibit are you
16 referring to today?

17 A. This has not been marked as an exhibit. This is
18 what was filed with the ACC as part of the lending
19 documents which showed the total issue sources and uses.

20 Q. Which page would that be, do you recall?

21 A. This is this one, page 1 of Series A and B,
22 dated 2/13/2007. And it actually comes up to
23 25,902,762. So some money had to be put into it. There
24 was a reoffering premium and there was also money from
25 Far West water in the amount of \$536,736.84 to be able

1 to close the deal.

2 MR. SHAPIRO: Your Honor, if I could, I would
3 like to be able to mark this as an exhibit and use this.

4 ALJ RODDA: I am sorry, was this the compliance
5 filing?

6 MR. SHAPIRO: No. I think it was part of the
7 financing application, is what Mr. Capestro referred to
8 when he meant it was filing.

9 THE WITNESS: It was the order of the ACC that
10 assumed it was approved and completed that we file with
11 the ACC compliance division a copy of the entire
12 financing package, which we did do, and this was part of
13 the package.

14 MR. SHAPIRO: But that was in the financing
15 docket.

16 ALJ RODDA: Right. But it wasn't part of the
17 financing application.

18 MR. SHAPIRO: No.

19 ALJ RODDA: It was after the order.

20 THE WITNESS: No.

21 ALJ RODDA: Okay.

22 MR. SHAPIRO: Do you want to take a minute? And
23 we will be happy to go make a copy and give to
24 Mr. Torrey.

25 MR. TORREY: I really would like that, Your

1 Honor.

2 THE WITNESS: The only thing this would not
3 show, as I can see it right now, is the actual interest
4 on the interim BAN, but that was part of the original
5 figures that we were showing when we did the financing
6 application.

7 MR. TORREY: The document that comes from, is
8 that the same document that was filed on February 11th
9 that was approximately, I guess, 745 pages of material?

10 THE WITNESS: About four inches thick, yes.

11 ALJ RODDA: Approximately 700 pages.

12 MR. TORREY: So that document there is somewhere
13 in that mass of documents?

14 THE WITNESS: That's where I took it out of.

15 MR. TORREY: Your Honor, with your permission we
16 would like to copy just a single page.

17 ALJ RODDA: That's good. Thank you. But we
18 will have to take a break while he is doing that.

19 (A recess ensued from 10:48 a.m. to 10:51 a.m.)

20 ALJ RODDA: Go ahead, Mr. Torrey. We are back
21 on the record.

22 MR. TORREY: Thank you, Your Honor.

23 BY MR. TORREY:

24 Q. Now, Mr. Capestro, the remaining -- while I am
25 having Mr. Becker look over this document, I will ask

1 you some follow-up questions. The total amount that was
2 projected to be used for sewer upgrades was about
3 17,735,000, is that correct?

4 A. That is correct.

5 Q. Now, the projects that resulted in the request
6 for that amount of money came from a violation notice
7 from ADEQ regarding different systems operated by Far
8 West, is that correct?

9 A. That is correct.

10 Q. And a copy of that notice of violation appeared
11 in, well, actually it is a consent order that appeared
12 in the financing application that was marked as
13 Exhibit R-1 previously, is that correct?

14 A. That's correct, the notice of violations is a
15 series of other documents. This is the consent order
16 that was entered in October of '06.

17 Q. And if I could direct your attention then to
18 Exhibit 3 of R-1, that's the consent order section of
19 the application, is that correct?

20 A. That is correct.

21 Q. Now, according to the consent order, there were
22 a series of findings that ADEQ made and then a
23 compliance schedule on page 5, is that correct?

24 A. Which consent order are you talking about?

25 Q. Exhibit 3, that --

1 A. There is two there.

2 Q. -- that I directed your attention to. Do you
3 have that in front you?

4 A. I do. I have two consent orders.

5 ALJ RODDA: Kevin, there are two consent orders.
6 One supersedes. We just need to clarify which one you
7 are looking at.

8 BY MR. TORREY:

9 Q. Exhibit 3 of the application, Exhibit R-1,
10 Docket No. P-18-06, do you have that?

11 A. I do.

12 Q. And that was the first consent order that ADEQ
13 issued, is that correct?

14 A. That is correct.

15 Q. And then thereafter there was a second order
16 that ADEQ issued, is that correct?

17 A. That is correct.

18 Q. And which exhibit is that?

19 A. That's also part of the same exhibit, just a
20 follow-up. I don't think it is separately numbered but
21 it is Docket No. P-105-06.

22 Q. And that's about halfway through Exhibit No. 3,
23 is that correct?

24 A. That is correct.

25 Q. And the reason, can you just for the record tell

1 us the reason why the second consent order was issued by
2 ADEQ?

3 A. The ADEQ had issued a series of notices of
4 violation on various plants that were in addition to the
5 Del Oro plant. And as a result of that, representatives
6 of Far West entered into a second consent order.

7 Q. Now, on that second consent order that you just
8 referred to, approximately page 8 is the compliance
9 schedule of that, is that correct?

10 A. That is correct.

11 Q. Now, I just want to go over with you some of the
12 things that ADEQ had ordered to be done. And
13 specifically paragraph E on that page, the Del Oro
14 wastewater treatment plant, within 45 days Far West was
15 ordered to complete installation and begin operation of
16 a temporary 300,000 gallon per day membrane bioreactor
17 wastewater treatment plant. Do you see that sentence?

18 A. Yes, I do.

19 Q. And was that the same treatment plant that you
20 discussed in your testimony yesterday that was not on
21 line currently?

22 A. No, it is not.

23 Q. Okay. This wastewater treatment plant that was
24 ordered within 45 days, was that complied with?

25 A. Yes, it was. That treatment plant actually was

1 in operation prior to the consent order. It went on
2 line June 1 of 2006. And that is the plant that Far
3 West paid for that will eventually go to the Seasons
4 plant.

5 Q. Okay. How was Far West able to pay for that
6 particular plant?

7 A. What Far West had obtained is it obtained a
8 series of two BANs. The first one was for \$11 million
9 and change. That was completed in July of 2006.
10 Originally the plant was being rented. And then that
11 rent was converted into a purchase. There is a second
12 short-term BAN for 17 million and change in December of
13 '06. Both of those were loans, short-term loans, less
14 than a year, guaranteed by Paula Capestro and Sandy
15 Braden and secured by their own stock in the company.

16 MR. SHAPIRO: I am sorry. Can we just clarify
17 for the record BAN. Is that bond anticipation note?

18 THE WITNESS: That's correct. Both of those --

19 ALJ RODDA: Thank you.

20 MR. SHAPIRO: I saw some confusion.

21 THE WITNESS: Both of them were in anticipation
22 of actually doing final bonding that would be approved
23 by the ACC.

24 BY MR. TORREY:

25 Q. Now, the loans were taken out to build this

1 plant. And the loans were secured by, you said, Paula
2 Capestro and Ms. Braden? Is that the name?

3 A. That is correct, personally guaranteed.

4 Q. And was that done in the name of Far West or was
5 that personal, a personal guarantee?

6 A. Done in the name of Far West.

7 Q. And did the company apply for permission with
8 the Commission to enter into the indebtedness?

9 A. No.

10 Q. And why is that?

11 A. Because we understood when it was personally
12 guaranteed by the parties in less than a year that it
13 wasn't necessary if we were wrong, we did show what the
14 BANs were in our financing application.

15 Q. Okay.

16 ALJ RODDA: I still don't understand exactly
17 who, who got the 11 million and 17 million. Was that
18 that -- did your wife and her sister borrow it and then
19 loan it or --

20 THE WITNESS: No. The money was borrowed by the
21 two of them.

22 ALJ RODDA: Personally or through the --

23 THE WITNESS: It was in the name of Far West
24 Water & Sewer.

25 ALJ RODDA: Okay.

1 THE WITNESS: And guaranteed by them and by
2 their stock. The money did not go to them. The money
3 went into Regions Bank. And as trustee that would
4 disburse the funds as soon as there was a request for
5 funds, requested by the president of the company and
6 countersigned by the engineer, Mr. Lee.

7 ALJ RODDA: So what you are saying is Far West
8 Water & Sewer took out short-term borrowings --

9 THE WITNESS: Correct.

10 ALJ RODDA: -- in those amounts and it secured
11 it with the stock?

12 THE WITNESS: Correct.

13 ALJ RODDA: And it was also personally
14 guaranteed by the shareholders?

15 THE WITNESS: Correct, because the two consent
16 orders said that lack of financing was not a defense to
17 the consent order.

18 ALJ RODDA: Okay.

19 BY MR. TORREY:

20 Q. And so, Mr. Capestro, am I correct that the
21 total amount of debt that was entered into for the
22 construction of that plant was about \$28 million?

23 A. No.

24 Q. 11 and 17?

25 A. No, no.

1 Q. Okay. Can you explain that?

2 A. The 11 paid -- the 17 paid off the 11.

3 Q. Okay.

4 A. Because it was, at the time that the money was
5 borrowed, everybody at Far West thought that we would be
6 able to get our applications approved much, in a much
7 shorter period of time. We were trying to contract and
8 get everything on line in the end of 2006 and early
9 2007. So we started the construction -- we started with
10 the engineering in 2006. Near the end of 2007 we had
11 agreements for the membrane plants and they were ready
12 to be delivered in December of '06.

13 However, the consent order provides that in
14 section -- page 8, A states that prior to beginning
15 construction and/or installation at any site identified
16 in this order, Far West shall first obtain the
17 approvals, permits, et cetera, including the 208. So we
18 could not start construction until we went through the
19 full permit process.

20 So we borrowed it, thought we would be able to
21 move forward, and we did some things as they were
22 approved.

23 Q. And do you recall approximately how much the
24 permitting and engineering process cost for this initial
25 plant?

1 A. Our contract for engineering was 10 percent of
2 the cost. So basically some of that cost is going to be
3 absorbed by Seasons. So I don't know how to give you an
4 answer to that. But the initial payment that had to be
5 made to Coriolis was \$330,000.

6 Q. All right. So let me make sure I am completely
7 clear. You have got this consent order from ADEQ that
8 requires you to bring on line this plant. Before you
9 can do that, you have got to get all the approvals. In
10 order to do that, you have got to get your application
11 and all your permitting documents in order, and your
12 engineering, correct?

13 A. That is correct for the permanent plants. For
14 the temporary plant, ADEQ waived that requirement,
15 because there was a necessity to get something on line
16 right away. But that was also put together by Coriolis
17 but it was done with a formal APP.

18 Q. Okay. Now I am a little more confused. So let
19 me make sure I am understanding you. Did you build a
20 temporary plant before you installed this 300,000 gallon
21 per day membrane bioreactor?

22 A. 300,000 gallon per day, if you take a look at E,
23 page 8, it says begin operation of a temporary 300,000
24 gallon per day membrane bioreactor.

25 Q. Okay.

1 A. So this is the temporary plant.

2 Q. Okay.

3 A. And, too, this plant itself is on skids, and
4 when the brains and everything else are not needed,
5 those skids, the whole vessel will be picked up and
6 moved and moved over to Seasons. And it just had -- we
7 just need to pour pads there and put in the plumbing and
8 piping.

9 Q. Okay. So you didn't need to go for the
10 permitting process to install this 300,000 gpd reactor,
11 bioreactor?

12 A. Normally you would, but pursuant to the consent
13 order we were allowed to put it in right away.

14 Q. So you needed to pay someone to do engineering
15 on this, is that correct?

16 A. I don't want to be elusive but what the contract
17 is is basically 10 percent of the entire project. So to
18 that extent, I think we have forty -- four hundred some
19 odd thousand dollars allotted to the temporary plant,
20 therefore the engineering on that portion would probably
21 be \$40,000.

22 Q. Okay. Because I am very unfamiliar with the
23 process that you are talking about, maybe that's, maybe
24 that's why I am not fully understanding this, let me
25 make sure we have gone through this correctly.

1 You were given this notice from ADEQ. You had
2 to install this temporary plant. You knew you needed to
3 do that job so you contracted with Coriolis. Is that
4 right?

5 A. Yes, in a capsule. What really happened is we
6 had engineers before ADEQ ever came to us with problems
7 but trying to figure out what the problem was, how we
8 would get to it. When, about the time that we started
9 talking to ADEQ about problems out there, we hired an
10 expert, Dr. David Stensel from the University of
11 Washington, who reviewed all the plans and preparations
12 and the like and said what you are trying to do will not
13 meet the qualifications of ADEQ.

14 About that time we found Coriolis and Gary Lee
15 who flew out and looked at the project and said this is
16 what you need to do. And Dr. Stensel conversed with
17 them and felt that this company could do it. They
18 specialize in problems, especially people that have
19 problems with local DEQs, as to what has to be done,
20 what can be done equally. And then right after that,
21 sometime in April, I believe it was, we entered into a
22 contract with Coriolis and Mr. Lee and his group.

23 Q. Okay. And that initial contract you said
24 amounted to about \$40,000?

25 A. No. The original contract itself was for

1 10 percent of the entire project. We handed the entire
2 project over to him. We showed him what was happening
3 with Section 14, with Seasons, with Del Rey, Del Oro and
4 the like.

5 The fact that we had a consent order in
6 October didn't mean that we had not been talking to ADEQ
7 for a period of time. We started talking to them about
8 Del Oro back in January of '06 and we were moving into
9 the other plants about March of '06. And in April of
10 '06 Mr. Lee came on board to try to find something, a
11 solution system-wide.

12 Q. And the solution that Mr. Lee recommended
13 ultimately was going to cost approximately 11 million,
14 is that correct? Is that where the initial BAN came
15 from?

16 A. The initial amount came from what we needed at
17 that time. I don't think that it was an end all. It
18 was what we could do until we thought we could --
19 basically the lender asked us what do we need right now.
20 And that's what we thought we needed at the beginning.
21 I don't think that we had it fleshed out for all of the
22 plants at that time.

23 Q. Okay. This temporary MBR, you said it is on
24 skids. It is a portable?

25 A. That's correct.

1 Q. Is this something that Mr. Lee already had
2 constructed or that he constructed for you?

3 A. No, no. This was something that Zenon company
4 had. And we needed something soon and they had
5 temporary plants. And finally Zenon, Zenon got it there
6 in the month of May when we called them in April. And
7 then they finally agreed to sell us their temporary
8 plant for use at Seasons. So otherwise they would
9 have -- they have used this type of plant around the
10 United States and Canada, whenever people have problems.
11 It was not brand new when we received it.

12 Q. Okay. So this is something that Zenon had
13 already constructed that Mr. Lee was aware of, you
14 contacted the company and they shipped it down for you
15 for installation at that site?

16 A. They shipped it down. They assisted in the
17 installation. Mr. Lee assigned Mr. Tim Mathis to be on
18 the site to make sure that the additional tankage that
19 was necessary went underground and they got all the
20 piping and everything else ready for, as soon as they
21 moved this in they could put it on a pad and we could
22 hook it up in a very short period of time.

23 Q. And at some point you decided to outright
24 purchase this unit?

25 A. That is correct.

1 Q. And is that where the \$11 million initial BAN
2 came from?

3 A. No, no. The purchase of this plant was
4 somewhere around a million dollars.

5 Q. Okay. When did this first BAN of \$11 million
6 come into play? What was it for?

7 A. This first BAN was to cover engineering,
8 construction management, some down payments on
9 equipment, and it was based upon a budget put together
10 by Mr. Lee.

11 Q. For what purpose? For the permanent
12 installation that was going to be required, is that --

13 A. Yes, for parts of it, yes.

14 Q. Okay.

15 A. But this was before any permits were issued and
16 we were in the preliminary stages of trying to figure
17 out what we need and trying to move forward. And we
18 knew what we had to do. We had to get things rectified.
19 We had to stop the nitrates.

20 Q. Okay. I want to make sure we are on the same
21 sheet here. You got your violation from ADEQ. You
22 built this or had this temporary plant installed.

23 A. Correct.

24 Q. And there was, a long-term solution was you
25 needed a permanent facility. Is that correct?

1 A. At Del Oro, correct.

2 Q. Now, at the same time that you were trying to
3 install this temporary solution were you also working on
4 the long-term solution?

5 A. Absolutely.

6 Q. Now, who was in charge of the long-term
7 solution?

8 A. Mr. Lee.

9 Q. So Mr. Lee was doing both jobs, the temporary
10 and long-term solution?

11 A. Yes. He and his staff were in charge of
12 engineering. In fact, the compliance, the consent order
13 was issued in the end of October of 2000 -- by November,
14 the middle of November, our first applications for some
15 of the plants were filed and others were filed in
16 December. That work had to be done. It takes a period
17 of time to do the engineering and putting together the
18 permits. So between July and November, Mr. Lee and his
19 staff were working on applications, engineering,
20 drawings and whatever else was necessary to go to the
21 ADEQ for their permitting process.

22 Q. And that's for the permanent facility?

23 A. That is correct.

24 Q. Now, maybe it is just me but I am not clear on
25 the language that you use. Is the permanent facility

1 the source of the \$11 million financing that you
2 initially applied for?

3 A. The permanent facility was part of the
4 11 million. My only question is whether or not it
5 included everything under the consent order. The
6 consent order had not been issued yet. And I, quite
7 frankly, as I sit here today, don't remember if all the
8 plants were involved at that time. At one time we had a
9 budget that included water also. And that just was
10 beyond our capability, expansion of the water plant.

11 Q. Okay. But this \$11 million was a conversion of
12 personal stock and all of that as a pledge of assets to
13 get to this \$11 million, correct?

14 A. I don't know if the word conversion is
15 appropriate but it was pledged.

16 Q. Okay. And there had to have been a specifically
17 designated purpose to take out \$11 million, correct?

18 A. That is correct. That is correct.

19 Q. And that's what I am trying to get down to, was
20 what was contemplated as the use precisely of that
21 \$11 million?

22 A. For engineering and permitting and permanent
23 plant. But the -- I don't have, I have not looked at
24 that budget for, you know, two and a half, three years.
25 I don't remember what was in it.

1 Q. But was the \$11 million intended to cover the
2 entire cost of installation of the permanent plant?

3 A. My memory was that it was not going to be
4 sufficient to cover everything. I remember the lender
5 saying how much money would we need through a certain
6 point. And we had to go into a second BAN when we got
7 more of the engineering together. By the time we did
8 the second BAN we had our engineering done and submitted
9 to ADEQ so we had a better foothold on exactly what it
10 was that we needed.

11 But between that, the time that we did the
12 second BAN and got the permanent financing and finally
13 had everything approved by ADEQ through its normal
14 processes, certain things had to be added, like vadose
15 wells and other things that are required for safety.
16 That increased the price.

17 So the breakdown of the \$11 million, I am pretty
18 sure it was going to include the original Del Oro plant.
19 I believe at that time it was going to take care of the
20 Section 14 plant.

21 At that time was the very first time we had not
22 found out that it was not practical to do anything to
23 the Palm Shadows plant because the engineers came back
24 after study after study and said we can't take care of
25 the nitrate problem with this plant with any

1 modifications, we are going to have to do something
2 else. So it was an expanding project as we found how
3 high the content of our influent was and what type of
4 processes you needed to take care of it.

5 Q. All right. Now, you used the term second BAN
6 and then you said and permanent financing. Were there,
7 were there two separate financial operations there? Was
8 there a second BAN and a permanent financing or was the
9 second BAN the permanent financing for this project?

10 A. No. The second BAN was in December of '06. And
11 that was the 17 million and change. That had to be paid
12 off by the IDA loan. As soon as we got the second BAN
13 then we started looking to determine what we would have
14 to do to qualify for an IDA loan. Hopefully it would be
15 at low cost and would not be at the higher rate of
16 interest that the BAN was at and would be something that
17 would meet within our qualifications so that the ACC
18 would approve it.

19 Q. Now, you said that you were, even at the time
20 you took out the second BAN, you knew you were going to
21 need additional financing. And am I understanding
22 correctly that the 17 million was not going to cover the
23 entire cost of building that plant?

24 A. No. When I took out the second BAN, I knew I
25 had to take it out with permanent financing because it

1 was only a short-term loan. It was only for 12 months.

2 Q. And so did I understand you that the 17 million
3 that you took out also paid off the 11 million so it was
4 actually about 6 million in additional financing?

5 A. That is correct.

6 Q. Okay. So at some point, the point that you are
7 discussing right now, the plant in its final planning
8 was about 17 million and now you needed permanent
9 financing for that plant?

10 A. That is correct. And when we got down the road,
11 the people that are placing the bond told us that they
12 would not accept second position and therefore we had to
13 pay off the WIFA loan, which was on the, which was
14 approved back in 1998 or 1999.

15 Q. How does the WIFA loan play into this particular
16 plant here that you have been discussing?

17 A. It doesn't. It is just part of the distribution
18 of funds that we went over when you first questioned us
19 where did the money go.

20 Q. So you went and got permanent financing in the
21 form of a bond, correct?

22 A. IDA bonds.

23 Q. And in the form of the IDA bonds, they were
24 supposed to replace the \$17 million that you had already
25 gotten in temporary financing?

1 A. Correct.

2 Q. And at the time that you got the money from the
3 bonds, what happened to -- essentially what I want to
4 ask, you said your wife had pledged all of her assets to
5 secure the 17 million --

6 A. Correct.

7 Q. -- or along during the process. Were her assets
8 still pledged at that time?

9 A. No. The bonding company did not require that.

10 Q. So she was able to get her money back?

11 A. No. She was able to get her stock back.

12 Q. Or her stock?

13 A. She didn't get any money back.

14 Q. Whatever she had pledged in order to get the
15 17 million was no longer on the hook, right?

16 A. That is correct. But to be able to get the
17 loan, Far West had to come up with \$536,000 to make it
18 all balance.

19 Q. And where did the 536,000 come from?

20 A. At that time, Far West had some cash because the
21 loan itself was rolling the interest into the loan
22 itself. We were not making interest payments at that
23 time. That changed after December of '08.

24 Q. So once you were able to secure the IDA loan,
25 you were able to comply completely with what ADEQ had

1 required in order to treat the nitrate issue you had at
2 Del Oro, is that right?

3 A. Most of the nitrate issues were eliminated but
4 not consistently with the temporary plant. However,
5 that had to be followed up by a permanent plant. And
6 that's what is being installed at the present time,
7 which is 90 some odd percent completed.

8 Q. Did ADEQ give you a deadline by which the
9 permanent plant had to be, permanent plant had to be in
10 place?

11 A. Yes, it did.

12 Q. And what was that date?

13 A. Well, the deadline -- I don't see it right now.
14 I see that the ADEQ required that within 90 days of the
15 consent order we would submit an administratively
16 complete APP application, which we did do.

17 Q. So there was no deadline for completion of the
18 project?

19 A. There is. I just saw it, within 90 days of the
20 receipt of construction authorization of ADEQ, Far West
21 shall complete the expansion of the Del Oro collection
22 system.

23 Q. So within 90 days of that particular
24 documentation. When did that documentation happen?

25 A. I don't have it in front of me right now.

1 Q. Is the Del Oro plant complete at this time?

2 A. No, it is not.

3 Q. And so is Far West in compliance with this
4 consent order at this time?

5 A. Well, you are putting me in a little bit of a
6 spot since there is a question from ADEQ whether or not
7 we are in compliance and Ms. Campbell is right here.

8 Q. To the best of your understanding do you believe
9 that Far West is in compliance with what ADEQ is
10 requiring?

11 A. What --

12 MR. SHAPIRO: I am going to object, Your Honor.
13 This is the concern that we expressed yesterday, that we
14 are expanding the scope of this proceeding to now place
15 before the Commission in this record a dispute that
16 is -- a matter that is disputed between the parties. I
17 think it is one thing to talk about the status of the
18 project, but to start asking for opinions on disputed
19 issues I think is inappropriate in the record in this
20 case.

21 MR. TORREY: And, Your Honor, if I may, I am not
22 asking for the Commission to rule on who is correct in
23 the dispute. I just wanted to know if Far West believes
24 it is in compliance with ADEQ.

25 MR. SHAPIRO: Well --

1 ALJ RODDA: Well, he is making -- I can see the
2 point. He is making sworn testimony that will, can be
3 used against him, but...

4 MR. SHAPIRO: I am hoping not to instruct my
5 witness not to answer. But he is in the middle of
6 ongoing litigation.

7 ALJ RODDA: But he must believe --

8 If there is a dispute you must believe that you
9 are.

10 MR. SHAPIRO: We haven't even had a chance to
11 respond to ADEQ yet on some of these disputed issues.

12 Again, this was what I was concerned about
13 yesterday. Mr. Capestro is both counsel for the company
14 in connection with ADEQ's disputes and obviously
15 speaking on behalf of the company in this rate case. He
16 is in an impossible position. And I am going to have to
17 at a minimum confer with him as counsel for the company
18 on behalf of ADEQ matters before I can allow him to
19 answer any questions regarding the nature of the
20 dispute, including his opinion.

21 ALJ RODDA: Let's --

22 MR. SHAPIRO: I apologize, but, you know, this
23 is --

24 ALJ RODDA: But part of the problem is the
25 company is saying we have to complete this plant. But

1 how do we, if we don't know the deadlines --

2 MR. SHAPIRO: Well, there is a difference
3 between asking what the deadline may be and asking
4 opinions on compliance. And there may be reasons the
5 company hasn't met deadlines but are part of the
6 disputed issues between ADEQ and Far West Water & Sewer
7 company. And as long as those issues remain in dispute
8 between another agency and Far West, and as long as
9 Mr. Capestro was the counsel for the company in
10 connection with those issues, I mean --

11 ALJ RODDA: Do you need, Mr. Torrey --

12 MR. TORREY: Your Honor.

13 ALJ RODDA: -- do we need the ADEQ compliance to
14 know the status? I mean, is that important?

15 MR. TORREY: Your Honor, if, if the company is
16 saying that it needs money in order to complete projects
17 for ADEQ but won't confirm whether or not it believes it
18 is actually in compliance, if the company answers, let's
19 just be frank, if the company says we are already in
20 compliance with ADEQ, then what do they need the money
21 for? If the company says they are not in compliance,
22 then, you know...

23 ALJ RODDA: But you can see that they might
24 argue that they are in compliance but the plant is not
25 yet in operation, they are going to argue but we need to

1 get the plant in operation, you can see that argument,
2 right?

3 MR. TORREY: And I can't see a reason why that
4 can't be answered on the stand even if it is the subject
5 of a dispute.

6 The problem is having a witness for the company
7 who is also an attorney who can testify to the
8 Commission but then just swear off the ability to answer
9 a question because he also happens to be an attorney for
10 the company. There is an inherent conflict of interest
11 of having your attorney testify. And that's a problem
12 that I have with Mr. Capestro testifying at all. But
13 until this question it hadn't come up, but that's going
14 to be a recurring theme here shortly, because
15 Mr. Capestro is not only part owner of the company but
16 he is representing himself but also representing various
17 competing interests, both the developer and the company.
18 And this is going to keep coming up.

19 I mean, if the Commission can't get to the
20 answers, then I would be content just to say that the
21 company can't support its application. But it is up to
22 the company. If they don't want to answer, they don't
23 have to answer.

24 MR. SHAPIRO: May I respond, Judge?

25 ALJ RODDA: Okay.

1 MR. SHAPIRO: First off, when Mr. Capestro took
2 the stand and submitted testimony, these questions were
3 not a part of this case. In fact, we had a pretrial
4 conference of sorts; we discussed the limited scope of
5 these things.

6 The fact is that there is a consent order. The
7 consent order is now in the record in this case. And
8 the question is and all the company has said that this
9 consent order requires us to take steps and it can't
10 complete those steps.

11 Now, if Mr. Torrey's question is have you
12 completed a particular piece of plant, I don't have a
13 problem with that. That's not asking him a specific
14 question about compliance with another agency's order.
15 That's asking him a question about ongoing construction.

16 We are not trying to be evasive but we are put
17 in an impossible position by something we were not aware
18 of until we came to this hearing yesterday. And that's
19 the testimony that's expected by ADEQ.

20 ALJ RODDA: Yes, but you knew that the
21 testimony, that what was at issue was how much money you
22 are going to need to complete and how much plant has
23 been completed. I mean that's always been --

24 MR. SHAPIRO: Absolutely, but that wasn't
25 Mr. Torrey's question. Mr. Torrey's question was do you

1 believe you are in compliance with this consent order.

2 ALJ RODDA: But inside part of that inquiry is
3 what plant are you required to put in.

4 MR. SHAPIRO: That's correct. Again, that
5 wasn't Mr. Torrey's question. Mr. Torrey's question was
6 essentially have you completed this plant in a time
7 frame that allows you to comply with the consent order.
8 That is, that is a question that goes to the heart of
9 issues that are or may be disputed in matters ongoing
10 between ADEQ and Far West Water & Sewer company. That's
11 the concern.

12 If you want to take a few-minute break so I can
13 confer with Mr. Capestro, maybe we can see some way
14 through the tunnel, but he is up there and I can't talk
15 to him.

16 ALJ RODDA: Okay. Let's take a break. You can
17 do that.

18 My inclination is, if you can't figure out what
19 you can testify to, I am going to let Mr. Torrey ask the
20 questions and you can decide what questions you can
21 answer.

22 MR. SHAPIRO: That's what I need to talk to
23 Mr. Capestro about.

24 ALJ RODDA: All right. Let's take a break.

25 (A recess ensued from 11:27 a.m. to 11:43 a.m.)

1 ALJ RODDA: Let's go back on the record. I will
2 ask Mr. Shapiro.

3 During the break, I know you were conferring
4 with your client, you were conferring with Staff. Were
5 you able to work out an arrangement or --

6 MR. SHAPIRO: Well, first off, I need to modify
7 my objection. Mr. Capestro is not counsel of record for
8 ongoing disputes both filed and possibly to be filed
9 with ADEQ. Jim Derouin of, I believe, of Steptoe &
10 Johnson is counsel of record.

11 THE WITNESS: Right.

12 MR. SHAPIRO: As far as what we will try to do,
13 we will try and evaluate each question on its merits.
14 We have asked Staff to try to avoid asking for
15 conclusions regarding compliance as we believe the
16 consent order speaks for itself. But we have indicated
17 that we are more than happy to answer any and all
18 questions that we can regarding the status of
19 construction projects. And then Mr. Torrey is certainly
20 free to argue from those facts what he wants to argue
21 based on the application of the consent order. So I
22 will just have to kind of wing it question by question.

23 ALJ RODDA: That's fine.

24 MR. SHAPIRO: Thank you, Judge Rodda. I
25 appreciate that.

1 MR. TORREY: And I understand the ongoing
2 objection, Your Honor. And I will try to phrase my
3 questions in a way that don't result in you having to
4 step in between all the objections and try to get this
5 resolved as quickly as I can.

6 ALJ RODDA: I appreciate all your cooperation.
7 I just expect Mr. Shapiro, who is a good attorney, to
8 represent his client well and Mr. Capestro to pause
9 before answering.

10 THE WITNESS: Attorneys make lousy witnesses.

11 ALJ RODDA: I didn't mean that.

12 MR. SHAPIRO: I hope that wasn't on the record.

13 ALJ RODDA: I didn't mean anything by that.

14 THE WITNESS: Thank you, Judge.

15 ALJ RODDA: Go ahead, Mr. Torrey.

16 MR. TORREY: Thank you, Your Honor.

17 BY MR. TORREY:

18 Q. Mr. Capestro, I had previously asked you,
19 subject to an objection, whether or not the company
20 believed it was in compliance with ADEQ. What I will
21 ask you instead is: The company was given a date for
22 completion of this plant by ADEQ, is that correct?

23 A. It was not given a specific date. It was given
24 a date so many days after the APP was approved.

25 Q. So it was a certain number of days after a

1 triggering event, is that correct?

2 A. That is correct.

3 Q. The triggering event has come and gone, correct?

4 A. It has.

5 Q. And the 90-day period from the triggering event
6 has come and gone?

7 A. That depends on exactly when the APP was
8 approved, but I believe it has.

9 Q. Okay. And, but to date that project is not
10 complete, correct?

11 A. The project itself is not on line at the present
12 time.

13 Q. How far along in terms of physical construction
14 is that project?

15 MR. SHAPIRO: Can we identify which project?
16 Because I think we have several of them, Mr. Torrey.

17 ALJ RODDA: Yes. When you were answering just a
18 minute ago about the project, what did you mean by that?

19 THE WITNESS: I thought we were still on Del
20 Oro.

21 ALJ RODDA: So you were focusing just on Del
22 Oro?

23 THE WITNESS: Correct.

24 ALJ RODDA: Was that -- all right.

25 BY MR. TORREY:

1 Q. That's what I meant. The permanent installation
2 at Del Oro that the company ended up taking out the
3 bonds in the amount of approximately \$17 million for,
4 how far along in terms of physical completion is that
5 project at this time?

6 A. It is my understanding from looking at it and
7 all the rest that the electricians finished all the work
8 that they could do last week. And Midwest Environmental
9 did its plumbing and everything else that it needed to
10 do to the extent of this phase last week also. The only
11 thing that is necessary to start it up is for Zenon to
12 come out and help with the cassettes and start it up.
13 So you could say it is 99 percent completed with the
14 first phase.

15 Q. Now, has someone made arrangements with Zenon to
16 come down and do the installation of those cassettes?

17 A. I have attempted to.

18 Q. And so there is no arrangement right now for
19 Zenon to do that?

20 A. Well, Zenon says they will come down provided
21 that a payment of either a little over \$400,000 is made
22 to them and that they will start up that plant when that
23 payment is made. I received a written offer from them
24 on what start-up would be done.

25 Q. Out of the 17 million that the company

1 ultimately borrowed through the bonds, is that money now
2 used up?

3 A. Every bit of it.

4 Q. And you still need 400,000 for Zenon to come
5 down and start up the phase one. And I take it from the
6 designation of phase one, there is an additional phase
7 to the project, is that correct?

8 A. There is, but I believe we already have that
9 equipment.

10 Q. Okay. What is phase two?

11 A. Phase two is additional cassettes and I believe
12 some additional tankage which we have on-site that will
13 be placed where the Zenon temporary plant is at the
14 present time.

15 Q. Now, phase two, with the added, you said, added
16 cassettes --

17 A. That's correct.

18 Q. -- and tankage --

19 A. Correct.

20 Q. -- was phase two considered to be part of what
21 ADEQ had ordered in this consent order?

22 A. Correct. The maximum that that plant can have
23 with the setbacks and size of the land, is 495,000
24 gallons. When you get to 500,000 gallons you need more
25 of them.

1 Q. Okay. How much are the added cassettes and
2 tankage going to cost?

3 A. I believe we already have that.

4 Q. So the added cassettes and tankage have already
5 been paid for out of the 17 million?

6 A. There is approximately \$1.2 million that is
7 still owed for Del Oro for tankage that has been
8 delivered and for other items that are delivered. It is
9 not as if we didn't pay a goodly portion of the amounts
10 to everybody. It is just the fact that it is more
11 expensive than we expected it to be.

12 Q. Is there any phase beyond phase two?

13 A. No.

14 Q. And so upon completion of one and two, the
15 company will, aside from your objection, the company
16 would certainly be in compliance with what ADEQ had
17 required in this consent order?

18 MR. SHAPIRO: Objection; calls for speculation
19 and requires the witness to offer a legal conclusion
20 about what might happen in the future and what some
21 other third party agency may believe to be compliance.

22 MR. TORREY: I will phrase it a different way.
23 I don't believe that's correct but I will phrase it in a
24 different way.

25 BY MR. TORREY:

1 Q. If the company finishes paying for both phase
2 one and phase two, do you believe that's all ADEQ was
3 requiring in this consent order?

4 A. No.

5 Q. And what else is required?

6 A. They require that as part of this it is
7 intermingled with Villa Del Rey and Villa Royale, which
8 will be shut down.

9 Q. I will get to those in just a second. You are
10 talking about the transportation issue?

11 A. That's correct. But the way they talked about
12 the 90 days and the rest, they talk about the Del Oro
13 plant in both E and in section F.

14 Q. Okay. But other than the -- the physical
15 construction portion of this consent order will be
16 completed upon the completion of phase one and phase
17 two, is that correct?

18 A. That's correct. And phase two shouldn't take
19 very much time. You just have to move things out of the
20 way.

21 Q. But for now, there is still a matter of about
22 a million, 1.6 million that needs to be paid to Zenon
23 and various vendors to complete the remainder of the
24 phase one and two?

25 A. No. Between one million six and one million

1 seven has to be paid to Zenon alone. Another million
2 three has to paid to other vendors.

3 Q. Okay. Now, just a minute ago you referred to
4 \$400,000 owed to Zenon in order to come down and install
5 the initial cassettes. Where did the additional money
6 owed to Zenon come from?

7 A. I may have, you know, confused you. That is not
8 the total amount that's owed. But with the \$400,000,
9 they will agree to do a start-up of Section 14, section
10 of Del Oro. With an additional 800,000, they will do
11 Section 14. Plus they will want payments of \$25,000 a
12 month to reduce the rest of the amount that's owed to
13 them.

14 Q. Okay. If we talk strictly about Del Oro,
15 though, just that section of the consent agreement, the
16 consent order, you need 1.6 million to come into the
17 physical plant requirements of that section of the
18 notice of consent, right, consent order?

19 MR. SHAPIRO: I am sorry. Can I have that
20 question read back.

21 BY MR. TORREY:

22 Q. I will rephrase it this way. So in order to
23 come into physical requirement, the physical
24 construction requirements of that part of the consent
25 order regarding Del Oro, you need 400,000 from Zenon to

1 come down and start the thing up and then you need an
2 additional 1.2 million to pay off the various vendors
3 that you made reference to and then the physical
4 construction will be completed, is that correct?

5 A. I am sorry, I confused you again, or my
6 testimony was confusing. The \$400,000 to Zenon is part
7 of that one million two. So you would not add \$400,000
8 to the million two that we still owe for Del Oro. But
9 we still do owe certain amounts to -- excuse me just a
10 moment.

11 We will still owe an addition to the amount
12 that's owed. We will owe Amtek another 22,000 to finish
13 the hookup once the Zenon plant is on line and will, for
14 the additional phase for the, when the new plant comes
15 in for construction and piping, will owe Midwest
16 Environmental another 56,000.

17 Q. Let me try to break that down. A minute ago you
18 said that you had approximately a million two owed to
19 various vendors, of which 400,000 is the money you need
20 to get Zenon to come down and start this thing up?

21 A. 400 of the 600,000 that's owed to them for Del
22 Oro. 600,000 is owed to Del Oro. About a million one
23 is owed to Section 14.

24 Q. Let me break this down. You owe 600,000 to
25 Zenon, 200,000 for which is other various contingencies,

1 but 400,000 is specifically to come down and start up
2 the plant plus their 600,000 to various other vendors,
3 which amounts to the 1.2 million?

4 A. Okay. I think that you have -- we finally --
5 there is about 600,000 owed to other vendors, 600,000 on
6 that plant owed to Zenon. Zenon is going to make an
7 accommodation for a partial payment and then pay off the
8 rest of it at \$25,000 a month. And they would want a
9 much bigger payment for Section 14. I am still in
10 negotiations with them to see what they would do if we
11 are really nice to them to see if I could get them to
12 start it up.

13 Q. So 1.2 million will get the physical plant,
14 phase one/phase two, for Del Oro, on line?

15 A. I would still have \$78,000 that has to be paid
16 to Amtek and Midwest Environmental that hasn't been
17 billed yet for work they still have to complete to
18 finish everything for Del Oro.

19 Q. Slightly less than \$100,000?

20 A. Yes.

21 Q. So 1.3 million approximately will take care of
22 all of the necessities for Del Oro and that section of
23 the consent order?

24 A. That is correct. That's correct for Del Oro
25 itself.

1 Q. All right. Going back to the IDA loans, I just
2 want to make sure that we are clear on something else.
3 When you went from the initial 11 million for which
4 Paula Capestro pledged assets and then you took out a
5 second BAN for 17 million, was Ms. Capestro still
6 required to pledge her assets for the 17 million?

7 A. Absolutely.

8 Q. And then once the IDA loan and the bonds were
9 used to finance, Ms. Capestro was able to have her
10 pledge sort of removed from that process, is that
11 correct?

12 A. It was a totally new loan. They didn't make
13 that requirement. So when we paid off the interim
14 loans, the stock pledge was released.

15 Q. Okay. What was the bank that did the 11 and
16 \$17 million BAN?

17 A. There was -- Regions Bank held the funds. But
18 the BANs were obtained by Crews & Associates, Mr. Robert
19 Wright. And they went over and found investors. I
20 don't know if banks were the investors or not.

21 Q. And then when the bond came out, Ms. Capestro
22 was not required to pledge assets when the bonds came
23 out?

24 A. That's correct.

25 Q. And who was the pledge or who was the guarantor

1 of that, the bank responsible for that money? Who
2 ultimately gave the money?

3 A. Which money?

4 Q. The bonding amount.

5 A. The bonding amount continued to be distributed
6 by Regions Bank. They were there from beginning to end.
7 But there was no specific bank for the loan. It was a
8 bond issue. And then it was sold to various investors,
9 various series of bonds.

10 Q. So Ms. Capestro at this time has her stock back
11 from these lenders?

12 A. Yes, she does.

13 Q. And so if need be, she could pledge that stock
14 again, couldn't she?

15 A. We have tried since last August when we found
16 out how much more it was going to cost. We have tried
17 people in Florida, Oklahoma, California, Arizona. We
18 have met with banks. We have met with investors. We
19 have met with even Crews & Associates. And we were told
20 by people like Crews & Associates that what we did
21 before in this climate cannot be done. So we have
22 offered to do that.

23 Q. And I understand your reference to this climate
24 meaning the current financial crisis that the country is
25 in, is that correct?

1 A. Well, that's most of it, yes.

2 Q. And does any of the reason that you are unable
3 to pledge the stock and get the remaining financing that
4 you need for other issues, does any of that have to do
5 with a small or relatively small capital stake in the
6 company?

7 A. Small capital what?

8 Q. Small capital investment in the company.

9 A. That has never been mentioned. The only thing
10 that was mentioned when we did have what we thought was
11 a line of credit was the suit filed by ADEQ. And they
12 said they didn't want to have anything to do with it
13 once that suit was filed.

14 Q. You have mentioned you have spoken to people in
15 various different states. Have you ever formally
16 applied for a financing pledging that stock?

17 A. I have made a, a written commitment with the
18 lending agents that they would be the sole agent for a
19 period of time.

20 Q. Have you ever received a rejection letter from
21 the folks that you sent that to?

22 A. Well, Shaw & Associates has been on this since
23 either August and September. And he is still trying. I
24 probably received a rejection letter from Chase. I know
25 I received a phone call from their agent saying they

1 couldn't do it.

2 I do know that Wells Fargo withdrew it but I
3 don't believe that they withdrew it -- I had a letter of
4 commitment, but, of parameters, but I don't remember
5 getting a letter that said no, except for a phone call
6 saying we can't do it.

7 Q. But isn't it customary from when you make an
8 application to get an answer in writing from the
9 institution?

10 A. I don't handle that much in lending. Whether or
11 not we have received letters back and forth, I just
12 don't remember anything from Wells Fargo that said we
13 have withdrawn it. I remember them calling us and
14 saying we have withdrawn it. And those people are still
15 available.

16 Q. Just so we are clear for the record,
17 approximately what is the total value of the assets that
18 Ms. Capestro said she was willing to offer for security?

19 A. Whatever the value of her stock is in Far West
20 water, including that of her sister's.

21 Q. And how much is that, approximately?

22 A. I don't know. We haven't had the Far West Water
23 & Sewer appraised.

24 Q. About how much was it worth when you pledged it
25 for the 11 million?

1 A. I really don't know.

2 Q. You must have some kind of ballpark figure.

3 A. I have heard that these companies are worth so
4 much per hookup but I have not had an appraisal.

5 Q. Is there anyone from Far West that would be able
6 to testify as to how much those assets are worth?

7 MR. SHAPIRO: I am sorry. I am going to object
8 at this time. The assets of a shareholder of a company
9 and their valuation are hardly at issue in this case.

10 MR. TORREY: Your Honor, if I may.

11 ALJ RODDA: Well, go ahead, Mr. Torrey.

12 Although, I think the ability to borrow or contribute
13 equity is at issue.

14 MR. TORREY: And that was exactly what I was
15 going to say, Your Honor, was just that the assets had
16 been pledged before and I am just trying to get down to
17 why they couldn't be pledged again.

18 BY MR. TORREY:

19 Q. Is there anyone from Far West who could give us
20 an approximate value that the company or major
21 shareholder of the company could possibly contribute to
22 aid in financing?

23 A. We have used our financials that we submitted to
24 you for the lending package. Other than that, as a
25 valuation most people we are talking to were very

1 familiar with utilities. And we give them the number of
2 hookups and the amount of plant we have and it is right
3 there on our books and that's what we have been using.

4 Q. When you refer to it was submitted to us, can
5 you be more specific? Was there anything in financing
6 application or --

7 A. The financials provided by Mr. Sunderman, the
8 same ones that we provided. And before we had the
9 audited financials, we sent that out, too, plus the tax
10 returns.

11 Q. You refer to some financials that were filed by
12 Mr. Sunderman in this matter, this application that we
13 are currently hearing testimony on today.

14 A. Absolutely.

15 Q. And those are not audited financials, is that
16 correct?

17 A. The only time an audited financial was required
18 was for the IDA bonds. The IDA bonds required to have
19 an audited financial to agree to do it. And that was a
20 2006 audited financial.

21 Q. And so the valuation of those assets was audited
22 with the IDA bonding. So what I am getting at is:
23 Anywhere in the IDA loan application is there a way to
24 figure out what those assets would be worth in terms of
25 financing for this application?

1 A. I don't believe so. But there is a prospectus,
2 a copy of which was given as part of the funding to the
3 ACC compliance division. It has been filed, the
4 prospectus itself. Obviously, you know, I could obtain
5 another copy of the prospectus that was put together by
6 Mr. Wright and Crews & Associates and get it to you.
7 But it is there on file.

8 Q. The financials submitted by Mr. Sunderman,
9 Mr. Sunderman is employed specifically by this company,
10 is that correct?

11 A. No. He is not an employee of the company. He
12 has his own CPA firm in downtown Yuma.

13 Q. He was employed to prepare financials for this
14 case, correct?

15 A. That is correct.

16 Q. Who employed him?

17 A. Well, he does financials every year. But Far
18 West water employs him.

19 ALJ RODDA: When you use the word employ, you
20 mean like hire as opposed to employee?

21 BY MR. TORREY:

22 Q. Right. Did Far West water hire Mr. Sunderman to
23 prepare the financials for this case?

24 A. We hired him to do financials. We used him not
25 only for this case but to also attempt to get financing.

1 Q. And so in that respect, these financials by
2 Mr. Sunderman are independent financial statements,
3 correct?

4 A. They are independent because he is not employed
5 by us. But we are his biggest client. So I think that
6 he usually has some type of notation that under the CPA
7 rules he has to disclose that we are his largest client.

8 Q. Okay. Aside from the fact that Far West is
9 Mr. Sunderman's biggest client, is there any other
10 reason why he would not be considered independent?

11 A. I don't think so. And I meant, I made a mistake
12 when I said we, he also does financials for H&S
13 Developers and the grocery store and the mini mart and
14 does our own personal financials. So there is a
15 connection there.

16 Q. So Mr. Sunderman does the personal financials
17 for both you and Ms. Capestro?

18 A. Correct.

19 Q. So Mr. Sunderman would be able to --

20 A. Pardon me?

21 Q. So Mr. Sunderman might be able to account for
22 what those assets would be worth, wouldn't he?

23 A. I don't believe that I have ever asked him to
24 evaluate the company. He has used, you know, a term
25 saying if it is worth X number of dollars per hookup and

1 there are X number of hookups, it could be worth this,
2 but that is as far as he has gone.

3 Q. All right. Mr. Capestro, I want to direct your
4 attention to, we have been discussing the consent order,
5 we were previously on page 8, if you could, turn a
6 couple pages to page 10 --

7 A. Correct.

8 Q. -- discussing the Villa Del Rey treatment plant
9 and the Villa Royale treatment plant. The consent order
10 from ADEQ also had some requirements with regard to
11 those two systems, is that correct?

12 A. Correct.

13 Q. And within 90 calendar days Far West was to
14 submit notice of intent. Did that get done?

15 A. Yes, it did.

16 Q. And can you just briefly summarize with regards
17 to Villa Del Rey and Villa Royale and the relationship
18 with Del Oro that we have just been talking about what
19 the arrangement ADEQ wanted was for the moving of
20 effluent?

21 A. What ADEQ wants is within 60 days of the
22 beginning of the operations of the new Del Oro plant for
23 the Del Rey and Royale plants to be shut down. Both of
24 those are under general permits. And under, as I
25 understand it, under the rules for reuse permits you

1 need an APP. And since the little plants themselves
2 would not qualify, you know, for an APP, an individual
3 aquifer protection permit, versus a general permit so
4 that you could use the effluent on the golf course, it
5 would have to be moved over to Del Oro.

6 And I hope this is not too confusing but I am a
7 little confused by it myself, but we have 60 days after
8 Del Oro starts up to be able to close these plants and
9 move the effluent over. We have not started
10 construction on that at the present time, because the
11 golf course has not agreed to an easement over parts of
12 their golf courses. We have all the other easements in
13 place. And we have nothing to do with that golf course.

14 Q. Now, because Del Oro is not on line, the company
15 is unable to undertake the arrangements that are
16 contemplated under this section of the consent order, is
17 that correct?

18 A. We can't shut it down until we have a place to
19 put it.

20 Q. And you said that you haven't begun
21 construction. Do you have any idea approximately how
22 much it is going to cost to comply with this section of
23 the consent order?

24 A. 395,400.

25 Q. So just under 400,000?

1 A. That's correct. That's for the two lift
2 stations and also for all the piping that will go from
3 those lift stations to the Del Oro plant, including
4 directional bore under the golf courses as required by
5 the golf course owner.

6 We have gotten to the point where they have
7 agreed to what we have to do. We have agreed that where
8 it should go. We have agreed that we will directional
9 bore, just haven't gotten around to signing an easement
10 yet.

11 Q. Has any of the 400,000 for the two lifts and
12 piping, has any of that been spent yet?

13 A. I believe the piping has already been purchased.

14 Q. Okay. So there remains two lifts to be paid for
15 at this time?

16 A. That's correct.

17 Q. Approximately how much would the two lifts be?

18 A. The Villa Royale will cost approximately
19 \$100,000 installed for the lift station. And that's at
20 Villa Del Rey. The Villa Royale will be about 80,000.

21 Q. Also installed?

22 A. Installed.

23 Q. And who would do the installation?

24 A. That hasn't been contracted yet, but what we are
25 contemplating is having H&S do it and get paid for it

1 when there is sufficient funds. They have put in lift
2 stations before for the various developments. And since
3 we already own the pipe, the only thing we would have to
4 do is pay for the equipment, which would be about
5 \$75,000.

6 Q. You lost me on that one.

7 ALJ RODDA: All right. Just when you talk about
8 \$100,000 installed and \$80,000 installed --

9 THE WITNESS: Correct.

10 ALJ RODDA: -- does that include the pipe that
11 has already been paid or --

12 THE WITNESS: That -- I am sorry, I interrupted.

13 ALJ RODDA: Does that include what you already
14 have spent?

15 THE WITNESS: No, no. There is a lift station
16 itself at Villa Del Rey which will cost approximately
17 \$37,000 and change. And then there is an actual lift
18 station, pump, equipment at Villa Royale which will be
19 another \$37,000. They are about the same size. The
20 remainder of those numbers is what it is going to cost
21 for installation.

22 ALJ RODDA: Wait. You said the remainder of
23 those numbers.

24 THE WITNESS: Excuse me. I think this has
25 already been an exhibit as to the cost. Maybe we can

1 refer to it.

2 ALJ RODDA: That would be good if we have
3 numbers in front of us.

4 MR. SHAPIRO: R-6, Mr. Capestro.

5 THE WITNESS: R-6. If we go to the one, if we
6 go to the -- it is the fifth page down.

7 ALJ RODDA: Okay.

8 THE WITNESS: And it shows the Villa Del Rey and
9 Royale pump stations.

10 ALJ RODDA: Yes.

11 THE WITNESS: The first number says \$100,000 for
12 the Villa Del Rey equipment. And then the next line
13 over breaks it apart to the installation and equipment.
14 And if you look further down, the gravity mains and the
15 others, the pipe for that has been paid for. But if you
16 go down to the five-inch force main directional drilled,
17 the portion of that for directional drilling has not
18 been paid for.

19 ALJ RODDA: So under the five-inch force main
20 directional drilled, it says \$72,030. Has any been
21 paid?

22 THE WITNESS: The actual force main itself, the
23 pipe has been purchased.

24 ALJ RODDA: Okay.

25 THE WITNESS: It is going to be approximately

1 \$40,000 for the directional drill the amount of places
2 they want us to go underneath the golf course. We asked
3 if we could do an open cut and reseed it but the golf
4 course operators didn't want us to do that. And we are
5 avoiding all of the -- we are going through the roughs
6 on most of this. And drilling under rough doesn't seem
7 to make sense. But it is their golf course, it is not
8 ours.

9 ALJ RODDA: Okay. So I am sorry if I am making
10 you repeat yourself, but for the pump station equipment,
11 when it is broken down by equipment and installation,
12 have you purchased the equipment already and you just
13 have installation or you need to still purchase the
14 equipment?

15 THE WITNESS: We still need to purchase the
16 equipment.

17 ALJ RODDA: So you need 100,000 for the Villa
18 Del Rey and 80,000 for the Villa Royale?

19 THE WITNESS: We are trying to reduce that cost
20 by having H&S actually do the groundwork and open it
21 up --

22 ALJ RODDA: So perhaps --

23 THE WITNESS: -- bring that off.

24 ALJ RODDA: I am sorry. So perhaps the
25 installation part could be deferred, is that what you

1 are saying, because H&S could do it and wait?

2 THE WITNESS: Yes.

3 ALJ RODDA: But the equipment part comes from
4 some third party?

5 THE WITNESS: Correct. So that will be about
6 75,000 for equipment plus the directional drill.

7 And then there is an estimated 20,000 for
8 electrical controls. And we don't have a contract for
9 the electrical controls. We have the specifications for
10 it. We have given that to Amtek and to another
11 electrical party plus mechanical to Midwest
12 Environmental. And I have not entered contracts with
13 them yet. But they should be coming under the amount
14 that's on here.

15 ALJ RODDA: Okay. I am sorry, Mr. Torrey.

16 BY MR. TORREY:

17 Q. I just need to clarify then. Originally when I
18 asked you how much money it was going to cost to comply
19 with that section for Villa Del Rey and Villa Royale you
20 gave me a figure about 400,000, then minus the piping
21 which you said had already been purchased, so that
22 really meant two lifts of 180,000 total. And so now I
23 have heard something about a labor figure just now,
24 about \$40,000 to do some drilling and all of that.

25 A. To hire a company that does directional

1 drilling.

2 Q. So --

3 A. And we already received a bid on that.

4 Q. So apart from the lifts themselves of 100,000
5 and 80,000, there is going to be labor involved in
6 digging, trenching, drilling, all that. What was the
7 total cost of that that is going to need to be done to
8 complete those projects?

9 A. You have got 335,000 if you eliminate the
10 decommissioning. But you are going to have to do some
11 paperwork and other things for the decommissioning. I
12 am not sure what is involved in that.

13 Part of this, like digging for the force main
14 that's not directional drilled, it is our intention to
15 have H&S Developers do it to defer so you could have a
16 creditor that will defer the cost for awhile. So are
17 you asking about out of pocket versus --

18 Q. I am asking --

19 A. Oh, bills?

20 Q. -- whether it is deferred or now, what is going
21 to be the total cost of complying with this Villa Del
22 Rey, Villa Royale section of this consent order?

23 A. 395,400.

24 Q. Okay, 395. If I subtract out that 180 for the
25 two lifts that you say you have already purchased --

1 A. No. I said what we purchased is the piping,
2 which is the eight-inch gravity main, the three-inch
3 force main the four-inch force main, the five-inch force
4 main. But that's the piping alone. These prices on
5 here include installation.

6 Q. Okay. So what is the total value of the piping
7 that you purchased?

8 A. I don't have that in front of me, but I believe
9 it is around \$35,000.

10 Q. So out of that 395, if you take out the 35,000,
11 that leaves roughly 360 that the company is still going
12 to need to pay at this point if it wants to complete
13 what ADEQ expects regarding this project?

14 A. That is correct.

15 Q. Okay. As part of that, ADEQ had already
16 required, on page 10, within 90 calendar days of receipt
17 of the construction authorization from ADEQ Far West was
18 to complete the expansion of the Del Oro collection
19 system. Now, that's the previous project regarding Del
20 Oro that we have already heard a lot of testimony from
21 you on today, is that correct?

22 A. That is correct.

23 Q. Then the next paragraph requires that within
24 30 days of the completion of that there would be an
25 administratively complete request for discharge

1 authorization. I take it because Del Oro is not
2 complete that that application for discharge has not
3 been filed either?

4 A. No. I believe the discharge authorization has
5 already been completed and already approved.

6 Q. Okay. So then the next paragraph requires that
7 within 90 days of the consent order Far West was to
8 submit to ADEQ an administratively complete APP for
9 closure of the Villa Del Rey. As you said, that can't
10 be done until Del Oro comes on line, but has that been
11 prepared?

12 A. There has been a closure plan submitted, I
13 believe. I have seen it. I know that we have reviewed
14 it. And I don't know what the status of that is.

15 Q. And the next section requires that within
16 60 days of the beginning of operation of that system Far
17 West was going to close the Villa Royale plant.
18 Obviously Del Oro is not on line and you can't
19 accomplish that either, correct?

20 A. But we should be able to do that within 60 days.
21 The actual digging will be approximately ten days, about
22 five days for the directional bore and five days for the
23 open cut.

24 Q. The remaining two items at the top of page 11 in
25 paragraph 5 on line 6 and 7 require the company to

1 remove material that may contribute to continued
2 discharge. Is that going to be a major expense?

3 A. No, it will not.

4 Q. What about eliminating to the greatest degree
5 practical any reasonable probability of further
6 discharge, is that going to create a large financial
7 burden to the company?

8 A. I am assuming that they are talking about Villa
9 Royale and Del Rey, and there shouldn't be any
10 discharge. If they are talking about Del Oro, the APP
11 requires certain parameters on that, which is A plus,
12 and the new plant should be able to handle that easily.

13 Q. All right. I will move on to the next section,
14 which is also on page 11, which discusses --

15 ALJ RODDA: Mr. Torrey, before you move on to
16 the next section, are we at -- before we get to a
17 stopping point, let me ask the parties, if we take a
18 lunch break, can we put on, can we put on the ADEQ
19 witness so that they can be on their way?

20 MR. SHAPIRO: Yes, that's okay with the company.

21 ALJ RODDA: Is that okay, Ms. Wood?

22 MS. WOOD: Yes.

23 ALJ RODDA: Because they are sitting here.

24 MS. WOOD: Yes. I think they are finding the
25 information helpful.

1 ALJ RODDA: They are having a good time.

2 All right, let's take a break. But before we
3 do, before we do that, Commissioner Newman had to leave
4 for another appointment, but he had a question I want to
5 ask you before I forget.

6 THE WITNESS: Okay.

7 ALJ RODDA: And earlier this morning you
8 testified when you are talking about, Mr. Torrey was
9 asking you about valuation of the company and trying to
10 get a feel for that, and you said you had heard that you
11 could value a company based on number of hookups. Do
12 you recall --

13 THE WITNESS: Yes.

14 ALJ RODDA: I think you said I heard you could
15 value it. When you heard that, did you hear a value
16 associated with that?

17 THE WITNESS: I have heard a huge range. I have
18 heard 1,000 per hookup, 2,000 a hookup, 3,000 a hookup.
19 And it all depends on what the market is bearing.

20 ALJ RODDA: So when you -- okay.

21 THE WITNESS: So, and then I heard differently,
22 that sometimes they value the hookups for water and
23 sewer differently, and sometimes with sewer they don't
24 give you any value at all, they just give you for the
25 water and they think the two go together. So...

1 ALJ RODDA: But you have not heard a specific
2 value in connection with your company?

3 THE WITNESS: No.

4 ALJ RODDA: Okay.

5 THE WITNESS: I would like to --

6 ALJ RODDA: That's something I will ask you
7 about later.

8 THE WITNESS: Okay.

9 ALJ RODDA: All right. So before we take a
10 lunch break, is there -- Mr. Shapiro is like smiling at
11 me.

12 MR. SHAPIRO: He is just hungry.

13 ALJ RODDA: Mr. Rigsby is waiting, too.

14 Are you raising your hand?

15 MR. RIGSBY: No, Your Honor. I was trying to
16 explain something to Ms. Wood.

17 ALJ RODDA: Mr. Torrey, you look like you are
18 eager to say something.

19 MR. TORREY: I am just eager to do whatever we
20 need to do, Your Honor.

21 ALJ RODDA: Let's take a lunch break. Let's
22 come back at 1:30. And if it is okay with everyone, we
23 can start with the ADEQ witness.

24 (A recess ensued from 12:29 p.m. to 1:35 p.m.)

25 ALJ RODDA: Let's go on the record then.

1 We are back on the record. And as I indicated
2 before lunch, when I came back from lunch break we were
3 going to start with RUCO's ADEQ witness to see if we can
4 let the witness and her attorney leave within a short
5 period of time.

6 So, Ms. Wood, do you want to call your witness?

7 MS. WOOD: Yes. We call to the stand Cynthia
8 Campbell.

9 MR. SHAPIRO: Judge Rodda, if, excuse me, if you
10 will just have the record reflect our continuing
11 objection to Ms. Campbell being called today as opposed
12 to later.

13 ALJ RODDA: Okay.

14 MR. SHAPIRO: Thank you.

15 (Whereupon Cynthia Campbell was duly sworn by
16 the Certified Reporter.)

17 ALJ RODDA: And, Ms. Campbell, I will just note,
18 if you would make sure that the green light is on on the
19 microphone when you are peaking, that helps.

20 Okay, Ms. Wood.

21

22

23

24

25

1 CYNTHIA CAMPBELL,
2 a witness herein, having been previously duly sworn by
3 the Certified Reporter to speak the truth and nothing
4 but the truth, was examined and testified as follows:

5

6 DIRECT EXAMINATION

7 BY MS. WOOD:

8 Q. Ms. Campbell, my name is Michelle Wood. I know
9 we have met on one occasion before today. And I just
10 want to say good afternoon.

11 And you are appearing here today by subpoena?

12 A. Yes.

13 Q. Okay. How are you employed?

14 A. I am employed as a compliance manager of the
15 water quality division of the Arizona Department of
16 Environmental Quality.

17 Q. Are you familiar with the company Far West
18 water?

19 A. Yes.

20 Q. And I should say Far West Water & Sewer company.

21 A. Yes.

22 Q. Okay. How are you familiar with that company?
23 How did you come to become involved with them?

24 A. I have been dealing with Far West Water & Sewer
25 pretty much during my entire tenure at ADEQ, which began

1 in July of 19 -- I am sorry -- July of 2006.

2 Q. All righty. Are you familiar with the, the
3 consent agreement that was entered into between ADEQ and
4 Far West Water & Sewer in 2006?

5 A. There were actually two in 2006. The second
6 one, which was effective October 31st, 2006 I am
7 familiar with. I actually drafted it.

8 Q. Okay. Does the second agreement in 2006
9 supercede the prior agreement in March of 2006?

10 A. Yes.

11 Q. Okay. So for the purposes of our discussion I
12 would like to focus on the second agreement of
13 October 2006.

14 Now, is this an order or an agreement?

15 A. It is a consent order that is, it is an order
16 that was entered into by ADEQ and Far West as a
17 negotiated agreement.

18 Q. Okay. Now, one of the wastewater treatment
19 plants that Far West Water & Sewer operates is called
20 Marwood. Are you familiar with that one?

21 A. I am familiar with the existence of it.

22 Q. Can you locate Exhibit R-1 in front of you. It
23 should be the largest clipped exhibit in that package.

24 A. Yes, I found that.

25 Q. This is a copy of the finance agreement

1 submitted by the company. And attached to it is an
2 attachment or Exhibit 3 which has a copy of the consent
3 agreements. And I would like you to turn to that.

4 A. Okay.

5 Q. On page 5 and 6, there is some discussion
6 regarding Marwood wastewater treatment plant. And it
7 looks like from paragraph D that whatever issues that
8 were related to a notice of violation were closed by the
9 department without action. Is that true?

10 A. As of the time of this consent order in
11 October of 2006, ADEQ was stating its intention to close
12 the notice of violation.

13 Q. Okay. Are there any requirements with regard to
14 this consent agreement that require the transfer of the
15 Marwood effluent, or influent for that matter, to
16 Section 14?

17 A. I am going to look at the compliance section of
18 the order. There are no compliance requirements for
19 Marwood in this order.

20 Q. Okay. There is a plant referred to as the
21 Section 14 wastewater treatment plant, correct?

22 A. Yes.

23 Q. That plant was previously permitted at 150,000
24 gallons per day, correct?

25 A. Let me look back at this. Yes.

1 Q. And I am going to give you a copy, actually I am
2 going to ask you to look, I think it is, Exhibit R-8 in
3 front of you.

4 A. Okay.

5 Q. Is that a copy of the Section 14 permit?

6 A. This is the amendment to Section 14 wastewater
7 treatment plant aquifer protection permit.

8 Q. Okay. And that was entered or issued by the
9 department on what date?

10 A. September 4th, 2008.

11 Q. Now, it talks about approval of a \$1.3 million,
12 excuse me, 1.3 million gallons per day limit. What does
13 that mean?

14 A. The permit, the permit authorizes the wastewater
15 treatment plant to operate at a peak flow -- not a peak
16 flow, I am sorry -- at a design rate of 1.3 million
17 gallons per day. So that's the maximum amount average
18 flow that they can take into that plant based upon its
19 design and what was approved in terms of the design by
20 ADEQ.

21 Q. By the existence of that 1.3 million gallons per
22 day, does that mean that the company has to go out and
23 build a 1.3 million gallon per day facility right now or
24 is there some other criteria you use to evaluate?

25 A. To answer your original question, not

1 necessarily. An APP permit is not, it is not a permit
2 that is directing a wastewater treatment plant to build
3 to a certain capacity. That's not the purpose of the
4 permit.

5 Q. What is the purpose of the permit?

6 A. The purpose of the permit is for the agency for
7 the State of Arizona to ensure that what is built as a
8 wastewater treatment plant is adequately engineered and
9 designed such that it can safely treat a certain volume
10 of sewage and the effluent that comes out the other end,
11 the discharge, which is what the APP is concerned with,
12 is protective of human health and environment.

13 Q. So in the consent agreement, or I think it is
14 called a consent order, it says that they will apply for
15 a 1.3 million gallons per day APP permit for this
16 facility.

17 Let's actually read it. Let me point you to the
18 exact page so I don't misstate. And if you find it
19 before I do, let me know.

20 A. I believe page 11.

21 Q. Okay. Okay. Is it in paragraph 2 where it
22 talks about the move from 150- gallons per day to
23 1.3 million gallons per day?

24 A. Yes. The consent order provides in paragraph
25 G.2 that Far West was required to submit an application

1 to expand Section 14 from 150,000 gallons per day to
2 1.3 million gallons per day.

3 Q. Now, where did you come up or where did the
4 parties arrive at the 1.3 million gallons per day
5 number?

6 MR. SHAPIRO: Your Honor, I am going to object.
7 I thought the purpose was to ask Ms. Campbell the status
8 of these projects. Now we are having her go back and
9 explain the entire consent order and how things were
10 determined. I think that also calls into question
11 conclusions of law regarding a written document.

12 MS. WOOD: They are saying they are required by
13 the ADEQ order to build to a certain level. What I am
14 trying to do is discover why is that number the number.

15 MR. SHAPIRO: Well --

16 ALJ RODDA: That seems to be --

17 MR. SHAPIRO: -- again, I don't think that's the
18 issue in this case. So I will make that objection as
19 well as we have gone well beyond the scope of this case.

20 How this order came about I don't know that
21 Ms. Campbell is appropriate to -- I mean we are
22 discussing a negotiated agreement and what is behind it.
23 I am not even sure there may not be Rule 408 concerns
24 there as well. This was a negotiated settlement of a
25 dispute.

1 ALJ RODDA: Well, I will let her answer that.

2 BY MS. WOOD:

3 Q. How did you arrive at the 1.3 million gallon per
4 day order in this consent?

5 A. In this particular consent order, that number
6 was arrived at because that was what Far West asked for.

7 Q. Okay. So did you do, did DEQ do an evaluation
8 and demand 1.3 million gallons per day or was it offered
9 and you accepted?

10 A. It was offered and we accepted based upon -- I
11 mean, we did an evaluation to determine obviously
12 whether the number that was chosen would be adequate to
13 meet the needs of what they were already servicing, what
14 they had committed to serve in actual capacity
15 development.

16 And I believe, if I recall correctly, that one
17 of the other provisions was Palm Shadows was going to be
18 decommissioned, taken off line, and the flows were to be
19 directed to Section 14. So those flows also would have
20 had to have been taken into account in coming up with
21 total volume that was a minimum that they had to, they
22 had to permit to that minimum.

23 I don't believe that 1.3 million represents a
24 minimum. So to the extent that it is greater than the
25 minimum, it was not a number of ADEQ's choosing.

1 Q. Thank you.

2 Now, looking back at the Exhibit R-8 that you
3 have in front of you, that is a copy of the APP
4 permit --

5 A. Yes.

6 Q. -- for Section 14?

7 A. Okay.

8 Q. And I am trying to make sense of it and it is
9 becoming more clear to me. As you permit it for the
10 first phase of 681,000 gallons per day, which is, you
11 know, significantly less than 1.3 million gallons per
12 day, can you explain the relationship between those
13 numbers?

14 A. Well, sometimes when the agency issues permits,
15 it issues permits that are built in phases, especially
16 if the expansion is somewhat significant. I personally
17 do not have knowledge as to why this permit was built in
18 this way in these phases. I can read that it did have
19 phases in it.

20 Q. Well, let me ask you this: If 1.3 million
21 gallons per day was necessary to serve the current
22 ratepayers, the transfer from Palm Shadows and anything
23 that had already been approved in terms of, you know,
24 commitment, would they approve it for 681,000, 681,000
25 gallons per day?

1 MR. SHAPIRO: I am sorry. Can you repeat that
2 question back.

3 (The record was read by the reporter as
4 requested.)

5 MR. SHAPIRO: Objection; assumes facts not in
6 evidence, calls for speculation by the witness.

7 ALJ RODDA: Yes, I am going to sustain that one
8 because you are assuming too much in that question.

9 BY MS. WOOD:

10 Q. What were you looking for in terms of --

11 ALJ RODDA: Do you have anything to do with the
12 permitting process?

13 THE WITNESS: No, in terms of actually issuing
14 the permit, no, I have nothing to do with the permitting
15 process.

16 ALJ RODDA: Okay.

17 MS. WOOD: I am asking her how they got to 1.3.

18 ALJ RODDA: I know. I just wanted to clarify
19 what her job was.

20 BY MS. WOOD:

21 Q. Let me just back up then. What is your
22 connection with this particular consent order?

23 A. I drafted this consent order and negotiated this
24 consent order.

25 Q. Okay. So you are familiar with what you were

1 looking for in terms of the consent order?

2 A. Yes.

3 Q. Okay. With regard to the capacity of Section
4 14, what were you wanting to cover?

5 A. As I said, we were looking to cover what
6 Section 14 was actually treating at the time. The
7 addition of the Palm Shadows flows, and then if Far West
8 was telling us that they had made actual capacity
9 assurances to additional, for additional flows, we
10 probably would have taken that into consideration.

11 I think in reality what was happening at the
12 time was, is that as long as Far West was going to put
13 forth a number which we thought would get to the minimum
14 amount it needed to, if it was greater than that number,
15 that frankly was not really of any concern to us as a
16 compliance matter. So if the number 1.3, which I
17 believe came from Far West, not from ADEQ, if it
18 represents a number that is greater than the sum of
19 those, I don't know why -- if it was different, it
20 wouldn't have mattered to us.

21 Q. So as long as you have enough to cover the
22 demands that you have just previously identified, ADEQ
23 was satisfied?

24 A. Yes.

25 Q. Okay. The next questions I am going to ask you

1 are about Palm Shadows. Palm Shadows is a waste
2 treatment facility also operated by Far West?

3 A. Yes.

4 Q. What are DEQ's concerns with regard to this
5 facility?

6 A. ADEQ has concerns about the operation of Palm
7 Shadows for several reasons. As were stated in the
8 consent order, one is that they failed to meet the
9 discharge limit for nitrogen at Palm Shadows for a
10 period of time. In addition to that, a large portion of
11 Palm Shadows was built without ADEQ approval or permits.
12 And then more recently, there have been numerous
13 complaints regarding odor at Palm Shadows, overtopping
14 of the evaporation ponds, and operation of those ponds
15 generally.

16 Q. Okay. What type of waste treatment plant is it?

17 A. I am not sure I understand your question.

18 Q. Is it a membrane bioreactor? Is it evaporation/
19 percolation? What kind of plant is Palm Shadows?

20 A. Let's see. I am actually not sure.

21 Q. Can you look to page 5 of the consent, line 6.

22 A. Page 5?

23 Q. Yes.

24 A. Okay.

25 Q. That's where they talk about the wastewater

1 treatment plant called Palm Shadows.

2 A. Uh-huh.

3 Q. And it says effluent from Palm Shadows
4 wastewater treatment plant is disposed of by evaporation
5 and percolation?

6 A. Oh, yes.

7 Q. Okay. What is the problem with the plant
8 evaporating and percolating?

9 A. Well, part of the, part of that is hard to say
10 simply because Far West has not engaged ADEQ in
11 conversations about why they have so many evaporation
12 ponds. The original permit permitted two. I believe
13 there are now seven, perhaps, evaporation ponds out
14 there. So it is difficult to say why and how Far West
15 came to the decision about why they needed all those
16 evaporation ponds because ADEQ was not involved in the
17 process, which should have happened in the permitting
18 issues.

19 Q. Now, typically when you permit a plant, a person
20 goes out and they, it gives them the authority to go out
21 and what? Is it to construct or to discharge? Or what
22 is the process?

23 A. An aquifer protection permit is granted to a
24 party to discharge.

25 Q. So is it based on an approved design flow?

1 A. It is based on an approved design that is
2 reviewed by our permitting group. They evaluate the
3 technical aspects of it, both the engineering and the
4 hydrology of it, to determine whether or not what is
5 being proposed will actually turn out an effluent that
6 will meet water quality standards.

7 Q. What if it doesn't work?

8 A. Generally speaking if a facility is operating
9 under its permit and they are not able to meet the
10 requirements of the permit because of something
11 operational, the general practice is for the party to
12 come back to ADEQ and propose an alternative or some
13 type of fix to it through the permitting process in
14 order to get the plant into compliance with water
15 quality standards.

16 Q. This plant was built in, according to the
17 consent agreement -- I don't know when it was built but
18 what it said in the consent agreement, it says April 14,
19 1999 ADEQ issued Far West an APP for the Palm Shadows
20 wastewater treatment plant permitting a design flow of
21 200,000 gallons per day.

22 A. That's what it says.

23 Q. Okay. Do you have any other facts related to
24 the parameters of that design flow and the gallons per
25 day?

1 A. Well, I know at the time that the permit was
2 issued the facility was already constructed and
3 operational, which generally speaking you are not
4 supposed to operate a facility without the permit. And
5 they did go ahead and operate without the permit. They
6 went and they built a 50,000 gpd facility back in the
7 late '90s. That's what was there. It had to have ponds
8 for evaporation, percolation, effluent disposal.

9 Q. How does the percolation part work, how does the
10 evaporation/percolation pond work? Do you have the
11 ability to tell me how that works? Do you have an
12 expertise?

13 A. I am not an expert on it but I know that
14 generally a percolation/evaporation pond works through a
15 combination of percolating into the soil and
16 evaporation. A combination of the two basically
17 disposes of effluent.

18 Q. Now, in addition to -- I understand there is
19 some sort of problem with Palm Shadows and their
20 hauling. I think you call it -- what do you call it?
21 Vault and haul?

22 A. Vault and haul is a term we use at DEQ.

23 Q. Which means?

24 A. It basically means you use a truck to take
25 either raw sewage or effluent and you transport it to

1 another location where it is treated.

2 Q. Don't they have a wastewater treatment plant
3 there? I mean, if the percolation/evaporation ponds
4 were not working, isn't there a wastewater treatment
5 plant located there to treat the influent making it
6 effluent?

7 A. At Palm Shadows?

8 Q. Yes.

9 A. Yes.

10 Q. Why does it have to be retreated by the City of
11 Yuma?

12 A. I am not sure why Far West is choosing to
13 retreat their effluent through the City of Yuma's
14 wastewater treatment plant.

15 Q. Should effluent come under the treatment plant
16 meeting the discharge requirements of the permit?

17 A. Yes.

18 Q. And if it is effluent, it should be something
19 they can use for stated purposes?

20 A. Depending on what the permit allows in terms of
21 what the quality of the effluent as prescribed by the
22 permit.

23 Q. And you have different categories --

24 A. Yes.

25 Q. -- of discharge permits?

1 A. There is different categories of effluent
2 quality.

3 Q. Okay. All right. I am mixing my terms. So I
4 have heard you say B quality effluent and Mr. Capestro
5 did a lot of testifying about A quality effluent. And
6 the term is used reuse or recharge. Can you explain
7 reuse, recharge?

8 A. Generally speaking reuse of effluent is done
9 through use and irrigation or other prescribed methods.
10 Recharge is a different, is different than reuse. It is
11 generally done through wells. And it is recharged into
12 the aquifer.

13 Q. If they are vaulting and hauling to the City of
14 Yuma for retreatment, that's not reuse or recharge?

15 A. No.

16 Q. Does that mean that what is coming out of the
17 waste treatment plant is not effluent that meets the
18 quality, or why do we have this problem?

19 A. Well, again, I can't tell you why Far West is
20 making a business decision to retreat its effluent. I
21 can say that the quality of the effluent that's being
22 treated by Palm Shadows is not meeting the requirements
23 of its APP permit, specifically with regard to nitrogen.

24 Q. Okay. What is the problem there?

25 A. They are exceeding the discharge limit.

1 Q. Okay. Should the wastewater treatment plant --
2 the wastewater treatment plant you approved had the
3 ability to generate effluent that met the standard?

4 A. ADEQ generally doesn't issue a permit if it
5 doesn't think that the treatment technology is -- I mean
6 we issue the permit with the idea that the treatment
7 technology will work. Sometimes that happens and
8 occasionally it does not.

9 Q. All right. Do you know whether or not the
10 percolating ponds failed to percolate because they have
11 clay underneath them?

12 A. I don't. I don't know that for a fact.

13 (Brief pause.)

14 BY MS. WOOD:

15 Q. In front of you you have a copy of what has been
16 marked as Exhibit R-21.

17 A. Yes.

18 Q. Can you identify that for administrative law
19 judge?

20 A. This is the amendment to the aquifer protection
21 permit for the Del Oro wastewater treatment plant.

22 Q. And on what date was that issued?

23 A. February 25th, 2008.

24 Q. And are you familiar with these documents?

25 A. I have seen these permits, yes.

1 Q. In fact I asked you for copies of them?

2 A. Yes.

3 Q. Okay. Is this a true and correct copy of the
4 document issued by the Department of Environmental
5 Quality on February 25th, 2008?

6 A. Yes.

7 MS. WOOD: Move for the admission of
8 Exhibit R-21.

9 ALJ RODDA: Any objection to R-21?

10 MR. SHAPIRO: Again, we are just introducing
11 exhibits that we are not asking anybody questions about.
12 So at this point, I mean are we just calling
13 Ms. Campbell just to lay a foundation for the document?

14 MS. WOOD: I don't think there is anything
15 improper about laying a foundation and asking for
16 admission of a document that's related to the Del Oro
17 plant and ADEQ's requirements when that's the issue
18 here.

19 ALJ RODDA: Well, if that's -- I don't know if
20 that's an objection or not, but I will admit it.

21 (Exhibit No. R-21 was admitted into evidence.)

22 BY MS. WOOD:

23 Q. On the Del Oro agreement, excuse me, APP permit
24 you have in front of you, on page 2 of the permit, what
25 is the capacity of this particular facility?

1 A. The maximum average monthly --

2 MR. SHAPIRO: I am sorry.

3 THE WITNESS: I am sorry.

4 MR. SHAPIRO: I am going to object if we are
5 just having her read stuff. But Ms. Campbell already
6 testified she is not in the permitting department, this
7 is not her area of responsibilities.

8 ALJ RODDA: All right. But I think she can
9 testify, I mean I am sure she is familiar with the
10 document.

11 Are you not?

12 THE WITNESS: I am familiar with the document.

13 ALJ RODDA: So you can answer the question.

14 THE WITNESS: The maximum average monthly flow
15 for Del Oro based on this permit is 495,000 gallons per
16 day.

17 BY MS. WOOD:

18 Q. Does the -- okay. Again, this number is 495,
19 495,000 gallons per day. How did you arrive at the
20 figure of 400 -- is that also part of the consent
21 agreement?

22 A. It was incorporated into the consent, into the
23 consent order, but it was already a permit that was in
24 process at the time this order was executed. The
25 application was already in process for 495,000 gallons

1 per day. So it wasn't a requirement of this permit --
2 or I am sorry, I am sorry -- of this consent order to
3 apply for that amount, because the application was
4 already in process.

5 Q. Did DEQ demand the level of 495,000 gallons per
6 day or was it something that was offered and you
7 accepted?

8 A. Actually I don't know how that number was
9 arrived at, because I believe the permit was applied
10 for. If this was a discussion in terms of compliance,
11 that is, what ADEQ was asking Far West to do in order to
12 comply, if that request was made, it predates my time at
13 ADEQ.

14 Q. Okay. Thank you.

15 There is another facility that Far West operates
16 called Seasons, correct?

17 A. I am aware of that.

18 Q. Under the terms of the consent agreement, what
19 is the company required to do with regard to Seasons?
20 And I am looking at page 13.

21 A. As I recall, the issue with Seasons was they
22 didn't have permit coverage for what they were either
23 operating at the time, which I believe was the case, or
24 that they were going to operate. And so they needed
25 additional permit coverage to cover up to 150,000

1 gallons per day. So the order required them to submit
2 an application to amend their APP to get to that
3 capacity.

4 Q. Now, has the department reviewed and approved an
5 amended APP?

6 A. Yes.

7 Q. What you have in front of you as R-22, is that a
8 copy of the amended APP?

9 A. It is for Seasons wastewater treatment plant.

10 Q. Is this a true and correct copy of the document
11 issued by the department?

12 A. Yes. This is the document I provided to you.

13 Q. And it was issued on which date?

14 A. It was issued June 4th, 2008.

15 MS. WOOD: Okay. I don't have any more
16 questions for Ms. Campbell at this time.

17 ALJ RODDA: Okay. Mr. Torrey, do you have any
18 questions for this witness?

19 MR. TORREY: I have just a few, Your Honor.

20

21 CROSS-EXAMINATION

22 BY MR. TORREY:

23 Q. Ms. Campbell, I want to direct your attention
24 back to Exhibit R-1 that you testified to before that
25 has the copy of the consent order that you said you had

1 helped draft.

2 A. Yes.

3 Q. I believe it is on about page 8 that the
4 compliance schedule begins to appear in that document.

5 A. Yes.

6 Q. I had asked some questions earlier of
7 Mr. Capestro related to this document and I wanted to
8 follow up with you.

9 Is it ADEQ's position that Far West is in
10 compliance with its, with this consent order as it
11 relates to the Del Oro wastewater treatment plant?

12 A. It is ADEQ's position -- and when I say it is
13 ADEQ's position, the agency issued a notice of violation
14 to Far West related to this consent order. The notice
15 of violation makes allegations that Far West is not in
16 compliance with this order. One of the allegations
17 contained in that notice of violation relates to the Del
18 Oro wastewater treatment plant to the extent that the
19 Villa Del Rey and Villa Royale wastewater treatment
20 plants are supposed to be taken off line, converted to
21 basically lift stations, and then the sewage that would
22 normally go to those wastewater treatment plants would
23 be put to Del Oro. So to that extent, to the extent
24 that that has not yet occurred, it is the agency's
25 position that Far West is not in compliance with this

1 order.

2 Q. But you would agree it would be impossible for
3 the company to move that effluent to the Del Oro plant
4 if the Del Oro is not on line, isn't that right?

5 A. That is true.

6 Q. And isn't it true that the Del Oro plant is not
7 at this time on line and able to process that effluent?

8 A. That is my understanding, yes.

9 Q. Approximately how long has it been since the
10 company and ADEQ discussed the need for the Del Oro
11 plant to be modified as it appears in this consent
12 order?

13 A. Well, as I already testified, the application
14 for Del Oro to expand to 495,000 gpd, gallons per day,
15 was already in process before we executed the order from
16 October of 2006. So to the extent that that answers
17 your question, I mean there was a discussion already
18 going, there was an application for that to happen.

19 Q. So is it safe to say that the company has been
20 on notice with ADEQ that modifications were necessary to
21 this Del Oro plant since before September 2006?

22 A. Yes.

23 Q. Regarding the Villa Del Rey and Villa Royale
24 plants, other than the fact that they have not been
25 interconnected with Del Oro at this time, are there any

1 other outstanding violations or outstanding
2 modifications that need to be made from the perspective
3 of ADEQ?

4 MR. SHAPIRO: I am sorry. Can I have that
5 question read back.

6 (The record was read by the reporter as
7 requested.)

8 MR. SHAPIRO: Mr. Torrey, are you asking whether
9 within the confines of or the context of the consent
10 order in general?

11 MR. TORREY: Within the context, within the
12 context of the consent order.

13 MR. SHAPIRO: Okay. Thank you for the
14 clarification. No objection.

15 THE WITNESS: To the extent that the portion of
16 the consent order that's under the title Villa Del Rey
17 wastewater treatment plant and Villa Royale wastewater
18 treatment plant, and right now I am looking at page 10,
19 section F, the provision that I was referring to in my
20 previous testimony regarding construction of a
21 collection system to Del Oro is referenced specifically
22 in F.1. And so my testimony stands with regard to that.

23 With regard to the additional requirements that
24 are laid out in this consent order, no, the agency has
25 not taken a position to date that Far West is a

1 noncompliance with these terms. They have submitted an
2 application for closure on both of those facilities, but
3 that closure application cannot be complete until the
4 facilities are closed.

5 I think the other requirement in here is for
6 them to submit an application for discharge
7 authorization, which, as you have already pointed out,
8 they cannot do until Del Oro is available to treat the
9 sewage.

10 BY MR. TORREY:

11 Q. You were just looking at page 10. If I could
12 get you to flip the page to page 11, subparagraph G,
13 where it discusses Section 14 wastewater treatment
14 plant.

15 A. Okay.

16 Q. From ADEQ's perspective are there outstanding
17 matters in this consent agreement or consent order that
18 Far West has yet to comply with?

19 A. ADEQ has taken the position in a notice of
20 violation that Far West is not in compliance with this
21 consent order with regard, I believe, specifically to
22 section G.4, which relates to the Section 14 collection
23 system.

24 Q. And is the purpose of the Section 14 collection
25 system the same as the previous collection systems,

1 which is to get effluent together to be shipped to Del
2 Oro for treatment?

3 A. No, no. The purpose of the Section 14
4 collection system is to divert raw sewage flows from
5 Palm Shadows, what is now Palm Shadows, to Section 14.

6 Q. Okay. Moving down to subsection H on this same
7 page, the Palm Shadows wastewater treatment plant from
8 the perspective of ADEQ, is there anything within the
9 section related to Palm Shadows that ADEQ believes Far
10 West is not in compliance with in relation to this
11 consent agreement?

12 A. Yes. ADEQ has issued a notice of violation
13 alleging that Far West is in violation of this portion
14 of the consent order in that it failed to submit to ADEQ
15 a request for a minor modification to its aquifer
16 protection permit to address the issues of the nitrogen
17 exceedances that are still unaddressed today.

18 Q. And that would be subparagraph H.1, is that
19 correct?

20 A. Correct.

21 Q. And so does that mean that H.2, 3 and 4 don't
22 present a problem to ADEQ from a compliance standpoint?

23 A. Not today, because the time is not ripe for
24 these things to have been completed. You can't complete
25 closure of a facility until after it is no longer taking

1 in sewage.

2 Q. Okay. And the final request is, if you will
3 turn to page 13, subparagraph I, regarding the Seasons
4 wastewater treatment plant. Does ADEQ have a position
5 regarding whether or not Far West is in compliance with
6 that subsection of the consent order?

7 A. Yes. ADEQ has issued a notice of violation
8 regarding this portion of the consent order alleging
9 that Far West is not in compliance with the consent
10 order because it has failed to submit a request for a
11 minor modification to its aquifer protection permit to
12 address the nitrogen exceedances at Seasons.

13 Q. And that's subparagraph 1, is that correct?

14 A. I.1, yes.

15 Q. Ms. Campbell, you have been testifying today
16 about minor modifications. Can you just for my benefit,
17 because I am not familiar enough with what happens at
18 ADEQ, why is it referred to as a minor modification,
19 what needs to be done to correct that?

20 A. Well, there are two things about it, I guess, to
21 answer your question.

22 One is a minor modification, the term is
23 somewhat of a term of art and used primarily to talk
24 about amendments to an aquifer protection permit. There
25 are major amendments and minor amendments. They usually

1 relate to the scope of the change that you are talking
2 about or if it increases the capacity.

3 In this particular instance, the reason that
4 both those facilities had that provision in this consent
5 order was because both facilities were experiencing, and
6 I can say I know with regard to Palm Shadows are still
7 experiencing, problems meeting their permit limits with
8 regard to the effluent quality specifically with the
9 parameter of nitrogen.

10 So what we had asked for when we did this order
11 was Far West had made the suggestion that they were
12 going to take Seasons off line. They had also made the
13 statement that they wanted to take Palm Shadows off
14 line. That was their proposal for how to address the
15 problems. But realizing that that would take time,
16 because both involved in both cases an expansion of
17 another wastewater treatment plant in order to take
18 those flows, what ADEQ had requested and what was agreed
19 to in this order was that in the interim there would be
20 a minor modification to the APP permit in both instances
21 because Far West represented to us that there was
22 available technology that they could install that would
23 address the nitrogen problem on a more immediate nature,
24 in a shorter time frame.

25 Q. And did Far West in fact do that?

1 A. No.

2 Q. I will just follow up with a couple quick
3 questions. And if you are not an appropriate witness
4 for this question, just please let me know.

5 For example, regarding this, the Seasons plant
6 that we just talked about, the company is required to
7 submit this authorization for increases in design flow.
8 They haven't done that. Are you familiar with what it
9 would approximately cost to get into compliance with
10 that?

11 MR. SHAPIRO: Excuse me. I am sorry.
12 Objection. I think Mr. Torrey misstated the witness'
13 testimony regarding what has not been submitted. So,
14 therefore, he stated facts that are not in evidence.

15 ALJ RODDA: Okay. Do you want to read that
16 question back, Mr. Torrey, or do you just want to
17 rephrase, ask the question again?

18 BY MR. TORREY:

19 Q. The --

20 ALJ RODDA: Are you going to ask her in general
21 if she has any knowledge about costs?

22 MR. TORREY: I can do that.

23 ALJ RODDA: Because she might not. I mean...

24 BY MR. TORREY:

25 Q. Are you familiar with the costs that it would

1 take for remediation of the nature that are discussed in
2 this consent order to the extent that Far West hasn't
3 complied?

4 A. No. That's outside the scope of my expertise.

5 Q. Okay. And if ADEQ has issued a notice of
6 violation, is there a particular penalty that the
7 company incurs for each ongoing day of violation, is
8 that how that works?

9 A. Well, a notice of violation is an informal
10 compliance tool used by ADEQ to notify a party if the
11 agency believes it is in violation of a law, rule,
12 consent order or other requirement. Once -- in and of
13 itself it does not carry a penalty. The notice of
14 violation does not impose a penalty nor does it carry a
15 penalty. If Far West is in violation of a consent
16 order, the statute provides up to \$25,000 per day per
17 violation, which includes violation of an administrative
18 order.

19 MR. TORREY: And, Your Honor, I have no further
20 questions for Ms. Campbell.

21 ALJ RODDA: All right. Let me ask, Mr. Shapiro,
22 based on what you heard here today, are you prepared
23 to -- or how do you want to proceed?

24 MR. SHAPIRO: Judge Rodda, what I would like to
25 do with your permission is proceed to right now ask

1 Ms. Campbell what I would view as more foundational and
2 not substantive questions. I would like to meet with my
3 client and advisors and discuss the substantive aspects
4 of her testimony.

5 ALJ RODDA: Okay. So what I hear you saying,
6 you are going to ask some foundational type questions
7 and then we can take a break and you can decide whether
8 you can conclude your cross today --

9 MR. SHAPIRO: Correct.

10 ALJ RODDA: -- or not.

11 MR. SHAPIRO: Correct.

12 ALJ RODDA: And I will just state for the record
13 for the witness we had a discussion prior, an
14 off-the-record discussion about the possibility that we
15 may have to come back a second day for
16 cross-examination. Isn't that right? And you agree
17 that you would be able to make arrangements to appear
18 again?

19 THE WITNESS: We would make arrangements to
20 appear if that's what the Commission would like.

21 ALJ RODDA: All right. Then let's go forward
22 with Mr. Shapiro --

23 MR. SHAPIRO: Thank you.

24 ALJ RODDA: -- and see where it gets.

25

1

CROSS-EXAMINATION

2 BY MR. SHAPIRO:

3 Q. Good afternoon, Ms. Campbell.

4 A. Good afternoon.

5 Q. When did you first speak with representatives
6 from RUCO about this case?

7 A. I think it was probably several weeks ago.

8 Q. And who did you speak to?

9 A. Ms. Wood.

10 Q. And did she contact you?

11 A. Yes.

12 Q. And what was the purpose of the contact by
13 Ms. Wood?14 A. She had questions for me regarding the consent
15 order between ADEQ and Far West.16 Q. So -- I am just trying to do some calendaring in
17 my head. So the contact by RUCO, by counsel for RUCO,
18 predated Tuesday, March 31st?

19 A. Yes.

20 Q. And at that time did Ms. Wood tell you that she
21 would like to call you as a witness?22 A. No, not initially. Initially when she contacted
23 me, she was asking me general questions about the order,
24 I believe trying to attempt to understand some of the
25 terms used in the order and how aquifer protection

1 permits worked generally. We didn't talk about listing
2 me as a witness initially.

3 Q. Did Ms. Wood suggest to you at that time any
4 position or concerns that RUCO had about this case or
5 about the consent order or the company?

6 A. No, I don't recall any specific concerns that
7 she said that RUCO had regarding the consent order.

8 Q. It was an informational inquiry at the time?

9 A. Absolutely.

10 Q. Okay. When was the next time you spoke to
11 Ms. Wood?

12 A. I believe I spoke to her again either the second
13 or third week of March. She said she had some
14 additional questions.

15 Q. And how did that, how did the additional
16 questions differ from the first contact?

17 A. Well, actually the second contact, in the second
18 contact she was then discussing the possibility of me
19 appearing as a witness. And the way the conversation
20 went, she made the inquiry and what I told her was, is
21 that ADEQ staff generally does not appear on the part of
22 any party in a matter before the Commission.

23 Q. Did RUCO request that you appear on their
24 behalf?

25 A. Well, they, they had asked if I could appear as

1 a witness. I don't know if, if I would necessarily
2 characterize it as on their behalf but I believe she did
3 ask me to give testimony.

4 Q. And this was also before March 31st?

5 A. It was.

6 Q. Okay. And at that time did RUCO inform you of
7 any concerns or positions that they had or might be
8 taking in this case?

9 A. None, none that differed from the original
10 consultation.

11 Q. During which you said that they didn't express
12 positions, it was informational?

13 A. Correct.

14 Q. Okay. So the second call was informational and
15 the possibility of becoming a witness?

16 A. Yes.

17 Q. Okay. And then the next time that you had
18 contact with Ms. Wood?

19 A. Well, I think the next time I had contact with
20 Ms. Wood was to tell her that ADEQ employees generally
21 do not appear. And so I thought the matter was closed.

22 Q. Okay. When did you find out it wasn't?

23 A. Today is --

24 Q. Roughly. I don't mean to pin you down. I know
25 it is hard to keep our calendars.

1 A. Last Thursday.

2 Q. So that would be April 2nd?

3 A. Yes.

4 Q. Okay. And what happened on April 2nd?

5 A. Well, there had been a bit of a back and forth
6 conversation.

7 Q. Okay.

8 A. They had said we would like you to appear and we
9 said we generally don't appear. And I think finally the
10 statement was, is, you know, if there was, obviously if
11 there was a subpoena issued, we would comply with the
12 subpoena. And then she indicated her interest in
13 pursuing a subpoena.

14 Q. Okay. Again, at that time any discussion of why
15 RUCO wanted you to appear?

16 A. There was, there was a conversation about I
17 believe she was -- in one of her interviews with me I
18 think she brought her investigator -- and the intent I
19 believe that she expressed to me was the hopes of, in
20 the process of interviewing me, that her investigator
21 would feel comfortable enough to testify to the
22 documents that were being submitted into evidence. And
23 that was, that was the last substantive conversation
24 that we had had.

25 Q. And who was that investigator?

1 A. I apologize for not remembering his name but he
2 is sitting at the table.

3 Q. Oh, Mr. Rigsby. We know him well.

4 Okay. So that was April 2nd. Again, at that
5 time, did RUCO indicate any specific testimony they
6 sought to elicit from you?

7 A. No, other than to say they were interested in
8 information about Palm Shadows. I think that
9 specifically was mentioned.

10 Q. Okay. I assume that after that you had some
11 discussions with Ms. Wood just about logistics as to the
12 date and time?

13 A. Sure.

14 Q. Were there any substantive discussions after
15 April 2nd before you got down here today?

16 A. No.

17 Q. I have noticed that since you arrived today you
18 have had some discussions with Ms. Wood.

19 A. Yes.

20 Q. What were the nature of those discussions?

21 A. The nature of those discussions, she confirmed
22 again what she was going to ask specifically about Palm
23 Shadows. And she mentioned that she would be asking me
24 questions relating to the terms of the consent order, to
25 some extent the terms of the aquifer protection permits.

1 Q. At any time in any of your discussions with RUCO
2 representatives have they indicated or used the terms
3 excess capacity?

4 A. No.

5 Q. Have they asked you whether you have formed a
6 belief as to whether the company has more wastewater
7 treatment capacity than it might need?

8 A. No. She did, she did ask me the question that
9 she asked me today relating to Section 14, specifically
10 in terms of the 1.3 million gallons per day, where did
11 that number come from.

12 Q. Okay. Did RUCO, did Ms. Wood today in any way
13 indicate any positions that RUCO might be taking or
14 concerned with Far West?

15 A. No.

16 MR. SHAPIRO: Okay. Thank you very much.

17 If I can have a few minutes at a break, we will
18 let you know where we go from here.

19 ALJ RODDA: Okay. And I don't have any
20 questions.

21 I just wanted to say that I have never had, as
22 long as I have been doing this, I have never had anyone
23 point and say, "It was him."

24 THE WITNESS: Sorry, sorry.

25 ALJ RODDA: So thank you very much for that

1 experience.

2 And what we are going to do, we are going to
3 take a short break while counsel confer. And then I
4 will let you know whether you are needed back or not.

5 THE WITNESS: Thank you.

6 ALJ RODDA: Thank you. So don't go away
7 completely.

8 (A recess ensued from 2:37 p.m. to 2:50 p.m.)

9 ALJ RODDA: Let's go back on the record.

10 MR. SHAPIRO: Thank you, Judge Rodda.

11 I think what we would suggest is the following.

12 Let's finish up the cross-examination and any questions
13 you have for Mr. Capestro, call it a day, reconvene a
14 conference call later this week to discuss additional
15 dates. I think if, rather than starting and doing a
16 short amount of redirect, we have a lot, I think --

17 ALJ RODDA: I am sorry. Let's go to
18 Ms. Campbell.

19 MR. SHAPIRO: She can go.

20 ALJ RODDA: Okay.

21 MR. SHAPIRO: We will work on Friday to get a
22 date to bring her back and everybody else.

23 ALJ RODDA: I see. So you are going to have
24 some additional substantive questions.

25 MR. SHAPIRO: Yes, but I don't believe we will

1 need discovery or depositions. We will just proceed
2 based on what we heard today.

3 ALJ RODDA: Okay. All right. Well, so thank
4 you very much, Ms. Campbell. You can be excused and we
5 will get in contact with you about a future appearance.

6 MR. SHAPIRO: And the subpoena will remain
7 effective?

8 ALJ RODDA: And so you will appear under the
9 same subpoena or do we need to, or do you know or does
10 your attorney know --

11 MR. COX: It is a continuing subpoena.

12 ALJ RODDA: It is a continuing, okay.

13 MR. COX: We are fine.

14 MR. SHAPIRO: Okay.

15 MR. COX: Just give us notice.

16 ALJ RODDA: We will. We will try to do this up
17 in Phoenix, too. You are both in Phoenix, is that
18 right?

19 MR. COX: Yes.

20 ALJ RODDA: And so...

21 MR. SHAPIRO: I would suggest, rather than
22 engage in what would be a very long redirect, I think if
23 we break when we are done, give us a chance to coalesce,
24 decide what additional witnesses we will call for
25 rebuttal, I think it would be more productive than going

1 through a day of cross-examination and try and figure
2 out what we want to cover, what has been covered. There
3 has been a lot of information the last 24 hours. So we
4 just think it would be more productive to finish
5 Mr. Capestro and then maybe reconvene Friday, if
6 possible, with you on a conference call to discuss the
7 procedural schedule. That's our suggestion.

8 ALJ RODDA: Okay. I will give the other parties
9 time. Any comments? I know Friday is Good Friday.

10 MR. SHAPIRO: I forgot about that.

11 ALJ RODDA: Well, tomorrow is Passover for those
12 of you, but we will find some time to discuss the
13 scheduling.

14 MS. WOOD: It would be better for me; I won't be
15 here on Friday.

16 ALJ RODDA: Okay.

17 MR. SHAPIRO: We will arrange a call whenever
18 the parties and you are available.

19 ALJ RODDA: Okay. Mr. Torrey.

20 MR. TORREY: I am available all the time.

21 ALJ RODDA: Well, I think that's a plan. I mean
22 we are already at 3:00 and it is obvious we have to come
23 back, and we can do some better rescheduling then.

24 So, all right. Mr. Capestro, you are back.

25 MR. CAPESTRO: I thought we were rescheduling to

1 some other day.

2 ALJ RODDA: No, not you. We have to finish.

3 THE WITNESS: As I heard it, he is not going to
4 do the redirect on me today. So if I am not finished, I
5 will keep on coming back.

6 MR. SHAPIRO: We just don't have time anymore.

7 ALJ RODDA: No.

8 All right. So Mr. Capestro is back on the stand
9 and, Mr. Torrey, I believe that you were still
10 cross-examining.

11

12

ANDREW J. CAPESTRO,

13 a witness herein, having been previously duly sworn by
14 the Certified Reporter to speak the truth and nothing
15 but the truth, was further examined and testified as
16 follows:

17

18

CROSS-EXAMINATION CONTINUED

19 BY MR. TORREY:

20 Q. It has been so long I almost forgot.

21 Mr. Capestro, I believe we were on approximately
22 page 11 of the document that we were looking at, the
23 consent agreement with ADEQ. And I was asking you about
24 subparagraph G, on line 12, about the Section 14
25 wastewater treatment plant.

1 A. Yes.

2 Q. According to the agreement on subparagraph 1,
3 Far West was supposed to submit to ADEQ a request to
4 expedite third-party review of the APP. Has that been
5 done?

6 A. We did it and we paid for the expedited review.

7 Q. Okay. And for paragraph 2, Far West was to
8 submit to ADEQ a complete APP for expedited review. Did
9 you just answer that as well?

10 A. Yes, we did.

11 Q. You did that.

12 MR. SHAPIRO: Mr. Torrey, I am sorry, where are
13 you?

14 MR. TORREY: Page 11.

15 MR. SHAPIRO: Okay, thank you.

16 THE WITNESS: Can I explain that a minute?

17 BY MR. TORREY:

18 Q. Certainly.

19 A. We submitted an APP in December of 2006. In
20 March of 2000 -- right after that, we were told that we
21 had to have an additional document for expedited review.
22 We thought that this decision would give us an expedited
23 review. And then it went through for three months and
24 it was returned saying we had not initialed a few pages.
25 And then we actually had the administratively complete

1 expedited review, but it was still within 90 days.

2 Q. All right. And in subparagraph 3 on that same
3 page, Far West was to submit administratively complete
4 notice of intent. Was that completed on time?

5 A. Yes, we did.

6 Q. And then turning the page to subparagraph 4, you
7 heard the testimony, I am sure, from ADEQ today that
8 says that Far West was within 60 calendar days of
9 receipt of a construction authorization. You were to
10 complete expansion of Section 14 collection system.

11 Is it correct to say that that, the expansion of
12 Section 14's collection system, has not been done to
13 date?

14 A. The expansion started on time. It worked
15 through expeditiously. It has not been finished.

16 Q. Okay. Approximately, if you had to estimate,
17 what percentage of that project has been completed at
18 this time?

19 A. 85 percent. We are waiting for some blowers to
20 be delivered after I pay the next installment and then
21 Zenon.

22 Q. At this time, relating to that, the Section 14
23 collection system, approximately how much money is
24 outstanding, owed at this time by Far West?

25 A. Approximate ly a million six out of the

1 two million nine with a million two going to Del Oro.
2 And then there is some additional amounts that are
3 necessary to complete the electrical and the mechanical.

4 (Electrical issues ensued in the hearing room.)

5 (An off-the-record discussion ensued.)

6 ALJ RODDA: Let's go back on the record.

7 BY MR. TORREY:

8 Q. All right. Mr. Capestro, we were just
9 discussing the money yet outstanding for completion of
10 the Section 14 collection system. I want to make sure
11 that I am clear.

12 You mentioned 1.6 million but you also mentioned
13 something with Del Oro. Is any of this 1.6 million that
14 you talked about already accounted for in the money you
15 and I discussed earlier this morning that is already
16 owed to contractors and vendors?

17 A. That's correct. It is part of that AP and the
18 total of 2.9.

19 But in answer to your question as to that's what
20 is necessary to complete, I have some additional amounts
21 that have not been billed by the contractors because
22 they have not completed the work. I have 98,000 that's
23 still owed to the electrician Amtek for Section 14 when
24 he finishes that work. I have for the Midwest
25 Environmental pursuant to their contract when they

1 finish the additional work they need to do is another
2 142,388. In addition to that, Delta Environmental has
3 some equipment that has yet to be delivered for another
4 99,250.

5 So you have got about another \$350,000 in
6 additional work and equipment that's necessary to
7 complete the plant.

8 Q. I need, I need to understand here, just to be
9 completely clear, you and I discussed under the Del Oro
10 plant that there was 400,000 to Zenon plus another, to
11 get it started, plus another 200,000. And you mentioned
12 another 600,000 of various contractors at that time.

13 A. Correct. That's part of that AP list that you
14 have.

15 Q. Out of 600,000, is any of that, are any of those
16 expenses out of that 600,000 the expenses that you just
17 enumerated to the electrician, the environmental group
18 or Delta Environmental, the 350,000?

19 A. No. On Del Oro, I believe I testified there was
20 an additional bill when they did the work for
21 electricity of over 22,000.

22 Q. Right.

23 A. And for the Midwest Environmental, they will be
24 owed an extra 56,000 but it is not due and payable or
25 billed because they haven't done the work yet.

1 Q. So this 350 that you testified is completely
2 separate from anything you testified related to Del Oro
3 this morning?

4 A. Correct.

5 Q. Okay. Now, out of that 1.6 million that you
6 just talked about, that covers both work that has been
7 completed but has not yet been billed to the company and
8 work that has been completed or billing outstanding, is
9 that correct?

10 A. The 1.6 million includes all work that has been
11 completed and all equipment that has been delivered. It
12 is not, it doesn't include work to be done. These other
13 amounts are for work to be done.

14 Q. Okay. 350,000 is for work yet to be finished?

15 A. Work and equipment to be done, yes. And that
16 gets you to 681,000 gallons.

17 Q. And so the 1.6 million is still owed for work
18 that has been completed but has not been paid for?

19 A. Correct. And the largest portion of that is
20 Zenon.

21 Q. So that amounts, this entire project amounts to
22 roughly \$2 million that either still needs to be paid or
23 will be billed to you in the future?

24 A. That's correct.

25 Q. Now, is there anything else related to --

1 Now we have lost the microphones. I was not
2 supposed to ask that question.

3 (Electrical issues ensued in the hearing room.)

4 (An off-the-record discussion ensued.)

5 BY MR. TORREY:

6 Q. Mr. Capestro, apart from the roughly 2 million
7 that we have talked about so far for the Section 14
8 collection system, is there anything more related to
9 that project, anymore outstanding funding that needs to
10 be accounted for?

11 A. Yes. We have approximately \$300,000 that we
12 would have to pay for the membrane cassettes to move it
13 from 681,000 to one million three gallons per day.

14 Q. Are those in addition to the cassettes you
15 already testified about this morning?

16 A. Correct. Those have not been delivered. We
17 haven't ordered them. That is part of that Section 14
18 permit that you saw that says that we go to 681,000
19 gallons per day until we test the vadose wells and
20 determine the capacity of the vadose wells and the golf
21 course to be able to accept the effluent.

22 Q. I am going to move you down the page a little
23 bit to subsection H, with Palm Shadows.

24 A. Correct.

25 Q. And, there is some discussion that, on the

1 subsection 1, there was a minor modification that the
2 company was to file with ADEQ in relation to its APP
3 authorizing the installation to bring it into compliance
4 for its total nitrogen. Has that been done?

5 A. That is better directed to Mr. Lee. But I
6 believe it was done. They were testing the use of
7 microbes and bugs to be able to remove the nitrates.
8 And we are going to file a minor modification. And I
9 think the minor modification came out that whatever
10 present engineering they had or present work they had,
11 they had no effective remedy for the nitrates. But it
12 was delivered within the time frame.

13 ALJ RODDA: I am just going to -- in case the
14 power comes back on.

15 (An off-the-record discussion ensued.)

16 THE WITNESS: Counsel, I believe a timely
17 response was made to ADEQ on their notice of violation
18 just yesterday while we were in hearing.

19 BY MR. TORREY:

20 Q. Okay. Now, regarding the next subsection, 2,
21 with the 200, within 200 calendar days to submit the
22 closure plan for Palm Shadows, has that been done?

23 A. Yes.

24 Q. Is there anything else related to the Palm
25 Shadows facility that you believe needs to be done to

1 bring the company into compliance with ADEQ?

2 A. You actually have to shut it down. And we need
3 the Section 14 plant on line to be able to do so.

4 Q. Okay. Now, I will direct your attention to the
5 next page, page 13, and subparagraph I with the Seasons
6 wastewater treatment plant.

7 A. Correct.

8 Q. And the notice, the consent agreement requires
9 that within 30 calendar days of the effective date that
10 Far West was to submit to ADEQ an application to amend
11 its APP authorizing an increase in the design flow of
12 that plant. Now, was that done?

13 A. Yes, it was.

14 Q. And is there anything regarding the Seasons
15 wastewater plant that is outstanding in order to make
16 Far West compliant according to this consent agreement?

17 MR. SHAPIRO: Do you mean -- objection, if you
18 are asking again about the --

19 It is back on.

20 ALJ RODDA: Thanks for testing that.

21 MR. SHAPIRO: I object. As we stated earlier,
22 the company shouldn't be required to take a position on
23 compliance. If Mr. Torrey wants to ask about the status
24 of construction projects, we have no objection.

25 ALJ RODDA: And I wasn't listening very

1 carefully to that last question, Mr. Torrey, so would
2 you either restate it or ask it again.

3 BY MR. TORREY:

4 Q. Mr. Capestro, you already testified that the
5 ADEQ application had been filed according to subsection
6 number 1. I will direct your attention to subsection
7 number 2, and at such time as ADEQ issues the amended
8 APP for operational flows, Far West was to operate that
9 Seasons plant with a maximum design flow of 70,000 gpd.
10 I take it that that plant has not come on line at this
11 time, correct?

12 A. No. The new plant has not come on line.

13 Q. And so under paragraph 2 it would be impossible
14 for the company to actually be operating at that flow
15 level, is that correct?

16 A. No. It says that until it comes on line, we
17 will not operate more than 70,000 gallons per day, which
18 we were doing.

19 Q. Okay. But you are -- okay. That was my
20 mistake. I misread. So you are operating with a
21 maximum design flow of 70,000 gpd?

22 A. That's correct.

23 Q. And the final contingency then, in subsection 3,
24 if the APP doesn't provide a schedule for completion,
25 Far West shall complete all approved upgrades within 90

1 days of the submitted APP, is it your position that that
2 has been accomplished at this time?

3 A. ADEQ approved the use of the membrane filtration
4 that is presently at Section -- Del Oro, so we have to
5 move that over. And that was part of what they
6 approved.

7 (Brief pause.)

8 BY MR. TORREY:

9 Q. Mr. Capestro, you mentioned that there was still
10 pending a move of the flows from Seasons to the Del Oro
11 plant, is that correct?

12 A. No.

13 Q. Is that what you were saying?

14 A. No.

15 Q. Can you clarify what that was that you were
16 saying?

17 A. We have to move the plant from Del Oro, the
18 temporary plant that we purchased, over to Seasons. We
19 are not having the flows from Seasons to Del Oro.

20 Q. Okay. And at that time what will you do with
21 the plant that's being moved over to Seasons?

22 A. What will we do?

23 Q. Yes, what will you do with the plant?

24 A. The one we are moving from Seasons is the new
25 plant approved by ADEQ. That's a new membrane

1 filtration plant that is going to be used at Seasons.
2 When I say new, it is something we used for three years.

3 Q. Because it is the formerly temporary plant that
4 you purchased from Seasons and have been using
5 temporarily at Del Oro until that facility comes on
6 line?

7 A. The former temporary plant will become a
8 permanent plant.

9 Q. Just not at Del Oro?

10 A. And we won't lose all that rental that we were
11 paying.

12 Q. Do you have any idea approximately how much it
13 is going to cost to make that transition?

14 A. For Seasons?

15 Q. Yes.

16 A. Yes. We budgeted another \$533,000.

17 MR. TORREY: Your Honor, if I could have just a
18 minute.

19 ALJ RODDA: Yes, that's fine.

20 (Brief pause.)

21 BY MR. TORREY:

22 Q. Okay. Mr. Capestro, I want to take you back in
23 time a short bit here.

24 A. To yesterday.

25 Q. Earlier this morning we discussed the financing

1 and the bond amounts and I believe we have had a pretty
2 lengthy discussion on that. You testified regarding
3 having taken out IDA bonds in the amount of about
4 17 million. You obtained about 17 million in financing,
5 is that what happened?

6 A. The IDA bond was \$25,190,000, I believe. That's
7 correct.

8 Q. Okay. So the second BAN was 17 million?

9 A. 17 million and change.

10 Q. And then when you got the IDA loan to replace
11 that temporary \$17 million from the BAN, that total
12 amount that you took out was 25 and what?

13 A. The total amount of the BAN of the IDA loan was
14 25,190,000. And it is broken down in Exhibit S-2.

15 Q. Okay.

16 A. And it, counsel, we did produce where the IDA
17 bond went and what it paid off in one of the exhibits.
18 I thought I saw it earlier.

19 Q. That's correct. We are just trying to make some
20 sense of all the numbers, because they are not broken
21 down the way that they were when we discussed it this
22 morning.

23 A. You have to take S-2, which is the breakdown
24 from the IDA bond and what was left, and then put it
25 into the other numbers. And we may need some Regions

1 numbers to determine what they paid for interest,
2 because Regions was the one that paid off the second BAN
3 and Regions was the one that paid off the first BAN. If
4 there is special documents you need from Regions I would
5 be more than happy to provide them to you.

6 Q. According to S-2 -- do you have that in front of
7 you?

8 A. Yes, I do.

9 MR. SHAPIRO: I am sorry. Excuse me,
10 Mr. Torrey. We do not. I gave you all the copies.

11 MR. TORREY: Your Honor, if I could have a
12 minute to find Mr. Shapiro some copies of S-2.

13 ALJ RODDA: Anyone but Mr. Shapiro.

14 (Brief pause.)

15 BY MR. TORREY:

16 Q. Mr. Capestro, if I could have you guide me
17 around Exhibit S-2 here, the top line, par amount of
18 bonds, and third column over to the right, that's the
19 total amount of the issue, is that correct?

20 A. That is correct, that's both A and B.

21 Q. What is the transfers from prior issue DSR
22 funds, what is that?

23 A. I don't know why they call it prior issue from
24 DSR funds. That is an amount that was deposited by Far
25 West water to make the numbers work out.

1 Q. Is that the number that you testified to earlier
2 this morning when we discussed this, that you said Far
3 West had in cash resources available that was necessary
4 to secure this financing?

5 A. To pay that amount, yes.

6 Q. And then so what happens with that column marked
7 transfer of prior issue? Is that money that comes back
8 to the company or is that money the company paid out and
9 is gone now, not available?

10 A. It was paid into the escrow fund to be paid out
11 pursuant to the uses of funds.

12 Q. What is the reoffering premium that's listed
13 there?

14 A. I believe that that is a discount that the
15 issuer Crews & Associates obtained.

16 Q. And the bottom line totals --

17 ALJ RODDA: When you say obtained, do you mean
18 that was their fee? I mean, they got that money?

19 THE WITNESS: I believe that there was a
20 discount that he had of some type when he purchased the
21 bonds and then resold them to somebody else. I am not
22 really that familiar with how the bond market works. I
23 just know he said this is something of a discount that
24 he was able to contribute. But then you turn around and
25 then there was an underwriter's premium that's pretty

1 large. So it goes in one way and comes out another.

2 ALJ RODDA: Okay.

3 BY MR. TORREY:

4 Q. Under the heading titled transfer of prior issue
5 DSR fund, what does the DSR stand for?

6 A. I did not put this document together. All I
7 know is that we had to come up with that amount.

8 Q. And so under total sources of 25,902,000, that's
9 money that is available to the company after the
10 issuance of these bonds, is that correct?

11 A. No, no.

12 Q. What does that represent?

13 A. That is an amount that is there to be able to
14 pay the underwriter's premium and the like. It is my
15 understanding that these were necessary to come up with
16 a total number of percentage of the \$1,066,000 for
17 underwriter's discount and for other fees because
18 somehow his numbers came up to 25,902,000 that was
19 necessary to close it and still be able to pay off the
20 underlying bonds.

21 Q. So at the end of this issue, which figure on
22 this page represents the amount of money that Far West
23 actually had available to it to use for the projects
24 that it needed?

25 A. It is not shown on here.

1 Q. What --

2 A. The 19 million in the escrow fund had to be used
3 to pay off the previous BAN and interest. And that
4 would be a document from Regions Bank. And if that
5 hasn't been produced previously, I will make sure that
6 it is.

7 Q. And according to your testimony earlier this
8 morning, that previous BAN was about 17 million,
9 correct?

10 A. 17 million plus interest plus the amounts that
11 were necessary for the earlier points.

12 Q. Is that the 500,000 that you talked about?

13 A. No, no. There was, there were points in the
14 earlier loans that had to be paid.

15 Q. Approximately, if you had to estimate,
16 approximately how much did those additional monies on
17 top of the 17 million come out to?

18 A. I believe, without looking at their documents,
19 it is the difference between the funds deposited in
20 escrow and the 19,154,000 and the 17 million --

21 Q. So --

22 A. -- 735. There is, you know, I don't have the
23 interest numbers in front of me or the discount numbers,
24 but they are on the books and we can provide that to
25 you.

1 Q. And so that's a roughly -- the difference
2 between the 19 and 17 only leaves roughly \$2 million
3 that the company had available, is that correct?

4 A. No. We had not used all the 17 million. We had
5 approximately 8 million left in the bank.

6 This loan didn't really give additional funds to
7 Far West. It paid off the short-term. It paid off the
8 WIFA loan and it paid the points and it paid the accrued
9 interest on the earlier loans.

10 Q. The 25 million, although it replaced a
11 \$17 million loan, it also replaced an almost four and a
12 half million WIFA loan as well plus interest?

13 A. Correct, not -- plus interest on the short-term
14 BAN. All interest on the WIFA loan had been paid up to
15 date.

16 Q. And it is your testimony today that that left
17 the company with approximately \$8 million?

18 A. Correct. And I believe that I know in one of
19 our productions we showed where approximately \$8 million
20 was left over.

21 Q. And from that, that \$8 million, that's where the
22 funding has to come from for the projects you and I
23 discussed throughout the day today, is that correct?

24 MR. SHAPIRO: Excuse me, Mr. Torrey. When you
25 said the projects we discussed today, do you mean the

1 projects that have already been done or the projects
2 that need to be done?

3 MR. TORREY: I am referring to the projects that
4 I have talked about in the notice, or the consent notice
5 from ADEQ, the compliance schedule that Mr. Capestro and
6 I have been discussing so far today.

7 MR. SHAPIRO: Okay, thank you.

8 ALJ RODDA: Do you remember the question?

9 THE WITNESS: I was --

10 ALJ RODDA: Oh, you were trying.

11 THE WITNESS: -- trying to review a document,
12 R-2. And I think that the one, two, three, four, fifth
13 column over shows what was still in the account at the
14 time that the IDA loan came down. And it looks like
15 \$8,697,000.

16 BY MR. TORREY:

17 Q. So the \$8,697,000 that you just mentioned,
18 that's the source of the funding for the projects that
19 still need to be completed you and I discussed today, is
20 that correct?

21 A. That's the source of the funds that was paid out
22 through 2008.

23 Q. I am confused by language you just used. The
24 \$8.6 million is not money that is left to pay the bills
25 after you have done all the refinancing?

1 A. It is. It was to pay the bills that were coming
2 due in 2008. And that money has all been expended.
3 Approximately the same amount, eight and a half million
4 dollars, had already been spent on the project.

5 Q. I think we are going to have to start back again
6 with this 17 million. I was under the impression when
7 we spoke this morning about the \$11 million projects at
8 Del Oro you took out the initial \$11 million BAN, then
9 took \$17 million to replace that --

10 A. Correct.

11 Q. -- that that money had been used up until that
12 point for compliance with this notice that we discussed.

13 A. Correct. A portion of it had been used between
14 December of '06 and December of '07. Approximately
15 eight, eight and a half million of the BAN money had
16 been used, leaving another 8 million plus that was still
17 there.

18 What the IDA loan did was it paid off the
19 \$17 million loan. It paid off the points. It paid off
20 the interest. It paid off the WIFA loan, leaving still
21 in the account the \$8 million plus to continue on with
22 construction.

23 Q. So now the \$8 million plus that is still
24 remaining to continue on is supposed to be used to
25 complete these projects that ADEQ has ordered you guys

1 to complete, isn't that right?

2 MR. SHAPIRO: Objection. That misstates the
3 witness' testimony. Mr. Torrey stated that the money is
4 still and that's not what the witness said.

5 MR. TORREY: And I asked that as a question.

6 ALJ RODDA: Right. I think, well, yes, there is
7 miscommunication or there is misunderstanding between
8 you. But you can ask your question.

9 Why don't you ask it is the eight -- because I
10 think he is testifying that they spent that money. It
11 was available in December.

12 My understanding, you can correct me --

13 THE WITNESS: That's correct, Your Honor.

14 ALJ RODDA: -- is it was there in December 2007
15 but now in April of 2009 -- sometime in 2008 it was
16 spent.

17 THE WITNESS: That is correct.

18 ALJ RODDA: So when you use the word is, they
19 are thinking of it as was. But if you were back in
20 time, it is, is, December 2007, it is available.

21 THE WITNESS: We could go back to the future.

22 MR. TORREY: Figuratively I meant we were going
23 back in time.

24 ALJ RODDA: Okay.

25 BY MR. TORREY:

1 Q. So we are going to have to start again with the
2 notice and go back through.

3 ALJ RODDA: I am sorry. Could you call it -- I
4 think you are referring to the consent order, right?

5 MR. TORREY: The consent order.

6 ALJ RODDA: Because there is a different
7 document, I think, called a notice of violation.

8 MR. TORREY: Yes, the consent order.

9 BY MR. TORREY:

10 Q. We will have to go back again and discuss these
11 projects. This 25 million that eventually was received
12 through the bond process to replace the 17 million that
13 replaced the 11 million, that 25 million was supposed to
14 have been used for all of the projects that are in this
15 consent agreement with ADEQ?

16 A. The WIFA loan was not within the consent order.
17 What was supposed to be used for the construction
18 projects was the 17 million and change. A part of it
19 had already been used and the rest of it was used after
20 the IDA financing.

21 Q. And if there were projects that ADEQ had ordered
22 the company to complete, for example the remainder of
23 the work on this Del Oro station, why did the company
24 use funds to pay off WIFA instead of doing the project
25 it was ordered to do?

1 A. First of all, the application for financing
2 showed that the WIFA was going to be paid off. Number
3 two, the bonding company could not get anybody to bond
4 if they were in second place after WIFA. WIFA had a
5 loan against all of the property of Far West Water &
6 Sewer.

7 Q. So didn't the company have the option then of
8 using some alternative method to pay off the outstanding
9 WIFA loan? Did you have to use the proceeds of this
10 loan to pay off WIFA?

11 A. Yes, we had to use those funds.

12 Q. Couldn't the company have asked for a rate
13 increase if it also needed to pay off WIFA and
14 financing?

15 A. I am not going to speculate.

16 Q. So then is it your testimony that the only
17 method that you had available to pay off, that Far West
18 had available to it was to take out financing for these
19 projects and then use that money to pay off WIFA?

20 A. The IDA loan was approved actually for more
21 money. However, to keep the IDA funds available, which
22 were interest free but we still have to pay back, we
23 deposited \$650,000 for security. If we did not take the
24 IDA loan and if we had gone in for a lengthy rate
25 increase, Far West Water & Sewer would have lost,

1 forfeited \$650,000. Plus -- and that had to be taken
2 down no later than December 15th, 2007. Plus, the
3 interim loan came due and was payable at the end of
4 December of 2007.

5 So that loan, the 17 million, they would have
6 taken over the stock. They would have, may have had it
7 subject to the WIFA loan, but the company itself would
8 have taken a hit of \$650,000. The loan would have been
9 past due and in default. We would not have the IDA
10 bonds available anymore.

11 I just don't think there was any other option
12 except to take the down the IDA loan where the lender
13 says I want to pay that off and we are going to give it
14 to you at six and a half percent. There was no other
15 alternative.

16 Q. Mr. Capestro, do you have Exhibit R-2 on the
17 stand in front of you?

18 A. Yes, I do.

19 Q. If I could direct your attention to the very
20 bottom line of that exhibit to approximately the fifth
21 column over --

22 A. Correct.

23 Q. -- the cash balance column.

24 A. Correct.

25 Q. The amount showing in the bottom of that column

1 is approximately \$8,657,000. Do you see that figure?

2 A. I do.

3 Q. Is that the 8.6 million that we have been
4 talking about as the amount available to this company
5 left over from after all of the financial arrangements
6 had been made?

7 A. I don't know if that was after the financing
8 came in, because I notice it says loans payable minus
9 17,735,000. But the closest to my estimate, that is
10 what should have been there at that time. I can't tell
11 if it includes the December payoff from the IDA.

12 Q. What was the date that the IDA came in?

13 A. Excuse me. I do see that, not the November 30th
14 at the bottom but I see a 12/31/08. So it does show the
15 note proceeds of 17,735,000 going in and then the other
16 loans being paid off. And I see the fees that were
17 shown deducted from -- which was Exhibit S-2 on this
18 accounting. I don't know how it was broken down. But,
19 yes, that looks like as of 12/31 \$8,657,000 was
20 available.

21 MR. SHAPIRO: Judge, can I ask the witness, he
22 said 12/31/08, and I can't find that number.

23 THE WITNESS: 12/31/08 is above the 11/30/07.
24 You have to go up to the middle of the page. That was
25 what was confusing me to begin with. It starts out --

1 ALJ RODDA: Are you sure it is not '06?

2 THE WITNESS: Is that '06?

3 MR. BOURASSA: Yes.

4 THE WITNESS: Then I am wrong. Bad contacts.

5 Then I am right, it only goes to 11/30/07.

6 MR. SHAPIRO: So the witness would like to
7 strike his prior testimony.

8 THE WITNESS: I looked at that and I said so
9 there is '08. I don't know what the heck the stuff is.

10 That was the only 17,735,000 loan. I stand
11 corrected. I was right to begin it.

12 BY MR. TORREY:

13 Q. So let's make sure we are clear on the record.

14 A. I am just as confused as you are, counsel.

15 Q. On the bottom line of Exhibit R-2, there is the
16 second column. And the bottom of the page says totals
17 to 12/13/07. Do you see that?

18 A. Where?

19 Q. At the very bottom, the second column on that
20 page --

21 A. Oh, I see it.

22 Q. -- very last line on that column --

23 A. Okay.

24 Q. -- totals 12/13/07, do you see that?

25 A. I see that.

1 Q. And then three columns to the right, does that
2 actually mean 12/31/07?

3 A. No, 12/13 because that was the date that the IDA
4 loan came down, I believe.

5 Q. And so three columns to the right of that is a
6 figure, cash balance, 8,657,092.39.

7 A. Correct.

8 Q. And that's the cash balance after all of these
9 payments that are in the column above that have been
10 made, is that correct?

11 A. That's correct. And I stand corrected. It does
12 not have the various fees out of it that are in S-2.

13 But it does show the earlier fees from the earlier BAN.

14 Q. And so if you go two more columns to the right
15 of that, under the column marked loans payable, that's
16 the 17,735,000 financing that you discussed, the second
17 BAN?

18 A. That is correct.

19 Q. And two columns further to the right of that is
20 the column for construction draws, 8,906,000 and change.
21 Do you see that?

22 A. I see that.

23 Q. And so is it correct to say that once that
24 17 million subtracts out the construction draws, the
25 company did in fact have the 8.6, roughly, million on

1 hand remaining from the second BAN?

2 A. It should be. I just see an interest here of
3 interest earned that was added to the BAN on 11/30. So
4 there was a portion that Regions Bank had of interest
5 earned while the funds were sitting there.

6 Q. And you said offset by the 611, but that is in
7 turn offset by the column to left of that, the 414,000,
8 isn't it?

9 A. It is offset by 611? I don't understand what
10 you are saying.

11 Q. You said that the remaining portion of this
12 8.65 million was offset by the interest earned of the
13 negative 611 on the far right column. Is that what you
14 testified to?

15 A. No.

16 Q. Then where did the negative 611 come into your
17 testimony, where does that come from? Did you have --

18 A. I don't remember testifying as to the 611. I
19 testified that interest was accruing on this loan at the
20 same time as we were earning interest. But this would
21 be an accountant's question.

22 Q. But as of 12/13/2007 doesn't this exhibit
23 indicate that you had \$8.6 million on hand?

24 A. That's correct. All I was saying, when you say
25 that that's the \$17,735,000 loan, I am saying that's

1 supplemented by some interest. That's all I am saying.
2 And, yes, that was the amount that was available on
3 12/13.

4 Q. Now, did anything happen between December 13th
5 and the end of the month, December 31st, that resulted
6 in a fairly significant inflow of cash to the company?

7 A. The IDA loan came in that eliminated the loan
8 payable of 17 million.

9 Q. Mr. Capestro, who prepared Exhibit R-2, do you
10 know?

11 A. I believe that this would have been done by the
12 comptroller, Debbie Smith.

13 Q. So I just want to clarify, Mr. Capestro. So if
14 the \$17 million second BAN is replaced by the total
15 financing, 25,190,000 --

16 Right?

17 A. Correct.

18 Q. -- once you subtract the WIFA loan and the fees
19 and all of that, you get down to this 17 million 735 is
20 what, is actually left over for construction, right?

21 A. No. That's left over to pay off the interim
22 BAN. What is left over for construction is the
23 8 million.

24 Q. So the 17 million is left over to pay off the
25 interim BAN, which was in the amount of how much?

1 A. 17,735,000 plus interest accrued.

2 Q. So replacing the financing of the second BAN
3 with the 25 million had no impact on the amount
4 available for construction, correct?

5 A. I would have to go to the original documents,
6 but I don't believe so.

7 Q. Okay. So you have as of December 13th, 2007
8 8.6, roughly, million dollars that was available at that
9 time for construction?

10 A. I believe that's the same thing I have been
11 saying.

12 Q. Okay. And --

13 Well, one second, Your Honor.

14 (Brief pause.)

15 BY MR. TORREY:

16 Q. Now, this Exhibit R-2 was prepared by the
17 comptroller of the company, is that correct?

18 A. Yes. It was prepared in response to either a
19 data request or -- but, yes, it was by the comptroller.

20 Q. And that person is not going to appear here
21 today or at any time in this hearing to testify about
22 this exhibit, is that correct?

23 A. That person is not going to be testifying but
24 Mr. Bourassa is going to be testifying.

25 Q. And so that person's exhibit should mesh up in

1 an exhibit that was prepared by Mr. Bourassa, correct?

2 A. You will have to ask Mr. Bourassa.

3 Q. Is there a reason why these total construction
4 funds would not match, can you think of a reason why
5 they wouldn't match what Mr. Bourassa has stated was
6 available for the company for construction?

7 MR. SHAPIRO: Objection; assumes facts not in
8 evidence.

9 MR. TORREY: I am asking if there would be a
10 reason if it is shown and can he explain why those
11 amounts wouldn't balance if they both come from the
12 company.

13 MR. SHAPIRO: Then I object. It calls for
14 speculation. Either way it is an improper question.

15 ALJ RODDA: Yes, I will sustain that.

16 BY MR. TORREY:

17 Q. All right. We are going to be here awhile then
18 because all of these exhibits that have been prepared --
19 you didn't prepare any of these exhibits, did you,
20 personally?

21 A. Which exhibits are you talking about?

22 Q. Any of the exhibits, did you prepare any
23 exhibits for testimony today, did you personally prepare
24 any of them?

25 A. I prepared my own testimony.

1 Q. Any exhibits?

2 A. No, I didn't --

3 MR. SHAPIRO: Hold it, Mr. Capestro.

4 THE WITNESS: Golf and --

5 MR. SHAPIRO: Mr. Capestro, hang on, please.

6 I am going to object. The exhibit is already in
7 evidence. Who prepared it -- if Mr. Torrey doesn't like
8 the witness' competence to answer questions about this
9 exhibit, then he shouldn't ask questions about the
10 exhibit of this witness.

11 ALJ RODDA: He wants some witness that's going
12 to be able to testify about the exhibit.

13 MR. SHAPIRO: I am not sure what he wants the
14 witness to testify as to the exhibit. Mr. Capestro
15 explained everything that he has been asked to explain
16 about this.

17 ALJ RODDA: Right.

18 MR. SHAPIRO: I don't, I mean with all due
19 respect to Staff, I don't think it is Mr. Capestro that
20 is confused. If Staff would like to take a five-minute
21 break and discuss it with Mr. Capestro and I, maybe we
22 can clarify something.

23 MR. TORREY: I think we need data responses for
24 the person that actually prepared these exhibits. I
25 mean we have exhibits and we don't have any witness that

1 can testify.

2 ALJ RODDA: But we haven't gotten to the numbers
3 witness yet, right? I mean Mr. Bourassa, I thought, was
4 the numbers witness.

5 MR. TORREY: But we know that this exhibit
6 doesn't match what Mr. Bourassa has put forward. We
7 can't talk to Mr. Bourassa until he gets on the stand.
8 But we know we are not going to get to a witness to
9 testify who did prepare this exhibit. So we are not
10 actually going to get to the bottom line for why those
11 two exhibits won't match because the company doesn't
12 have a witness who can talk about that.

13 MR. SHAPIRO: Again --

14 ALJ RODDA: We haven't established yet, we have
15 what you say it doesn't match, but you haven't
16 established that it doesn't match. I mean I don't have
17 the -- I mean it is hard to follow these numbers. But I
18 don't know where you are coming from, is what I am
19 saying, I guess.

20 MR. TORREY: What I am trying to do is track
21 down where all the \$25 million worth of money came from.
22 I keep getting responses that are vague, evasive and
23 then referring me to other witnesses who can testify to
24 these things. I want to have someone who can testify to
25 where these numbers come from. And if I have to go back

1 to the original loans that were taken out and then
2 testify about each construction draw as it went along so
3 that I can follow it and absolute balance from the time
4 that the money was issued, then I might have to do that.
5 And that's going to take too long, but I will do it if I
6 have to.

7 It is just once we get to this balance of
8 8.6 million, then we hit this dead end where the witness
9 says that was available at that time but I already
10 testified the money was spent. But then the exhibits
11 don't match up to show where the money was spent. So I
12 can't get a straight answer.

13 ALJ RODDA: Right. So you want to track after
14 12/13 of '07, you want to track, because this document
15 doesn't go further than that. That's the problem,
16 right?

17 MR. TORREY: 12/13/07, and from then on it says
18 8.6 million available for construction. And then there
19 is no tracking of the funds thereafter.

20 ALJ RODDA: Well, there must be the same ledger
21 for 2008.

22 MR. SHAPIRO: Again, Judge Rodda, the problem is
23 RUCO introduced this exhibit. It didn't choose to
24 produce anything further. Neither has Staff to date.
25 And we are now being accused by Mr. Torrey of being

1 evasive. I mean you can't criticize a witness for not
2 answering questions about an exhibit that nobody has
3 bothered to put into evidence.

4 If Mr. Torrey wants evidence to carry this
5 forward, then he can certainly ask for it and we will
6 either see if it is available yet or we will produce it.
7 But to sit here today and criticize the witness for not
8 testifying to something that's not in front of him is
9 just inappropriate.

10 ALJ RODDA: Right. The whole problem goes back
11 to this was introduced by RUCO and it served RUCO's
12 needs for whatever.

13 MS. WOOD: This was documentation --

14 ALJ RODDA: This was introduced by RUCO.

15 MS. WOOD: Yes, Your Honor. I am not
16 disagreeing with that statement. And I am not
17 quite sure --

18 ALJ RODDA: Because you are arguing, I mean --

19 MS. WOOD: No, no, Your Honor, I am not arguing
20 with you. I wanted to explain where we got it, if you
21 need that information.

22 ALJ RODDA: I don't care. You got it from the
23 company.

24 MS. WOOD: Yes, ma'am.

25 ALJ RODDA: I mean I do care, but this is like,

1 this document goes as far as December of 2007. You are
2 trying to prove what they used money for after 2007.
3 There is some other document and I don't know if you
4 have asked for that in discovery. Probably. Either you
5 have it or you don't. And we are going to come back to
6 hearing some other day so there is going to be a chance
7 to do that.

8 MR. TORREY: We may have to, Your Honor. I
9 mean --

10 ALJ RODDA: Well, we are coming back some other
11 day for hearing.

12 MR. TORREY: This may be an appropriate time to
13 just stop and wait and continue at the next available
14 date.

15 ALJ RODDA: I am sorry. It is just, it is
16 incredibly frustrating. All right. Do you -- we will
17 discuss that later.

18 Do you want to ask additional questions? Or I
19 have some questions I want to ask today. I don't want
20 to wait. Do you want me to do that and do you want to
21 reserve further cross-examination? Do you want to think
22 about additional discovery or what do you want to do?

23 MR. TORREY: I think we will need additional
24 discovery, Your Honor. But if you would like to ask
25 questions, I would certainly yield to your questions.

1 MR. SHAPIRO: I guess I would ask, if Mr. Torrey
2 knows what he wants, if he can tell us now and we will
3 start working on it.

4 ALJ RODDA: Well, let's not do it right this
5 minute.

6 MR. SHAPIRO: Okay.

7 ALJ RODDA: Because I have got an hour that I am
8 here and you are here and you can work on discovery on
9 your own time.

10 MR. SHAPIRO: Okay.

11 ALJ RODDA: But, Mr. Torrey, I don't think that
12 the company was evasive to the extent the company
13 objected to that. I understand you weren't getting the
14 answers you wanted or need, but I do not believe they
15 were evasive.

16

17

EXAMINATION

18 BY ALJ RODDA:

19 Q. All right. Mr. Capestro, sorry. I am usually
20 not so testy.

21 You have testified throughout this proceeding
22 that the company needs a lot of money to finish these
23 projects, right?

24 A. That is correct.

25 Q. And I am not sure exactly how much you need, but

1 it is some millions of dollars, right?

2 A. \$4,437,486.

3 Q. And I am going to be very curious on how, on
4 questions that other people asked you because they are
5 doing -- you know, slowly we are getting out what that
6 \$4 million is.

7 But in annual -- so the requests, if the
8 Commission gives you everything you are asking for in
9 this proceeding, do you know how much that is annually?

10 A. In the interim or --

11 Q. Yes, the interim.

12 A. The interim is two million one, I believe.

13 Q. And that's going to come in monthly, right?

14 A. That is correct.

15 Q. How are you going to be able to complete, even
16 if you get everything you want, how are you going to
17 come up with the \$400,000 to pay Zenon, the \$300,000 in
18 property taxes, the hundreds of thousands you say you
19 owe to other contractors to finish the work, how is that
20 going to happen?

21 A. I think that our negative cash flow has directly
22 impacted to do a short-term loan, which, once again, we
23 would ask the stockholders to put up their stock for a
24 short-term loan. But nobody wants to look at us at the
25 present time with such a negative cash flow.

1 If you have a rational cash flow, I either have
2 the ability to get a short-term loan or, once I show
3 someplace like Zenon out of the \$2.9 million 1.7 million
4 is owed to Zenon, and it is GE Capital, there is the
5 prospects that, if we do have a positive cash flow, or
6 at least a cash flow that covers the amount of the IDA
7 loan, that they would be reasonable to give us some type
8 of terms.

9 One of the things that they have asked for is
10 whether or not -- and it is either to give up the cash
11 they want, and the last time I talked to them they said
12 can I put up a cash bond. Of course I can't put up a
13 cash bond, but maybe I would be able to find a lender
14 that would be willing to put up a cash bond to be able
15 to do it. But that's the alternatives, to show that
16 there is a source of repayment for these people, whether
17 or not it is a loan or working out with the major
18 suppliers such as Zenon and the other ones that are
19 fairly big, like Delta Environmental, to work out a
20 payment arrangement.

21 Q. When you paid off the WIFA loan with the IDA
22 bonds, what was that WIFA loan for?

23 A. The WIFA loan was for water infrastructure. New
24 water plant was built back in '98, 1999, went on line, I
25 believe, in December of '99.

1 Q. Okay. So now I am looking at schedule R-6,
2 which has that accounts payable at the end.

3 A. My R-6 is a projected budget. Is there an
4 account payable?

5 Q. At the third from the end, document third from
6 the end, vendor balance summary.

7 A. Okay. Thank you very much. Yes, ma'am.

8 Q. Okay. So from what I can tell it looks like one
9 column is a company total, the next column is the water
10 division and then the third column or fourth column,
11 depending how you count columns, is the sewer division,
12 and then the fourth or fifth column is sewer
13 construction, right?

14 A. Correct. The sewer bills as of, even though it
15 says March 24th, I see a December 8th, '08 in the middle
16 of that, I notice that there are some minor differences
17 between the third and fourth columns.

18 Q. So do you know what that 2008, December '08,
19 looks like a heading bolded, is in the middle of the
20 column there?

21 A. I see that.

22 Q. But you don't know why that would be there?

23 A. I think that that was what was owed as of
24 December of '08. And then the last column is the amount
25 that is owed as of March 25th of '09.

1 Q. Okay. But, again, you didn't prepare this
2 document?

3 A. No, I did not.

4 Q. And this is, is this something the comptroller
5 prepared also?

6 A. That is correct.

7 Q. Okay. Do you know then whether that last column
8 there that has the sewer, slash, construction heading,
9 whether amounts in that column are amounts that are owed
10 due to the construction project?

11 A. I know that looking at the line items that I am
12 aware of, I know that Amtek was owed approximately
13 26,000 as of that date.

14 Q. When you say that date, you mean March 25th?

15 A. March 25th. I am aware of the larger bill for
16 Amtek on Section 14. The EDI bill, I negotiated with
17 those people, I am aware of that. The Eutek bill, I
18 negotiated with those people.

19 The only thing that I would say is that after
20 March 25th I know that additional bills came in from
21 Hydrosystems, Incorporated, and additional bills came in
22 from Amtek because they purchased a generator. But
23 other than that, it looks correct. The Zenon amount
24 looks right down the line.

25 Q. So this document shows us what, as of March 25th

1 of this year, the company owed to its vendors, right?

2 A. Correct.

3 Q. But it doesn't tell us how long those amounts
4 have been owing, right?

5 A. No, it does not.

6 Q. Okay. Let's look at that Zenon amount, the
7 1.6 million and change --

8 A. Correct, that's correct.

9 Q. -- as people refer to it. Do you know how long
10 that amount has been owing?

11 A. I believe that those became due and payable last
12 year, somewhere around October, November sometime.

13 Q. The entire amount?

14 A. Yes.

15 Q. Is this the amount -- so when you say Zenon is
16 requiring \$400,000 to come and turn on the plant and --

17 A. They sent me a letter saying either pay this
18 1,643,000 or this is what we will do: If you pay
19 \$400,000, we will come out and turn on Del Oro; you pay
20 us \$800,000 and change, we will pay, we will take care
21 of Section 14. That leaves about 400,000 that's not
22 paid and that they wanted to have paid with payments of
23 25,000 a month. But they wanted a drop dead date for
24 the rest of it to be paid.

25 Q. Above that is \$203,000 to Waste Tech.

1 A. Correct.

2 Q. What plant was that for?

3 A. I believe that Waste Tech was Section 14.

4 Q. And do you know how long that has been owed?

5 A. Waste Tech, that is about 90 days.

6 Q. Do you know if you owe them any more money?

7 A. I don't believe so.

8 Q. Are they going to do any more work for you?

9 A. No.

10 Q. Okay. Then the one above that is 383,000 and
11 some odd thousand dollars for Trojan Technologies.

12 A. That's for ultra violent disinfection for both
13 plants. And Trojan Technologies wrote me a letter
14 through their attorney saying can we take back the
15 technologies, and then they found it already had been
16 hooked up and said, well, you better find some financing
17 soon.

18 Q. When did they do that?

19 A. Pardon me?

20 Q. When did they write that letter?

21 A. The last letter I received from them was last
22 week.

23 Q. But how long has this amount been outstanding?

24 A. It has been since probably December.

25 Q. Okay. And other work, do you expect that, do

1 you need any more work from them?

2 A. I don't know if they have to come out to hook
3 them up, but I don't plan on any other work from them.
4 We have the UV filtration both at Del Oro and
5 Section 14. I am not sure if they are necessary to be
6 over at the Seasons plant but I don't foresee it in the
7 immediate future.

8 Q. Have you had discussions with them like with
9 Zenon about a payment plan?

10 A. I have. And that's when the attorney got
11 involved saying we don't want to be your financier, we
12 would prefer a payment.

13 Q. Okay. All right. Up a ways there is \$321,000
14 owed to JCI Industries.

15 A. That is correct. That's Mr. Robert Kaup.
16 Mr. Kaup has some blowers that are to be delivered for
17 Section 14. And I have, I need those to complete
18 Section 14. However, I have not been able to work out
19 an arrangement for him to deliver them. I made minor
20 payments that got it down to 321,000.

21 It is 255,000 for the blowers that are to be
22 delivered at Section 14 and the remaining amount is for
23 blowers that have already been delivered to Del Oro. I
24 just need for him to deliver; he doesn't have to come up
25 to set them off.

1 Q. So you have been billed, of that \$321,000, did
2 you just say 255,000 is for equipment that is yet to be
3 delivered?

4 A. That's correct.

5 Q. And I am not sure if I followed exactly what
6 your conversations with that vendor were. Are they
7 insisting upon full payment before they deliver those?

8 A. He is asking for full payment before delivery.
9 In fact, I got an e-mail from him just today saying that
10 he would be in the office tomorrow to continue
11 discussions. I have offered, you know, minor payments,
12 modest payments to try to get him to release this, but
13 he says that he has to pay his share of the blowers
14 before he could release them. I don't think he is a
15 very big outfit.

16 Q. Okay. Then there is 59,000, almost \$60,000 owed
17 to Environmental Dynamics. What did they do for you or
18 what is that?

19 A. EDI? They deliver the diffusers. Earlier in
20 the month it was twice that amount. We were able to
21 give them a payment so they would allow us to install
22 the diffusers. And they walked us through how to
23 install the diffusers. And they have been installed
24 over at Section 14.

25 Q. So the work associated with that amount has been

1 done, you just owe for work already done?

2 A. That's correct.

3 Q. And do you know how long that has been owing
4 for?

5 A. I know the diffusers were installed last week.
6 I know that the payment of \$50,000 was sent to them to
7 at least give them partial payment probably around the
8 14th of March.

9 Q. That doesn't tell me when they were billed, when
10 it was billed.

11 A. I don't think this is more than 90 days old.

12 Q. Okay. And the other large amount, the 172,000,
13 the Amtek Electric, that is Section 14?

14 A. That's correct.

15 Q. What work is that for?

16 A. That's for electrical. And a big portion of
17 that is for a generator that he has purchased that was
18 part of the ADEQ plans that he has installed. And
19 that's less than 30 days old.

20 Q. Okay. So, but that generator has been installed
21 you said?

22 A. Yes, it has.

23 Q. So amounts owing for work that has already been
24 completed or was received?

25 A. That is correct. He is still under contract to

1 do other work but that's the amount that has already
2 been completed.

3 Q. All right. I think it was your testimony that
4 was talking about the Yuma Mesa irrigation district and
5 your negotiations with them.

6 A. That is correct.

7 Q. As I look at when I was reading your testimony,
8 I was a little bit confused about what was that for.
9 But looking at this exhibit, it looks like that's for
10 something from the water division, right?

11 A. That's correct. It is all water.

12 Q. So is it one of your sources of water to serve
13 your customers?

14 A. It is, our major source of water is from the
15 Yuma Mesa Irrigation and Drainage District. It is the
16 surface water that we use. That is the water that goes
17 through the plant that was financed by the WIFA loan.

18 That plant goes up to 6 million gallons a day
19 maximum during the times that we are short on water. Or
20 when the canal from Mesa Irrigation Drainage District is
21 closed down we have to use wells. And that's why we
22 talked about well repair also.

23 Up until the beginning of 2008, we were required
24 to pay for 5,000 acre feet a year. Starting in 2008, we
25 were required to pay for 7500 acre feet a year. And

1 that's where the Yuma Mesa district came in. When they
2 sent us a bill at the end of 2008, I requested that the
3 unused water be either suspended or that they give us
4 some other type of leeway. And they agreed to take,
5 instead of \$100 per acre feet, \$50 per acre feet for
6 anything over 5,000 acre feet we didn't take. So it
7 reduced it from 250,000 to 125,000.

8 Q. So you have to, whether you use the water or
9 not, you have to pay them something for like the
10 capacity so it is available for you?

11 A. So, that's true, so it is available to us. And
12 we have a 103-year contract.

13 Q. Okay. And then there are like, there are three
14 different entries for the Yuma Mesa irrigation. Or is
15 the Yuma Mesa Irrigation District No. 2 different from
16 the irrigation drainage district?

17 A. No, it is the same.

18 Q. Do you know why there are three different
19 entries?

20 A. Yes, I do.

21 The first, the first entry was for our used
22 water for the last quarter of 2008. The quarters go
23 through the end of December. Their year starts
24 December 1.

25 The second amount, I believe, is the amount that

1 we still owed. We had a payment plan to pay off the
2 previous year. And I am not, I think that's what it is,
3 I am not sure.

4 The third one I know is the unused water and how
5 much we still owed for unused water as of March 25th.
6 That 25, it was 100 acre feet at \$50, and I am not sure
7 if the 24,907 was for the previous year or what that was
8 for.

9 Q. Okay.

10 A. It should have been paid off by that time.

11 Q. Do you know why that 115,941 only shows up in
12 that first column?

13 A. No, I don't. We do make quarterly payments to
14 them of the water we actually do use. And I might be
15 backwards as to which one is which.

16 Q. Oh, okay.

17 A. I really don't know, unless a payment was made.
18 I want to make sure that they don't shut off the spigot.

19 Q. Way back yesterday when you first started
20 testifying, I can't remember who asked you the question,
21 but about compensation you received, I think it was
22 whether you received compensation for your acting as
23 general manager of the water company, do you remember
24 that?

25 A. I remember stating that I do get paid for legal

1 services and I bill for legal services, but I don't get
2 paid as a manager.

3 Q. Okay. So I think what you said in response to
4 that particular question was not for that position,
5 meaning the management position. But from what I hear
6 you just saying, you do get paid for legal services but
7 not for your general manager work?

8 A. That is correct.

9 Q. Okay. All right. Then there was some testimony
10 yesterday about golf courses I think were owned or
11 controlled by H&S development and some unpaid effluent
12 bills maybe.

13 A. Correct.

14 Q. Do you remember that? And you were talking
15 about how they weren't paid but it was offset against
16 work that H&S did for Far West, is that right?

17 A. What -- yes. What H&S does is it presents bills
18 to Far West just like Far West presents bills to H&S for
19 effluent. And Far West does charge H&S for water use,
20 whether or not it is for, you know, dust control or it
21 is for any of their buildings or anything else.

22 H&S is the main actor and actually going out in
23 the middle of the night to take care of repairs. It has
24 the equipment. It has the experienced operators. And
25 when you have a water break at 2:00 in the morning, you

1 have to have somebody right out there. If we didn't do
2 that, we also have on line Rob's Backhoe and Priority
3 Wells. And those places we found are more expensive
4 than using H&S to do it.

5 So the bills are presented. Debbie Smith is the
6 comptroller, reviews those bills, makes sure there is
7 backup, makes sure there was the hours they were there,
8 makes sure the equipment there is on. And if she has
9 any questions, she returns the bills. Once the bills
10 are approved, we -- the bills are either paid or
11 sometimes they are offset against such things as the
12 effluent.

13 Q. And so those bills didn't show any credits for
14 the offsets. Do you have documents somewhere that show
15 amounts billed between the two companies?

16 A. Yes. Debbie Smith prepares a list of all the
17 bills that she has approved. And sometimes we do offset
18 it. And sometimes, if there is money there, we pay it
19 by check. But since we have been so short on money, Far
20 West hasn't been able to pay H&S lately for the work
21 that they do. I would prefer to do it by exchanging
22 checks between the two entities but sometimes that's not
23 a possibility.

24 Q. Does H&S show up on this accounts payable? It
25 does. Well --

1 A. I don't think so. I didn't -- I don't believe
2 so.

3 Q. Okay. There is a --

4 MR. SHAPIRO: There is an entry on line 5, Judge
5 Rodda.

6 THE WITNESS: No. I see one that's a minus
7 \$1.14, but...

8 BY ALJ RODDA:

9 Q. Right. That's the one that --

10 A. And I see a bill for Far West Water & Sewer. I
11 don't know why there would be one for minus 1873, so...
12 We try to make sure that we have everything detailed.

13 ALJ RODDA: A lot of my questions, they have
14 either been answered or I would anticipate were on the
15 lines of what Mr. Torrey was going down and then I --
16 when I cut him off because we weren't getting anywhere.
17 So I think for now I don't have any, for today I don't
18 have any further questions. I think they will be
19 answered as we go through that.

20 But one of the things perhaps you can do,
21 Mr. Shapiro, is on redirect or sometime between now and
22 when we next meet is I need to see or I would like to
23 see by each of the plant categories what has been paid,
24 what equipment has been paid for and what still needs to
25 be paid for. And it needs to all add up at the bottom

1 to what a grand total will be for that.

2 THE WITNESS: We keep two sets of books doing
3 that. One is with Far West water and the other one is
4 Mr. Lee and Coriolis. And we confirm that both of us
5 are in sync so that we know how far we have to go and
6 whether or not we are over budget and what has to be
7 done. So there are project managers that go out and
8 make sure the work is done. We have that available.

9 ALJ RODDA: Because the numbers in your
10 testimony about what it takes to complete is the
11 aggregate. But what I need is the detail per project.

12 MR. SHAPIRO: Okay. And that's what I was going
13 to ask. When you say per plant category, you meant by
14 plant, Seasons, Marwood?

15 THE WITNESS: We have that broken down that way.
16 We have it broken down according to the budget as to
17 each plant, how much is paid, how much has been billed,
18 how much has been billed and has not been paid and how
19 much is still to be billed. So we do have that.

20 ALJ RODDA: I think that would be very helpful
21 to see it.

22 MR. SHAPIRO: We were planning on doing that.

23 ALJ RODDA: Oh, okay.

24 THE WITNESS: No problems with that at all.
25 Plus I do have a breakdown of every single order for

1 disbursement to Regions Bank if that would be useful
2 also, or we could just do it, you know, as a
3 spreadsheet. We could have a wheelbarrow bring stuff
4 in.

5 MR. SHAPIRO: We will work on an exhibit.

6 ALJ RODDA: Okay. And I would encourage Staff
7 to talk to the company and get what you need, I mean get
8 what -- make sure you have the documents that you need
9 by next time --

10 MR. TORREY: That will happen.

11 ALJ RODDA: -- we meet.

12 Okay. Now, so is it your pleasure that we
13 reconvene by telephone Thursday of this week to talk
14 about when we can reconvene, or do you want to do it
15 like Monday of next week? I mean to talk about it, not
16 to meet on Monday.

17 MR. TORREY: Either of those dates would work,
18 Your Honor. If it is Thursday, Mr. Becker has something
19 in the afternoon. So if we could do it Thursday
20 morning, that would be --

21 MR. SHAPIRO: I don't know that we will be in a
22 position by Thursday morning to determine how much time
23 we need. We have some meetings. Why don't we plan for
24 Monday, if that's okay with the parties.

25 ALJ RODDA: Okay.

1 MS. WOOD: RUCO is fine with Thursday morning or
2 Monday.

3 MR. SHAPIRO: And if we are ready before that
4 and we can arrange it Thursday, I am happy to make those
5 arrangements.

6 ALJ RODDA: I think we can talk about it Monday.
7 And I will have Debra or Debbie contact you all to find
8 a convenient time that works.

9 Okay. So, Mr. Capestro, you can go but you have
10 to come back.

11 THE WITNESS: All right.

12 ALJ RODDA: And I am sorry if I yelled at you
13 all. It was very frustrating.

14 MR. TORREY: We have gotten used to it, Your
15 Honor.

16 ALJ RODDA: That's good. I am glad. Smart
17 alec, Mr. Torrey.

18 All right. So I will talk to you all next week.
19 Hope you all have a happy rest of the week. We are off
20 the record.

21 (The hearing recessed at 4:22 p.m.)
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1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

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I, COLETTE E. ROSS, Certified Reporter No. 50658 for the State of Arizona, do hereby certify that the foregoing printed pages constitute a full, true and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 20th day of April, 2009.



 COLETTE E. ROSS
 Certified Reporter
 Certificate No. 50658