

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ST. JOHNS RIVERKEEPER, INC.,
CITY OF JACKSONVILLE and
ST. JOHNS COUNTY,

Petitioners,

vs.

DOAH CASE NO: 08-1316
08-1317
08-1318

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT,

Respondent,

and

C E R T I F I E D
C O P Y

SEMINOLE COUNTY and CITY OF COCOA,

Intervenors.

_____ /

DEPOSITION OF: ROBERT DANA MORTON

DATE: Thursday, July 31, 2008

PURSUANT TO: Notice by Attorney for the
Intervenor for purposes of
discovery, use at trial or
such other purposes as are
permitted under the Florida
Rules of Civil Procedure

TIME: Commencing at 12:31 p.m.
Concluding at 3:10 p.m.

LOCATION: City of Jacksonville
Office of the General Counsel
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

REPORTED BY: JUANITA BUTLER
Stenographic Reporter
and Notary Public -
State of Florida at Large

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ALSO PRESENT:

Alan W. Aikens, (via Teleconference)

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1 The deposition, upon oral examination, of
2 ROBERT DANA MORTON, taken on Thursday, July 31, 2008,
3 at City of Jacksonville, Office of General Counsel, 117
4 West Duval Street, Suite 480, Jacksonville, Florida
5 32202, beginning at 12:31 p.m., before Juanita Butler,
6 Notary Public in and for the State of Florida at Large.

7 ROBERT DANA MORTON,
8 Being first duly sworn to testify the truth,
9 the whole truth and nothing but the truth, was examined
10 and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. DE LA PARTE:

13 Q. Please state your name for the record.

14 A. R. Dana Morton.

15 Q. By whom are you employed, Mr. Morton?

16 A. City of Jacksonville.

17 Q. What is your business address?

18 A. It's 117 West Duval, Suite 225, Jacksonville,
19 Florida.

20 Q. What's your business telephone number?

21 A. 630-1212, extension 3128.

22 Q. How long have you been employed by the City
23 of Jacksonville?

24 A. It will be 20 years in September.

25 Q. What did you do before coming to the City of

1 Jacksonville?

2 A. I was at the United States Environmental
3 Protection Agency's research lab in Gulf Breeze Florida
4 as an adjunct from Cornell. Actually, I was employed
5 by Cornell University there, and also, the University
6 of West Florida doing research at their lab.

7 I was there for ten years and one year with the
8 Department of Environmental protection in Pensacola.

9 Q. So for the ten years preceding you're coming
10 with the City of Jacksonville, you held the position
11 that you described with U.S. EPA at the University of
12 West Florida?

13 A. Correct.

14 Q. Did you work for the Department of
15 Environmental Protection prior to these 30 years?

16 A. It was in between. It was right in between
17 there. I left the EPA and came back, at that time, as
18 a Cornell employee. I was employed by Cornell
19 University for a brief period.

20 Q. What did you do for the U.S. EPA at their
21 Gulf Breeze Center?

22 A. Well, I was a member of the dive team there
23 conducting research data, collecting organisms and
24 various things like that. We also conducted
25 microcarbon systems level effect studies on drilling

1 fluid, on seagrass communities, and tributyltin,
2 antifoulant components on seagrass communities. I was
3 the liaison between the various universities and EPA to
4 conduct that research.

5 Q. These are fluids that are used in offshore
6 drilling?

7 A. Offshore drilling fluids, yes.

8 Q. And inshore?

9 A. For instance, Mobile Bay was an area that we
10 used to collect fluids from. And as far offshore as
11 the Flower Gardens off the coast of Texas. And the
12 antifoulant paint was supposed to be used by the Navy.

13 Q. And is that what you primarily did for those
14 ten years?

15 A. Yeah, it sure was. A lot of seagrass cores,
16 a lot of experiment running, analyzing the data.

17 Q. What did you do for the Department of
18 Environmental Protection?

19 A. I was a biologist for the Department. Did
20 water quality sampling, sediment sampling, taxonomy.

21 Q. Was that at their Pensacola office?

22 A. Correct.

23 Q. What position do you currently hold with the
24 City of Jacksonville?

25 A. I'm the City's aquatic biologist.

1 Q. What do you do for the City as an aquatic
2 biologist?

3 A. It's more, what don't I do. I oversee three
4 distinct areas currently. The first one that I spent
5 most of my time on is the ambient water quality
6 monitoring section. And that is the section of the
7 city government that monitors the surface water quality
8 of the St. Johns River tributaries in Jacksonville.

9 The second part that I do now is, I oversee
10 erosion sedimentation control program. We inspect
11 construction sites for projects. They're required to
12 put up erosion control measures.

13 And the third piece that I do now, we have a
14 Potential Illicit Connection in high priority
15 industries stormwater permit inspection program.
16 Coupled with that is also a pump station inspection
17 program. All those programs report to me.

18 Q. I have to ask you, what's an "illicit
19 connection?"

20 A. It's a discharge into waters of the state or
21 the City's MS 4 that shouldn't be there. Basically, if
22 it's not rainwater from a gutter, it shouldn't be
23 there. More often there are swimming pool discharge
24 pipes, washing machine pipes, the occasional septic
25 tank tailpipe where they can't get their drain field to

1 work.

2 But it's basically potential illicit. We call
3 them PICs. It's not illicit until we've confirmed that
4 it's illegal, and at that point, they have to remove
5 it. So it's potential until we confirm what it is,
6 then they have to remove it.

7 Q. Is this different from the City's
8 cross-connection backflow prevention program?

9 A. Yes, it is. There are cross-connections and
10 backflows. We would discover those as we would have a
11 stormwater outfall, for instance, with a high
12 chloroform count and we would have had a
13 cross-connection there in that manhole.

14 Q. Okay. And so these unpermitted wastewater
15 discharges are ones that you discover are being made
16 into the City's stormwater discharge system?

17 A. Correct.

18 Q. Anything else that you're tasked with?

19 A. I forgot about those artificial reefs. I'm
20 one of three city members and I'm the scientist on
21 board for the artificial reef program. We just got 22
22 permits issued by the Corp of Engineers for artificial
23 reefs off Jacksonville. We just got that going again.

24 Q. Anything else?

25 A. If I think of something I will let you know.

Q. Okay. When did the City begin the ambient water quality monitoring program?

A. Before I arrived. I would say it had to be the early to mid '80s the City got involved. When I came on board, it was as a result of the Water Quality Attainment Act, I think it was called. The Environmental Protection board developed it in 1987.

There was an '86 document by the state that was describing the level of impairment at the St. Johns River. And the City, having a local environmental program, decided it was going to be, these is my words, proactive on the water quality side of things.

They decided to designate a specific program to monitor and recommend compliance efforts or restoration strategies. That was the section that I came in to head up.

We were originally permitting point source discharges. We had 400 small package plants in Jacksonville. We had, in our group, compliance inspectors that monitored the discharges of those plants. That is the actual framework that the current tributary monitoring program employs.

Those 400 package plants were all on creeks, discharging creeks. As they were phased out, the monitoring locations remained in many cases, so now we

have 100 -- 104 sites.

So they started, as a part of permit compliance, upstream and downstream of the permitted discharge. And as the discharges were eliminated, the monitoring continued, a smaller subset of it. That was kind of the beginning back in the mid '80s.

Q. So at present, there's 104 monitoring sites?

A. Yes, that's the tributary. That's a routine tributary we call it. We actually have tributary intensive programs that are a result of TMDL development. We're going into specific water body IDs that are listed that are verified as impaired for fecal chloroform and we're setting up special assessments in there that can be more close to, say, six to eight in that specific waterbody. We may have only had one site there.

As we try to bring that into compliance, we'll go ahead and add another layer, increase the frequency, and have a more proactive stance on monitoring to try to describe the source of the fecal chloroform. So that's the routine.

We have commitment to do these other wibits. They're only for eight months, then we rotate on through to the next one. We're partners with DEP Northeast District and JEA to implement that program.

Q. How many monitoring sites does your department currently monitor on a typical basis?

A. I would say the backbone would be the 104 tributary sites. We've got twelve Nassau Fort George Intercoastal sites and we've got ten river-owned sites. So that's about 130 or so.

Q. How often are these sites sampled?

A. The tributary program routine is quarterly. The river run is done monthly at ten sites. Mayport to Doctor's Lake and the Nassau Fort George Intercoastal sites are done bimonthly.

Q. What parameters do you measure at these sites?

A. The routine tributary, we do the typical field parameters; dissolved oxygen, specific conductants, percent saturation, pH, temperature. Those same parameters and fecal chloroform at the tributary sites.

The river run and the Nassau River sites, we pick up a complete nutrient set, which includes the demands also, CobD, nitrate-nitrite, total Kjeldahl nitrogen -- nitrate-nitrite and total phosphorous, chlorides, color, about twenty parameters we do. We do those on surface grabs.

It's actually an integrated sample, a 2.5

meter deep composite sample that we take per Water Management District technical guidelines. We work with them very closely on the program.

Q. And you said the River Run?

A. Yeah.

Q. What about Nassau?

A. Nassau, the same constituents. We do surface grabs there.

Q. What about twelve around St. George?

A. The Fort George?

Q. Oh, Fort George.

A. Yeah, it's the Nassau Fort George Intercoastal. That's twelve sites there. That's the same constituents.

We've recently entered into an agreement with the park service. We do that for corporation with them. And they're paying for a chlorophyll analysis at an out-of-state lab. So we're picking up chlorophyll. That's the only chlorophyll monitoring that we do and we ship those samples off to lab in the Chesapeake area.

Q. Do you prepare any sort of monthly or annual reports containing the water quality information that you collect?

A. No, we don't. We have our website that

updates our quarterly sampling for the routine tributary program, but the data is not summarized beyond the tables that are present there. And that's got all 104 sites.

It's got the current quarter's worth of data and then the fecal chloroform for the previous three quarters. So they can see four quarters worth of fecal chloroform data for the county at 100 sites.

There are no annual reports on a regular basis for the others. All the data we take is uploaded to STORET. That's where it's pulled down for various compliance determinations by the state for fecal chloroform or nutrients, for various TMDL work.

Q. So all the data that are collected at these 130 something sites are downloaded to STORET?

A. Yeah, they sure are. We're trying to take more ownership of that on the tributary. We're working real close with the STORET coordinator. Her name is Jessica James or Jennifer James.

It's somewhat of a tedious and difficult process with a lot of ins and outs, but we've been doing that. What you see on the Florida STORET is current for the tributary and not as current on some of the other sites. It's maybe a year or two behind currently.

It's been a moving target. There's a lot more strict QA/QC on the datasets that were going in there, so we're having to add fields to our database and do some manipulations there.

(There was a discussion off the record.)

BY MR. DE LA PARTE:

Q. How long have you been the City's aquatic biologist?

A. Nineteen years, plus. It will be twenty on September 8th.

Q. You didn't say twenty.

A. Nineteen years and eleven months.

Q. Is that the position you were hired at when you joined the City?

A. Yes.

Q. Have you had any role, as the City's aquatic biologist, in the TMDL work that has been done in the lower St. Johns basin?

A. Yes.

Q. What specific work or role have you had with respect to the establishment of TMDL in development of a basin management plan?

A. Collecting data that is used for the calibration of the models that were run to set the TMDL, review of the basin management action plans and

helping develop monitoring plans, commenting on those various pieces.

Q. Have you had been involved in setting up and running any of the models that have been utilized by the various regulatory agencies to develop the TMDLs?

A. No.

Q. Is that something that's within your area of expertise?

A. It's not.

Q. In your role as the City's aquatic biologist, have you ever been involved in reviewing a consumptive use permit application submitted by anyone to the Water Management District, other than this case?

A. No.

Q. How about when you were employed by DEP, Cornell and EPA during the ten years prior to your tenure with the District?

A. No.

Q. So this case would be your first exposure to the consumptive use permitting process?

A. Yes.

Q. Are you aware that there are surface water withdrawals from the St. Johns River in Duval County?

A. I'm aware, yes.

Q. Have you had occasion to review those

discharges or the biological effects of those discharges outside of the consumptive use permitting process?

MR. FRAZIER: Objection to form.

BY THE DEPONENT:

A. Yes, they were cooling water withdrawals.

BY MR. DE LA PARTE:

Q. What exactly did you do in terms of reviewing these cooling water withdrawals?

A. It was primarily along the impacts to all of the fish impingement/entrainment. We were the commenting agency, not issuing the permit.

Q. Is it your understanding that there's a certain percentage of these cooling water discharges that are not discharged back into the river after they're used for cooling water purposes?

A. I am not aware of that.

Q. Is it your understanding, then, all of the water that's withdrawn for cooling purposes at these power plants is discharged back into the St. Johns River?

A. I believe there's some evaporation. It's not all going back, but there is some.

Q. In the course of your experience with the City, have you ever evaluated the effects on the river

of that portion of the withdrawal from the St. Johns River that is not discharged back into the river?

A. No.

Q. Are these power plants where you've reviewed the impingement and entrainment issues, ones that are owned by JEA?

A. Yes.

Q. And those are the Northside Plant?

A. Yes, the Northside and the St. Johns River Power Park?

A. What about the Kennedy Power Plant?

A. Not involved. That's pre-me.

Q. When you say you were a "commenting agency," you were a commenting agency on the power plant certification process for those power plants?

A. It was not the certification. As far as the discussions, they were in the context of larger water quality St. Johns River health issues that were brought up. Those issues were addressed at that point.

To be honest, I can't recall if it was specifically on the certification for those plants. But I know that we reviewed the dataset that was collected by JEA's contractor and those concerns were discussed.

Q. Let me ask you about the St. Johns power

Park. Is that correct, St. Johns Power Park?

A. I believe so.

Q. Is that withdrawal from the river, for cooling water purposes, one that's in excess of 800 million gallons a day?

A. I couldn't give you particulars. It's been many years.

Q. What did JEA do to address entrainment and impingement issues on that particular facility?

A. I'm unaware.

Q. Did they do something sufficient to satisfy any concerns that you may have had regarding those issues?

A. I didn't have a specific comment on it and I did not make any specific recommendations on that.

Q. Would you have made any specific recommendations or had any specific comments if those issues were detrimental to the health of aquatic biology in the river?

A. Yes. If we have the position to make those comments.

Q. What about the Northside Plant, do you know how much water is withdrawn on a daily basis from the Northside Plant?

A. No, I don't.

Q. Did you make any comments regarding the impact of impingement and entrainment as a result of the withdrawals of water from the river for that plant?

A. Not to my recollection.

Q. Again, do you know what, if anything, that JEA was doing at that particular plant to minimize or reduce the potential for impingement and entrainment?

A. No.

Q. I think you testified that you didn't know what the exact quantity was that is being withdrawn by JEA from those power plants. Would you agree that it's several hundred million gallons a day?

A. I couldn't agree with that. I don't know. I sure don't.

MR. DE LA PARTE: Let's mark this as Number 6.

(Seminole County Exhibit Number 6 was marked for identification.)

BY MR. DE LA PARTE:

Q. We handed you a document that we've marked as County Exhibit Number 6, which is Seminole County's Amended Notice of Taking Deposition of Robert Morton.

Have you seen this document before?

A. Yes, I have.

Q. Are you appearing at this deposition pursuant

to this notice?

A. Yes.

Q. And you are the Robert Morton that's identified in this deposition notice?

A. Yes.

Q. Are you aware that in 2004 Seminole County applied to the St. Johns River Water Management District for a consumptive use permit to withdraw water out of the St. Johns River?

A. Yes.

Q. When did you first become aware of this permit application?

A. It was early '08.

Q. Would that have been after the City received notice of the District's intent to issue the permit?

A. Yes.

Q. At the time the City received notice of the District's intent to issue the permit, were you given any directions regarding this permit application?

A. No specific. We get most, if not all, of their notices of intent to issue within Duval County. I was not given anything specific regarding this one.

Q. Were you requested by your superiors to review the Technical Staff Report prepared by the District?

A. Yes.

Q. Were you requested by your superiors to obtain copies of the permitting file for this particular application?

A. No.

Q. Aside from the District Technical Staff Report, what other documents did you either obtain or review regarding this permit application?

A. Discussions with the Water Management District staff on proposed studies for the expert witnesses that they're going to retain.

Q. When you're saying, proposed studies, you're referring to the 24-month study that the District has committed to look at existing and future --

A. Yes.

Q. -- withdrawals from the river?

A. It's not the cumulative assessment study. This, I think, was a precursor to that.

Q. Who at the District did you have those discussions with?

A. John Hendrickson.

Q. Did you discuss with Mr. Hendrickson this specific proposed withdrawal by Seminole County?

A. Yes, in very brief detail.

Q. When did you have those discussions with

Mr. Hendrickson?

A. They would be in June, mid June, after I became aware of this -- the affidavit.

Q. So those discussions with Mr. Hendrickson occurred after the City filed a petition for hearing which attached an affidavit that you had signed?

A. No. The notice of intent, I think, was what I was requested to review. My discussions with Mr. Hendrickson were -- I don't know when they filed this with my intent. But it would have been I guess, as I think about it, it would be after. Because I became aware of my involvement in it and I got more serious about doing my homework on it. So yes, it would be after.

Q. So you got more serious about doing your homework after you signed your affidavit in this case?

A. Yes. It was general knowledge prior to that, twenty years on the river.

Q. What did you specifically discuss with Mr. Hendrickson regarding the County's proposed withdrawal from the river?

A. How much he was working on it. We just shifted courses from the TMDL, and I said, I imagine you're swamped.

Documents. We did talk about things with DEP.

We have a lot of counterparts in Tallahassee that are co-managers of the resource. So we talked about general, nothing specific.

Q. Did Mr. Hendrickson offer any comments or opinions regarding the counties proposed withdrawal from the river?

A. Wish the studies would have been done before it had been issued.

Q. Anything beyond that?

A. No. He referenced the Lake Monroe Human Natural Resource Value document?

Q. The one prepared by ECT?

A. Correct.

Q. So other than his expression that he wished the studies had been done before this permit had been issued and identification of the ECT report that you just identified, was there any other information that he provided you?

A. No.

Q. Have you had discussions with any other personnel at the District regarding Seminole County's proposed withdrawal from St. Johns River?

A. No.

Q. Have you had any discussions with personnel at the department of Environmental Protection regarding

Seminole County's proposed withdrawal from the river?

A. Yes.

Q. Who, at the DEP, have you had those discusses with?

A. Dr. Wayne Magley.

Q. When did you have those discussions with Dr. Wayne Magley?

A. Those would have been in June, this past June. Probably right after the affidavit.

Q. Is Dr. Magley the only DEP person that you have had discussions with specifically regarding this permit application?

A. Yes.

Q. What is your recollection of what Dr. Magley had to say regarding Seminole County's proposed withdrawal?

A. They amazingly had very little to do with it. That was the biggest discovery on my part.

As far as his part, he had specific concerns about water quality, TMDLs, models and things of that nature. How they set minimum flows and levels, it would appear to be broken.

We didn't get specific either, Dr. Magley and I. He didn't have a lot to offer because of not being involved in it.

Q. Did he explain why me felt that their methodology for establishing MFLs was broken?

A. It's just that one agency is required to set and maintain the standards in the river and another can effect the use and not be required to inform or bring on board the recommendations of the other agency that actually sets the standards and issues the permits for them. It seems to be a disconnect that's not working in the resource's interest.

Q. Did Dr. Magley indicate that he hadn't personally been contacted regarding the establishment of MFLs in the river?

A. Correct.

Q. Did he express to you whether anybody else at the DEP may have been contacted and consulted in the establishment of MFLs in the river?

A. They comment on them occasionally. I mean, they don't always get the opportunity, as a technical staff, to do that. They hadn't had any opportunity to comment on these that are in the St. Johns or associated tributaries but in others they have across the state. The commenting agency can take their comments or not apparently.

(Mr. Aikens joined the deposition via teleconference.)

BY MR. DE LA PARTE:

Q. Was Dr. Magley indicating that he hadn't had an opportunity to comment on the MFLs --

A. Yes.

Q. -- or was he indicating that the agency at large didn't?

A. He.

Q. What concern did he express about the impact of Seminole County's proposed withdrawals on the TMDLs?

A. It would be along the lines of water chemistry, principally, concentrations, reduced flushing, so to speak, retention ponds. It's a slow moving river. Cumulative impacts for the other withdrawals that are proposed or permitted. Principally on the water chemistry, possible shifts in the plankton communities.

Q. Did he indicate to you that Seminole County's proposed withdrawals would in fact, in his opinion, cause adverse water quality effects?

A. He didn't say definitively on the issue.

Q. How about adverse impacts to aquatic vegetation?

A. He didn't say they would.

Q. What did Dr. Magley have to say about the models in relationship to this particular permit

application?

A. He was of the opinion that they probably should be run under the different flow regimes and different criteria.

Q. Which specific models did he feel should be run?

A. Well, I don't know specifically. The ones that we're using for the nutrient TMDL for the main stem in the lower basin, those models -- or that model.

Q. Are you personally familiar with those models?

A. No. I can't identify them by name. They've got their model.

Q. So if I said EFDC model?

A. It wouldn't mean anything.

Q. Did Dr. Magley indicate that he had knowledge that the District had not in fact run those models with Seminole County's proposed withdrawals?

A. He didn't know.

Q. Do you know whether the Water Management District has run those models for Seminole County's proposed withdrawal?

A. I don't know that they have. I know specific models that we've set for the nutrient TMDL. I know models have been run but I don't which ones and if

they're the same ones that were used for the state's adoption of the TMDL.

Q. By the "state's adoption of the TMDL," are you referring to the TMDL that's currently -- that was adopted in 2003 or the one that's proposed for adoption in 2008?

A. I think it's been adopted, I might stand corrected for the nutrients in the lower basin.

Q. BUT it's not yet in effect, is it?

A. Yes, it is.

Q. The one that was proposed for adoption in June 2008 by DEP?

MR. FRAZIER: Object to form. You may answer.

BY THE DEPONENT:

A. I believe it has been adopted.

BY MR. DE LA PARTE:

Q. Okay.

A. I believe there's no outstanding challenges. I believe it's been adopted.

Q. So when you say "the TMDL," you're referring to that TMDL that was established in 2008?

A. Yes.

Q. Any conversations with other researchers or investigators that you had similar to the ones that

you've had with Mr. Hendrickson and Dr. Magley regarding Seminole County's proposed withdrawal?

A. There was an exchange of science information hosted by the National Park Service with different researchers from the area. That was a point of discussion there, an interesting lively discussion.

Q. When did that forum take place?

A. It was July 12th or 16th. It was this month. I don't remember the date.

Q. Again, after you signed your affidavit?

A. Yes.

Q. You said it was lively. What it was about the discussion that made it lively?

A. Just proposals, you know. Was this looked at, was that looked at. Some people had been involved in similar litigations. The director of the UNF Coastal Program now, Dr. Hackney, I think his name is, had been involved in similar work. Dr. Clay Montague had some specific questions that he would be interested in answers.

Q. Did any of those gentlemen indicate whether they knew for a fact whether those questions that they had, had in fact, been evaluated by the District?

A. They didn't state for sure. But the fact that they were posed kind of -- you presume that they

hadn't been answered -- or asked.

Q. Any other discussions or conversations that you had regarding the effects of this particular proposed withdrawal?

A. Just in-house staff discussion among the branch.

Q. And who are these --

A. My supervisor, Nam Huyhn, Gary Weise. Those two specifically. Vince Seibold, my chief.

MR. DE LA PARTE: Let's go ahead and mark this is as Deposition Exhibit Number 7.

(Seminole County Exhibit Number 7 was marked for identification.)

BY MR. DE LA PARTE:

Q. We've handed you a document that we've marked as County Deposition Exhibit Number 7. Is this the Technical Staff Report that you had previously referenced in your testimony?

A. Yes, it is.

Q. Is this the document that you reviewed prior to signing the affidavit that was attached to one of the petitions in this case?

A. Yes.

Q. Other than reviewing this particular document, did you perform any technical analysis or

study concerning the impact of Seminole County's proposed consumptive use permit prior to signing your affidavit?

A. No.

Q. Did any of your colleagues within the City of Jacksonville perform any analysis or study that they shared with you prior to you signing the affidavit in this case?

A. The analysis, I would have so say yes. I know that my colleagues reviewed numbers, particularly Gary Weise, about what he was aware of and he made comments that I had seen on this TSR. I'm assuming that there was some analysis on his part. He had notes and figures and stuff like that. I'm not certain of the level of analysis.

Q. Let me ask it this way, first of all. Did any of your colleagues supply you information regarding this permit application that you relied on in preparing the affidavit that you signed in this case?

A. Yes.

Q. Which of your colleagues provided you with that kind of information?

A. Gary Weise.

Q. What specifically did Mr. Weise provide you?

A. Comments on the TSR. He had it line by line

or page by page with notes on specific issues that are more in his area.

Q. What's his area?

A. Groundwater, water conservation.

Q. Is that your area, groundwater, water conservation?

A. Yes, but it's not my area. That's his, the technical services branch. He oversees the groundwater program.

Q. Do you know what sort of study or analysis that Mr. Weise undertook in preparing those annotations to the TSR?

A. No, I don't.

Q. And is this something that you relied on in preparing the affidavit that you signed?

A. Yes.

Q. Any other information provided to you by other employees of the City of Jacksonville that you relied on preparing the affidavit in this case?

A. No.

MR. DE LA PARTE: Let's go ahead and mark this as Deposition Exhibit Number 8.

(Seminole County Exhibit Number 8 was marked for identification.)

BY MR. DE LA PARTE:

Q. Let me ask you, first of all, to turn to the end of the document that we've marked as Exhibit Number 8. And you see that there is an affidavit at the end of this document. Do you see that?

A. Yes.

Q. Is that an affidavit that you prepared and executed?

A. I signed it. I didn't have a lot to do with the preparation of it.

Q. Prior to signing this affidavit did you review the petition that this affidavit is attached to?

A. Yes.

Q. How long did you spend reviewing that petition before you signed the affidavit?

A. A few hours.

Q. Were there any items that were alleged in the initial draft of the petition that was provided you that you, as an affiant, indicated to the City that you could not support?

MR. FRAZIER: Object to form.

BY THE DEPONENT:

A. No.

BY MR. DE LA PARTE:

Q. So you did not make any suggested changes to

the petition that was provided to you?

A. No.

Q. Did you make any suggestions or changes to the petition that was provided to you?

A. No

Q. Did you voluntarily sign this affidavit of your own accord without duress or coercion?

A. Yes.

Q. Did you realize in signing this affidavit that you were in effect making a sworn statement under oath that the information contained in the affidavit is true and correct to your personal knowledge?

A. Yes.

Q. Let me call your attention to paragraph 2 of your affidavit. Paragraph 2 says, As set forth in the City of Jacksonville's Petition to Intervene dated June 16, 2008, the issuance of the consumptive use permit sought by Seminole County will have the effect of impairing polluting or otherwise injuring the water or other natural resources of the state.

Do you see that statement?

A. Yes.

Q. And that does reflect your sworn testimony?

A. Yes, it does.

Q. And it's still your sworn testimony here

today?

A. Yes.

Q. Did you interpret the first portion of that sentence, As set forth in the City of Jacksonville's Petition to Intervene dated June 16, 2008, to mean that you were in effect swearing to the truth and accuracy of the allegations contained in the petition?

A. Yes.

Q. And in fact are you still here today swearing to the truth and accuracy of the allegations contained in the petition?

A. Yes.

Q. What impairment, pollution or injury of the water or other natural resources of the state do you believe will be caused by Seminole County's proposed withdrawal of water from the St. Johns River?

A. I believe it will have adverse effects on the contaminant loads in the river, increasing concentrations of any number of contaminants of concern whether they be nutrients or metals.

I believe it will be effecting the water chemistry that would effect other aquatic life, juvenile life stages, submerged vegetation.

Q. Any others?

A. I think I'll just leave it at that at the

moment.

Q. What is the source of the contaminant load to the river?

A. It's varied. Point sources and nonpoint sources of pollution.

Q. Would those loadings still continue to occur even with the proposed withdrawal from the Seminole County site?

A. Yes.

Q. So in reality, looking at the physics of the situation, this withdrawal is not going to effect the amount of loading to the river; is that correct?

MR. FRAZIER: Object to form.

BY THE DEPONENT:

A. It's going to effect the receiving water bodies of the loading that is being permitted and discharged into the river.

BY MR. DE LA PARTE:

Q. I understand that. Would you agree that --

A. Total loading, I agree. It's not going to effect the pounds of nitrogen or pollution going in.

Q. And how will this 5.5 mgd withdrawal effect the receiving waters for the loading?

A. It will effect it on a hydrologic and a chemical fashion. It will provide a slightly

diminished flow regime, slightly lower levels, staging levels, salinities slightly lower for the whole river.

It will, during extreme drought scenarios and flow reversals of varying degrees, present a greater threat to the water chemistry and biota during those times.

Q. Do you understand that Seminole County's proposed consumptive use of water for the first five years of the permit will only consist of 800,000 gallons a day?

A. Yes.

Q. Is it your testimony that the withdrawal of 800,000 gallons a day of water from the river will impair, pollute or otherwise injure the water resources of the river?

A. I believe my testimony is in the 5.5 order; isn't it?

Q. That's why I'm asking for it. Is your sworn testimony regarding impairment, pollution or injury to the water and natural resource of the state based on the 800,000 gallons a day or the ultimate 5.5 million gallons a day?

A. It's based on the ultimate 5.5.

Q. Can you say, sitting here today, that the withdrawal of 800,000 gallon a day for the first five

years of the permit will have the effect of impairing, polluting or otherwise injuring the water or other natural resources of the State?

A. I believe I can. It's a matter of degrees whether it's measurable or not.

Q. Do you know whether it would even be measurable, an 800,000 gallon a day withdrawal, on those factors that you just described?

A. It would be measurable. It's a matter of whether we have tools to measure it. So I believe, yes.

Q. Do we have the tools in fact to measure those changes?

A. Certain flow regimes, I believe it will be more pronounced. It could be measurable at those times.

Q. Have you quantified the changes to water chemistry, salinity, submerged vegetation or aquatic biology that will occur as result of an 800,1000 gallon a day withdrawal?

A. I have not quantified them, no.

Q. Have you quantified the changes to salinity, water quality, water chemistry, submerged vegetation, aquatic biology that will occur from a 5.5 million gallon a day withdrawal?

A. I've read the documentation provided in the TSR.

Q. Beyond the documentation provided in the TSR, have you done any work to quantify what those changes would be?

A. No.

Q. Have you come to the conclusion that the changes described in the TSR for the 5.5 million gallon a day withdrawal are ones that would impair, pollute or injure the water or natural resources of the state?

A. The withdrawal will not be beneficial. There's no neutral -- so yes.

Q. And is that the basis for your testimony that since the withdrawal is not beneficial, that, by the other side of the coin then, it would impair, pollute or otherwise injure?

A. In a gross level, yes. I have no special study that I performed.

Q. Is it your position that any withdrawal of water from the river using the standard that you described, would constitute impairment, pollution or injury to water or natural resources?

A. Yes.

Q. Is there any degree of withdrawal at which the change in the water chemistry or the biology of the

river is so de minimis that it doesn't rise to the level of injury or impairment or pollution?

A. Those thresholds or criteria haven't been established. In theory, it's possible. To my knowledge they have not been set.

Q. Does the withdrawals made by JEA from their power plants for cooling purposes, in your opinion, impair, injure or otherwise pollute the water resources and natural resources of the state?

A. It does.

Q. Has your data collection system noted changes in water chemistry, submerged vegetation or aquatic biology that you can attribute to the effects of surface water withdrawals from the St. Johns River?

A. From increased salinity, not necessarily from surface water withdrawals.

Q. Okay. I didn't understand your response.

A. We've documented fish kills due to salinity in Duval County.

Q. Do you know whether that increased salinity is due to surface water withdrawals?

A. Drought and possibly the cumulative impact of withdrawals. But no, we did not determine the source.

Q. Is it possible that increased salinity and the fish kills would have taken place simply because of

the result of drought and without the effect of any existing withdrawals from the river?

A. It's possible.

Q. Have you determined or your staff determined whether surface water withdrawals contributed to those fish kills?

A. No, we haven't.

Q. How does the proposed withdrawal of water by Seminole County result in pollution of the waters of the state?

A. It's a matter of dilution. It's not a source of pollution. It's providing less of a high quality of water for the receiving water body to assimilate the pollution that is being permitted by the various agencies.

Q. But Would you agree that this proposed withdrawal does not inherently contemplate a discharge to the river?

A. My read of the documentation is there's no discharge associated with it.

Q. Okay. In the scenario that you just posited, the source of the discharge to the river is other point and nonpoint sources in the river?

A. Yes.

Q. And those would be point and nonpoint sources

not owned or controlled by Seminole County?

A. Some undoubtedly are. I don't know what all their points of discharge are. I would assume there's some surface water discharges to the lower basin, nonpoint or point source permits.

Q. Of the ones that you are familiar with, point and nonpoint source discharges to the river, are any of those owned or controlled by Seminole County?

A. No, I'm not aware of any that they own.

Q. So it's your position then that the pollution that you refer to here, is one that would occur by virtue of Seminole County diminishing the amount of freshwater available in the receiving waters?

A. Yes.

Q. In your estimation, does any diminishment of the freshwater quantity of the receiving water constitute pollution?

A. It diminishes the assimilative capacity of the receiving water for the permitted pollution. It's not a source of pollution in this case. So that's the guidelines that I'm operating under there.

Q. I understand. But I'm trying to find out whether it's your belief that any diminishment in the quantity or volume of freshwater in the St. Johns River would constitute pollution as you attributed to

Seminole County?

MR. FRAZIER: Object to form.

BY THE DEPONENT:

A. I don't believe I attributed pollution to Seminole County in this particular instance. I'm attributing them to diminishing of the receiving water for pollution and I didn't specify where the source of the pollution was.

Q. Okay.

A. Any diminishment of that receiving water would be, in your terms, it seems to be the source of pollution then.

Q. I'm trying to figure in your terms.

Would you characterize any diminishment of the volume of freshwater in the St. Johns River as a result of surface water withdrawals to constitute pollution of the water or other natural resources of the state as you've described it in paragraph 2?

A. Impairing or otherwise injuring, the pollution to me is more of an additive thing. You can impair things in other ways. Physically by a dam structure. It could be a course change, dredging operations that don't actually pollute, per se. They're not adding in excess amounts or in any amounts pollution, whether it's nitrogen, metals or whatever.

So I guess I'm kind of holding that out in my terms on the polluting. Withdrawal is otherwise impairing and injuring.

Q. So in the case of Seminole County, then, the activities that you believe that their withdrawal would in fact cause is impairment or injury of the water or other natural resources of the state as opposed to the pollution?

A. Correct.

Q. Let me ask you to look at Deposition Exhibit Number 7, which is the TSR.

Can you point me to those sections of the Technical Staff Report that you believe support your position that Seminole County's proposed withdrawal will have the effect of impairing or otherwise injuring the water or other natural resources of the state?

MR. FRAZIER: Object to the form.

BY THE DEPONENT:

A. The TSR has come to the conclusion that it will not have a significant impact or it will not impair it. I would not agree with it. The part that says, 5.5 million gallons a day withdrawal, would be the part that would get me to the table on this.

BY MR. DE LA PARTE:

Q. Let's take this in segments, first of all.

Would you agree that the Technical Staff Report comes to the conclusion that the proposed 5.5 million gallon a day withdrawal will not impair or otherwise injure the natural resources of the state?

A. Yes.

Q. Okay.

A. Significantly, I don't know if they would say not. I would have to reread. I guess they're documenting changes. They're just not calling them significant.

Q. Okay. Where are the documented changes that are referenced in the Technical Staff Report that you're characterizing as being impairment or injury of the water or other natural resources of the state?

A. The various salinity regimes that are in Table 1 and the isohalines, dissolved oxygens.

MR. FRAZIER: Have you had a chance to look at the entire TSR?

THE DEPONENT: Yes.

BY MR. DE LA PARTE:

Q. I think what he's asking is, do you need another chance to look at the TSR?

A. No.

Q. All right. Let's look at Table 1 first. I think you mentioned that first.

Is it your position, then, that the changes in salinity that are indicated in this table for a 5.5 million gallon a day withdrawal would constitute impairment or injury of the water resource or other natural resources of the state?

A. Yes.

Q. For example at Buckman Bridge, a change from the baseline of 700ths of a part per 1000 would, in your mind, be impairment or injury of the water resources of the State?

A. Yes.

Q. How about if there was no change indicated in that section?

A. I'm not familiar with the actual simulated maximum and minimums and if they were run under various extremes. I know there's a lot of averages here, average salinities and things of that nature. So I don't think it was run under flow reversals, for instance, would be one.

So I don't believe that this is as thorough a characterization of the potential impacts as is merited by the type of work.

Q. Have you or your staff done the kind of analysis that you're talking about, doing flow reversals and what have you, to see what those changes

would be?

A. No.

Q. What about Table 2, is the predicted changes in isohalines ones that you characterize as being injury or impairment of the water or other natural resources?

A. Yes.

Q. What about Table 4, the dissolved oxygen changes, are these predicted dissolved changes ones that you would consider injury or impairment to the water resources and natural resources of the state?

A. Yes.

Q. For example, at Buckman Bridge, it shows at saturation average and at saturation DO, there would be no change in the dissolved oxygen at 5.5 million gallon a day withdrawal. Would you characterize, then, that as being injury or impairment?

A. These are average conditions, which I don't agree with that type of approach to it. In the 100ths of a decimal point, that's all we run at. I know we can run out further in significant figures. Logic will tell me, if I ran out enough significant figures, I would see the difference.

Q. So how many significant figures would I have to run it out before you finally would concede that

that does not constitute injury or impairment?

MR. FRAZIER: Object to the form.

BY MR. DE LA PARTE:

Q. If we ran it out to thousandths instead hundredths, and then, in thousandths, we saw a change between the baseline and the model condition, would that, in your mind, be injury or impairment?

MR. FRAZIER: Object to form.

BY THE DEPONENT:

A. I don't know.

BY MR. DE LA PARTE:

Q. Is there any other information that was presented besides the information in these four tables that you believe support your conclusion that this proposed withdrawal will impair or otherwise injure the water or other natural resources of the state?

A. I have no other documentation. Working twenty years, I've come to my conclusions and understandings, my own opinions. This is the most information I've seen presented on this specific issue.

Q. But in the twenty years that you've worked, you have not dealt with this particular withdrawal, have you?

A. No.

Q. So the information that you have regarding

this specific withdrawal, you're relying on for the conclusion that it will injure or impair the water or natural resources of the state constitute these tables 1 through 4?

A. They describe the withdrawal scenarios, yeah, and they are the documents that I'm relying on.

Q. Let's look at paragraph 3 of your affidavit that's back on the back of Exhibit Number 8.

Paragraph 3 says that the facts contained are true and correct based upon my personal knowledge as verified by my review of the City of Jacksonville's records.

What City of Jacksonville records did you review that you're relying on for the affidavit that's attached to this petition?

A. My review of documents over twenty years that I'm relying on. They start back in the 1987]SWIM Plan Preparation in Palatka, all the way on up to the TMDL development for the main stem and the nutrients.

Q. So these are documents in the possession of the City of Jacksonville that relate to water quality and aquatic biology in the St. Johns River?

A. Yes.

Q. Are there any documents in the records of the City of Jacksonville regarding this specific permit

1 application or proposed withdrawal that you're relying
2 on?

3 A. No.

4 Q. Would your response be the same with respect
5 to the Department of Environmental Protection records
6 that you're relying on?

7 A. Yes.

8 Q. And except for the TSR, would your testimony
9 be the same with respect to the St. Johns River Water
10 Management District records?

11 A. Yes.

12 Q. And the personal investigation that's referred
13 to in paragraph 3 here that you conducted, was that
14 essentially reviewing the Technical Staff Report and
15 receiving input from your colleagues at the City?

16 A. Yes.

17 Q. Let me ask you to turn to paragraph 41 of the
18 petition. When you signed the affidavit that we had
19 just gone through, were you attesting in that affidavit
20 to the accuracy of the claims raised in paragraph 41 by
21 the City regarding the County's proposed permit
22 application?

23 A. Yes.

24 Q. Let me ask you to look at 41(a) whether the
25 proposed water use is reasonable. Is it your sworn

1 testimony here today that Seminole County's proposed
2 water use is not reasonable?

3 A. Yes.

4 Q. And what is there about Seminole County's
5 proposed water use that is unreasonable?

6 A. Conservation efforts and allocation of re-use
7 water.

8 Q. Anything else?

9 A. Impacts to the surface waters of the state
10 make it unreasonable.

11 Q. Anything else ?

12 A. That's broad enough.

13 Q. What is it about Seminole County's
14 conservation efforts that you believe makes their
15 proposed water use unreasonable?

16 A. The TSR documents no conservation efforts or
17 improvement in conservation by the consumption over the
18 permit period. Consumptive use on a per-household
19 basis is notably higher.

20 The use of reuse water into rapid infiltration
21 basins, using that water first instead pulling from the
22 surface waters of the state.

23 That would be pretty much the conservation
24 side of things.

25 Q. Does the Technical Staff Report identify

1 conservation efforts that Seminole County is in fact
2 implementing or proposing to implement?

3 A. Yes, they have quite a few conservation
4 efforts.

5 Q. Are there any conservation efforts that you
6 believe that are practicable for Seminole County to
7 implement that it is not implementing?

8 A. I couldn't identify any, no.

9 Q. Would it be reasonable, in your mind, to
10 require Seminole County to implement conservation
11 efforts that are not practicable?

12 A. It would have to be weighed.

13 I would struggle over determining whether
14 something is not practicable or not. Given the
15 consequences of not doing something that seems not
16 practicable and who determines that.

17 I guess I may be confusing the issue, but I'm
18 confused by that terminology.

19 Q. Let me see if I can simplify it and ask you
20 some questions.

21 Would Seminole County, in your mind, be
22 required to implement conservation measures that are
23 not economically feasible?

24 A. That depends on what is economically
25 feasible. I believe they should be required to

1 implement conservation measures that are in the best
2 interest of the citizens and natural resources that
3 they own.

4 Q. And should they have that obligation
5 regardless of whether or not the conservation measures
6 are ones that they can afford?

7 A. Yes.

8 Q. Is Seminole County, in your mind, required to
9 implement conservation measures that are not
10 technically feasible?

11 A. I don't know.

12 Q. Are they required to implement conservation
13 measures that are not environmentally feasible?

14 A. I don't know.

15 Q. Have you made any evaluation as to whether
16 Seminole County has conservation measures that are
17 available to it that it's not implementing that are
18 technically, economically and environmentally feasible?

19 A. No, I have not done that evaluation.

20 Q. And did you rely in arriving at this
21 conclusion regarding conservation measures based on
22 information supplied to you by Mr. Weise?

23 A. That and the TSR.

24 Q. And is the section of the TSR that you're
25 specifically referring to the one that indicates that

1 the per capita water use for the County today is 140
2 gallons per person per day and projected to be 140
3 gallons per person per day in the future?

4 A. Yes.

5 Q. So aside from the information supplied by
6 Mr. Weise and that piece of information in the TSR, is
7 there any other information that you're relying on for
8 your conclusion that Seminole County's conservation
9 efforts are insufficient?

10 A. No.

11 Q. Let me ask you about the allocation of the
12 reuse water that is referred to in the TSR as going to
13 the rapid infiltration basins, whether that water
14 supply could economically, technically and
15 environmentally feasibly being used as a replacement
16 for the proposed withdrawals from the St. Johns River?

17 A. The St. Johns River withdrawal, I believe, is
18 being used sometimes to augment existing reuse. I
19 would therefore assume that reuse is a viable option
20 for whatever purposes, besides the RIBs, and that they
21 could divert that flow that is proposed to go to RIBs
22 to where the reuse supplement for the surface water
23 withdrawal is. I would believe they would be able to
24 divert it based on that.

25 Q. Now, in order to divert water from wherever

1 these RIBs are to the place that the reuse is planned
2 to be applied, there would have to be facilities
3 constructed and there would have to be evaluations of
4 the impact of diverting that resource from the RIBs to
5 the place of reuse, wouldn't you agree?

6 A. Yes.

7 Q. Do you know whether or not Seminole County
8 has in fact conducted those evaluations?

9 A. No.

10 Q. Would you agree that in order to determine
11 whether it would be feasible to redivert this water
12 from the RIBs to the area where the reuse water is
13 proposed to be applied, that it would need to be
14 technically and environment feasible for that diversion
15 to take place?

16 A. Yes.

17 Q. Have you, yourself, determined whether it's
18 environmentally and technically feasible for that
19 diversion to take place?

20 A. I imagine environmentally feasible would be a
21 trade off. You're probably enhancing something where
22 the RIB is at the detriment to the river. You're
23 weighing one resource against the other and I have not
24 made that determination.

25 Q. What about the "technically" part?

1 A. I haven't made that determination either.

2 Q. Paragraph 41(b) states whether the proposed
3 water use is beneficial. Is it your sworn testimony
4 here today that Seminole County's proposed withdrawal
5 from the St. Johns River is not beneficial?

6 A. Yes , it is.

7 Q. And is it not beneficial for the reasons that
8 you gave just previously that it's not reasonable?

9 A. Yes.

10 Q. Let me ask you, is it your understanding that
11 a portion of the water that Seminole County is
12 proposing to withdraw is to be used to supplement reuse
13 system?

14 A. Yes.

15 Q. And would you agree that the greater portion
16 of the water that Seminole County is proposing to
17 withdraw is to be used to meet its future potable water
18 demands?

19 A. Yes.

20 Q. Do you know whether or not the diversion of
21 the reclaim water from the RIBs would serve as a
22 suitable replacement for the water to be withdrawn from
23 the river for potable water use?

24 A. I would assume not for potable water use. I'm
25 not aware of reuse going to potable, yet.

1 Q. So the diversion of the water from the RIBs
2 really only is viewed by you as a replacement of that
3 portion of the 5.5 that is to be used to supplement
4 Seminole's reclaimed water?

5 A. Yes.

6 Q. Let me ask you to look at paragraph 41(c),
7 whether the proposed use is necessary to fulfill a
8 certain reasonable demand. I think we've just been
9 discussing the fact that Seminole County's proposed
10 withdrawal is intended to meet both a reuse demand and
11 a future potable water demand. Is that your
12 understanding as well?

13 A. Yes.

14 Q. Let me ask you first about the potable water
15 demand. Is it your sworn testimony that the water that
16 Seminole County is seeking to withdraw from the
17 St. Johns River is not necessary to fulfill a certain
18 reasonable potable water demand?

19 A. I'm uncertain whether the need can be met by
20 increased conservation measures. That would be my one
21 hold out on that. Beyond that, I would have to say I'm
22 not able to make that determination. Whether the
23 wellfield could be increased, I'm not sure about those
24 things either.

25 Q. Is it your understanding that the potable

1 water portion of this allocation is intended to supply
2 Seminole County's potable water demands after 2013?

3 A. Yes.

4 Q. Is it your understanding that the Water
5 Management District has adopted a rule that says that
6 utilities, like Seminole County, in Central Florida,
7 can no longer rely on groundwater after 2013 to meet
8 their future potable water demands?

9 A. I was not aware of that. If I've read it,
10 I've forgotten it.

11 Q. If, in fact, the District had adopted such a
12 rule, would you agree that increased groundwater
13 withdrawals would not be a suitable replacement for the
14 surface water that the County is seeking to withdraw to
15 meet its future potable water demands?

16 MR. FRAZIER: Object to form.

17 BY THE DEPONENT:

18 A. Restate that again.

19 BY MR. DE LA PARTE:

20 Q. If the Water Management District has in fact
21 enacted a rule that prohibits utilities from
22 withdrawing groundwater to meet their potable water
23 demands after 2013, would you agree that groundwater
24 would not be a suitable replacement for the potable
25 water that the County is seeking to withdraw from the river?

1 MR. FRAZIER: Same objection.

2 BY THE DEPONENT:

3 A. Yes.

4 BY MR. DE LA PARTE:

5 Q. Are you aware of any other alternatives that
6 the County has available to it to supply the potable
7 water demands that are to be met by the proposed
8 withdrawal from the river?

9 A. Yes. Desalination.

10 Q. Do you know whether or not it would be
11 technically, economically or environmentally feasible
12 for the County to develop desalinated seawater to be
13 substituted for the water that it's proposing to
14 withdraw from the river?

15 A. I don't know.

16 Q. Would you agree that if it wasn't technically,
17 environmentally or economically feasible for the County
18 to develop seawater and transport it to the County,
19 that that would not be a suitable replacement for the
20 water from the river?

21 MR. FRAZIER: Objection to form.

22 BY THE DEPONENT:

23 A. I would agree to the technically and
24 environmentally. I'm not so sure about economically.

25 BY MR. DE LA PARTE:

1 Q. Okay. Other than seawater from the coast,
2 are you aware of any other source of water that could
3 be substituted for the water from the river that is
4 intended to meet the County's potable water demand?

5 A. No.

6 Q. Would you agree, if the County in fact
7 continued to have a demand for increased potable water
8 after 2013, after implementation of all reasonable
9 conservation, that it would need water from the river
10 if there were no other alternative supplies?

11 A. No.

12 Q. Well, what would the County do?

13 A. They would go to desalinization at the coast.

14 Q. Okay. Let's look at (d), whether the proposed
15 water use will not cause quantity or quality changes
16 which adversely affect water resources. Is it your
17 sworn testimony that Seminole County's proposed
18 withdrawal of water would cause quantity or quality
19 changes which would adversely affect water resources?

20 A. Yes.

21 Q. What are the quantity or quality changes that
22 would be caused by their proposed withdrawal which
23 would adversely affect water resources?

24 A. As I stated, it would reduce the assimilative
25 capacity of the receiving water for the various

1 permitted pollution sources, diminish the actual value
2 of the natural resource for the wildlife, fauna, flora
3 found in the river.

4 Q. How much of a reduction in load would there
5 have to be in order to counteract the reduction in the
6 assimilative capacity from a 5.5 mgd withdrawal?

7 A. Interesting question. I couldn't say.

8 Q. Would you agree, though, that just knowing
9 that pollution is an interaction between loading and the
10 amount of receiving water, that you could achieve a
11 state where you reduce load so that the reduction in
12 receiving water results in no net change to water
13 quality?

14 A. Theoretically, it's possible.

15 Q. And have you considered that in evaluating
16 whether or not Seminole County's proposed withdrawal
17 would cause an adverse impact to water quality?

18 A. It would have to be implemented basin-wide,
19 but no.

20 Q. So when you concluded that Seminole County's
21 proposed withdrawal from the river will cause an
22 adverse water quantity or quality change in the river,
23 then are you assuming that the load to the river would
24 remain the same as is presently permitted?

25 A. Yes, I assume the same or increase. The best

1 case would be to remain the same.

2 Q. Let's look at (e), whether the proposed water
3 use will not cause adverse environmental impacts to
4 wetlands, lakes, streams, estuaries, fish and wildlife
5 or other natural resources. Is it your sworn testimony
6 that Seminole County's proposed withdrawals would cause
7 adverse impacts to wetlands, lakes, streams, estuaries
8 fish and wildlife or other natural resources?

9 A. Yes.

10 Q. Which lakes do you believe would be adversely
11 impacted?

12 A. Great question. Yankee Lake would come to
13 mind right off the bat. Doctor's Lake down in my neck
14 of the woods. Lake George . I'm not as familiar with
15 the upstream portions of the river.

16 Q. That was going to be my next question. Are
17 there any lakes upstream of the proposed withdrawal
18 that you believe would be --

19 A. I couldn't say.

20 Q. So your testimony regarding adverse
21 environmental impacts really relates to those
22 downstream of the proposed withdrawal?

23 A. Yes.

24 Q. And the lakes that you specifically identified
25 that you believe that adverse environmental impacts

1 would take place are Yankee Lake, Doctor's Lake and
2 Lake George?

3 A. Yeah.

4 Q. Any others?

5 A. I'm not going to even venture a guess, so I
6 will just leave it at that.

7 Q. What about wetlands? Which wetlands would be
8 adversely impacted as a result of the County's proposed
9 withdrawal?

10 A. The wetlands adjacent to the St. Johns River.

11 Q. Are those wetlands within the 25 year
12 floodplain, 50 year floodplain, or 100 year floodplain?

13 A. They would be certainly within 100 year
14 floodplain.

15 Q. Would all wetlands located within the 100 year
16 floodplain of the St. Johns river downstream of the
17 withdrawal point be adversely impacted by the proposed
18 withdrawal?

19 A. The wetlands, I couldn't say that. I couldn't
20 say for sure.

21 Q. Can you identify one wetland, for sure, that
22 you believe would be adversely impacted by the proposed
23 withdrawal?

24 A. By name a wetland? I'm not familiar with
25 names of wetlands along the St. Johns River.

1 Q. Or a specific location that you know contains
2 wetland species along the St. Johns River that you
3 believe would be adverse?

4 A. Julington Creek, Durbin Creek.

5 Q. Any others?

6 A. I will just go with those two.

7 Q. Are those both located in Duval County?

8 A. Portions of them. Mostly Julington is.
9 Durbin is right on the line.

10 Q. On the line to where?

11 A. Duval County line. We have monitoring
12 stations in and out of the county that kind of cross in
13 there.

14 Q. I guess when I meant "on the line," is there
15 another county?

16 A. St. Johns.

17 Q. So they are both located either in Duval or
18 St. Johns County?

19 A. Those two, yeah.

20 Q. What about estuaries that are going to be
21 adversely impacted by the proposed withdrawal. Where
22 would the estuary system be located?

23 A. Probably downstream of Palatka, St. Johns
24 River estuary.

25 Q. So it would be all of the St. Johns River

1 downstream of Palatka?

2 A. You could go all the way up to Lake George, I
3 suppose, the mouth of Lake George. The tidal portion
4 of the St. Johns.

5 Q. Is that the portion that is classically
6 identified as the St. Johns estuary?

7 A. Yes , the lower basin.

8 Q. So is the entire lower basin classified as an
9 estuary?

10 A. Yes.

11 Q. Do you know whether Lake George is considered
12 within the lower basin?

13 A. Not technically. But certainly it's looked at
14 quite intensively.

15 Q. But it's your understanding that technically
16 it's not within the lower basin; is that correct?

17 A. Yes.

18 Q. What fish species would be adversely impacted
19 by the proposed withdrawal?

20 A. Any of the estuarian species, red drum,
21 sheepshead, croaker, spotted sea trot, mullet, shad,
22 menhaden.

23 Q. How about any of the freshwater species?

24 A. Certainly.

25 Q. Which of those would be --

1 A. Bluegill, largemouth bass, cat, shad.

2 Q. Catfish? I've had scientists tell me you have
3 to beat them with a stick before you would --

4 A. I know they are tough. Not all effects are
5 lethal. There are a lot of sublethal effects.

6 Q. Has there been a documented diminishment in
7 the number of fish species in the St. Johns River as a
8 result of surface water withdrawals?

9 A. Not to my knowledge.

10 Q. How about species richness, has there been a
11 documented reduction in species richness of fish in the
12 St. Johns River?

13 A. Not to my knowledge.

14 Q. What other wildlife, besides fish, that you
15 believe will be adversely effected by Seminole County's
16 proposed withdrawal?

17 A. Shrimp -- white, brown shrimp, blue crab,
18 variety of invertebrate species, anthropoids, worms,
19 mollusk, habitat for Western Manatee, osprey, bald
20 eagle, species dependant on the resource.

21 Q. And the impact to these species would be from
22 adverse impact to the community that they require for
23 food?

24 A. Terrestrial species, aquatic species, there
25 will be more direct impact.

1 Q. If there was no change, measurable change, in
2 the communities or the aquatic life that these wildlife
3 species depend on, would there be any adverse impact to
4 these species from the withdrawal?

5 A. If there was no impact to the aquatic species,
6 would there be an impact to the terrestrial that are
7 dependant?

8 Q. Yes.

9 A. No.

10 Q. And the impact to the aquatic species would be
11 impacts that would affect the quality or water
12 chemistry in the river or affect the volume of water,
13 freshwater in the river?

14 A. Correct.

15 Q. And if there was no measurable change in water
16 quality or quantity in the river as a result of this
17 withdrawal would there be any adverse impact to the
18 aquatic species?

19 MR. FRAZIER: Objection to form.

20 BY THE DEPONENT:

21 A. Species of aquatic life are often used as
22 indicators of water quality. When the effects of the
23 chemistry side are immeasurable, they kind of serve as
24 little sentinels. So they may not be measurable on an
25 analytical level but they can be impacting, adverse

1 sense, the aquatic life. Often times a shift there
2 would be an indicator of impairment prior to any
3 measurable chemistry effect.

4 So I would defer to say I would look to the
5 aquatic life as an indicator, shifts. And they may not
6 always be presence or absence, diversity, would be some
7 lethal effects.

8 BY MR. DE LA PARTE:

9 Q. Are you aware that there are a number of
10 existing surface water withdrawals on the river?

11 A. Yes.

12 Q. Have there been any of these shifts in aquatic
13 life that you've seen that you believe are indicative
14 of the impacts to the existing surface water
15 withdrawals?

16 A. I'm not aware of any documentation.

17 Q. Let's look at (f). Do you know what the
18 quality of the waters will be at the location where the
19 proposed withdrawal will be made at the St. Johns
20 River?

21 A. Pretty dark according to the TSR. No, I don't
22 have any chemistry. I haven't researched the
23 chemistry. I didn't see alot of chemistry provided.

24 Q. Do you know what the salinity is going to be
25 of the water at the point of withdrawal?

1 A. It's probably below zero. Probably low low.

2 At the point of withdrawal?

3 Q. Uh-huh.

4 So it's your belief that the water quality at
5 the point of withdrawal will have a total dissolved
6 solids --

7 A. That's different than salinity.

8 Q. Well, total dissolved solids is a --

9 A. Right. okay, we're talking parts per
10 thousand. Typically, when I think salinity, I mean
11 parts per thousand. Total dissolved solids, I don't
12 know what the -- I don't know what the total dissolved
13 solid measures are for the area of withdrawal?

14 Q. Are you aware that there is a water quality
15 standard, Class III water quality standard for total
16 dissolved solids?

17 A. I don't know if there is a numerical criteria.

18 Q. How about a drinking water standard for total
19 dissolved solids?

20 A. I'm sure there is.

21 Q. Do you know what that is?

22 A. No, I don't.

23 Q. Do you know whether the groundwater in the
24 aquifer systems in and around the proposed Yankee Lake
25 site, what their water quality is?

1 A. No.

2 Q. Do you know whether the river water is of
3 higher quality or lesser quality than the surrounding
4 groundwater?

5 A. No.

6 Q. Are you aware of any sources of lower quality
7 water than the St. Johns River that Seminole County has
8 the ability to use in place of the withdrawal from the
9 river?

10 A. Other than the coastal, the ocean?

11 Q. Uh-huh.

12 A. No.

13 Q. Let me ask you to look at (g), whether the
14 proposed water use will utilize local water resources
15 to the greatest extent practicable. Is it your sworn
16 testimony that Seminole County's proposed water use
17 will not utilize local water resources to the greatest
18 extent practicable?

19 A. Yes.

20 Q. Let me ask you, first of all, is the St. Johns
21 River at the site of the proposed Yankee Lake plant a
22 local water resource for Seminole County?

23 A. It's a shared resource for the state within
24 their local jurisdictional boundaries.

25 Q. That would be the same for JEA in

1 Jacksonville?

2 A. Yes.

3 Q. What other local water resources, besides the
4 St. Johns River, would be available to Seminole County
5 to meet the need that is sought to be met by the
6 withdrawal?

7 MR. FRAZIER: Objection to form.

8 BY THE DEPONENT:

9 A. The potable source is either going to be the
10 coastal or the wellfield. I don't know, there's
11 something about combining four permits and I don't know
12 the details of that, whether there would be some more
13 gain on a groundwater side.

14 But the reuse, it would be the tradeoff of the
15 rapid infiltration application of the reuse. That
16 seems to be a local water source that is being used to
17 supplement the aquifer rather than used for reuse at
18 the expense of the river.

19 BY MR. DE LA PARTE:

20 Q. So the local water resources, if I've got this
21 right, are the groundwater that's available from
22 Seminole County wellfields, the water from the coast
23 and the reuse water. Is there any others?

24 A. I guess we're splitting hairs. The local
25 water resource, they are all waters of the state. I

1 don't know as far as ownership. I mean, you neglected
2 to mention -- I mean the coastal waters are certainly
3 no more Seminole's than the river.

4 Q. Why don't I ask it this way, you testified
5 that it's your sworn testimony that Seminole County's
6 proposed withdrawal is not going to utilize local water
7 resources to the greatest extent practicable. What you
8 did my mean by "local water resources"?

9 A. Reuse water not being thoroughly used to the
10 maximum extent feasible.

11 Q. Any other local water resources that you
12 define that Seminole County is not utilizing to the
13 greatest extent practicable?

14 A. In my mind, I'm thinking now that the
15 groundwater would be the local thing. Anything that is
16 connected to the river would be a shared resource. It
17 is the same with the coast.

18 Q. So for local resources, then, it would be
19 reuse and groundwater?

20 A. Correct.

21 Q. Have you made any evaluations yourself as to
22 whether there is additional reuse water available --
23 that's available as a replacement for the entire 5.5
24 mgd that the County is proposing to withdraw from the
25 River?

1 A. I have not done that.

2 Q. Would you agree, though, that the reuse water
3 would not be a replacement for the potable water
4 component?

5 A. Yes.

6 Q. Have you made an evaluation as to whether
7 there is groundwater resources available that are
8 sufficient to replace the potable water component?

9 A. No, I haven't.

10 Q. Let me ask you to turn to 41(1), still on page
11 12, bottom of page 12.

12 Is it your sworn testimony that the proposed
13 water use does not adequately predict the needs of
14 Seminole County and does not consider changing uses and
15 lands requiring water such as a change in agricultural
16 uses to less water consumptive residential uses?

17 A. Yes.

18 Q. Let me ask you to explain that last one to me.
19 What is it about Seminole County's -- what has Seminole
20 County not considered in terms of changing uses in land
21 requiring water, such as a change in agricultural uses
22 to less water consumptive residential uses?

23 A. I'm deferring to staff, other people from the
24 staff on that one. I don't have any personal knowledge
25 of that but just by their review of the documents.

1 Q. Which staff advised you that there are changes
2 in agricultural uses to less water consumptive
3 residential uses that Seminole County did not consider
4 in connection with this proposed withdrawal?

5 A. Gary Weise. Conservation, the lack of
6 improvement in the conservation in that table back
7 there, 140.

8 Q. Did he explain to you what is there about a
9 change in agricultural use to a less water consumptive
10 residential use that will make water available or
11 reduce water demands for Seminole County?

12 A. No.

13 Q. What evidence are you relying on that the
14 proposed water use does not adequately predict the
15 needs of Seminole County?

16 A. Staff.

17 Q. That would be Gary, again, correct?

18 A. Yes.

19 Q. Let me ask you to turn to paragraph 43.

20 Is it your sworn testimony that Seminole
21 County's average daily water use, 140 GPCD, is higher
22 than JEA's average 103 GPCD?

23 A. Yes.

24 Q. What was the evidence that you relied on for
25 concluding that Seminole County's average daily

1 household use is 140 GPCD?

2 A. Staff, again.

3 Q. What evidence are you relying on that JEA's
4 average daily household use is 103 GPCD?

5 A. I'm deferring to staff on that.

6 Q. That, again, would be Mr. Weise?

7 A. Yes.

8 Q. Let me ask you to turn to paragraph 45.

9 The first sentence says, Applicant is
10 currently proposing to consolidate four existing
11 consumptive use permits into a unified permit. Do you
12 see that?

13 A. Yes.

14 Q. Is it your sworn testimony that Seminole
15 County is in fact currently proposing to consolidate
16 four existing consumptive use permits into a unified
17 permit?

18 A. Yes.

19 Q. Have you personally reviewed those four
20 existing consumptive use permits?

21 A. No.

22 Q. Have you reviewed the consolidation
23 application that Seminole County has applied for this
24 unified permit?

25 A. No.

1 Q. Of your own personal knowledge are you aware
2 of the County's existing permits or any pending permit
3 applications it may have other than this permit?

4 A. No.

5 Q. Now, this paragraph goes on to say that the
6 consolidation of the four permits as discussed below
7 could result in additional water supply being made
8 available for use until the District can complete its
9 cumulative impact study identified above.

10 Is it your sworn testimony that the
11 consolidation of these four permits could result in
12 additional water supplies being made available for use
13 by Seminole County until the cumulative impact study is
14 completed?

15 A. Yes.

16 Q. How would the consolidation of those four
17 permits make more water available to Seminole County?

18 A. I don't know.

19 Q. Something, again, that Mr. Weise provided you
20 information on?

21 A. Right.

22 Q. Did he explain to you how the consolidation of
23 these permits makes more water available?

24 A. No.

25 Q. Let me ask you to turn to paragraph 48.

1 It says, the proposed permit conditions
2 identified in the Technical Staff Report, including
3 Other Condition 13, do not specifically address
4 potential aquatic impacts.

5 Do you see that?

6 A. Yes.

7 Q. If you turn to Exhibit Number 7, to Other
8 Condition 13, it says, the permittee's consumptive use
9 shall not adversely impact wetlands, lakes, rivers and
10 stream flows or cause or contribute to the violation of
11 minimum flows and level.

12 Do you see that?

13 A. Yes.

14 Q. Is the problem that you've identified with
15 Condition No. 13 is that it does not specifically
16 reference aquatic impacts in addition to wetlands,
17 lakes, rivers and stream flows?

18 A. Yes.

19 Q. If this condition were amended to include
20 aquatic impacts, would you still have the concern that
21 you expressed in paragraph 48 regarding this condition?

22 A. Yes.

23 Q. What continued problems would you have with
24 Condition No. 13 if you were to add the words aquatic
25 impact to the condition?

1 A. It would be along the lines of specific
2 regimes. Conditions do not cover the potential
3 extremes of drought scenarios, flow reversals.
4 Protective in all different possible or previously
5 experienced flow regimes.

6 Q. And so that would be high flows, low flows and
7 then flows in between?

8 A. And reverse flows.

9 Q. Uh-huh.

10 A. Yes.

11 Q. Now, Condition 13 also references not cause or
12 contribute to a violation of minimum flows and level
13 adopted in Chapter 40C-8. Are you familiar with the
14 minimum flows that have been adopted in the river
15 downstream of this site and upstream of this site?

16 A. No.

17 Q. Have you ever reviewed minimum flows adopted
18 by the District?

19 A. No.

20 Q. If I asked you to assume that those minimum
21 flows adopted by the District have high flow regimes,
22 middle flow regimes, low flow regimes and reverse flows
23 as well, would this requirement here that the
24 withdrawals not cause or contribute to a violation of
25 minimum flows satisfy that concern that you just

1 expressed?

2 MR. FRAZIER: Object to form.

3 BY THE DEPONENT:

4 A. I'm not sure that the minimum flows and levels
5 are protective of the resource to the extent that I
6 would not object to.

7 BY MR. DE LA PARTE:

8 Q. Have you evaluated, technically evaluated the
9 minimum flows and levels to see whether they are in
10 fact protective of the resource?

11 A. No.

12 Q. Have you conducted any analysis or study to
13 see how protective of the water resource their minimum
14 flows and levels are?

15 A. No, I have not conducted a study.

16 Q. Are you aware that minimum flows and levels
17 were adopted by the District as rules in their
18 regulations?

19 A. Yes.

20 Q. Did your office or you personally ever provide
21 comment or input to the District when it was adopting
22 minimum flows in the St. Johns River?

23 A. No, not to my knowledge.

24 Q. So on what basis do you conclude that the
25 minimum flows adopted by the St. Johns River Water

1 Management District are not sufficiently protective of
2 the river?

3 A. The fact that they are referenced in the TSR
4 and I believe that the scenario that's proposed in this
5 specific request, this withdrawal, if allowed by the
6 minimum flows and levels, it would be an indication
7 that they are not protective enough.

8 Q. So you're saying that in order for the minimum
9 flows and levels to meet your standard of sufficient
10 protectiveness, then the withdrawal in question -- they
11 should not allow any withdrawal from the river that
12 would cause injury or impairment of the water
13 resources?

14 MR. FRAZIER: Objection to form.

15 BY THE DEPONENT:

16 A. Cumulative assessment of the withdrawals --
17 potential withdrawals, the permitted withdrawals that
18 are existing from the river at that time. There's not
19 been a cumulative study of those withdrawals and so.

20 BY MR. DE LA PARTE:

21 Q. Have you reviewed the studies that the
22 District has done to set the minimum flows in the
23 river?

24 A. I've reviewed the proposed work that is being
25 done to address the current scenario. They are

1 addressing those things. I have not reviewed the
2 studies that were used to set the previous minimum
3 flows and levels.

4 Just by the fact that these studies need to be
5 conducted, in my mind, is implying that they have yet
6 to be conducted adequate to meet the District's own
7 needs by the staff that they're requesting this type of
8 work to be done.

9 Q. But you don't know whether the District, in
10 past studies, specifically looked at cumulative impacts
11 of existing and potential future withdrawals when
12 establishing the minimum flows in the river, have you?

13 A. I have no personal knowledge of that, no.

14 Q. But it's your testimony that you're not
15 familiar with the minimum flows and levels?

16 A. Correct.

17 Q. Let me ask you to turn to paragraph 56.

18 Paragraph 56 says, the City disputes the
19 District's finding that the proposed use will not cause
20 the rate of flow of a surface water course to be
21 lowered below a minimum flow which has been established
22 pursuant to Section 373.43, subsection 1, or Rule
23 40C-8.031.

24 Is it your sworn testimony that Seminole
25 County's proposed use will cause the rate of flow of a

1 surface water course to be lowered below a minimum flow
2 which has been established pursuant to that statute and
3 rule?

4 A. It hasn't been adequately answered that it
5 won't.

6 Q. I understand. But I'm asking whether it's
7 your sworn testimony that the proposed use will
8 cause -- I'm trying to find out if that's your sworn
9 testimony, that it will cause the flow of a surface
10 water course to be lowered below minimum flow which has
11 been established pursuant to these rules?

12 A. Deferring to staff that I've agreed with, yes.

13 Q. But you, yourself, are not familiar with the
14 minimum flows and levels themselves?

15 A. Exactly.

16 Q. And since you, personally, are not familiar
17 with the minimum flows and levels yourself, you
18 personally do not know whether this proposed withdrawal
19 would cause a rate of flow of a surface water course to
20 be lowered below the established minimum flows?

21 A. Not below the established flows, no.

22 Q. And who on your staff specifically indicated
23 to you that Seminole County's proposed withdrawal would
24 in fact cause the rate of flow of a surface water
25 course to be lowered below a minimum flow which has

1 been established pursuant to these statutes and rules?

2 A. I'm operating under the assumption somebody
3 provided this to the staff that prepared the document.
4 I don't know specifically which one. I have not had
5 those discussions with any one of the staff members. I
6 wouldn't know which one of the staff provided this
7 information for counsel.

8 Q. I understand. But you're the one that signed
9 the affidavit. Did anyone provide you information that
10 you relied on to sign that affidavit regarding whether
11 or not this proposed withdrawal would meet the minimum
12 flow?

13 A. No.

14 Q. Let me ask you, No. 57, is it your sworn
15 testimony that the District's finding that the proposed
16 use will not cause the water level of a surface water
17 to be lowered below a minimum level which has been
18 established pursuant to Section 373.042 or Rule
19 40C-8.031?

20 A. Yes.

21 Q. And are you familiar with the minimum flows
22 and levels which which have been established in
23 40C-8.031?

24 A. Is that the procedure for setting the minimum
25 flows or is that the actual rule that adopts the

1 minimum flowS specifically by position in the river?

2 Q. I think actually adopt it by position in the
3 river.

4 A. Okay.

5 Q. But in this case, though, we're referring to
6 the level of surface water. Previously, we were
7 referring to a minimum flow that was established. In
8 this one, we're referring to a water level of a surface
9 water, so we referring to a level that has been
10 established.

11 A. Right, levels and flows.

12 Q. Are you familiar with the levels of surface
13 water that have been established by the District?

14 A. No.

15 Q. So are you able, of your own personal
16 knowledge, to state that the proposed use will cause
17 the water level of a surface water to be lowered below
18 the minimum level which has been established pursuant
19 to the statute or this particular rule?

20 A. Of my personal knowledge, no.

21 Q. Has anyone on staff provided you information
22 indicating that Seminole County's proposed withdrawal
23 would cause the water level of a surface water to be
24 lowered below a minimum level established?

25 A. No.

1 Q. Let's go back to paragraph 50. Paragraph 50
2 says, the Technical Staff Report does not indicate any
3 existing or future plans to use stormwater
4 irrigation. It is reasonable to expect there are
5 numerous opportunities to utilize this source.

6 Is it your sworn testimony that Seminole
7 County has numerous opportunities to use stormwater
8 irrigation in lieu of the proposed withdrawal from the
9 St. Johns River?

10 A. Yes.

11 Q. Can Seminole County utilize stormwater as a
12 replacement for the potable water component of its
13 requested allocation?

14 A. People drink rainwater, don't they?

15 Q. Do you let your citizens drink water from your
16 stormwater sewer systems?

17 A. I could create a scenario and treat it like
18 the river water for certain land use. But no, in
19 general.

20 Q. Okay. Do you know what opportunities Seminole
21 County has to utilize stormwater as a replacement for
22 the reuse water component of its proposed allocation?

23 A. It would be just through the increased
24 impervious surface and the stormwater retention ponds
25 and utilization of those waterbodies for irrigation

1 purposes.

2 Q. Have you or your staff conducted any
3 evaluation of the stormwater ponds that are currently
4 in existence to see whether or not there would be
5 adequate quantities of stormwater available as a
6 replacement for the supplemental water?

7 A. No.

8 Q. Are you familiar with stormwater ponds?

9 A. Somewhat.

10 Q. Is it your understanding that the water level
11 in stormwater ponds will fluctuate depending on
12 rainfall?

13 A. Yes.

14 Q. During droughts, for example, there's not a
15 lot of water in stormwater ponds; is that correct?

16 A. Correct, less water.

17 Q. And if the water that Seminole County is
18 seeking to withdraw from the St. Johns River is
19 intended to supplement its reuse system, would
20 stormwater be available to supplement the reuse system
21 during those portions of the year when there's drought
22 or when it is the dry season?

23 A. It's a less reliable source.

24 Q. Have you done any analysis to determine
25 whether it's in fact an available source?

1 A. I have not done any analysis.

2 Q. Do you need to take a break?

3 A. No, I'm good.

4 Q. Let me ask you to turn to paragraph 53. The
5 City disputes the District's finding that the
6 consumptive use will not contribute to a violation of
7 state water quality standards and receiving waters of
8 the state that is set forth in a variety of DEP
9 regulations. Do you see that?

10 A. Yes.

11 Q. What are the receiving waters of the state for
12 the purposes of this consumptive use permit
13 withdrawal?

14 A. The St. Johns River.

15 Q. Are you familiar with the Department of
16 Environmental Protection's water quality rules?

17 A. Pretty familiar.

18 Q. Under the Department of Environmental
19 Protection's water quality rules, aren't receiving
20 waters usually defined as waters that receive pollutant
21 discharges?

22 A. Right.

23 Q. Are there any pollutant discharges associated
24 with this particular withdrawal?

25 A. No, not associated with this withdrawal.

1 Q. If receiving waters in this context were
2 given the definition used in the DEP standards, would
3 there be any receiving waters in connection with this
4 permitted withdrawal?

5 MR. FRAZIER: Object to form.

6 BY THE DEPONENT:

7 A. Receiving waters wouldn't be defined by this
8 permit, but they would still be receiving waters for
9 other permitted discharges.

10 BY MR. DE LA PARTE:

11 Q. So the receiving waters that you're looking at
12 in this paragraph are not receiving waters for this
13 permit but receiving waters that are occurring at other
14 locations in the river where there's actual pollutant
15 discharges?

16 A. Correct.

17 Q. And that's the context in which you were using
18 or swearing to the term "receiving waters" in this
19 paragraph?

20 A. Correct.

21 Q. What specific water quality standards do you
22 believe this withdrawal are going to cause violations
23 of in those receiving waters?

24 A. Biological integrity, potential for dissolved
25 oxygen violations, potential for the narrative nutrient

1 standards to be impacted. We've got a numerical
2 criteria now downstream in Jacksonville, nutrients.

3 Q. What is the nutrient standard downstream in
4 Jacksonville?

5 A. It's based on dissolved oxygen. Upstream,
6 we've got Chlorophyll A. In the fresher parts, in
7 Palatka and down there, we've got dissolved oxygen
8 standards for the nutrient load.

9 Any of the contaminants we find in there. It
10 could be heavy metals, lead, zinc, copper, iron,
11 stormwater runoff.

12 Q. So all of those? So all the water quality
13 standards listed in these rules are ones that this
14 withdrawal are going to cause or contribute to
15 violations of?

16 A. As the receiving waters are diminished and the
17 ability to assimilate the pollutants that are
18 discharged in the river, yes.

19 Q. Are there state water quality standards in
20 these receiving waters that are now currently being
21 violated?

22 A. Yes.

23 Q. And have you determined whether this
24 withdrawal would be sufficient to tip those discharges
25 to a point that they go from not violating those water

1 quality standards to violating those water quality
2 standards?

3 A. No, I haven't.

4 Q. Are there areas or locations in the receiving
5 waters where discharges are causing violations of state
6 water quality standards?

7 A. Yes.

8 Q. Where are those located?

9 A. I can name Jacksonville right off the bat.
10 They've got fecal chloroform water quality violations
11 in numerous tributaries. They are listed as impaired
12 for nutrients. We've got nutrient discharges here.
13 I'm aware of sporadic heavy metal violations in Duval
14 County.

15 Q. Any other specific violations besides the ones
16 you've identified in Duval County?

17 A. No.

18 Q. How about any existing violations in Seminole
19 County, are you aware of any?

20 A. I'm not aware of any violations in Seminole
21 County.

22 Q. How about Lake County, any violations in Lake
23 County?

24 A. I've not looked to see if they're listed as
25 impaired.

1 Q. How about Volusia County?

2 A. No, I have not looked.

3 Q. So you're not aware of any violations of water
4 quality standards in the immediate downstream vicinity
5 of the proposed Yankee Lake site; is that correct?

6 A. Yeah.

7 Q. So can you say that the withdrawal of water
8 from the Yankee Lake site is going to cause a violation
9 of state water quality standards in Seminole County?

10 A. I can't say that it will.

11 Q. How about Volusia County?

12 A. I can't say it will.

13 Q. How about Lake County?

14 A. I can't say it will have an effect there, a
15 violation.

16 Q. Let me ask you to turn to paragraph 58. The
17 City disputes the District's finding that the proposed
18 surface water withdrawals will not cause the infrequent
19 high or frequent high surface water flows and levels to
20 occur less frequently or at lesser duration than stated
21 in Rule 40C-8.301, subsection 4, which I believe is the
22 minimum flows rule.

23 Is it your sworn testimony that the District's
24 finding that Seminole County's proposed surface water
25 withdrawals will not cause the infrequent high or

1 frequent high surface water flow levels to occur less
2 frequently or for a lesser duration than stated in the
3 rule that's cited in this paragraph?

4 A. Yes.

5 Q. And are you familiar with the infrequent high
6 and frequent high surface water flow regimes that are
7 adopted in the minimum flow rule for the various
8 locations where minimum flows have been adopted in the
9 river?

10 A. No, I'm not knowledgeable of them.

11 Q. So do you have personal knowledge as to
12 whether Seminole County's proposed withdrawal will
13 cause the infrequent high or frequent high surface
14 water flow established in the minimum flows to occur
15 less frequently or for a lesser duration?

16 A. I'm relying on staff's recommendation. I have
17 no specific information.

18 Q. Did anybody on staff specifically indicate to
19 you that this proposed withdrawal would cause the
20 infrequent high or frequent high surface water flow and
21 levels, as established in the minimum flow rule, to
22 occur less frequently or at lesser duration?

23 A. No.

24 Q. Let me ask you to turn to paragraph 63. It
25 says the total of all the individual withdrawals

1 upstream of this application, plus this application,
2 and any potential future increases in this facility
3 should be compared with the 155 minimum gallon a day
4 reported limit to maintain minimum flows and levels.

5 Do see that section?

6 A. Yes.

7 Q. Is the 155 million gallon a day limit that is
8 referenced in this paragraph the quantity of water that
9 St. Johns River Water Management District staff
10 believes could be withdrawn upstream of State Road 44
11 without causing a violation of the minimum flow and
12 level?

13 A. I believe it is. I can't recall specifically,
14 but the number looks familiar and I know they proposed
15 a number larger than the application was sustainable.

16 Q. Do you know whether staff, Water Management
17 District staff, in fact, compared all individual
18 withdrawals upstream of this application, plus this
19 application, to the 155 million gallon a day reported
20 limit to maintain minimum flows and levels?

21 A. I don't know that they didn't.

22 Q. Paragraph 64 refers to a Memorandum of
23 Agreement with the South Florida Water Management
24 District and local governments to build a surface water
25 withdrawal project in two phases.

1 What Memorandum of Agreement, specifically, is
2 this referring to?

3 A. I have no personal knowledge specifically of
4 this Memorandum of Agreement other than what is
5 referred to here in the document.

6 Q. Is this information that was provided to you
7 specifically by your colleagues at the City of
8 Jacksonville?

9 A. It was only provided to me in the form of this
10 petition.

11 Q. So at the time you signed the affidavit, you
12 did not ask to see the Memorandum of Agreement or
13 receive specific information regarding the details of
14 the Memorandum of Agreement beyond what has been
15 alleged in this petition?

16 A. That's correct.

17 Q. Let me ask you a few questions. Have you ever
18 testified in a court of law?

19 A. Yes.

20 Q. Have you ever testified at a formal
21 administrative hearing?

22 A. No, not at an administrative hearing.

23 Q. How many times have you testified in a court
24 of law?

25 A. I'm looking at Bruce. You know, we did Rona

1 Park. I don't know what that proceeding was.

2 Just once. It's only been once.

3 Q. So when you said "yes" to court proceeding,
4 you're referring to one proceeding then?

5 A. Yes.

6 Q. And did you testify in the forum where you
7 were put under oath and testified -- were you qualified
8 as an expert in that case?

9 A. Yes.

10 Q. And in what fields were you qualified as an
11 expert?

12 A. Water quality expert.

13 Q. Do you consider yourself an expert in water
14 quality?

15 A. By some.

16 Q. How about by yourself?

17 A. Sure.

18 Q. Do you consider yourself an expert in
19 hydrology?

20 A. No.

21 Q. That would be both surface water hydrology
22 and --

23 A. Groundwater.

24 Q. -- groundwater hydrology?

25 A. No.

1 Q. Do you consider yourself an expert in
2 engineering?

3 A. No.

4 Q. And you're not a professional engineer, are
5 you?

6 A. No.

7 Q. Have you ever been involved in the operation
8 or management of a potable water utility?

9 A. No.

10 Q. Do you consider yourself an expert in water
11 demand projections or conservation methodologies for
12 potable water utilities?

13 A. No.

14 Q. Have you ever been involved in the design or
15 development of a reclaim water reuse system?

16 A. No.

17 Q. Have you ever done a reuse master plan?

18 A. No.

19 Q. Do you consider yourself an expert on reuse or
20 reuse master plans as they apply to potable water
21 utilities?

22 A. No.

23 Q. Do you consider yourself an expert in
24 consumptive use permits?

25 A. No.

1 MR. DE LA PARTE: Let's take a short
2 break. I think we're almost done.

3 (There was a recess.)

4 MR. DE LA PARTE: No further questions.

5 MR. SMITH: No question.

6 MR. FRAZIER: I have no questions.

7 MR. WRIGHT: No questions.

8 MR. FRAZIER: We're done.

9 He'll read.

10 (The deposition was CONCLUDED at 3:10 p.m.)

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S T I P U L A T I O N

It was hereby STIPULATED and agreed by and
between counsel present and the deponent, that the
reading and signing of this deposition by the deponent
IS NOT waived.

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CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, the undersigned authority, certify that
ROBERT DANA MORTON personally appeared before me and was
duly sworn.

Witness my hand and official seal this 31st day
of July, 2008.

Juanita Butler, Court Reporter
Notary Public, State of Florida
Commission No. DD 742125
Expires: December 21, 2011

1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA

3 COUNTY OF HILLSBOROUGH

4

5

6 I, JUANITA BUTLER, Court Reporter, certify that
7 I was authorized to and did stenographically report the
8 foregoing deposition; and that the transcript is a true
9 record of the testimony given by the witness.

10

11 I FURTHER CERTIFY that I am not a relative,
12 employee, attorney, or counsel of any of the parties, nor
13 am I a relative or employee of the parties' attorneys or
14 counsel connected with the action, nor am I financially
15 interested in the action.

16

17 Dated this 31st day of July, 2008.

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23 Juanita Butler, Court Reporter
24 Notary Public, State of Florida
Commission No. DD 742125
Expires: December 21, 2011

25

1 I HAVE READ THE FOREGOING TRANSCRIPTION OF MY
2 DEPOSITION AND EXCEPT FOR ANY CORRECTIONS AND/OR
3 AMENDMENTS APPENDED HERETO, I HEREBY SUBSCRIBE TO THE
4 TRANSCRIPT AS AN ACCURATE RECORD OF THE TESTIMONY GIVEN
5 BY ME.

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9 _____
ROBERT DANA MORTON

10 My hand and official seal this the _____ day of
11 _____, 2008.

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17 _____
Notary Public
18 State of _____ at Large
My Commission Expires:

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23 STYLE: ST. JOHNS vs SJRWMD & SEMINOLE CO
DEPONENT: ROBERT DANA MORTON
24 REPORTER: JUANITA BUTLER TAKEN: JULY 31, 2008

25

