

1           BEFORE THE ARIZONA CORPORATION COMMISSION  
2  
3       IN THE MATTER OF THE APPLICATION)  
      OF ICR WATER USERS ASSOCIATION, )  
4       INC., FOR A PERMANENT RATE       ) DOCKET NO.  
      INCREASE.                            ) W-02824A-07-0388  
5    )  
6    )  
7       \_\_\_\_\_ ) EVIDENTIARY HEARING  
  )

8  
9   At:           Phoenix, Arizona  
10   Date:         December 1, 2008  
11   Filed:        December 23, 2008

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14               REPORTER'S TRANSCRIPT OF PROCEEDINGS  
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23   By:   TERESE HEISIG  
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1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before the  
3 Arizona Corporation Commission, in Hearing Room 1 of  
4 said Commission, 1200 West Washington Street, Phoenix,  
5 Arizona, at 10:05 a.m. before TERESE HEISIG, Certified  
6 Reporter No. 50378 for the State of Arizona.

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8

9 BEFORE: KRISTIN K. MAYES, Commissioner  
10 MARC E. STERN, Administrative Law Judge

11

12

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22 For Dayne Taylor:

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7 TERESE M. HEISIG  
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9 Certificate No. 50378

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1 ALJ STERN: This hearing is now open in the  
2 matter of the application of ICR Water Users  
3 Association, Incorporated, for the determination of the  
4 current value of its utility plan and property for  
5 increases in its rates and charges for utility service.

6 My name is Marc Stern. I will preside over the  
7 proceeding today.

8 At this time, we will take appearances, and on  
9 behalf of the Applicant.

10 MR. CROCKETT: Good morning, Your Honor.  
11 Jeff Crockett with the law firm of Snell and Wilmer  
12 appearing on behalf of ACR Water Users Association, and  
13 with me today is Rob Metli, also with my firm.

14 ALJ STERN: All right. And we have, I think,  
15 the first intervenor to your right, okay. Go ahead.

16 MR. SHAPIRO: Good morning, Judge Stern.  
17 Jay Shapiro from Fennemore Craig on behalf of the  
18 intervenor Talking Rock Golf Club, L.L.C. With me at  
19 the table on behalf of my client is Mr. Craig Krumwiede,  
20 K-r-u-m-w-i-e-d-e.

21 ALJ STERN: And next intervenor.

22 MR. TAYLOR: Dane Taylor. Good morning, Your  
23 Honor. I'm an intervenor representing myself.

24 ALJ STERN: Okay.

25 MR. TAYLOR: And at the table with me is one of

1 my neighbors.

2 ALJ STERN: Your assistant, Dayne.

3 MR. TAYLOR: Jimmy Stoner, yes, sir.

4 ALJ STERN: And for the Commission Staff.

5 MR. TORREY: Your Honor, Kevin Torrey appearing  
6 on behalf of Commission Staff. With me is Mr. Charles  
7 Mylhusen and Mr. Jian Liu.

8 ALJ STERN: All right. Before we go further,  
9 we've had a couple of previous sessions, but I guess we  
10 have some public members here who would like to make  
11 public comment, so before you start, the podium in the  
12 middle is where you come to. State your name and your  
13 street address and relationship to the Company, and then  
14 you can say anything else you would like, whether you  
15 are in favor, not in favor, whatever. And, also, please  
16 indicate, when you state your address, whether you are  
17 in the Inscription Canyon Ranch Subdivision, the Talking  
18 Ranch -- Talking Rock Subdivision. I think there is  
19 another one also, I forget the name of. Whispering  
20 Canyon. Is there another one?

21 MR. TAYLOR: Preserve at the Ranch.

22 ALJ STERN: So we know which location you are  
23 coming from.

24 Frank Giordano, maybe.

25 MR. GIORDANO: Good morning. My name is

1 Frank Giordano. I live at 14724 North Holt Brothers  
2 Lane in Talking Rock. The Talking Rock Golf Club is  
3 sort of the lifeblood of the Talking Rock community.  
4 When my wife and I and many other neighbors bought at  
5 Talking Rock, it was because of the golf course. It was  
6 because of the look and feel of the community, the  
7 quality of that community, the style of development and  
8 the concern for the environment, including water  
9 conservation through landscape restrictions,  
10 requirements for native and indigenous plants, Building  
11 restrictions and requirements that support water  
12 conservation, the preservation of open space and natural  
13 lands, the use of effluent water for the course where  
14 possible, golf course watering.

15 Harvard continues to support their environmental  
16 policies today with reduction of water acreage on the  
17 golf course in 2008. In the last two years, even in the  
18 face of the worst of economic times, Harvard and the  
19 Talking Rock Golf Clubs have shown that their motives  
20 are not just profit-oriented, but have the best interest  
21 of the community in mind. The pending agreement between  
22 ICR Water Users and TRGC is also done in this spirit, I  
23 believe.

24 I'm also a member at the Anthem Golf and Country  
25 Club. Recent increases in water rates for us has hit us



1 in three different ways. Our home rates for water have  
2 gone up. The golf course expenses have gone  
3 astronomical, and homeowners dues for maintaining common  
4 areas have gone up tremendously. We are losing golf  
5 memberships and homeowners today because of those  
6 increases. Cost to the remaining members are going up  
7 to cover the gap created by those losses. This could  
8 happen eventually to the ICR water company and the  
9 customers they support if the Commission does not  
10 support the proposed agreement. ICR water company and  
11 the Talking Rock Homeowners Association need a  
12 partnership of the Talking Rock Golf Club, not an  
13 adversarial relationship. The pending agreement  
14 represents a well thought out compromise, I believe. I  
15 urge you to support and approve this settlement  
16 agreement as presented. Thank you.

17 ALJ STERN: Okay. Greg Borehert.

18 MR. BOREHERT: Good morning. Greg Borehert,  
19 11950 West Wild Bunch Way, that is in Talking Rock. And  
20 I also would say I support the ICR Water Users  
21 Association, their proposal, as has been set forth. I'm  
22 a new member of Talking Rock, and I've seen all the  
23 advantages of the community, also the spirit of having  
24 the water reduction that they've done to the golf  
25 course. It is well designed. As we said, the native

1 plantings also is in the same spirit of water reduction,  
2 so I think Talking Rock has put up a comprehensive plan  
3 which we support, and that is what I'm here this morning  
4 for, to show my support.

5 ALJ STERN: Thank you. Lani Beach.

6 MR. BEACH: Good morning. It is actually Lani,  
7 L-a-n-i. But everybody makes that mistake, including my  
8 parents. So 11910 Wild Bunch Way, Greg's neighbor in  
9 Talking Rock. My wife and I started our search for  
10 where to reside when we left the north and the snow in  
11 2000, and in 2001, we came to Prescott. We eventually  
12 walked into the Talking Rock real estate office, and had  
13 three questions: Who is Harvard; what about the  
14 long-term water supply; and what kind of restrictions  
15 will exist in this community that we are looking at?

16 The Harvard research was pretty easy. At that  
17 point, they were 95-plus years old with an outstanding  
18 reputation, and what we learned at the time and have  
19 learned to be true since then personally is they do what  
20 they say they are going to do.

21 The second subject was water research. That was  
22 a little more difficult, because there isn't quite as  
23 much science around there. There is a certain amount of  
24 science and a certain amount of mythology. We were  
25 assured there is a 100-plus year aquifer that Harvard

1 was in the process at that point of already investing in  
2 the infrastructure, would be participating in a water  
3 board to include residents from Inscription Canyon and  
4 Whispering Rock -- or Whispering Canyon, whatever it is.  
5 Now, that was information in 2001, and everything we've  
6 learned since then, while it has been confused by a few  
7 people, has been that Harvard Talking Rock has continued  
8 to live up to their end of those agreements.

9 We also understood, because it was a concern to  
10 us, that to build out or at a certain amount of critical  
11 mass in Talking Rock, that the golf course water would  
12 be 100 percent effluent. So the quicker we can reach  
13 critical mass, the better for all parties concerned.

14 And the last thing, what kind of restrictions  
15 would exist in the community? And we found those  
16 restrictions to be lengthy, but every one of them very  
17 sensible. And they included the type of products to be  
18 used or materials to be used on construction, water  
19 savings technologies, and the use of native plants, and  
20 essentially, a great deal of respect for the  
21 environment, the native environment. And I'm here also  
22 to support the recommendations.

23 ALJ STERN: Okay. Thank you. The next name I  
24 have is Bill Meyer, I believe.

25 MR. MEYER: Good morning, Your Honor. My name

1 is Bill Meyer. I live at 13709 Fork Trail in  
2 Inscription Canyon Ranch, and I'm a member of the ICR  
3 Water Users Association. I believe that I should also  
4 state that I'm a member of the Association's board of  
5 directors serving as its secretary/treasurer for the  
6 last two years. My comments at this time represent only  
7 my opinion, however, and are not those of the board.

8 I am not in favor of the water services  
9 agreement submitted by the Company, and I'm requesting  
10 that the Commission deny approval of this agreement. I  
11 believe that the agreement submitted on September 12th,  
12 2008, is fatally flawed. I agree with the  
13 November 14th, 2008, direct testimony of Mr. Charles  
14 Mylhousen, wherein he states that the agreement takes  
15 the Commission out of regulating the Company as to  
16 conditions of service for Talking Rock Golf and the  
17 charges for the water sold to Talking Rock Golf. This  
18 is not in the public interest.

19 I believe that only the Commission should  
20 establish the rates that the Company charges for water  
21 utility services and that the Company should be allowed  
22 to function without constraints imposed by the Talking  
23 Rock parties. This would include the Company's right to  
24 ask for a rate increase whenever the financial  
25 conditions require such a request.

1 I believe the Talking Rock parties exert too  
2 much influence over the Company with regard to the cost  
3 that they pay for the water utility service, and the  
4 water service agreement continues this influence,  
5 providing the Talking Rock parties a principal role in  
6 setting their own rates.

7 I believe that the ability of the Talking Rock  
8 parties to exert influence on the Company comes largely  
9 from the well agreement, a document signed by ICR Water  
10 Users Association and two of the Talking Rock parties  
11 approximately 13 months after Decision 64360.

12 Although this document was not approved by the  
13 Commission, it and only it is used by the Company to  
14 determine Talking Rock Golf's cost for the water service  
15 that ICR provides to Talking Rock Golf. This is true  
16 despite the fact that the Main Extension Agreement that  
17 was approved by the Commission requires the Company to  
18 provide water utility service to the golf course  
19 consistent with the rules and regulations of the  
20 Commission, including Commission-approved tariffs.

21 It should be understood that the Company  
22 provides water utility service to Talking Rock Golf on a  
23 daily basis for much of the year. This results from the  
24 fact that regardless of which well is being pumped in  
25 the Talking Rock well field, it is not possible for the

1 golf course to receive groundwater without the water  
2 going through ICR's infrastructure.

3           The influence that the Well Agreement exerts  
4 over the Company can be seen from the November 21st,  
5 2008, testimony of the Company's manager, Mr. Robert  
6 Busch. Responding to Mr. Mylhausen's conclusion that  
7 Well 1 should be transferred to the Company, Mr. Busch  
8 states, and I quote, if Staff's recommendation is  
9 approved and the Talking Rock parties do not agree to  
10 transfer Production Well 1, ICRWUA is left in the  
11 untenable position to decide whether to breach the Well  
12 Agreement and only provide water to Talking Rock Golf at  
13 a Commission-approved tariff or not comply with the  
14 Commission decision and charge Talking Rock Golf the  
15 wheeling rate for water delivered from Production Well 1  
16 as provided by the Well Agreement. Either way, ICR  
17 Water Users Association loses, end of quote.

18           I do not agree with the concern expressed by  
19 Mr. Busch as to what course the Company should follow.  
20 I do not believe there should be any question in the  
21 Company's mind in this regard. The Company is under the  
22 jurisdiction of the Arizona Corporation Commission and  
23 it must follow the rules and regulations of the  
24 Commission. The Company cannot be ruled by an agreement  
25 that sets the cost for ICR's water service that is not

1 approved by the -- the Corporation Commission.

2 With regard to the issue of Well 1 transfer, I  
3 also support Mr. Mylousen's conclusions that Well 1  
4 should be transferred to the Company and the land  
5 associated with all three wells in the Talking Rock well  
6 field should be transferred and deeded to ICR.

7 It is my opinion that both of these steps are  
8 necessary to bring the Company into compliance with  
9 Decision 64360.

10 Transfer of the land would remove the improper  
11 constraints that were put on the Company with regard to  
12 the amount of water it can withdraw from Wells 2 and 3  
13 and would also assure the Company that the same improper  
14 constraints were not placed on Well 1.

15 Finally, ownership of all three wells and the  
16 land they are located on would assure priority of  
17 service for residential customers.

18 In closing, it is my hope that the Commission  
19 will render a decision in this case that, one, settles  
20 the issue of well and landowner relative to Decision  
21 64360.

22 Two, reasserts Commission control over rates for  
23 water utility service provided by the Company to all  
24 that receive the service.

25 And, three, permanently removes the influence

1 that the Talking Rock parties have over the rates they  
2 are charged by the Company. To do this, I think it can  
3 only be accomplished by allowing the Commission to  
4 decide the major issues in this case. Accepting the WSA  
5 as submitted on September 12th, 2008, or any subsequent  
6 revisions to it, only continues the status quo.

7 That concludes my testimony. Thank you.

8 ALJ STERN: Okay. Thank you.

9 We have next -- you were Mr. Meyer; right?

10 MR. MEYER: Yes.

11 ALJ STERN: Okay. Jerome Reid.

12 MR. REID: Good morning, Judge Stern. My name  
13 is Jerome Reid. I live at 13755 North Standing Bear  
14 Trail, Inscription Canyon Ranch, and I've lived there  
15 since 2004.

16 Through my service on the board of the ICR  
17 Sanitary District, which has an identical service area  
18 to the water community, and having closely followed the  
19 water company since 2004, I am very familiar with  
20 Harvard Investment's approach to managing the projects.  
21 Harvard investment sees government entities like the  
22 sanitary district board and private corporations like  
23 this water company as mere bumps in the road to be  
24 ignored, circumvented, or controlled in order to achieve  
25 their investment objectives. We have witnessed that



1 attitude in this case with Harvard's purported  
2 compliance with Decision 64360. The LOU of June and now  
3 the water service agreement and a first amendment filed  
4 this morning.

5 I have had the privilege to work with boards of  
6 public companies, lawyers, and accountants all over the  
7 world, and I have to say, the behavior of the water  
8 company board of directors, their lawyers and the  
9 lawyers representing Harvard has been disgraceful. The  
10 board's conduct in this case has placed a clear priority  
11 on Harvard's Investment and left the resident owners to  
12 fight for fair and equitable treatment against the  
13 juggernaut of unpleasant, disingenuous, and manipulative  
14 board members and lawyers.

15 Based on my discussions with neighbors of the  
16 Inscription Canyon Ranch and Whispering Canyon, I  
17 believe my comments reflect the frustration, anger, and  
18 disappointment felt by many towards the gross  
19 mismanagement of our water company and by this board of  
20 directors. An example of their poor performance is the  
21 status of financial statements of the Company.

22 A recent audit by a local CPA resulted in a  
23 recommendation to the Board that an approximate  
24 \$4 million understatement of fixed assets on the balance  
25 sheet be restated to reflect the correct number. In

1 addition, the Board -- as another example of poor  
2 performance, the Board and Harvard entered into  
3 agreements that contravene the Main Extension Agreement  
4 requirement that asset transfers be advances, and the  
5 agreements entered into by Harvard and the Board state  
6 that asset transfers be characterized as 70 percent  
7 contributions and 30 percent advances.

8           This board of directors has violated the Company  
9 bylaws by usurping the responsibilities of the Board's  
10 secretary and treasurer. The most recent example of  
11 this was when Hugh Prior, Board member and Company  
12 president, alone, signed the Water Service Agreement,  
13 accepted a \$30,000 payment by Harvard for signing the  
14 Water Service Agreement, and authorized a payment to  
15 Snell and Wilmer of \$60,000 against outstanding legal  
16 fees.

17           ALJ STERN: Excuse me, who was it that received  
18 the \$30,000 payment?

19           MR. REID: Well, I believe it was actually  
20 received by the Board member Mr. Prior.

21           ALJ STERN: But I mean, was it for the Board or  
22 for him individually?

23           MR. REID: I don't know. I assume that it was  
24 to be paid to the water company.

25           ALJ STERN: Oh, okay, for whatever.

1           MR. REID: I didn't mean to suggest that he  
2 personally accepted that and put it into his bank  
3 account.

4           ALJ STERN: Okay.

5           MR. REID: The Board, prior to the \$60,000  
6 payment, the Board had adopted a payment of paying Snell  
7 and Miller \$5,000 a month against outstanding legal  
8 fees. All of this that I described was done without the  
9 knowledge of the secretary/treasurer in violation of the  
10 Company bylaws.

11           As a final example of this Board's egregious  
12 conduct, several resident/owners of the Company,  
13 including me, requested in writing an opportunity to  
14 inspect and copy Company records that are required to be  
15 kept by Arizona statute. The Board failed to comply  
16 with our information request. One item that was  
17 specifically requested was a copy of Mr. Bourassa's 2006  
18 Cost of Service Study and, specifically, the backup  
19 schedules that would explain exactly how he arrived at  
20 his conclusions and what assumptions he was making. The  
21 Board responded that they did not have the backup  
22 schedules. Like the Company's incorrect financial  
23 statement representation of assets and depreciation,  
24 Mr. Bourassa's study is flawed in that respect and  
25 possibly others. Mr. Bourassa never met with anyone in

1 our community to explain in detail how he produced his  
2 study.

3 I would also like to take this opportunity to  
4 address Harvard's November 14th filing on the Arizona  
5 water law. I think that was actually filed by  
6 Mr. Shapiro on behalf of the golf course. From that  
7 brief, I learned that the Arizona water law was enacted  
8 in 1980 and that the standard for use of groundwater  
9 outside an active management area is reasonable and  
10 beneficial use. The Supreme Court of Arizona -- in  
11 *Bristor v. Cheatham*, the Arizona Supreme Court said what  
12 is reasonable -- what is a reasonable use must, to an  
13 extent, depend upon many factors, such as the persons  
14 involved, the nature of their use and all the facts and  
15 circumstances pertinent to the issue. Since 1980,  
16 Arizona's population has increased more than  
17 200 percent, from 2.7 million to about 6.2 million. The  
18 population of the Yavapai County, since 1980, has  
19 increased by a factor of more than three from about  
20 68,000 to about 210,000. So you have to ask, what is  
21 reasonable in the context of supply and demand? It is  
22 clear that the population has increased dramatically,  
23 both in the state and the county, since 1980. But the  
24 water supply, I believe, has probably remained static,  
25 if not been reduced, as a result of drought conditions.

1           Then the question has to be asked, beneficial to  
2 whom? It has been stated in testimony -- I think  
3 Mr. Krumwiede indicated the golf course or golf club has  
4 approximately 500 members. If you take the 130 million  
5 gallons of groundwater a year that is put on that golf  
6 course, that comes out to approximately 260,000 gallons  
7 per member per year, and I have to ask, is that  
8 reasonable? And is that a beneficial use beyond those  
9 500 members?

10           And in addition, the golf course says it is not  
11 a customer, but the facts are to the contrary. In the  
12 Main Extension Agreement, Harvard made it clear that  
13 they did not intend to be a customer and would provide  
14 their own water and would not become a customer until  
15 they made a written request for water utility services.  
16 It is clear that the water company is providing water  
17 utility services to Talking Rock Golf Club and the fact  
18 that they have not submitted a written request to me is  
19 a formality. I would ask, when they begin receiving  
20 these water utility services, did they protest the  
21 receipt of those services on the grounds that they did  
22 not submit a written request before.

23           I find it incomprehensible that the rate case  
24 process apparently fails to hold accountable the  
25 individuals responsible for this unnecessarily lengthy

1 and expensive ordeal, and that would be the Board  
2 members.

3 I was going to ask if any of them are here  
4 today, and I have recognized that there are three.

5 I would like to express my appreciation to the  
6 Staff, Judge Stern, and the Commission for their  
7 considerable effort and deliberations in this case. I  
8 sincerely hope a fair and equitable solution can be  
9 identified to resolve the open issues. I'm opposed to  
10 the Water Service Agreement that has been filed, and I  
11 would like to think that Judge Stern, Staff, and the  
12 Commission can come up with a reasonable solution.  
13 Thank you.

14 ALJ STERN: Thank you.

15 Marless Taylor.

16 MS. TAYLOR: Some of what I prepared has already  
17 been presented, but I can't rewrite it.

18 ALJ STERN: That is okay. Could you please --

19 MS. TAYLOR: I will say who I am.

20 ALJ STERN: Wait, wait. I need you -- I don't  
21 know whether the court reporter has your first name,  
22 so...

23 MS. TAYLOR: She does, because I gave it to her.

24 ALJ STERN: Okay.

25 MS. TAYLOR: I'm Marless Taylor. I live at

1 13868 North Gray Bears Trail in Inscription Canyon  
2 Ranch. Hold on one second.

3 Dayne Taylor, who is an intervenor in this case,  
4 is my husband. And, briefly, I would like to tell how  
5 Dayne got involved in this case in the first place. He  
6 and Skip Reid from our neighborhood had learned that  
7 Arizona Public Service was going to put a 69kV line  
8 above-ground and across the land of our development,  
9 Inscription Canyon Ranch. That matter was settled  
10 agreeably to all parties without going to court, thanks  
11 to the assistance of one of the Commissioners who was  
12 also involved with the case. As a result, everything  
13 was put underground.

14 I mention this because in that process, Dayne  
15 related to the Commissioner his concerns over the water  
16 usage on the Talking Rock Golf Course, not just the fact  
17 they use an excessive amount of their expense grass,  
18 which, by the way, is apparently a high-water-usage  
19 grass. Dayne asked the Commissioner if it was possible  
20 for him to do some good by getting involved in this  
21 matter, and the response was, It's people like you that  
22 have turned things like this around.

23 Well, Dayne got involved, for sure, and we  
24 neither one realized to what extent that would be, but  
25 we are not sorry for any of it, no matter which way this

1 goes. We both have put a lot of time and effort into  
2 it, but Dayne's far surpasses mine. Dayne has also had  
3 much support by a few wonderful and capable neighbors.

4 We are both patently aware of the fact that  
5 Dayne is not a lawyer, but he has diligently applied  
6 himself to learning about each step he needs to take.  
7 He hasn't always done everything exactly right, learning  
8 that after the fact, but he kept on, not giving up,  
9 despite being ridiculed by some of the lawyers that are  
10 involved.

11 I have formed some opinions as things have  
12 progressed, and one thing that puzzles me concerns  
13 finances. Dayne has been accused of distorting the  
14 numbers, but Dayne has used numbers that he has been  
15 supplied by the ICR Water Users. The water board  
16 manager has admitted that many of the figures Dayne has  
17 asked for are not available. What has become apparent  
18 is that the numbers are a moving target, and no one  
19 seems to know where the target is from day to day.

20 So Dayne has had to try to sift through the many  
21 conflicting reports in trying to make his conclusions.  
22 What has been interesting in the allegations Dayne has  
23 received in trying to discredit his numbers is that  
24 general statements are used, but nothing ever appears to  
25 substantiate them.



1           Now, as a second point on finances, Mr. Bourassa  
2 is presented as an expert in the financial types of  
3 reports he has been asked to prepare, and maybe that is  
4 true, but so far, Dayne has received three reports from  
5 Mr. Bourassa, and they give conflicting figures. I  
6 guess the third report is the one we are to accept as  
7 the accurate one, but where these numbers, or for that  
8 matter the numbers on the first two reports, come from  
9 has never been made clear, at least not to us. All the  
10 financial matters have been most confusing.

11           And a third and final point regarding finances,  
12 ICR Water Users received the audit report from their  
13 CPA, and the results revealed assets that are to be  
14 accepted, but it also showed additional in-service  
15 assets, more than what was reported earlier. The CPA's  
16 recommendation after the audit was for the ICR Water  
17 Users to resubmit their 2007 income taxes filing because  
18 of its inaccuracy. So, Dayne isn't the only one having  
19 problems with the numbers given to him.

20           At the second or two public meetings, there was  
21 a small group from those who consider themselves the  
22 opposition who said derogatory things about the efforts  
23 not only of Dayne but of the neighbors who have leant  
24 him much valued assistance. Several of these  
25 antagonists kept repeating, Get a life. I, as one who

1 knows, would like to say that, yes, Dayne's and my life  
2 through this effort has been greatly taken up with ICR  
3 Water Users. But let me also say, again, that we have  
4 no regrets for Dayne's getting involved. The inequity  
5 would have continued, and may even still, but Dayne and  
6 I are always going to be glad that he gave it his best  
7 effort.

8 I hope from what I've said that you can  
9 understand the heart Dayne has for doing right by the  
10 whole community, not just for the special interests of  
11 one particular group, in this case, Talking Rock Golf  
12 Club.

13 We are sorry that there has been so much  
14 antagonism that has arisen between what we now call "the  
15 two sides of the road," meaning Talking Rock and  
16 Inscription Canyon Ranch, but that in no way was Dayne's  
17 intent. It is not them against us or vice versa, but we  
18 are all one under the same water district. The question  
19 asked is, why should a powerful entity such as Talking  
20 Rock Golf Club pay a few piddly cents for water that  
21 homeowners of the entire district have to pay dollars  
22 for? Not only are they using groundwater, but they are  
23 a for-profit entity under a non-profit water supplier.

24 Talking Rock Golf Club from day one of this rate  
25 case has threatened to withdraw from the ICR Water

1 Users, and I for one do not understand why this is a  
2 threat. It would be a blessing to everyone involved.  
3 Talking Rock repeatedly emphasizes that they are paying  
4 more than their share. In fact, claiming they are the  
5 ones who are continually compensating the Water Users  
6 Association. It sounds to me like poor business  
7 practice to admit such a thing, but more than that, it  
8 makes me doubt their sincerity. Why are they willing to  
9 go through this tiresome, lengthy, and expensive legal  
10 process if what they say is true, that they are indeed  
11 the ones losing out in being under the umbrella of the  
12 ICR Water Users? As far as I know, they have no  
13 written, documented proof that this claim is true.

14 Judge Stern had told all parties to be involved  
15 in the negotiations, and for Dayne, this has involved  
16 receiving two conference calls, both late in the game  
17 and after negotiations between the other parties,  
18 meaning Talking Rock and Inscription Canyon Ranch, had  
19 been completed. Dayne commented in previous testimony  
20 that the first conference call was really between  
21 Jeff Crockett, ICR Water Users counsel, and Dayne.  
22 Mr. Crockett wanted to focus on the latest  
23 favorable-to-Talking-Rock-only submittal called the  
24 Water Service Agreement. Dayne said noncompliance to  
25 64360 was the issue, and Mr. Crockett replied, We feel

1 we are in compliance. That was pretty much that.

2 The second conference call was just last  
3 Wednesday, the day before Thanksgiving and two working  
4 days before the hearing. ICR Water Users' counsel said  
5 they started these discussions the day before at  
6 3:00 p.m., without Dayne, again, and it was now 22 plus  
7 hours later.

8 So these two conference calls are what  
9 constituted Dayne's involvement. And what you might  
10 find interesting is that they wanted Dayne to come to an  
11 immediate decision in their favor without his having any  
12 time to look over materials or to think it through.  
13 Actually, what they presented in the second conference  
14 call was still in Mr. Metli's head. From my point of  
15 view, when Dayne tries to get them to answer a question,  
16 they either brush over it quickly, move on, or ignore  
17 him.

18 Since I finished writing this, we have had more  
19 develop in the saga. Late Sunday afternoon, Dayne  
20 received via e-mail an amendment to the unapproved Water  
21 Service Agreement. It is six pages long, and what  
22 exactly is expected at the eleventh hour? This is  
23 strictly between counsels and, from what I can discern,  
24 no other interested parties are being included.

25 If the Water Users Board were truly operating

1 within their fiduciary duties, which of course means  
2 with the best interests of the members in mind, it's  
3 inconceivable that they would present this amendment for  
4 approval here today without first presenting it to the  
5 shareholders. This looks to me like one more example of  
6 them not caring what their fiduciary duties entail.

7 Dayne has no ulterior motives in making the  
8 stand he has in these proceedings. He receives no  
9 monetary compensation and has not complained for one  
10 moment about costs. He does not send a bill to anyone,  
11 and it is obvious that his whole intent is the welfare  
12 of the entire community, not just Talking Rock, not just  
13 Inscription Canyon Ranch, even though, sadly, at this  
14 point, there is division between some members of the  
15 Water Users Association.

16 Dayne would like to see equity in the rates paid  
17 by all members of the district, which is what was set up  
18 in the original Decision 64360, but counsel for ICR  
19 Water Users says Talking Rock will never go along with  
20 that.

21 I say, call their bluff. Make them pay  
22 equitable rates, and see if they withdraw. I don't  
23 think we would miss their monetary contribution or lack  
24 thereof within the ICR Water Users, and I am confident  
25 that we will not miss the problems created by their

1 involvement.

2 Thank you for listening.

3 ALJ STERN: Okay. Thank you.

4 We have Jimmy Stoner.

5 MR. STONER: My name is Jimmy Stoner. I live at  
6 13410 North Iron Hawk Trail in Inscription Canyon. My  
7 wife Kris and I have lived there since 2004. I have a  
8 bunch of notes that I was going to go through, and I  
9 think the best thing I can do, but rather than go  
10 through this, is say that on the hearing on the 16th of  
11 April, you had admonished the parties to go ahead and  
12 try and work out another agreement. However, recognize  
13 that if they can't work out an agreement, you would have  
14 to make a decision and impose a decision on the parties.  
15 It is apparent, after hundreds of thousands of dollars  
16 and all this time, another agreement has been presented  
17 that, again, does not comply with your admonition to  
18 comply with 64360. I encourage you and Staff to come up  
19 with -- with an agreement and impose a decision and  
20 let's stop the bleeding of all this money and legal  
21 matters. Thank you for your attention and thank you for  
22 your attention to this matter.

23 ALJ STERN: Thank you. We have another  
24 individual. Mr. Robbins, Scott.

25 MR. ROBBINS: Hello, Your Honor. My name is

1 Scott Robbins and I live at 13150 Yaqui Drive in  
2 Inscription Canyon. I've been a resident of Inscription  
3 Canyon since 2004 also, and come to this area from  
4 Northern California. And I'm currently also a lot owner  
5 in Talking Rock.

6 And one of the things that brought me to  
7 purchase over in Talking Rock were some of the things  
8 that have already been mentioned by Mr. Beach. Not to  
9 go over those things again in detail, but the fact that  
10 I lived in ICR, Inscription Canyon, and then Talking  
11 Rock across the road, I wanted to see what it was all  
12 about and I went over there and looked and I was very  
13 impressed with what I saw. I'm not a golfer. I didn't  
14 join because of golf. I don't golf at all. I play  
15 softball.

16 The other reasons that drew me to Talking Rock  
17 were, again, not to reiterate what Mr. Beach said  
18 earlier, was the fact that everything they had done in  
19 the development was in a beneficial way. It wasn't for  
20 financial gain, in my opinion. It looked like they had  
21 done extreme measures in directing the outcome of the  
22 development towards a positive, you know, lifestyle  
23 rather than the present place where I'm living in ICR,  
24 where it was put together as a development. The lots  
25 were sold. People were let loose to do whatever they

1 wanted, and pretty much there was kind of a disregard in  
2 that respect.

3 Talking Rock has taken the time and effort to  
4 put back into the community to -- in a direction that is  
5 positive. So as far as the water situation, being a  
6 customer on one side and not really hearing a lot of  
7 what has been going on up until now, it raised my  
8 interest to want to find out more of what was going on,  
9 so I very shortly in a period of time had to bring  
10 myself up-to-speed, and I don't know all of the people  
11 involved and the dos and don'ts, but I can say this, I'm  
12 definitely in favor of the agreement. I don't  
13 understand how it got to as far out of whack as it did,  
14 but it has, and I would like to see it come to some kind  
15 of conclusion. And from a few of the other people that  
16 I've talked to in Inscription Canyon, the same kind of  
17 awareness, they really had no idea that all of this was  
18 going on. Just going about our lives with all the  
19 turmoil going on in the world, this thing doesn't seem  
20 to make sense. Everything seems to be in a positive  
21 light to work to a conclusion now, and I just would like  
22 to see that happen. That is all I have to say.

23 ALJ STERN: Okay. Thank you.

24 We have Gene Leasure.

25 MR. LEASURE: Morning, Your Honor. I'm



1 Gene Leasure. I live at Inscription Canyon Ranch, 5531  
2 Inscription Canyon Drive.

3 I just have a few comments. First comment is  
4 I'm appalled that -- of the amount of time, effort, and  
5 money that has been spent trying to circumvent  
6 Decision 64360. This has been going on way, way far too  
7 long. I think the Staff has bent over backwards to try  
8 to let the entities come to some agreement, but it has  
9 been apparent over the last many months that it wasn't  
10 going to come to fruition.

11 From my point of view, quite a few of the  
12 members of the Board are acting as pawns for Talking  
13 Rock Ranch. I'm disappointed in the Staff, in reading  
14 some of the correspondence that had been docketed over  
15 the past few months, has let this go on. It is getting  
16 pretty obvious that the two parties aren't coming to an  
17 agreement, and the main emphasis of all of the  
18 negotiations is to circumvent Decision 64360.

19 And over this period of time, it has been  
20 obvious that the community board has spent money way  
21 beyond their means, and in my opinion, the Company is  
22 virtually bankrupt, and I think it is time that the  
23 Staff or the Commission put an end to this and,  
24 hopefully, you will agree and put an end to this silly  
25 stuff that is going on back and forth, back and forth

1 and back and forth. I've read the Water Service  
2 Agreement. I disagree with it. And I understand as of  
3 last night there was another revision or another Water  
4 Service Agreement. This is going to go on infinitum  
5 unless the Commission puts a stop to it.

6 That is my comments. Thank you very much.

7 ALJ STERN: All right. Thank you, sir.

8 And Debra Ott.

9 MS. OTT: My name is Debra Ott. I live at 12325  
10 West El Capitan Way, and that is Talking Rock.

11 First of all, I'm a newby at all of this. I'm a  
12 homeowner. I've had a home there several years. My  
13 husband and I have four homes. We are appalled at the  
14 behavior of -- I would say most of the people here today  
15 are well educated. I would beg to differ from anyone  
16 that would tell me any different.

17 Inscription Canyon, the reserve, Whispering  
18 Canyon, Talking Rock. It is basically made up of gray  
19 hairs, including myself if I let my hair grow out, but  
20 we are people that were drawn to that area for a reason,  
21 and we came there for quality of life. And it saddens  
22 me deeply to see people bickering and creating what the  
23 one woman called "two sides of the road." It is  
24 pathetic. It is pathetic in the scheme of what is going  
25 on in the world.

1 I live in another golf course community, the  
2 golf club in DC Ranch. We live there at the -- the  
3 country club. Guard-gated community. The cost in DC  
4 Ranch -- and they are just as much serious about water  
5 retention. It is all natural desert. We all pay a  
6 small fortune to live in there, especially in the  
7 country club side, and I will tell you that our rates  
8 are going up, up, up, up, not down. They are going up.  
9 And we are taking on the burden of foreclosures, custom  
10 homes in foreclosures. We are taking on those burdens  
11 and added expenses.

12 What turned my husband and I on to Talking Rock  
13 was, number one, the affordability to live in a quality  
14 place that had the same beliefs in leaving the  
15 environment alone. We have a property that is on  
16 about -- well, it is -- is well over an acre and it is  
17 all natural. It is all natural. Anyway, I feel like  
18 I'm back in the wild west and I've lived in Arizona for  
19 50 years. I grew up in the Valley, and I always wanted  
20 to live in Prescott, but it saddens me to see the  
21 behavior. It saddens me to see that we have the costs  
22 we have incurred on the rate increase. It is  
23 ridiculous. And I would like to know, the people that  
24 want to create all this havoc and have been creating it,  
25 why aren't they running for Board positions rather than

1 standing on the sidelines creating this craziness?

2 I completely support Harvard and everything  
3 they've done, and if anything, they've been the deep  
4 pockets to keep this entire community going, whether it  
5 is Whispering Canyon, the preserve, or Inscription  
6 Canyon. They hold us to every drip of water we have on  
7 our property. You can't put anything in vegetation-wise  
8 if it is not within the agreement that we all signed  
9 when we bought there. I beg to differ with people that  
10 are opposed to the settlement that is on the table right  
11 now, and it saddens me that it has had to go to this  
12 level.

13 The board of directors for the water company,  
14 they give it their time. They are not salaried  
15 positions like commissioners, let's say, or judges. But  
16 I will tell you, it saddens me that we've got defamation  
17 of character going on in this room today. Everybody  
18 sitting here had the same right to run for a position  
19 and, for example, Jerome, for all your two-page or  
20 three-page single-spaced speech on everything that is  
21 wrong, why aren't you on the ballot for one of the  
22 positions? I would think you could accomplish a lot  
23 more in that capacity than you could stirring trouble up  
24 on the sides. And I would also like to know, now that  
25 we have legal fees up to almost \$300,000, who all is

1 going to pay for that? Is that the burden of every one  
2 of the members of this water community? That is wrong.  
3 That is totally wrong.

4 I support Talking Rock and the current ICR  
5 agreement that has been put forth here today. And I  
6 also have to say, based on a newsletter that the water  
7 company sends out, just a quote right out of the  
8 newsletter, because I heard several people say that  
9 Talking Rock should pull out and we should be our own  
10 company, and you have your own company. Are you willing  
11 to put your money where your mouth is, because currently  
12 Harvard is the deep pockets and they are trying to  
13 accommodate your whims.

14 We pay the least amount of money for water in  
15 Talking Rock than we do at our other three homes, and we  
16 live in what is called "gold nugget communities."  
17 Talking Rock had the honor this year of being recognized  
18 as the number one multiresidential community in the  
19 United States, and what was taken into consideration  
20 with that was their conservation of water, the adherence  
21 to every homebuilder that builds in there has to abide  
22 by that, the golf course is using effluent water, and  
23 when we have more development, it will be 100 percent  
24 effluent water. But to get back to this quote from this  
25 newsletter, if Talking Rock Golf Course were to leave

1 the ICR WUA system, additional revenue needed would go  
2 from 13.75 percent to 72 percent. Gee, whose backs is  
3 that going to go on? That will go on Inscription Canyon  
4 homeowners, the reserve, and Whispering Canyon.

5 The other thing I would like to say is that  
6 Talking Rock currently brings economic viability to  
7 Canyon Ranch Road and that whole area because we employ  
8 people there at the club, the Ranch compound, and we  
9 have people involved spraying our homes, providing us  
10 added security. Maintaining our properties when we are  
11 not there. We bring economic viability to a very sad  
12 economic scene right now.

13 In closing, I would like to say that I do  
14 support our elected Board members. And the bottom line  
15 to me is, if we are going to have all this grief, if you  
16 are not here to support your neighbors who are giving of  
17 their time, there isn't any hidden agenda. They are not  
18 getting deep pockets from us, they are giving of their  
19 time. There isn't any other thing, you know. And it  
20 just saddens me we have the behavior going on. It  
21 reminds me of the wild west. I thought this was 2008,  
22 not 1808. Anyway, it is kind of a disappointment, and  
23 I've had my property for not quite three years. I have  
24 not been actively participating in going to the  
25 meetings. From what I hear, there is not a lot of room

1 for members to sit and listen to the Board.

2 Getting this most recent newsletter that goes to  
3 our home in Scottsdale -- and I predominantly spend my  
4 time in Prescott. I'm retired. My husband owns an  
5 accounting firm and payroll company and so forth in the  
6 Valley here. But when I read this newsletter, I knew  
7 there was a problem, and I threw my hat in at the last  
8 minute to run for a Board position, and it is not  
9 because I want to go and represent Talking Rock. I want  
10 to represent people, and I feel that this has been an  
11 inequitable situation for all the communities, not just  
12 Talking Rock, so to speak, and I support our Board  
13 members and I apologize to them profusely for being  
14 treated the way they have been treated on both sides of  
15 the road, because it is not both sides of the road. I  
16 think we all share the same zip code.

17 So okay. Thank you.

18 ALJ STERN: Okay. Thank you.

19 Commissioner Mayes is in attendance, and at this  
20 time, I just want to check with the court reporter, if  
21 she wants to take a break. If she wants to take a  
22 break.

23 THE REPORTER: I'm fine.

24 ALJ STERN: We can start with opening  
25 statements, then. Then maybe we will take a break.

1                   Who is going then on behalf of the Applicant?

2                   MR. CROCKETT: Your Honor, Jeff Crockett on  
3 behalf of ICR Water Users Association. I have a few  
4 brief remarks with respect to opening statement today.  
5 We've had about an hour's worth of public comment now,  
6 and I want to indicate, Your Honor, that the Board of  
7 the ICR Water Users Association has taken into  
8 consideration all of the comments that have been  
9 submitted. There has been a lot of public comment  
10 throughout this case going back to the original hearing  
11 date on January the 8th, 2008, and there have been some  
12 authority issues to resolve in this case. The Board has  
13 endeavored, to the best of their ability, to do what  
14 they believe is in the best interest of all of the  
15 customers, ICR, and they've made the decisions they've  
16 made fully aware of the comments that have been made  
17 today, the positions that have been put forth today.

18                   Let me give you a brief summary of how we get to  
19 this position today. The application for a rate  
20 increase in this docket was filed June 26th, 2007.  
21 Staff testimony was filed on November 30th, 2007. And  
22 at that point in time, there was substantial agreement  
23 between ICR, Water Users Association, and Staff with  
24 respect to the rate design and the other elements of a  
25 rate case.



1           Mr. Taylor filed his motion to intervene on  
2   December 21st, 2007. This matter had been set to go to  
3   hearing on January the 8th, but because of the  
4   intervention which raised issues by Mr. Taylor, the --  
5   the hearing on January 8th was postponed. That day  
6   became a day of public comment. Mr. Taylor raised  
7   various issues, but chief among those was whether or not  
8   ICR Water Users Association was in compliance with  
9   Commission Decision 64360, which is the decision that  
10  approved the extension of the Company's CC & N to  
11  include the Talking Ranch Rock Development.

12           Mr. Taylor also raised issues regarding the  
13  rates that were charged to the Talking Rock Golf Club  
14  for water provided and whether or not those rates were  
15  consistent with the Commission's rules and requirements.  
16  Well, the filing of Mr. Taylor's intervention and the  
17  issues raised by him caused the Commission to --  
18  Commission Staff to take a look at Decision 64360, and  
19  on January 15th, 2008, this Commission Staff issued a  
20  compliance memo that concluded that ICR Water Users  
21  Association had not achieved compliance with  
22  Decision 64360 and an issue was whether or not wells  
23  that were to be transferred by the developer of Talking  
24  Rock Ranch to ICR had, in fact, been transferred. There  
25  is a well field which serves the -- which ICR uses to

1 serve the Talking Rock system. That well field consists  
2 of three wells.

3 As of January 15th, 2008, a single well had been  
4 transferred to the water company. The compliance memo  
5 determined that under the Decision 64360, it required  
6 that two wells be transferred, and that had not  
7 happened.

8 Now, ICR had previously made a filing on  
9 March 7th, 2003, a compliance filing, and in that  
10 filing, they indicated that Well Number 3 had been  
11 transferred, which is the single well that the Company  
12 owned, and that a second well would be transferred to  
13 the Company at the time that the 801st connection was  
14 made in the Talking Rock system. That compliance filing  
15 was accepted by Staff at the time. There was no --  
16 there was no indication to the Company that that path  
17 was unacceptable with Staff at that time.

18 COMM. MAYES: If I could interrupt, was the 800  
19 number in Decision 64360?

20 MR. CROCKETT: Commissioner Mayes, it was not.

21 COMM. MAYES: Was it in the record?

22 MR. CROCKETT: It was not.

23 ALJ STERN: Weren't there only two wells in  
24 existence at the time of that hearing, Well Number 1 and  
25 Well Number 2?

1 MR. CROCKETT: Your Honor --

2 ALJ STERN: Well Number 3 was a dream at that  
3 point. I wrote the decision, that is why I know.

4 MR. CROCKETT: There is some debate. My  
5 understanding was there was a single well in existence  
6 at the time with perhaps a second test well or  
7 monitoring well that had been drilled.

8 ALJ STERN: And the order said, transfer the  
9 wells, and as I understood it, there were two wells in  
10 that, if you go back and look at the transcript.

11 MR. CROCKETT: Yes, Your Honor, the transcript  
12 from that hearing indicates that there was -- there was  
13 a well to serve the development and a backup well that  
14 would also be part of the system, so there were, in  
15 fact, two wells and your order in Decision 64360  
16 required that the wells be transferred to ICR.

17 That -- admittedly, that did not happen with the  
18 March -- the March 7th, 2003, compliance filing  
19 indicated that one well had been transferred, and that a  
20 second well would be transferred at the time the 800 --  
21 801st connection occurred.

22 COMM. MAYES: Who decided that?

23 MR. CROCKETT: That was an agreement that was --  
24 that was a result of a Well Agreement that was signed  
25 between Harvard and the ICR Water Users Association.

1 They --

2           COMM. MAYES: So the developer decided he was  
3 going to decide when the well was transferred even  
4 though the judge and the Commission in 2001 had ordered  
5 you to transfer the wells; is that correct? I assume  
6 you will be putting on a witness, Mr. Crockett, who can  
7 answer some of these questions, but is that what your  
8 witness is going to testify to?

9           MR. CROCKETT: Well, the witnesses that the  
10 Company intends to put on, neither -- well, the Company  
11 is going to put on two witnesses, Mr. Bob Busch, who  
12 operates -- who manages the system. Mr. Busch was not  
13 around at this time, at this point in time. The current  
14 board of directors was not around at that time.  
15 Mr. Bourassa is also going to be a witness. He,  
16 obviously, was not involved at that point in time. And  
17 ICR was represented by a different law firm at that  
18 point in time, and so...

19           COMM. MAYES: Well, surely somebody from the  
20 Company will be able to answer my questions?

21           MR. CROCKETT: Well --

22           COMM. MAYES: Are you going to testify -- I  
23 guess you're testifying on behalf of the Company, then?

24           MR. CROCKETT: I'm not testifying on behalf of  
25 the Company, Commissioner Mayes. I'm here as the

1 Company's attorney, obviously, and I wasn't involved in  
2 2003, so I don't have -- the problem we have is there  
3 are not a lot of people that have direct knowledge of,  
4 at least on ICR's side, of what went into that decision.  
5 Suffice it to say, Commissioner, that what was submitted  
6 in the March 2003 compliance filing laid out exactly  
7 what had been done and what would transpire. And I  
8 agree with you that it appears that that was not in  
9 compliance with Decision 64360. But that filing was  
10 made. There was never any response on the part of Staff  
11 to that filing, and the Company proceeded down the path  
12 of that arrangement.

13 COMM. MAYES: Well, it is not the fault of our  
14 Staff that the Company violated a Commission order. You  
15 would agree with me?

16 MR. CROCKETT: Well, Commissioner, I would.

17 COMM. MAYES: Are you trying to lay the blame on  
18 Staff for --

19 MR. CROCKETT: No.

20 COMM. MAYES: -- for what appears to be a  
21 violation of a Commission order?

22 MR. CROCKETT: No. First of all, Commission  
23 Staff, I don't believe, has found there was a violation.

24 COMM. MAYES: Well, that is a different matter  
25 whether the Commission decides there was a violation.

1 That is one of the issues we will be addressing in this  
2 case. You know, of course, different board today, not  
3 necessarily their fault that perhaps the Company  
4 violated a Commission order in 2003, but we are stuck  
5 with the situation we have.

6 MR. CROCKETT: Commissioner Mayes, let me just  
7 say, first of all, I'm not -- I'm not arguing that Staff  
8 did anything improper. The point I made was that there  
9 was no attempt on the part of the Company to hide  
10 anything from the Commission. This was laid out in a  
11 filing on March 7th, 2003. And Staff accepted that  
12 filing at the time, and the parties went ahead and  
13 operated under that plan up until the Staff filed a  
14 compliance memo in January of this year. Now, on  
15 May 21st of this year, a second well is trans -- was  
16 transferred, and on November 21st, Staff filed a  
17 compliance memo indicating that the Company had now  
18 fully complied with Decision 64360.

19 COMM. MAYES: So how many years was the Company  
20 out of compliance for? Five?

21 MR. CROCKETT: Commissioner Mayes.

22 COMM. MAYES: Six, seven?

23 MR. CROCKETT: I would not agree with you that  
24 the Company was out of compliance. The Commission Staff  
25 accepted the filing.

1           COMM. MAYES: Hang on, Mr. Crockett, you said it  
2 appears that the Company was not in compliance with  
3 64360. That is what you just said. I can have the  
4 court reporter read it back. Which is it, are you  
5 admitting culpability or not? Is the Company admitting  
6 culpability for not complying?

7           MR. CROCKETT: Commissioner Mayes, I believe  
8 that an argument can be made that the compliance filing  
9 in March of 2003 was consistent with 64360.

10          COMM. MAYES: How?

11          MR. CROCKETT: An argument -- because the  
12 requirement in Commissioner Stern's order was paperwork  
13 be filed providing for transfer to the --

14          COMM. MAYES: I think you demoted the judge.

15          MR. CROCKETT: What did I call him?  
16 Commissioner?

17          COMM. MAYES: That is okay.

18          MR. CROCKETT: My apologies. I don't know who I  
19 should apologize to for that, Commissioner Mayes or  
20 Judge Stern.

21                Commissioner Mayes, the way I look at that  
22 compliance filing is Judge Stern had ordered that  
23 paperwork be filed. I don't have the exact language of  
24 the order in front of me. Paperwork filed for  
25 transferring of the wells.

1           COMM. MAYES: He didn't order the transfer of  
2 the wells.

3           ALJ STERN: I ordered the transfer of the wells.  
4 You know, this thing that strikes me as strange, even to  
5 this date, they are not transferring title to the  
6 property where the well sits. I mean even for wells 1  
7 -- 2 and 3, am I correct or am I incorrect? Normally,  
8 when we order a developer -- we don't order developers  
9 to do anything, we order the Company as a condition of  
10 their extension of the CC & N, or to get a CC & N, to  
11 transfer the wells to the utility.

12           MR. CROCKETT: Right.

13           ALJ STERN: Well, normally, and I've seen this I  
14 don't know how many times in a few years, they transfer  
15 the well site by deed. They quit claim deed it over to  
16 the utility company. In this instance, from what I  
17 understand and what I read, the well is transferred, but  
18 the land -- the title of the land is remaining with, I  
19 guess, Harvard or some entity.

20           MR. CROCKETT: Yeah, the title of the land  
21 remains with Harvard, but...

22           ALJ STERN: Which gives them the right to  
23 control how the water is used.

24           MR. CROCKETT: No, it is not. The way -- and,  
25 Judge Stern, we will get into this when we get into the



1 testimony part of the case, but the way the transaction  
2 is structured between ICR and Harvard is that Harvard  
3 effectively has given up all control of the wells, and  
4 while the utility company does not own the actual land  
5 that the wells are on, the utility company has a  
6 perpetual easement to access the property 24 hours a  
7 day, seven days a week and the right to withdraw as much  
8 water from those wells as they need to withdraw and, in  
9 fact, the wells have been conveyed. The wells  
10 themselves have been conveyed to the utility company,  
11 two of the three wells have been conveyed.

12 ALJ STERN: That is 2 and 3?

13 THE WITNESS: Correct.

14 ALJ STERN: Number 1 is still out there on --

15 MR. CROCKETT: Number 1 is the subject of the  
16 Water Service Agreement that has been filed with the  
17 Commission dated September 12, 2008, as amended by the  
18 first amendment which was filed today.

19 ALJ STERN: Okay. I will just stay out of this.  
20 If Commissioner Mayes has something else.

21 COMM. MAYES: No, thank you, Your Honor, and,  
22 counsel, so -- we will get into this, obviously, in the  
23 hearing, but your argument is that you didn't violate  
24 the Commission order, you know, it is an order. Looking  
25 at it right now, it was signed by Commissioner Mundell,

1 who is still a commissioner. Commissioner Urbin and  
2 Commissioner Spitzer, who are no longer with the  
3 Commission, but it is an order.

4 So are you saying that something in this order  
5 did not require you to transfer the wells? Just trying  
6 to figure this out before we get into the testimony.

7 MR. CROCKETT: Commissioner Mayes, no. The  
8 intent behind Decision 64360 was clearly that the wells  
9 be transferred, and the compliance filing that was made  
10 in March of 2003 identified that one well had been  
11 transferred and that a second well would be transferred.

12 COMM. MAYES: And it never was.

13 MR. CROCKETT: No. It has been now.

14 COMM. MAYES: For five years, it did not get  
15 transferred.

16 MR. CROCKETT: It didn't get transferred until  
17 this year.

18 COMM. MAYES: I'm trying to understand your  
19 legal argument. Are you arguing that legally you had  
20 the ability and the right to spend five years dawdling  
21 and not complying with the Commission order? I mean,  
22 because that, of course, would be absurd. If you were  
23 representing APS, as you know, as I think you have in  
24 the past, you would not stand in front of us and suggest  
25 that APS, a company the size of APS, could just simply

1 decide on its own volition that it wasn't going to  
2 comply with a Commission order, would you?

3 MR. CROCKETT: Commissioner Mayes, the Company  
4 has not dawdled. The Company --

5 COMM. MAYES: What is five years?

6 MR. CROCKETT: The Company believed it had  
7 been -- it had complied with Decision 64360 when it made  
8 its March 2003 filing.

9 COMM. MAYES: Even though that was in complete  
10 contravention of the Commission order?

11 MR. CROCKETT: Well, I disagree with your  
12 characterization that it is in complete contravention to  
13 a Commission order.

14 COMM. MAYES: How was it in compliance with a  
15 Commission order?

16 MR. CROCKETT: Well, let me look. I had not  
17 intended to get into this issue, but let me look at the  
18 order, and I will tell you. And I really did not intend  
19 to argue whether or not the Company had complied with  
20 Decision 64360 previously, but let's look at the  
21 language of the Decision.

22 COMM. MAYES: Counsel, if you want to do that  
23 with a witness, that is fine. But certainly I intend to  
24 get into it.

25 MR. CROCKETT: Commissioner Mayes, let me just

1 read the language from Decision 64360 that deals with  
2 the wells. Finding of fact 35 on page 6 says, we  
3 believe that this additional condition can be met by  
4 amending the agreement between the parties and we shall  
5 require ICR to file a copy of the relevant documents  
6 transferring the ownership of the wells and related  
7 water production facilities to ICR within 365 days of  
8 the effective date of this Decision or the approval  
9 granted herein shall be rendered null and void without  
10 further order by the Commission.

11 The language says that we are to file relevant  
12 documents transferring ownership of the wells. The  
13 modified agreements that were provided set -- it set  
14 forth the path by which the second well would be  
15 transferred. The first well was transferred. The  
16 second well would not be transferred until the 801st  
17 customer of the system was connected. So, you know,  
18 if -- I would argue on behalf of the Company that what  
19 was filed in March 2003 was compliant with Judge Stern's  
20 order. Obviously, you disagree with that, but the point  
21 is that the filing was made in March of 2003. The  
22 Company operated under the belief that it was in  
23 compliance with that Decision until January 15th of this  
24 year when Staff issued its compliance memorandum  
25 indicating that the second well should have been

1 transferred. That was taken care of on May 21st.

2 COMM. MAYES: Would it ever have been taken care  
3 of but for the extension of this case and questions from  
4 the bench and from, obviously, Mr. Taylor? I mean, when  
5 would you have gotten around to doing that?

6 MR. CROCKETT: It would have happened under the  
7 Well Agreement when the 801st connection occurred in  
8 Talking Rock Ranch.

9 COMM. MAYES: Even if that is 20 years from now?

10 MR. CROCKETT: I don't know what the timing was,  
11 Commissioner.

12 COMM. MAYES: Probably won't be 20 years from  
13 now, but, okay, so you're telling us, your legal  
14 argument is that when the judge said, transferring  
15 ownership-relevant documents, transferring ownership of  
16 the wells, the documents you filed at the Commission in  
17 2003 transferred ownership of the well?

18 MR. CROCKETT: The document provided for the  
19 transfer of the wells.

20 COMM. MAYES: But it didn't transfer ownership?

21 MR. CROCKETT: It did not effect an immediate  
22 transfer of the ownership of the well.

23 COMM. MAYES: Do you think your Company complied  
24 with the spirit of the order? I mean, surely you are  
25 not going to argue that.

1           MR. CROCKETT: Commissioner Mayes, all I can do  
2 is I can go back and look at the documents. I was not  
3 there at the time any of this happened, and I will tell  
4 you without any doubt that the Board believed that it  
5 was in compliance with that Decision, and once that  
6 filing was made in 2003, the Company believed it had  
7 complied and Staff did not tell the Company otherwise.  
8 Again, I'm not telling you that to place blame, because  
9 I don't think there is any blame on Staff, but had Staff  
10 come back at that point in time and said, wait a minute,  
11 we read the order differently. We think that you need  
12 to effect an immediate transfer of the well, we would  
13 have then gone back and addressed that at that point in  
14 time.

15           Today, the second well has been transferred, and  
16 the Water Service Agreement that has been docketed with  
17 the Commission provides for the transfer of the third  
18 well in that well field.

19           Now, Commissioner Mayes, one other point is that  
20 whether the second well was actually legally transferred  
21 prior to this year, ICR Water Users Association had the  
22 right to use all three of those wells going back to day  
23 one. Well, going back to the time when all three of  
24 those wells were in and operating. So the Company did  
25 not -- they weren't denied the opportunity of using Well

1 Number 2. They have, in fact, used Well Number 2,  
2 operated, maintained the well all the way along.

3 COMM. MAYES: Has that new agreement been  
4 provided to the bench? I don't have it.

5 MR. CROCKETT: The Water Service Agreement?

6 COMM. MAYES: Yes, it would be nice to --

7 MR. CROCKETT: We do have a copy that I will  
8 have Mr. Metli provide to you.

9 The Water Service Agreement was executed on  
10 September 12th, 2008. As I indicated, there is an  
11 amendment to that agreement that was docketed today that  
12 is intended to address a rate issue that Staff brought  
13 up in its November 14th filing.

14 COMM. MAYES: Thank you.

15 MR. CROCKETT: Okay. Well, so we've spent a  
16 fair amount of time talking about the compliance status  
17 based upon Decision 64360. As a result of the issues  
18 that arose around that issue, the Commission Staff  
19 revised its testimony in this case and they filed  
20 amended testimony on March 14th. A hearing date was set  
21 for April 16th on the rate case application. Well,  
22 after March 14th, ICR began talking to Harvard about the  
23 unresolved issues in the case and whether there was a  
24 way that the parties could agree upon a modification to  
25 their existing arrangement that would address the issues

1 that were raised by Mr. Taylor, the issues that were  
2 raised by Staff in their March 14th testimony. So the  
3 hearing on April 16th was continued, and the parties  
4 indicated to the Commission that they would be working  
5 on an agreement between the parties that would resolve  
6 the issues in the case.

7 Harvard and ICR proceeded with discussions to  
8 address these issues. They ultimately -- those  
9 discussions led to a letter of understanding that was  
10 signed on April the 18th, 2008. The letter of  
11 understanding was a preliminary nonbinding document that  
12 was intended to lead to a definitive document. That  
13 definitive document, the Water Service Agreement, was  
14 executed on September the 12th, 2008, and docketed that  
15 same day with the Commission.

16 Now, ICR filed additional testimony supporting  
17 the Water Service Agreement on October the 15th.  
18 Commission Staff filed amended testimony on November the  
19 14th in which Staff rejected the Water Service  
20 Agreement. Now, the Company was in substantial  
21 agreement with Staff -- with the Staff testimony filed  
22 on November 14th, with the exception of the Staff's  
23 rejection of the Water Service Agreement. The primary  
24 element of the Water Service Agreement that Staff was  
25 concerned with was that that Water Service Agreement set



1 a rate for water for the golf -- for Harvard that was a  
2 35-year rate. It was a special commodity rate, and  
3 there were two components to that rate. There was a  
4 reservation charge, which applied for 10 years. It  
5 started at \$50,000 a year and then ratcheted down over  
6 the 10 years. The second component was a commodity  
7 charge of \$1 per 1,000 gallons of water. That commodity  
8 charge increased year over year at the rate of the  
9 consumer price index and that is set forth in the  
10 agreement.

11 There were also other triggers built into the  
12 Water Service Agreement that would allow for the  
13 increase in that commodity rate if different things  
14 happened. Well, Staff rejected that rate design from  
15 the Water Service Agreement and proposed in the Staff  
16 testimony on November 14th a commodity charge of \$1.40  
17 per 1,000 gallons for water delivered to Harvard.

18 Now, as I indicated ICR Water Users Association  
19 was in substantial agreement with the Staff testimony  
20 filed on November 14th, including the rate component.  
21 The problem was that there were some things in the Water  
22 Service Agreement that were very beneficial to ICR Water  
23 Users Association. And they did not want to lose some  
24 of those benefits from the Water Service Agreement. So  
25 ICR approached Harvard again to talk about what we might

1 do on the rate design that might satisfy Commission  
2 Staff and still achieve the benefits of the Water  
3 Service Agreement that ICR had the -- had gained.

4 And that is what led to the first amendment to  
5 the Water Service Agreement that was docketed this  
6 morning. That was negotiated last week and to some  
7 extent over the holiday weekend this past weekend. What  
8 that document does is it adopts the Staff rate design  
9 for the commodity charge for Harvard at \$1.40. It also  
10 establishes a rate moratorium of five years on all rates  
11 for the Company, but, again, provides certain triggers  
12 that would allow the Company to increase rates if  
13 certain things happen. It also maintains a number of  
14 the benefits of the Water Service Agreement that we will  
15 go through in our testimony.

16 Now, the evidence will show in this case that  
17 there is substantial agreement between ICR Water Users  
18 Association and Staff over the elements of the rate  
19 case. Specifically, we agree with the rate design that  
20 is included in Staff's testimony filed November the  
21 14th. As this case proceeds, we may find that we have  
22 complete agreement with Staff. I said "substantial  
23 agreement," because there are a couple areas I think we  
24 agree, but until I hear the testimony on the record --  
25 we may be in complete agreement with Staff on the

1 important elements of this case.

2 The water -- the evidence will also show that  
3 the Water Service Agreement, as amended by the first  
4 amendment, is in the public interest and provides  
5 substantial benefits to the customers of ICR Water Users  
6 Association and strikes the appropriate balance of the  
7 different interests involved in this case.

8 Your Honor, one of the things that was a core  
9 principle in this proceeding is whether or not Harvard  
10 would remain on the system. The Company believes that  
11 the ratepayers of ICR Water Users Association are much  
12 better off if Harvard remains a customer of the water  
13 company, and so what we've done in this case is to  
14 attempt to strike a balance that keeps Harvard on the  
15 system, but also provides benefits to the existing  
16 customers, and we think we have done that. The evidence  
17 will also show that ICR Water Users Association is now  
18 in complete compliance with Decision 64360.

19 Now, just a word about the settlement  
20 discussions in this case. You've heard in public  
21 comment that Mr. Taylor, the intervenor, had limited  
22 involvement in the settlement discussions in this case.  
23 I would disagree with those characterizations. There  
24 was substantial time spent between ICR and Harvard  
25 attempting to reach an agreement. We did not think it

1 was appropriate to bring Mr. Taylor into the process  
2 until Harvard and ICR -- until ICR figured out if they  
3 could, in fact, reach an agreement with Harvard.

4 As soon as we did come to the conclusion we  
5 could reach an agreement, we brought Mr. Taylor in,  
6 provided him a copy of the draft. Asked for his input.  
7 What made it difficult in the negotiations was  
8 Mr. Taylor's position that -- and the position of other  
9 people in -- who were speaking with Mr. Taylor was that  
10 the commodity rate charged Harvard had to be the same  
11 rate that was charged the other customers of the water  
12 system. That was not an option for us, because Harvard  
13 had told us that that was not -- not an option and they  
14 would leave the system if, in fact, the result was that  
15 a tariffed rate for potable water was imposed upon their  
16 golf course.

17 After doing the analysis, a lot of different  
18 ways in consultation with Mr. Bourassa, there was no  
19 doubt in the Board's mind that it was better off with  
20 Harvard on the system. So Mr. Taylor's position made  
21 settlement with him essentially impossible, because he  
22 wasn't willing to yield on that issue on the rate.

23 Again, Mr. Taylor was only recently provided a  
24 copy of the first amendment to the Water Service  
25 Agreement, which was executed this morning. I sent a

1 copy of it to him last night, which he picked up as he  
2 was leaving town for Phoenix, and admittedly, he hasn't  
3 had much time to look at it, but we've worked diligently  
4 to try to resolve the issues of Staff, of the  
5 intervenors, of Harvard in this case, and, you know, we  
6 worked even over the weekend to come to that agreement.  
7 So that is before the Commission.

8 We will be going through it with our witnesses  
9 in some detail. At the end of the day, Your Honor, I  
10 think that you will conclude that the Staff testimony  
11 filed November 14th is correct, that the Company is in  
12 agreement with that, that the Water Service Agreement,  
13 as amended by the first amendment, provides significant  
14 additional benefits to the Company that don't -- that  
15 don't -- are not realized through the Staff report and  
16 Staff testimony alone. And I think that wraps up my  
17 brief introductory remarks.

18 ALJ STERN: Okay. Mr. Shapiro.

19 MR. SHAPIRO: Good morning, Judge Stern. Good  
20 morning, Commissioner Mayes.

21 Well, a lot of folks have tried to portray my  
22 clients as the big bad developer golf course that is  
23 preying on the ratepayers. I feel a little bit like I'm  
24 trying to represent the Big Bad Wolf in some fairy tale.  
25 There have been a lot of very strong accusations against

1 the parties to this Water Service Agreement. There has  
2 been claims that my client needs to be removed from the  
3 backs of the ratepayers. There has been claims that the  
4 Talking Rock parties obtained ICR's assistance to  
5 circumvent the Commission's order. Today, the Board was  
6 called "pawns of Harvard." There have been claims that  
7 the assistance that we apparently coerced led to ICR's  
8 Board submitting compliance filings under a false basis.  
9 Today by the intervenor's wife, who called us  
10 "insincere" and accused us of making false claims. By  
11 another public comment maker we were called  
12 "disgraceful" and "disingenuous." The mistrust of my  
13 clients and the ICR Board is so deep that our most vocal  
14 critics leave open in room for any explanation of the  
15 actions that have preceded us other than their own  
16 views.

17 With all due respect, how we got into this mess  
18 doesn't seem to matter a whole lot anymore. Not  
19 suggesting the Commission shouldn't look into it. That  
20 is their job, but we tried to focus on solutions. We  
21 spent now nine months working with ICR to try to clean  
22 up the mess that brings us to the table today.

23 We believe we've come up with a very fair  
24 agreement, including agreeing this morning to adopt  
25 Staff's rate design and special commodity rate. Still,

1 to some, the results of our efforts are extremely  
2 prejudicial to the ratepayers. I respectfully suggest  
3 this is not what the evidence is going to show in this  
4 proceeding. The evidence is going to show that my  
5 clients, the Talking Rock parties, are not the Big Bad  
6 Wolf preying on Little Red Riding Hood, the ratepayers,  
7 which is what is being portrayed by some customers and  
8 some concerned interest stakeholders.

9           And I'm not going to sit here and tell you that  
10 we really are the benevolent old grandmother that Red  
11 Riding Hood was going to visit. My clients are  
12 motivated to achieve success in their development and to  
13 operate the golf course for the benefit of the 500 and  
14 growing number of members.

15           But what the evidence will show is that in order  
16 to achieve this success in their development, the  
17 Talking Rock parties have been and continue to work very  
18 hard to be partners with the water and sewer providers  
19 to better the development of the entire community. This  
20 is what a responsible developer should do if he expects  
21 to achieve success in a project like Talking Rock.

22           So let me talk about some of the things that the  
23 Big Bad Wolf has done in this case. Since April, when  
24 ICR and the golf club asked for some more time to work  
25 out an agreement, a second well has been transferred to

1 ICR. ICR has now been found by Staff to be in  
2 compliance with the Decision and the Talking Rock  
3 parties make a stand ready to spend another \$50,000 to  
4 improve this second well.

5 Talking Rock Golf Club stands ready to transfer  
6 a third well, the infamous Well Number 1. Talking Rock  
7 golf course stands ready to warranty both of the wells  
8 it will transfer this year or maybe next year at this  
9 point.

10 Talking Rock golf course stands ready to grant a  
11 perpetual easement for total access to the well field.  
12 Talking Rock Golf Club and the Talking Rock parties  
13 stand ready to waive any use restrictions that can be  
14 waived and agree to never challenge ICR's groundwater  
15 withdrawals on these wells. They also are stand ready  
16 to agree to a priority, allowing for the curtailment of  
17 water for irrigation and lake fill if residential demand  
18 cannot be met. They've agreed to convert refundable  
19 advances in aid of construction to contributions,  
20 because ICR thinks that will help to mitigate some of  
21 the rate increases by creating a more balanced  
22 capitation. They've agreed to continue their  
23 conservation efforts.

24 You've already heard today and through the  
25 testimony that Mr. Krumwiede filed that this community



1 is designed with maximum space, and conservation efforts  
2 in the community have worked. In fact, the evidence  
3 will show that ICR's -- that the water company's  
4 customers in Talking Rock use far less water than the  
5 system that serves ICR and where Mr. Taylor and his  
6 neighbors live. In fact, last year the golf course was  
7 reconfigured to reduce turf, and water use went down  
8 15 percent. Talking Rock Golf Club will build a  
9 25-million gallon storage pond on the golf course, which  
10 as Mr. Taylor recognizes in his testimony, will further  
11 accommodate the use of effluent.

12 Talking Rock has agreed to provide \$80,000 of  
13 financial assistance. \$30,000 of this has already been  
14 paid to help defray the cost of the negotiations. And  
15 for the record, we strongly disagree with those that are  
16 claiming this payment was some sort of a payment to  
17 coerce the Board to execute the agreement.

18 This volunteer Board, represented by the very  
19 able yet underpaid council, has obtained a host of  
20 concessions from my clients, the developers. Frankly,  
21 if I lived in this community, I would be applauding the  
22 Board for horn swaddling the local developer.

23 Let's talk about what -- besides what we've  
24 given, let's talk about what we've given up. Ownership  
25 of all the wells that Harvard always intended to use to

1 serve themselves. They've given up all the rights to  
2 have water wheeled at their costs. They have given up  
3 the right to connect additional wells to the Talking  
4 Rock system. Most importantly, they've given up the  
5 permanent freedom from the uncertainties of the  
6 regulatory process. First, we gave it up in an  
7 agreement that said we would have a rate set for  
8 35 years. Now we are ready to have a rate set for five  
9 years.

10 We've agreed to pay a Commission-tariffed rate  
11 for irrigation and construction water in addition to all  
12 the other concessions that we've already discussed.

13 All of this is being done really for the right  
14 to pay more for the same water we are already getting.  
15 Why? Well, Mr. Krumwiede says in his prefiled  
16 testimony. He and his partners want a healthy viable  
17 water company. And for the past few years, they have  
18 shown a generous willingness to work with both the water  
19 association and the sanitary district, including  
20 building a brand-new sewer plant to serve not only  
21 Talking Rock, but also the ICR and the other  
22 subdivisions.

23 They are bringing investment and jobs into the  
24 community and they were stepping up to the plate to help  
25 everyone out. This Commission can fault my clients if

1 it wants for being overly willing to make concessions  
2 from the existing rights because to do so will benefit  
3 them as well as the other stakeholders, but their  
4 motives are not being fairly called into question. The  
5 evidence speaks otherwise. These motives are not what  
6 is relevant in this proceeding at this time. What is  
7 relevant is how much better the two parties, ICR and  
8 Talking Rock, have worked -- have tried to make this  
9 situation work. It may not be perfect, although I'm  
10 having a hard time envisioning what else we can do. But  
11 this late stage, given the relief that is sought, the  
12 only thing that you are being offered in an alternative  
13 is that the Talking Rock CC & N be declared null and  
14 void.

15 I wouldn't want to be one of the homeowners  
16 whose CC & N is being declared null and void. They  
17 haven't done anything except buy property, pay their  
18 bills, and conserve water.

19 Well, we do offer an alternative. Staff's rate  
20 design with a new tariffed rate for irrigation and  
21 construction water, rate stability for all customers, a  
22 cleanup of all the legitimate issues that have been  
23 raised about the past agreement and past ACC agreements  
24 and proceedings. Relinquishment of a number of  
25 long-term rights by the Talking Rock parties and large

1 users that will stay in the system and continue to  
2 subsidize the costs to all customers.

3 With that, we are confident that by the time the  
4 record is clear, Judge Stern, you and the Commission  
5 will easily see the public interest supports the relief  
6 that we are requesting.

7 COMM. MAYES: Counsel, if I could, first of all,  
8 no one on the bench is impugning your motives or judging  
9 that there is ill motive on the bench. We are  
10 interested in the public interest and making sure it is  
11 served in this case.

12 I'm reading through Mr. Krumwiede's testimony.  
13 Has your client provided the information that I think I  
14 asked for last spring about the amount of water that has  
15 been -- groundwater that has been pumped onto the golf  
16 course since the inception of ICR?

17 MR. SHAPIRO: I think we have available a couple  
18 of years, the past '06, '07. I think we can provide  
19 some of '08. I don't know that we have that number for  
20 the past several years.

21 MR. KRUMWIEDE: I don't know the answer.

22 COMM. MAYES: I asked for it months ago. Is  
23 there a reason why it is not in the testimony?

24 MR. SHAPIRO: Commissioner Mayes, with all due  
25 respect, I'm not sure the amount of groundwater that

1 this Company has wheeled to their -- to the golf course  
2 is relevant to this proceeding.

3 COMM. MAYES: I appreciate your opinion, but it  
4 is relevant to the judge in the case, which is me, and I  
5 asked for it months ago. Counsel, you remember that,  
6 where is the information?

7 MR. CROCKETT: Commissioner Mayes, I will -- on  
8 a break, I will talk to ICR and see if we can gather  
9 that information and get it to you.

10 COMM. MAYES: I expect it today. And it will be  
11 an issue in the case, Mr. Shapiro, because as you know,  
12 this commissioner, and there are other commissioners,  
13 who are deeply concerned about the use of groundwater on  
14 golf courses and other turfed areas. And one of the  
15 problems that I think we have here in this case is the  
16 fact that a bad decision was made years ago that allowed  
17 a golf course to be built without any conditions about  
18 the amount of groundwater that would be used over the  
19 years for that golf course. And one of the ways that we  
20 are avoiding that today is this Commission, for the, you  
21 know, edification of those in the audience, this  
22 Commission is no longer allowing new water companies to  
23 put groundwater on golf courses outside of an AMA. So  
24 the fact of the matter is, this golf course, this  
25 situation wouldn't be allowed to happen today. So, you

1 know, you may not think it is relevant, but this  
2 Commission does, Mr. Shapiro, and I will expect that  
3 information before we are done with this case.

4 ALJ STERN: Okay. Mr. Taylor, you're next on  
5 the opening statement.

6 MR. TAYLOR: Thank you. I'm not as prepared for  
7 a long opening statement, but I want to thank you,  
8 Commissioner Mayes, Judge Stern, for back in January  
9 that you allowed me when I requested intervention, and  
10 your provision of that is such that it was my intent  
11 just to bring to service the issues as I stated then,  
12 Decision 64360.

13 Quite obviously, that has brought about a lot of  
14 questions. It is moving in a direction of resolution to  
15 a lot of those questions.

16 You -- Judge Stern, you instructed that I would  
17 be involved with the negotiations in this proceeding as  
18 far as the agreements. My amount of contribution to  
19 that was not what I had expected by any short -- I  
20 expected to be involved from the get-go in some of the  
21 terms, things that were to be resolved, and I never  
22 really got anything until August 29th on an agreement.

23 The LOU that was presented, I filed my testimony  
24 as to my view of that document, of which I was extremely  
25 disappointed. Heard nothing. We had a public meeting.

1 That LOU was presented to the community. It was not a  
2 Water Service Agreement, and then from that LOU  
3 presentation, then the Company and Talking Rock Golf  
4 Club negotiated into what is now the Water Service  
5 Agreement. That said, I have just been on -- in the  
6 waiting mode waiting to see what was the next document,  
7 what was to be provided.

8 Again, we got the filing for the amendment to  
9 the Water Service Agreement late yesterday, and here,  
10 again, there is things there that I've had taken some  
11 time to read. Missed quite a bit of sleep because of  
12 trying to decipher what was said there. It is not my  
13 intent to oppose what is being done. I have worked with  
14 Mr. Krumwiede. Today officially starts my fifth year on  
15 the sanitary board. We have worked, Mr. Krumwiede and  
16 the Board, sanitary board, has worked through putting in  
17 this new treatment plant. It is still in the approval  
18 cycle, but we made significant progress in all these  
19 years, and we have -- it has been a good experience, a  
20 great experience to work with him saying, you know, we  
21 need to do this. We need to do that. And we can work  
22 together, and that has been my success with working with  
23 Harvard in that aspect.

24 And the other point that I want to bring out is  
25 in the approval of 64360, we referred to -- or the MXA

1 was -- was the document that was approved, and those  
2 things that were in 64360, again, was the reason that I  
3 came to the Commission to be able to surface those  
4 items. I have seen and heard from the Board, as of the  
5 sitting board, as of today that they were glad that I  
6 have brought some of these things to them so that they  
7 can move forward for resolution, which I was quite  
8 encouraged that they felt that it was a benefit for me  
9 to bring this to the service so that could be  
10 accomplished.

11 So I'm here to, at this hearing, to present my  
12 position, the information that I have been able to  
13 accumulate and, again, it is for you, sir, to make the  
14 decisions and pass them on to the Commissioners for them  
15 to make their decision. I'm not here to say this is the  
16 absolute. The appreciation of working with Staff, the  
17 things that I have learned from this -- my -- I hope my  
18 last rate hearing, but irregardless, that I would like  
19 to say that the information that I have been able to  
20 surface and pass to the parties, I trust is beneficial.  
21 And I have no motives but for we, the shareholders, that  
22 are going to be there until we decide to find another  
23 place to live.

24 But we pay reasonable equitable rates for the  
25 commodity that we utilize every day, and just for the



1 contribution, or the words that have been inferred as  
2 far as water conservation, I guess I'm probably too  
3 close to a lot of the numbers as to what is being --  
4 when we talk about conservation, but the records show  
5 that the golf club has used more than 400 acre feet. As  
6 we have a greater population, we also produce more  
7 effluent, so consequently when we look at 400 acre feet  
8 in a year of -- in excess of 400 acre feet, we are also  
9 producing an additional amount of effluent, so water  
10 conservation in 2007 is -- I can't agree with the term  
11 "conservation." There has been more water used, as I  
12 see the numbers that I've been provided. I want to  
13 qualify that, because numbers are always a moving  
14 target. I thank you for your time.

15 ALJ STERN: Okay. Mr. Torrey.

16 MR. TORREY: Good morning, Your Honor. I just  
17 want to speak briefly to the two issues that Staff has  
18 been primarily concerned with in this case. The first  
19 one is the compliance with Decision 64360 that we pretty  
20 much have beaten to death this morning, but I will start  
21 with my own spiel on that right from the beginning.

22 I wasn't here with the Commission when 64360  
23 came down, so I was not familiar with the requirements.  
24 Frankly, until Mr. Taylor intervened at the beginning of  
25 this case, there was no statement that the Company was

1 not in compliance. The Company had made a compliance  
2 filing with this Decision, and Staff had accepted it at  
3 some point, and Mr. Taylor intervened and raised that  
4 issue, so I went and took a look at Decision 64360.

5 There are actually two sort of sub issues with  
6 Decision 64360 that have been raised and I want to  
7 address both of those. On page 2 of 64360, the  
8 Commission makes Finding of Fact Number 4 that says,  
9 since ICR does not own a well, it purchases all of this  
10 water under the terms of the 100-year water purchase  
11 agreement. And then at the bottom of that same page  
12 under Finding of Fact Number 8, Commission points out  
13 that ICR and Harvard have entered into the Main  
14 Extension Agreement and points out that under that  
15 agreement, Harvard will construct all of the required  
16 facilities necessary to serve the ranch and advance them  
17 to ICR.

18 Now, flipping over to page 4, Finding of Fact  
19 Number 20 is pretty important. It says that Harvard has  
20 drilled two test wells, one of which produces  
21 approximately 700 gallons of water per minute. Then it  
22 goes on to point out that additionally, Harvard will  
23 utilize the second well as a backup emergency well and  
24 has the ability to add a third well, if needed.

25 And so Finding of Fact Number 20 makes reference

1 to all three of the wells that are currently in  
2 existence in the ICR well field.

3 Flipping over to page 5, the critical statement  
4 from the Commission is Finding of Fact Number 34. It  
5 says, we are concerned with the fact that ICR does not  
6 own or have its own water production facilities and that  
7 the issue was not addressed adequately. We believe as  
8 an additional condition for the extension of the  
9 certificate herein, as part of the agreement, Harvard  
10 should include in its advance the wells which it has  
11 drilled for the purposes of providing water to the  
12 extension area as described in exhibit A to ensure that  
13 the utility has adequate water for its customers and to  
14 ensure that they are not subject to relying for their  
15 water on a third party over which the Commission lacks  
16 jurisdiction.

17 Now, until Mr. Taylor's intervention, the issue  
18 had not been raised over which two wells this Decision  
19 was referring to. And it is important to notice that in  
20 the Finding of Fact Number 20, although there may have  
21 been some understanding at the time this order was  
22 written, none of the wells are mentioned either by a  
23 registration number or even within the context of this  
24 case, wells 1, 2, and 3. They are not specifically  
25 referred to by a well number. That is, again, because

1 there really was no issue as to which wells were  
2 transferred. What was important was that the Commission  
3 wanted to make sure that this Company had a well to  
4 serve its customers and a backup well, if necessary.

5 Now, I went back and looked at the document that  
6 had been submitted as the compliance filing. And I've  
7 got a witness that will speak to this later and I have  
8 the exhibits to show this, but the long and short of it  
9 is, as Mr. Crockett has already discussed, the submitted  
10 filing called for the immediate transfer of the single  
11 well and then the second transfer upon 800 homes.

12 Clearly, that was not what I considered to be compliance  
13 with the Decision. We spoke with Staff. I spoke with  
14 Mr. Bourassa from Commission Staff. A letter went out  
15 to the Company stating that they were not in compliance.

16 In response to that, the Company did provide the  
17 transfer of a second well. Now, it is my understanding  
18 that Wells Number 2 and 3 were the two that were -- that  
19 ended up being transferred to the Company. The reason  
20 that I don't believe that it is important which two  
21 wells is that Mr. Liu has done his analysis of the water  
22 supply, and right now, the Company is serving its  
23 customers from Well Number 2 and, currently, residential  
24 use for that -- from that well only accounts for about  
25 15 percent of the total production of that well. That

1 means that if the golf course were to withdraw from the  
2 system right now, the demand of that well would only be  
3 15 percent to serve all of the customers that exist in  
4 that area right now and still there would be a second  
5 backup well. So for practical purposes, which two wells  
6 have been transferred isn't really something that needs  
7 to be argued over. The Company has sufficient  
8 production for all of its customers for the foreseeable  
9 future.

10 Now, this touches on the second thing that I  
11 wanted to talk about, which is the discussion of the  
12 approval of this agreement between the companies. To my  
13 way of thinking, an approval by this Commission, an  
14 actual formal approval or adoption in some way of a  
15 private agreement between these two parties, can have a  
16 lot of legal ramifications to it. And if this  
17 Commission were to take that step of making that formal  
18 adoption, I would think that the Commission should first  
19 discuss with its legal counsel in some kind of executive  
20 session the ins and outs of what that could mean for  
21 this Commission, so I don't think it is appropriate for  
22 Staff to be making a recommendation regarding approval  
23 of the actual agreement itself.

24 Now, having said that, the actual substance of  
25 the agreement is something that Staff has looked into.

1 Now, in most ways, this was a typical rate case. The  
2 Company submitted its filing. There was a cost of  
3 service that either was done by Mr. Bourassa that was  
4 submitted that Staff reviewed. Staff came up with its  
5 recommendations for the overall rates and the rate  
6 structure involved.

7 In presenting this updated Well Agreement as  
8 this water sharing agreement, that the parties have  
9 actually agreed to Staff's recommended numbers. So  
10 Staff doesn't have any disagreement with the way the  
11 rates and charges would be handled under this agreement.  
12 In addition to the rates and charges, Staff's position  
13 is that there are a lot of things in this agreement that  
14 do benefit the water company itself. And not the least  
15 of which was touched on.

16 I believe it was Ms. Ott in her opening comments  
17 that right now Staff's recommended increase is roughly  
18 in the area of 11.4 percent. If this agreement isn't  
19 approved and the golf course sort of parts ways with the  
20 water company, to make up for that additional revenue,  
21 you are looking at something in the neighborhood of  
22 about 70 percent rate increase, and clearly what that  
23 means is this golf course is subsidizing a lot of the  
24 expenses for the running of this water company. It is  
25 important to have the -- some Staff's point of view. It

1 is important to have the golf course remain on that  
2 system.

3 In terms of the overall rates that these  
4 ratepayers are going to pay, certainly Mr. Myhlhousen  
5 will speak to any of the ins and outs of the agreement  
6 and how he feels about those when he takes the stand,  
7 but overall, Staff feels that the water sharing  
8 agreement or the updated agreement has a lot of benefits  
9 for the Company. We are not prepared to recommend what  
10 this Commission should do in terms of a formal adoption.

11 COMM. MAYES: So, counsel, is it Staff's  
12 position, then, that it simply missed something in 2003,  
13 that -- which happens. From time to time we all make a  
14 mistake, and so is it Staff's position that a compliance  
15 violation was overlooked by Staff in 2003?

16 MR. TORREY: That's correct. The -- I don't  
17 know whether or not this compliance filing went through  
18 the legal division before it was just approved by the  
19 compliance section. It certainly should have been,  
20 because -- and I have it here as an exhibit, it will be  
21 in the record. It has the agreement attached to it. It  
22 is about a 40-page filing. And someone from Commission  
23 legal should have taken a look at that before it went  
24 through compliance. I don't know whether that happened  
25 or not, but Staff approved it. From my reading of it,

1 it seems pretty clear it was not in compliance.

2 COMM. MAYES: Okay. And so this business of the  
3 Company coming up with the 800-home hookup threshold was  
4 not in the record and was not in the Decision and was  
5 not approved by this Commission?

6 MR. TORREY: It is not mentioned anywhere in any  
7 record that I have been able to find, and it certainly  
8 is not in the Decision 64360.

9 COMM. MAYES: Okay. Thank you.

10 I will just say to Staff and all the parties,  
11 one of -- as I stated before, one of the issues I'm very  
12 concerned about is the use of groundwater for this golf  
13 course. There is not a whole heck of a lot we can do  
14 about the existence of the golf course today. As I said  
15 earlier, it probably wouldn't be built today, at least  
16 it wouldn't be served by a water company that is  
17 regulated by this Commission, no way, no how. Unless  
18 the Company found a way to put effluent on it from the  
19 beginning.

20 So one of the things I would like the parties to  
21 do is examine how many best management practices would  
22 be needed to be adopted to at least some degree  
23 compensate for the use of the groundwater by this golf  
24 course. I know from Mr. Krumwiede's testimony that, and  
25 public comment by a lot of people that came today, that



1 Talking Rock already has a lot of water conservation  
2 measures already in place, but the fact of the matter is  
3 it has got a golf course that is using 1 million gallons  
4 of groundwater, as I understand it, every month. That  
5 is a lot, and that is a lot for Prescott, which I'm very  
6 familiar with. I was born and raised there, so I will  
7 want to know how many BMPs need to be adopted to  
8 compensate for the loss of the groundwater as a result  
9 of that golf course. And then I also want to know how  
10 much groundwater is being used by the golf course, has  
11 been used by the golf course, and how much is  
12 anticipated to be used by the golf course and going into  
13 the future. Mr. Krumwiede's testimony states he  
14 believes build-out will occur 10 to 20 years from now.  
15 If he is going to be on the stand, I will want him to  
16 pin that down a little more precisely than 10 to  
17 20 years from now.

18 Thank you, Your Honor.

19 ALJ STERN: Thanks. I think now we will take --

20 MR. TAYLOR: Can I make a comment to  
21 Commissioner Mayes' comment? Did I understand you to  
22 say 1 million gallons per month?

23 COMM. MAYES: Did I misstate that?

24 MR. TAYLOR: Yes. It is 125 million for the  
25 year.

1           COMM. MAYES: Oh, 125 million for the year.

2           MR. TAYLOR: Yes.

3           COMM. MAYES: That is why I would like to get  
4 the actual information in the record, which I asked for  
5 months ago.

6           Counsel, will you be able to provide that?

7           MR. CROCKETT: Commissioner Mayes, we are  
8 working on it.

9           COMM. MAYES: Thank you.

10          ALJ STERN: I think what we will do is take a  
11 recess now and come back around 1:30 and resume.

12          Thank you.

13          (Recess from 12:01 p.m. until 1:38 p.m.)

14          ALJ STERN: Want to call your first witness.

15          MR. CROCKETT: Yes, Your Honor. The Company  
16 calls Robert Busch.

17          ALJ STERN: Okay. Mr. Busch, come on forward  
18 and be sworn.

19

20                                   ROBERT M. BUSCH,  
21 called as a witness herein, having been first duly sworn  
22 by the Certified Court Reporter to speak the truth and  
23 nothing but the truth, was examined and testified as  
24 follows:

25

1 DIRECT EXAMINATION

2

3 BY MR. CROCKETT:

4 Q. Mr. Busch, will you state your name and business  
5 address for the record?

6 A. Yes, my name is Robert Busch. Business address  
7 is 246 North Highway 89 in Chino Valley, Arizona.

8 Q. By whom are you employed and in what capacity?

9 A. I'm employed by MDI Financial Services. They  
10 are under contract with the water company to manage the  
11 water company.

12 ALJ STERN: Where is MDI Financial Services  
13 from?

14 THE WITNESS: That is the address, 246 --

15 ALJ STERN: Excuse me.

16 THE WITNESS: 246 Highway 89 is the MDI office  
17 and also the office of the water company business  
18 office.

19 ALJ STERN: Where is MDI from? Just curious.

20 THE WITNESS: It is M, as in Michael, D-I. They  
21 are an accounting/bookkeeping firm.

22 ALJ STERN: Oh, okay.

23 THE WITNESS: And --

24 ALJ STERN: Local in Prescott?

25 THE WITNESS: Yes, they are in Chino Valley in

1 Prescott.

2 ALJ STERN: Okay. Go ahead.

3 BY MR. CROCKETT:

4 Q. Mr. Busch, have you described your  
5 responsibilities with ICR Water Users Association, your  
6 education, professional background on page 2 of your  
7 rebuttal testimony filed December 14th, 2007?

8 A. Yes.

9 Q. Would you briefly describe today your  
10 responsibilities for ICR?

11 A. My responsibilities are to manage the day-to-day  
12 administrative operations of the Company, interface with  
13 the Company's operator, who is also under contract to  
14 the water company. I approve invoices for payment,  
15 prepare reports for the Board, periodic operational  
16 reports for the Board.

17 Q. When you say you "interface with the Company's  
18 operator," are you referring to the certified operator  
19 for the water system?

20 A. Yes.

21 Q. And who is that person?

22 A. The Company name is A Quality Water Company.  
23 They are out of Williams, Arizona. The individual is  
24 Kris Williamson.

25 Q. Mr. Busch, are you authorized to testify on

1     behalf of ICR Water Users Association?

2           A.     Yes.

3           Q.     Did ICR file an application to increase its  
4     rates and charges in this docket?

5           A.     Yes.

6           Q.     Mr. Busch, I placed in front of you a stack of  
7     exhibits that we are going to be using this afternoon.  
8     Would you pick up the exhibit that has been marked as  
9     ICR-1 and identify that document for the record?

10          A.     This is the application for rate increase.

11          Q.     The file in this docket?

12          A.     Yes.

13          Q.     And when was that application filed?

14          A.     It is docketed June 26, 2007.

15          Q.     Mr. Busch, has ICR provided notice of this  
16     hearing today in compliance with the Commission's  
17     procedural orders?

18          A.     Yes.

19          Q.     Did the Company publish notice of the original  
20     hearing date on January 8th, 2008?

21          A.     Yes.

22          Q.     And was that published in the Prescott Courier  
23     on August 29th, 2007?

24          A.     Yes.

25          Q.     And did the Company also cause a copy of that

1 notice to be mailed to each of its customers on or about  
2 August 30th, 2007?

3 A. Yes.

4 Q. And did you prepare an affidavit of mailing in  
5 connection with that dissemination of notice?

6 A. Yes, I did.

7 Q. And did the Company file notice of compliance  
8 with the notice requirement in this docket?

9 A. Yes.

10 Q. Did the Company also publish notice of the --  
11 this December 1, 2008, hearing date?

12 A. This hearing date, yes.

13 Q. Was that also published in the Prescott Courier  
14 on October 26th, 2008?

15 A. Yes.

16 Q. And did you or did the Company cause a copy of  
17 that notice to be mailed to each of the Company's  
18 customers?

19 A. Yes.

20 Q. And did you prepare an affidavit of mailing in  
21 connection with that mailing?

22 A. Yes, I did.

23 Q. And was notice of compliance with that notice  
24 requirement filed in the docket?

25 A. Yes.

1 Q. Mr. Busch, are you the same Robert M. Busch who  
2 prefiled testimony in this case in support of the rate  
3 application?

4 A. Yes.

5 Q. Now, I would like to take you through the  
6 different pieces of testimony that you filed.

7 Did you file rebuttal testimony on  
8 December 14th, 2007?

9 A. Yes, I did.

10 Q. Is that the document that is identified as  
11 exhibit ICR-3?

12 A. Yes.

13 Q. Did you also prepare supplemental rebuttal  
14 testimony that was filed on March 14th, 2008?

15 A. Yes.

16 Q. And is that the document that is identified as  
17 exhibit ICR-4?

18 A. It is, yes.

19 Q. Did you file additional supplemental testimony  
20 on October 15th, 2008?

21 A. Yes.

22 Q. Is that the document identified as exhibit  
23 ICR-7?

24 A. Yes.

25 Q. And did you file additional supplemental

1 rebuttal testimony on November 21st, 2008?

2 A. Yes.

3 Q. And is that testimony included in the exhibit  
4 that has been marked as exhibit ICR-8?

5 A. Yes.

6 Q. Mr. Busch, were each of these pieces of  
7 testimony prepared under your direct supervision?

8 A. Yes.

9 Q. Have you submitted any other testimony in this  
10 case?

11 A. No, I have not.

12 Q. And, Mr. Busch, did the Company also have  
13 Thomas Bourassa file testimony in the case?

14 A. Yes, they did.

15 Q. And is that -- is that testimony -- well, let's  
16 walk through that quickly here. Does that include  
17 direct testimony of Thomas Bourassa filed on June 26,  
18 2007?

19 A. Yes.

20 Q. Is that part of the initial rate application  
21 that is identified as exhibit ICR-1?

22 A. Yes, it is.

23 Q. And rebuttal testimony of Thomas Bourassa filed  
24 December 14th, 2007?

25 A. Yes.



1 Q. And is that the document that has been marked as  
2 ICR exhibit -- or exhibit ICR-2?

3 A. Correct.

4 Q. And then there is supplemental rebuttal  
5 testimony of Thomas Bourassa filed March 14th, 2008?

6 A. Yes.

7 Q. And is that the testimony that has been marked  
8 as exhibit ICR-5?

9 A. Yes.

10 Q. And finally -- well, not quite finally, I guess,  
11 additional supplemental testimony of Thomas Bourassa  
12 dated October 15th, 2008?

13 A. Yes.

14 Q. Is that the testimony that has been marked as  
15 exhibit ICR-6?

16 A. That's correct.

17 Q. And then finally, did Mr. Bourassa file  
18 additional supplemental rebuttal testimony on  
19 November 21st, 2008?

20 A. Yes.

21 Q. And is that testimony contained in the exhibit  
22 that has been marked as ICR-8?

23 A. Yes.

24 Q. Mr. Busch, is it your understanding that  
25 Mr. Bourassa will be testifying in this proceeding as to

1 his direct prefiled testimony?

2 A. That is my understanding, yes.

3 MR. SHAPIRO: Mr. Crockett, you stated that the  
4 additional supplemental rebuttal testimony of Mr. Busch  
5 was ICR-8, and then you just stated that Mr. Bourassa  
6 was ICR-8.

7 MR. CROCKETT: They are both contained in the  
8 same filing. We filed a notice of testimony that  
9 included both testimonies, and that is the docket.

10 MR. SHAPIRO: Thank you for the clarification.

11 BY MR. CROCKETT:

12 Q. Now, Mr. Bourassa -- sorry, Mr. Busch, in your  
13 rebuttal testimony dated December 14th, 2007, you  
14 discussed two compliance issues alleged by ADEQ; is that  
15 correct?

16 A. Yes.

17 Q. And one of those is a failure to complete and  
18 submit maximum residual disinfection level reports, and  
19 the second is a failure to complete and submit lead and  
20 copper monitoring reports; correct?

21 A. Yes.

22 Q. Has ICR properly addressed each of those issues  
23 to the complete satisfaction of ADEQ?

24 A. It has.

25 Q. Would you briefly describe what those reporting

1 issues were?

2 A. Well, the first had to do with the MRDL  
3 reporting requirements. We were notified that ADEQ did  
4 not have in their files copies of reports that the  
5 Company believed it sent to them previously. The  
6 Company rectified that by almost immediately sending  
7 them copies of the required reports.

8 The second issue had to do with lead and copper  
9 monitoring. Again, ADEQ did not have in their files  
10 records of lead and copper monitoring tests performed in  
11 the water company over a period of time and required  
12 that the Company take two sets of samples over a  
13 six-month period to determine lead and copper levels in  
14 the water. That was done to the satisfaction of ADEQ.

15 Q. And did ICR receive compliance status reports  
16 from ADEQ indicating that both of these issues had been  
17 addressed?

18 A. Yes.

19 Q. And did ICR cause a copy of those compliance  
20 status reports to be filed in this docket on May 14th,  
21 2008?

22 A. Yes, I believe so.

23 Q. Now, in front of you, you have an exhibit that  
24 is identified as ICR-11, which is a notice of filing of  
25 environmental compliance status reports. Is that a copy

1 of -- strike that.

2 Are those the status reports that --

3 ALJ STERN: I'm not sure he has them.

4 THE WITNESS: I'm not sure I have them.

5 BY MR. CROCKETT:

6 Q. It is exhibit ICR-11. Do you have a copy of  
7 that, Mr. Busch?

8 A. Yes.

9 Q. Is that a copy of the compliance filing in this  
10 docket?

11 A. Yes.

12 Q. Does it attach copies of the ADEQ compliance  
13 status reports?

14 A. Yes, it does.

15 Q. And do those reports indicate that both of the  
16 Company's water systems are in compliance with no major  
17 deficiencies?

18 A. Yes, it does -- or they do.

19 Q. At this time, Mr. Busch, does ICR have any  
20 unresolved compliance issues with ADEQ?

21 A. No.

22 Q. Mr. Busch, are you familiar with a document  
23 entitled, "Water Service Agreement," dated September 12,  
24 2008?

25 A. Yes.

1 Q. How are you familiar with that document?

2 A. Well, I was involved in some of the negotiations  
3 with that in preparation of that agreement.

4 Q. Is that document identified as exhibit ICR-9?

5 A. Yes.

6 Q. And have you read that Water Service Agreement?

7 A. I have.

8 Q. Is it fair to say that you are familiar with the  
9 contents of the agreement?

10 A. Yes.

11 Q. Do you recall whether a copy of that agreement  
12 was provided to the Utilities Division Staff before it  
13 was executed?

14 A. Yes, I believe so.

15 Q. And do you recall whether Staff was offered the  
16 opportunity to comment on that Water Service Agreement  
17 before it was executed?

18 A. Yes.

19 Q. And do you know whether the intervenor in this  
20 case, Mr. Taylor, was provided a copy of the Water  
21 Service Agreement before it was executed?

22 A. Yes.

23 Q. And was Mr. Taylor offered the opportunity to  
24 comment on the Water Service Agreement before it was  
25 executed?

1 A. Yes.

2 ALJ STERN: When was that, approximately?

3 THE WITNESS: If I remember correctly, there was  
4 a telephone call, which I was not a party to, actually,  
5 where that was discussed, and I believe it was again  
6 discussed at a status conference in September.

7 ALJ STERN: Not a status conference here. You  
8 mean between you and your attorneys or something?

9 THE WITNESS: It was a status conference here.

10 ALJ STERN: Oh, okay.

11 Go ahead.

12 MR. CROCKETT: Your Honor, if you would bear  
13 with me for a moment, we are going to mark an exhibit.

14 MR. CROCKETT: Your Honor, if I might approach?

15 ALJ STERN: Sure.

16 BY MR. CROCKETT:

17 Q. Mr. Busch, I've handed you a document that has  
18 been marked as ICR-13. Do you have that?

19 A. Yes.

20 Q. And is that document a copy of an e-mail from  
21 myself, Jeff Crockett, to Mr. Taylor and Mr. Kevin  
22 Torrey of Utilities Division Staff dated Friday,  
23 August 29th, 2008?

24 A. It is.

25 Q. Would you read the message in that e-mail for

1 the record?

2 A. Mssr. Taylor and Torrey, attached for you and  
3 comment is a draft of a Water Service Agreement between  
4 ICRWUA and Harvard Simon One, Talking Rock land and  
5 Talking Rock Golf Club. The draft agreement is a  
6 confidential settlement agreement that is being provided  
7 to you in furtherance and settlement discussions in  
8 connection with docket W-02824A-07-0388. You may not  
9 distribute that agreement publicly.

10 Want me to go on?

11 Perhaps it might be helpful if we scheduled a  
12 meeting or conference call to walk through the draft  
13 agreement and answer any questions you may have. Please  
14 let me know if you would like to schedule such a  
15 meeting. Regards.

16 Q. Based on that document, is it your  
17 understanding, your testimony that a copy of the Water  
18 Service Agreement in draft form was provided to  
19 Mr. Taylor and Mr. Torrey on August 29, 2008?

20 A. Yes.

21 MR. CROCKETT: Your Honor, does that answer your  
22 question?

23 ALJ STERN: Yes.

24 BY MR. CROCKETT:

25 Q. Now, Mr. Busch, are you familiar with a document

1 that is identified as First Amendment to Water Service  
2 Agreement?

3 A. Yes.

4 Q. Dated September 12th or -- or sorry, dated  
5 December 1, 2008?

6 A. Yes, I am.

7 Q. Is a copy of that first amendment -- has it been  
8 marked as exhibit ICR-10?

9 A. Yes.

10 Q. Have you read that document?

11 A. I have.

12 Q. And is it accurate to say that you are familiar  
13 with its contents?

14 A. Yes.

15 Q. And although the title of the agreement  
16 basically says what it does, is it your understanding  
17 that that is an amendment to the Water Service Agreement  
18 that was executed on September 12th, 2008?

19 A. That is my understanding, yes.

20 Q. Now, Mr. Busch, who are the parties to the Water  
21 Service Agreement?

22 A. ICR Water Users Association and the Talking Rock  
23 parties.

24 Q. And by "Talking Rock parties," would you please  
25 identify who those are?



1           A.       Harvard Simon One, L.L.C., Talking Rock Land,  
2           L.L.C., and Talking Rock Golf Club.

3           Q.       And is the first amendment a document with the  
4           same parties?

5           A.       Yes.

6           Q.       Do you know whether the first amendment has been  
7           filed with Docket Control in this case?

8           A.       I believe it was just filed this morning.

9           Q.       Now, Mr. Busch, in your opinion, do the Water  
10          Service Agreement -- or does the Water Service  
11          Agreement, as amended by the first amendment, provide  
12          benefits to the ICR Water Users Association and its  
13          customers?

14          A.       Yes, I do.

15          Q.       Are these benefits discussed in your additional  
16          supplemental testimony filed October 15th, 2008?

17          A.       Yes.

18          Q.       And is that the testimony that has been marked  
19          as exhibit ICR-7?

20          A.       Yes.

21          Q.       And that testimony that was filed on  
22          October 15th, 2008, does that contain a copy, a fully  
23          signed copy, of the Water Service Agreement?

24          A.       Yes.

25          Q.       Now, Mr. Busch, what I would like to do with you

1 now is walk through the Water Service Agreement and talk  
2 about some of the provisions of that document as amended  
3 by the first amendment. So if you would get a copy of  
4 those two documents in front of you, I would appreciate  
5 it. That is ICR-9 and ICR-10.

6 MR. CROCKETT: Your Honor, do you have copies of  
7 those?

8 ALJ STERN: Nine and 10?

9 MR. CROCKETT: Yes.

10 ALJ STERN: Somewhere. Hang on. Yes, sir. I  
11 have them both, 9 and 10.

12 BY MR. CROCKETT:

13 Q. Now, Mr. Busch, if you would, please turn in the  
14 Water Service Agreement to page 3. And specifically, I  
15 would like you to look at Recital O. Does the first  
16 amendment delete that Recital O?

17 Well, first of all, let me back up. Would you  
18 read Recital O into the record?

19 A. It says: Subject to the terms and conditions of  
20 this agreement, TRGC will be a special contract customer  
21 of ICRWUA.

22 Q. Okay. And does the first amendment delete that  
23 recital?

24 A. Yes.

25 Q. And is that because under the -- under the

1 agreement as amended, Talking Rock Golf Club will now be  
2 a customer of the water company?

3 A. That's correct, that is my understanding.

4 Q. And the golf course will pay a tariffed rate,  
5 which is identified in Mr. Myhlhousen's testimony of  
6 November 14th, as a special commodity rate?

7 A. That's correct.

8 Q. Now, on page 3, we get into the body of the  
9 agreement. Paragraph 2(A) talks about a Well 1  
10 transfer. What is the purpose of that provision?

11 ALJ STERN: Wait a minute. You are a little  
12 ahead of me. Where are you at?

13 MR. CROCKETT: Page 3 of the Water Service  
14 Agreement, Your Honor, paragraph 2(A).

15 ALJ STERN: Okay. Go ahead.

16 BY MR. CROCKETT:

17 Q. Mr. Busch, describe for me what paragraph 2(A)  
18 does?

19 A. Paragraph 2(A) provides that the Well Number 1  
20 would be transferred from the Talking Rock parties to  
21 ICR within 15 days of the bill of sale -- 15 days from  
22 the effective date of the agreement.

23 ALJ STERN: What is the effective date of the  
24 agreement?

25 THE WITNESS: My understanding is under the, at

1 least the initial Water Service Agreement, the effective  
2 date would be dependent on the approval of the  
3 Commission.

4 ALJ STERN: So the effective date, you are  
5 saying, is within 15 days of the Commission's decision  
6 approving a rate increase or approving the agreement?

7 THE WITNESS: Approving the agreement.

8 ALJ STERN: What if the Commission doesn't  
9 approve the agreement?

10 THE WITNESS: The agreement wouldn't be  
11 effective.

12 ALJ STERN: Then ICR wouldn't get Well Number 1?

13 THE WITNESS: That's correct.

14 ALJ STERN: And the Company wouldn't be -- the  
15 Company -- I don't know what they would be. It is a  
16 golf course. What would they be, then?

17 THE WITNESS: The Talking Rock parties?

18 ALJ STERN: I guess, yes.

19 THE WITNESS: I guess if the agreement was not  
20 approved by the Commission, the existing Well Agreement  
21 would be in effect.

22 MR. CROCKETT: Your Honor, let me provide some  
23 clarity here. On page 4 of the first amendment, under  
24 section -- under paragraph 7, which modifies section 11  
25 of the Water Service Agreement, specifically paragraph B

1 says, effective date. Do you see that?

2 ALJ STERN: M'hum.

3 MR. CROCKETT: The parties in the agreement  
4 essentially modified the way the effective date is to  
5 work under the original Water Service Agreement, and  
6 this is the new language.

7 BY MR. CROCKETT:

8 Q. Mr. Busch, would you read the language under  
9 section B, effective date?

10 A. In the amendment?

11 Q. Yes.

12 A. It says, the agreement has been executed as the  
13 date first included herein and this first amendment has  
14 been executed as of the date included above. However,  
15 the parties agree that the agreement and first amendment  
16 shall not be effective until the effective date, and in  
17 parenthesis, effective date, which shall be defined for  
18 purposes of this agreement, the date upon which all  
19 parties have submitted a statement of acceptance  
20 indicating that the final and nonappealable ACC decision  
21 approving the agreement is acceptable.

22 Q. So, Mr. Busch, is it your understanding, then,  
23 once the Commission issues a decision in this rate case,  
24 then the parties to the Water Service Agreement will  
25 issue or may issue a statement of acceptance indicating

1 that they accept the decision as issued by the  
2 Commission?

3 A. That is my understanding, yes.

4 Q. And that then triggers the effective date;  
5 correct?

6 A. Correct.

7 Q. And it is the effective date which then drives  
8 the conveyance of Well Number 1?

9 A. That's correct.

10 Q. So is it your testimony, then, that the  
11 conveyance of the well is not any longer specifically  
12 conditioned upon the Commission approving the Water  
13 Service Agreement?

14 A. That's correct. That is the way I would  
15 interpret it.

16 Q. But, in fact, it is conditioned upon the  
17 Commission issuing a decision in this case that is  
18 acceptable to the parties of the Water Service  
19 Agreement?

20 A. That's correct.

21 MR. CROCKETT: Your Honor, does that clarify the  
22 question?

23 ALJ STERN: Sort of written in legalese.

24 MR. CROCKETT: That is what we do.

25 ALJ STERN: I think it would be better in plain

1 English, but, you know, if that is what he says your  
2 interpretation of this is. I just want to read it  
3 through again, since everything is, for the past few  
4 years, has dilly and dallied around several wells here.

5 I will have to read this about six times. We  
6 will take it for now. I will have to think about it.  
7 It looks like, and I guess it is your intent, that if  
8 you, Mr. Shapiro on behalf of your clients, of course  
9 Mr. Taylor on behalf of himself as the intervenor, and  
10 Mr. Torrey on behalf of the Staff all sign off and say  
11 whatever this statement of acceptance is, but which it  
12 is not --

13 MR. CROCKETT: Your Honor, the statement of  
14 acceptance is an acknowledgement by the parties to the  
15 agreement, which would not include Staff or Mr. Taylor,  
16 because they are not parties to the agreement. So once  
17 a decision is issued in this case and the time for  
18 appealing that decision has run, the ICR Water Users  
19 Association and the Harvard parties to the agreement  
20 then submit to one another -- exchange a statement of  
21 acceptance or a statement of nonacceptance. So assuming  
22 that the statements of acceptance is issued, meaning  
23 that both of the parties are satisfied with the decision  
24 issued in this case, that would then trigger the  
25 effective date, which then leads to the conveyance of

1 Well Number 1.

2 ALJ STERN: Say you are undissatisfied, then,  
3 with --

4 MR. CROCKETT: Well, if either of the parties is  
5 not satisfied with the outcome of this case, then --

6 ALJ STERN: I guess you will not sign a  
7 statement of acceptance?

8 MR. CROCKETT: That's correct.

9 ALJ STERN: Your client won't sign.

10 MR. CROCKETT: That's correct, and the well  
11 wouldn't transfer and the other benefits of the Water  
12 Service Agreement would not accrue to the benefit of ICR  
13 Water Users Association. Now, I guess I would point  
14 out, Your Honor, that the various benefits we are going  
15 to walk through in this agreement are not really  
16 provided for in the current Staff recommendation in the  
17 case. The Company is -- the Company is essentially  
18 satisfied with the Staff recommendation at this point in  
19 time. I think as is Harvard. So, you know, it is hard  
20 for me to imagine a scenario, I guess --

21 ALJ STERN: Let's say, hypothetically speaking,  
22 the Commissioners at open meeting, assuming that I  
23 recommend to them everybody -- maybe Mr. Taylor won't  
24 like what Staff has recommended, but you, your client,  
25 and Mr. Shapiro's client are willing to accept Staff's



1 recommendations. I don't know what Mr. Taylor is going  
2 to do, but let's just say I accept Staff's  
3 recommendations and recommend the decision accordingly.  
4 However, at open meeting, for whatever their reasons,  
5 the Commissioners decide to change it. See, this is one  
6 of those loophole things, and it is one of these things  
7 the lawyers do all the time.

8 MR. CROCKETT: Well, I would say it is not a  
9 loophole. The agreement is intended to effect the  
10 intent of the parties, and to give you an example, the  
11 commodity rate that is recommended by Staff is \$1.40 per  
12 thousand for the golf course. Let's assume that when we  
13 get to -- either Your Honor issues a recommended opinion  
14 and order or the Commissioners modify the recommended  
15 opinion and order at the hearing and adopt a rate  
16 applicable to the golf course of \$5 per 1,000. Under  
17 that scenario, I am quite certain that Harvard would not  
18 issue or provide its letter of acceptance, and then that  
19 means that the Water Service Agreement, as amended,  
20 would not become effective. It would be null and void.

21 ALJ STERN: All right. Then we are back to the  
22 problem of Well Number 1.

23 MR. CROCKETT: Well, you know, to the extent it  
24 is a problem, I guess. I mean, the order -- we have now  
25 a compliance memorandum from Staff saying the Company

1 has complied with Decision 64360, which provided for the  
2 transfer of two wells -- we provided for the transfer of  
3 two wells. This transfer of the third well is a benefit  
4 to the Company, but it wasn't something that was  
5 required by the original decision.

6 ALJ STERN: I'm just wondering. That is all.  
7 My questions in my mind show up because of the problems  
8 we've had in the past. That is the only reason I'm  
9 asking a question like that, what happens if. Well,  
10 this may not work. And that is sort of the problem we  
11 want to avoid, I thought.

12 MR. CROCKETT: Right. Well, let me ask  
13 Mr. Busch a question to get at this.

14 BY MR. CROCKETT:

15 Q. Mr. Busch, to your knowledge, does ICR Water  
16 Users Association have a legal way to force the Harvard  
17 entities to convey Well Number 1?

18 A. Of course, I'm not an attorney, but I don't  
19 think so. They are a private party.

20 Q. And under the original Commission Decision  
21 64360, did it require the transfer of three wells or two  
22 wells?

23 A. Not three wells.

24 Q. So under the Water Service Agreement, Harvard  
25 has agreed to transfer the third well subject to certain

1 conditions?

2 A. Correct.

3 Q. And your understanding is that one of those  
4 conditions is that the Staff-recommended commodity rate  
5 of \$1.40 per 1,000 gallons be adopted in this case?

6 A. Yes, that is my understanding.

7 Q. Now, Mr. Busch, back to the Water Service  
8 Agreement, page 3, paragraph 2(B), and the heading of  
9 that paragraph is "Well 2 Pump Motor Replacement."  
10 Would you describe what the obligation of the Harvard  
11 entities is under that provision?

12 A. Yes. That provision requires a replacement of  
13 the pump on Well Number 2, and Harvard is to pay the  
14 cost of replacing that pump, a cost up to -- not to  
15 exceed \$50,000.

16 Q. So if the cost of replacing the pump on Well  
17 Number 2 is \$50,000 or less, then Harvard pays all the  
18 cost of that replacement?

19 A. Yes.

20 Q. Does the pump motor need to be replaced on that  
21 Pump Number 2?

22 A. I believe so. There is some problems with air  
23 production in that well and by downsizing it, that will  
24 probably help, and there also may be a problem with  
25 overpumping that well, a smaller motor will help.

1 Q. Now, Mr. Busch, on page 4 of the Water Service  
2 Agreement, under paragraph 2(C), which is captioned  
3 "Warranties," do the Talking Rock parties or the Harvard  
4 entities provide certain warranties with respect to  
5 Wells 1 and 2?

6 A. Yes, they warranty it for a period of 12 months.

7 Q. That is, they warranty each of the wells?

8 A. Each of the wells.

9 Q. And the period of warranty is 12 months from the  
10 effective date; is that correct?

11 A. From the date of the bill of sale.

12 Q. Okay. From the date of the bill of sale for  
13 Well Number 1, and that hasn't transferred yet; correct?

14 A. Correct.

15 Q. And Well Number 2, the warranty period runs from  
16 the date that the pump motor is replaced?

17 A. Yes.

18 Q. And is there also an air production warranty?

19 A. Yes, there is.

20 ALJ STERN: Excuse me. Where is that pump for  
21 Well Number 2, is that in the agreement or in the  
22 amended agreement?

23 MR. CROCKETT: Your Honor, it is in the -- the  
24 warranty on the Well Number 2 pump replacement is in the  
25 Water Service Agreement. It is at page 4.

1 ALJ STERN: Oh, okay.

2 MR. CROCKETT: Paragraph C, two little "i"s  
3 there.

4 ALJ STERN: All right. Go ahead.

5 BY MR. CROCKETT:

6 Q. All right. Mr. Busch, we were talking about air  
7 production warranty. Does the warranty on air  
8 production run simultaneous with the warranties on  
9 Well 1 and Well 2, meaning it is a one-year warranty?

10 A. Yes, essentially. I believe that air production  
11 warranty actually ensures that we have at least one full  
12 season to measure air production.

13 Q. And if the air production exceeds a percent of  
14 3.5 percent, does that then require the Harvard parties  
15 to fund additional repairs to those two wells?

16 A. That is my understanding, yes.

17 Q. And is the methodology for identifying air  
18 production set out in attachment 1 to the Water Service  
19 Agreement?

20 A. Yes.

21 Q. And is that procedure a procedure that has been  
22 previously used by the parties to evaluate the air  
23 production in the wells?

24 A. Yes, that was the procedure that was used during  
25 a three-day raw field test.

1 Q. Mr. Busch, again, on page 4, paragraph 2(D),  
2 which is entitled, "Waiver of Prior Restrictions," do  
3 you see that?

4 A. Yes.

5 Q. Were there certain restrictions included in the  
6 bills of sale for Well Number 2 and Well Number 3 that  
7 were previously conveyed to ICR?

8 A. Yes.

9 Q. And does this Water Service Agreement remove  
10 those restrictions?

11 A. That is my understanding, yes.

12 Q. And so is it also your understanding that ICR  
13 may pump Well 2 and Well 3 without any restriction?

14 A. Correct.

15 Q. Is it your understanding that is also regarding  
16 Well 1, that that could be pumped without any  
17 restriction?

18 A. Yes.

19 Q. Turning to section 3 of the agreement,  
20 subparagraph A, it is entitled, "Perpetual Right to  
21 Enter the Well Field Property, No Charges to ICR for  
22 Groundwater Withdrawal." Does ICR have a perpetual  
23 right to enter the -- each of the well sites to operate,  
24 repair, replace, and maintain the wells?

25 A. Yes.

1 Q. Is that right restricted in any way?

2 A. No, not that I can see.

3 Q. Does the agreement -- does the Water Service  
4 Agreement make clear that ICR can pump the wells without  
5 restriction or limitation as needed to provide water to  
6 the system?

7 A. Yes, that is my understanding.

8 Q. And water withdrawn from those wells by ICR is  
9 done so without the payment of any money to the Harvard  
10 entities?

11 A. That's correct.

12 Q. I want to skip ahead to paragraph 4 on page 5,  
13 service of water for landscape irrigation, lake fill,  
14 construction, and other nonpotable purposes, maximum  
15 amount, no minimum delivery, quantity required. You see  
16 that paragraph?

17 A. Yes.

18 Q. Now, under the first amendment to the Water  
19 Service Agreement, does it delete the sentence in that  
20 paragraph that says, the Talking Rock parties shall not  
21 be required to take any amount of water under this  
22 agreement and retain the right to provide their own  
23 water supply without any provision by ICRWUA as long as  
24 such self-supply is not in violation of Arizona and/or  
25 federal law?

1 I won't continue with reading the sentence, but  
2 has that language been deleted under the first amendment  
3 to the Water Service Agreement?

4 A. Yes, it has.

5 Q. And if you could kind of flip over to the first  
6 amendment, is that reference in paragraph 4 of the first  
7 amendment?

8 A. Sorry, are you referring to the language of --

9 Q. Yeah, I'm referring to the first amendment. I'm  
10 asking, where the deletion is referenced in the first  
11 amendment, is that paragraph 4?

12 A. Paragraph 4, yes.

13 Q. And is it your understanding that under the  
14 first amendment, referring specifically to section 5 --  
15 it is a little confusing. Paragraph 5 of the first  
16 amendment modifies section 6 of the Water Service  
17 Agreement?

18 ALJ STERN: Wait, wait, wait. Paragraph 5 of  
19 the amendment are you talking about?

20 MR. CROCKETT: Yeah, paragraph 5, Your Honor, on  
21 page -- starts on page 1. If you've got the first  
22 amendment.

23 ALJ STERN: Right.

24 BY MR. CROCKETT:

25 Q. Paragraph 5 modifies section 6 of the Water



1 Service Agreement. And if you look at the second page  
2 of the first amendment, section 6(A), three little "i"s,  
3 which is entitled, "Obligation to Purchase Water."

4 Do you see that, Mr. Busch?

5 A. In the amendment?

6 Q. On the amendment.

7 A. Yes. Numeral 3 or three "i"s?

8 Q. Roman 3.

9 A. Right.

10 Q. Now, that requirement under the first amendment  
11 obligates the Talking Rock parties to purchase all water  
12 they need from ICR Water Users Association; is that  
13 correct?

14 A. Less effluent.

15 Q. Less effluent they receive, okay.

16 A. Yes.

17 Q. That is a change from the Water Service  
18 Agreement?

19 A. Yes, it is.

20 Q. Because is it true that under the Water Service  
21 Agreement, the Harvard parties are what are referred to  
22 in this agreement as the "Talking Rock parties," they  
23 reserve the right to supply their own water?

24 A. That's correct.

25 Q. And so that is why the language in section 4 of

1 the Water Service Agreement needed to be deleted;  
2 correct?

3 A. Right.

4 MR. CROCKETT: Your Honor, is that --

5 ALJ STERN: Can I ask a question, Mr. Crockett?  
6 I know this is somewhat disjointed. The way the  
7 agreement is, you know, you are taking sections out.  
8 You are putting in other sections, and I understand, but  
9 would it have been impossible for your client to have or  
10 for your firm to have taken the original agreement and,  
11 you know, interlineated or crossed out and say,  
12 substitute this, because going back and forth from page  
13 to page is pretty confusing.

14 MR. CROCKETT: It is a little confusing. When  
15 you've worked with this agreement for as long as we  
16 have, it is not all that confusing, but I understand you  
17 are not --

18 ALJ STERN: Understand, I see this agreement for  
19 the first time today and to go back and forth and try to  
20 find this paragraph from that paragraph, this is  
21 confusing, and the Commissioners are going to be  
22 confused by it, too.

23 MR. CROCKETT: Well, and, Your Honor, the first  
24 amendment was developed after discussions with Staff  
25 regarding --

1 ALJ STERN: Sort of on the fly?

2 MR. CROCKETT: It was done somewhat on the fly  
3 over the last week to resolve any issues that existed  
4 between ICR, Harvard, and Staff, and that is what this  
5 first amendment does, and we -- you know, we could have  
6 gone back and amended and restated the Water Service  
7 Agreement.

8 ALJ STERN: Normally, that is the way most  
9 people do it. To come in like this is -- it is very  
10 choppy and maybe perhaps, if you have time, you will be  
11 able to put forth some sort of a document that all of  
12 the parties can agree on that says what you are actually  
13 doing.

14 MR. SHAPIRO: Just to help out, we are certainly  
15 happy. It was just a timing issue.

16 ALJ STERN: I understand, but it is --

17 MR. SHAPIRO: We are happy to do a whole new  
18 Water Service Agreement and incorporate the first  
19 amendment into it and execute an all new Water Service  
20 Agreement and reexecute it with the first amendment  
21 absorbed into it. We are happy to make it as easy as  
22 possible and do a late filing. We just couldn't  
23 accomplish that before the hearing today.

24 ALJ STERN: I understand what you are saying,  
25 but for practical purposes, when you are deleting whole

1 sections and substitute in six paragraphs makes it just  
2 a little bit tough to understand.

3 MR. SHAPIRO: I don't see any reason why the  
4 parties couldn't do a late filing shortly after the  
5 hearing with a replacement version of both what is now  
6 ICR-9 and ICR-12.

7 MR. CROCKETT: I agree with that, Your Honor, if  
8 that would be helpful.

9 ALJ STERN: I think it would be helpful to  
10 everyone. It might even help your witness.

11 MR. CROCKETT: We certainly don't want to help  
12 our witness.

13 BY MR. CROCKETT:

14 Q. Now, moving ahead on the Water Service Agreement  
15 in the section 6 which starts on page 6, Mr. Busch, that  
16 section establishes a price for water to be paid by the  
17 Talking Rock parties; is that correct?

18 A. That's correct.

19 Q. And the price is based upon a couple of  
20 components. One of those is a system reservation charge  
21 that is outlined in section 6(A) and the second is a  
22 commodity rate that is outlined in section 6(B); is that  
23 correct?

24 A. That's correct.

25 Q. And the commodity rate that was proposed or that

1 was agreed to in the Water Service Agreement is \$1 per  
2 1,000 gallons?

3 A. That's correct.

4 Q. Now, is it true that the first amendment to the  
5 Water Service Agreement completely supersedes section 6?

6 A. Yes, that's correct.

7 Q. And was the purpose of modifying section 6 to  
8 change the rate structure to adopt the Staff recommended  
9 rate for the golf course in this case?

10 A. Yes.

11 Q. Now, if you would turn, then, to page 2 of the  
12 first amendment, under section 6(A), commodity charge,  
13 what is the charge paid for water in that section?

14 A. \$1.40 per 1,000.

15 Q. Is that the rate that comes from  
16 Mr. Myhlhousen's November 14th, 2008, testimony in this  
17 case?

18 A. Yes, it does.

19 Q. Now, under section 6(A), Romanette "i," that  
20 section provides there will be no monthly minimum charge  
21 of meter charge for water delivery to the golf course;  
22 is that correct?

23 A. That's correct.

24 Q. And is that consistent with Mr. Myhlhousen's  
25 recommendation and the Staff report?

1 A. I believe so.

2 Q. And under Romanette "ii" of that same section,  
3 does that section establish a moratorium on increases in  
4 rates and charges?

5 A. It does.

6 Q. And what is the period of that moratorium?

7 A. Five years.

8 Q. And that is five years from the date of a final  
9 decision in this docket?

10 A. Yes.

11 Q. Does that moratorium apply to the golf course  
12 commodity rate of \$1.40 per 1,000 gallons?

13 A. Yes.

14 Q. Does that moratorium also apply to the  
15 residential rates and charges as recommended by Staff?

16 A. Yes, it does.

17 Q. Now, in Romanette "iii," we've talked about this  
18 earlier, but that is a section that provides that the  
19 Talking Rock parties shall be required to take the water  
20 that they need for the golf course, and construction  
21 purposes, that they take or purchase that water from  
22 ICR; is that correct?

23 A. That's correct.

24 Q. So the way that section works, Harvard or the  
25 Talking Rock parties could not supply a portion of their

1 own groundwater?

2 A. That is my understanding, yes.

3 Q. They can use effluent that they acquire;  
4 correct?

5 A. Correct.

6 Q. But any groundwater would have to come through  
7 ICR?

8 A. That's correct.

9 Can I clarify one thing, perhaps --

10 Q. You bet.

11 A. -- on the moratorium?

12 Q. Yes.

13 A. That five-year moratorium is for the -- for  
14 rates to become effective, so in essence, we could apply  
15 for a rate increase before that, if I interpret that  
16 correctly.

17 Q. So a company could file an application before  
18 five years, but those rates could not be effective until  
19 five years of the decision in this case?

20 A. Correct.

21 Q. I'm glad you brought that up. I want to go back  
22 to that section on the moratorium. The last sentence of  
23 that section states that the moratorium terminates if  
24 the Talking Rock parties cease to take water from ICR;  
25 is that correct?

1 A. That's correct.

2 Q. And the purpose for that is if the golf course  
3 leaves the system, there will be an immediate need for a  
4 rate increase, in the Company's opinion; is that  
5 correct?

6 A. That is our opinion, yes.

7 Q. And so if, in fact, the Talking Rock parties do  
8 exit the system, at whatever time that is over the next  
9 five years, ICR could immediately come in and apply for  
10 a rate increase?

11 A. That's correct. That is my understanding.

12 Q. And we will get to this in a minute, but is it  
13 your understanding that the first amendment requires the  
14 Talking Rock parties to provide 90 days notice to ICR  
15 that they intend to leave the system? And if it would  
16 help you, I would refer you to section 13 on page 5 of  
17 the first amendment.

18 A. Yes, it does.

19 Q. That would give the Company a little time to  
20 prepare for that rate application?

21 A. That's right.

22 Q. Back to the first amendment, we are still  
23 looking at section 6, the new section 6, under  
24 paragraph A, Romanette "iv," which is entitled, "New  
25 Treatment Requirement Contamination." Are you with me?



1 A. In the amendment?

2 Q. Yes, the amendment.

3 ALJ STERN: Which one are you at now?

4 MR. CROCKETT: Your Honor, we are at page 3 of  
5 the amendment at the top of the page. Roman Numeral  
6 "iv" says, new treatment requirement contamination.

7 BY MR. CROCKETT:

8 Q. Mr. Busch, what is the purpose for that section?

9 A. It is my understanding that that would allow the  
10 Company to recover any costs of additional treatment  
11 that might be required for any governmental or any  
12 contamination that might occur in the wells.

13 Q. And that would apply during the moratorium  
14 period?

15 A. Yes.

16 Q. So even though there is a moratorium or  
17 increasing rates for five years, if a new treatment  
18 requirement came into effect that required ICR to spend  
19 additional capital or to incur additional operating  
20 expenses, the Company could file for an increase in  
21 rates to address those issues?

22 A. That is my understanding.

23 Q. And is that -- is that designed to mitigate some  
24 of the risk to the Company of agreeing to a five-year  
25 rate moratorium?

1 A. Yes.

2 Q. And does the same apply for any contamination in  
3 the system -- or sorry, any contamination of the  
4 groundwater supply?

5 A. Yes, I believe -- my understanding is that if  
6 there were some additional contamination that were --  
7 that was required to be treated, that we would be able  
8 to recover costs for that.

9 Q. You said "additional contamination." Is there  
10 any contamination of the groundwater supplied?

11 A. No.

12 Q. So the groundwater supplied today is fine?

13 A. It is fine.

14 Q. But if during the five-year moratorium period  
15 something happened to the groundwater supply that  
16 required the Company to install new treatment  
17 infrastructure or increase the Company's operating  
18 expenses, it is your understanding, based on this  
19 provision that those costs -- that the Company could  
20 seek an increase in rates to address those costs?

21 A. That's correct.

22 Q. Mr. Busch, to finish off that section 6,  
23 subparagraphs B, C, and D, those are basically  
24 provisions that came over from -- those were in the  
25 Water Service Agreement originally; is that correct?

1 A. Yes, they are.

2 Q. Okay. All right. Now, turning back to the  
3 Water Service Agreement, page 9, section 7. Financial  
4 assistance. Are you there?

5 A. Yes.

6 Q. Describe for me what that section does.

7 A. That provides some financial assistance to the  
8 Company, some of the costs it incurred in negotiating  
9 the agreement and for those that have been incurred  
10 during the rate case.

11 Q. And the -- that section calls for a payment to  
12 ICR of \$30,000 upon execution of the agreement?

13 A. That's correct.

14 Q. And did that \$30,000 get paid?

15 A. Yes, it did.

16 Q. And it calls for an additional payment of  
17 \$50,000 within 30 days of the effective date of the  
18 agreement?

19 A. It does.

20 Q. So assuming that the -- that there is a  
21 statement of acceptance submitted by the parties at the  
22 end of the day, the Talking Rock parties will have  
23 contributed \$80,000 toward the cost of -- toward the  
24 water company's costs of negotiating this agreement and  
25 the amendment?

1 A. That's correct.

2 Q. Now, Mr. Busch, section 8 of the Water Service  
3 Agreement, which deals with additional wells, has that  
4 section been deleted?

5 A. It has.

6 Q. And what was the purpose of that section in the  
7 original agreement?

8 A. In the original agreement, it provided that  
9 under certain conditions the Harvard parties could  
10 connect an additional well to the water company water  
11 system, and supply water to the golf course.

12 Q. Was that a concern to some of the residents  
13 of -- or some of the customers of ICR?

14 A. Yes.

15 Q. And that has now been deleted from the  
16 agreement; is that correct?

17 A. That's correct.

18 Q. So the Talking Rock parties no longer have any  
19 right to connect any of their wells to the water system?

20 A. That's correct.

21 Q. The -- now, Mr. Busch, turning to section 9 of  
22 the Water Service Agreement on page 11, specifically  
23 subsection A, utility facilities transfers and refunds.  
24 Are you there?

25 A. Yes.

1 Q. What does that section -- what does that section  
2 do with respect to the transfer of water infrastructure  
3 from the Talking Rock parties to ICR?

4 A. It modifies terms of the main extension  
5 agreement which require that all of the infrastructure  
6 that is completed by the developer Harvard would be  
7 transferred to the water company and considered as an  
8 advance and aid in construction. This provision  
9 modifies that and allows certain latitude by the Company  
10 as to whether to characterize those transfers as  
11 advances in aid of construction or as contributions to  
12 aid of construction.

13 Q. And the agreement provides that so long as  
14 30 percent of the plant that is advanced is  
15 characterized as advances in aid of construction, ICR  
16 can otherwise characterize the plant as advances or  
17 contributions?

18 A. That's correct.

19 Q. And does that provision provide you with the  
20 flexibility to mitigate or reduce some of your concerns  
21 about future rate increases for the Company?

22 A. Yes. It would affect the amount of depreciation  
23 that is put on the Company books as a result of that  
24 land, depending on how much is advanced and how much is  
25 contributed.

1 Q. So do you view this provision as a benefit to  
2 the Company?

3 A. Yes, a lot of flexibility.

4 Q. Mr. Busch, turning to section 10 of the Water  
5 Service Agreement regarding conservation. What is the  
6 purpose of that section?

7 A. I believe it is an intent to show cooperation on  
8 the efforts to conserve water that is sent to the golf  
9 course.

10 Q. So it obligates the Talking Rock parties to  
11 continue to use reasonable efforts to promote  
12 conservation?

13 A. That's correct.

14 Q. Now, it also references the construction of an  
15 additional planned storage pond with a capacity of  
16 25 million gallons. What is the purpose of that  
17 requirement?

18 A. I believe, or at least I see it, as allows the  
19 golf course to use stock -- they can stock the effluent  
20 in the lake in the months that they are not able to use  
21 it all, so that allows them to use that effluent in  
22 months where they need more water and don't need to use  
23 the groundwater.

24 Q. Does that provide a benefit to ICR?

25 A. I believe it does. At least indirectly. It

1 means that the golf course is making effective use of  
2 effluent and moderating its use of groundwater.

3 Q. Does it also help you with the operation of your  
4 system?

5 A. Well, certainly. The more effluent they use,  
6 the less they are going to need the water through the  
7 water system, so it should reduce our costs.

8 Q. Okay. And in turning to paragraph -- or  
9 section 11 of the Water Service Agreement, that  
10 paragraph has been deleted now by the first amendment  
11 and replaced with a new section 11.

12 And, Mr. Busch, I refer you to paragraph 7 of  
13 the first amendment on page 4.

14 A. Okay. Yes, section 11 of the original  
15 agreement.

16 Q. And the purpose of that revision is to modify  
17 the approval process of the agreement?

18 A. Correct.

19 Q. And under the Water Service Agreement, the  
20 parties had contemplated that the Commission would  
21 approve the agreement; is that correct?

22 A. That's right.

23 Q. Is it your understanding that the Commission  
24 Staff has a concern about whether the Commission has  
25 jurisdiction to approve this agreement between private

1 parties?

2 A. Yes. Effectively.

3 Q. And so the modification to section 11 provides  
4 that the parties to the agreement do not require  
5 specific Commission approval of the Water Service  
6 Agreement and first amendment, but simply the issuance  
7 of a final decision that is acceptable to the parties?

8 A. Correct.

9 Q. And if that decision is issued, which is  
10 acceptable to the parties, the parties will exchange  
11 their -- the statements of acceptance and that will  
12 trigger the effective date of the agreement?

13 A. That is my understanding.

14 Q. And then these various benefits that we've been  
15 discussing here will accrue to the water company?

16 A. That's right.

17 Q. Now, Mr. Busch, turn back to the first amendment  
18 to the Water Service Agreement. The first amendment,  
19 under paragraph 8 on page 4, addresses a revision to  
20 section 14(A). Do you see that?

21 A. Yes.

22 Q. Please read -- and section 14(A) is entitled,  
23 "No Right to Challenge Withdrawal of Groundwater." Are  
24 we on the same page?

25 A. Right.



1 Q. Read for me that section, if you would?

2 A. Of the original agreement?

3 Q. No, of the first amendment.

4 A. Okay.

5 Q. Starts at the bottom of page 4.

6 A. The Talking Rock parties hereby waive, on behalf  
7 of themselves and their respective successors and  
8 assigned any right to challenge ICRWUA withdrawal of  
9 water from the Talking Rock wells. It is the party's  
10 mutual understanding and good faith belief that ICRWUA  
11 has the legal right and authority to withdraw  
12 groundwater from the Talking Rock wells, and once  
13 groundwater is withdrawn from such wells, ICRWUA is the  
14 owner of such groundwater.

15 Q. Is that provision intended to address any  
16 concern about ICR's ability to withdraw water from the  
17 three wells in the well field?

18 A. I believe so.

19 Q. Mr. Busch, on section 14(D) of the Water Service  
20 Agreement, on page 15, the words "additional wells" are  
21 deleted from that paragraph. Do you see that?

22 A. Fourteen, section 14?

23 Q. Section 14(D) on page 15.

24 A. D as in dog; right?

25 Q. D as in dog.

1 A. I'm sorry. I'm not --

2 Q. There are two -- on lines 5 and 7, the words  
3 "additional wells" appear. Do you see that?

4 A. I do, yeah. Sorry.

5 Q. And under the first amendment, those words are  
6 deleted from that section?

7 A. That's correct.

8 Q. And that is because there will no longer be any  
9 additional wells connected to the system?

10 A. That's right.

11 Q. Now, Mr. Busch, on page 16 of the Water Service  
12 Agreement, Roman Numeral 6 toward the bottom, do you see  
13 that?

14 A. Yes.

15 Q. That provision is entitled, "Responsibility of  
16 Talking Rock Parties for System Reservation Charge."  
17 Has that provision been deleted under the first  
18 amendment?

19 A. Yes, it has.

20 Q. And the reason for that is that there is no  
21 longer a system reservation charge payable by the  
22 Talking Rock parties?

23 A. That's correct.

24 Q. Now, turn, if you would, to the -- to page 5 of  
25 the first amendment. Specifically, section 11 on

1 page 5. Do you see that?

2 A. Yes.

3 Q. That provision is entitled, "Nonopposition."

4 A. Correct.

5 Q. What is your understanding of that provision?

6 A. My understanding is that the Company would not  
7 oppose Talking Rock parties constructing their own  
8 waterline to their golf course.

9 Q. So if Talking Rock decides -- if the golf course  
10 decides to disconnect from the ICR water system, ICR  
11 would not oppose that effort?

12 A. That is my understanding of that paragraph.

13 Q. Now, section 12 of the first amendment is  
14 entitled, "Emergency Temporary Backup Supply." Do you  
15 see that?

16 A. M'hum, yes.

17 Q. And what does that provision do?

18 A. It allows the Talking Rock parties to request  
19 water from ICR wells as a backup.

20 Q. And that provision would apply in the event that  
21 the Talking Rock parties disconnect from the water  
22 system?

23 A. That's correct.

24 Q. But may need emergency water?

25 A. Right.

1 Q. And finally, section 13 on page 5 of the first  
2 amendment is entitled, "Additional Notifications." Do  
3 you see that?

4 A. Yes.

5 Q. What does that provision do?

6 A. Just provides that the Company would notice the  
7 Talking Rock parties of its intent to file anything with  
8 the Commission that might affect the commodity rate.

9 Q. And also, as you discussed earlier, obligates  
10 the Talking Rock parties to notify ICR if they intend to  
11 get off the system?

12 A. Yes.

13 Q. Okay. Now, Mr. Busch, have you reviewed  
14 Mr. Myhlhousen's testimony filed November 14th, 2008, in  
15 this docket?

16 A. I have.

17 Q. Does Mr. -- Mr. Myhlhousen, in his testimony,  
18 indicates that the Commission should not approve the  
19 Water Service Agreement; is that correct?

20 A. That's correct.

21 Q. And putting aside for a moment the legal issue  
22 of whether the Commission does or does not have  
23 jurisdiction to approve the agreement, if this  
24 agreement, as amended, does not become effective, in  
25 your opinion, does ICR lose a number of significant

1 benefits under this agreement?

2 A. Without question, in my opinion.

3 Q. And the intent behind the first amendment was  
4 primarily to take the Staff-recommended commodity rate  
5 for the golf course and integrate that with the Water  
6 Service Agreement?

7 A. Yes.

8 Q. So is it your opinion and your testimony that  
9 the Water Service Agreement, as amended by the first  
10 amendment, allows the Company to get the benefits of the  
11 Staff testimony of November 14th plus these additional  
12 benefits under the Water Service Agreement?

13 A. Absolutely, yes.

14 Q. Now, this case has evolved over time, and  
15 testimony has evolved over time. With respect to  
16 Mr. Myhlhousen's testimony, is it your understanding,  
17 Mr. Busch, that his direct testimony, dated  
18 November 14th, supersedes his prior testimony to the  
19 extent that that testimony is inconsistent with his  
20 November 14th testimony?

21 A. I believe that to be true, yes.

22 Q. Now, I would like to talk to you, did you  
23 indicate that you had -- you indicated you had reviewed  
24 Mr. Myhlhousen 's November 14th testimony; is that  
25 correct?

1 A. Yes.

2 Q. Mr. Busch, this testimony hasn't been marked,  
3 yet, but I've placed in front of you a copy of the  
4 direct testimony of Charles R. Myhlhousen, dated  
5 November 14th, 2008. Do you have that?

6 A. Yes.

7 Q. And, in fact, is this the testimony that you  
8 said you previously reviewed?

9 A. Yes.

10 Q. If you would turn to page 11 of that testimony,  
11 I would like to look at the recommendations contained  
12 therein?

13 A. This doesn't have 8 -- oh, yes, it does. I'm  
14 there.

15 Q. Let's talk about the -- what appear to be the  
16 four recommendations that Mr. Myhlhousen makes in his  
17 testimony. First recommendation is, Staff recommends  
18 approval of its rates and charges as shown on schedule  
19 CRM-13. Do you see that?

20 A. Yes.

21 Q. Have you reviewed schedule CMR-13 -- or CRM-13?

22 A. Yes.

23 Q. And does ICR agree with the rate design that is  
24 set out in that section?

25 A. Yes, it does.

1 Q. And, Mr. Busch, if you would turn to page 2 of  
2 that schedule. At the top of that page, do you see a  
3 rate for golf course water?

4 A. Yes.

5 Q. Is that the rate that we call the "special  
6 commodity rate"?

7 A. I believe it is, yes.

8 Q. And do we call that the special commodity rate  
9 because that is broader than golf course water and  
10 includes construction water, as well?

11 A. Yes, I believe so.

12 Q. And what is the rate -- and turning to -- okay.  
13 Turn back, if you would, to page 10 of Mr. Myhlhousen's  
14 testimony.

15 MR. CROCKETT: Your Honor, I should have asked  
16 you, do you have a copy of that testimony,  
17 Mr. Myhlhousen's testimony?

18 ALJ STERN: November 14th, yes.

19 BY MR. CROCKETT:

20 Q. Mr. Busch, if you look at line 5 of that  
21 testimony, it says, Staff is recommending a special  
22 commodity rate. Do you see that?

23 A. Yes.

24 Q. Is that where you come up with the language  
25 "special commodity rate"?

1 A. Yes.

2 Q. And so back to the schedule, CRM-13, page 2.  
3 What is the golf course rate that is set out in that  
4 recommended rate design?

5 A. It says, golf course, 3,000 gallons would be  
6 \$1.40.

7 Q. Okay. So does the -- so, then, the Company  
8 agrees with this first recommendation in  
9 Mr. Myhlhousen's testimony?

10 A. Yes.

11 Q. Would you please read the second recommendation?

12 A. Let's see, Staff further recommends a provision  
13 be included in the Company's tariff to allow for the  
14 flow through of all appropriate state and local taxes as  
15 provided for in ACC Rule 14-2-409(D)(5).

16 Q. Do you agree with that recommendation?

17 A. Yes.

18 Q. The third recommendation is that the land for  
19 the three wells be transferred and deeded to ICR. Do  
20 you agree with that recommendation?

21 A. No.

22 Q. And is that the reason you disagree with that  
23 recommendation, because ICR does not have the ability to  
24 control whether that land is, in fact, transferred?

25 A. That's correct.



1 ALJ STERN: Wait a minute. I understand you  
2 don't have any -- you can't sign the papers, but if the  
3 owners of that property wanted to deed the property to  
4 ICR, you could certainly receive them, couldn't you?

5 THE WITNESS: Certainly.

6 BY MR. CROCKETT:

7 Q. Yeah, Mr. Busch, you would have no objection to  
8 Harvard transferring that land to the water company; is  
9 that true?

10 A. That is true.

11 Q. But your objection to that recommendation is  
12 that it is a -- it is something that you have no ability  
13 to control?

14 A. Right. My concern is that if the Commission  
15 were to direct it, I'm not sure what would happen.

16 Q. Meaning, you are not sure what would happen if  
17 you -- if Harvard refused to convey the property?

18 A. Correct.

19 Q. Because you don't -- you are not aware of any  
20 avenue that you might have to compel that transfer?

21 A. That's correct.

22 Q. Okay. Now, has the Company, in fact, taken  
23 steps to assure that it has effectively complete control  
24 of that property for purposes of operating the wells?

25 A. Yes, there are provisions in the service

1 agreement and the amendment addresses those concerns,  
2 and I believe provide perpetual access to those well  
3 sites.

4 Q. And is one of those provisions found at  
5 section 3(A) on pages 4 and 5 of the Water Service  
6 Agreement?

7 A. Page 4 and 5?

8 Q. Correct.

9 A. Yes.

10 Q. And, Mr. Busch, would you read the first  
11 sentence of that paragraph 3(A)?

12 A. The Talking Rock parties will retain ownership  
13 of the real property upon which the Talking Rock wells  
14 are located and the well field property. I hereby grant  
15 to ICRWUA a perpetual right to enter the well field  
16 property at any time, day or night, to operate, inspect,  
17 repair, replace, and maintain the Talking Rock wells.

18 Q. And then, if you would, would you read also the  
19 sentence that starts two lines up from the bottom of  
20 page 4, the Talking Rock parties?

21 A. The Talking Rock parties further agree that  
22 ICRWUA may pump the Talking Rock wells and withdraw  
23 groundwater in quantities necessary for ICRWUA to  
24 provide water service to its current and future  
25 customers on the Talking Rock water system subject to

1 the terms of this agreement and without any charge to  
2 ICRWUA for the groundwater withdrawn or for its  
3 rights -- for -- for the rights granted to ICRWUA under  
4 this agreement.

5 Q. Okay. And, then, there is another sentence I  
6 would like you to read that begins about eight lines  
7 down that says, the parties intend that. Do you see  
8 that?

9 A. M'hum.

10 Q. Would you read that?

11 A. The parties intend that the rights of ICRWUA  
12 granted under this section 3 shall run with the land and  
13 shall survive the expiration or term of this agreement  
14 and the parties agree that they will execute such  
15 additional documents in recordable form as may be deemed  
16 necessary to ensure that the rights granted to ICRWUA  
17 hereunder run with the well field property.

18 Q. Mr. Busch, is there any effective difference  
19 between owning the well site properties outright versus  
20 the rights that you have under this section 3(A)?

21 A. I don't believe so. I might point out that it  
22 is very similar to the agreement we had, arrangement we  
23 have, with the exist ing wells on the other system we  
24 own where we own wells where we don't own land.

25 Q. That is on the Inscription Canyon part of the

1 system?

2 A. That's correct.

3 Q. I didn't have you read this, but in this section  
4 3(A), is there also a prohibition on the Talking Rock  
5 parties drilling additional wells in that well field  
6 property?

7 A. Let me find it. I lost the page, sorry.

8 Q. Page 5 of the Water Service Agreement.

9 A. Yes, I believe so, in the middle of the  
10 paragraph.

11 Q. What does that state?

12 A. It says, the Talking Rock parties further agree,  
13 on behalf of themselves and the respective successors  
14 and assigns, that they shall not construct or permit the  
15 construction of any additional wells on the well field  
16 property or the equipping and use of the existing fourth  
17 well on the well field property by any persons or entity  
18 other than the ICRWUA, subject only to ICRWUA's right to  
19 drill one or more replacement wells on the well field  
20 property.

21 Q. So, again, do you believe that ICR has complete  
22 control over the existing wells and the well field  
23 property?

24 A. I believe so.

25 Q. Now, there is a couple of other provisions I

1 would like to talk to you about under the Water Service  
2 Agreement, section 2(D), back on page 4.

3 A. Okay.

4 Q. What does that -- what does that provision do?

5 A. 2(D)?

6 Q. 2(D).

7 A. It waives any restriction on any amount of water  
8 being pumped from Wells 2 and 3.

9 Q. And did the bills of sale for Wells 2 and 3 have  
10 restrictions on pumping?

11 A. Yes, they do.

12 Q. But under this agreement, those are gone?

13 A. Correct.

14 Q. Okay. Then finally, under the first amendment,  
15 if you can turn back to that, paragraph 14(A) -- I'm  
16 sorry.

17 A. Page 4.

18 Q. It is page 4. It is paragraph 8, which modifies  
19 section 14(A) of the Water Service Agreement?

20 A. Right.

21 Q. What is the effect of that provision?

22 A. Eliminates or deletes section 14(A) entirely.

23 Q. But what does the provision itself do?

24 A. Wait a minute. 14(A) is entitled, "No Right to  
25 Challenge Withdrawal of Groundwater."

1 Q. Is that what that provision does? In effect, it  
2 prohibits Talking Rock parties from challenging ICR's  
3 withdrawal of water from the wells in the well field?

4 A. Right.

5 Q. So it appears that the Company has done a number  
6 of things to ensure that the Company has all of the  
7 legal access and rights that they need to pump those  
8 wells?

9 A. Yes, I believe that is correct.

10 Q. And is it fair to say that there are more  
11 protections built in on the Talking Rock side of the  
12 system than on the Inscription Canyon side?

13 A. I believe that is true.

14 Q. Now, turning back to Mr. Myhlhousen's testimony,  
15 there is a fourth recommendation that says, Staff  
16 further recommends that the Water Service Agreement not  
17 be approved by the Commission.

18 Now, do you know whether the basis for that  
19 recommendation is that Staff does not support the  
20 provisions of the Water Service Agreement or rather that  
21 Staff doesn't know whether the Commission has  
22 jurisdiction to approve this agreement?

23 A. It is my understanding that Staff does not want  
24 to recommend approval just because of the -- not sure  
25 what the Commission's jurisdiction is there.

1 Q. So is it -- so would the Company -- would the  
2 Company seek or request a recognition from Staff  
3 regarding the benefits of the Water Service Agreement?

4 A. Yes. It would appear to me that there are  
5 significant public benefits or water company customer  
6 benefits by this agreement, and it would certainly be  
7 nice if Staff would recognize the benefits that are  
8 included within that agreement.

9 Q. So you would not -- you would not object in the  
10 event that the Commission concluded it did not have  
11 jurisdiction to approve the agreement?

12 A. No, I would not object. I would hope that the  
13 Commission would support the idea of the agreement, even  
14 though they would not recommend it.

15 Q. Fair enough.

16 ALJ STERN: Mr. Crockett, let's take a brief  
17 break, about 10 minutes. We will come back. I think I  
18 will have to wind up a little bit early. I will see  
19 when I take this break if we will wind up around 4:00 or  
20 4:30, okay?

21 MR. CROCKETT: Okay, Your Honor.

22 (Recess from 3:09 p.m. until 3:29 p.m.)

23 ALJ STERN: Returning to the record. Go ahead.

24 MR. CROCKETT: Thank you, Your Honor.

25 BY MR. CROCKETT:

1 Q. Good afternoon, Mr. Busch.

2 ALJ STERN: Again.

3 BY MR. CROCKETT:

4 Q. I think we pretty much wrapped up with  
5 Mr. Myhlhousen's testimony of November the 14th. I  
6 would like to talk to you now about Mr. Liu's amended  
7 direct testimony filed on March 14th, 2008.

8 MR. CROCKETT: Again, this hasn't been marked,  
9 yet, as an exhibit, because it is a Staff exhibit, Your  
10 Honor, but I provided a copy of it for Mr. Busch.

11 Mr. Busch.

12 ALJ STERN: Just a minute. I need to find that.  
13 Due to the voluminousness of this file.

14 MR. CROCKETT: March 14th amended direct  
15 testimony of Jim Liu.

16 ALJ STERN: Let me see, just a minute.

17 MR. CROCKETT: Amended direct testimony of  
18 Jim Liu, March 14th, 2008.

19 ALJ STERN: I have it.

20 BY MR. CROCKETT:

21 Q. Mr. Busch, do you have a copy of that testimony  
22 in front of you?

23 A. Yes.

24 Q. Does Mr. Liu identify a Commission compliance  
25 issue in that testimony?



1 A. Yes.

2 Q. And is that compliance issue the issue we've  
3 discussed throughout the day today, which is the  
4 Company's compliance with Commission Decision 64360?

5 A. That's correct.

6 Q. Is it your understanding, Mr. Busch, that the  
7 Staff's issue with ICR's compliance with Decision 64360  
8 is that the Talking Rock parties failed to transfer to  
9 the utility a second well?

10 A. That is my understanding, yes.

11 Q. Has the transfer of that second well now  
12 occurred?

13 A. Yes.

14 Q. Do you remember when that occurred?

15 A. I believe it was May 27th of this year.

16 Q. Let me direct you to exhibit ICR-12, which is a  
17 Staff memo dated November 21, 2008.

18 A. Okay.

19 Q. Toward the bottom, in fact the last paragraph of  
20 that letter, I believe indicates the date of the  
21 transfer. Do you see that?

22 A. Yeah, May 21st.

23 Q. Does that sound consistent with your  
24 recollection?

25 A. Yes.

1 Q. That is, May 21st of 2008?

2 A. 2008, yes.

3 Q. With the transfer of that well, has ICR now  
4 complied with Decision 64360?

5 A. Yes.

6 Q. And is that reflected in the last sentence of  
7 that Staff memorandum dated November 21st, 2008?

8 A. It is.

9 Q. And what does that sentence say?

10 A. It says, Staff is now satisfied that ICR is in  
11 compliance with the requirements of Decision  
12 Number 64360.

13 Q. And who prepared that memo?

14 A. Originator is Brian K. Bozzo.

15 Q. And what is his title?

16 A. Manager of compliance and enforcement of the  
17 Utilities Division.

18 Q. Is it your understanding, Mr. Busch, that the  
19 Company is in complete compliance with all Commission  
20 orders and requirements?

21 A. Yes, that is my understanding.

22 Q. You are not aware of any Commission decision or  
23 requirement that the Company is not in compliance with?

24 A. No, I'm not aware of anything.

25 Q. Now, Mr. Busch, I'm going to direct your

1 attention to another piece of testimony filed by  
2 Mr. Liu. It is the surrebuttal testimony of Jim Liu  
3 dated December 21st, 2007. And for your purposes, it is  
4 tab 6 in the binder that you have before you.

5 MR. CROCKETT: Your Honor, this is a piece of  
6 testimony that has not yet been offered, so I don't have  
7 an exhibit number for it.

8 ALJ STERN: Going way back in time.  
9 December 21st, 2007?

10 MR. CROCKETT: Correct.

11 ALJ STERN: Okay. Go ahead. I will find it.

12 MR. TORREY: Your Honor, I have a copy if you  
13 need it.

14 ALJ STERN: I have it.

15 BY MR. CROCKETT:

16 Q. Mr. Busch, are you there?

17 A. Yes.

18 Q. Turn, if you would, to the page that is  
19 entitled, "Executive Summary." Do you see that?

20 A. Yes, okay.

21 Q. And does that executive summary identify two  
22 issues of compliance that the Company had at that time?

23 A. Yes.

24 Q. Was one of those the issue of compliance with  
25 ADEQ's requirements?

1 A. Right.

2 Q. And you've testified earlier as to the Company's  
3 compliance with that issue; is that correct?

4 A. That's correct.

5 Q. And the evidence of the Company's compliance is  
6 the -- are the drinking water compliance status reports  
7 that were filed with the Commission on May 14th, 2008?

8 A. I believe that is correct.

9 Q. So with regard to item 1 on Mr. Liu's executive  
10 summary, that issue has been addressed and fully  
11 resolved by the Company?

12 A. Yes. We are in full compliance with ADEQ.

13 Q. Now, the second item has to do with water use  
14 data. What is the issue there?

15 A. I believe the issue is that the information that  
16 the Company has been providing in its annual reports.  
17 The commission have not been broken down in sufficient  
18 detail that the Staff could determine the amount of  
19 water that was being pumped from each of the two  
20 systems.

21 Q. And has the Company been working to resolve that  
22 issue?

23 A. Yes. The Company has data from each of the two  
24 systems that it could easily break down and provide. We  
25 were just not aware of Staff's need to have that in that

1 format.

2 Q. Do you feel like you understand what is being  
3 required by Staff at this time?

4 A. I believe so.

5 Q. And will the Company comply with that  
6 requirement?

7 A. Certainly.

8 Q. Are there any other issues that have been  
9 identified by Mr. Liu in his testimony in this case that  
10 have not been resolved by the Company?

11 A. Not that I'm aware of.

12 Q. Is ICR Water Users Association current on the  
13 payment of its property taxes and all other taxes and  
14 assessments that it owes?

15 A. Yes.

16 Q. Mr. Busch, in your opinion, is the Water Service  
17 Agreement, as amended by the first amendment to the  
18 Water Service Agreement, in the public interest?

19 A. Yes, I believe it is.

20 Q. Oh, Mr. Busch, does this conclude your  
21 testimony?

22 A. It does.

23 MR. CROCKETT: Your Honor, at this time I would  
24 move the admission of my exhibits, and those are --

25 ALJ STERN: Wait a minute. Go ahead.

1 MR. CROCKETT: ICR-3, 4, 7, 8, 9, 10, 11, 12,  
2 and 13. I'm not moving at this time the application,  
3 which is exhibit ICR-1, because that primarily is  
4 comprised of Mr. Bourassa's direct testimony, and I will  
5 let Mr. Metli move that when he goes over the testimony  
6 with Mr. Bourassa.

7 ALJ STERN: You said, ICR-3, 4, 7, 8, 9, 10, 11,  
8 12, and 13?

9 MR. CROCKETT: Correct.

10 ALJ STERN: And ICR-2, that is that one?

11 MR. CROCKETT: The balance of the exhibits,  
12 ICR-1, 2, 5, and 6 are all testimony of Mr. Bourassa.

13 ALJ STERN: Okay. So any objection,  
14 Mr. Shapiro?

15 MR. SHAPIRO: No.

16 ALJ STERN: Mr. Taylor?

17 MR. TAYLOR: No.

18 MR. TORREY: No.

19 ALJ STERN: No objections. Exhibits ICR-3, 4,  
20 7, 8, 9, 10, 11, 12, and 13 are all admitted.

21 (Exhibits ICR-3, 4, 7, 8, 9, 10, 11, 12 and 13  
22 were admitted into evidence.)

23 And your witness is ready to be cross-examined  
24 by these other individuals?

25 MR. CROCKETT: Yes.

1 ALJ STERN: Okay. Mr. Shapiro, do you want to  
2 proceed?

3

4

CROSS-EXAMINATION

5

6 BY MR. SHAPIRO:

7 Q. Good afternoon, Mr. Busch.

8 A. Good afternoon.

9 Q. You started with Mr. Crockett talking about the  
10 process of reaching an agreement with the Talking Rock  
11 parties on the Water Service Agreement. Do you recall  
12 that?

13 A. Yes.

14 Q. And Mr. Crockett introduced exhibit ICR-13 to  
15 reflect, in answer to Judge Stern's question, when a  
16 copy of the Water Service Agreement was provided to  
17 Mr. Taylor for his review and comment. Do you recall  
18 that?

19 A. Yes.

20 Q. Did Mr. Taylor provide any review or comment on  
21 the Water Service Agreement when that opportunity was  
22 provided to him?

23 A. Not that I'm aware of.

24 Q. Do you know why?

25 A. I don't know why.

1 Q. That wasn't the first time that the parties  
2 attempted to solicit comment from Mr. Taylor on what was  
3 to become the Water Service Agreement, was it?

4 A. I don't believe it was.

5 Q. Didn't the parties also sit down with Mr. Taylor  
6 and representatives from Staff in late May of 2008 to  
7 talk about turning the letter of understanding into a  
8 Water Service Agreement?

9 A. Yes.

10 Q. And you participated in that meeting here at the  
11 Commission, didn't you?

12 A. Yes, I did.

13 Q. And at that time, the parties did attempt to  
14 obtain input from Mr. Taylor on certain terms and  
15 conditions that would become part of the Water Service  
16 Agreement?

17 A. That is what I recall.

18 Q. So Mr. Taylor's claim in his testimony that he  
19 had no involvement whatsoever, would you believe that to  
20 be a bit of an exaggeration?

21 A. A bit.

22 Q. How many other wells does ICR use to serve its  
23 customers outside of Talking Rock?

24 A. We presently have two wells outside of Talking  
25 Rock.



1 Q. Do you own those wells?

2 A. We own the wells.

3 Q. Is there some relationship that would require  
4 that well be returned at some point to somebody else,  
5 ownership to transfer back?

6 A. You mean -- sorry, would you clarify for me.

7 Q. Yeah. Is that a permanent ownership or is there  
8 some arrangement where that well at some point would  
9 revert back to other ownership?

10 A. My understanding is that the Company owns it  
11 outright.

12 Q. And do you own the land under those wells?

13 A. No.

14 Q. Those are the wells that are used to serve the  
15 subdivision that Mr. Taylor lives in; correct?

16 A. Correct.

17 Q. That is the ICR subdivision?

18 A. And Whispering Canyon, yes, and preserve.

19 Q. Is ICR, the Company, prohibited from using those  
20 wells to serve its customers because it doesn't own the  
21 land underneath the well?

22 A. No. Not to my knowledge.

23 Q. And are the two water systems, the Talking Rock  
24 system and the ICR system, are they interconnected in  
25 some way?

1           A.       They are not.  They are totally separate  
2 independent systems.  They are not interconnected in any  
3 way.

4           Q.       You testified in response to a question by  
5 Mr. Crockett that under the party's agreement, the Water  
6 Service Agreement as amended, construction water would  
7 be covered by the special commodity rate.  Do you recall  
8 that?

9           A.       Yes.

10          Q.       Currently, construction water is provided to the  
11 Talking Rock parties' community pursuant to the Well  
12 Agreement; correct?

13          A.       Correct.

14          Q.       So it is not sold at a tariffed rate today?

15          A.       That's correct.

16          Q.       I just want to go back over, you went through  
17 some things with Mr. Crockett, and I know it was  
18 difficult at times, let me see if I can summarize where  
19 we are at with the Water Service Agreement as amended.

20                    If the special commodity rate were approved,  
21 then that would be the rate that the golf course and the  
22 Talking Rock parties would pay for irrigation and  
23 construction water for at least five years?

24          A.       That's correct.  That is my understanding.

25          Q.       And during that five years, the Talking Rock

1 parties have the right to leave the system and serve  
2 themselves, consistent with Arizona and federal law, at  
3 any time?

4 A. That's right.

5 Q. But as long as they are on the system, then they  
6 can't bring any outside water, groundwater, to the  
7 Talking Rock subdivision for the purposes of irrigation  
8 or construction water?

9 A. That's right.

10 Q. But they can use effluent that is made available  
11 by the district that Mr. Taylor is on the board of?

12 A. That's right.

13 Q. So Talking Rock, the Talking Rock parties, will  
14 use only groundwater from ICR less effluent during the  
15 period of time they stay on the system?

16 A. That's right.

17 Q. Okay. There has been a lot of discussion over  
18 which wells needed to be transferred, what the Order  
19 required. And you are familiar with that issue;  
20 correct?

21 A. Yes.

22 Q. The truth is, Mr. Busch, is that for some time  
23 now, several years, ICR, the water company, has operated  
24 all three of the Talking Rock wells; correct?

25 A. That's correct.

1 Q. And that includes the two wells that only 1 --  
2 that includes Well 3, which was transferred effective  
3 several years ago, and Well 2 that was transferred just  
4 this past spring, but you were operating and controlling  
5 that well prior to that?

6 A. Right.

7 Q. Okay. And Well 1, which you have no ownership  
8 interest in, you've also been operating and controlling  
9 for some time?

10 A. That's correct.

11 Q. So the fact that there wasn't a transfer of two  
12 wells several years ago, how did that harm ICR's  
13 operations, or did it harm ICR's operations?

14 A. I don't believe it harmed the operation at all.

15 Q. Has ICR ever run out of water to date to serve  
16 any of its residential customers?

17 A. No.

18 Q. Did it ever run out of water to wheel water to  
19 the golf course?

20 A. No, not to my knowledge.

21 Q. There was a well field test that was conducted  
22 last year in '07; correct?

23 A. Correct.

24 Q. And that was -- I think you said that that was a  
25 three-day test?

1 A. Yes.

2 Q. And all three wells were run at the same time  
3 for that full three-day period?

4 A. Correct.

5 Q. So they were run together?

6 A. Together.

7 Q. And from your experience, you would have  
8 different well production readings for running all three  
9 wells at the same time for 24 hours versus just running  
10 one well at a time for a limited period of time;  
11 correct, it is a different type of well test?

12 A. That sounds reasonable.

13 Q. And there was a large quantity of water that  
14 would have been pumped out of those three Talking Rock  
15 wells during this well field test; correct?

16 A. Yes, three-days' worth.

17 Q. Was there other testing that the Company did  
18 during that same year that maybe Talking Rock didn't  
19 participate in?

20 A. I believe there was some testing one of our  
21 Board members did, earlier in the summer.

22 Q. Okay. Mr. Taylor has accused ICR's Board and  
23 the Talking Rock parties of failing to commit to water  
24 conservation. Do you agree with that statement?

25 A. No, I don't believe I would agree with it.

1 Q. What does ICR do as a water company and a water  
2 provider to promote water conservation within its  
3 service area?

4 A. To be quite honest, I don't know that I could  
5 say that we've done a lot for conservation inside the  
6 area right now.

7 Q. But you are aware of the steps that the Talking  
8 Rock parties have taken within the golf course property  
9 to reduce water?

10 A. Yes.

11 Q. Okay. And you talked about the 25 million  
12 gallon storage pond that the Talking Rock parties agreed  
13 to build and said that that would help to reduce the use  
14 of groundwater by allowing storage of effluent?

15 A. Yes.

16 Q. Would that, in your mind, constitute the type of  
17 best management practice that Commissioner Mayes was  
18 looking for earlier today?

19 A. I would certainly think so.

20 Q. Do you know how the use by residential customers  
21 differs between those living in the Talking Rock  
22 subdivision and those living in other parts of your  
23 service territory?

24 A. Yes.

25 Q. And what is the difference?

1           A.       Well, there is a couple of differences.  First  
2   off, the residential use in the Talking Rock subdivision  
3   is approximately half of what it is in the Inscription  
4   subdivision.  Now, that doesn't take into account the, I  
5   want to call, the common area irrigation that is done in  
6   some of the landscaped areas within the Talking Rock  
7   area.  But at least the residential users themselves,  
8   the Inscription Canyon section, use about twice the  
9   average in in the Talking Rock area.

10          Q.       ICR doesn't currently have a Commission-approved  
11   curtailment tariff?

12          A.       ICR?  We have an approved curtailment tariff.

13          Q.       And under the agreement -- one of the things  
14   that I don't recall Mr. Crockett asking you about is the  
15   agreement by the Talking Rock parties that residential  
16   customers, anywhere in ICR's systems, would have a  
17   priority in the event of water shortage; correct?

18          A.       Correct.

19                 ALJ STERN:  When you say "customers," do you  
20   mean residential customers versus the golf course and  
21   construction?

22                 MR. SHAPIRO:  Well, yeah, I think that is a  
23   little unclear now, because of the time the residential  
24   priority was agreed to, we were going to be a special  
25   contract customer, but I think for the record, it is

1 clear, at least in our mind, the Talking Rock parties,  
2 that in the times of water shortage, residences get  
3 water first and golf courses and construction get water  
4 second.

5 ALJ STERN: Go ahead.

6 BY MR. SHAPIRO:

7 Q. Thank you.

8 Lastly, if -- the real property where the wells  
9 are located, are you aware that that is a parcel that is  
10 larger in ownership than just where the wells are  
11 located?

12 A. Yes, that is my understanding.

13 Q. So it would require some sort of a lot split to  
14 take the parcel that just -- to split out the area where  
15 just the wells are contained versus the other property  
16 that the Talking Rock party owns?

17 A. That is one possibility, yes.

18 Q. Mr. Busch, not to put you on the spot, but I  
19 guess I am going to, if the Talking Rock parties were  
20 willing to convey the land itself after a lot split,  
21 would ICR be willing to grant access easements back to  
22 the Talking Rock parties if they conveyed ownership of  
23 the well field land? Kind of the opposite scenario of  
24 what we have now?

25 A. Yeah, I understand. I understand that the Board



1 would have to make that decision, but I would -- I guess  
2 I would recommend to the Board that they do that.

3 ALJ STERN: Can I just ask you a question? How  
4 large -- are all three of these wells in sort of close  
5 proximity?

6 THE WITNESS: Yes, they are within 100 yards of  
7 each other.

8 ALJ STERN: How big is the well site? Is it an  
9 acre? Two acres? A quarter acre?

10 THE WITNESS: I guess it is about five acres.

11 ALJ STERN: The whole well site area?

12 THE WITNESS: The whole parcel is five acres.  
13 The wells are probably concentrated in an acre, maybe  
14 one acre.

15 ALJ STERN: Okay. Go ahead.

16 MR. SHAPIRO: Thank you, Mr. Busch.

17 ALJ STERN: Are you done?

18 MR. SHAPIRO: Yes.

19 ALJ STERN: Mr. Taylor, you are next for  
20 cross-examination. I want to ask you, how much  
21 cross-examination do you have for the gentleman?

22 MR. TAYLOR: Thank you, Your Honor, for asking,  
23 because I feel mine is going to go more than 4:30 that  
24 you had estimated.

25 ALJ STERN: Well, if it is going to be lengthy,

1 I think what we will do is try and put it into one  
2 session. If you --

3 MR. TAYLOR: I would appreciate it if I could do  
4 it in one session.

5 ALJ STERN: What we will do is return here at  
6 9:30 tomorrow morning. Call witnesses, et cetera, and  
7 see you tomorrow.

8 We are off the record. Thank you.

9 (The hearing recessed at 3:54 p.m.)

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1 STATE OF ARIZONA )  
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I, TERESE HEISIG, Certified Reporter No. 50378  
for the State of Arizona, do hereby certify that the  
foregoing printed pages constitute a full, true and  
accurate transcript of the proceedings had in the  
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WITNESS my hand this 15th day of December, 2008.

  
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Certified Reporter  
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