

1 probably ancillary information also in the section 04:13:19
2 dealing with the Navy. 04:13:23

3 Q. So would it -- would it be fair to say, then, 04:13:27
4 that all of the bases for the position that Chollas Creek 04:13:29
5 has contributed to contamination at the site beyond the 04:13:33
6 polygon NA22 are contained either in Section 4 of the DTR 04:13:37
7 or the Navy's section of the DTR, which I think is 04:13:43
8 Section 10, perhaps? 04:13:47

9 A. Yes. Yes. 04:13:48

10 Q. I think that's right. 04:13:48
11 Are you able to quantify the percent of 04:13:50
12 contribution that you believe Chollas has contributed to 04:13:53
13 the site contamination beyond NA22? 04:13:59

14 MR. RICHARDSON: Objection. Lacks foundation. 04:14:02

15 THE WITNESS: No. I guess throughout the DTR we 04:14:03
16 never allocated the percent of the site contamination as 04:14:08
17 coming from one source versus the other. 04:14:15

18 BY MS. REYNA: 04:14:18

19 Q. Okay. 04:14:19
20 Would -- would the basis for the position that 04:14:22
21 Chollas has contributed to contamination at the site 04:14:25
22 beyond NA22 also serve as the basis for your testimony 04:14:28
23 that there was a possibility that Chollas could cause 04:14:34
24 recontamination of the site prior to TMDL implementation? 04:14:37

25 A. Yes. 04:14:41

1 Q. So those would be the same bases; there are no 04:14:43
2 additional bases you're aware of? 04:14:46

3 A. Yes. There's another finding, now that I'm 04:14:52
4 thinking about it, in the DTR that makes some statements 04:14:54
5 about Chollas Creek outflows. It's -- I can just tell 04:14:59
6 you quickly where it is. In Finding 12 talks about it in 04:15:08
7 a very summary way. But it's mostly drawing its 04:15:15
8 conclusions from Section 4 of the DTR, plus whatever is 04:15:18
9 mentioned in the Navy section. Okay. 04:15:26

10 Q. Would you agree that recontamination from 04:15:33
11 Chollas to the point that another dredging or remedial 04:15:38
12 action would be required is not likely as long as the 04:15:42
13 TMDLs are implemented according to the schedule? 04:15:45

14 A. I -- that is the theory that the board is 04:15:48
15 stated, I think, in Finding 12 of the order. I would 04:15:54
16 like to just note that the -- with the cleanup of the 04:15:59
17 site, we're not requiring cleanup to pristine levels at 04:16:05
18 all areas of the site but only certain portions of the 04:16:09
19 site. 04:16:12

20 And while there might be some contaminants that 04:16:15
21 may come into the site from Chollas Creek during the 04:16:19
22 period while the TMDLs are being implemented, we were not 04:16:23
23 expecting that to accumulate to levels that would trigger 04:16:26
24 the need to re-cleanup the site. 04:16:30

25 MS. REYNA: Okay. Great. Thank you very much. 04:16:34

1 That's all the questions I have. 04:16:36

2 THE WITNESS: Thank you. 04:16:39

3 MR. CARRIGAN: Let's go off the record. 04:16:40

4 THE VIDEOGRAPHER: Off the record. Time is 04:16:41

5 4:16 p.m. 04:16:43

6 (A recess was taken.) 04:16:46

7 THE VIDEOGRAPHER: Back on the record. Time is 04:20:17

8 4:20 p.m. 04:20:19

9 *** 04:20:20

10 EXAMINATION 04:20:20

11 BY MS. WITKOWSKI: 04:20:21

12 Q. Good afternoon, Mr. Barker. 04:20:23

13 A. Good afternoon. 04:20:24

14 Q. My name is Jill Witkowski, I'm counsel for 04:20:24

15 San Diego CoastKeeper and Environmental Health Coalition. 04:20:27

16 I'd like to start with some questions on the economic 04:20:31

17 feasibility analysis. 04:20:34

18 A. All right. 04:20:35

19 Q. You are the Cleanup Team's person most 04:20:36

20 knowledgeable for the economic feasibility? 04:20:38

21 A. Yes. 04:20:40

22 Q. And what's the basis of -- what makes you the 04:20:40

23 person most knowledgeable? 04:20:44

24 A. Just based on my supervision of all the work 04:20:47

25 done on the site over the years, and also my work done on 04:20:54

1 other contaminated sediment sites in the bay where 04:20:59
2 economic feasibility was a consideration. 04:21:07
3 Q. What other economic feasibility analyses have 04:21:11
4 you completed or worked on? 04:21:14
5 A. Well, let's see. In the sites we referred to 04:21:16
6 earlier today the -- and also yesterday on contaminated 04:21:23
7 sediment sites around the bay, the economic feasibility 04:21:31
8 to cleanup to background was a consideration at all of 04:21:35
9 those sites. So -- 04:21:39
10 Q. For the record, so we don't have to go back to 04:21:41
11 yesterday's testimony to figure out what those are, could 04:21:43
12 you tell me what those are? 04:21:46
13 A. The names of the sites? 04:21:48
14 Q. Yes. 04:21:49
15 A. Let me get the spreadsheet here, and I can list 04:21:50
16 those out for you. 04:21:54
17 Q. Thank you. 04:21:57
18 A. These would have been the Paco Terminals, 04:21:58
19 Incorporated site; the Teledyne Ryan Convair Lagoon site; 04:22:01
20 the Eichenlaub Marine site; the Shelter Island Boatyard 04:22:09
21 site, the Bay City Marine site; the Driscoll Boatyard 04:22:16
22 site; the Kettenburg Marine site; the Koehler Kraft site; 04:22:23
23 the Mauricio and Sons site; and the Campbell Industries 04:22:29
24 Shipyard site. 04:22:40
25 Q. For any of those cleanups, were you -- did you 04:22:42

1 have primary responsibility for completing the economic 04:22:47
2 feasibility analysis? 04:22:50

3 A. I was senior engineer supervising staff working 04:22:52
4 on those sites, reviewing -- typically, we would ask for 04:22:57
5 the responsible parties to submit feasibility analysis to 04:23:04
6 us. So I was, along with the staff working the project, 04:23:08
7 would review those analyses and draw conclusions from 04:23:12
8 them, yes. 04:23:15

9 Q. You said that with this analysis you supervised 04:23:18
10 people who were working on that; is that correct? 04:23:22

11 A. Yes. 04:23:24

12 Q. Who were you supervising? 04:23:24

13 A. Let's see. On -- this would have been the 04:23:26
14 Cleanup Team members -- Julie Chan, Craig Carlisle. It's 04:23:28
15 late in the day, and for some reason I'm -- I'm just 04:23:42
16 starting to forget the names of my own staff. Tom Alo. 04:23:44
17 Those were the primary members. 04:23:53

18 Q. And did each of those people work on the 04:23:54
19 economic feasibility analysis? 04:23:56

20 A. It was -- again, it was -- this was a type of 04:23:58
21 analysis that was kind of a group analysis. It wasn't 04:24:03
22 one individual taking a primary lead on it. But we were 04:24:11
23 kind of jointly looking at it, jointly drawing 04:24:15
24 conclusions on it. 04:24:18

25 Q. Have you taken any classes or specific training 04:24:22

1 on economic feasibility or economic analysis? 04:24:26

2 A. Yes, yes. 04:24:30

3 Q. Which -- which classes or training were those? 04:24:31

4 A. Well, let's see. Primary class was a -- was a 04:24:33

5 couple of economics classes when I was in school studying 04:24:39

6 for my engineering degree that involve comparison of -- 04:24:45

7 of alternatives. And -- and then also just economic 04:24:48

8 considerations are considered -- are involved in many of 04:25:00

9 the projects at the Regional Board. And so I get 04:25:04

10 involved in those issues when they arise. 04:25:11

11 Q. Of the prior cleanups that you just referred to, 04:25:17

12 did any of those conclude that it was economically 04:25:21

13 feasible to cleanup to background? 04:25:23

14 A. No. 04:25:27

15 MR. CARRIGAN: Any of the sediment sites? 04:25:27

16 MS. REYNA: Yes, the Paco Terminals through 04:25:29

17 Campbell that you had listed before. 04:25:31

18 THE WITNESS: Okay. Yeah, let me see. 04:25:33

19 Yeah, cleanup to background was evaluated at all 04:25:42

20 those sites, except for there were two sites where the 04:25:46

21 decision was made to leave the contaminants in place and 04:25:54

22 to not require cleanup. And so cleanup to background may 04:26:00

23 not have been evaluated as part of that process. But 04:26:07

24 at -- I can name the sites if you'd like where it was. 04:26:10

25 BY MS. REYNA: 04:26:12

1 Q. So -- 04:26:14

2 A. I -- okay. Out of that list I just gave you, 04:26:15

3 the only sites that would be excluded from that would 04:26:17

4 have been Eichenlaub Marine and Shelter Island Boatyard. 04:26:20

5 The remaining sites all involved evaluation of cleanup to 04:26:25

6 background. 04:26:29

7 Q. Did any of them conclude that eval -- or that 04:26:30

8 cleanup to background was economically feasible? 04:26:33

9 A. No, no, they did not. 04:26:36

10 Q. Are you aware of any cleanups in California that 04:26:38

11 have included that cleanup to background is economically 04:26:41

12 feasible? 04:26:44

13 MR. CARRIGAN: Overbroad. Vague. 04:26:49

14 BY MS. WITKOWSKI: 04:26:53

15 Q. I'll limit that to sediment cleanups. 04:26:54

16 A. Sediment cleanups, I am not aware of that, no. 04:26:56

17 Q. This -- I'll turn to Finding 31 in the current 04:27:05

18 version of the DTR which is the economic feasibility 04:27:08

19 considerations analysis. 04:27:10

20 A. Yes. 04:27:11

21 Q. When was this analysis in its current version 04:27:12

22 completed? 04:27:17

23 A. When was it completed? It was an analysis 04:27:18

24 that's been formulated over some period of time. But as 04:27:28

25 far as when we dotted the last "I" and got all the 04:27:31

1 supporting spreadsheets in order, it was sometime fairly 04:27:35
2 close to when we issued the final document. Although it 04:27:52
3 was, I guess, substantially completed before then. 04:28:01
4 Q. You said that it basically had been in process 04:28:05
5 for quite some time. Can you explain what you mean by 04:28:07
6 that? 04:28:09
7 A. Just cost data being refined and cranked into 04:28:10
8 the -- the approach on it. 04:28:15
9 Q. And what -- "cranked through the approach," what 04:28:19
10 do you mean by that? 04:28:23
11 A. Just there's various spreadsheets that support 04:28:24
12 the analysis that are based on certain assumptions like, 04:28:27
13 dredge area involved, the cost of dredging, the 04:28:33
14 assumptions made with disposal of dredged material. All 04:28:44
15 of this had a -- had a -- had a bearing on how one would 04:28:49
16 compute the feasibility of cleanup to background, yeah. 04:28:53
17 Q. Okay. 04:28:58
18 A. So it was -- I believe in -- let's see. This -- 04:28:59
19 this is the 2010 version. I believe there were some 04:29:06
20 differences in the text on economic feasibility in -- 04:29:10
21 in -- in that version of the DTR versus the one that was, 04:29:15
22 say, back in 2009. And those differences are related to 04:29:23
23 refinement of numbers, calculations, et cetera. 04:29:28
24 Q. Is -- in Finding 31 of the DTR and the 04:29:35
25 appendices for Section 31. 04:29:41

1 Q. What does "objective balancing" mean? 04:31:07
2 MR. CARRIGAN: Document speaks for itself. 04:31:11
3 Calls for a legal conclusion. You can answer. 04:31:12
4 THE WITNESS: A -- in my mind, an unbiased 04:31:21
5 balancing without a predetermination of how the analysis 04:31:26
6 would -- would -- what would be the resulting decision 04:31:31
7 from the analysis. But of two different factors. The -- 04:31:36
8 the benefits associated with attaining more stringent 04:31:44
9 cleanup levels versus the costs of -- of achieving those 04:31:48
10 levels, yeah. 04:31:55
11 BY MS. WITKOWSKI: 04:31:56
12 Q. In your mind would an objective balancing also 04:31:58
13 be supported by evidence and facts? 04:32:00
14 A. Yes. Yes, it would. 04:32:04
15 Q. Okay. Let's go to the next page. 04:32:07
16 A. Okay. 04:32:10
17 Q. This is where I want to start to get into the 04:32:11
18 meat of this analysis. 04:32:13
19 A. Okay. 04:32:15
20 Q. The first sentence reads, "Economic feasibility 04:32:16
21 was assessed by ranking the 65 shipyard sediment stations 04:32:20
22 according to the contaminant levels found in surficial 04:32:24
23 sediment samples." 04:32:27
24 A. Yes. 04:32:30
25 Q. And then it continues to say, "The process used 04:32:31

1 triad data and site specific median effects quotient, 04:32:35
2 SSMEQ." 04:32:39
3 A. Yes. Right. 04:32:41
4 Q. So I want to understand the process, how you did 04:32:41
5 this. How did you gather all this information together 04:32:44
6 to do this ranking? 04:32:50
7 A. Well, the ranking, the sediment triad data was 04:32:53
8 the results of the triad sampling done in this 04:33:03
9 investigative report from 2001 to 2003. And those 04:33:08
10 results are tabulated in the DTR. 04:33:12
11 And then the SSMEQ calculations are also 04:33:16
12 tabulated in here, as well. And -- and then the sites, 04:33:26
13 these polygon areas that we discussed, I -- I call them 04:33:36
14 that -- were ranked from just using certain assumptions 04:33:42
15 from the most polluted polygons down to the -- the least 04:33:49
16 polluted. 04:33:58
17 Q. So what assumptions were used to make that 04:33:58
18 ranking? 04:34:00
19 A. Well, the -- I'd have to consult the document to 04:34:02
20 refresh my memory. Part of it was just based on the -- 04:34:10
21 the potential for biological effects from the contaminant 04:34:16
22 levels found in those -- those polygons. 04:34:22
23 Q. Did you have SSMEQ data for all of the polygons? 04:34:28
24 MR. CARRIGAN: Vague. 04:34:36
25 THE WITNESS: I'd have to consult the DTR. I 04:34:38

1 believe we did. 04:34:40

2 BY MS. WITKOWSKI: 04:34:41

3 Q. What about triad data; did you have that for 04:34:42

4 each of the polygons? 04:34:44

5 A. No. There were -- there was only triad data 04:34:46

6 for -- I think there was a data set of like six -- 04:34:54

7 65 sample stations. And approximately 30 of those sites 04:35:02

8 had triad data. And for the sites that did not have 04:35:08

9 triad data, the SSMEQ was a procedure to -- used to 04:35:15

10 calculate the potential for biological effects from that 04:35:25

11 because they weren't directly measured. Say, only 04:35:28

12 sediment chemistry was obtained at those sites. 04:35:34

13 So it's a procedure to take just when -- in 04:35:37

14 situations where you just have sediment chemistry and you 04:35:39

15 don't have toxicity sampling or benthic community 04:35:43

16 assessments at a station point. You can do this 04:35:47

17 calculation procedure which indicates a potential for 04:35:51

18 biological effects. It's a way to make -- take advantage 04:35:55

19 of what data that you have. 04:35:58

20 Q. So if I understand correctly, you had triad data 04:36:01

21 for some but not all of the polygons. 04:36:04

22 A. Yes. 04:36:07

23 Q. And SSMEQ data for some but not all of the 04:36:07

24 polygons? 04:36:10

25 A. I think the SSMEQ could be calculated for any 04:36:13

1 polygon where there was just sediment chemistry at that 04:36:17
2 polygon. 04:36:22

3 Q. How did you bring those two different 04:36:23
4 measurements together to create one ranking? 04:36:26

5 A. There was a procedure outlined here in the text. 04:36:30
6 And before I answer your question, I would like to have 04:36:34
7 an opportunity to refreshen my memory on that. 04:36:37

8 Q. Please do. Let me know when you're done where 04:36:45
9 you were looking so I -- 04:36:47

10 A. Yes. Okay. 04:36:48

11 MR. CARRIGAN: Do you think it's in Chapter 31? 04:36:50

12 THE WITNESS: No. Well, let me see. No, no. 04:36:51
13 It's -- it's in an earlier -- the ranking of the sites 04:36:56
14 are in a different section. Let me see where it is. 04:37:02
15 Alternative levels. Let me see here. Hang on. 04:37:15
16 Campbell. I'm just trying to see where we are. 04:37:42
17 Definitely not Volume 1. 04:37:44

18 Two, triad -- no. It's possible, but I think 04:37:52
19 it's even later than that. This is just the weight of 04:38:04
20 evidence. Let me go to Volume 3. Right. Let me go back 04:38:08
21 to the economic -- I see a Section 33. But let me refer 04:38:31
22 back to the economic feasibility analysis, which is the 04:38:40
23 end. 32.5.2. Yeah. Okay. Where did we point to that 04:38:47
24 ranking? Yeah. Okay. Yeah. Thirty-three. Yeah. 04:39:16
25 If you look in Table 33-1, there's part of the 04:39:49

1 tabulation of the ranking of the polygons, that this 04:40:01
2 would be -- this was a system to analyze the polygons for 04:40:14
3 chemical concentrations of the chemicals of concern with 04:40:30
4 ranking them from, which would be -- which ones should be 04:40:36
5 removed on a worse first type basis. And then over on 04:40:40
6 the next page is a ranking that was done with regard to 04:40:47
7 SSMEQ ranking. 04:40:50
8 Q. I see that Table 33-1 says "Remedial footprint 04:40:56
9 polygons ranked by SWAC." 04:41:01
10 A. Yes. 04:41:03
11 Q. And then back in Finding 31, it talks about the 04:41:04
12 process used triad data in site specific -- SSMEQ. So is 04:41:07
13 the triad data the same as SWAC? 04:41:14
14 A. No, no. The triad data would have been the data 04:41:16
15 that indicates which stations had likely biologic effects 04:41:21
16 associated with them. And there were only a few stations 04:41:30
17 that had that result. And -- and so those -- you know, 04:41:33
18 that was a consideration. But we used other parameters, 04:41:37
19 also, to identify worst first. 04:41:43
20 Because we -- we were -- were not limiting the 04:41:45
21 cleanup decision just to polygons that -- where there 04:41:48
22 were likely impacts to benthic organisms, if you follow 04:41:55
23 my logic. We were also looking for ones that had the 04:41:59
24 greatest mass of contaminants in them that at the higher 04:42:03
25 levels. And then using the SSMEQ to analyze whether 04:42:07

1 those polygons would -- had a potential for biologic 04:42:16
2 effects. 04:42:22

3 Q. So the worst first ranking used the SWAC data 04:42:23
4 and the SSMEQ and the triad data? 04:42:28

5 A. Yes. I think so. I think it was a given that 04:42:33
6 any -- any polygon that had a likely effect as a result 04:42:37
7 of the triad data would be included in the proposed 04:42:42
8 footprint. So this is a methodology for dealing with the 04:42:47
9 rest of them. 04:42:50

10 Q. So I guess I'll go back to my original question 04:42:54
11 of how, then, did you take the SWAC data, the SSMEQ data, 04:42:56
12 and the triad data and combine them all together to get 04:43:01
13 one ranking? 04:43:04

14 A. Okay. That -- let's see. Okay. 04:43:05

15 Just using the results for -- for both of those 04:44:09
16 rankings and integrating the results of both of that was 04:44:13
17 used to rank the worst first. 04:44:21

18 Q. Let me ask a more specific example. Maybe that 04:44:26
19 will help us figure it out. 04:44:30

20 A. Okay. 04:44:32

21 Q. Can you look at 31-1 and 30 -- excuse me -- 04:44:33
22 Table 33-1 and Table 33-2 together? 04:44:37

23 A. Thirty -- 33-1 and 32-2. Okay. 04:44:41

24 Q. 33-2. Yeah, the SWAC ranking and SSMEQ ranking. 04:44:45

25 A. Yes, uh-huh. 04:44:49

1 Q. So looks to me that SW-04 is the same, is number 04:44:52
2 one on both lists? 04:44:57
3 A. Yes. 04:44:58
4 Q. And then SW-08 is the second on both. SW-02 is 04:44:58
5 the third on both. SW-24 is the fourth. Same -- SW-09 04:45:02
6 is the fifth. And then when we get down to the sixth, on 04:45:09
7 SWAC it's SW-28 and for the SSMEQ it's SW-13? 04:45:12
8 A. Yes. 04:45:18
9 Q. So for the overall ranking how did you decide 04:45:18
10 what goes next? 04:45:22
11 A. Okay. So then we would proceed to 04:45:27
12 Section 33.1.4 to ensure that the polygons that had the 04:45:32
13 highest individual CoCs are remediated. Each was rank 04:45:52
14 ordered independently for each of the CoCs. 04:45:57
15 Q. So how -- how does that tell me which one goes 04:46:23
16 next? 04:46:26
17 A. Let's see. What I'm looking for is if there's a 04:46:30
18 table that integrates all of this and displays that. I 04:46:33
19 think in the spreadsheets for the economic feasibility 04:46:40
20 analysis is where you might see that integration. 04:46:44
21 Because it's -- it's ranked with cleaning -- 04:46:48
22 it's ranked in series of six polygons with the costs of 04:46:56
23 remediating the first six that would result in the 04:47:02
24 greatest exposure reduction. And then -- and then going 04:47:05
25 down to the next six. 04:47:09

1 Q. We're actually going to get there in just a 04:47:13
2 minute. But before we have to get off tape because we 04:47:15
3 have to switch the tape, there's nowhere that you can 04:47:17
4 point to right now in the DTR that details the process 04:47:21
5 that the Cleanup Team used to -- 04:47:25
6 A. For -- 04:47:28
7 Q. -- to bring these types of data all together? 04:47:30
8 MR. CARRIGAN: Besides what he already pointed 04:47:33
9 to? 04:47:35
10 MS. WITKOWSKI: That explains the methodology of 04:47:35
11 bringing those three together. So I can follow why you 04:47:38
12 picked SW-28. 04:47:41
13 MR. CARRIGAN: In addition to the testimony he's 04:47:42
14 already given, there is nothing more? That's what you're 04:47:44
15 asking? 04:47:47
16 MS. WITKOWSKI: I'm asking for -- well, let me 04:47:48
17 ask my question again. 04:47:51
18 BY MS. WITKOWSKI: 04:47:52
19 Q. There is no narrative text in the DTR that 04:47:55
20 explains how the Cleanup Team combined three different 04:47:58
21 types of data to come up with the ranking? 04:48:03
22 MR. CARRIGAN: Document speaks for itself. Go 04:48:06
23 ahead. 04:48:07
24 THE WITNESS: Okay. Yeah. There is -- I 04:48:07
25 believe there is narrative text. I just need to 04:48:09

1 refreshen my memory on it. I'm the -- if we're talking 04:48:13
2 in terms of the economic feasibility analysis, I know 04:48:21
3 that those cells in the spreadsheet that are -- where 04:48:26
4 it's sequenced in different phases of the cleanup, and 04:48:32
5 balancing the costs of cleaning certain polygons up with 04:48:39
6 the net exposure reduction that would result from 04:48:48
7 reducing those chemical levels in the environment are -- 04:48:53
8 are grouped on the worst, most polluted polygons first 04:48:57
9 basis. 04:49:09
10 And then going down the chain. So -- so if you 04:49:09
11 look on that spreadsheet, whatever the first six sampling 04:49:14
12 stations that are called out in the spreadsheet, those 04:49:22
13 would be the ones that are ranked the highest and so on. 04:49:24
14 Q. Okay. 04:49:31
15 A. It's -- I'm kind of -- I'm not answering your 04:49:31
16 question directly. There's probably a table that defines 04:49:34
17 that with more precision in there. And I -- I'll -- will 04:49:38
18 look for that table. But for right now, that spreadsheet 04:49:43
19 is ranked that way. 04:49:47
20 MS. WITKOWSKI: Okay. I'd be happy to move onto 04:49:51
21 there next, but we're almost at 5:00 o'clock. Do you 04:49:54
22 guys want to continue on, or do you want to end for the 04:49:57
23 day? 04:50:00
24 MR. CARRIGAN: No, we want to end for the day. 04:50:00
25 It's been a long day. 04:50:02

1 THE WITNESS: Yeah. 04:50:03
2 MS. WITKOWSKI: Okay. 04:50:04
3 MR. CARRIGAN: Let's resume tomorrow morning. I 04:50:05
4 think we had -- well, let's go off the record. 04:50:06
5 THE VIDEOGRAPHER: This ends the videotaped 04:50:08
6 deposition of David Barker, Volume 2, Videotape No. 3. 04:50:10
7 Today's date is March 2nd, 2011. Time is 4:50 p.m. 04:50:13
8 Off the record. 04:50:17
9 (Whereupon the deposition was adjourned at 04:50:17
10 4:50 p.m.) 04:50:18
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1 I declare under penalty of perjury under the laws of the
2 State of California that the foregoing is true and
3 correct; that I have read my deposition and have made the
4 necessary corrections, additions or changes to my answers
5 I deem necessary.

6
7 Executed on this _____ day of _____,
8 2011.

9

DAVID BARKER

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I, ANNE M. ZARKOS, Certified Shorthand
Reporter for the State of California, do hereby certify:

That the witness in the foregoing deposition was by me
first duly sworn to testify to the truth, the whole
truth and nothing but the truth in the foregoing cause;
that the deposition was taken by me in machine shorthand
and later transcribed into typewriting, under my
direction, and that the foregoing contains a true record
of the testimony of the witness.

Dated: This 16th day of March, 2011
at San Diego, California.

Anne M. Zarkos
Anne M. Zarkos RPR, CRR
CSR No. 13095

A				
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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

IN RE THE MATTER OF)
)
TENTATIVE CLEANUP AND ABATEMENT)
ORDER NO. R9-2011-0001)
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DEPOSITION OF DAVID BARKER
Volume III, Pages 431 - 679
San Diego, California
March 3, 2011

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

IN RE THE MATTER OF)
)
TENTATIVE CLEANUP AND ABATEMENT)
ORDER NO. R9-2011-0001)
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DEPOSITION OF DAVID BARKER,
taken by the Attorney for NASSCO, commencing at the hour
of 8:15 a.m. on Thursday, March 3, 2011, at
600 West Broadway, Suite 1800, San Diego, California,
before Anne M. Zarkos, RPR, CRR, CSR No. 13095, Certified
Shorthand Reporter in and for the State of California.

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I N D E X

WITNESS: DAVID BARKER

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MR. BROWN	487
MR. BENSHOOF	566

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1236 Regional Board Cleanup Team's Responses & Objections to Designated Party San Diego Unified Port District's First Set of Request for Admissions; 26 pages	512
1237 Letter to John H. Robertus from Thomas Mulder of ENV America dated June 15, 2005; eight pages	530
1238 Economic Considerations of Proposed Amendments to the Sediment Quality Plan for Enclosed Bays and Estuaries in California, dated January 2011; 76 pages	555
1239 RWQCB Staff Report on the Establishment of Shipyard Sediment Cleanup Levels for NASSCO and Southwest Marine, Inc., dated February 17, 1999; 12 pages	576
1240 Record of Written Communications Between SWM and RWCB During Development of the DTR - Chronological Index, dated February 28, 2011; 66 pages	583

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4	1242	Letter (with attachment) to David Barker from Lane McVey of NASSCO dated November 9, 2004; 30 pages	594
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7	1243	Ogden Environmental and Energy Services report entitled "Final Report Site Remediation Marine Railway Removal Project Southwest Marine Shipyard," dated December 1998; 11 pages	635
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10	1244	Excerpt from Ogden Environmental and Energy Services report entitled "Final Report Site Remediation Marine Railway Removal Project Southwest Marine Shipyard," dated December 1998; nine pages	650
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1	THE VIDEOGRAPHER: Good morning. The time on	07:38:50
2	the record is 8:15 a.m. Today's date is March 3rd,	08:15:54
3	2011.	08:15:59
4	My name is Abel Sibrel with Peterson Reporting,	08:15:59
5	Video & Litigation Services. The court reporter today is	08:16:01
6	Anne Zarkos of Peterson Reporting, located at	08:16:06
7	530 B Street, Suite 350, San Diego, California 92101.	08:16:09
8	This begins the videotaped deposition of	08:16:14
9	David Barker, Volume 3, testifying in the matter of	08:16:17
10	In Re Tentative Cleanup and Abatement Order	08:16:20
11	No. R9-2011-0001; taken at 600 West Broadway, Suite 1800,	08:16:23
12	San Diego.	08:16:33
13	Will counsel please identify yourselves and	08:16:34
14	state whom you represent.	08:16:36
15	MS. WITKOWSKI: Jill Witkowski on behalf of	08:16:38
16	San Diego CoastKeeper and Environmental Health Coalition.	08:16:39
17	MR. RICHARDSON: Kelly Richardson with Latham &	08:16:43
18	Watkins for NASSCO.	08:16:45
19	MR. WATERMAN: Ryan Waterman, Latham & Watkins,	08:16:49
20	for NASSCO.	08:16:50
21	MR. BENSHOOF: Ward Benshoof, Alston & Bird, for	08:16:52
22	SDG&E.	08:16:53
23	MR. DART: Matt Dart, DLA Piper, for	08:16:54
24	BAE Systems.	08:16:56
25	MR. BROWN: Bill Brown, Brown & Winters, for	08:16:59

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1 Port of San Diego. 08:17:01
2 MS. FITZGERALD: Leslie Fitzgerald, also for 08:17:02
3 Port of San Diego. 08:17:02
4 MS. PERSSON: Kara Persson, Gordon & Rees, for 08:17:03
5 the City of San Diego. 08:17:05
6 MR. CARRIGAN: Cris Carrigan for the San Diego 08:17:07
7 Water Board and for the witness, Mr. Barker. 08:17:08
8 THE VIDEOGRAPHER: Thank you. The court 08:17:12
9 reporter will now swear in the witness. 08:17:12
10 *** 08:17:14
11 DAVID BARKER, 08:17:14
12 having first been duly sworn, testified as follows: 08:17:14
13 *** 08:17:14
14 FURTHER EXAMINATION 08:17:24
15 BY MS. WITKOWSKI: 08:17:24
16 Q. Morning, Mr. Barker. 08:17:25
17 A. Good morning. 08:17:27
18 Q. Yesterday we were talking about Finding 31, the 08:17:27
19 economic feasibility considerations. 08:17:30
20 A. Yes. 08:17:33
21 Q. And Appendix 31. 08:17:33
22 A. Right. 08:17:36
23 Q. I have for you, for your convenience, printed 08:17:36
24 out copies of -- 08:17:37
25 A. Okay. 08:17:38

1 Q. -- both the findings and the appendix. 08:17:39

2 A. Okay. Thank you. 08:17:42

3 Q. At the end of yesterday, you had referred to, I 08:17:43

4 believe, this chart here, A31-2. 08:17:46

5 A. Yes. 08:17:51

6 Q. With reference to the complete ranking of all of 08:17:51

7 the polygons; is that correct? 08:17:56

8 A. The complete ranking for the purposes of the 08:17:58

9 economic analysis, yes. 08:18:00

10 Q. Was there a different ranking for another 08:18:03

11 purpose? 08:18:06

12 A. If -- when the remediation footprint was 08:18:07

13 designed -- or excuse me, the description of that, which 08:18:16

14 I think is in Sections 33 and 34, if you review those, 08:18:21

15 you'll see other criteria for ranking polygons, the -- 08:18:28

16 and for showing that the most polluted are what I refer 08:18:37

17 to as polygons, where the site was subdivided into 08:18:42

18 different areas. 08:18:47

19 In 32 and 33, there's -- there's other criteria 08:18:50

20 for showing that the dredge footprint was -- was 08:18:55

21 capturing all the contaminated -- the most heavily 08:18:57

22 contaminated sites. 08:19:01

23 And then in the economic analysis chapter, the 08:19:04

24 ranking was -- was done to rank the polygons in -- in 08:19:08

25 terms of their potential to cause biologic effects from 08:19:17

1 the most heavily contaminated polygons down to the least. 08:19:27
2 And there was a reason for that, so that you could 08:19:35
3 correlate that with the associated reduction in exposure 08:19:38
4 that would result from cleaning up different groups of 08:19:46
5 polygons. 08:19:50
6 Q. Let's look through Table A31-2. 08:19:54
7 A. Okay. 08:19:58
8 Q. If you'll look, looks to me like if you flip to 08:20:00
9 the second page of that -- 08:20:04
10 A. Okay. 08:20:07
11 Q. -- it ranks from 1 to 66; is that correct? 08:20:09
12 A. Yes. 08:20:12
13 Q. So are there 66 polygons? 08:20:13
14 A. Yes. 08:20:15
15 Q. If we flip back to the page 31-2 -- 08:20:16
16 A. 31-2. 08:20:25
17 Q. -- of the DTR. 08:20:27
18 A. Okay. 08:20:28
19 Q. The first sentence refers to 65 shipyard 08:20:28
20 sediment stations. 08:20:31
21 A. Okay. 08:20:33
22 Q. Is there -- can you explain the inconsistency? 08:20:34
23 A. I think one -- one of the possibilities is that 08:20:41
24 there was a station over in the Chollas Creek channel 08:20:46
25 referred to as NA22 that was removed from consideration 08:20:53

1 for inclusion in the remedial footprint and the economic 08:21:03
2 analysis because the -- it's explained in the DTR. 08:21:09
3 A decision was made to address remediation at 08:21:15
4 that area as part of the, I believe, the Mouth of Chollas 08:21:18
5 Creek TMDL, another remediation project that's underway 08:21:24
6 at the board. 08:21:30
7 Q. So this economic feasibility analysis is for the 08:21:31
8 entire site except for NA22? 08:21:34
9 A. I'm pretty certain that's the case. Let me just 08:21:40
10 check the column to see if my memory is correct. I'm 08:21:42
11 just scanning it for NA22. Oops. I see NA22. Let me -- 08:21:46
12 let me refer to the station that's over in Chollas Creek 08:22:03
13 channel. I want to make sure that I've got the right 08:22:07
14 station in mind. I think I do. 08:22:10
15 Let's see. Thirty-two. Yeah. That is the 08:22:32
16 Chollas Creek channel. So at least for right now, I 08:22:45
17 can't think of the -- it could be a discrepancy there, 08:22:49
18 or -- I'll have to examine later. 08:22:55
19 Q. Okay. Let's look back at Table A31-2 and 08:22:59
20 start -- 08:23:03
21 A. Okay. 08:23:05
22 Q. I'd like to start asking you some questions 08:23:05
23 about the column headings -- 08:23:07
24 A. Yes. 08:23:08
25 Q. -- so that I can understand what the chart 08:23:08

1 means. 08:23:10

2 A. Sure. 08:23:11

3 Q. The third column reads, "Total Area," and then 08:23:13

4 in paren, "9-11-10." What does that signify? 08:23:17

5 A. Okay. Total Area 9-11-10, it could be the date 08:23:22

6 that the data in -- when -- when that column was 08:23:28

7 tabulated there. 08:23:37

8 Q. Could there have been multiple tabulations of 08:23:40

9 data? 08:23:43

10 A. In -- yes. I'm sure there were. 08:23:44

11 Q. And where did that data come from? 08:23:48

12 A. The data came from -- the board requested that 08:23:51

13 information from the responsible parties that are named 08:24:00

14 in the draft order. And it came from the consultants on 08:24:05

15 one of the parties. 08:24:11

16 Q. The next column reads, "Dredging Area-Inside 08:24:12

17 (SF)." 08:24:16

18 A. Yes. 08:24:17

19 Q. What does that signify? 08:24:18

20 A. SF? 08:24:20

21 Q. The whole "Dredging Area-Inside." 08:24:22

22 A. This is the -- a couple of the parties were 08:24:28

23 trying, I believe, to track what portion of an area was 08:24:30

24 inside their leasehold and what was outside. And so 08:24:37

25 that's -- so inside would refer to inside the leasehold 08:24:45

1 for wherever the station is located. 08:24:51

2 And it's probably -- I believe it's -- when I 08:24:53

3 say "leaseholds," it's probably the NASSCO and 08:24:59

4 Southwest Marine leaseholds. And so that would be the 08:25:02

5 area that was within the leasehold. And -- and outside 08:25:05

6 as -- as I said would be outside. 08:25:11

7 Q. From the Regional Board's perspective, from the 08:25:14

8 staff's perspective, is there a difference in -- in the 08:25:17

9 cleanup or how it would proceed if something was inside 08:25:21

10 or outside? 08:25:24

11 A. It's just information. That's all. 08:25:25

12 Q. The next column I'd like to ask about is the 08:25:32

13 "Depth To Clean" column. 08:25:34

14 A. Yes. Uh-huh. 08:25:36

15 Q. Where do those numbers come from? 08:25:39

16 A. As part of the -- the assessment of the site, 08:25:41

17 there were various core samples collected to track the 08:25:50

18 depth of contamination. And in the remedial footprint 08:25:54

19 under the remediation strategy, any of the polygon areas 08:26:01

20 included within that would -- the goal of the remediation 08:26:11

21 would be to clean those up to or below background levels. 08:26:16

22 And so this depth is a projection on how -- how much 08:26:24

23 material would be removed from a particular polygon to 08:26:32

24 get to that level. 08:26:35

25 Q. Do you recall how deep each of the cores were? 08:26:38

1 A. Not off the top of my head. That information is 08:26:45
2 in -- in the DTR. I would -- I would have to look it up. 08:26:48
3 Q. So if something says "Depth To Clean SUR," what 08:26:52
4 does that mean? 08:26:56
5 A. Depth to -- which -- 08:26:57
6 Q. Look -- Polygon SW-13, which is No. 6. 08:27:04
7 A. SW-13, No. 6. Okay. 08:27:09
8 Q. Depth to clean SUR. 08:27:13
9 A. Depth to clean. I'm -- I right -- right now I'm 08:27:16
10 not sure what the SUR means there. It may mean that 08:27:19
11 it -- that the depth, that background levels were -- the 08:27:25
12 core samples indicated background levels were -- would be 08:27:32
13 obtained immediately below the surface. 08:27:37
14 Q. Are you familiar with dredging capabilities, of 08:27:43
15 how deep a first surficial pass would -- would be? 08:27:49
16 A. Yes. 08:27:55
17 Q. So would that be, say, the first foot, within 08:27:56
18 the first foot, if it say -- if it would be surficial? 08:27:59
19 A. Well, if you look over in the in -- in next 08:28:02
20 column there, it's -- it was assuming that there would be 08:28:03
21 a dredging depth of 5 feet there. So it would just -- 08:28:08
22 Q. Good. I actually had some -- some questions 08:28:15
23 about that. 08:28:16
24 A. Okay. 08:28:18
25 Q. Look at -- I'll be pointing to lines 14, 15, and 08:28:19

1 then 21 where we have a few different examples of depth 08:28:24
2 to clean, says "SUR," and then we have different dredging 08:28:28
3 depths. 08:28:32
4 A. Okay. 08:28:33
5 Q. So on 14, depth to clean is SUR, and the 08:28:34
6 dredging depth is five. Then for 15, depth to clean is 08:28:38
7 SUR, and the dredging depth is three. And for 21, we 08:28:42
8 have -- 08:28:45
9 A. Yeah. I -- I -- I -- 08:28:46
10 Q. We have seven. 08:28:47
11 A. I see. 08:28:48
12 Q. Can you explain to me why that is? 08:28:49
13 A. Not right now, I cannot. 08:28:51
14 Q. Do you know who could? 08:28:53
15 A. Yes. We -- we could -- it's possible there's a 08:28:59
16 footnote to this table. Rather than me sitting here 08:29:03
17 guessing, we -- we could -- we could look for that and 08:29:06
18 see. 08:29:12
19 Q. Part of my concern is that if -- if SUR meant 08:29:13
20 surficial, it would be a big variance to me dredging 08:29:17
21 3 feet versus 7 feet when you're talking over an entire 08:29:22
22 area -- 08:29:28
23 A. Right. 08:29:28
24 Q. -- of the polygon. Do you see that? 08:29:28
25 A. Yes. 08:29:31

1 Q. Do you agree that if all the SURs were 7 feet 08:29:32
2 versus 3 feet, that could make a difference in the total 08:29:35
3 combined -- 08:29:38
4 A. Oh, yes. 08:29:38
5 Q. -- volume? 08:29:39
6 A. Right, yes. 08:29:39
7 Q. Which then could have a difference in the total 08:29:39
8 price of the dredging? 08:29:43
9 A. Right, yes. 08:29:44
10 Q. Okay. The next column I'd like to talk about is 08:29:46
11 the "Volume Per Polygon Inside and Outside." Does that 08:29:49
12 correlate similarly as to the dredging area inside and 08:29:52
13 outside? 08:29:55
14 A. Yes, it does. 08:29:56
15 Q. Okay. 08:29:58
16 A. And the -- the best way, actually, to review 08:29:59
17 this table is -- is to review the native spreadsheet that 08:30:02
18 has the equations over each -- each column. It's -- I -- 08:30:09
19 actually, I brought my laptop here today in case we got 08:30:16
20 into that. 08:30:20
21 Q. Is that in the administrative record? 08:30:21
22 A. The -- the -- this table is. And the board has 08:30:27
23 the electronic file that this table is based on. So I 08:30:32
24 assume that's part of the record, yes. 08:30:38
25 Q. Yeah. My problem was when I went to click to 08:30:40

1 the supplemental administrative record to find that, the 08:30:42
2 table didn't have the formulas in it -- 08:30:46
3 A. Right. 08:30:48
4 Q. -- to look into that. 08:30:48
5 A. Yeah. 08:30:49
6 Q. So it made it hard to -- to track where you got 08:30:50
7 the numbers from. 08:30:52
8 A. Yes. I can see that. 08:30:53
9 Q. Do you think it would be possible to add those 08:30:54
10 formulas into the administrative record? 08:30:57
11 A. I -- I would have to consult with -- 08:30:59
12 MR. CARRIGAN: They'll be in. 08:31:02
13 THE WITNESS: -- counsel. 08:31:03
14 MS. WITKOWSKI: Great. Thanks. 08:31:04
15 THE WITNESS: I'd have no objection. 08:31:05
16 MR. CARRIGAN: I'm surprised they're not in. 08:31:06
17 And I would suspect they may be in. But if they're not 08:31:08
18 in, they will be added. 08:31:12
19 MS. WITKOWSKI: Thank you. 08:31:13
20 BY MS. WITKOWSKI: 08:31:13
21 Q. The final column I have to ask about is this 08:31:14
22 "Cumulative Shoreline Protection" column. 08:31:16
23 A. Okay. 08:31:19
24 Q. What does that mean? 08:31:19
25 A. I think that that column is referring to the -- 08:31:23

1 the area of the shoreline that would -- no. I think I 08:31:29
2 know what it means. But rather than guessing at all the 08:31:40
3 equations for this, I would like to look at the native 08:31:46
4 file and answer your question. I -- I guess I could do 08:31:49
5 that on the Internet. But yeah. 08:31:54
6 MR. CARRIGAN: Can we go off the record? 08:31:58
7 MS. WITKOWSKI: Sure. 08:31:59
8 THE VIDEOGRAPHER: Off the record. Time is 08:32:00
9 8:31 a.m. 08:32:01
10 (A recess was taken.) 08:32:03
11 THE VIDEOGRAPHER: Back on the record. Time is 08:34:05
12 8:34 a.m. 08:34:08
13 MR. CARRIGAN: So Counsel, the file, which I 08:34:09
14 suspect is in the administrative record but if not will 08:34:11
15 be added, I'll have it distributed to all counsel today 08:34:13
16 at the first break so that you can take a chance to 08:34:16
17 review it. 08:34:19
18 If you want to ask Mr. Barker questions about 08:34:20
19 this, he'll respond to the best of his recollection today 08:34:22
20 at the deposition. And then we'll provide the SAR number 08:34:26
21 or the copy of the document. 08:34:31
22 MS. WITKOWSKI: Great. 08:34:33
23 MR. CARRIGAN: It does, I believe, have to be in 08:34:33
24 an electronic format because of the way the document is 08:34:35
25 created. And that's why the printout in this appendix 08:34:38

1 does not contain the top part so -- with the formulas. 08:34:42

2 MS. WITKOWSKI: Thank you. I appreciate that. 08:34:46

3 MR. CARRIGAN: All right. 08:34:48

4 THE WITNESS: Yeah. The -- and as I recall, 08:34:48

5 when -- in the -- one of the factors that was analyzed in 08:34:52

6 the dredging of the area was the need to shore up the 08:35:00

7 shore structures, where the bay meets the land and around 08:35:13

8 dock areas, with rock material. And so this -- this 08:35:19

9 column here would refer to the tons of rocks that would 08:35:26

10 be brought into the site to -- for structural stability 08:35:30

11 reasons. 08:35:36

12 BY MS. WITKOWSKI: 08:35:36

13 Q. And that would be part of the cleanup as well? 08:35:37

14 A. Yes. And so the cost of that would be factored 08:35:39

15 in. And so this last column is simply -- actually, now 08:35:42

16 that I'm saying this, I can see if you look -- look over 08:35:48

17 in -- let's see -- the seventh column from the left, 08:35:52

18 you'll see "Rock Protection in Tons." And then if you 08:35:59

19 then go to the last column, you'll -- you'll see 1,453 08:36:02

20 there. And so it's just -- it's just a cumulative column 08:36:06

21 adding up the totals. 08:36:10

22 Q. If I understand this chart right, the numbers at 08:36:13

23 the far right in the green are calculations based on the 08:36:17

24 numbers from the left. 08:36:22

25 A. That's correct, yes. 08:36:23

1 Q. And all the numbers on the left, did they come 08:36:25
2 from the dischargers? 08:36:28

3 A. Yes, yes. Plus, and these -- some of the -- 08:36:31
4 this -- this material was, you know, based on information 08:36:38
5 in the DTR. But yeah, yeah, the dischargers told us how 08:36:50
6 big the different polygons were, that kind of thing. 08:36:56

7 Q. I also see on this chart that looks like every 08:37:02
8 sixth polygon is highlighted in yellow. 08:37:05

9 A. Uh-huh. 08:37:08

10 Q. Do you know why that is? 08:37:09

11 A. It -- it gets back to how the economic analysis 08:37:13
12 was -- was done. It was -- actually, there's a chart 08:37:17
13 that's in the DTR in the -- that plots percent of 08:37:28
14 exposure reduction versus the remediation dollars that 08:37:40
15 would be spent to obtain that reduction. 08:37:45

16 And the analysis was done in increments of -- of 08:37:53
17 six polygon areas at a time. And so this yellow color is 08:38:00
18 just showing -- would correlate to that first -- the -- 08:38:04
19 in the first column where you see Rank 6 there, that 08:38:11
20 corresponds to the first blue rectangle on -- in 08:38:18
21 Figure 31-1. 08:38:25

22 Q. Why was it six at a time? 08:38:28

23 A. It was just done to -- to show the -- the 08:38:33
24 gradual increase in -- in cost to obtain cleanup levels, 08:38:43
25 and what -- what the resulting percent reduction was. 08:39:01

1 And it's showing that when the -- the most contaminated 08:39:04
2 areas are remediated, there's a bigger percent reduction 08:39:10
3 with that. And then as you go down the list where the -- 08:39:18
4 the amount of contamination within a polygon is 08:39:23
5 decreasing before remediation, it's showing that the cost 08:39:28
6 of dredging is the same. But the -- the percent exposure 08:39:33
7 reduction you get from -- from remediating polygons that 08:39:39
8 have less contamination. There's a less of a percent 08:39:48
9 reduction. 08:39:51

10 Q. Was there any particular reason that six was 08:39:53
11 chosen instead of, say, five or seven? 08:39:55

12 A. I -- I think six is just -- is just an 08:39:58
13 assumption that we made to do that. Could be five. 08:40:01
14 Could have been done in different increments. We chose 08:40:06
15 six. 08:40:09

16 Q. Let's look at Table A31-1, which is on the 08:40:11
17 second page of appendix -- Section 31. Should be on the 08:40:15
18 back of that. 08:40:20

19 A. Yeah. Okay. 08:40:22

20 Q. In the first column of the top table we have 08:40:26
21 here, it says "Construction Seasons Required" in the 08:40:32
22 left-hand column. 08:40:35

23 A. Yes. 08:40:36

24 Q. What does that signify? 08:40:38

25 A. That is the dredging periods that are involved. 08:40:40

1 The -- there is a season when dredging can be conducted. 08:40:51
2 And so it's saying to get to these post remedial SWAC 08:40:56
3 numbers here, you know, how many dredging seasons would 08:41:05
4 be involved and -- okay. 08:41:10
5 Q. How long is the dredging season? 08:41:16
6 A. It refers to the Least Tern nesting season where 08:41:22
7 potentially dredging cannot be conducted. And I'm just 08:41:29
8 trying to remember where in the DTR -- it's discussed 08:41:37
9 somewhere in there. And I'm just guess -- remembering 08:41:42
10 the window as being somewhere in the March to September 08:41:44
11 time period when potentially dredging could not be 08:41:53
12 conducted. 08:41:57
13 Q. I believe you said yesterday that there may not 08:42:00
14 be Least Terns nesting at the shipyard site; is that 08:42:03
15 correct? 08:42:08
16 A. Yes. I -- I consulted with U.S. Fish and 08:42:08
17 Wildlife just to find out what their thinking was. 08:42:10
18 And -- and they indicated some pretty open-minded 08:42:16
19 thinking about that. I was assuming it was almost like a 08:42:23
20 regulation but found that that's not necessarily the 08:42:26
21 case. 08:42:30
22 Q. If there weren't Least Terns nesting at the 08:42:31
23 shipyard site, could the construction season be longer? 08:42:34
24 MR. CARRIGAN: Calls for a legal conclusion. 08:42:38
25 THE WITNESS: I would say if Least Tern nesting 08:42:43

1 is not an obstacle, there are other considerations 08:42:46
2 involved in, for example, the amount of area that would 08:42:51
3 be needed to stage the dredge spoil storage or just the 08:43:04
4 temporary stockpiling and dewatering of it. That might 08:43:13
5 be a limitation. 08:43:16
6 The -- a lot of this activity is -- would be 08:43:20
7 conducted in front of two active shipyards with the need 08:43:25
8 to have ship movements in and out of them. And so 08:43:30
9 there's a need to let that business continue while the 08:43:35
10 dredging takes place. So in orchestrating all of this, 08:43:38
11 that may dictate certain periods when it could be 08:43:43
12 conducted and others not. 08:43:46
13 Q. How much dredging can be done in a construction 08:43:51
14 season? 08:43:55
15 MR. CARRIGAN: Lacks foundation. 08:43:56
16 THE WITNESS: I -- I can't answer that with any 08:44:03
17 precision. I guess it would depend on how -- how many 08:44:08
18 barges are out there dredging the material. You could 08:44:13
19 get a lot done. 08:44:19
20 BY MS. WITKOWSKI: 08:44:20
21 Q. Do you know if the limitation would be by volume 08:44:23
22 or a total area that needs to be cleaned up? 08:44:29
23 MR. CARRIGAN: Vague. Overbroad. Lacks 08:44:33
24 foundation. 08:44:33
25 THE WITNESS: No. I've -- I've not -- I've not 08:44:41

1 looked at how much, you know, an upper limit on how -- 08:44:42
2 how much material could be dredged over a given period of 08:44:52
3 time. Yeah. 08:44:55
4 BY MS. WITKOWSKI: 08:44:57
5 Q. Back to the Construction Season's Required 08:44:59
6 column, as I look down the column, I see that it lists 08:45:01
7 one, two, and then two again. 08:45:07
8 A. Uh-huh. 08:45:09
9 Q. Can you explain to me why that is? 08:45:10
10 A. Just that those levels could be obtained in the 08:45:13
11 second construction season. 08:45:17
12 Q. Okay. And then as I skip down, I notice there's 08:45:20
13 not a seven or nine or 11 or a 13. 08:45:23
14 A. Yeah. 08:45:28
15 Q. What's the reason for that? 08:45:29
16 A. I -- I can't tell you right now. Okay. Yeah. 08:45:30
17 Q. For the construction seasons required under 08:45:41
18 No. 1, what does that -- what does that signify? 08:45:44
19 A. Back to your previous question, you're asking 08:45:51
20 why there's not an 11 or 14. I think the numbers there 08:45:55
21 just correlate that in order to obtain the SWAC 08:46:01
22 post-remedial numbers that are in the area colored in 08:46:06
23 yellow, that it would take 12 seasons to do that, to 08:46:11
24 obtain that. And it could not be obtained in 11, but it 08:46:16
25 would be 12, and -- and so on for the 14. 08:46:20

1 Q. So for the construction seasons required under 08:46:28
2 the first season, how much -- how much dredging is 08:46:31
3 happening in that first construction season? 08:46:35
4 A. Well, then I think if you look over in the 08:46:37
5 cumulative column -- well, let me -- let me make this 08:46:41
6 observation is, there's a missing part of this table that 08:46:48
7 would answer that question directly that is in the native 08:46:56
8 file but did not make it into the PDF display. And that 08:47:01
9 needs to be corrected. 08:47:08
10 Q. I was wondering, it seemed like there was a 08:47:10
11 piece missing. I was trying to -- 08:47:13
12 A. Yes. 08:47:14
13 Q. -- figure this out. 08:47:14
14 A. Yes. Yeah. There was a -- and it's a critical 08:47:15
15 bit of information. It kind of -- it's right to the 08:47:18
16 right, and it gives the -- the -- the costs of 08:47:20
17 remediation and the volumes involved by construction 08:47:25
18 season. And it helps to make sense of the whole chart. 08:47:30
19 So it's a crucial table. I noticed that the other day, 08:47:35
20 that it seemed to be missing. I went back to the native 08:47:40
21 file, and sure enough there it is. So that was an 08:47:43
22 oversight. 08:47:46
23 Q. So does this first construction season correlate 08:47:47
24 to the first six polygons, or not necessarily? 08:47:50
25 A. I -- with -- yeah. To answer that, I would need 08:47:55

1 the rest of the table there to look. I -- I think -- I'm 08:47:58
2 not sure that it does. But as I say, that's the 08:48:02
3 information I would need to answer your question. 08:48:09
4 Q. Okay. Moving on to the SWAC -- 08:48:12
5 A. Yeah. 08:48:16
6 Q. -- segment -- 08:48:17
7 A. Yeah. 08:48:17
8 Q. -- of the table. 08:48:17
9 A. Yeah. 08:48:18
10 Q. And then starting with the PCB column? 08:48:19
11 A. Yeah. 08:48:23
12 Q. I see the number 249. 08:48:23
13 A. Yes. 08:48:25
14 Q. What does that mean? 08:48:25
15 A. Okay. From a post-remedial -- okay. Again, 08:48:26
16 this number SWAC stands for surface weighted average 08:48:33
17 concentration. And in the -- in the first six polygons, 08:48:42
18 when those are remediated, those are remediated to 08:48:53
19 background levels or below. 08:49:03
20 And so this SWAC, this is a site-wide average 08:49:05
21 concentration, is calculated with the assumption that 08:49:09
22 those polygons are -- are -- are at background or below. 08:49:14
23 And then the resulting calculation is 249. And so as you 08:49:22
24 remediate more and more polygons where more of them get 08:49:28
25 to background levels, the site-wide average concentration 08:49:32

1 decreases. 08:49:38

2 Q. So this whole SWAC, all these numbers in yellow 08:49:39

3 are assuming that each time a polygon is cleaned, it's 08:49:45

4 cleaned to background or below? 08:49:48

5 A. Yes. Right, yeah, yeah. 08:49:51

6 Q. Then moving over to the exposure reduction -- 08:49:54

7 A. Uh-huh. 08:49:56

8 Q. -- I see percentages there. 08:49:56

9 A. Yes. 08:49:59

10 Q. What does that mean? 08:49:59

11 A. Okay. Now, if you -- let me go to the DTR. 08:50:00

12 Yeah. Page 31-2. And if you see the equations in bold 08:50:15

13 there, that -- okay. Yeah. Yeah. These exposure 08:50:28

14 percent reductions is -- is the -- is the result of this 08:50:39

15 equation that says percent exposure reduction and gives 08:50:43

16 the -- how that's calculated. And it's relative to the 08:50:48

17 percent exposure reduction relative to background. 08:50:52

18 Q. So as you clean more polygons, you'll get a 08:50:56

19 greater percentage? 08:51:00

20 A. Yes. 08:51:01

21 Q. I have a question about that. If you look at 08:51:02

22 the "Mercury" column. 08:51:05

23 A. Okay. 08:51:08

24 Q. As you look down the column from the top, it 08:51:09

25 starts at 19.4 and increases to 115 percent, 122, 126. 08:51:11

1 where you can follow the equations and see the logic of 08:53:15
2 the numbers. 08:53:19

3 Q. So there would be a similar explanation, then, 08:53:20
4 in the "Copper" column between Construction Season 12 and 08:53:22
5 Construction Season 14, that it somehow increases 08:53:26
6 exposure reduction from 112 to 101? 08:53:30

7 A. Or decreases -- 08:53:35

8 Q. Exposure. 08:53:37

9 A. Yeah. 08:53:37

10 Q. So you'll -- 08:53:38

11 A. Yeah. 08:53:39

12 Q. You'd be -- is it fair to say that for mercury, 08:53:40
13 you'd be better off in stopping at Construction Season 10 08:53:43
14 than going to Construction Season 12? 08:53:47

15 A. From a site-wide average basis, it would seem to 08:54:00
16 indicate that, yes. Again, as the -- the numbers and the 08:54:03
17 chemistry is changing between the polygons. 08:54:17

18 Q. So this -- just to be -- be clear in my head. 08:54:22
19 Because I'm having a little problem with how these 08:54:26
20 numbers are switching around and how it can work from 08:54:29
21 averages. I would assume that as you clean each polygon, 08:54:32
22 you're removing some amount of mercury. And that if you 08:54:38
23 clean the whole site to background, you would be at a 08:54:41
24 hundred percent, or if you cleaned it greater than 08:54:45
25 background, it would be more than a hundred percent 08:54:47

1 clean. 08:54:49

2 A. Uh-huh. 08:54:50

3 Q. Right? 08:54:50

4 A. Yeah. 08:54:51

5 Q. So Construction Season 10, we're more than a 08:54:51

6 hundred percent clean. 08:54:55

7 A. Yeah. 08:54:56

8 Q. Averaged over the entire site -- 08:54:57

9 A. Yeah. 08:54:59

10 Q. -- you're at 126 percent, how do you go back to 08:54:59

11 102 percent at Construction Season 14? 08:55:02

12 A. Yeah. To really answer your questions, I 08:55:05

13 myself, I need to see the equations for this column here, 08:55:07

14 how -- how these -- if these numbers are cumulative or if 08:55:12

15 they're just reflecting a particular dredging season like 08:55:18

16 in -- so yeah. 08:55:22

17 Q. Let's talk about the "Average" column under 08:55:30

18 "Exposure Reduction." 08:55:33

19 A. Okay. 08:55:35

20 Q. What does that column signify? 08:55:35

21 A. Average. I think that would be the average 08:55:37

22 reduction of -- of each -- each exposure reduction. It's 08:55:39

23 the average across all of the constituents, PCB, mercury, 08:55:49

24 copper, TBT, HPAHs. 08:55:54

25 Q. I see that in Construction Season 10 -- 08:56:04

1 A. Okay. 08:56:06
2 Q. -- we have an average that goes to 101 percent. 08:56:06
3 A. Uh-huh. 08:56:09
4 Q. Why doesn't the cleanup stop there if you're 08:56:10
5 averaged a hundred percent clean? 08:56:16
6 A. I -- I would just go back to my original 08:56:27
7 statement as in order to answer your question, I need to 08:56:32
8 see the native file with the equations there to answer it 08:56:36
9 precisely. I'm just guessing otherwise. 08:56:42
10 Q. Okay. And as we look down the "Average" column, 08:56:46
11 in Construction Season 12 we get to 104 percent. 08:56:52
12 A. Uh-huh. 08:56:55
13 Q. And then Construction Season 14 it dips back to 08:56:56
14 a hundred percent. 08:56:59
15 A. Uh-huh. 08:56:59
16 Q. What's the explanation for that? 08:57:00
17 A. Same -- same thing. I -- I just need to look at 08:57:02
18 the equations that are computing the results in that 08:57:05
19 cell. And then I could answer your question. 08:57:09
20 Q. Okay. Let's move down to the -- the plot 08:57:13
21 data -- 08:57:15
22 A. Okay. 08:57:16
23 Q. -- chart. The first column we have is 08:57:16
24 "Incremental Exposure." And we have a 30.2 percent. 08:57:18
25 A. Uh-huh. 08:57:24

1 Q. Where -- where does that number come from? 08:57:25

2 A. The incremental exposure. Let me look at this. 08:57:26

3 Okay. It's -- the 12.4 percent, I understand what that 08:57:55

4 is. I -- again, I'd have to look at the spreadsheet 08:58:34

5 native file there to see. 08:58:39

6 Q. I see another -- if we go up to the top table on 08:58:43

7 Table A31-1. 08:58:46

8 A. Okay. 08:58:49

9 Q. I see an "Average" column under the first -- 08:58:49

10 second construction season that there's a 30.2 percent. 08:58:55

11 Is -- is that where the number comes from? 08:58:58

12 A. Incremental exposure. It could be, yes. 08:59:20

13 Q. So is there -- but you're not sure? 08:59:26

14 A. No. No. Again, I think it would be 08:59:30

15 straightforward with the equations there to -- to answer 08:59:34

16 these questions right. 08:59:38

17 Q. I can come back to these questions after I've 08:59:40

18 had a chance to look at them and you've had a chance to 08:59:42

19 look at these supporting equations. But let's go forward 08:59:45

20 with some more questions about this plot data chart. 08:59:49

21 A. Okay. Excuse me just a second. I just want to 08:59:52

22 make sure the text doesn't explain this here. Okay. 08:59:55

23 Q. The next column in the plot data chart is 09:00:15

24 "Incremental Cost." 09:00:17

25 A. Yes. 09:00:20

1 Q. And for the first line we have a 24.3 million. 09:00:21

2 A. Uh-huh. 09:00:26

3 Q. Where does that number come from? 09:00:27

4 A. The -- any of the cost data we obtained from the 09:00:29

5 responsible parties. The cost of dredging that -- hang 09:00:40

6 on a second. Let me just see this. Yeah. The -- the 09:00:54

7 cost of cleaning up the -- you know, again, a series of 09:01:10

8 six polygons, yeah. That -- the cost data to complete 09:01:14

9 that was obtained from the responsible parties, yes. 09:01:23

10 Q. Where is that -- that underlying data? 09:01:27

11 A. There is -- over in Section 33, there is a -- 09:01:31

12 excuse me. The -- okay. Yeah. Back -- excuse me. 09:01:45

13 In -- in Chapter 32, there's some -- some cost 09:01:52

14 data in the appendices there that are related to the cost 09:01:55

15 of the cleanup. And that's one source. And then the 09:01:59

16 missing part of this spreadsheet has that information. 09:02:05

17 Q. Would it have, like, the -- each of the 09:02:10

18 assumptions used to come up with these numbers? 09:02:13

19 A. No. It wasn't that detailed. But -- but it -- 09:02:16

20 it had the -- the dollar figures associated. 09:02:20

21 Q. Where could I find all of the assumptions that 09:02:26

22 went into creating this 24 point -- 09:02:28

23 A. You could look in -- in 33 -- or excuse me, 09:02:32

24 Section 32, the cost data in there. 09:02:40

25 Q. Does that -- is that cost data limited just to 09:02:42

1 the cost of cleaning up the remedial footprint? 09:02:45

2 A. On that sheet, I didn't look that over in too 09:02:49

3 much detail myself. It looked like it had some -- a unit 09:02:52

4 cost data that could be used to predict costs from -- 09:02:57

5 dredging so many cubic yards that could be used to derive 09:03:04

6 these estimates here. 09:03:07

7 Q. I have a -- some information that might be what 09:03:11

8 you're referring to. 09:03:15

9 A. Okay. 09:03:17

10 Q. This is SAR 384578, which I'd like to mark as 09:03:19

11 Exhibit 1235. 09:03:24

12 (Exhibit 1235 was marked.) 09:03:38

13 BY MS. WITKOWSKI: 09:03:38

14 Q. Is this what you were referring to? 09:03:43

15 A. Yes. 09:03:45

16 Q. Okay. What -- what is this that we're -- I'm 09:03:45

17 looking at right now? 09:03:47

18 A. These are the bases for assumptions made for 09:03:48

19 providing the cost estimate for the -- the cleanup of the 09:04:01

20 site. Let me just see here. And if you look on the -- 09:04:06

21 the reverse where it comes up to \$58,100,000, that was 09:04:14

22 the estimated cost for the -- the selected dredge 09:04:21

23 footprint, yes. 09:04:26

24 Q. Were these numbers then in turn used to create 09:04:29

25 the economic feasibility analysis? 09:04:32

1 A. Yes. I mean, there's unit cost factors in here 09:04:35
2 that could -- would be applied to that, yes. 09:04:39
3 Q. So give me an example of one of those. 09:04:41
4 A. Oh, let's see here. Yeah. Over in one, two, 09:04:47
5 three -- Column 4. 09:04:56
6 Q. The column that says "Unit Cost"? 09:05:07
7 A. Yes. 09:05:08
8 Q. Okay. 09:05:09
9 A. And just go down, like, dredging surface, 09:05:10
10 \$120 per cubic yard. 09:05:18
11 Q. So to get this 24.3 million number, you took 09:05:22
12 some amount of cubic yards that were going to be dredged 09:05:28
13 and multiplied it by this 120? 09:05:32
14 A. Yes. That would be one -- one method of -- of 09:05:35
15 getting there. Those costs in the economic analysis, it 09:05:37
16 was costs other than dredging that was included in there. 09:05:49
17 But that's how you would do that. 09:05:53
18 Q. What additional costs were included? 09:05:56
19 A. Well, like the -- the placement of the quarry 09:06:00
20 rock was in there. There's a unit cost associated with 09:06:02
21 that, as well. 09:06:06
22 Q. I see that some of these on this chart, for 09:06:13
23 example, the design and permitting area, the probable 09:06:16
24 quantity is only one, and the unit is a lump sum. 09:06:19
25 A. Okay. 09:06:22

1 Q. So this -- am I correct in assuming that that 09:06:23
2 would mean that if you dredged even one polygon, that 09:06:26
3 this would be a number that would have to apply? 09:06:31
4 A. Well -- let's -- what -- 09:06:44
5 MR. CARRIGAN: Incomplete hypothetical. 09:06:45
6 THE WITNESS: What -- what section are we in? 09:06:47
7 BY MS. WITKOWSKI: 09:06:48
8 Q. Under the design and permitting. 09:06:49
9 A. Okay. Yeah. 09:06:51
10 Q. So we have a lump sum. 09:06:52
11 A. Okay. Yeah. Yeah. For example, to -- if you 09:06:53
12 were to go out and dredge one polygon, that would trigger 09:06:57
13 the need to obtain 401 Water Quality Certification, 09:07:04
14 Army Corps of Engineers permit, demonstrate conformance 09:07:09
15 with CEQA, et cetera. And there would be a cost 09:07:15
16 associated with that. 09:07:18
17 Q. So those would be fixed cost for -- 09:07:20
18 A. Yes. 09:07:22
19 Q. -- any dredging? 09:07:22
20 Do you have those fixed costs listed anywhere? 09:07:24
21 MR. CARRIGAN: Besides on this chart? 09:07:27
22 MS. WITKOWSKI: For the economic feasibility 09:07:30
23 analysis. 09:07:31
24 THE WITNESS: I think this -- this is the chart 09:07:32
25 that has the fix -- fixed costs. I -- I could look at 09:07:36

1 the -- let's see. This came out of 32. I just want to 09:07:41
2 see if there's anything else in 32, any other cost data. 09:07:53
3 Let's see. 09:08:06
4 Okay. Eight, page 66. Yeah. Okay. I don't 09:08:26
5 see any other source of information. 09:08:50
6 Q. How were these fixed costs apportioned when 09:09:00
7 figuring out this incremental cost number? 09:09:07
8 A. How were they apportioned? 09:09:10
9 Q. Were they all front-loaded? 09:09:12
10 A. Oh, front-loaded. 09:09:15
11 Q. Or were they split up among the construction 09:09:17
12 seasons? 09:09:19
13 MR. CARRIGAN: Vague. 09:09:20
14 BY MS. WITKOWSKI: 09:09:20
15 Q. Or -- or were they considered in some other way? 09:09:20
16 A. They -- they -- they were -- yeah. They were 09:09:23
17 factored in for the cost to obtain cleanup to that 09:09:35
18 particular level. Now, I can't tell you right now 09:09:42
19 exactly how they were apportioned, but they were. 09:09:47
20 In other words, if you're asking was all of 09:09:55
21 this -- was all of the permitting and design included 09:09:58
22 just in Season 1 with the -- and then not repeated for 09:10:03
23 the other seasons? 09:10:08
24 Q. Right. 09:10:09
25 A. Yeah. I can't tell you exactly how that got 09:10:10

1 proportioned in there, other than it was -- was included. 09:10:12
2 Yeah. 09:10:16
3 Q. Would you be able to tell me after looking at 09:10:16
4 the supporting -- the native files? 09:10:19
5 A. Yeah. I might be able to tell you with more 09:10:25
6 precision, yes. 09:10:27
7 Q. Who is Anchor QEA? 09:10:32
8 A. The -- this is one of the consultants for one of 09:10:35
9 the responsible parties. 09:10:44
10 Q. Were these the only cost estimates you received? 09:10:46
11 A. Yes, yes. 09:10:50
12 Q. Did you receive cost estimates from Anchor QEA 09:10:55
13 prior to July 2010? 09:11:02
14 A. There were refinements of different numbers that 09:11:05
15 we saw. And so the answer to that is yes. 09:11:08
16 Q. Do you know if those are in the record? 09:11:17
17 A. The -- like, as a spreadsheet was refined, the 09:11:32
18 previous drafts of the spreadsheet, for a while we would 09:11:39
19 stockpile them. But in the end, I believe, they were 09:11:45
20 deleted when they -- as we got to what we and the parties 09:11:51
21 agreed would be the final tabulation, yeah. 09:11:57
22 Q. Was there a reason you only used cost estimates 09:12:04
23 from Anchor? 09:12:07
24 A. Typically, in -- when the board gets into 09:12:09
25 economic considerations, sometimes the board develops its 09:12:15

1 own cost figures. And then other times the board 09:12:20
2 requests the -- that information from the parties that 09:12:27
3 are -- are designing the remedial alternative. The board 09:12:33
4 cannot dictate the alternative. 09:12:40
5 So we -- in addition to designing a remedial 09:12:42
6 proposal, we -- we will ask, "Tell us how much" -- "scope 09:12:50
7 out the costs for implementing this." And so it's 09:12:58
8 typical that we would request it from responsible 09:13:03
9 parties. We'll look at it, and then we will circulate it 09:13:07
10 for review to all the interested parties, and then focus 09:13:11
11 on comments that come in that are asking about particular 09:13:17
12 aspects of it. 09:13:20
13 Q. Do you happen to know as far as contractors go 09:13:22
14 if these numbers are high or low or middle of the road? 09:13:26
15 A. When -- 09:13:30
16 MR. CARRIGAN: I want to caution you, David, 09:13:33
17 that to the extent that these questions are asking you to 09:13:34
18 disclose communications that were made to you in 09:13:38
19 mediation, that you're not to speak to them. Okay. 09:13:40
20 THE WITNESS: Okay. 09:13:44
21 MR. CARRIGAN: So that cannot be part of your 09:13:45
22 answer. And the questions are broadly worded so that 09:13:48
23 they are asking on their face for that information. I'm 09:13:51
24 instructing you not to give an answer that provides 09:13:54
25 communications that were given to us in mediation. 09:13:58

1 Do you understand? 09:14:01

2 THE WITNESS: Yes. 09:14:01

3 MR. CARRIGAN: Okay. Thank you. 09:14:01

4 THE WITNESS: Okay. 09:14:02

5 BY MS. WITKOWSKI: 09:14:03

6 Q. So my question again is, do you happen to know 09:14:04

7 if these, as far as dredging contractors go, are high or 09:14:09

8 low or middle-of-the-road numbers? 09:14:13

9 A. We looked at the information ourselves, felt the 09:14:27

10 numbers were reasonable. We didn't do a lot of 09:14:30

11 comparisons with other remediation projects. There's not 09:14:36

12 too many remediation projects like this we can compare it 09:14:41

13 to. So the -- the costs that were listed in the line 09:14:45

14 items appeared to be reasonable estimates to us, in that 09:14:50

15 we -- we -- on the face of it, we had no reason to 09:14:59

16 question them. 09:15:03

17 Q. I see that these numbers appear all to be, 09:15:10

18 assuming that the remediation is -- method is dredging; 09:15:16

19 is that correct? 09:15:19

20 A. Yes. 09:15:20

21 Q. Was there any analysis of what the costs would 09:15:21

22 be if we used confined aquatic disposal instead of 09:15:23

23 dredging? 09:15:29

24 A. Oh. 09:15:29

25 MR. CARRIGAN: Vague. 09:15:30

1 THE WITNESS: The -- there was an interest in 09:15:34
2 trying to have as complete a product as possible when the 09:15:47
3 board -- when -- when the board conducted its public 09:15:57
4 hearings to set the cleanup level and get cleanup 09:16:04
5 underway. And so in crafting the order and working with 09:16:14
6 the parties, we tried to press the envelope as much as 09:16:23
7 possible to get not only the technical information and 09:16:34
8 complete that as to what the appropriate cleanup levels 09:16:38
9 were, but also to get into what might be the most likely 09:16:42
10 remedial alternative to be implemented at the site. 09:16:48
11 And -- and then for some of the reasons I 09:16:56
12 mentioned yesterday, we -- the cleanup team was not 09:17:04
13 looking on natural recovery as a favorable alternative. 09:17:10
14 Confined aquatic disposal is a option. The board doesn't 09:17:16
15 have the authority to order that option. And so we're 09:17:24
16 trying to kind of come up with an order that the parties 09:17:31
17 would likely implement. And this is what we came up 09:17:34
18 with. 09:17:40
19 Q. The economic feasibility analysis incremental 09:17:42
20 cost numbers. 09:17:46
21 A. Uh-huh. 09:17:47
22 Q. Those are dredging numbers? Those are based on 09:17:48
23 costs of dredging; is that correct? 09:17:52
24 A. They're -- 09:17:55
25 MR. CARRIGAN: Document -- hold on. Document 09:17:55

1 speaks for itself. Go ahead. 09:17:58

2 THE WITNESS: They are the costs in order -- all 09:18:01

3 of the costs associated with meeting the -- obtaining 09:18:03

4 the -- this post-remedial SWAC for each of the -- that's 09:18:10

5 associated with -- in that chart with each of the six 09:18:17

6 polygons. 09:18:23

7 BY MS. WITKOWSKI: 09:18:24

8 Q. And the assumptions that were used that there 09:18:25

9 would be some fixed costs such as permitting, CEQA 09:18:28

10 review, that would happen regardless of the remedial 09:18:33

11 option chosen, and then some variable costs such as 09:18:36

12 dredging, that could vary whether you chose remedial 09:18:40

13 action of dredging or confined aquatic disposal. 09:18:43

14 A. Yeah. 09:18:48

15 MR. CARRIGAN: Vague. 09:18:49

16 THE WITNESS: Okay. 09:18:50

17 MR. CARRIGAN: Those aren't the remedial 09:18:51

18 options. The confined aquatic disposal facility, there's 09:18:52

19 dredging for that. So I just want to clarify that -- I 09:18:58

20 just want to clarify that. That's the purpose of my 09:19:03

21 objection. So go ahead. Sorry. Ask your question. 09:19:06

22 BY MS. WITKOWSKI: 09:19:09

23 Q. So this assumed dredging, removal, dewatering, 09:19:09

24 variables that I'm not sure what they are because they're 09:19:14

25 not listed here? 09:19:17

1 actually is part of the purpose of the CEQA -- CEQA 09:21:02
2 document that's under development is to get at analyzing 09:21:08
3 environmental impacts from various alternatives. 09:21:14
4 BY MS. WITKOWSKI: 09:21:18
5 Q. Are you familiar with the term "sensitivity 09:21:21
6 analysis"? 09:21:23
7 A. Sensitivity analysis, I've heard it used in 09:21:25
8 different contexts. 09:21:28
9 Q. Are you familiar with how it's used in economic 09:21:29
10 analysis? 09:21:31
11 A. Not -- not in detail, no. 09:21:32
12 Q. Have you heard it used generally? Would you 09:21:44
13 know a purpose of a sensitivity analysis? 09:21:48
14 A. Kind of to bracket the assumptions to show 09:21:52
15 the -- the region of certainty within a calculation, yes. 09:21:59
16 Q. My understanding of it is that helps identify 09:22:05
17 the areas where if you change a variable -- 09:22:10
18 A. Yes. 09:22:11
19 Q. -- it leads to the greatest -- 09:22:12
20 A. Yes. 09:22:17
21 Q. -- change in results. 09:22:17
22 A. Yes, right. 09:22:18
23 Q. Did you do any sign of sensitivity analysis in 09:22:19
24 your economic feasibility analysis? 09:22:22
25 A. Not on this, no. 09:22:25

1 Q. One more question before we kind of switch gears 09:22:35
2 and maybe -- maybe take a break. 09:22:38
3 Is the analysis -- if I understand correctly, 09:22:40
4 the construction -- the information in Table A31-1 was 09:22:46
5 derived by going down the chart in A31-2 in six polygon 09:22:55
6 increments. 09:23:04
7 A. Uh-huh. 09:23:06
8 Q. Which is where you would come up with your 09:23:07
9 construction seasons required. 09:23:09
10 A. Right. 09:23:10
11 Q. And that this information basically then led 09:23:11
12 into your incremental exposure and your incremental cost. 09:23:17
13 How did you decide on an exposure reduction for 09:23:25
14 10 million? 09:23:28
15 A. It's -- it's just a way of characterizing 09:23:33
16 exposure reduction per -- per \$10 million spent. And it 09:23:41
17 seemed an appropriate way to do that for a project where 09:23:45
18 the remediation costs to, say, cleanup to background 09:23:50
19 might be close to \$200 million. So it -- that was its 09:23:57
20 purpose. 09:24:09
21 Q. Would you agree with my characterization that of 09:24:10
22 the polygons in the shipyard site, it can vary widely in 09:24:13
23 their size? We have some that are relatively small and 09:24:20
24 some that are relatively large? 09:24:23
25 A. Yes. 09:24:28

1 Q. Did you look at all -- did you consider looking 09:24:32
2 at the costs of cleaning up some of the smaller polygons 09:24:36
3 first and then the larger polygons and what the cost 09:24:40
4 implications of that would be, versus cleaning up on a 09:24:43
5 worst first? 09:24:49
6 A. With marine sediment cleanups, one of the key 09:24:53
7 goals with them is to obtain reduced risk to human health 09:24:57
8 and the environment. And risk is reduced through 09:25:05
9 removal, mass removal, of -- of pollutants. 09:25:10
10 And so it made sense to us to -- from -- from 09:25:17
11 that viewpoint to approach it as, let's make sure -- 09:25:21
12 let's clean up the hotspots and do that, get to the worst 09:25:29
13 ones first and -- and make sure we're addressing those 09:25:37
14 and address as many of them as possible, taking into 09:25:41
15 account the -- the costs for obtaining this cleanup. And 09:25:49
16 this is a balancing of all of those considerations. 09:25:54
17 Q. I notice by looking through the polygon ranking 09:25:58
18 in Table A31-2 that looks to me like those polygons that 09:26:03
19 are most contaminated aren't necessarily adjacent to one 09:26:09
20 another. 09:26:12
21 A. Right. 09:26:13
22 Q. In the cost analysis, if you're looking at 09:26:13
23 cleaning up nonadjacent polygons, how would -- how does 09:26:19
24 that work? 09:26:24
25 A. Is -- 09:26:26

1 Q. As far as, do you assume the cost of we're going 09:26:27
2 to dredge SW-04 first, pick up the dredge, move it, then 09:26:29
3 dredge SW-08 next, pick up the dredge and move it, and 09:26:34
4 each of the costs of setting the dredge, setting the best 09:26:38
5 management practices from there? 09:26:42
6 A. Yeah. 09:26:44
7 Q. So instead of looking at the whole area of 09:26:45
8 cleaning up all the area adjacent to SW-04 together. 09:26:50
9 A. Right. 09:26:54
10 Q. Even though -- okay. 09:26:55
11 A. Yeah. Again, our technique was, yes, there 09:26:57
12 might be additional labor and cost to position a barge in 09:27:04
13 one area of the site then move to another, versus stay in 09:27:08
14 one area and do a sweep that way. 09:27:13
15 But we weren't designing this remediation goal 09:27:15
16 to have cleanup just for the sake of cleanup. We wanted 09:27:21
17 it to be a little bit more surgical than that and -- 09:27:26
18 because of the expense of the project. And wanted to -- 09:27:33
19 the board -- or Cleanup Team wanted to make sure that 09:27:41
20 there were measurable environmental benefits that would 09:27:43
21 result from the dredging. And so we approached it as we 09:27:50
22 did. 09:27:55
23 As I was mentioning yesterday, any time you go 09:27:58
24 out in the environment and start dredging, you are 09:28:01
25 disturbing habitat. And we were wanting to limit that to 09:28:04

1 the areas that truly needed remediation. And so these 09:28:15
2 were our considerations. 09:28:18

3 Q. I understand that. My concern is with how 09:28:21
4 that -- those costs will add up when you're doing an 09:28:23
5 economic feasibility analysis. 09:28:27

6 A. Right. 09:28:29

7 Q. If you, instead of looking at, for example, with 09:28:30
8 the remedial -- final remedial footprint, I believe there 09:28:33
9 are some adjacent polygons that will be cleaned up. 09:28:36

10 A. Yes. 09:28:41

11 Q. Is that correct? 09:28:41

12 A. Yes. 09:28:42

13 Q. So in the -- at the end of the day, if that's 09:28:42
14 the final remedial footprint, you'll be cleaning all 09:28:44
15 those up, I assume, together and not actually following 09:28:47
16 all this order laid out. 09:28:51

17 A. Yeah. The sequencing of what would be dredged 09:28:53
18 first or how that would work hasn't been really addressed 09:28:55
19 as yet. Part of the cleanup order has a -- there's a 09:29:04
20 directive in there for a detailed remedial action plan 09:29:09
21 where all of those details would get described and laid 09:29:14
22 out. 09:29:17

23 Q. By dredging those areas that are next to each 09:29:18
24 other when the dredging actually happens could reduce 09:29:22
25 some of the costs that were assumed in the economic 09:29:26

1 feasibility analysis. 09:29:29

2 MR. CARRIGAN: Calls for speculation. 09:29:30

3 Incomplete hypothetical. 09:29:30

4 THE WITNESS: Yeah. I would just be speculating 09:29:35

5 in -- in -- in answering that. I -- I can't tell you -- 09:29:38

6 I think what you're asking me is, what are the costs of 09:29:44

7 dredging areas that are right next to each other versus 09:29:50

8 ones that are four polygons over and such. And I -- I -- 09:29:55

9 we might be able to get at that type of information in a 09:30:08

10 remedial action plan once the actual design and 09:30:13

11 sequencing of the -- the orchestration of how the 09:30:17

12 dredging will be done is laid out. 09:30:22

13 BY MS. WITKOWSKI: 09:30:23

14 Q. And I'm not trying to ask you to predict the 09:30:25

15 remedial action plan. My question is more trying to get 09:30:26

16 to figuring out what the assumptions were -- 09:30:30

17 A. Right. 09:30:32

18 Q. -- that came into this 24.3 number, which we can 09:30:33

19 talk about a little bit later -- 09:30:36

20 A. Okay. 09:30:37

21 Q. -- after we get that. 09:30:38

22 A. Okay. 09:30:39

23 Q. I think now is -- I have some more questions, 09:30:39

24 but I think now might be a good time for a break. 09:30:41

25 A. Okay. Sure. All right. 09:30:44

1 MS. WITKOWSKI: Go off the record. 09:30:45
2 THE VIDEOGRAPHER: Off the record. Time is 09:30:48
3 9:30 a.m. 09:30:49
4 (A recess was taken.) 09:30:55
5 THE VIDEOGRAPHER: Back on the record. Time is 09:46:07
6 9:46 a.m. 09:46:09
7 MR. CARRIGAN: Back on the record. 09:46:11
8 BY MS. WITKOWSKI: 09:46:12
9 Q. One more question for you, Mr. Barker, on the 09:46:16
10 Anchor spreadsheet. 09:46:18
11 A. Yes. 09:46:20
12 Q. On the back page under "Monitoring Costs," do 09:46:20
13 you know if that monitoring quantity and frequency 09:46:24
14 reflects what's currently in the DTR for a monitoring and 09:46:32
15 post monitoring plan, or monitoring during and after 09:46:36
16 dredging? 09:46:42
17 A. Yes, it does. It's as part of the -- our goal 09:46:43
18 of presenting the board a complete package, we went 09:46:52
19 beyond what we've done in other cleanup situations and -- 09:46:58
20 and got quite a bit into scoping what a -- a -- the three 09:47:02
21 different phases of monitoring that are listed there. 09:47:15
22 And so that's the associated costs with implementing it. 09:47:19
23 Q. Along the same lines, on the front of that page 09:47:23
24 under "Dredging," the last entry is "Additional dredging 09:47:27
25 as needed for a second pass." 09:47:31

1 A. Yes. 09:47:33

2 Q. And it was assumed 28,000 cubic yards. 09:47:34

3 A. Uh-huh. 09:47:38

4 Q. Does that also reflect the requirements for a 09:47:39

5 second pass as laid out in the current version of the 09:47:42

6 DTR? 09:47:45

7 A. It -- it's just a contingency cost factor 09:47:46

8 associated in case there's any anomalies in the -- when 09:47:52

9 the samples are obtained, where the cleanup goal was not 09:47:57

10 reached in a particular polygon, where a second pass 09:48:04

11 would need to be done. 09:48:09

12 Q. So was that based on a -- looking at what those 09:48:12

13 redredging triggers were and assessing the probability 09:48:15

14 that that would happen? 09:48:20

15 A. Yeah. It's just contingency planning. 09:48:25

16 Q We'll move on to another topic. 09:48:34

17 Yesterday, you were -- you spoke about natural 09:48:34

18 attenuation. And I believe you testified that you 09:48:35

19 determined that it was not appropriate remedy for the 09:48:39

20 entire site; is that correct? 09:48:42

21 A. Yes. 09:48:44

22 Q. Does the DTR determine that natural attenuation 09:48:45

23 is appropriate for NA22? 09:48:48

24 A. Let's see. Let me just -- I want to verify that 09:48:55

25 we're on the same -- no, no, no. NA22, a decision -- 09:48:59

1 we -- Cleanup Team just made a decision that it was best 09:49:07
2 to deal with the remediation of that site in conjunction 09:49:13
3 with the -- what's called the Mouth of Chollas Creek 09:49:18
4 TMDL. 09:49:21
5 There's a -- actually, it's open to the right 09:49:22
6 page. On page 33-3 of the DTR, you can see that it's -- 09:49:27
7 NA22 is -- is one point in the -- within a block of other 09:49:43
8 sediment quality sampling that's being done for the Mouth 09:49:51
9 of Chollas Creek. And it -- it just -- we felt that -- 09:49:54
10 that it was best to deal with remediation decisions on 09:50:00
11 that site, as I said. And as part of that TMDL effort. 09:50:04
12 Q. Does the TMDL have a remediation portion? 09:50:10
13 A. It -- the goal of that project is to come up 09:50:14
14 with some type of -- of reduction, waste load allocation. 09:50:17
15 And that could -- could very well lead to a sediment 09:50:33
16 remediation effort to obtain that goal there, in order to 09:50:35
17 ensure that water quality standards are met at the Mouth 09:50:41
18 of Chollas Creek. I think it's on the 303(d) list as a 09:50:45
19 sediment problem there. It's, I think, sediment 09:50:49
20 toxicity, listed for impairment with respect to sediment 09:50:56
21 toxicity and benthic community. 09:51:01
22 Q. Do you know if the TMDL as it's in progress 09:51:06
23 currently requires dredging there? 09:51:10
24 A. No. I -- 09:51:14
25 MR. CARRIGAN: I'm going to object. Calls for 09:51:15

1 speculation and lacks foundation. The TMDL hasn't been 09:51:17
2 issued. 09:51:22

3 MS. WITKOWSKI: That's why I said, "Do you know 09:51:24
4 as it's currently in progress." 09:51:25

5 MS. PERSSON: Join the objection. 09:51:30

6 MR. CARRIGAN: Calls for speculation. 09:51:32

7 THE WITNESS: Okay. I have not reviewed the -- 09:51:32
8 the draft on that lately to see if that's there. I do 09:51:34
9 know that when I last -- we were last discussing this in 09:51:44
10 the office -- this was some years ago -- we looked at it 09:51:50
11 as a phased operation that first the TMDL would be 09:51:53
12 implemented, and then the board would get into 09:51:57
13 determining whether there should be a remediation there 09:52:00
14 and who would be responsible for that, yes. 09:52:06

15 BY MS. WITKOWSKI: 09:52:09

16 Q. So it would be a separate cleanup, potentially? 09:52:12
17 A. Yes. Yes, exactly. 09:52:14
18 Q. And that would be after the TMDL would be 09:52:15
19 completed and implemented? 09:52:17
20 A. Or after the team -- 09:52:18

21 MR. CARRIGAN: Same objection. 09:52:20

22 MS. PERSSON: Join. 09:52:21

23 MR. CARRIGAN: The board has to take action on 09:52:21
24 this. It's out for peer review. So we're talking -- 09:52:23
25 we're way speculating about what might happen there. But 09:52:28

1 so -- I'm -- 09:52:32

2 MS. WITKOWSKI: Go ahead. 09:52:33

3 THE WITNESS: Could -- could you -- could I -- 09:52:33

4 MS. WITKOWSKI: Could you read back the 09:52:37

5 question, please? 09:52:38

6 (The record was read.) 09:52:49

7 MR. CARRIGAN: Calls for speculation. Lacks 09:52:49

8 foundation. Go ahead. 09:52:50

9 MS. PERSSON: Join. 09:52:52

10 THE WITNESS: When -- when TMDLs are 09:52:52

11 implemented, that refers to the process where -- where -- 09:52:58

12 a TMDL that's fully implemented means water quality 09:53:06

13 standards have been obtained. And -- and so a decision 09:53:10

14 on remediation, if there were to be that, would be 09:53:21

15 made -- well, I'm speculating. 09:53:23

16 But typically, a -- a decision's made on what 09:53:32

17 type -- type of pollutant reductions need to take place 09:53:36

18 and where those need to take place in order to reach the 09:53:40

19 goal of the TMDL. And then those actions are implemented 09:53:44

20 over time. 09:53:50

21 BY MS. WITKOWSKI: 09:53:51

22 Q. If I understand what you're saying and what your 09:53:52

23 counsel has objected to, it's speculative at this point 09:53:54

24 how contaminated sediments at NA22 will be dealt with? 09:53:59

25 A. Yes. Yes. It -- other than there's other -- 09:54:04

1 there's other sampling stations at the mouth of the creek 09:54:09
2 with the same sorts of sediment quality issues as NA22. 09:54:13
3 The same issues and receptors are involved. And whatever 09:54:18
4 decision would be made with respect to the other 09:54:24
5 stations, it would be made in a uniform manner, I guess. 09:54:27
6 Q. So does the decision to defer action on NA22 09:54:35
7 effectively remove NA22 from the Shipyard Sediment Site 09:54:39
8 for purposes of -- of this DTR and the cleanup and 09:54:44
9 abatement order? 09:54:47
10 A. Yes. We made a decision to not just -- to not 09:54:48
11 consider NA22 in the footprint. We just thought from a 09:54:56
12 decision-making process it would be better to have the 09:55:01
13 decision on NA-22 made at the same time as decisions are 09:55:06
14 made on the -- with the other stations that are shown in 09:55:12
15 Figure 35-2. 09:55:17
16 Q. Will NA22 be considered -- be factored in when 09:55:20
17 considering post-remedial SWACs and their achievement? 09:55:26
18 A. Post -- 09:55:36
19 Q. And whether site-wide, whether the cleanup goals 09:55:36
20 have been met, does NA22 factor in? 09:55:39
21 A. Is that included in the calculation. I -- I'd 09:55:42
22 have to look at the spreadsheets to see. I can see logic 09:55:53
23 for leaving it in or taking it out. It would seem to 09:55:56
24 be -- make more sense that it be removed from that 09:56:04
25 calculation. 09:56:08

1 Q. Are you familiar with the term "natural resource 09:56:16
2 damage assessment," NRDA, NRDA? 09:56:19
3 A. I've heard of it, have no experience with it. 09:56:24
4 Q. So to your knowledge, the San Diego Regional 09:56:29
5 Water Quality Control Board does not do natural resource 09:56:33
6 damage assessments? 09:56:36
7 A. I -- I'd have to ask you to explain that term to 09:56:39
8 me, and then I might be able to provide perspective on 09:56:42
9 it. 09:56:45
10 Q. Does the cleanup and abatement order take any 09:56:47
11 position on natural resource damage assessment? 09:56:50
12 MR. CARRIGAN: Document speaks for itself. 09:56:56
13 THE WITNESS: Could you tell me what you mean by 09:57:01
14 that phrase? 09:57:03
15 BY MS. WITKOWSKI: 09:57:04
16 Q. I -- let's actually flip to what I'm talking 09:57:05
17 about. In the tentative -- let's see. On page 16 of the 09:57:09
18 tentative cleanup and abatement order. 09:57:25
19 A. Okay. 09:57:36
20 Q. Second to last paragraph, the last sentence, 09:57:37
21 there's a conclusion that reads, "Cleanup of the remedial 09:57:41
22 footprint will restore any injury, destruction, or loss 09:57:45
23 of natural resources." 09:57:48
24 What's the -- does that statement, to your 09:57:55
25 knowledge, intend to refer at all to the necessity for a 09:57:59

1 natural resource damage assessment? 09:58:04

2 MR. CARRIGAN: Calls for a legal conclusion. 09:58:06

3 Assumes facts not in evidence. 09:58:08

4 THE WITNESS: Could you repeat that question? 09:58:14

5 (The record was read.) 09:58:26

6 THE WITNESS: No. 09:58:27

7 MS. WITKOWSKI: That's all I have for right now. 09:58:30

8 I'd like to take an opportunity to review the documents 09:58:31

9 that your counsel has pointed out to me, and I probably 09:58:34

10 will have more questions for you later. 09:58:37

11 THE WITNESS: Okay. Thank you. 09:58:39

12 MS. WITKOWSKI: Thank you. 09:58:40

13 MR. CARRIGAN: Let's go off the record. 09:58:41

14 THE VIDEOGRAPHER: Off the record. Time is 09:58:43

15 9:58 a.m. 09:58:44

16 (A recess was taken.) 09:58:48

17 THE VIDEOGRAPHER: Back on the record. Time is 10:01:20

18 10:01 a.m. 10:01:22

19 *** 10:01:23

20 EXAMINATION 10:01:23

21 BY MR. BROWN: 10:01:24

22 Q. Good morning, Mr. Barker. My name is 10:01:26

23 Bill Brown. We've met on other occasions. But I'm the 10:01:29

24 attorney who represents the Port in this administrative 10:01:31

25 matter. 10:01:35

1 I'm going to go through some questions with you. 10:01:35
2 Some of them are probably preliminary questions that you 10:01:37
3 may have asked before, but we'll get into the meat of it 10:01:40
4 very quickly. 10:01:43
5 First, when did you first begin working on the 10:01:45
6 TCAO and DTR for the Shipyard Sediment Site? 10:01:49
7 A. The project has had a long history of -- but I 10:01:58
8 think in -- in -- I would say one could use the date 10:02:04
9 where we issued the investigative order to NASSCO and BAE 10:02:15
10 to do a sediment quality investigation. So I think that 10:02:26
11 was -- I believe that was 2001. 10:02:30
12 Q. Yeah. And actually, that does lead to another 10:02:33
13 question right away. Did you -- we were looking for it, 10:02:35
14 but we did not determine, did you issue an investigative 10:02:38
15 order to San Diego Gas & Electric at the same time? 10:02:43
16 A. No. There was a subsequent order issued to 10:02:48
17 San Diego Gas & Electric further on into the 10:02:53
18 investigation. The 2001 order was just issued to NASSCO 10:03:02
19 and Southwest to get the study underway. 10:03:10
20 Q. Okay. Were you involved in the draft that was 10:03:12
21 prepared on August 4, 2007, of the technical report and 10:03:19
22 TCAO? 10:03:24
23 A. Yes. 10:03:25
24 Q. And you were also involved in the one that was 10:03:25
25 prepared April 4th, 2008? 10:03:27

1 MR. CARRIGAN: I'll join Mr. Waterman. 10:05:41

2 THE WITNESS: At this -- at this point in time 10:05:46

3 the cleanup is proceeding cooperatively, yes. Oh, excuse 10:05:50

4 me. There is no cleanup proceeding. We are putting 10:06:08

5 together a draft proposal for cleanup, and the hearings 10:06:10

6 have yet to be held. And so it's open to question. 10:06:15

7 Who's cooperating on one day may change on the next. 10:06:19

8 BY MR. BROWN: 10:06:24

9 Q. And of today is there -- are the Port tenants 10:06:25

10 acting in a cooperative manner in the process? 10:06:29

11 MR. WATERMAN: Objection. Vague. 10:06:33

12 MR. CARRIGAN: Same objections. Vague. 10:06:35

13 Compound. 10:06:36

14 THE WITNESS: To -- to my knowledge, yes. 10:06:39

15 BY MR. BROWN: 10:06:40

16 Q. Who, other than you, would have more knowledge 10:06:41

17 on this issue? 10:06:45

18 A. There's different -- the project is complex 10:06:47

19 enough with enough different aspects where, for instance, 10:06:53

20 on the development of the CEQA document, I attend some of 10:06:59

21 those meetings but not all. There could be things 10:07:03

22 happening there that I'm not immediately aware of. So 10:07:07

23 other team members might have greater knowledge on 10:07:13

24 certain aspects. 10:07:18

25 BY MR. BROWN: 10:07:19

1 Q. Does the word "cooperation" have a special 10:07:20
2 meaning in the context of the Water Board, or is it -- 10:07:24
3 it's every day use that all of us are familiar with? 10:07:28
4 MR. CARRIGAN: Calls for a legal conclusion. 10:07:33
5 MR. WATERMAN: Objection. Vague. 10:07:34
6 THE WITNESS: I'm not certain how to answer your 10:07:41
7 question. But cooperative in a cleanup sense means that 10:07:44
8 an effort is moving along smoothly and that there is not 10:07:54
9 a protracted process for -- for getting remedial work 10:08:03
10 underway. 10:08:09
11 BY MR. BROWN: 10:08:09
12 Q. Were you involved in any discussions back at the 10:08:15
13 time of the 2009 TCAO as to whether the Port should be 10:08:17
14 named secondarily liable? 10:08:22
15 A. The 2009. Yes. 10:08:26
16 Q. And who were you involved in discussions with? 10:08:37
17 A. Just Cleanup Team members, legal counsel. 10:08:45
18 Q. Okay. I don't want to know any discussions 10:08:50
19 where legal counsel was present. 10:08:52
20 A. Okay. 10:08:54
21 Q. Outside of discussions where legal counsel was 10:08:55
22 present, do you recall any discussions among the Cleanup 10:08:57
23 Team regarding whether the Port should be named 10:09:01
24 secondarily liable? 10:09:05
25 MR. CARRIGAN: Prior to 2009? 10:09:06

1 MR. BROWN: Prior to the 2009 TCAO. 10:09:08
2 THE WITNESS: Okay. So not -- not prior to 10:09:15
3 2010, 2009. 10:09:16
4 Q. No, I'm trying to go back into that time frame. 10:09:19
5 A. Okay. Yeah, periodically, discussion would come 10:09:22
6 up on that. 10:09:25
7 Q. And do you recall what the gist of those 10:09:29
8 conversations were? 10:09:31
9 MR. CARRIGAN: If not conveyed to you by 10:09:33
10 counsel. 10:09:34
11 MR. BROWN: And again, let's just have a blanket 10:09:36
12 for this, that anything that came out of conversations 10:09:39
13 with counsel, I don't want to hear about it. 10:09:42
14 THE WITNESS: Okay. As -- as I'm remembering 10:09:45
15 back to that time frame, there were -- were -- there were 10:10:00
16 other issues we were scrambling on. And the Port's 10:10:06
17 status as a -- as a named party in the order and whether 10:10:12
18 to change that status was not a -- a priority issue to us 10:10:21
19 at that time. 10:10:29
20 BY MR. BROWN: 11:59:57
21 Q. Do you remember any other instances where the 10:10:31
22 Port was named a primarily liable party by the 10:10:34
23 Water Board? 10:10:39
24 A. Yes. 10:10:45
25 Q. And what instance was that? 10:10:45

1 name parties that should be -- name all responsible 10:12:54
2 parties or parties that could be held responsible in a 10:13:00
3 cleanup order to ensure there -- there's adequate 10:13:03
4 financial resources to complete a cleanup. 10:13:08
5 Q. Do you know if the Port ultimately paid for the 10:13:11
6 cleanup at the Paco Terminal sites? 10:13:14
7 A. There were different -- as I recall different 10:13:19
8 parties involved and insurance considerations. And I 10:13:23
9 personally don't know who paid for what. I just know 10:13:31
10 that the cleanup goal was obtained. 10:13:35
11 Q. Do you recall whether the Port ever refused to 10:13:37
12 pay for the cleanup of the Paco Terminal? 10:13:39
13 A. I -- I think the board's naming of the -- well, 10:13:42
14 to answer your question, no, I don't know if the Port 10:13:59
15 refused to pay for the cleanup. 10:14:02
16 Q. Now, in contrast to the Paco Terminal matter, is 10:14:06
17 it accurate that the Port has not had actual involvement 10:14:12
18 in discharges at this site? 10:14:15
19 A. In the day-to-day operations at the site? 10:14:18
20 Q. Yes. 10:14:23
21 MR. WATERMAN: Objection. Calls for a legal 10:14:31
22 conclusion. 10:14:32
23 THE WITNESS: Could you read back the question 10:14:33
24 to me? 10:14:34
25 (The record was read.) 10:14:44

1 THE WITNESS: Well, there's -- the board has not 10:14:46
2 taken the position that the Port has been involved in the 10:14:53
3 day-to-day operations at NASSCO and BAE. The board has 10:14:57
4 taken the position that the Port has some responsibility 10:15:08
5 for MS4 discharges from the site. 10:15:13
6 BY MR. BROWN: 10:15:16
7 Q. And we'll get into that -- 10:15:19
8 A. Okay. 10:15:20
9 Q. -- in detail a little bit later down the line. 10:15:21
10 But I'll have you look at Master Exhibit 11-4. It's 10:15:23
11 actually Master Exhibit 2 but Section 11-4. 10:15:33
12 A. Okay. 10:15:54
13 MR. CARRIGAN: Section 11-4 or page? 10:15:55
14 MR. BROWN: I believe it's page 11-4. 10:15:57
15 MR. CARRIGAN: Okay. 10:15:59
16 BY MR. BROWN: 10:16:00
17 Q. It's in -- and it says, "Although the 10:16:02
18 Port District is a public governmental entity, and 10:16:03
19 there's no evidence in the record that the Port District 10:16:06
20 initiated or contributed to the actual discharge of waste 10:16:09
21 at the Shipyard Sediment Site, it is nevertheless 10:16:11
22 appropriate to name the Port District as a discharger in 10:16:17
23 the CAO." 10:16:20
24 Is that the Water Board's current position 10:16:21
25 adequately reflected? 10:16:23

1 A. Let's see. Yeah. I think there's a -- it -- it 10:16:25
2 seems like there's a -- a little disconnect between that 10:16:43
3 statement and Section 11.3.1 that gets into allegations 10:16:48
4 about the Port's operation of the MS4 system at the site, 10:16:59
5 and its responsibilities for discharges from that system 10:17:07
6 to the bay. 10:17:10
7 I think, as I read this sentence here, it -- it 10:17:14
8 seems to be referring to that it's talking about there's 10:17:28
9 no evidence that the Port was involved in day-to-day 10:17:35
10 activities at NASSCO and BAE and -- and discharged waste 10:17:40
11 as a result of those type of activities. 10:17:46
12 Q. Okay. 10:17:51
13 Let's look at some of the storm water issues. 10:17:51
14 There are two storm drain outfalls at issue in the order; 10:17:57
15 is that correct? 10:18:03
16 A. Yes. 10:18:03
17 Q. Okay. One of them -- 10:18:04
18 A. Excuse me. On your -- you said there were two 10:18:11
19 storm drains, part of the order. There's actually a 10:18:13
20 couple hundred storm drains that we've alleged are 10:18:21
21 contributors at the site, but two that empty out from, I 10:18:26
22 guess, tidelands under Port jurisdiction. Okay. 10:18:31
23 Q. Yeah. Okay. And are -- and let's just be 10:18:36
24 clear. I know the document speaks to itself. But I have 10:18:38
25 to try and understand your interpretation. 10:18:41

1 Is it your understanding that the Water Board 10:18:43
2 believes that the Port is responsible for those hundreds 10:18:48
3 of drains or for the two drains that empty out on Port 10:18:50
4 tidelands? 10:18:53
5 A. For the storm drains that would be within the 10:18:55
6 Port's jurisdictional area at the site. So the -- the -- 10:19:02
7 I guess this would, then, focus on storm drains SW4, and 10:19:08
8 I think the other one was SW9. 10:19:18
9 Q. Right. Let's first talk about SW9. 10:19:21
10 Is it your understanding that that -- when we -- 10:19:25
11 when we reference the site, it gets a little squishy here 10:19:27
12 because it appears that SW9 empties into the area that's 10:19:33
13 now known as NA22. 10:19:38
14 A. Yes. 10:19:40
15 Q. And so that is the TMDL portion of the site? 10:19:41
16 A. Yes, that's what's proposed there. 10:19:45
17 Q. And that is not a part that is going to be 10:19:48
18 remediated during this phase of the proceedings under the 10:19:50
19 cleanup and abatement order? 10:19:54
20 A. The -- yes, that's the proposal for that 10:19:57
21 sediment, yes. 10:20:00
22 Q. So why is SW9 considered as part of the Port's 10:20:01
23 responsibility for the cleanup of the site and the 10:20:09
24 dredging activities when it drains into an area that is 10:20:13
25 not going to be remediated through that piece? Do you 10:20:17

1 understand my question? 10:20:20

2 MR. CARRIGAN: Misstates facts in evidence. Go 10:20:21

3 ahead. 10:20:23

4 THE WITNESS: Yes. The -- the board considers 10:20:24

5 outflows from Chollas Creek as -- is to be as a pollutant 10:20:33

6 outflows is one factor that influences the sediment 10:20:42

7 quality at the shipyard site. 10:20:47

8 And so in the DTR, the board has alleged that 10:20:48

9 all of the storm drains that empty out into Chollas 10:20:57

10 Creek, some of which don't discharge to the shipyard site 10:20:59

11 directly, but indirectly, those discharges influence the 10:21:09

12 site. So that would be the basis. 10:21:14

13 BY MR. BROWN: 11:00:57

14 Q. Do you believe that discharges from Southwest -- 10:21:19

15 from SW9 storm drain are influencing the areas that will 10:21:24

16 be dredged? 10:21:31

17 A. That's -- yes. That's our position, yes. 10:21:33

18 Q. And how does that occur? 10:21:37

19 A. The Chollas Creek is immediately adjacent to the 10:21:39

20 shipyard site. There's some discussion in the DTR, I 10:21:45

21 think, I recall in the chapter dealing with the City of 10:21:54

22 San Diego that talks about the Chollas Creek plume that 10:22:01

23 has been observed in the bay during storm events, and 10:22:06

24 what the extent and reach of that is. 10:22:10

25 And we -- the Cleanup Team is alleging that that 10:22:13

1 plume influences sediment quality at the shipyard site, 10:22:19
2 that there's some -- some pollutant load that gets to the 10:22:24
3 site, some fraction of it. 10:22:29
4 Q. And that fraction, does it involve PCBs? 10:22:31
5 A. I -- I don't -- I don't believe in the DTR we 10:22:39
6 got into the chemical -- the different chemicals that 10:22:48
7 might be present. I mean, there are some findings in 10:22:55
8 there that list typical constituents that are in urban 10:22:58
9 runoff. And I -- I think PCBs was one of the items 10:23:03
10 listed for that in the -- 10:23:07
11 Q. The -- 10:23:09
12 A. -- so from that basis I guess we are alleging 10:23:09
13 that there -- there could be that in the Chollas Creek 10:23:11
14 outflow. 10:23:15
15 Q. The Chollas Creek outfall is currently listed on 10:23:16
16 the 303(d) list for the TMDL program; is that correct? 10:23:21
17 A. The Mouth of Chollas Creek, that's correct. 10:23:26
18 Q. Do you recall whether it's listed for PCBs? 10:23:29
19 A. I -- I'd have to consult the list. I -- I 10:23:34
20 don't -- I believe the list is just describes the 10:23:37
21 impairment as sediment toxicity and benthic community 10:23:44
22 impairments without -- and it doesn't talk about chemical 10:23:51
23 constituents. But I'd have to consult the list to answer 10:23:55
24 precisely. 10:23:58
25 Q. Okay. We may be able to get that for you at one 10:23:59

1 of the breaks. 10:24:02

2 A. Okay. 10:24:02

3 Q. If it does not list PCBs as a chemical of 10:24:03

4 concern on the TMDL -- in other words, the TMDL does 10:24:07

5 typically list types of contaminants of concern that are 10:24:10

6 listed under the 303(d) list. 10:24:15

7 If PCBs are not one of the chemicals that's a 10:24:18

8 chemical of concern for that TMDL, does that have an 10:24:21

9 impact on your opinion as to whether or not PCBs are 10:24:26

10 being conveyed to the Shipyard Sediment Site via that 10:24:29

11 storm train? 10:24:33

12 MS. PERSSON: Incomplete hypothetical. Calls 10:24:36

13 for speculation. 10:24:37

14 MR. WATERMAN: Join. 10:24:38

15 MR. CARRIGAN: Yeah. I'll join those, too. 10:24:42

16 THE WITNESS: I mean, that would be evidence, 10:24:45

17 certainly, not -- I would say in my mind not conclusive. 10:24:50

18 The -- there's some unique aspects of SW9 as -- as it 10:24:56

19 drains an industrialized area, and it's close to the 10:25:01

20 mouth of the bay. A lot of the drainage into 10:25:07

21 Chollas Creek as you move inland comes from a 10:25:13

22 nonindustrial area. So it could have some unique 10:25:19

23 characteristics there that aren't somehow showing up in 10:25:22

24 the total watershed assessment. 10:25:26

25 BY MR. BROWN: 11:59:57

1 Q. Is there any monitoring data available for SW9? 10:25:30

2 A. There are -- there is some. I -- I don't know 10:25:35

3 if there is -- if there is MS4 permit-related monitoring. 10:25:45

4 If there is, I haven't seen it. It all -- the monitoring 10:25:51

5 I'm -- the information I'm aware of is just the sediment 10:25:57

6 quality data for NA22 that's -- that's in the report. 10:26:00

7 Q. At pages 11-3 and 11-15, Sections 11.6.4 and 10:26:09

8 11.6.5 state that, "Although no monitoring data is 10:26:19

9 available for these outfalls, it is highly probable that 10:26:23

10 historical and current discharges from this outfall have 10:26:26

11 discharged heavy metals and organics to San Diego Bay at 10:26:31

12 the Shipyard Sediment Site." 10:26:34

13 Does that adequately reflect the current view of 10:26:36

14 the Water Board? 10:26:42

15 A. Could you tell me what paragraph that was again? 10:26:44

16 Q. I would have to -- 10:26:49

17 MR. CARRIGAN: Give me the cite again, Bill. 10:26:51

18 MR. BROWN: It's Section 11-6-4. Let's look at 10:26:53

19 that one. 10:26:56

20 THE WITNESS: Okay. 10:26:56

21 MR. BROWN: On page 11-3. 10:26:57

22 MR. CARRIGAN: 11-15? 10:27:01

23 MR. BROWN: There is -- there's -- it appears on 10:27:03

24 11-3 and 11-15. It's repeated. So you can -- I think 10:27:06

25 the statement's repeated. 10:27:11

1 THE WITNESS: Oh, here it is. Okay. I see the 10:27:15
2 statement on page 11-15. Okay. I -- I -- I see the 10:27:17
3 statement there, and that is our -- our current position. 10:27:31
4 MR. BROWN: Okay. We -- I've been given a note 10:27:35
5 that we have to change the tape. So we're going to take 10:27:37
6 a short break, and we'll be back. 10:27:39
7 THE WITNESS: Okay. 10:27:41
8 THE VIDEOGRAPHER: This ends Videotape No. 1 in 10:27:42
9 the deposition of David Barker. This time of the record 10:27:44
10 is 10:27 a.m. 10:27:46
11 (A recess was taken.) 10:27:48
12 THE VIDEOGRAPHER: This begins Videotape No. 2 10:35:00
13 in the deposition of David Barker. The time on the 10:35:02
14 record is 10:35 a.m. 10:35:05
15 BY MR. BROWN: 10:35:06
16 Q. Mr. Barker, are you aware of any plans for 10:35:07
17 future monitoring of the SW4 and SW9 outfalls? 10:35:10
18 A. That potential is certainly there. There was 10:35:20
19 some requirements that are listed in the order. I can't 10:35:24
20 remember what party it was directed to. Actually, let 10:35:33
21 me -- let me look in the order. 10:35:38
22 There's some direct -- proposed directives in 10:36:35
23 the current draft CAO that are directed to the City and 10:36:38
24 the -- and the Port District to do some investigation 10:36:45
25 on -- MS4 storm drain investigations. 10:36:53

1 Q. Could you give me a cite to that, Mr. Barker? 10:37:05
2 A. Yeah. That's page 21, Directives 3, 4, 5. And 10:37:07
3 these -- this investigation is -- looks like it's 10:37:24
4 directed to outfall SW4. 10:37:29
5 Q. And I'm sorry. I'm -- I momentarily lost focus. 10:37:32
6 What document are you referring to? 10:37:36
7 A. Oh, excuse me. The draft cleanup and abatement 10:37:38
8 order. And that investigation could lead to, at least 10:37:40
9 with respect to SW4, some monitoring activities there. 10:37:53
10 Q. Is it your understanding that the Port District 10:38:00
11 owns a part of SW4 or SW9? 10:38:02
12 MR. CARRIGAN: Calls for a legal conclusion. 10:38:06
13 THE WITNESS: I -- I don't know if the Port 10:38:08
14 owns -- whether or not -- I don't know who owns the SW4 10:38:17
15 and SW9, the physical pipe, no. 10:38:24
16 BY MR. BROWN: 10:38:27
17 Q. Do you know whether the Port operates SW4 or 10:38:31
18 SW9? 10:38:36
19 MS. PERSSON: Objection. Vague. 10:38:40
20 THE WITNESS: The board, I believe, since 1990 10:38:41
21 has -- has in its NPDS permits made findings that -- that 10:38:45
22 state that the Port is the owner and operator of an MS4 10:38:57
23 system and is subject to the requirements of the permit. 10:39:05
24 BY MR. BROWN: 11:59:57
25 Q. And you believe that's in the permit for the 10:39:11

1 NPDS? 10:39:15

2 A. Yes. 10:39:16

3 Q. Okay. Can you point me to any sections? 10:39:17

4 A. It would be in the -- let's see. It would be in 10:39:21

5 the findings of the permit, maybe the first couple of 10:39:26

6 findings where it lists out the parties that are named in 10:39:31

7 the permit. It -- it -- it has some words that describe 10:39:35

8 whether or not those parties own and operate a MS4 10:39:47

9 system. 10:39:53

10 Q. Now, does operating and owning an MS4 system, is 10:39:53

11 that the equivalent of operating a particular storm 10:39:57

12 drain? 10:40:00

13 A. It -- it could be that. 10:40:00

14 Q. Could it also be that the MS4 permit applies to 10:40:04

15 a wide variety of storm drains, but it's a case-by-case 10:40:08

16 basis as to whether a particular storm drain is covered 10:40:10

17 by the permit or permitting? 10:40:14

18 MS. PERSSON: Lacks foundation. Calls for 10:40:17

19 speculation. 10:40:18

20 MR. CARRIGAN: I think calls for a legal 10:40:18

21 conclusion. Join counsel's other objections. 10:40:19

22 MR. WATERMAN: Join. 10:40:23

23 THE WITNESS: I think the board's -- I mean, the 10:40:25

24 jurisdiction over a storm drain, you know, normally it's 10:40:35

25 a straightforward process. Because in the municipal 10:40:43

1 permit situation when you cross city lines, you -- you -- 10:40:49
2 you -- it's pretty easy to determine who has jurisdiction 10:40:53
3 at a particular location. 10:40:58

4 The -- the board's, in naming the Port District 10:41:00
5 in the municipal permit, it's in effect assigning the 10:41:06
6 watershed area of the tidelands and the -- the -- the 10:41:11
7 runoff from those areas as being -- as -- it's assigning 10:41:22
8 compliance -- or it's assigning that discharge as being 10:41:30
9 under the responsibility of the Port. 10:41:36

10 BY MR. BROWN: 10:41:41

11 Q. Do you know whether the City and the Port have 10:41:43
12 any agreements as to who owns particular storm drains? 10:41:46

13 MS. PERSSON: Lacks foundation. 10:41:54

14 THE WITNESS: I do not know. 10:41:56

15 THE COURT REPORTER: I'm sorry. What? 10:41:57

16 MS. PERSSON: Lacks foundation. 10:41:57

17 THE WITNESS: I -- I -- I do not know. 10:41:57

18 BY MR. BROWN: 10:41:57

19 Q. Are you aware of what source you used to 10:41:57
20 determine in the Section 11.3, what was your source for 10:42:01
21 determining that the Port owned and operated storm 10:42:10
22 drains? 10:42:13

23 A. In Section 11.3? 10:42:18

24 Q. Yes. 10:42:20

25 A. Okay. Let's see. The source of any statements 10:42:20

1 like that would -- would be the board's municipal storm 10:42:52
2 water permits. 10:43:01

3 Q. Is the citation for the figures at page 11 and 10:43:02
4 six and 11-7, is it referred to as the source being the 10:43:08
5 exponent report? 10:43:13

6 A. Let's see. 10:43:15

7 MR. CARRIGAN: Document speaks for itself. 10:43:17

8 THE WITNESS: Like for -- let's see. On 10:43:21
9 page 11-6 with the description of Storm Drain SW4, yes, 10:43:24
10 that was a storm drain identified in the Exponent report. 10:43:32
11 BY MR. BROWN: 10:43:36

12 Q. And is the identification by Exponent the basis 10:43:37
13 for the determination that the Port owns and operates 10:43:40
14 storm drains? 10:43:44

15 MR. CARRIGAN: Document speaks for itself. 10:43:45
16 Calls for a legal conclusion. 10:43:46

17 MR. WATERMAN: Join. 10:43:49

18 MS. PERSSON: Join. Misstates prior testimony. 10:43:49

19 THE WITNESS: Okay. The -- the -- the Cleanup 10:43:53
20 Team looked at where the drainage area for, in this case, 10:43:53
21 SW4 and noted that it was in the -- in the 10:44:10
22 Port District's jurisdictional area and is -- is alleging 10:44:18
23 that the Port has some responsibilities for outflows from 10:44:26
24 that storm drain into the site. 10:44:31
25 BY MR. BROWN: 10:44:34

1 Q. So is it the basis is that the drain passed 10:44:37
2 through a Port area of jurisdiction is the basis for the 10:44:43
3 allegation that we owned or operated the storm drain? 10:44:49
4 MR. CARRIGAN: Misstates testimony. 10:44:53
5 THE WITNESS: I -- well, I think the -- the 10:44:57
6 basis -- the general basis is the basis I described 10:45:00
7 that's in the municipal storm water permit. And in 10:45:05
8 page 11-5, there's a -- kind of a description of the 10:45:12
9 board's perspective on the Port District's operation of 10:45:30
10 the MS4 system there. 10:45:37
11 BY MR. BROWN: 10:45:40
12 Q. And is it possible that the Port operates an MS4 10:45:41
13 system, but that SW4 or SW9 are not part of that system? 10:45:45
14 MS. PERSSON: Calls for speculation. 10:45:50
15 MR. CARRIGAN: Calls for speculation. 10:45:52
16 Incomplete hypothetical. 10:45:52
17 MR. DART: Join. 10:45:56
18 THE WITNESS: Yeah. I would just refer back to 10:46:10
19 my statement that the -- that the permits specifically 10:46:11
20 regulate the watershed of the Port District tidelands, 10:46:19
21 and the -- these MS4 storm drains may receive drainage 10:46:27
22 from this watershed area, and, therefore, we believe the 10:46:33
23 Port has some responsibility for the discharge. 10:46:41
24 BY MR. BROWN: 11:59:57
25 Q. Have you ever asked the Port or the City who 10:46:45

1 owns the storm drain? 10:46:47

2 A. I have not. 10:46:52

3 Q. Do you know if anybody on your staff has ever 10:46:53

4 asked them? 10:46:55

5 A. I do not know. 10:46:56

6 Q. Do you -- let's talk about operation of the 10:46:58

7 storm drain. Is that, in your mind, different than 10:47:01

8 ownership of the storm drain? 10:47:04

9 MR. CARRIGAN: Calls for a legal conclusion. 10:47:08

10 THE WITNESS: It -- it -- it could. 10:47:15

11 BY MR. BROWN: 10:47:16

12 Q. And how would it differ? 10:47:17

13 MR. CARRIGAN: Same question -- or same 10:47:21

14 objection. 10:47:22

15 MS. PERSSON: Calls for speculation. 10:47:34

16 MR. BROWN: Was that a -- 10:47:34

17 MR. CARRIGAN: That was a slip. Same objection. 10:47:34

18 THE WITNESS: The only context I can think of is 10:47:38

19 when there is a facility discharging waste that is -- 10:47:45

20 that facility can be operated by one entity yet owned by 10:47:50

21 another. 10:47:55

22 BY MR. BROWN: 10:47:55

23 Q. Okay. 10:47:55

24 A. Yeah. 10:47:56

25 Q. Are you ever -- are you periodically informed of 10:47:58

1 recent legal decisions that address the issue as to who 10:48:04
2 has responsibility for a outfall? 10:48:09
3 A. I'm periodically informed of legal decisions. 10:48:20
4 But yeah. 10:48:24
5 Q. Are you aware that this issue has been heavily 10:48:27
6 litigated in the Los Angeles area recently? 10:48:29
7 A. Not personally, no, no.. 10:48:32
8 Q. Have you seen any of the decisions that came out 10:48:34
9 of that case? 10:48:36
10 A. No, not as yet, no. 10:48:38
11 MR. CARRIGAN: Yeah. Assumes facts not in 10:48:40
12 evidence. 10:48:42
13 BY MR. BROWN: 10:48:42
14 Q. Well, are you aware of a case called NRDC vs. 10:48:42
15 the County of Los Angeles? 10:48:44
16 A. No. 10:48:48
17 Q. Are you aware of the standards that the court 10:48:48
18 imposed to determine whether a party is responsible for 10:48:50
19 the outfall of a system? 10:48:53
20 MS. PERSSON: Objection. Argumentative. 10:48:57
21 MR. CARRIGAN: Asked and answered. 10:48:59
22 THE WITNESS: No. 10:49:00
23 BY MR. BROWN: 11:59:57
24 Q. Have you done any testing of the areas where any 10:49:02
25 portion of the Port property may connect to the storm 10:49:08

1 drain? 10:49:14

2 MR. WATERMAN: Vague. 10:49:19

3 THE WITNESS: Okay. Question? 10:49:21

4 (The record was read.) 10:49:30

5 MS. PERSSON: Join in the objection. 10:49:36

6 MR. CARRIGAN: I'll join that, too. 10:49:37

7 THE WITNESS: We may have done some sampling 10:49:42

8 activities over at SW4. But I -- I'd have to look at the 10:49:44

9 DTR. I know some sampling was done in that storm drain. 10:49:55

10 I'm not sure if it was us or another agency. 10:49:58

11 BY MR. BROWN: 10:50:00

12 Q. Do you know whether it was located at an area 10:50:02

13 where the Port or any of its tenants discharged into the 10:50:09

14 storm drain? 10:50:13

15 MR. CARRIGAN: Vague. 10:50:14

16 THE WITNESS: I believe -- I -- I don't. I 10:50:18

17 believe it was in an area that could -- could receive 10:50:22

18 drainage from tideland areas, yes. 10:50:26

19 BY MR. BROWN: 10:50:30

20 Q. Okay. How was it determined that the listing 10:50:31

21 for the SW4 and SW9 was listed -- was limited to the City 10:50:41

22 and the Port? 10:50:47

23 A. We looked at those as -- felt those met the 10:50:57

24 definition of a MS -- MS4 system. And -- and then based 10:51:07

25 on that conclusion, went to the -- deferred to the 10:51:16

1 municipal storm water permit to see who -- who would 10:51:19
2 be -- who should be held responsible for discharges from 10:51:23
3 them. 10:51:27
4 Q. Are there any other co-permittees on these 10:51:30
5 permits? 10:51:34
6 A. Yes. 10:51:39
7 Q. Do you know who they are? 10:51:41
8 A. I would have to -- I'd have to have the permit 10:51:42
9 in front of me to name them all. But they are basically 10:51:47
10 the -- in San Diego County's permit, it's the -- all of 10:51:51
11 the incorporated municipalities that are listed there 10:51:56
12 along with the Port District. 10:52:00
13 Q. And -- 10:52:02
14 A. And the County. 10:52:04
15 Q. How about Caltrans; are they listed? 10:52:05
16 A. Caltrans has a separate MS4 permit. And so 10:52:07
17 they're not included in the San Diego County permit. But 10:52:16
18 they are subject to a -- I think a statewide general 10:52:20
19 permit. 10:52:23
20 Q. Do you know if their -- any portion of their 10:52:24
21 properties drain to SW4 or SW9? 10:52:28
22 A. I -- I -- it's possible that it could, if the 10:52:32
23 storm drain received drainage from Interstate 5. 10:52:38
24 Q. Has the Port ever been cited for violating any 10:52:45
25 terms of the permits? 10:52:48

1 the document. 10:54:54

2 A. Yes. 10:54:57

3 Q. And the verification is signed by you; is that 10:54:58

4 correct? 10:55:00

5 A. Yes. 10:55:01

6 Q. And that's your signature? 10:55:01

7 A. Yes. 10:55:03

8 Q. And does this refresh your recollection that the 10:55:03

9 Port has never been named for any violation of the 10:55:05

10 permit? 10:55:09

11 A. Yes. 10:55:10

12 Q. Okay. 10:55:11

13 Do you know if other parties have ever been 10:55:12

14 named for violation of this permit as it affects these 10:55:15

15 storm drains? 10:55:19

16 A. Those particular storm drains? 10:55:20

17 Q. Yes. 10:55:22

18 A. There was an NO -- a Notice of Violation, I 10:55:22

19 believe, issued by the City of San Diego to SDG&E. And 10:55:28

20 I'm aware of that. 10:55:36

21 Q. And did that NOV name Port District? 10:55:37

22 A. I don't believe it did. 10:55:41

23 Q. And was it ever determined that the 10:55:42

24 Port District had responsibility for that NOV? 10:55:45

25 MR. CARRIGAN: Act -- asked and answered. 10:55:47

1 THE WITNESS: This was a NOV that the board did 10:55:51
2 not issue it, the City of San Diego issued it. And I'm 10:55:54
3 not sure of the current status of their thinking. But as 10:55:58
4 far as I know, it was just issued to SDG&E. 10:56:01
5 BY MR. BROWN: 10:56:05
6 Q. Okay. 10:56:05
7 Did you ever -- have you ever been provided with 10:56:06
8 copies of easements or other documents that indicate who 10:56:10
9 owns the storm drains? 10:56:15
10 MR. CARRIGAN: Assumes facts not in evidence. 10:56:20
11 THE WITNESS: I -- I haven't seen those 10:56:24
12 documents, no. 10:56:25
13 BY MR. BROWN: 11:59:57
14 Q. And if they were provided to you, you'd be happy 10:56:26
15 to add them to the administrative record? 10:56:28
16 MR. CARRIGAN: Yes. 10:56:32
17 BY MR. BROWN: 10:56:32
18 Q. And if those documents showed that the 10:56:32
19 Port District did not own the storm drains or operate 10:56:37
20 them, would that change your opinion in any manner? 10:56:39
21 MS. PERSSON: Calls for a legal conclusion. 10:56:46
22 THE WITNESS: I would consult legal counsel. 10:56:51
23 But so far, I -- I would -- so I don't want to speculate 10:56:55
24 on that. 10:57:01
25 BY MR. BROWN: 10:57:01

1 Q. Okay. Between the drafting of the TCAO in 2009 10:57:02
2 and the 2010 TCAO, the Port was named as a discharger and 10:57:21
3 a primarily responsible party; is that correct? 10:57:27
4 A. In 2010, yes. 10:57:29
5 Q. Yes. Were you involved in drafting or 10:57:31
6 investigating the findings in Section 11? 10:57:38
7 MR. CARRIGAN: Compound. 10:57:43
8 THE WITNESS: I was not involved in drafting; 10:57:50
9 although, I was aware of changes to them. 10:57:55
10 BY MR. BROWN: 10:58:00
11 Q. Okay. Let met break it down because 10:58:03
12 Mr. Carrigan's objection was entirely appropriate. 10:58:05
13 Were you involved in the drafting of specific 10:58:09
14 sections of Finding 11? 10:58:13
15 A. Let's see. No. 10:58:19
16 Q. Do you know who was involved in the drafting? 10:58:49
17 A. Let's see. Yeah. The findings in Finding 11 10:58:55
18 were -- were based upon advice from legal counsel. 10:59:15
19 Q. Okay. I don't want to have any knowledge of 10:59:19
20 advice from legal counsel. 10:59:23
21 A. Okay. 10:59:24
22 Q. Did your staff draft these sections, or were 10:59:25
23 they drafted by legal counsel? 10:59:27
24 A. There were -- let's see. Prior, like the 2009 10:59:37
25 order, I think, had -- had -- also had a finding on the 10:59:55

1 Port District that -- and there was some verbiage in 10:59:58
2 there I was involved with drafting. And some of that 11:00:07
3 verbiage may have been retained in here. I haven't done 11:00:09
4 that comparison. But largely charges were made, as I 11:00:12
5 said, based upon advice from legal counsel. 11:00:21
6 Q. Were you involved in investigating specific 11:00:27
7 sections of Finding 11; in other words, fact or search or 11:00:30
8 scientific investigation? 11:00:36
9 That's a different question than what I asked 11:00:38
10 before, so you don't have to amend your last question. 11:00:40
11 The first one was about drafting, this one is now about 11:00:43
12 investigating. 11:00:46
13 A. Okay. Just verifying the Port's status with 11:00:48
14 respect to the MS4 permit, just from that perspective. 11:01:01
15 Q. And who was involved in that? 11:01:06
16 A. That would have been myself, possibly our -- 11:01:09
17 Eric Becker in our office. 11:01:17
18 Q. And how did you go about conducting that 11:01:20
19 investigation? 11:01:22
20 A. That -- that would have been just looking at the 11:01:23
21 permits, seeing who was named in the permits, that type 11:01:26
22 of thing. 11:01:29
23 Q. Now, do the permits -- and I may have asked you 11:01:30
24 this before, so I'm sorry if I did. 11:01:34
25 Do the permits address specific storm drains or 11:01:36

1 do they just address jurisdictions? 11:01:40

2 A. Just jurisdiction, correct. 11:01:42

3 Q. Okay. Did anyone outside of the Water Board or 11:01:43

4 its attorneys draft any particular sections of 11:01:48

5 Finding 11? 11:01:51

6 A. Not -- not that I'm aware of. 11:01:52

7 Q. Did any consultants or attorneys for named 11:01:55

8 dischargers draft any portions of Finding 11? 11:01:58

9 MR. CARRIGAN: Asked and answered. 11:02:01

10 MR. BROWN: I could ask in another fashion. 11:02:04

11 You can answer. 11:02:06

12 THE WITNESS: Yeah. Not -- not aware of that, 11:02:07

13 no. 11:02:08

14 BY MR. BROWN: 11:02:09

15 Q. You mentioned that one of the reasons, perhaps, 11:02:15

16 why the Port was not named in the prior version in 11:02:17

17 December of 2009 was that there were a lot of other 11:02:21

18 things on your plate at that time, and the Port wasn't 11:02:25

19 given particular focus at that time; is that correct? 11:02:29

20 A. Yes. And the board -- or the Cleanup Team felt 11:02:33

21 it was in its interests to work cooperatively with the 11:02:37

22 Port, and that we were getting some cooperation from the 11:02:47

23 Port at that time where we -- we felt it was in our 11:02:55

24 interest to not -- not name the Port in the order and 11:03:03

25 create an adversarial situation that might obstruct the 11:03:06

1 cooperation between the two agencies. 11:03:12

2 Q. Now, in terms of your workload, did that change 11:03:17

3 substantially between 2009 and 2010? 11:03:22

4 A. Workload, workload only increases, as far as I'm 11:03:26

5 concerned. 11:03:30

6 Q. So you remained busy throughout that period? 11:03:30

7 A. Yes. 11:03:37

8 Q. So the change in circumstances wasn't that you 11:03:38

9 had more time to consider the Port's status at that 11:03:39

10 point. There was actually some other facts that occurred 11:03:44

11 that changed -- 11:03:46

12 A. Yeah. 11:03:48

13 Q. -- your decision-making process? 11:03:49

14 A. Yes. 11:03:51

15 Q. And what were those facts? 11:03:51

16 A. Now, this is just from my perspective based on 11:03:55

17 things that I -- my observations on things that I became 11:04:00

18 aware of. One was, I became aware that, I guess, in 2009 11:04:04

19 there were -- that we had some expectations that the Port 11:04:16

20 would contribute financially to the cleanup, possibly 11:04:21

21 using insurance proceeds from tenants that were absent in 11:04:31

22 the proceedings. 11:04:41

23 Q. And did you become under the impression 11:04:44

24 subsequently that the Port was refusing to do that? 11:04:48

25 A. Yeah. It was my understanding that -- that -- 11:04:53

1 that the Port had changed its position on that. 11:04:56

2 Q. And how did you come to that understanding? 11:05:04

3 A. Just conversations. But I think they were 11:05:10

4 privileged conversations, if I understand that, legal 11:05:21

5 counsel. 11:05:24

6 Q. Okay. Were these conversations with legal 11:05:25

7 counsel, then? Is that -- and I don't want to know what 11:05:27

8 they told you. But I'm trying to find out what your 11:05:30

9 source of information is. And if it's something other 11:05:33

10 than legal counsel, I want to -- 11:05:36

11 A. Okay. 11:05:37

12 Q. -- find out. 11:05:37

13 A. Okay. Yeah. My information on that would have 11:05:38

14 been with legal counsel. 11:05:44

15 Q. Were you ever in meetings with any port 11:05:46

16 representatives where they told you that the Port did not 11:05:48

17 want to contribute financially to the cleanup or use the 11:05:51

18 insurance assets available to the Port or its tenants? 11:05:56

19 A. No. I was not personally. But the project, in 11:06:00

20 its complexity, there were meetings occurring that I was 11:06:08

21 not always attending them. And so things were happening 11:06:13

22 I may not have had direct knowledge of. 11:06:19

23 Q. Did you make any attempt to find out whether 11:06:21

24 that -- those communications were true that the Port had 11:06:23

25 changed course and did not want to contribute 11:06:27

1 financially, meaning you personally? 11:06:29

2 MR. CARRIGAN: Assumes -- assumes facts not in 11:06:31

3 evidence. Misstates testimony. Go ahead. 11:06:33

4 THE WITNESS: I -- no. I made no attempt to 11:06:36

5 verify that, no. 11:06:38

6 BY MR. BROWN: 11:06:39

7 Q. Okay. Were there any other facts that changed 11:06:40

8 in regard to the Port District between 2009 and 2010 in 11:06:47

9 your perspective? 11:06:52

10 A. Okay. My perspective. The -- I think in the 11:06:53

11 2009 time frame the staff -- the Port had made available 11:07:02

12 to staff technical scientific expertise from its 11:07:13

13 consultant Mike Johns, I remember. 11:07:19

14 And the board -- or Cleanup Team was very 11:07:26

15 appreciative of that. And there came a period where 11:07:29

16 the -- that type of support was withdrawn. 11:07:36

17 MR. CARRIGAN: I just want to take this 11:07:41

18 opportunity to caution you, David, not to discuss any of 11:07:42

19 the communications that may have been made -- that were 11:07:44

20 specifically made during mediation to the extent they may 11:07:49

21 involve Mr. Johns or other people from the Port. Okay? 11:07:52

22 THE WITNESS: Okay. 11:07:55

23 MR. CARRIGAN: Just to caution you. 11:07:56

24 THE WITNESS: Yeah. Okay. 11:07:56

25 BY MR. BROWN: 11:07:56

1 Q. Okay. 11:07:57

2 And aside from communications in mediation, were 11:07:57

3 you aware of any representations by the Port that they 11:08:07

4 would withdraw your access to Mr. Johns? 11:08:13

5 A. Just that -- I'm just trying to recall that 11:08:18

6 there was a period where we did not feel like we had free 11:08:28

7 access to Mr. Johns, yeah. 11:08:34

8 Q. Do you recall when the Port withdrew from the 11:08:42

9 mediations? 11:08:46

10 A. I -- I believe it was -- no. You know, 11:08:49

11 actually, I don't remember that time period. I might be 11:08:56

12 confusing it with something else. 11:08:58

13 Q. Does January of 2010, does that seem the 11:09:02

14 appropriate time to you? 11:09:07

15 A. It -- it may have been, yes. 11:09:08

16 Q. The -- the other version came out in 11:09:11

17 December 22nd, '09, and then the Port withdrew, 11:09:16

18 perhaps, in January 2010. 11:09:23

19 So do you believe that the Port's change of 11:09:26

20 heart occurred during that time frame? 11:09:29

21 A. It may have, yes. 11:09:33

22 Q. Okay. 11:09:34

23 Aside from the level of cooperation that the 11:09:43

24 Port was providing, were there additional facts that were 11:09:47

25 gathered between 2009 and September 15th, 2010, draft 11:09:51

1 TCAO that were gathered that influences your decision 11:10:01
2 or -- and I -- when I say you, I mean the Water Board's 11:10:07
3 decision -- to name the Port as a discharger? 11:10:11
4 A. Yes. 11:10:14
5 Q. And what is that? 11:10:15
6 A. There was a process, I believe, in July of 2010 11:10:19
7 where parties had to identify witnesses that might 11:10:24
8 testify in the matter of the CAO. And we received word 11:10:31
9 that the Port was not planning on assigning witnesses to 11:10:37
10 testify in support of the CAO. 11:10:44
11 Q. Do you know if that has changed since then? 11:10:49
12 A. I -- I don't know that, no. 11:10:51
13 Q. Do you know if Mike Johns has been designated as 11:10:54
14 an expert witness now in this proceeding? 11:10:57
15 A. I'm not aware of that, no. 11:11:00
16 Q. Have you made any inquiries as to whether his 11:11:05
17 opinion would support the Water Board's opinion? 11:11:08
18 MR. CARRIGAN: Lacks foundation. Calls for 11:11:11
19 speculation. 11:11:12
20 THE WITNESS: Have I made any inquiries to 11:11:16
21 Mr. Johns? 11:11:17
22 BY MR. BROWN: 11:11:18
23 Q. Or to the Port. 11:11:19
24 A. Or to the Port, no. 11:11:20
25 Q. Okay. Have you ever received any information 11:11:21

1 that Port experts would not support the Port -- the 11:11:24
2 Water Board's decision in this matter? 11:11:30
3 A. No. 11:11:34
4 Q. And in addition to the issues that we 11:11:38
5 identified, level of cooperation and willingness to 11:11:43
6 provide testimony, are there any other facts that you're 11:11:49
7 aware of that changed between 2009 and 2010 when the next 11:11:53
8 TCAO was issued? 11:11:59
9 A. Yes. 11:12:03
10 Q. What other facts occurred? 11:12:04
11 A. In the process of -- of drafting the various 11:12:13
12 iterations of the DTR and CAO -- and I can't remember the 11:12:17
13 exact time frame -- but some discussion began on what 11:12:23
14 areas near shore might be used to stage the stockpiling 11:12:29
15 and dewatering of the dredged material. 11:12:43
16 And the thought was that whatever area was 11:12:46
17 selected might be on port -- Port District tidelands. 11:12:51
18 And we had some hopes that the Port would come forward 11:12:58
19 with sites that could be leased for that purpose. And -- 11:13:05
20 and that type of information did not seem to be 11:13:21
21 forthcoming. 11:13:27
22 Q. Had the Port at any time prior to 2010 indicated 11:13:30
23 that it would provide tidelands as an area for 11:13:35
24 dewatering? 11:13:39
25 A. I guess not specifically to me. My -- and this 11:13:40

1 goes back several years when we originally issued the 11:13:45
2 order that that was -- it was in our vision to -- I guess 11:13:54
3 we had -- the board or Cleanup Team felt we had more than 11:14:00
4 enough adversaries as it was. And we were hoping that by 11:14:04
5 not naming the Port, that there might be an ally created 11:14:11
6 there to help shepherd us through the process of getting 11:14:17
7 the -- at least the Port tenants, helping to get them in 11:14:25
8 direction towards a cleanup. 11:14:31
9 Q. Do you know what any of the Port's concerns were 11:14:34
10 in providing a dewatering site for this cleanup? 11:14:42
11 MR. CARRIGAN: Calls for speculation. Lacks 11:14:46
12 foundation. 11:14:46
13 BY MR. BROWN: 07:59:57
14 Q. Well, let me ask it another way: Did the Port 11:14:49
15 ever communicate to you any of its concerns regarding 11:14:51
16 providing a dewatering station? 11:14:57
17 A. No, not to me personally, no. 11:15:01
18 Q. Do you know if they ever did to any of your 11:15:03
19 staff? 11:15:05
20 A. I'm not aware of that. 11:15:06
21 Q. Do you know whether the Port ever identified 11:15:09
22 this as an environmental justice issue? 11:15:14
23 MR. CARRIGAN: Asked and answered. 11:15:21
24 THE WITNESS: No. No, I'm not aware of that, 11:15:21
25 no. 11:15:25

1 BY MR. BROWN: 11:15:25

2 Q. Do you know, did the Port ever express concerns 11:15:26

3 regarding the trucking of dewatered waste through 11:15:29

4 Barrio Logan? 11:15:32

5 MR. CARRIGAN: I'm going to have to give the 11:15:37

6 instruction that if the Port communicated that to you in 11:15:39

7 mediation, that you should -- unless you want to waive 11:15:42

8 that, Bill -- that you should not -- you should disregard 11:15:46

9 that as part of your answer. 11:15:50

10 MR. BROWN: That's an interesting question, and 11:15:53

11 I'll try to talk to the Port about waiving communications 11:15:54

12 during mediation that the Port may have made. Because 11:15:57

13 that is an interesting question. But I can't do that 11:16:00

14 right now. 11:16:02

15 MR. CARRIGAN: It's possible that the 11:16:03

16 communication was made during -- during that time. So 11:16:03

17 I'd like to admonish you, David, don't -- if that is when 11:16:07

18 you were -- that was communicated to you, you can't 11:16:10

19 answer on that ground. Okay? 11:16:14

20 THE WITNESS: Okay. 11:16:16

21 MR. BROWN: And that's fine. I don't want you 11:16:17

22 to in any way violate any privileges that your counsel 11:16:18

23 may assert. 11:16:22

24 BY MR. BROWN: 11:16:23

25 Q. Outside the mediation context, did the Port ever 11:16:23

1 communicate that it was concerned about environmental 11:16:26
2 justice issues associated with dewatering on Port 11:16:28
3 tidelands? 11:16:33
4 A. I don't remember any discussions that I was 11:16:36
5 involved with in that. 11:16:37
6 Q. Do you recall whether this issue ever came up 11:16:40
7 with regard to EIR meetings that occurred on the site? 11:16:42
8 A. Yes. 11:16:45
9 Q. And do you recall whether the Port had a 11:16:46
10 position at those EIR meetings? 11:16:48
11 A. I -- I -- I have not been in attendance at all 11:16:54
12 of those meetings. So I don't have a -- I don't know 11:16:57
13 that, no. 11:17:02
14 Q. Do you recall ever any Port board meetings, 11:17:03
15 public meetings, where the issue of environmental justice 11:17:07
16 and dewatering was discussed? 11:17:11
17 A. I -- I don't recall that. 11:17:15
18 Q. Has the board made any evaluations of the issues 11:17:17
19 of environmental justice and the dewatering of sediments 11:17:23
20 on Port tidelands? 11:17:26
21 A. There are some findings about environmental 11:17:30
22 justice in the cleanup order. But I don't think they are 11:17:33
23 with respect to dewatering sites. 11:17:36
24 Q. Do you know whether the board has ever 11:17:39
25 considered the environmental justice aspects of 11:17:41

1 dewatering on Port tideland sites? 11:17:44

2 A. No, I do not know that, no. 11:17:48

3 Q. Do you know whether the Port has ever evaluated 11:17:50

4 the number of truckloads it would have to move through 11:17:53

5 Barrio Logan for a dewatering system? 11:17:57

6 MR. CARRIGAN: The Port or the board? 11:18:00

7 MR. BROWN: Why don't we ask it both ways. 11:18:01

8 Let's start with the Port. 11:18:03

9 BY MR. BROWN: 11:59:57

10 Q. Do you know whether the Port has ever made a 11:18:04

11 determination in that regard? 11:18:06

12 A. No, I don't. 11:18:12

13 Q. Do you know whether the board has ever made a 11:18:13

14 determination? 11:18:15

15 A. I believe in the DTR that there is some 11:18:16

16 discussion of truckloads of material that would have to 11:18:22

17 be -- where the dredge spoil would be transported and 11:18:27

18 possible impacts to communities. But it's done in a very 11:18:33

19 summary and quick fashion, nothing detailed. 11:18:36

20 Q. Do you know whether the board has ever examined 11:18:41

21 what communities would be affected? 11:18:42

22 A. Not in any detail, no. 11:18:45

23 Q. Since the time when it appeared that the Port 11:18:50

24 may have objections to a dewatering program on its 11:18:53

25 tidelands, has the Port offered any alternative 11:18:55

1 solutions? 11:18:59

2 A. Yes. 11:19:04

3 Q. And what alternative solutions has the Port 11:19:05

4 suggested? 11:19:09

5 A. In recent discussions, there was talk of using 11:19:10

6 the Convair Lagoon site as a -- as a containment 11:19:15

7 structure to receive the material. 11:19:25

8 Q. And at what stage are those decisions? 11:19:28

9 A. Very preliminary at this time. 11:19:30

10 Q. And has the Port offered to provide assistance 11:19:32

11 in having that option evaluated? 11:19:35

12 A. Yes. 11:19:37

13 Q. And has the Port ever mentioned the issue of 11:19:39

14 environmental justice in regard to the CDF disposal 11:19:43

15 option? 11:19:50

16 A. The -- I've been to one meeting with this. And 11:19:51

17 I remember there was talk of transporting the material 11:19:59

18 via barge to the site, negating the need to truck the 11:20:03

19 material through adjacent neighborhoods. 11:20:08

20 Q. And would that have a better environmental 11:20:11

21 justice impact as you now perceive it? 11:20:17

22 MR. CARRIGAN: Calls for speculation. Lacks 11:20:21

23 foundation. 11:20:22

24 MR. WATERMAN: Objection. Join. 11:20:25

25 THE WITNESS: Yeah. That's one of the functions 11:20:27

1 of the EIR that's under development to evaluate that. So 11:20:31
2 I -- I don't have a position on that. 11:20:35
3 BY MR. BROWN: 11:20:37
4 Q. Okay. And has the Port offered to assist with 11:20:38
5 that portion of the EIR that would evaluate this option? 11:20:40
6 A. Yes. 11:20:44
7 Q. In addition to the other matters that we 11:20:52
8 recently discussed, can you think of any other factors 11:20:56
9 that developed between 2009 and 2010 that were relevant 11:21:01
10 to the determination that the Port should be named as a 11:21:09
11 primarily responsible party? 11:21:12
12 MR. WATERMAN: Objection. Vague. 11:21:14
13 THE WITNESS: Let's see. Let me -- let me just 11:21:28
14 do a little scrawling just to jar my memory here. 11:21:31
15 MR. CARRIGAN: Don't write anything on that 11:21:36
16 paper. 11:21:37
17 MR. BROWN: Mr. Barker -- Mr. Barker, I have a 11:21:38
18 better suggestion, which is because the way we've been 11:21:40
19 doing this is we've been breaking for lunch around 12:30 11:21:41
20 or so, let's take a five minute break now, we'll go for 11:21:44
21 an hour, and then we'll think about lunch. How does that 11:21:49
22 work? 11:21:50
23 MR. CARRIGAN: That will be fine. 11:21:51
24 MR. BROWN: Thank you. 11:21:51
25 THE VIDEOGRAPHER: Off the record. Time is 11:21:52

1 11:21 a.m. 11:21:53
2 (A recess was taken.) 11:22:01
3 THE VIDEOGRAPHER: Back on the record. Time is 11:34:10
4 11:34 a.m. 11:34:11
5 BY MR. BROWN: 11:34:12
6 Q Mr. Barker, during the break or otherwise, were 11:34:13
7 you able to identify any other grounds that developed 11:34:15
8 between 2009 and 2010 as to why the Port was named as a 11:34:19
9 discharger to the order? 11:34:24
10 A. No. 11:34:25
11 Q. Okay. I'm going to pass out -- what is our next 11:34:34
12 exhibit? 11:34:54
13 THE COURT REPORTER: 1237. 11:34:55
14 MR. BROWN: Okay. I'll provide you with a copy 11:34:56
15 of this next exhibit. 11:34:57
16 THE COURT REPORTER: Will you stick that on 11:34:59
17 there for me? 11:34:59
18 THE WITNESS: Yeah. 11:34:59
19 THE COURT REPORTER: Thank you. 11:34:59
20 (Exhibit 1237 was marked.) 11:34:59
21 BY MR. BROWN: 11:35:07
22 Q. And I want to ask you if you've seen this 11:35:21
23 document before. 11:35:23
24 A. Yes, I have. 11:35:28
25 Q. When do you recall first seeing it? 11:35:35

1 A. It would have been -- let's see. It would have 11:35:38
2 been about -- on or about the time that the letter is 11:35:46
3 dated. 11:35:56
4 Q. Do you know whether SDG&E and EMD America ever 11:36:00
5 published to the Regional Board the results of its 2005 11:36:06
6 sediment testing? 11:36:09
7 A. No, I don't. 11:36:20
8 Q. Have you seen any results of the 2005 sediment 11:36:22
9 testing? 11:36:27
10 A. I don't -- don't recall that. 11:36:29
11 Q. Did anybody from the Regional Board ever follow 11:36:32
12 up with San Diego Gas & Electric regarding the 11:36:34
13 environmental testing? 11:36:37
14 MR. CARRIGAN: Calls for speculation. 11:36:40
15 MR. BROWN: If you know. 11:36:41
16 THE WITNESS: I -- I don't know. 11:36:41
17 BY MR. BROWN: 11:36:42
18 Q. Do you have any current plans to ask whether the 11:36:49
19 2005 sediment investigation will be provided to the 11:36:53
20 board? 11:36:58
21 A. I -- I don't personally. But there -- we may 11:36:59
22 well do that, yes. 11:37:21
23 Q. And then at page 4 of this document, after the 11:37:25
24 two first bullet points, so more or less the third 11:37:44
25 paragraph, it states, "San Diego Gas & Electric is 11:37:48

1 continuing to research records on PCB uses and 11:37:52
2 occurrences at Silvergate Power Plant and will provide 11:37:54
3 additional supporting documentation to the RWQCB in a 11:37:57
4 future transmittal." 11:38:02
5 Have you seen a transmittal of the type that was 11:38:04
6 referenced in this letter? 11:38:06
7 A. No. 11:38:08
8 Q. Do you have plans to try to obtain that 11:38:09
9 transmittal? 11:38:10
10 A. We -- this is not an issue I've been working on 11:38:14
11 lately. But we may well do that, yes. There is -- north 11:38:21
12 of the shipyard site, the board has some concerns with 11:38:34
13 other areas of San Diego Bay, and that might lead to a 11:38:43
14 future investigative order. 11:38:52
15 Q. And is that in a particular area? 11:38:55
16 A. It's north of the BAE lease -- leasehold or the 11:38:58
17 northern extent of the proposed dredge footprint. 11:39:03
18 Q. Does it include Polygons 29 and 30? 11:39:11
19 MR. CARRIGAN: Calls for speculation. Lacks 11:39:15
20 foundation. 11:39:16
21 THE WITNESS: I just need to get a map in front 11:39:24
22 of me. Yes, it could, yes. 11:39:26
23 BY MR. BROWN: 11:59:57
24 Q. Okay. And when will that be evaluated? 11:39:39
25 MR. CARRIGAN: Same objections. 11:39:45

1 THE WITNESS: We've not -- not -- there's no 11:39:47
2 firm schedule for that, just an awareness of that, that 11:39:53
3 there is a potential need for that. 11:39:58
4 BY MR. BROWN: 11:40:00
5 Q. I understand that the reason that NA22 was not 11:40:05
6 included in the remedial footprint is because it's part 11:40:09
7 of a TMDL program. Is that correct? 11:40:12
8 A. Yes. 11:40:15
9 Q. Now, is the entire bay listed on a 303(d) 11:40:17
10 listing, to your knowledge? 11:40:21
11 MR. CARRIGAN: Vague. 11:40:24
12 THE WITNESS: It's got -- the bay is listed for 11:40:28
13 several impairments, portions of it. I -- I recall that 11:40:30
14 for PCBs, the entire bay is listed. 11:40:35
15 BY MR. BROWN: 11:59:57
16 Q. And so how was it determined that TMDLs would be 11:40:39
17 used at NA22 but not for the rest of the leasehold area? 11:40:44
18 MS. PERSSON: Asked and answered. 11:40:54
19 THE WITNESS: There is a -- a finding in a 11:40:55
20 section in the DTR that addresses that. And if I could 11:41:02
21 turn to that, I could summarize that. 11:41:07
22 MR. BROWN: That would be very helpful. 11:41:10
23 THE WITNESS: In my response. It's probably 11:41:11
24 Volume 2. On page 12-2, there's a paragraph there that 11:41:28
25 in -- that -- where the board makes the finding that 11:41:48

1 we've determined that issuance of a cleanup and abatement 11:41:54
2 order in lieu of a TMDL is an appropriate regulatory tool 11:41:57
3 to correct the impairment, sediment quality impairment, 11:42:05
4 at the shipyard site based on several considerations. 11:42:12
5 There's five of them listed. 11:42:15
6 The first consideration is that the pollutant 11:42:21
7 discharges from NASSCO and BAE, that they're two of the 11:42:26
8 primary sources of contamination. The board is alleging 11:42:30
9 that current discharges have been significantly curtailed 11:42:35
10 there in recent years. And so there's no compliance 11:42:38
11 issues with the discharge permits. 11:42:43
12 The second consideration was that pollutant 11:42:49
13 contributions to the shipyard site from Chollas Creek 11:42:54
14 will be gradually and significantly reduced as a result 11:42:59
15 of the implementation of two TMDL efforts on that stream. 11:43:02
16 The third consideration was discharges from 11:43:10
17 other sources that the board is aware of to the shipyard 11:43:19
18 site have either -- they're either historical 11:43:25
19 contributions that are no longer happening and are no 11:43:29
20 longer occurring. Or if we became aware of them, we feel 11:43:39
21 that we could control and get the sources terminated. 11:43:42
22 The -- we made a conclusion that all of those 11:43:53
23 source control efforts I just mentioned will likely be 11:43:55
24 sufficient to eliminate or significantly reduce 11:43:58
25 pollutants from accumulating in the sediments at the 11:44:05

1 shipyard site. 11:44:08

2 And then finally, the major goal is that we feel 11:44:10

3 attainment of the cleanup levels in the order will result 11:44:15

4 in restoration of the beneficial uses in -- through -- 11:44:20

5 through the cleanup process. And the attainment of water 11:44:29

6 quality standards is one of the chief goals of a TMDL. 11:44:32

7 And it achieves that through defining waste load 11:44:35

8 allocations that apply to sources. 11:44:40

9 And then the -- as the TMDL is implemented and 11:44:43

10 those waste load allocations are -- are complied with, 11:44:45

11 then in theory the water body that's impaired, the 11:44:53

12 impairment is resolved and the water body meets the 11:44:58

13 standards. And the cleanup order is kind of achieving 11:45:03

14 that same kind of -- of result through the cleanup of the 11:45:06

15 sediment. All -- all of those reasons. 11:45:11

16 BY MR. BROWN: 11:45:14

17 Q. Thank you. 11:45:15

18 Is it your anticipation that if the site is 11:45:17

19 addressed through the CAO that this portion of the bay as 11:45:19

20 it applies to sediments will not have further cleanup 11:45:24

21 done through a TMDL program? 11:45:28

22 A. At the Shipyard Sediment Site, yeah, the board 11:45:30

23 has no plans for any further remedial action other than 11:45:36

24 what's described in the draft cleanup order for that 11:45:41

25 site. 11:45:44

1 Q. Have you made any comparison of what the cleanup 11:45:45
2 levels would be through the TMDL program versus the CAO 11:45:48
3 program for this site? 11:45:54
4 A. I -- there's a -- I -- I have not personally. 11:45:56
5 There's a draft document out for peer review. I don't 11:46:01
6 know if it's been on the public website or not. There 11:46:04
7 could be some differences there. I'm not certain at this 11:46:10
8 time. 11:46:14
9 Q. Is that available for public review? 11:46:15
10 A. It might be. Anything that is available for 11:46:18
11 review, it is posted on the website. 11:46:22
12 Q. I haven't seen it; although, I'm not that great 11:46:26
13 with websites. 11:46:29
14 A. Yes. 11:46:31
15 Q. Is there a mechanism for obtaining it if it's 11:46:31
16 not on the website? 11:46:35
17 A. I can -- we can look into that for you. And I 11:46:36
18 would just have to say we would -- could get back with 11:46:38
19 you on that, anything -- we would be happy to supply 11:46:41
20 anything that's available to the general public. 11:46:45
21 Q. When the cleanup and abatement order and the DTR 11:46:48
22 use the words that the CAO is being used in lieu of a 11:46:51
23 TMDL program, does that indicate that one will substitute 11:46:55
24 for the other and we won't face liability under oath? 11:47:02
25 A. Our hope with the Shipyard Sediment Site is -- 11:47:08

1 is that once the order is complied with, that the 11:47:10
2 Regional Board will use the various -- the post-remedial 11:47:17
3 monitoring data that comes in as a basis for delisting 11:47:25
4 the site, removing it from the 303(d) -- it's term Clean 11:47:28
5 Water Act Section 303(d) List of Impaired Waters, that we 11:47:39
6 would remove it from the list, and thereby the potential 11:47:43
7 requirement for a TMDL would be -- would be satisfied. 11:47:46
8 Q. Okay. I want to switch back a little bit to 11:47:51
9 SW29 and 30. I think I might be -- not the outfalls. 11:47:54
10 The polygons. 11:48:03
11 A. Okay. That's the cleanup order, I guess. 11:48:04
12 MR. CARRIGAN: Oh, yeah. Here we go. Do you 11:48:12
13 think it might be under this? There we go. 11:48:15
14 THE WITNESS: Okay. I've got it. 11:48:18
15 BY MR. BROWN: 01:59:57
16 Q. I'm trying to understand why they were not 11:48:27
17 included in the dredging footprint. Could you give me 11:48:30
18 your perception as to why they were not? 11:48:40
19 A. I -- I think the -- I would have to look at the 11:48:49
20 DTR to refreshen my memory on that. It -- we -- as I 11:49:06
21 have indicated earlier this morning, we constructed the 11:49:21
22 dredge footprint to deal with the -- the most polluted 11:49:25
23 sites first and get -- get those addressed. 11:49:32
24 And we -- at the northern end of the site, there 11:49:35
25 was a possible basis for further investigation to be done 11:49:43

1 up there to see if any remedial work, other remedial work 11:49:49
2 needed to be done. And the board made the decision to 11:49:56
3 reserve that for a future investigative order, is about 11:49:59
4 the best way I could put it. 11:50:03
5 Q. And that's somewhat what I was trying to get at, 11:50:05
6 or what I was trying to get at. 11:50:08
7 Is it the primary reason why they're not listed 11:50:10
8 in the dredge footprint is because they will be 11:50:13
9 considered at a later date? 11:50:16
10 MR. CARRIGAN: Document speaks for itself. 11:50:18
11 MS. TRACY: Misstates testimony. 11:50:23
12 MS. PERSSON: Join. 11:50:25
13 MR. BROWN: From your perspective. 11:50:26
14 THE WITNESS: Yeah. From my perspective, I'm 11:50:27
15 just recalling that we -- we had some concerns, and those 11:50:29
16 concerns may lead to more investigations at the end of 11:50:31
17 that -- BAE's leasehold. 11:50:36
18 BY MR. BROWN: 11:50:41
19 Q. Okay. Do you know who was involved in those 11:50:42
20 discussions? 11:50:43
21 A. With the Cleanup Team? 11:50:44
22 Q. Yes. 11:50:45
23 A. That would have been myself and the other 11:50:46
24 Cleanup Team members, basically, group discussion. 11:50:53
25 Q. And you're the person most knowledgeable on the 11:50:56

1 issue as to why they -- those two polygons were not 11:50:58
2 included in the footprint? 11:51:02
3 MR. CARRIGAN: He's not been designated as such. 11:51:04
4 THE WITNESS: Yeah. Yeah. I -- I -- I -- I 11:51:10
5 guess I'm not designated as such. 11:51:12
6 BY MR. BROWN: 11:51:15
7 Q. Okay. All right. On to some more general 11:51:15
8 topics, I wanted to go through with you some of the other 11:51:25
9 sites that you may have worked on. 11:51:32
10 A. Okay. 11:51:34
11 Q. Did you work on the Campbell Shipyard Site, the 11:51:35
12 one that's distinct from this site? 11:51:38
13 A. Yes, I did. 11:51:39
14 Q. And what was your involvement with that site? 11:51:43
15 A. It was two-fold. I was involved with the -- the 11:51:46
16 review of a sediment quality assessment which led to the 11:51:52
17 development and issuance of a cleanup and abatement 11:51:59
18 order. And then sometime after that, I was involved with 11:52:01
19 the board's issuance of waste discharge requirements for 11:52:09
20 a confined sediment disposal facility at the site. 11:52:16
21 Q. And did you work with port representatives at 11:52:22
22 that site? 11:52:24
23 A. Yes. 11:52:25
24 Q. And did you find them to be cooperative? 11:52:26
25 A. Yes, yes. 11:52:30

1 Q. Were they named as a primary responsible party 11:52:31
2 at that site? 11:52:33
3 A. No. 11:52:34
4 Q. And was the site ultimately capped? 11:52:38
5 A. Yes, it was. 11:52:40
6 Q. Do you know what method of imposing cleanup 11:52:42
7 standards was used at that site? And let me give you a 11:52:49
8 few options. 11:52:53
9 Was it 92-49, SQOs, or TMDLs? 11:52:55
10 A. It was not -- it was 92-49. 11:52:59
11 Q. Okay. The TDY site, were you involved in that 11:53:04
12 site? 11:53:08
13 A. Yes. 11:53:09
14 Q. And did you work with port representatives on 11:53:10
15 that site? 11:53:12
16 A. It's been -- this goes back some years. But I 11:53:15
17 think there was some Port involvement, yes. 11:53:19
18 Q. Do you know if the Port was cooperative at that 11:53:23
19 site? 11:53:26
20 A. I -- I believe they were, yes. 11:53:28
21 Q. And do you know if this site is still continuing 11:53:31
22 on into the future? 11:53:33
23 A. Yes, it is. 11:53:35
24 Q. And it's the subject of renewed interest at this 11:53:36
25 point? 11:53:39

1 A. Yes. 11:53:39

2 Q. And is the Port cooperating at that site? 11:53:40

3 A. Well, let me ask you this: When you're -- when 11:53:42

4 you're talking about activities, renewed interest, are -- 11:53:45

5 are you referring to the cleanup activities being done 11:53:50

6 there or the -- 11:53:53

7 Q. Yeah. Let's break it down a little bit. There 11:53:55

8 is an ongoing cleanup of the land side portion of TDY; is 11:53:57

9 that correct? 11:54:02

10 A. Yes. 11:54:02

11 Q. And is the Port cooperating in that -- those 11:54:03

12 activities? 11:54:06

13 A. That's being managed in a different part of the 11:54:07

14 office, so I don't have any direct knowledge on that. 11:54:09

15 Q. And how about the water side part of TDY, the 11:54:11

16 Convair Lagoon cleanup? 11:54:17

17 A. I also am not involved there, either. 11:54:19

18 Q. Do you have any knowledge that the Port's not 11:54:27

19 cooperating at that site? 11:54:29

20 A. No. 11:54:30

21 Q. How about the Tow Basin site? 11:54:31

22 A. I've only remote involvement with that. So I -- 11:54:34

23 I can't answer as to what the Port is doing on that site 11:54:38

24 or our perspective on that. I haven't heard anything 11:54:43

25 that it's -- the Port is obstructing anything or not 11:54:46

1 helping. 11:54:51

2 Q. Okay. How about the South Bay Power Plant site; 11:54:52

3 are you involved in that? 11:54:56

4 A. Yes. 11:54:57

5 Q. And have you worked with any Port 11:54:58

6 representatives at that site? 11:55:00

7 A. Not heavily. But yeah, there've been some 11:55:06

8 contacts with the Port. 11:55:12

9 Q. And who is your contact at the Port with that 11:55:13

10 site? 11:55:15

11 A. That would have been David Burke. 11:55:16

12 Q. And in any way has the Port been uncooperative 11:55:21

13 at that site? 11:55:23

14 A. Not -- not -- not uncooperative. However, 11:55:26

15 they -- Mr. Murk, when we did meet with him, indicated he 11:55:33

16 was under some legal constraints as to how much he 11:55:39

17 could -- how much cooperation he could have with us at 11:55:42

18 that time. 11:55:54

19 Q. And are you aware of any current lack of 11:55:57

20 cooperation by the Port at that site? 11:55:59

21 A. No. 11:56:02

22 Q. How about the Goodrich site in Chula Vista; are 11:56:03

23 you familiar with that site? 11:56:08

24 A. I haven't worked on that site directly. I'm 11:56:09

25 aware of it. I don't have knowledge of the Port's 11:56:11

1 interaction with the board on that site. 11:56:16

2 Q. Are you aware of any other sites where the board 11:56:20

3 is currently working with the Port? 11:56:23

4 A. None come to mind. Oh, excuse me. The 11:56:31

5 Shelter Island Yacht Basin, a copper TMDL -- with -- 11:56:37

6 involving conversion of boat hulls to -- using different 11:56:56

7 type of vessel paints. The Port is working very 11:56:59

8 cooperatively with the board on that. 11:57:02

9 Q. Okay. Let's go back through a couple of these 11:57:04

10 on another issue. On the Campbell -- on the Campbell 11:57:07

11 Shipyard site, 92-49 was used as the method for 11:57:09

12 determining cleanup at that site. At the TDY site, what 11:57:17

13 was used as the method? 11:57:21

14 A. This would have been back in the 1980s. It 11:57:24

15 would have been pre-Resolution 92-49, but similar 11:57:28

16 concepts involved. 11:57:38

17 Q. Okay. And at the Tow Basin site, what mechanism 11:57:39

18 is being used? 11:57:43

19 A. Well -- well, any time the board sets cleanup 11:57:43

20 goals by, the board needs to set those levels in 11:57:49

21 conformance with the principles in 92-49. So whatever is 11:57:57

22 done in the Tow Basin at some point needs to show that it 11:58:01

23 is in conformance with it. 11:58:05

24 Q. Are you aware that the SQOs are being 11:58:08

25 implemented at the Tow Basin? 11:58:11

1 A. I'm not aware of that. But it sounds correct. 11:58:14
2 They are -- they are in effect now, and the sediments in 11:58:22
3 the cleanup decisions would have to be in conformance 11:58:27
4 with -- with that State Board policy. 11:58:31
5 Q. And how about the South Bay Power Plant; are 11:58:34
6 sediments being investigated there? 11:58:36
7 A. There are plans to initiate investigation at 11:58:40
8 that site, yes. 11:58:45
9 Q. And what mechanism will be used there? 11:58:47
10 A. We haven't gotten into detailed formulating 11:58:52
11 strategy on that. But the board has authority under the 11:58:58
12 Water Code to issue investigative orders to -- similar to 11:59:06
13 the shipyard site to do sediment -- to obtain sediment 11:59:11
14 quality assessments and to -- to see if any remedial work 11:59:15
15 needs to be done. 11:59:19
16 Q. Will that be under the governance of the SQOs? 11:59:21
17 A. Yes, it would. 11:59:26
18 Q. Okay. And how about the Goodrich facility; are 11:59:27
19 you aware of whether there's any sediment investigation 11:59:31
20 going on at that site? 11:59:33
21 A. There -- there has been a -- some type of 11:59:35
22 cleanup done in the marsh land down in that area. But 11:59:41
23 I'm not aware of other work being done. It could be. 11:59:46
24 I'm just not aware of it. 11:59:51
25 Q. Okay. And at the Shelter Island Yacht Basin, 11:59:52

1 what work is being performed at that site? 11:59:56

2 A. The Port is kind of taking a lead role in 11:59:59

3 investigating the use of alternative vessel hull paints 12:00:11

4 to curtail copper discharges into the bay from the 12:00:20

5 current hull paints that is causing water quality 12:00:29

6 standards to be exceeded. 12:00:33

7 They are kind of coordinating, serving as a -- 12:00:36

8 as a facilitator between the board and the underwater 12:00:41

9 hull cleaners and the marina operators that -- where 12:00:46

10 these vessels are congregated, those type of activities. 12:00:51

11 There is -- we believe the Port is going to 12:01:01

12 begin some routine reporting to us on water quality 12:01:04

13 conditions in Shelter Island Yacht Basin and giving us 12:01:07

14 reports on how many boat hulls are being modified to -- 12:01:11

15 with less toxic paint, that type of thing. 12:01:17

16 Q. Okay. At the Campbell Shipyard Site, are you 12:01:20

17 aware whether the Port contributed to the cost of 12:01:25

18 cleaning up that site? 12:01:29

19 A. I'm not aware of how the cleanup was ultimately 12:01:32

20 financed, no. 12:01:35

21 Q. Have you ever received any indication that the 12:01:38

22 Port paid for that? 12:01:40

23 A. I -- I'm not aware of it, no. 12:01:47

24 Q. And I think you mentioned in your deposition a 12:01:49

25 couple of days ago that outside the NASSCO cleanup, this 12:01:51

1 was the largest cleanup of sediments to occur in 12:01:54
2 San Diego Bay. 12:01:57
3 A. The Campbell facility? 12:01:58
4 Q. Yes. 12:02:00
5 A. I -- there's -- there is a chart that lists all 12:02:01
6 these cleanups and the dredge volumes involved. I think 12:02:07
7 the Campbell site was a sizable effort there. I -- I 12:02:10
8 don't know how it compared to Convair Lagoon or that but. 12:02:16
9 Q. Do you know where that chart is located? 12:02:20
10 A. It's one of the exhibits here. 12:02:22
11 Q. Maybe -- 12:02:26
12 MR. CARRIGAN: It's Exhibit 1210, Counsel. 12:02:28
13 BY MR. BROWN: 12:02:29
14 Q. Exhibit 1210. Okay. I won't be able to ask you 12:02:31
15 about that right at the moment because I'd have to get on 12:02:37
16 my computer and move from something else I wanted to ask 12:02:40
17 you about. 12:02:42
18 A. Okay. 12:02:42
19 Q. Do you know what the cost was of cleaning up the 12:02:43
20 Campbell Shipyard Site? 12:02:45
21 A. I -- I can't recall if there was any cost data 12:02:51
22 on this chart. The -- the board typically does not get 12:02:55
23 detailed cost reports on the ultimate cost for compliance 12:03:01
24 with cleanup orders. It's not typically information that 12:03:06
25 we request. 12:03:10

1 Q. Mr. Barker, when you're doing the economic 12:03:12
2 feasibility, wouldn't it assist you in looking at the 12:03:15
3 costs of prior cleanups to determine sort of the scope 12:03:18
4 and size of the next cleanup that's being done? 12:03:24
5 A. Yes, it would. It -- it would help. And also 12:03:28
6 to help -- it would help to have ready access to cost 12:03:31
7 estimates and things like that. 12:03:36
8 Q. Have you ever been informed that the cost of the 12:03:41
9 cleanup at Campbell shipyards has been \$30 million? 12:03:43
10 A. No. Or I may have heard just indirectly numbers 12:03:48
11 in that magnitude, yeah. 12:03:55
12 Q. And in size of volume -- and we'll look at the 12:03:57
13 chart -- but to your recollection, is the size of the 12:04:00
14 volume at the current site considerably larger than the 12:04:04
15 Campbell site? 12:04:08
16 A. I believe that it is, yes. 12:04:13
17 Q. And did that involve the operation of one 12:04:14
18 shipyard to your knowledge? 12:04:16
19 MR. CARRIGAN: Vague. The Campbell site? 12:04:20
20 MR. BROWN: Yes. 12:04:22
21 THE WITNESS: To my knowledge, yes. 12:04:23
22 BY MR. BROWN: 12:04:23
23 Q. Did it have involvement of the Navy involved in 12:04:24
24 it? 12:04:30
25 A. In -- in the remediation of the site? 12:04:31

1 Q. Or in contributing to the problem at the site. 12:04:33
2 A. The board -- I don't recall that the Navy was a 12:04:37
3 party that we named in the cleanup order. There -- there 12:04:40
4 may have been some role that was off outside of the 12:04:45
5 board's purview with the Navy. I'm not aware of it. 12:04:49
6 Q. But you don't recall if there was a naval base 12:04:52
7 nearby contributing to the problems at that site? 12:04:55
8 A. I -- I don't recall that, no. 12:04:57
9 Q. Was there a power plant in the vicinity? 12:04:59
10 A. I don't recall that. I -- yeah. There may -- 12:05:07
11 there may have been. This goes back many years. I -- I 12:05:09
12 just vaguely recall an old power plant facility being 12:05:13
13 listed as a source for some of the soil contaminants on 12:05:20
14 the upland side of the site. Now that I'm thinking about 12:05:24
15 it more, the order addressed remediation both in the bay 12:05:30
16 and in upland areas. 12:05:34
17 Q. Okay. Do you know who the contractor was who 12:05:37
18 provided cost estimates for the site? 12:05:41
19 MR. CARRIGAN: The Campbell site? 12:05:46
20 MR. BROWN: Yes. 12:05:48
21 THE WITNESS: I don't recall that. It may have 12:05:58
22 been Anchor. But I -- I -- I don't -- my memory is foggy 12:05:59
23 on that. 12:06:04
24 BY MR. BROWN:
25 Q. I'll represent to you that it was, in fact, 12:06:07

1 Anchor that provided the cost estimate for the cleanup of 12:06:10
2 that site. Do you know what their estimate was? 12:06:13
3 A. I -- I can't -- cannot recall that, no. 12:06:15
4 Q. Did you -- does it ring a bell that the estimate 12:06:17
5 was \$16 million? 12:06:20
6 A. As I'm recalling, there was -- I remember some 12:06:25
7 complications with the cleanup where the order was issued 12:06:30
8 based on one set of assumptions which, upon further 12:06:34
9 investigation, turned out to not be an accurate 12:06:39
10 assessment of what it would take to remediate the site. 12:06:44
11 Q. And did it ever come to your attention to the 12:06:48
12 actual cost of the cap was \$30 million as opposed to 16? 12:06:50
13 MR. CARRIGAN: Asked and answered. 12:06:54
14 THE WITNESS: Yeah. I have nothing to add to my 12:06:55
15 prior answers on that. I may have had some general 12:06:57
16 discussion over the years when someone from the Port 12:07:04
17 might have mentioned that to me. But -- 12:07:07
18 BY MR. BROWN:
19 Q Did the Port make you aware that they were being
20 sued for the \$14 million cost overrun between Anchor's
21 estimate and the actual cost of the cleanup?
22 A. No. 12:07:19
23 Q. Did the Port ever suggest to you that Anchor may 12:07:21
24 not be the best party to look to for cost estimates on 12:07:24
25 cleanup in San Diego Bay based on its underestimation by 12:07:29

1 the order of 40 percent at the prior single largest 12:07:33
2 cleanup in San Diego Bay? 12:07:38

3 MR. CARRIGAN: Argumentative. Counsel, we're 12:07:39
4 getting way far afield. If you could bring it back to 12:07:40
5 something that might be relevant to this proceeding, that 12:07:44
6 would be helpful. 12:07:46

7 MR. BROWN: I think this is pretty relevant. 12:07:47
8 We're getting into economic feasibility. 12:07:49

9 THE WITNESS: I would have to have the question 12:07:55
10 read back. 12:07:56

11 (The record was read.) 12:08:15

12 MR. CARRIGAN: Assumes facts not in evidence. 12:08:16
13 Argumentative. 12:08:19

14 MR. WATERMAN: Objection. Lacks foundation. 12:08:20

15 THE WITNESS: I'm not the -- No. The Port did 12:08:26
16 not approach me with that information. 12:08:28

17 BY MR. BROWN: 12:08:30

18 Q. And who suggested to you that Anchor might be 12:08:32
19 the party that should be used for estimates of cleanup in 12:08:34
20 San Diego Bay at this site? 12:08:37

21 A. No one suggested it or even asked the board. 12:08:42
22 The board was in need of cost information on -- for 12:08:46
23 various issues to allow us to do certain analysis. And 12:08:52
24 we made the responsible parties aware of that. And they 12:08:56
25 supplied us with the information we requested. 12:09:01

1 Q. Okay. Switching to another subject. 12:09:05
2 Are you aware of any economic analysis of -- and 12:09:11
3 comparison of the costs of implementing TMDLs, SQOs, and 12:09:22
4 cleanup under 92-49? 12:09:27
5 MR. CARRIGAN: Vague. 12:09:30
6 THE WITNESS: Am I aware of a -- of a study 12:09:31
7 that's been done to develop those costs, no, I'm not. 12:09:36
8 MR. BROWN: Okay. I think I'm not going to 12:09:43
9 question you about it. I'll let other counsel know, this 12:09:45
10 is an economic study. It's on the Water Board site. It 12:09:47
11 just came out in January in 2011. But I think he just 12:09:49
12 testified that he's not aware of it. So I'm just going 12:09:53
13 to show it to him to make sure he's not, and then I won't 12:09:56
14 question him further about it. 12:10:00
15 THE WITNESS: Yeah. I have not. I have not 12:10:06
16 reviewed this as yet, no. 12:10:13
17 MR. BROWN: Okay. I will mark this as the next 12:10:15
18 exhibit to the deposition. 12:10:17
19 (Exhibit 1238 was marked.) 12:10:18
20 BY MR. BROWN: 12:10:23
21 Q. Mr. Barker, do you receive training on economic 12:10:24
22 considerations? 12:10:27
23 A. Yes. 12:10:27
24 Q. And how is that training conducted? 12:10:28
25 A. The training I was thinking of was classes I 12:10:30

1 took as part of my engineering degree. 12:10:34

2 MR. WATERMAN: Pardon me. Pardon me, Counsel. 12:10:38

3 Do you have copies for -- of that exhibit. 12:10:39

4 MR. BROWN: No, I don't. You can all take a 12:10:42

5 look at it, and it's also on the Water Board site. But 12:10:45

6 I'm not going to question him about it. 12:10:49

7 MR. WATERMAN: You just entered it in order to 12:10:49

8 ask if he'd seen it? 12:10:53

9 MR. BROWN: Yes. 12:10:55

10 MR. WATERMAN: Okay. I'll get a copy at the 12:10:55

11 break. 12:10:57

12 BY MR. BROWN: 12:10:57

13 Q. Outside of your engineering classes, I take it, 12:10:58

14 during your formal education, have you been given 12:11:02

15 training on it at the Water Board? 12:11:04

16 A. On analyzing economic issues? 12:11:06

17 Q. Yes. 12:11:10

18 A. Just -- just as a result of guidance on specific 12:11:10

19 projects, not general training classes, no. 12:11:16

20 Q. Have you been given training on economic 12:11:20

21 analysis of TMDLs? 12:11:22

22 A. Just generalized training that -- that economic 12:11:25

23 considerations are a part of the process for adopting a 12:11:33

24 TMDL. And so there's -- I think there's a process with 12:11:36

25 TMDLs that's referred to as the functional equivalent 12:11:41

1 process where the -- it's a process for requiring 12:11:48
2 conformance with CEQA. 12:11:54
3 And it -- when a project is analyzed under -- 12:11:58
4 under that process, the -- the costs of reasonably 12:12:08
5 foreseeable methods of compliance with whatever the 12:12:13
6 standard is that's being considered is part of that 12:12:18
7 process. And so we get into cost data from that 12:12:22
8 perspective with a TMDL. 12:12:26
9 Q. Are you aware of any court challenges to 12:12:29
10 economic considerations for the application of TMDLs? 12:12:32
11 MS. PERSSON: Objection. Vague. 12:12:43
12 THE WITNESS: Not in the San Diego region. 12:12:44
13 There -- there might have been in other areas of the 12:12:48
14 state lawsuits involved or that were over economic 12:12:51
15 consideration issues and their evaluation. 12:13:00
16 BY MR. BROWN: 11:59:57
17 Q. Are you familiar with a case regarding the 12:13:04
18 County of Los Angeles where the County of Los Angeles 12:13:06
19 sued the State Board regarding economic considerations 12:13:08
20 for TMDLs? 12:13:13
21 MS. PERSSON: Asked and answered. 12:13:17
22 MR. CARRIGAN: Assumes facts not in evidence. 12:13:17
23 MS. PERSSON: Asked and answered. 12:13:20
24 MR. BROWN: It's not asked and answered. It's a 12:13:21
25 different subject. 12:13:22

1 THE WITNESS: Yeah. I'm -- I'm not -- I'm not 12:13:25
2 aware of it specifically. I -- I may be thinking of it 12:13:25
3 as a different case in my mind. But I'm aware that there 12:13:29
4 have been some lawsuits in that area. 12:13:34
5 BY MR. BROWN: 12:13:36
6 Q. Do you recall -- would it refresh your 12:13:36
7 recollection if I told you it was regarding trash 12:13:39
8 discharges? 12:13:41
9 A. Yes. Yes, that helps. 12:13:43
10 Q. And do you recall what the outcome of that was? 12:13:44
11 A. I -- I don't remember right now, no. 12:13:47
12 Q. Okay. 12:13:52
13 From your perspective is there any difference in 12:13:53
14 costs for implementation of SQOs, TMDLs, and cleanup 12:13:57
15 under 92-49? 12:14:05
16 MR. CARRIGAN: Vague. Overbroad. 12:14:07
17 THE WITNESS: Yeah. It -- it would be a hard 12:14:13
18 question to answer. Are we talking about at the shipyard 12:14:20
19 site? 12:14:25
20 BY MR. BROWN: 12:14:26
21 Q. Well, we can use the shipyard site. But since 12:14:27
22 they may not get implemented there, I don't know if that 12:14:29
23 leads us in the right direction. 12:14:32
24 A. Okay. 12:14:34
25 Q. But you can answer it that way if you're more 12:14:34

1 comfortable with it. 12:14:36

2 A. I'm just thinking. So the three -- the three 12:14:37

3 things we're thinking of are SQOs, TMDLs, and cleanup and 12:14:43

4 abatement orders? 12:14:49

5 Q. Right. 12:14:51

6 A. TMDLs sometimes are written on a very broad 12:14:54

7 watershed basis addressing many sources and a laundry 12:14:59

8 list of contaminants. And a cleanup order might be 12:15:07

9 focused at a smaller area, on a smaller suite of 12:15:13

10 contaminants. 12:15:17

11 So some respects, the -- and the -- and the 12:15:20

12 cleanup order is based on -- might be directed towards a 12:15:25

13 removal of contamination, whereas a TMDL is -- is 12:15:31

14 implement -- implemented. It sets waste load allocations 12:15:36

15 that have to be met forever from that point forward. 12:15:42

16 And so there will be continuing costs accruing 12:15:46

17 forever to comply with that. So in that respect, a TMDL 12:15:51

18 might be a more expensive process. 12:15:55

19 Q. And how about SQOs; is that, from your 12:15:58

20 perspective, a more expensive process than 92-49 or -- 12:16:01

21 A. No -- 12:16:06

22 MR. CARRIGAN: Calls for a legal conclusion. 12:16:07

23 Vague and ambiguous. Go ahead. 12:16:11

24 THE WITNESS: SQOs are actually -- it's a common 12:16:13

25 element in both a cleanup order and a TMDL. What SQOs 12:16:16

1 are, it refers to narrative sediment quality objectives. 12:16:20
2 And that is -- they are water quality standards. And in 12:16:28
3 both a cleanup and abatement order and a TMDL, if they're 12:16:32
4 both directed at sediment pollution problems, both a 12:16:36
5 cleanup order and a TMDL would be directed towards 12:16:47
6 achieving compliance with the sediment -- these narrative 12:16:52
7 sediment quality objectives. They would -- they're water 12:16:58
8 quality standards. They would apply in both cases. 12:17:02
9 Q. And to your understanding, does the board have 12:17:05
10 discretion as to whether to use 92-49, SQOs, or TMDLs at 12:17:08
11 a given site? 12:17:12
12 MR. CARRIGAN: Calls for a legal conclusion. 12:17:13
13 THE WITNESS: The -- as -- as I mentioned, the 12:17:21
14 board did the sediment quality objectives, SQO, are water 12:17:24
15 quality standards. And they apply throughout -- in all 12:17:30
16 enclosed bays and estuaries in California. And the 12:17:36
17 San Diego Water Board does not have authority to set 12:17:41
18 those aside. 12:17:44
19 And under the Water Code, if the board makes a 12:17:47
20 cleanup decision in the bay -- and there's a little 12:17:49
21 caveat to that because there was a date put in the SQO 12:17:53
22 policy that said sediment quality investigations prior to 12:17:57
23 that date could -- decisions could be made based -- based 12:18:04
24 on the investigation that had been done. But just 12:18:10
25 hypothetically speaking, I'm getting tongue-tied now, and 12:18:15

1 I forget what I'm trying to head towards. 12:18:19

2 Q. I'll try and redirect this in another direction. 12:18:22

3 Was there any legal basis for determining that 12:18:28

4 SQOs could be -- were you made aware of any legal basis 12:18:31

5 for determining that SQOs could be eliminated from sites 12:18:35

6 prior to a certain date that were under investigation? 12:18:39

7 A. Yes. 12:18:42

8 Q. And what was your understanding of that? 12:18:42

9 A. I'd have to have the SQO policy in front of me. 12:18:45

10 There's a particular date that was placed in there. And 12:18:49

11 I forget all the qualifications on it. 12:18:52

12 But it -- I think it amounted to that if a -- a 12:18:55

13 sediment quality investigation had been completed on or 12:19:00

14 before that date, that the -- a decision on a cleanup 12:19:03

15 could proceed based on that investigation that had been 12:19:14

16 done with -- even though that investigation may not have 12:19:18

17 addressed all of the testing protocols that are part of 12:19:24

18 the -- what's called the State Water Board's SQO Policy. 12:19:29

19 Q. Okay. Let's switch to a slightly different 12:19:34

20 subject. Related, but slightly different. And then I 12:19:37

21 hope to get us out of here for lunch by the 12:30 break. 12:19:39

22 I want to look at Section 31.2 of the DTR. 12:19:45

23 A. Okay. 12:19:48

24 Q. And I'm particularly interested in Figure 31.1. 12:19:49

25 MR. CARRIGAN: Right before this tab. 12:19:58

1 THE WITNESS: Okay. 12:20:03

2 BY MR. BROWN: 12:20:03

3 Q. Mr. Barker, the part that I couldn't understand 12:20:04

4 here is, what was ultimately decided as to which one of 12:20:08

5 these levels would be applied to the shipyard site? 12:20:15

6 MR. CARRIGAN: You're asking about the 12:20:23

7 Figure 31-1? 12:20:25

8 MR. BROWN: Right. 12:20:26

9 MR. CARRIGAN: Okay. 12:20:27

10 THE WITNESS: Okay. I'm -- oh, you mean at what 12:20:28

11 point was there a decision made as to... 12:20:43

12 BY MR. BROWN: 11:59:57

13 Q. Right. So I guess what I'm trying to say is, it 12:20:49

14 appears that these figures are related to the footprint. 12:20:52

15 And I'm trying to determine which one of these graphs was 12:20:55

16 the guiding principle for the footprint, which dollar 12:20:58

17 amount was used. 12:21:04

18 A. Oh, okay. The projected cost of the cleanup, 12:21:05

19 which is in Section 32, was in the neighborhood of 12:21:10

20 \$58 million. 12:21:19

21 Q. Right. 12:21:22

22 A. And that was based on the cost estimate for the 12:21:23

23 proposed dredge footprint. And I'd have to get a 12:21:30

24 read-back on your question. 12:21:38

25 Q. Well, maybe I can help you. Because we have the 12:21:40

1 benefit of having the Anchor document available to us. 12:21:43
2 And it doesn't seem to fit neatly into a particular 12:21:48
3 category. 12:21:51
4 A. Oh, of percent exposure reduction? 12:21:54
5 Q. Right. I'm trying to determine, ultimately 12:21:57
6 determine that this percent exposure reduction was used 12:22:01
7 to determine the appropriate level of economic 12:22:04
8 feasibility. But I -- I -- I'm trying to determine which 12:22:08
9 one of these blue graphs turn to be the cutoff point. 12:22:13
10 A. Okay. The function of this graph was to 12:22:19
11 determine if cleanup to background was economically 12:22:22
12 feasible. And so the -- the methodology there was to try 12:22:26
13 to correlate percent reduction in what we call percent 12:22:33
14 exposure reduction. 12:22:42
15 That would be obtained by meeting 12:22:48
16 ever-increasing stringent cleanup levels. And there was 12:22:52
17 a point reached, which is described in the text, that 12:22:58
18 beyond \$33 million exposure reduction dropped below 12:23:08
19 7 percent. And 7 percent per \$10 million spent. And 12:23:14
20 that -- and that that would be at the \$33 million scale. 12:23:23
21 And then that exposure reduction dropped below 12:23:32
22 4 percent after a \$45 million exposure. 12:23:35
23 So we had -- the staff was -- or Cleanup Team 12:23:41
24 was of the opinion that with a remediation project cost 12:23:46
25 of \$58 million, we were in the -- the neighborhood of 12:23:50

1 diminishing returns as far as environmental benefits of 12:23:57
2 requiring more cleanup. And we felt that was an 12:24:01
3 appropriate place to say that cleanup was feasible to 12:24:05
4 that point, but that it didn't make economic sense to go 12:24:12
5 beyond that point. 12:24:17
6 Q. Okay. So somewhere between the 45 and the 185, 12:24:22
7 it was determined that that was the appropriate level for 12:24:28
8 incremental costs to be no longer occurred -- occurring? 12:24:33
9 A. Or -- yeah. We -- we -- we -- we were just 12:24:38
10 saying that the percent exposure reduction had -- was 12:24:41
11 dropping below 4 percent after 45 million, and that to 12:24:48
12 obtain further percent reduction, that from a balancing 12:24:54
13 of the benefit -- environmental benefits from the cleanup 12:25:04
14 versus the cost of the cleanup, we felt that -- that 12:25:08
15 there -- the benefits did not warrant requiring more 12:25:11
16 cleanup. 12:25:19
17 Q. Now, did the \$58 million as it pertains to this 12:25:20
18 graph, is this graph linked to the 58 million-dollar 12:25:25
19 figure or the 38 million-dollar figure? 12:25:29
20 A. Okay. Yeah. 12:25:33
21 Q. And I'm trying to get -- I think you 12:25:34
22 understand -- does this graph relate to cleanup costs or 12:25:36
23 cleanup costs plus monitoring and other nonconstruction 12:25:39
24 costs? 12:25:44
25 A. The -- let me say two things. For economic 12:25:45

1 considerations the board did two evaluations. One is 12:26:00
2 economic feasibility of cleaning up to background. And 12:26:03
3 that was a function of this graph. 12:26:06
4 And then later on in Chapter 32, there's an 12:26:07
5 analysis in there that says given that cleanup to 12:26:16
6 background is not economically feasible, that the 12:26:22
7 alternative levels need to be as close to background as 12:26:26
8 is economically and technologically feasible. 12:26:31
9 And so there's an analysis done back in that 12:26:35
10 section to show that its -- that the remedial footprint 12:26:39
11 was as close to background as was feasible. I'm not sure 12:26:45
12 if I'm answering your questions. 12:26:49
13 Q. I think you're answering my questions. But I've 12:26:51
14 got to admit I'm -- was there a reason why that analysis 12:26:54
15 wasn't included in this economic consideration section? 12:26:57
16 A. Yeah, yeah. It's basically the -- the document 12:27:05
17 was set up where -- where in one part of the document -- 12:27:14
18 one decision point under requirements of 12:27:22
19 Resolution 92-49, it has a presumptive cleanup goal of 12:27:25
20 background. And it says that all -- you know, cleanups 12:27:32
21 have to attain background, and that alternative levels 12:27:35
22 are not appropriate unless cleanup to background is 12:27:39
23 technologically or economically feasible. 12:27:42
24 So the function of this section of the DTR was 12:27:47
25 just to address that consideration on whether cleanup to 12:27:52

1	background was technologically or economically feasible.	12:27:57
2	And that is its only function.	12:28:02
3	MR. BROWN: Okay. Well, that's been very	12:28:06
4	enlightening. I have no further questions for you. So	12:28:08
5	you can enjoy a good lunch knowing you don't have to hear	12:28:11
6	from me again.	12:28:14
7	THE WITNESS: Okay. Thank you.	12:28:15
8	THE VIDEOGRAPHER: This ends Videotape No. 2 in	12:28:18
9	the deposition of David Barker. The time off the record	12:28:20
10	is 12:28 p.m.	12:28:23
11	(A recess was taken.)	12:28:35
12	THE VIDEOGRAPHER: This begins Videotape No. 3	01:37:16
13	in the deposition of David Barker. The time on the	01:37:18
14	record is 1:37 p.m.	01:37:21
15	***	01:37:22
16	EXAMINATION	01:37:22
17	BY MR. BENSHOOF:	01:37:22
18	Q. Mr. Barker, good afternoon. My name is	01:37:24
19	Ward Benshoof. I introduced to you -- or introduced	01:37:27
20	myself to you briefly off the record. I'm cocounsel with	01:37:28
21	Ms. Tracy, representing SDG&E in this matter.	01:37:32
22	And I have some questions of you regarding the	01:37:35
23	portion of the DTR and temporary cleanup and abatement	01:37:40
24	order that addresses SDG&E, as well as the shipyard. So	01:37:47
25	that's where I'm going to be focusing my questioning on	01:37:52

1 this afternoon. 01:37:56

2 And I apologize if -- I'm going to ask a couple 01:37:57

3 of background questions. They may have been covered 01:38:01

4 before, but I'm going to go through them pretty quickly. 01:38:04

5 A. All right. 01:38:07

6 Q. I understand that you've been with the 01:38:07

7 Water Board, Mr. Barker, for approximately 30 years. 01:38:09

8 Is that correct? 01:38:13

9 A. Thirty-five years. 01:38:18

10 Q. And -- and have you developed in that time, 01:38:20

11 Mr. Barker, a -- what you would consider an expertise in 01:38:26

12 matters of fate and transport, the movement of 01:38:30

13 contaminants? 01:38:35

14 A. Yes, some expertise, yes. 01:38:37

15 Q. I assume that a number of your projects have 01:38:38

16 raised questions that would fall generally under the 01:38:41

17 description of fate and transport questions. 01:38:46

18 A. Yes. 01:38:49

19 Q. And in particular on this project, Mr. Barker, 01:38:50

20 Mr. Carlisle testified that in terms of the section of 01:38:57

21 the DTR that concerns SDG&E, Section 9, you would be the 01:39:01

22 individual at the Water Board that knows the most about 01:39:05

23 that section. Is that a fair characterization? 01:39:08

24 A. Along with Mr. Carlisle, yes. 01:39:12

25 Q. And would the same be true of the Sections 3, 5, 01:39:17

1 and 6 having to do with BAE, Southwest Marine, and -- or 01:39:22
2 San Diego Marine Construction -- excuse me -- and 01:39:31
3 Campbell Industries? 01:39:34
4 A. Yes. 01:39:37
5 Q. And we -- in the Carlisle deposition, I referred 01:39:39
6 to those as the -- sometimes as collectively as the 01:39:44
7 shipyards or Southwest Marine. And if I use those terms 01:39:50
8 today, I mean to refer to that shipyard on the northern 01:39:54
9 part of the site as opposed to the -- most of my 01:39:58
10 questions at least will be focused just solely on that 01:40:02
11 shipyard as opposed to the NASSCO shipyard. 01:40:05
12 A. Okay. 01:40:08
13 Q. But if there's any doubt in your mind as to 01:40:09
14 which one I'm referring to, you know you can ask me to 01:40:11
15 clarify. 01:40:15
16 A. Okay. 01:40:15
17 Q. And that, of course, holds true for any of my 01:40:16
18 questions. To the extent there's any aspect of them that 01:40:20
19 you don't understand, be sure that you ask me what I mean 01:40:23
20 by something, as you have during the course of the day or 01:40:27
21 so that I've been here. Because once you start 01:40:31
22 answering, we all assume that you've understood the 01:40:33
23 question. So if there's any aspect of it that you don't 01:40:36
24 understand, be sure you let me know. 01:40:39
25 The -- have you been involved, Mr. Barker, with 01:40:46

1 projects that you would consider to be similar to this 01:40:52
2 particular matter with the Water Board? 01:40:56
3 A. Yes. 01:41:01
4 Q. And -- and what -- what projects would you put 01:41:01
5 into that similar category? 01:41:07
6 A. Speaking of projects on San Diego Bay that dealt 01:41:11
7 with contaminated sediments and linking those sediments 01:41:16
8 to sources or trying to do that, yes. 01:41:25
9 Q. And that's your general description. 01:41:33
10 What specific projects, then, by name, if you 01:41:35
11 could just sort of identify them, would fall within that 01:41:40
12 general category? 01:41:42
13 A. Okay. If I could refer to one of the exhibits? 01:41:43
14 Q. Please do. 01:41:47
15 MR. CARRIGAN: Let's see. I'm guessing that 01:41:50
16 would be 1210. 01:41:52
17 THE WITNESS: Yes. Okay. These projects would 01:41:54
18 include but not necessarily be limited to Paco Terminals, 01:42:41
19 Incorporated; Teledyne Ryan Convair Lagoon, 01:42:46
20 Shelter Island Boatyard, Bay City Marine, 01:42:55
21 Driscoll Boatyard, Kettenburg Marine, Koehler Kraft, 01:43:00
22 Mauricio and Sons, Campbell Industries, and the current 01:43:09
23 Shipyard Sediment Site. 01:43:21
24 BY MR. BENSHOOF: 01:43:21
25 Q. So these were all projects which you worked on 01:43:26

1 that involved conditions of contamination in bay 01:43:28
2 sediments and your effort -- or your and others' efforts 01:43:33
3 to try to identify the sources that caused or may have 01:43:35
4 contributed to the -- 01:43:39
5 A. Yes. 01:43:40
6 Q. -- contaminated conditions? 01:43:40
7 A. Yes. 01:43:42
8 Q. Now, have you been in a position of supervising 01:43:43
9 each of those projects, as you have with this particular 01:43:48
10 matter? And you don't -- let me just -- you can shortcut 01:43:51
11 things by if, for example, you supervised most of the 01:43:58
12 them but there were a couple you didn't, you can just 01:44:02
13 point out the ones that you didn't. So if you want to 01:44:04
14 use a shortcut, you can. 01:44:07
15 A. Okay. Yes, I supervised all of them. 01:44:08
16 Q. Okay. And I take it your practice in -- in all 01:44:15
17 of these instances that you just identified, as well as 01:44:20
18 this would, in terms of supervision, was to give guidance 01:44:23
19 to staff and be the sort of ultimate reviewer of staff's 01:44:28
20 work; would that be a fair generalization? 01:44:34
21 A. Yes. Let me say in terms of level of authority, 01:44:40
22 I was a first-line supervisor. I worked for a -- I was 01:44:44
23 supervised directly by a assistant executive officer who, 01:44:54
24 in turn, reported to an executive officer. So in terms 01:44:59
25 of hierarchy, I was at No. 3 level. 01:45:03

1 Q. The person that has to do all the work, but 01:45:07
2 isn't given all the credit? 01:45:10
3 A. That sums it up sometimes. 01:45:11
4 Q. The -- now, I take it that as a result of this 01:45:15
5 extensive work, you've become -- well, let me ask it a 01:45:18
6 different way. 01:45:23
7 The sites that you've referred to, is it fair to 01:45:24
8 say that they basically involve the same suite of 01:45:27
9 chemicals of concern that the site that we're here today 01:45:31
10 on involved? 01:45:35
11 A. Yeah. Some of them, as I mentioned yesterday, a 01:45:43
12 number of these were boatyard sites that had similar 01:45:50
13 waste characteristics that might be found at a shipyard. 01:45:55
14 One -- one of the sites involved PCB releases from an 01:46:01
15 aerospace aircraft manufacturing facility. The other was 01:46:09
16 a copper ore from a copper ore loading facility. 01:46:13
17 Q. And it's the -- it's your experience with 01:46:17
18 shipyard sites that I'm going to be mostly asking some 01:46:20
19 questions on today. 01:46:23
20 A. Okay. 01:46:25
21 Q. And I -- I got the sense in listening to your 01:46:25
22 earlier testimony that -- that at the Water Board you've 01:46:28
23 become perhaps one of the most experienced persons in 01:46:32
24 dealing with discharges that are to be expected with 01:46:35
25 shipyard operations. Would that be a relatively fair 01:46:41

1 characterization? 01:46:45

2 A. Your question was the most experienced? 01:46:50

3 Q. I would -- I said one of the most experienced. 01:46:52

4 A. Oh, yes. That would be correct. 01:46:54

5 Q. And I think that's why Mr. Carlisle identified 01:46:56

6 you as the person most knowledgeable, because he just 01:46:59

7 said you had the longest experience with these sorts of 01:47:02

8 issues. 01:47:05

9 A. Okay. 01:47:06

10 Q. And he probably didn't want to answer my 01:47:07

11 questions was probably the second reason. 01:47:09

12 A. All right. 01:47:11

13 Q. But let me ask the -- 01:47:13

14 MR. CARRIGAN: You don't know Craig that well. 01:47:14

15 BY MR. BENSHOOF: 01:47:16

16 Q. The -- and as a result of that experience, 01:47:18

17 Mr. Barker, I take it you're -- you're not only generally 01:47:23

18 familiar with the sort of discharges that are typically 01:47:27

19 associated with shipyard operations; you're familiar with 01:47:29

20 the fact that all of those chemicals of concern that are 01:47:32

21 being addressed in this case are all associated with 01:47:36

22 shipyard operations; correct? 01:47:39

23 MR. DART: Objection. Calls for speculation. 01:47:43

24 Lacks foundation. Assumes facts not in evidence. 01:47:44

25 THE WITNESS: Yes. I believe they are, yes. 01:47:47

1 BY MR. BENSHOOF: 01:47:50

2 Q. And incidentally, I didn't describe what I'm 01:47:50

3 doing with this computer screen. The reporter is, as you 01:47:54

4 know, transcribing your testimony. I'm reading it. 01:47:57

5 A. I see. 01:48:00

6 Q. Sort of as -- as you're giving it. So I -- just 01:48:01

7 to make sure that I understand your answers, this is an 01:48:04

8 aid that I use. 01:48:06

9 A. All right. 01:48:07

10 Q. I'm not shopping eBay. 01:48:08

11 A. Okay. 01:48:09

12 Q. And you have no doubt, as a result of the 01:48:15

13 experience that you've had, that shipyard operations in 01:48:17

14 particular in San Diego Bay are a major source of PCB 01:48:21

15 impacts to the bay sediment; correct? 01:48:25

16 MR. DART: Same objections. Vague and 01:48:29

17 ambiguous, overbroad. 01:48:30

18 MR. CARRIGAN: I'll join with vague. Go ahead. 01:48:32

19 THE WITNESS: Let's see. Out of those 01:48:36

20 investigations, really only one of them was a shipyard 01:48:38

21 level investigation. That was at Campbell Shipyard. And 01:48:46

22 PCBs were an element of that. 01:48:50

23 BY MR. BENSHOOF: 01:48:53

24 Q. Okay. And we'll get into the specifics of those 01:48:54

25 elements. 01:48:57

1 Q. Correct. 01:50:05
2 A. Since his deposition? 01:50:07
3 Q. Correct. 01:50:09
4 A. I don't recall a discussion like that that 01:50:12
5 pertained to SDG&E. 01:50:14
6 Q. Okay. 01:50:17
7 Did you recall a discussion with Mr. Carlisle 01:50:19
8 since his deposition regarding any of the testimony he 01:50:23
9 gave outside of the presence of your counsel? 01:50:28
10 A. Let's see. Just superficial passing 01:50:31
11 conversation. I -- I can't even remember what was 01:50:40
12 discussed. It was that level of conversation. 01:50:43
13 Q. Okay. Fair enough. 01:50:45
14 Did you review any of the transcripts of other 01:50:46
15 staff members' deposition testimony that have been given 01:50:50
16 in recent weeks in this case? 01:50:54
17 A. No, I have not. 01:50:56
18 Q. Now, you indicated, when asked by Mr. Brown, 01:51:02
19 some questions about what was the commencement of this 01:51:08
20 project, you -- if I can recall it correctly, you 01:51:12
21 indicated something to the effect that it's -- it sort of 01:51:15
22 had a number of start dates but, the one that you picked 01:51:18
23 for your answers to Mr. Brown's question was 2001, when 01:51:22
24 the investigative order was issued. 01:51:25
25 A. Yes. 01:51:29

1 Q. And from my reading of the records, and we can 01:51:29
2 go over them if you'd like, it appears that the genesis 01:51:32
3 in time was probably as far back as at least 1994, was it 01:51:38
4 not, when the issue of these sediment conditions first -- 01:51:43
5 A. Yeah. It -- it may have gone even a little bit 01:51:49
6 further back than that. There are some letters in the 01:51:53
7 record way back in the early '90s that allude to it. 01:51:59
8 Q. And in fact, in the 19 -- in the late '80s, the 01:52:06
9 Water Board began to receive investigative evidence 01:52:13
10 showing elevated levels of contaminants in the sediments 01:52:19
11 that were opposite both the BAE shipyard and the NASSCO 01:52:22
12 shipyard; correct? 01:52:26
13 A. That sounds right. 01:52:27
14 Q. And -- and let me not read from something that 01:52:28
15 I'm not showing you. Let me put this in the record as 01:52:33
16 Exhibit 1239. 01:52:36
17 (Exhibit 1239 was marked.) 01:52:37
18 BY MR. BENSHOOF: 11:59:57
19 Q. It's -- and what I was reading from, Mr. Barker, 01:52:51
20 to refresh my recollection, was a document SAR 061457, a 01:52:54
21 certain staff report for the establishment of shipyard 01:53:03
22 sediment cleanup levels dated February 17th, 1999. 01:53:06
23 Do you see that? 01:53:11
24 A. Yes. 01:53:11
25 Q. And I take it you were involved with this staff 01:53:12

1 report? 01:53:15

2 A. Yes. 01:53:16

3 MS. PERSSON: 1999? 01:53:18

4 MR. BENSHOOF: February 17th, 1999, yes. 01:53:19

5 MS. PERSSON: Thank you. 01:53:23

6 BY MR. BENSHOOF: 01:53:23

7 Q. And -- and just before I go to a couple of the 01:53:24

8 specific portions, could you just briefly describe your 01:53:26

9 involvement? 01:53:30

10 A. Again, I was the -- I was supervising a staff 01:53:32

11 member who prepared this report. And if you would, let 01:53:36

12 me scan the document to freshen my memory as to what it 01:53:44

13 was about. Okay. 01:53:48

14 Q. Add the concern at the time and it's indeed 01:54:32

15 reflected in the first paragraph called "Issue" was the 01:54:36

16 impact on -- of the sediment contamination under "Study 01:54:39

17 on Benthic Organisms"; correct? 01:54:45

18 A. Yes. 01:54:50

19 Q. And not human health or wildlife? 01:54:50

20 A. That's correct. 01:54:53

21 Q. And then on the second page under "Background," 01:54:56

22 it's indicated that this project which we're, I guess, a 01:54:59

23 part of today actually began in October of 1994. 01:55:07

24 Do you see that? 01:55:11

25 A. Yes. 01:55:12

1 Q. And is that a correct description that we're now 01:55:13
2 some 17 years later involved in the same project that the 01:55:17
3 board -- that the Water Board began in October of 1994? 01:55:22
4 A. Yes. 01:55:28
5 Q. And the -- moving down to the second paragraph, 01:55:33
6 there's a reference in there, and you're reciting -- the 01:55:38
7 document is reciting the history. And it indicates that 01:55:41
8 by letter dated April 27th, 1998, the Regional Board 01:55:45
9 directed Southwest Marine to also investigate PCBs in the 01:55:49
10 sediment. Do you see that? 01:55:54
11 A. Yes. 01:55:55
12 Q. And prior to that date, the Water Board had 01:55:55
13 directed both shipyards to investigate metals; correct? 01:55:58
14 A. Yes. 01:56:01
15 Q. Now, what was -- if you can recall, what was the 01:56:01
16 reason for the directive to Southwest Marine in 1998 to 01:56:05
17 investigate PCBs in the sediment? 01:56:10
18 A. Okay. Let me -- I -- I can't recall 01:56:12
19 specifically. The board went through a period where 01:56:52
20 periodically we would collect sediment samples out in 01:56:59
21 San Diego Bay. And some of those results may have led us 01:57:02
22 to -- to open up that line of inquiry with respect to 01:57:10
23 BAE. 01:57:16
24 Q. The -- the -- now turn to page 1466, if you 01:57:17
25 would. There's a reference to -- it's page 10 of the 01:57:23

1 document. 01:57:26

2 A. 1466. 01:57:27

3 Q. Yes. It's Bates stamped 1466. 01:57:29

4 A. All right. 01:57:32

5 Q. And there's a reference to indicator chemicals. 01:57:33

6 Do you see that? 01:57:39

7 A. Yes. 01:57:40

8 Q. And I take it that's a shorthand for -- for 01:57:41

9 those chemicals that are known to be associated with the 01:57:45

10 sources being investigated. 01:57:51

11 A. Yes. 01:57:53

12 Q. And -- and one of the indicator chemicals for 01:57:53

13 Southwest Marine was PCBs; correct? 01:57:59

14 MR. DART: Objection. The document speaks for 01:58:03

15 itself. 01:58:05

16 MR. BENSHOOF: It does. And we'll listen to it 01:58:06

17 here. Let's turn to page 1468. 01:58:08

18 THE WITNESS: Fourteen. 01:58:13

19 BY MR. BENSHOOF: 01:58:13

20 Q. And -- and you see that Southwest Marine cleanup 01:58:14

21 indicator chemicals, the box labeled -- the box -- or the 01:58:16

22 line labeled "PCBs" is checked as an indicator chemical 01:58:20

23 for Southwest Marine. Do you see that? 01:58:24

24 A. Yes. 01:58:27

25 MR. DART: Same objection. 01:58:27

1 BY MR. BENSHOOF: 01:58:28

2 Q. And that's because discharges of PCBs were known 01:58:28

3 to have been associated with Southwest -- 01:58:34

4 Southwest Marine's operation. And -- and again, by 01:58:35

5 Southwest Marine, I mean the current entity and its 01:58:39

6 predecessors at that site. 01:58:44

7 MR. CARRIGAN: Calls for speculation. Lacks 01:58:47

8 foundation. Misstates witness's testimony. 01:58:49

9 MR. DART: Join. 01:58:52

10 MR. BENSHOOF: I'll ask it a different way, 01:58:56

11 then. 01:58:58

12 BY MR. BENSHOOF: 01:58:58

13 Q. Why was PCB identified as an indicator chemical 01:58:59

14 for Southwest Marine? 01:59:04

15 A. Let's see. 01:59:09

16 MR. DART: May call for speculation. May lack 01:59:13

17 foundation. 01:59:16

18 THE WITNESS: I believe that the board had found 01:59:41

19 there had been some -- some rounds of what we refer to as 01:59:47

20 NPDS permit sediment monitoring that had been turned in 01:59:57

21 by both Southwest Marine and NASSCO. And there was this 02:00:02

22 statewide program called the Bay Protection Toxic Cleanup 02:00:10

23 Program that involved a significant survey of 02:00:16

24 San Diego Bay sediment quality. 02:00:20

25 And the board -- or we had drawn the conclusion 02:00:24

1 that the elevated levels of PCBs from stations near 02:00:28
2 Southwest Marine were the result of discharges from 02:00:37
3 Southwest Marine. 02:00:41
4 BY MR. BENSHOOF: 02:00:42
5 Q. Okay. And was that conclusion in part based 02:00:43
6 upon the knowledge that you had gathered with respect to 02:00:45
7 shipyard operations generally, that there were a number 02:00:49
8 of potential PCB sources associated with those 02:00:52
9 operations? 02:00:55
10 A. Yes. 02:00:56
11 Q. Now, in -- in the preparation of the DTR in this 02:01:00
12 instance, and I assume in other projects, of necessity 02:01:05
13 the board needs to rely on information from responsible 02:01:10
14 parties; correct? 02:01:13
15 A. Correct. 02:01:14
16 Q. And it issues orders of investigation in order 02:01:15
17 to get technical information from them; is that correct? 02:01:18
18 A. Yes. 02:01:22
19 Q. And it's in -- of necessity again and just in 02:01:22
20 terms of the practical nature of the process of putting 02:01:25
21 something like this together, it has to look to 02:01:29
22 responsible parties for a lot of important information. 02:01:32
23 A. Right. 02:01:36
24 Q. Now -- and -- and I was looking at the database 02:01:36
25 for -- the SAR database. And you'll need to -- this 02:01:45

1 isn't the -- this is a document we generated. 02:01:51

2 But I was trying to get a sense for the 02:01:54

3 involvement of Southwest Marine in the development of the 02:01:56

4 DTR and the temporary -- or the cleanup and abatement 02:01:59

5 order. And just by putting in Southwest Marine and 02:02:02

6 Water Board, I came up with 658 written communications 02:02:11

7 over the course of the period that we've been talking 02:02:16

8 about. 02:02:18

9 A. Okay. 02:02:19

10 Q. And let me just -- I'm not going to be going 02:02:20

11 into any detail on that because -- but the number is 02:02:23

12 significant to me. So I just want to let you -- 02:02:25

13 A. All right. 02:02:29

14 Q. -- see the exhibit from which I take that 02:02:29

15 number. 02:02:31

16 A. Okay. 02:02:32

17 Q. And my question is -- and we'll mark that as 02:02:39

18 1240. 02:02:41

19 (Exhibit 1240 was marked.) 02:02:41

20 BY MR. BENSHOOF: 02:02:42

21 Q. And you see that a certain individual, 02:02:43

22 Sander Halvax, shows up with frequency and writing 02:02:46

23 letters over the years to the Regional Board. 02:02:50

24 MR. DART: Document speaks for itself. 02:02:53

25 MR. BENSHOOF: It does. 02:02:55

1 MR. DART: Again, to clarify, speaking now of 02:02:57
2 Southwest Marine as the corporate predecessor of BAE or 02:03:00
3 your prior definition that it include all shipyard 02:03:05
4 operations on the north or confined to Southwest Marine? 02:03:08
5 MR. BENSHOOF: I will. The communications begin 02:03:11
6 in 1996 that I just searched for. And we put a 02:03:12
7 conclusion date of September 2005 on it, on the search. 02:03:17
8 This is just an illustration. And so it would be that 02:03:21
9 entity during that time period, Counsel. Whoever 02:03:25
10 Mr. Halvax works for, I guess. He's writing all the 02:03:29
11 letters. 02:03:33
12 BY MR. BENSHOOF: 02:03:34
13 Q. And I take it you recognize that individual? 02:03:34
14 A. Yes. 02:03:36
15 Q. Now, it's -- again, I think we all understand 02:03:37
16 the necessity of relying on information supplied by 02:03:42
17 responsible parties. But I take it, Mr. Barker, you also 02:03:46
18 are very aware of the self-interest of parties and not 02:03:50
19 wanting to be responsible for something. 02:03:54
20 A. Yes. 02:03:57
21 Q. And so, for example, there would be an interest 02:03:57
22 in Southwest Marine to attempt to attribute contamination 02:04:00
23 it caused to some other source, for example, SDG&E? 02:04:05
24 MR. CARRIGAN: Calls for speculation. Lacks 02:04:09
25 foundation. 02:04:09

1 MR. DART: Join. 02:04:12
2 BY MR. BENSHOOF: 11:59:57
3 Q. You recognize that there's a risk in relying on 02:04:12
4 parties like Southwest Marine, that their input might be 02:04:15
5 biased? 02:04:19
6 MR. DART: Join. 02:04:19
7 MR. CARRIGAN: Same objections. 02:04:20
8 MR. DART: Same objections. 02:04:21
9 MR. WATERMAN: Calls for speculation. 02:04:23
10 THE WITNESS: I'm always aware that parties, 02:04:24
11 when they submit information, are submitting information 02:04:26
12 that may want to reflect their bias towards their 02:04:30
13 perspective on what the information means. 02:04:37
14 BY MR. BENSHOOF: 02:04:39
15 Q. And you obviously, being aware of that, are 02:04:39
16 obviously also sensitive to trying not to have your 02:04:47
17 conclusions driven by a responsible party's bias? 02:04:50
18 A. Yes. 02:04:53
19 Q. And could you just describe how in a project 02:04:54
20 that lasts this -- this long, that's this complicated, 02:05:01
21 where you need a lot of information from somebody like a 02:05:03
22 Sander Halvax, how -- how you can kind of protect the 02:05:06
23 process from what you don't want it to be driven to, 02:05:10
24 which is bias? 02:05:15
25 MR. DART: Objection. Vague and assumes facts. 02:05:16

1 THE WITNESS: In my mind that protection just 02:05:19
2 comes from the experience and perspective of the people 02:05:22
3 on the receiving end of that correspondence to be aware 02:05:27
4 of -- of, again, back to my original statement that 02:05:31
5 interested persons and representatives of corporations in 02:05:43
6 the vicinity of a site may submit information with a -- 02:05:47
7 with their individual perspective on it and -- and bias. 02:05:53
8 BY MR. BENSHOOF: 11:59:57
9 Q. Okay. 02:05:58
10 The -- and in connection with Southwest Marine, 02:06:04
11 do you recall instances where Southwest Marine was 02:06:09
12 attempting to direct the attention of the board 02:06:13
13 specifically to SDG&E as the cause for some condition 02:06:16
14 rather than itself? 02:06:19
15 A. I don't -- I don't recall SDG&E being a prime -- 02:06:23
16 primary point of interest with Southwest Marine. They 02:06:32
17 were quite interested in the board expanding its 02:06:35
18 investigation to other sites in the vicinity of the 02:06:45
19 shipyard site besides NASSCO and BAE. 02:06:50
20 Q. Okay. And let me -- I realize there's a lot of 02:06:56
21 documentation. And so we'll -- let me give you an 02:07:01
22 example of one of the instances that I saw and just ask 02:07:04
23 you what you can recall of it. This will be -- it's an 02:07:08
24 email from Mr. Carlisle to yourself, SAR 069625. And it 02:07:11
25 will be 1241. 02:07:18

1 MR. DART: Objection. Misstates the document. 02:08:40
2 MR. CARRIGAN: Argumentative. 02:08:42
3 MR. BENSHOOF: Letters or other communications. 02:08:42
4 MR. DART: Same objection. 02:08:44
5 BY MR. BENSHOOF: 11:00:57
6 Q. And he's called around the staff "Shaun." 02:08:46
7 Correct? He's well known enough to be referred to by 02:08:50
8 first name, it looks like. 02:08:54
9 A. Yes. 02:08:55
10 Q. And now Shaun is writing -- or called 02:08:58
11 Craig Carlisle. And Mr. Carlisle summarizes the 02:09:04
12 conversation to you and Mr. Alo and sends a copy of his 02:09:07
13 email to Mr. Shaun, or Shaun Halvax and -- and others. 02:09:11
14 A. Okay. 02:09:16
15 MR. DART: Object to the form of the question. 02:09:17
16 MR. BENSHOOF: Is that -- 02:09:19
17 MR. DART: Excuse me. Object to the form of the 02:09:20
18 question. And the document is more than one layer of 02:09:21
19 hearsay. 02:09:24
20 BY MR. BENSHOOF: 02:09:24
21 Q. Tell me about the process of sharing the board's 02:09:30
22 own communications with potentially responsible parties 02:09:35
23 as occurred in this instance. 02:09:42
24 Is it typical when a member of your staff 02:09:43
25 summarizes to you a conversation he's had with a 02:09:46

1 representative of a responsible party to copy that 02:09:52
2 particular individual with his email summary? 02:09:54
3 A. It's not unheard of. Sometimes the staff member 02:09:56
4 will want to let a person that has called or provided 02:10:02
5 information know that their call or information is being 02:10:09
6 followed up on. It's a way of just advising them. 02:10:13
7 Q. Fair enough. 02:10:17
8 A. Courtesy notice, really. 02:10:18
9 Q. And then you see in paragraph 4, Shaun was 02:10:19
10 expressly raising a question about how the board intended 02:10:23
11 to deal with other PRPs other than the shipyard. 02:10:28
12 Do you see that? 02:10:33
13 A. Yes. 02:10:34
14 MR. DART: Same objections. 02:10:35
15 BY MR. BENSHOOF: 11:59:57
16 Q. You might want to pause a little bit. 02:10:38
17 A. Okay. 02:10:40
18 Q. Because counsel may have objections to my 02:10:41
19 question. Both your counsel and other counsel. And they 02:10:44
20 are entitled to state them -- 02:10:46
21 A. All right. 02:10:48
22 Q. -- for the record. And so but let me -- as 02:10:50
23 that -- as to that paragraph, you see that Mr. Halvax was 02:10:54
24 raising with Mr. Carlisle a package of materials that he 02:11:02
25 had provided to the board at some point previously. 02:11:06

1 Do you see that reference? 02:11:09

2 MR. DART: Same objections. The document speaks 02:11:11

3 for itself. 02:11:12

4 THE WITNESS: Yes. I see that. 02:11:16

5 BY MR. BENSHOOF: 02:11:16

6 Q. And that package of materials appear, according 02:11:17

7 to Mr. Carlisle, represent -- related to previous tenants 02:11:20

8 historical SDG&E discharges, et cetera. Do you see that? 02:11:23

9 MR. DART: Same. 02:11:26

10 THE WITNESS: Yes. 02:11:33

11 BY MR. BENSHOOF: 11:59:57

12 Q. And then Mr. Carlisle said he told Shaun that, 02:11:34

13 why don't you send a letter specifically citing other 02:11:38

14 discharges and include their current name and address. 02:11:40

15 And it's -- I suppose people would know where to find 02:11:44

16 SDG&E. 02:11:47

17 But is that typical? 02:11:47

18 MR. DART: Same objections. 02:11:52

19 MR. CARRIGAN: I'll join and add vague. 02:11:54

20 BY MR. BENSHOOF: 02:11:55

21 Q. I mean, it looks like to an external person 02:11:59

22 unfamiliar with board procedures, Mr. Barker, I take it 02:12:02

23 you might agree, it looks like sort of a collaborative 02:12:05

24 relationship between a responsible party and -- and the 02:12:09

25 board going after a third party. 02:12:11

1 And I'm just -- I'm assuming that you -- that's 02:12:13
2 one of the things you're sensitive to is to make sure 02:12:19
3 that another responsible party not interject bias into 02:12:21
4 who the ultimate dischargers are that the board seeks to 02:12:26
5 name. I mean, that is one of the things you're sensitive 02:12:30
6 to; correct? 02:12:34
7 A. Yes. 02:12:35
8 Q. And is it -- so, therefore, I'll go back to my 02:12:36
9 question. 02:12:40
10 Is it typical for someone in Mr. Carlisle's 02:12:40
11 position to ask for a formal letter saying, who do you 02:12:43
12 want us to cite? 02:12:48
13 MR. CARRIGAN: Misstates the document. 02:12:49
14 BY MR. BENSHOOF: 09:00:57
15 Q. Specifically citing other dischargers. I'll 02:12:51
16 just read it. 02:12:55
17 MR. DART: Same objection. 02:12:56
18 THE WITNESS: My interpretation of it is that 02:12:57
19 Mr. Carlisle was trying -- it was his way of suggesting 02:13:00
20 that Mr. Halvax frame the issue as to exactly 02:13:08
21 specifically what -- what parties was he alleging might 02:13:18
22 have had a role in discharges to the Shipyard Sediment 02:13:28
23 Site. 02:13:32
24 And so -- and so it was just a -- I was reading 02:13:32
25 it as it was a suggestion Mr. Carlisle made to Mr. Halvax 02:13:40

1 to frame the issue in a very specific way, so that the 02:13:45
2 board wouldn't flounder around investigating -- could 02:13:49
3 more quickly get at the heart of the matter. 02:13:54
4 BY MR. BENSHOOF:
5 Q. Okay. Now, the -- the reason for my questions 02:13:58
6 regarding the -- the communications between Mr. Halvax 02:14:04
7 and Mr. Carlisle is because of some deposition testimony 02:14:08
8 Mr. Tobler gave. 02:14:10
9 A. Okay. 02:14:12
10 Q. And let me recite that to you. He was asked at 02:14:13
11 pages 116 and 117 of his transcript what Mr. Carlisle 02:14:17
12 told him about the reason that SDG&E had been named as a 02:14:22
13 discharger. 02:14:26
14 A. Oh. 02:14:27
15 Q. Because -- because apparently, SDG&E had been 02:14:27
16 named as a discharger before Mr. Tobler arrived at the 02:14:30
17 Water Board. He testified that that was the case. So he 02:14:39
18 said he asked Mr. Carlisle why. And these are his words, 02:14:40
19 quote, I think he told me something like NASSCO and 02:14:42
20 Southwest Marine wanted more people on board. 02:14:46
21 And I asked Mr. Carlisle did he dispute that, 02:14:50
22 and he said he didn't recall it. But he said he didn't 02:14:54
23 dispute it, either. 02:14:57
24 I take it as a preliminary matter, Mr. Barker, 02:14:59
25 you would agree that it would not be appropriate for the 02:15:02

1 Water Board to add, for example, SDG&E just because 02:15:04
2 Southwest Marine wanted more people on board, in 02:15:08
3 Mr. Tobler's language. That wouldn't be an appropriate 02:15:12
4 basis. 02:15:17
5 MR. CARRIGAN: Incomplete hypothetical. 02:15:18
6 MR. DART: Objection. Misstates the testimony 02:15:19
7 of Mr. Tobler and Mr. Carlisle. And join in the 02:15:20
8 objections. 02:15:24
9 THE WITNESS: Could -- could you read back the 02:15:27
10 question again. 02:15:28
11 MR. DART: The whole thing? 02:15:37
12 THE WITNESS: Or maybe the last. 02:15:37
13 MR. BENSHOOF: Should I just restate it? 02:15:38
14 THE WITNESS: Please. Please do. 02:15:40
15 BY MR. BENSHOOF:
16 Q. I take it as a preliminary matter, Mr. Barker, 02:15:41
17 you would agree that it would not be appropriate for the 02:15:44
18 Water Board to add, for example, SDG&E as a responsible 02:15:47
19 party just because Southwest Marine wanted more people on 02:15:51
20 board, to use Mr. Tobler's phrase. 02:15:54
21 MR. CARRIGAN: Same objection. 02:15:58
22 MR. DART: Same objections. 02:15:59
23 MR. WATERMAN: Join. 02:16:00
24 THE WITNESS: No. I would -- I would -- I mean, 02:16:01
25 part of the decision process might recognize that 02:16:06

1 Southwest Marine in this might want a particular party 02:16:13
2 added. But the board would be looking for evidence to 02:16:18
3 support that. 02:16:23
4 BY MR. BENSHOOF:
5 Q. And you set that out in the DTR that sort of the 02:16:25
6 principles that the board follows when putting together a 02:16:29
7 cleanup and abatement order. 02:16:31
8 A. Yes. 02:16:32
9 Q. And you, at least from your perspective as a 02:16:33
10 supervisor, you fully intended your staff to follow those 02:16:35
11 principles in this instance. 02:16:38
12 A. Yes. 02:16:40
13 Q. Now, the -- I take it you also received 02:16:40
14 information from the other shipyard, NASSCO, concerning 02:16:49
15 who they thought should be added in -- in that 02:16:54
16 connection. 02:16:57
17 Let me just identify as 1242 a November 9th, 02:16:58
18 2004, letter from Mr. Lane McVay, NASSCO, to yourself, 02:17:07
19 Bates stamped SAR 156870. 02:17:13
20 MR. WATERMAN: Counsel, do you have a copy of 02:17:23
21 that? 02:17:24
22 MR. BENSHOOF: I'm sorry. I... 02:17:24
23 MR. WATERMAN: It's going to be hard for me to 02:17:26
24 look over Mr. Carrigan's shoulder from here. 02:17:27
25 MR. CARRIGAN: I want it back. 02:17:31

1 (Exhibit 1242 was marked.) 02:17:31

2 BY MR. BENSHOOF:

3 Q. I -- I don't have a lot of questions on this. 02:17:33

4 Just preliminarily, Mr. Barker, do you recognize this as 02:17:52

5 a communication you received in the course of -- of the 02:17:58

6 investigative work that you supervise on the site? 02:18:03

7 A. Yes. Yes, yes, I do. 02:18:10

8 Q. And I wanted to turn your attention in 02:18:11

9 particular to -- excuse me. We can see by the document 02:18:20

10 that NASSCO's vice president Mr. McVay is expressing an 02:18:25

11 opinion on other entities that bear responsibility for 02:18:31

12 contributing to the sediment contamination. 02:18:37

13 A. Uh-huh. 02:18:39

14 Q. Is that -- that's how you understood the letter? 02:18:40

15 A. Yes. 02:18:46

16 Q. And I take it -- 02:18:47

17 MR. WATERMAN: Objection. Document speaks for 02:18:48

18 itself. 02:18:49

19 BY MR. BENSHOOF:

20 Q. And I take it you -- as you described before, 02:18:50

21 sort of the safety valve in this whole process is to look 02:18:56

22 critically at what an interested party is providing to 02:18:59

23 the board. 02:19:03

24 A. Yes. 02:19:05

25 Q. And I wanted to ask you about one of the 02:19:06

1 statements here. It's on SAR 156874. 02:19:09

2 A. 1568 -- okay. 02:19:13

3 Q. It's -- there's -- and it's underneath the 02:19:17

4 discussion of the Port District. But it states, "The 02:19:20

5 technical report submitted by the responsible parties as 02:19:26

6 well as by" -- "as well as the Exponent report confirm 02:19:29

7 that ship building is not" -- and it's underscored not -- 02:19:33

8 "a likely source of several contaminants of concern 02:19:37

9 observed at the site including hydrocarbons, PCBs, and 02:19:41

10 pesticides." 02:19:46

11 Setting pesticides aside for a minute, I take it 02:19:49

12 that was not an assertion of fact that you agreed with. 02:19:53

13 A. That's correct. 02:20:00

14 Q. And as a matter of fact, based upon your 02:20:01

15 experience, you had concluded the opposite, that ship 02:20:04

16 building was a likely source of several contaminants 02:20:08

17 observed at the site including hydrocarbons and PCBs; 02:20:11

18 correct? 02:20:16

19 MR. WATERMAN: Objection. Lacks foundation. 02:20:18

20 THE WITNESS: Yes. 02:20:22

21 BY MR. BENSHOOF:

22 Q. Now, you had discussed a -- a site with one of 02:20:36

23 the attorneys earlier. I think it was -- am I 02:20:39

24 pronouncing correctly, the Paco site, where there wasn't 02:20:45

25 a concern regarding the adequacy of the responsible 02:20:51

1 parties' financial resources to respond. 02:20:55

2 A. Yes. 02:20:59

3 Q. Am I correct in this instance, Mr. Barker, has 02:21:00

4 the Water Board had any concern with the adequacy of the 02:21:07

5 financial resources of either NASSCO or Southwest Marine 02:21:13

6 to respond to the cleanup order? 02:21:17

7 A. No. That has not been the focus of our 02:21:28

8 concerns, other than from this perspective that in -- in 02:21:32

9 any cleanup situation, the State, under Resolution 92-49, 02:21:42

10 I think there's a section in the policy that indicates 02:21:53

11 that the -- the board should investigate and assign the 02:21:56

12 cleanup responsibility. I don't -- I'd have to get the 02:22:05

13 policy right in front of me for the exact wording. 02:22:11

14 But it indicates that we should do a reasonable 02:22:14

15 investigation and name parties that should be held 02:22:16

16 accountable for discharges subject to the cleanup action. 02:22:20

17 And part of the reason of that is to ensure that there 02:22:25

18 are financial resources to pay for a cleanup. 02:22:28

19 Q. But you -- you haven't in this case believed it 02:22:34

20 necessary to take a step of adding parties beyond 02:22:38

21 Southwest Marine and NASSCO in order to have adequate 02:22:42

22 financial resources, have you? 02:22:45

23 MR. CARRIGAN: I'm going to object to vague as 02:22:47

24 to our previous definition of Southwest Marine. 02:22:48

25 MR. BENSHOOF: Let's exclusively focus on the 02:22:51

1 current owner -- or the current operator of the site. 02:22:53
2 THE WITNESS: Sorry. Could you -- 02:22:58
3 BY MR. BENSHOOF:
4 Q. Yes. Using the definition of Southwest Marine 02:23:01
5 as the entity existing there today, I take it you -- I 02:23:04
6 appreciate your prior answer. 02:23:10
7 But you don't have any concerns, do you, that 02:23:11
8 Southwest Marine and NASSCO could not afford to fund this 02:23:13
9 cleanup? 02:23:17
10 A. We haven't thought about it in those terms or 02:23:20
11 investigated it from that perspective. 02:23:26
12 Q. Okay. And neither entity has asserted they lack 02:23:28
13 the financial resources to respond to a cleanup and 02:23:31
14 abatement order? I mean, they don't like the cost. We 02:23:33
15 understand that. 02:23:40
16 A. Right. I haven't -- I haven't heard that from 02:23:41
17 them. 02:23:45
18 Q. Now, I'd like you to turn to the tentative 02:23:46
19 cleanup and abatement order. And I'm interested in 02:23:52
20 paragraph 9 at page 5 which has -- contains the 02:23:55
21 allegations against my client. If you could look at 02:23:58
22 that. Is it Master Exhibit No. 1? 02:24:01
23 MR. CARRIGAN: It was here. It was right on 02:24:32
24 top. 02:24:33
25 MR. BENSHOOF: I'd show you mine, but it's got 02:24:34

1 my secret notes on it. 02:24:36

2 MR. CARRIGAN: Okay. Here we go. 02:24:39

3 THE WITNESS: Okay. 02:24:40

4 BY MR. BENSHOOF:

5 Q. Page 5 is -- is the paragraph concerning SDG&E. 02:24:46

6 A. Okay. 02:24:49

7 Q. And as you did supervise and were very much 02:24:52

8 involved in preparation of the DTR and specifically the 02:25:01

9 section related to SDG&E, Section 9, I take it that you, 02:25:05

10 likewise, were involved in supervising the preparation of 02:25:10

11 the Master Exhibit 1, tentative cleanup and abatement 02:25:15

12 order; is that correct? 02:25:18

13 A. Yes. 02:25:21

14 Q. And with Mr. -- with Mr. Carlisle, I understand 02:25:21

15 you're -- you're including him and people that would be 02:25:26

16 most knowledgeable concerning the SDG&E allegations, both 02:25:29

17 you and he, I take it, with regard to the DTR, I take it, 02:25:34

18 that would apply also to paragraph 9 of -- 02:25:38

19 A. Yes. 02:25:43

20 Q. -- this document. 02:25:44

21 Now, there's a -- the basic allegation. I'll 02:25:45

22 read it, and then I want to ask you some questions about 02:25:47

23 how you at least have yourself interpreted and applied 02:25:51

24 these key concepts in your career of 35 years with the 02:25:56

25 Water Board. 02:25:59

1 And the allegation I want to focus on is that 02:26:00
2 second paragraph which is, "Charges that the San Diego 02:26:04
3 Water Board alleges but SDG&E denies that it has caused 02:26:07
4 or permitted waste including metals chromium, copper, 02:26:12
5 lead, nickel, and zinc, PCBs, PAHs, and total petroleum 02:26:16
6 hydrocarbons, TPHD and TPHH, to be discharged or" -- "or 02:26:23
7 to be deposited where they were discharged into 02:26:27
8 San Diego Bay and created or threatened to create a 02:26:30
9 condition of pollution. Based upon these considerations 02:26:34
10 SDG&E is referred to as a discharger in this CAO." 02:26:39

11 Am I correct -- and again, I -- some of these 02:26:42
12 are sort of mixed issues of law. And -- and -- and for 02:26:46
13 all of the questions that I'm now going to ask, I'm not 02:26:51
14 seeking a legal opinion of any sort. I'm just asking how 02:26:54
15 you've implemented or interpreted, implemented and 02:26:58
16 applied basic concepts under the Water Code in your 02:27:02
17 tenure at the Water Board. 02:27:06

18 A. Okay. 02:27:07

19 Q. So that's the purpose. And I'm specifically 02:27:08
20 going to be focusing in the next several questions, 02:27:10
21 Mr. Barker, on how you've interpreted and applied the 02:27:13
22 concept of a discharge which creates or threatens to 02:27:17
23 create a condition of pollution or nuisance. So that's 02:27:20
24 sort of my overall context explanation for you. 02:27:25

25 And I take it that, again, based upon your 02:27:29

1 experience at the Water Board in applying the Water Code, 02:27:32
2 you've understood over the years, it's been at least your 02:27:39
3 understanding and interpretation, that there must be more 02:27:42
4 than a discharge. It must, amongst other things, create 02:27:48
5 or threaten to create a condition of pollution or 02:27:51
6 nuisance to be something that's subject to a cleanup and 02:27:54
7 abatement order. 02:27:58

8 MR. CARRIGAN: I'm going to object that it 02:28:00
9 misstates the statute. But to the extent the allegation 02:28:01
10 is set forth this way, there are other criteria that 02:28:05
11 allow for the issuance of a cleanup and abatement order 02:28:08
12 but are not being alleged here. 02:28:13

13 MR. BENSHOOF: Right. So I -- with that 02:28:15
14 amendment, does my question make sense or do you need me 02:28:17
15 to -- 02:28:21

16 THE WITNESS: Yeah. I -- I'm sorry. Could you 02:28:22
17 repeat your question? 02:28:27

18 BY MR. BENSHOOF:

19 Q. Which is, that for purposes of -- let me just 02:28:31
20 amend it to address Mr. -- your counsel's concern. 02:28:35

21 Am I correct that for purposes of the cleanup 02:28:40
22 and abatement order being considered by the Water Board 02:28:44
23 in this action represented by Master Exhibit 1, the 02:28:48
24 manner in which you've interpreted and applied the Water 02:28:54
25 Code to such circumstance is that there must be more than 02:28:57

1 a discharge by a party. That discharge must either 02:29:01
2 create or threaten to create a condition of pollution or 02:29:06
3 nuisance. 02:29:09
4 A. Yes. We are alleging -- there are certain 02:29:10
5 findings that need to be made for a cleanup and abatement 02:29:21
6 order issuance under Water Code, I think, Section 13304. 02:29:24
7 And this finding is create -- is crafted to just allege 02:29:32
8 that there was a discharge, as you were stating. 02:29:37
9 Q. Right. And but it's more than that, was the 02:29:42
10 point of my question. 02:29:46
11 A. Okay. 02:29:47
12 Q. And I think you agree that it's more than just 02:29:48
13 that a discharge occurred at SDG&E's facility. It was a 02:29:50
14 discharge which was into the bay and created or 02:29:53
15 threatened to create a condition of pollution or 02:30:01
16 nuisance. 02:30:03
17 MR. CARRIGAN: Misstates the allegation. 02:30:04
18 BY MR. BENSHOOF:
19 Q. Is that how you've evaluated SDG&E's role as a 02:30:07
20 discharger in this matter? 02:30:11
21 MR. WATERMAN: Objection. Document is the best 02:30:16
22 evidence. 02:30:20
23 THE WITNESS: I'm just referring back to the way 02:30:28
24 the -- the finding is -- is worded, is it's alleging that 02:30:30
25 SDG&E caused or permitted waste to be discharged or to be 02:30:37

1 deposited at a location where they were, I assume, 02:30:43
2 eventually discharged into the bay, and that that 02:30:47
3 discharge created or threatened to create a condition of 02:30:50
4 pollution or nuisance. That's the allegation. 02:30:55
5 BY MR. BENSHOOF:
6 Q. Fair enough. And -- and I'm not trying to get 02:30:58
7 you to contradict the language of your lawyers. 02:31:00
8 A. Right. 02:31:04
9 Q. But I'm just, although it may seem that way, I'm 02:31:04
10 just trying to understand the basic rule book by which 02:31:07
11 you've operated -- 02:31:12
12 A. Right. 02:31:13
13 Q. -- in your career at the Water Board. And I 02:31:14
14 take it that's -- that sentence summarizes the elements 02:31:16
15 that you've used time and time again to decide whether or 02:31:20
16 not to issue a cleanup and abatement order to a 02:31:23
17 particular party. 02:31:28
18 A. It -- actually, it varies between the sites. 02:31:30
19 Some of them, the board alleged violations of -- of the 02:31:35
20 permits, which regulate the normal disposal of waste 02:31:43
21 and -- and doesn't rely on the part of Water Code 02:31:47
22 Section 13304 that binds -- that requires a finding of 02:31:54
23 pollution or nuisance being created or threatened to be 02:31:59
24 created in the water body. 02:32:02
25 Q. So my question was too broad then. I -- I 02:32:04

1 appreciate your distinction. 02:32:06

2 In instances such as this where the Water Board 02:32:09

3 is not proceeding against responsible parties on the 02:32:12

4 basis of allegations of violation of permits, does that 02:32:14

5 language that you read into the record from the tentative 02:32:22

6 cleanup and abatement order fairly summarize how you, 02:32:28

7 yourself, have interpreted and applied the requirements 02:32:33

8 of the Water Code before identifying persons against whom 02:32:36

9 a cleanup and abatement order should be issued? 02:32:40

10 A. Yes. 02:32:46

11 Q. And in preparing the DTR and in -- and in -- and 02:32:48

12 in preparing the tentative cleanup and abatement order, I 02:32:54

13 take it you attempted to assure yourself that indeed 02:32:57

14 SDG&E was responsible for a discharge into San Diego Bay 02:33:04

15 that created or threatened to create a condition of 02:33:10

16 pollution or nuisance. 02:33:13

17 MR. CARRIGAN: Misstates the document and the 02:33:14

18 witness's testimony. Go ahead. 02:33:16

19 MR. BENSHOOF: I thought I stated it very 02:33:25

20 accurately. But if I misstated it, it was inadvertent. 02:33:27

21 Do you want the question? 02:33:30

22 MR. CARRIGAN: It's the phrase "into the bay" 02:33:33

23 that creates the misstatement. It can be deposited in a 02:33:34

24 position where it would threaten the bay, but the -- the 02:33:38

25 discharge could be on land. So I offer that just in the 02:33:42

1 hopes that we can get past this ambiguity in your line of 02:33:45
2 questioning. 02:33:49

3 MR. BENSHOOF: Well, of course, I quoted the 02:33:50
4 tentative cleanup and abatement order. So if there's an 02:33:51
5 ambiguity, it's in the language of the order. But I 02:33:55
6 don't mean to quibble over, you know, the -- those kinds 02:33:58
7 of legal nuances. I'm just -- all I'm trying to get to 02:34:05
8 is the standards that you followed for 35 years with the 02:34:08
9 Water Board. 02:34:13

10 THE WITNESS: Okay. 02:34:15

11 BY MR. BENSHOOF:

12 Q. And I take it they're pretty accurately 02:34:16
13 summarized in this tentative cleanup and abatement order. 02:34:18

14 A. Yes. 02:34:20

15 Q. And you attempted to apply that to the evidence 02:34:20
16 that you were able to gain regarding SDG&E. 02:34:23

17 A. Yes. 02:34:28

18 Q. Now, let me ask -- before we look at all of 02:34:31
19 that, I want to ask another general question I asked of 02:34:36
20 Mr. Carlisle. 02:34:41

21 And that is, during the course of this whole 02:34:42
22 process, Mr. Barker, did you ever come to a conclusion 02:34:45
23 that the condition of the bay at the Southwest Marine 02:34:51
24 site could not be explained by discharges solely from 02:34:56
25 that site? 02:35:01