

1 UNITED STATES District COURT  
SOUTHERN District OF FLORIDA  
2 MIAMI DIVISION

3 Case02-80309-CIV-CMA

4 FRIENDS OF THE EVERGLADES, FLORIDA  
WILDLIFE FEDERATION, and  
5 FISHERMEN AGAINST DESTRUCTION  
OF THE ENVIRONMENT, INC.,

6 Plaintiffs,

7 MICCOSUKEE Tribe OF INDIANS OF  
FLORIDA, a Florida municipality,

8 Intervenor-Plaintiff,

9  
10 vs.

MIAMI, FLORIDA

11 SOUTH FLORIDA WATER MANAGEMENT  
District,

FEBRUARY 15, 2006

12  
13 Defendants.

U.S. SUGAR, UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, and UNITED STATES ARMY  
CORPS OF ENGINEERS,

Intervenor-Defendants.

14 TRANSCRIPT OF BENCH TRIAL PROCEEDINGS  
BEFORE THE HONORABLE CECILIA M. ALTONAGA,  
15 UNITED STATES District JUDGE

16 APPEARANCES:

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5

3 WILLIAM R. WISE, PLAINTIFFS' WITNESS, SWORN.

4 DIRECT EXAMINATION

5 BY MR. GUEST:

6 Q. Dr. Wise --

7 A. Good morning.

8 Q. -- good morning.

9 We have heard testimony that the Interim Action Plan,  
10 by reducing the frequency of backpumping from S-2, 3 and 4,  
11 therefore, moved the watershed dramatically from the north  
12 close to the south shore of the lake.

13 Do you have an opinion as to whether reducing the  
14 frequency of pumping has any bearing at all on the size of the  
15 watershed from the pumps?

16 A. Reduction of the frequency of pumping would not reduce the  
17 place from which the water was being drawn. So, no, the  
18 watersheds would not change.

19 Q. I would like to show you what has been marked as the -- I  
20 think it's Exhibit Number 75.

21 MR. GUEST: Do you have that. That's -- I'll use a  
22 different one.

23 BY MR. GUEST:

24 Q. I'm turning now to Defendants' Exhibit Number 200, page --  
25 okay -- 28. We'll use 28. 28 and 51. Defendants' 28 -- I'm

6

1 sorry -- Defendants' 200 in evidence, and it's pages 28 and 51  
2 that we'll be referring to. I'm going to compare those to the  
3 plate Mr. Nutt gives me.

4 So, let me start here. I'll just start right with the  
5 first one. I think I need to wait for my colleagues to get it  
6 together.

7 We'll just press on.

8 MR. GUEST: May I approach the witness, Your Honor?

9 THE COURT: You may.

10 MR. GUEST: I'm going to be directing the witness'

11 attention to pages 28 and 51 of the Defendants' Exhibit 200.  
12 BY MR. GUEST:  
13 Q. So, can you look at the watershed maps shown on those pages  
14 and tell us whether those are any different than the watershed  
15 maps in the earlier and original maps of the watersheds?  
16 A. They look the same to me.  
17 Q. Could you tell us what the date on that document is?  
18 A. This is 1989.  
19 Q. So, is that 10 years after the Interim Action Plan?  
20 A. Correct.  
21 Q. How does that compare to Exhibit Number 114, which I'm  
22 going to show you here?  
23 This was the exhibit used by Mr. MacVicar, Defendants'  
24 Exhibit 114. I'd like you to compare it.  
25 MR. GUEST: May I approach the witness, Your Honor?

7

1 THE COURT: You may.  
2 A. The features seem to be drawn in the same fashion.  
3 Q. Thank you.  
4 Do you think there can be even an arguable claim that  
5 reducing the frequency of pumping changes the watershed?  
6 MR. BURGESS: Calls for speculation objection.  
7 THE COURT: Overruled.  
8 BY MR. GUEST:  
9 Q. Let me turn now to the matter of water treatment, that the  
10 cities of South Bay, Pahokee and La Belle have switched from  
11 chlorine to chloramine.  
12 How do they make chloramine?  
13 A. Well, chloramine is made by mixing chlorine with ammonia.  
14 Typically a gaseous feed of chlorine is fed into a reactor.  
15 There are various ways of doing this, and liquid forms ammonia  
16 is --  
17 MR. BURGESS: Objection, Your Honor. This is  
18 completely and totally outside his expert report.  
19 MR. GUEST: Your Honor --  
20 THE COURT: Overruled.  
21 BY MR. GUEST:  
22 Q. Do you have an opinion about whether -- strike that.  
23 Do you have an opinion about the comparative public  
24 health risk of using elemental chlorine versus using  
25 chloramines.

8

1 A. It's a very interesting field of study right now. We know  
2 that chlorine produces things such as trihalomethanes and we

3 have known that for several years and we have been tracking  
4 that and we, basically, have a very good methodology at least  
5 quantifying the known by-products of chlorine.

6 By contrast, chloramine is a newer disinfectant and  
7 its by-products aren't as well known and characterized. Some  
8 of them are potentially much worse than the by-products  
9 produced by chlorine.

10 Q. Does it make any difference in terms of how strong those  
11 by-products are -- strike that.

12 Is there any relationship between the level of organic  
13 compounds in the water, the intake water into the water  
14 treatment plants, does it make any difference how much organic  
15 compounds are in the water when you look at the extent to which  
16 the chloramines produce toxic by-products?

17 A. Yes. Basically, the organic matter, the natural organic  
18 matter is one of the reactants that go into the disinfectant  
19 by-products. The chloramine would be the other. The more of  
20 each that would be present, the more by-products would be  
21 produced.

22 Q. Is it the practice of treatment plants --

23 MR. NUTT: Your Honor, I'm going to make an objection  
24 again on the report. We haven't had any opportunity to preview  
25 any of this or discuss this with him or prepare for this expert

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1 to now be an expert in treatment water or safe drinking water.  
2 He was presented as an expert in hydrology and none of  
3 this information is close to or remotely anything we have had  
4 an opportunity to deal with it.

5 MR. THOMPSON: He is not tendered as an expert in  
6 operation of public water treatment systems, hasn't expressed  
7 my information in the experience, in the operation of public  
8 water systems or water systems' treatment methodologies.

9 MR. GUEST: I have two responses.

10 This is exactly the same argument that we made about  
11 Jerry Brooks when this new information about chloramine came in  
12 the case for the very first time. That's the first day in the  
13 whole proceedings. From the day the case was filed, that we  
14 heard the word "chloramine" was that day when Jerry Brooks  
15 testified. It doesn't appear in the record previous to that.

16 MR. NUTT: I'm sorry.

17 MR. GUEST: Then the other point is the issue of is  
18 this witness qualified. He has already been qualified as a  
19 hydrologist, as an environmental engineer and as a chemist, but  
20 beyond, that we have, obviously, no objection to a voir dire on  
21 this witness' experience in water treatment systems, which I

22 think is the qualifications issue.  
23 MR. NUTT: Mr. Brooks testified factually as the  
24 regulating agency as to the fact there were changes in the  
25 water treatment methods to accommodate whatever conditions

10

1 were, so there was no issue about his qualifications or prior  
2 disclosure on it. I mean, he had talked about it.

3 But, you know, I don't have to voir dire when he  
4 hasn't even laid a foundation. If he wants to lay the  
5 foundation and if we are given an opportunity to address this,  
6 then we can move on.

7 MR. THOMPSON: Your Honor, in addition, I believe the  
8 issue of chloramine was brought into this case by virtue of  
9 cross-examination by Mr. Guest.

10 MS. REIMER: No.

11 MR. NUTT: No, he had mentioned it when he was talking  
12 about the treatment in the cities. Mr. Brooks had mentioned  
13 it.

14 This is no different than Mr. MacVicar wanting to talk  
15 about the treatment facilities and the feasibility of the  
16 treatment in the north of the EAA. It wasn't disclosed. They  
17 went through all their arguments about how they were  
18 hood-winked and surprised. Now we have a person who was  
19 represented as an expert, we are told we can now voir dire and  
20 find out what other expertise he has and he can testify to an  
21 area we had no knowledge or foresight, and testify in a matter  
22 we had no knowledge about it.

23 MR. GUEST: Would you like me to lay a foundation,  
24 Your Honor?

25 THE COURT: You may.

11

1 BY MR. GUEST:

2 Q. Dr. Wise, do you consider yourself to be an expert in water  
3 treatment?

4 A. Yes.

5 Q. Could you tell us why?

6 A. Approximately a third of the refereed journal articles I  
7 have written relate to protection of water resources and/or  
8 treatment issues relating to water --

9 Q. Have you --

10 A. -- in terms of chemistry and things of that nature.

11 Q. Have you studied drinking water issues?

12 A. Yes, I have.

13 Q. Have you done water treatment at water treatment

14 facilities?  
15 A. Yes. I have visited many water treatment plants and drunk  
16 samples from them in the past.  
17 Q. Are you familiar with the methods of water treatment?  
18 A. Yes, I am.  
19 Q. Can you give us, without going into any detail, just give  
20 us just give us a number on how many different treatment  
21 processes, you know -- what I mean by "processes" is the  
22 varieties of different ways of doing things -- that are in use  
23 throughout the United States?  
24 A. In a typical water treatment plant, if I understand your  
25 question correctly, you'll have about 5 to 7 processes,

12

1 depending upon the nature of the water.  
2 Q. Then between different kinds of plants, how do those  
3 processes vary?  
4 A. They are specific to the chemistry of the water that's  
5 being treated.  
6 Q. Do they vary very widely?  
7 A. Yes, they do.  
8 Q. Are you familiar with the processes that are in use?  
9 A. Yes, I am.  
10 Q. How about the ones in use at South Bay, Pahokee and La  
11 Belle?  
12 A. Yes, I am.  
13 MR. GUEST: I think that's a sufficient foundation.  
14 MR. NUTT: May I?  
15 THE COURT: You may.  
16 VOIR DIRE EXAMINATION  
17 BY MR. NUTT:  
18 Q. How did you become familiar with the water treatment at  
19 South Bay, Pahokee and Belle Glade?  
20 A. I had done a little bit of investigation on their treatment  
21 processes by looking at information published on the DEP  
22 website and yesterday I visited all three plants.  
23 Q. Okay.  
24 When did you look at the website to learn this  
25 information about them?

13

1 A. Last week some time.  
2 Q. Have you talked to anybody at the treatment plants about  
3 any of the processes they are using or any of their future  
4 plans?  
5 A. I talked to them about their treatment processes. I asked

6 them to give me a tour of the plant. They were more than happy  
7 to do -- each operator was more than happy to give me a tour of  
8 their plant.  
9 Q. Yesterday?  
10 A. Yesterday.  
11 Q. And you toured the plants yesterday?  
12 A. Yes, all three.  
13 Q. Prior to yesterday -- when did Mr. -- when did you first  
14 get asked at all about treatment?  
15 A. I believe when the chlorine issue first came up. I'm not  
16 sure exactly when that came up, on the date.  
17 Q. When were you aware that there was an issue about water  
18 treatment in this case?  
19 A. I don't remember the specific date.  
20 Q. When you first were asked to become involved in this case,  
21 were you told the plaintiffs had an issue in this case about  
22 water use, water supply and treatment?  
23 A. I know that we were quite concerned because Lake  
24 Okeechobee, as class 1 water, that, you know, in general,  
25 water treatment could be an issue.

14

1 Q. And this was back when you were -- when did you first get  
2 retained in this case?  
3 A. I believe February.  
4 Q. I'm sorry?  
5 A. I believe February.  
6 Q. Of what year?  
7 A. 2005.  
8 Q. And you are aware there was an issue with class 1 and  
9 waters and you talked about some of that in your report from a  
10 hydrologic perspective. Correct?  
11 A. Yes, I did.  
12 MR. NUTT: I guess we're dealing with an investigation  
13 that happened yesterday that we have had no chance to do any  
14 deposition on, understanding or his qualifications.  
15 BY MR. NUTT:  
16 Q. Have you ever regulated water treatment?  
17 A. No, I'm not a regulator.  
18 Q. You have tested water quality at treatment plants. Have  
19 you ever been involved in water treatment processes?  
20 A. Yes.  
21 Q. To what extent?  
22 A. We use water treatment processes in some of our research  
23 all the time in a much smaller scale than water treatment  
24 plants. The same type of processes, coagulation, filtration.



25 Q. I am talking about water treatment for drinking systems.

15

1 A. I don't really see the difference. Treating water, there  
2 is always an end use for water and you choose the processes  
3 that are appropriate for the end-use.

4 Some of the processes are just as good -- some of the  
5 water we use in our lab is actually of higher quality than  
6 anywhere near the drinking standard. We have to have such  
7 chemical purity of the water that we can't have any  
8 interference.

9 Q. You haven't dealt with in your lab, you are not treating  
10 with an end use of drinking water?

11 A. No. Sometimes the end-use is quite more stringent than  
12 that.

13 MR. NUTT: Your Honor, I would just ask if he is going  
14 to go into this from an investigation yesterday that we can  
15 have some opportunity to respond to this. I don't want to  
16 waste the Court's time, and move on. If he is going to come  
17 out with completely new opinions and new areas, that we have an  
18 opportunity to address it or have somebody in surrebuttal or do  
19 it in some way.

20 THE COURT: Why don't we hear what he has to say  
21 first? Then you can let me know what it is you would need.

22 Mr. Guest, you may continue.

23 BY MR. GUEST:

24 Q. Okay,

25 I think where we were was I think I was asking you

16

1 whether or not a higher -- well, let's just go right into it  
2 now that it has been raised. Let's just go into what happened  
3 when you were in South Bay, La Belle and Belle Glade, and was  
4 there anything in particular about that trip that was useful  
5 compared to other trips you might have made at a different  
6 time?

7 A. Well, I asked for samples of both raw and finished water  
8 from each plant, and part of the interest in going is we have  
9 just experienced a backpumping event in S-2.

10 Q. Well, did you observe anything in the drinking water of any  
11 of those cities that you associated with the backpumping event?

12 MR. THOMPSON: Objection. Foundation.

13 MR. GUEST: Okay. Well, okay.

14 I don't understand what the objection.

15 MR. THOMPSON: How does he know whether there is a  
16 relationship? He said there is backpumping. He said he looked

17 at water. He hasn't established there is any relationship  
18 between the two.

19 THE COURT: I think that's what the question is trying  
20 to elicit. Why don't we hear the answer and you can cross  
21 examine him on it?

22 You may proceed.

23 A. Well, when I compared the raw water going into the plants,  
24 the samples of those, the raw water going into the South Bay  
25 plant was significantly worse than the raw water going into the

17

1 Belle Glade, which was significantly similar to water going  
2 into the Pahokee plant.

3 Q. Do you actually have the samples with you?

4 A. Yes, sir, they are in my briefcase.

5 Q. Can you pull out a raw sample from the backpumped water  
6 from the input into South Bay?

7 THE COURT: When was the backpumping event?

8 THE WITNESS: The backpumping event sort of centered  
9 between February 4th and February 9th, give or take.

10 THE COURT: And it was at South Bay?

11 THE WITNESS: It was North New River Canal is where I  
12 actually looked at the USGS data. The water level dropped  
13 about 2 to 5 feet, indicative of backpumping.

14 MR. NUTT: We don't have an ability to even deal with  
15 this. This witness and all of these witnesses continually said  
16 they have done no independent investigation, they have done  
17 nothing. Yesterday he was not available. Now we know why.

18 I'm not sure we're going to need the ability to break  
19 and deal with this, if we can Your, Honor. Let him --

20 THE COURT: Let's see the water. Let's hear what he  
21 has to say and you can tell me what it is you need to do either  
22 to prepare a cross-examination or any other witness.

23 All right.

24 BY MR. GUEST:

25 Q. Do you have the samples with you?

18

1 A. The samples are in my briefcase behind -- your chair is  
2 there.

3 MR. THOMPSON: By the way, Your Honor, also, none of  
4 this information was disclosed to us by Mr. Guest in terms of  
5 the testimony that he was offering Mr. Wise yesterday. This is  
6 total surprise.

7 Mr. Guest, when he indicated to us what, A, Mr. Wise  
8 was going to talk about and, B, what exhibits he was going to

9 provide did not disclose this information yesterday. This is  
10 total surprise, first of all.

11 Secondly, this information about problems with  
12 drinking water treatment is an issue Mr. Guest raised or the  
13 plaintiffs raised, you know, several years ago when this case  
14 was first filed. It has been in the record. There is  
15 extensive cross-examination. This is, obviously, a prejudicial  
16 sneak attack.

17 This is an issue Mr. Guest has tried to prove on  
18 direct and was unable to do so because he relied exclusively on  
19 hearsay. Now he is coming along at the 11th hour with this  
20 information we have no opportunity to voir dire, except on the  
21 record, or examine. It's highly prejudicial and we, therefore,  
22 strongly object and we move to strike his testimony in this  
23 regard.

24 MR. GUEST: Actually, the truth is I didn't know he  
25 was going to get samples until last night and I wasn't going to

19

1 bring them up to the Court on that principle until we got this  
2 aggressive voir dire demanding to know what he did. So --  
3 well, there it is --

4 MR. NUTT: So, the whole --

5 MR. GUEST: If the Court doesn't want to see them,  
6 it's all right. I thought if you want to get the whole story  
7 out after the voir dire about what he did --

8 MR. NUTT: It's fascinating. He is innocently  
9 bringing this here today? That's remarkable, how the whole  
10 case has proceeded. But the point is, this is completely  
11 unknown.

12 Mr. Guest not only didn't tell us any of this, he  
13 specifically told us there are three topics for today and said  
14 "that's all Mr. Wise is going to testify about," are  
15 these three points.

16 Not only was it not disclosed, it was affirmatively  
17 represented there was nothing remotely like this that was going  
18 to occur.

19 With that said, you know, we --

20 THE COURT: Here is what we can do: We can hear his  
21 direct testimony today. You don't have to cross examine him  
22 today. Let me know what it is you need to do to effectively  
23 cross examine and/or present another witness or other  
24 witnesses.

25 MR. NUTT: I appreciate that.

20

1 THE COURT: This is a bench trial. You don't have a  
2 jury held captive. I can accommodate your schedule.

3 MR. NUTT: We do not have an opportunity now -- we had  
4 issues in this case when Mr. Guest was trying to go out and do  
5 sampling. Early on in this case, 2001 and 2002, where we ended  
6 up, the Court gave us the right to go along with them when they  
7 were doing inspections, check what they were doing, the  
8 processes by which they dealt with it, check where samples were  
9 taken. We were given all of these rights to be able to verify  
10 it.

11 Now we learn today Mr. Guest sent his expert out to  
12 treatment plants without any overview, any supervision. This  
13 is an expert who we have considerable conflicting testimony  
14 prior to. We have considerable questions about the veracity of  
15 it and this person is coming in with Zephyrhills bottles  
16 claiming what they appear to be without anything.

17 This Court granted us going, the right to go on  
18 property where we had the equal opportunity to go with and  
19 compare and look at the results and challenge it. We can't  
20 challenge this now. We not only are surprised -- Mr. Guest  
21 knows this. He knew he was going to send the guy out  
22 yesterday. Now he is saying "I didn't think I was going to  
23 bring this in if it wasn't for some aggressive voir dire"?  
24 That's as deceiving as you get.

25 This is something that is being thrown on us, that is

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1 about as prejudicial as you get.

2 We have admitted so many of the facts that lead up to  
3 this. This is cumulative and irrelevant. We have not  
4 challenged there is changes to the color. The extent now in  
5 this demonstration to the Court is something now we are put in  
6 such a prejudicial position. The backpumping was four days  
7 ago. We can't go out and replicate it. I can try to call  
8 staff and get something 24 hours later. We can't do anything  
9 about this.

10 He is trying to pull up a specific event. I can't get  
11 anybody to come in and compare this and challenge it to say "No  
12 this isn't what it was like that day."

13 We have been prejudiced of our ability to even do  
14 that. The chloramine issue came up two weeks ago, a week and a  
15 half ago. We could have gone out to the plant with him if he  
16 said "This is something I really feel I need to do," ask for  
17 permission of the Court to do this, disclose it not, play  
18 hoodwink and sandbag.

19 THE COURT: I think this is an appropriate time for me

20 to leave you all to talk to each other and let me know when  
21 you're ready to proceed.

22 MR. GUEST: Thank you, Your Honor.

23 [There was a short recess at 10:36 a.m.]

24 THE COURT: Please be seated.

25 MR. GUEST: Your Honor, I think where we left off,

22

1 there was some anxiety being expressed by my colleagues at the  
2 other table, and I do want to make it very clear to the Court  
3 that we feel that what we did was perfectly and absolutely  
4 appropriate.

5 We're trying to get the whole story out. Mr. Brooks  
6 surprised us completely with this chloramine thing and  
7 Mr. Wise -- we don't have unlimited funds -- Mr. Wise could  
8 only come down here once, so we brought him to do his field  
9 trip.

10 He wasn't actually looking for this. We have been  
11 seeking for years to try to get this kind of information and  
12 the discovery process failed us, and it was a fortuity that it  
13 turns out -- well, I don't know. I shouldn't be testifying,  
14 but what we will show is this was not a sneak attack of any  
15 sort.

16 It was a piece of evidence we have been struggling to  
17 get and IT happened to be there when he got there. We had no  
18 idea until he got there. I didn't find out about it until last  
19 evening. It goes directly to the --

20 THE COURT: The concern I have, Mr. Guest, frankly, if  
21 you found out about it last evening, I'm sure you have each  
22 other's cell phone numbers. A phone call would have been the  
23 appropriate gesture, advising what was done and what you  
24 intended to do today, and that, certainly, would have lessened  
25 the need for this long break and for the strong level of

23

1 anxiety, as you said, expressed by your colleagues to your  
2 right.

3 The question is what to do about it now. I can simply  
4 say "No, I will not hear this. I will not see this and don't  
5 give me that information" or I can say "Give me the  
6 information," share it with defense by way of his testimony  
7 today, the witness' testimony today, and the witness may  
8 need to come back for cross-examination, which will be a  
9 greater expense to you, and the defense will have the  
10 opportunity to present an additional witness or two to address,  
11 if they think it's necessary, that which is disclosed today.

12 If that's all right with plaintiffs, I think that's  
13 the way we should go. I understand Mr. Nutt's remarks that I'm  
14 going to have to accept what's in the Zephyrhills water bottles  
15 is what this witness says as there was no one there to see what  
16 he was sampling or taking.

17 MR. BURGESS: Your Honor, may the defense be heard on  
18 this?

19 THE COURT: Sure.

20 MR. BURGESS: Your Honor, for all defendants, and for  
21 the record, we believe the testimony is completely outside the  
22 scope of this witness' expert report and is similar to Your  
23 Honor's ruling with respect to Mr. MacVicar on STAs. We had no  
24 ability to prepare a cross-examination or to depose this  
25 witness on this testimony.

24

1 Secondly, it is not rebuttal in the sense that we  
2 certainly didn't bring in any water quality samples. We  
3 believe its probative value is outweighed by the prejudicial  
4 effect of allowing him to testify on sampling that he conducted  
5 yesterday.

6 We believe it violates the spirit of Judge  
7 Middlebrooks' earlier order of protocol with respect to  
8 sampling and, certainly, standard sampling protocol for split  
9 sampling during discovery which is and was over long ago.

10 We also think it violates Your Honor's request that  
11 parties share the scope of rebuttal and exhibits at least a day  
12 in advance.

13 Should Your Honor allow the testimony, and without  
14 waiving our objections, we would like a three-hour break to  
15 prepare cross-examination and, in addition, we request the  
16 right to provide surrebuttal of this testimony.

17 MR. GUEST: May I respond to that, Your Honor?

18 We have approximately one million data points that  
19 were brought into this case in water quality data. They did  
20 every single one of them and we didn't get to do one. We  
21 didn't even get to challenge and get the raw data out of them.  
22 Last weekend we couldn't get the raw data.

23 All we have is bottles which just show the color which  
24 I should have probably looked at and it would be all right.  
25 What maybe I should be doing is taking the bottles away because

25

1 I didn't intend or mean to stir anything like this up.

2 We had -- and I will show you if we get to it -- a  
3 written agreement that goes back to a long time ago from

4 Mr. Nutt that he was going to notify us when they were going to  
5 do backpumping so we would be able to get some samples.

6 I made repeated phone calls, emails, too. There has  
7 never been one occasion when that was complied with in all this  
8 time, and, you know, it happened as a complete fortuity which,  
9 you know, I think we can move on. I think I can accept the  
10 Judge's proposal.

11 I think what I want to do is pull those bottles off  
12 and ask you to disregard them and get him to say what it looked  
13 like. That might solve the sampling problem.

14 Here is the thing about split samples: There is  
15 sampling protocol issues. "Did you get the bag dirty? Is the  
16 bottle clean? Are you mixing it with the right acid?" in  
17 order to make sure you can honestly will replicate what's in  
18 the chemical that's actually suspended in the water or  
19 dissolved in the water.

20 That's not what we're doing. All we're doing is,  
21 like, he was there and he took some you know water samples  
22 because he is a scientist and brought them back. I didn't ask  
23 him to do that and was quite startled when he did have them.

24 Maybe it was a mistake to bring them out, but I think,  
25 you know, he wasn't looking for that. It just turns out when

26

1 he got -- maybe I should do it through the witness rather than  
2 testify how this happened.

3 THE COURT: Here is what I would like to do because  
4 we're really not moving this case along: I will allow the  
5 testimony, as I said. I understand the defendants' objections.  
6 Many of them are well taken, as I have also noted. I will  
7 provide a three-hour break prior to cross and give the  
8 defendants the right to provide surrebuttal.

9 Let's please move on.

10 MR. NUTT: I would just like an opportunity at the  
11 appropriate time to respond to several of the representations  
12 that were made. I don't want to waste the time.

13 That agreement was in 2003 -- we never backpumped.  
14 This gentleman never has called me in three years. He won't  
15 call me without a tape-recorder. I don't want to get too much  
16 into this, but his representations he just made on the record  
17 about not being able to get samples, we offered him every  
18 opportunity to take the samples. He told us when the Supreme  
19 Court remand came down he was going to rely on District data  
20 and they didn't want to do any sampling anymore.

21 In the last year and a half, they never requested from  
22 the corps an opportunity to sample. That representation is so

23 misleading to the Court, and I'm sorry to get off on that  
24 tangent because I know it's a waste of time, but I need the  
25 record not to show we had some cooperative agreement I

27

1 violated. It never happened, absolutely never.

2 MR. GUEST: Okay.

3 BY MR. GUEST:

4 Q. What was your task yesterday in going to La Belle, South  
5 Bay and Pahokee? What were you going there for?

6 A. I was looking to see if the plants had carbon filtration  
7 systems.

8 Q. Why would that make a difference?

9 A. That would dissolve organic matter that causes problems in  
10 drinking water.

11 Q. Problems specifically relating to chloramine --

12 A. And disinfection by-products from chlorination.

13 Q. What do the disinfection by-products actually cause?

14 A. They can cause cancer. They can cause other mutagenic  
15 maladies such as birth defects and things of that nature.

16 Q. Does the extent to which you have those toxic by-products  
17 vary with how much organic materials is in the water?

18 A. Yes. As I stated earlier, the more organics you have, the  
19 more propensity to cause the by-products.

20 Q. The absence of carbon filters has what bearing on the  
21 chloramine use?

22 A. Basically, the absence of carbon filters provides more  
23 organic matter than would be in their presence.

24 Q. How effective are carbon filters at reducing the organic  
25 contents?

28

1 A. They are extremely effective.

2 Q. That is the reason why you went?

3 A. Yes.

4 Q. While you were there you -- how did you -- can you give us  
5 a quick rundown on what you did and how you ended up getting  
6 samples there?

7 A. Whenever I visit a site, I sort of put myself in the  
8 position of the person who's giving me the tour. I want them  
9 to be as engaged as possible.

10 Basically, I brought two bottles of Zephyrhills water  
11 still sealed, unopened, and I said "You know what? I would  
12 like to do is have a quick tour of your plant, and I would  
13 like to be able to demonstrate what the difference is  
14 between the raw water and the finished water so I can



15 understand, because this is very different from, you know,  
16 other waters that you may have."

17 So, I was interested, you know, I was basically trying  
18 to get them to give me a tour of the plant and I was trying to  
19 give them some motivation to give me a good tour, just as I  
20 would if I were pulling a class of students through the same  
21 plant and trying to get the operator engaged in giving a nice  
22 explanation of what was going on.

23 Q. In the course of that process, did you discover any events  
24 that were relevant to the character of the intake water?

25 A. Yes. The operator at South Bay was complaining about --

29

1 MR. NUTT: Objection. Hearsay.

2 MR. GUEST: This is not going to the truth of the  
3 matter stated, but to the motivation for taking the samples.

4 MR. NUTT: The motivation --

5 MR. THOMPSON: It's still hearsay.

6 MR. GUEST: It's not offered for the truth of the  
7 matter stated. We're not offering it to prove there was a  
8 backpumping event. We're offering to prove why he took the  
9 samples.

10 THE COURT: Sustained.

11 BY MR. GUEST:

12 Q. Okay. Let me -- this document I have shared with my  
13 colleagues.

14 I am showing you --

15 MR. GUEST: Do we have an exhibit number?

16 MR. NUTT: We object. He showed it to us about three  
17 minutes before Your Honor came on the Bench. We haven't had an  
18 opportunity to examine this. He actually said "Okay. I'm not  
19 going to use it."

20 So, since that time we have done nothing about it.  
21 It's a website pulloff. Again, he will claim  
22 self-authenticating, which it's not. It's hearsay. It's also  
23 something he did not previously disclose. It's also something  
24 he did tell us he was not going to use, but did tell us "Be  
25 careful what cans of worms you are going to open up because

30

1 I will bring in anything."

2 MR. GUEST: This is getting incredibly acrimonious.

3 Mr. Nutt informed us a couple of days ago there had  
4 been backpumping. From our knowledge of how this system  
5 operates, we believed it would probably be S-4, not S-2, and  
6 did not --

7 MR. NUTT: Object to the testimony. This is not the

8 opportunity for him to present things to you, but to respond to  
9 an objection.

10 MR. GUEST: Well --

11 MR. NUTT: I object to his explanation about what  
12 pumps did what when. He doesn't have a document in or is  
13 trying to testify --

14 THE COURT: I know Mr. Guest is not testifying. I'm  
15 not even marking it. I mark things that I think are pertinent  
16 to my ultimate findings. I'm not marking his comments.

17 MR. GUEST: Let's at least identify the document,  
18 which is 241.

19 [Plaintiff Exhibit 241 marked for identification].

20 MR. GUEST: May I approach the witness?

21 THE COURT: You may.

22 BY MR. GUEST:

23 Q. What is that?

24 A. This is, basically, a graph of the water level in the North  
25 New River Canal near South Bay.

31

1 I'm sorry. This is actually the Hillsboro Canal that  
2 looks exactly the same as the one for the North New River.

3 Q. What is that thing? Can you tell us specifically what it  
4 is?

5 A. Basically, it's a record of gauge height, the water level  
6 versus time.

7 MR. THOMPSON: Your Honor, can we have a copy of this,  
8 please, so we can follow along with the witness?

9 MR. GUEST: We only have one copy.

10 THE WITNESS: You can take it. I think I'm familiar  
11 enough to talk about it.

12 MR. NUTT: We have a hearsay objection and he is  
13 publishing the document and reading from it.

14 MR. GUEST: He hasn't stated what the contents are,  
15 which I think is the objection to that.

16 THE COURT: Please proceed.

17 BY MR. GUEST:

18 Q. So, specifically, where does this document come from?

19 A. It comes from the USGS website, the United States  
20 Geological Survey.

21 Q. Is it an official report of the United States Government?

22 A. Yes, it is.

23 Q. And you found it online?

24 A. Yes.

25 Q. When did you find it online? What time did you find it

1 online?

2 A. Maybe early in the morning, late last night. I don't  
3 remember exactly the time.

4 MR. GUEST: I think that goes to admit it as an  
5 official Government report that he got offline. I think it  
6 comes in under the exception, 803.

7 THE COURT: I think there is a more fundamental  
8 objection which is I don't think it was on the exhibit list. I  
9 suppose you could bring it in if it was rebuttal of something  
10 that was unexpected that you didn't have a chance to disclose  
11 in the witness and exhibit list.

12 MR. GUEST: What we're seeking to use it for is simply  
13 to show in the rebuttal the existence -- that the color of the  
14 water at the intakes is related to a backpumping event which  
15 took place during the defendants' case.

16 We can't really put it on the list if it took place  
17 during the defendants' case.

18 THE COURT: Oh, I see. It's showing data of an event  
19 that occurred during the defendants' case.

20 MR. GUEST: In fact, I don't actually remember the  
21 date.

22 BY MR. GUEST:

23 Q. What are the dates shown on that page?

24 A. I believe the dates start around February 4th and end  
25 around February 9th, about a two and a half foot drawdown.

1 MR. NUTT: The issue, though, of rebuttal, he came up  
2 to rebut some of what Mr. MacVicar said. The testimony about  
3 color of the water is relating to backpumping or relating to  
4 Lake Okeechobee, other events, was all testimony that was in  
5 the plaintiffs' part of the case.

6 I think the Court might recall we never rebutted that.  
7 We never brought anything up about it. We relied on the  
8 plaintiffs' initial representation.

9 You didn't hear any District witness or defense  
10 witness say anything about the color. This is so far outside  
11 any scope of rebuttal. It's simply not. It's bolstering.  
12 It's adding to evidence. It's new evidence. We don't have the  
13 ability now to go back and look at the events, compare any of  
14 the history of this.

15 We weren't monitoring that event so we could be  
16 prepared to deal with anything pointing to that event. You  
17 know, this idea that this is a new event, there has been  
18 backpumping in the past. They have talked about it. It's just

19 simply bolstering additional new evidence.  
20 MR. GUEST: I really am just trying to connect the  
21 color to the chloramine. May I do that? That's the issue.  
22 All we're talking here is about chloramines.  
23 THE COURT: You are trying to get the document into  
24 evidence.  
25 MR. GUEST: That's right. I'm sorry. That's what the

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1 relevance is.  
2 So, the foundation for this is that -- well, I don't  
3 want to testify for the witness. Can I show you -- I'm sorry.  
4 I'm lost here.  
5 Are we working on hearsay or are we working on  
6 relevance?  
7 THE COURT: We're working on this is well beyond the  
8 scope of any rebuttal.  
9 MR. GUEST: What this is showing is chloramine is a  
10 really toxic compound when you have highly organic-laden water.  
11 THE COURT: This exhibit goes to that issue?  
12 MR. GUEST: Yeah. It's backpumped water. What he has  
13 got, he has looked at the water and what he would testify to is  
14 there is a connection between these two things he, himself,  
15 saw.  
16 THE COURT: Why don't I hear his testimony so I can  
17 gauge whether or not the exhibit is related to that point?  
18 BY MR. GUEST:  
19 Q. Okay.  
20 You had an opportunity to look at the intake water  
21 going into the three plants?  
22 A. Yes, I did.  
23 Q. What did it look like?  
24 A. The water at South Bay plant was very heavily organic-laden  
25 and colored and less so to the Belle Glade and Pahokee.

35

1 Q. And which one is closer? Which of those three is closest?  
2 A. South Bay is closest to the S-2.  
3 Q. Is there any relationship between color and the impact of  
4 chloramines?  
5 A. Yes.  
6 Q. What is the relationship?  
7 A. Color is, basically, a representation of organic compounds.  
8 These are the precursors to disinfection by-products that are  
9 formed with disinfection with chloramines.  
10 Q. Does that mean if you have highly colored water that you

11 treat with chloramines that it has more or less toxic  
12 disinfectant by-products in there?  
13 MR. NUTT: Objection. Leading.  
14 MR. BURGESS: Leading.  
15 THE COURT: Overruled.  
16 A. Yes, it would have a tendency to form disinfection  
17 by-products in higher concentrations.  
18 Q. Do you know whether the practice of treatment plants when  
19 they get highly colored water to change the chemical mixes?  
20 A. If they know an organic pulse is coming, they would step up  
21 the disinfectant, in this case chloramines.  
22 Q. What effect does that have?  
23 A. You are adding more reactants, both organics and the  
24 chloramines, so you get all the more disinfectant products.  
25 MR. GUEST: That's where we're going. That's why it's

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1 in the scope of rebuttal, because the testimony of Mr. Brooks  
2 was that we have got this whole problem solved.  
3 MR. THOMPSON: Your Honor, that's not correct.  
4 Furthermore, that doesn't relate to this exhibit that he wants  
5 to proffer into evidence in any way. The witness is talking  
6 generally about the relationship between color and chloramines.  
7 Mr. Guest is trying to use this exhibit to create an inference  
8 as to a causal connection between backpumping, which is clearly  
9 what he is trying to do with this exhibit. Otherwise, there is  
10 no reason for this exhibit. It has nothing to do with the  
11 witness' testimony with regard to chloramines. Therefore, we  
12 should not admit the exhibit.  
13 MR. GUEST: What it shows actually is -- the substance  
14 of Mr. Brooks' testimony is "Backpumping doesn't make any  
15 difference now in terms of public safety in the cities  
16 because now we're using chloramines."  
17 MR. THOMPSON: That's not correct.  
18 MR. GUEST: That's the only relevance of this  
19 testimony. If it's not dealing with backpumping. What we're  
20 showing, now we have a backpumping event, very, very highly  
21 colored water, a huge flood of chloramine, very highly colored  
22 and chloramine is in high use and toxic by-products.  
23 MR. NUTT: Much more testimony than even the witness  
24 gave. We move to strike his testimony.  
25 THE COURT: Motion denied. Objection overruled.

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1 The document admitted. What is the exhibit number.  
2 MR. GUEST: Who has the exhibit?

3 MR. NUTT: They have labeled it Plaintiffs' 241.  
4 MR. GUEST: I believe one of you all have it. I  
5 believe it's right there.  
6 MS. RUDOLPH: Again, Your Honor, we would request a  
7 copy of that exhibit.  
8 THE COURT: Mr. Guest, do you want to go into my  
9 office and make a copy please?  
10 MR. GUEST: We'll just make copies at our next break.  
11 MR. NUTT: We can do it on a break, Your Honor, as  
12 long as we can go back and forth with it.  
13 THE COURT: All right.  
14 MR. GUEST: May I have a moment?  
15 THE COURT: Yes.  
16 BY MR. GUEST:  
17 Q. Based on what you saw, the treatment processes that you  
18 understood, that you witnessed at those plants, would you as a  
19 scientist feel comfortable and safe in consuming that water?  
20 A. No.  
21 MR. GUEST: No further questions.  
22 MR. NUTT: I apologize, Your Honor, but we would  
23 request that break.  
24 THE COURT: When do you want to resume?  
25 MR. NUTT: 230.

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1 MR. GUEST: We have another witness here.  
2 MR. NUTT: We, obviously, can't do two at one time.  
3 We would request the break and we'll try to move as rapidly as  
4 we can.  
5 MR. GUEST: Our witness, of course, is -- we'll work  
6 with them. I have worked with Andy with some success in  
7 explaining what happened.  
8 THE COURT: If you are ready to start before 2:30,  
9 please let us know. I would like to stop today at around 4:30.  
10 Have a good break.  
11 [There was a short recess at 11:30 a.m.]  
12 THE COURT: Please be seated.  
13 MR. NUTT: We're all set. Thank you, Your Honor.  
14 CROSS EXAMINATION

• • • • •

43

25 Q. And are you aware the cities are changing to an RO plant?

- 1 A. Cities?
- 2 Q. Reverse osmosis plant. The cities are changing to a plant?
- 3 A. Which cities?
- 4 Q. South Bay, Pahokee, Belle Glade.
- 5 A. They are changing to an RO plant?
- 6 Q. Are you agreeing?
- 7 A. I -- changing when?
- 8 Q. It has been approved. They are starting construction.
- 9 A. And is it built?
- 10 Q. No, that -- I am saying they are beginning construction.
- 11 A. I am aware of the existence of a proposed plant in Palm
- 12 Beach County.
- 13 Q. And they are going to transfer the water source to
- 14 groundwater?
- 15 A. That is the proposal yes.
- 16 Q. Okay. I want to go to chart 241.
- 17 MR. NUTT: Excuse me one second, Your Honor.
- 18 I'm sorry Your Honor.
- 19 BY MR. NUTT:
- 20 Q. We have 241. Did you get a copy of it?
- 21 A. I don't have a copy of 241.
- 22 MR. NUTT: Do you have a copy of 241?
- 23 MS. REIMER: (Handing to the witness.)
- 24 BY MR. NUTT:
- 25 Q. Which -- where is this water level taken?

- 1 A. This water level is taken in Hillsboro Canal.
- 2 Q. Do you know where?
- 3 A. Just a little bit downstream, if you will, of the
- 4 confluence with the North New River Canal.
- 5 Q. And that's at structure 351?
- 6 A. Yes.
- 7 Q. Do you know where that is if we had the map?
- 8 A. Yes, the confluence of the North New River and the
- 9 Hillsboro Canal.
- 10 Q. Do you know where that is in approximation to the S-2 pump
- 11 station?
- 12 A. It's right next-door.
- 13 Q. This says levels, this shows levels of the canal.
- 14 A. Correct.
- 15 Q. Okay.
- 16 Do you know what data unit is used on this graph?
- 17 A. Well, the data are in feet.
- 18 Q. Okay.

19 And do you know if it's a daily mean or is this a peak  
20 in the day or low point in the day?  
21 A. These are actually the daily means, I believe.  
22 Q. Which is an average for that day?  
23 A. Correct.  
24 Q. You can't tell from this chart what the high water level in  
25 the canal was on any particular day?

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1 A. To exact precision, no, but to a realistic estimate, yes.  
2 Q. You can't tell whether -- you can't tell what the peak, I  
3 guess -- do you know what day the highest level is reflected in  
4 this occurred?  
5 A. It would appear to be February the 4th, perhaps, February  
6 the 3rd.  
7 Q. You don't know how high the canal reached on that day, do  
8 you?  
9 A. I would estimate, based on what I see here, that it reached  
10 somewhere around 12.2.  
11 Q. The peak of this, the highest point, the highest daily mean  
12 was 12.2. Isn't that correct?  
13 A. Correct.  
14 Q. You are estimating the mean was the peak?  
15 A. I am, basically, accounting for normal fluctuation which we  
16 see, January 14th through January 28th, where we have  
17 relatively quiescent conditions. That sort of gives the plus  
18 or minus of the flows. I used that to, basically, bracket my  
19 estimate of the mean.  
20 Q. Sorry about that.  
21 The very next day it was almost a foot lower?  
22 A. Yes.  
23 Q. So, within a day it changed a foot?  
24 A. There are ways of making the stage lower by a foot.  
25 Q. The day before it was a foot lower, too?

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1 A. I'm sorry. The day before? Which days are we talking  
2 about now?  
3 Q. The peak. You pointed that out, February 4th.  
4 A. The day before the peak it was a foot lower, yes.  
5 Q. Or over a foot lower?  
6 A. Yes.  
7 Q. A foot and a half lower even?  
8 A. Yes.  
9 Q. So, it --  
10 A. A little less than that, but, yes.



11 Q. In there period of time it went up a foot and that's just  
12 the mean. Isn't that correct?  
13 A. That's correct.  
14 Q. So, in a day it easily fluctuates a foot?  
15 A. Well, actually, if we start looking at that data very  
16 carefully, the data goes from -- as I read this graph, February  
17 4th is the vertical line. February 3rd, I assume, is the tick  
18 immediately to the left of that line and February 5th is the  
19 next tick. If you see the little ticks I'm talking about.  
20 Basically, it takes two days to raise that foot and a  
21 half, not one day.  
22 Q. How about the next one, from the 5th to the 6th?  
23 A. From the 5th to the 6th it drops from, let's see, about,  
24 what, seven tenths of a foot.  
25 Q. And you said two ticks for a foot and a half, but it's one

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1 tick for the foot, since we're talking ticks?  
2 A. I'm sorry. The ticks I am taking about are the horizontal  
3 ticks on the data axis. I am trying to use those to delineate  
4 individual dates.  
5 Q. So, within a day it can change a foot or within this one  
6 narrow time period within a day it changed at least a foot?  
7 A. I don't see any given day it changed, changed a foot except  
8 for, perhaps, during backpumping. On the upswing, it raises  
9 about three quarters of a foot per day.  
10 Q. Where does it show on this graph that they were  
11 backpumping?  
12 A. I would say from the 5th of February to about the 9th of  
13 February.  
14 Q. And you can tell that from this graph?  
15 A. That combined with the graph at the North New River Canal.  
16 Q. Which is the graph of the North New River Canal?  
17 A. The same website. It's the same. It looks very similar to  
18 this graph.  
19 Again, it's a two and a half foot swing. The  
20 District's pumps are about the only thing that could  
21 potentially charge that other than something that would be  
22 ridiculous, like a meteor striking the area.  
23 Q. You can't tell -- you are saying the drop in elevation of a  
24 canal had to be due to pumping?  
25 A. Yes.

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1 Q. You can't tell what pumps were pumped to reduce the  
2 elevation?

3 A. The only pump of that substance in the area that would do  
4 that would be the S-2 structure.  
5 Q. You could pump it down from the south?  
6 A. That would lower it with that type of fast signal.  
7 Q. Have you done any analysis to determine that?  
8 A. I worked with hydraulics and, basically, if this were the  
9 tail water effect and you were pumping at the south, the effect  
10 at the end, which would be this data we're looking at, would be  
11 very gradual.  
12 The fact the data is very quick indicates that it's  
13 very near the pump that's causing the disturbance.  
14 Q. Your period of time opinion on these changes of levels it  
15 had to be backpumping of the northern pumps into Lake  
16 Okeechobee, from which date range did you tell me again?  
17 A. On this graph, it would appear to be -- and, again, I  
18 haven't counted all the ticks -- somewhere between about the  
19 5th to about the 9th.  
20 Q. Where is the 9th on this?  
21 A. The 9th would seem to be the lowest point of record.  
22 Q. And it's your opinion that whole lowering of the canal up  
23 until the lowest point was due to the S-2 pumping?  
24 A. Yes.  
25 THE COURT: Isn't there an objective way of knowing if

50

1 the S-2 was pumping during that time period?  
2 MR. NUTT: We have all sorts of records. I'm trying  
3 to point out his analysis so we can later show you that the  
4 record -- it's wrong.  
5 MR. GUEST: May I be heard on this one? We had a  
6 battle underway about fax notifications to the cities for their  
7 water.  
8 I think that, you know, if we could get our hands on  
9 those, that would probably put it to rest. We wouldn't have to  
10 have this argument here if that is the question, if that's  
11 really the debate here, if there is an honest debate whether  
12 there is backpumping.  
13 THE COURT: I'm not sure I said understanding what the  
14 debate is. He has reached a conclusion, an opinion that what  
15 he is seeing, the numbers he is seeing is a result of S-2  
16 pumping going on.  
17 You know whether that's true or not. You would be the  
18 ones operating the pumps.  
19 MR. NUTT: There is a number of reasons to ask  
20 questions on cross and one of them is to deal with his  
21 conclusions, that is to show, essentially, his conclusions are

22 faulty. His analysis is --

23 THE COURT: Isn't the easiest way to show him your  
24 data and saying "You were wrong"?

25 MR. NUTT: We have been planning this for two hours.

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1 I don't have my data. I do have some. I don't have a  
2 foundation to bring it in. Unlike bringing things in on cross,  
3 I don't have the basis to bring my data here without a witness.

4 This gentleman, I asked him if he did any analysis of  
5 the actual data at the time of DBHydro and at the time of other  
6 records. Mr. Guest talks about not having information. No one  
7 has asked. I advised them we were backpumping last week that  
8 this incident occurred. I told them fully about it over a week  
9 ago.

10 They didn't ask for any of the data. They come in  
11 with a chart that doesn't support what he is saying. I will  
12 show that in surrebuttal the best I can. I would rather not go  
13 through that process, but that's what I'm left with.

14 THE COURT: All right.

15 MR. NUTT: We can stipulate the backpumping stopped on  
16 the 5th and 6th and it only went with one pump. We can do all  
17 that.

18 MR. GUEST: Your Honor, if we're just worrying about  
19 what kind of backpumping it was, we can have a look at the  
20 records and we can work a deal. We need the raw records and we  
21 can work it out.

22 MR. NUTT: The elevations were wrong, too. Mr. Guest  
23 is going to argue in closing 12.2 feet was the highest and we  
24 started backpumping, and these elevations aren't true and they  
25 aren't the triggering events for backpumping. I needed to lock

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1 that in.

2 I did verify the mean is not the peak or the low point  
3 within that day.

4 BY MR. NUTT:

5 Q. Correct?

6 A. You did suggest that, yes.

7 MR. NUTT: If we could have a second to talk to the  
8 plaintiffs?

9 MR. THOMPSON: Your Honor, these are documents we  
10 literally just received at the time of this witness beginning  
11 his testimony, which is why it's a work in process, because of  
12 this information we received earlier today.

13 THE COURT: That's fine.

14 MR. NUTT: I received this, frankly, after you came

15 out.

16 I'm going to have to bring in a witness, Your Honor,  
17 so -- we'll make this the next exhibit. What number am I?

18 I don't have any more questions, Your Honor.

19 MR. GUEST: Your Honor, I don't think we need another  
20 witness to figure out whether we have backpumped or not.

21 We have got a document on here. We seem to be having  
22 the world's tiniest dispute or not. Did they really stop when  
23 they did? I don't think it's that important at this point. We  
24 need to just work with each other.

25 We know the S-2 was on one night. We need to be

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1 assured it's the only day. We can do that. We don't need  
2 somebody to come into this courtroom just for that. We can get  
3 the fax notification list. If there is nothing else there, it  
4 will be fine.

5 MR. THOMPSON: Your Honor, it's an issue of  
6 credibility as to the witness. He made very definite  
7 statements about conclusions HE CAN draw from the report. We  
8 should have the opportunity to show those conclusions were not  
9 factually based.

10 THE COURT: As I said, you will have that opportunity.

11 MR. THOMPSON: Thank you.

12 MR. NUTT: He is responding to the point about we can  
13 stipulate to this. I hope we can. I'll try not to bring  
14 another witness. I asked if we could stipulate to the start  
15 and top. He said "No." We're not complete yet because we have  
16 been running around on this issue.

17 THE COURT: I understand.

18 REDIRECT EXAMINATION

19 BY MR. GUEST:

20 Q. Just a couple of follow-up things.

21 Let's just assume that we only backpump for about one  
22 full day, 24 hours, on one of the four pumps at pumping  
23 station, S-2. Let's have that as a hypothetical.

24 Do you have an opinion on whether you would see highly  
25 colored water at the intake from, to the City of South Bay from

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1 that?

2 MR. THOMPSON: Objection. Scope. It's outside the  
3 direct and cross.

4 MR. GUEST: The question raised on cross was whether  
5 or not at what basis he has to think that backpumping would  
6 cause that.

7 THE COURT: Overruled.  
8 A. Could you ask the question again, please?  
9 Q. The question was that if you had 24 hours' pumping from one  
10 of the nine big pumps at 900 CFS pump, one of those for 24  
11 hours at pumping station S-2, would you expect about a week or  
12 10 days later to still see or to see highly colored water  
13 resulting from the backpumping at the intake station at South  
14 Bay?  
15 A. That would not surprise me at all. Plumes typically tend  
16 to last quite a while.  
17 Q. Did you -- was there a comparison that you made between the  
18 color of the water at the, at the three different intake  
19 points?  
20 A. Yes, there was.  
21 Q. And was there any inference concerning backpumping that you  
22 could make about those three?  
23 A. There certainly was an indicator at South Bay that the  
24 water quality was significantly worse than it was at Belle  
25 Glade and Pahokee.

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1 Q. What is their respective positions with regard to --  
2 A. The closest plant to S-2 is South Bay.  
3 Q. Was it substantially different than --  
4 A. Yes, noticeably different.  
5 Q. Different than -- I want to clarify for the record here. I  
6 know you knew what I was thinking.  
7 Was it substantially different than the water plants  
8 that were much farther away?  
9 A. Yes, a lot more organic matter in the water.  
10 Q. More organic water than the one at South Bay?  
11 A. Yes.  
12 Q. Do you have an opinion on whether it's reasonable to  
13 attribute this difference to anything other than backpumping?  
14 A. I have no reason to believe it's anything other than  
15 backpumping.