

HolmdeI

1984

10/24

Transcript of Proceedings: Testimony of Michael Walsh

pgs. 69

blue pi. — expert witness

ML000106 S

Russ

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - OCEAN/MONMOUTH COUNTY
DOCKET NO. L-015209-84-P.W.

REAL ESTATE EQUITIES,)
INC, ETC.)
)
Plaintiffs,)
)
vs.)
)
HOLMDEL TOWNSHIP,)
ETC.,)
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS

TESTIMONY OF
MICHAEL P. WALSH

RECEIVED
OCT 24 1984
CLERK OF SUPERIOR COURT

OCEAN COUNTY COURTHOUSE
TOMS RIVER, NEW JERSEY
OCTOBER 24, 1984

B E F O R E:

HONORABLE EUGENE D. SERPENTELLI, J. S. C.

APPEARANCES:

CARL BISGAIER, ESQUIRE,
Attorney for Real Estate Equities, Inc.

DOUGLAS K. WOLFSON, ESQUIRE,
Attorney for N. B. Hampton

J. PETER SOKOL, ESQUIRE,
Attorney for Gideon Adler

RONALD L. REISNER, ESQUIRE,
Attorney for Twp. of Holmdel

REPORTED BY:
GLORIA MATHEY, C.S.R.

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
MICHAEL P. WALSH				
By Mr. Reisner	3			
By Mr. Bisgaier		36		
By Mr. Wolfson		60		
By Mr. Sokol		65		

A F T E R N O O N S E S S I O N

1
2
3 THE COURT: All right, Mr. Reisner.

4 MR. REISNER: At this time I'd call
5 Michael Walsh to the witness stand, your Honor.
6

7 M I C H A E L P . W A L S H, having been duly sworn,
8 testified as follows:

9 THE COURT: The middle initial P. is for
10 patience, having sat here now for a day and a
11 half.

12 DIRECT EXAMINATION BY MR. REISNER:

13 Q Mr. Walsh, by whom are you employed?

14 A West Keansburg Water Company.

15 Q And how long have you been employed by
16 West Keansburg Water Company?

17 A Four years.

18 Q And in what capacity are you presently
19 employed?

20 A Executive vice-president and general manager.

21 Q And have you been employed in that
22 capacity since joining the company?

23 A Yes.

24 Q Could you briefly outline what your duties
25 are in that capacity for the water company?

1 A Provide the day-to-day management for the
2 utility, as far as management of revenues and daily
3 operations, including customer services and
4 construction.

5 Q As part of your duties over the past four
6 years, have you been called upon as part of your work
7 duties to engage in projections of water service for
8 your customer area?

9 A Yes.

10 Q And have you testified before the Board of
11 Public Utilities concerning those projections in the
12 past?

13 A Yes.

14 Q And do you also have professional
15 licenses?

16 A Yes.

17 Q What are those professional licenses?

18 A I'm a licensed professional engineer in the
19 States of New Jersey and Georgia, and a licensed
20 professional planner in the State of New Jersey.

21 Q And prior to being employed at West
22 Keansburg, what sort of work experience did you have?

23 A For the immediate seven years prior to joining
24 West Keansburg, I worked for a consultant engineering
25 firm, primarily in the work of environmental

1 engineering, which included water and waste water.

2 Q And as part of that work experience, also,
3 did you have occasion to engage in water supply
4 projections?

5 A Yes.

6 Q In West Keansburg, what type of utility is
7 West Keansburg?

8 A It is an investor-owned water utility.

9 Q Of what class?

10 A Class A.

11 Q Could you go to the growth area map and
12 indicate for the Court the areas which your company
13 provides service to in the Township of Holmdel?

14 A Generally speaking, the franchise area of West
15 Keansburg would be north of a line along Van Brackle
16 Road and Crawfords Corner Everett Road, between the
17 Holmdel Township borders, and extended north to Route
18 36, including all of Hazlet Township.

19 Q And are you familiar in the course of your
20 experience in the water company with the New Jersey
21 Water Supply Management Act?

22 A Yes.

23 Q And what is the purpose of that act?

24 A I believe the main purpose of that act was
25 coupled with a bond issuance after the 1980 drought

1 situation. However, I think that the -- another aspect
2 of it is that it redefines the state authority to
3 control the aquifers.

4 Q Okay. What is your understanding of the
5 term diversion rates?

6 MR. WOLFSON: Your Honor, if I might, are
7 we still in the process of qualifying Mr. Walsh
8 as an expert, or are we in the process of
9 offering testimony relevant to the fair share
10 and regional issues that are the subject of this
11 trial?

12 MR. REISNER: At this point, what I would
13 like to do, as part of his qualifications,
14 indicate that he has personal knowledge and
15 familiarity with the diversion -- the legal
16 requirement of the diversion area rights
17 process in order to qualify that he has
18 familiarity with those concepts and what they
19 are.

20 THE COURT: Still in the qualification
21 stage. All right.

22 THE WITNESS: May I have the question,
23 please?

24 Q Sure. I believe I asked you what your
25 familiarity and understanding was of the diversionary

1 permit process under the law as it now stands in New
2 Jersey.

3 A My understanding of the process is that it is
4 one by which either an individual or a company applies
5 to the state for permission to withdraw water from the
6 aquifer system beneath the state; that that system
7 requires at present, anyone wishing to divert a hundred
8 thousand gallons or more on a daily basis from that
9 aquifer, apply for permission to do so.

10 I further understand that that process or that
11 limit of a hundred thousand gallons is being
12 considered, or it is being considered to lower that to
13 10,000 gallons; that the familiarity that I have with
14 it is that, in West Keansburg we have permits for
15 diversion granted by the State of New Jersey, and
16 again, the 1981 act puts some teeth into their
17 authority to control that withdrawal.

18 Q And during the time that you've been
19 general manager, have you made such an application to
20 the State Department for additional diversion rights?

21 A Yes.

22 Q And you participated in that process?

23 A Yes.

24 Q And that included also a determination of
25 projections of water supply?

1 A Yes, it did.

2 MR. REISNER: Okay.

3 At this time, your Honor, I would offer
4 Mr. Walsh as an expert with respect to the
5 projections of water supply, based on his
6 qualifications, experience and training.

7 THE COURT: Any voir dire?

8 MR. WOLFSON: Your Honor, I have no voir
9 dire. I would, for the record, object at this
10 point in the trial from having testimony from
11 this or any other witness, with all due respect
12 to Mr. Walsh and his qualifications.

13 I don't see how the availability or
14 nonavailability of how much water is a component
15 of what the fair share number is. It seems to
16 me that it is patently clear that it is a
17 compliance issue. It may be a building permit
18 issue. It may be a builder's remedy issue, but
19 it's not an issue regarding regional fair share,
20 and I say this without any disrespect to Mr.
21 Walsh or, you know, his qualifications or any
22 knowledge.

23 It just seems to me that, under the
24 circumstances, neither Mr. Kasler's formula nor
25 Mr. Queale's formula nor Mr. Moskowitz's nor Mr.

1 Hintz' formula, contained a factor or a
2 component that related to available water. And
3 Mr. Kasler, in his methodology, contained a
4 component that said if you have more water,
5 your fair share number is higher, and if you
6 have less, it's lower.

7 Subject to our investigation of those
8 issues and cross examination, I would be less
9 inclined to Mr. Walsh's presence here today,
10 notwithstanding the fact that we made him wait
11 so long to get on the stand. It just seems to
12 me that, since the town's own experts have not
13 used that in any -- as any component of any of
14 their methodology, we are embarking in an area
15 that just has no relevance to, no bearing upon,
16 whether Mr. Kasler's number's accepted or Mr.
17 Hintz's or Mr. Moskowitz's.

18 MR. REISNER: If I may respond, your
19 Honor.

20 MR. BISGAIER: Your Honor, before Mr.
21 Reisner responds, I'd like to also concur in the
22 objections stated by Mr. Wolfson. Your Honor
23 may recall that I raised this objection
24 substantially before Mr. Walsh's presence in
25 court. I never understood him as -- to be

1 offered as a witness on fair share prior to the
2 fair share hearing. The so-called reports that
3 have been submitted in his behalf are a couple
4 of letters that, one that he wrote to Mr.
5 Gagliano, and one that he wrote to me. They
6 didn't read in the context of fair share. There
7 was no indication from any of the experts for
8 the defendant on fair share that this was a
9 factor which we may get a fair share number as
10 opposed to mitigating, you know, on the issue of
11 compliance. We have not taken Mr. Walsh's
12 deposition because we understood that this
13 hearing was limited to fair share, and we have
14 not presented or prepared witnesses on this
15 issue to rebut whatever it is that Mr. Walsh may
16 say.

17 THE COURT: Go ahead.

18 MR. REISNER: Your Honor, first of all, it
19 is abundantly clear if you look at Mr. Queale's
20 report, that one of the factors that he did
21 identify in determining fair share allocation
22 was the availability of water supply, and that's
23 contained in his report. I don't have the page
24 citation, but it was in the introductory part of
25 his testimony.

1 The second is, I recall specifically when
2 we had the pretrial in this matter that Mr.
3 Walsh was named as an expert, he's contained in
4 the pretrial order, and back at the pretrial
5 stage of this proceeding it was made abundantly
6 clear to counsel at that time that Mr. Walsh
7 would at least be attempted to be called as a
8 witness relating to the allocation process of
9 the fair share.

10 And so that all of those objections, I
11 think, were well-covered long before we got here
12 today.

13 The legal basis that I rely upon in
14 offering the witness at this stage, and I don't
15 disagree with counsel that he may be relevant to
16 other stages of the trial as well, both as to
17 builder's remedy and compliance, but it's the
18 Township's position that under page 350 of the
19 Mount Laurel II decision, that what the Court is
20 engaged in at this process, at this stage of
21 process, as I understand it, is a fair share
22 allocation.

23 Now, the share, I submit, is what's being
24 consumed by the bulk of this trial, and that is
25 the formula that produces the share that is the

1 number. And what I submit that this evidence
2 is relevant to at this stage is at that
3 particular page of the decision.

4 The Court talks about allocating for
5 suitability reasons, that particular share to a
6 particular municipality within a region. And
7 the reason that we focused on Mr. Walsh, as you
8 can tell from the introductory testimony, that
9 if you look at the line that he described on the
10 map as being his service area within Holmdel, it
11 almost exactly, but not precisely, covers the
12 growth area, and the position as to why this
13 testimony - and I don't anticipate it's going to
14 be lengthy testimony, as your Honor can see from
15 the letters that were exchanged - is simply
16 that, when we tried to determine what the fair
17 share allocation is - there's three words there,
18 fair, share, and allocation - that the
19 methodology that we've been assessing so far
20 in this particular phase of the trial relates to
21 the share.

22 What I submit on behalf of the Township
23 is, at this point in time, that this witness
24 goes to, A, what's fair, and B, whether or not
25 it can be properly allocated under the

1 circumstances, whatever the share is. And as I
2 understand the Court's opinion, that's evidence
3 that the Court should consider in determining
4 the number itself, and I believe Mr. Queale has
5 that in his report and testified that that was
6 one of the concerns in developing a plan,
7 development for the plan, that he should
8 consider.

9 I'm not saying it's not relevant for other
10 purposes. I agree with counsel, that it may
11 very well be that the testimony is relevant on
12 builder's remedy and compliance. But our
13 position is, on the record, that when you have
14 the situation, never mind the sewer problems and
15 traffic problems, that when you have the
16 situation where uniquely, as it is, that this
17 particular water company services the growth
18 area almost exclusively within the town, that
19 it's relevant for the Court to consider in
20 allocating whatever number is produced by the
21 methodology, and I believe I tried to express
22 that, maybe not as articulately with the page
23 reference at the pretrial, but Mr. Walsh was
24 listed as an expert at that time, and I
25 indicated to the Court exactly at that time that

1 that was the position that I was advancing and
2 that's the position that we take.

3 MR. WOLFSON: Your Honor, just for the
4 record, there is nothing on page 350 that
5 remotely relates to the issues raised by Mr.
6 Reisner. That discussion on page 350 relates
7 to Judge Furman's allocation in the Urban League
8 case on the basis of vacant available land, and
9 the Court simply said that you can't divide it
10 equally just because they all have enough vacant
11 available land. It has nothing to do with
12 whether there's water or sewer or anything else,
13 for that matter.

14 It just seems to me, your Honor, the Court
15 is being asked to listen to testimony that says,
16 assumingly, there's not enough water to go
17 around, and then is being asked in some magical
18 fashion to knock some number off the fair share
19 number. Mr. Kasler didn't offer any basis upon
20 which the Court could do that. And contrary to
21 Mr. Reisner's interpretation of what Mr. Queale
22 did, Mr. Queale didn't do that either.

23 This Court has no basis upon which to take
24 the testimony that I'm assuming will be offered
25 by Mr. Walsh and somehow factor it into a

1 formula. Mr. Kasler offered no suggestion;
2 certainly Mr. Mosko -- neither Mr. Moskowitz
3 nor Mr. Hintz offered the Court any such
4 suggestion. How would that occur? There's no
5 fundamentally underlying rationale upon which
6 this Court could act, assuming the testimony is
7 as I assume it will be. I just don't see where
8 we're going with this, and I think we've
9 exhausted more than our fair share of the
10 Court's time in this trial, and I think we ought
11 to call this matter to a close.

12 MR. SOKOL: Judge, if I might just burden
13 the record a little more. I concur with my
14 fellow plaintiffs in that I think that if your
15 Honor listens to testimony concerning the water,
16 so-called alleged problem, with regard to the
17 service area that Mr. Walsh services, you're
18 going to have to listen to testimony outside of
19 his service area relating to those small
20 portions, if I can believe Mr. Reisner, that are
21 serviced by other water companies.

22 In addition, there's -- if that happened,
23 then there's nothing to prevent the defendant
24 from bringing experts in with regard to the
25 other aspects of infrastructure, including

1 traffic and sewerage.

2 It seems to me that this is well beyond
3 what the fair share trial was supposed to
4 encompass.

5 MR. BISGAIER: Just one other point, your
6 Honor. Lastly, you know, I think a precedent
7 is being set here which would enable defendants
8 in every case to raise traffic and sewer and
9 water and fire and police protection and every
10 aspect of the municipal infrastructure in the
11 fair share hearing as opposed to in the
12 compliance hearing. And, you know, I believe
13 your Honor has previously, if I recall, I think
14 this type of an issue came up in AMG, and it was
15 indicated that those were issues that were to be
16 looked at in a compliance phase.

17 MR. REISNER: The only thing I'd like to
18 add in response, your Honor, is just one point,
19 and that is, that Mr. Wolfson's reading of the
20 Mount Laurel opinion is too narrow. What I was
21 referring to is the term in connection with
22 Judge Furman's opinion of simply allocating the
23 number uniformly to the towns, which is the
24 sentence in the opinion which says that the
25 issue in these cases is that the overall group

1 of factors that must be considered all subsumed
2 the word suitability. Those factors have been
3 described and need not be repeated here.

4 What I'm saying to your Honor is that, I'm
5 not opening Pandora's box in a situation where
6 we have here, as the record demonstrates, that
7 this particular water company, as testified to
8 by the witness, covers primarily the growth
9 area, and what I'm saying is that the allocation
10 must be suitable, and that the water supply
11 to -- just as it turns out, that the service
12 area is primarily, except for a small portion if
13 you look at the map, consumed by this particular
14 witness's employer, and my position simply is
15 that under these circumstances, you would not be
16 opening Pandora's box because I, frankly, can't
17 conceive of another town where this would
18 happen. So I don't think you have to worry
19 about that.

20 But I do submit that when the Supreme
21 Court is talking about determining the
22 suitability of the allocation process, that you
23 should consider this evidence. And I don't
24 necessarily agree that it has to be quantified.
25 Everybody wants to push us into the numbers

1 game, although the Court is required to do that,
2 obviously, at some point. I don't necessarily
3 think that under the suitability factor, that it
4 necessarily has to be quantified by another
5 witness in the case. I'm simply saying that it
6 is presented in the Mount Laurel II opinion. It
7 is part of the allocation process, and that it
8 is relevant as to what Holmdel's fair share is
9 based on that part of the opinion.

10 When we get to the builder's remedy, as I
11 said, that also may be a factor when we get to
12 that phase of the trial as well. But I submit
13 that we are not opening Pandora's box, mainly
14 because of the unique circumstances of this
15 particular situation.

16 THE COURT: Just give me an offer of
17 proof. What is he going to tell us?

18 MR. REISNER: The offer of proof is best
19 stated in his October 10th, 1984 letter, which I
20 believe at the pretrial procedure we were
21 submitting experts' reports to the Court so that
22 you would have an opportunity to read them in
23 advance, and that simply is going to be the sum
24 and substance of his testimony.

25 Primarily, what is contained -- in fact, I

1 really don't anticipate anything beyond what is
2 contained in the October 10, 1984 letter from
3 the witness to Mr. Bisgaier. There was an
4 earlier letter, but primarily, what the focus of
5 his testimony would be, would be the sum and
6 substance of the letter in response to Mr.
7 Bisgaier's request, that he, as I understood
8 it -- that there be reserved for his particular
9 client four hundred thousand gallons per day.
10 And that was -- that is what I anticipate the
11 witness will say, and if you want to mark it for
12 identification purposes only for purposes of
13 the record only, I'd be happy to do that. I
14 would like to preserve that.

15 THE COURT: Well, the sum and substance of
16 it is, and you can mark it, of course, that the
17 water simply is not there, according to Mr.
18 Walsh, to take care of Mr. Bisgaier's project,
19 and I assume that the same is true of the other
20 two --

21 MR. REISNER: That's correct.

22 THE COURT: Although it's only addressed
23 to Mr. Bisgaier.

24 MR. WOLFSON: I don't believe my client's
25 property is in the service area of this company,

1 in any event. So I don't agree that that
2 statement, just for the record, I don't agree
3 that Mr. -- I have parcels. I believe one may
4 be in and one may not be in.

5 MR. REISNER: My recollection is that
6 they're both in, to tell you the honest truth.
7 But the bottom line is, your Honor, is that what
8 the witness is prepared to offer -- to testify,
9 that under the diversionary right system which
10 he is required to follow by the Water Management
11 Act, that he can only supply X amount -- divert
12 X amount of water from the ground in a given
13 period of time. He has no control over that.
14 The Court has no control over that. The
15 Township has no control over that. The
16 plaintiffs have no control over that.

17 THE COURT: Unless he gets approval for
18 further diversion.

19 MR. REISNER: That's right. He would have
20 to go back to the state, get that kind of
21 approval. And the evidence would also indicate
22 that the last application process, which I
23 alluded to in his direct testimony, that the
24 last time that he went, he was turned down for
25 any additional diversion.

1 THE COURT: How does that differ in what I
2 was dealing with in Warren Township where we
3 had testimony - but that's because we were
4 dealing with builders' remedies there, too - in
5 Warren there was substantial testimony
6 concerning the 201 and 208 waste-water facility
7 studies. The long and short of which was
8 clearly that, at the present time there was a
9 significant doubt as to whether there was any
10 additional capacity to handle the builders'
11 remedies being sought, and that in that case
12 there was also testimony that the state would
13 not approve an expansion. And I think at page
14 70, it seems to me that the case is, or this
15 issue is, at least rather close, in which I
16 indicated that the proper procedure would be to
17 ask the master's opinion, notwithstanding the
18 best efforts of - the Township in that case,
19 in this case the water company - whether the
20 builders' projects were precluded because of the
21 unavailability of sewer capacity or the
22 inability to handle the effluent that was going
23 to be generated, in which event there would be
24 no builder's remedy, in which event, in effect,
25 the fair share number would be lower.

1 MR. REISNER: Maybe I'm looking at it,
2 because this is my first Mount Laurel II
3 case, but I see it -- and we went through this
4 at the pretrial, most respectfully, your Honor,
5 about the actual procedure back and forth, but I
6 see it as a bigger picture, and what I see
7 happening is that, if the testimony of this
8 witness as outlined in his letter of October
9 10th is accepted by the Court, then the Court
10 should take that consideration in formulating
11 the fair share, because when you come then to
12 the number that the zoning ordinance must
13 provide for, and if his testimony is believed
14 that the water can't be provided, then we're
15 going through a lot of rezoning, we're going
16 through a lot of process, we're going through
17 not only the builder's remedy, but the zoning
18 ordinance itself is going to be affected.
19 If we're going to zone for 10,000 units, and
20 there's not water enough for 3,000 units, then
21 what's the point of having an ordinance that
22 says that Holmdel can over-zone for 10,000
23 units?

24 THE COURT: Well, it should be clear that
25 no water coming out of this Court is going to

1 make you zone for 10,000 units.

2 MR. REISNER: I understand that. But
3 that's just a hypothetical as to why this
4 testimony becomes relevant at this point in
5 time, because it's our position that the fair
6 share number, whatever it is, has to be
7 realistic. And I mean, I understand the Court's
8 concern, but you have to understand our concern,
9 too, that it has, what I say, is a ripple-down
10 effect throughout the course of these
11 proceedings.

12 THE COURT: But the situation exists in
13 Holmdel and in many, many other communities.
14 I would dare say that in the majority of the
15 communities before the Court, there is neither
16 sewer nor water, in most of the cases. And what
17 I'm pressed to deal with is the issue of, first
18 of all, how one could adjust Holmdel's number
19 alone without having a regional picture, and
20 secondly, whether or not you wouldn't have to
21 expand the testimony into a whole issue of
22 where regional development of sewer and water
23 is going, what other facilities might be
24 available or unavailable, and all of those, all
25 of those issues, and then having known all of

1 that, then maybe you could make some reasonable
2 estimate of an overall reduction of the regional
3 number and then reduce everybody
4 proportionately.

5 But how -- if I take the offer of proof, I
6 guess the answer should be here that Holmdel has
7 no fair share because there's no water capacity.
8 How else could I -- how else could I reduce it?

9 MR. REISNER: I submit, your Honor, that
10 you should reduce it, and I'm not suggesting to
11 the Court that you can, on this witness or any
12 other witness, quantify the whole problem. What
13 I'm saying is, is that it's something that
14 should affect in some respect the number that
15 you establish, and if you want to say that the
16 proofs are insufficient, that's fine, and we can
17 get to that at a later date. But all I'm saying
18 at this point in time, that for to you come up
19 with some number, whatever it is, without any
20 regard to the realistic problem of how you're
21 going to continue on through this case and what
22 that number's going to be at this point in time,
23 that's why I feel this evidence is relevant.

24 THE COURT: Well, suggest to me, Mr.
25 Reisner, how - let's take Mr. Kasler's fair

1 share number - how am I going to adjust that to
2 reflect what Mr. Walsh is going to say? Give me
3 some rational basis to adjust that number.

4 MR. REISNER: I would say, your Honor,
5 that if you look at the October 10 letter and
6 accept his testimony, that the first thing that
7 happens is that probably the builder's remedy
8 starts to unravel, but as to the number itself,
9 I would say there would have to be a substantial
10 reduction, because what the witness is going to
11 say --

12 THE COURT: What's substantial?

13 MR. REISNER: Fifty percent.

14 THE COURT: Why should I do something as
15 arbitrary as that? I mean, why shouldn't it be
16 a hundred percent? If you can't do it, you
17 can't do it. I mean -- and if it's fifty, why
18 shouldn't it be seventy-five or twenty-five? In
19 terms of the builder's remedy, that clearly
20 would be unfair, because this trial was clearly
21 limited to fair share and, so, I can't consider
22 it now. There's no question later on, in terms
23 of the builder's remedy, that this is a
24 suitability issue and is appropriate in terms of
25 those proofs. I have no problem with that at

1 all.

2 Did you have something else?

3 MR. REISNER: No, sir.

4 MR. BISGAIER: Your Honor, I would just
5 like , you know, because I think the record gets
6 a little clouded here. Number one, you know,
7 throwing around terms, like, that the Court --
8 we are asking for the Court to approve
9 10,000 units of new construction in Holmdel, is
10 clearly without any foundation in this record.
11 And if anything, the Township's own planner has
12 indicated by the Township's own methodology,
13 which I presume the Township deems to be
14 a reasonable one, they will satisfy possibly a
15 three thousand unit fair share number with the
16 introduction of very few additional units that
17 otherwise would have been built.

18 THE COURT: It is the singly most
19 inaccurate report aspect of Mount Laurel II in
20 the newspaper and no one can seem to get it
21 straight. I just finished reading an article in
22 the Philadelphia Inquirer -- Inquirer? Yeah, I
23 guess that's it, Inquirer -- which related to
24 Holmdel, and indicated that Holmdel would have
25 to take 10,000 units if they take the fair share

1 estimated by the plaintiffs, and I don't know
2 how they get that information, but it has not
3 been produced in this Court and it's simply
4 incorrect and I don't know how it comes about.
5 That's why I responded to Mr. Reisner's comment.
6 But there's no way that I can deal with that.

7 MR. BISGAIER: One thing I'd like to
8 add to put this witness's testimony into the
9 context of the Township's own position. The
10 Township has already adopted an ordinance which
11 presumably the Township believes to be
12 reasonable. The Township has adopted an
13 ordinance which calls for a substantial
14 development in the growth area, in the area
15 that's serviced by the West Keansburg Water
16 Company. The Township has presented a witness
17 who said it was not only reasonable, that it was
18 not only reasonable, but that it would generate
19 between seventeen hundred and three thousand
20 low- and moderate-income units. We're hearing
21 all of that is reasonable and we're hearing fair
22 share methodologies, taking the Township's
23 methodology which generates certain numbers and
24 doesn't contain any factor whatsoever which
25 could be modified on the basis of potential

1 water resource needs, and now we're going to
2 hear a witness testify there's no water, and the
3 Court is apparently going to be thrust into the
4 darkness on how to modify a fair share number
5 because of an infrastructure problem which, by
6 the way, you know, may not exist by the time
7 this Township determines to stop litigating this
8 case.

9 MR. REISNER: Well, that's just
10 ridiculous. That's a ridiculous statement and
11 should be stricken from the record.

12 MR. BISGAIER: It's so ridiculous that the
13 witness has testified that there is a plan to
14 bring in surface water and to utilize that
15 within the near future, and, you know, by the
16 time this case completes litigation, that water
17 may be unavailable.

18 THE COURT: Well, that's speculative,
19 although things do change in the middle of
20 litigation. A la Colts Neck. But I think,
21 in any event, maybe the efficient way to
22 handle this is to permit this witness to testify
23 so that the record's preserved, with the
24 understanding from counsel for the plaintiffs
25 that if the Court intends in any respect to

1 utilize this witness's testimony with respect to
2 fair share, that we will reconvene and give
3 plaintiffs' counsel an opportunity to meet it.

4 At this posture, I find it hard to believe
5 that I will. However, I think it avoids the,
6 what I would consider, the possibility, although
7 the Appellate Division may disagree with me,
8 a necessity of remand on this issue.

9 So I'm going to permit his testimony with
10 the understanding that should the Court find it
11 relevant to fair share, that counsel for
12 plaintiffs would have the opportunity to meet
13 the issue, will have the opportunity to take
14 whatever discovery is necessary with respect to
15 the issue, and that this witness could be
16 recalled.

17 MR. REISNER: I have no objection to that
18 procedure, your Honor.

19 BY MR. REISNER:

20 Q Mr. Walsh --

21 THE COURT: And, by the way, with respect
22 to the builders' remedies aspect, to the extent
23 that this testimony is offered now, it would be
24 considered in evidence as to the builders'
25 remedies, although you're not limited to recall

1 him as as well.

2 MR. REISNER: Thank you, your Honor.

3 BY MR. REISNER:

4 Q Mr. Walsh, approximately how large is your
5 franchise area? What is your -- I mean West Keansburg.

6 A Square miles, it's approximately seventeen.

7 Q And as of October, 1984, approximately how
8 many residential accounts - and I assume by accounts
9 you mean individual service residential units - do you
10 have?

11 A You're assumption is correct. The number's
12 7,283.

13 Q Now, in the past five years, approximately
14 what rate of growth have you had with respect to
15 residential customers within your service area?

16 A Calculated by the number of connections, the
17 five-year average is less than one percent growth
18 annually.

19 Q And during that same five-year period,
20 what was your maximum monthly pumpage?

21 A The maximum occurred in July of 1983, and it was
22 one hundred seventy-two point five million gallons.

23 Q And how does that compare to the maximum
24 allowable pumpage that you are permitted to pump from
25 the Department of Environmental Protection per month?

1 A Ten point five million gallons less than our
2 maximum allowable.

3 Q Okay. What, in laymen's terms, is the
4 maximum -- what is the significance of the term maximum
5 allowable pumpage?

6 A Under the diversionary system, we're permitted
7 to take a hundred and eighty-three million gallons per
8 month from the aquifers. So the significance is that
9 we were very close to that maximum in 1983 with the
10 then present population and the then weather
11 conditions.

12 THE COURT: That is July of '83?

13 THE WITNESS: Yes, sir, your Honor.

14 Q And did you apply in 1982, 1983, for
15 additional diversion?

16 A Yes, we did.

17 Q And what was the basis for that request?

18 A The basis was a long-term study prepared by
19 Heymond and Emerson Consultant Engineers for West
20 Keansburg Water, in which they projected growth for the
21 franchise area, and relating that to firm capacity and
22 monthly diversion, it was deemed proper that we build
23 additional facilities to accommodate that future
24 growth.

25 Q And that petition was rejected?

1 A Yes, it was.

2 Q And what essentially is your understanding
3 of the position of the Department of Environmental
4 Protection with respect to your company as to why you
5 cannot divert additional waters from the aquifer at
6 this point?

7 A The position of the Division of Water Resources
8 and Department of Environmental Protection is that the
9 aquifer in the northeast Monmouth County region is
10 overtaxed and cannot support any additional diversion
11 beyond which is presently allowed, and further, that
12 they are considering reduction of the existing
13 diversion.

14 Q Now, in the course of the documents, you
15 issued a letter dated October 10, 1984 to Mr. Bisgaier.

16 THE COURT: How can they reduce your
17 diversion if you're committed to a hundred and
18 seven, hundred and eighty-three homes, how can
19 the state cut your diversion back if you needed
20 it all in 1982, '83?

21 THE WITNESS: Your Honor, when we get the
22 answer to that, we'll both be very happy.

23 THE COURT: That's my next lawsuit, huh?

24 THE WITNESS: Your Honor, I don't know how
25 they can do it, in all honesty. General

1 Whipple, speaking at a recent conference in
2 Washington, D.C., indicated that that was being
3 considered.

4 Q It would mean that if your diversion
5 rights, given the same number of customers, you either
6 have to go to some form of rational system or
7 conservation methods --

8 A We've already instituted conservation methods as
9 dictated in our most recent permit to drill a well.
10 The only thing, in my mind, that remains would be a
11 restriction on water usage, and possibly more vigorous
12 conservation.

13 THE COURT: There's a brick in every water
14 closet.

15 Q I take it that your letter of October 10,
16 1984, which has been previously identified for the
17 record, indicates that you were requested by Mr.
18 Bisgaier to anticipate an average daily demand of four
19 hundred thousand gallons per day. Do you recall that?

20 A Yes, that's correct.

21 Q And you used the term that, "When factored
22 up to reflect peak demands." In the water business,
23 what is the the process of factoring up to reflect peak
24 demands? What does that mean in laymen's terms?

25 A For residential accounts, the normal factor to

1 get from average daily demand to peak daily demand, is
2 a multiple of two. In West Keansburg's history, that
3 multiple is two point five. So we would take the four
4 hundred thousand gallon average daily demand and
5 multiply by two point five to find the peak demand.

6 Q So at the present time, given the limits
7 placed on your present diversion rights, would you be
8 able to meet that demand just for the four hundred
9 thousand?

10 A No.

11 Q And in your five-year forecast, for the
12 next five years, what sort of a rate, given your
13 current diversionary rights process, what type of
14 growth could you meet without any further diversion
15 rights?

16 A Our projections make some assumptions, and one
17 of the main assumptions is that there will be normal
18 weather - there never is - but using that assumption
19 and taking note of the vacant services presently
20 constructed with no occupancies at the other end, our
21 projections call for about one hundred new residential
22 customers per year in each of the next five years could
23 be accommodated.

24 Q All right. Going beyond 1990, what is it
25 that your company anticipates beyond 1990 with respect

1 to increasing the apply of surface waters?

2 A Well, the West Keansburg Water Company is
3 exclusively a well company. I'm using the term well as
4 withdrawing water from groundwater as opposed to
5 surface water. My understanding is that the state
6 anticipates that the Manasquan River project will be on
7 line in 1990, and that will be an additional source of
8 surface waters which will be used to supplement the
9 diversion from groundwater.

10 Q So that, as I understand your testimony,
11 what your concern is right now is that, at the present
12 time you're looking at a five-year projection to the
13 period either 1990 or 1991.

14 A We project that far in advance in order to meet
15 our capital needs, and also for a budgetary basis on an
16 annual accounting, so that when we go to the B.B.U. who
17 regulates our rates, that we're able to demonstrate
18 reasonable growth factors and, therefore, set
19 reasonable rates.

20 MR. REISNER: That's all I have on direct,
21 your Honor.

22 THE COURT: Are your diversionary rights
23 established in the same manner through 208 and
24 201 programs?

25 THE WITNESS: No, your Honor.

1 THE COURT: You're not subject to any of
2 that?

3 THE WITNESS: No.

4 THE COURT: Okay. Cross, Mr. Bisgaier?

5 CROSS EXAMINATION BY MR. BISGAIER:

6 Q Mr. Walsh, your letter indicates, or
7 you've indicated on your direct testimony that you're
8 presently serving seven thousand two hundred and
9 eighty-three units. Is that correct?

10 A That's correct, residential units.

11 Q And what do you utilize as your daily
12 gallonage per unit as figurative to factor in your
13 gallonage needs?

14 A On average, we're using a hundred and three
15 thousand gallons per year per residential unit. Now,
16 that includes Hazlet units and Holmdel units.

17 Q Can that be converted into -- can you
18 convert that into a monthly flow?

19 A Yes. I have converted that, really, to a peak
20 monthly flow, and that's sixteen thousand gallons per
21 residential user for a per peak month. Now, that's
22 different if you just took a separate division of a
23 hundred thousand gallons by three sixty-five, you
24 multiply it back out to get months.

25 Q Your peak monthly flow per month, per

1 residential unit, is sixteen thousand gallons?

2 A Yes, that's correct.

3 Q What does that mean, your estimate daily
4 gallonage is per residential unit?

5 A Well, it could be divided by thirty, but that
6 would be high, because obviously we don't have thirty
7 peak days in a peak month. Our peak day has been seven
8 point five million gallons. So that number could be
9 divided by the total number of units, and you could get
10 a peak day.

11 Q Could you do that?

12 A Yes. That yields one thousand twenty-nine
13 gallons per residential unit per peak day.

14 Q That's assuming that seven thousand two
15 hundred and eighty-three residential units is your
16 total, the total draw on your capacity. Don't you have
17 nonresidential customers?

18 A Yes, we do. That's the basis of the numbers
19 before me, that's what we would use. Our -- we have
20 very few commercial, industrial accounts, and they
21 don't experience the peak flows that residential do.
22 They're basically flat. Certainly the number is a
23 ballpark number, but it's all that we have, or all that
24 I have before me now.

25 Q What percentage of your consumption is

1 nonresidential consumption?

2 A Less than five.

3 Q Do you believe it's a reasonable estimate
4 for water consumption purposes to assume a peak
5 gallonage per day for residential customers of over a
6 thousand gallons of water?

7 A That's not assumption. That's what our
8 experience indicates to us, based upon that division I
9 just gave you.

10 Q I'm sorry. When you plan for water
11 consumption and when you estimate water consumption
12 that can reasonably be anticipated by a residential
13 unit, do you utilize a thousand gallons per day as --
14 for planning purposes?

15 A No. That's where the sixteen thousand gallons
16 per month, residential peak, would be utilized.

17 Q What is the average that you utilize for
18 planning purposes?

19 A We use the actual numbers for planning purposes,
20 and that, again, would yield in this case sixteen
21 thousand gallons per month, using the experienced peak
22 and the number of --

23 Q So --

24 A If I may finish.

25 Q Sure.

1 A -- the number of actual residential accounts at
2 a point in time. In making forecasts, I take the
3 population adjustment into consideration from when the
4 peak may have occurred in a prior year, and upgrade it
5 to a then existing population, as on what may have been
6 experienced had the same weather conditions existed
7 with a new population.

8 Q If I came to you and I said I was going to
9 build one hundred units, what would you estimate the
10 gallage needs to be?

11 A We would take the one hundred units and use the
12 sixteen thousand gallons per month to look into the
13 peak month. We would use one hundred thousand gallons
14 per year to estimate the yearly demand on the system.

15 Q Converted into days, you estimate that my
16 daily, the daily demand that you would plan for, for a
17 hundred units, would be over a hundred thousand gallons
18 per day?

19 A No. I'm sorry. I don't think I said that. I
20 said we would use a hundred thousand gallons per year.
21 If we divided that back through by three hundred
22 sixty-five, that would yield an average day.

23 Q Okay. What would that be, what would the
24 per unit be?

25 A Per unit would be round numbers, two hundred and

1 seventy-four gallons per day, average demand. Again,
2 that then -- that includes both Hazlet and Holmdel
3 units in existence in our franchise.

4 Q Are you making an assumption as to the
5 size of the unit and the number of persons in the
6 household when you estimate your gallonage?

7 A The assumption is that on average they would be
8 the same as is in existence today.

9 Q And what is that?

10 A I'll just make a division and then I'll tell
11 you.

12 That's four persons per household.

13 Q That's four persons per household? So
14 when you testified that the average residential unit
15 will result in a demand for two hundred -- on a average
16 of two hundred and seventy-four gallons per day, one
17 assumption built into that is that that residential
18 unit will be occupied by a four-person household; is
19 that correct?

20 A That's correct.

21 Q If one were to assume that it was going to
22 be occupied by a two-person household, what would your
23 estimate be for the gallonage per day?

24 A Just taking that, those numbers, you take half
25 of that, if, in fact, we made that assumption.

1 Q If someone were able to prove to you or
2 show some commitment in some form which was binding
3 to -- which would result in the household size, average
4 household size of a development being an approximate
5 size of two persons per unit, your estimate would be
6 that the unit gallonage needs would be half of two
7 hundred and seventy-four gallons per day; is that
8 correct?

9 A If they demonstrated that scenario to me, yes.

10 Q Your present diversion gallonage is what?

11 A Expressed in a monthly amount of one hundred
12 eighty-three million gallons.

13 Q When the state gave you that permit for
14 one hundred and eighty-three million gallons, was that
15 based on assumption as to the peak demand or assumption
16 as to the average daily demand?

17 A That's peak demand.

18 Q So when the state told you you had a
19 diversion right of one hundred eighty-three thousand
20 gallons per month, they were telling you that you could
21 not exceed at a peak day or moment, whatever, a peak
22 month, could not exceed one hundred and eighty-three
23 thousand gallons -- one hundred eighty-three million
24 gallons; is that correct?

25 A That's correct. Except that it's not just one

1 permit. The total is made up of a group of permits.

2 Q Okay. Whatever your present diversion
3 rights, however they're defined in terms of the
4 permits, is for a hundred and eighty-three million
5 gallons for a peak month, and that means that the
6 permits that you issue to tie into your system have to
7 be designed in such a way that in a peak month they
8 will not draw more than a hundred eighty-three million
9 gallons; is that correct?

10 A I don't know. I don't know that the permits
11 would have to be designed as such. We're under an
12 obligation to not pump more than one hundred
13 eighty-three million gallons from the groundwater
14 supply; that if we approach that number, we would make
15 decisions as to how to stay under that number, and
16 those decisions would consider -- would be made by
17 considering conservation practices and restricting use.

18 Q In fact, you have plans, do you not, to
19 deal with that problem?

20 A There are conservation measures that we have
21 instituted already as ongoing conservation methods. We
22 have not instituted an emergency act to regulate
23 individual usage.

24 Q When you state that you reached a peak of
25 one hundred -- one hundred and seventy-two million --

1 one hundred and seventy-two million five hundred
2 thousand gallons as the maximum monthly pumpage, how
3 often did you reach that?

4 A That was a number reached in July of 1983. And
5 that is the maximum number, or the highest number,
6 reached by this company in its history.

7 Q And how does that compare to your
8 experience in other months during the five-year period?

9 A The normal occurrence can be expected that July
10 will have the peak, will be the peak month; that,
11 however, June, August, and September will be very close
12 to peak as well.

13 Q So, for example, what was July of 1984?
14 Do you have that?

15 A No. I don't have that -- excuse me. I don't
16 have July of '84, no.

17 Q Do you have what your average monthly flow
18 is?

19 A My average monthly flow is three point two five
20 million gallons. That is taking the annual flow and
21 dividing it by months.

22 Q So in any given month on the average, you
23 anticipate a flow of three million two hundred and
24 fifty --

25 A I'm sorry, Mr. Bisgaier. I believe I said

1 monthly and I meant daily. The three point two is a
2 daily number. So we would take that and multiply it by
3 three hundred and sixty-five divided by twelve, or
4 something, to get -- and let me make that calculation
5 and tell you what it is.

6 Q Sure.

7 A The average monthly flow would be ninety-nine
8 million gallons.

9 Q So it's fairly clear that in some months
10 you go well below what your July, 1983 experience was
11 in terms of the draw from your system; is that correct?

12 A Yes.

13 Q So you have -- you presently have a system
14 of diversionary rights of one hundred and eighty-three
15 million gallons per month, and an average monthly flow
16 of approximately half that, ninety-nine million gallons
17 per day -- per month; is that correct?

18 A Yes, if those numbers are correct.

19 Q You indicate that you presently have
20 capacity in your system of, I believe you said, it was
21 ten point five million gallons per month.

22 A Yes. That was expressed as an unused portion in
23 1983, July.

24 Q And your testimony is that that is how the
25 state would have you evaluate what your unused capacity

1 is. The state would have you look at your diversion
2 rights, look at your historical monthly peak and
3 subtract that, and that would generate what your
4 capacity is; is that your testimony?

5 A No. I don't think the state has ever asked me
6 that, to make that calculation. I do it as a planning
7 tool.

8 Q All right. What is your understanding of
9 the requirements imposed by you -- on you by the State
10 of New Jersey in terms of estimating what your capacity
11 is for additional use?

12 A I don't believe that there's any ongoing
13 requirement by the state for me to make that estimate.
14 We do it in-house, as a management devise.

15 Q I thought it was your prior testimony that
16 the State of New Jersey limited you to a draw of one
17 hundred and eighty-three million gallons per month
18 under any set of circumstances. It would seem to me if
19 that is the case, then the way that one would establish
20 capacity is to look at one's historical peak demand and
21 subtract that from what the state's diversion permits
22 permitted you to draw.

23 A Yes.

24 Q Am I missing something?

25 A No. I said we do that. I further stated that

1 this is not a requirement from the state to make that
2 calculation. I thought you were asking with regard to
3 the methodology of obtaining additional diversions, is
4 that required, and to my knowledge that is not a
5 requirement for obtaining diversion rights. That is a
6 management tool that let's us know for long-term
7 planning where we stand as far as unused capacity and
8 what we must do and must consider in order to
9 accommodate future needs.

10 Q It would be your testimony that the --
11 that the state, through the Department of Environmental
12 Protection, would agree with you today, looking at
13 these facts, that the West Keansburg Water Company
14 could only issue additional permits so that peak demand
15 could increase by ten point five million gallons per
16 month; is that correct?

17 A I don't think that the state would say that --

18 Q What would they say?

19 A -- as such. I don't think that the state would
20 enter into the conversation until we came to a point
21 where we exceeded those demands and were brought before
22 them to explain what had happened. I think at that
23 time, that conversation may take place, but until it
24 does, I don't believe that the state is on top of the
25 issue to the extent that your question indicates.

1 Q Assuming that you have ten point five
2 million gallons of capacity per month remaining in your
3 system, is it my understanding that all of the other
4 capacity is not -- is now committed and is being used?
5 We're talking about actual hookups into your system for
6 the one hundred and seventy-two million five hundred
7 thousand gallons.

8 A That was our experience in 1983, that that
9 number -- one project would have to be updated for the
10 population change, or the number of connection changes
11 since July of 1983, and, in fact, I would suggest that
12 that ten point five would be reduced for a forecasting
13 basis.

14 Q Has the -- has your company committed
15 itself to any additional residential or nonresidential
16 development that is not currently utilizing the system
17 but intends to utilize the system?

18 A Yes.

19 Q Can you state for the record what
20 development that is?

21 A That's made up of several developments. I can
22 enumerate some of them; I can't enumerate all of them
23 at this time. However, if you give me some liberty, I
24 think the explanation would tell you what you want to
25 know.

1 Q Sure.

2 A Normal practice indicates that there are two
3 hundred service connections vacant at all times. At
4 present we have an inventory of five hundred forty-two
5 vacant connections. Those are connections that are in
6 the ground, physically made between our supply demands
7 and building lots; that, in the near future I fully
8 expect that those building lots will be constructed
9 upon and there will be residents withdrawing water from
10 those accounts.

11 So, in fact, we have committed utilization of
12 the difference between five hundred forty-two and the
13 normal vacancy of two hundred. So I would say that we
14 have three hundred forty-two connections that we can
15 expect in the near future to be drawing water from the
16 system.

17 Q Excuse me. Those are residential units?

18 A Yes, that's correct. And they are all in
19 Holmdel, by the way.

20 In addition, we have accepted contracts for
21 construction in 1985. That, to date, would add
22 approximately another hundred connections to the
23 system.

24 Q And those were one hundred residential
25 units?

1 A Correct.

2 Q Is that the sum total of your committed
3 but unused capacity?

4 A Yes, that is.

5 Q Utilizing the figure of ten million five
6 hundred thousand gallons per month, could you convert
7 that for us into the number of units that you, you as
8 in your position with West Keansburg, would argue are
9 capable of being brought into the system?

10 A Yes, I can.

11 Q Could you do that, please?

12 A Yes. I think we're approximating somewhere in
13 the nine to ten million gallons per month range, if all
14 of those connections, or when all those connections are
15 occupied.

16 Q So then, your testimony is that the five
17 hundred or the -- four hundred and forty-two
18 connections that are committed today will generate
19 approximately ten million gallons per month of
20 consumption?

21 A Excuse me. That would be seven million gallons
22 per month, and that is peak demand per res -- for those
23 additional four hundred and forty-two connections, and
24 that would leave the vacant two hundred connecting
25 still in existence.

1 Q That's the seven -- that's approximately
2 seven million gallons that will be utilized for
3 planning purposes?

4 A Yes, sir.

5 Q By the four hundred forty-two units?

6 A Yes. That will be a peak month as opposed to an
7 average month.

8 Q You would utilize the peak month for
9 planning purposes to determine how many units to hook
10 up, right?

11 A Yes.

12 Q So that will leave three million five
13 hundred thousand gallons per month of capacity?

14 A Yes.

15 Q And that would be the equivalent of
16 approximately two hundred and twenty units?

17 A Yes.

18 Q So it's your testimony that, today the
19 West Keansburg Water Company, in light of existing
20 consumption and committed consumption, has an
21 additional capacity of two hundred -- for two hundred
22 and twenty residential units?

23 A Yes. That's giving no change in the state's
24 position on diversion.

25 Q Which may go down, up, whatever.

1 Has it ever happened to a water company in the
2 State of New Jersey that's exceeded its maximum
3 permitted flow?

4 A Yes.

5 Q And what happens when that happens?

6 A There is a procedure by which the state will
7 come in and evaluate the company's position and reasons
8 for exceeding that flow. I believe there's also a
9 mechanism that would institute a substantial fine for
10 each unit of excess over the permitted allotment. That
11 occurred, by the way, in the past in several companies,
12 to my knowledge, and at the present I believe that the
13 Gordon's Corner Water Company is very close to their
14 allowed diversion and has already met with the state
15 agencies to seek their advice on curtailing usage and
16 restricting development.

17 Q When you use the term exceeding the
18 maximum allowable, I am understanding you to mean, and
19 correct me if I'm wrong, that if you ever exceed what
20 your diversion right is, even if that happens once --
21 one month out of twelve, that that would trigger the
22 state in pursuing the mechanisms that you testified to,
23 to call you into account for having exceeded the
24 maximum flow; is that correct?

25 A I believe I understand the question, and maybe I

1 should restate it so that we're both clear that I
2 understand it.

3 Q Sure.

4 A That should any water company exceed, and I
5 believe it would extend to the municipality as well,
6 exceed their granted diversion, that, in any one month,
7 that the state would call them in, take them to task to
8 find out what happened, why it happened, and what
9 measures are being undertaken to get back to allowable
10 limits.

11 Q Do you know what your average consumption
12 has been in the summer months of 1984, July -- June,
13 July, August, September?

14 A I don't have those figures at this time. I have
15 June's figure --

16 Q What was June's figure?

17 A -- with me.

18 June of 1984 was a hundred and forty-five
19 million gallons. I can say from my recollection and my
20 dealing with the numbers that, generally speaking, the
21 months since June, that is July, August, September, and
22 October, to date, have been below projected usage.
23 That's primarily due to the inclement whether, cold
24 fall, wet summer. However, I have made projections for
25 1985, and those projections are slightly higher than

1 our actual experience in 1983.

2 Q So your projection today for July of 1985
3 would be that you will slightly exceed the experience
4 of one hundred and seventy-two million five hundred
5 thousand gallons that you experienced in July of '83?

6 A My recollection is that that's probably so. I'm
7 speaking from a cumulative basis, and I don't have
8 particular months in mind, but I know that on a yearly
9 figure, that the projections for 1985 are slightly
10 higher than actually achieved in 1983, yearly, and I
11 would assume that each of the months would pretty well
12 fall into line.

13 Q Is Holmdel, to your knowledge, or the
14 immediate areas, served by other water companies?

15 A Yes. Part of Holmdel is serviced by the
16 Monmouth Consolidated Water Company. The line of --
17 center line of Crawford's Corner Road actually divides
18 the franchise area. North of that line is serviced by
19 West Keansburg, and south of that line, generally
20 speaking, is serviced by Monmouth Consolidated.

21 Q And do you know what the situation is in
22 terms of Monmouth Consolidated in terms of their
23 capacity for additional hookups?

24 A Not precisely. In general terms I have
25 discussed the matter with the general manager of

1 Monmouth Consolidated and found that they're somewhat
2 in the same position as West Keansburg, in that they
3 have requested additional diversion from the state and
4 have been rejected. So I, therefore, conclude that
5 they felt that the diversion was necessary, and the
6 state's position is that the aquifers, that they're
7 overtaxed in the location where they wanted the
8 wells -- in addition to the location where they wanted
9 the wells.

10 Q Do you have any knowledge as to what the
11 unused capacity is in the Monmouth Consolidated system?

12 A No, I don't. I do know, for example, Mr.
13 Bisgaier, that there is one region south of Crawford's
14 Corner Road within Holmdel Township, that Monmouth
15 Consolidated could not serve, and on an interim basis,
16 West Keansburg Water Company is serving that area. If
17 and when Monmouth Consolidated has the necessary water
18 and pipes available, they will take into service that
19 particular area.

20 Q How many units are being served there by
21 West Keansburg?

22 A Approximately fifty.

23 Q So if and when Monmouth Consolidated runs
24 its pipes to that area, that would yield an additional
25 fifty units?

1 A Back to West Keansburg, that's correct.

2 Q Is there any reason other than the
3 financial expense that would prohibit Monmouth
4 Consolidated from running its lines into the areas
5 served now by West Keansburg?

6 A Availability of water.

7 Q Other than availability of water and the
8 expense of running the line, is there anything that
9 would prohibit Monmouth Consolidated from running its
10 lines into the areas served by West Keansburg?

11 A Not to my knowledge.

12 Q On Page 2 of your -- of your March -- of
13 your October 10th letter, Mr. Walsh, you indicate that
14 service is anticipated as a result of the surface water
15 project in the Manasquan River. Is that correct?

16 A Yes.

17 Q Can you tell us what the potential
18 capacity will be?

19 A Yes. My understanding from talking to the state
20 agencies that are looking at that project, that the
21 production of Manasquan River will be producing
22 approximately thirty-seven million gallons per day.

23 Q That's peak --

24 A That's average - excuse me - every day. As I
25 understand it, the way they're setting up the project,

1 that various purveyors and municipalities will be
2 required to take the first gallons of use from the
3 Manasquan River project and therefore stabilize that
4 project. Any additional use in excess of the -- of
5 that supply by Manasquan will come from the aquifers.

6 Q Do you know how many additional
7 residential units are being anticipated to be served by
8 this development, Manasquan River project?

9 A No, I don't. And neither do I know the precise
10 areas of that water is going to flow to. I'm drawing a
11 conclusion based upon conversations and meetings with
12 the Division of Water Resources within the state in
13 which they clearly mark that the most severe impact
14 area for the over-pumping of the aquifer is the
15 northeast Monmouth County region, and that I conclude
16 that the Manasquan River project would go towards
17 supplying that excess draft on the aquifer.

18 Q In your March 22nd letter to Mr. Gagliano,
19 on Page 2 you indicate, you say, "We strongly urge you
20 to use the powers of your office to impose a moritorium
21 on the application of any building resulting from Mount
22 Laurel II."

23 Do you recall writing that?

24 A Yes.

25 Q I take it you weren't singling out Mount

1 Laurel II type developments. That was a poor choice of
2 words. Were you referring to development generally?

3 A No. I specifically was talking about Mount
4 Laurel II. The reason being that the history of the
5 company indicates that normal growth patterns going on
6 in Holmdel/Hazlet area could be accommodated by West
7 Keansburg water system; however, that the numbers that
8 were being displayed to me were so astronomical for
9 Mount Laurel II, that the impact of them would pose a
10 danger to the residents that we were presently serving.

11 Q Your March 22nd, 1984 letter to Mr.
12 Gagliano was in response to correspondence from him or
13 from some other person; is that correct?

14 A Yes.

15 Q Do you have a copy of that correspondence
16 with you?

17 A No, I don't. I have a copy of the letter of
18 March 22. I do not have a copy of the correspondence
19 that made me write that letter. I believe that the --
20 there was a general letter to the population at large,
21 from Mayor Popolo, and that's what I was referring to.

22 Q You're a Holmdel resident and you received
23 a copy of that letter?

24 A No, I'm not a Holmdel resident, but I did
25 receive a copy of that letter. We had facilities at

1 Holmdel, and it was a general letter and I think they
2 must have mailed it out by tax I.D. number or something
3 like that.

4 Q And it was just in response to receiving
5 that letter and nothing else that you --

6 A That's correct.

7 Q -- that you wrote this letter of March
8 22nd, 1984?

9 A Yes.

10 Q Still have a copy of that letter in your
11 files back in your office?

12 A My secretary may.

13 MR. BISGAIER: Your Honor, I'd just ask
14 the Court, if counsel for the defendant has a
15 copy of the letter today, we'd be able to see
16 it.

17 THE COURT: Mr. Reisner.

18 MR. REISNER: I don't have it with me,
19 your Honor.

20 Q If - last question, or line of
21 questioning - if you utilized conservation measures
22 that you are knowledgeable of and utilize state of the
23 art conservation measures for your system, do you have
24 an opinion as to whether, either you're doing so now to
25 your fullest capacity or if you could do so, what the

1 increase capacity might be in your system?

2 A The only conservation measures that I believe
3 that would work would be those similar to those imposed
4 in the 1980 drought by the northern New Jersey
5 purveyors, which included a restriction of fifty
6 gallons per day per person, and that there were
7 enforcement procedures and fines that went along with
8 that.

9 The problem with that system was that the
10 enforcing agency was a water company. I disagree with
11 that, but I think that that system, perhaps, could be
12 reworked and made more practical than it was in 1980.

13 Other than that, I don't think that voluntary
14 conservation works until no water at all comes out of
15 the spicket.

16 Q If a conservation system were devised as
17 you, you know, would devise one, what capacity do you
18 believe it would generate; what additional capacity do
19 you believe it would generate in your system?

20 A I don't believe that I could make a comment on
21 that number at this time without doing extensive
22 research as to the impact of those measures during
23 1980.

24 MR. BISGAIER: I have no further
25 questions, your Honor.

1 THE COURT: Mr. Wolfson, do you have any
2 questions?

3 MR. WOLFSON: Why don't we take -- can we
4 take the break now, Judge?

5 (Recess taken.)

6 MR. WOLFSON: Your Honor, I'll be very
7 brief, if it please the Court.

8

9 CROSS EXAMINATION BY MR. WOLFSON:

10 Q Mr. Walsh, I have before me two letters
11 from the West Keansburg Water Company, a March 22
12 letter and an October 10 letter. Are you familiar with
13 those two letters?

14 A Yes.

15 Q And you have copies with you?

16 A Yes.

17 Q On the March letter, which was sent to Mr.
18 Gagliano in response to the letter sent out by the
19 mayor to the general public of Holmdel, you indicate in
20 the second paragraph that Mr. Bisgaier's proposed
21 eighteen hundred home project would require an average
22 daily gallonage of seven hundred thousand gallons per
23 day. Does that accurately state what's in that letter?

24 A Yes.

25 Q And in the October 10 letter it says Mr.

1 Bisgaier's project will require an anticipated demand
2 of four hundred thousand gallons per day.

3 A Yes.

4 Q All right. Am I missing something, or are
5 those two numbers different numbers for the same
6 testimony?

7 A The October letter took into account Mr.
8 Bisgaier's letter, which he stated what the demand
9 would be, not what the company estimated it to be. The
10 seven hundred thousand was a company estimate, and the
11 four hundred thousand was Mr. Bisgaier's estimate.

12 Q So you don't subscribe to Mr. Bisgaier's
13 estimate of four hundred thousand gallons per day.

14 A Not without further investigation by us, no.

15 Q And the seven hundred thousand gallons per
16 day -- withdraw that question.

17 Did you testify, did I understand your direct
18 testimony, or your testimony on cross, to be that the
19 average daily per gallon usage of a unit in your
20 franchise area was two hundred seventy-four gallons per
21 day?

22 A Yes.

23 Q Does that mean if you were to estimate the
24 average gallon for eighteen hundred homes, it ought to
25 be eighteen hundred times two hundred seventy-four?

1 A Yes.

2 Q Is eighteen hundred gallons times two
3 hundred seventy-four equivalent to seven hundred
4 thousand gallons?

5 A No. It's five hundred thousand gallons. Again,
6 at that time, and I would have to go back and perhaps
7 look in the record, there is a difference between
8 Holmdel and Hazlet, and I'm using, say, four hundred
9 ninety-three thousand gallons as an average -- well,
10 that number would be produced by using the two hundred
11 seventy-three gallons household for eighteen hundred
12 homes, that's correct. Again, the estimate was very
13 rough, based upon limited numbers and limited review of
14 seven hundred thousand gallons.

15 Q So if the seven hundred thousand is an
16 over estimate by over two hundred thousand, is it fair
17 to say that the twenty percent increase that you
18 forecasted in your letter is also somewhat inflated?

19 A Yes.

20 Q Now, you also indicated, I thought, that
21 the demands for Hazlet were different to a per unit
22 basis on the demands for Holmdel?

23 A Yes.

24 Q Is that because of different household
25 size?

1 A I don't know why that difference is. It's just
2 a difference that we noted in an earlier report.

3 Q Is it just a difference that's based upon
4 actual figures on a total number of units in each
5 community?

6 A No. It's based upon a five-percent sample of
7 actual accounts in which we went back over a period of
8 time and recorded kind of on an account by account
9 basis, with no change in ownership of that account,
10 what the historical usage was, and we determined from
11 that five-percent sample what water consumption could
12 be -- supposed to be in Hazlet and in Holmdel.

13 Q If a dwelling unit in either Hazlet or
14 Holmdel has an inground or above-ground pool, for that
15 matter, will the flow used to fill that pool show up in
16 your records?

17 A It would show up. I don't know if it could be
18 identified.

19 Q So you can't identify which community --
20 you cannot identify whether the reason that Holmdel
21 shows a higher usage than Hazlet is because, for
22 example, there are more inground or above-ground pools?

23 A I can't do that from -- make that assumption
24 from our records. I can make an assumption based upon
25 my knowledge of the two areas as to why there's a

1 difference. That assumption would include larger land
2 areas in Holmdel per residential unit, substantially
3 greater percentage of sprinklers, inground sprinklers
4 installed in Holmdel, and a substantially higher number
5 of pools. Pools are kind of a one-time shot. You top
6 them off or refill them in the spring, that's it. But
7 sprinklers have been installed more often in Holmdel
8 than in Hazlet, and I would suppose that that also
9 gives rise to why the differential occurs in the summer
10 months rather than the winter months.

11 Q So if there's a one-acre or two-acre lot
12 per house as opposed to some smaller lot size, it's
13 your experience that that generates a higher usage of
14 water?

15 A Yes. In general, the larger the lot size, you
16 could expect a larger usage of water, going hand in
17 hand with the sprinkler comment. There's always a
18 larger lot size, generally a larger household,
19 particularly in Holmdel, and a lot more bathrooms per
20 house.

21 Q Do you have an opinion, based on your
22 experience in your position with the water company, how
23 many people typically occupy a one- or two-bedroom
24 apartment or townhouse?

25 A No, I don't have an opinion. We have a forecast

1 of population in our service area, and that's how we
2 derived the four persons per household average. But on
3 an individual basis, I don't have any basis for making
4 that -- any assumption.

5 Q And there are no apartments or townhouses
6 presently in Holmdel; is that correct? If you know.

7 A There's some on the south side of Route 35, but
8 I believe they're in Hazlet, because I think the line
9 goes up Bethany Road, in that area.

10 MR. WOLFSON: Judge, I have no further
11 questions.

12 THE COURT: Mr. Sokol.

13

14 CROSS EXAMINATION BY MR. SOKOL:

15 Q All my questions have been taken, Judge.

16 I take it from your testimony, Mr. Walsh, that
17 the water supplied to Bell Laboratories is from
18 Monmouth Consolidated; is that correct?

19 A There are two Bell Laboratories. There's one on
20 Crawford's Corner Road, and that is supplied by
21 Monmouth Consolidated. There is another one on Keyport
22 Holmdel road, and we supply that unit.

23 Q Okay.

24 A It's a very small unit, small research
25 installation, nowhere the scope of the installation on

1 Crawford's Corner Road.

2 Q How about PRUPAK? Do you know, Prudential
3 Casualty Insurance Company, who supplies water for
4 them?

5 A If they have any supply at all, I believe that's
6 Monmouth Consolidated. That's down in the Holmdel
7 Village area, isn't it?

8 Q Yes.

9 A That would be Monmouth Consolidated.

10 Q Perkin-Elmer?

11 A Monmouth Consolidated.

12 Q And that's -- does Monmouth Consolidated
13 derive their water from some surface reservoir?

14 A Primarily, yes, but they also have wells.

15 Q They also have wells?

16 A Yes.

17 Q And aside from Holmdel, what other region
18 do they cover?

19 A I believe they cover a substantial portion of
20 Monmouth County.

21 Q Would you attribute the peak usage being
22 that your peak, I guess, was in July of 1983, to the
23 sprinkling of lawns and those types of summer
24 activities?

25 A Well, certainly summer activities occurred in

1 July. The sprinkling of lawns was a major factor. I
2 believe more frequent bathing in the summertime and car
3 washing, et cetera, and just general household use
4 increases because of the daylight hours and the warm
5 whether. Typically, the minimum occurs in the winter
6 quarter, being January, February and March.

7 Q As I remember July of 1983, it was a
8 fairly long period of very warm whether without rain.
9 Is that your recollection?

10 A Yes. In general, on an annual basis, the
11 rainfall for 1983 was average. However, it occurred
12 all in the spring and in the late fall. I mean, there
13 was very little rainfall in the summer.

14 Q Do you have a recollection as to whether
15 or not West Keansburg imposed some type of conservation
16 method, methods with regard to the sprinkling of lawns,
17 in July of '83?

18 A We did not impose that specifically. I think
19 that the conservation practices that we are talking
20 about go towards knowledgeable use of the resource, and
21 we try and approach that through the school system as
22 opposed to going around to individual households and
23 knocking on doors and leaving cards and so forth.

24 Q Are you aware of conservation methods
25 which were employed in nearby municipalities concerning

1 the sprinkling of lawns?

2 A Yes, I am.

3 Q And it was during that same period, wasn't
4 it?

5 A I believe in part it was. I don't know the
6 specific start/stop dates on it, but I know that there
7 were restrictions placed in adjacent communities
8 because of problems with supply. Although we were very
9 close to our maximum, we never felt that we would
10 exceed that maximum during that time, and did --
11 therefore, did not go into public notification, as did,
12 I believe, Marlboro, Gordon's Corner, and some of those
13 communities.

14 MR. SOKOL: No further questions, Judge.

15 THE COURT: Redirect.

16 MR. REISNER: None, your Honor.

17 THE COURT: Thank you. You may step down.

18 Nice to have you. Sorry we kept you.

19

20 (Witness excused.)

21

22

23

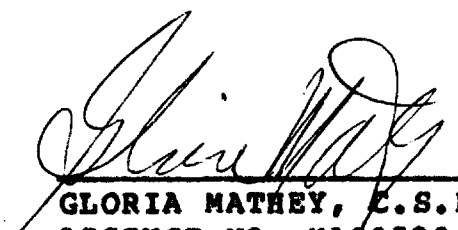
* * * *

24

25

C E R T I F I C A T E

I, GLORIA MATHEY, a Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes.


GLORIA MATHEY, C.S.R.
LICENSE NO. X100530