

CN - Orego Farms v. Colts Neck Twp

10/4/84

Transcript ~~of proceedings~~ of Depositions of
Paul Burden + ~~the~~ William Pearce

P 116

CN 000 047 G

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MONMOUTH COUNTY
DOCKET NO. L-3299-78 PW, L-3540-84,
L-13769-80 PW

x-----x

ORGO FARMS & GREENHOUSES, INC.,
a New Jersey Corporation; and
RICHARD J. BRUNELLI,

SEA GULL BUILDERS, INC.,
Plaintiffs,

CIVIL ACTION
DEPOSITIONS

-vs-

OF

TOWNSHIP OF COLTS NECK,
a Municipal Corporation,
Defendant.

PAUL BURDAN
WILLIAM PEARCE

x-----x

C O M P U T E R I Z E D T R A N S C R I P T of the
stenographic notes of the proceedings in the
above-entitled matter as taken by and before
KATHLEEN M. SHAPIRO, a Certified Shorthand
Reporter and Notary Public of New Jersey, in the
office of MONMOUTH CONSOLIDATED WATER COMPANY,
661 Shrewsbury Avenue, Shrewsbury, NJ 07701, on
Thursday, October 4, 1984, commencing at nine
thirty o'clock in the forenoon.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FRIZELL & POZYCKI, ESQS.,
296 Amboy Avenue
Metuchen, NJ 08840
BY: DAVID J. FRIZELL, ESQ.
For the Plaintiffs Orgo and Brunelli.

DRAZIN & WARSHAW, ESQS.,
25 Reckless Place
Red Bank, NJ 07701
BY: LOUIS F. LOCASCIO, ESQ.,
For the Plaintiff Sea Gull.

STOUT, O'HAGAN & O'HAGAN, ESQS.,
1411 Highway 35
Ocean, NJ 07712
BY: ROBERT W. O'HAGAN, ESQ.,
For the Defendant Township of Colts Neck.

DAVIS, REBERKENNY & ABRAMOWITZ, ESQS.,
499 Cooper Landing Road
Cherry Hill, NJ 08002
BY: WILLIAM C. DAVIS, ESQ.,
For Monmouth Consolidated Water Company.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

NAME	Direct	Cross	Redirect
PAUL BURDAN			
By Mr. O'Hagan	4		
By Mr. Locascio		95	
WILLIAM H. PEARCE			
By Mr. O'Hagan	97		162
By Mr. Frizell		149	
By Mr. Locascio		157	

EXHIBITS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
D-1	DEP application	9
D-2	Engineer's report	45
D-3	Letter, 12/21/83	50
D-4	Letter, 3/11/83	51
D-5	Response, draft, #420-171	53
D-6	Letter, 4/19/83	54
D-7	Memo, 1/3/84	55
D-8	Memo, 1/30/84	60
D-9	Memo, 1/27/84	60
D-10	Letter, 7/12/84	64
D-11	Letter, 6/25/84	65
D-12	Application	94
D-13	Letter, 3/30/79	146
D-14	Report, 5/14/79	147

1 P A U L B U R D A N, sworn.

2

3 MR. O'HAGAN: Can you verify
4 that the information requested in the subpoenas
5 is present in the room? If we could verify that
6 the file is present?

7 MR. DAVIS: Yes.

8

9 DIRECT EXAMINATION BY MR. O'HAGAN:

10

11 Q. Mr. Burdan, my name is Bob O'Hagan.
12 I'm the attorney for the Township of Colts Neck.
13 Seated next to you is Mr. Bill Davis, the
14 attorney for the Monmouth Consolidated Water
15 Company; correct?

16 A. That's correct.

17 Q. Has he explained to you the nature
18 of these depositions?

19 A. In general concept, yes.

20 Q. Well, you do know that my questions
21 and your answers are being taken down by the
22 reporter?

23 A. Yes.

24 Q. And you do know that what you say is
25 therefore going to be transcribed?

1 A. Yes.

2 Q. And I would ask that if you don't
3 understand a question, you let me know and I'll
4 try to rephrase it. If for some reason you want
5 the questions repeated, I'll be glad to do so on
6 your request.

7 If you do answer however, I am going
8 to assume that you understand the question and
9 that your answer is based upon that understanding.

10 One thing that you can do is respond
11 verbally. If you nod your head --

12 A. Doesn't show up in the record.

13 Q. Correct. So if you could do that,
14 I'd appreciate it.

15 A. Yes, sir.

16 Q. Mr. Burdan, would you explain to us
17 your position with the Monmouth Consolidated
18 Water Company?

19 A. I'm the vice president and general manager
20 of the company, which involves the responsibility
21 for the overall operation of providing water
22 service to 23 communities in Monmouth County.

23 Q. Would it be accurate to say, Mr.
24 Burdan, that your deposition has been taken
25 before?

1 A. My deposition?

2 Q. Not in this action.

3 A. Have I given depositions in other
4 situations?

5 Q. Right.

6 A. Yes, I have.

7 Q. So you're familiar with the process?

8 A. Yes, I am.

9 Q. Would it also be accurate to say
10 that you are the chief officer of the Monmouth
11 Consolidated system?

12 A. I am the chief local officer representing
13 the company's interest in the area we serve.
14 There is a president of the company.

15 Q. Now, do I understand that the
16 Monmouth Consolidated Water Company is part of
17 the American Water Works System?

18 A. That's correct, yes.

19 Q. Are you employed by the American
20 Water Works Company or Monmouth Consolidated?

21 A. I am employed by Monmouth Consolidated
22 Water Company.

23 Q. Do I understand that you move on
24 occasion from one position under the umbrella of
25 the American Water Works Company to a local

1 company and then, perhaps with promotions, you
2 work elsewhere?

3 A. That's correct, yes.

4 Q. How long have you been here in
5 Monmouth County with the Monmouth Consolidated
6 Water Company?

7 A. This is my second tour of service at
8 Monmouth Consolidated. I've been here since
9 October of 1982.

10 Q. And before that when did you work
11 here?

12 A. I worked here as assistant manager between
13 the years 1968 and 1972.

14 Q. You very briefly described your
15 duties as the vice president. Would you fill us
16 in a little bit more to advise specifically as to
17 what you do?

18 A. The responsibility I have is largely of an
19 administrative nature; the organization is
20 established. I have an operations manager who
21 oversees the departments involved with the
22 production and the distribution and the
23 construction aspects of our utility; and the
24 second half of the operation essentially is known
25 as the business end or commercial end of the

1 business which is under the responsibility of a
2 business manager.

3 Q. Would I be accurate in understanding
4 that both the operations manager and the business
5 manager report to you?

6 A. Yes, sir.

7 Q. And they're under your supervision?

8 A. Yes, sir.

9 Q. Please tell us the name of the
10 operations manager?

11 A. Kenneth Critchlow.

12 Q. And the business manager?

13 A. Herbert Brown.

14 Q. I would understand that Mr. Brown
15 would not know the ins and outs of the actual
16 supply of water, that would be under the domain
17 of yourself and Mr. Critchlow?

18 A. That's correct.

19 Q. Now, would it be accurate to say
20 then that when actions are taken by Monmouth
21 Consolidated Water Company they are passed by you
22 for approval and review and so forth?

23 A. Depending on the nature of the
24 recommendation or project or action being taken,
25 it receives my approval and, if necessary, goes

1 to the officers and board of directors of the
2 company.

3 Q. Now, you indicated, I think, that
4 the Monmouth Consolidated Water Company serves --
5 did you say 23 municipalities?

6 A. Twenty-three municipalities in total, two
7 in part. So I make that clarification. We serve
8 only part of Holmdel and part of Red Bank.

9 Q. Mr. Burdan, I show you a document on
10 the letterhead of the Division of Water Resources
11 which appears to be a division of the Department
12 of Environmental Protection. And it bears a date
13 of February 3rd, 1983. Please look at it with a
14 view towards seeing whether it accurately depicts
15 the municipalities served by Monmouth
16 Consolidated?

17 A. As depicted in the first paragraph of this
18 motion, of this application and modified permit
19 number 5018 and 5019, the municipalities listed
20 are the ones that we provide service to.

21 MR. O'HAGAN: May we have
22 this marked as an exhibit for identification?

23 (Whereupon a DEP application
24 is marked D-1 for identification.)

25 BY MR. O'HAGAN:

1 Q. Mr. Burdan, looking at D-1 again,
2 and more particularly the list of the
3 municipalities served by Monmouth Consolidated
4 Company, are you in a position to advise us as to
5 the length of time that those municipalities have
6 been served by Monmouth Consolidated?

7 A. The corporate name Monmouth Water Company
8 was formed in 1926; and most of these communities
9 have been served since that time, at least under
10 the predecessor to the consolidation of the three
11 water utilities who were operating in this
12 general area that merged in 1926.

13 Q. Would I be correct in understanding
14 that at least from 1926 until the present,
15 Monmouth Consolidated has not sought to serve
16 additional municipalities other than set forth on
17 D-1 for identification?

18 A. That's not a totally accurate statement, no.
19 We have served or added portions, like of
20 municipalities that we served in part but not all
21 of. Oceanport in the late 60s had a small
22 municipal operation called the Port-au-Peck Water
23 Company, and we acquired that. And there was
24 another development in the Shark River Hills area
25 of Neptune Township which was constructed by a

1 realtor developer that we acquired that, I think
2 as I recall, was about the same period. So in
3 that aspect we have acquired some additions to
4 our system since 1926.

5 Q. Let me rephrase the question then.
6 Aside from the small water companies in Neptune
7 Township and Oceanport, from 1926 till the
8 present the Monmouth Consolidated Water Company
9 has not sought additional municipalities to serve?

10 A. I don't know the answer to that question.
11 Since my acquaintance with Monmouth Consolidated
12 in 1968 and 1972, I can say that is true; and
13 since my tenure here in 1982, I can say that is
14 true. But the intervening period and prior to
15 1970, I have no knowledge of the activities in
16 that area.

17 Q. If the company sought to serve
18 additional municipalities, that would be a
19 subject of an application before the what's now
20 known as the Board of Public Utilities
21 Commissioners?

22 A. That would be subject to their regulation,
23 yes.

24 Q. Do you think someone on your staff
25 can search the records to determine whether there

1 were any such applications?

2 A. Yes, we can do that.

3 Q. Would you do that, please?

4 MR. DAVIS: Applications for
5 what, Bob?

6 THE WITNESS: Extend the
7 franchise to other municipalities.

8 MR. PEARCE: I know
9 definitely we purchased Asbury Park, the City of
10 Asbury Park.

11 THE WITNESS: That's one I
12 forgot.

13 BY MR. O'HAGAN:

14 Q. Mr. Pearce has fleshed out the
15 record and indicated that, I guess it was -- that
16 was in the 70s?

17 A. That was after I left.

18 Q. I believe that was in the 70s or
19 that time period?

20 A. Thereabouts, it must have been after I left
21 in '72.

22 Q. So aside then from the Asbury system
23 and the small companies in Neptune Township and
24 Port-au-Peck those, to your knowledge, are the
25 only additional --

1 A. Yes.

2 Q. -- service areas?

3 A. That we've added to our --

4 Q. Now, with reference --

5 MR. LOCASCIO: Since 1926?

6 THE WITNESS: Well, I don't
7 know. What I'm saying is only those additions,
8 those are the only additions I'm aware of. If
9 there were some prior to that point I cannot
10 definitely say without searching records.

11 MR. O'HAGAN: Fine. I
12 understand you're going to search the records.

13 THE WITNESS: You want me to
14 search records for any additional applications?

15 MR. DAVIS: Off the record.

16 (Whereupon there is a
17 discussion off the record.)

18 MR. FRIZELL: May I just
19 enter a general objection? I think now that I've
20 heard the scope of this inquiry I just want to
21 make a statement for the record that I think that
22 this whole search is harassing, burdensome to
23 these witnesses and to this company, and an
24 attempt by the Township to interfere in a
25 business relationship between my client and

1 Monmouth Consolidated Water Company. We're past
2 the time of discovery in this case by six months,
3 by some accounts, and certainly well into the
4 time of discovery in the extended discovery
5 period that Judge Serpentelli granted to all
6 parties concerning Mr. Payton's report. To start
7 a fishing expedition at this date of the
8 proceeding into matters that are obviously well
9 beyond the scope of the litigation in this case,
10 I think, is contrary to all the bounds not only
11 of fair play in litigation and good taste.

12 Having made that objection,
13 Mr. O'Hagan, I'll permit you to proceed.

14 MR. O'HAGAN: Of course, let
15 the record reflect that we had noticed the water
16 company for a deposition in the month of
17 September, which was within the period mandated
18 by Judge Serpentelli; but at the request of the
19 water company we adjourned them until this date.
20 I understood that on the previous date Mr. Burdan
21 and Mr. Pearce had a schedule conflict and that's
22 the reason they were adjourned.

23 MR. FRIZELL: I don't want to
24 belabor this point. That's true, you had a right
25 to take the deposition in September. I don't

1 believe that Judge Serpentelli's extended
2 discovery proceedings allow you to ask for
3 additional discovery materials, so that the
4 Monmouth Consolidated Water Company has to
5 research its records back to 1926 in preparation
6 for your litigation three weeks before the trial.

7 MR. O'HAGAN: You've given
8 them your message.

9 MR. FRIZELL: Yeah.

10 MR. O'HAGAN: Would you read
11 back the last question, please?

12 MR. DAVIS: I am trying to
13 get a clarification of what records we are to
14 search for what purpose. And the reason I'm
15 asking the question is, I've represented this
16 company since 1957. I'm somewhat familiar with
17 the record keeping of the company. And frankly,
18 I don't know of any records that this company
19 keeps that would indicate applications to the BPU
20 or franchises or things like that. First of all,
21 you don't make an application to the BPU for a
22 franchise. You make an application for an
23 approval of a franchise after it's granted. And
24 I don't know of any records that the company
25 keeps that indicates they made applications to

1 this or that municipality for a franchise.

2 MR. O'HAGAN: Let me ask you
3 this then, Mr. Davis. As far as you're concerned
4 during the period of your representation from
5 1957 to the present, I would assume there have
6 been no applications for approval of a franchise?

7 MR. FRIZELL: Let me object.
8 Mr. Davis is not here to testify. You can get
9 factual evidence for this record any way you want,
10 Mr. O'Hagan. I don't think asking the attorney
11 for the company is appropriate.

12 MR. O'HAGAN: He made a
13 statement. I'm just trying to clarify that.

14 Is that accurate, Mr. Davis,
15 that as far as you can recall from 1957 to the
16 present the water company has not made an
17 application for an approval of an extended
18 franchise area?

19 MR. DAVIS: No, it's not true;
20 and I think that first of all the Asbury Park
21 situation was a situation where the BPU approvals
22 were necessary and there may have been a couple
23 of others.

24 MR. O'HAGAN: Are we talking
25 about the Oceanport situation and Neptune?

1 MR. DAVIS: I'm not sure we
2 had to make an application for Oceanport or not.
3 If we already had a franchise in the area, we
4 didn't. I don't see where that is important. I
5 don't understand where we're going with this line
6 of questioning, I guess.

7 MR. O'HAGAN: Are you
8 directing Mr. Burdan not to look for the records
9 which he so graciously indicated he would do?

10 MR. FRIZELL: Excuse me,
11 because I don't think these parties understand
12 the nature of what's going on here. It is my
13 view that they don't have any obligation to
14 search for anything at this stage under these
15 circumstances; and they're certainly not
16 obligated to do it for free. And I don't think
17 that they have any obligation to search for any
18 records. But just so, you know, I'll be happy to
19 provide Mr. Davis with the necessary -- with the
20 information on which I'm basing these statements.

21 MR. DAVIS: Why don't you ask
22 Mr. Burdan the question again, Mr. O'Hagan, so
23 the witness can clarify the situation. What I
24 don't want is the witnesses to be put in a
25 position of saying they're going to do something

1 and then it's impossible to do. That's my role
2 here.

3 BY MR. O'HAGAN:

4 Q. Mr. Burdan, wouldn't it be accurate
5 to say that the Monmouth Consolidated system has
6 a filing procedure in the system?

7 A. Yeah. We have a correspondence filing
8 system, Mr. O'Hagan.

9 Q. Don't you file as to categories?

10 A. Yes.

11 Q. Isn't an application to the Board of
12 Public Utilities Commission a matter of some
13 seriousness and importance to the water company?

14 A. Yeah.

15 Q. Isn't it accurate to say then,
16 bearing in mind its importance, you would keep a
17 separate file for applications to the BPU?

18 A. We have a document file of that nature, yes.

19 Q. And the document file, would that be
20 gathered as to years or as to --

21 A. It would be gathered chronologically.

22 Q. So then to search through the
23 records would not be a big job; would it?

24 A. It most likely would revolve around looking
25 at an index list of important documents.

1 Q. If it's too burdensome for you to do
2 it, I could retain someone to look through the
3 files and then, under the jurisdiction of one of
4 your people -- if it is too burdensome, just tell
5 me and we'll arrange that.

6 A. Without actually looking at the documents
7 required and the location of those index files,
8 at this time I think with the provision that any
9 cost involved or extensive work involved in this
10 be borne by you, depending on what's involved
11 with the search, we could take or make that
12 effort to see what is involved in documents.

13 Q. After we finish, if you can give us
14 an idea of the cost of the search, we'll go from
15 there.

16 A. Okay.

17 Q. Now just very briefly - I certainly
18 didn't mean to spend this much time on this
19 aspect of the matter - I'm understanding you to
20 say that you bought a small system in Oceanport.
21 Wouldn't it be accurate to say that prior to your
22 purchase of that system you served Oceanport, the
23 balance of it? Let me rephrase it.

24 This was not your first encroachment
25 or excursion into Oceanport to serve customers in

1 that area?

2 A. No. We served a portion of Oceanport.

3 Q. Prior to the purchase?

4 A. Prior to the purchase, yes.

5 Q. And your answer would be the same as
6 to the small water company in Neptune Township?

7 A. That's correct.

8 Q. As to Asbury Park, it would be
9 accurate to say that your system, except for the
10 east, surrounded Asbury Park?

11 A. As I recall the geographical portion, we
12 served a portion of Asbury Park.

13 Q. Even before the purchase?

14 A. Even before the purchase.

15 Q. So basically that was a connection
16 to your existing system?

17 A. Yes.

18 Q. Now the decision as to whether or
19 not to add additional municipalities to your
20 company in terms of water service, how is that
21 decision made?

22 A. Preliminary discussions are conducted
23 between the vice president and general manager
24 and an interested municipality; and if there is
25 benefits to be gained through the extension of

1 service and agreements appear to be worked out,
2 the vice president and general manager makes a
3 recommendation to the president of the company to
4 proceed further with negotiations and other
5 activities to firm up the details of the
6 acquisition. And that must go before the board
7 of directors for an approval prior to any final
8 consummation.

9 Q. I'm sure that there are various
10 factors that are considered?

11 A. Yes, sir.

12 Q. Would one of the factors be whether
13 the water company had available water to service
14 those customers?

15 A. Yes, sir.

16 Q. If the water company did not have
17 available water, then obviously they would not
18 take on the job?

19 A. We have an obligation to provide service to
20 our existing customers before going into new
21 service areas; that's correct.

22 Q. Now the decision as to adding
23 customers, on occasion is that initiated by the
24 water company?

25 A. It could be, yes.

1 Q. And with reference to those, we're
2 really talking about a small company in Neptune,
3 a small company in Oceanport and the Asbury Park
4 system. Do you know who initiated those
5 discussions?

6 A. I do not, no.

7 Q. Do I take it that from -- during the
8 time of your employment by Monmouth Consolidated
9 you never initiated discussions with
10 municipalities concerning adding them to your
11 list of customers?

12 A. I have not.

13 Q. Would a factor involved in that be
14 your inability to provide water to them?

15 A. No, sir.

16 Q. Now concerning the supply of the
17 Monmouth Consolidated system, do you have
18 documentation with you today as to your allowed
19 diversion?

20 A. Yes, sir.

21 Q. Can you describe for us what that
22 means, "diversion rights"?

23 A. The diversion rights granted to us by the
24 New Jersey DEP permit us to withdraw certain
25 quantities of water from either surface water

1 sources or ground water sources.

2 Q. Is that a cap on what you can
3 withdraw?

4 A. No.

5 Q. Is that a direction from the DEP --
6 strike that.

7 What is it, then?

8 A. It is an amount of water which we're
9 permitted to draw without penalty, financial
10 penalty.

11 Q. Do you know how the DEP goes about
12 setting the diversion rights?

13 A. No, I do not.

14 Q. You've been involved in applications
15 with the DEP?

16 A. I have been involved with filing
17 applications, but have not entered into
18 discussions to determine what criteria they are
19 using to establish diversion for water supply
20 purposes.

21 Q. In any case, you believe that there
22 are criteria?

23 A. There are criteria, yes.

24 Q. Who in your company would be
25 familiar with the criteria that was used or that

1 is used?

2 A. I think Mr. Pearce would be familiar, more
3 familiar with that criteria than I would be at
4 this point.

5 Q. Now the question that I asked is do
6 you have documentation as to your allowed
7 diversion at the present time?

8 A. Yes.

9 Q. Would you refer to that?

10 A. (Whereupon the witness complies.)

11 This document I have in front of me is not
12 the diversion application approval, it's a notice
13 of a public hearing relative to that.

14 Q. Is that what was marked D-1?

15 A. That's correct.

16 That therein contains certain information
17 applicable to a public hearing.

18 Q. Now, is that a request for
19 additional diversion rights?

20 A. No. This is a request for a public hearing
21 or a notice of public hearing.

22 Q. Does the public hearing concern the
23 request for additional diversion rights?

24 A. The hearing, I think, is pertinent to an
25 application that we had before the DEP for

1 additional diversion.

2 Q. Now prior to your application for
3 diversion, for increased diversion, do you have
4 documentation as to your allowed diversion rights
5 at that time?

6 A. Yes, sir.

7 Q. Would you turn to that?

8 A. (Whereupon the witness complies.)

9 MR. DAVIS: You don't have
10 that here. This is the diversion right that you
11 reviewed the other day. We have it here in the
12 office.

13 MR. O'HAGAN: Could we get
14 that?

15 MR. DAVIS: Yeah.

16 MR. O'HAGAN: Off the record.

17 (Whereupon there is a
18 discussion off the record.)

19 (Whereupon the pending
20 question is read back by the Reporter.)

21 THE WITNESS: We had two
22 diversion permits. One permit is identified
23 water supply permit number 5018, which covers
24 diversions from the Swimming River Reservoir in
25 the Township of Middletown, Colts Neck and Tinton

1 Falls.

2 BY MR. O'HAGAN:

3 Q. If we can separate the two diversion
4 permits -- and by the way, does that refer to
5 surface water?

6 A. This one permit, number 5018, refers only
7 to surface water.

8 Q. Now concerning the diversion permit
9 at the Swimming River Reservoir, can you tell us
10 what your allowed diversion is?

11 A. Twenty-five million gallons per day.

12 Q. That means, as I understand it then,
13 that you are not allowed to exceed that flow on
14 any day?

15 A. That is incorrect. We can exceed that flow
16 but there is a financial penalty that is imposed
17 by the State for exceeding it.

18 Q. So the State fines you?

19 A. Yes, in effect it's a fine. It's a payment
20 for the excess water.

21 Q. Do they describe it as a fine, as a
22 penalty?

23 A. No, I don't believe they do define it as a
24 penalty. It's --

25 MR. PEARCE: Excess diversion.

1 THE WITNESS: It's an excess
2 diversion fee.

3 BY MR. O'HAGAN:

4 Q. In any case, it's an extra fee that
5 you must pay?

6 A. Yes, sir.

7 Q. Have you exceeded the allocated
8 amount?

9 A. Yes.

10 Q. Now do they also calculate -- strike
11 that.

12 If you were to exceed it on one day,
13 would you be fined for that?

14 A. I believe the calculation is made on an
15 average basis as opposed to a day basis over a
16 period of 30 days within a month.

17 Q. So then if you exceeded it for a
18 month, would you be fined for that?

19 A. Yes.

20 Q. Are you familiar with whether
21 Monmouth Consolidated in fact has exceeded the
22 allowed flow?

23 A. Yes, we have.

24 Q. Can you tell us from your
25 recollection of the facts as to how many times

1 that has occurred; and if you can do it in the
2 last five years?

3 A. I am unable to do that. It's quite a
4 number of statistics.

5 Q. It sure is.

6 A. I can only testify to the fact that it
7 generally occurs during the summer demand period.

8 Q. Would it be accurate to say that
9 over the last five years you've exceeded it at
10 least once, at least one time during each of
11 those five years?

12 A. That would be an accurate statement.

13 Q. Twice each year over the last five
14 years?

15 A. Let me ask a clarification of that question.
16 When you say twice, twice in a month, twice in a
17 year?

18 Q. See, then I misunderstood you. I
19 thought that you were assessed a fine if your
20 diversion over the course of an entire month
21 exceeded the allowed diversion. I thought you
22 had said that.

23 A. The fee is calculated on excess water over
24 the allowed amount in total.

25 Q. Per month?

1 A. But the diversion may be exceeded on a per
2 day basis. So if we exceed it, they total it for
3 a given period, which I believe is 30 days on a
4 monthly basis. And then they calculate the
5 difference between those two figures. And if the
6 actual pumpage is in excess of the allowed
7 diversion, there's a penalty.

8 Q. So let me just capsulize it. If you
9 exceed it on one day, there is no fine; and if
10 you exceed it, on a monthly basis --

11 MR. FRIZELL: Objection. Mr.
12 O'Hagan seems to insist to use the word "fine"
13 when the witness has clearly indicated that their
14 understanding of the fee is not a fine. So let's
15 at least -- if they're not going to respond to
16 the word "fine," let's make the record clear on
17 that. That it is your characterization of their
18 testimony and not their testimony.

19 THE WITNESS: It's a fee.

20 MR. O'HAGAN: Okay.

21 BY MR. O'HAGAN:

22 Q. In any case, if you exceed it for
23 any one given day or two given days during the
24 monthly period, there is not an additional fee?

25 A. Again, that depends if on other days if we

1 hit the exact amount, yeah, we would be -- we
2 would pay a fee for the two days. But on the
3 other hand, with water pumpage going up and down,
4 we would be below the allowed limit. So I can't
5 respond whether it's going to be one or two days
6 other than over a period of time, 30 days, 60
7 days or 90 days, if on average the diversion
8 application is exceeded, there will be a fee paid
9 for the excess water used.

10 Q. With that background, are you able
11 to say that at least two times per year over the
12 last five years there has been an additional fee
13 paid by Monmouth Consolidated due to excess
14 diversion?

15 A. Yes.

16 Q. Would it be as much as three times
17 per year over that last five years?

18 A. I wouldn't be able to testify to that.

19 Q. Now, have you made any studies as to
20 whether you have -- whether your present
21 diversion in the Swimming River Reservoir is as
22 much as can safely be diverted from that system?

23 MR. FRIZELL: I'm going to
24 object to the form of the question. I have no
25 idea what safely diverted water means, whether he

1 means that it's going -- be safe for fish, for
2 the frogs, for the people, for the customers, for
3 the residents of Colts Neck. I don't really know
4 what "safe" means. I'm not sure if the witness
5 understands. If he does understand, I have no
6 problem.

7 MR. O'HAGAN: Mr. Burdan
8 understands it.

9 BY MR. O'HAGAN:

10 Q. Didn't you correspond with the
11 Department of Environmental Protection indicating
12 that you could not safely divert any more water
13 from the Swimming River system than you presently
14 do?

15 A. The safe yield of the reservoir has been
16 calculated to be approximately 31 M.G.D., and
17 during the summer demand periods, that safe yield
18 figure is exceeded.

19 Q. By how much?

20 A. The figure depends on whether we're
21 calculating on an average basis or peak day basis
22 or peak week basis. And the characterization of
23 a figure at that point in time would do more to
24 confuse the comparison of a safe yield to the
25 average or the peak day or the peak week. On a

1 peak week basis we have exceeded the safe yield
2 of the reservoir.

3 Q. And also on a peak month basis?

4 A. And on a peak month or peak day we have
5 exceeded, which is not uncommon in the water
6 works industry.

7 Q. When you corresponded to the DEP
8 indicating to them that you had exceeded the safe
9 yield, what did you mean by the use of the word
10 "safe"?

11 A. "Safe" characterizes the amount of water
12 that can be withdrawn from the reservoir without
13 continually diminishing the quantity of the water
14 in the reservoir to a level where there is no
15 more water.

16 Q. And there is no question but that
17 you did correspond with the DEP advising them
18 that it would be unsafe to divert more water from
19 Swimming River than you're presently doing; isn't
20 that correct?

21 A. That's not in total correct. What we're
22 saying with our application is that the supply
23 and demand of our company, particularly during the
24 peak summer months has reached a point where we
25 need to add supply so that we can continue to

1 meet the requirements of our customers.

2 Q. And you can't get anymore supply
3 from the Swimming River?

4 A. The capacity of the Swimming River is set
5 at this time and cannot be expanded.

6 Q. Now, you talked about two diversion
7 permits, and we've discussed the Swimming River
8 diversion permit. Where is the other one?

9 A. The other permit is identified as number
10 5019. That covers our diversions from our source
11 of supply at the southern end of the system which
12 originates out of the Shark River, the Jumping
13 Brook stream, and two wells at Jumping Brook and
14 one well in Ocean Grove.

15 Q. Did you divert water, surface water
16 from the Jumping Brook itself?

17 A. Yes, we do.

18 Q. Is your permit broken down as to how
19 much can be diverted from the Jumping Brook?

20 A. It's combined with an amount from Shark
21 River.

22 Q. It's not separated?

23 A. It's not separated.

24 Q. Have you corresponded with the DEP
25 advising that you could not safely divert more

1 water from the Jumping Brook?

2 A. Not specifically in that sense. What we
3 have corresponded with the DEP is that the total
4 water supply situation of our company needs to be
5 augmented to meet the supply. The Shark River
6 and Jumping Brook stream are dependent on weather
7 conditions for flow. They're not what we would
8 call an on-stream dam, reservoir type situation
9 as the Swimming River. And that water is
10 continually flowing. And the volume is directly
11 dependent on the rainfall. And consequently the
12 amount of water that is available from those
13 sources is directly related to the rainfall. And
14 we augment the supply of the river from well
15 water. And the operation of that lower end is
16 dependent on an off-stream reservoir which we
17 pump into during off peak seasons to fill the
18 reservoir; and we depend on that in the peak
19 season to meet our supplies.

20 Q. That supply is Glendola?

21 A. The Glendola Reservoir.

22 Q. So in other words, just to capsulize -
23 and pardon me for rehashing it - you don't feel
24 that the stream of the Jumping Brook, I guess you
25 said, and the Shark River is reliable and,

1 therefore, you need the wells to augment that?

2 A. That's correct.

3 Q. Now, the wells, where are they
4 located?

5 A. Wells four and six are located on our
6 property in Jumping Brook in Neptune Township,
7 and we have one well located in Ocean Grove which
8 provides a small amount of water.

9 Q. And that is still in use?

10 A. That's still in use.

11 Q. And could you give us the magnitude
12 of the Ocean Grove diversion?

13 A. The allowed diversion is 1.2 million
14 gallons per day.

15 Q. The two wells that you're talking
16 about?

17 A. An allowed amount of two million gallons
18 per day.

19 Q. It would be accurate to say that you
20 filed an application to the DEP requesting
21 additional diversion from those two wells; isn't
22 that correct?

23 A. That's incorrect. We applied for
24 additional diversion for one of the two wells.

25 Q. All right. I thought you indicated

1 wells four and six.

2 A. There are two wells there but one well is
3 at its capacity in terms of the diversion permit;
4 the other well is at one million gallons approved
5 diversion and the well capacity is two; and we're
6 seeking authority under the permit to increase
7 that another one million gallons, which is
8 available.

9 Q. So that one is at its capacity and
10 one you're requesting an additional million
11 gallons.

12 Back in 1982 didn't you file an
13 application on the very same wells requesting
14 increased diversion?

15 MR. FRIZELL: Let me just
16 enter an objection. I think again the scope of
17 this inquiry is well beyond the matters that are
18 before Judge Serpentelli in the litigation in
19 which this -- of this case. It's not listed as
20 any issue. I have no idea where Mr. O'Hagan is
21 going relative to the issues in this case. But
22 since we're on a fishing expedition, at this late
23 stage I don't want that it be discontinued or
24 have a conference call at this point.

25 MR. O'HAGAN: Are you

1 finished?

2 MR. FRIZELL: Yes.

3 BY MR. O'HAGAN:

4 Q. Can you answer that?

5 A. Would you restate the question?

6 MR. O'HAGAN: That was his
7 idea.

8 Q. You filed an application in 1982
9 requesting increased diversion from the one well
10 in Jumping Brook that you've advised has
11 additional capacity?

12 A. That's correct.

13 Q. And was that application granted?

14 A. No, it was not. Our application was
15 withdrawn without prejudice.

16 Q. Now are you presently pumping from
17 that well to the level that you had requested?

18 A. Yes.

19 Q. And that's without the stamp of
20 approval from the DEP?

21 A. That's with provisional approval from the
22 DEP. We do have approval for what we are doing.

23 Q. In fact, in 1982 you did file an
24 application to the DEP; did you not?

25 A. For?

1 Q. Increased diversion?

2 A. Yes. Let me check.

3 Q. Why don't you look at D-1 for
4 identification?

5 A. Let me check the date on --

6 MR. O'HAGAN: Off the record.

7 (Whereupon there is a
8 discussion off the record.)

9 MR. O'HAGAN: Back on the
10 record.

11 THE WITNESS: Yeah, it was in
12 December of 1982.

13 BY MR. O'HAGAN:

14 Q. Now, please tell us what your
15 application entailed, the increased diversion
16 that you requested?

17 A. That particular application detailed
18 requests for additional water through the
19 installation of wells in the Raritan/Magothy
20 (phonetic) formation aquifer. The original
21 application was submitted on the basis of a total
22 of six million gallons per day additional ground
23 water, three of which was to be installed through
24 wells at out Swimming River Reservoir location;
25 the balance of three were to be derived from our

1 Jumping Brook location.

2 Q. So you were requesting an additional
3 three million gallons from that one well that
4 you've indicated?

5 A. No. It was to be a combination of -- well,
6 depending on hydrogeological conditions; but in
7 total we were looking for a total of an
8 additional six million gallons.

9 Q. I had understood you to say -
10 perhaps incorrectly - that the one well at
11 Jumping Brook was at capacity, you could not
12 divert anymore water from that?

13 A. One existing well.

14 Q. And have you a total of two wells?

15 A. We have existing two wells at Jumping Brook.

16 Q. You were seeking to drill another
17 well?

18 A. That's correct.

19 Q. And did you have an engineering
20 study made prior to the submission of that
21 application?

22 A. Would you characterize what you mean as "an
23 engineering study" for me?

24 Q. Well, I'm a neophyte in this area,
25 but would I be correct in understanding that the

1 DEP would require some background information
2 before they acted on an application?

3 A. Most of the information that was filed with
4 that particular application was demographic in
5 nature in terms of customer growth, population
6 projections, water use history and projections on
7 water use into the future years, as to support
8 the requirement for additional water.

9 Q. Doesn't the DEP require some
10 information as to whether the water might safely
11 be withdrawn from the ground?

12 A. We provided information based on existing
13 records to attempt to respond to that question.

14 Q. And that would be done by an
15 engineering type person?

16 A. That's correct.

17 Q. And it was your hope that the DEP
18 would act upon your application?

19 A. Yes, it was.

20 Q. And you submitted the application
21 in good faith?

22 A. Yes, we did.

23 Q. And you believed at that point that
24 you had supplied all of the required information?

25 A. That's correct.

1 Q. Now, that increased diversion, I
2 think you spoke of six million gallons per day?

3 A. Yes.

4 Q. That was designed to serve the
5 customers in your service area?

6 A. That's correct.

7 Q. And didn't you tell the DFP that
8 without that increased diversion you would not be
9 adequately able to serve your existing customers
10 and those reasonably projected in the short term
11 future?

12 A. During the summer peak periods that would
13 be a correct statement.

14 Q. And you sincerely believe that?

15 A. Yes.

16 Q. Did you have any involvement in the
17 application that was submitted?

18 A. Not directly, but just to oversee the
19 supervision and preparation of it. It was
20 prepared by an engineer and under a license.

21 Q. Did Mr. Pearce have any involvement
22 in that?

23 A. Mr. Pearce had some involvement in that,
24 too.

25 Q. Before it was sent down I take it

1 you reviewed it?

2 A. Yes.

3 Q. Now when you submitted that
4 application, had you made projections as to the
5 expected growth in your area?

6 A. There were projections, yes.

7 Q. Do you have them?

8 A. Yes. I do not with me but -- I don't see
9 it. They're not part of the permit.

10 Q. Mr. Burdan, speaking of that aspect,
11 we're clear that the expected growth that you
12 were talking about at that point was solely
13 within your service area?

14 A. That's correct.

15 Q. Including only the municipalities
16 that were listed on D-1 for identification?

17 A. That's correct.

18 Q. Now, the growth that you projected,
19 how is that information gathered?

20 A. That is gathered through figures that come
21 from the DEP, from Monmouth County Planning Board,
22 and from census figures that are issued every ten
23 years, and from customer growth records that we
24 maintain on our record system.

25 Q. Now, I'm sure as you sit there now

1 you can't tell us the growth projected for each
2 individual town within your service area?

3 A. No, I cannot.

4 Q. Can you tell us the total growth
5 that was projected?

6 A. I cannot. I don't have that figure in my
7 mind.

8 Q. Is that something that was committed
9 to a report?

10 A. Yes, that figure would be in -- those
11 projections would be part of the application that
12 was made in 1982.

13 Q. Do you have that application?

14 A. Not with me.

15 Q. It's in the building; isn't it.

16 A. Yes, sir. Excuse me, it's in the room now.

17 MR. O'HAGAN: May we see that,
18 Mr. Pearce?

19 (Whereupon there is a
20 discussion off the record.)

21 MR. O'HAGAN: Back on the
22 record.

23 There has been an off the
24 record discussion. I had asked Mr. Burdan to
25 point in the previous application to a population

1 projection figure first as to service on a
2 service area wide basis, and later on a per town
3 basis. As I understand it, based upon the off
4 the record discussion, there was no such
5 information provided, and if -- at least no
6 independent study by the Monmouth Consolidated
7 Water Company, but rather a reliance upon
8 published figures.

9 THE WITNESS: General
10 reference to DEP figures.

11 MR. O'HAGAN: General
12 reference to DEP figures, that's an accurate
13 reflection.

14 BY MR. O'HAGAN:

15 Q. Now when you submitted that
16 application, it's therefore fair to say that when
17 you projected population growth you did not do so
18 with reference to the State Development Guide
19 Plan; isn't that correct?

20 A. I think Mr. Pearce would be in a better
21 position to testify to that.

22 Q. As far as you know it wasn't done on
23 that basis?

24 A. I can't answer that question.

25 Q. Now, Mr. Burdan, I show you a

1 document, I believe it's an excerpt from your
2 report entitled, "Engineer's Report." Please
3 examine it to verify that it's complete?

4 A. A review of that indicates - without a
5 word-for-word reading that's is the document that
6 was attached to the application.

7 Q. Just so it's clear, it's on the
8 stationery of American Water Service Company, and
9 it's called, "Engineer's Report Accompanying
10 Application for Diversion Monmouth Consolidated
11 Water Company" and then it speaks of a total
12 diversion of six million gallons per day?

13 A. That's correct.

14 Q. And it's signed by Mr. William H.
15 Pearce.

16 MR. O'HAGAN: May this be
17 marked D-2 for identification?

18 (Whereupon an Engineer's
19 Report is marked D-2 for identification.)

20 BY MR. O'HAGAN:

21 Q. Now, Mr. Burdan, as I understood it,
22 the water company projected a continued high
23 growth in its service area in the years to come;
24 isn't that correct?

25 A. Which statement are you referencing to?

1 Q. That which is underlined.

2 A. The statement is made, yes, sir.

3 Q. Now, I'm correct in understanding in
4 the Monmouth Consolidated Company in this report
5 indicated that the additional diversion of six
6 million gallons per day was designed to meet the
7 1983 projected dry season demand; is that correct?

8 MR. FRIZELL: I object to the
9 form of the question. I think the report is
10 going to speak for itself; and it's signed by Mr.
11 Pearce, and I think that, obviously, the best
12 person to ask is going to be Mr. Pearce, if you
13 want that report interpreted, number one. And
14 secondly, I think the report will speak for
15 itself. If you want to burden the record by
16 having Mr. Burdan read from the report, that's
17 your -- you can do that.

18 BY MR. O'HAGAN:

19 Q. Is that correct?

20 A. That's what the statement says.

21 Q. It doesn't speak of the need in the
22 future?

23 A. It is a given that the additional water
24 will be used in the future beyond 1983. In other
25 words, the additional water wouldn't be

1 specifically for the year 1983. And as it turned
2 out in 1983, because of the extremely high
3 quantities of rainfall, well above average, the
4 additional supply wasn't required.

5 Q. In any case, as I understand it, the
6 water company took the view that even if this
7 additional diversion of six million gallons per
8 day were granted, that still would not be enough
9 to meet the needs in the calendar year 1988;
10 isn't that correct?

11 A. That would be correct.

12 Q. And wasn't there a projected deficit -
13 assuming that the six million gallons per day
14 diversion were granted - a deficit, not
15 withstanding that grant in 1988 of over four
16 million gallons per day?

17 A. That would be correct.

18 Q. So we're correct in understanding
19 that that request was to serve the needs of your
20 customers in your service area for a very limited
21 period of time?

22 A. That would be an incorrect characterization.

23 Q. Tell me the correct characterization.

24 A. The correct characterization would be that
25 that water would be continually used to meet the

1 requirements of the water company to serve its
2 customers.

3 Q. I think my question was inarticulate.

4 Notwithstanding that grant, there
5 would be more water required?

6 A. There would be an additional amount of
7 water required beyond the six million gallons per
8 day, that is correct.

9 Q. You did not in the 1982 application
10 foresee serving customers outside of your service
11 area?

12 A. I don't believe the application included
13 that consideration.

14 Q. Now, Mr. Burdan, you've indicated
15 that the application was withdrawn. Wouldn't it
16 be more accurate to say that the application was
17 denied?

18 A. No.

19 Q. Didn't General Whipple, who is in
20 charge of these applications, correspond with you
21 denying the application?

22 A. I'm not quite sure of the wording that
23 General Whipple used in his letter to us, but as
24 I recall, the application was essentially allowed
25 to be withdrawn without prejudice. But I don't --

1 the application was never acted upon by the DEP.

2 Q. Okay?

3 A. And officially or through public hearings
4 and awaiting the addition of some information
5 which the company was preparing, Mr. Whipple
6 indicated that we would be permitted to withdraw
7 the application without prejudice.

8 Q. I show you a letter addressed to you
9 dated December 21, 1983 from General Whipple.
10 Would it be accurate to say that it was that
11 document that addressed itself to your
12 application?

13 A. Ask the question again, Bob.

14 Q. Would it be accurate to say that
15 that letter from General Whipple responded to the
16 application filed by Monmouth Consolidated Water
17 Company?

18 A. Yes.

19 MR. O'HAGAN: May we have
20 this letter on the stationery of the Division of
21 Water Resources signed by William Whipple,
22 Administrator, marked as an exhibit.

23 MR. FRIZELL: Can we
24 stipulate that General Whipple is the same
25 General Whipple that testified for the Township

1 in this case?

2 MR. O'HAGAN: I think he is.

3 (Whereupon a letter dated
4 12/21/83 is marked D-3 for identification.)

5 BY MR. O'HAGAN:

6 Q. Mr. Burdan, prior to your receipt of
7 the letter from General Whipple, the staff of the
8 Division corresponded with you; did they not?

9 A. Yes, there was correspondence.

10 Q. I show you a letter with a report
11 annexed dated March 11, 1983, signed by an Ernest
12 Hardin. Would you verify that was the document
13 you received and it was the staff report?

14 A. That is a letter that I received from Mr.
15 Hardin.

16 MR. O'HAGAN: May we have
17 that marked -- with an attached report, you
18 received that also?

19 THE WITNESS: With an
20 attachment, a draft attachment, the staff report
21 dated March 11th, 1983.

22 MR. O'HAGAN: May this be
23 marked as an exhibit, please.

24 (Whereupon a letter with
25 report attached dated 3/11/83 is marked D-4 for

1 identification.)

2 BY MR. O'HAGAN:

3 Q. Mr. Burdan, the letter from General
4 Whipple contains writing on the bottom. As far
5 as you know, that was not put on there by General
6 Whipple?

7 A. To my knowledge it was not. It appears to
8 have been put on there by Mr. Pearce, who
9 evidently spoke to Mr. Whipple on December 30.

10 Q. Now, Mr. Burdan, am I correct in
11 understanding that after you received that
12 turn-down from the -- or strike that.

13 After you received the staff report
14 under cover of Mr. Hardin's letter, the personnel
15 of the Monmouth Consolidated Water Company and
16 others met to prepare a response?

17 A. That's correct.

18 Q. Who was involved in that response?

19 A. At that time Mr. Delaney was involved; Mr.
20 Pearce was involved; Mr. Scott, an engineer for
21 the company was involved; and myself. And I
22 think a Division of Water Quality director, an
23 Arthur Sherman was involved.

24 Q. Would it be accurate then to say
25 that you put your collective heads together in

1 the preparation of a response?

2 A. That was the beginning point of that effort,
3 yes, sir.

4 Q. I show you a document and ask you to
5 identify it?

6 A. Let me correct the impression. This is not
7 a response to the turn-down.

8 Q. It's a response to the staff report?

9 A. It's a response to the staff report and the
10 observations that were brought out in that report.

11 Q. Yeah, that's right. I said
12 turn-down and I didn't mean that.

13 Have you reviewed that, Mr. Burdan?

14 A. Yes.

15 Q. It contains a place for your
16 signature; isn't that correct?

17 A. Yes.

18 Q. Wouldn't it be fair to say that that
19 was prepared by yourself after consulting with
20 the other personnel that you mentioned before?

21 A. As I recall, this draft report and response
22 was prepared for my review; and subsequently a
23 final letter to Mr. Hardin could very well be
24 revised or edited by myself. I'm not certain
25 that this is the final document that was sent to

1 Mr. Hardin in response to that draft report.

2 Q. In any case, it was an initial?

3 A. It was an initial draft of the response.

4 MR. O'HAGAN: May we have
5 this marked for identification.

6 (Whereupon a draft response
7 to the draft report, file no. 420-171, is marked
8 D-5 for identification.)

9 THE WITNESS: I came up with
10 one copy of the response to Mr. Hardin and in
11 that answering the questions raised in his March
12 staff report.

13 BY MR. O'HAGAN:

14 Q. You have it in front of you?

15 A. Yes, I do.

16 Q. May I see it?

17 A. (Whereupon the witness complies.)

18 Q. Just so the record is clear, Mr.
19 Burden, as I understand it your April 19th, 1983
20 letter was the response sent to Mr. Hardin, and
21 that letter bears your signature. And attached
22 to it is a document entitled "Monmouth
23 Consolidated Water Company Response to Staff
24 Report"?

25 A. Yes, that was sent to Mr. Hardin.

1 MR. O'HAGAN: May that be
2 marked?

3 (Whereupon a letter dated
4 4/19/83 is marked D-6 for identification.)

5 BY MR. O'HAGAN:

6 Q. Now, you've indicated -- and there's
7 been perhaps a little confusion between us as to
8 whether that application was withdrawn or denied.
9 If I were to show you a memorandum from the
10 American Water Works Service Company dated
11 January 3rd, 1984 and signed by W.R. Cobb, who I
12 understand is the president of the system, would
13 that refresh your recollection as to whether the
14 application was denied?

15 A. The characterization of the sentence
16 written by Mr. Cobb is due to the
17 misunderstanding of a statement in a letter that
18 was clarified by Mr. Pearce and myself with Mr.
19 Whipple. Mr. Cobb was reacting off the copy of a
20 letter that was forwarded to him from Mr. Whipple.
21 Subsequent conversation with Mr. Whipple
22 indicated that he did not intend to deny the
23 application. It was just a clarification
24 indicating that he was allowing us to withdraw
25 the permit application without prejudice.

1 Q. That letter from Mr. Cobb, you
2 received that; did you not?

3 A. Yes, I did.

4 MR. O'HAGAN: Can this be
5 marked as an exhibit?

6 (Whereupon a memo dated
7 1/3/84 is marked D-7 for identification.)

8 BY MR. O'HAGAN:

9 Q. Now, after the disposition of that
10 application, what did the water company do next?
11 Strike that.

12 Let me just -- okay. Let me
13 rephrase that question.

14 After this application was disposed
15 of with the DEP, what did the water company do
16 next?

17 A. It's -- as a result of the discussions that
18 went on between the correspondents and the
19 development of a clear conception of the DEP's
20 water management policies, we had to, in effect
21 go back to the drawing board with regard to
22 reestablishing data for submission, resubmission
23 of our application to the DEP. The DEP during
24 the conversations in the latter part of 1983 and
25 up to the point where they allowed us to withdraw

1 the application, began to bring in requirements
2 that we, in one sense with regard to doing a
3 hydro ground water, hydrogeologic study, did not
4 feel we should burden our customers with the cost
5 of that study. The DEP continued to persist in
6 their conversation with us in not directly
7 stating but certainly inferring that any
8 application that would be resubmitted would have
9 to include a ground water study to be considered.
10 And DEP is greatly concerned with the ground
11 water situation in New Jersey. And they were
12 insisting that we demonstrate that if we were
13 requesting withdrawals from those ground waters,
14 that we demonstrate there would be no adverse
15 effects on the ground water system and/or related
16 wells within a five mile radius of the wells that
17 we proposed. Consequently, we got approval to
18 proceed with the hydrogeological ground water
19 study, which was recently concluded. And at the
20 same time, because the State was questioning the
21 population figures which they wouldn't recognize
22 as being their own, we redeveloped in more detail
23 to meet their requirements, population growth
24 figures and demand figures in response to the
25 questions that were raised during the course of

1 the proceedings covering that 1982-83 period on
2 the prior applications.

3 Q. When did work commence on that study?

4 A. Worked commenced on that as soon as we
5 understood what the DEP was going to persist in,
6 which would be late 1983. Work began on that
7 early this year, and the hydrogeological study
8 was commenced, as I recall, in the April, May,
9 June framework.

10 Q. Who did that, by the way?

11 A. A firm by the name of Perkins Jordan from
12 Portland, Maine.

13 And the associated data we began collecting
14 concomitant with the preparation for that ground
15 water study.

16 Q. At the same time?

17 A. At the same time.

18 Q. Who was involved -- and ground water,
19 just so that I'm clear, is to be distinguished
20 from surface water? It's under the ground?

21 A. That's correct.

22 Q. Who did the work? Correct me if I'm
23 wrong. I understood you to say that your studies
24 determined both the availability of ground water
25 and surface water?

1 A. That's correct.

2 Well, excuse me. Which study are you
3 referencing, the Perkins Jordan study?

4 Q. I understood that that was just
5 ground water?

6 A. That's correct. And our other studies were
7 done with our own engineers.

8 Q. And that was surface water?

9 A. That was an analysis of the surface water
10 conditions in our area.

11 Q. Who made those studies?

12 A. Mr. Howard Woods our division engineer and
13 Mr. Jim Scott, a company engineer.

14 Q. He's a local?

15 A. He works here, yes, sir.

16 Q. Did they commit their reports to
17 writing?

18 A. In the form of a new application, yes.

19 Q. Didn't they submit interim reports?

20 A. To me?

21 Q. To anyone?

22 A. No. The process of compiling the data was
23 being done to resubmit applications to the DEP;
24 and at the conclusion, their findings were
25 engendered into that report which is identified

1 as an engineering report to accompany the
2 application for additional water.

3 Q. Do you have that application with
4 you today that was submitted to the DEP?

5 A. No, I do not.

6 MR. DAVIS: Yes, you do.

7 THE WITNESS: All right.

8 Yes, I have the application
9 with me.

10 BY MR. O'HAGAN:

11 Q. May I see that?

12 A. (Whereupon the witness complies.)

13 Q. Those other letters, do they go with
14 it?

15 A. One is a memo of a meeting to file on a
16 discussion that Howard Woods, myself, Ken
17 Critchlow, Bob Merker (phonetic), who was then
18 production superintendent, and Jim Scott and I
19 had concerning the diversion application.

20 Q. May I see that? There's another one
21 if I may see that one, too?

22 A. The second letter is a proposal from
23 Perkins Jordan Company, consulting engineers, for
24 a hydrogeological study.

25 Q. With reference to the first memo,

1 which is apparently authored by Jim Scott and
2 bears the date of January 30th, 1984, that speaks
3 merely of applications for ground water diversion;
4 does it not?

5 A. At the time of this memo, that would be a
6 correct statement.

7 MR. O'HAGAN: May we have
8 this marked as an exhibit?

9 (Whereupon a memo dated
10 1/30/84 is marked D-8 for identification.)

11 BY MR. O'HAGAN:

12 Q. The memo from Perkins Jordan, your
13 consulting engineers, also pertains to diversion
14 of ground water; is that correct?

15 A. That is correct.

16 Q. And that is dated January 7th, 1984?

17 A. January 27th, 1984.

18 Q. Pardon me, you're right.

19 MR. O'HAGAN: May that be
20 marked?

21 (Whereupon a memo dated
22 1/27/84 is marked D-9 for identification.)

23 BY MR. O'HAGAN:

24 Q. These two documents discussed ground
25 water diversion. Is there a similar document

1 pertaining to diversion of surface waters?

2 A. No.

3 Q. You mean there was no letter
4 directing your staff people to determine whether
5 surface waters could be safely diverted?

6 A. No.

7 Q. That would be something that would
8 be transmitted by word of mouth?

9 A. No. That would be included in their
10 application under the original one. All that
11 information was originally established. The DEP
12 was not questioning the information we had given
13 them on our surface water supplies.

14 Q. And those surface waters in the
15 earlier 1982 application concerned only the
16 Swimming River Reservoir and the Jumping Brook?

17 A. That's correct.

18 Q. Was there a policy decision made at
19 that time by the Monmouth Consolidated Water
20 Company to look for additional sources of surface
21 waters?

22 A. At that time?

23 Q. Yes.

24 A. No.

25 Q. When was that decision made?

1 A. That decision was made, I believe, this
2 past summer, June or July.

3 Q. June or July, now? Would that have
4 been made at this level here at Monmouth
5 Consolidated?

6 A. That decision would have been made by Mr.
7 Cobb and Mr. Pearce and myself.

8 Q. Wasn't the decision somehow
9 committed to writing?

10 A. I think I have one memorandum from Mr.
11 Pearce which indicates that that decision to seek
12 alternate surface water supplies would be
13 included in our application to the DEP.

14 Q. And that decision, could it have
15 been made as late as July?

16 A. Yes.

17 Q. What prompted that decision?

18 A. The decision really was prompted by the
19 fact that the Perkins Jordan examination of the
20 hydrogeological conditions which we had on an
21 informal basis at the time that the decision was
22 made that the company would not be able to
23 withdraw six million gallons per day out of the
24 Raritan aquifer; and the report indicated that
25 the wells that we had proposed for Swimming River

1 Reservoir would not be feasible because of
2 potential damage to the aquifer, which is already
3 in progress, and that the amount of water that we
4 would be able to get would be limited to
5 approximately two to three million gallons per
6 day from the southerly end of our system. But
7 that essentially would be the extent of the
8 ground water diversion we would be taking without
9 subsequent changes in the ground water system.

10 Q. From a chronological viewpoint,
11 wouldn't it be accurate to say that before that
12 decision was made you had received an inquiry
13 from Philip Caton?

14 A. I did not directly receive an inquiry from
15 Philip Caton.

16 Q. Let's speak of the Monmouth
17 Consolidated Water Company. Wouldn't it be
18 accurate to say that you received an inquiry from
19 Mr. Caton?

20 A. We received an inquiry. I'm not certain of
21 the person, so I can't really respond to the
22 question, as to who you're referencing to. If
23 you want to go one step further and say that Mr.
24 Caton represents somebody --

25 Q. Let me show you, if I may, a letter

1 dated July 12th, 1984, directed to Mr. Kenneth
2 Critchlow.

3 A. All right.

4 Q. You've already indicated to us he is
5 connected with the Monmouth Consolidated system?

6 A. All right. I had another situation in my
7 mind relative to your question.

8 Q. Wouldn't it be accurate to say that
9 from a chronological viewpoint then, that before
10 the inquiry was made to study surface water
11 diversion you had received some type of
12 communication from Mr. Caton?

13 A. No, I cannot say that.

14 Q. Would it be accurate?

15 A. Looking back over it chronologically, as
16 Perkins Jordan's information began to develop and
17 we had conversations with the firm, the
18 crystallization for either water source, other
19 than ground water, could have begun before we
20 received this letter.

21 MR. O'HAGAN: May we mark
22 this for identification?

23 (Whereupon a letter dated
24 7/12/84 is markd D-10 for identification.)

25 BY MR. O'HAGAN:

1 Q. Mr. Burdan, you have in front of you
2 now a letter. I believe it's dated June 25th,
3 1984?

4 A. Yes.

5 Q. Again it's directed to Mr. Critchlow?

6 A. Yes.

7 Q. And it bears the signature of Mr.
8 Brunelli?

9 A. Yes.

10 Q. And it's on the stationery --

11 A. Colts Neck Developers, Ltd.

12 Q. That letter is similar to Mr.
13 Caton's letter inquiring about service of water
14 to the Orgo Farms/Brunelli development; does it
15 not?

16 A. It inquires about a cost estimate on
17 extending a water main to a site and a copy of
18 our standard main extension agreement.

19 MR. O'HAGAN: May this be
20 marked as an exhibit?

21 (Whereupon a letter dated
22 6/25/84 is marked D-11 for identification.)

23 BY MR. O'HAGAN:

24 Q. You indicated that there is a
25 written statement of policy of the American Water

1 Works Company which involved a meeting between
2 Mr. Cobb, yourself and some other gentlemen.
3 Will you produce that letter announcing the
4 policy decisions of the Monmouth Consolidated
5 system?

6 A. Relative to what?

7 Q. Utilization of surface waters in
8 addition to the ground waters?

9 A. The company has not issued a policy
10 statement relative to that subject.

11 Q. Let me rephrase my question.

12 You had indicated that out of the
13 meeting Cobb, yourself and someone else emanated
14 a letter which indicated let's investigate
15 surface waters in addition to ground waters?

16 A. That was a memo from Mr. Pearce to me.

17 Q. Okay?

18 A. That was not a policy statement, that was
19 just a direction to take.

20 Q. I more than likely misunderstood
21 your answer. But would you see if you can find
22 that letter and perhaps someone on your staff
23 could be looking for it while we proceed?

24 A. Well, I am running out of time here.

25 MR. O'HAGAN: We're almost

1 finished.

2 Would you know where it is,
3 Mr. Pearce?

4 MR. PEARCE: No, somewhere
5 in the files. I think that when you get me on, a
6 lot of this will clear up.

7 BY MR. O'HAGAN:

8 Q. Up until this point you were seeking
9 waters to serve your existing municipalities;
10 isn't that correct?

11 A. Yes.

12 Q. And as a matter of fact, during this
13 time period the discussions about the Manasquan
14 Reservoir had been ongoing; have they not?

15 A. Yes, they have.

16 Q. Isn't it accurate to say that all
17 during this time you were seeking water from the
18 Manasquan system to take care of your existing
19 service areas?

20 A. Would you repeat that, Bob?

21 Q. I sure will.

22 You -- I'll rephrase it. You had
23 been a participant in the Manasquan River
24 Reservoir Study Group; correct?

25 A. That's correct.

1 Q. And isn't it accurate to say that
2 you had some input on the decisions that were
3 made concerning that potential development of
4 that reservoir?

5 A. That's an ongoing study at this point. No
6 conclusions have been drawn by the firm
7 conducting the study; and I am serving on the
8 Citizens Advisory Board to the New Jersey Water
9 Supply Authority, and working on subcommittees of
10 that advisory board to represent the company and
11 the water industry.

12 Q. Now that Manasquan system, as I
13 understand it - and you correct me if I'm wrong -
14 that is designed -- strike that.

15 The flow that you were requesting
16 from that system was to service and to handle
17 your existing municipalities that are within your
18 franchise area; isn't that correct?

19 A. The additional -- the request for
20 additional water is an ongoing responsibility of
21 the company to meet not only its existing
22 customer requirements but the expected growth
23 patterns that have developed, and based on
24 figures that are developed either through the
25 State or through our own studies or through the

1 census. And we have a responsibility to have an
2 ongoing search for water when it becomes
3 necessary to seek additional water. That is an
4 activity that does not occur within a very short
5 period of time. We're looking at a period of two,
6 three, four, five years now relative to having a
7 source of water on line to be used. So as we
8 look at what we're doing with regard to water
9 supply, we have to take into consideration not
10 only what our existing requirements are, we have
11 to project and take care of those things because
12 of the time lag that is now evident to add water.

13 Q. I think my question was inarticulate.

14 You have been corresponding back and
15 forth, I would imagine, with representatives that
16 are involved in this Manasquan River Reservoir
17 project; correct?

18 A. No.

19 Q. Well, there has been some
20 correspondence; has there not?

21 A. There has been some correspondence but --

22 Q. But the correspondence that has been
23 emanating in this matter contemplates the supply
24 of water from the Manasquan River Reservoir to
25 Monmouth Consolidated to serve customers within

1 their existing service area; isn't that correct?

2 A. That is correct; and to be extended
3 relative to a developing management water policy
4 by the DEP on a regional basis beyond our service
5 area.

6 Q. Now, as a matter of fact, with
7 reference to the application that you filed in
8 1982, in December of 1982, you projected an
9 expected diversion from the Manasquan River
10 project; did you not?

11 A. Yes.

12 Q. And that certainly was to handle
13 your customers in your service area; was it not?

14 A. Yes.

15 Q. I show you a part of exhibit D-2
16 marked for identification, in engineers report.

17 Would I be correct in understanding
18 that when that report was filed the Monmouth
19 Consolidated Water Company had taken the position
20 that they would need a diversion from the
21 Manasquan Reservoir system of ten million gallons
22 per day to serve customers within their existing
23 franchise area?

24 A. That would be an interim figure, yeah. I
25 think the ultimate water required would be in the

1 vicinity of 15 million gallons per day.

2 Q. To serve your existing franchise
3 area?

4 A. To serve our area, yeah.

5 Q. Now, as I understand it, there are
6 many potential customers of the Manasquan
7 Reservoir system; isn't that correct?

8 A. That's correct.

9 Q. Would it be accurate to say that
10 each of them are seeking water to be diverted
11 from the reservoir?

12 A. No.

13 Q. You're not the only one who is
14 seeking a diversion of water?

15 A. Yes, we are. To my knowledge, we're the
16 only purveyor in this area has definitely applied
17 and indicated that we're interested in water from
18 the Manasquan. I don't know of any other
19 municipality or entity that has taken that step.

20 Q. You're familiar with the fact that
21 the Department of Environmental Protection is
22 seeking to push the communities in the western
23 part of the county to using the Manasquan
24 Reservoir system; isn't that correct?

25 A. My understanding of the policy of the DEP

1 is that they want to reduce the withdrawals from
2 the ground water system in Monmouth County and to
3 develop what they are terming conjunctive use of
4 water supplies in this area so there is less
5 dependence on ground water and a greater usage of
6 surface water to reduce the withdrawal rate or,
7 if at all possible, eliminate it to allow these
8 ground water aquifers to recover.

9 Q. So those municipalities, Freehold,
10 Marlboro, Manalapan, Howell Township in that area,
11 as you understand the policy, will be pushed by
12 the DEP to use the Manasquan system?

13 A. I cannot accept that characterization. I
14 don't know what the policy of the DEP is going to
15 be other than the one I stated. I don't know how
16 they're going to accomplish that. But their
17 policy is to reduce the dependence on ground
18 water and increase the usage of surface water.

19 Q. All right. Just so that we're clear --
20 and I think you've answered this but I'm not sure
21 I got it.

22 When you filed the application in
23 1982 you took the position that your system
24 needed to divert ten million gallons per day from
25 the Manasquan system to handle the customers

1 within your service area, both existing and
2 future?

3 MR. DAVIS: 1982 is that what
4 you said?

5 MR. PEARCE: December '82.

6 MR. LOCASCIO: 1982
7 application?

8 MR. PEARCE: Paul, that was
9 based on getting six million ground water.

10 THE WITNESS: Yeah. That's
11 what I'm trying to get clear in my mind. The '82 diver
12 had nothing to do with the Manasquan.

13 BY MR. O'HAGAN:

14 Q. When you filed that application for
15 the diversion of six million gallons per day
16 diverted from the ground waters, you indicated
17 that you would have a shortfall by 1988. You've
18 already told us that; correct?

19 A. That's correct.

20 Q. You contemplated at that point that
21 you would be able to divert water from the
22 Manasquan?

23 A. No, we did not, because at the time we were
24 making the application --

25 Q. I think my question was inarticulate.

1 When you filed that application in
2 1982, you concluded that in the future after the
3 reservoir was constructed and in operation you
4 would have to divert water from the reservoir?

5 A. We knew at some time in the future when
6 that water was available that we would be
7 requiring water from it to meet the needs of our
8 company.

9 Q. The figure of ten million gallons
10 per day, was that needed to handle the needs of
11 the customers within your own service area?

12 A. Yes.

13 Q. Now, the new application -- strike
14 that.

15 Mr. Burdan, your predecessor at the
16 Monmouth Consolidated Water Company was named
17 Michael J. Caponigro?

18 A. Yes.

19 Q. He was the chief operating officer
20 of the water company before you?

21 A. He was the vice president and general
22 manager.

23 Q. We have already marked many exhibits
24 and I'm trying to minimize them. I would ask you
25 to first verify that this is a letter apparently

1 sent by Mr. Caponigro on March 22, 1979, and that
2 it comes from your files; is that correct?

3 A. Yes.

4 And I would also note that it's a draft of
5 a letter. I'm not certain as to what the final
6 letter would have been.

7 Q. Let's do it another way. Looking at
8 the top there's a letter dated March 28, 1979
9 signed by Michael J. Caponigro and sent by
10 certified mail, return receipt requested to the
11 Office of Environmental Assessments, Division of
12 Water Resources; isn't that correct?

13 A. That's correct.

14 Q. Now, so that the record is clear,
15 would you read the contents of that letter into
16 the record?

17 A. The salutation is: Dear Mr. Walker:
18 Following careful review of the environmental
19 impact analysis for the Manasquan Reservoir
20 system Monmouth Consolidated Water Company wishes
21 to insert into the hearing record the following
22 comments. The full 35 M.G.D. safe yield of the
23 Manasquan River should be developed through the
24 construction of both reservoirs. The long range
25 needs of Monmouth Consolidated Water Company

1 require nearly full yield of any single reservoir
2 without considering another water system. It
3 cannot be stressed strongly enough that the first
4 phase must be started as soon as possible.
5 Please do not hesitate to apprise the water
6 company of any new developments in your plan for
7 this very important water development project.

8 Q. We've spoken of the application that
9 was filed just recently; and I gather it was
10 filed on September 25th, 1984. And there's a
11 cover letter over your signature directed to Mr.
12 Ernest Hardin; is that correct?

13 A. Yes.

14 Q. And this seeks the diversion of both
15 ground water and surface water?

16 A. Yes.

17 Q. Now, the ground water diversion that
18 you're seeking, would that be the same amount of
19 as you were previously seeking?

20 A. No.

21 Q. A lesser amount?

22 A. A lesser amount.

23 Q. Can you just tell us briefly how
24 much that is?

25 A. We're requesting an additional total of

1 three million gallons per day for ground water of
2 our Jumping Brook facility.

3 Q. That's to be contrasted with your
4 previous request of six million gallons?

5 A. In total, yes.

6 Q. And the surface water you're seeking,
7 how much is that?

8 A. Five million gallons per day immediately
9 from the Manasquan River.

10 Q. May I see that again, please?

11 A. (Whereupon the witness complies.)

12 Q. With this water that you're seeking
13 to divert that you feel you can serve to Orgo
14 Farms project; is that correct?

15 A. I think our analysis would show that we
16 could from a hydraulic point of view with the
17 current weather conditions and with the
18 understanding that we're looking at 1200 units,
19 that the addition of that 1200 units to our
20 system could be served by our existing water
21 supply.

22 Q. And that's not withstanding your
23 previous applications to the DEP indicating that
24 you needed six million gallons additional
25 diversion to handle the customers in your

1 existing franchise area and your expressed need
2 to receive ten million gallons per day from the
3 Manasquan River project to handle your existing
4 customers; is that correct?

5 A. We were essentially asked to determine the
6 capability of serving 2300 units and no more.

7 And on the basis of that request and an
8 examination of our current water supply situation,
9 our determination was that for that 1200 units we
10 could adequately serve them under normal
11 conditions with our existing supplies.

12 Q. You've also indicated a willingness
13 to serve the Sea Gull development; isn't that
14 correct?

15 A. That is correct.

16 Q. And is that also with your current
17 supply?

18 A. That's also considered in our current
19 supply situation.

20 Q. So that we both understand, each of
21 those projects are outside of your present
22 service area?

23 A. Yes.

24 Q. To serve 1200 units, what size pipe
25 would be required?

1 A. That is dependent on the distance and the
2 volume of water being requested. And the
3 distances as I understand it requires the
4 installation of a 36-inch pipe line to provide
5 them the fire protection required as well as
6 provide the domestic water supply.

7 Q. And are you saying that it is solely
8 to serve the Orgo project the 36-inch pipe is
9 required; or would that serve additional
10 customers?

11 A. That's a question I think an engineer would
12 be able to answer. I don't have an answer to
13 that question.

14 Q. You don't know?

15 A. No, not at this point.

16 Q. Have you given any thought as to a
17 shortage of water in your service area if you
18 serve 1200 customers at the Orgo site?

19 A. Yes, that was taken into consideration.

20 Q. That was committed to writing I
21 would imagine?

22 A. In terms of to whom?

23 Q. Well, I'm asking you. Was it
24 committed to writing?

25 A. No, not to my knowledge.

1 Q. Was there someone in your employ who
2 was assigned to make these calculations?

3 A. Yes.

4 Q. Who was that?

5 A. Mr. Scott and Mr. Woods.

6 Q. Now, the assignment, was that
7 transmitted by writing?

8 A. No. I think it was done on the telephone.

9 Q. Was the calculations that Mr. Scott
10 made as to impact upon customers in your existing
11 service area, was that committed to writing?

12 A. I don't know. I have not reviewed those
13 documents or backup. I have only reviewed the
14 conclusion.

15 Q. Would you review that backup and
16 supply me with those calculations in a letter or
17 memo or whatever you have to back it up?

18 MR. FRIZELL: Before Mr.
19 Burdan answers that, let me just again remind you
20 that, Mr. Davis and Mr. O'Hagan, for the record,
21 that I don't think there's any requirement on the
22 part of this company to do anything subsequent to
23 today's deposition. The discovery ended several
24 days ago. The Township waited until the last
25 possible moment to schedule the depositions; did

1 it on short notice under the rules; and we're all
2 here in a spirit of cooperation. But I think
3 I've made my previous comments about the fishing
4 party of this thing. I want to repeat it for the
5 record.

6 MR. O'HAGAN: Are you saying
7 it's fishing to determine whether or not they can
8 serve your development? Is that fishing?

9 MR. FRIZELL: I'm not going
10 to debate it. I think the appropriate time is in
11 court. First of all, I think if you want to make
12 calculations, you can hire experts to do them. I
13 think whatever was done you had an opportunity to
14 make discovery. You've taken that opportunity to
15 the fullest extent and that's why we're here. I
16 don't think we need to extend this beyond today's
17 date. As a matter of fact, I think it's beyond
18 the scope permitted by Judge Serpentelli in a
19 very specific order in this case.

20 MR. O'HAGAN: If you had an
21 objection to the adjournment of the depositions -
22 which was done to accommodate the water company -
23 I certainly wish you would have told me and then
24 I would have been able to guide myself. If I had
25 known you were going to do this, I wouldn't have

1 accomodated these fine folks in that fashion.
2 But, let's go back. We're just burdening the
3 record.

4 BY MR. O'HAGAN:

5 Q. Did you supply me with that
6 information, Mr. Burdan?

7 A. No.

8 Q. Meaning you don't have it?

9 A. I don't want to supply it.

10 Q. You don't choose to supply it?

11 A. I don't choose to supply it.

12 Q. With reference to these types of
13 extensions of lines, is it common that a
14 calculation is made regarding the ability of the
15 water company to supply water?

16 A. Yes.

17 Q. Are you confident that that was made
18 in this particular case?

19 A. Yes.

20 Q. And you think it was in a report
21 from Mr. Scott?

22 A. Not directly from Mr. Scott, but
23 cooperatively with Mr. Woods and Mr. Scott.

24 Q. Mr. Woods, you may have told me his
25 function?

1 A. He is our division engineer.

2 Q. And it's your testimony, I believe,
3 that you feel that this was committed to a
4 writing?

5 A. No, I did not say that.

6 Q. So you don't know?

7 A. I don't know. My testimony is I don't know
8 what and how the conclusion was arrived at.

9 Q. You got Mr. Frizell's message, I
10 gather, about not supplying the information?

11 MR. FRIZELL: I didn't say
12 that he shouldn't supply information. If Mr.
13 Burdan had the information here today pursuant to
14 your discovery request, I wouldn't have made the
15 objection. But as I understood it, what the
16 request was to ask Mr. Burdan to take his time
17 and go out and do some additional discovery and
18 calculations for the benefit of the Township. I
19 don't think he has any obligation to do that.

20 Q. Mr. Burdan, would your answer be the
21 same concerning the extent of the line to the Sea
22 Gull project?

23 A. Yes.

24 Q. Now, Mr. Burdan, the application
25 that you're now seeking, I gather, is below the

1 reservoir for the diversion of surface waters?

2 A. You're referencing to the ground water
3 diversion application portion of that?

4 Q. Let me rephrase it. You
5 distinguished between ground water and surface
6 waters?

7 A. Yes.

8 Q. You indicated, I think, that the
9 surface waters were to be diverted on the
10 Manasquan River?

11 A. Any surface water is a river or stream.
12 Any ground water is any water underneath the
13 ground.

14 Q. What stream is it that we're talking
15 about that is to be diverted?

16 A. The Manasquan River.

17 Q. Can you pinpoint the precise
18 location of the area where the water is to be
19 diverted?

20 A. I don't think you really are asking me a
21 question that I understand.

22 MR. O'HAGAN: Off the record.

23 (Whereupon there is a
24 discussion off the record.)

25 BY MR. O'HAGAN:

1 Q. As I understand it then, Mr. Burdan,
2 the precise location of where the water is to be
3 diverted from the Manasquan River has not been
4 fixed but the general location has been; and it's
5 near the Allaire golf course?

6 A. Yeah. The approximation would be near the
7 Allaire golf course approximately eight miles
8 south of our franchise area, north of Wall
9 Township.

10 Q. This would be an interim diversion?

11 A. It could be, yes.

12 Q. If the reservoir project were in
13 operation, would this diversion be abandoned?

14 A. No. The purveyor could be changed in the
15 sense that we would go to the intake structure
16 and pump raw water to our Jumping Brook treatment
17 plant. In the event the reservoir system
18 proceeds; the New Jersey Water Supply Authority
19 would be purveyor of the raw water, under the
20 current concept and essentially our temporary
21 intake would be replaced by whatever structure
22 they built, if they decide to build one.

23 Q. What is the ultimate amount that
24 you're seeking to divert from this location?

25 A. Right now the ultimate to the year 2010,

1 somewhere in that vicinity; these figures are
2 rather liberal in terms of the sense that we
3 can't be that precise. We're looking at roughly
4 15 million gallons a day.

5 Q. You spoke of diverting ten million
6 gallons per day from the reservoir. That was the
7 company's projection?

8 A. That was to the year, I believe, 1995, 1990,
9 '95. We're looking at roughly five to six, seven
10 years, increments of five, five, and five.

11 Q. To what ultimate figure?

12 A. To a total of 15.

13 Q. Doesn't the reservoir have a total
14 capacity of 35 million gallons per day?

15 A. The total capacity has now been estimated
16 at roughly 31 million gallons per day.

17 Q. You would be seeking to divert from -
18 I believe you said at this so-called temporary
19 facility, at least on your part, 15 million
20 gallons per day?

21 A. Ultimately, yes.

22 Q. That would be roughly half the
23 capacity of the reservoir?

24 A. Approximately, approximately.

25 Q. Now, the application that you filed

1 would be subject to a hearing?

2 A. Yes.

3 Q. And all municipalities in the area
4 would be noticed?

5 A. I believe that's DEP policy.

6 Q. And all those who had an interest in
7 the Manasquan River project would make their
8 views known?

9 A. Yeah, I guess so.

10 Q. Or opposition?

11 A. I'm not quite sure of the extent of the
12 notification, of the public notice' but I would
13 assume that that would be --

14 Q. You cannot tell us at this time
15 whether or not therefore, based on those facts,
16 you could not tell us whether the application
17 would be approved?

18 A. I cannot at this time give any indication
19 at all as to what will happen with our
20 application.

21 Q. And naturally that depends upon the
22 DEP and whether there are any objectors and so
23 forth?

24 A. It all depends on those conditions, yes,
25 sir.

1 Q. The increased diversion that you're
2 seeking, am I correct in understanding that
3 you've projected growth in your present service
4 area?

5 A. Yes.

6 Q. And I think you told us before that
7 you personally don't know the extent of the
8 projection?

9 A. I don't have the statistical data with me.

10 Q. Aren't you also seeking to serve
11 additional areas?

12 A. Not unless we're requested to.

13 Q. Doesn't your application seek --
14 speak of serving the Bayshore area?

15 A. That's only on a policy that's being
16 evolved by the DEP. That's a potential that we
17 have to take into consideration; but we're not
18 actively at this point saying we want to serve
19 the Bayshore area.

20 Q. Aren't you also seeking to serve the
21 Freehold area?

22 A. Not actively, no.

23 Q. So your answer then would be the
24 same. You are concerned with your service area
25 and it's going to be up to the DEP whether you

1 serve Colts Neck, Freehold and beyond; isn't that
2 correct?

3 A. I think in terms of the overall
4 considerations, there are regulatory
5 considerations the DEP has to get involved in;
6 the municipality of Colts Neck is going to have
7 to get involved in; and I think the whole
8 question of whether we do or whether we don't
9 enter into a service situation with Colts Neck or
10 Orgo Farms or anyone else is going to be
11 dependent on the outcome of the Mount Laurel II
12 problems. It's going to depend on the policies
13 that are being established by the DEP in terms of
14 water management in this area. And if in the
15 wisdom of the DEP in their water management
16 scheme it's the best way to manage the water,
17 yes, sir, they could direct us to do it.

18 Q. And your answer would be the same
19 for Freehold Township?

20 A. Yes, sir.

21 Q. Are you seeking additional water to
22 serve the towns north of Manasquan?

23 A. No.

24 MR. O'HAGAN: Mr. Pearce?

25 MR. PEARCE: Well, in effect,

1 if DEP directed us to do it.

2 THE WITNESS: That's what I'm
3 saying. We're not actively. If the DEP directs
4 us to, the water has to be there. That's part of
5 the consideration of the policy, Bob, you're
6 saying is Monmouth Consolidated actively pursuing
7 Wall Township or Howell Township? No, at this
8 time we are not. But if the DEP in their wisdom
9 says that Wall Township needs the surface water,
10 that could be a possibility and that must be
11 taken into consideration in the overall
12 perspective of the water management scheme.

13 BY MR. O'HAGAN:

14 Q. Whether or not you serve the
15 Bayshore communities; whether or not you serve
16 the coastal towns north of Manasquan; whether or
17 not you serve the area through Colts Neck and
18 into Freehold, none of them are avenues that
19 you're actively pursuing; but it's up to a
20 decision of the Department of Environmental
21 Protection?

22 A. We have made an application for water; and
23 we have brought into consideration what we think
24 requires the amount of water we're looking at.
25 And the DEP has to make a judgment as to whether

1 the application is reasonable and justifiable and
2 in the interests of the water management policies
3 and in the interests of our customers.

4 Q. If you have to serve the Bayshore
5 area, can you tell us how much of that requested
6 diversion would be needed?

7 A. I think there are estimated figures - I
8 don't have them in hand - as to how much water
9 the Bayshore area would require if they were
10 directed to interconnect with another surface
11 water system to relieve the ground water
12 situation. I think there are figures.

13 Q. And as a matter of fact, in the
14 Bayshore system isn't there what's called a "cone
15 of depression"?

16 A. That's not only true of the Bayshore
17 district, that's true of any well operation.
18 You're going to have cones of depression. And
19 what you're indicating in Bayshore is equally
20 true throughout New Jersey.

21 Q. The water level has been sinking
22 drastically?

23 A. That's not identified -- the cone of
24 depression, the water table is dropping.

25 Q. Isn't it accurate also to say that

1 you requested increased capacity to serve
2 existing municipal water systems that your
3 service area surrounds?

4 A. We have to take into consideration the
5 policy and bring to the attention of the DEP if
6 they're pursuing what we believe to be their
7 policy, that we have to take into consideration
8 Red Bank, Allenhurst, Avon. These are systems we
9 don't presently serve in full, but if the DEP
10 comes along and says that Red Bank, for instance,
11 you've got to go on surface water in whatever
12 mechanic way. The DEP can do that. We're going
13 to have to be in a position to say the surface
14 water is going to come from somewhere.

15 Q. How much water -- I'll do this in
16 just one question. You can't tell us how much
17 water would be required then to either service or
18 augment those municipal systems that you've
19 described, nor how much is required in the
20 Bayshore area, nor in the towns north of
21 Manasquan, nor to service the Freehold area?

22 A. No.

23 Q. Mr. Burdan --

24 A. No. That's information I don't have.

25 Q. Mr. Burdan, I show you a document

1 and would ask --

2 MR. DAVIS: Can you tell me
3 how much longer?

4 MR. O'HAGAN: This is the
5 last question.

6 BY MR. O'HAGAN:

7 Q. I show you a document and ask you to
8 identify it?

9 A. I'm unable to read the title, but at the
10 top of the report, Monmouth Consolidated Water
11 Company, abbreviated, and it appears to be water
12 diversion -- I can't make out --

13 MR. O'HAGAN: Off the record.
14 (Whereupon there is a
15 discussion off the record.)

16 THE WITNESS: This is a
17 diversion report that is directed to the State,
18 DEP.

19 BY MR. O'HAGAN:

20 Q. As you look at that, can you tell
21 the instances where the allowed diversion was
22 exceeded?

23 A. No, I cannot.

24 Q. Do you know -- strike that.

25 Do you know what the diversion

1 allowed from the Swimming River is?

2 MR. PEARCE: I have to dig it
3 up out of the files.

4 MR. O'HAGAN: No further
5 questions.

6 May we mark this report?

7 (Whereupon an application is
8 marked D-12 for identification.)

9 MR. O'HAGAN: Mr. Burdan, I
10 really have a few questions.

11 BY MR. O'HAGAN:

12 Q. Mr. Burdan, you told us that you
13 don't know whether the 36-inch pipe is the size
14 needed solely to serve Orgo?

15 A. That information I don't have at this time,
16 no.

17 Q. Your policy as enunciated in the
18 report that you've just submitted speaks of
19 serving the Freehold area; isn't that correct?

20 A. I would have to read that, but in terms of
21 taking into consideration the DEP policy, that
22 could become a possibility.

23 Q. So it would be illogical to say that
24 you would extend a pipe from Swimming River Road
25 to Orgo smaller than was needed to serve the

1 additional areas; isn't that correct?

2 A. If that was a consideration, yes, it would
3 be illogical to undersize the pipe line without
4 taking into consideration that potential.

5 Q. This is the last question. In your
6 reports you speak of average consumption per
7 capita in residencies within your service area?

8 A. Yes.

9 Q. Do you know that figure?

10 A. It's 69.5, I think, in round figures,
11 gallons per day per person.

12 Q. And that's based upon studies you've
13 made?

14 A. Yes.

15 MR. O'HAGAN: I have nothing
16 else.

17 MR. LOCASCIO: May I ask one
18 question?

19

20 CROSS-EXAMINATION BY MR. LOCASCIO:

21

22 Q. A question, you mentioned
23 conjunctive use. Is it the present policy as far
24 as you know approved by the DEP to encourage
25 diversion by means of recharging surface water

1 rather than simply withdrawing ground water? Is
2 that what you meant about conjunctive use?

3 A. That's not the concept of conjunctive use.

4 Q. What is the concept?

5 A. Balancing the use of ground water with the
6 use of surface water during certain periods of
7 the year. Current practice is for the ground
8 water to be used as a base supply many of the
9 water purveyors in the area, obviously most of
10 them, because we are the only surface water
11 purveyor in the area. Our major source is
12 surface water. The State wants to expand that
13 concept of using surface water to the other
14 municipalities. And the proposal to construct
15 the Manasquan Reservoir is to fit that need, so
16 that the dependence becomes more for the base
17 load on surface water while the peak loading
18 periods in the summer time would be allowed to
19 use the ground water diversions.

20 Q. Would it be fair to say then that
21 the DEP would look more favorably upon a
22 diversion request if in conjunction with the
23 diversion of ground water it included a diversion
24 of surface water?

25 A. Based on our knowledge of their current

1 thinking, that would be an accurate assertion.

2 MR. LOCASCIO: Thank you very
3 much.

4 (Whereupon the witness is
5 excused.)

6
7 W I L L I A M H. P E A R C E, sworn.

8
9 DIRECT EXAMINATION BY MR. O'HAGAN:

10
11 Q. Mr. Pearce, you are employed by the
12 American Water Works Service Company?

13 A. Yes.

14 Q. And you're the manager of operations?

15 A. For the eastern division, which encompasses
16 operating companies that American Water Works
17 owns in New Jersey and New York.

18 Q. How many companies are under your
19 jurisdiction?

20 A. Four.

21 Q. Can you tell us what your duties
22 involve?

23 A. My duties involve the supervision of the
24 operations of the four water companies that
25 American Water Works owns in the New York and New

1 Jersey states.

2 Q. Mr. Pearce, I neglected to go over
3 with you the nature of the depositions; but you
4 were present when Mr. Burdan was deposed?

5 A. Yes, I was.

6 Q. And you full well know the nature of
7 these proceedings?

8 A. Yes.

9 Q. Mr. Pearce, would you be good enough
10 to detail for us your educational background?

11 A. Yes, I graduated from the University of
12 Kentucky with a bachelor of science in civil
13 engineering in 1972. In 1972 I was employed by
14 the Appalachian Power Company in West Virginia.
15 I worked for two years for them. In 1975, spring
16 of '75, I came to work for the American Water
17 Works Service Company in Haddon Heights as a
18 staff engineer. In 1977 I was promoted to
19 division engineer, which was in charge of all the
20 engineering design, planning and construction in
21 New Jersey for the American Water Works Companies;
22 those companies being Monmouth Consolidated Water
23 Company, Commonwealth Water Company and New
24 Jersey Water Company.

25 Q. Are you licensed?

1 A. A registered professional engineer in the
2 State of New Jersey.

3 MR. O'HAGAN: Off the record.

4 (Whereupon there is a
5 discussion off the record.)

6 BY MR. O'HAGAN:

7 Q. I interrupted you when you
8 describing your job or credentials and promotions.
9 Please continue.

10 A. In 1979 I was promoted to the manager of
11 operations in the eastern division within the
12 American Water Works Company and within the
13 American Water Works Service Company; some
14 parties carry in effect two hats. The second hat
15 that I wear is the vice president of the four
16 operating companies within the eastern division,
17 so that I am a counterpart with Mr. Burdan as a
18 vice president and, basically, operations manager
19 of Monmouth Consolidated Water Company.

20 Q. You, as I understand it, get
21 involved with applications to state agencies?

22 A. Yes, I do.

23 Q. What part of the work do you perform?

24 A. Presently I supervise the water company and
25 service company staff members that basically

1 prepare the parts of the application. I review
2 the application. Where my signature is required
3 as an officer, I sign the document as an officer.

4 Q. Would it be accurate --

5 MR. DAVIS: Excuse me. I
6 assume you're talking about diversion
7 applications, because he talked about making
8 applications to state agencies, and there's a
9 number of other state agencies you make
10 applications to.

11 MR. O'HAGAN: I think that's
12 a good point.

13 BY MR. O'HAGAN:

14 Q. Would it be accurate to say that the
15 applications you're involved in are limited to
16 diversion permits?

17 A. No, that wouldn't be accurate.

18 Actually, as a regulated public utility in
19 the State of New Jersey, we have an enormous
20 number of documents and applications and reports
21 that go to various State agencies and Federal
22 agencies where corporate officers' signatures are
23 required. Actually, there's four persons that
24 can sign those applications, three vice
25 presidents - Mr. Burdan and I are two of those -

1 and of course the company president, William R.
2 Cobb.

3 As it is relates to the specific, as I
4 understand this deposition, that we're dealing
5 with is the Department of Environmental
6 Protection and the diversion application or
7 applications as it is. In those instances
8 generally it would be either Mr. Burdan, as the
9 general manager and vice president of Monmouth
10 Consolidated or myself as vice president and
11 operations manager.

12 Q. Speaking of Monmouth Consolidated
13 and speaking of diversion permits and diversion
14 applications, can you tell us what year was the
15 first time you were involved in an application
16 for a diversion permit?

17 A. Specifically for Monmouth Consolidated
18 Water Company an application to request an
19 increase in diversion, the first time I was
20 involved was 1979.

21 Let me back up. It's not 1979. The
22 application was filed in December of 1982; that
23 application I was involved in, and in fact did
24 sign it.

25 Q. Going back to the one that was filed

1 in 1979, what participation did you have in that?

2 A. I'm sorry, I misstated. It wasn't 1979, it
3 was 1982.

4 Q. So then as far as you are concerned,
5 that's the first application in which you were
6 involved?

7 A. To increase diversion at Monmouth
8 Consolidated Water Company, yes.

9 Q. What gave rise to the filing of that
10 application?

11 A. Perceived need by the water company - and I
12 use that generically as Monmouth Consolidated -
13 but the water company in the present and
14 immediate near future needs of water had to be
15 increased.

16 Q. And that was an application for six
17 million gallons per day?

18 A. Yes, that first application was filed for
19 six million gallons a day.

20 Q. And it was anticipated that that
21 would serve the needs of the company for a
22 limited period of time?

23 A. It was intended to be an interim
24 application.

25 Q. When that application was filed --

1 strike that.

2 You've mentioned it was interim.
3 What discussions occurred as far as you were
4 concerned or decisions were made regarding the
5 need for additional water in addition to the six
6 million gallons per day?

7 A. In 1979, a planning study was done for
8 Monmouth Consolidated Water Company by Charles
9 Paginaro (phonetic).

10 Q. He's a licensed engineer?

11 A. A licensed civil engineer.

12 Q. He's from New York; is he not?

13 A. Yes.

14 Part of the task of his study was to review
15 the safe yield of the water company's present
16 supplies, project the potential demands within
17 the existing franchise area -- and I specifically
18 delineate that as the franchised area. It was
19 not to look beyond the existing franchised areas;
20 and by that context was narrowly defined as not a
21 regional analysis of the needs of the Monmouth
22 service area, and specifically excluded even a
23 system such as Red Bank which Monmouth
24 Consolidated completely surrounds.

25 The study indicated that in the near term

1 that there should be -- should be the
2 availability of the ground water from the
3 Raritan/Magothy formation essentially to the mid
4 80s, at which point in time, at that time it was
5 understood, that the Manasquan Reservoir project
6 would be virtually nearly complete. History has
7 told us that that has somewhat not come to pass.
8 Their recommendations were to develop water from
9 those ground waters in the Raritan formation
10 until that surface water supply was available and
11 then, recognizing that the ground waters in the
12 region - and "the region" being essentially most
13 of Ocean and Monmouth Counties and Middlesex
14 County - that the ground waters were being
15 heavily drawn upon and areas were perceived to be
16 concerns regarding salt water contaminaton; and
17 that some conjunctive use of surface and ground
18 waters would have to be taken into account; and
19 that Monmouth should look to the Manasquan
20 project for that additional surface water.

21 So that you don't have to dredge up that
22 entire report, they did look at the possibility
23 of raising the Swimming River dam and acquiring
24 additional properties. They looked at the
25 possibility of diverting other surface waters of

1 rather small brooks in the Monmouth County area.
2 They looked at the possibility of increasing the
3 withdrawal of water from the Shark River/Jumping
4 Brook system; and found that none of them would
5 satisfy the immediate shortfalls; and that
6 particularly that the raising of the reservoir,
7 the Swimming River, that the costs were just --
8 land acquisition and environmental impacts were
9 basically unacceptable. And did not go any
10 further into the surface water development other
11 than the fact that the New Jersey water supply
12 Master Plan, which was adopted in 1980 by the
13 State, indicated that for Region 2, which is
14 Monmouth and Ocean Counties, that the Manasquan
15 Reservoir project and conjunctive use of ground
16 water supplies in those two counties was the
17 solution for the water supply needs for that
18 region through the year 2010.

19 Q. Now, the Paganaro study, what does
20 that suggest?

21 A. the Paganaro study indicated that whatever
22 the shortfall was prior to the coming on line of
23 the surface waters of Manasquan, as far as they
24 were concerned, absent detailed hydraulic
25 analysis, could be developed on an interim basis

1 from the Raritan formation.

2 Having been here while you were questioning
3 Mr. Burdan, I perceived again - I recognize that
4 you're not an engineer and I'm not an attorney -
5 but I wanted to clarify the safe yield discussion
6 that you had with Mr. Burdan.

7 Q. We'll get to that.

8 But Paganaro, in his study, what did
9 he recommend as to the additional diversion that
10 was required from the ground supplies?

11 A. He recommended six million; in essence, the
12 application that we filed.

13 Q. And as I understand, that was to
14 serve projected future customers in the service
15 area for a limited period of time to the mid 80s?

16 A. Existing and projected, yes.

17 Q. Did you work on the application that
18 was submitted?

19 A. Yes, I did.

20 Q. With reference to that application,
21 I ask you firstly is there something that Mr.
22 Burdan has said that you wish to correct?

23 A. No, there's nothing that he said that was
24 wrong or anything that I wish to correct. There
25 are areas that I felt might help you understand.

1 his discussion.

2 Q. Would you tell us what they are then?

3 A. When Mr. Burdan and you were discussing
4 safe yield, I wanted to indicate to you that safe
5 yield, in effect, is a definition that you must
6 first agree upon the numbers that you're going to
7 analyze, in effect set a ceiling or a floor on
8 your analysis. And in the particular instance of
9 Monmouth Consolidated Water Company and, in
10 general within the American Water Works System,
11 the company analyzes the weather and stream
12 sources on a basis that the supply will sustain
13 the demand of the customers such that once in
14 every 20 years a shortfall in rainfall which
15 would, in turn, cause a reduction in stream flows,
16 might cause the company to not be able to meet
17 the full needs of the customer, which would cause
18 a reduction in the water usage, generally a
19 cessation in lawn sprinkling or outside uses or
20 discretionary uses of water. If you change that
21 analysis period to some other time frame, say 50
22 years, 100 years or 500 years, you change the
23 safe yield number.

24 An analogy would be that if you changed it
25 from a 20-year frequency at Swimming River, which

1 was 25 million gallons a day with a let-by
2 requirement of six million to release downstream,
3 if you change that to a different time period, it
4 might not be 25 million gallons a day. It could
5 be higher or it could be lower. In effect it's a
6 numerical stating of the statistical risk of
7 running out of water. So that you have to agree
8 upon what time period you're analyzing to develop
9 that safe yield.

10 The numbers that Mr. Burdan was giving you
11 was a 20-year frequency.

12 MR. O'HAGAN: Off the record.

13 (Whereupon there is a
14 discussion off the record.)

15 MR. O'HAGAN: Back on the
16 record.

17 BY MR. O'HAGAN:

18 Q. We've had an off the record
19 discussion; and you spoke, Mr. Pearce, of a safe
20 yield determination. Would I be correct in
21 understanding that that's a figure that's
22 discussed between the water purveyor, in this
23 case Monmouth Consolidated, and the Department of
24 Environmental Protection?

25 A. In this particular instance, the safe yield

1 number that we're dealing with is an agreed upon
2 number between the Department of Environmental
3 Protection and the Monmouth Consolidated Water
4 Company.

5 Q. And evidence, perhaps, was submitted --
6 strike that.

7 Evidence was submitted by the water
8 company, reviewed by the DEP, and approved or
9 amended or so forth, in any case this safe yield
10 figure was derived?

11 A. Yes. In fact, that evidence was presented
12 by the company in 1962 at the application for
13 what is now the present Swimming River diversion
14 rights.

15 Q. And among the factors that the DEP
16 relies upon is the needs to serve the existing
17 customers, the anticipated rainfall, the expected
18 growth of the area; is that correct?

19 A. That's correct.

20 Q. Any other factors?

21 A. Not per se, within the allocation review.

22 Q. In any case then, for Monmouth
23 Consolidated, as I understood it, they had a safe
24 yield of what?

25 A. The safe yield is 31 million gallons a day,

1 with a let-by of six million, which translates to
2 25 million gallon average diversion right.

3 Q. With reference to the let-by,
4 perhaps not in the Swimming River, but the DEP
5 has to be concerned with the downstream areas?

6 A. The let-by requirements in surface sources
7 are considered by the DEP based upon downstream
8 water rights, water quality, wildlife, aesthetics,
9 plant life. It's an area that the DEP is
10 concerned with when they allocate surface water
11 rights.

12 Q. Do you have a document that would
13 indicate the times on a monthly basis that the
14 Monmouth Consolidated Water Company exceeded the
15 diversion rights?

16 A. I do not have that document in front of me,
17 but the water company, as part of the diversion
18 permit, reports quarterly to the Division of
19 Water Resources, the actual volumes of water that
20 it took from all of its sources, be they ground
21 or surface, and any additional information that
22 might be required by the diversion application
23 that was permitted. The fact is that for a
24 number of years Monmouth Consolidated has taken
25 during certain periods of the year, generally the

1 drier, warmer seasons, more than a 25 million
2 gallon a day average from the Swimming River
3 Reservoir.

4 Q. Please look at this document and see
5 if you can identify it?

6 A. I have a document which is a copy of a
7 report sent to the Division of Water Resources
8 totaling the diversions from all sources by
9 Monmouth Consolidated Water Company and they vary
10 through the years from 1983 to 1980.

11 Q. Do you know the monthly allowed
12 diversion from the Swimming River Reservoir?

13 A. Not off the top of my head. We have about
14 200 diversion permits in this state. I would
15 have to look at a file.

16 Q. Is there a document that would --
17 strike that.

18 Would the application to the DEP,
19 would that reflect the allowed diversion?

20 A. The application to the DEP would reflect it
21 specifically, and in an annual diversion from all
22 sources and a monthly diversion from individual
23 sources or groups of sources, again related to
24 what the actual permit requirements were of that
25 allocation. As an example, the December 1982

1 application was seeking to increase the overall
2 annual -- excuse me, not annual, monthly
3 diversion rights from 1129.02 million gallons per
4 month to 1314.02 million gallons per month.

5 Q. Let me just ask it a different way.
6 Mr. Burdan indicated that he could not tell me
7 precisely the months when the water company
8 exceeded its allowed diversion. Would it be
9 accurate to say -- I gather from your response
10 that during all of the dry months in the summer
11 it's more than likely that you exceeded the
12 allowed diversion?

13 A. I couldn't say all, and the reason would be,
14 to give you an example, June of 1983 had
15 excessively high rainfalls. The usage demands of
16 our customers would have been significantly below
17 normal for the month of June; and it's quite
18 possible that in June of 1984 we didn't exceed it.
19 Then again, in August of 1983 you had extremely
20 high demands, and it was very hot and warm. And
21 I would guess without looking at the records that
22 we did exceed in all of '83. It's a month to
23 month, based upon weather and customer demand.

24 Q. What part did you play in the
25 application that was submitted to the DEP in

1 December of 1982?

2 A. The 1982 application I directed service
3 company staff and water company staff in
4 preparing the bulk of the document. I reviewed
5 it. I personally added comments to it and I
6 signed the engineer's report as the engineer of
7 record. Mr. Burdan signed some of the other
8 documents as the vice president.

9 Q. So D-2 for identification bears your
10 signature and you have overall control of its
11 preparation?

12 A. Yes, sir.

13 Q. Before we get to this - and I asked
14 you in a general sense from a ballpark viewpoint -
15 can you tell us within a 12 month-period looking
16 backwards, how many times Monmouth Consolidated
17 has exceeded its allowed diversion, speaking
18 first of Swimming River?

19 A. I would have to say that since about the
20 late 70s, '77, '78, that generally that what
21 would be perceived as the summer months of July
22 and August, we've exceeded that average monthly
23 volume from Swimming River.

24 Q. During each of those years?

25 A. Unless it was an extremely wet month.

1 Q. Mr. Pearce, as I understood Mr.
2 Buridan's comments, he indicated that even
3 considering this application for diversion of an
4 additional six million gallons per day there
5 would be a shortfall as to water needs within the
6 company's franchised areas beginning or -- strike
7 that -- continuing from 1984 onward; is that
8 correct?

9 A. In general that's true.

10 Q. And doesn't it say that even if you
11 got that requested diversion you wouldn't have
12 enough water to serve your existing customers in
13 the franchise area?

14 A. The application filed in 1982 was intended
15 to meet an immediate deficit that existed then
16 and, frankly still exists today. Based upon
17 average rainfalls and projected customer demands,
18 it was intended as an interim application before
19 the greater quantity of water from the Manasquan
20 project was perceived to be available. On the
21 average, that six million number in 1982, we
22 projected, would only provide us a buffer until
23 about the mid 80s; and if growth was greater than
24 our projections, we would fall short. If growth
25 was less than our projections, we would have

1 sufficient supplies. But it was only for a very
2 short period of time. Approximately five years
3 is what we were looking at.

4 Q. So the shortfall even exists at the
5 present time?

6 A. Absolutely.

7 Q. If you have to estimate the
8 shortfall - and I gather that means the total
9 amount you're able to divert as compared to the
10 total needs - what would that figure be?

11 A. On the average four to five million gallons
12 a day as of today.

13 Q. And that shortfall doesn't prevail
14 throughout the year?

15 A. No.

16 Q. How many months of the year does it
17 prevail?

18 A. None if it rains greater than normal. And
19 I say in in all honesty we're dealing with
20 averages; and it's important that be understood.

21 Q. What I'm understanding from your
22 remarks is that if it rains more than normal,
23 that the domestic needs that the people have to
24 water the grass is correspondingly reduced?

25 A. That's reduced and the water available to

1 divert is being increased.

2 Q. You still may not divert more than
3 you're allowed?

4 A. It's a chicken and egg proposition. If the
5 demand is not there, we would not divert. So if
6 there is an excess of rain, generally there would
7 be a decline in usage. We would not divert. It
8 would run over the spillway at Swimming River and
9 go out into the ocean.

10 Q. The example I gave was to water the
11 lawns.

12 A. Yes.

13 Q. Even if there were more rainfall,
14 however, you could not divert more water, absent
15 paying the fee that Mr. Burdan spoke of?

16 A. We would have no reason to divert that
17 water because the demand isn't there.

18 Q. Let's speak of years of average
19 rainfall. And I think the question was what was
20 the difference between --

21 MR. O'HAGAN: Would you read
22 back that question, please?

23 (Whereupon the Reporter reads
24 back, "Question: If you have to estimate the
25 shortfall- and I gather that means the total

1 amount you're able to divert as compared to the
2 total needs - what would that figure be?")

3 BY MR. O'HAGAN:

4 Q. Mr. Pearce, after looking back on
5 the record the question was if you had to
6 estimate the deficit that exists now - and I
7 understand the deficit to be a figure between
8 your present allowed diversion and the present
9 need - what would you say the deficit would be,
10 assuming it was a period of average rainfall?

11 A. Four to five million gallons a day.

12 Q. If it were a period of drought, then
13 the deficit would be greater?

14 A. Yes.

15 Q. When you submitted that application
16 to the DEP in 1982, you considered population
17 projections. And as I understood it from Mr.
18 Burdan, those were figures published by the DEP?

19 A. Yes, they were.

20 Q. Have you revised those population
21 projections?

22 A. Yes. The current application which was
23 filed in September of 1984 carries a detailed
24 analysis of the Labor and Industry statistics for
25 Monmouth County, the work currently being done by

1 Metcalf, Netty (phonetic) as consultants for the
2 New Jersey Water Supply Authority and the
3 Monmouth County Planning Board planning board.
4 We also reviewed with each individual
5 municipality that we presently serve or could
6 possibly serve, such as Red Bank, Allenhurst,
7 their local perceptions - which are an admittedly
8 unscientific but sometimes are accurate in the
9 near term as to what the new houses or changes in
10 the water uses might be in those communities.
11 That was factored into that application.

12 Q. That application that we've spoken
13 of - and it's been marked as an exhibit and I
14 think it's being copied at the moment - are those
15 population projections incorporated within that
16 application?

17 A. Yes, they are.

18 Q. Now, Mr. Burdan described the
19 application. And as I recall it, it was
20 requesting, I think, three million gallons per
21 day from ground water?

22 A. Yes.

23 Q. And was it five million gallons per
24 day from surface waters at present?

25 A. Yes.

1 Q. Now, so we're talking about a total
2 of eight million gallons per day?

3 A. Within the first period of analysis of the
4 application.

5 Q. Of that eight million gallons per
6 day, how much would go to serve the existing
7 customers in your service area?

8 A. Well, on the average, four to five million
9 gallons to meet that deficit that now exists.

10 Q. And by the way, when we speak of
11 service area, I'm sure we're talking about these
12 municipalities?

13 A. Twenty-three municipalities that are
14 presently served and parts of.

15 Q. Now of that eight million gallons,
16 how much of it would go to serve the needs of the
17 towns in the Bayshore area?

18 A. None.

19 Q. Doesn't your application speak of a
20 company policy to be able to provide water to
21 those municipalities?

22 A. The company has no policy to supply those.
23 The application actually is a two-part
24 application. We have a responsibility to provide
25 service to the customers and future customers of

1 the communities that we presently serve. The
2 application as filed of three million in-ground
3 water and 15 million gallons a day through the
4 year 2000 from the Manasquan Reservoir project is
5 for the 23 municipalities that we presently serve
6 to meet the existing and growing demands of those
7 communities.

8 Q. Then I perhaps misunderstood it. So
9 all of that application for diversion for the --
10 I think you said 15-year period that was solely
11 concerned with your existing 23 municipalities?

12 A. That is our first and number one
13 responsibility.

14 Q. Would it be accurate to say then
15 that your growth projections in those 23
16 municipalities require in additional diversion of
17 three million gallons per day plus the 15
18 ultimate million gallons per day from the
19 Manasquan system?

20 A. Yes.

21 Q. And I gather that that determination
22 was made as the result of - for want of a better
23 word - the scientific studies that were made?

24 A. Engineering studies.

25 Q. Did you play a part in that?

1 A. Not a first-hand part, only to oversee the
2 methods and the results. Mr. Howard Woods, the
3 Director of Engineering for the Eastern Division,
4 who is a registered professional engineer in New
5 Jersey; Mr. Jim Scott, who is the Monmouth
6 Consolidated engineer, who is also a registered
7 engineer in New Jersey did the bulk of that work.

8 Q. You're satisfied that the
9 projections that they made concerning needs of
10 customers in the service area were accurate?

11 A. Yes.

12 Q. Now, Mr. Burdan indicated to us, I
13 think, that the initial diversion sought from the
14 Manasquan Reservoir was ten million gallons per
15 day?

16 A. The 1982 application filed in December
17 presumed an availability and a willingness by the
18 DEP to permit us an interim ground water supply
19 of six million gallons per day; that supply was
20 projected - and I would have to review the
21 application - specifically to meet augmentation
22 by it's Manasquan in the early 80s. And that
23 augmentation, based upon the population that we
24 were working with, which stopped in 1997 or '98,
25 indicated that ten million gallons from the

1 Manasquan would be needed. So we're looking at a
2 16 million gallon number ending in the late 90s.

3 Q. Now, had it been agreed -- strike
4 that.

5 With reference to the three million
6 gallons per day, I understood from Mr. Burdan --
7 strike that.

8 MR. O'HAGAN: Off the record.

9 (Whereupon there is a
10 discussion off the record.)

11 MR. O'HAGAN: Back on the
12 record.

13 BY MR. O'HAGAN:

14 Q. Mr. Pearce, just to clarify our
15 discussions, and particularly to reflect what an
16 off the record discussion of the three million
17 gallons per day of surface water, one million --
18 strike that -- three million gallons of ground
19 water, one million gallons per day was the
20 subject of your earlier application; and it's one
21 of the wells at the Jumping Brook station?

22 A. Yes, well number six has the capacity to
23 pump two million gallons a day. The allocation
24 of record is one million gallons a day. In 1980,
25 which was a drought year, Monmouth Consolidated

1 requested an emergency increase of one million
2 gallons a day for that well; and it was granted.
3 To date, that in effect has not been withdrawn by
4 the DEP. And it was actually in the '82
5 application, and now in the '84 application
6 seeking to permanently ratify in the eyes of the
7 DEP and in the public record, that it's no longer
8 an emergency allocation but, in fact, it's
9 permitted.

10 Q. The two million gallons per day,
11 that's for a well in the same vicinity?

12 A. For a proposed well in the same vicinity.

13 Q. That's one that the DEP would have
14 to approve or disapprove?

15 A. The DEP could approve or disapprove that,
16 as well as the request to permanently recognize
17 the additional one million from well number six.

18 MR. LOCASCIO: Is that the
19 Raritan aquifer?

20 THE WITNESS: All of those
21 wells, four, six and the proposed well would be
22 from the Raritan/Magothy aquifer.

23 BY MR. O'HAGAN:

24 Q. Now, concerning the request for
25 initially five million gallons from the Manasquan

1 and ultimately leading up to 15 million gallons
2 per day, Mr. Burdan indicated that was an interim
3 application on the part of the Monmouth
4 Consolidated system?

5 A. Presently at this time the New Jersey Water
6 Supply Authority has hired consulting engineers;
7 and that group of individuals and firms is
8 reviewing a very broad project that is concerned
9 with engineering, environmental, political,
10 economic and organizational concerns that the
11 Manasquan project has always had.

12 The fact is that in the early 1950s
13 Monmouth Consolidated Water Company sought to
14 build the Manasquan project; and for many reasons,
15 among which were political, was denied that by
16 the State of New Jersey. In the interim time,
17 the project has been on again, off again, on
18 again, off again, with Monmouth Consolidated
19 obviously still an interested party.

20 The Water Supply Authority consultants have
21 not recommended publicly any particular scheme of
22 operation, ownership or even construction of the
23 project. And as Mr. Burdan indicated, he's a
24 member of a task group that is overseeing the
25 Authority's consultants' work; and basically

1 represents water purveyors as one of the
2 interested parties. The company does not wish to
3 prejudice the outcome of the consultant's work.
4 On the other hand, we have a responsibility to
5 meet what is an immediate and growing deficit.
6 And frankly, the State and the Authority have not
7 been able to -- for many reasons not been able to
8 bring the Manasquan project into being quick
9 enough. And we cannot just sit back and wait for
10 studies on top of studies. On the other hand, we
11 recognize that for Monmouth to basically apply
12 and, in fact, in concrete establish a presence on
13 the Manasquan River that wouldn't lend itself to
14 the overall regional needs would probably not be
15 looked upon favorably by the DEP nor the
16 authority nor the consultants nor our neighboring
17 water systems. So that it is an interim. It
18 could be expanded to the full capacity of the
19 Manasquan system and we could meet the needs of
20 the entire region, if that was so determined by
21 the DEP and the Water Supply Authority to be the
22 appropriate way of doing it. It could also end
23 up that it would be converted by the Authority or
24 modified by the Authority and the consultants to
25 fit within their needs and plans; and that is

1 presently under consideration and under study and,
2 very shortly, will be publicly debated.

3 Q. So the way I understand your answer,
4 there are many different factors that go into
5 first, the existence of the reservoir, the
6 location of the reservoir, the expected diversion
7 by a given water purveyor and so forth?

8 A. Yes. It's very complex.

9 Q. So we could reasonably -- strike
10 that.

11 You would certainly expect then that
12 when your application is set for public hearing
13 those considerations would be brought to bear?

14 A. I would expect that many interested parties
15 will participate in that application review by
16 the DEP.

17 Q. So whether or not your application
18 is approved is anybody's guess?

19 A. It is not a guess that it will be approved
20 to me. It is my professional and corporate
21 opinion, as well as personal, that Monmouth
22 Consolidated will be given a new volume of water
23 supply from some source. What is not known, and
24 I do not believe anyone today even in the DEP
25 knows what form that will take, whether it is any

1 ground water at all, or all ground water and no
2 Manasquan water, or Manasquan water in total. I
3 have no idea.

4 Q. I gather there are segments of the
5 DEP who are in favor of one or more of those
6 alternatives?

7 A. I would say there are as many opinions as
8 there are ideas on how it could be done as there
9 are members of the DEP.

10 Q. Now, some consultants recommended
11 that the capacity of the Manasquan Reservoir
12 would be based upon a diversion of 35 million
13 gallons per day?

14 A. The Manasquan Reservoir is proposed by the
15 Water Supply Master Plan as a project. And the
16 early analysis by Metcalf and Netty indicated
17 that there was a safe yield of 35 million gallons
18 a day.

19 Q. Do you have any knowledge as to how
20 much of that 35 million gallons per day will be
21 required by Wall Township?

22 A. The answer is no. And I would like to
23 flesh that out by it's concept to answer the
24 question,

25 You have to define from the DEP what

1 policy they will establish relative to the water
2 systems in northern, central and southern
3 Monmouth County, in effect, exclusive of the
4 Monmouth Consolidated service area regarding what
5 modifications will be made to their existing
6 ground water and future ground water allocation
7 rights.

8 As an example: The DEP might
9 consider it proper that no new ground water from
10 any need would be permitted, that all existing
11 ground water diversions would be reduced by some
12 number. Where they were reduced, and how much,
13 and by whom, again, is a policy statement and
14 attitude that the DEP has not chosen as of this
15 moment to reveal.

16 In general I would expect - and if you read
17 the Water Supply Master Plan of the State of New
18 Jersey, and you read the public statements and
19 outputs by Metcalf and Netty who are the
20 consultants for the New Jersey Water Supply
21 Authority - I would expect that there are areas
22 of Monmouth County that will be declared critical
23 zones under the soon to be implemented water
24 supply management regulations. In doing such,
25 the DEP would then have the latitude, following

1 public hearings, of basically modifying all
2 allocation permits of all water users and
3 potential water users that in effect would
4 require them to find some other source of water.
5 Obviously there's only a few involved that they
6 could consider, and the only one that is near
7 completion or realization is the Manasquan
8 Reservoir project. Who they do that to and to
9 what extent is an unknown.

10 Based upon our understanding, Monmouth
11 Consolidated's and American Water Works and my
12 own, the areas of the north Bayshore, the areas
13 of central Monmouth County around Freehold and
14 the areas of southern Monmouth County in the
15 coastal communities will probably have a
16 reduction in the allowable volume of ground water
17 they may use, and given some implementation time
18 by the DEP to develop a new source of water,
19 which obviously would tend to be surface water,
20 either directly from the Manasquan or indirectly
21 through the other surface waters of Monmouth
22 County which are owned and operated by Monmouth
23 Consolidated.

24 To give you a specific, if the north
25 Bayshore communities were or had their

1 allocations all reduced, they would not have too
2 many alternatives other than to buy surface water
3 from Monmouth Consolidated, which we would treat.
4 That, in itself, would increase our deficit. We
5 would have to increase the volume of water that
6 we would seek from the Manasquan.

7 Our present diversion really identifies the
8 immediate service area of 23 municipalities and
9 then three potentials. And it analyzes, not as a
10 formal request because we don't have that demand
11 yet, but it takes a look at what the impact would
12 be if all the north Bayshore, all the Freehold
13 central area and all of the southern Monmouth
14 areas sought that water from us and what that
15 would mean to our Manasquan application. And in
16 our interpretation of what we think might happen
17 regarding growth and reductions in their existing
18 ground water, it would change our application
19 from 15 million gallons a day to 25 million
20 gallons a day at the end of this century of that
21 30 to 35 million that's available at the
22 Manasquan.

23 I want to make very clear for this record
24 and any other public record that we are not
25 actively out seeking those customers. We're

1 saying we have the ability to meet tha need,
2 however, if that need is requested. And we -- to
3 meet it we will need that additional water from
4 the Manasquan. The State has the policy setting
5 they have to say as to who needs the water and
6 who takes it to them. Given the geographic
7 location, given our size, given our expertise, we
8 feel we can do the job. It's just a question of
9 whether we do or not. And that is why the
10 additional ten million gallons of Manasquan water
11 is not formally requested, because the need is
12 not there.

13 Q. As to the Bayshore area, can you
14 tell us how much of the ten million gallons will
15 be used for that system?

16 A. In answer to your question, we have made
17 some judgments which, in our opinion, make sense.
18 Whether the Department of Environmental
19 Protection and the consultants for the New Jersey
20 Water Supply Authority and even these
21 municipalities and authorities agree with it is a
22 matter, obviously, open to discussion. But we
23 anticipate that if all future growth as
24 predicated by the Monmouth County Planning Board
25 and the State Labor and Industry statistics, and

1 one-third of their winter average diversion were
2 supplied by surface water from Monmouth
3 Consolidated, in the year 2000 5.75 million
4 gallons a day would go to those communities in
5 the north Bayshore.

6 Q. Are you familiar with those towns?

7 A. I know where they are and I've driven
8 through them. And I grew up in Monmouth County;
9 so I'm reasonably familiar with them.

10 Q. Wouldn't it be accurate to say that
11 for the most part they're presently developed?

12 A. They are presently substantially well
13 developed.

14 Q. So we can really assume that even at
15 the present time if all of this comes to pass
16 they'll need somewhere in the neighborhood of
17 that 5.7 million gallons per day?

18 A. Yeah. We don't anticipate that they would
19 need more unless the State set a higher volume of
20 the reduction of ground water. We assume
21 one-third of the winter use average. The State
22 might take one-third of all of their use or one
23 half.

24 Q. Wouldn't it be accurate to say that
25 the State would look more favorably on your

1 serving an area well developed as to not
2 developed.

3 MR. FRIZELL: I object.

4 A. I can't answer that.

5 Q. The coastal communities north of
6 Manasquan?

7 A. Southern Monmouth County coastal
8 communities.

9 Q. What portion of the ten million
10 gallons would go to serve those communities?

11 A. In that particular set of statistics we've
12 included the boroughs of Allenhurst and Avon,
13 since we surround them and they are on the same
14 ground water aquifer. We have excluded Howell
15 Township.

16 Q. That would be a little bit further
17 to the --

18 A. We have included Wall and all of the other
19 coastal communities using the same criteria of
20 growth plus one-third of the perceived winter
21 average usage. We're dealing with 4.53 million
22 gallons a day in the year 2000.

23 Q. We're up somewhere over nine million
24 gallons?

25 A. I think if you add the two of them together

1 you're at 10.28.

2 Q. Now, with reference to your proposal
3 to serve the Freehold area, what is your
4 projection for the gallonage per day required
5 there?

6 MR. LOCASCIO: Could you also
7 tell us what towns make that up?

8 A. Freehold Borough, Freehold Township and
9 it's a consolidation of Manalapan, Marlboro and
10 what we perceived, based upon the Orgo Farms, Sea
11 Gull, Mount Laurel II interpretations of Colts
12 Neck water needs, 6.5 million gallons a day.

13 MR. O'HAGAN: Off the record.

14 (Whereupon there is a
15 discussion off the record.)

16 BY MR. O'HAGAN:

17 Q. Mr. Pearce, we've agreed that when
18 you total all of those up they exceed the ten
19 million plus that you've described before. Now
20 concerning Colts Neck into Freehold Borough and
21 Freehold Township, do you know what size line is
22 proposed there?

23 A. If our staff engineers were requested to
24 provide service to that region, we would be
25 looking at a pipe line running from what is the

1 east end of Colts Neck, which is where our plant
2 at Swimming River is, to the west on some route
3 that would be between 30 and 36 inches in
4 diameter. I hedge on that because it depends on
5 the length, the volume of water, and when it
6 would be needed. The sizing of the pipe is
7 related to the volume as well as the pressures
8 needed at the end of the line.

9 Q. How far would that line extend into
10 Freehold Township?

11 A. I can't answer that specifically because it
12 is related to who has asked for the service and
13 how much and where they want it is at.

14 Q. No one from Freehold Township has
15 yet asked for service from you?

16 A. Monmouth Consolidated Water Company has had
17 two specific requests for water service within
18 Colts Neck, Orgo Farms and Sea Gull. And we have
19 had a specific request for a review of what it
20 would cost from the Gordons Corner Water Company.
21 And we've had a request to review what part the
22 Marlboro Water Authority might be able to play in
23 that similar extension; all of these based upon
24 the fact that the DEP has identified a cone of
25 depression in the ground waters in the western

1 Monmouth County, Freehold, Marlboro area.

2 Q. How many customers did you project
3 in Colts Neck to feed off this pipe, either this
4 30 or 36 inches?

5 A. Within the application as filed it does not
6 discuss specifically Colts Neck. It was Mr.
7 Woods' opinion, and I concurred, that given the
8 open nature of Colts Neck's development, the
9 Mount Laurel II as we understood it at that time,
10 and the proposed two projects, that we were
11 dealing with somewheres between 500 and 1100
12 dwelling units, based upon whatever those
13 developments sought to build.

14 Q. But your pipe is sized for more
15 customers than the 500 units and the eleven or
16 1200 unit projects; isn't that correct?

17 A. No. And I'll explain that if you give me
18 an opportunity.

19 Q. Aren't -- you told us before you
20 were seeking to serve both Freehold Borough and
21 Freehold Township?

22 A. You have to go back to the hydraulics of
23 the design and what the demand is. The 1100
24 units in and of themselves, if we want to take
25 that size, if they built their own storage tank

1 to meet the fire demands, if we built a booster
2 pumping station, we could extend the line, just
3 Orgo Farms or Sea Gull, that might, might be 16
4 inches in diameter.

5 Q. And 16 inches would serve Orgo and
6 Sea Gull together?

7 A. I couldn't say they would serve both of
8 them. I would have to go back and ask the
9 engineers to calculate the volumes. The
10 difference to go to a 36-inch line is we
11 eliminate the need for pumping and storage; and
12 it is a consideration. And what we perceived to
13 be the potential needs of cent Monmouth County
14 because of the ground water problems and what the
15 State identified in the Water Supply Master Plan
16 as a possible solution, for instance surface
17 water from Monmouth Consolidated, which we would
18 then make up by purchasing additional Manasquan
19 water.

20 Q. Obviously, then, if you use the
21 36-inch line and you develop a storage facility
22 plus a pumping station, you could serve a great
23 many additional customers?

24 A. No. We could serve with a 16, a tank and a
25 pumping station the proposed Orgo or Sea Gull --

1 and I wouldn't want to say both because I would
2 have to go back and look with the engineers as to
3 just exactly what those two projects are.

4 However, they would be sized specifically
5 for those projects. And the expansion of that to
6 additional volumes of six or seven million
7 gallons a day based upon a concept of a
8 regionalization of a water supply, a 16 inch line
9 would not be sufficient.

10 Q. Would a 36 inch line be sufficient
11 to provide in six million gallons per day in the
12 Colts Neck, Freehold Borough and Freehold
13 Township area?

14 A. Yes.

15 Q. Aren't there other water purveyors
16 in the area of Freehold Township?

17 A. Yes, there are, Gordons Corner Water
18 Company, Freehold, itself; and the Marlboro
19 system and some other smaller systems.

20 Q. As a matter of fact, can't you
21 really trace more or less a system of water
22 companies coming from Howell Township in the
23 vicinity of the reservoir all the way up to the
24 north?

25 A. If you take the corridor of Route 9 and go

1 from Lakewood through to the Raritan River, you
2 will find a string of water systems, whether they
3 be investor owned or municipal.

4 Q. The Aldrich Water Company?

5 A. Investor company.

6 Q. Adelphia?

7 A. Yes.

8 Q. Howell Township Municipal Utilities
9 Authority?

10 A. I don't know. They are a municipal utility
11 authority and they have no water customers.

12 Q. Freehold Township has its own water
13 system?

14 A. Yes.

15 Q. Marlboro Township has the WMUA as do
16 Manalapan?

17 A. Yes.

18 Q. Are you saying that the WMUA and
19 Gordons Corner and now we know about the
20 Matchiponix, are you saying they would not be
21 interested in extending a line down to the
22 Manasquan River system to draw water out to serve
23 customers that are more or less along the path of
24 the water companies we've just mentioned?

25 MR. FRIZELL: Excuse me.

1 Just for the record here, I don't think he
2 answered with -- the WMUA is not a water service
3 company.

4 MR. O'HAGAN: It is so, both
5 sewer and water. I might be wrong.

6 MR. FRIZELL: Western
7 Monmouth? I don't think so.

8 BY MR. O'HAGAN:

9 Q. In any case, have you investigated
10 the possibility of those water companies in the
11 western part of the county seeking to serve the
12 customers that you've described in Freehold
13 Borough, Freehold Township and Colts Neck and so
14 forth?

15 A. Monmouth Consolidated Water Company has not
16 sought to bring those private and public systems
17 into some agreement as to how they will develop
18 new water supplies. The fact is that they all
19 wish to join into some sort of consortium and
20 extend a transmission line to Howell Township and
21 to build a water filtration plant near their
22 proposed Oakland Reservoir. They could develop
23 the six million gallons a day that way for
24 themselves, if they could agree that they wanted
25 to do that, and if they could agree to do it

1 amongst themselves and develop the financing and
2 wherewithal and expertise to do that. Yes,
3 that's certainly a possibility.

4 Q. And they would be closer to the
5 Freehold and Freehold Township areas than you
6 would be?

7 A. Who is "they"?

8 Q. This consortium of water companies
9 that you just mentioned?

10 MR. FRIZELL: Excuse me. Can
11 we clarify the record on that?

12 MR. O'HAGAN: I'm going to
13 withdraw the question.

14 You would not really know in
15 any case.

16 BY MR. O'HAGAN:

17 Q. Now, we got off on a little bit of a
18 tangent, Mr. Pearce. You were telling us about
19 the expected allocation of the water from the
20 Manasquan River Reservoir project. And I think
21 it was your view it's anybody's guess as to what
22 will actually be permitted and approved by the
23 State as to who will be able to draw upon in
24 system?

25 A. Yes.

1 Q. And you really -- you have no way of
2 telling us now that's a sure thing that the
3 Monmouth Consolidated Water Company will be
4 approved to divert ten million gallons per day
5 after the reservoir is in operation?

6 A. It's a sure thing, in my opinion, that
7 Monmouth Consolidated will get the water it needs
8 from the Manasquan system. Who actually removes
9 it from the river and who treats it and who pumps
10 it into our existing service area is still in
11 question.

12 Q. With reference to this interim
13 facility that you're proposing -- and you've
14 indicated off the record that it's on the
15 Manasquan River a little bit to the west and
16 north of the Garden State Parkway?

17 A. Yes.

18 Q. What distance -- strike that.

19 I would assume then that you will
20 have to transport the water from there to your
21 existing lines?

22 A. Yes.

23 Q. Where will it be transported?

24 A. We presently intend to take raw water from
25 the river to our Glendola Reservoir located in

1 Wall Township near the Neptune Township boundary;
2 then from the Glendola Reservoir through existing
3 lines to our Jumping Brook treatment plant, and
4 then into our existing transmission line.

5 Q. Speaking about taking it out of the
6 river, the first stop, that's in Glendola. What
7 distance is that?

8 A. If I say five miles, it's going to be wrong.
9 I just know it's over five miles.

10 Q. If you don't know, you don't know.
11 Somewhere over five miles?

12 A. Yes.

13 Q. I understood then that you have to
14 go through -- is it only Wall Township?

15 A. Wall Township is the only municipality
16 affected by our proposed application.

17 Q. Do you have a franchise in Wall
18 Township?

19 A. No, we do not.

20 Q. So in order to run the pipe from the
21 Manasquan River to the Glendola Reservoir you
22 would need to seek and obtain a franchise from
23 Wall Township?

24 A. No.

25 Q. Would you not have to?

1 A. No.

2 Q. You would have to seek an obtain
3 certainly approval from the DEP?

4 A. We will have to obtain an allocation from
5 the department of Environmental Protection for
6 the water. We will need highway opening permits
7 from the State Highway Department, Monmouth
8 County, Wall Township. We will seek Board of
9 Public Utilities tacit approval of the necessity
10 of the project because of the substantial
11 investment involved, which will relate to the
12 Board of Public Utilities eventual review.

13 Q. It will impact on the rates?

14 A. Yes, it will.

15 MR. O'HAGAN: Off the record.

16 (Whereupon a luncheon recess
17 is taken.)

18 BY MR. O'HAGAN:

19 Q. As I understood your answer earlier,
20 Mr. Pearce, the diversion that you're presently
21 seeking is to make up the existing deficit?

22 A. Yes.

23 Q. If the diversion is not granted in
24 full, the deficit will not be made up in full?

25 A. Yes.

1 Q. Would it be accurate to say that
2 absent the approval of your application for
3 diversion you could not serve the Colts Neck area?

4 A. Yes.

5 Q. And you could not serve specifically
6 the Orgo project?

7 A. As it relates to safe yield of the water
8 supply, yes.

9 Q. And consequently you couldn't serve
10 Sea Gull?

11 A. Yes.

12 Q. Mr. Pearce, at one time there was a
13 study made to determine the impact of the Orgo
14 project on the Swimming River Reservoir. Are you
15 familiar with that?

16 A. I know that the study was done, yes.

17 Q. Do you know Richard Monser
18 (phonetic)?

19 A. Yes, I know Dick Monser.

20 Q. He is an employee of the American
21 Water Works System?

22 A. Mr. Monser is vice president of water
23 quality presently.

24 Q. So his field therefore is concerned
25 with preservation of the quality of the water in

1 the reservoir at Swimming River and various other
2 supplies of the American Water Works system?

3 A. His principal task is to supervise the
4 treatment of the water supply. Treatment is
5 impacted by the quality of the raw water. The
6 quality of the raw water is impacted by the
7 overall environment. The water shed is a major
8 part of that.

9 Q. I show you a letter dated March 30,
10 1979 addressed to Mr. Michael J. Caponigro and
11 signed by R.H. Monser dated March 30th,, 1979.
12 Are you familiar with that?

13 A. I have read the letter.

14 Q. He concludes that the Orgo project
15 would have a detrimental effect upon the
16 reservoir; does he not?

17 A. Yes, he does.

18 MR. O'HAGAN: May this letter
19 be marked as an exhibit.

20 (Whereupon a letter dated
21 3/30/79 is marked D-13 for identification.)

22 BY MR. O'HAGAN:

23 Q. By the way, this letter came from
24 the files of the water company; did it not?

25 A. I assume so.

1 Q. And also contained within the files
2 of the Monmouth Consolidated Water Company is a
3 report dated May 14th, 1979 authored by William
4 Whipple, Jr.?

5 A. Yes.

6 Q. And I'd ask you to identify this one?

7 A. This report is dated May 14th, 1979. It
8 was prepared by William Whipple, Jr., who is now
9 an employee of the DEP; and titled, "Nonpoint
10 Source Pollution From Proposed Colts Neck Village
11 PUD Complex."

12 MR. O'HAGAN: May that be
13 marked as an exhibit?

14 (Whereupon a report dated
15 5/14/79 is marked D-14 for identification.)

16 MR. DAVIS: I was going to
17 make an observation type comment, and that is, as
18 I understand the issue that's to be tried in this
19 case, first of all, as I understand it, both
20 Monser and Whipple testified in one of these
21 cases; and their testimony in effect was that the
22 Orgo Farm development would have an impact on the
23 reservoir?

24 MR. O'HAGAN: Correct.

25 MR. DAVIS: As I understand

1 it; the bottom line issue here now is that the
2 judge has rejected that testimony; did really not
3 take in into consideration; the report that we
4 have from the company's own expert doesn't
5 mention the impact on the reservoir. I don't see
6 any mention of it in here. So that isn't this an
7 issue that has already been decided by the court?

8 MR. O'HAGAN: Not as far as
9 I'm concerned, no.

10 MR. FRIZELL: Not as far as
11 Mr. O'Hagan is concerned.

12 MR. O'HAGAN: And as a matter
13 of fact, so that the record is clear, the report
14 from Clark and Caton -- I sent that to you, Mr.
15 Davis.

16 MR. DAVIS: Yes.

17 MR. O'HAGAN: And you
18 received it on Monday of this week?

19 MR. DAVIS: Yes, right.

20 MR. O'HAGAN: So, in other
21 words, October 1?

22 MR. DAVIS: Yes. And I also
23 made copies and supplied it to Mr. Burdan and Mr.
24 Pearce.

25 MR. O'HAGAN: You told me you

1 were going to.

2 MR. DAVIS: Yes.

3 BY MR. O'HAGAN:

4 Q. Mr. Pearce, prior to receipt of Mr.
5 Caton's report - and it says what it says - has
6 the water company or did the water company
7 receive any written report which would indicate
8 that development of the Orgo site would not have
9 a deleterious effect on the reservoir?

10 A. No.

11 Q. It's clear from the chronology, but
12 I just want to make it clear in the record, then
13 when Mr. Critchlow wrote to Mr. Brunelli, he did
14 not have Mr. Caton's report in his possession?

15 A. No, he didn't.

16 MR. O'HAGAN: I have no
17 further questions.

18 MR. FRIZELL: I have either
19 one or two questions.

20

21 CROSS-EXAMINATION BY MR. FRIZELL:

22

23 Q. Mr. Pearce, I'm sure you're familiar
24 with the fact that your company has indicated to
25 Mr. Brunelli that it can feasibly supply adequate

1 water to service the needs of the proposed Colts
2 Neck Village development?

3 A. Yes.

4 Q. Mr. Pearce, is it your company's
5 policy before making comments of that kind to
6 proposed developers to take into account the
7 responsibility that the company has to service
8 its existing customers and future customers
9 within the service area?

10 A. When we receive a request from service from
11 within our service area or from without, we ask
12 ourselves two basic questions. The first is what
13 you might typify as a micro review of the project
14 or request, whether it's a single house
15 connection or a 1200 unit subdivision. That
16 micro review is: What hydraulic needs are there?
17 What volumes are necessary? And can our existing
18 transmission and distribution and pumping
19 facilities meet those needs? That's the micro
20 review. The macro review, obviously, is not done
21 for a relatively small project, a few townhouses
22 or single family home. That macro review is: do
23 we have the source of water supply? If it is a
24 substantial project or envisions the possibility
25 by that extension into an undeveloped but growing

1 area the need for additional water supplies, we
2 then look at what is our present and future needs
3 for water supply. That's the macro review.

4 In the particular instance of Mr.
5 Brunelli's letter, Mr. Critchlow and the
6 engineering staff reviewed it on a micro aspect
7 as to what hydraulic requirements are there and
8 what would it take within our existing system and
9 without our existing system outside of it to get
10 the necessary volumes for fire protection and
11 domestic needs to Orgo Farms. And they did that
12 and they responded to Mr. Brunelli with a
13 proposal for a large diameter line from our
14 existing system to Orgo Farms. A macro review
15 for Orgo Farms or Sea Gull was not done and the
16 reason is that neither of those projects in and
17 of themselves would generate any greater deficit
18 than already existing and neither of those
19 projects in and of themselves would cause the
20 application which was presently filed here in
21 September to have been markedly different in
22 either direction.

23 Q. Because of the size?

24 A. It's a relatively small project given that
25 we presently serve 65,000 customers. So that if

1 it had been on a factor of ten larger or, frankly,
2 if Colts Neck was a growth oriented community or
3 that they were projecting a massive increase and
4 population densities or such, it would have been
5 analyzed perhaps within that whole context.

6 The reality of it is that we were aware of
7 the potential needs of the western Monmouth area
8 within the same time period we were having
9 inquiries from Gordons Corner Water Company. As
10 I indicated, we already knew we needed new
11 sources of water supply, so the macro review just
12 for Orgo Farms was not done.

13 Q. Are you aware - and I don't want you
14 to repeat the testimony that's already gone
15 before - but you're aware, are you not, that the
16 DEP is reporting a crisis in the ground water
17 supplies in the aquifers underlying Monmouth
18 County?

19 A. I'm not only aware of it, I feel that that
20 is a substantial reason why we were delayed and
21 deferred and given a significant number of data
22 requests and detailed analysis demands in our
23 December 1982 application. And I believe that
24 the DEP will be implementing, as soon as they can,
25 stringent ground water reductions and

1 modifications in the existing allocations in
2 virtually all of Monmouth County. As to what
3 extent and to who and when, it's just a matter of
4 time.

5 I think the thing that probably impresses
6 me most is that the State is moving with
7 deliberate speed to implement the water supply
8 management regulations. And within that they
9 have defined a critical aquifer as that aquifer
10 that has a potentiometric surface greater than 30
11 feet below sea level. If you map that - and that
12 can be mapped and is part of our application -
13 for the Raritan formation you take in a crescent,
14 a shape that extends from Keansburg on the
15 Raritan Bay through western Monmouth County,
16 centering on Freehold, and then eastward towards
17 the shore areas of Wall and Spring Lake. It's
18 not too subtle that that is considered in our
19 application. That will enable, according to the
20 proposed regulations to have the diversion
21 allocation review of the DEP reduced to numbers
22 lower than 100,000 gallons a day average usage
23 down potentially to 10,000 gallons per day from
24 ground water diversion. So that --

25 Q. Is that change in the proposed

1 regulations now the change from 100,000 gallons
2 threshold?

3 A. It's in the proposed regulations that if
4 there is a critical zone defined, they can reduce
5 the allocation review from the present 100,000.
6 If you divert 100,000 or 70 gallons a minute from
7 the ground, they don't review you. They can
8 reduce that down to 10,000 or some other number;
9 but 10,000 is used in the regulation.

10 Q. I don't want to oversimplify this
11 Mr. Pearce, but is it accurate to characterize
12 the concern that the DEP is attempting to address
13 as a fear that continued draw from ground water
14 or well resources in western Monmouth County will
15 cause an intrusion of salt water from the
16 Atlantic Ocean into the shore communities which
17 are now drawing from the aquifer in a more
18 easterly and along the shore line?

19 A. Generally the DEP is concerned with all the
20 principal aquifers in each region that salt water
21 either from the Raritan Bay or the Atlantic Ocean
22 will adversely impact those aquifers.

23 Q. And is it an observed consequence of,
24 in your experience, Mr. Pearce, that the
25 Department of Environmental Protection is

1 directing all, virtually all of their attention
2 in terms of future water needs in the Monmouth
3 County area toward surface water resources?

4 A. Yes.

5 Q. Mr. Pearce, are you familiar with
6 the Matchiponix water system proposed?

7 A. It's my understanding that the Matchiponix
8 system is a diversion of surface water from the
9 Matchiponix Brook during high periods of flow
10 associated with the winter and high rain periods
11 to the existing filtration facilities of -- I
12 believe it's the Gordons Corner Water Company, I
13 can't be sure, or a plant to be built by
14 Matchiponix Water and that that water would be
15 used in lieu of the existing ground water
16 supplies unless the brook dried up due to dry
17 weather, at which point the ground water supplies
18 would be used. It is a classic conjunctive use
19 method of between three to five million gallons a
20 day of yield, as I understand it. I have not
21 reviewed the application or the engineering but
22 just discussing it with counterparts in the water
23 industry.

24 MR. O'HAGAN: So that's all
25 hearsay?

1 THE WITNESS: I would have to
2 say it's hearsay because I did not read any
3 reports. Specifically I've discussed it with DEP
4 staff. I've discussed it with some of the people
5 that are involved with Matchiponix directly; but
6 it's hearsay, second party, definitely.

7 BY MR. FRIZELL:

8 Q. Mr. Pearce, in your preparation for
9 today's testimony and in your review of this
10 situation regarding the Colts Neck case, is it
11 your opinion that the provision of water to the
12 Colts Neck Village as proposed by Mr. Brunelli,
13 or alternatively or perhaps conjunctively to the
14 Sea Gull site would have any substantial
15 detrimental effect on your existing customers or
16 your ability to provide service to your service
17 area, taking everything into account including
18 your pending applications?

19 MR. O'HAGAN: Are you making
20 him an expert witness?

21 MR. FRIZELL: No. I'm asking
22 an opinion.

23 THE WITNESS: In the long
24 term, given our application as filed, there would
25 be no impact. On the shortterm, I believe Mr.

1 Burdan's testimony and mine would indicate that
2 by a very infinitesimal number it would increase
3 our existing deficit absent inclusion of new
4 water supplies into our existing system.

5 BY MR. FRIZELL:

6 Q. That deficit relates to the amount
7 of water that you're obligated to permit to pass
8 over the Swimming River dam on a daily, monthly
9 or annual basis; is that right? Or is it just
10 the total diversion rights of your system is what
11 you're referring to in total?

12 A. If we were permitted by the DEP to not
13 release that flow, passing flow and in effect our
14 available water allowed by the DEP was increased
15 by that six million number, there would be an
16 on-paper improvement in our water supply by that
17 amount.

18 MR. FRIZELL: No other
19 questions.

20

21 CROSS-EXAMINATION BY MR. LOCASCIO:

22

23 Q. With respect to Mr. Monser's letter
24 indicating an impact on the reservoir, would you
25 agree that the further away a development is from

1 the reservoir the lesser the impact?

2 MR. FRIZELL: Let me object.

3 I don't know that Mr. Pearce is knowledgeable of

4 Mr. Monser's analysis.

5 A. I was going to respond that I'm not a water
6 quality expert nor an expert on environmental
7 impacts. Being in the water industry and being a
8 civil engineer, I'm not unfamiliar with the
9 general concepts involved with environmental
10 impact assessment and water shed impacts. The
11 simplistic attitude would be the further from the
12 surface water an impact was the greater the
13 opportunity that nature would have to mend the
14 ills of man.

15 Q. And therefore the closer the impact
16 the more adverse the impact upon the reservoir?

17 A. If nothing were done by man to mitigate
18 those impacts, that would be mitigated by nature
19 over a great distance. I would have to say yes.

20 Q. Now, when you consider whether or
21 not your company can service a development, is
22 there any formula you use with respect to the
23 amount of gallons per unit per day?

24 A. Typically we request of the interested
25 parties an analysis of what they project their

1 average daily domestic needs to be and what they
2 project their fire requirements to be at 20
3 pounds per square inch at specific locations or
4 groups of locations within their project. These
5 two are related and also unrelated numbers; but
6 they -- one relates to the ability of the
7 customer on the average to have the water they
8 need to flush toilets and shower and water lawns,
9 and that's an average daily number. The fire
10 supplies are an emergency flow which would be of
11 much larger volumes than domestic flows. So that
12 the two impact the sizing of the pipe lines and
13 storage and pumping stations. We ask that of
14 them. If the numbers aren't on the average
15 compared to what we experience in similar type of
16 housing - and this varies based upon whether or
17 not you have large lawns that would be irrigated
18 or high density high-rise apartments or a
19 commercial building - if they vary we go back to
20 them and say is this really what you mean.
21 Generally the numbers are within allowable ranges
22 and we work with those numbers. If they're not
23 we go back and try and find out where the problem
24 lies. The end result is that the sizing of pipe
25 lines, tanks, booster stations that may be

1 related to that given project is based upon those
2 numbers. On an annual average, Monmouth
3 Consolidated's customers are in the high 60s
4 gallons per day per capita.

5 Q. And is that number, the high 60s,
6 the one that was used with respect to your
7 consideration of the Orgo and Sea Gull tracts?

8 A. I frankly do not know.

9 Q. When you said that the Matchiponix
10 Water Company is the classic conjunctive use.
11 What did you mean by that?

12 A. Conjunctive use is generally understood is
13 that you take two totally different water sources
14 in this case in New Jersey it's being used in the
15 format of ground water and surface water - that
16 are impacted by rainfall or lack thereof in two
17 totally different ways. And by utilizing both of
18 them in different volumes in total, you can
19 average out the unpredictableness of nature. In
20 effect what you are saying is that if you could
21 realistically turn on all the wells when there is
22 no rain, that they would make up the fact that no
23 rain means no water in the reservoirs. However,
24 when it is raining very heavily, and the
25 reservoirs are spilling into the ocean and

1 overflowing, that you would turn off all the
2 wells and utilize all in water.

3 A good example would be this June of 1984,
4 extraordinarily above average rainfalls, and all
5 of the rivers in Monmouth County running out into
6 the ocean and the water not being used, the fresh
7 water. The only system in this region using that
8 water was Monmouth Consolidated. Yet the systems
9 that we either abut or are close to or wholly
10 surround, ground water systems, continued to pump
11 their wells as they would in a drought or any
12 other time. The conjunctive use would say don't
13 use your wells, we're wasting that precious water
14 going into the sea. We'll save the fresh water
15 in the ground for when there is no water, surface
16 water.

17 Q. And that's the system Matchiponix is
18 using?

19 A. As I understand it on second parties'
20 conversations, as the water is available in the
21 stream, they would use it. If it's unavailable
22 they would turn on their wells.

23 Q. And as I understand it,, this is the
24 type of a system that is now encouraged by the
25 DEP?

1 A. Yes.

2 MR. LOCASCIO: Nothing
3 further.

4

5 REDIRECT EXAMINATION BY MR. O'HAGAN:

6

7 Q. Mr. Pearce, just briefly.

8 I gathered by your response to Mr.
9 Locascio's question that when Mr. Critchlow wrote
10 to Richard Brunelli and then to Sea Gull he did
11 not consult with you?

12 A. That's not true.

13 Q. He did consult with you?

14 A. Yes, sir.

15 Q. You've indicated that if you look at
16 it from a macro viewpoint there is not enough
17 water to serve either Orgo or Sea Gull; and then
18 you've advised that from a micro viewpoint -
19 bearing in mind the number of units and expected
20 customers - there is enough water. Is that a
21 fair capsulization?

22 A. No. I think you've misunderstood me. The
23 micro deals with the specific hydraulics of being
24 able to move water from where it is presently is
25 in our system - in this case a transmission line

1 coming from the Swimming River filter plant to
2 that site. Macro takes in effect the raw water
3 volume. And my point was is that in and of
4 themselves they're not the least concerned. The
5 deficit, the deficit is there because of 23
6 municipalities that are growing.

7 Q. Then I truly did misunderstand you.

8 With reference to the response to
9 Mr. Brunelli, it was just that water could be
10 moved to the development?

11 A. Yes, from point A to point B. And in our
12 proposal that Mr. Critchlow sent back was the
13 methodology to move it from the existing
14 transmission lines and pumping stations to either
15 Sea Gull or Orgo Farms.

16 Q. Without consideration of the safe
17 yields and the supply of water?

18 A. Mr. Critchlow did not include that in his
19 letter, no.

20 Q. Wouldn't it be accurate to say that
21 if you served the Brunelli development of roughly
22 1200 homes it's a logical conclusion that that
23 would increase the deficit by however much?

24 A. That's true and I said that.

25 Q. I know you did.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, KATHLEEN M. SHAPIRO, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, certify that the foregoing is a true and accurate Computerized Transcript of the Depositions of PAUL BURDAN and WILLIAM H. PEARCE, who were first duly sworn by me.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which the Depositions are taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in the action.



KATHLEEN M. SHAPIRO, C.S.R.
License No. XI01098

Dated: October 12, 1984
My Commission expires:
August 17, 1988

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MONMOUTH COUNTY
DOCKET NO. L-3299-78 PW,
L-3540-84, L-13769-80 PW

X----- X
ORGOA FARMS & GREENHOUSES, INC.,
etc., et als,
Plaintiffs, CIVIL ACTION
-v-
TOWNSHIP OF COLTS NECK,
Defendant.
X----- X

DEPOSITIONS OF: PAUL BURDAM and WILLIAM
PEARCE

DATE: Thursday, October 4, 1984
AT: Monmouth Consolidated Water Co.,
668 Shrewsbury Ave., Shrewsbury, NJ

STATE SHORTHAND REPORTING SERVICE
212 Monmouth Road
Oakhurst, New Jersey 07755

BY: KATHLEEN M. SHAPIRO, C.S.R.

ORIGINAL SENT: STOUT, O'HAGAN & O'HAGAN, ESQS.