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February 28, 2013

Ms. Loretta E. Pineda  
Division Director  
Department of Natural Resources  
Division of Reclamation, Mining and Safety  
1313 Sherman Street, Suite 215  
Denver, CO 80203

RECEIVED  
FEB 28 2013  
Durango Field Office  
Division of Reclamation,  
Mining and Safety

RE: Costilla County / BMRI - storage of poor quality waters

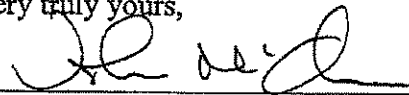
Dear Ms. Pineda:

As a follow-up to Costilla County's letter to you of February 26, 2013, we attached a memo of even date which referred to certain exhibits.

We would like to supplement the memo by one additional exhibit: On page 4 (second full paragraph) of the memo, it refers that Mr. Scott Mefford, Costilla County's engineering consultant, having concluded that a substantial release of poor quality waters from the lined tailings facility would reach the aquifer underlying the Salazar Ranch. In support of that statement, and related statements which deals with BMRI's water management practices, and the prior and current use of the lined tailings facility, we are attaching Mr. Mefford's trial testimony in Case No. 2007CW42 (pp.1-12, 33-94).

Thank you.

Very truly yours,



John C. McClure, on behalf of  
Costilla County Conservancy District  
And the Board of County  
Commissioners of Costilla County

/s/ Ed Lobato

Edwin J. Lobato, on behalf of  
The Board of County Commissioners of  
Costilla County, the Montez Ditch, San  
Luis Peoples Ditch, Acequia Chiquita  
Ditch, and the Espinosa Ditch

JCM:aa  
Enclosure

RECEIVED  
FEB 28 2013

Durango Field Office  
Division of Reclamation,  
Mining and Safety

DISTRICT COURT  
WATER DIVISION 3  
STATE OF COLORADO

702 Fourth Street  
Alamosa, CO 81101

IN THE MATTER OF THE  
APPLICATION FOR WATER  
RIGHTS OF BATTLE  
MOUNTAIN RESOURCES,  
INC., IN COSTILLA COUNTY

^COURT USE ONLY^

Case No. 2007CW42

For the Petitioner:  
JAMES S. WITWER, #19482  
ANDREA ASEFF, #42571  
KRISTIN BAILEY, #44868

For the Board of Cty  
Cmmr's of Costilla  
County & Costilla Cty  
Conservancy District:  
JOHN C. MCCLURE, #2896

For the Board of Cty  
Commr's & Montez,  
Espinosa, Acequia  
Chiquita, & San Luis  
People's Ditches:  
Edwin J. Lobato, #4699

REPORTER'S TRANSCRIPT  
(Excerpt of Proceedings)

The trial in this matter continued on  
Wednesday, December 12, 2012, before the HONORABLE  
PATTIE P. SWIFT, Water Judge within and for the  
12th Judicial District, State of Colorado.

## I N D E X

WITNESSESPAGE

## FOR THE OBJECTORS:

SCOTT MEFFORD

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SCOTT MEFFORD

called as a witness on behalf of the Objectors,  
having been first duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. MCCLURE:

Q Would you state your name, please.

A Scott Gibson Mefford.

Q And your address, sir.

A My business address is 12975 West 24th  
Place in Golden, Colorado.

Q And what business are you in, sir --  
involved in, sir?

A I am president of Hydrokinetics, which is  
a water engineering and scientific firm.

Q And how long have you been involved in  
that line of work?

A I began working in the water field  
immediately upon graduation from college in 1972,  
and I have worked in the field of hydrology,  
geology, and related fields ever since.

Q Where did you graduate from, sir?

A I have a degree in geophysical  
engineering from the Colorado School of Mines.

Q What certifications do you hold?

A I am a certified professional geologist.

00:01:38 1 I'm a registered professional geologist in the  
00:01:41 2 state of Wyoming. Wyoming has a registration law  
00:01:44 3 for geologists as well. Colorado doesn't  
00:01:47 4 specifically have a registration law, but  
00:01:49 5 generally relies upon the AIPG, American Institute  
00:02:06 6 of Professional Geologists.

00:02:11 7 Q Do you believe you have any expertise in  
00:02:14 8 the area of groundwater hydrology?

00:02:17 9 A Yes. As I indicated, I have both  
00:02:22 10 academic experience and practical experience or  
00:02:25 11 work experience in that field. Beyond my academic  
00:02:35 12 experience in geophysical engineering at the  
00:02:38 13 School of Mines, I also graduated from the United  
00:02:41 14 States Army Officer Engineer School at Fort  
00:02:46 15 Belvoir, Virginia, and returned and completed  
00:02:49 16 graduate work at the Colorado School of Mines --  
00:02:52 17 did not get my master's because I haven't  
00:02:54 18 completed or didn't complete the thesis. I got a  
00:02:57 19 job offer and didn't get that done.

00:02:59 20 Q Can you briefly describe your work  
00:03:02 21 history, sir.

00:03:04 22 A In 1973, '72 or '73, I went to work for  
00:03:12 23 the firm of Willard Owens Associates, which was a  
00:03:14 24 groundwater engineering firm based in Wheat Ridge,  
00:03:18 25 Colorado. I worked for that firm until I took off

00:03:24 1 and started my own firm in 1983. That's the firm  
00:03:28 2 of Hydrokinetics Incorporated, and I've been  
00:03:35 3 working for that firm, Hydrokinetics, ever since.

00:03:42 4 Q What experience do you have in  
00:03:44 5 groundwater hydrology?

00:03:45 6 A The primary focus of my practice both at  
00:03:55 7 Willard Owens Associates and at Hydrokinetics has  
00:03:59 8 been exactly in the field of groundwater hydrology  
00:04:01 9 and related topics.

00:04:07 10 Q Can you give us a general background as  
00:04:10 11 to the type of cases you've been involved in  
00:04:15 12 involving groundwater hydrology over the years.

00:04:17 13 A We -- I have done -- conducted a variety  
00:04:24 14 of different kinds of studies for purposes of  
00:04:28 15 development of water supplies, for water quality  
00:04:34 16 concerns, water quality analysis, for water rights  
00:04:37 17 purposes. We've done a considerable amount of  
00:04:42 18 municipal water supply development work, including  
00:04:45 19 construction of wells, design and engineering of  
00:04:48 20 well systems, groundwater modeling issues,  
00:05:00 21 geologic mapping.

00:05:03 22 We do a considerable amount of work for  
00:05:06 23 special districts, in particular, municipalities  
00:05:09 24 and special districts in regards to development of  
00:05:12 25 their water rights, development -- physically,

00:05:17 1 development of their water supplies.

00:05:19 2 Q And do you apply your background in  
00:05:22 3 geology to any of those hydrologic studies?

00:05:26 4 A Yes. Certainly aquifer systems are  
00:05:28 5 geologic systems and to understand -- first, to  
00:05:31 6 understand an aquifer system, it's first important  
00:05:34 7 to understand the geology.

00:05:35 8 Q You indicated you had experience in water  
00:05:38 9 quality. Could you tell us what type of  
00:05:40 10 experience you've had.

00:05:43 11 A We have done -- I have done a variety of  
00:05:47 12 different water quality projects. I've worked for  
00:05:52 13 Texaco International on spills related to gasoline  
00:05:59 14 where we have investigated the extent of the  
00:06:02 15 spill, developed contaminate and cleanup processes  
00:06:07 16 and implemented those processes.

00:06:11 17 I have worked for East Cherry Creek  
00:06:16 18 Valley Water and Sanitation District on various  
00:06:18 19 water quality issues, including implications of  
00:06:22 20 the Lowry Superfund Site and contaminate migration  
00:06:26 21 from that superfund site on to the district. I've  
00:06:30 22 also been appointed by the governor as a member of  
00:06:35 23 the Lowry Superfund monitoring committee, which  
00:06:38 24 was a committee that was established to allow  
00:06:40 25 public input to the superfund process.

00:06:47 1 Let's see, there's a lot of others that  
00:06:49 2 we work on that had water quality implications.  
00:06:53 3 I've worked with Cherokee Water and Sanitation  
00:06:57 4 District out of Colorado Springs on a water  
00:07:00 5 project where they have to monitor groundwater  
00:07:03 6 downgradient of seepage ponds that are associated  
00:07:06 7 with their sewage disposal facilities.

00:07:10 8 I've worked on a host of petroleum  
00:07:15 9 cleanup projects for Montgomery Ward -- "host,"  
00:07:18 10 I'll say, six of them -- where, when Montgomery  
00:07:22 11 Ward closed down some years ago, they had gasoline  
00:07:29 12 leaks that needed cleaned up. I've done work at  
00:07:38 13 Gill Stapleton Airport in a similar regard,  
00:07:41 14 groundwater cleanup.

00:07:44 15 Q What about -- have you been involved in  
00:07:49 16 water management issues?

00:07:50 17 A Yes, uh-huh.

00:07:51 18 Q And could you tell me your experience in  
00:07:53 19 water management.

00:07:57 20 A A great deal of the work that we do for  
00:07:59 21 municipalities is really a management process. We  
00:08:03 22 work with them from the very start to develop  
00:08:08 23 water rights through the implementation of those  
00:08:11 24 water rights and then getting the water into the  
00:08:14 25 pipeline.



00:08:14 1 So, for example, East Cherry Creek Valley  
00:08:19 2 Water and Sanitation District, which is one of our  
00:08:22 3 larger clients, we have put together some of the  
00:08:26 4 initial water rights packages. To the degree that  
00:08:33 5 there were aug plans associated with some of  
00:08:37 6 those, he have either developed or assisted in the  
00:08:40 7 development of the administration programs for  
00:08:42 8 those; the accounting packages for those, which  
00:08:45 9 require that you track the water through the  
00:08:47 10 system; and then physically watching where the  
00:08:49 11 water goes.

00:08:51 12 In that particular case, water comes into  
00:08:54 13 Barr Lake, various manipulations occur in Barr  
00:08:58 14 Lake. There's an accounting balance associated  
00:09:00 15 with Barr Lake that has to be kept track of.  
00:09:03 16 Water is taken out of Barr Lake. Some of it goes  
00:09:05 17 into the alluvial aquifer system. Water is pumped  
00:09:09 18 from the alluvial aquifer system through a well  
00:09:18 19 system that we constructed, and it's important to  
00:09:19 20 keep track of the quantities of water that we pump  
00:09:23 21 from that well system.

00:09:25 22 In addition to that, there's a recharge  
00:09:26 23 facility that we constructed; and it's necessary  
00:09:29 24 to very specifically account for and track the  
00:09:33 25 water that goes into that recharge facility and

00:09:36 1 how that gets back into the system.

00:09:39 2 It's important that it's tracked both for  
00:09:41 3 legal reasons, for compliance with the  
00:09:43 4 augmentation plan; but it's also important that  
00:09:46 5 it's tracked physically so that we can make sure  
00:09:49 6 that the wells -- that the water is not just paper  
00:09:53 7 water but it's really going to result in  
00:09:56 8 production.

00:09:58 9 Q Is water balance calculations part of  
00:10:01 10 groundwater management considerations?

00:10:03 11 A Yes.

00:10:05 12 Q And you've been involved in water balance  
00:10:09 13 calculations in the past, analyses?

00:10:12 14 A Yes.

00:10:13 15 Q Also, do you have any expertise in ground  
00:10:21 16 and surface water matters in general?

00:10:23 17 A Yes. We talked about, I think,  
00:10:26 18 groundwater issues to some considerable degree.  
00:10:29 19 We deal routinely with issues of surface water,  
00:10:34 20 groundwater interaction. We don't do as much  
00:10:39 21 strictly surface water diversion kinds of work,  
00:10:43 22 but where there is an interaction between surface  
00:10:46 23 waters and groundwaters, we work on many projects  
00:10:50 24 like that.

00:10:51 25 Q Were you qualified as an expert witness

00:10:57 1 in one of the prior cases, 89 CW 32?

00:11:02 2 A Yes.

00:11:03 3 Q And did you testify in that case?

00:11:05 4 A Yes.

00:11:06 5 Q Okay. You testified for the opposers Dos  
00:11:13 6 Hermanos Ranches in that case?

00:11:14 7 A That's correct.

00:11:17 8 Q You've been qualified -- have you been  
00:11:20 9 qualified to testify in court as an expert  
00:11:23 10 witness, aside from that occasion?

00:11:24 11 A Yes.

00:11:24 12 Q And on how many different occasions?

00:11:30 13 A A lot. I'm trying to remember. I don't  
00:11:33 14 know as I could tell you exactly how many. In  
00:11:35 15 excess of a dozen though, I'm sure.

00:11:37 16 Q Have you been involved in water matters  
00:11:40 17 in Division 3?

00:11:42 18 A Yes.

00:11:42 19 Q Were you involved in trials in Division 3  
00:11:46 20 on other matters?

00:11:47 21 A Yes.

00:11:47 22 Q Were you qualified as an expert witness  
00:11:49 23 in those cases?

00:11:50 24 A Yes.

00:11:53 25 Q Have you done work in the San Luis Valley

00:11:57 1     aside from this case then, I assume?

00:12:00 2           A     Yes.

00:12:00 3           Q     Could you briefly describe what type of  
00:12:03 4     work you've done in the San Luis Valley.

00:12:07 5           A     We have worked on moving wells, the  
00:12:12 6     transfer of wells. We did some work down in the  
00:12:16 7     town of Sanford -- I believe it was for the school  
00:12:18 8     district down there -- where they had acquired a  
00:12:21 9     well, and it was located on a ranch, and it needed  
00:12:23 10    to be moved to a new location consistent with the  
00:12:26 11   rules and regulations.

00:12:28 12                 We've actually worked for the town of  
00:12:29 13     Alamosa in looking at water supplies for their  
00:12:33 14     golf course, well construction for water supplies  
00:12:37 15     for their golf course.

00:12:39 16                 We have worked on two different cases  
00:12:41 17     associated with the development of the groundwater  
00:12:45 18     district in the Closed Basin. We actually worked  
00:12:49 19     for the senior rights on the Rio Grande and  
00:12:52 20     Conejos Rivers in that aspect. That was a case  
00:12:57 21     that had a great deal to do with the interaction  
00:12:59 22     between the surface water in the Rio Grande and  
00:13:02 23     the Conejos and the groundwater systems,  
00:13:07 24     especially the groundwater systems in the Closed  
00:13:10 25     Basin area.

00:13:10 1 Q Go ahead, I'm sorry.

00:13:14 2 A Other projects we worked on -- we've done  
00:13:17 3 groundwater modeling some considerable number of  
00:13:20 4 years ago at the San Luis Lakes facility. It's  
00:13:25 5 managed by BLM. That work was done for the  
00:13:28 6 federal government.

00:13:32 7 Q That's fine. You mentioned you worked on  
00:13:35 8 the -- this first case on 89 CW 32. What about  
00:13:38 9 the second case, 99 CW 57?

00:13:41 10 A As I recall, that didn't go to trial; but  
00:13:48 11 we did work with pretty much the same group or at  
00:13:50 12 least with the county and the conservancy district  
00:13:53 13 in evaluating that decree.

00:13:54 14 MR. MCCLURE: Okay. We would offer  
00:13:59 15 Mr. Mefford as an expert witness in groundwater  
00:14:02 16 hydrology, geology, water quality, water  
00:14:07 17 management, and ground and surface water  
00:14:10 18 interaction.

00:14:10 19 THE COURT: Thank you, Mr. McClure.  
00:14:12 20 Mr. Witwer, any objection?

00:14:14 21 MR. WITWER: May I voir dire, Your Honor?

00:14:16 22 THE COURT: You may.

00:14:17 23 VOIR DIRE EXAMINATION

00:14:19 24 BY MR. WITWER:

00:14:19 25 Q Mr. Mefford, you're not a registered

01:01:04 1 Q (By Mr. McClure) Mr. Mefford, let me ask  
01:01:07 2 you, concerning the issue that was addressed and  
01:01:14 3 your investigation of the Lined Tailings Facility  
01:01:18 4 as a reservoir and ability to store waters as is  
01:01:24 5 being contemplated as part of this action, could  
01:01:29 6 you address those, please.

01:01:33 7 A If I understand what you're asking me,  
01:01:35 8 yes, we're looking at it as a reservoir; and, in  
01:01:39 9 the work that I do, we deal with reservoir issues  
01:01:46 10 on a fairly routine basis.

01:01:49 11 For example, right now we're doing an  
01:01:52 12 analysis of leakage beneath Barr Lake, which is a  
01:01:56 13 big reservoir up by Brighton; and we're making  
01:02:01 14 determinations of the water balance in that  
01:02:03 15 reservoir, how much comes in, how much comes out,  
01:02:05 16 and how much is leaking out and seeping out.  
01:02:09 17 We're doing drilling, and we're doing groundwater  
01:02:12 18 modeling and so on to make that evaluation. So,  
01:02:15 19 certainly, we deal with those kinds of aspects  
01:02:18 20 with regard to more traditional storage  
01:02:20 21 structures.

01:02:22 22 And what I'm indicating here to you is  
01:02:24 23 that this is not what we would envision as a  
01:02:27 24 traditional storage structure, traditional  
01:02:30 25 reservoir.

01:02:31 1 MR. WITWER: I raise the same objection  
01:02:32 2 and move to strike.

01:02:34 3 THE COURT: Okay. I'm actually going to  
01:02:36 4 overrule that objection. I'm going to let that  
01:02:38 5 testimony stand. You may proceed, Mr. McClure.

01:02:42 6 Q (By Mr. McClure) From a water management  
01:02:44 7 standpoint and as a vessel to store water as a  
01:02:47 8 reservoir, have you conducted any analysis?

01:02:53 9 A We have requested, through the discovery  
01:03:02 10 process, information that would be usable in  
01:03:09 11 defining water balance, defining how those -- how  
01:03:18 12 the things like the storage curve and how an  
01:03:22 13 understanding of the water that's stored in the  
01:03:25 14 reservoir, the elevation of the water and so on,  
01:03:28 15 may impact things; but we have been unable to  
01:03:31 16 secure that information through the discovery  
01:03:33 17 process.

01:03:33 18 Q Did you conduct any historical analysis,  
01:03:35 19 by looking at any documents, determining -- to  
01:03:39 20 determine whether or not this Lined Tailings  
01:03:43 21 Facility could be used for storage of waters?

01:03:46 22 A We looked at some construction documents,  
01:04:01 23 to the degree that they were available, through  
01:04:02 24 the Mined Land Reclamation Board, or DRMS as it's  
01:04:07 25 now called.

01:04:08 1 Q Did you look at any transcripts of  
01:04:12 2 hearings?

01:04:13 3 A We did. In particular, we looked at the  
01:04:17 4 transcript of a BMG hearing -- I think it's in  
01:04:22 5 1999 -- in which representatives of the  
01:04:25 6 engineering firm working for Battle Mountain Gold  
01:04:28 7 on the design of the system testified.

01:04:33 8 Q You attached a transcript to your report  
01:04:37 9 from January 29, 1990. Is that the document  
01:04:42 10 you're referring to as the '99 document or  
01:04:45 11 something else?

01:04:45 12 A Yes, that's correct.

01:04:53 13 Q January 25, 1990. And did you  
01:04:58 14 investigate concerning the testimony that was  
01:05:02 15 given in that proceeding concerning use of the  
01:05:05 16 Lined Tailings Facility for storage of waters?

01:05:10 17 A I had interest in the opinions of the  
01:05:12 18 design engineers, as to their testimony in regard  
01:05:18 19 to whether or not the facility was designed to  
01:05:23 20 store water. Certainly they are the design  
01:05:26 21 engineers. They are the ones that should have the  
01:05:28 22 expertise and the understanding of how that  
01:05:31 23 particular facility is best suited to or not to  
01:05:37 24 store water.

01:05:37 25 Q And are these the design engineers that



01:05:41 1 were consultants to Battle Mountain Resources,  
01:05:46 2 Inc., from SRK Engineering?

01:05:48 3 A That's correct, yes.

01:05:49 4 Q And that was a Mr. Dorey? Rob Dorey, I  
01:05:52 5 believe, is the name.

01:05:53 6 A Yes.

01:05:53 7 Q And Ms. Anne Baldrige?

01:05:58 8 A Yes. I believe she also testified in  
01:06:00 9 that hearing.

01:06:02 10 Q In your report, you referred to testimony  
01:06:04 11 of those two persons and how that might be  
01:06:08 12 material to the use of that facility for storing  
01:06:11 13 liquids. Are you aware of that?

01:06:14 14 A Yes.

01:06:15 15 Q And what do you think was relevant  
01:06:18 16 concerning their testimony concerning the ability  
01:06:23 17 to contain liquids?

01:06:26 18 A The testimony of Mr. Dorey, in  
01:06:30 19 particular, was -- I will have to paraphrase it  
01:06:35 20 just a little bit because I don't have it right  
01:06:37 21 here in front of me, but it was fairly explicit  
01:06:40 22 indicating that this facility was designed to  
01:06:44 23 store tailings not to store water, not to store  
01:06:47 24 fluids.

01:06:47 25 MR. WITWER: I'm going to object to the

01:06:49 1 extent that the testimony of this witness  
01:06:50 2 misstates information that's already contained in  
01:06:53 3 a 200-page exhibit that's in evidence.

01:06:56 4 MR. MCCLURE: I don't know if it is in  
01:06:57 5 evidence; but we would introduce it at this point  
01:06:59 6 in time, Your Honor. I didn't think it had been  
01:07:02 7 introduced.

01:07:03 8 THE COURT: All right. Well, actually,  
01:07:06 9 it hasn't been admitted.

01:07:11 10 MR. MCCLURE: That is tab 20, Exhibit T;  
01:07:17 11 and we would offer into evidence the transcript of  
01:07:20 12 the January 25, 1990, hearing for MLRB.

01:07:26 13 THE COURT: All right. Mr. Witwer, any  
01:07:30 14 objection?

01:07:30 15 MR. WITWER: May I have a moment,  
01:07:31 16 Your Honor?

01:07:32 17 THE COURT: You certainly may.

01:07:32 18 (There was a brief pause in the  
01:07:32 19 proceedings.)

01:07:32 20 MR. WITWER: Can we just go off the  
01:07:32 21 record?

01:08:13 22 THE COURT: The question before me is to  
01:08:15 23 admit. And, if you want to go off the record,  
01:08:21 24 that's fine with the Court too.

01:08:21 25 (There was a brief pause in the

01:08:21 1 proceedings.)

01:08:22 2 THE COURT: Back on the record. Go  
01:09:06 3 ahead, Mr. Witwer.

01:09:08 4 MR. WITWER: Thank you. Your Honor,  
01:09:09 5 subject to our continuing urging of the Court to  
01:09:12 6 take any documents that are related to water  
01:09:16 7 management on the tailings -- it is not an issue  
01:09:21 8 that the applicant believes is relevant in this  
01:09:23 9 case whatsoever -- make them only conditionally  
01:09:26 10 relevant subject to the connecting up of proof of  
01:09:30 11 likelihood that water management will contaminate  
01:09:33 12 the replacement sources, replacement water  
01:09:54 13 available under the Salazar Ranch water rights;  
01:10:01 14 and subject to that urging of the Court to admit  
01:10:06 15 it as only conditionally relevant later to be  
01:10:09 16 stricken, we have no objection.

01:10:11 17 THE COURT: Thank you, Mr. Witwer; and I  
01:10:13 18 do admit it. And I agree with Mr. Witwer on that;  
01:10:18 19 that it is dependent on the condition that the  
01:10:23 20 relevancy be established; but I will admit it on  
01:10:25 21 that condition.

01:10:26 22 MR. MCCLURE: Thank you, Your Honor.

01:10:27 23 (Objectors' Exhibit CC-T, 1/25/90  
01:10:38 24 Transcript, was received into evidence.)

01:10:38 25 Q (By Mr. McClure) Going to your report

01:10:41 1     itself, I believe the question had been asked you  
01:10:45 2     about Mr. Dorey's testimony concerning that the  
01:10:46 3     facility is designed to contain solids and not to  
01:10:52 4     contain liquids. Is that relevant for your  
01:10:55 5     purposes of an analysis?

01:10:58 6           A     Yes.

01:10:59 7           Q     And why do you say that?

01:11:05 8           A     If it is being now used as a water  
01:11:09 9     storage vessel, when it wasn't intended by the  
01:11:14 10    design engineers to be utilized as a water storage  
01:11:18 11   vessel, that would seem to be of considerable  
01:11:20 12   concern to me.

01:11:21 13           MR. WITWER: Your Honor, I'm going to  
01:11:22 14   object and move to strike. That's not a  
01:11:24 15   professional opinion. That's something that  
01:11:26 16   anybody could say based on their interpretation of  
01:11:31 17   what two people said 22 years ago who actually  
01:11:34 18   knew something about design of tailings  
01:11:37 19   impoundments, but that's not a professional  
01:11:39 20   opinion.

01:11:39 21           THE COURT: I'm just going to let you  
01:11:41 22   cross-examine him and make these things clear to  
01:11:44 23   me, Mr. Witwer. So I'm going to overrule that  
01:11:47 24   objection. You may proceed, Mr. McClure.

01:11:49 25           Q     (By Mr. McClure) You also had a quote

01:11:51 1 from Anne Baldrige of SRK Engineering, and that  
01:11:55 2 referred to the pump-back system taking slurry  
01:12:02 3 from the mill to the tailings facility and pumping  
01:12:05 4 back waters. Do you recall that quote?

01:12:08 5 A Yes.

01:12:08 6 Q Okay. Could you explain why you believe  
01:12:13 7 that is relevant for purposes of your analysis.

01:12:17 8 A Well, as the design engineers explained  
01:12:22 9 in that testimony, the water is being -- is  
01:12:28 10 carrying the tailings to the pond. It's the  
01:12:31 11 transport mechanism, and so water ends up in the  
01:12:34 12 pond as part of the tailings. And the purpose of  
01:12:37 13 the tailings pond is to decant the water and  
01:12:41 14 distribute the tailings at the location that  
01:12:43 15 they're designed to be located.

01:12:45 16 I think that was the testimony in that  
01:12:49 17 case or in that hearing, but the important part of  
01:12:55 18 Baldrige's testimony there is the fact that water  
01:12:59 19 then, after it's decanted, is not designed to be  
01:13:05 20 stored or dissipated there. It's designed to be  
01:13:08 21 pumped back and reused at the mine facility.

01:13:15 22 So it operates in a cycle. The water  
01:13:18 23 that brings the tailings over, deposits the  
01:13:20 24 tailings. That water is picked up, pumped back up  
01:13:22 25 to the mill facility, and goes through the loop

01:13:25 1 again. So the water is circulated, but the water  
01:13:28 2 is not designed to be stored in any large  
01:13:31 3 quantities or dissipated in any large degree at  
01:13:36 4 that point.

01:13:36 5 Q I believe that area of testimony that you  
01:13:44 6 quoted from Anne Baldrige referred to a free water  
01:13:49 7 pool on top of the Lined Tailings Facility. Do  
01:13:52 8 you recall that?

01:13:52 9 A Yes.

01:13:53 10 Q Okay. Does that have any significance to  
01:14:00 11 you in terms of your analysis, particularly --  
01:14:03 12 well, during the mining phase and also post  
01:14:06 13 mining?

01:14:11 14 A That pond is part of the decant process,  
01:14:14 15 but that pond is -- also there's some evaporation  
01:14:20 16 off of it. I'm not sure I understand the  
01:14:22 17 question.

01:14:23 18 Q Well, during the mining phase, there was  
01:14:25 19 a pond on the top of the Lined Tailings Facility?

01:14:30 20 A Yes.

01:14:30 21 Q And I'm asking you about that. Is that  
01:14:34 22 what your understanding was?

01:14:36 23 A Yes, my understanding, that existed.

01:14:45 24 Q Is there any significance, in terms of  
01:14:47 25 your analysis, to having a pond on the Lined

01:14:51 1 Tailings Facility after the mining phase has  
01:14:54 2 ceased?

01:14:59 3 A Well, as I read the reclamation plan, the  
01:15:02 4 idea ultimately was to close those facilities; to  
01:15:09 5 dry out the LTF, the Lined Tailings Facility; and  
01:15:13 6 to restore it to natural conditions by adding such  
01:15:20 7 conditional topsoil and regrading as was necessary  
01:15:24 8 to reestablish it under natural conditions.

01:15:26 9 Q Do you have an opinion as to the use of  
01:15:31 10 that Lined Tailings Facility as is now proposed in  
01:15:37 11 this plan of augmentation for water storage  
01:15:40 12 purposes?

01:15:44 13 A It's my opinion that it wasn't designed  
01:15:47 14 for that purpose; and lacking any more information  
01:15:55 15 or lacking a structural engineer's evaluation of  
01:15:59 16 the use of that facility for that purpose, I think  
01:16:01 17 that there is some risk in using it for storage.

01:16:12 18 It's my understanding that there's not  
01:16:13 19 been a structural engineer or geotechnical  
01:16:17 20 engineer that's done any work to determine whether  
01:16:20 21 or not water can be stored safely in that  
01:16:23 22 facility, especially an undisclosed or  
01:16:27 23 undetermined quantity of water, because we have no  
01:16:31 24 understanding of how much water -- what the  
01:16:34 25 maximum quantity of water might be that would be

01:16:37 1 intended to be stored in there.

01:16:39 2           There are no limits in the decree, as far  
01:16:41 3 as I can read it, as to the quantities of water  
01:16:45 4 that can be stored in there. So I think there are  
01:16:48 5 considerable safety issues, and it hasn't been  
01:16:51 6 looked at by a structural or geotechnical  
01:16:54 7 engineer.

01:16:54 8           MR. WITWER: I'm going to object,  
01:16:56 9 Your Honor, for the record for the same purpose,  
01:16:57 10 considerable safety issues that relies on  
01:17:01 11 expertise this witness does not possess.

01:17:03 12           THE COURT: Your objection is noted,  
01:17:04 13 Mr. Witwer. Thank you. You may proceed,  
01:17:07 14 Mr. McClure.

01:17:09 15           MR. WITWER: To clarify, are you  
01:17:11 16 overruling my objection?

01:17:12 17           THE COURT: I'm overruling your  
01:17:14 18 objection. Sorry.

01:17:15 19           Q     (By Mr. McClure) In analyzing this  
01:17:24 20 facility as a reservoir, this is a man-made  
01:17:29 21 reservoir?

01:17:31 22           A     It's a man-made facility.

01:17:34 23           Q     And there is a liner underneath it and  
01:17:37 24 then an under drain system?

01:17:39 25           A     That's my understanding, yes.



01:17:42 1 Q Would the ability to store waters in the  
01:17:53 2 future, after mining ceased, be related to the  
01:18:00 3 integrity of the liner?

01:18:04 4 MR. WITWER: Objection, Your Honor, same  
01:18:09 5 objection.

01:18:09 6 THE COURT: Overruled.

01:18:11 7 A Well, if the liner leaked, certainly that  
01:18:13 8 causes some problems both with the ability of the  
01:18:16 9 vessel to store water and with the release of  
01:18:20 10 contaminates if that were the case.

01:18:23 11 Q (By Mr. McClure) And, once again, that  
01:18:24 12 can be, if you had enough information, something  
01:18:27 13 that possibly could be determined through a water  
01:18:29 14 balance calculation, with the necessary  
01:18:34 15 information?

01:18:34 16 A Certainly, if there were enough leakage  
01:18:38 17 out of there that was recognizable, that could  
01:18:40 18 very well be in a water balance calculation.

01:18:42 19 Q Let me go to Opinion No. 6 on the West  
01:19:07 20 Pit water quality on page 7 of your report. Did  
01:19:09 21 you give an opinion about the water quality in the  
01:19:14 22 West Pit is not of adequate quality to discharge  
01:19:17 23 into the Rito Seco?

01:19:18 24 A I did.

01:19:19 25 Q And what -- this was in August of --

01:19:25 1 20th, 2012, you conducted some sort of an analysis  
01:19:33 2 concerning that. Could you briefly describe what  
01:19:36 3 analysis you conducted.

01:19:37 4 A We, actually, looked at the work that the  
01:19:41 5 health department had done back when the original  
01:19:46 6 leak from the West Pit was found to be reaching  
01:19:50 7 the Rito Seco. I believe, at that time, the  
01:19:55 8 health department determined that there were  
01:19:58 9 potential issues with a number of parameters. As  
01:20:02 10 I recall, at least sulfates, manganese, total  
01:20:07 11 dissolved solids, I believe, were discussed; and  
01:20:11 12 the health department at that time concluded that  
01:20:15 13 the release would not be acceptable and not meet  
01:20:20 14 stream standards.

01:20:22 15 Since that time, there has been and there  
01:20:28 16 continues to be monitoring; and the discharge  
01:20:30 17 permit continues to be in place such that waters  
01:20:34 18 are not allowed to be released to the stream  
01:20:37 19 without treatment. So that indicates to me that  
01:20:41 20 the condition that the groundwaters don't meet  
01:20:48 21 stream standards continues to exist.

01:20:50 22 Q Can you please indicate what analysis you  
01:20:56 23 did concerning a review of information as to the  
01:21:00 24 piercing of the green clay layer during the mining  
01:21:04 25 period and how that has affected water quality.

01:21:08 1 A There is considerable discussion of the  
01:21:13 2 geology of the West Pit and the significance of  
01:21:18 3 the green clay layer to the geology and the  
01:21:21 4 hydrogeology of the West Pit that can be found in  
01:21:24 5 TR-15. TR-15 was developed after this leak was  
01:21:30 6 identified.

01:21:32 7 There was a green clay layer. It was one  
01:21:37 8 type of layer. Actually, it's a gouge material,  
01:21:40 9 which is a material that is created by the  
01:21:44 10 movement of rocks along the fault; and it's,  
01:21:47 11 essentially, a clay barrier to flow. And,  
01:21:50 12 historically, this is an almost vertical barrier.  
01:21:54 13 So when we say "layer," it's not just a flat  
01:21:57 14 layer, but it's at an angle. That barrier to flow  
01:22:04 15 prevented large quantities of water from the north  
01:22:08 16 of the green clay layer from reaching the Rito  
01:22:15 17 Seco.

01:22:15 18 During the mining operation, that clay  
01:22:19 19 layer was breached. That gouge layer was breached  
01:22:23 20 such that waters from the north, which were of  
01:22:26 21 poor quality, were able to reach the West Pit and  
01:22:37 22 flood the West Pit and then interact with the  
01:22:42 23 chemistry of the rock material that was refilled  
01:22:45 24 into the West Pit and create water quality  
01:22:48 25 conditions which were inappropriate to put into

01:22:53 1 the stream.

01:22:53 2 Q And just kind of in a time reference,  
01:22:57 3 after mining, the West Pit was filled in with some  
01:22:59 4 fill material. Is that what you're referring to  
01:23:02 5 as the interaction?

01:23:03 6 A Yes.

01:23:04 7 Q So it's the interaction of the water with  
01:23:06 8 that fill material that creates a water quality  
01:23:09 9 issue?

01:23:10 10 A Yes. And the breaching of the green  
01:23:16 11 clay, in part, creates the head conditions within  
01:23:21 12 the West Pit that caused the problem with the  
01:23:24 13 water level rise and release into the Rito Seco  
01:23:27 14 that didn't occur under natural conditions.

01:23:30 15 Q And the pumping of the West Pit wells,  
01:23:36 16 wells that have been referred to as the West Pit  
01:23:38 17 wells, the four wells, for remediation purposes,  
01:23:43 18 do you have a view as to whether or not that helps  
01:23:45 19 cure that problem?

01:23:46 20 A It does. It maintains the water level at  
01:23:49 21 an elevation in the alluvium that is below the  
01:23:54 22 point at which it can be released into the Rito  
01:23:58 23 Seco, and it also keeps the water level in the  
01:24:01 24 tailings -- not tailings, in the rock that was  
01:24:04 25 used as backfill in the West Pit below a level

01:24:09 1 that causes water quality problems through  
01:24:13 2 geochemical interaction.

01:24:15 3 Q So the maintenance of a certain level in  
01:24:18 4 the West Pit actually helps maintain water  
01:24:22 5 quality?

01:24:22 6 A Yes.

01:24:23 7 Q But I think you also said it reverses the  
01:24:26 8 hydraulic gradient or words to that effect.

01:24:29 9 A Yes.

01:24:29 10 Q And that's to create waters from spilling  
01:24:32 11 over into the Rito Seco?

01:24:34 12 A Yes.

01:24:36 13 Q And those West Pit waters that are  
01:24:40 14 discharged to the Water Treatment Facility, from  
01:24:43 15 your investigation, is that accomplishing a  
01:24:46 16 purpose that's desired as to the use of the Water  
01:24:54 17 Treatment Facility?

01:24:54 18 A Yes. I mean, the Water Treatment  
01:24:58 19 Facility serves a specific purpose in resolving  
01:25:01 20 the water quality issues, yes.

01:25:02 21 Q From your observations or knowledge, it  
01:25:05 22 functions appropriately?

01:25:07 23 A Yes.

01:25:12 24 Q Is this an ongoing situation concerning  
01:25:17 25 waters emanating up and into the West Pit?

01:25:19 1 A Yes.

01:25:20 2 Q And why do you say that?

01:25:22 3 A Well, the geology has been permanently  
01:25:25 4 altered with the breaching of the green clay and  
01:25:28 5 the backfilling of the West Pit with the rock,  
01:25:42 6 waste rock.

01:25:43 7 Q When you talk about breaching the green  
01:25:46 8 clay layer, is that breaching a confining layer.

01:25:48 9 A Essentially that's it, yes.

01:25:50 10 Q Okay. Would you explain to the Court  
01:25:53 11 what that means in terms of a confining layer?

01:25:56 12 A Well, a confining layer is a layer that  
01:26:02 13 can create an artesian head and can allow waters  
01:26:05 14 to -- can confine water such that if it is  
01:26:11 15 breached, the water level can rise above the  
01:26:17 16 confining layer.

01:26:21 17 An example down here would be the blue  
01:26:24 18 clay sequence. We know that as we penetrate the  
01:26:27 19 blue clay sequence in the Closed Basin, we get  
01:26:30 20 flowing wells. And those flowing wells are  
01:26:32 21 operating because of an artesian head, and that  
01:26:36 22 artesian head is generated because we have  
01:26:38 23 recharge to the blue clay at a higher elevation  
01:26:45 24 than a particular flowing well. And we have this  
01:26:47 25 confining clay that holds the pressure in until

01:26:51 1 it's breached with the well.

01:26:53 2 Same kind of situation with the confining  
01:26:55 3 layer in the green clay. The geometries are just  
01:26:59 4 a little bit different because its not a flat  
01:27:01 5 layer in the same sense that the blue clay layer  
01:27:04 6 is, but it functions in somewhat of that manner.

01:27:08 7 Q If I can go to your opinion at page 4,  
01:27:11 8 paragraph 4. You quoted the proposed decree.  
01:27:26 9 That was a different proposed decree at that time  
01:27:28 10 in April of 2012, but you quoted the language at  
01:27:34 11 page 22, paragraph D that indicates -- let me just  
01:27:39 12 read it into the record:

01:27:41 13 "There was no evidence presented from  
01:27:44 14 which the Court in Case Nos. 89 CW 32 or 99 CW 57,  
01:27:48 15 or this Court, could conclude that Battle  
01:27:51 16 Mountain's operations have contaminated or will  
01:27:54 17 contaminate anyone's water supply or impair  
01:27:57 18 anyone's water rights by degrading water quality.  
01:28:00 19 In fact, the evidence was just to the contrary."

01:28:04 20 You then rendered an opinion that you  
01:28:06 21 felt that incorporation of this language in the  
01:28:09 22 current decree is misleading in a number of water  
01:28:14 23 quality and contamination issues that have arisen.  
01:28:18 24 Could you tell me what sort of analysis you  
01:28:21 25 conducted on that.

01:28:22 1 MR. WITWER: I'm going to object on  
01:28:24 2 grounds of relevance. The decree language has  
01:28:26 3 been changed since then.

01:28:27 4 THE COURT: This isn't in the current  
01:28:29 5 proposed decree?

01:28:30 6 MR. WITWER: No, it is not, Your Honor.

01:28:31 7 THE COURT: Then I sustain. I don't see  
01:28:34 8 how it's relevant if it's not in there.

01:28:37 9 MR. MCCLURE: Honestly, Your Honor,  
01:28:38 10 there's been a number of proposed decrees lately;  
01:28:40 11 and I wasn't sure if this was still in there. So  
01:28:43 12 if it's not in there, it's not in there.

01:28:50 13 Q (By Mr. McClure) Let me ask you this:  
01:28:52 14 Do you have -- have you done any investigation  
01:28:55 15 concerning whether or not the quality of waters  
01:29:00 16 delivered to the downstream rights is an area of  
01:29:05 17 concern to the downstream water users?

01:29:10 18 A Well, certainly that's an integral part  
01:29:13 19 of this decree, that the quality of waters  
01:29:17 20 delivered are -- remain suitable for the historic  
01:29:22 21 uses of seniors downstream.

01:29:26 22 Q And what are the concerns in terms of  
01:29:30 23 your investigation?

01:29:31 24 A Well, certainly the maintenance of the  
01:29:37 25 facility, the treatment facility, such that



01:29:41 1 contaminated waters are not again allowed to be  
01:29:46 2 released into the Rito Seco is a concern. This  
01:29:54 3 decree would, hopefully, continue to resolve that  
01:29:57 4 issue; but were that treatment plant done away  
01:30:02 5 with and water levels allowed to recover, based on  
01:30:06 6 the information, the water quality information  
01:30:08 7 that's available today, that would degrade the  
01:30:10 8 water quality for downstream seniors.

01:30:13 9 In addition, there are concerns, as we've  
01:30:15 10 discussed, with potential releases from the Lined  
01:30:19 11 Tailings Facility should such releases occur.

01:30:39 12 Q In your report, you refer to the reported  
01:30:42 13 cyanide spill in 1992 by Battle Mountain. What  
01:30:46 14 was your knowledge concerning that incident?

01:30:52 15 A I don't recall all of the details. As I  
01:30:55 16 remember, there was a spill or release of some  
01:31:00 17 cyanide-containing materials at some point in the  
01:31:04 18 vicinity of the mill, and the health department  
01:31:12 19 somehow identified that; and, ultimately, a fine  
01:31:16 20 was issued, significant fine. I think, as you  
01:31:21 21 indicated, I think it was the largest fine that  
01:31:24 22 the MLRB people had issued to that point. I don't  
01:31:28 23 recall all of the details of it, but certainly  
01:31:31 24 there was a release that was out of compliance.

01:31:37 25 Q And were you aware of the spill that

01:31:39 1 occurred in that late '90s time frame that you  
01:31:44 2 generally referred to in your prior testimony, but  
01:31:47 3 where contaminated water actually reached the Rito  
01:31:53 4 Seco out of the West Pit?

01:31:54 5 A Yes.

01:31:57 6 Q As part of your investigation, did you  
01:31:59 7 determine if a cease and desist order had been  
01:32:04 8 issued by Colorado Department of Health and  
01:32:06 9 Environment?

01:32:06 10 A I believe it was, yes.

01:32:08 11 Q Okay. And you referred to that as  
01:32:12 12 appendix 4 in your report?

01:32:18 13 A I think that's correct.

01:32:20 14 Q And was there also a -- go ahead if you  
01:32:23 15 want to take a look.

01:32:25 16 A I don't know the appendices. Yes, I do  
01:32:34 17 have it here.

01:32:34 18 Q And then that also calls for the  
01:32:39 19 requirement of a CDPHE discharge permit, which was  
01:32:44 20 Appendix 5?

01:32:45 21 A Yes.

01:32:49 22 Q You referred to the development of TR-15  
01:32:53 23 and then later TR-26. Could you briefly describe  
01:32:58 24 what TR-15 is.

01:33:01 25 A The release into the Rito Seco occurred

01:33:08 1 through some seeps along the river, along the  
01:33:12 2 stream. Once that was identified and regulatory  
01:33:20 3 agencies became aware of it, something had to be  
01:33:27 4 done to take care of it. That, ultimately, is why  
01:33:29 5 the cease and desist order was issued and so on.

01:33:33 6 TR-15, as I recall, was the first effort  
01:33:38 7 to identify the mechanism that created the leak;  
01:33:45 8 and that describes the geology and so on that  
01:33:47 9 we've discussed here with the green clay layer;  
01:33:53 10 and it also described the monitoring programs that  
01:33:55 11 would be put in place.

01:33:58 12 TR-26 addressed the remediation of the  
01:34:03 13 process, the long-term remediation of the process.  
01:34:12 14 TR-26 explains -- I think there was a two-phase  
01:34:16 15 process that they envisioned in TR-26. The first  
01:34:20 16 phase of that was, before a permanent solution was  
01:34:22 17 found, there was a temporary solution which relied  
01:34:25 18 upon enhanced evaporation; and that was like a  
01:34:28 19 two-year period that that was supposed to be  
01:34:31 20 allowed to operate.

01:34:33 21 And then subsequent to that, there was a  
01:34:36 22 long-term remediation process that was to be  
01:34:41 23 designed. In TR-26, I believe that that was a  
01:34:46 24 passive biological system that they were hoping to  
01:34:51 25 implement at that time.

01:34:54 1 Before that implementation came, to  
01:34:56 2 fruition, the health department, I think, remained  
01:35:03 3 concerned about the continuing releases; and  
01:35:06 4 they -- and Battle Mountain brought in a treatment  
01:35:10 5 plant, I think a temporary treatment plant, RO  
01:35:15 6 plant, to treat and process and, ultimately,  
01:35:17 7 designed a full-scale RO plant, the plant that we  
01:35:20 8 see out there today, which is used as the  
01:35:22 9 remediation solution, as opposed to the passive  
01:35:26 10 biological treatment process that was initially  
01:35:30 11 envisioned in TR-26. But that's kind of a  
01:35:34 12 background of what TR-26 and TR-15 tried to  
01:35:38 13 accomplish.

01:35:38 14 Q Did TR-26 address attempting to  
01:35:41 15 reintroduce the West Pit waters on a treated basis  
01:35:45 16 back to the stream?

01:35:47 17 A Yes.

01:35:48 18 Q And in what context? Was that a policy  
01:35:51 19 matter?

01:35:53 20 A As I recall, the thought there was to put  
01:35:56 21 the water back into the stream to the highest  
01:36:00 22 degree possible. That was one of the reasons that  
01:36:02 23 the passive process was favored in the original  
01:36:07 24 TR, to try and maintain as much of the water in  
01:36:12 25 the stream or to return as much of the treated

01:36:15 1 water to the stream as was possible.

01:36:17 2 Q Okay. Do you have any knowledge as to  
01:36:19 3 whether, during that period of time after the  
01:36:23 4 spill was discovered coming out of the West Pit  
01:36:26 5 into the stream and prior to the final completion  
01:36:29 6 of the permanent RO facility, waters were  
01:36:33 7 transported over to the Lined Tailings Facility?

01:36:38 8 A There were -- there was a memo, as I  
01:36:44 9 recall, from DRMS or from MLRB at that time which  
01:36:48 10 allowed them to truck water to the Lined Tailings  
01:36:54 11 Facility in the event that water levels were  
01:36:57 12 rising and they didn't have the ability to control  
01:37:00 13 it through the evaporation systems that they had  
01:37:02 14 in place over the West Pit itself.

01:37:08 15 Subsequent to that, there was another  
01:37:10 16 memo, later in 2009, as I recall, from their  
01:37:17 17 engineers requesting construction of a pipeline  
01:37:20 18 that would lead to the Lined Tailings Facility,  
01:37:24 19 and it requested the use of that pipeline strictly  
01:37:27 20 on a backup basis. But, again, that was a safety  
01:37:33 21 overflow such that, if they were not able to  
01:37:36 22 handle the quantities of water in the pit to keep  
01:37:39 23 the elevations at the point necessary to prevent  
01:37:43 24 overflow into the Rito Seco, then at least they  
01:37:46 25 had a means, a safe means, of pumping it down

01:37:49 1 temporarily.

01:37:51 2           So there was mechanisms in place,  
01:37:56 3 basically safety or backup mechanisms. And I  
01:38:00 4 don't know how much water was trucked over there,  
01:38:03 5 if water was, in fact, trucked over there or run  
01:38:07 6 through that pipeline in that period.

01:38:10 7           Q     Was this more or less a safety valve  
01:38:13 8 while the Water Treatment Facility was being  
01:38:16 9 built?

01:38:16 10          A     Yes. This was kind of a safety valve  
01:38:19 11 during what was Phase I, as I talked about, before  
01:38:23 12 the treatment plant was built. It was really not  
01:38:30 13 in anyone's interest to see the water level rise  
01:38:32 14 and again contaminate the stream. So, if it  
01:38:36 15 physically couldn't be dissipated through the  
01:38:39 16 evaporation systems that were in the West Pit, at  
01:38:42 17 least this was a safety mechanism that could be  
01:38:46 18 used to prevent renewal of contamination.

01:38:55 19          Q     It is my understanding that you're  
01:38:57 20 talking about the history of the Lined Tailings  
01:39:02 21 Facility to take West Pit waters prior to  
01:39:06 22 completing the permanent Water Treatment Facility?

01:39:11 23          A     Yes.

01:39:11 24          Q     Okay.

01:39:15 25          A     This was in, I think, the 1999 time

01:39:18 1 frame; and the treatment facility was completed  
01:39:21 2 later on in 2002 or '03.

01:39:27 3 Q Were you involved in the 99 CW 57 case?  
01:39:32 4 I think you already testified that you were.

01:39:34 5 A Yes.

01:39:34 6 Q Did that incorporate any of these or  
01:39:38 7 attempt to implement any of the TR-26 provisions  
01:39:43 8 from your standpoint?

01:39:44 9 MR. WITWER: I object. Calls for a legal  
01:39:47 10 conclusion.

01:39:48 11 THE COURT: I'm going to sustain that  
01:39:50 12 objection.

01:39:57 13 Q (By Mr. McClure) Can you tell me about  
01:39:59 14 the -- can you tell me, in your view, if there was  
01:40:07 15 any -- well, strike that.

01:40:11 16 Let's go to the lysimeters. Can you tell  
01:40:17 17 me what was the lysimeters -- the use of the  
01:40:22 18 lysimeters in the context of the first case,  
01:40:24 19 89 CW 32?

01:40:27 20 A The lysimeters were designed to be part  
01:40:31 21 of the contaminate identification from the -- if  
01:40:36 22 there was a release from the ponds, particularly  
01:40:41 23 the collection ponds down below the main tailings  
01:40:45 24 facility.

01:40:49 25 Q Was that part of a stipulation with

01:40:52 1 Dos Hermanos Ranches in 89 CW 32?

01:40:56 2 A Yes, it was.

01:40:57 3 Q And that was, more or less, a protection  
01:41:02 4 measure for the owners, which was the Williamson  
01:41:08 5 family at that point in time, to what is now  
01:41:10 6 referred to as the Salazar Ranch?

01:41:12 7 MR. WITWER: Objection. Calls for a  
01:41:13 8 legal conclusion.

01:41:14 9 THE COURT: Sustained.

01:41:16 10 Q (By Mr. McClure) What was the purpose of  
01:41:17 11 those lysimeters?

01:41:19 12 MR. WITWER: Same objection.

01:41:20 13 THE COURT: Overruled.

01:41:21 14 A The purpose of those lysimeters was to  
01:41:25 15 provide some points which contamination, if it  
01:41:29 16 existed in the vadose zone -- the vadose zone  
01:41:35 17 being the unsaturated zone -- could be identified.  
01:41:39 18 Lysimeters are -- maybe I should explain what a  
01:41:42 19 lysimeter is.

01:41:43 20 Q Would you please do that.

01:41:46 21 A Water in the vadose zone, in the  
01:41:53 22 unsaturated zone that is, migrates vertically  
01:41:57 23 downward through the unsaturated materials; and so  
01:42:02 24 if you put a monitoring well in, there will be no  
01:42:06 25 water level in there because there's no



01:42:08 1 saturation.

01:42:09 2 But a lysimeter is a porous cup that is  
01:42:15 3 made out of porcelain. And it's designed so that  
01:42:18 4 you can put a vacuum on that cup; and if there is  
01:42:21 5 water migrating even in an unsaturated state  
01:42:24 6 through the unsaturated zone, through the vadose  
01:42:28 7 zone, it will suck a sample in. And that sample  
01:42:31 8 can be extracted through tubing that goes to the  
01:42:36 9 surface. So that gives us some means of trying to  
01:42:39 10 determine if there is flow of contaminants through  
01:42:48 11 the unsaturated zone.

01:42:50 12 Q So one would take a water -- take  
01:42:53 13 whatever water sample is found in the lysimeter  
01:42:56 14 and take it out in some fashion through a suction  
01:43:01 15 cup, and that would be then tested at a later  
01:43:04 16 time. Is that the concept behind this?

01:43:06 17 A Yeah. Yeah. The way that it's removed  
01:43:09 18 is a little different than that, but essentially  
01:43:11 19 it gives us a means of collecting a water sample  
01:43:13 20 in that zone.

01:43:14 21 Q And there were lysimeters then placed  
01:43:17 22 below the collection pond?

01:43:19 23 A Yes.

01:43:19 24 Q Okay. At various locations. Are you  
01:43:29 25 aware that it's reported that there has been no

01:43:31 1 water samples found in those lysimeters for --  
01:43:36 2 since they were installed over 20 years?

01:43:38 3 A Yes.

01:43:39 4 Q Okay. And the reporting on that is done  
01:43:45 5 by Battle Mountain personnel; is that correct?

01:43:49 6 A Yes.

01:43:49 7 Q Okay. What -- is there any significance,  
01:43:55 8 from your standpoint, that there has been no  
01:43:59 9 sample obtained from those? There's three  
01:44:06 10 different locations -- excuse me. Are there three  
01:44:10 11 different locations for those lysimeters?

01:44:12 12 A I believe that's correct, yes.

01:44:15 13 Q At different depths are those lysimeters  
01:44:23 14 installed?

01:44:23 15 A Yes. I think they're 25 to 50 feet,  
01:44:26 16 somewhere in that neighborhood.

01:44:26 17 Q Is there a significance, from your  
01:44:29 18 standpoint, that there has never been any water or  
01:44:32 19 fluid found in that porcelain cup at any of those  
01:44:37 20 lysimeters for a 20-plus-year period of time?

01:44:40 21 A I find that somewhat remarkable, yes. I  
01:44:43 22 mean, I would expect that we would find some  
01:44:47 23 fluids -- clean, contaminated or otherwise --  
01:44:50 24 which would have been collected in those zones as  
01:44:54 25 different water fronts from seasonal melting and

01:44:58 1 rain and precipitation events migrated down  
01:45:01 2 through the unsaturated zone; but apparently,  
01:45:04 3 these lysimeters were not able to pick that up.

01:45:09 4 Q Are you aware of other conditions in very  
01:45:19 5 dry climates, desert climates, where they have  
01:45:23 6 been able to receive a sample for testing  
01:45:26 7 purposes?

01:45:28 8 A I have read studies where they have, yes.  
01:45:31 9 I haven't myself participated in them; but I  
01:45:34 10 certainly have read studies, even in the Sahara  
01:45:40 11 Desert, where they have secured samples.

01:45:43 12 MR. WITWER: Objection, hearsay.

01:45:45 13 THE WITNESS: This is based on -- I'm  
01:45:46 14 sorry.

01:45:46 15 THE COURT: You don't get to argue. I'm  
01:45:48 16 going to overrule. He's an expert. He's giving  
01:45:51 17 his opinion.

01:45:52 18 Q (By Mr. McClure) Go ahead, please.

01:45:54 19 A I'm sorry. Based upon technical  
01:45:57 20 documents that I have reviewed as part of my work  
01:46:01 21 on a variety of projects, certainly, there is an  
01:46:06 22 institute -- I believe it's in Arizona somewhere  
01:46:08 23 around Tucson -- that specifically studies desert  
01:46:16 24 hydrology; and they use these lysimeters in very  
01:46:19 25 dry situations and are able to identify fluids and

01:46:24 1 extract fluids from very dry situations.

01:46:26 2 Q These lysimeters are buried now under the  
01:46:30 3 ground below the collection pond?

01:46:31 4 A Yes.

01:46:32 5 Q So one really can't stick your head under  
01:46:35 6 the ground and know what's going on. You would  
01:46:38 7 almost have to dig them up?

01:46:39 8 A It may be a maintenance issue with salts  
01:46:42 9 precipitating in the porcelain -- in the pores of  
01:46:48 10 the porcelain cups that prevent water from  
01:46:50 11 reaching them. It may have been a construction  
01:46:52 12 problem originally when they were set.

01:46:54 13 It depends on the kind of drilling rig  
01:46:56 14 that they were set with. If the drilling rig  
01:46:58 15 created mud slime on the side of the hole before  
01:47:03 16 the porcelain cups were set in there, that mud  
01:47:08 17 slime can prevent the water from getting to the  
01:47:10 18 cup even if there's a suction in the cup.

01:47:13 19 So there's a number of maintenance and  
01:47:15 20 construction issues which, if not properly  
01:47:17 21 observed, can render the usefulness of the  
01:47:20 22 lysimeter -- or render it useless.

01:47:28 23 MR. MCCLURE: Your Honor, at this time,  
01:47:29 24 we would like to enter into evidence two exhibits,  
01:47:31 25 the Cease and Desist Order, and the second is the

01:47:48 1 Colorado Department of Health Discharge Permit.  
01:47:56 2 I'll give you those numbers. Those are E, and the  
01:48:12 3 discharge permit is F. It's E and F. Excuse me.

01:48:25 4 THE COURT: So you're asking to admit E  
01:48:27 5 and F, which are your tabs 5 and 6?

01:48:30 6 MR. MCCLURE: That's correct.

01:48:31 7 THE COURT: Mr. Witwer, do you have any  
01:48:33 8 objection to my admitting those exhibits?

01:48:35 9 MR. WITWER: Subject to our continuing  
01:48:38 10 conditional relevance concerns, Your Honor, no  
01:48:41 11 objection.

01:48:41 12 THE COURT: E and F will be admitted.

01:48:44 13 (Objectors' Exhibit CC-E, Cease and  
01:48:44 14 Desist Order; and CC-F, Discharge Permit, were  
01:48:44 15 received into evidence.)

01:48:50 16 THE COURT: It's about noon, so we'll  
01:48:52 17 take our lunch break; and I will ask that we  
01:48:54 18 resume at 1:15; and we'll be in recess.

02:43:29 19 (Lunch recess was taken at 11:57 a.m.)

02:43:29 20 AFTERNOON SESSION, WEDNESDAY, DECEMBER 12, 2012

02:43:29 21 (The court reconvened at 1:17 p.m., and  
03:09:34 22 the following proceedings were had:)

03:09:34 23 THE COURT: Mr. Mefford, I'll remind you  
03:09:38 24 you're still under oath. And, Mr. McClure, you  
03:09:42 25 may continue your examination of Mr. Mefford.

03:09:46 1 MR. MCCLURE: Thank you, Your Honor.

03:09:46 2 DIRECT EXAMINATION CONT'D

03:09:46 3 BY MR. MCCLURE:

03:09:48 4 Q Mr. Mefford, you had previously testified  
03:10:01 5 concerning the -- what you understood to be the  
03:10:04 6 water management practices of taking West Pit  
03:10:07 7 waters to the Lined Tailings Facility during that  
03:10:12 8 2003 to 2010 time period or that eight-year time  
03:10:17 9 period. Do you recall your testimony concerning  
03:10:19 10 that?

03:10:19 11 A I believe we talked about the memos from  
03:10:29 12 DRMS that allowed that there would be some  
03:10:32 13 trucking back in the 1999 period. I'm not sure if  
03:10:36 14 I understand your question.

03:10:41 15 Q Let me rephrase the question. Just in  
03:10:43 16 terms of the accounting information that was  
03:10:45 17 testified to this last day and a half,  
03:10:47 18 Mr. Madrid's testimony concerning the practices  
03:10:54 19 which existed in 2003 to 2010, did you hear any of  
03:11:02 20 that testimony concerning all of that West Pit  
03:11:06 21 water being treated through the Water Treatment  
03:11:09 22 Facility?

03:11:09 23 A Yes, I did.

03:11:10 24 Q Did you, likewise, hear that during that  
03:11:13 25 eight-year period, none of the water that was

03:11:16 1 taken from the West Pit went to the Lined Tailings  
03:11:22 2 Facility but for the brine?

03:11:23 3 A Yes.

03:11:26 4 Q We consider the brine separately as  
03:11:28 5 that's a by-product from the Water Treatment  
03:11:31 6 Facility?

03:11:31 7 A Yes.

03:11:42 8 Q Then did you hear the testimony that in  
03:11:45 9 2011 there was more than 150 acre-feet of water  
03:11:56 10 taken over to the Lined Tailings Facility, put in  
03:12:00 11 a pond, pumped out of that pond, and used in a  
03:12:03 12 center pivot to grow a canola crop?

03:12:07 13 A Yes.

03:12:07 14 Q Okay. And did you hear that in 2012  
03:12:11 15 there, likewise, were more than 150 acre-feet of  
03:12:15 16 water taken to the Lined Tailings Facility, put in  
03:12:19 17 the pond, pumped out of the pond, and then used  
03:12:23 18 for purposes of forced evaporation through the  
03:12:30 19 sprinklers?

03:12:31 20 A Evaporated through the sprinklers, yes,  
03:12:36 21 or attempted to be evaporated through the  
03:12:38 22 sprinklers, yes.

03:12:39 23 Q Yes. Do you have an opinion as to  
03:12:41 24 whether or not that increases the risk concerning  
03:12:44 25 water management practices in the Lined Tailings

03:12:49 1 Facility?

03:12:49 2 A You mean the concept of taking water from  
03:12:53 3 the West Pit, as opposed to just taking brine?

03:12:57 4 Q Taking water from the West Pit and as  
03:12:59 5 opposed to treating it in a Water Treatment  
03:13:02 6 Facility, but taking it over to the Lined Tailings  
03:13:05 7 Facility as existed during the 2011 and 2012 time  
03:13:09 8 period?

03:13:10 9 A Yes.

03:13:12 10 MR. WITWER: Your Honor, I'm sorry. I'm  
03:13:14 11 going to object because we're talking again about  
03:13:16 12 risk, risk to the facility, risk to the integrity  
03:13:19 13 of the facility. This witness is not qualified to  
03:13:22 14 render an opinion about that.

03:13:23 15 THE COURT: Thank you, Mr. Witwer.  
03:13:26 16 Overruled. He may answer the question.

03:13:28 17 A There certainly is, as in any kind of  
03:13:33 18 structure like that, probably some safe level,  
03:13:36 19 some stage at which water can be stored safely.  
03:13:41 20 We don't know what that is in this facility.

03:13:47 21 So, consequently, the more water that we  
03:13:49 22 put into it and the more water that's stored in it  
03:13:52 23 at any given time would increase the risk, not  
03:13:56 24 knowing what that safe level is.

03:13:57 25 Q (By Mr. McClure) And, if that continued



03:14:00 1 in the future where 150 acre-feet or more per year  
03:14:03 2 were taken from the West Pit directly to the Lined  
03:14:07 3 Tailings Facility, would that impact your decision  
03:14:10 4 in any manner?

03:14:11 5 MR. WITWER: Same objection, Your Honor.

03:14:13 6 THE COURT: Noted and overruled.

03:14:15 7 A If, based upon the water balance, there  
03:14:19 8 was an accrual of water so that there was an  
03:14:22 9 increase in the quantity of water stored in that  
03:14:25 10 facility from year to year, because the facility  
03:14:28 11 was incapable through evaporation and  
03:14:31 12 evapotranspiration of dissipating those quantities  
03:14:34 13 of water, then that would increase the risk of  
03:14:37 14 reaching whatever the safe level would be in  
03:14:40 15 there, even though we don't know what that safe  
03:14:43 16 level is. So it would increase the risk, yes,  
03:14:46 17 sir.

03:14:46 18 Q (By Mr. McClure) Is there any concern  
03:14:47 19 from your standpoint that the practice that  
03:14:50 20 existed in 2011 and 2012 changed from the prior  
03:14:54 21 practice that existed from 2003 to 2008 where all  
03:15:00 22 that Lined Tailings Facility water was treated at  
03:15:03 23 the Water Treatment Facility but for the brine?

03:15:05 24 A Yes. Certainly is a substantial change  
03:15:09 25 in the practice.

03:15:10 1 Q Let me hand you Exhibit No. CC-1 and ask  
03:15:21 2 you if you can identify that.

03:15:34 3 THE COURT: You have letters.

03:15:39 4 MR. MCCLURE: It's going to be tab No. 9.  
03:15:42 5 I'm not reading that very well. It is CC-I.

03:15:47 6 THE COURT: Thank you.

03:15:57 7 THE WITNESS: I have tab No. 9,  
03:15:59 8 Exhibit CC-I, yes.

03:16:02 9 Q (By Mr. McClure) And can you identify  
03:16:05 10 that document? Is that a document that you  
03:16:10 11 prepared?

03:16:11 12 A This is an air photo of the vicinity of  
03:16:15 13 the mine and the Salazar Ranch. The title is  
03:16:20 14 "Wells Down Gradient of Battle Mountain Resources  
03:16:23 15 Tailings Pond." There is an insert in the lower  
03:16:26 16 right-hand corner that shows topography as well.  
03:16:31 17 On the air photo map, there is location -- there  
03:16:34 18 are locations for the wells identified, and  
03:16:37 19 there's also some arrows which show the directions  
03:16:41 20 of the surface drainages.

03:16:45 21 Q And what wells are identified on that  
03:16:47 22 map?

03:16:48 23 A The San Luis Well, one of the town  
03:16:51 24 wells -- actually, both of the town wells. Those  
03:16:54 25 are the permit No. 11606-F and 23234-F. The

03:17:04 1 Salizar Well permit No. 215914 [sic], I believe.  
03:17:14 2 It's a little difficult to read on the air photo.  
03:17:17 3 One of the other Salizar wells or permit  
03:17:20 4 No. 19564-RF, and the third Salizar Well permit  
03:17:26 5 No. 21589-F. Again, that one is a little bit  
03:17:38 6 difficult to read on this small version. I  
03:17:41 7 believe that's the correct number.

03:17:42 8 Q Approximately in the middle of that map  
03:17:44 9 does it depict the Lined Tailings Facility?

03:17:46 10 A Yes.

03:17:47 11 Q And can you see a pond on that that's in  
03:17:49 12 black?

03:17:50 13 A Yes.

03:17:50 14 Q And that's around the white area?

03:17:53 15 A Yes.

03:17:54 16 Q Okay. And the town well that you've  
03:18:00 17 identified -- you've identified a couple of them.  
03:18:03 18 Was one of those town wells mentioned in the  
03:18:06 19 89 CW 32 decree?

03:18:08 20 A Yes.

03:18:08 21 Q Which one was that, sir?

03:18:14 22 A I probably should pull that decree out to  
03:18:16 23 get the right one. If I could reference that  
03:18:25 24 decree, I could be more specific than that. One  
03:18:29 25 of those is mentioned. One of those two wells

03:18:31 1 certainly is mentioned in that decree. I just  
03:18:34 2 want to make sure we have the right permit number  
03:18:36 3 so we have it on the record.

03:18:47 4 Q If you're sure that one of the two is the  
03:18:51 5 town well that's in the decree, I think that will  
03:18:53 6 suffice for right now.

03:18:58 7 Do you recall having your deposition  
03:19:00 8 taken in -- by Mr. Witwer in this case on --  
03:19:21 9 excuse me. Let me back up here a minute. Can I  
03:19:25 10 refer you to Exhibit 27, AA. If you could take a  
03:19:32 11 moment and take a look at that.

03:19:33 12 THE COURT: Tab 27.

03:19:35 13 MR. MCCLURE: Tab 27, Exhibit AA.

03:19:37 14 THE COURT: That's all right. I just  
03:19:39 15 wanted to make sure I had it right. Thanks.

03:19:41 16 A If I can find it in the correct book  
03:19:43 17 here, yes.

03:20:13 18 Q (By Mr. McClure) If I could hand you 27,  
03:20:15 19 AA, and ask you, Is that a judgment and decree  
03:20:18 20 adjudicating a well in W-142, well No. 1 for the  
03:20:25 21 San Luis Valley -- excuse me, San Luis Water and  
03:20:29 22 Sanitation District?

03:20:29 23 A Yes, it is.

03:20:32 24 Q And let me hand you Exhibit No. 25 --  
03:20:39 25 excuse me -- yeah, 25, please. It is tab 25,

03:20:47 1 Exhibit No. Y. I apologize for the confusion.

03:20:51 2 Tab 25, Exhibit No. Y.

03:21:02 3 A I don't know if I've got this. I've got  
03:21:06 4 tab 25, Exhibit CC-Y.

03:21:12 5 Q If you could go to tab 25, please.

03:21:15 6 A I have that.

03:21:15 7 Q Is that a separate well adjudicated in  
03:21:18 8 Case W-2336, well No. 1, in favor of the San Luis  
03:21:26 9 Water and Sanitation District?

03:21:26 10 A Yes.

03:21:27 11 Q And are those wells depicted upon your  
03:21:30 12 map?

03:21:30 13 A Yes. Those are the wells depicted on the  
03:21:33 14 map.

03:21:46 15 Q If I may refer you to your deposition  
03:21:56 16 that was taken on October 23, 2012, that was taken  
03:22:03 17 in this action by Mr. Witwer, and ask you if you  
03:22:39 18 recall a series of questions that Mr. Witwer posed  
03:22:43 19 to you starting with page 106 of that deposition.

03:23:10 20 A Okay.

03:23:11 21 Q And going to line 14, he asked you a  
03:23:15 22 question concerning whether or not the tailings  
03:23:19 23 pond was relevant to the Court's injury analysis  
03:23:23 24 for purposes of the change case or the  
03:23:26 25 augmentation plan amendment.

03:23:27 1 And your answer was, "I believe it is?"

03:23:30 2 MR. WITWER: Objection, Your Honor,  
03:23:32 3 hearsay.

03:23:33 4 THE COURT: I'm a little confused. Why  
03:23:37 5 are you asking the question using the deposition  
03:23:40 6 instead of just asking him the question.

03:23:41 7 MR. MCCLURE: That's fair enough. What  
03:23:44 8 I'm trying to do is review some of his deposition  
03:23:47 9 testimony that was given at that time, and ask him  
03:23:53 10 if there's any clarification to that.

03:24:02 11 THE COURT: Okay.

03:24:05 12 MR. WITWER: Your Honor, it's not proper  
03:24:08 13 to offer an out-of-court statement for the truth  
03:24:10 14 of the matter asserted; and it's not proper unless  
03:24:16 15 and until somebody has been impeached to start  
03:24:19 16 offering rehabilitative testimony.

03:24:25 17 MR. MCCLURE: I think it's appropriate to  
03:24:27 18 go ahead and ask him if he needs to clarify  
03:24:29 19 anything concerning what he had testified to  
03:24:31 20 before.

03:24:32 21 MR. WITWER: Your Honor, he was under  
03:24:34 22 oath -- I'm sorry.

03:24:35 23 THE COURT: Let's let Mr. McClure finish,  
03:24:37 24 and then I'll hear what you have to say.

03:24:39 25 MR. MCCLURE: There's adequate time for

03:24:42 1 cross-examination.

03:24:42 2 MR. WITWER: There was also adequate time  
03:24:44 3 for this witness to review all the lines in his  
03:24:46 4 deposition and make corrections and sign the  
03:24:48 5 correction pages, as every deponent has the  
03:24:50 6 opportunity to do; and that was not done in this  
03:24:53 7 case.

03:24:53 8 THE COURT: I'm going to let Mr. McClure  
03:24:55 9 ask his questions. And, Mr. Witwer, you can bring  
03:24:58 10 out the fact to me that he didn't correct his  
03:25:01 11 deposition, and you can bring that out in your  
03:25:03 12 questioning.

03:25:04 13 It sounds like it's just a matter of  
03:25:06 14 who's going to go first with these issues from  
03:25:09 15 this deposition; and we don't have a jury here, so  
03:25:12 16 I don't really think it matters a great deal. So  
03:25:15 17 go ahead, Mr. McClure.

03:25:17 18 MR. WITWER: Thank you.

03:25:18 19 Q (By Mr. McClure) In that, it was  
03:25:38 20 concerning your Opinion No. 5 and also a related  
03:25:44 21 analysis. Do you recall your testimony concerning  
03:25:54 22 that you were not aware of the storage volume in  
03:26:01 23 the Lined Tailings Facility and that you indicated  
03:26:04 24 that it was not a viable storage facility? And  
03:26:09 25 I'm going over to the top of page 107.

03:26:15 1 A Excuse me, yes.

03:26:24 2 Q Did you -- in answering that question,  
03:26:28 3 you also indicated that, under a worst case  
03:26:33 4 scenario, if there was a gross failure of the  
03:26:36 5 facility that was completely full of water, that  
03:26:41 6 flows could conceptually reach the Rito Seco. Do  
03:26:48 7 you recall that testimony?

03:26:51 8 A Yes.

03:27:05 9 Q Do you have an opinion about that  
03:27:07 10 currently, whether in the event that there is  
03:27:14 11 waters -- in the event that there was a  
03:27:23 12 substantial failure of the facility, a gross  
03:27:27 13 failure of the facility, and it was completely  
03:27:30 14 full of water, whether or not those waters could  
03:27:32 15 reach the Rito Seco?

03:27:35 16 A Well, in the event that there was a  
03:27:41 17 failure of the structure and large surface water  
03:27:46 18 release, that water would follow the topography  
03:27:49 19 downgradient and, as we follow that, down through  
03:27:53 20 the low canyon and through the alluvial fan that  
03:27:58 21 exists at the mouth of that canyon, then to the  
03:28:02 22 Rito Seco. So I think that's still correct.

03:28:06 23 I think I talked about, also, there's a  
03:28:10 24 little -- drainage structures and roads right at  
03:28:13 25 the mouth of that canyon which could redirect some



03:28:16 1 of that water or maybe all of that water, if it  
03:28:19 2 was not that big a failure, to the south instead  
03:28:22 3 of directly over to the Rito Seco; but, certainly,  
03:28:25 4 if enough water came down through there, it would  
03:28:27 5 follow the direct topography across to the Rito  
03:28:32 6 Seco.

03:28:32 7 Q And concerning the Exhibit No. CC-1 --  
03:28:43 8 unfortunately, we don't have a blown-up version of  
03:28:48 9 that; but maybe you could just explain, if there  
03:28:51 10 was a substantial release of waters out of that  
03:28:56 11 Lined Tailings Facility, how that would move and  
03:29:00 12 what direction, as you've demonstrated on CC-1.

03:29:05 13 THE COURT: You mean CC-I?

03:29:07 14 MR. MCCLURE: I'm sorry. CC-I. It looks  
03:29:11 15 like a one from here every time I look at it, but  
03:29:14 16 it's not right.

03:29:14 17 THE WITNESS: Are you talking about a  
03:29:16 18 surface water release?

03:29:17 19 Q (By Mr. McClure) Correct, yes.

03:29:18 20 A Surface water release would follow the  
03:29:20 21 topography, as I indicated. The topography --

03:29:24 22 MR. WITWER: Objection, Your Honor. This  
03:29:26 23 witness has not been qualified as an expert in  
03:29:29 24 surface water hydrology.

03:29:30 25 THE COURT: Mr. McClure, do you want to

03:29:32 1 address that?

03:29:32 2 MR. MCCLURE: Yes he has. He has  
03:29:34 3 indicated that he has expertise in surface water;  
03:29:37 4 and it's connected to, generally, the groundwater  
03:29:40 5 issues; but he does have experience in surface  
03:29:43 6 water.

03:29:44 7 MR. WITWER: He was qualified as an  
03:29:46 8 expert in groundwater hydrology, geology, water  
03:29:50 9 quality, water management, and ground and surface  
03:29:53 10 water interaction.

03:29:54 11 THE COURT: Yeah. That was what you  
03:29:55 12 asked him to be qualified as, Mr. McClure.

03:30:04 13 Q (By Mr. McClure) Concerning the path of  
03:30:06 14 release, as it could impact the groundwater and  
03:30:12 15 the groundwater underneath the Salazar Ranch or  
03:30:15 16 anything surrounding that, in the event that there  
03:30:18 17 is a major release from the Lined Tailings  
03:30:22 18 Facility, could that reach the groundwater in any  
03:30:26 19 of those locations?

03:30:29 20 A The -- this is really a matter of surface  
03:30:33 21 water-groundwater interaction, and it is important  
03:30:37 22 to recognize and understand where the surface  
03:30:40 23 water would flow. It's just a matter of water  
03:30:43 24 flows downhill. This is not rocket science in  
03:30:47 25 terms of the surface water aspects here.

03:30:51 1 But water flowing down the drainage, as  
03:30:59 2 you can see on this map up here, reaches the mouth  
03:31:02 3 of the canyon; and at that time, it will begin to  
03:31:05 4 seep into the aquifer systems. So it's a matter  
03:31:09 5 of, not only surface flow down the canyon, and  
03:31:13 6 some of the aquifer that exists in the bottom of  
03:31:17 7 this canyon will be saturated; but as the main  
03:31:20 8 body of the water reaches the mouth of the canyon,  
03:31:22 9 it will begin to seep into the aquifer as well.

03:31:25 10 So the aquifer could be contaminated here  
03:31:28 11 by virtue of seepage into it. You know, we know  
03:31:31 12 that these are losing streams and ditches through  
03:31:33 13 here. So we know that the aquifer absorbs water  
03:31:37 14 and takes water throughout that reach. So it's a  
03:31:40 15 function of both surface water, groundwater. It's  
03:31:42 16 a function of both surface water and groundwater  
03:31:45 17 and the interaction of those two.

03:31:47 18 So, that being said, if we have surface  
03:31:50 19 water release and it comes down the canyon and  
03:31:54 20 then it seeps into the groundwater system, then  
03:31:58 21 the gradient on the water table, underlying water  
03:32:02 22 table, will take over and determine the rate and  
03:32:05 23 direction of flow of the groundwater -- or of the  
03:32:09 24 contaminants.

03:32:11 25 Q In the event that the wells that are

03:32:14 1 pumping at the east pivot and west pivot -- wells  
03:32:19 2 that are located there are, in fact, pumping,  
03:32:23 3 could that cause a movement of groundwater toward  
03:32:27 4 those wells?

03:32:30 5 A Certainly. If those are pumping and  
03:32:32 6 there is a cone of depression developed around  
03:32:35 7 those wells, those will be a local depression  
03:32:39 8 which impacts the contours in the water table and  
03:32:45 9 creates a gradient toward those wells.

03:32:50 10 The water table mapping through this  
03:32:51 11 whole region is kind of marginal. The state  
03:32:55 12 engineer has done some of it as part of their  
03:32:57 13 Decision Support System work, but the water table  
03:33:00 14 mapping through here doesn't really have a lot of  
03:33:03 15 definition.

03:33:04 16 But, certainly, the mechanism that's  
03:33:06 17 important to recognize is that the water is going  
03:33:09 18 to come down on the surface from the surface  
03:33:12 19 release; it's going to seep vertically down into  
03:33:15 20 the aquifer where it overlies the alluvium. It's  
03:33:25 21 going to seep vertically down through the alluvium  
03:33:25 22 in the unsaturated zone; and once it reaches the  
03:33:28 23 zone of saturation, it's going to be the gradient  
03:33:31 24 on the groundwater table that's going to determine  
03:33:34 25 the rate and direction of flow in that system.

03:33:38 1           So those are the parameters that you need  
03:33:40 2   to understand with a fairly high degree of  
03:33:42 3   specificity to try and track where a plume might  
03:33:51 4   go, contaminate plume might go.

03:33:54 5           Q     And based upon your experience and  
03:33:57 6   expertise in groundwater, integration of surface  
03:34:01 7   water and groundwater, do you have an opinion with  
03:34:03 8   a reasonable degree of probability if the waters  
03:34:07 9   underlying the Salazar Ranch in that aquifer could  
03:34:10 10   be impacted by a major release?

03:34:22 11          A     It's certainly probable. Again, it's  
03:34:24 12   going to be a function of the mechanisms that we  
03:34:26 13   just discussed; but we know that the groundwater  
03:34:29 14   generally in this reach runs to the south and to  
03:34:31 15   the west. It kind of parallels the surface  
03:34:47 16   drainages in that manner to some degree.

03:34:48 17           But, in general, what I'm saying is we  
03:34:51 18   know that the general direction of groundwater  
03:34:53 19   flow is going to be from the recharge areas, which  
03:34:56 20   exist up in the mountains down to the south and  
03:34:58 21   down to the west. So a plume is going to go  
03:35:00 22   through there if there's a contaminate plume  
03:35:03 23   generated.

03:35:04 24           Exactly where that plume goes is going to  
03:35:07 25   be a function of the configuration of the

03:35:10 1 groundwater table. The groundwater table may be  
03:35:15 2 impacted. The configuration of the groundwater  
03:35:15 3 table may be impacted by whether or not those  
03:35:16 4 wells are pumping at any given time.

03:35:22 5 MR. MCCLURE: We would offer into  
03:35:23 6 evidence CC-I.

03:35:24 7 THE COURT: Thank you, Mr. McClure.  
03:35:26 8 Mr. Witwer, any objection to my admitting CC  
03:35:30 9 Exhibit I?

03:35:32 10 MR. WITWER: Several objections,  
03:35:34 11 Your Honor. I guess a relatively minor objection:  
03:35:48 12 Salizar Well 21589, I believe it is, the well  
03:35:55 13 that's kind of in the center of the drawing, has  
03:35:58 14 been withdrawn from this case. That's not an  
03:36:03 15 augmentation supply that's claimed in this case.  
03:36:06 16 And we further believe that that well has been  
03:36:12 17 incorrectly located and would not be shown as  
03:36:15 18 located anywhere on the Salazar Ranch were it in  
03:36:18 19 the application, which it is not.

03:36:25 20 I guess, secondarily, this exhibit, which  
03:36:34 21 was not disclosed as part of the expert report of  
03:36:37 22 the witness, nor was it disclosed prior to the  
03:36:41 23 deposition that was taken in this case, is now  
03:36:45 24 illustrating testimony that was neither disclosed  
03:36:48 25 in the report nor disclosed during the deposition,

03:36:56 1 wherein Mr. Mefford simply said that he was  
03:37:07 2 referring to potential effects of contamination of  
03:37:09 3 groundwater-surface water from a major release.

03:37:12 4 He said he agreed that those potential  
03:37:16 5 effects don't have anything to do with the quality  
03:37:17 6 of the replacement or augmentation water supplies  
03:37:20 7 in this augmentation plan. They don't impact the  
03:37:22 8 water quality that's being used. The water  
03:37:26 9 quality that's being used for augmentation is  
03:37:28 10 separate from the water quality that's in the  
03:37:30 11 tailings pond.

03:37:31 12 And then went on to say, conceivably, if  
03:37:34 13 there were a failure or release from that pond,  
03:37:37 14 surface water or groundwater, ultimately, some of  
03:37:40 15 that water might make it back, way back, to the  
03:37:42 16 Dos Hermanos wells or the Salazar wells, as they  
03:37:45 17 are called here. We don't know that.

03:37:49 18 You just heard testimony --

03:37:51 19 MR. MCCLURE: What page are you on?

03:37:53 20 MR. WITWER: I apologize. I'm on  
03:37:56 21 page 108, and I was reading from -- I guess a  
03:37:59 22 paraphrase of my question beginning on line 2 of  
03:38:02 23 that page through line 15. His answer being  
03:38:07 24 quoted from lines 7 through 15 of page 108 of his  
03:38:10 25 deposition.

03:38:11 1 And we've now heard the word "likely"  
03:38:14 2 snuck into that opinion without notice, without  
03:38:19 3 any supplementation. And that's a serious matter  
03:38:23 4 under Rule 37, and we move that that opinion be  
03:38:27 5 stricken and this heretofore undisclosed exhibit  
03:38:33 6 illustrating a further opinion be further  
03:38:35 7 stricken.

03:38:36 8 The final reason this exhibit ought not  
03:38:39 9 be admitted has to do with the fact that none of  
03:38:41 10 the opposers in this case own any interest in the  
03:38:46 11 town of San Luis wells, which are, as noted by  
03:38:50 12 Mr. McClure, as yet unoffered well decrees, are  
03:38:56 13 held by the San Luis Water and Sanitation  
03:39:00 14 District, which is not a party to this case.

03:39:01 15 And under the Shirola case, which I'll be  
03:39:08 16 glad to tender to counsel and to the Court,  
03:39:14 17 S-H-I-R-O-L-A, direct quote from that case --  
03:39:28 18 that's 937 P.2d 739 at page 747 -- "In a water  
03:39:34 19 adjudication involving a proposed plan for  
03:39:37 20 augmentation or a change of water right, any  
03:39:40 21 person may object to the application itself and  
03:39:43 22 participate in the adjudication by holding the  
03:39:46 23 applicant to a standard of strict proof; however,  
03:39:51 24 for that objector to have standing to assert  
03:39:55 25 injury to his or her water right, the objector



03:39:58 1 must show that he or she has a legally protected  
03:40:01 2 interest in a vested water right or conditional  
03:40:04 3 decree."

03:40:05 4           There has been no such showing in this  
03:40:07 5 case; that the San Luis Water and Sanitation  
03:40:09 6 District is not present before the Court. They're  
03:40:11 7 the only ones who have standing to assert injury  
03:40:15 8 to water rights decreed to that well.

03:40:16 9           So, for all of those reasons, we object  
03:40:18 10 to the admission of Exhibit CC-I; and we further  
03:40:22 11 ask that the brand new opinion concerning  
03:40:24 12 likelihood of contamination of groundwater on the  
03:40:29 13 Salazar Ranch property be stricken.

03:40:32 14           THE COURT: Thank you, Mr. Witwer.  
03:40:34 15 Mr. McClure.

03:40:36 16           MR. MCCLURE: We feel that the notice was  
03:40:42 17 given concerning our position on this matter by  
03:40:46 18 virtue of the deposition that was taken. The  
03:40:49 19 deposition was taken. He had adequate opportunity  
03:40:52 20 to ask all questions he wanted to of Mr. Mefford  
03:40:57 21 concerning the issue; that the issue concerning  
03:40:59 22 the impact on the Salazar Ranch was a matter that  
03:41:07 23 they were certainly aware of. If they didn't ask  
03:41:10 24 the question at the deposition, that's up to them;  
03:41:12 25 but it is certainly a matter where there was

03:41:15 1 notice given concerning that.

03:41:17 2 THE COURT: So what I understood  
03:41:19 3 Mr. Witwer to be arguing, and please help me, is I  
03:41:23 4 understand that he said, "I asked him these  
03:41:28 5 questions at the deposition and he gave one  
03:41:30 6 answer. Today he's giving a different opinion,  
03:41:35 7 and nobody supplemented the discovery to tell me  
03:41:37 8 that he's actually come up with a different  
03:41:39 9 opinion." So that was what I understood.

03:41:41 10 MR. MCCLURE: If I could just read a  
03:41:43 11 little bit more of the deposition and the  
03:41:45 12 questioning asked, and this was on page 107.

03:41:47 13 THE COURT: I don't have the deposition,  
03:41:49 14 if anyone cares about that.

03:41:51 15 MR. MCCLURE: No. I can get you -- I  
03:41:55 16 guess I have it. If you don't mind, I'll read it  
03:41:57 17 into the record and hand it to you if I could.

03:41:59 18 THE COURT: That's fine.

03:42:03 19 MR. WITWER: We have a clean copy,  
03:42:04 20 Your Honor, so that Mr. McClure doesn't have to  
03:42:06 21 give up his own.

03:42:07 22 THE COURT: You have another copy?

03:42:09 23 MR. WITWER: Yes, Your Honor.

03:42:24 24 THE COURT: What page are you on?

03:42:26 25 MR. MCCLURE: I'm on page 108, and I'm

03:42:29 1 reading at 108 to 109. It is as follows:

03:42:36 2 "QUESTION: Would you agree that the  
03:42:38 3 effects" -- and this is 108, line 2. "Would you  
03:42:42 4 agree that the effects of contamination of  
03:42:44 5 groundwater or surface water that you just  
03:42:46 6 described don't have anything to do with the  
03:42:56 7 quality of the replacement or augmentation water  
03:42:59 8 supplies in the augmentation plan?

03:43:00 9 "ANSWER: That's correct. They don't  
03:43:02 10 impact the water quality -- the water quality  
03:43:04 11 that's being used -- excuse me -- the water that's  
03:43:09 12 being used for augmentation is separate from the  
03:43:12 13 water quality that's in the tailings pond.

03:43:15 14 "Conceivably, if there was a failure or  
03:43:17 15 release from that pond, surface water or  
03:43:19 16 groundwater, ultimately, some of that water might  
03:43:23 17 make its way back down to the Dos Hermanos or  
03:43:26 18 Salazar wells, as they are called here. We don't  
03:43:29 19 know that."

03:43:31 20 "QUESTION: Underneath Rito Seco?

03:43:34 21 "In the alluvium underneath the Rito  
03:43:37 22 Seco, yes, to the Dos Hermanos wells.

03:43:39 23 "QUESTION: I thought...you say that the  
03:43:41 24 Dos Hermanos wells are not connected to the  
03:43:44 25 surface drainage system?

03:43:46 1 "ANSWER: That's true. The water level,  
03:43:48 2 as I recall in at least one of the Dos Hermanos  
03:43:52 3 wells, is, like, 60 feet. But, again, if there  
03:43:56 4 was a release into the groundwater and a surface  
03:43:59 5 water release seeped into the groundwater, either  
03:44:02 6 way, that is likely to make its way to the  
03:44:04 7 aquifer, not to the surface stream there.

03:44:07 8 "It would take -- it would take a  
03:44:09 9 substantial release, maybe a catastrophic failure,  
03:44:12 10 that would have to be occurring for that water to  
03:44:14 11 make it to the surface stream."

03:44:27 12 MR. WITWER: May I respond, Your Honor?

03:44:30 13 THE COURT: You may.

03:44:30 14 MR. WITWER: The comment later on, in  
03:44:33 15 response to a different question yet again, about  
03:44:36 16 whether there was a connection between the Dos  
03:44:38 17 Hermanos wells and the surface stream system, was  
03:44:40 18 that if there was a, as yet, unproven release, a  
03:44:47 19 substantial release, maybe a catastrophic failure,  
03:44:52 20 apparently, it's likely that water released from  
03:44:57 21 that would go into the aquifer. That's as far as  
03:45:01 22 the "likely" comment made.

03:45:04 23 The question -- and as you pointed out  
03:45:06 24 yourself in your response or your question to  
03:45:09 25 Mr. McClure -- that I have every right and my

03:45:14 1 client has a right to rely on the answer,  
03:45:17 2 beginning at line 7, was that the potential  
03:45:21 3 effects of groundwater or surface water  
03:45:24 4 contamination "don't impact the water quality --  
03:45:26 5 the water that's being used -- excuse me -- the  
03:45:30 6 water that's being used from augmentation is  
03:45:33 7 separate from the water quality that's in the  
03:45:35 8 tailings pond."

03:45:36 9 And then he proceeded to say -- and this  
03:45:38 10 is not undermined by the final comment -- "if  
03:45:42 11 there were a failure" -- "Conceivably, if there  
03:45:45 12 were a failure or release from that pond, surface  
03:45:47 13 water or groundwater, ultimately, some of that  
03:45:49 14 water might make its way back down to the Dos  
03:45:53 15 Hermanos wells or the Salazar wells, as they are  
03:45:55 16 called here. We don't know that." So you've got  
03:46:00 17 three qualifications in one paragraph.

03:46:02 18 And the next thing says, if there was a  
03:46:03 19 catastrophic failure, water would likely go to the  
03:46:06 20 aquifer. It's a big aquifer. The only thing upon  
03:46:09 21 which we are here able to rely is this, and now  
03:46:15 22 we're hearing that it's likely to get to the  
03:46:17 23 wells. That's an entirely new fabricated opinion  
03:46:21 24 post deposition.

03:46:25 25 MR. MCCLURE: Judge, it refers to the Dos

03:46:29 1 Hermanos wells. The Dos Hermanos wells are the  
03:46:32 2 wells that are part of the augmentation supply.

03:46:36 3 MR. WITWER: You have the text in front  
03:46:38 4 of you, Your Honor. I'm not going to bandy words  
03:46:41 5 over what it says.

03:46:42 6 THE COURT: To the extent that Exhibit I  
03:46:43 7 refers to a well that's not part of the  
03:46:45 8 application, that part of the exhibit the Court  
03:46:48 9 certainly will completely disregard. To the  
03:46:51 10 extent what it refers to wells that belong to the  
03:46:53 11 town of San Luis, who are not parties to this  
03:46:56 12 action in any way, the Court will disregard that  
03:47:00 13 part of the exhibit as well.

03:47:06 14 I think, at this point, there was enough  
03:47:07 15 discussion during the deposition; and it's been  
03:47:10 16 clear that this is the issue or one of the major  
03:47:13 17 issues the Court was going to be dealing with at  
03:47:15 18 this hearing. I think there's enough notice that  
03:47:18 19 I'm going to allow -- I'm not going to strike the  
03:47:21 20 testimony of Mr. Mefford.

03:47:24 21 Certainly, not only can you cross-examine  
03:47:26 22 him, Mr. Witwer; but you also have your expert  
03:47:29 23 here to provide any rebuttal testimony that you  
03:47:32 24 desire. And so I am not going to strike his  
03:47:35 25 testimony.

03:47:36 1           Certainly, changing opinions goes to what  
03:47:39 2           weight this Court is going to give to the  
03:47:42 3           testimony. And I will at this time admit  
03:47:47 4           Exhibit I, except as I've noted; and I'm not going  
03:47:54 5           to consider the wells on there that don't have  
03:47:56 6           anything to do with this application or other  
03:47:59 7           parties before the Court.

03:48:00 8           MR. MCCLURE: Your Honor, if we could  
03:48:01 9           make one comment on that.

03:48:03 10          THE COURT: You may.

03:48:04 11          MR. MCCLURE: To the extent that the well  
03:48:05 12          that is referred to in 89 CW 32, which was a well  
03:48:12 13          that is being tested under the water quality  
03:48:15 14          provisions submitted by Battle Mountain in that  
03:48:18 15          case, we think that would be appropriate to  
03:48:23 16          include that well, particularly where they want  
03:48:25 17          to -- Battle Mountain is seeking to include the  
03:48:28 18          terms of 89 CW 32 and 99 CW 57 in this action.

03:48:33 19          THE COURT: Which well is that? Is that  
03:48:35 20          the town well that's tested then? Is that what  
03:48:40 21          you're talking about?

03:48:40 22          MR. MCCLURE: Yeah. That is the town  
03:48:41 23          well that is tested in 89 CW 32. That is correct.

03:48:46 24          THE COURT: But which one is that?

03:48:47 25          MR. MCCLURE: If you can give me a

03:48:49 1 moment, I will try to find that well. The well is  
03:50:09 2 2236, well No. 1.

03:50:16 3 THE COURT: 2236, so that's the one that  
03:50:18 4 is down there in the far left corner?

03:50:20 5 MR. MCCLURE: Yes. And that is on  
03:50:22 6 89 CW 32 at page 30, and that's the well that  
03:50:32 7 water samples are taken from belonging to the  
03:50:41 8 San Luis Water and Sanitation District.

03:50:43 9 THE COURT: Okay. Well, I've admitted  
03:50:46 10 the exhibit, and that's indicated on there. And  
03:50:50 11 to the extent that you want to make argument about  
03:50:52 12 how -- in closing -- that this testimony and how  
03:50:58 13 it affects that well should make a difference to  
03:51:01 14 the Court's ruling, certainly you can do that  
03:51:04 15 since that well is referred to in that decree.

03:51:06 16 MR. WITWER: Just to clarify. You're not  
03:51:08 17 modifying your ruling that they cannot assert  
03:51:10 18 injury to a well they don't own.

03:51:12 19 THE COURT: No. Because I think you're  
03:51:14 20 right. I think that's the law; but since it's  
03:51:16 21 part of the decree, I mean, there may be some  
03:51:18 22 other argument there; and I'm not going to  
03:51:20 23 foreclose that.

03:51:21 24 MR. WITWER: Understood. Thank you very  
03:51:23 25 much.



03:51:23 1 (Objectors' Exhibit CC-I, Aerial Photo of  
03:51:23 2 Wells Down Gradient of Battle Mountain Resources  
03:51:23 3 Tailing Pond, was received into evidence with  
03:51:29 4 exclusions as outlined by the Court above.)

03:51:29 5 MR. MCCLURE: We have no further  
03:51:30 6 questions.

03:51:31 7 THE COURT: Thank you, Mr. McClure.  
03:51:33 8 Mr. Lobato, do you have any questions you want to  
03:51:35 9 ask Mr. Mefford?

03:51:37 10 MR. LOBATO: No, I don't.

03:51:39 11 THE COURT: Mr. Witwer, you may  
03:51:41 12 cross-examine Mr. Mefford.

03:51:50 13 MR. MCCLURE: Could I ask Mr. Mefford one  
03:51:52 14 other question before we get started?

03:51:55 15 THE COURT: You may, Mr. McClure.

03:52:03 16 Q (By Mr. McClure) As part of your  
03:52:05 17 investigation, did you have the opportunity to  
03:52:07 18 review the deposition of William Lyle or  
03:52:10 19 deposition summary of William Lyle of November 2,  
03:52:13 20 2012?

03:52:15 21 A I did, yes.

03:52:20 22 Q I'm going to hand you that deposition at  
03:52:22 23 pages 127 and 128 and ask if you reviewed that.

03:52:48 24 THE COURT: Before you -- Mr. McClure,  
03:52:49 25 did you give me a copy of that beyond the

03:52:51 1 original? I'll open the original if you didn't;  
03:52:54 2 and it doesn't matter. I'll open the original.

03:52:56 3 MR. MCCLURE: Please do. I didn't do  
03:52:58 4 that. We could if you would like.

03:53:03 5 THE COURT: No. No. No.

03:53:11 6 A Yes, I recall reading this.

03:53:16 7 Q (By Mr. McClure) And you recall in that  
03:53:20 8 deposition that Mr. Lyle is the project manager  
03:53:22 9 from 1997 to 2011 at the Costilla County site?

03:53:28 10 A At the mine, yes.

03:53:32 11 Q Did that -- anything that he say in that  
03:53:34 12 opinion, concerning his analysis and study of  
03:53:38 13 where the path of release of waters from the Lined  
03:53:45 14 Tailings Facility would go, influence you in your  
03:53:48 15 decision?

03:53:48 16 MR. WITWER: Objection, Your Honor,  
03:53:49 17 mischaracterizes deposition testimony as an  
03:53:53 18 analysis and study. The full context of the  
03:53:56 19 deposition is quite the opposite.

03:53:59 20 THE COURT: All right.

03:54:01 21 MR. MCCLURE: I'll rephrase the question.

03:54:03 22 THE COURT: That's fine.

03:54:07 23 Q (By Mr. McClure) Would whatever Mr. Bill  
03:54:10 24 Lyle did concerning his investigation concerning  
03:54:13 25 the opinion that -- and statement that he rendered

03:54:16 1 in that deposition, did that help you in any  
03:54:23 2 manner concerning a -- an analysis by somebody  
03:54:29 3 who's been involved in the mine site from 1997 to  
03:54:34 4 2011 as the manager?

03:54:37 5 A I didn't rely upon his opinion. His  
03:54:39 6 opinion parallels mine.

03:54:42 7 Q And what is his opinion?

03:54:43 8 A His opinion is that, in the event of a  
03:54:47 9 breach -- his answer on line four is "It would  
03:54:54 10 flood down the canyon onto the San Luis Ranch."

03:54:57 11 And then you indicated, "The Salazar  
03:54:57 12 Ranch?"

03:54:59 13 And he said that's correct -- or "That's  
03:55:01 14 right."

03:55:01 15 And I think that's consistent with the  
03:55:03 16 testimony I just gave that, in a large breach,  
03:55:07 17 that's where the water would go, come down the  
03:55:10 18 canyon and onto the Salazar Ranch.

03:55:12 19 Q And that's a breach out of the Lined  
03:55:15 20 Tailings Facility?

03:55:15 21 A Yes.

03:55:17 22 MR. MCCLURE: Thank you. I've got no  
03:55:19 23 further questions now.

03:55:20 24 THE COURT: Thank you, Mr. McClure.  
03:55:24 25 Mr. Witwer, you may cross-examine Mr. Mefford.