

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SONOMA

3
4 BEFORE HONORABLE ELLIOT DAUM DEPARTMENT 16

5 BROOKTRAILS TOWNSHIP COMMUNITY,)
6 SERVICES DISTRICT, a Public Agency,)

7 Plaintiff,)) SCV 253175

8 CITY OF WILLITS, a General Law City;)
9 DOES 1 through 100, inclusive,)

10 Defendant,)

11)
12 AND RELATED CROSS ACTION

13
14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 MARCH 19, 2015

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19 Appearances:

20 For Plaintiff: DANIEL CROWLEY, ATTORNEY AT LAW
21 PATRICK O'BRIEN, ATTORNEY AT LAW
22 CHRISTOPHER NEARY, ATTORNEY AT LAW

23 For Defendant: LEO BARTOLOTTA, ATTORNEY AT LAW
24 RAY FULLERTON, ATTORNEY AT LAW,
25 ROBERT HENCKLE, ATTORNEY AT LAW
H. JAMES LANCE, ATTORNEY AT LAW

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27 Reported by:

28 Malinda K. Hentz, CSR No. 12393

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4 ADRIENNE MOORE

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E X H I B I T S

<u>Exhibit No.</u>	<u>Exhibit description</u>	<u>Offered</u>	<u>Admitted</u>
330	Notification of Allocation		833

1 MARCH 19, 2015

11:02 A.M.

2
3 THE COURT: We're convened now outside of the
4 presence of any jurors and Mr. Bartolotta you indicated there
5 was an issue, at least one, regarding opening statement and
6 potential slides of some kind.

7 MR. BARTOLOTTA: It's actually Mr. Fullerton will be
8 addressing the issue.

9 MR. FULLERTON: Yes. Thank you, your Honor.

10 For the third time, we received some materials
11 today, the day they're going to be used, today for the first
12 time. We exchanged some slides on Tuesday, each side.
13 There's no problem.

14 So this morning we received some slides and we do
15 have a couple of issues to address.

16 These new slides -- and a couple of the issues deal
17 with some things that may not be clear as the last
18 motion in limine ruling, Court ruled that the contract does
19 not require notice as to the purchase of land, that the notice
20 provisions only apply to the engineering work.

21 The first slide that we're dealing with is that
22 section nine under this land purchase.

23 The implications of that ruling go beyond just the
24 notice issue itself. I mean, without the notice which is the
25 basis of their claims, under the notice, they said that it was
26 improper notice and it was a violation of CEQA, those things
27 are out.

28 And so what is left really is the City of Willits

1 claim for reimbursement of the Niesen Ranch.

2 And with a notice being found not to apply to that
3 property purchase, basically, we're back to the regular
4 contract, we're back to the improvement project, and there's
5 nothing as we had went through that, nothing in the contract
6 that allows one party or Brooktrails, I guess, to pick and
7 chose what capital expenditures they pay for or not.

8 And now, essentially, we've appeared to have an
9 argument that they can pick and chose what capital
10 expenditures they pay or not.

11 Now, I think, again this should be considered
12 without it being a separate issue that was part of the
13 improvement project, that it was submitted and that shouldn't
14 be at issue anymore.

15 At a minimum, I think, it goes to reasonableness,
16 but we have, you know, the first slide is going to that notice
17 provision and it goes into the appraisal report.

18 And so that's one primary issue.

19 The next issue has to do with some documents that
20 are -- I don't think proper to publish to the jury before
21 they're admissible into evidence.

22 We have -- and there's a few different categories, I
23 should say, for example, there's a preliminary engineering
24 report, and the person has been the subject of many
25 depositions, and there's going to be testimony about it, and I
26 think the foundation will be laid at trial as it was in the
27 deposition. So I am less concerned about documents like that.

28 But there's also some documents, one particular in

1 the Regional Water Quality Control Board. It's a document
2 written from a gentleman that was not deposed in the case to a
3 representative of the city who has now passed away.

4 And it's hearsay and it contains opinions inside it
5 that are highlighted that are lacking foundation.

6 I don't think that's admissible evidence. It could
7 possibly become admissible evidence at trial under the right
8 circumstances, but it's not the type of evidence we exchanged
9 in the other slides, like the agreement, and party admissions
10 and those sort of things.

11 So I think it's another issue that we have here.
12 There are two items from the Regional Water Quality Control
13 Board. I don't think it's appropriate to show to the jury in
14 opening statement.

15 MR. O'BRIEN: Just so I am clear, you're referring
16 to the stack of the cease and desist order, staff report, and
17 then the Tom Dunbar letter?

18 MR. FULLERTON: The Tom Dunbar letter.

19 MR. O'BRIEN: Not to worry about the cease and
20 desist order.

21 MR. FULLERTON: I don't see the cease and desist
22 order, at least in the one you gave me.

23 MR. O'BRIEN: The other reason why, it's right, it's
24 after the second amendment the -- the second, you referred to
25 two documents from the Regional Water Quality Control Board.
26 I now understand the one is the Tom Dunbar correspondence,
27 correct?

28 MR. FULLERTON: That's correct.

1 MR. O'BRIEN: And the other one is that the
2 executive officer's summary regarding seize and desist order
3 R1-0106. Are you okay with that?

4 MR. BARTOLOTTA: It was 128, with ours, if you look
5 at in the corner, it's the document slide before.

6 MR. O'BRIEN: That's right. The execute summary for
7 the cease and desist order.

8 MR. FULLERTON: Not the whole document, and I
9 really -- yeah, I don't know that this is appropriate, either.
10 Again, it contains some opinions off of that foundation, I
11 don't even know who created it, the document.

12 MR. O'BRIEN: Well, it's --

13 MR. CROWLEY: Your Honor, can I address counsel's
14 comment?

15 THE COURT: Yes.

16 MR. CROWLEY: The Court ruled that section ten does
17 not require notice. The slide is of section nine. Section
18 ten isn't even in the slide. So I am not sure why counsel is
19 referring to the notice provision of the contract, because
20 that is not there.

21 Even though the Court ruled on motion in limine
22 number eight, that section ten does not require notice for
23 land acquisition. That doesn't mean that, in essence, the
24 Court granted -- I don't know if it would be a non-suit, I
25 don't know if it would be a final determination -- that I
26 believe we're still entitled to argue that the purchase price
27 of Niesen was excessive, and because it was excessive it was
28 not economical and it was not efficient, which is section

1 nine, which is in the slide.

2 And I don't believe there's been any ruling by this
3 Court that somehow Brooktrails is not entitled to argue that
4 it does not -- it is not obligated to pay for moneys spent by
5 the City of Willits that are excessive, that are not
6 economical, that are wasteful, all of those types of matters.

7 So, again, when counsel represents to this Court
8 that we are -- we have the notice provision in our slide, I
9 take offense to that because section ten is the notice
10 provision which this Court ruled on.

11 Section nine has nothing to do with notice.

12 Again, it's relevant to show in section nine the
13 contract requires the City of Willits to do things in an
14 economical and efficient manner.

15 And we maintain that even though this Court's ruled
16 that they don't have to give us notice, if they are not
17 spending money in an economical and efficient manner pursuant
18 to the terms of the contract, we're not obligated to pay for
19 it. They, in essence, have breached the contract.

20 The letters from the Regional Water Board, I was
21 surprised to hear -- are you saying Tom Dunbar is dead?

22 MR. FULLERTON: The recipient is dead.

23 MR. CROWLEY: Right, but the author is not dead.

24 MR. FULLERTON: Okay.

25 MR. CROWLEY: The author of the letter is a fellow
26 by the name of Tom Dunbar who worked at the Water Board and
27 who will be here to testify. So the recipient of the letter
28 may be dead, but the author of the letter is certainly going

1 to be here to testify.

2 It is a letter written in his capacity as an
3 engineer with the Regional Water Quality Control Board. And I
4 understand the reason why Mr. Fullerton wants it out because
5 in the letter Mr. Dunbar says that the quality of the effluent
6 is excellent.

7 MR. O'BRIEN: Of the old plant.

8 MR. CROWLEY: At the old plant and one of the issues
9 in this case is quality versus quantity. So I understand the
10 reason why they don't want it out, but for purposes of opening
11 statement, I believe I can refer to it. It is a public
12 document.

13 Like I said, Mr. Dunbar is going to be here. He's
14 under subpoena. He's accepted the subpoena. He is the author
15 of the letter. They had plenty of opportunity to depose Mr.
16 Dunbar, if they wanted to.

17 But I don't believe there's any basis to keep it out
18 of opening statement. If for some reason Mr. Dunbar does not
19 show up, of course, I am going to have egg on my face because
20 I refer to this letter.

21 Again, the other document is a -- the staff report
22 was also a staff report prepared by the North Coast Regional
23 Water Quality Control Board staff for the cease and desist
24 order, which generated the project. And, again, in the staff
25 report, the staff for the water board says the quality of the
26 effluent at the old plant is fine.

27 There's a problem with the quantity which goes back
28 to our whole argument in this case under the Fourth Amendment,

1 8-A of the contract, that this plant was built to deal with
2 the quantity problems that the City of Willits was having with
3 their wet weather flows.

4 And so I -- our position in this case is that the
5 reason this plant was built was not for quality purposes,
6 which is section 8-A of this contract, but it was built to
7 deal with the wet weather flows that the City of Willits was
8 having problems with. And, in fact, the Court will learn that
9 the old capacity of the plant for what weather flow was three
10 million gallons.

11 The new capacity of the plant is seven million
12 gallons. So the quantity for wet weather flows has more than
13 doubled.

14 The quantity for dry weather flows has gone down
15 from 1.3 million gallon to 1.18.

16 So our argument is that this plant was not built to
17 improve the quality of the effluent, but to improve the
18 quantity problems that the City of Willits was having.

19 Response, Mr. Fullerton.

20 MR. FULLERTON: Yes, thank you.

21 My argument on the documents is not based on
22 relevance. I am sure we're going to hear plenty about
23 Brooktrails position. It's just a fundamental matter of, this
24 is not admissible evidence and it shouldn't be published to
25 the jury until a foundation is laid for the opinions that are
26 in there.

27 Going back to the original issue, there's a couple
28 of things. First of all, it now seems that Brooktrails want

1 to argue that the costs of certain items or all items were not
2 reasonable.

3 This is not something they sued on. We have a
4 motion in limine that's been granted that the -- that the
5 reasonableness of the costs are not a subject in this suit.

6 And then counsel is right, that in the slide he does
7 take out section nine. Again, the slide has to do with the
8 Niesen 125 purchase, and I think I need to read section nine
9 because I don't think it frankly has anything to do whatsoever
10 with the land purchase.

11 Section nine is entitled City Control as to
12 Improvements.

13 "The city shall have the right to employ engineers
14 of their selection to design and provide improvements to the
15 city sewage treatment plant, both as a capacity and quality,
16 provided however that such engineers shall be experienced and
17 recognized engineer to do such work. All such work shall be
18 designed to produce an efficient and economical cost, both to
19 construction and maintenance and operation, and not constitute
20 over design."

21 I would submit this has nothing to do with the
22 capital improvement expense of buying a piece of property.
23 This is an engineering issue. It goes back to plant
24 specifications and improvements that we covered in detail in
25 the other motion in limine. It's not appropriate to make that
26 argument as applied to the property.

27 Again, I don't think that section allows them to
28 parse and pick and chose what capital improvements they chose

1 to pay for. I don't think there's any other provision in the
2 contract that does that.

3 Their arguments on the property were based solely on
4 notice and it's in the pleadings.

5 And that that's been removed from the case.

6 With that, I would submit.

7 MR. CROWLEY: Just briefly, your Honor.

8 THE COURT: Yes.

9 MR. CROWLEY: The Niesen Ranch was purchased in
10 large part through the efforts of the city engineer Mr.
11 Herman. Mr. Herman is all over this purchase. Mr. Herman
12 writes a memo in March of 2002 to the city saying, you guys
13 should look at this land. Mr. Herman is acting as the city
14 engineer.

15 So when counsel says that somehow we're now going to
16 parse words on what is an engineer, because it refers to
17 engineers, I just don't think that passes the smell test.

18 The city engineer was one of the negotiators in the
19 purchase of this parcel. This parcel has been consistently
20 maintained by the city that it is necessary, it is a necessary
21 part of the project.

22 If it is a necessary part of the project, it is so
23 intertwined with the project that they cannot now parse it out
24 and say, gee, even though part of our new plant is on the
25 Niesen property, gee, even though some of the enhanced
26 wetlands are on the Niesen property, gee, even though we're
27 using the Niesen property as a spray irrigation field because
28 of the plant that somehow Brooktrails is precluded from

1 mentioning the cost of the Niesen property.

2 It is a motion for a non-suit. It is an improper
3 motion for a non-suit. And if the Court grants this motion in
4 limine, it effectively removes the Niesen property from this
5 case, which I think would be reversal error.

6 MR. O'BRIEN: Can I add one thing, your Honor?

7 THE COURT: No. At this point, I just want to give
8 counsel for the city the last word, and we'll go from there.

9 MR. FULLERTON: Thank you, your Honor.

10 I think Mr. Crowley kind of made my point, this is
11 so intertwined with the project, it's part of the project.

12 And by virtue of that, it needs to be considered as
13 part of the project. The Court's ruled that the
14 reasonableness of the cost of the project is not an issue in
15 the case. It wasn't part of the lawsuit. They didn't sue on
16 that.

17 The notice is out and so, you know, it was part of
18 the plan specification and cost estimates that have been
19 accepted. And it is not at issue.

20 And Tom Herman is not what this case is about. Tom
21 Herman was a contract engineer who served his position. This
22 section deals with the engineering and not land purchases.
23 So --

24 THE COURT: All right. Is the matter submitted?

25 MR. CROWLEY: Yes, your Honor. Although I do
26 have -- it is submitted, but has the Court ruled? I don't
27 believe this is accurate, but I want, for clarification
28 purposes, has the Court ruled that the reasonableness of the

1 cost of the project is not going to be in this case as an
2 issue?

3 MR. O'BRIEN: It did accept that Mr. Fullerton,
4 remember when I discussed it with him, specifically excluded
5 the cost of Niesen Ranch. And we can check the transcript
6 from yesterday, and that's what he said. When he said that, I
7 said that was okay. He said it's not included, the Niesen.
8 We can check the transcript, but that's what was said.

9 MR. FULLERTON: That was before the Court's ruling
10 on --

11 MR. O'BRIEN: Oh --

12 MR. FULLERTON: -- and now with the notice out that
13 Niesen is not its own thing, it's part, as Mr. Crowley said
14 part of the plant. There's no basis for them to challenge
15 under the contract the cost any longer.

16 So, you know, to me, it's not an issue.

17 THE COURT: All right. Is the matter submitted?

18 MR. CROWLEY: Submitted, your Honor.

19 THE COURT: All right. The Court believes that at
20 the end of the trial, the ultimate determinations and
21 questions that the jury needs to answer may well touch on the
22 valuations and the issues presented by both section nine of
23 the contract as well as the valuations involving any
24 acquisition of Niesen.

25 So the Court at this juncture will not permit the
26 presentation in the opening statement as has been requested by
27 this motion. So this motion is, in essence, denied.

28 MR. FULLERTON: Your Honor, on the other evidence,

1 the letters containing the --

2 THE COURT: As far as the showing of the letter, the
3 Court would grant that motion. The reason is that it would
4 need to have a foundation laid for it. There is the
5 indication that Mr. Dunbar obviously is available and will
6 testify. You can certainly tell the jurors what you think Mr.
7 Dunbar's testimony is going to be, but showing them the letter
8 at this point without further foundation would be beyond what
9 would be expected.

10 When we think of exhibits generally been utilized in
11 this fashion, we would think more of photographs, diagrams, et
12 cetera, rather than documents.

13 So the Court with regard to the Dunbar letter would
14 wait to allow the showing of it. Again, doesn't prevent the
15 plaintiff from going forward in their opening with describing
16 what Mr. Dunbar is going to testify to.

17 MR. O'BRIEN: Your Honor, just very briefly, does
18 that also apply to the staff report from the Regional Water
19 Quality Control Board? Because where it says, I believe their
20 slide shows the cease and desist order that is part of. I'm
21 not sure, does it?

22 MR. FULLERTON: We have the --

23 MR. O'BRIEN: They're together. Either remove both
24 or get rid of both.

25 MR. FULLERTON: I don't have a problem -- well, I
26 don't have a problem with necessarily the staff report. I
27 don't think this expresses opinions in it.

28 MR. O'BRIEN: Okay.

1 MR. FULLERTON: So I think, that's fine.

2 MR. O'BRIEN: As far as the e-mail that you have in
3 the slide.

4 MR. CROWLEY: Can I stop you for a second? Your
5 Honor, I think, again, if the Court's ruling is, the Court's
6 ruling is, I understand and appreciate, if it's good for us,
7 it's good for them.

8 And the cease and desist order should not be part of
9 their slide show. We will withdraw the letter from Mr.
10 Dunbar. We won't show it to the jury. We'll withdraw the
11 staff report because both of those contain opinion.

12 I would argue, your Honor, that the cease and desist
13 order contains opinion. It is the opinion of the water board
14 that they need to do something.

15 So if it's frankly good for the goose, it's good for
16 the gander. And one final point. They, also, in their slide
17 show, they refer to an e-mail from Mr. Neary. And if -- in
18 fact, purported from Mr. Neary.

19 I don't believe in his deposition he authenticated
20 the e-mail. But, again, consistent with the Court's ruling
21 about Mr. Dunbar, that e-mail should be removed from the
22 city's slide presentation.

23 THE COURT: Further comment?

24 MR. FULLERTON: Yes, your Honor, first of all, these
25 are admissible evidence and the foundations have been laid,
it's an admission of a party opponent, this e-mail.

27 This cease and desist order is a public document,
28 and order. It doesn't contain opinion. It's the action of a

1 regulatory body.

2 And so there's not these un -- these opinions that
3 are offered without proper foundation within them.

4 MR. CROWLEY: So I think they're exceptions to the
5 hearsay rule and admissible evidence.

6 THE COURT: They may be, but I am not going to rule
7 on those at this time.

8 The Court's philosophy on this, especially in the
9 case where the jury is not going to be sitting and
10 deliberating about this for four or five weeks. Issues like
11 this can be described in opening statement, but to show them
12 documents that are not yet admitted, creates problems that I
13 think are unnecessary and I don't think showing them the cease
14 and desist order is necessary in the same way I don't think
15 showing them the Dunbar letter is. It can be described, tell
16 the jury this is part of what you're going to prove, but
17 rather than give it the imprimatur of an already admitted
18 document, it's opening statement. It's not an argument.

19 And so it's granted to keep those documents from
20 being shown to the jury as part of the opening. Don't think
21 it's going to mean anything in the end, especially because you
22 can describe what it is you want to as you give your argument.

23 I'd really like to get moving here and get
24 everything setup so we're ready and assume Mr. Cane is now
25 here.

26 THE BAILIFF: Yes, your Honor.

27 THE COURT: How long will it take to set up for
28 the opening you've got?

1 MR. O'BRIEN: It will take me two minutes.

2 THE COURT: Very good.

3 MR. O'BRIEN: I worry about this though.

4 (Off the record discussion, 11:25-11:31.)

5 (Judge instructing the jury, 11:31-11:52, pages

6 732-744.)

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1
2 MR. CROWLEY: I am, your Honor.

3 Good morning, ladies and gentlemen. It's still
4 morning. First of all, on behalf of Brooktrails, I would like
5 to thank everybody for putting up with the process that got us
6 here today. I think I can tell you that I am sure the City of
7 Willits shares those sentiments as well.

8 Judge Daum mentioned this, but I just want to
9 reiterate it, nothing I say here is evidence. When I am done,
10 Mr. O'Brien will follow up on a part of the case and nothing
11 Mr. O'Brien says is evidence.

12 And I believe when we're done, Mr. Fullerton from
13 the City of Willits will get up to talk to you, and again,
14 nothing Mr. Fullerton says is evidence.

15 So this is our opportunity to tell you what we
16 believe the evidence will show. So everything that I say and
17 everything Mr. O'Brien says, I think it's helpful if you just
18 preface it in your mind this is what we think the evidence in
19 this case is going to show.

20 The pleadings, Brooktrails has filed a complaint
21 against the City of Willits alleging that the contract that is
22 issued in this case has been breached.

23 City of Willits has filed a cross-complaint against
24 Brooktrails alleging that Brooktrails has breached the
25 contract that is issue in this case.

26 And then there is a cross-complaint to the
27 cross-complaint. So it gets somewhat convoluted, but the
28 reality is both sides are maintaining that the other side

1 breached the terms of this contract.

2 So what I'd like to do is go over just briefly a
3 little bit about the contract and a little bit about
4 Brooktrails.

5 Brooktrails is a community of about 31, 3200 folks
6 that live to the northwest of the City of Willits. And what I
7 have is a photograph and it's just an overview of the City of
8 Willits. Brooktrails is a community up here. (Indicating)

9 The wastewater treatment plant that is the subject
10 of the contract, and there is an area called the enhanced
11 wetlands. And you'll hear a lot of testimony about primarily
12 about the wastewater treatment plant, the enhanced wetlands,
13 as well as sewer lines and how sewer gets to the wastewater
14 treatment plant, but that just gives you an overview of the
15 location of the different communities, the wastewater
16 treatment plant and the enhanced wetlands.

17 And again, Brooktrails is not part of the City of
18 Willits. Brooktrails is its own community. It provides
19 sewer, it provides water, it provides fire protection, it has
20 a parks and recreation department. And any other services
21 that Brooktrails needs is provided by Mendocino County.

22 And again, City of Willits is its own governmental
23 entity and provides its own services to its citizens.

24 In 1967, Brooktrails and the City of Willits entered
25 into a contract. And that contract was in exchange for money,
26 the City of Willits agreed to process Brooktrails sewer.

27 The sewer is piped down into the wastewater
28 treatment plant and it's processed there, and eventually, it

1 is returned back into what are called receiving waters and
2 those are creeks, there's a couple of creeks that run right by
3 the sewer plant. And after it's treated, the water is
4 dispersed back into what are called receiving water, and
5 you'll hear that. Some of the effluent after it's treated
6 you'll hear the word "effluent," but the effluent is also --
7 it can be used for spray irrigation, for cattle grazing
8 ranches, and things like that.

9 But anyway, the 1967 contract has been amended four
10 times. And what you're going to hear in this trial is really
11 testimony about, I believe anyway, that the original contract,
12 the terms of the original contract, the second amended, the
13 second amendment to the contract and the Fourth Amendment to
14 the contract. And those are really the terms that will be at
15 issue in this case.

16 The Judge will give you the instructions at the end
17 of this case, and one of the instructions is going to be, I
18 believe, how do you interpret the contract. And we believe
19 that instruction is going to be that you apply the principle
20 of good faith and fair dealing. That's one of the covenants
21 in the contract.

22 For the overall contract, we believe there are
23 really three issues in dispute. One is called the Niesen
24 Ranch. The other is called the Fourth Amendment or the
25 project. And then the third part is what we've referred to as
26 accounting issues.

27 And Mr. O'Brien will address the accounting issues,
28 but just briefly the contract from the accounting standpoint

1 says that Brooktrails will pay a certain percentage of the
2 total flow into the plant.

3 And so if you take the total flow, we're going to
4 take 23.62 percent of the total flow into the plant.

5 The way you determine what is a total flow into the
6 plant is through meters. And you'll hear a lot of testimony
7 about meters. And we believe the evidence is going to show
8 that for the past 15 years, there has not been an accurate
9 meter that measures the inflows into the plant.

10 You will also hear testimony about 37.69 percent.
11 And 37.69 percent is what Brooktrails is contractually
12 obligated to pay for improvements to the plant.

13 The 37.69 percent was arrived at through a
14 mathematical equation and the way that equation works is under
15 the contract Brooktrails has .49 million gallons a day of a
16 right to use the wastewater treatment plant. The capacity on
17 a daily basis, there's an old plant and the new plant, but
18 under the old plant, the capacity of the plant was 1.3 million
19 gallons a day.

20 So in order to arrive at 37.69 percent, you take .49
21 and underneath that you put 1.3 million gallons, and you do
22 the math, it comes out to 37.69 percent.

23 And that was the percentage share that Brooktrails
24 had under the old plant. One of the issues in this case is
25 that the capacity of the new plant has gone down. It used to
26 be 1.3 million gallons a day, and under -- and the new plant
27 it's now 1.18 million gallons a day.

28 And, again, you will hear evidence as you do that

1 math, the reality is that Brooktrails is now paying more
2 because, again, you take .49 and underneath that you put 1.18
3 and it comes up to about 40 percent. So Brooktrails is now
4 paying more for the new plant and we maintained that we were
5 never told that the capacity of the plant, the new plant would
6 decrease.

7 So that's one of the issues in this case.

8 Let me talk to you about what we call the Niesen
9 Ranch. And the Niesen Ranch is an area of property that's
10 right in this area in here, and you will see a lot of exhibits
11 that delineate the Niesen Ranch.

12 And the Niesen Ranch was owned by a fellow named
13 Walt Niesen. Thus the name Niesen Ranch. He purchased the
14 property, 270 acres in 1996.

15 In 2000, the city and Brooktrails agreed that they
16 would share the cost of a part of Mr. Niesen's property.
17 You'll hear that referred to as the Niesen 119.

18 And the reason it's called the Niesen 119 is because
19 it's 119 acres. In 2000, again, the city and Brooktrails
20 jointly purchased the Niesen 119, and there were no issues
21 with that purchase.

22 In 2002, the city decided that it wanted to purchase
23 what we refer to as the Niesen 125. 125 acres.

24 We maintain that as to the Niesen 125, the city paid
25 way too much money for it. And, again, when they came to us
26 and said, hey, you owe us 37.69 percent of the Niesen Ranch,
27 we said, well, hold on a second. We don't think that that's a
28 fair price.

1 So let me just walk you through a little bit of the
2 Niesen 125. Again, in 2002, there will be testimony and
3 you'll see exhibits that in March of 2002, a fellow by the
4 name of Tom Herman, who was the designated city engineer for
5 the City of Willits, wrote a memo and he said, you know, we
6 should -- and the memo went to the folks at the city. And it
7 said we should really purchase the Niesen 125. There are
8 benefits that we could use when we build this new plant.

9 And additionally, there may be some what we consider
10 to be speculative value to the Niesen 125.

11 Again, I don't know how many of you have been up to
12 Willits recently, but there is a bypass that goes through,
13 Caltrans has put in a bypass.

14 And in this March 2002 memo, Mr. Herman identifies
15 that the Niesen 125 could have a great deal of value for the
16 City of Willits.

17 In fact, in his memorandum the evidence will show
18 that he says that the value of the portions of the Niesen
19 property could be as much as \$10,000 for a tenth of an acre.
20 So you do the math, right, and you buy eight -- you sell eight
21 acres, at that price you're selling it for \$800,000 to
22 Caltrans.

23 So the City of Willits in 2002 was very interested
24 in purchasing the Niesen 125. The problem was Mr. Niesen had
25 signed a contract with another entity to sell his land. It's
26 called an option agreement.

27 Mr. Niesen had an option agreement with an outfit
28 called Wildlands. What Wildlands does is they will buy --

1 they won't buy -- but they'll enter into an option agreement
2 with people where they think Caltrans may be putting in a
3 project.

4 The contract price under the option agreement
5 between Mr. Niesen and Wildlands was \$4,000 an acre. You do
6 the math, 125 acres time 4,000, comes up to \$400,000.

7 That option agreement was set to expire March of
8 2003. And what you're going to learn is that in March of
9 2003, Mr. Herman and the City of Willits pay for an attorney,
10 a fellow by the name of Tom Brigham. They pay this attorney
11 to meet with Walt Niesen and with Tom Herman.

12 And the purpose of the meeting is to sell the Niesen
13 125 to the City of Willits. And there'll be meeting minute
14 notes where I believe the evidence will show that, in fact, an
15 offer was made to buy portions of the Niesen Ranch for 6,000
16 an acre while Mr. Niesen was still under contract with
17 Wildlands.

18 So, again, that option is set to expire March 31st.
19 On March 27th, Mr. Niesen cancels the option. He sends a
20 letter to Wildlands and cancels the option.

21 And that, you'll see that cancellation, why he
22 cancelled, the reasons why he stated in the cancellation
23 notice, why he was canceling the option agreement.

24 On March 31st, Mr. Herman meets with Mr. Niesen
25 again, and there are notes from that meeting and at that
26 meeting you'll see 125 acres, 6 K per acre equals \$750,000.

27 Now, at this point in time, this is March 31, 2003,
28 nothing is said to Brooktrails about this purchase. April 4,

1 2003, the City of Willits enters into an option agreement with
2 Mr. Niesen to purchase the property.

3 It's actually, it's dated April 4th, but somebody
4 crossed it out, so I believe it's signed April 7th.

5 On May 21st, a purchase agreement is signed by the
6 City of Willits and Mr. Niesen for \$750,000. It's contingent
7 on a grazing rights agreement, Mr. Niesen wants to graze his
8 cattle back on the property, and they eventually work out a
9 grazing rights agreement.

10 There's very little in the way of city minutes, the
11 city council meeting minutes and agendas about any of this.
12 And you'll hear evidence on that.

13 The deed is recorded in October of 2003. They
14 finally work out the grazing rights agreement, and the deed is
15 recorded in October of 2003.

16 It's not until September of 2007 when the city comes
17 to Brooktrails and says, by the way, guys, you owe us
18 37.69 percent of this purchase price.

19 And when what happens, the Brooktrails board of
20 directors looks at it and says, why do we owe 37.69 percent of
21 this property, and they instruct their general counsel, Mr.
22 Neary, to look into the purchase price.

23 Mr. Neary hires an appraiser by the name of Dean
24 Chapman. Dean Chapman is a very sophisticated, very
25 experienced appraiser.

26 And he comes in and he says, basically, to Mr.
27 Neary, well, they must have had an appraisal done before they
28 could spend that kind of money for the property.

1 Mr. Neary goes to the City of Willits, and he says,
2 show me everything that you have relating to this purchase.
3 And the fellow by Ross Walker, who was a city manager at the
4 time, gives Mr. Neary the information that the city had
5 relating to the project -- or the purchase -- I am sorry.

6 And there's an appraisal in there, and the appraisal
7 is by a fellow by the name of Phil Cessna. Mr. Cessna was
8 hired by Mr. Herman to go out and do an appraisal.

9 And the timing of Mr. Cessna's appraisal is
10 interesting. Remember March 31st, there's a handwritten
11 notes, 6K per acre equals 125 acres equals \$750,000. That's
12 March 31st.

13 April 1st, Mr. Cessna is hired to go out and do the
14 appraisal. He and Mr. Herman go out, walk the property and do
15 an appraisal.

16 You'll also see evidence that during this timeframe
17 before the option agreement is signed, April 4th, Mr. Herman's
18 doing research on the value of the property.

19 Mr. Cessna's appraisal, there's some ambiguity
20 whether it's as of April 1st or as of April 5th, but he comes
21 in with a price of \$757,000.

22 The problem with Mr. Cessna's appraisal is he
23 compares apples to oranges. Again, we have an appraiser named
24 Dean Chapman who's looked at the appraisal, and he will tell
25 you there are so many problems with Mr. Cessna's appraisal.
26 One, he wasn't properly licensed to do this kind of an
27 appraisal. Two, he had the address of the property wrong.
28 Three, most importantly, he compared industrial property to

1 farmland. And you simply can't compare the values of
2 industrial property to farmland.

3 He went down to Ukiah, which is about 35 miles south
4 of Willits to find comparable industrial land that he could
5 put into his appraisal to what we contend is to inflate the
6 price of the property or the value of the property.

7 There's other problems with the appraisal that
8 you'll hear about, but what is interesting, the City of
9 Willits after this lawsuit got started, the City of Willits,
10 their own appraiser looked at Mr. Cessna's appraisal, and
11 their own expert says, frankly, it's really not worth the
12 paper it's written on. There's so many problems with Mr.
13 Cessna's appraisal, it is simply unreliable.

14 So when Mr. Chapman goes out there and does the
15 appraisal, he comes up with a value initially of \$3,000, 3,500
16 an acre, about \$2,500 less than what Mr. Cessna came up with.

17 But then Mr. Chapman, yes, Mr. Chapman realizes that
18 Mr. Niesen was in -- had an option agreement with Wildlands.
19 So he says how much was that option agreement worth. And the
20 option agreement with Wildlands was \$4,000 an acre.

21 So between March 31, 2003 -- I am sorry -- March 27,
22 2003, and April 4th, or April 7th, the property went from
23 \$4,000 an acre to \$6,000 an acre.

24 And we believe the evidence is going to show that
25 was an unrealistic inflation value of the property and the
26 reason the city wanted the property so bad was because they
27 believed they could make money off the property.

28 Again, you go back to Mr. Herman's March 2002

1 memorandum where he tells Ross Walker and the other folks at
2 the city, Ross Walker was the city manager, hey, if we can
3 sell this property down the road to Caltrans, it can be worth
4 as high as \$10,000 for one-tenth of an acre.

5 So we believe the City of Willits overpaid for the
6 property and that we should not have to pay for more than the
7 property is worth.

8 During the course of this trial, you'll hear
9 evidence that Brooktrails did offer to pay after -- once we
10 get the appraisal, we come back to the city, and we say, look,
11 you guys paid too much for it, can we work out some sort of an
12 arrangement, and all the arrangements are tied to other
13 contractual issues, so they never reach an agreement on what
14 is due and owing on the property.

15 So that's one of the issues. I am trying to skip
16 through some of this because of the time constraints. I can't
17 see what time that is.

18 MR. BARTOLOTTA: 12:15.

19 MR. CROWLEY: 12:15. Thank you.

20 This is going to get somewhat convoluted, but the
21 plant that you see in that picture is a new plant.

22 And the water board, the North Coast Regional Water
23 Quality Control Board, came to the City of Willits and they
24 said you need to do something about the effluent that you're
25 putting out into the creeks.

26 The quality of the effluent is excellent. There's a
27 fellow named Tom Dunbar who worked -- who was the engineer for
28 the North Coast Regional Water Quality Control Board and he

1 was the one who had jurisdiction over Willits and their old
2 wastewater treatment plant. And what -- there's a letter and
3 you'll hear from him.

4 And what he says is, the problem is not with the
5 quality of the effluent. The problem is with the quantity.
6 If you're putting too much effluent into the creek, you're
7 overloading the creek, in essence, and what you'll hear is the
8 way these systems properly work is, in essence, the effluent
9 has to be metered into the receiving water, so you get proper
10 dilution ratios. Because if you don't have the proper
11 dilution ratio, you're putting into much effluent into the
12 water and it has a bad effect on all kinds of things.

13 So in 2001, the water board issued this cease and
14 desist order to Brooktrails, and it says you need to do
15 something.

16 Now, they don't tell Willits what they need to do.
17 They just say -- and the water board does this with everybody.
18 They don't tell you, you need to buy a new plant, you need to
19 build a new plant, you need to do whatever.

20 What they tell you is you need to fix the problem.
21 There is too much, you're violating what's called your waste
22 discharge requirement, you're putting too much effluent into
23 the creek.

24 And they look at different alternatives as to how
25 this can be done. The City of Willits put together different
26 alternatives.

27 And what you're going to learn is that one of the
28 biggest problems with the old plant was that they were -- they

1 had too much in the way of wet weather flows.

2 You're going to hear terms about dry weather flows
3 and wet weather flows. And dry weather flows are the flows
4 that occur during the dry months, May through September are
5 generally considered the dry months. Obviously, September
6 through April are the wet months.

7 And what was happening to the old plant was the city
8 was discharging too much, they had too much water coming in
9 and, therefore, they were discharging too much partially
10 treated and untreated effluent into the creeks.

11 So when the city comes and says you need to do
12 something, because you're discharging in violation of your
13 permits, we believe what the city should have done was said
14 okay, why do we have so much wet weather flows.

15 And what you're going to learn is that the -- in a
16 perfect world, a sewer collection system is a closed system.
17 What should be going in there is the untreated effluent and
18 going into the sewer plant and being treated.

19 What you're going to learn though is a thing called
20 I & I, inflow and infiltration. Inflow is the water that
21 comes into a sewer collection system from people's downspouts.

22 People will, for whatever reason, until this case I
23 didn't know this, but I guess there's a lot of people that
24 will plumb their downspouts and other water collection systems
25 right into the sewer system.

26 So you have a lot of people that have wired in their
27 downspouts and other things around their house right into the
28 sewer collection system.

1 So in addition to the effluent, you now have inflow
2 coming in. And then what you have is called infiltration.
3 And infiltration is water that comes in if there's a bad
4 rainstorm, big rainstorm, heavy rainstorm, what happens is the
5 ground table, the water table will come up or water will flow
6 in from manhole covers.

7 The piping for the sewer collection system may have
8 tree roots going into it which opens up an opening for water
9 coming in. So in essence you have inflow problems and you
10 have an infiltration problem. And what happened, what we
11 maintain happened, is that the City of Willits was having too
12 much I & I come into the system, and because they were having
13 too much I & I come into the system, it was causing too much
14 wet weather flow and they were violating their permit.

15 Under the contract, if the city has to improve or
16 build a new plant for quality purposes, we have to share in
17 that cost. And you'll hear the paragraph called 8-A. And
18 paragraph 8-A says if a governmental entity orders us to do
19 something and build a new plant, improve the plant for water
20 quality issues, the parties agree to share it, share in the
21 cost of that.

22 And we say that's fine. We're all for that.

23 But once we got into this litigation, it looked more
24 and more to us that what was going on here wasn't a water
25 quality issue, it was a water quantity issue.

26 And so you'll hear testimony about quality and
27 quantity. And again, Mr. Herman, who was involved in the
28 purchase of the Niesen property, he became the project manager

1 for the new sewer plant and you'll hear evidence that that
2 sewer plant ended up costing \$25 million.

3 The engineers for the sewer plant was a company
4 called SHN. Mr. Herman, again, was listed as the city
5 engineer prior to SHN coming in to build this new wastewater
6 treatment facility, and shortly after, around the time that
7 this new wastewater treatment plant is being designed and
8 talked about, Mr. Herman leaves his position as the city
9 engineer and joins SHN.

10 You'll also hear testimony that the engineering
11 costs for this project were somewhere between 9 and
12 \$11 million, which was paid to SHN.

13 So again, as we got into this litigation and we
14 started looking at the real reasons for this plant, we came to
15 the conclusion that this plant is not about quality, it's
16 about quantity. And what is important also to keep in mind,
17 and you'll hear evidence of this, that the cease and desist
18 order was issued by the water board in 2001.

19 I believe you're going to hear evidence that in the
20 early '90s, the City of Willits spent a fair amount of money
21 trying to fix their I & I problem.

22 We believe the evidence is going to show that they
23 weren't successful. If they were successful, you would not
24 have had the cease and desist order in 2001.

25 Brooktrails also has an I & I problem. But what
26 Brooktrails did in 2001 is they started a very aggressive
27 program to address their I & I issues.

28 And you'll hear testimony from experts that the

1 Brooktrails I & I problem was reduced by 50 percent. At one
2 point in 2001, I think it was 2.3 million gallons a day in wet
3 weather, and then it went down to 1.2.

4 So we believe we did what we could to fix the I & I
5 problem during the early -- during the time this plant was
6 being built.

7 We also maintain that during this time the city
8 never did a study of its own I & I problems to see what they
9 could do to fix the winter flows, the wet weather flows into
10 the plant.

11 One of the things that we maintained, rather than
12 going out and spending \$20 million for a new plant, maybe you
13 ought to look and see if there's any low-hanging fruit that
14 you can take care of and fix your I & I problem. That's also
15 going to be at issue in this case.

16 Do I still have time, your Honor?

17 THE COURT: Yes. You're going to go past, do you
18 think?

19 MR. CROWLEY: I am.

20 THE COURT: Okay. If this is a convenient stopping
21 point.

22 MR. CROWLEY: It is, your Honor.

23 THE COURT: We can stop. Let's do it that way then.
24 Ladies and gentlemen, we're going to break at this time.
25 We're going to come back at -- let's come back at 1:20,
26 please. Remember the admonishment, ~~8~~not to form or express an
27 opinion about the case, talk to anyone about it, not let
28 anyone talk to you. Do not use the Internet for any purpose

1 connected to the case. And we'll see you back at 1:20. 1:20.

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2 THE COURT: Back on the record in Brooktrails
3 versus City of Willits. Both parties and counsel are
4 present. The jurors are all here.

5 And Mr. Williams for Brooktrails is not going to
6 be here this afternoon; he had a previous engagement, but
7 I'm sure he'll be back for other portions of the trial.

8 Mr. Crowley, still amidst your opening statement.
9 Whenever you're ready, sir.

10 MR. CROWLEY: Thank you, your Honor.

11 Good afternoon, ladies and gentlemen. I don't
12 want to spend too much more time on my portion of the
13 opening statement, except to talk to you about the other
14 issue in this case which is called the fourth amendment.
15 And in 2007, the parties, the City of Willits and
16 Brooktrails, signed what you will learn to -- you will learn
17 is what's referred to as the fourth amendment to the
18 underlying contract. And the fourth amendment related to
19 the construction of the new waste water treatment plant, and
20 there's a dispute over the terms of the fourth amendment.

21 We maintain, and this is what we believe the
22 evidence will show, that Brooktrails agreed to pay 37.69
23 percent of the loans that were incurred for stage one, and
24 that number is 10.285 million. And Brooktrails has
25 continued to pay that 37.69 percent of that 10.25 million
26 dollars from 2007 to the present.

27 But after 2007, we kept asking what is the
28 capacity going to be of the new plant, because capacity is

1 very important for us. And we never really got a straight
2 answer. But we were told that we don't know whether the
3 capacity is going to increase that much. But we were never
4 told that the capacity would go down. And so we believe
5 that the representations made to us about the capacity of
6 the new plant were not accurate. So when bills came due for
7 the remainder of the plant, we said we're not responsible
8 for those additional payments for really two reasons: One,
9 the plant was not built for quality, the plant was built to
10 help Willits' capacity.

11 And what you will learn is that after the plant
12 was built, it was certified by the City of Willits to us
13 that the wet weather capacity of the plant went to seven
14 million gallons per day. The dry weather capacity of the
15 plant went down, and when we learned that we said, well,
16 wait a minute, the wet weather capacity doesn't do anything
17 for Brooktrails, it only benefits the City of Willits. And
18 in fact, like I said earlier, the dry weather capacity has
19 gone down so we end up paying more than we did before. So
20 based on that, we said to Willits, you're responsible for
21 the future payments. We will continue to pay what we owe on
22 the 2.25 million.

23 And when you read the fourth amendment there's a
24 section called recitals, and there's a section called
25 covenants. And under the covenants section, we maintain
26 that that's the agreement that we entered into. And the
27 covenant section says we will be responsible for that loan,
28 the 10.285 million. And that's what we've held -- upheld

1 our end of the bargain on that.

2 You will also hear from a fellow named Paul
3 Caylar. Paul Caylar was the city manager around this time
4 frame. And he wrote a letter, and in that letter he said
5 what we are saying, is that Brooktrails agreed to pay their
6 share of the \$10.285 million, and that's what the agreement
7 calls on Brooktrails to do, and that's what we believe that
8 we have -- we've upheld the fourth amendment, the
9 contractual part of the fourth amendment.

10 I talked about the meters. The other problem
11 that we have, even with the new plant, is even after the new
12 plant was built the meters that are supposed to measure the
13 inflow don't work. And what happens was the plant was
14 certified, I believe in 2013, and we started getting bills
15 based on the meter. And we said well, wait a minute, this
16 can't be right. So we sent our own engineers out to look at
17 the city's meter.

18 And what you'll learn is the contract says the
19 inflow of the effluent into the plant, the inflow has to be
20 metered, and we have a meter where our effluent leaves
21 Brooktrails, so you can take the total inflow and you can
22 subtract what we know is coming out of Brooktrails and you
23 get what is actually in there, the true number.

24 The problem is, that even since 2013 we sent
25 engineers out there and we said to the city, your meters are
26 wrong. And I think the evidence will be they kind of
27 poo pooed us, and finally we sent a report to the Regional
28 Water Quality Control Board, and at that point they did go

1 out, the City of Willits went out and they discovered what
2 we said is true. Their own engineers confirmed what we had
3 said is true, that in fact these meters haven't worked. And
4 the evidence is going to be that for the past 15 years, the
5 city has not had accurate meters. And it's very important
6 for us, because our charges are based on these meters.

7 There will be other evidence regarding the
8 contract, how it was performed, what the covenants are, but
9 I could talk to you for 10 hours and I really -- there's no
10 sense in doing that, because this is an opening statement,
11 it's just a guideline of what the evidence is going to be.
12 You will hear all the evidence. And again, thank you very
13 much.

14 But before I close, Mr. O'Brien will talk about
15 the accounting issues, thank you.

16 MR. O'BRIEN: Well I have what I would consider
17 to be the exciting part of this case, it's accounting. And
18 while most people don't get excited about it, I do. There's
19 a lot of sayings about accounting, but one of them is that
20 numbers don't lie. And as a lawyer, it's a meaty subject;
21 it's something you can look to documents to get the answer,
22 and that's what we tried to do in this case.

23 Unfortunately the accounting system used the last
24 12 years to bill Brooktrails is pretty complex, so I'm going
25 to do an overview today of the various moving parts in the
26 accounting system. Try to get everybody kind of familiar
27 with what was going on in a general term, and then as we go
28 through witnesses hopefully it will become more and more

1 apparent.

2 Brooktrails to a great extent, or great expense
3 has gone out and hired a gentleman by the name of
4 Dr. Holder, who is the dean of accounting down at U.S.C. and
5 he's fairly famous in the country, and in the State of
6 California. And he really, literally, wrote the book on
7 municipal accounting; the book that every accountant will
8 have on their desk when they're doing an audit of a
9 municipality. We spent a decent amount of money on Dean
10 Holder, because as the Judge informed you in voir dire,
11 unlike normal contracts between two parties, which have to
12 have a definite term, between two municipalities they can
13 last forever, and in this case this contract literally lasts
14 forever. So if you had an accounting error that was a
15 thousand dollars, multiply that by a thousand years and
16 you've got a million bucks.

17 You'll see in this case while the numbers on an
18 annual basis aren't massive, they're 30 and 40 or \$50,000 in
19 over charges every year -- in fact in the scheme of things
20 you might even miss them if you're a municipality, but if
21 you don't miss them and you start adding them up, in this
22 case we're talking about 10 years, all of a sudden it's a
23 half million dollars or \$750,000 or a million dollars, which
24 is the case here. Now multiply 50,000 times a thousand
25 years and you're talking about some real money. So the
26 decisions you guys make today are going to last forever. Or
27 not today, but four weeks from now.

28 First thing I wanted to cover was a little bit

1 about -- well the first thing I want to cover is what each
2 party is supposed to pay. Can everybody see? Okay. And
3 you don't necessarily need to read it, we'll talk about it.

4 But first, I just want everybody to understand
5 who is supposed to pay what, because that ultimately is what
6 this whole case is about. You're going to hear the fourth
7 amendment, you're going to hear Niesen, you're going to hear
8 accounting, they're all accounting issues. Willits is
9 saying that we owe them money and on certain issues we're
10 saying, no, we don't owe you money, look at the contract.
11 So this is an accounting case, who is supposed to pay what.

12 This contract regards a waste water treatment
13 plant that's been there for 50 years, and it's been upgraded
14 a couple times, and when it's upgraded the contract has been
15 amended. There's two parts to a sewer system really -- and
16 I'll use your bathtub because using a toilet is gross. So
17 your bathtub goes the same place, so we'll use that.

18 All these houses and businesses and whatnot in
19 Willits, and the houses up here in Brooktrails all have
20 bathtubs or showers. So the bathtubs or showers connect to
21 millions of miles of pipes, okay. And those millions of
22 miles of pipes up here connect through a meter to the waste
23 water treatment plant system, and then down at the sewer
24 plant here at the gate, it's two pipes coming in and all of
25 Willits' pipes and all of Brooktrails' pipes ultimately dump
26 through this waste water treatment plant.

27 And there's also some other activities that we'll
28 talk about that Willits operate out of the waste water

1 treatment plant.

2 The only thing Brooktrails is supposed to pay for
3 is its flow into this plant, that's what the contract says.
4 It's not supposed to pay a single penny for anything that
5 happens outside this gate in this City of Willits. It's not
6 supposed to pay for other activities that happen within the
7 waste water treatment plant. Just treat our sewage, we'll
8 pay a fair rate.

9 The evidence in this case will show we have
10 always paid our bills in advance by a year, even when we
11 didn't get billed.

12 The other things we're not suppose to pay for is
13 we're not supposed to pay for any Willits Police Department,
14 as you can imagine. Not supposed to pay for their swimming
15 pools or their parks. We're just supposed to pay for the
16 waste water treatment plant, and then maybe if there's some
17 city services that benefit the treatment plant, we're
18 supposed to share in those as well and that's accounted for
19 properly and we pay it. So that's -- that's how it's
20 divided up.

21 You're going to see bills. There's going to be a
22 bunch of bills and a bunch budgets admitted into evidence.
23 The bills to Brooktrails are one page, sometimes three
24 pages, sometimes five pages, but there's one main page and
25 you'll see some different departments. The plant and all
26 these pipes are all within the sewer fund. And the sewer
27 fund calls the plant the sewer operations. So you see an
28 account called sewer operations, and in your mind you think

1 plant. You'll also see sewer maintenance. When you see
2 sewer maintenance in this case -- I'm sorry it's so
3 confusing -- but think collection. So maintenance equals
4 collection, brooktrails doesn't pay. Plant equals
5 operations, Brooktrails does pay. Anything other than
6 operation, generally Brooktrails shouldn't be paying. So,
7 we're going to talk a lot about that; that's going to be
8 important.

9 And if there is a certain thing that happens away
10 from the sewer plant, for instance the finance department
11 does something on behalf of the plant that needs to be
12 accounted for and we need to only pay for what benefits us.

13 Dan talked in his opening a little bit about
14 benefits, and that's the main thing that we're going to talk
15 about in this case, and that's a main principle in municipal
16 accounting. Cities can only pay for things that benefit
17 their citizens. Cities can only pay for benefits received.
18 Governments can't give out gifts, that's your money. So
19 that's every -- in every accounting issue, including
20 Mr. Crowley's issues that you see in this case, keep in the
21 back of your mind did Brooktrails benefit. If we didn't
22 benefit, we shouldn't pay and we can't pay.

23 We talked about the city a little bit, and I'm
24 going the talk briefly about how the city has chosen to set
25 up their accounting system. There's lots of different ways
26 to set up an accounting system. Obviously if you have any
27 accounting background, you'll know that municipal accounting
28 is no different. Every city has a little bit of a different

1 take on the thing, and as long as it's well documented and
2 fair, usually it can work.

3 In this case, the city has a number of accounts
4 that you're going to see over and over and over again.
5 You're going to see an account called the general fund. Now
6 the general fund in a city runs certain things. The general
7 fund runs some administrative things, like Finance, City
8 Attorney, the City Council, those type of purely
9 administrative functions. They don't do anything other than
10 support all of the other departments in the city, okay. And
11 I'll have some charts to, throughout the trial, to help you
12 guys with this, and you'll see lots of bills that show this.

13 Within the general fund there's also other types
14 of departments, and those would be things that the citizens
15 of Willits use: The police department, the pool, the
16 library, the parks. Those kind of things are what we call
17 operations accounts, but they're inside the general fund.

18 And then you have some other funds. You have
19 what are called enterprise funds. So you got the general
20 funds, which are general things that the City of Willits'
21 citizens need and use, and then you've got enterprise funds.
22 And enterprise funds are special types of services, and
23 those are things like the airport, and there is an airport
24 in Willits. The redevelopment agency, the water department,
25 the delivery of the water, which is in a lot of ways similar
26 to the sewer system, just going the other way and it's a
27 little cleaner, and of course the sewer fund. And we're
28 going to spend a lot of time talking about the sewer fund in

1 this case.

2 And you're going to learn a lot about municipal
3 accounting, whether you like it or not, so try to hang in
4 there. It can get complicated, and I apologize. We'll try
5 to do our best to make it as simple as possible. It took me
6 years that we've been working on this to figure -- to try to
7 figure some of it out.

8 Real quick to run through the contract terms
9 only, and there's just going to be a few as they relate to
10 accounting in this case. So there's a couple agreements:
11 The first one I think the Judge told you started in 1967,
12 and these agreement clauses have never changed, they're
13 still the same. They talk about the city records. The city
14 is supposed to maintain books and records of the account
15 that shall reflect, and the key word here is separately,
16 from its sewer collection system records and accounts of all
17 costs administrations, maintenance operation and repair of
18 the sewer treatment plant.

19 So, the idea here again, like I told you, is if
20 you're going to bill Brooktrails, make sure you've kept the
21 account separate; you haven't charged us for other accounts;
22 you haven't charged us for the police department or your
23 collection system or other things, and we're happy to pay
24 it. And try to keep some supporting documentation so we can
25 look at it if we have a question, that's the idea.

26 Next one is same type of competent supporting
27 data, it still applies although the way we pay is a little
28 different. There used to be negotiations on a regular

1 basis, and now we pay based on our percentage of flow. But
2 the competent supporting data clause I still believe
3 applies, and it's very similar to the clause I read you; I'm
4 not going to read to you again.

5 And then came the second amendment in '75. The
6 first amendment is pretty much done away with by the second
7 amendment, and it was -- it's very irrelevant to this case.
8 The second amendment is the part of this case that you're
9 going to hear the most about, it's a big contract and it
10 dealt with an earlier sewer upgrade to the plant. The City
11 came to Brooktrails and asked for some more money, and there
12 was a new contract that kind of spelled out how the whole
13 thing was going to work and they signed it and that's been
14 in operation since 1975, and really forms the basis for this
15 whole case.

16 The second amendment clause 12 talks about
17 capital costs clause, which Mr. Crowley touched upon.
18 Clause 13 talks about operations cost. And again, it talks
19 about that they have to keep books of accounts of
20 administration maintenance, operation and repair of the
21 treatment plant. And again, this is important, very
22 important in this case; we will be talking about why,
23 separate and distinct from all other accounts of the city.
24 Okay.

25 So again, it's important. If you were being
26 billed you'd think the same thing. It's very important to
27 have separate accounts and that we only pay for the plant --
28 our share of the plant. And remember, separate accounts.

1 There's four or five different accounts within the sewer
2 fund: Sewer fund, the enterprise fund, the accounts are
3 numbered and they're separate, and we're only supposed to
4 pay for that sewer operations, I'll say slash plant account,
5 which you'll learn is the 5013 account.

6 Another important one is Number 14. Every year
7 the city is supposed to make an audit of its accounts,
8 presumably by an independent person -- and we all know the
9 word audit, none of us like to hear it I don't think -- and
10 deliver that to Brooktrails by October of every year. And
11 that's so Brooktrails -- what happens is each October
12 Brooktrails is supposed to get both the actual
13 reconciliation for the prior year, and what's determined is
14 did Brooktrails pay too little or too much, because
15 Brooktrails is paying in advance, remember, so the whole
16 past Brooktrails has paid something every month, 20,000
17 every month.

18 On the 1st, they're suppose to get a
19 reconciliation audited from the city that says, hey, you
20 paid too little. The operations are 100,000 more, you owe
21 us \$800,000 more per month. And then they're supposed to
22 get an estimate for the following year, okay. And the
23 estimate is estimating basically based on last year's bill
24 what you owe for next year, plus it should include whatever
25 shortage there was for the previous year, or it should take
26 a deduction for whatever if it paid too much. And then we
27 go forward for the next year and we pay in advance all year,
28 same thing is supposed to happen next October.

1 The evidence will show in this case -- sorry let
2 me back up for a second.

3 The reason that's important is that Brooktrails
4 has rate payers too. There's 2,500 people living up in
5 those trees on that wooded hillside up in Brooktrails, and a
6 lot of them are disabled veterans, there's all sorts of
7 people there, senior citizens, fixed-income people. And
8 Brooktrails, by law, has to set their rates every year and
9 that process happens in the first quarter of the fiscal
10 year -- excuse me -- first quarter of the calendar year,
11 January through March, May. And to do that, they need to
12 know what they're supposed to pay. Just like we need to
13 know how much money we're going to pay, or we're going to
14 make the next year, in order to pay our bills and budget for
15 the year, so does a town like Brooktrails. And so we have
16 to have some sort of audited financials from the city before
17 we start setting our rates; if we don't, our rates could be
18 wrong. What happens then, we have huge -- the next year
19 when we finally get audits, we're going to have to bump our
20 rates instead of \$2 a year over three or four years, we
21 might have to bump them \$10, and then as you can imagine,
22 the town hall fills up with a lot of angry folks. And it
23 can hurt people in the pocket book. So, we need the ability
24 to plan as a town for our citizens.

25 The evidence will show from 2004 until today, an
26 audit has never been received on time in compliance with
27 this contract. In fact an audit has never been received
28 within three months of October. The earliest we've received

1 an audit at Brooktrails in the last 12 years is February, I
2 believe of the following year, which frankly we're excited.
3 Brooktrails is happy when they get that, and they'll take
4 February, and they can do their work real fast and usually
5 get to the -- get to the right answer.

6 You'll find out in certain years, for instance
7 2005, the evidence will show Brooktrails didn't get a 2005
8 audit from the City of Willits until 2007, July of 2007, two
9 and a half years after they were supposed to. I think the
10 average over the period of 10 years that we'll be looking at
11 is about 12 or 13 months late. Not good. So we don't feel
12 like the City of Willits has complied with that clause.

13 Measuring facility. Dan touched on this. I'll
14 touch on it again so you can, with the map, so we can get a
15 better understanding of what we're supposed to be billed
16 for, and then we'll talk about the specifics in the bill.
17 This talks about the fact that the city and Brooktrails are
18 supposed to have meters, which is important.

19 The next clause talks about how the apportionment
20 occurs, okay. So let me just -- this graphic is great. Let
21 me show you what's supposed to happen. There's supposed to
22 be a meter, it's called an inflow meter at the plant. This
23 is called a headworks of the plant, and I have another blow
24 up behind me that shows it better, but I need this. Right
25 here, supposed to be a manhole right in front of the
26 headworks that measures all the flows coming into the plant.
27 Likewise, there's a -- somewhere along here, I'm not sure
28 exactly where it is, but at the boundary line of Brooktrails

1 there's also a -- one pipe coming out of Brooktrails with a
2 meter on it, and that meter measures the flow out of
3 Brooktrails.

4 And so what you do -- say this is a million
5 gallons, and this meter measures four million gallons in a
6 day. You divide a million by four million, you come up with
7 point two five. So Brooktrails should pay 25 percent of the
8 operating costs of the plant for that day. And they do it
9 on an annual basis, but that's the idea. So in order for
10 that piece of accounting to work, you need two things,
11 right? You need a meter at Brooktrails -- and I'll
12 represent to you the meter at Brooktrails works, and it's
13 worked most of the years. There was some question about it
14 in 2006, I think, and Brooktrails rapidly replaced it. So
15 we have our meter, and I don't think anybody disputes that
16 our meter works.

17 The plant's meter stopped working in 2002. The
18 plant in about 2003, that became readily apparent to
19 everybody that the plant's inflow meter was not working. So
20 they could not measure the total flow entering the plant.
21 You see line four there, it's an important line. The ratio
22 is based on the total flow entering, and entering being the
23 key word, the plant. So the flow, measuring the flow --
24 excuse me -- the meter measuring the flow and entering the
25 plant breaks, city comes to Brooktrails and they say, hey,
26 sent a letter -- actually Ross Walker sent a letter and he
27 says, how about we use an average of the past three years
28 until we can get this meter fixed, and we'll try to get it

1 fixed as fast as we can. And Brooktrails says, wait a
2 minute. We'd rather pay what we owe. It would be
3 similar -- I try to tell people an example is you have a
4 meter for PG&E at your house. That meter breaks down. What
5 if PG&E came to you and said, hey we're going to use the
6 average for the last three or four years for you
7 indefinitely, that should be cool with you. No. We put in
8 solar panels, we're trying to save power, which is what
9 Brooktrails was doing at the time. You wouldn't be okay
10 with that. But Brooktrails said okay, let's do this for two
11 years. We'll give you two years to get the meter fixed.
12 After two years, we want you to take the following 12
13 months, so whenever from the time you get it fixed to 12
14 months later, see what our flow is and give us a credit or
15 we'll pay whatever we owe based on that percentage for those
16 two years. So we'll make an adjustment. City doesn't
17 respond. No signature, no nothing.

18 We go forward. We go forward. We go forward.
19 We go forward. New plant's built. Now we're eight years
20 later. And all this time the city's billing Brooktrails
21 23.62 percent, which is that average that they came up with
22 and that they used, even though they refused to sign our
23 agreement. And they even put at the bottom of the bill,
24 they say based on an agreement dated February 8th, 2005,
25 Brooktrails has agreed to pay 23.62. The evidence will
26 show, it will show today with other witnesses, there is no
27 letter dated February. There is no letter dated February
28 8th, 2005, let alone an agreement. There's no document. We

1 asked the city to bring that letter with us to trial,
2 because it's on every audit they issued for the last 12
3 years; document doesn't exist.

4 In any case, the city puts in a meter with the
5 new plant, 25 million bucks. Puts in a very expensive meter
6 and it still doesn't work. So as we sit here today, 2013
7 was billed at 23.62. We're now 11 years later. 2014, 2015,
8 comes along and the city gets a plan in their mind, and the
9 city says, we're going to install for one month, the driest
10 winter we have ever had, we're going to install a test meter
11 and we're going to compare the test meter to our outflow
12 meter, and if those are close enough, we're going to bill
13 you for the rest of your -- or for however long, we're going
14 to bill you on that outflow meter. And the witness that
15 we're going to have in here today, or tomorrow, signed that
16 letter, a woman named Adrienne Moore. And she says, hey,
17 the inflow meter is not working, we think the outflow meter
18 will work, so that's what we're billing and here's your
19 bill. No. Hey, Brooktrails, is that okay? No. We need to
20 sign an amendment to the agreement, because we have a
21 written agreement between two cities, no.

22 We're using -- we don't care what 16 says, we're
23 using the -- we're going to measure the flow exiting the
24 plant now and you're going to pay your bill. The problem
25 is, the meter exiting the plant is down here and that goes
26 into these, what are called enhanced wetlands. Treated
27 fluid goes out here and ultimately is dumped into a creek.
28 The problem is, there's these three -- and they don't show

1 here with water in them. There's these big what are called
2 equalization ponds. I don't -- where's the other chart,
3 Dan?

4 MR. CROWLEY: It's right there, Pat.

5 MR. O'BRIEN: There's these big giant
6 equalization ponds, which are here. Equalization basins. I
7 get the name wrong, okay. They store 18 million gallons of
8 water. Right now they're all full, okay. As we sit here
9 during the winter, during the wet weather they're full. The
10 meter we're talking about is about right here, right in
11 front of the headworks. I made this so we know all these
12 terms; I didn't even know them before I made this.

13 When water comes into the plant and goes through
14 the influent meter, it has two choices: It can either head
15 into the headworks if the plant has capacity at that time,
16 or if it's a particularly rainy day, that's why Willits
17 needed this plant and they have lots of INI like Dan talked
18 about, they divert the water to these big storage ponds they
19 talked about, and they hold tons and tons of water in these
20 storage ponds until things settle down in the communities
21 and they can slowly pump it back into the plant.

22 What happens when the water is sitting in these
23 ponds -- we have a expert that's going to tell you what
24 happens, is it does two things: It evaporates and it seeps
25 into the groundwater, and our estimate is that about 50
26 million gallons a year, that's 50 million gallons of 350
27 million gallons is lost during this process. And so by the
28 time that sewage water is ultimately treated and goes

1 through the plant and exits the outflow meter, it's light
2 about 50 million gallons. What happens? Well, if the total
3 flow entering the plant is smaller, what happens to
4 Brooktrails' percentage? It goes up. In this case if it's
5 50 million gallons smaller over the course of the year, 50
6 million over 350 million gallons they treat, Brooktrails'
7 bill is going to be 12 percent higher. And that's great for
8 the city, they get 12 percent more money they can use. So
9 that's why they want to unilaterally change the language in
10 paragraph 16 now, because clearly it's beneficial to the
11 city. And we'll talk about this with the witnesses. It
12 takes two people to contract and two people to amend the
13 contract.

14 We talked about some of the general municipal
15 accounting principles. I won't talk more about those now,
16 we'll let Dean Holder talk to you about those. But they're
17 basic. It basically comes down to benefit received and
18 fairness.

19 Quickly we'll go through some bills and charts to
20 show some specifics that Dean Holder found when he started
21 digging in the books. And really the devil is in the
22 details. And it gets real complicated, but I'll start
23 trying to explain how this whole thing works now.

24 We talked about this estimate and this bill
25 that's due in October. Well, here's 2013's bill, and it
26 says City of Willits to Brooktrails Community Services
27 District. And this is the actual amounts, so this is the
28 reconciliation of the year prior, okay. So this reconciles

1 June 2012 to June 2013. Along with this document we got
2 another document stapled to the back that would be the
3 estimate for 2013/2014 and would show what we should pay
4 that year if everything was running along to keep things
5 current.

6 Now, Brooktrails has continued to pay during the
7 whole course of this litigation, even though we think we're
8 owed hundreds and hundreds of thousands of dollars, because
9 of course we have a real important service and we still need
10 to have our sewage treated, so we paid a set amount during
11 this whole time, and at the end of the day we'll either get
12 money back or we'll have to pay some money, we'll see.
13 That's up to you guys.

14 5013 operations. And you can just in your mind
15 put a slash there and it should say sewer plant, okay. That
16 top number is supposed to be what the sewer plant's
17 operations costs were for the year.

18 Fixed assets is irrelevant to this case.

19 Maintenance is the next department you got to
20 think of. And again we talked about it earlier. You're
21 going to put a slash collection system, that's Willits.
22 Brooktrails doesn't pay any of that. So the 5011 account
23 Brooktrails should never pay anything towards. They should
24 only be paying towards the 5013 account.

25 In, I don't know exactly when it was, it wasn't
26 clear from the documents, but I think it was around 2001,
27 2002, the city came up with an idea that they were going to
28 start a sewer engineering account. You'll see it's there,

1 it's 5014. The city had a city engineer for a long time.
2 They contracted with a company called Tom Herman until he
3 did a contract with SHN and then decided to join SHN to
4 build this plant. And now they have a gentleman named Tom
5 Annette (phonetic).

6 The engineering department, there is no sewer
7 engineering department. You can't go to the plant or
8 anywhere else in the City of Willits and go to a door that
9 says sewer engineering and walk in and talk to someone okay,
10 that's a fallacy. This is just an account. That's the only
11 place it lives in the world is right there on these bills
12 every year and in the city's budget at the time. There's no
13 people, there's no office, no computers, no surveying
14 equipment, no paper, no file cabinets, no nothing. This is
15 what we call an allocation, and you're going to hear a lot
16 about allocations.

17 Administration on this is an allocation too, the
18 5010 account, and that's a big problem in this case. Those
19 two allocation accounts, both administration and engineering
20 are allocations that the city is trying to put over into the
21 sewer fund for what should be benefits received by the sewer
22 fund. And then the city does two different things with
23 these two different accounts: The sewer engineering account
24 or the sewer engineering allocation, I'll call it, it gets
25 billed, if you look, over total shared operation costs
26 you'll see that 919 and below that you'll see that 73646,
27 and it matches the number over on the left. So they had
28 billed -- this is the bill that goes to Brooktrails. They

1 billed 100 percent of the sewer engineering department to
2 Brooktrails, okay. What you'll find out is city engineers
3 did do some work at the plant; they also did a lot of work
4 on the collection system. As you can imagine, there's roots
5 going into these pipes, they've got, you know, sink holes,
6 everything their little town has. And they've got to have
7 engineers that come and do drawings. Maybe they want to do
8 a major line replacement like they're doing now on Holly
9 Street up in Willits. And they have to have engineers work.
10 So when the engineers work for the maintenance department
11 they should bill the maintenance department and keep a
12 record and Brooktrails wouldn't pay for that. And the
13 evidence will show in this case that they worked a lot in
14 the maintenance department. They also worked for the
15 operations department. They kept no records. Not a single
16 record, at least that we've been produced. We have no idea
17 where those people were working or when they were working in
18 any year.

19 I asked their expert a gentleman, named Emmitt
20 Jones, who you'll meet. I asked him 2004/2005, how much
21 time should Brooktrails have been billed? We know they got
22 100 percent, which certainly isn't fair. He'll tell you
23 it's not fair. He'll tell you he agrees with us. How much
24 should they have gotten. He says, I can't tell ya. It's
25 somewhere between zero and 100 percent. Well, if PG&E came
26 to you and said, hey, pay me. I'm going to bill you 100
27 percent.

28 MR. BARTOLOTTA: Objection, your Honor.

1 Argument.

2 THE COURT: Sustained.

3 MR. O'BRIEN: So the evidence is going to show
4 that Brooktrails got billed 100 percent for this. And the
5 evidence is also going to show from our expert, their expert
6 and former city finance manager that that wasn't fair. And
7 so part of this case is trying to determine what to do about
8 that.

9 They also have an administration account. The
10 administration account -- it gets real convoluted, and I'm
11 going to try to explain it fairly quickly. This is a graph
12 that shows the administration charges that were billed to
13 the sewer fund over the course of 10 years.

14 Sewer. The sewer plant in this case is a fairly
15 static operation. It automatically treats sewage that flows
16 through it and there's a couple operators there that punch
17 buttons and do tests. And you think the administration of
18 that, they're writing the same number of checks every year
19 and they're managing the same number of people every year,
20 and you would think the administration would be kind of a
21 straight line, maybe going up a little, the cost of living,
22 but looks like the Sierras. In fact, it gets so bad by 2009
23 that the sewer fund is getting charged \$500,000 in
24 administration. The evidence will show the \$500,000 pays
25 the City of Willits to write about three checks a day and to
26 manage two and a half employees. And we'll ask the city
27 manager when she gets up here how much it would just cost
28 the plant to hire a full-time engineer and hire its own

1 full-time administrative person. I think it's going to be a
2 little less than 500 grand a year.

3 So it just keeps building and building and
4 building. And this is like an onion. Dean Holder had to
5 start peeling it back. And so that's what we've done.

6 The first thing that Dean holder figured out was
7 the overhead charges. That administrative account you saw
8 in the bill has a couple things to it; it has what's called
9 a direct staffing allocation, we'll talk about that in a
10 sec, and then it has this one line that says overhead. And
11 obviously you go overhead 250,000, what's in there. Well,
12 here's what's in there. The city, prior to 2011, took the
13 total of their overhead, which means the total of the city
14 admin accounts, the City Council the Finance Department the
15 Human Resources Department, the general administration
16 department, the city attorney, and they took about a million
17 dollars a year, round number. And there they were supposed
18 to divide it based on -- this is their allocation method,
19 and we have a problem with that, and they changed it in
20 2011. But even based on the way they thought they wanted to
21 do it, they were supposed to divide it between these other
22 agencies, which we'll call operations department, based on
23 the budgets of each one of those agencies. So the biggest
24 agency was another part of the general fund. So all those
25 admin departments, and then the first box, all exist in the
26 general fund top part, provides services to all the lower
27 parts. General fund has -- should be taking about 30
28 percent or 300,000 of that admin, if you use a million, to

1 spread out. That means other departments should be taking
2 their share based on their budget under the city's program,
3 which would have given the sewer fund 15 percent, okay.

4 The problem with what the city did up until 2011
5 when finally they kind of yielded to Brooktrails begging
6 them to do something as this mountain of administrative was
7 hanging over their heads, they hired a company called
8 Matrix. But before that, they just did it wrong and here's
9 what they did. And this is 2008. They got rid of -- they
10 didn't allocate any of the million bucks over there to the
11 general fund, to the police department or the parks or the
12 swimming pool. So they got a free ride on 30 percent of the
13 budget. And what did that do to all of these enterprise
14 funds? Well, instead of taking 15 percent the sewer fund
15 took 23 percent in 2008. The sewer fund took eight percent.
16 This is just a clerical error. The city won't admit it, but
17 it's just a clerical error. But this is what happened in
18 '08.

19 Now remarkably this same spreadsheet wasn't used
20 every year, and you'll see a bunch of those. Our accountant
21 is going the talk about them. So some years that general
22 fund, that box will get 10 percent, even though it was due
23 30 that year. Some years it might even get 20 percent, but
24 it changes every year. And there's a different spreadsheet
25 every year and we haven't figured out why.

26 In any case, in each of the years from 2005 to
27 2011, the sewer fund got way more administration than they
28 were supposed to, and that added up to a lot of money.

1 The next thing Willits did to try to allocate as
2 much as they could to the sewer fund was they did what is
3 called a direct allocation. Now the first allocation we
4 talked about, you know, this isn't the proper way of doing
5 it. You should look at the benefits received and hire a
6 company like Matrix, which they finally did in 2011. This
7 one is an unusual one, at least Dean Holder is going to say,
8 isn't nearly as common. And we'll call this staffing over
9 charges. Here's a City of Willits budget for 2012, '13 and
10 we saw the bill associated with this budget earlier, and
11 here's the sewer administration fund. And this is where all
12 this admin is dumping in, it's this account. Again, no door
13 you can go knock on. There's no people that work in the
14 sewer administration fund. It doesn't have any computers,
15 doesn't have bookkeeping software, doesn't have anything,
16 it's an allocation account. It's just there to accept money
17 from other departments in the city and pass it through to
18 the sewer plant, and some to the sewer collection system,
19 just a little bit.

20 And what they did here -- so in addition, if you
21 saw the bottom part of this budget -- I should have put it
22 on here. The next page, it shows the actual numbers and the
23 overhead numbers in there, that was what we just talked
24 about. That's a city-wide allocation. They actually went
25 and took the same positions that they already allocated
26 through the city-wide allocation, we talked about them,
27 right, these finance people, senior accountant, office
28 assistant, administrative assistant, finance director, city

1 manager, all those people are already allocated to the sewer
2 plant through the city-wide administration. We took 23
3 percent. We were supposed to get 15 percent in the slide we
4 saw earlier. And they reallocated them again.

5 And they put these -- here's the percentage that
6 they gave us of each one of those people's salary, okay.
7 And they put these into a payroll. You'll see it in the --
8 when we look at the general journals. These all went into a
9 payroll line, and it looks like the administration fund
10 actually has people working there. Well, they don't. This
11 is just another way to reallocate what's already been
12 allocated, and that's why this thing is getting to \$500,000,
13 because now we're paying part -- most of the city's
14 administration and a ton of people's salary.

15 We talked to some of these people. Finance
16 director says she works on budgets and audits and we're
17 going to meet her, her names Joanne Cavallari. She used to
18 work for the city, now she's down at Cloverdale. She said,
19 I didn't really work on the sewer plant. I did budgets half
20 the year, audits the other half. And those things do
21 benefit the sewer plant, and we receive our share of her
22 salary through the city-wide administration, which is
23 supposed to allocate that audit and budget. She never
24 worked directly. These are direct allocations. These are
25 saying she went over to the sewer plant and did work.
26 Never. She said the senior accountant didn't either.

27 Remarkably we also got the office assistant
28 Number 3. If you see next to the office assistant Number 3

1 what does the office assistant Number 3 do? They're the
2 utility billing clerk. Utility billing clerk is a person
3 who sends out the bills for the collection system to the
4 City of Willits, okay. What in the heck is Brooktrails
5 doing paying for the City of Willits to pay out, or bill its
6 customers? Brooktrails has its own utility billing clerk.
7 We bill our own customers. The evidence will show that's a
8 completely erroneous allocation. 20, then we got 30 percent
9 of that person's salary that's passed through to the sewer
10 plant, passed through to Brooktrails. So now we know that
11 for the years in question, Brooktrails was paying part of
12 Willits Police Department, their parks, their libraries, and
13 now we're paying to send out bills to their customers. It's
14 not fair. It's got to change.

15 Last way they get Brooktrails in this
16 administrative brouhaha is the way they divide up
17 administration between the plant and maintenance. And as
18 you can imagine, after you've heard all this, guess who gets
19 the lion's share of the administration? The plant and
20 Brooktrails. What they do in this allocation, is they take
21 the collection department and the operations department and
22 they combine them together, and what they do is they
23 multiply each budget by the total and they come up with
24 these two percentages. And what we learned, what Dean
25 Holder learned and what the evidence will show is that both
26 of these departments have a pretty similar number of
27 transactions, and both of these departments use a similar
28 amount of labor. The difference is the plant has some

1 really big bills, they pay 12 grand a month to PG&E.
2 Maintenance department pays a couple hundred bucks. Takes
3 the same amount of time to write a check for \$12,000 as it
4 does for 400 bucks -- maybe a little longer, it's an extra
5 zero, but it's close enough for government work.

6 So, if you took the PG&E bill out of this, what
7 happens? All of a sudden it goes from 80/20 down to 70/30
8 and we can do it over and over again, because the bills for
9 the plant just are bigger. There's not more of them. It
10 takes more admin to write more checks, not more admin to
11 write bigger checks.

12 So Dean Holder looked at this and he said, well,
13 you could use this method, but it doesn't really work here.
14 And we asked the finance director again, Joanne Cavallari,
15 hey, did you look into the general ledgers to see if this
16 was a fair way of doing this thing, because it could be a
17 generally accepted fair way to do things. She said, no, I
18 never looked, it's just the way we'd always done it. Asked
19 her that same question regarding all these things, no just
20 the way we'd always done it. And so Dean Holder looked at
21 it and said, really, what's driving the costs in both these
22 are the people and the maintenance department has about two
23 point three people and the plant has about two point eight
24 people, so let's split it up that way. So he went back and
25 did it based on human resources, managing people, and it
26 comes out to a fair split. The plant still pays a little
27 bit more, but we think it's okay.

28 So we're going to see spreadsheets that kind of

1 do these, fix these problems. Dean Holder is going to bring
2 spread sheets that fix these problems and ultimately show
3 what Brooktrails is owed back.

4 Getting back to engineering charges. I just
5 wanted to show you a budget. This is again a 2012/2013
6 budget. Sewer engineer department, remember, is being
7 billed 100 percent to the plant and 100 percent to
8 Brooktrails. And in fact even after Joanne Cavallari's
9 deposition the finance, former finance director, and even
10 after Dean Holder's deposition she was able to change the
11 contract and bill Brooktrails this new percentage based on
12 outflow. She knew at that point -- sorry. We got to
13 believe she knew at that point that everybody knew that this
14 was a problem, the plant shouldn't be getting a 100 percent.
15 Did she change it on the last bill that we just got two
16 weeks ago? No, still there. Brooktrails is still getting
17 100 percent.

18 What was the engineering department doing in
19 2013? Well, the City of Willits -- and we asked the finance
20 director, are you honest in these? Do you have to be
21 truthful? Of course you do. What were they doing? They
22 were developing a plan for installing a septic receiving
23 station. Brooktrails isn't suppose to pay for that either.
24 And we're going to talk about that in a minute. Plans and
25 recommendations for installing of a maintenance building.
26 Not an operations building, a collection building. The
27 plant may use a tiny bit of that, we don't know, but clearly
28 probably not 100 percent for the plant.

1 We're mapping a sewer map system for arc view,
2 arc view, a truck that they drive around the city and check
3 for pipes. Not for the plant at all.

4 Work towards developing a hydraulic model. I
5 don't know what that is, but I don't think it's for the
6 plant, not 100 percent at least. And they're doing a major
7 remodel of the Holly Street sewer line. So those are the
8 projects they were working on 2013. None of them relate to
9 the sewer plant in any way, but they keep billing 100
10 percent of this account to Brooktrails. They admitted it
11 was wrong and they refused to change it.

12 What happens with the sewer engineering? I told
13 you they started it a couple years earlier than this, but it
14 was tiny. Looks like the other chart. By 2008, 2009 -- oh,
15 incidentally, the height of crisis Brooktrails and the plant
16 are getting the 500 grand we talked about earlier from
17 administration, and now they have this other not real
18 account, we're getting another \$100,000, now we're getting
19 over charged \$6,000 a year, at least our percentage of that.
20 I added it all up for you.

21 I want to talk about one other thing real quick.
22 There's something called septage receiving. Septage
23 receiving is not what flows into the plant. You saw the
24 contract only discusses flows into the plant. Septage
25 receiving comes in a different way, it's driven in. And
26 there's actually, I think a gate out here now. A guy meets
27 a truck at the gate and they come in here. And first of all
28 they have to test the septage and they have to pump it so it

1 doesn't flow into the plant, it pumps into the plant. They
2 have to pump it into a tank and they keep all that septic.

3 A You'll find out from one of our experts John
4 DeBoise who's a PhD from Berkeley a sanitary engineer, this
5 is some nasty stuff. So unlike the regular sewer water
6 that's flowing in from your bathtub, which is mixed with
7 bathtub water and mixed with INI, all the things Dan talked
8 about, and gets pretty diluted by the time it gets to the
9 plant, this is -- I would say straight poop, that would be
10 gross. This is very toxic stuff.

11 And it has to sit there in the plant until --
12 excuse me -- sit there in a tank until somebody manually
13 turns a valve and allows a little bit to go in at a time
14 through the plant, and then they come out here and they bill
15 the guy, Roto Rooter or whoever brought it to them, and the
16 city makes a lot of revenue off of that. And they keep the
17 revenue. And they set up a separate account. And remember
18 we talked about how important it was that the plant didn't
19 get charged for other accounts. They've actually set up a
20 separate account in their budget called "septage receiving."
21 And they budget every year that septage receiving should be
22 getting a big chunk of the expenses, because obviously
23 they're making revenue. These guys are working in the
24 septage receiving business that the city is running. What
25 are they doing? At the end of the year you'll see zeros
26 when we look at those budgets. They never charge any actual
27 expenses. They budget to charge expenses, but they instead
28 put all those expenses over onto Brooktrails, and they bill

1 Brooktrails for the septage receiving too, even though the
2 city is making almost 200 grand a year off of receiving
3 septage. Brooktrails is paying a portion of that bill for
4 the city as well. It's a good deal if you can get it, all
5 in all.

6 Oh, the last quick thing. They also -- there's
7 just random mistakes. So the City of Willits -- and I don't
8 know if they're intentional or unintentional. The City of
9 Willits billed us for their rate studies. We already know
10 we're paying for their billing clerk. We also paid for
11 their rate studies, which is how they determined how to bill
12 their citizens. Not supposed to be billed for those. Those
13 are six or seven thousand a year, and they all add up.
14 First column over here, the total over charges. You'll see
15 that comes out to a lot. And then the rates that
16 Brooktrails paid, and you'll see the 23.62. You'd expect
17 that to change a little every year based on the meters, but
18 we were being billed based on what the city thought we
19 should pay. And then over there is the over charge.

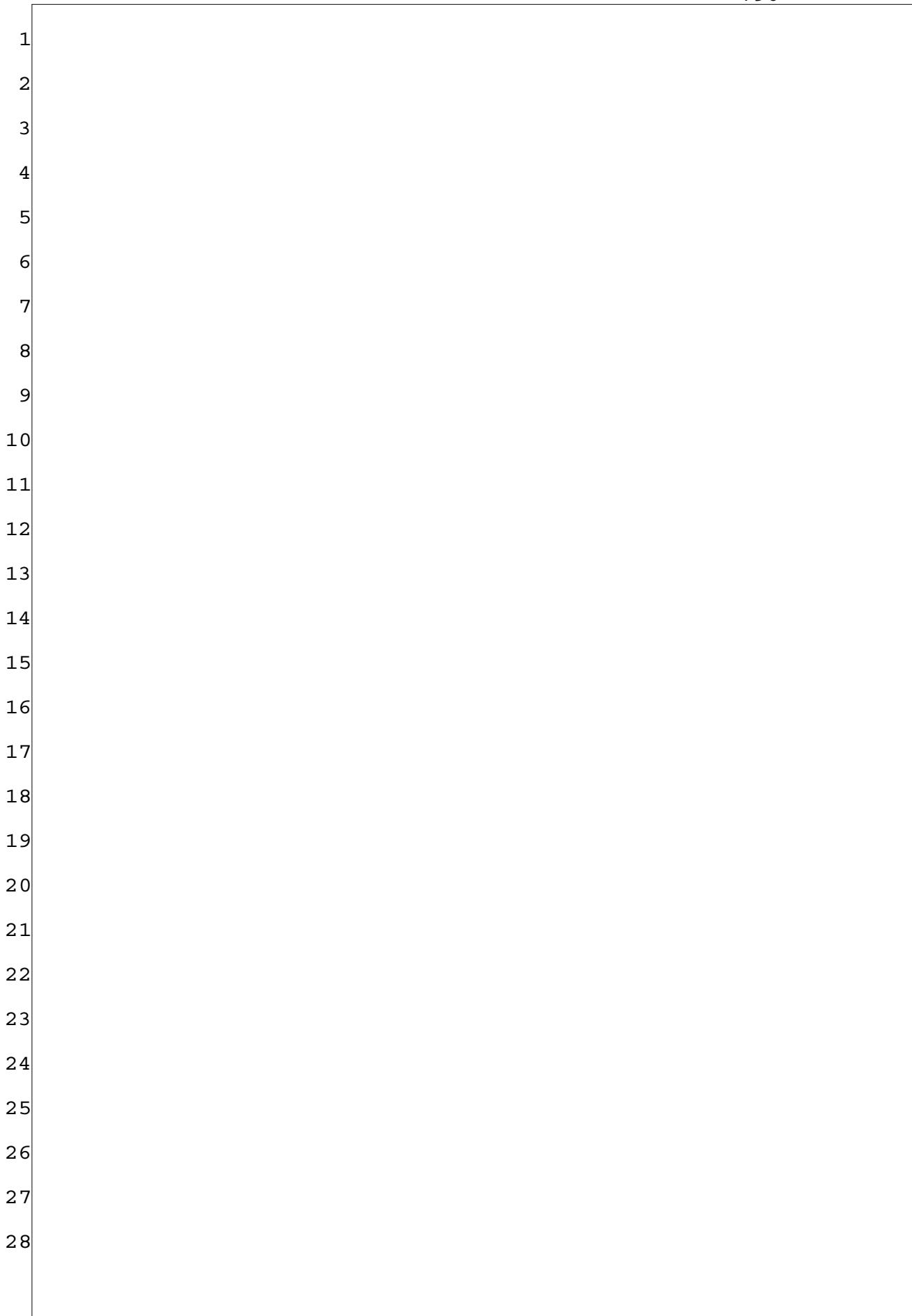
20 And now this chart it adds up to \$463,000.
21 There's going to be two more things that you're going to
22 hear to get your final number and you're going to have some
23 decisions to make at the end of this trial: One is how much
24 are those septage receiving costs that we're paying, and the
25 city is -- and we're getting no benefit for, and Dean Holder
26 is going to testify about that. It's pretty easy to figure
27 out, it's right on the city's website.

28 And then we're going to talk about that 23.62,

1 because I told you earlier that the city, the only agreement
2 that existed was this letter that Brooktrails sent back in
3 response to the city saying, hey, can we use 23.62. We said
4 yeah, two years. And when we get done we'll take the first
5 12 months and apply it retroactively. I told you about
6 that. Well the city just billed 23.62 percent for 12 years
7 and you think you can fix a meter, but it hasn't been fixed.
8 The next 12 months, Joanne Cavallari sent those flow numbers
9 over to Brooktrails for the next 12 months and it came out
10 to 19 percent. And so you'll hear evidence about that, and
11 you can make your own decision what you think is fair, what
12 to do with -- that number could be zero. They didn't have a
13 meter, there was no agreement change the agreement, so you
14 can decide zero, you can decide 19 or you can decide this 23
15 percent.

16 Now again, everything I've said up here is not
17 evidence. We're going to take in a lot of people, have a
18 lot of people on the stand that will explain this more
19 slowly and better than I have, but I -- hopefully I've given
20 you a little overview of what we're going to be talking
21 about and try to simplify it as much as I possibly can. And
22 thank you guys so much for being here. We can't do this
23 without having people willing to volunteer like you guys
24 are, so we really appreciate it.

25 THE COURT: Thank you, Mr. O'Brien. At this time
26 we'll take a 15-minute break, ladies and gentlemen. Please
27 remember the admonition, and then we'll hear from the
28 defendant city at that time. 15 minutes.



1 THE COURT: Back on the record in Brooktrails v.
2 City of Willits, parties and counsel are all present. Our
3 jurors are all here. It's time for defense's opening.

4 MR. FULLERTON: Thank you, your Honor.

5 THE COURT: If counsel's ready.

6 MR. FULLERTON: Good afternoon.

7 Again, my name is Ray Fullerton. I represent the
8 City of Willits. And, again, before we get started, I again
9 want to thank you.

10 As you may have figured out by now, we all think
11 this is a pretty important process and we appreciate that
12 you're here and the civil justice system is really the
13 cornerstone of civilized society and this is how we have
14 peaceful resolution of disputes.

15 So we do appreciate you going through this
16 inconvenience to be here.

17 Now, you've heard from Brooktrails and many of the
18 things they talked about we're going to address through the
19 course of this trial.

20 I'll address a few of them here. But it occurs to
21 me with the themes they were bringing out, didn't really get
22 to the core of the issue.

23 From our perspective this case is not about I & I,
24 it's not about this land speculation. It's not even really
25 about accounting of 400 and some thousand over the last ten
26 years.

27 This case is about a \$25 million improvement
28 project. It's about a ten-year regulatory process with

1 multiple agencies, a process that Brooktrails was involved in,
2 they're aware of and participated in, but they now say it
3 wasn't necessary and it provides no benefit to them.

4 This case is about Brooktrails repeated
5 acknowledging to the city and even to their own rate payers
6 that they have a responsibility to share in the cost of this
7 project, and now they say they don't have to pay.

8 This case is about Brooktrails entering into a
9 Fourth Amendment to the contract, acknowledging their
10 obligation and agreement that their attorney, Mr. Neary,
11 helped to draft, but now says that thing should be ripped
12 because they were somehow duped into entering into it.

13 And this is how in reliance on Brooktrails
14 statements, actions, and promise that the City of Willits
15 obtained more than 18-and-a-half million dollars in federal
16 loans to finance this project. And these are loans now that
17 Brooktrails say they're not responsible for.

18 Now, Brooktrails has been paying on the first loan
19 agreement, the \$10.2 million loan. They do so under protest.
20 And by way of this lawsuit, they seek have to have that Fourth
21 Amendment discarded. They want to leave the city holding the
22 bag on the entire cost of the project, pay nothing.

23 Meanwhile, the city has held up its end of the
24 bargain. All along it treated the waste that the Brooktrails
25 generates and it continues to treat every bit of the waste
26 they generate.

27 So we'll address the claim to I & I and the
28 accounting issues and whatever else Brooktrails wants to bring

1 up, but ultimately everything comes back to this plant and
2 it's why it needed to be built and how this case, essentially
3 about the city asking Brooktrails to honor its promise.

4 I have a presentation for you. It can't be possibly
5 go into the details of every interaction between these two
6 entities over the last ten years.

7 The amount of paper that this relationship has
8 generated would probably, you know, amaze you.

9 Even when going through witnesses, we'll probably
10 just scratch some of the surfaces, and hit the big points, but
11 through this presentation, I want to show you some of the key
12 points of the contractual relationship that goes back for
13 48 years, and some of the key issues in the case.

14 Then I want to show you what this plant is. To me,
15 I am not that familiar with accounting issues. Thank goodness
16 for my partner, Lee Bartolotta, has taken on that bear. But I
17 found that the engineering issues are quite fascinating. It's
18 something that I didn't think much about. You take for
19 granted what goes down the shower drain.

20 So here we are. The City of Willits, it's part
21 Mendocino County, a small town, north of Ukiah, population
22 just under 5,000. This is a small town. It may be one of the
23 overlying things of this case, that there are a lot of people
24 that know each other and a lot of things go on in a small
25 town. I grew up in a small town. Maybe that colors some of
26 the relationship.

27 The city is only 2.8 square miles. And this is an
28 overview. (Indicating) you can see the city's here, right at

1 the bottom of the valley, called the City Lake Valley.

2 The City of Willits has just under 2,000 households.

3 It's incorporated city. It has a mayor and a city council.

4 Holly Madrigal is here, is on the city council, and she served
5 a term of mayor as well.

6 Brooktrails are our neighbors. Population, just
7 over 3,000. Area is about 7.3 square miles. And in relation
8 to Brooktrails, it's up here in the mountain or the hills
9 above it. Brooktrails has about 1300 households. And those
10 are the parties.

11 So I want to talk about clean water and the history
12 of water. The history of wastewater and the treatment of
13 wastewater is a little bit frightening in ways. For the most
14 part, wastewater was either scattered in cesspools or dumped
15 directly into waterways throughout history.

16 As populations increased and became more
17 concentrated following the industrial revolution, waste became
18 a much bigger problem. Still it took many years, well into
19 the 20th century before the problem was seriously addressed in
20 terms of environmental protection.

21 The first permit for the City of Willits was
22 actually issued in 1951. The treatment at that time consisted
23 of a few ponds, where waste was stored for 45 days. After
24 45 days, it was deemed treated and dumped directly into the
25 creek. That was state of the art back in 1951.

26 As time went on, we as a society began to understand
27 that there's social benefits to treating wastewater. You
28 know, just 150 years ago big cities were big smelly,

1 unsanitary places. Improperly handled waste is a conduit for
2 disease and sickness.

3 Unfortunately, there's still far too many places in
4 the world that still have those kind of problems. But in the
5 United States regulation of point source discharge became a
6 point of emphasis in order to protect clean water.

7 As often the case, California has led the forefront,
8 was at the forefront of this effort. First, with the Dickey
9 Water Pollution Act in 1949, and then 20 years later, the
10 Colon-Porter Act in 1969. 1972, the federal government passed
11 a Clean Water Act which is modeled after the Colon-Porter Act.

12 The Clean Water Act set water quality standards and
13 implemented a permitting process that regulated discharges
14 into waterways called the MPBS Permit.

15 Pollution was the focus of the Clean Water Act and
16 the goal to protect water quality and fisheries. Wastewater
17 standards, it's regulated by state and federal law.

18 And as you'll hear in this case, one of the primary
19 regulators is a Regional Water Quality Control Board. And
20 they're empowered to federal, not only state law, but federal
21 regulation regarding water.

22 Now, you know during the voir dire process, there
23 was a discussion about how people feel about environmental
24 regulations. And I heard from some people who raised concern,
25 think that sometimes it goes too far. And I can understand
26 how, you know, in certain applications it can seem unfair. It
27 can seem burdensome when applied to an individuals through a
28 small business.

1 But this is the world we live in. And the City of
2 Willits is responsible for this plant and it's subject to the
3 same laws. It's not exempt by virtue of being a public
4 entity, so the city didn't have an option of ignoring the
5 board or anything else.

6 So the original agreement between the parties,
7 September 1967. Parties, of course, City of Willits and
8 Brooktrails. The basis for the agreement, is the recital of
9 the city constructed and owns a sanitary sewage treatment
10 plant, which provides primary and secondary treatment to
11 sewage.

12 The city -- Brooktrails, the public interest and
13 economy of the district will be served by -- a right of
14 disposal in city plant -- as plant rather than constructing
15 and operating its own plant."

16 And, of course, the capacity is measured by average
17 dry weather flow. Mr. Crowley brought up the Second
18 Amendment. This 1975, this is after the Clean Water Act has
19 been passed and the city was under order to construct
20 improvements to improve effluent quality.

21 Effluent is the treated wastewater that comes out to
22 the end of the process, water is either applied to
23 agricultural land or discharged into the waterways. And
24 you'll find that, you know, there are different rules about
25 when it's put into the creek versus when it's put on
26 agricultural land.

27 Generally, during summer months it will be applied
28 to the ground and there's no discharge into the creek. During

1 winter months, there's discharge into the creek. The outlet
2 creek is the creek. There's the picture there that right
3 right through the middle of the plant. This is not atypical,
4 especially for old plants.

5 Typically sewage treatment plants are built near a
6 source of water, near a discharge point.

7 So 1975, the parties amend their agreement to
8 clarify their rights and obligations under the contract. They
9 agree to share in the cost of the improvements and according
10 to the capacity rights. And the city has control over the
11 improvement and operational costs based on use.

12 So this is a plant where in exchange for Brooktrails
13 agreeing to help pay for upgrades that their waste is treated
14 based on the cost of that treatment.

15 In that agreement, parties also agreed to share in
16 the cost of future improvements. And this is where the Second
17 Amendment still has relevance to our case today.

18 There are two central basis for the sharing of costs
19 for improvement to the wastewater treatment plant. The first
20 one, the future quality improvements. It's to meet more
21 stringent effluent quality requirements by state and/or
22 federal agencies.

23 Again, the cost of those improvements are portioned
24 among the parties, the ratio of their respective dry weather
25 treatment capacity.

26 The other basis for upgrades is under Section 17 of
27 the contract. And it reads that all costs of replacement
28 plant equipment, machinery or facilities resulting from

1 breakage or obsolescence shall be apportioned in the ratio of
2 dry and dry weather flow capacity.

3 So those are the two bases, for water quality and
4 for obsolescence.

5 So after the 1975 agreement, construction began on
6 the wastewater treatment plant in Willits and finished in
7 1976, owned by the City of Willits, operated and maintained by
8 the City of Willits, treats wastewater for the city for
9 Brooktrails, for Meadowbrook Manner and Sherwood Valley
10 Rancheria.

11 And the picture in the right-hand side of the
12 original plant is still in place today.

13 The Third Amendment. I'm just going to touch
14 briefly on this. This was early eighties, 1981, I believe.
15 Minor changes to the plant to increase capacity. Essentially,
16 the only change was to raise the height of the berm around the
17 pond aeration basin.

18 Brooktrails gets additional capacity and during dry
19 weather, it's now 37.69. That's a number I am sure you'll
20 hear many times over and get sick of hearing many times over.

21 Just a quick overview of that original plant, back
22 in 1976, it's what they called an activated sludge plant.
23 What happened was waste would come into the plant, it would be
24 screened out for an inorganic matter, plastic and pieces of
25 rocks and things that end up in the pipes.

26 That water would be pumped and transferred into
27 aeration basins, these big ponds. These ponds were fitted
28 with, they're basically paddlewheels. Think about a

1 Mississippi riverboat with the center of the wheel about the
2 level of the wastewater, and they would spin quickly, add
3 oxygen into the wastewater. It encourages the growth and
4 multiplication of microorganisms that eventually breakdown the
5 waste.

6 After the water, the wastewater was processed in
7 these aeration basins, they would be transferred to a
8 clarifier where solids would be removed. And solids actually
9 are a very small amount of waste. Most of it is all liquid of
10 course. Solid makes up less than one percent. Generally the
11 wastewater that comes through a plant.

12 The clarifier, the wastewater would go into these
13 large vats where gaseous chlorine would be injected as a
14 disinfective measure. After the chlorine process, the water
15 would be then be discharged into the creek. That was the
16 entire process under the old plant.

17 The old plant had a number of limitations that are
18 relevant to our case. Had no ability to control nutrients,
19 which is an important requirement under the current permit
20 applied to the wastewater treatment plants. The City of
21 Willits is required to control the amount of total nitrogen,
22 which nitrogen, nitrates, nitrites, and this is something that
23 has been in the works and being implemented all over the North
24 Coast.

25 You may heard heard about nutrient concerns causing
26 about geo blooms or things that desecrate the water quality
27 for fish. And so it's a big concern with Regional Water
28 Quality Control Board.

1 And of course, there's no real ability to address
2 additional constitutes of concern as we move forward.

3 Now, moving forward to the year 2000, this plant is
4 showing its age. It approaches the end its design life.
5 You'll hear testimony these things last 25, 30 years and we
6 were getting there with this plant. It's been decades since
7 the last upgrade. This is a picture from inside the old Head
8 Works.

9 It was one of the things that was a problem in this
10 plant. I don't know why it was designed this way, but the
11 Head Works were the main processing area where waste comes
12 into the plant was built below grade. It was actually one or
13 two stories below grade. The first picture you saw where the
14 main treatment was two stories below grade.

15 One of the problems with that is that not only do
16 you have to deal with wastewater, but during flood events
17 where you have the creek overflowing or have surface water,
18 additional capacity, that has to be dealt with.

19 You'll hear from the people that had to operate this
20 plant and on occasion they'd be down in that room dealing with
21 the primary influent and have to wear waders because it's
22 overflowing, and at times that whole room would flood and rise
23 up to the top and interfere with the control mechanism.

24 In the event of repair, the equipment was obsolete.
25 One of the problems they couldn't get parts anymore. It was a
26 control cabinet, a room above the primary treatment area, and
27 when water came and flooded this and damaged the controls,
28 they couldn't get real replacement parts.

1 And it also poses significant safety hazard. That
2 rescue pipe, you'll hear from the operators, that's the main
3 ventilation down to that room below grade where they had to
4 work. So the plant had a lot of problems that need to be
5 addressed.

6 Around the same time, the state Water Quality
7 Control Board contacted the city and said that we have some
8 issues that we need to address.

9 There's the cease and desist order that Mr. Crowley
10 referenced in 2001. The plant was in violation of its permit.
11 And the city was required to find a solution.

12 There's actually a series of cease and desist
13 orders. I am sure they'll be shown to you at different parts.
14 And what the Regional Water Quality Control Board, it comes in
15 and says this needs to be addressed, and it sets timelines.
16 We want to see plans for a new plant, 50 percent by this
17 time. We want the new Head Works to be started by this time.

18 And so the City of Willits started evaluating its
19 options and developing a plan to upgrade this plant, both to
20 deal with its obsolescence and with the orders from the
21 Regional Board.

22 Now, as you might imagine there's multiple
23 agencies,, multiple regulatory agencies that have jurisdiction
24 over this, and so there's a lot to be done. It starts with
25 the environmental impact report.

26 The thing about the improvement project is that
27 Brooktrails was involved in the very beginning. The first
28 step, the environmental impact report identified two different

1 projects, alternatives. It's a comprehensive report, valuing
2 impact of the options to improve the plant.

3 Brooktrails reviews the report, provided comment.
4 There's always a public opportunity for the public to review
5 and make comments on environmental impact report, and
6 Brooktrails took advantage of that.

7 The report identified a need for additional land at
8 that time. So that the violation could be addressed, in 2003,
9 the city purchased the Niesen property and the Niesen property
10 is -- was uniquely situated in that it was contiguous to the
11 plant itself.

12 And you'll see you as we move on a portion of the
13 physical plant, the new plant that is actually built on that
14 property, and another portion is used for the wetlands that
15 are a part of the treatment process, the secondary treatment.

16 Other parts were necessary for environmental
17 mitigation. Anytime that you do a project like this, you need
18 to make sure that any wetlands that are lost, are made up for
19 some other place. So you have to secure land in perpetuity to
20 protect those wetlands. And it's also used for spray
21 irrigation.

22 So 2004, early 2004, the engineering report prepared
23 and evaluates, its engineering evaluation, the different
24 options to improve the plant.

25 Brooktrails actually assisted in the preparation
26 report. And there's specifically a thanks in the
27 acknowledgment section. Second person listed there is Mike
28 Chapman. He's the general manager of Brooktrails.

1 There are two options identified, the preferred
2 alternative, which was actually a ponding system with a system
3 of a number of ponds with less emphasis on mechanical. It was
4 a mechanical aspect of the plant.

5 However, not only the Regional Water Quality Control
6 Board, the Water Quality Control Board, but other governmental
7 agencies weighed in, that it was not the least environmental
8 damaging alternative, because of the ponding system. The
9 footprint was rather large, and so they said why don't you go
10 back to the drawing board and find something that didn't have
11 so much impact.

12 So the second alternative was addressed. Required a
13 greater overhaul of the plant. Improved the effluent quality.
14 But with this, it was even a larger need to have the Niesen
15 property. As it turned out, it became acceptable to the new
16 project.

17 Brooktrails weighed in on it. Mr. Neary, in fact,
18 evaluated the project and the regional board's decision to
19 disallow the first alternative and recommended going forward
20 with the alternative two.

21 So now we get to Brooktrails' obligation. So this
22 is an important point to me. There's a Fourth Amendment and
23 we're going to spend some time talking about the Fourth
24 Amendment. We'll get here.

25 But the rights and obligations of these parties
26 really stems from that Second Amendment. So even if
27 Brooktrails were to get rid of that Fourth Amendment, they
28 still have an obligation to contribute to the development of

1 this plant. And again, according to capacity, 37.69 percent.

2 Now, over the years, Brooktrails repeatedly
3 acknowledged its commitment to pay 37.69 percent. You'll hear
4 from Brooktrails, you'll hear from city witnesses, you'll see
5 records and minutes. This is not something that just came out
6 of the blue. It was something that was deliberated over for a
7 long time and many instances Brooktrails acknowledges its
8 obligation.

9 So it comes time for the Fourth Amendment. The
10 project must be financed. These are small towns. And so they
11 don't have that kind of money laying around. Fortunately,
12 U.S. Department of Agriculture provides these type of loans.
13 As you'll see, there is evidence presented as a condition of
14 giving the loan the USDA asks that another amendment be
15 executed, that the parties affirm their obligations and that
16 they have Brooktrails commitment so they will pay their 37.69
17 percent. That was the Fourth Amendment. So the parties agree
18 to the Fourth Amendment.

19 Brooktrails prepared the first draft. Mr. Neary
20 sent over the first draft of the agreement and it was really a
21 collaboration from two entities. They were passed back and
22 forth and they signed, at ultimately signed the Fourth
23 Amendment July 24th, 2007.

24 Brooktrails board passed by unanimous vote to sign
25 the agreement and they reaffirmed their obligation to share
26 costs, consistent with the Second Amendment.

27 This is the Fourth Amendment. And Mr. Crowley
28 talked a little bit about what it says and their portions that

1 they think are enforceable. Portions that, I don't know what
2 they say, but what they call recitals and recitals are at the
3 beginning of a contract and it sets forth the parties
4 understanding.

5 So recital F talks about some of the issues we've
6 been talking about. It says that the city and the district
7 wish to share in the cost of the new plant.

8 It says that the parties acknowledge that the total
9 cost, anticipated cost of this new plant described in the
10 other recital could substantially exceed the subject loan
11 amount. The parties acknowledge that 37.69 of the total cost
12 of the new plant shall be apportioned to the district and the
13 remaining shall be apportion to the city. Notwithstanding,
14 this amendment only addresses the first USDA loan, and it was
15 signed by the president of the Brooktrails board, the general
16 manager, who was also the secretary of the board of directors
17 and by Mr. Neary who approved this to form.

18 With the Fourth Amendment in hand, the city obtained
19 finance and improvement project beginning construction.

20 Brief mention about the Niesen property. And we'll
21 get into this in more detail during the trial. \$750,000.
22 That's what was demanded. That was the price that Mr. Niesen
23 set. This is part of what it was used for. This is a shot
24 from the -- to enhance wetlands, which provides a secondary
25 treatment for the wastewater treatment plant. It was --
26 turned out to be vital to the improvement project. We used it
27 for physical expansion.

28 It's the new discharge point after the enhancement

1 wetlands. And we also used portions of the property for
2 environmental mitigation.

3 You know, you'll see pictures of these wetlands, I
4 am going to go through the whole process. They look beautiful
5 with water and aquatic plants, but since it's part of the
6 wastewater treatment plant in the eye of the regional board,
7 it's the equivalent a parking lot. So for every acre that we
8 use up for that plant, even though it's, you know, it looks
9 like wetlands, we need to find other wetlands for mitigation.
10 That's what the environment mitigation is all about.

11 And, of course, at the time that all this is going
12 on, the Willits bypass is being put in and land was at a
13 premium throughout the valley.

14 Okay. The improvement project completed for
15 \$25 million below estimate. Now, this project changed form
16 over the years. At one point the estimates were \$31 million.

17 And you'll see documents and you'll hear testimony
18 about how Brooktrails acknowledged that this could be up to
19 \$31 million. They raised their rate payers monthly bills,
20 accordingly, preparing for that. Fortunately, it came in well
21 below that number.

22 Improvement project extends the life of the plant.
23 You know, hopefully, we'll have another 30 years, if not more.
24 This type of plant is easier to upgrade than the old type.

25 And here it is. This is the new Head Works.
26 Remember, before we showed some pictures of these rooms that
27 were below ground? They had the foresight this time to raise
28 it. This is the main center where waste is received and the

1 process begins.

2 These are the pumping stations for it. On the top
3 floor here, part of the process, there's a grit removal device
4 which takes the fine sands and solids which are very hard to
5 deal with in the treatment process and difficult and rough on
6 the equipment.

7 There's also an inorganic sorting at this place,
8 take out plastic and whatever else comes through.

9 The control room, the controls, where before were
10 susceptible to flooding and damage, are now enclosed in that
11 high building. The ability to control the treatment process
12 is also greatly enhanced.

13 These are the equalization basins that we referred
14 to before where waste can be stored, waiting to be processed.

15 So after the waste is sorted and goes through the
16 Head Works, fine solids are removed, the inorganic matters
17 removed, the waste is gone to these aeration basins and the
18 system that this plant is, is called a Biolac system.

19 So these basins are much more sophisticated than the
20 old simple ponds with paddlewheel that we used to have.

21 What this is, the second basins, what this does it
22 allows greater control over and manipulation of the process to
23 break down the waste.

24 Even though we're in the 21st Century and we have
25 all this technology, we still rely on a biological process.
26 There's bio organisms that are in there that break down the
27 waste like just in nature. Every time you have waste in
28 nature, it degrades and this is the way of speeding up that

1 process.

2 So with this system though instead of just aerating
3 and getting oxygen and hope those bio organisms produce, we
4 can actually manipulate it, these are blowers in the separate
5 building built. They're computer controlled, they not only
6 create aerobic zones, high oxygen zones, but also anoxic
7 zones. It's a process that's gone and back forth.

8 What that does there's certain micro organisms that
9 thrive on oxygen and there are others that will eat nitrogen.
10 And let's one of the goals of this, remove nutrients. That's
11 one of the capabilities that the old plant didn't have.

12 Certainly didn't have the ability to manipulate that
13 process. The micro organism will breakdown the waste, it
14 converts it, and you'll hear the experts tell you -- I am just
15 giving you an overview.

16 Nitrogen is released into the air. It breaks down
17 the nitrates and then so those nutrients are removed, so
18 they're not in the effluent when it's discharged into our
19 waterways. These are the control mechanisms for the blowers.

20 And we still have clarifiers. This is again to
21 removing solids. Now, however, we treat solids in a much
22 different way, whereas before the solids are put in this big
23 vat and allowed to percolate for a time in order to break
24 down. This is called a fan press. So it can bring in solids
25 into this device, they're dewatered, all the moisture is
26 pulled out of them. We can accelerate that process. This is
27 the control panel for the fan press.

28 And the next step, is the disinfectant step. This

1 is actually another part of the plant that has been
2 repurposed. These are old vats that were used to put the
3 wastewater in where the gaseous chlorine was injected into it.
4 That is kind of a dangerous process and for the workers, as
5 well. That's been eliminated.

6 Instead of using chlorine for disinfectant, we have
7 a series of UV generators here and so it relies on UV
8 disinfectant.

9 After that process, the wastewater is put into the
10 enhancement wetlands. These wetlands are constructed and one
11 of the features that they have is they process -- the
12 wastewater goes through a series of three different ponds and
13 the aquatic plants there pull additional nitrogen out,
14 additional nutrients, so that when it's discharged into the
15 outlet creek, which is a tributary of the Eel River, by the
16 time it reaches there, those nutrients are removed, so we have
17 a better habitant for fish. We don't have to worry about
18 algae blooms as much. These are pictures of the enhanced
19 wetlands as the wastewater removed. This is secondary
20 treatment. This is treated wastewater moves through the
21 wetlands.

22 At the far end of the wetlands, this is the new
23 discharge station. From this point, during the summer months,
24 the effluent can be piped out for spray irrigation on
25 agricultural land and in the winter months when the discharge
26 point, when the creeks are higher, you can discharge that
27 effluent into the creek, and this is the discharge point.

28 So that the process, this is Outlet Creek. This is

1 the creek we have to discharge our wastewater.

2 Now, Mr. Crowley talked a little bit at about
3 quantity versus quality. And that's going to be an issue
4 here. I mention that there a few different cease and desist
5 orders. One in particular, in 2006 the Regional Water Quality
6 Control Board ordered the city to prepare a variance request.

7 They say that the discharge isn't working. They
8 were required to discharge at a dilution rate of 1 to 100 for
9 every gallon going through, or every gallon of effluent, it
10 has to be 100 gallons in the creek before it could go in.

11 The problem, as you can see, Outlet Creek is not a
12 significant waterway.

13 And so especially during shoulder season, late in
14 the winter, early in the fall, there's just simply not enough
15 flow in the creek to meet that dilution rate.

16 So by virtue of upgrading the plant, creating a more
17 modern treatment process, adding nutrient removal, we're able
18 to get a variance from the Regional Water Quality Control
19 Board, so we're allowed to discharge at a rate 10 to 1.

20 It's a much higher quality effluent going into the
21 waterway and, therefore, we're allowed to have a higher
22 concentration.

23 Now, Mr. Crowley talked a lot about I & I, inflow
24 and infiltration. So I & I, of course, as he said, is water
25 getting into the collection system, not necessarily from your
26 bathroom. Sometimes water going -- pouring into manholes or
27 groundwater that comes up and seeps into the pipes.

28 And it can increase the amount of hydraulic load on

1 the wastewater treatment plant.

2 Brooktrails suggests that the only reason we had to
3 upgrade this plant was to deal with this I & I, this hydraulic
4 load. There's a few things that are wrong with that. First,
5 you'll find, the evidence will show that some of the times
6 that the hardest time meeting the dilution ratio was not
7 during storm events at all. In fact, when there's a storm
8 event, when there's high I & I, we also have corresponding
9 high flows in the creek, so the creek is raging and the volume
10 is high, and we'll be able to discharge a lot more effluent.

11 And the problem comes in the wintertime when we're
12 not allowed to discharge to agricultural lands, especially dry
13 winters when the creek is low, but -- and there's no I & I
14 because it's not raining, but we have waste coming into the
15 plant from our communities that need to be treated and need to
16 be discharged.

17 This new plant, we're able to increase the rate of
18 discharge because of that higher quality of treatment.

19 As you might imagine, was not something you just go
20 out and do. It's been studied left and right and upside down.
21 Been approved by the Regional Water Quality Control Board.
22 Been approved by the Army Corp. of Engineers. And, of course,
23 it's been reviewed by the U.S. Department of Agricultural.

24 Before we can get financing, they had to know
25 what kind of plant we were going to build and they had to be
26 on board.

27 It's also proved by Brooktrails Township, and that's
28 what the Fourth Amendment was all about.

1 Brooktrails, in fact, retained its own engineer to
2 review the project and what did they look at, they looked at
3 the plans, specifications, cost estimates, they raised to
4 objection.

5 One of the things that Mr. Crowley also brought up
6 was this issue about capacity. Well, before this plant was
7 built those plans, specifications went to their engineers who
8 did a review, did an analysis and, in fact, they said, well,
9 the design plan says 1.18, we think it's 1.22 million gallons
10 a day that was provided to Brookfields.

11 Mr. Neary, you'll see, says we've had our expert
12 look at this, we have no concern over capacity whatsoever.

13 So they had an opportunity to do so. They raised no
14 objections.

15 Now, eventually, Brooktrails reverses course. They
16 now claim they're not obligated to share in the cost of the
17 improvement project.

18 They've paid the first USDA loan under protest.
19 They actually started paying on the second loan, changed their
20 mind and then credited themselves back for the payments they
21 already made.

22 And obviously, they refused to pay for the Niesen
23 property, even though it is the vital portion of this project.

24 They, of course, allege improper accounting
25 practices. The evidence will show that the improvement
26 project was absolutely necessary.

27 Increased influent quality, replaced an obsolete
28 plant. And it's going to have a plant that is going to serve

1 these communities for many years into the future. It's
2 designed to meet the new regulations. And of course,
3 Brooktrails is included from the beginning. They participated
4 in important decisions. They repeatedly acknowledged their
5 responsibility, as for the cost of the plant, and repeatedly
6 represented they would share the costs.

7 And the city continues to treat Brooktrails
8 wastewater, that's one thing that is constant in this case,
9 has not changed and that was their promise. The city promised
10 the original agreement for the disposal of sewage of
11 Brooktrails improvement project. So the city lived up to its
12 promise. Brooktrails has not.

13 There's a couple other items I want to address.
14 First, the accounting issues. Again, not my particular area,
15 but the main complaint we have from Brooktrails is the method
16 of allocating administrative expenses. As you heard from Mr.
17 O'Brien's representation, it's not an easy, simple thing to
18 understand.

19 It's something that we're going to work through
20 through witnesses. And, you know, you'll see it. They
21 complained the administrative expenses have increased over the
22 years. It's a complex issue, and I am not even the one to be
23 able to tell you the defenses and the issues, but we're going
24 to spend some time looking through these sheets and
25 understanding what they mean.

26 You're going to hear from our current financial
27 director, Susan Holmes, you'll hear from the former finance
28 director, Joanne Cavallari, and I think I understand it that

1 Ms. Cavallari will be on soon. Maybe tomorrow.

2 Ms. Cavallari actually worked for Brooktrails. She
3 lives in Brooktrails. She left Brooktrails to go work for the
4 City of Willits. So she's had experience on both sides of
5 this. She's no longer an employee at the City of Willits, but
6 she is still loyal and she'll be here to talk.

7 Both of them will testify in detail how they
8 calculated the bills that were sent to Brooktrails. The
9 method of cost allocation and the entire budgeting process.

10 You'll also hear from Emmitt Jones, who is our
11 expert. Emmitt is a CPA up in Ukiah, and his opinion. You
12 know, the allocation complete by Willits were reasonable under
13 the circumstances and they comport with good municipal
14 accounting practices.

15 Another idea that was brought up in opening that I
16 feel I need to address quickly was this metering issue.

17 It's true that we've had issues with the meter at
18 the wastewater treatment plant. The parties got together,
19 realized years ago, I believe it was 2005 or thereabouts, that
20 they didn't have a proper meter. And agreed to this
21 allocation albeit for a short amount of time, that
22 23.62 percent has been carried forward.

23 We hope with the construction of a brand new plant,
24 we have a brand new meter and that issue will be behind us.

25 Unfortunately, while we designed a beautiful meter,
26 it was not constructed properly. So there's some construction
27 issues that are ongoing. We were a deal right now with the
28 contractors. It wasn't built to the design plans.

1 I want to let you know though what we're talking
2 about. This type of meter, it's not like a PG&E gas meter or
3 a water meter at your house.

4 This is what they call a parshall flume.
5 Essentially, it's constructed, maybe an underground trough, is
6 a good way to put. It's several feet deep. Water is funneled
7 into this trough, supposed to be built to a specific gradient
8 and specific dimensions and then there's a meter that stands
9 on top of it and shoots a pulse and measures the distance from
10 the water back to the meter. By doing that, it can calculate
11 the volume going through this. It's not just replace a dial
12 or a valve. It's a large, underground concrete constructed
13 meter.

14 Few different problems, actually multiple problems
15 so we're dealing with that. One of the problem that
16 downstream you're supposed to have a nice, smooth, constant
17 stream through. It's constructed with some problems and edges
18 that cause eddies and backflow. And so, the problem, too,
19 it's not just off by one amount, the margin of error is going
20 to depend on how much water is going through it.

21 So maybe if it's a nice easy middle of the road
22 flow, it might be fairly accurate. If it's a very low flow or
23 more importantly high flow, it tends to be inaccurate, but
24 it's being dealt with.

25 But we have not had an influent meter for a number
26 of years. We've had experts come out and look, independent
27 experts. People who designed it, looked at it. People who
28 built it, we've had out to fix it. We've had other

1 independent engineers look at it, multiple people.

2 All of them agree that it's not working correctly.

3 And there's not really a way to calibrate it or at least
4 that's not something that is clear.

5 Some the experts have looked at this and said, well,
6 influent meter is not working well, but you have a perfectly
7 good effluent meter. This meter is UV, disinfection process
8 before it goes into the wetlands, there's what they call a mag
9 meter. It's one of the most accurate meters. Whereas this
10 parshall flume is a plus or minus five percent, mag meter is a
11 .04 percent. So or .4 percent. It is a very accurate meter.

12 True, it's not influent meter. So as Mr. O'Brien
13 pointed out, well, there's some issue with that, what about
14 evaporation, what about solids. Well, the thing is those
15 things can be calculated and we have engineers and as it turns
16 out evaporation in solids amount to less than one percent of
17 the total flow. Even with that, this is a much more accurate
18 measure. It's well within the margin of error of that partial
19 flume.

20 So the city suggested, let's use the 002 effluent
21 meter. Brooktrails has been resistant to that, and that's
22 fine.

23 You mention that, well, we went out and put two
24 other meters to test. That was at Brooktrails suggestion.
25 Why don't you go out and put a float on the effluent and use
26 that.

27 Well, float area, we don't have a place to install
28 it. It's appropriate, there's two places that would work.

1 But for a temporary, so we put two floaters in, we put it
2 together. And what we found out was what we kind of knew all
3 along is that the parshall flume was overreading and that the
4 flows are consistent with the effluent meters. That's what
5 that is all about. They have an expert that says, wait a
6 minute, wait a minute, what if your ponds are leaking. I
7 don't think much of that idea and we'll hear experts and
8 you'll make that decision, whether that's something that
9 should even be considered.

10 The expert never tested for leakage. He never did a
11 ground level water test. He never did a bore hole. He's just
12 using the broken meter and the other meter and saying there's
13 a difference. I don't know if you'll find it to rely on.
14 That's the meter issue, I wanted to address.

15 Again, to me, it's a little bit of a collateral
16 issue from what we're talking about. This case is really
17 about this plant, whether it was necessary and whether
18 Brooktrails is to be held to their promise to pay their share
19 of the plant.

20 One more thing, although, the city has a significant
21 claim, Brooktrails actually filed a lawsuit first. So they're
22 the plaintiff. They get to go first. They got to go first in
23 opening and during voir dire and they get to call witnesssed
24 first. That's the way our system works.

25 But as they present their case, I want you to keep
26 in mind that there is another side of the story and that
27 you're going to hear from city witnesses, you're going to hear
28 from city experts. And you need to hear all the evidence

1 before you really understand what is going on, before you make
2 up your mind.

3 And I appreciate your time and I thank you. And
4 that's it.

5 THE COURT: All right. Thank you, Mr. Fullerton.

6 Ladies and gentlemen, what I'd like to take about a
7 five-minute stretch break, if anyone needs it. And then we're
8 ready with your first witness, Mr. Crowley.

9 MR. O'BRIEN: Yes. I believe she's out in the
10 hallway.

11 THE COURT: Mr. O'Brien, let's have that witness
12 ready at 3:30, 3:30. Let's take a five-minute stretch and a
13 short break.

14 (Recess taken: 3:27-3:34 p.m.)

15 (Whereupon the following matters were heard in open
16 court, in the presence of the jury.)

17 THE COURT: We're now convened inside the presence
18 of ladies and gentlemen of the jury and our alternatives. And
19 first witness is present.

20 If you'll please rise and face the clerk to be
21 sworn.

22 (Whereupon, the Court Clerk placed Ms. Adrienne
23 Moore under oath.)

24 THE WITNESS: I do.

25 THE CLERK: Thank you.

26 THE CLERK: State and spell your full name for the
27 record.

28 THE WITNESS: It's Adrienne, A-D-R-I-E-N-N-E,

1 M-O-O-R-E.

2 THE COURT: Counsel, ready?

3 MR. O'BRIEN: Sure I am. Let me grab a few things.

5 DIRECT EXAMINATION

7 BY MR. O'BRIEN:

8 Q. Good afternoon, Ms. Moore.

9 A. Good afternoon.

10 Q. I am Patrick O'Brien. I believe we met in the
11 hallway and maybe once before, and I am counsel for
12 Brooktrails in this case.

13 And we have a few questions we want to chat with you
14 about.

15 So what you do for the city?

16 A. I'm the city manager.

17 Q. How long have you been a city manager?

18 A. Since January of 2013.

19 Q. And what did you do before that? Did you work for
20 the City of Willits?

21 A. I did. I worked for the City of Willits since
22 December of 2009, previously as the human resources director
23 and city clerk.

24 Q. What did you do as the human resource director?

25 A. Managed our personnel program.

26 Q. Was that for the whole city?

27 A. Yes.

28 Q. Including the sewer employees?

1 A. Yes.

2 Q. The sewer engineers?

3 A. Yes.

4 Q. And as city clerk, what did you do?

5 A. Managed the agendas and minutes for the city
6 council, amended the meetings, beyond council meetings,
7 commitment meeting, standing commitments, record requests, so
8 on and so forth.

9 Q. Do you have any specific experience of being a city
10 manager, other than being a clerk and a human resources
11 person?

12 A. As a city manager prior to this, no.

13 Q. Have you gone to any classes or CV or anything like
14 that, continuing education, that kind of thing?

15 A. I've attended various conferences and trainings
16 through various organizations.

17 Q. Why don't you explain for us, what the city manager
18 does?

19 A. Well, manage the city. In our case, we have public
20 safety and public works is our primary function. We have an
21 airport and various recreational facilities and an art center.

22 So under public works, we have water and sewer
23 operations and streets and parks maintenance.

24 Q. And you're responsible to report to the city
25 council?

26 A. Yes.

27 Q. And also to the citizens, to some extent the
28 citizens of Willits; is that correct?

1 A. Correct.

2 Q. And when you report to them by either agenda or
3 minutes, you have to be honest, right?

4 A. Yes.

5 Q. Super important?

6 A. Yes.

7 Q. Both to the council and the citizens?

8 A. Yes.

9 Q. And you also deal with Brooktrails as well?

10 A. Yes.

11 Q. You've written them letters and correspondence and
12 whatnot, correct?

13 A. Yes.

14 Q. When you correspond with Brooktrails that you have a
15 duty of honesty?

16 A. Of course.

17 Q. You understand that although you weren't there and
18 neither was I, in 1967, an agreement was signed, right?

19 A. Yes.

20 Q. Have you reviewed those agreements?

21 A. I have. I am not versed on them verbatim.

22 Q. You have a general understanding of what they say
23 and what the duties of the two parties are.

24 I am going to ask you a couple of questions first
25 about the Second Amendment. Can you look at your binder and
26 look at that exhibit, I think it's three in your binder. I
27 think it's open.

28 A. Yes.

1 Q. Is that the Second Amendment?

2 A. It is.

3 Q. Can you just leaf through that and see if that's the
4 one you remember reviewing?

5 MR. BARTOLOTTA: Also, be noted that the Third --

6 MR. O'BRIEN: I think it might be, too. I am asking
7 to use the binder. If you care, it's part to the third.
8 Let's mark them both or admit them both.

9 MR. BARTOLOTTA: That's fine.

10 THE WITNESS: Yes.

11 MR. CROWLEY: I am going to ask you a lot of
12 foundational questions. I am going to ask to move this
13 exhibit into evidence. I don't think there's any objection.
14 I think we agree the agreements can come in.

15 MR. BARTOLOTTA: Stipulated.

16 THE COURT: All right. It is admitted into evidence
17 then. It may be published to the jury as you find
18 appropriate.

19 MR. O'BRIEN: If my computer was working, I might
20 publish it.

21 MR. BARTOLOTTA: Mr. O'Brien?

22 MR. O'BRIEN: Yep.

23 MR. BARTOLOTTA: And the Court, the Third Amendment
24 is also Exhibit 4. Maybe we want to remove the Third
25 Amendment from Exhibit 3.

26 THE COURT: Thank you. Yes.

27 MR. O'BRIEN: The source is automatic on this thing.
28 He changed it. Let me change this. Sorry.

1 THE CLERK: Counsel, can I get clarification, did
2 you request to request 3 and 4 into evidence?

3 MR. O'BRIEN: No. Just three, but within three for
4 the record is the Second and the Third Amendment to the
5 agreement between the City of Willits and Brookfields.

6 MR. BARTOLOTTA: And I've requested that the Third
7 Amendment be removed, because it's also Exhibit 4.

8 MR. O'BRIEN: No problem.

9 MR. CROWLEY: So it just the Second Amendment.

10 MR. O'BRIEN: Okay. We'll fix your binder. Don't
11 worry about it for now. I apologize. There's probably other
12 errors because this binder is eight volumes.

13 BY MR. O'BRIEN:

14 Q. I want to follow up on something your counsel just
15 said in his opening statement. He made a comment that Willits
16 has always lived up to their agreement and Brooktrails wasn't
17 living up to their part of agreement.

18 And I want to ask you first about Section 14.

19 If you can turn to that?

20 A. Sure.

21 Q. Have you read Section 14 before?

22 A. I believe I have at some point.

23 Q. And Section 14 requires that the city delivered to
24 Brooktrails by October 1st an audited statement, correct?

25 A. Yes.

26 Q. And has the city, in your -- to your knowledge since
27 you've been there ever complied with Section 14?

28 A. Since I've been at the city, I really couldn't speak

1 to prior to my position of city manager because I wasn't as
2 involved.

3 In the last two years, we have not.

4 Q. And you haven't delivered the audit that was due
5 this last October yet, have you?

6 A. That's correct.

7 Q. Do you understand why getting an audit in a timely
8 fashion is important to Brooktrails?

9 A. Yes.

10 Q. They needed to set their rate, right. Uh-huh, yeah.

11 Q. Are you aware of the fact that in some years
12 Brooktrails didn't get their audit for up to two years after
13 the end of the fiscal year?

14 A. Yes.

15 Q. And would that make it very difficult for them to
16 set their rate for their customers?

17 A. Probably so.

18 Q. So at least with regard to Section 14 in your
19 memory, the city has not lived up to that, have they?

20 A. Not in my understanding.

21 Q. Not in any understanding that you know of, correct?

22 A. Again, for the last two years where I've been
23 directly involved, yes.

24 Q. That's all I was asking, as far as you know the city
25 has not lived up to this portion of the agreement, correct?

26 A. Yes.

27 Q. Let me turn your attention to Section 16 of the
28 Second Amendment.

1 I am going to take a pause every once in a while for
2 ten seconds.

3 Section 16 is a crucial portion of this contract and
4 it refers to how the operating costs will be apportioned,
5 correct?

6 A. Yes.

7 Q. And you understand that Brooktrails is only supposed
8 to be billed for its flow into the plant based on this
9 section, correct?

10 A. Yes.

11 Q. And they're not supposed to be billed for any other
12 part of the city, correct?

13 A. Correct.

14 Q. And do you understand from Section 16 that the city
15 is responsible to meter the total flow entering, entering the
16 treatment plant?

17 A. Yes.

18 Q. And has the city, since you've been there,
19 accurately measured the total flows entering the sewage
20 treatment plant?

21 A. Again, are we talking about the last two years?

22 Q. Yes, during your experience.

23 A. Okay. No, there has been inaccuracies.

24 Q. And prior to the new plant being built with the
25 meter that you're dealing with which is inaccurate, the meter
26 was just broken, right, for a long period of time?

27 A. That's my understanding.

28 Q. And you would know that because you were the clerk

1 and sat in on city council meetings and whatnot, correct?

2 A. Yes.

3 Q. And so the city hasn't in your memory at least,
4 there hasn't been a single year since you've been at the city
5 that the city's lived up to Section 16, right?

6 A. I really can only speak about the last two years.

7 Q. Other than the issues involved in this litigation,
8 which obviously the jury and the Judge will decide, are you
9 aware of Brooktrails being a deadbeat payer or have they
10 generally paid on time, other than the issue in this
11 litigation?

12 A. Actually, I don't know.

13 Q. I'd have to ask Joanne Cavallari that?

14 A. Yes.

15 Q. Or somebody else?

16 A. Yes.

17 Q. Okay. I want to ask you also about another clause
18 -- well, really, it's again about section -- well, it's about
19 a whole bunch of sections together, but the original
20 agreement -- whoops, that's not in evidence yet. Sorry, your
21 Honor.

22 We'll come back to that.

23 Follow up on the meter issues, you sent a letter --
24 let me find it -- which is in front of you.

25 What date is that letter?

26 A. February 19, 2015.

27 Q. Did you draft this letter?

28 A. It was drafted in collaboration with public works

1 director, the finance director and our attorney and myself.

2 Q. Which attorney? Don't tell me what the attorney
3 said. Was it Jim Lance?

4 A. Yes.

5 Q. And did you sign this letter?

6 A. I did.

7 Q. Can you look at that copy of the letter with the
8 attachments and tell me if it looks like a true and correct
9 copy of the letter that you wrote or helped write and sent to
10 Brooktrails?

11 A. Yes.

12 Q. Can you tell me what the sticker on the front of
13 that says, what number?

14 A. Exhibit 330. ID 319 and case number SCV 253175.

15 MR. O'BRIEN: Your Honor, at this time I move to
16 admitt into evidence Exhibit 330.

17 THE COURT: Any legal objection?

18 MR. BARTOLOTTA: No objection.

19 THE COURT: 330 is admitted.

20 (Whereupon, Exhibit 330 was admitted.)

21 BY MR. O'BRIEN:

22 Q. Now, just to go back to your experience at different
23 training programs and whatnot with regard to being the city
24 manager, you learned during those different training sessions
25 what the best practices are for municipal managing, correct?

26 A. Yes.

27 Q. And you try to follow those on a day-to-day basis of
28 the city?

1 A. Absolutely.

2 Q. Do you try to follow those when you're drafting
3 letters such as the one we're looking at, Exhibit 330?

4 A. Yes.

5 Q. And did you try to follow those best practices when
6 you reviewed the invoice to Brooktrails --

7 A. Yes.

8 Q. -- attached to this letter?

9 A. Yes.

10 Q. And you've always done that the whole time you've
11 been city manager?

12 A. Yes.

13 Q. You tried to do it when you were the city clerk or
14 human resources manager in those positions, right?

15 A. Yes, absolutely.

16 Q. Another thing your counsel said in opening was that
17 you suggested to Brooktrails that the effluent meter would be
18 used to measure inflows.

19 But this letter doesn't say we're suggesting we're
20 going to use inflow or effluent meter, does it?

21 A. Sorry. Give me a moment.

22 MR. BARTOLOTTA: Objection. Vague.

23 THE COURT: If you understand the question, you may
24 answer it.

25 THE WITNESS: Okay. So, I -- perhaps I am not clear
26 on the question. It does discuss the effluent meter.

27 THE COURT: Thank you. You can rephrase it,
28 counsel.

1 BY MR. O'BRIEN:

2 Q. Did you consider this letter to be a suggestion to
3 Brooktrails that you were going to use the EFF-2 or the
4 effluent meter or were you tell Brooktrails you were going to
5 use the EFF-2 meter?

6 A. Yes. We were suggesting that this was the best
7 meter to use for accuracy. And I -- in my belief we were
8 informing them that we would be doing this.

9 Q. Okay. That's the answer, right, you were informing
10 them that from here forward you were going to use the effluent
11 meter to measure inflows, correct?

12 A. Well, there -- while there was an issue existing,
13 yes.

14 Q. Did you call Brooktrails prior to sending this
15 letter and say, hey, let's have a meeting and try to work this
16 out?

17 A. No.

18 Q. Did you ask your lawyer to call us and try to work
19 it out?

20 MR. BARTOLOTTA: Objection. Settlement discussions.

21 MR. O'BRIEN: That may be attorney client. I'd
22 withdraw the question, your Honor.

23 THE COURT: All right.

24 BY MR. O'BRIEN:

25 Q. Did you suggest to the city council that they should
26 call Brooktrails city council and discuss with them or suggest
27 to them, as counsel referred to it, that the EFF-2 meter would
28 be a good one to use?

1 A. I did not suggest that they call them. We had
2 ongoing communications taking place.

3 Q. So, and let's discuss the EFF-2. You understand
4 what EFF-2 is, right?

5 A. Yes.

6 Q. You talk about it in this letter, right?

7 A. Yes.

8 Q. I am going to show you a graph. Where is -- let me
9 see if I can stand here. Where is the EFF-2 meter, somewhere
10 up in this area? (Indicating.)

11 A. No.

12 Q. Where is it?

13 A. It's near the Head Works.

14 Q. That's where you think the EFF-2 meter is?

15 A. I think so.

16 Q. Okay. There's an inflow meter near the Head Works,
17 correct?

18 A. I think so.

19 Q. And you're not suggesting in that letter, that the
20 inflow meter was used?

21 A. No.

22 Q. You understand EFF-2 measures fluids going out of
23 the plant after it's been treated, right?

24 A. Yes.

25 Q. And EFF-2, whatever it is, and we'll have your
26 public works director here, maybe tomorrow, to discuss the
27 exact location, you understand that EFF-2 doesn't measure
28 inflow, does it?

1 A. I understand that.

2 Q. It only measures out flows, correct?

3 A. Yes.

4 Q. And you understand that Section 16 of the Second
5 Amendment requires the city to measure flow entering the
6 plant, correct?

7 A. Yes.

8 Q. And yet you wrote a letter on February 19th, 2015,
9 telling Brooktrails, not asking them, not suggesting it to
10 them, but telling them that you were now going to use the
11 effluent meter, correct?

12 A. Yes.

13 Q. And you, in fact, changed their bill, correct?

14 A. Yes.

15 Q. And you changed their bill up to 27.3 percent,
16 right?

17 A. Yes.

18 Q. And that's up from the 23.62 percent you'd been
19 using for the previous 13 years?

20 A. Yes.

21 Q. If that percentage from EFF-2 had been lower than
22 23.62 percent, would you still have sent this letter?

23 MR. BARTOLOTTA: Objection. Speculation.
24 Argumentative.

25 THE COURT: On both grounds, sustained.

26 BY MR. O'BRIEN:

27 Q. The period, did you look at -- since you were
28 revising, this was really a revised bill, wasn't it?

1 A. Yes.

2 Q. You went back and revised the bill that you already
3 sent for 20 -- let me get it right -- 2012, '13, right?

4 Strike that.

5 2013, '14? Right?

6 A. Yes.

7 Q. Did you go back and look at the other bills --
8 strike that -- the other periods of time since the influent
9 meter had been put in, that you knew wasn't working, to adjust
10 Brooktrails bill for that period of time?

11 A. I personally did not.

12 Q. Did anyone?

13 A. Yes.

14 Q. Who?

15 A. Our finance director.

16 Q. Why didn't she send out revised bills?

17 A. I believe our intent was to go forward with a more
18 accurate measurement.

19 Q. Well, did we knew -- we know you revised one bill
20 which increased Brooktrails bill, right?

21 A. Yes.

22 Q. Would it surprise you to know the 2011, 2012,
23 readings would have put Brooktrails bill at 19 percent?

24 A. I am not aware of that of.

25 Q. That would have, Brooktrails paid 23.62 percent that
26 year, right?

27 A. Yes.

28 Q. So that would have been in Brooktrails favor, right?

1 A. Yes.

2 Q. But you guys decided not to change that bill, right?

3 A. I have no knowledge that we looked at how that was
4 reviewed.

5 Q. Do you believe the City of Willits can unilaterally
6 change this contract?

7 MR. BARTOLOTTA: Objection. Argumentative.

8 THE COURT: That calls for a legal conclusion,
9 sustained.

10 BY MR. O'BRIEN:

11 Q. Do you understand in order to change the meter that
12 you would use to bill Brooktrails and instead of billing them
13 based on the inflow, based on the outflow, just as a layperson
14 person using best practices, do you understand you need to
15 talk to Brooktrails Township and get their approval to do so?

16 A. Well, again, we've had ongoing written
17 communications about the accuracy of the meter, and this
18 letter was to lay out a more accurate measurement.

19 Q. I am not sure you understand answer my question. I
20 can read it again or if you remember my question, if you'd try
21 try to answer it more specifically.

22 A. If you could restate it, please.

23 Q. Okay. Do you understand using best practices, as a
24 city manager and understanding everything that you know about
25 this case and the dealings you've had with Brooktrails, do you
26 understand that in order to change the meter which you based
27 your bill on and sent to Brooktrails from the inflow meter to
28 the outflow meter, that you need to obtain the approval of

1 Brooktrails city council prior to doing that?

2 MR. BARTOLOTTA: Objection. Vague. Regarding
3 Brooktrails city council?

4 MR. CROWLEY: Township.

5 MR. O'BRIEN: Township, counsel, sorry.

6 THE WITNESS: Yes.

7 BY MR. O'BRIEN:

8 Q. And you didn't have that when you sent this letter,
9 right?

10 A. We did not have their approval.

11 Q. Do you know if the effluent meter at this time of
12 year even measures or even could be related in any way to the
13 measurements from the inflow meter, if it was working?

14 A. I really don't think I have the technical background
15 for that question.

16 Q. There's a lengthy discussion in this letter about
17 that. Did you talk to anybody before you wrote the discussion
18 about sending this letter?

19 A. Our public works director.

20 Q. And he said -- have you read his deposition?

21 A. I have not.

22 Q. He said, right now, there's a lot of water in the
23 pond --

24 MR. BARTOLOTTA: Objection.

25 MR. FULLERTON: Objection.

26 MR. BARTOLOTTA: Hearsay.

27 MR. O'BRIEN: Okay. I'll withdraw.

28 BY MR. O'BRIEN:

1 Q. My understanding as we sit here today, there's water
2 in the big ponds that are called the equalization basin; is
3 that right?

4 A. Yes.

5 Q. So the water sits there for some period of time,
6 correct?

7 A. Yes.

8 Q. Do you have any knowledge or do you understand that
9 the water in the equalization ponds becomes less over time?

10 A. Yes.

11 Q. And why is that?

12 A. Evaporation.

13 Q. And also seepage, too, right?

14 A. I suppose that's possible.

15 Q. So the water leaving the plant is always going to be
16 less than the water coming into the plant, right?

17 A. I presume so.

18 Q. And that benefits, as far as the build of
19 Brooktrails, that benefits the City of Willits, right?

20 A. I think that's a matter of opinion.

21 Q. Well, if the total flow on the bill is less, total
22 flow, Brooktrails share goes up, right?

23 A. Yes.

24 Q. So by using EFF-2, you're always going to be
25 benefiting the City of Willits, right?

26 A. I don't know.

27 Q. Do you feel like that's fair to the citizens of
28 Brooktrails?

1 MR. BARTOLOTTA: Objection. Argumentative.

2 THE COURT: Sustained.

3 BY MR. O'BRIEN:

4 Q. Do you have any records showing how much time the --
5 strike that.

6 Do you have any records showing how much time the
7 sewer engineer spent on the operations department versus the
8 maintenance department?

9 A. I believe that would be reflected in time sheets.

10 Q. Do you know if it's reflected in time sheets?

11 A. Right offhand, I do not know.

12 Q. Who are the sewer engineers?

13 A. By name? Or --

14 Q. Are there any sewer engineers?

15 A. We have an engineering department that has largely
16 worked for the sewer operation.

17 Q. Well, let me ask you this. When you say that,
18 you're building a new water plant right now, right?

19 A. Yes.

20 Q. Are your engineers largely working for the water
21 plant right now?

22 A. During that project, yes.

23 Q. How long has that project been going on?

24 A. About a year.

25 Q. And you also are doing a major Holly Street line
26 replacement, right?

27 A. It has not yet gotten underway.

28 Q. It's been planned for three years?

1 A. Yes.

2 Q. My understanding is that you've been very involved
3 in that three years? That's been in planning for three years,
4 correct?

5 A. Yes. Sounds about right.

6 Q. And the city engineers have been very involved in
7 that, correct?

8 A. Yes.

9 THE COURT: With that, we're going to take our
10 afternoon recess, ladies and gentlemen. Ms. Moore, be
11 available first thing tomorrow morning.

12 So, ladies and gentlemen, we now are in the midst of
13 our first witness, of course, and much to follow. But the
14 admonishment is ever more important, not to form or express an
15 opinion, talk to anyone about it or let anyone talk to you.
16 Do not use the Internet for any purpose connected to the case.

17 Have a good afternoon. And we'll be able to start
18 with you right at 8:30 tomorrow. If you come early, that will
19 be great, so we can count heads and start right away at 8:30.

20 MR. O'BRIEN: Thank you, your Honor.

21 THE COURT: Have a good evening, everybody.

22 (Whereupon, the following matters were heard in open
23 court, outside the presence of the jury.)

24 THE COURT: We're now convened outside the presence
25 of any of our jurors. And counsel, just see you tomorrow at
26 8:30. If any issues come up this evening, you know how to get
27 ahold of me. Other than that, I'd like to reconvene right at
28 8:30.

1 MR. O'BRIEN: One issue, not exactly sure how to
2 deal with it. Perhaps you can help. The defendant's slides
3 that they showed had a bunch of pictures that they said were
4 the old plant. And those pictures were taken two weeks ago.
5 And the pictures they took were of delipidated areas of the
6 plant that had been sitting underground for a couple of years.

7 When I saw the pictures, first, I objected to them
8 and I said, can't use those in opening or we're going to have
9 to put someone on the stand to explain that's not how the
10 whole plant looks when it was operating. That's kind of how
11 it was represented, if you remember in opening.

12 When I got the opening statement, Mr. Fullerton was
13 having problems sending it to me. It was a big file with all
14 the pictures. So I got it in a PDF, it was late at night and
15 I reviewed it and those pictures don't show up in the PDF.

16 MR. FULLERTON: I sent you the PowerPoint.

17 THE COURT: Just a moment. Counsel is ordered to
18 meet and confer and reach a resolution. Let me know what the
19 issue is, and we'll go ahead and make an order. Otherwise,
20 we're done for today.

21 MR. O'BRIEN: Thank you, your Honor.

22 THE COURT: Off the record.

23 (Concluded: 4:02 p.m.)

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1 REPORTER'S CERTIFICATE
23 COUNTY OF SONOMA)
STATE OF CALIFORNIA) SS:
45 I, Malinda K. Hentz, an Official Court Reporter of
the Superior Court of the State of California, County of
6 Sonoma, do hereby certify that I correctly reported the
within-entitled matter and that the foregoing is a full, true
7 and correct transcript of my shorthand notes of the testimony
and other oral proceedings had in the said matter.
89
10 Dated this 20th day of March, 2015 at Santa Rosa,
11 California.
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1617 Malinda K. Hentz, CSR No. 12393
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1 STATE OF CALIFORNIA)
2 COUNTY OF SONOMA) ss
3
4

5 CERTIFICATE OF OFFICIAL REPORTER
6
7

8 I, BARRIE L. HART, C.S.R. #6954, hereby certify:
9 THAT on Thursday, March 19, 2015 at the hour of
10 2:19 p.m. thereof, I reported in shorthand writing the
11 proceeding had in the matter of Brooktrails versus Willits
12 No. SCV-253175.

13 THAT I thereafter caused my said shorthand
14 writing to be transcribed into longhand typewriting.

15 THAT the foregoing pages 762 through 795
16 constitute and are a full, true, correct and accurate
17 transcription of my said shorthand writing and a correct and
18 verbatim record of the proceedings so had and taken, as
19 aforesaid.

20 DATED this 20th day of March, 2015.
21
22

23 _____
24 BARRIE L. HART, CSR 6954
25
26
27
28