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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA  
BEFORE THE GRAND JURY

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PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	
PLAINTIFFS,	)	INDICTMENT
	)	
V.	)	NO. 211045
	)	
RONALD R. GONZALES,	)	
JOSEPH AUGUST GUERRA III, AND	)	
NORCAL WASTE SYSTEMS, INC.,	)	
	)	
DEFENDANTS.	)	

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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
SAN JOSE, CALIFORNIA

VOLUME 3  
PAGES 233-447

JANUARY 27, 2006  
JANUARY 31, 2006  
FEBRUARY 1, 2006

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APPEARANCES:

FOR THE PEOPLE:	JULIUS FINKELSTEIN DEPUTY DISTRICT ATTORNEY
	JAMES GIBBONS-SHAPIRO DEPUTY DISTRICT ATTORNEY
OFFICIAL COURT REPORTER:	SUE HERFURTH, C. S. R. LICENSE NO. 9645

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SUE HERFURTH, CSR #9645

1 SAN JOSE, CALI FORNIA JANUARY 27, 2006

2

3

PROCEEDINGS:

4

THE FOREMAN: I WOULD LIKE TO CALL THIS SESSION OF

5

THE GRAND JURY TO ORDER, PLEASE, AND LET US TAKE THE ROLL

6

CALL.

7

(ROLL WAS CALLED BY THE FOREMAN.)

8

MR. FINKELSTEIN: THANK YOU VERY MUCH. WE'RE GOING

9

TO ASK MR. MOSHER TO COME BACK IN AND RESUME HIS TESTIMONY.

10

CARL MOSHER,

11

HAVING BEEN PREVIOUSLY SWORN, TESTIFIED ON HIS OATH AS

12

FOLLOWS:

13

EXAMINATION, CONTINUED:

14

BY MR. FINKELSTEIN:

15

Q. GOOD MORNING, MR. MOSHER.

16

A. GOOD MORNING.

17

Q. JUST TO REMIND YOU, HAVING BEEN PREVIOUSLY SWORN IN

18

THIS MATTER, YOU ARE STILL UNDER OATH. DO YOU UNDERSTAND

19

THAT?

20

A. YES, I DO.

21

Q. I BELIEVE WHEN WE BROKE LAST NIGHT YOU HAD TOLD US

22

THAT YOU FIRST LEARNED ABOUT THE POSSIBILITY THAT THE CITY OF

23

SAN JOSE MIGHT HAVE TO GET INVOLVED IN DEALING WITH THE ISSUE

24

OF WHETHER THE CWS WORKERS EMPLOYED BY NORCAL'S SUBCONTRACTOR,

25 CWS -- I MEAN MRF WORKERS EMPLOYED BY NORCAL' S SUBCONTRACTOR,  
26 CWS, NEEDED TO BE PAID HIGHER WAGES AND BENEFITS, AND AS A  
27 CONSEQUENCE, WHETHER THE CITY NEEDED TO MAKE HIGHER PAYMENTS  
28 TO NORCAL WHEN YOU RECEIVED THIS FEBRUARY 10, 2003 E-MAIL FROM

SUE HERFURTH, CSR #9645

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1 JOE GUERRA, CORRECT?

2 A. THAT' S CORRECT.

3 Q. I THINK WE LOOKED AT THAT YESTERDAY, AND THAT WAS  
4 EXHIBIT 29, WHICH I' M DISPLAYING ON THE SCREEN NOW, CORRECT?

5 A. THAT' S CORRECT.

6 Q. LET ME ASK YOU A FEW QUESTIONS ABOUT THIS.

7 IF YOU LOOK AT THE E-MAIL, LOOK AT ITEM TWO. IN  
8 ITEM TWO THERE IS A REFERENCE TO A NUMBER THAT MR. GUERRA SAYS  
9 HE RECEIVED FROM ESD STAFF EARLIER IN NEGOTIATIONS; DO YOU SEE  
10 THAT REFERENCE?

11 A. YES.

12 Q. ESD STAFF WOULD BE ENVIRONMENTAL SERVICES DEPARTMENT?

13 A. YES.

14 Q. THAT WOULD BE YOUR STAFF?

15 A. THAT' S CORRECT.

16 Q. DO YOU KNOW WHAT THAT REFERENCE REFERS TO?

17 A. YES, I THINK I DO. WE HAD CONVERSATIONS WITH JOE  
18 GUERRA' S OFFICE AND THE BUDGET OFFICE, WHICH IS THE BUDGET  
19 OFFICE OF THE CITY MANAGER.

20 Q. WHO WOULD THAT BE?

21 A. LARRY LI SENBEE, WHO WAS THE BUDGET DIRECTOR, AND WE  
22 HAD CONVERSATIONS RELATED TO, YOU KNOW, WHAT DOES A 1%

23 INCREASE GENERATE IN REVENUE, WHAT DOES A DOLLAR GENERATE, AND  
24 WE MADE GENERAL RULES OF THUMB RELATED TO WHAT A PERCENT  
25 INCREASE WENT TO.

26 WE ALSO KNEW, AS I DESCRIBED YESTERDAY, THAT THERE  
27 WERE CONVERSATIONS GOING ON BETWEEN THE TEAMSTERS AND THE  
28 MAYOR'S OFFICE RELATED TO THE LABOR SITUATION THAT WAS

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1 OCCURRING AT CWS, AND THAT WAS, IF I COULD DESCRIBE --

2 Q. SURE.

3 A. WE DISCUSSED YESTERDAY THAT THE TEAMSTERS UNION HAD  
4 DESIRED TO REPRESENT THESE PEOPLE OR -- WE HAD DISCUSSED  
5 YESTERDAY THAT THE LONGSHOREMEN WERE INTENDING TO REPRESENT  
6 THIS GROUP OF EMPLOYEES AT THE MRF. THE TEAMSTERS DESIRED TO  
7 REPRESENT THEM. SO WHAT WENT ON DURING A PERIOD OF TIME WAS  
8 THIS ELECTION BY THE EMPLOYEES OF WHO WOULD REPRESENT THEM,  
9 AND IT WAS THEN DETERMINED THAT THE TEAMSTERS WOULD REPRESENT  
10 THE MRF WORKERS. AT THE CONCLUSION OF THAT ELECTION, THEN  
11 NEGOTIATIONS ENSUED BETWEEN CWS AND THE TEAMSTERS FOR WHAT THE  
12 HOURLY WAGE WOULD BE AND OTHER BENEFITS ASSOCIATED WITH THOSE  
13 MRF WORKERS. WE KNEW DURING THOSE CONVERSATIONS THAT THERE  
14 WERE MEETINGS WITH THE MAYOR'S OFFICE RELATED TO THESE  
15 NEGOTIATIONS.

16 AT NO TIME DURING THOSE NEGOTIATIONS OR MEETINGS  
17 WERE WE AWARE THAT THE CITY WAS POTENTIALLY GOING TO BE UNDER  
18 ANY OBLIGATION TO PAY ANY DIFFERENCE IN WAGE BETWEEN WHAT THE  
19 LONGSHOREMEN WERE GOING TO PAY AND WHATEVER NEGOTIATION HAD  
20 OCCURRED BETWEEN THE TEAMSTERS AND CWS FOR HOURLY RATE.

21 Q. AS A MATTER OF FACT, IS IT NOT THE CASE THAT THE  
22 SIGNED AGREEMENT BETWEEN THE CITY AND NORCAL HAD A PROVISION  
23 THAT SPECIFICALLY SAID THAT THE CITY WOULD NOT BE RESPONSIBLE  
24 FOR ANY INCREASED LABOR COSTS?

25 A. THAT'S CORRECT.

26 Q. THAT WAS, I THINK, SECTION 17.0203. LET ME GET THAT  
27 FOR YOU. I THINK WE MARKED AS EXHIBIT 26 THE AGREEMENT, AND  
28 LET --

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1 A. THAT WAS THE AGREEMENT WE WERE LOOKING AT YESTERDAY,  
2 CORRECT.

3 Q. YES. LET ME FIND SECTION 17.02.3. IT'S ENTITLED "NO  
4 COMPENSATION ADJUSTMENT," CORRECT?

5 A. THAT'S CORRECT.

6 Q. AND THE RELEVANT LANGUAGE THERE IS THAT THE  
7 CONTRACTOR SHALL NOT BE ENTITLED TO ANY ADJUSTMENTS IN THE  
8 COMPENSATION PAID TO THE CONTRACTOR BY THE CITY UNDER THIS  
9 AGREEMENT. AS A RESULT OF ANY ADJUSTMENT OF WAGE RATE THE  
10 CONTRACTOR IS REQUIRED TO PAY ITS EMPLOYEES.

11 A. THAT'S CORRECT. IN ADDITION, THERE IS ANOTHER  
12 SECTION THAT SAYS THAT THIS CONTRACT IS THE CONTRACT AND THERE  
13 ARE NO OTHER AGREEMENTS RELATED TO THIS, AND THAT THE PARTIES  
14 AGREE THAT THIS IS THE CONTRACT.

15 Q. I THINK YOU'RE REFERRING TO WHAT LAWYERS CALL AN  
16 INTEGRATION CLAUSE. I'LL PUT THAT UP ON THE SCREEN FOR A  
17 MINUTE.

18 A. SURE.

19 Q. YOU' RE REFERRING TO SECTION 24.24, WHICH IS LABELED  
20 ENTIRE AGREEMENT?

21 A. THAT' S CORRECT.

22 Q. AND THERE' S A PARAGRAPH THERE THAT SAYS, "THIS  
23 AGREEMENT INCORPORATES AND INCLUDES ALL PRIOR NEGOTIATION,  
24 CORRESPONDENCE, CONVERSATIONS, AGREEMENTS, AND UNDERSTANDINGS  
25 APPLICABLE TO MATTERS CONTAINED IN THIS AGREEMENT, AND THE  
26 PARTIES AGREE THERE ARE NO COMMITMENTS, AGREEMENTS, OR  
27 UNDERSTANDINGS CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT  
28 THAT ARE NOT CONTAINED IN THIS DOCUMENT," CORRECT?

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1 A. THAT' S CORRECT.

2 Q. SO, GIVEN YOUR FAMILIARITY WITH THE CONTRACT, IN  
3 PARTICULAR THE CLAUSE WHICH PROVIDED THAT THERE WOULD BE NO  
4 COMPENSATION ADJUSTMENT DUE TO INCREASED LABOR COSTS ON THE  
5 PART OF THE CONTRACTOR, AND THE FACT THAT THERE WAS THIS  
6 INTEGRATION CLAUSE THAT SAID THIS WRITTEN DOCUMENT WAS THE  
7 ENTIRE AGREEMENT AND UNDERSTANDING AND NO OTHER COMMITMENTS,  
8 ASSURANCES, WHAT HAVE YOU, WOULD BE HONORED IN A SENSE, WHAT  
9 WAS YOUR RESPONSE, IF ANY, WHEN YOU RECEIVED THIS E-MAIL  
10 MARKED EXHIBIT 29?

11 A. THERE WERE SEVERAL. ONE, THERE WAS A RESPONSE. I  
12 THINK YOU HAVE A COPY OF MY RESPONSE BACK, WHICH WAS ACTUALLY  
13 PRETTY GENERIC, RELATED TO THE REQUESTS THAT WERE CONTAINED IN  
14 THIS E-MAIL. I CIRCULATED THIS E-MAIL TO KEY PEOPLE IN MY  
15 STAFF BECAUSE I NEEDED THE ANSWERS TO A COUPLE OF THOSE  
16 QUESTIONS, PARTICULARLY NUMBER FOUR, WHICH, IF WE WERE EVER

17 GOING TO DO THIS, WHETHER WE DEPOSIT THE FUNDS IN A DIFFERENT  
18 PLACE RATHER THAN PAYING NORCAL, BECAUSE IN ADDITION TO THE  
19 CONTRACT, THE CONTRACT SAYS WE HAVE A CONTRACT WITH NORCAL.  
20 WE PAID NORCAL. WE DO NOT HAVE A CONTRACT WITH THE  
21 SUBCONTRACTOR, SO FOUR WAS PROBLEMATIC, IF WE GOT DOWN TO THE  
22 POINT WE WERE GOING TO PAY ADDITIONAL MONEY, WE WERE NOT GOING  
23 TO PAY ANYBODY ELSE, WE WERE GOING TO PAY NORCAL. I DON'T  
24 RECALL EXACTLY WHAT I SAID, BUT IT WAS A PRETTY GENERIC  
25 RESPONSE --

26 Q. LET ME INTERRUPT YOU. WAS YOUR IMMEDIATE RESPONSE TO  
27 THIS E-MAIL TO SEND BACK AN E-MAIL, OR DID YOU TALK TO PEOPLE  
28 ORALLY FIRST?

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1 A. I SENT BACK A RESPONSE, AND I THINK THAT RESPONSE  
2 PROBABLY INCORPORATED SOME CONVERSATION I HAD WITH KEY PEOPLE  
3 IN MY STAFF, WITH SUSAN DEVENZENZI FROM THE ATTORNEY'S OFFICE.

4 Q. WAS YOUR FIRST COMMUNICATION BACK TO JOE GUERRA BY  
5 MEANS OF AN E-MAIL THAT YOU SENT?

6 A. I THINK IT WAS.

7 Q. LET'S LOOK AT EXHIBIT 30. CAN YOU TELL US WHAT THAT  
8 IS?

9 A. THAT'S THE E-MAIL RESPONSE I SENT BACK TO JOE. AS  
10 YOU CAN SEE, AS I MENTIONED EARLIER, I SPOKE TO RICK IN THIS  
11 E-MAIL, RICK DOYLE, CITY ATTORNEY. DEL IS DEL BORGSORF, THE  
12 CITY MANAGER AT THE TIME.

13 Q. IN THIS E-MAIL YOU SET FORTH YOUR RESPONSES TO THE  
14 SUBSTANCE OF THE QUESTIONS, CORRECT?

- 15 A. THAT' S CORRECT.
- 16 Q. BUT YOU ALSO INDICATE AT THE END OF THE FIRST
- 17 PARAGRAPH THAT YOUR RESPONSES ARE PROVIDED AS ANSWERS TO YOUR
- 18 QUESTIONS AND SHOULD NOT BE INTERPRETED AS AN AGREEMENT TO THE
- 19 PROPOSAL, CORRECT?
- 20 A. THAT' S CORRECT.
- 21 Q. WHY DID YOU PUT THAT IN THERE?
- 22 A. I DID THAT PURPOSEFULLY, BECAUSE I KNEW WHAT THE
- 23 CONTRACT SAID. I KNEW NEITHER I NOR ANYONE ON MY STAFF HAD
- 24 NEGOTIATED ANY AGREEMENT OR HAD HAD ANY DISCUSSION WITH NORCAL
- 25 RELATED TO ADDITIONAL COSTS.
- 26 Q. AT THAT TIME, DID YOU KNOW ABOUT ANY CONVERSATIONS
- 27 THAT MAY HAVE TAKEN PLACE BETWEEN THE MAYOR OR JOE GUERRA AND
- 28 REPRESENTATIVES OF NORCAL, THE TEAMSTERS, AND/OR CWS PRIOR TO

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- 1 THE SELECTION OF NORCAL' S PROPOSAL?
- 2 A. NO, NOT RELATED TO THIS PARTICULAR ONE, NO.
- 3 Q. NOW, IN CONNECTION WITH THE E-MAIL FROM JOE GUERRA,
- 4 LET ME RETURN BACK TO THAT FOR A MOMENT. THERE' S AN ATTACHED
- 5 DOCUMENT, IS THERE NOT?
- 6 A. YES.
- 7 Q. THAT' S THE LETTER FROM DAVID DUONG?
- 8 A. THAT' S CORRECT.
- 9 Q. DID YOU OPEN THE ATTACHMENT?
- 10 A. YES.
- 11 Q. LET ME SLOW YOU EXHIBIT 28. DOES THIS APPEAR TO BE
- 12 THE LETTER THAT WAS IN THE ATTACHMENT?

13 A. YES, IT DOES.

14 Q. NOW, LET ME DIGRESS FOR A MOMENT. WE LEARNED  
15 YESTERDAY FROM YOUR TESTIMONY THAT GREEN TEAM WAS PROPOSING  
16 THAT ITS MRF WORKERS BE REPRESENTED BY THE CARPENTER'S UNION?

17 A. THAT'S CORRECT, AND THEY HAD ACTUALLY, UNDER A  
18 PREVIOUS CONTRACT, THEIR MRF WORKERS WERE REPRESENTED BY  
19 CARPENTERS.

20 Q. OKAY. WAS THERE ANY COMMUNICATIONS OR DISCUSSION AT  
21 CITY HALL ABOUT WHETHER THE CARPENTER'S UNION MRF WORKERS  
22 NEEDED HIGHER WAGES AND BENEFITS?

23 A. NONE. NONE WHATSOEVER.

24 Q. DO YOU KNOW HOW THE CARPENTER'S UNION MRF WORKERS  
25 WAGES AND BENEFITS COMPARED TO EITHER THE LONGSHOREMEN OR  
26 TEAMSTERS?

27 A. IF MY MEMORY IS CORRECT, THE CARPENTER'S UNION WAS IN  
28 BETWEEN WHAT THE TEAMSTERS WERE PAYING WASTE MANAGEMENT'S MRF

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1 WORKERS UNDER THE PREVIOUS CONTRACT AND HIGHER THAN WHAT THE  
2 LONGSHOREMEN WERE GOING TO BE PROPOSING TO PAY.

3 Q. OKAY. AND TO YOUR KNOWLEDGE, WAS THERE EVER ANY  
4 DISCUSSION ABOUT THE GREEN TEAM MRF WORKERS WHO WERE  
5 REPRESENTED BY THE CARPENTERS NEEDING TO HAVE HIGHER WAGES AND  
6 BENEFITS?

7 A. NO. NO.

8 Q. SO WHAT HAPPENED AFTER YOU REPLIED THAT SAME DAY TO  
9 MR. GUERRA'S E-MAIL INQUIRY ABOUT POSSIBLE RATE INCREASES?

10 A. THAT WAS IN FEBRUARY. WHAT HAPPENED NEXT IS, I DON'T

11 REMEMBER THE EXACT SEQUENCE, BUT THERE WERE MANY CONVERSATIONS  
12 THAT I HAD WITH RICK DOYLE AND WITH SUSAN DEVENCENZI AND DEL.  
13 KNOWING NOW THAT WE KNOW THIS AND NOT KNOWING THAT ANY OF US  
14 HAVE COMMITTED TO IT, WHAT DO WE DO NEXT? AND GENERALLY WHAT  
15 HAPPENED NEXT WAS IF THERE WAS GOING TO BE AN AMENDMENT, IF  
16 THERE WAS GOING TO BE A WAY TO PAY OR NEED TO PAY, AND AS I  
17 DESCRIBED IN MY RESPONSE BACK, WE WERE ALREADY PROPOSING AN  
18 INCREASE TO RECYCLE PLUS OF APPROXIMATELY 5%.

19 Q. 5%. OKAY.

20 A. THE PURPOSE FOR THAT INCREASE OF 5% WAS TWOFOLD. ONE  
21 WAS, AND YOU SHOWED ON THE SCREEN EARLIER, WE WERE NOT PAYING  
22 FOR ADDITIONAL WAGES TO THE WORKERS OF ANY CONTRACTOR'S  
23 EMPLOYEES. WE HAD ESCALATION CLAUSES IN THE RECYCLE PLUS  
24 CONTRACT THAT WE WOULD PAY THE CONTRACTORS ADDITIONAL MONEY  
25 RELATED TO THE CONSUMER PRICE INDEX AND AN INDEX WITHIN THAT  
26 INDEX RELATED TO FUEL AND OTHER COSTS.

27 Q. YOU'RE TALKING ABOUT A COLA, COST OF LIVING?

28 A. THAT'S CORRECT, AND SO OUR RATE PROPOSAL HAD INCLUDED

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1 WHAT WE WERE GOING TO HAVE TO PAY THE CONTRACTORS FOR THAT AND  
2 INCLUDED OTHER ADDITIONS TO THE BUDGET THAT WE WERE PROPOSING.

3 Q. THIS IS THE 4%?

4 A. THIS IS THE 4-5%, THAT'S CORRECT.

5 Q. I GUESS IT WAS BROKEN OUT, DIFFERENT RATE INCREASES  
6 FOR SINGLE VERSUS MULTIPLE FAMILY DWELLINGS?

7 A. THAT'S CORRECT.

8 Q. SINGLE WAS FOUR, MULTIPLE WAS FIVE?

9           A.       I THINK SO, YES. SO WE HAD DISCUSSIONS WITH THE  
10 BUDGET OFFICE AND CITY MANAGER'S OFFICE, WHAT WOULD WE DO WITH  
11 THE BUDGET PROPOSAL I HAD PROPOSED THROUGH THE BUDGET PROCESS  
12 AND BUDGET OFFICE. WHAT WE ENDED UP WITH WAS A DISCUSSION OF  
13 APPROXIMATELY 9%, I THINK, FOR THAT FIRST YEAR, WHICH  
14 INCORPORATED ALL THOSE FACTORS.

15          Q.       LET ME STOP YOU FOR A MOMENT. BEFORE THIS E-MAIL  
16 FROM MR. GUERRA ON FEBRUARY 10 OF 2003, THERE HAD BEEN A RATE  
17 INCREASE APPROVED IN DECEMBER OF 2002 EFFECTIVE FEBRUARY '03,  
18 CORRECT?

19          A.       THAT'S CORRECT.

20          Q.       NOW, AND YOU WERE LOOKING AT FURTHER RATE INCREASES  
21 TO INCREASE COST RECOVERY?

22          A.       THAT'S CORRECT.

23          Q.       AND PAY FOR CERTAIN COLA INCREASES?

24          A.       THAT'S CORRECT.

25          Q.       WHEN, PRIOR TO THE FEBRUARY 10, 2003 E-MAIL, WHEN  
26 WERE YOU THINKING THE SECOND RATE INCREASE MIGHT BE SOUGHT AND  
27 APPROVED?

28          A.       I DON'T RECALL EXACTLY, BUT WE PROBABLY HAVE IT IN

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1 THE DOCUMENTS. I THINK IT WAS GOING TO BE IN THE NEXT FISCAL  
2 YEAR.

3          Q.       THAT WOULD BE, AT THE EARLIEST, WHEN?

4          A.       IT WOULD HAVE BEEN PRESENTED IN THE SPRING OF '04.

5          Q.       SPRING OF WHEN?

6          A.       '04, I BELIEVE. WE HAD ALREADY HAD WHAT YOU

7 DESCRIBED, WE HAD PRESENTED TO THE COUNCIL A SERIES OF RATE  
8 PROPOSALS, SO THE NEXT WOULD HAVE COME FORWARD IN THE NEXT  
9 BUDGET CYCLE AS I RECALL.

10 Q. SO THAT WOULD HAVE BEEN SPRING OF '04, NOT '03?

11 A. I BELIEVE SO NOW, THAT'S THREE YEARS AGO.

12 Q. LET ME TRY TO HONE IN ON THIS FOR A MOMENT. WE HAVE  
13 SEEN EVIDENCE THAT THERE WAS A SECOND BUDGET INCREASE ACTUALLY  
14 IN THE SPRING OF '03, A FEW MONTHS AFTER THE FEBRUARY '03 RATE  
15 HIKE TOOK EFFECT. ARE YOU SUGGESTING THAT THE TIMETABLE WAS  
16 MOVED UP, OR THAT YOU WERE JUST IN ERROR ON THE TIMING?

17 A. I MAY JUST BE IN ERROR ON THE TIMING. IF I MAY  
18 DESCRIBE WHAT WE DID EACH YEAR RELATED TO PROPOSING THE RATES  
19 FOR RECYCLE PLUS FOR MULTI AND SINGLE FAMILY. EVERY YEAR IN  
20 THE OCTOBER, NOVEMBER TIME FRAME WE WOULD PUT TOGETHER,  
21 PROPOSE WHAT WE THOUGHT REVENUE WAS GOING TO BE, AND  
22 EXPENDITURES. WE REVIEWED THAT WITH THE BUDGET OFFICE. THAT  
23 WAS IN ANTICIPATION OF JANUARY AND FEBRUARY, WHEN WE WOULD BE  
24 ASKED BY BUDGET OFFICE TO PRESENT WHAT WE SHOULD BE THINKING  
25 OF. SO WE DID THAT IN OCTOBER, NOVEMBER, READY FOR JANUARY,  
26 FEBRUARY, AND PRESENTED ALTERNATIVES RELATED TO VARIOUS RATE  
27 MODELS WE COULD USE FOR FOUR OR FIVE YEARS, PROGNOSTICATED IN  
28 THE NEXT SEVERAL YEARS, AND WE DID THAT EVERY SINGLE YEAR AS I

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1 WAS DIRECTOR.

2 SO, THE REASON I WAS CONFUSED ABOUT WHAT WE WERE  
3 PROPOSING WHEN IS EVERY YEAR WE DID THIS, AND EVERY YEAR WE  
4 HAD SLIGHTLY DIFFERENT PROPOSALS, DIFFERENT IDEAS, WE

5 INCORPORATED ADDITIONAL REVENUE OR CREATED A RATE  
6 STABILIZATION FUND --

7 (INTERRUPTION BY THE COURT REPORTER. )

8 THE WITNESS: OR RAINY DAY FUND.

9 BY MR. FINKELSTEIN:

10 Q. CAN YOU MOVE THE MICROPHONE CLOSER? YOU WERE TELLING  
11 US ABOUT THE NORMAL PROCESS YOU FOLLOWED IN SEEKING AND  
12 OBTAINING RATE INCREASES. WAS THERE MORE TO THAT?

13 A. THEN WHAT HAPPENED IS WE WOULD HAVE DISCUSSIONS WITH  
14 THE BUDGET OFFICE, AND THE BUDGET OFFICE AND THE CITY MANAGER  
15 WOULD CONFER AND DECIDE, BASED UPON ALL THE INFORMATION THAT  
16 WE HAD PRESENTED, WHAT A REASONABLE RATE INCREASE WOULD BE FOR  
17 A PARTICULAR BUDGET YEAR.

18 I BASICALLY MADE RECOMMENDATIONS. THOSE DECISIONS  
19 FOR WHAT WAS GOING TO GO IN THE BUDGET BOOK WERE APPROVED BY  
20 THE BUDGET OFFICE AND BY THE CITY MANAGER.

21 Q. OKAY. SO, JUMPING AHEAD FOR A MOMENT, WE KNOW THAT  
22 IN THE SPRING OF 2003 THERE WAS AN APPROXIMATE 9% RATE  
23 INCREASE SOUGHT AND APPROVED?

24 A. THAT'S CORRECT.

25 Q. WAS THAT PROCESS FOR AN '03 RATE INCREASE, WAS THAT,  
26 THE TIMING OF THAT, WAS THAT DIFFERENT FROM WHAT HAD HAPPENED  
27 IN EARLIER YEARS?

28 A. YES, BECAUSE WHAT HAPPENED WAS WE WERE NOW IN

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1 FEBRUARY, AND WE'VE ALREADY HAD SOME DISCUSSION RELATED TO  
2 WHAT WE WERE GOING TO PROPOSE, AND NOW WE HAD THIS SITUATION,

3 AND WE WERE BASICALLY THINKING, WHAT DO WE DO NOW?

4 Q. DO YOU KNOW WHETHER OR NOT ANY PORTION OF THE 9% RATE  
5 INCREASE WAS ATTRIBUTABLE TO INCREASED WAGES AND BENEFITS FOR  
6 CWS' S MRF WORKERS?

7 A. YES, I DO KNOW.

8 Q. WHAT' S THE ANSWER?

9 A. THE ANSWER IS YES, IT WAS.

10 Q. ARE YOU SURE ABOUT THAT?

11 A. LET ME TELL YOU THE PHILOSOPHY BEHIND IT.

12 Q. OKAY.

13 A. THE CALCULATION FOR WHAT WE PUT INTO THE RATE  
14 INCORPORATED THAT DOLLAR AMOUNT OF 1.9 MILLION DOLLARS.

15 Q. THAT 1.9 IS DESCRIBED IN MR. GUERRA' S E-MAIL?

16 A. YES, ITEM NUMBER TWO IN THE E-MAIL YOU HAVE ON THE  
17 SCREEN. AS YOU MENTIONED EARLIER, WE WERE, WE HAD ALWAYS  
18 DISCUSSED WITH THE BUDGET OFFICE CREATING ADDITIONAL REVENUE,  
19 SO A RATE STABILIZATION FUND, IF THINGS WENT WRONG, WE WOULD  
20 HAVE THE DOLLARS TO TAKE CARE OF THAT. SO WHEN THIS WAS  
21 CREATED, OR THE BUDGET PROPOSAL WAS CREATED WITH THE 9%, THIS  
22 AMOUNT OF MONEY COULD NOT BE USED FOR ANY PURPOSE UNLESS THE  
23 COUNCIL APPROVED THAT PURPOSE. IT HAD TO BE APPROPRIATED BY  
24 THE COUNCIL.

25 SO OUR INCORPORATING IT IN THERE WAS A CONTINGENCY  
26 SO FUTURE ACTIVITIES DIDN' T OBLIGATE THAT MONEY FOR THAT  
27 PURPOSE OR FOR ANY OTHER PURPOSE EXCEPT THAT IT HAD TO BE USED  
28 WITHIN THAT FUND. THE INTEGRATED WASTE MANAGEMENT FUND IS A

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1 RESTRICTED FUND AND CANNOT BE USED FOR ANY PURPOSE EXCEPT THE  
2 PURPOSES OF THE INTEGRATED WASTE MANAGEMENT OR GARBAGE  
3 COLLECTION. SO IF IT WAS GOING TO BE USED FOR ANOTHER  
4 PURPOSE, THE COUNCIL HAD TO APPROVE THAT PURPOSE.

5 Q. DID YOU ATTEND THE COUNCIL MEETING WHEN THE COUNCIL  
6 TOOK UP THE QUESTION OF WHETHER OR NOT TO APPROVE THE '03 RATE  
7 HIKE?

8 A. YES.

9 Q. DID YOU REVIEW THE TRANSMITTAL OR MEMOS TO THE  
10 COUNCIL THAT WERE PREPARED TO BRIEF THE COUNCIL ON THIS ISSUE?

11 A. I REVIEWED THE MEMOS THAT I HAD PREPARED, YES.

12 Q. WAS THERE ANYTHING IN YOUR MEMO -- STRIKE THAT.  
13 LET'S LOOK AT EXHIBIT 35. IS THAT A MEMO YOU PREPARED ON OR  
14 ABOUT FEBRUARY 26 OF 2003?

15 A. YES.

16 Q. AND WHAT WAS THE PURPOSE OF PREPARING THIS  
17 MEMORANDUM?

18 A. THIS RELATED TO THE PROSPECTIVE RECYCLE PLUS RATE  
19 INCREASE.

20 Q. THE ONE WE HAVE BEEN TALKING ABOUT IN SPRING '03?

21 A. THAT'S CORRECT.

22 Q. IS THERE ANYTHING IN THE MEMORANDUM THAT INFORMS THE  
23 COUNCILMEMBERS THAT A PORTION OF THIS RATE INCREASE IS BEING  
24 SOUGHT TO COVER, POTENTIALLY COVER INCREASED COSTS BY NORCAL,  
25 TO COVER INCREASED WAGES AND BENEFITS FOR CWS' S MRF WORKERS?

26 A. NO, IT'S NOT.

27 Q. WHY IS THAT?

28 A. GOOD QUESTION.

1 Q. OKAY, DO YOU HAVE A GOOD ANSWER?

2 A. I HAVE AN ANSWER. IT'S AN ANSWER THAT IS RELATED TO  
3 WHAT WE DID AND RELATES TO THE SITUATION THAT I WAS IN RELATED  
4 TO THE SITUATION. WE PURPOSELY MADE IT GENERIC AT THIS TIME  
5 BECAUSE THERE WAS NO AGREEMENT, AND AT THIS POINT IN TIME NO  
6 ONE HAD INDICATED THAT THEY HAD MADE AN AGREEMENT. WE HAD THE  
7 E-MAIL FROM JOE GUERRA, WE HAD NORCAL'S REPRESENTATION THAT  
8 THEY HAD BEEN HAVING THESE DISCUSSIONS, BUT WE HAD NO MORE  
9 INFORMATION AT THIS TIME EXCEPT THE E-MAIL AND LETTER FROM  
10 CWS. NONE OF THOSE CONSTITUTED ENOUGH INFORMATION TO PRESENT  
11 AN AMENDMENT TO THE COUNCIL IF WE WERE GOING TO DO SO, BECAUSE  
12 WE HAD NOT ENOUGH INFORMATION, AND IT'S TWO PAGES OF LETTER,  
13 AS I RECALL, NOT ENOUGH INFORMATION.

14 Q. THE LETTER FROM MR. DUONG?

15 A. YES.

16 Q. WHAT JUSTIFICATION IS GIVEN TO THE COUNCIL FOR THIS  
17 9% RATE INCREASE?

18 A. I THINK IT WAS THE THINGS WE HAVE BEEN DISCUSSING.  
19 IF YOU MOVE THAT UP, I THINK IT WILL DESCRIBE. WE TALKED  
20 ABOUT, IN THE SECOND LINE OF THE BACKGROUND, TO BRING THE  
21 RECYCLE PLUS PROGRAM TO FULL COST RECOVERY AND ESTABLISH AN  
22 ADEQUATE FUND BALANCE TO SERVE AS CONTINGENCY RESERVE FOR  
23 2006-2007.

24 Q. WOULD YOU CHARACTERIZE THAT ANALYSIS AS BEING  
25 COMPLETELY TRUTHFUL?

26 A. I WOULD SAY IT TELLS THE TRUTH. IT DOESN'T TELL ALL  
27 OF THE TRUTH, SIR.

28 Q. SO I'M TRYING TO UNDERSTAND HOW THE NUMBERS WORK HERE

1 IN THIS REGARD. WAS THIS RATE INCREASE, IS IT THE CASE THAT  
2 THIS RATE INCREASE WAS LARGE ENOUGH TO COVER THE ADDITIONAL  
3 COSTS FOR THE WAGE AND BENEFIT INCREASES, BUT SMALL ENOUGH TO  
4 STILL BE USED SOLELY TO INCREASE COST RECOVERY AND NOT GO  
5 BEYOND THE 100% -- THAT'S A BAD QUESTION. LET ME ASK ANOTHER  
6 QUESTION.

7 YOU TOLD US PREVIOUSLY THAT YOU DETERMINED THAT THE  
8 FOUR AND FIVE PERCENT RATE INCREASE WAS NECESSARY TO MEET THE  
9 NEEDS IN THAT FISCAL YEAR FOR COLA ADJUSTMENTS AND ANY OTHER  
10 COSTS.

11 A. THAT'S CORRECT.

12 Q. YOU TOLD US IF YOU WANTED TO GET MORE MONEY INTO THE  
13 FUND FROM THE RATES TO COVER ADDITIONAL LABOR COSTS, YOU WOULD  
14 HAVE TO GO UP TO 9%, CORRECT?

15 A. THAT'S CORRECT.

16 Q. IF YOU WENT UP TO 9%, AND DIDN'T USE ANY OF THAT  
17 MONEY TO COVER ADDITIONAL LABOR COSTS, WOULD YOU USE, WOULD  
18 YOU HAVE MONEY LEFT OVER AFTER YOU PAID THE LEGALLY OBLIGATED  
19 COSTS?

20 A. YES. THAT WOULD HAVE BEEN WHAT'S DESCRIBED IN THE  
21 MEMORANDUM HERE AS A CONTINGENCY RESERVE.

22 Q. SO IF THE 9% RATE INCREASE WAS IMPLEMENTED AND YOU  
23 COLLECTED ADDITIONAL REVENUES FROM THE RATEPAYERS, THE  
24 PROPERTY OWNERS, AND DIDN'T APPLY ANY OF THOSE REVENUES TO  
25 INCREASED LABOR COSTS, WHICH THE CITY WAS NOT OBLIGATED TO  
26 USE, YOU WOULD BE RECOVERING MORE THAN 100% OF THE COSTS.

27 A. THAT IS CORRECT.

28 Q. DOESN'T THAT PRESENT A PROBLEM UNDER PROP 218?

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1 A. I DON'T KNOW IF IT'S EXCESSIVE, BECAUSE UNDER PROP  
2 218 YOU WERE ALLOWED TO CREATE A RESERVE, WHICH WAS WHAT WE  
3 WOULD BE PROPOSING TO DO.

4 Q. ANY LIMITS TO THE AMOUNT OF RESERVE?

5 A. I DON'T KNOW THE EXACT NUMBER. I KNOW IT'S PROBABLY  
6 A TEST WHICH WAS NOT EXCESSIVE. WE WERE LOOKING AT THE  
7 BUDGET, BUT WE HAD A VERY SMALL RESERVE FOR THE PROGRAM THAT  
8 WAS APPROXIMATELY 50 MILLION DOLLARS.

9 Q. 50 MILLION A YEAR?

10 A. YES. SO EACH YEAR I WAS ALWAYS TRYING TO INCREASE  
11 THAT RESERVE. EACH YEAR I WAS ALWAYS BROUGHT DOWN TO A LOW  
12 NUMBER AND WE DIDN'T INCREASE IT.

13 Q. ARE YOU SAYING THAT THE 9% INCREASE, WHICH IS GREATER  
14 THAN THE 4-5% PERCENT INCREASE ORIGINALLY CONCEIVED BY YOU,  
15 WAS LARGE ENOUGH SO THAT IT COULD BE EITHER, A PORTION OF IT  
16 COULD EITHER BE APPLIED TO PAY INCREASED LABOR COSTS OR BUILD  
17 UP THE RESERVES?

18 A. THAT IS CORRECT.

19 Q. WAS THAT WHAT YOU BELIEVED TO BE THE ACCURATE  
20 CHARACTERIZATION OF THE SITUATION?

21 A. THAT'S WHAT I WAS DOING, YES.

22 Q. LET ME SHOW YOU EXHIBIT 36. LET ME DISPLAY THAT. DO  
23 YOU RECOGNIZE THIS DOCUMENT?

24 A. I RECOGNIZE IT, I DON'T RECOGNIZE IT AS  
25 EXACT -- YEAH, LOOKS LIKE SOMETHING I SENT.

26 Q. IT, CONTAINED IN THIS DOCUMENT, IS THERE A FEBRUARY

27 11, 2003 E-MAIL THAT YOU SENT TO JOE GUERRA WITH A COPY TO DEL  
28 BORGSDORF, RICHARD DOYLE, LARRY LI SENBEE AND REBECCA

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1 DI SHOTSKI ?

2 A. MM-HMM.

3 Q. YES?

4 A. THAT' S CORRECT.

5 Q. NOW, IN THE FIRST PARAGRAPH HERE, YOU CONCLUDE IN THE  
6 FIRST PARAGRAPH BY MAKING THE STATEMENT, ALL IN ALL, THE GRAND  
7 TOTAL OF THESE ITEMS IS APPROXIMATELY 15%, 4% PREVIOUSLY  
8 CONCEPTUALLY APPROVED, 5% FOR NEW PROPOSALS, AND 6% FOR  
9 NORCAL/CWS?

10 A. MM-HMM.

11 Q. YES?

12 A. THAT' S CORRECT.

13 Q. NOW, IS THAT GIVEN FROM WHAT YOU JUST TOLD US, OR CAN  
14 YOU EXPLAIN HOW THE TWO ARE CONSISTENT?

15 A. IT RELATES TO WHAT I DESCRIBED ABOUT THE WHOLE  
16 DISCUSSION THAT GOES ON, WHAT DO I AS A DEPARTMENT HEAD, WANT  
17 TO SEE HAPPENING, WHAT DOES THE BUDGET OFFICER AND THE CITY  
18 MANAGER SEE RELATED TO THE WORLD AS THEY LOOK AT IT. AND I  
19 WAS ALWAYS A LITTLE BIT HIGHER THAN WHAT THEY WOULD THINK  
20 WOULD BE POLITICALLY SENSITIVE OR CORRECT TO PRESENT.

21 NORMALLY WE WERE ALWAYS TRYING TO BE UNDER 5% OR  
22 UNDER 10%, NEVER WANTED TO GET INTO DOUBLE DIGITS. BUT IF YOU  
23 ADD EVERYTHING UP ON THE TABLE OTHER THAN WHAT I ALREADY  
24 PRESENTED TO THE BUDGET OFFICE, IT ADDED TO APPROXIMATELY

25 15%.

26 Q. HERE'S MY QUESTION: LET ME PLAY DEVIL'S ADVOCATE FOR  
27 A MOMENT. IF ONE WANTED TO DISPUTE WHAT YOU'VE TOLD US, WHICH  
28 WAS THAT -- THAT THE FOUR AND FIVE PERCENT GREW TO 9% TO

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1 INCLUDE THE POTENTIAL OF REIMBURSING NORCAL'S INCREASED LABOR  
2 COSTS OR BUILDING UP RESERVES, DOESN'T THIS E-MAIL SUGGEST  
3 THAT IF THAT WAS YOUR INTENT, TO INCLUDE THE LABOR COSTS, YOU  
4 WOULD HAVE TO GO TO 15%, NOT 9%?

5 A. IT DOES IF YOU -- AS I RECALL, IF YOU SAY YOU ARE  
6 GOING TO DO ALL THAT IN ONE YEAR. WHAT ENDED UP HAPPENING, WE  
7 ENDED UP, THE PROPOSAL FOR 9% IN '03-'04 AND ANOTHER 9% IN  
8 SUBSEQUENT YEARS. WE WORKED OUT A WAY TO REDUCE THE INITIAL  
9 COST TO TWO YEARS.

10 Q. YOUR 15% ESSENTIALLY IS WINDING UP BEING SPREAD OVER  
11 TWO YEARS?

12 A. THAT'S CORRECT.

13 Q. IT'S A TIMING ISSUE AS TO WHEN THE RATES WILL BE  
14 RAISED?

15 A. THAT'S CORRECT.

16 Q. IN ORDER TO RAISE THESE RATES, DOESN'T PROP 218  
17 REQUIRE THAT THE RATEPAYERS OR PROPERTY OWNERS BE GIVEN NOTICE  
18 AND A CHANCE TO PROTEST THE INCREASE?

19 A. THAT'S CORRECT. EACH YEAR WE SEND NOTICES TO ALL THE  
20 PROPERTY OWNERS INDICATING THE MAXIMUM AMOUNT THAT THE RATE  
21 WOULD GO TO AND THE NUMBER OF YEARS THAT WOULD BE. SOMETIMES  
22 WE SENT OUT A ONE-YEAR NOTICE, SOMETIMES A NOTICE THAT WAS FOR

23 MULTIPLE YEARS.

24 Q. DOES PROP 218 REQUIRE THAT RATEPAYERS OR PROPERTY  
25 OWNERS BE TOLD THE PURPOSE OF THE RATE INCREASE?

26 A. YES, IT DOES.

27 Q. LET ME SHOW YOU WHAT HAS BEEN MARKED AS EXHIBIT 37.  
28 IF WE LOOK AT THE PURPOSE STATED HERE, COULD YOU TELL US WHAT

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1 THE RATEPAYERS ARE BEING TOLD IS THE PURPOSE OF THE RATE  
2 INCREASE? CAN YOU READ THAT PORTION?

3 A. "THE PROPOSED RATE INCREASES NEEDED TO HELP MAKE  
4 GARBAGE AND RECYCLING SERVICES MORE SELF-SUPPORTING, MINIMIZE  
5 THE AMOUNT OF TAXPAYER FUNDS REQUIRED TO SUPPORT THEM, AND  
6 COVER RISING COSTS SINCE RATES WERE LAST INCREASED.

7 Q. NOW IS THERE ANY DISCLOSURE IN THIS NOTICE ABOUT ONE  
8 OF THE PURPOSES INCLUDING EITHER PAYING NORCAL FOR ITS  
9 INCREASED LABOR COSTS OR BUILDING UP OF A CONTINGENCY FUND?

10 A. THERE IS NO NOTICE RELATED TO PAY FOR NORCAL'S  
11 INCREASED LABOR COST. THE LANGUAGE THAT'S IN THE SECOND  
12 SENTENCE OF PARAGRAPH THREE CAN BE UTILIZED TO STATE WHAT I  
13 STATED EARLIER, RELATED TO THE CONTINGENCY RESERVE COSTS OF  
14 THE PROGRAM.

15 Q. SO YOUR VIEW IS THAT THE LANGUAGE IN THIS NOTICE IS  
16 BROAD ENOUGH TO INCLUDE THE BUILDING UP OF THE CONTINGENCY  
17 FUND?

18 A. I THINK SO, YES.

19 Q. I'M SORRY?

20 A. YES.

- 21 Q. WHO PREPARES THESE PROP 218 NOTICES SUCH AS THIS ONE  
22 WE HAVE IN FRONT OF US?  
23 A. THEY ARE PREPARED UNDER MY DIRECTION.  
24 Q. WHO SPECIFICALLY PREPARES THEM?  
25 A. I DON'T RECALL WHO BY NAME PREPARED THIS ONE.  
26 Q. AND DO YOU HAVE TO APPROVE THE NOTICE BEFORE IT GOES  
27 OUT?  
28 A. YES. THE CITY ATTORNEY'S OFFICE ALSO.

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- 1 Q. WHO AT THE CITY ATTORNEY OFFICE?  
2 A. SUSAN DEVENCENZI.  
3 Q. DID YOU MAKE MISS DEVENCENZI AWARE OF THE FACT THAT  
4 ONE OF THE PURPOSES OF THE RATE INCREASE WAS TO POSSIBLY COVER  
5 INCREASED LABOR COSTS?  
6 A. SHE WAS AWARE OF THAT, YES.  
7 Q. DID YOU ALSO MAKE HER AWARE OF THE FACT THAT ANOTHER  
8 ALTERNATIVE PURPOSE OF THE RATE INCREASE WAS TO BUILD UP THE  
9 CONTINGENCY FUND?  
10 A. SHE WAS AWARE OF THAT ALSO, YES.  
11 Q. SHE PASSED ON, I GUESS, THE LEGAL SUFFICIENCY OF THE  
12 NOTICE?  
13 A. YES, THAT IS CORRECT.  
14 Q. LET ME SHOW YOU EXHIBIT 38 AND ASK YOU IF YOU  
15 RECOGNIZE THIS DOCUMENT.  
16 A. YES, I DO.  
17 Q. WHAT IS IT?  
18 A. IT IS A MEMORANDUM TO THE CITY COUNCIL REGARDING THE

19 PROPOSED RECYCLE PLUS RATE INCREASES FOR FISCAL YEAR '03-'04.

20 Q. OKAY. AND ARE YOU THE PERSON WHO PREPARED IT?

21 A. IT WAS PREPARED UNDER MY SUPERVISION, AND I THINK I  
22 SIGNED THIS ONE. I DON'T RECALL, SOMETIMES A DEPUTY SIGNS IT.

23 Q. LET'S TAKE A LOOK AT THE LAST PAGE.

24 A. IT'S MY SIGNATURE.

25 Q. LET ME DIRECT YOUR ATTENTION TO TABLE 1. COULD YOU  
26 EXPLAIN TO US WHAT THAT SHOWS?

27 A. TABLE 1 IS A FUND-TO-BALANCE TABLE SHOWING WHAT THE  
28 REVENUE AND OPERATING EXPENDITURES WOULD BE IN EACH OF THE

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1 FISCAL YEARS SHOWN THERE, SHOWING WHAT THE APPROXIMATE  
2 PERCENTAGE OF COST RECOVERY WOULD BE, AND SHOWING WHAT A  
3 BALANCE WOULD BE WITHOUT THE PROPOSED RATE INCREASES. WE DO A  
4 TABLE SIMILAR TO THIS EACH TIME WE DO A PROPOSED RATE  
5 INCREASE.

6 Q. AND IS THIS TABLE CONSISTENT WITH WHAT YOU TOLD US,  
7 THAT FOR '03-'04 UNDER THE SCENARIO OF THE PROPOSED 9%, THAT  
8 WOULD PROVIDE COST RECOVERY UP TO 100%?

9 A. YES, THAT'S CORRECT.

10 Q. AND WHEN YOU SAY COST RECOVERY, DID YOU INCLUDE AS  
11 PART OF THE COSTS ADDITIONAL PAYMENTS TO NORCAL FOR INCREASED  
12 LABOR COSTS?

13 A. I DON'T REMEMBER. I DON'T RECALL.

14 Q. ARE THERE ANY WORKSHEETS OR COMPUTATIONS OR DOCUMENTS  
15 THAT YOU COULD REFER TO THAT WOULD ANSWER THAT QUESTION?

16 A. THERE WOULD HAVE BEEN. IF WE DON'T HAVE THEM, I

17 DON' T KNOW WHERE THEY ARE.

18 Q. WE' VE SUBPOENAED LOTS OF DOCUMENTS, BUT WE HAVE NOT  
19 HAD A CHANCE TO GO THROUGH ALL OF THEM, BUT WE WILL.

20 A. AS I DESCRIBED EARLIER, THE DOLLARS ASSOCIATED WITH  
21 THE RATE INCREASE THAT WERE EARMARKED FOR THIS POTENTIAL  
22 PAYMENT FOR EXTRA WAGES COULD NOT BE USED FOR THAT PURPOSE  
23 UNLESS THE COUNCIL APPROVED AN AMENDMENT, AND UNLESS THE  
24 COUNCIL APPROPRIATED FUNDS FOR THAT PURPOSE. SO AT THIS  
25 POINT I DON' T RECALL SAYING WE WERE GOING TO SPEND THAT MONEY,  
26 EVEN THE NEXT YEAR. BUT PERHAPS FOR BUDGET PURPOSES, FOR  
27 ACCOUNTING PURPOSES WE HAD TO SAY THAT, BUT WE COULDN' T SAY WE  
28 WERE GOING TO SPEND IT, BECAUSE WE DID NOT HAVE AN AMENDMENT.

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1 Q. DID THE COUNSEL APPROVE THE RATE HIKE?

2 A. YES.

3 Q. DO YOU RECALL WHEN IT BECAME EFFECTIVE? WOULD YOU  
4 LIKE TO REFER TO THE MEMO?

5 A. YES, PLEASE.

6 Q. ON THE FRONT PAGE OF YOUR MEMO, APPARENTLY THAT WAS  
7 EFFECTIVE JULY 1, 2003?

8 A. THAT' S A RESOLUTION REVISING RATES FOR SERVICES  
9 BEGINNING JULY 1. DOES THAT STATE IN THE MEMO WHETHER THE  
10 RATE HIKE ITSELF --

11 Q. WHY DON' T I HAND THE DOCUMENT TO YOU; SINCE IT' S  
12 PREPARED UNDER YOUR SUPERVISION, YOU' RE PROBABLY MUCH MORE  
13 FAMILIAR WITH IT THAN I AM.

14 A. I DON' T SEE IN HERE THE STATEMENT AS TO EXACT DATES

15 THE RATES WOULD BE EFFECTIVE. IT STATES ON THE TOP, ON THE  
16 FIRST PAGE, EFFECTIVE JULY 1. USUALLY IT TAKES US SEVERAL  
17 BILLING CYCLES TO INCREMENT RATES INTO EVERYONE'S BILLING. IT  
18 TAKES A COUPLE OF MONTHS TO PROGRAM IT UNDER THE  
19 CIRCUMSTANCES. LET'S ASSUME IT WAS JULY 1. IT WAS FOR  
20 PURPOSE OF THE FISCAL YEAR BEGINNING JULY 1.

21 Q. LET ME GO BACK TO THIS TABLE. WE WERE LOOKING AT  
22 TABLE 1 AGAIN. WE WOULD LIKE TO GET A LITTLE MORE  
23 CLARIFICATION ON THE TABLE, BECAUSE SOME OF US MAY NOT BE AS  
24 FAMILIAR WITH IT AS YOU ARE.

25 IF YOU LOOK AT THE SECOND COLUMN FROM THE LEFT,  
26 WHICH IS THE '03-'04 FISCAL YEAR, CORRECT?

27 A. CORRECT.

28 Q. YOU SHOW A PROPOSED SINGLE FAMILY RATE INCREASE OF

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1 9%?

2 A. CORRECT.

3 Q. YOU SHOW, WITH THE RATE INCREASE, 100% COST RECOVERY,  
4 CORRECT?

5 A. CORRECT.

6 Q. AND WITHOUT IT, 92% COST RECOVERY?

7 A. CORRECT.

8 Q. NOW, NOT UNDERSTANDING THE INTRICACIES AND SUBTLETIES  
9 OF THE TABLE, IT SEEMS TO ME YOU'RE OFF BY 1%?

10 A. WE'RE OFF BY 1%?

11 Q. YEAH, BECAUSE 92 PLUS NINE IS 99%, NOT 100%.

12 A. OH, OKAY.

13 Q. NOW, I'M SURE THAT'S NOT THE CASE, BUT WHAT AM I  
14 MISSING HERE?

15 A. IT ISN'T THAT -- IT IS NOT THAT EASY, BECAUSE, AS YOU  
16 SEE IN THE NEXT, OVER, IF YOU DIDN'T DO IT, IT WOULD BE 88%,  
17 AND NINE PLUS 88 IS LESS THAN 100%.

18 Q. SO WHAT'S GOING ON HERE?

19 A. THERE WERE A NUMBER OF FACTORS GOING ON HERE. ONE,  
20 IT RELATES TO HOW MUCH THAT RESERVE OR BALANCE IS BUILDING UP  
21 OR NOT. WE HAVE AN ENORMOUS, VERY LARGE RATE MODEL WE USE,  
22 THAT IS USED TO DO WHAT I DESCRIBED EARLIER RELATED TO THE  
23 PROJECTIONS, AND WE HAVE PROGRAMMED INTO THAT MODEL ALL OF OUR  
24 EXPENDITURES. IT WAS MORE DETAILED THAN THIS, IT'S A VERY  
25 LARGE EXCEL SPREADSHEET THAT INCORPORATES ALL SOURCES OF  
26 REVENUE INTO THE FUND, ALL EXPENDITURES OUT, INCLUDING  
27 CONTRACTS, THE CONTRACTORS AFTER EXPENDITURES, ALL OTHER  
28 ACTIVITIES. AND WE, IT ALSO LOOKS AT, WE LOOKED AT FOUR OR

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1 FIVE YEARS OUT, SO WE WERE DOING PROJECTIONS RELATED TO  
2 POPULATION, PROJECTIONS RELATED TO SIZE OF PERCENTAGES EACH  
3 CUSTOMER WOULD HAVE TO ALL KINDS OF EXTRAPOLATIONS AND  
4 FORECASTS.

5 THAT JOINED MODEL COMES UP WITH THIS, WHICH IS AN  
6 EXECUTIVE SUMMARY, SO IT COMES, AS YOU SEE, VERY CLOSE, BUT IT  
7 IS NOT EXACT.

8 Q. OKAY. DO I UNDERSTAND TABLE 1 TO SAY, IN YOUR  
9 MEMORANDUM TO THE COUNCIL, DO I UNDERSTAND THIS TO SAY THAT  
10 FOR FISCAL YEAR '03-'04, FOR SINGLE-FAMILY DWELLINGS UNDER THE

11 ASSUMPTION OF THE PROPOSED 9% RATE INCREASE, THE FUND BALANCE  
12 AND CONTINGENCY RESERVE WOULD INCREASE BY \$200,000?

13 A. NO, YOU HAVE TO TAKE A LOOK AT WHETHER WE'RE TALKING  
14 ABOUT -- YES, REVENUE WOULD INCREASE, BECAUSE THE TOTAL  
15 REVENUE SAYS \$50,406,000, SO OPERATING EXPENSES WOULD BE 50  
16 MILLION AND -- SO NET WOULD BE MINUS \$200,000.

17 Q. SO DO I UNDERSTAND FROM THIS TABLE AND OUR MOST  
18 RECENT DISCUSSION ABOUT THIS TABLE THAT WHAT'S BEING PRESENTED  
19 IN THIS TABLE INCLUDES AN ASSUMPTION THAT SOME OF THE RATE  
20 INCREASE WILL BE USED TO PAY ADDITIONAL LABOR COSTS AND NOT TO  
21 BUILD UP THE CONTINGENCY FUND?

22 A. NO, THAT'S THE ROOT OF THE QUESTION YOU ASKED  
23 EARLIER.

24 Q. RIGHT.

25 A. WE ASSUME IN OUR TOTAL OPERATING EXPENDITURES IN  
26 '03-'04 --

27 Q. RIGHT. AND WHAT'S THE ANSWER?

28 A. I DON'T RECALL. I DON'T RECALL. BUT --

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1 Q. WELL --

2 A. BUT --

3 Q. I DON'T WANT TO CUT YOU OFF.

4 A. WELL, IN MY TESTIMONY EARLIER I STATED WE DIDN'T HAVE  
5 AN AGREEMENT YET.

6 Q. I UNDERSTAND.

7 A. WHAT I'M LOOKING AT ON THE CHART, OR WHAT I'M  
8 RECALLING IS THAT I DON'T RECALL HOW I COULD INDICATE THAT WE

9 WOULD HAVE AN EXPENDITURE.  
10 Q. THAT YOU WEREN' T LEGALLY OBLIGATED TO PAY?  
11 A. THAT' S CORRECT. SO I DON' T RECALL --  
12 Q. SO IF THAT, IF YOU DID NOT -- IN YOUR ASSUMPTION, IN  
13 YOUR RATE MODEL ASSUMPTION, IF YOU DID NOT INCLUDE THESE  
14 ADDITIONAL LABOR COSTS AS PART OF YOUR ASSUMPTION, WHY DIDN' T  
15 THE RATE MODEL SPIT OUT AND BUILD UP IN A CONTINGENCY FUND?  
16 A. GOOD QUESTION. I' M THINKING TO MYSELF AS WE HAVE  
17 DESCRIBED AND AS I DESCRIBED TO YOU, IF IT' S NOT INCLUDED  
18 THERE, IT SHOULD BE BUILDING UP THE RESERVE.  
19 Q. CORRECT. WHY ISN' T IT?  
20 A. AT THIS POINT I DON' T KNOW, OTHER THAN I WILL HAVE TO  
21 TAKE A MORE CLOSER LOOK AT THE TABLE TO SEE HOW IT' S  
22 SUMMARI ZED.  
23 MR. FINKELSTEIN: I REPRESENTED TO THE REPORTER WE  
24 WOULD TRY TO BREAK EVERY HOUR. LET' S TAKE A FIVE-MINUTE  
25 RECESS.  
26 (A BRIEF RECESS WAS TAKEN.)  
27 THE FOREMAN: I' LL CALL THE GRAND JURY BACK TO ORDER  
28 AND NOTE FOR THE RECORD THAT ALL JURORS ARE PRESENT.

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1 BY MR. FINKELSTEIN:  
2 Q. I THINK WHEN WE RECESSED, MR. MOSHER, WE WERE TRYING  
3 TO UNDERSTAND TABLE 1 FROM YOUR MEMO TO THE COUNCIL ABOUT  
4 THE '03 PROPOSED 9% RATE INCREASE, CORRECT?  
5 A. THAT' S CORRECT.  
6 Q. YOU' VE HAD A BRIEF CHANCE TO REVIEW THE MEMO, AND I' M

7 WONDERING IF THAT'S CAUSED YOU TO RETHINK HOW THIS RATE  
8 INCREASE WAS PUT TOGETHER.  
9 A. LET ME STATE TWO THINGS. THERE'S A TABLE ON PAGE  
10 SEVEN OF THE MEMORANDUM.  
11 Q. JUST A MOMENT.  
12 A. CALLED CHART NUMBER 1.  
13 Q. JUST A MOMENT. I'LL PUT THAT UP ON THE SCREEN.  
14 A. IF I CAN JUST --  
15 Q. WE HAVE ANOTHER COPY OF THIS, WE CAN GET IT. DO YOU  
16 WANT TO DIRECT US TO THE PAGE?  
17 A. IT'S PAGE SEVEN, AND IT'S CALLED CHART 1.  
18 Q. LET ME PUT THAT UP ON THE SCREEN.  
19 A. THE CHART ON THE TOP RELATES TO THE TABLE ON THE  
20 BOTTOM.  
21 Q. SHALL WE LOOK AT THE TABLE OR CHART OR BOTH?  
22 A. THE TABLE WHICH WE WERE SPEAKING OF EARLIER RELATES  
23 TO JUST THE SINGLE-FAMILY PORTION OF THE INTEGRATED WASTE  
24 FUND.  
25 THE NEXT TABLE, ON PAGE SIX, PRECEDING THIS ONE, IS  
26 THE TABLE RELATING TO THE MULTIFAMILY PORTION, AND THIS TABLE  
27 IS THE ADDITION OF ALL THOSE EXPENSES.  
28 Q. SO IS THE ANSWER THAT THE TABLE THAT I WAS LOOKING

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1 AT, TABLE 1, ONLY TELLS PART OF THE STORY BECAUSE IT WAS ONLY  
2 THE SINGLE-FAMILY?  
3 A. THAT'S CORRECT.  
4 Q. THIS TABLE, WHICH IS TABLE --

5 A. THIS TABLE THEN SHOWS --

6 Q. WHAT TABLE ARE WE LOOKING AT, THIS IS THE TABLE  
7 FOLLOWING CHART 1.

8 A. YES. THE SAME FISCAL YEAR AS SHOWN IN TABLE 1.

9 Q. THIS IS COMBINED, SINGLE AND MULTI?

10 A. YES, IT SHOWS THE ENDING, OR WHAT'S CALLED THE  
11 UNRESTRICTED FUND BALANCE CONTINGENCY RESERVE AS THE TOTAL  
12 AMOUNT OF DOLLARS THAT'S THERE. THE PREVIOUS TWO TABLES SHOW  
13 THAT THERE WAS SUBTRACTION FROM THAT, BECAUSE WE WERE SPENDING  
14 MORE THAN WE WERE TAKING IN. AND YOU CAN SEE BY THIS CHART,  
15 IN 0001 WE HAD A VERY HIGH BALANCE, AND WE WERE USING THAT  
16 BALANCE BECAUSE THE PROGRAM WAS NOT COST RECOVERY. WE WERE  
17 SUBSIDIZING IT FROM OTHER SOURCES OF REVENUE BETWEEN THE FUND  
18 AND DRAWING DOWN A CONTINGENCY BALANCE TO THE POINT WE WOULD  
19 SHOW AND WE NEEDED TO GET THE PROGRAM BACK TO COMPLETE COST  
20 RECOVERY WITHIN THE MULTIFAMILY AND SINGLE-FAMILY RATEPAYERS,  
21 AND THIS IS WHAT WE WERE TRYING TO DO.

22 Q. SO, ACCORDING TO THIS TABLE WITH THE 9% PROPOSED RATE  
23 HIKE FOR '03-'04, THE UNRESTRICTED FUND BALANCE CONTINGENCY  
24 RESERVE WOULD HAVE BEEN MORE THAN 2.4 MILLION DOLLARS?

25 A. THAT WOULD HAVE BEEN REMAINING IN THE FUND.

26 Q. SO, POSITIVE CONTINGENCY?

27 A. POSITIVE, BUT MUCH LOWER THAN WE WERE IN PREVIOUS  
28 YEARS.

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1 Q. THANK YOU FOR CLARIFYING THAT. I WOULD LIKE TO MARK  
2 AS EXHIBIT 43 A MULTI-PAGE DOCUMENT ENTITLED "RATE INCREASE

3 SCENARIO SUMMARY, FUND 423. "

4 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
5 JURY EXHIBIT 43.)

6 BY MR. FINKELSTEIN:

7 Q. WOULD YOU TAKE A LOOK AT THAT, PLEASE, AND TELL US IF  
8 YOU HAVE SEEN THIS DOCUMENT BEFORE.

9 A. THIS IS, THE SUMMARY PAGES OF WHAT I DESCRIBED  
10 EARLIER RELATED TO DIFFERENT SCENARIOS WE WOULD PUT TOGETHER  
11 FOR RATE AND REVENUE AND EXPENDITURE SCENARIOS.

12 THIS PARTICULAR ONE, AS YOU CAN SEE, WAS DEVELOPED  
13 FEBRUARY 28, AND THERE ARE FIVE SCENARIOS ON THIS SHEET.

14 Q. OKAY. LET ME ASK YOU SOME QUESTIONS. WHO PREPARED  
15 THIS DOCUMENT?

16 A. WHO IS THE AUTHOR?

17 Q. YES.

18 A. I AM THE ULTIMATE AUTHOR; MY STAFF PREPARED IT.

19 Q. AND SO THIS IS GENERATED FROM THIS RATE MODEL  
20 PROGRAM?

21 A. THAT'S CORRECT. THESE ARE HIGH-LEVEL SUMMARIES OF A  
22 VERY LARGE EXCEL SPREADSHEET.

23 Q. IT APPEARS WHAT YOU HAVE IS FIVE DIFFERENT SCENARIOS  
24 FOR VARIOUS FISCAL YEARS THAT ARE PORTRAYED IN THIS TABLE?

25 A. THAT'S CORRECT.

26 Q. LET ME DIRECT YOUR ATTENTION, SCENARIO ONE IS CALLED  
27 THE BASE CASE, CORRECT?

28 A. THAT'S CORRECT.

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1 Q. SCENARIO TWO IS NO CHANGE PROPOSALS, MAX 9%. WHAT  
2 DOES THAT MEAN?

3 A. WHERE DID THE 9% COME FROM?

4 Q. NO, NO. WHAT IS SCENARIO ONE?

5 A. SCENARIO ONE WAS THE, I BELIEVE THE CASE THAT WE HAD  
6 PROPOSED TO THE COUNCIL IN THE PREVIOUS YEAR RELATED TO WHAT  
7 WE THOUGHT RATES WOULD BE FOR JULY 1, 2003, AND FEBRUARY 1,  
8 2003, AND FOR SINGLE-FAMILY YOU CAN SEE ON THE TOP LINE THERE  
9 WERE THE 3% IN 2/03, 4% IN 2/04. THAT WAS THE PROGRAM WE WERE  
10 OPERATING UNDER UNTIL WE GOT THE BOMBSHELL.

11 Q. LET ME TRY TO APPROACH THIS SUBJECT THIS WAY. SINCE  
12 WE HAVE BEEN TALKING ABOUT '03-'04, THAT WOULD BE THE SECOND  
13 COLUMN ON THE LEFT, CORRECT, FROM THE --

14 A. THAT IS CORRECT.

15 Q. SO SCENARIO ONE, THAT'S THE 4-5% RATE INCREASE THAT  
16 YOU TOLD US YOU WERE ORIGINALLY CONTEMPLATING?

17 A. THAT'S CORRECT. AND SCENARIO TWO AND THREE WOULD BE  
18 A MULTI-YEAR PROPOSAL THAT, IF WE INCURRED LABOR INCREASES, I  
19 NEEDED TO INCORPORATE THAT EXPENDITURE, WHAT WOULD THAT TAKE  
20 FOR A MULTI-YEAR SCENARIO.

21 SCENARIO NUMBER FOUR IS ENTITLED AB, CAPITAL A,  
22 CAPITAL B, 939.

23 Q. WHAT IS THAT?

24 A. STATE LAW THAT ALLOWED CITIES AND COUNTIES TO INCLUDE  
25 RATES OR DOLLARS FOR RECYCLING PROGRAMS. WE HAVE, THE  
26 INTEGRATED WASTE FUND SETS THE RATES FOR THIS FEE, WHICH WAS  
27 ON A CUBIC FOOT OR PER TONNAGE BASIS. THE REVENUE FOR AB 939  
28 COMES INTO THIS FUND.

1 ANOTHER REVENUE OR FEE THAT IS AFFIXED TO GARBAGE  
2 HAULERS IS WHAT'S CALLED THE FRANCHISE FEE. WE HAD, I  
3 BELIEVE, \$3.85 PER TON OR CUBIC FOOT. WE WERE WORKING WITH  
4 THE BUDGET OFFICE TO REDUCE THE AB 939 FEE AND INCREASE THE  
5 FRANCHISE FEE, BUT STILL KEEP THE TOTAL BURDEN TO BE \$3.85.

6 THE PURPOSE WAS, THE AB 939 FEE REVENUE CAME TO THE  
7 INTEGRATED WASTE FUND, AND THE FRANCHISE FEE DOLLARS GO INTO  
8 THE GENERAL FUND. THIS WAS DURING THE PERIOD OF TIME WHEN THE  
9 CITY, AND IT STILL DOES, HAD GENERAL FUND REVENUE SHORTFALLS.

10 WE WERE LOOKING AT HOW COULD WE INCREASE REVENUE TO  
11 THE GENERAL FUND. ONE OF THOSE WAS TO DECREASE THE AB 939  
12 FEE, INCREASE THE FRANCHISE FEE. THAT'S WHAT FOUR IS ABOUT.

13 Q. SCENARIO FIVE?

14 A. SCENARIO FIVE IS, I THINK THAT WOULD BE IF WE  
15 PROPOSED THE RATES, THE FIRST BULLET UNDER PROPOSED RATE TO BE  
16 COMPLETELY COST RECOVERY AT 100%, WHAT WOULD IT TAKE THE FIRST  
17 YEAR TO INCORPORATE THE THIRD BULLET, LABOR INCREASES, AND  
18 AFTER THAT, WHAT WOULD BE THE RATES TO KEEP THE FUND OR RATES  
19 COST RECOVERY AT A ONE-TIME INCREASE IN '03-'04.

20 Q. LET ME ASK YOU THIS: SCENARIO ONE WAS WITHOUT  
21 INCREASED LABOR COSTS ATTRIBUTABLE TO INCREASED PAYMENTS TO  
22 THE CWS WORKERS?

23 A. THAT'S CORRECT.

24 Q. MRF WORKERS?

25 A. THAT'S CORRECT.

26 Q. HERE'S THE QUESTION: IF YOU LOOK AT SCENARIO ONE, IT  
27 HAS A LINE ITEM THAT SAYS "LABOR INCREASES INCLUDED."

28 A. YES, IT DOES.

1 Q. AS A MATTER OF FACT, ALL FIVE SCENARIOS HAVE THAT  
2 LINE ITEM, CORRECT?

3 A. THAT'S CORRECT.

4 Q. SO CAN YOU EXPLAIN THAT APPARENT INCONSISTENCY? ARE  
5 WE TALKING ABOUT DIFFERENT LABOR INCREASES, ARE WE TALKING ON  
6 THE ONE HAND LABOR INCREASES AND ON THE OTHER HAND INCREASED  
7 WAGES AND BENEFITS?

8 A. WHAT SCENARIO ONE SHOWS IS THAT IF THE LABOR  
9 INCREASES WERE INCORPORATED INTO OUR EXPENDITURES, THE TOP  
10 LINE THERE, CALLED "UNRESTRICTED FUND BALANCE," THAT SHOWS  
11 WHAT WOULD HAPPEN TO THE FUND BALANCE OF THE FUND IF THE LABOR  
12 INCREASE WAS PAID AND WE DID NOT INCREASE THE REVENUE OR THE  
13 RATES ANY FURTHER THAN WHAT THE BASE CASE IS.

14 IF YOU COULD MOVE THAT CHART TO THE RIGHT, YOU CAN  
15 SEE IN THE SUBSEQUENT YEARS THERE ARE NEGATIVE NUMBERS FOR THE  
16 UNRESTRICTED FUND BALANCE. THAT SHOWS UNDER THE PRESENT,  
17 UNDER THAT POINT IN TIME IF WE ONLY INCREASE THE RATES AS  
18 SHOWN THERE, AND IF THERE WAS AN AMENDMENT, THAT WOULD REQUIRE  
19 TO US PAY ADDITIONAL LABOR FEES.

20 Q. YOU WOULD GO NEGATIVE IN THE FUND?

21 A. THEN WE GO NEGATIVE. THAT'S WHAT NUMBER ONE SHOWS.

22 Q. SO THIS MODEL ASSUMES IN ALL CASES AN ADDITIONAL COST  
23 FOR INCREASED WAGES AND BENEFITS; IS THAT CORRECT?

24 A. THAT'S CORRECT.

25 Q. IT SHOWS THE CONSEQUENCES OF THAT ASSUMPTION?

26 A. SHOWS THE CONSEQUENCES, AND SHOWS THEM BASED UPON,  
27 THIS IS NOW DATED FEBRUARY 28, THIS IS LIKE 18 DAYS AFTER THAT

28 FIRST E-MAIL, WE STILL HAVE NO MORE INFORMATION THAN WHAT WAS

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1 CONTAINED IN THIS LETTER. WE HAD NO MORE INFORMATION OTHER  
2 THAN HERE'S WHAT SOMEBODY SAID THEY THOUGHT IT WOULD BE IN  
3 THOSE YEARS.

4 Q. WHAT WAS JOE GUERRA'S AUTHORITY -- STRIKE THAT. WHO  
5 WAS DRIVING THIS TRAIN, WHO WAS CAUSING THESE ASSUMPTIONS TO  
6 BE INCORPORATED INTO THE RATE MODEL AND SO FORTH?

7 A. JOE GUERRA AND THE BUDGET OFFICE. THEY ASKED US FOR  
8 THESE SCENARIOS.

9 Q. WHEN YOU SAY JOE GUERRA AND THE BUDGET OFFICE, IS THE  
10 BUDGET OFFICE SOMETHING UNDER THE CITY MANAGER'S PURVIEW, OR  
11 ARE YOU TALKING ABOUT IS THERE A SEPARATE BUDGET OFFICE THAT  
12 JOE GUERRA IS PART OF?

13 A. WHEN I SAY BUDGET OFFICE, I MEAN LARRY LI SENBEE, WHO  
14 IS THE MANAGER'S BUDGET OFFICER AND HIS BUDGET OFFICE.

15 Q. THE MAYOR'S BUDGET PERSON AND THE MANAGER'S BUDGET  
16 PERSON FROM YOUR POINT OF VIEW ARE THE PEOPLE CAUSING THESE  
17 ASSUMPTIONS TO CHANGE?

18 A. THEY ASKED US FOR WHAT IFS, AND WE GAVE THEM THESE  
19 FIVE SCENARIOS.

20 Q. THIS CHART TELL US THAT IF YOU DID BOTH THE LABOR  
21 INCREASED COSTS, YOU RECOGNIZE THE INCREASED LABOR COSTS AND  
22 THE AB 939 SHIFT, YOU WOULD HAVE TO GO TO 15%?

23 A. THAT WOULD BE SCENARIO NUMBER FIVE, THAT IF WE DID  
24 ALL THOSE THINGS, YES.

25 Q. FOR '03-'04?

26 A. FOR '03-'04. WE DIDN'T END UP WITH THAT  
27 RECOMMENDATION.  
28 Q. I UNDERSTAND.

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1 A. IF I MAY, I THINK THAT NUMBER IN SCENARIO NUMBER FOUR  
2 --  
3 Q. NUMBER FOUR OR FIVE?  
4 A. SCENARIO NUMBER FIVE, YES. YOU SHOWED THE E-MAIL  
5 EARLIER THAT SUMMARIZED VARIOUS NUMBERS AND CAME UP WITH 15%.  
6 THAT'S THIS NUMBER.  
7 Q. THAT'S THE RATE OF 15%?  
8 A. YES, BECAUSE I BELIEVE WE DECIDED NOT TO, I THINK WE  
9 DECIDED TO DELAY THE AB 939 SHIFT.  
10 Q. YOU'RE TALKING ABOUT THE E-MAIL MARKED EXHIBIT 36?  
11 A. THAT'S CORRECT. I THINK THAT SCENARIO FIVE IS THE  
12 SCENARIO, IS THE PARAGRAPH AT THE END.  
13 Q. LET ME CONTINUE. I HAVE A FEW MORE QUESTIONS ON THIS  
14 PROPOSED RATE HIKE OF 5%, WHICH COULD HAVE BEEN USED TO BUILD  
15 UP THE CONTINGENCY FUND. IF IT WASN'T USED TO PAY INCREASED  
16 LABOR COSTS, WHAT ELSE COULD IT HAVE BEEN USED FOR?  
17 A. IT ONLY COULD HAVE BEEN USED FOR ACTIVITIES OR  
18 EXPENDITURES WITHIN THE INTEGRATED WASTE FUND, AND THEY ONLY  
19 COULD BE APPROVED THROUGH THE BUDGET PROCESS, BY BEING  
20 INCORPORATED INTO THE BUDGET, OR BY APPROPRIATION BY THE  
21 COUNCIL AFTER THE BUDGET WAS APPROVED. THEY COULD NOT BE USED  
22 FOR ANY OTHER PURPOSE EXCEPT FOR A RATE INCREASE.  
23 Q. LET ME ASK YOU TO TAKE A LOOK, IF YOU WILL, ON THE

24 RATE MODEL SPREADSHEET, WHAT EXHIBIT NUMBER IS THAT?  
25 A. 43.  
26 Q. IF YOU GO TO PAGE TWO, WHICH IS BATES STAMP  
27 CA0000834, TAKE A LOOK AT THAT FOR A MOMENT.  
28 A. YES.

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1 Q. NOW, THERE'S A BOX IN THIS SPREADSHEET ON PAGE TWO  
2 THAT APPEARS TO HAVE BEEN PRINTED OUT FROM THE COMPUTER WITH  
3 THE HEADING "AB 939 FEE SHIFT"?  
4 A. YES.  
5 Q. IT LOOKS LIKE SOMEONE HAS HANDWRITTEN INTO THIS BOX  
6 AND PUT A STRIKE THROUGH THAT WORD, AND WRITTEN BY HAND THE  
7 WORD "LABOR" AND INSERTED BY HAND, STARTING WITH '02-'03, THE  
8 FIGURE 1.9 MILLION DOLLARS, AND 2.1 AND SO FORTH. DO YOU SEE  
9 THAT?  
10 A. YES.  
11 Q. DO YOU KNOW WHAT THAT, WHY THAT IS?  
12 A. YES. THIS ENTIRE DOCUMENT THAT YOU HAVE WAS THE  
13 EXECUTIVE SUMMARY, I'LL CALL IT, OF THAT RATE MODEL. WHEN WE  
14 USED THAT MODEL, WE HAD, WERE WORKING WITH AB 939 FEE SHIFT  
15 ACTIVITY THAT BOX WAS INTENDED TO DO. WHEN THIS SITUATION  
16 CAME ABOUT, WE INCORPORATED THIS, AND WE ONLY HAVE DAYS TO DO  
17 THIS. WE INCORPORATED THE NUMBERS INTO THIS BOX, HANDWRITTEN  
18 THEM ON TOP OF THAT, SO WE COULD PRESENT THESE TO PEOPLE.  
19 Q. WHO WAS THIS DOCUMENT DISTRIBUTED TO AT CITY HALL?  
20 A. WE REVIEWED THIS DOCUMENT WITH THE BUDGET OFFICE.  
21 Q. AND WHO?

22 A. LAYER LI SENBEE AND THE STAFF ANALYSTS THAT LARRY HAD  
23 ASSIGNED. LARRY LI SENBEE VERY MUCH WAS INVOLVED IN THIS, AND  
24 HE REVIEWED THIS DOCUMENT WITH JOE GUERRA HIMSELF.

25 Q. WHERE DID THE 1.9 MILLION DOLLAR FIGURE COME FROM?  
26 WHAT WAS THE SOURCE OF THAT?

27 A. THEY CAME FROM JOE GUERRA AND THEY CAME FROM THE  
28 LETTER AND --

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1 Q. DAVE DUONG'S LETTER?

2 A. YES. AT THIS POINT WE HAVE THAT LETTER, I DON'T  
3 RECALL IF THAT'S THE EXACT NUMBERS ON DAVID'S DUONG'S LETTER  
4 OR NOT, BUT I KNOW IT'S PRETTY CLOSE.

5 Q. WE'LL GET THAT IN A MOMENT. YOU'RE TALKING ABOUT  
6 EXHIBIT 28?

7 A. IT IS THE SECOND PAGE. THE TOP PARAGRAPH SHOWS THE  
8 1.9 FOR FISCAL YEAR STARTING IN 2002, AND THEN AN INCREASE  
9 THEREAFTER OF \$250,000 EACH YEAR TO 2.15 INTO CONTRACT YEAR  
10 TWO, SO WHAT YOU CAN SEE, IF YOU READ THE WORDS FROM THAT  
11 LETTER YOU WOULD ASSUME THAT IT WOULD INCREASE \$250,000 A YEAR  
12 EACH YEAR, WHICH WOULD MEAN YOU WOULD HAVE A HIGHER NUMBER.  
13 AT THE TIME, WE HAD DISCUSSIONS, I RECALL WE DID SOME  
14 SCENARIOS THAT ACTUALLY INCLUDED THESE NUMBERS BEING HIGHER  
15 THAN WHAT'S SHOWN ON THIS CHART ON EXHIBIT 43, AND IN VERBAL  
16 CONVERSATION WITH JOE GUERRA IT WAS DECIDED, NO, IT WAS ONLY  
17 GOING TO BE 1.9 MILLION DOLLARS, 2.15 EACH YEAR THEREAFTER.  
18 THAT'S WHAT THAT MODEL INCORPORATES.

19 Q. YOU'VE INDICATED, I BELIEVE, YOU DID NOT FEEL THE

20 CITY HAD ANY LEGAL OBLIGATION TO COMPENSATE NORCAL FOR ANY  
21 INCREASED LABOR COSTS INCURRED BY SUBCONTRACTOR CWS, CORRECT?

22 A. THAT'S CORRECT.

23 Q. AND I THINK YOU'VE ALSO INDICATED YOU DIDN'T THINK IT  
24 WAS PROPER FOR JOE GUERRA OR THE MAYOR TO BE MAKING ANY SUCH  
25 COMMITMENTS TO NORCAL, CORRECT?

26 A. THAT IS CORRECT.

27 Q. SO WHEN YOU RECEIVED THIS E-MAIL FROM JOE GUERRA IN  
28 FEBRUARY OF '03, ASKING YOU TO RUN SCENARIOS FOR A RATE

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1 INCREASE TO PAY COSTS THAT YOU DIDN'T BELIEVE THE CITY WAS  
2 LEGALLY OBLIGATED TO, OR THAT HAD BEEN PROPERLY, OR THAT  
3 ASSURANCES HAD BEEN PROPERLY GIVEN TO NORCAL, DID YOU QUESTION  
4 ANYONE ABOUT WHY ARE WE RUNNING SCENARIOS FOR SOMETHING WE'RE  
5 NOT OBLIGATED TO PAY?

6 A. OH, YES.

7 Q. WHO DID YOU QUESTION?

8 A. I QUESTIONED THE MAYOR, LI SENBEE. I QUESTIONED DEL,  
9 I QUESTIONED JIM HOLGERSON, WHO WAS DEPUTY CITY MANAGER AT THE  
10 TIME, AND WHO I WORKED WITH RELATED TO NORCAL ACTIVITIES.

11 Q. OKAY, ANYONE ELSE? DID YOU QUESTION JOE GUERRA?

12 A. I DON'T BELIEVE I PARTICULARLY QUESTIONED JOE, I MEAN  
13 MY CONVERSATIONS WERE BASICALLY WITH THE CITY MANAGER'S  
14 OFFICE, BUT --

15 Q. LET'S GO DOWN THESE PEOPLE ONE BY ONE. WHAT DID YOU  
16 SAY TO LARRY LI SENBEE, THE BUDGET DIRECTOR?

17 A. I DON'T REMEMBER THE EXACT CONVERSATION.

18 Q. OKAY. FAIR ENOUGH. COULD YOU TELL US THE GIST OF  
19 WHAT YOU SAID?

20 A. YES. IT WOULD BE SOMETHING LIKE THIS, WHICH IS ALL  
21 THE WAY THROUGH WE HAD NO OBLIGATION TO PAY FOR THIS. WE  
22 COULDN'T PAY FOR IT UNLESS THERE WAS AN AMENDMENT TO THE  
23 CONTRACT. NEITHER I NOR THE CITY MANAGER HAD AUTHORITY TO  
24 AMEND THIS CONTRACT FOR THAT PURPOSE. AND WE HAD NO ABILITY  
25 TO PAY OTHER THAN AN AMENDMENT. SO WE WOULD HAVE THOSE  
26 CONVERSATIONS, AND NOW WHAT I CAN TELL YOU IS THERE ARE A  
27 NUMBER OF TIMES ALL OF US REVIEW ACTIVITIES, PROVIDE SCENARIOS  
28 RELATED TO THINGS THAT MAY OR MAY NOT BE, WHETHER THEY ARE

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1 LEGAL OR NOT, OR WHETHER THEY SHOULD DO THEM OR NOT OR AGREE  
2 TO CONSIDER THEM OR NOT, WE ARE TO PROVIDE INFORMATION.

3 Q. BUT IN THIS INSTANCE, DID YOU CONFRONT LARRY LI SENBEE  
4 ABOUT ANYTHING -- IN THIS CASE, DID YOU ASK LARRY LI SENBEE,  
5 WHY ARE WE RUNNING THESE SCENARIOS WHEN THERE DOESN'T SEEM TO  
6 BE A LEGAL BASIS TO IMPLEMENT THIS SCENARIO?

7 A. I THINK WE ALL ASKED THE RHETORICAL QUESTION, BUT WE  
8 KNEW WE HAD TO DO IT.

9 Q. WHAT I'M TRYING TO GET AT IS WHAT PEOPLE SAID IN  
10 RESPONSE. DID YOU POSE THOSE QUESTIONS?

11 A. I DID.

12 Q. YOU DID?

13 A. I DID.

14 Q. WHAT RESPONSE DID YOU GET?

15 A. THE RESPONSE IS, WE'RE DOING THIS BECAUSE WE NEED TO,

16 BECAUSE EVENTUALLY THIS IS GOING TO COME BACK TO THE COUNCIL  
17 AND WE HAVE TO HAVE A WAY TO PAY IT.

18 Q. WHO TOLD YOU THAT?

19 A. THE BUDGET OFFICER, CITY MANAGER JIM HOLGERSON. WE  
20 ALL KNEW THIS WAS GOING TO COME BACK, SO WE BETTER HAVE A WAY  
21 TO PAY FOR THIS.

22 Q. OKAY, I REALLY WANT TO TRY TO BE AS ACCURATE AND  
23 PRECISE ON THIS POINT AS I CAN, AND REMEMBER THAT YOU ARE  
24 TESTIFYING UNDER OATH NOW.

25 A. I DO.

26 Q. DID DEL BORGS DORF SAY WORDS TO THAT EFFECT TO YOU?

27 A. DEL BORGS DORF DID NOT SAY THOSE WORDS.

28 Q. DID LARRY LI SENBEE SAY THOSE WORDS TO YOU?

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1 A. YES, HE DID. SO DID JIM HOLGERSON.

2 Q. AND WHAT ABOUT MR. GUERRA, DID YOU EVER CONFRONT HIM  
3 WITH THESE ISSUES?

4 A. NO.

5 Q. NOW, SO WE UNDERSTAND, IN 2004 THE NORCAL AGREEMENT  
6 WAS AMENDED, CORRECT?

7 A. YES.

8 Q. MY COLLEAGUE HAS POINTED SOMETHING OUT THAT I MISSED.  
9 BEFORE WE MOVE ON TO THE AMENDMENT, LET'S LOOK AT ANOTHER  
10 E-MAIL, EXHIBIT 40. DO YOU RECOGNIZE THIS E-MAIL?

11 A. LET ME READ IT.

12 Q. SURE.

13 A. YES, I REMEMBER SEEING IT.

14 Q. IT ACTUALLY, AS IS TYPICAL, THERE IS A CHAIN HERE?

15 A. OH, YES.

16 Q. PRIOR E-MAILS, BUT LET'S FOCUS ON THE TOP E-MAIL FOR  
17 A MOMENT.

18 THERE'S A REFERENCE IN THE TOP E-MAIL WHICH WAS FROM  
19 MR. GUERRA, THE SECOND SENTENCE SAYS, "I BELIEVE I EVEN STILL  
20 HAVE THE SPREADSHEET CARL MADE UP WHICH SHOWED THE  
21 JUSTIFICATION FOR THE RATE AMOUNT THAT WAS SETTLED ON." DO  
22 YOU SEE THAT STATEMENT?

23 A. YES.

24 Q. IS THAT THE SPREADSHEET WE HAVE JUST BEEN LOOKING AT?

25 A. I BELIEVE IT WAS, YES. THAT WOULD BE EXHIBIT 43.

26 Q. LET ME SHOW YOU EXHIBIT 41, WHICH IS, AGAIN, A CHAIN  
27 OF E-MAILS. DO YOU RECOGNIZE, THE TOP E-MAIL PURPORTS TO BE  
28 FROM JOE GUERRA DATED MAY 27, 2004, AND IT IS TO RICHARD

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1 DOYLE, JIM HOLGERSON, DEL BORGS DORF AND CARL MOSHER. DO YOU  
2 RECOGNIZE THIS?

3 A. YES, I DO.

4 Q. WELL, FIRST OF ALL, MR. GUERRA'S STATEMENT ON THE TOP  
5 SAYS, "YOU ARE CORRECT THAT THERE WAS NOTHING IN THE MEMO TO  
6 THE COUNCIL; HOWEVER, SEVERAL STAFF WERE AWARE OF THE 1.9  
7 MILLION NUMBER THAT WAS FOLDED INTO THE RATES," DO YOU SEE  
8 THAT?

9 A. YES.

10 Q. FROM YOUR POINT OF VIEW, WOULD BE THAT BE AN ACCURATE  
11 STATEMENT?

12 A. THE NUMBER WAS INCORPORATED AS WE'VE ALREADY  
13 DESCRIBED WITH THE POTENTIAL THAT IT COULD BE USED FOR THAT  
14 PURPOSE.

15 Q. AND THEN, IN THE CHAIN BELOW, THERE'S A E-MAIL FROM  
16 RICHARD DOYLE THAT SAYS, IN PART, "I DON'T THINK, HOWEVER,  
17 THAT IT'S DISINGENUOUS TO RAISE QUESTIONS OVER THE AMENDMENT,  
18 BECAUSE I REMEMBER THE COUNCIL DID NOT RAISE RATES TO COVER  
19 ANY SPECIFIC ADDITIONAL COSTS, AND THERE WAS NOTHING IN THE  
20 STAFF MEMO THAT MENTIONED THIS ISSUE." THAT'S YOUR MEMO  
21 YOU'RE REFERRING TO, RIGHT?

22 A. THAT'S CORRECT.

23 Q. WOULD THAT BE AN ACCURATE STATEMENT, WOULD YOU SAY?

24 A. THAT'S CORRECT.

25 Q. IT GOES ON TO SAY, "COUNCIL'S ACTION WAS TO MAKE THE  
26 RECYCLE PLUS PROGRAM CLOSER TO COST RECOVERY, WHICH APPARENTLY  
27 IS STILL ONLY AT 91%." WHAT ABOUT THAT STATEMENT, BEARING IN  
28 MIND THIS IS AN '04 MEMO?

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1 A. I DON'T KNOW IF RICK KNEW EXACTLY WHAT PERCENTAGE OF  
2 THE COST RECOVERY WAS. RICK WAS AWARE THAT COST RECOVERY WAS  
3 NOT AT 100%, AND I DON'T KNOW IF 91% AT THAT POINT IN TIME WAS  
4 COMPLETELY ACCURATE, BUT IT WAS LESS THAN COST RECOVERY.

5 Q. GOING DOWN IN THE CHAIN, THERE'S WHAT'S CALLED AN  
6 ORIGINAL MESSAGE FROM JOE GUERRA THE DAY BEFORE, MAY 26. IT  
7 SAYS, "AS I HAVE POINTED OUT TO RICK AND DEL BY PHONE TODAY,  
8 WE RAISED OUR CUSTOMERS' RATES ALREADY TO SPECIFICALLY COVER  
9 THESE ADDITIONAL COSTS." DO YOU SEE THAT?

- 10 A. YES.
- 11 Q. DO YOU KNOW WHAT ADDITIONAL COSTS HE'S REFERRING TO?
- 12 A. I THINK IT'S REFERRING TO THE COST OF THE LABOR
- 13 INCREASE.
- 14 Q. AND WOULD YOU AGREE WITH THAT STATEMENT?
- 15 A. WELL, I WOULD AGREE THAT JOE GUERRA THOUGHT THAT'S
- 16 WHY WE RAISED THE RATES. AND IF I MAY, THIS WHOLE E-MAIL
- 17 EXCHANGE RELATED TO THE TIME THAT I HAVE NOT YET BROUGHT THIS
- 18 AMENDMENT TO THE CITY COUNCIL. I WAS NOT GOING TO BRING IN
- 19 THE AMENDMENT TO THE CITY COUNCIL, AND I DID NOT.
- 20 Q. WHO DID BRING IT TO CITY COUNCIL?
- 21 A. IT WAS BROUGHT TO THE CITY COUNCIL AS A MEMORANDUM
- 22 FROM THE CITY MANAGER'S OFFICE AS A MEMORANDUM THAT SAID, WE
- 23 HAVE A REQUEST FROM NORCAL. THERE ARE OPTIONS THE COUNCIL CAN
- 24 PURSUE, BUT WE DON'T RECOMMEND ANY ONE OF THEM.
- 25 Q. OKAY.
- 26 A. I WAS IN THE MIDDLE OF A TUG OF WAR.
- 27 Q. YOU WERE IN THE MIDDLE OF A TUG OF WAR?
- 28 (INTERRUPTION BY THE COURT REPORTER.)

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- 1 A. A TUG OF WAR WITH THE MAYOR'S OFFICE, AND RELATED TO
- 2 WHY I HAD NOT BROUGHT THIS AMENDMENT. AND I HAD NOT FOR
- 3 REASONS I DESCRIBED, BECAUSE I BELIEVED IT WAS, I HAD NOT
- 4 NEGOTIATED IT, I HAD NOT HAD ANY INFORMATION RELATED TO IT,
- 5 AND I WASN'T GOING TO PRESENT IT, AND I WAS NOT GOING TO
- 6 PRESENT IT WITH A RECOMMENDATION, SO I DID NOT.
- 7 Q. OKAY. NONETHELESS, APPARENTLY IN 2004 THE COUNCIL

8 CHOSE TO PURSUE AN AMENDMENT TO THE NORCAL AGREEMENT, IS THAT  
9 CORRECT?

10 A. THAT IS CORRECT.

11 Q. DO YOU KNOW WHO WAS INVOLVED IN NEGOTIATING THE  
12 AMENDMENT ON BEHALF OF THE CITY?

13 A. WE ACTUALLY DIDN'T NEGOTIATE THE AMENDMENT THAT WAS  
14 PRESENTED IN THE STAFF REPORT BY THE CITY MANAGER. WE  
15 RECEIVED A LETTER FROM NORCAL THAT SAID, "WE HAVE TO BE PAID  
16 THESE COSTS." I THINK YOU HAVE A COPY OF THAT LETTER.

17 Q. LET ME SEE IF WE CAN FIND THAT. GIVE US JUST A  
18 MOMENT. WE'RE LOCATING AN EXHIBIT.

19 A. SURE.

20 Q. MAYBE WE DIDN'T MARK IT.

21 A. IT WAS A LETTER --

22 Q. WE'LL FIND IT. I KNOW THAT.

23 A. YOU KNOW WHICH ONE IT IS, I'M SORRY.

24 Q. ARE YOU TALKING ABOUT THE DAVID DUONG LETTER OR THE  
25 NORCAL LETTER?

26 A. THE NORCAL LETTER. THAT WOULD HAVE BEEN JULY OF  
27 2004.

28 Q. WE WILL CHECK OUR TIME.

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1 A. IT WAS FROM NORCAL TO THE CITY MANAGER.  
2 MR. FINKELSTEIN: I WILL ASK TO HAVE MARKED AS  
3 EXHIBIT 44 THIS -- ACTUALLY JUNE 16, 2004 --

4 A. THIS, SIR, IS THE LETTER THAT WAS JUNE 16, TO ME,  
5 WHICH IS THE LETTER TO THE CITY --

- 6 Q. WAIT. WE HAVEN' T MARKED IT. IS THIS THE LETTER  
7 YOU' RE REFERRING TO?
- 8 A. NO, BUT IT IS A SIMILAR LETTER THAT WAS SENT TO ME  
9 PRIOR TO THE LETTER I REFERRED TO THAT WAS SENT TO THE CITY  
10 MANAGER.
- 11 Q. HOLD ON.
- 12 A. THE LETTERS ARE NEARLY IDENTICAL.
- 13 Q. OKAY. WE DID MARK IT, SO LET ME SHOW YOU WHAT HAS  
14 BEEN PREVIOUSLY MARKED AS EXHIBIT 39, AND LET' S SEE IF I CAN  
15 DISPLAY IT. THIS IS A JULY 22, 2004 LETTER FROM NORCAL. IS  
16 IT THE LETTER YOU' RE TALKING ABOUT?
- 17 A. YES.
- 18 Q. TELL US BRIEFLY WHAT THIS LETTER IS.
- 19 A. IT IS THE THE FORMAL LETTER NORCAL SENT TO THE CITY  
20 REQUESTING AN AMENDMENT FOR THE LABOR INCREASE THAT WE HAVE  
21 BEEN TALKING ABOUT HERE TODAY. THIS WAS THE FIRST -- THIS WAS  
22 THE SECOND LETTER SENT TO US. THE FIRST WAS ONE YOU PUT UP ON  
23 THE SCREEN THAT WAS DATED THE 16TH, THIS IS THE FIRST LETTER  
24 THAT SAYS WE NORCAL REQUEST AN AMENDMENT.
- 25 Q. THERE' S A RECITAL IN THIS LETTER ABOUT A SERIES OF  
26 DISCUSSIONS AMONG REPRESENTATIVES OF NORCAL, CWS, AND THE  
27 MAYOR' S OFFICE, CORRECT?
- 28 A. CORRECT.

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- 1 Q. DO YOU KNOW WHAT THEY WERE REFERRING TO?
- 2 A. ONLY BY WHAT' S IN THE LETTER. AND IF I MAY, I THINK  
3 I HAVE A LETTER I WROTE TO NORCAL.

4 Q. WE WILL GET TO THAT.

5 A. THOSE --

6 Q. YOU WERE NOT PRIVY TO THOSE DISCUSSIONS?

7 A. I WAS NOT INVOLVED IN THOSE DISCUSSIONS.

8 Q. YOU DID NOT SPEAK TO ANYONE IN THE MAYOR'S OFFICE

9 ABOUT THOSE DISCUSSIONS?

10 A. NO, I DID NOT.

11 Q. YOU DID NOT KNOW WHAT, IF ANYTHING, MAY HAVE

12 TRANSPIRED IN THOSE MEETINGS?

13 A. THAT'S CORRECT. I DO NOT KNOW WHAT TRANSPIRED IN

14 THOSE MEETINGS.

15 Q. THIS LETTER ON PAGE TWO HAS NUMBERS RELATED TO EXTRA

16 COSTS THAT CWS WOULD INCUR FOR RECOGNIZING A COLLECTIVE

17 BARGAINING AGREEMENT WITH THE TEAMSTERS FOR ITS MRF WORKERS?

18 A. CORRECT. 1.9 MILLION FIRST YEAR, DIFFERENT NUMBERS

19 SUBSEQUENT YEARS, AND THE NUMBERS ARE DIFFERENT THAN THE TWO

20 OTHER EXHIBITS YOU'VE SHOWN US. THESE ARE NOW A DIFFERENT SET

21 OF NUMBERS.

22 Q. AND YOU REPLIED TO THIS LETTER?

23 A. I DID NOT REPLY TO THIS LETTER BECAUSE THIS IS THE

24 EXHIBIT THAT'S THE LETTER TO THE CITY MANAGER.

25 Q. I'M SORRY, RIGHT. BUT YOU RECEIVED A LETTER AND

26 BEFORE THIS DIRECTED TO YOU?

27 A. THAT'S CORRECT. THAT WAS THE JUNE 16 LETTER.

28 MR. FINKELSTEIN: I WILL ASK THAT WE MARK AS EXHIBIT

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1 44 THIS JUNE 16, 2004 LETTER FROM JOHN NICOLLETTI OF NORCAL

2 WASTE SYSTEMS, INC. TO CARL W. MOSHER.

3 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
4 JURY EXHIBIT 44.)

5 THE FOREMAN: SO MARKED.

6 BY MR. FINKELSTEIN:

7 Q. SHOWING YOU EXHIBIT 44. NOW, CAN YOU IDENTIFY THIS  
8 DOCUMENT FOR US?

9 A. THAT IS THE LETTER THAT WAS SENT TO ME ON THAT DATE,  
10 AND IT IS, I BELIEVE, NEARLY IDENTICAL TO THE LETTER OF JULY  
11 22, DELIVERED TO THE CITY MANAGER.

12 Q. OKAY. AND THIS LETTER BEARS THE APPARENT SIGNATURE  
13 OF JOHN NICOLLETTI ON BEHALF OF NORCAL?

14 A. THAT'S CORRECT.

15 Q. AND IN THIS LETTER THERE IS A PARAGRAPH THAT SPEAKS  
16 TO THE BACKGROUND OF THIS REQUEST; IS THAT CORRECT?

17 A. YEAH, THE MIDDLE PARAGRAPH?

18 Q. YES.

19 A. YES.

20 Q. AND IN THAT SECTION IT SAYS, OR MR. NICOLLETTI SAYS,  
21 "AFTER NORCAL PRESENTED ITS RECYCLE PLUS PROPOSAL IN RESPONSE  
22 TO THE CITY'S RFP OF 2000, BUT BEFORE THE RECYCLE PLUS  
23 AGREEMENT WAS SIGNED, CITY OFFICIALS RECOGNIZED THAT NORCAL'S  
24 PROPOSED RECYCLING SUBCONTRACTOR, CWS, INTENDED TO HIRE  
25 WORKERS UNDER THE LABOR CONTRACT CWS THEN HAD IN OAKLAND WITH  
26 THE LONGSHOREMEN'S UNION.

27 "UNDER THAT LABOR CONTRACT, CWS WAS PAYING ITS  
28 WORKERS CONSIDERABLY LESS THAN WORKERS ORGANIZED BY THE

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1 TEAMSTERS WERE RECEIVING AT THE RECYCLING FACILITY THEN IN  
2 OPERATION IN SAN JOSE.

3 "THIS SIGNIFICANT WAGE DISCREPANCY, ALONG WITH THE  
4 POSSIBILITY SAN JOSE WORKERS MIGHT LOSE THEIR JOBS, PROMPTED  
5 CITY OFFICIALS TO URGE NORCAL TO EXPLORE AN ARRANGEMENT WITH  
6 CWS THAT WOULD ALLOW CWS TO BE PAYING TEAMSTERS WORKERS AT THE  
7 HIGHER WAGE SCALE THE TEAMSTERS HAD PREVIOUSLY NEGOTIATED.

8 "CITY OFFICIALS ADVISED NORCAL THAT THE CITY DID NOT  
9 WANT A ROCK-BOTTOM PRICE FOR ITS NEW COLLECTION CONTRACT IF  
10 DOING SO REQUIRED DISPLACING EXISTING RECYCLING FACILITY  
11 WORKERS OR FORCING THOSE WORKERS TO ACCEPT LOWER PAY. "

12 IT GOES ON TO RECITE MORE, CORRECT?

13 A. MM-HMM.

14 Q. HAVE I READ THAT CORRECTLY?

15 A. THAT'S THE -- YES.

16 Q. THAT'S BY WAY OF BACKGROUND. LET ME GET TO THE KEY  
17 LANGUAGE. AS A RESULT OF THOSE DISCUSSIONS, CITY OFFICIALS  
18 COMMITTED TO NORCAL IN EARLY OCTOBER, 2000, THAT THE CITY  
19 WOULD REIMBURSE NORCAL FOR THE INCREMENTAL PAYMENTS IF IT IN  
20 TURN HAD TO PAY CWS TO CAUSE CWS TO MEET THE CITY'S REQUEST  
21 THAT CWS EMPLOY HIGHER PAID TEAMSTERS WORKERS AT ITS NEW SAN  
22 JOSE FACILITY. IS THAT IN THE LETTER?

23 A. THAT'S IN THE LETTER.

24 Q. DO YOU KNOW WHICH CITY OFFICIALS COMMITTED TO NORCAL  
25 IN EARLY OCTOBER 2000 THAT THE CITY WOULD REIMBURSE NORCAL FOR  
26 THE HIGHER COSTS ASSOCIATED WITH THE EMPLOYMENT OF TEAMSTERS?

27 A. I KNOW THAT IT WAS NOT ME OR ANYONE THAT WORKED FOR  
28 ME. I DID NOT KNOW AT THAT TIME WHO THOSE CITY OFFICIALS

1 WERE.

2 Q. WHEN YOU RECEIVED THIS JUNE 16, 2004 LETTER, DID YOU  
3 INITIATE ANY INQUIRIES AT CITY HALL TO DETERMINE WHO, IF  
4 ANYONE, MAY HAVE MADE SUCH COMMITMENTS TO NORCAL?

5 A. YES.

6 Q. WHAT DID YOU DO?

7 A. I SPOKE WITH THE CITY ATTORNEY HIMSELF, RICK DOYLE.

8 Q. WHAT DID HE TELL YOU?

9 A. HE SAID NO ONE ON HIS STAFF WAS INVOLVED IN THOSE  
10 NEGOTIATIONS. I SPOKE WITH JIM HOLGERSON IN THE CITY  
11 MANAGER'S OFFICE AND ASKED IF ANYONE FROM HIS STAFF OR ANYONE  
12 IN THE CITY MANAGER'S OFFICE HAD BEEN INVOLVED.

13 Q. WHAT DID HE TELL YOU?

14 A. HE SAID TO HIS KNOWLEDGE, NO ONE WAS. I THEN  
15 WROTE --

16 Q. DID YOU SPEAK TO ANYONE ELSE?

17 A. I SPOKE TO MY STAFF.

18 Q. NO ONE INDICATED THEY HAD BEEN INVOLVED IN ANY SUCH  
19 DISCUSSIONS?

20 A. ON MY STAFF, NO ONE INDICATED THAT, THAT'S CORRECT.

21 Q. WHAT ABOUT JOE GUERRA, THE PERSON WHO WAS INITIATING  
22 THIS ADDITIONAL RATE INCREASE; DID YOU SPEAK TO HIM?

23 A. NO, I DID NOT.

24 Q. GIVEN THE FACT THAT THE YEAR EARLIER HE WAS THE ONE  
25 WHO WAS INSTIGATING AN ADDITIONAL RATE INCREASE TO COVER THESE  
26 COSTS THAT ARE BEING TALKED ABOUT IN THIS LETTER, WOULDN'T HE  
27 BE A LOGICAL PERSON TO SPEAK TO ABOUT THIS?

28 A. HE WOULD, BUT IT WASN'T FOR ME TO TALK TO HIM.

1 Q. WHY IS THAT?

2 A. I FIGURED THE CITY MANAGER OR JIM HOLGERSON OUGHT TO  
3 TALK WITH JOE ABOUT THAT.

4 Q. DID YOU SUGGEST THAT TO EITHER THE CITY MANAGER OR  
5 JIM HOLGERSON?

6 A. I DON'T RECALL SUGGESTING THAT, NO, I KNEW NO ONE HAD  
7 THE AUTHORITY TO HAVE THAT DISCUSSION AND COMMIT THE CITY TO  
8 THAT COMMITMENT.

9 Q. OKAY. I UNDERSTAND THAT. AND YOU TOLD US SOME OF  
10 THE EFFORTS YOU MADE TO FIND OUT WHO MIGHT HAVE MADE SUCH AN,  
11 OR ATTEMPTED TO MAKE, SUCH AN INQUIRY.

12 MR. FINKELSTEIN: I WOULD LIKE TO HAVE MARKED AS  
13 EXHIBIT 45 A JUNE 25, 2004 LETTER TO JOHN NICOLLETTI AT NORCAL  
14 WASTE SYSTEMS, INC. FROM CARL MOSHER.

15 THE WITNESS: THAT'S CORRECT.

16 MR. FINKELSTEIN: LET US MARK IT FIRST.

17 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
18 JURY EXHIBIT 45.)

19 THE FOREMAN: SO MARKED.

20 MR. FINKELSTEIN: THANK YOU.

21 BY MR. FINKELSTEIN:

22 Q. COULD YOU LOOK AT EXHIBIT 45, WHICH I'M DISPLAYING  
23 NOW, AND TELL ME IF YOU RECOGNIZE THIS DOCUMENT. FIRST OF  
24 ALL, IS THAT YOUR SIGNATURE?

25 A. THAT IS MY SIGNATURE AND THAT IS MY LETTER.

26 Q. AND JUST GIVEN THAT WE'RE ALMOST AT THE RECESS TIME,  
27 COULD YOU SUMMARIZE FOR US WHAT YOU TOLD JOHN NICOLLETTI IN

28 YOUR RESPONSE TO HIS LETTER?

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1 A. I TOLD JOHN NICOLLETTI THAT NONE OF MY STAFF HAD BEEN  
2 INVOLVED IN THAT, THAT THE CITY COUNCIL HAD NOT AUTHORIZED  
3 THESE DISCUSSIONS, AND THAT WE HAD NOT SUFFICIENT INFORMATION  
4 TO PRESENT AN AMENDMENT TO THE COUNCIL, AND WE ONLY HAVE WHAT  
5 WAS CONTAINED IN THE LETTER.

6 MR. FINKELSTEIN: MR. FOREMAN, UNFORTUNATELY, AND I  
7 APOLOGIZE, MR. MOSHER, BECAUSE I KNOW YOU COME FROM OUT OF THE  
8 AREA, AND I WAS HOPING WE COULD COMPLETE YOU THIS SESSION.  
9 WE'RE NOT GOING TO BE IN SESSION THIS AFTERNOON BECAUSE THE  
10 GRAND JURY HAS OTHER MATTERS OR COMMITMENTS. I BELIEVE WE  
11 WILL BE CONTINUING NEXT TUESDAY.

12 THE FOREMAN: YES, AT 10:00 IN THE MORNING.

13 MR. FINKELSTEIN: IS THERE ANY WAY YOU CAN RETURN  
14 WITHOUT CREATING INCONVENIENCE TO YOURSELF?

15 THE WITNESS: I CAN RETURN TUESDAY. I HAVE  
16 COMMITMENTS LATER ON IN THE WEEK.

17 MR. FINKELSTEIN: I UNDERSTAND. I DOUBT YOU'LL GO  
18 BEYOND THE LUNCH HOUR.

19 THE WITNESS: I WILL RETURN ON TUESDAY.

20 MR. FINKELSTEIN: THANK YOU VERY MUCH FOR YOUR  
21 COOPERATION, AND I SUGGEST THAT THIS WOULD BE AN APPROPRIATE  
22 TIME TO RECESS.

23 THE FOREMAN: IF YOU WILL, CAN I REITERATE THE  
24 ADMONITION ON CONFIDENTIALITY?

25 YOU ARE ADMONISHED NOT TO REVEAL TO ANY PERSON,  
Page 53

26 EXCEPT AS DIRECTED BY THE COURT, WHAT QUESTIONS WERE ASKED OR  
27 WHAT RESPONSES WERE GIVEN, OR ANY OTHER MATTERS CONCERNING THE  
28 NATURE OR SUBJECT OF THE GRAND JURY'S INVESTIGATION WHICH YOU

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1 LEARNED DURING YOUR APPEARANCE BEFORE THE GRAND JURY, UNLESS  
2 AND UNTIL SUCH TIME AS THE TRANSCRIPT OF THIS GRAND JURY  
3 PROCEEDING IS MADE PUBLIC. VIOLATION OF THIS ADMONITION MAY  
4 BE PUNISHABLE AS A CONTEMPT OF COURT.

5 THE WITNESS: I UNDERSTAND.

6 MR. FINKELSTEIN: THANK YOU VERY MUCH.

7 THE FOREMAN: WE'RE ADJOURNED UNTIL 10:00 O'CLOCK  
8 NEXT TUESDAY.

9 MR. FINKELSTEIN: THANK YOU VERY MUCH.

10 (COURT WAS ADJOURNED FOR THE DAY.)

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1 SAN JOSE, CALIFORNIA JANUARY 31, 2006

2

3

AFTERNOON SESSION:

4

THE FOREMAN: I WILL CALL THIS SESSION OF THE GRAND  
5 JURY TO ORDER.

6

(ROLL WAS TAKEN AND A DISCUSSION WAS HAD REGARDING  
7 THE RESIGNATION OF A GRAND JUROR DUE TO HEALTH CONCERNS.)

8

MR. FINKELSTEIN: ON ANOTHER MATTER, MR. FOREMAN, WE  
9 RECEIVED A COMMUNICATION FROM YOU INDICATING THAT ANOTHER  
10 JUROR WANTED TO DECLARE SOME MATTER THAT THE JUROR THOUGHT  
11 SHOULD BE BROUGHT TO EVERYONE'S ATTENTION.

12

THE FOREMAN: YES. I WAS MADE AWARE LATE LAST  
13 EVENING OF A SITUATION THAT I SENT AN E-MAIL TO YOU ABOUT AND  
14 WE, I PERSONALLY DO NOT BELIEVE THAT THERE IS A CONFLICT, BUT  
15 I WANT TO FULLY DISCLOSE THE POSSIBILITY. THE JUROR INVOLVED  
16 IS MR. (NAME REDACTED).

17

MR. FINKELSTEIN: PERHAPS MR. (NAME REDACTED) CAN  
18 INDICATE BRIEFLY FOR THE RECORD.

19

A JUROR: IN ONE OF YOUR EXHIBITS YOU PUT UP A  
20 LETTER WHICH HAD AS THE FIRST NAME IN THE TITLE "BEESON." I

21 DON' T KNOW WHAT THE REST OF IT SAID. IT REFERRED TO  
22 TEAMSTER' S UNION 350. MY DAUGHTER WORKED FOR THAT FIRM.

23 MR. FINKELSTEIN: FOR THE LAW FIRM?

24 A JUROR: FOR BEESON, AND I KNOW BEESON DEALT WITH  
25 THE TEAMSTERS UNION, BUT I DON' T KNOW WHAT LOCAL IT WAS, AND  
26 SHE WORKED THERE ABOUT A YEAR AND A HALF, I DON' T KNOW  
27 WHETHER, I SUSPECT IT' S NOT IN THE TIME PERIOD THE LETTER WAS  
28 SENT, AND I KNOW NOTHING MORE ABOUT IT.

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1 MR. FINKELSTEIN: HAVE YOU HAD ANY DISCUSSIONS WITH  
2 HER ABOUT ANY ASPECTS OF THIS MATTER?

3 A JUROR: NOT AT ALL.

4 MR. FINKELSTEIN: DO YOU BELIEVE THE FACT THAT YOUR  
5 DAUGHTER MAY HAVE WORKED FOR THE LAW FIRM THAT MAY HAVE  
6 REPRESENTED THE TEAMSTERS AT SOME POINT IN THE PAST WOULD  
7 INFLUENCE YOUR DECISION IN THIS MATTER IN ANY WAY, SHAPE, OR  
8 FORM?

9 A JUROR: NO.

10 MR. FINKELSTEIN: YOU BELIEVE YOU CAN STILL BE FAIR?

11 A JUROR: ABSOLUTELY.

12 MR. FINKELSTEIN: I DON' T BELIEVE THE JUROR NEEDS TO  
13 STEP DOWN UNLESS THE JUROR FEELS UNCOMFORTABLE PROCEEDING.

14 A JUROR: NO.

15 MR. FINKELSTEIN: THANK YOU VERY MUCH FOR MAKING  
16 THAT DISCLOSURE.

17 IF THERE IS NO OTHER BUSINESS, I SUGGEST THAT  
18 MR. MOSHER BE RECALLED.



17 A. THAT'S CORRECT. IT WAS GOING TO BE A CONTINGENCY  
18 THAT WOULD BE AVAILABLE IF AND WHEN THE COUNCIL APPROVED AN  
19 AMENDMENT, THEN THE MONEY COULD BE USED TO FOR THAT PURPOSE.

20 Q. NOW, I THINK WE WILL SEE THIS MORNING, IN THE  
21 FOLLOWING YEAR, 2004, THE CITY COUNCIL DID APPROVE AN  
22 AMENDMENT TO THE NORCAL AGREEMENT THAT PROVIDED FOR A PAYMENT  
23 OVER TIME OF, IN EXCESS OF 11 MILLION DOLLARS?

24 A. THAT'S CORRECT.

25 Q. THAT WAS TO COVER INCREASED LABOR COSTS ATTRIBUTABLE  
26 TO CWS'S INCREASED LABOR COSTS, CORRECT?

27 A. THAT'S CORRECT.

28 Q. DO YOU KNOW WHY IT TOOK MORE THAN A YEAR FROM THE

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1 RATE HIKE FOR THE COUNCIL TO CONSIDER THIS ISSUE AND APPROVE  
2 THIS AMENDMENT?

3 A. I CAN TELL YOU FROM MY PERSPECTIVE WHY IT TOOK THAT  
4 LONG.

5 Q. PLEASE.

6 A. WHEN WE BROKE LAST WEEK, YOU HAD PUT UP ON THE SCREEN  
7 THE LETTER THAT I HAD WRITTEN IN REPLY TO NORCAL IN JUNE OF  
8 2004. UP UNTIL THAT TIME, WE HAVE NOT RECEIVED ANY OFFICIAL  
9 INFORMATION RELATED TO WHAT THIS EXTRA COST WAS OTHER THAN THE  
10 E-MAIL YOU HAD PRESENTED OF FEBRUARY, 2003. WE HAVE NO BACKUP  
11 INFORMATION, WE HAD NO OTHER INFORMATION OTHER THAN WHAT  
12 PEOPLE HAD TOLD US.

13 WE HAVE A COPY OF AN AMENDMENT BETWEEN NORCAL AND  
14 CWS WHICH PRESCRIBED THAT NORCAL WAS GOING TO PAY CWS THIS

15 ALMOST EXACT SAME AMOUNT THAT WAS INCLUDED IN THE AMENDMENT  
16 THAT THE CITY COUNCIL APPROVED, BUT WE HAD NO BACKUP  
17 INFORMATION, NO INFORMATION THAT, IF YOU AND I WERE GOING TO  
18 HAVE A NEGOTIATION, WE HAVE INFORMATION WE COULD DISCUSS AND  
19 NEGOTIATE. WE DIDN'T HAVE THAT.

20 ON TOP OF THAT, AS WE'VE DESCRIBED AND IN YOUR  
21 QUESTIONS TO ME, WE HAD AN AGREEMENT. I HAD SAID ALL ALONG  
22 THAT I WAS NOT GOING TO PRESENT AN AMENDMENT UNDER MY  
23 SIGNATURE TO THE COUNCIL FOR EXTRA COSTS FOR AN AGREEMENT THAT  
24 WAS ALREADY IN PLACE, THAT ALREADY DESCRIBED THE SERVICES THAT  
25 WERE GOING TO BE PROVIDED, AND ALL THAT THIS AMENDMENT DID WAS  
26 PAY ADDITIONAL COSTS FOR LABOR THAT WAS ALREADY DESCRIBED IN  
27 THE CONTRACT.

28 SO, THAT PERIOD OF TIME IN JUNE, I WAS IN A

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1 SITUATION WHERE I WAS SURE WE WERE NOT GOING TO PRESENT OUR  
2 DEPARTMENT, PRESENT AN AMENDMENT TO THE CITY COUNCIL FOR THAT  
3 PURPOSE. THEN THE LETTER CAME THAT YOU DESCRIBED THAT I  
4 REPLIED TO IN JUNE, THE LETTER THAT'S UP ON THE SCREEN.

5 Q. THAT WOULD BE --

6 A. JUNE 16 LETTER.

7 Q. EXHIBIT 45?

8 A. THAT'S CORRECT. I REPLIED TO THAT LETTER, AND THEN,  
9 SUBSEQUENT TO MY REPLY, NEARLY AN IDENTICAL LETTER WAS SENT TO  
10 THE CITY MANAGER REQUESTING THE SAME, THAT THIS AMENDMENT BE  
11 CONSIDERED.

12 Q. LET ME ASK YOU ANOTHER QUESTION RELATED TO THE SAME

13 SUBJECT. DO YOU KNOW WHETHER THERE WAS ANY EFFORT UNDERTAKEN  
14 BY ANYONE AT CITY HALL TO INITIALLY ATTEMPT TO MAKE THESE  
15 ADDITIONAL PAYMENTS TO NORCAL WITHOUT A CONTRACT AMENDMENT?

16 A. I WAS APPROACHED ABOUT WHAT WOULD BE THE METHODS THAT  
17 THE PAYMENT COULD BE MADE TO NORCAL.

18 Q. WHO APPROACHED YOU?

19 A. JIM HOLGERSON FROM THE CITY'S MANAGER'S OFFICE, WHO  
20 WAS THE DEPUTY CITY MANAGER. AND I MET WITH JIM HOLGERSON A  
21 NUMBER OF THE TIMES RELATED TO NORCAL.

22 Q. HE WORKS UNDER DEL BORGS DORF?

23 A. THAT'S CORRECT, HE WAS DEPUTY CITY MANAGER TO  
24 DEL BORGS DORF, THE CITY MANAGER.

25 Q. OKAY.

26 A. GENERAL CONVERSATIONS ALONG THE LINES OF HOW COULD WE  
27 MAKE THIS PAYMENT. I MADE IT VERY CLEAR THAT WE COULD NOT PAY  
28 NORCAL UNDER THE PRESENT AGREEMENT. WE PAID MONTHLY TO NORCAL

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1 BASED ON INVOICES THAT THEY SUPPLIED TO US, AND IT WAS, THAT  
2 BASICALLY WAS BASED UPON THE NUMBER OF CUSTOMERS THAT NORCAL  
3 HAS AND THE TYPES OF CARTS, ET CETERA. THERE WAS NO SECTION  
4 IN THE MONTHLY INVOICES FOR LABOR COSTS. WE PAID THEM BASED  
5 UPON THE SERVICES THAT THEY PROVIDED.

6 SO I SAID, ONE, WE COULD NOT PAY THEM BASED UPON THE  
7 PRESENT AGREEMENT.

8 TWO, WE COULD AMEND THE AGREEMENT, BUT NONE OF US IN  
9 THE ADMINISTRATION HAD THE AUTHORITY TO AMEND THE AGREEMENT.  
10 SOME AGREEMENTS HAVE THE AUTHORITY, THIS ONE DID NOT. AND THE

11 THIRD WAY, THE ONLY WAY WOULD BE AN AMENDMENT THAT WOULD BE  
12 PRESENTED TO THE CITY COUNCIL THAT THE COUNCIL COULD DECIDE.

13 Q. WHEN DID YOU HAVE THIS CONVERSATION WITH  
14 MR. HOLGERSON?

15 A. THOSE WERE PROBABLY BEFORE THIS LETTER AND AFTER THIS  
16 LETTER.

17 Q. SO IN THE SPRING OF '03?

18 A. YES, I WOULD SAY FROM THE TIME THAT WE RECEIVED THE  
19 E-MAIL, FEBRUARY, UNTIL ALL THE WAY THROUGH THIS POINT AND  
20 AFTER, WE WERE HAVING THE CONVERSATIONS.

21 Q. THIS POINT BEING WHAT?

22 A. THIS POINT BEING THE LETTER NORCAL SENT TO MYSELF.

23 Q. WHICH IS APRIL -- I'M SORRY, JUNE OF '04, CORRECT?

24 A. CORRECT.

25 Q. ARE YOU AWARE OF ANY OTHER INQUIRIES OR EFFORTS ON  
26 THE PART OF ANYONE ELSE AT CITY HALL ABOUT EFFORTS TO PAY  
27 NORCAL THIS ADDITIONAL MONEY WITHOUT THAT CONTRACT AMENDMENT?

28 A. NONE OTHER THAN WHAT I DESCRIBED.

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1 MR. FINKELSTEIN: I HAVE A CERTIFIED COPY OF THE  
2 MINUTES OF THE SAN JOSE CITY COUNCIL FOR TUESDAY, APRIL 4,  
3 2000, AND I'M GOING TO ASK THIS BE MARKED AS EXHIBIT 46 FOR  
4 IDENTIFICATION. AND LET ME JUST PUT IT ON THE SCREEN FOR A  
5 MOMENT.

6 IN PARTICULAR, IT'S ITEM 9G THAT I WANT TO ASK THE  
7 WITNESS ABOUT.

8 THE FOREMAN: SO MARKED.

9 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
10 JURY EXHIBIT 46.)

11 BY MR. FINKELSTEIN:

12 Q. MR. MOSHER, DO YOU KNOW WHAT THAT DOCUMENT IS?

13 A. THE DOCUMENT IS A SYNOPSIS OF THE APRIL 4 CITY  
14 COUNCIL MEETING.

15 Q. OKAY. THAT'S A CERTIFIED COPY, IS IT NOT?

16 A. YES, IT IS.

17 Q. DO YOU RECALL WHETHER OR NOT YOU ATTENDED THAT  
18 MEETING OF THE CITY COUNCIL?

19 A. YES, I THINK I DID. LOOKING AT THE -- I'M SURE I  
20 DID. THIS WAS THE -- YES.

21 Q. YOU DID ATTEND THAT MEETING?

22 A. YES.

23 Q. AND I TAKE IT ITEM 9G RELATES TO WHAT?

24 A. IT RELATES TO THE NORCAL CONTRACTS. WE WERE  
25 REQUESTING APPROVAL FOR THE RECYCLE PLUS SERVICE DISTRICTS AS  
26 IT STATES IN ITEM 1. WE WERE PROVIDING A STATUS REPORT FOR  
27 REQUEST FOR PROPOSALS.

28 Q. ARE YOU LOOKING AT ITEM 9G?

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1 A. YES, I AM.

2 Q. THIS DOCUMENT RELATES TO THE PROPOSAL AND EVALUATION  
3 PROCESS?

4 A. THAT'S CORRECT.

5 Q. THIS IS BEFORE THERE WAS ANY SELECTION OF NORCAL,  
6 CORRECT?

7 A. THIS IS CORRECT.

8 Q. AND WAS THIS ONE OF A NUMBER OF CITY COUNCIL MEETINGS  
9 MEANT TO GIVE DIRECTION TO THE CONTENTS OF THE PROPOSAL?

10 A. YES, IT IS.

11 Q. AND THERE ARE SOME DOCUMENTS FILED FOR THE COUNCIL'S  
12 CONSIDERATION IN CONNECTION WITH ITEM 9G?

13 A. YES, THERE ARE.

14 Q. ONE OF THESE DOCUMENTS IS A MEMORANDUM FROM  
15 MAYOR GONZALES AND VICE MAYOR FISCALINI DATED APRIL 4, 2000?

16 A. ITEM 1, THAT'S CORRECT.

17 MR. FINKELSTEIN: CAN I ASK THAT THE CERTIFIED COPY  
18 OF THE MAYOR'S MEMORANDUM DATED APRIL 4, 2000, BE MARKED AS  
19 EXHIBIT 47 FOR IDENTIFICATION?

20 THE FOREMAN: SO MARKED.

21 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
22 JURY EXHIBIT 47.)

23 BY MR. FINKELSTEIN:

24 Q. CAN YOU TELL US WHAT EXHIBIT 47 IS?

25 A. THIS IS AN EXHIBIT WRITTEN OR SIGNED BY  
26 MAYOR GONZALES AND VICE MAYOR FRANK FISCALINI. IT MAKES A  
27 COUPLE OF RECOMMENDATIONS RELATED TO THE PROPOSAL THAT WAS  
28 JUST ABOUT TO BE RELEASED.

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1 Q. YEAH. THESE ARE RECOMMENDATIONS CONCERNING THE  
2 CONTENT OF THE PROPOSAL, CORRECT?

3 A. THAT'S CORRECT.

4 Q. AND IT'S BASICALLY SETTING OUT A RECOMMENDATION TO

5 THE COUNCIL AS A WHOLE AS TO WHAT THE, WHAT POLICIES SHOULD BE  
6 EMBODIED IN THE PROPOSAL, CORRECT?

7 A. THAT'S CORRECT.

8 Q. AND THIS MEMORANDUM IS WHAT'S REFERENCED AS ITEM 9G  
9 IN THE APRIL 4, 2000 COUNCIL MINUTES, CORRECT?

10 A. THAT'S CORRECT.

11 Q. LET ME DIRECT YOUR ATTENTION TO PAGE TWO OF THE  
12 MEMORANDUM. THERE IS A HEADING, "WORKER RETENTION," AND THEN  
13 BENEATH THAT THERE'S A HEADING LABELED "COMPENSATION  
14 ADJUSTMENT," CORRECT?

15 A. YES.

16 Q. AND THAT HEADING READS: "SOME COUNCILMEMBERS SUGGEST  
17 THAT WE MAY CHOOSE TO REOPEN THE CONTRACT IN THE EVENT OF A  
18 CHANGE IN COLLECTIVE BARGAINING AGREEMENTS. WE BELIEVE THIS  
19 SUGGESTION WILL CREATE AN OPPORTUNITY TO EASILY OR REGULARLY  
20 RAISE RECYCLE PLUS RATES AND CANNOT RECOMMEND ITS ADOPTION.  
21 CURRENT CONTRACTS ACCOUNT FOR REASONABLE WAGE INCREASES.  
22 EMPLOYERS WHO WISH TO INCREASE WAGE RATES HIGHER THAN  
23 ANTICIPATED MAY DO SO. WE BELIEVE THE CURRENT RFP LANGUAGE  
24 BEST PROTECTS THE INTERESTS OF CITY AND OUR RATEPAYING  
25 CUSTOMERS. DO YOU SEE THAT LANGUAGE?

26 A. YES.

27 Q. DID THE COUNCIL ADOPT AND APPROVE THAT POLICY IN THE  
28 RFP?

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1 A. YES. THEY WERE HAVING, AS I RECALL, A DISCUSSION  
2 ABOUT WHETHER OR NOT THEY SHOULD INCORPORATE LANGUAGE SIMILAR

3 TO THIS. THEY DECIDED NOT TO, AND WHAT WAS IN EFFECT IN THE  
4 CONTRACT WAS, AS I THINK I DESCRIBED LAST WEEK, WAS THE  
5 CONSUMER PRICE INDEX. INDEX FOR CERTAIN LABOR AND OTHER  
6 COMMODITIES ASSOCIATED WITH GARBAGE COLLECTION, THAT WAS THE  
7 INCREASE ESCALATOR IN THE CONTRACT. THAT WAS SOLELY WHAT WAS  
8 IN THE CONTRACT.

9 MR. FINKELSTEIN: JUST A MOMENT. I WANT TO SHOW YOU  
10 AN EXHIBIT.

11 BY MR. FINKELSTEIN:

12 Q. WE PREVIOUSLY LOOKED AT EXHIBIT 26, WHICH IS THE  
13 AGREEMENT BETWEEN THE CITY AND NORCAL, CORRECT?

14 A. THAT'S CORRECT.

15 Q. AND WE SAW THAT THIS AGREEMENT CONTAINED A CLAUSE,  
16 17.02.03, I BELIEVE. I WANT TO PUT THAT ON THE SCREEN FOR A  
17 MOMENT.

18 1702.3. IT'S LABELED "NO COMPENSATION ADJUSTMENT,"  
19 CORRECT?

20 A. YES.

21 Q. IT PROVIDES THAT THE CONTRACTOR SHALL NOT BE ENTITLED  
22 TO ANY ADJUSTMENTS IN THE COMPENSATION PAID BY THE CITY UNDER  
23 THIS AGREEMENT AS A RESULT OF ANY ADJUSTMENT OF THE WAGE RATE  
24 WHICH THE CONTRACTOR IS REQUIRED TO PAY ITS EMPLOYEES,  
25 CORRECT?

26 A. THAT'S CORRECT.

27 Q. AND IS THAT CLAUSE, DO YOU KNOW WHETHER OR NOT THAT  
28 CLAUSE IS INCLUDED IN THE CONTRACT TO CARRY OUT THE POLICY

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1 DIRECTIVE IN THE MAYOR' S MEMO OF APRIL 4, 2000, WHICH WAS  
2 APPROVED BY THE COUNCIL THAT SAME DAY?

3 A. IF YOU' RE ASKING DID WE ADD THAT LATER, I DON' T  
4 RECALL. I THINK IT WAS ALREADY A PART OF THE CONTRACT WHEN WE  
5 WERE PROPOSING THE DOCUMENTS.

6 Q. IN OTHER WORDS, NO. WHAT I' M ASKING IS, SOMEONE HAD  
7 TO DRAFT THE LANGUAGE OF THIS AGREEMENT, CORRECT?

8 A. YES.

9 Q. DO YOU KNOW WHO WORKED ON DRAFTING THIS AGREEMENT?

10 A. SUSAN DEVENCENZI FROM THE CITY ATTORNEY' S OFFICE.

11 Q. DID YOU PROVIDE ANY INPUT IN THE DRAFTING OF THE  
12 AGREEMENT?

13 A. YES.

14 Q. DID YOU REVIEW DRAFTS OF THE AGREEMENT?

15 A. YES.

16 Q. THAT WAS FOR THE PURPOSE OF MAKING SURE THAT THE  
17 AGREEMENT WAS CONSISTENT WITH THE CITY COUNCIL' S POLICY IN  
18 THIS MATTER, CORRECT?

19 A. THAT' S CORRECT.

20 Q. MY QUESTION IS, THIS CLAUSE, DOES IT REFLECT THE CITY  
21 COUNCIL' S POLICY AS REFLECTED ON APRIL 4, 2000 BY THE CITY  
22 COUNCIL' S ACTION ADOPTING THE MAYOR' S RECOMMENDATION THAT  
23 THERE BE NO COMPENSATION ADJUSTMENT FOR INCREASED LABOR COSTS?

24 A. THAT CLAUSE DOES WHAT HE DESCRIBED.

25 Q. ARE YOU SUGGESTING THIS WAS A STANDARD CLAUSE THAT  
26 WAS USED ON PRIOR OCCASIONS --

27 A. WHAT I WAS SUGGESTING WAS, WHEN WE PROPOSE THE  
28 DOCUMENTS FOR THE RFP, WE HAVE A COPY, AS I RECALL, OF THE

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1 DRAFT CONTRACT THAT WOULD BE INCORPORATED INTO THE FINAL  
2 CONTRACT WITH THE GARBAGE CONTRACTORS. AND THAT WAS IN THE  
3 RFP. SO THEY WOULD SEE THE GENERAL NATURE OF THE LANGUAGE  
4 WHICH WE WERE GOING TO INCLUDE, AND AFTER THE CONTRACTS WERE  
5 AWARDED, WE DID MAKE SOME MINOR MODIFICATIONS TO THE LANGUAGE  
6 OF THE CONTRACT.

7 Q. WERE YOU SUGGESTING THAT THE SAMPLE CONTRACT THAT WAS  
8 INCLUDED WITH THE RFP HAD THAT SIMILAR LANGUAGE IN IT?

9 A. IT MAY HAVE, BUT I DO NOT RECALL -- BUT YOUR  
10 QUESTION, AND MY ANSWER WAS CORRECT BEFORE, THE PURPOSE WAS TO  
11 MOVE THE COUNCIL ALL IN THE SAME DIRECTION.

12 Q. AND I GUESS THE PERSON WHO WOULD BE MOST  
13 KNOWLEDGEABLE OF THE DRAFTING OF THIS AGREEMENT WOULD BE  
14 MISS DEVENCENZI?

15 A. THAT'S CORRECT.

16 Q. LET'S TALK ABOUT THE NORCAL AGREEMENT IN MORE DETAIL.

17 MR. FINKELSTEIN: I WOULD LIKE TO MARK AS EXHIBIT 48  
18 A SECOND AMENDMENT TO THE SUBCONTRACT BETWEEN, THIS IS BETWEEN  
19 NORCAL AND CALIFORNIA WASTE SYSTEMS, INC., AND IT'S DATED  
20 MARCH 11, 2004.

21 THE FOREMAN: SO MARKED.

22 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
23 JURY EXHIBIT 48.)

24 BY MR. FINKELSTEIN:

25 Q. HAVE YOU EVER SEEN THAT DOCUMENT BEFORE?

26 A. YES, I HAVE.

27 Q. AND DO YOU KNOW WHAT THAT DOCUMENT IS?

28 A. IT IS AN AMENDMENT THAT'S CALLED "A SECOND AMENDMENT

1 BETWEEN NORCAL AND CWS. "

2 Q. AND WHEN DID YOU FIRST SEE THIS DOCUMENT, UNDER WHAT  
3 CIRCUMSTANCES?

4 A. IT WAS EITHER PRESENTED TO ME OR E-MAILED TO ME BY  
5 NORCAL, AND THE PURPOSE WAS TO SHOW US WHAT THE AGREEMENT THAT  
6 NORCAL HAD WITH CWS FOR THE PAYMENT THAT'S SHOWN ON EXHIBIT A,  
7 THE LAST PAGE OF THIS DOCUMENT.

8 Q. OKAY. LET ME BORROW THAT DOCUMENT BACK FROM YOU AND  
9 I'LL PUT IT UP ON THE SCREEN. YOU'RE REFERRING TO THE  
10 SCHEDULE OF ADDITIONAL PAYMENTS; IS THAT CORRECT?

11 A. CORRECT.

12 Q. AND THIS WAS, THESE NUMBERS WERE THE BASIS FOR THIS  
13 INCREASE AND THE RATE INCREASE FROM 4% AND 5% TO 9%?

14 A. THAT'S CORRECT.

15 Q. AND IN THIS DOCUMENT, REFERENCE IS MADE IN THE  
16 RECITALS TO AN EARLIER AGREEMENT OF OCTOBER 9, 2000, CORRECT?

17 A. ITEM B, THE RECYCLE FEE.

18 Q. YES. DO YOU KNOW WHAT THAT REFERENCE WAS REFERRING  
19 TO?

20 A. THAT WOULD MOSTLY LIKELY BE THE AGREEMENT THAT  
21 ORIGINALLY NORCAL AND CWS HAD FOR CWS AS SUBCONTRACTOR.

22 Q. THAT'S THE OCTOBER 9, 2000 AGREEMENT THAT HAS THE  
23 RECITAL "THE PARTIES HAVE LEARNED THAT THE CITY MAY REQUIRE  
24 WAGE AND BENEFITS HIGHER THAN CONTAINED IN THEIR PROPOSAL. "  
25 IS THAT THE AGREEMENT YOU'RE REFERRING TO?

26 A. IS THAT --

27 Q. LET ME SHOW YOU EXHIBIT 15. THIS IS DATED OCTOBER 9,  
28 2000?

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1 A. RIGHT.

2 Q. AND IT'S CALLED "ADDENDUM TO AGREEMENT BETWEEN NORCAL  
3 AND CWS"?

4 A. CORRECT.

5 Q. AND IS THAT THE AGREEMENT THAT'S BEING REFERENCED IN  
6 THIS 2004 AGREEMENT, MARCH 2004?

7 A. YES. WHAT'S BEING REFERRED TO IN ITEM B OR RECITAL B  
8 IS THE ADDENDUM.

9 Q. THIS EARLIER ADDENDUM OF OCTOBER 9, 2000, IT CONTAINS  
10 A RECITAL ABOUT THE PARTIES HAVING LEARNED THAT -- "THE  
11 PARTIES HAVE LEARNED THAT THE CITY OF SAN JOSE MAY REQUIRE  
12 CALIFORNIA WASTE SOLUTIONS, INC. AND NORCAL WASTE SYSTEMS,  
13 INC. TO PROVIDE WAGE AND BENEFIT PACKAGES THAT ARE DIFFERENT  
14 THAN CWS'S CURRENT WAGE AND BENEFIT PACKAGES," CORRECT?

15 A. THAT'S CORRECT, THE TOP LINE.

16 Q. WHEN IS THE FIRST TIME YOU SAW THIS OCTOBER 9, 2000  
17 ADDENDUM?

18 A. I DON'T RECALL SEEING THIS UNTIL ABOUT THE SAME TIME  
19 I SAW THE SECOND AMENDMENT. BECAUSE WHAT HAPPENED WAS WE SAW  
20 REFERENCE TO THAT ADDENDUM, WHICH WE HAD NOT SEEN BEFORE, SO  
21 WE ASKED FOR IT.

22 Q. SO WHEN YOU SAW IT, I TAKE IT YOU READ IT?

23 A. YES.

24 Q. YOU MADE NOTE OF THE FIRST PARAGRAPH BY THE  
25 REFERENCES?

26 A. YES.

27 Q. DID YOU MAKE INQUIRIES OF CITY HALL AS TO WHO THE  
28 PARTIES MAY HAVE LEARNED THAT FROM?

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1 A. NO, MY INQUIRIES WERE, AGAIN, TO THE NORMAL PEOPLE I  
2 MADE INQUIRIES TO, AS I TESTIFIED, TO THE CITY MANAGER'S  
3 OFFICE AND THE CITY ATTORNEY'S OFFICE.

4 MR. FINKELSTEIN: LET'S MARK AS EXHIBIT 49 AN APRIL  
5 5, 2004 E-MAIL, AND THIS IS FROM JOHN NICOLETTI OF NORCAL  
6 WASTE SYSTEMS TO CARL MOSHER.

7 THE FOREMAN: SO MARKED.

8 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
9 JURY EXHIBIT 49.)  
10 BY MR. FINKELSTEIN:

11 Q. TAKE A LOOK AT THAT AND TELL US IF YOU KNOW WHAT IT  
12 IS.

13 A. YES. THIS IS AN E-MAIL TO ME FROM JOHN NICOLETTI,  
14 WHO WAS THE MANAGER OF NORCAL FOR SAN JOSE'S OPERATIONS.

15 Q. AND LET'S PUT IT UP ON THE SCREEN. IT'S ALSO SENT TO  
16 A GENTLEMAN NAMED STEVE WILLIS; IS THAT CORRECT?

17 A. THAT'S CORRECT.

18 Q. WHO IS STEVE WILLIS?

19 A. MY ACTING DEPUTY DIRECTOR OF THE INTEGRATED WASTE  
20 MANAGEMENT GROUP.

21 Q. THIS E-MAIL -- WHO IS JOHN NICOLETTI?

22 A. HE IS NORCAL'S OPERATIONS MANAGER FOR SAN JOSE'S  
23 CONTRACT FOR RECYCLE PLUS.

24 Q. IN THIS E-MAIL, DOES JOHN NICOLETTI STATE THAT ON  
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25 MONDAY, APRIL 5, HE HAND-DELIVERED TO YOU THE SECOND AMENDMENT  
26 TO THE SUBCONTRACT BETWEEN NORCAL AND CALIFORNIA WASTE  
27 SOLUTIONS?

28 A. THAT'S CORRECT.

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1 Q. THAT WOULD BE THE DOCUMENT WE JUST LOOKED AT A MOMENT  
2 AGO?

3 A. RIGHT, EXHIBIT 48.

4 Q. OKAY. AND THEN LET'S MARK ANOTHER EXHIBIT, 50, A  
5 CHAIN OF E-MAILS THAT START WITH AN APRIL 6 MEMO FROM  
6 JOHN NICOLETTI TO CARL MOSHER AND END WITH AN APRIL 6 E-MAIL  
7 FROM JIM HOLGERSON TO ALAN MORA.

8 THE FOREMAN: SO MARKED.

9 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
10 JURY EXHIBITS 50.)  
11 BY MR. FINKELSTEIN:

12 Q. CAN YOU TELL US IF YOU RECOGNIZE EXHIBIT 50?

13 A. YES, I DO.

14 Q. LET'S GO THROUGH THIS DOCUMENT. STARTING WITH, FROM  
15 THE BOTTOM UP. THIS IS A CHAIN OF E-MAILS, CORRECT?

16 A. THAT'S CORRECT.

17 Q. AND WE CAN SEE FROM THE BOTTOM, STARTING WITH THE  
18 E-MAIL FROM APRIL 6 FROM JOHN NICOLETTI, WHICH MAKES REFERENCE  
19 TO HAVING DELIVERED THIS SECOND AMENDMENT TO YOU.

20 A. THAT'S CORRECT.

21 Q. WHAT IS THE NEXT E-MAIL UP ON THE CHAIN; IS THAT  
22 E-MAIL FROM YOU?

23 A. YES, THE NEXT ONE IS FROM ME TO JIM HOLGERSON AND  
24 SUSAN DEVENCENZI .

25 Q. AND IN THE -- WHAT WAS THE PURPOSE OF THIS E-MAIL?

26 A. THE PURPOSE WAS TO DESCRIBE WE HAD THIS DOCUMENT AND  
27 SUMMARIZES A CONVERSATION THAT I HAD WITH JOHN WHEN HE GAVE ME  
28 THE DOCUMENT. JOHN NICOLETTI .

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1 Q. SO IN THE SECOND E-MAIL UP ON THE CHAIN, YOU SAY THAT  
2 JOHN GAVE YOU A COPY OF THE SECOND AMENDMENT TO THE  
3 SUBCONTRACT, CORRECT?

4 A. THAT' S CORRECT.

5 Q. AND YOU SAY THAT HE -- REFERRING TO JOHN NICOLETTI ,  
6 CORRECT?

7 A. YES.

8 Q. SAID THAT THEY MET WITH JOE GUERRA, TOLD HIM THEY  
9 REACHED AGREEMENT AND WERE READY TO GIVE HIM THE AMENDMENT; IS  
10 THAT CORRECT?

11 A. THAT' S CORRECT.

12 Q. IS THAT IN FACT WHAT JOHN NICOLETTI TOLD YOU?

13 A. YES, THAT' S WHAT JOHN TOLD ME.

14 Q. AND HE ALSO TOLD YOU, DID HE TELL YOU HE DIDN' T WANT  
15 A COPY OF THE AMENDMENT, REFERRING TO JOE GUERRA?

16 A. THE FIRST HE IS JOE GUERRA.

17 Q. AND THAT MR. GUERRA TOLD JOHN NICOLETTI TO GIVE THE  
18 COPY OF THE SECOND AMENDMENT TO YOU?

19 A. THAT' S CORRECT.

20 Q. AND THEN DID YOU TELL JOHN NICOLETTI , AS REFLECTED IN

21 YOUR E-MAIL, THAT YOU NEEDED TO KNOW WHAT CONSIDERATION THE  
22 CITY RECEIVES AND THE BREAKDOWN OF THE PROPOSED PAYMENTS  
23 BETWEEN THE CITY AND NORCAL?

24 A. CORRECT.

25 Q. THEN YOU FORWARDED THE AMENDMENT ON TO MR. HOLGERSON  
26 AND MISS DEVENCENZI FOR THEIR REVIEW AND COMMENT?

27 A. THAT'S CORRECT.

28 Q. WHEN YOU WERE TALKING ABOUT AMENDMENT HERE, YOU'RE

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1 TALKING ABOUT THE AMENDMENT BETWEEN NORCAL AND CWS?

2 A. YES. WE'RE TALKING ABOUT THIS DOCUMENT HERE, THE  
3 SECOND AMENDMENT, EXHIBIT 48.

4 Q. THEN HIGHER UP IN THE CHAIN YOU RECEIVED A REPLY FROM  
5 JIM HOLGERSON THAT SAME DAY, APRIL 6, 2004?

6 A. CORRECT.

7 Q. AND WHAT DID MR. HOLGERSON TELL YOU IN THE E-MAIL,  
8 COULD YOU READ THAT?

9 A. YES. "CARL, LET'S GET TOGETHER WITH SUSAN AND RICK  
10 IF RICK IS AVAILABLE AND DISCUSS. THIS AGREEMENT IS  
11 INTERESTING, BUT DOESN'T PROVIDE ANY GOOD REASON TO AMEND THE  
12 CONTRACT."

13 Q. SO UP UNTIL APRIL 6 OF 2004, WOULD IT BE ACCURATE TO  
14 SAY THAT YOU DIDN'T BELIEVE THERE WAS ANY GOOD REASON TO AMEND  
15 THE CONTRACT?

16 A. CORRECT.

17 Q. BASED ON THIS E-MAIL FROM MR. HOLGERSON, HE DOESN'T  
18 APPEAR TO BELIEVE THERE'S ANY GOOD REASON TO AMEND THE

19 CONTRACT, CORRECT?

20 A. CORRECT.

21 Q. LET'S TAKE A LOOK AT AN E-MAIL DATED -- I'M SORRY.

22 LET'S LOOK AT A DIFFERENT DOCUMENT. I HAVE AN APRIL 28, 2004

23 MEMORANDUM TO THE COUNCIL FROM CARL MOSHER, SUBJECT: "ADOPTION

24 OF RESOLUTIONS REVISING RECYCLE PLUS RATES AND COMMERCIAL

25 FRANCHISE FEES AND AB 939 FEES, EFFECTIVE JULY 1, 2004."

26 MR. FINKELSTEIN: I WILL ASK THAT BE MARKED AS

27 EXHIBIT 51.

28 THE FOREMAN: SO MARKED.

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1 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
2 JURY EXHIBIT 51.)

3 BY MR. FINKELSTEIN:

4 Q. CAN YOU TAKE A LOOK AT THIS MEMORANDUM AND TELL ME IF  
5 YOU RECOGNIZE IT?

6 A. YES, I DO.

7 Q. OKAY. WHAT IS IT?

8 A. IT'S A MEMORANDUM FROM MYSELF TO THE CITY COUNCIL  
9 REGARDING THE ADOPTION OF RESOLUTIONS REVISING RECYCLE PLUS  
10 SERVICES TO BECOME EFFECTIVE JULY 1, 2004.

11 Q. IN THIS DOCUMENT THERE IS A SECTION STARTING ON PAGE  
12 TWO LABELED "BACKGROUND," CORRECT?

13 A. CORRECT.

14 Q. AND YOU RECITE THIS IS -- THIS IS MEANT TO REMIND THE  
15 CITY COUNCIL OF WHAT HAS HAPPENED SO FAR IN THE RATE HIKES,  
16 CORRECT?

- 17 A. CORRECT.
- 18 Q. AND YOU POINT OUT THAT THE PROP 218 NOTICES WERE  
19 MAILED ON APRIL 11, 2003?
- 20 A. CORRECT.
- 21 Q. AND PROPOSING A RATE INCREASE OF 9% FOR BOTH SINGLE  
22 AND MULTIPLE FAMILY DWELLINGS, CORRECT?
- 23 A. CORRECT.
- 24 Q. AND ALSO AN ADDITIONAL RATE INCREASE OF UP TO 9% FOR  
25 FISCAL YEAR '04-'05?
- 26 A. CORRECT.
- 27 Q. AND THEN FURTHER ON YOU TALK ABOUT THE PROPOSED 9%  
28 RATE INCREASE FOR '04-'05, CORRECT?

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- 1 A. CORRECT, IN PARAGRAPH THREE.
- 2 Q. YOU TALK ABOUT THAT BEING NEEDED FOR ADDITIONAL COST  
3 RECOVERY, CORRECT?
- 4 A. CORRECT.
- 5 Q. NOTHING IN HERE -- IS THERE ANYTHING IN HERE THAT  
6 ALERTS THE READER TO THE FACT THAT PART OF LAST YEAR'S,  
7 THE '03 RATE INCREASE, THE 9%, WHICH WAS INCREASED FROM 4% AND  
8 5%, WAS TO PROVIDE A CONTINGENCY IN CASE NORCAL WAS GOING TO  
9 RECEIVE ADDITIONAL REIMBURSEMENT FOR LABOR COSTS, CORRECT?
- 10 A. CORRECT.
- 11 Q. WHY IS THAT?
- 12 A. AS I DESCRIBED BEFORE, WE GENERICALLY DESCRIBED IN  
13 THE MEMORANDUM TO GET THE COST RECOVERY AND WE DIDN'T DESCRIBE  
14 ANY OF THESE OTHER THINGS. THAT'S WHAT WE DID.

15 Q. OKAY. DID ANYONE INSTRUCT YOU OR SUGGEST TO YOU THAT  
16 YOU SHOULD LEAVE OUT ANY DISCUSSION IN YOUR MEMORANDUM ABOUT  
17 SOME OF THESE RATE HIKE INCREASES BEING ATTRIBUTABLE TO  
18 POSSIBLE ADDITIONAL PAYMENTS TO NORCAL?

19 A. WE HAD A GENERAL DISCUSSION WITH THAT GROUP OF PEOPLE  
20 I DESCRIBED.

21 Q. THE NAME --

22 A. JIM HOLGERSON, SUSAN DEVENCENZI, AND MYSELF. THAT WE  
23 SHOULD BE GENERAL IN THIS MEMORANDUM, AND THE REASON IS THAT  
24 WE HAD, THERE WAS NO AMENDMENT AND THERE WAS NO DOCUMENTATION  
25 YET REQUESTING SUCH AN AMENDMENT BEFORE US.

26 Q. OKAY. WHAT I THINK I'M TRYING TO UNDERSTAND IS  
27 APPARENTLY THERE'S ENOUGH OF A REASON TO SUSPECT THAT NORCAL  
28 MAY BE GETTING ADDITIONAL PAYMENTS FROM THE CITY TO JUSTIFY

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1 UPPING THE RATE INCREASE FROM 4% AND 5% TO 9%. BUT ON THE  
2 OTHER HAND, THERE'S NOT ENOUGH OF A REASON TO BRING THIS TO  
3 THE CITY COUNCIL'S ATTENTION.

4 DO YOU SEE THAT, DOES THAT APPEAR TO BE SOMEWHAT  
5 INCONSISTENT TO YOU?

6 A. UH -- I DON'T UNDERSTAND THE QUESTION.

7 Q. WELL, THE QUESTION IS, IF THERE WAS ENOUGH OF A  
8 REASON TO REVISE THE 4% AND 5% RATE HIKE UPWARDS TO 9% TO  
9 COVER THE POSSIBILITY OF MAKING ADDITIONAL PAYMENTS TO NORCAL  
10 FOR INCREASED LABOR COSTS, WHY DIDN'T THAT SAME REASON REQUIRE  
11 THAT THIS BE BROUGHT TO THE CITY COUNCIL'S ATTENTION IN THIS  
12 MEMORANDUM DISCUSSING THE RATE HIKES?

13           A.       AT THIS POINT IN TIME NO ONE IN THE CITY HAD  
14           ACKNOWLEDGED THAT THEY HAD MADE ANY AGREEMENT WITH NORCAL OR  
15           CWS.   SO THERE WAS NO ACKNOWLEDGMENT OF THAT OTHER THAN THE  
16           DOCUMENTATION GIVEN TO US IN FEBRUARY BY JOE GUERRA, AND SO  
17           THERE WAS NO STATEMENT FROM THE MAYOR'S OFFICE THAT THEY HAD  
18           BEEN ENGAGED IN THIS CONVERSATION.   AND SO THERE WAS NO  
19           OFFICIAL DOCUMENTATION THAT THIS WAS GOING TO OCCUR.

20           Q.       WELL, IF THAT'S THE CASE, WHY DID YOU INCREASE THE  
21           RATE HIKE FROM 4% AND 5% TO 9%?  THAT'S THE, WHAT I'M TRYING  
22           TO UNDERSTAND.

23                       ON THE ONE HAND YOU SAY THERE'S NOT ENOUGH BASIS FOR  
24           GOING FORWARD WITH AN AMENDMENT TO PAY NORCAL ADDITIONAL  
25           MONEY, BUT YET THERE'S ENOUGH BASIS TO GO FORWARD WITH THE  
26           RATE HIKE.   HOW DO YOU EXPLAIN THOSE TWO SEEMINGLY  
27           INCONSISTENT POSITIONS?

28           A.       WE WEREN'T GOING TO DIVULGE THE FACT THAT WE HEARD

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1           FROM NORCAL OR ANYONE ELSE THAT THERE WAS AN AGREEMENT, BUT I  
2           WAS NOT GOING TO PUT THIS IN THIS MEMORANDUM.

3           Q.       WHY?

4           A.       IT WAS NOT MY PLACE TO DIVULGE THAT THE MAYOR HAD  
5           MADE AN AGREEMENT, ALTHOUGH I HAD NOT BEEN PARTY TO IT, I WAS  
6           NOT THERE, BUT THERE HAD BEEN ENOUGH DISCUSSIONS WITH NORCAL  
7           PRECEDING THE PRESENTATION OF THIS SECOND AMENDMENT, EXHIBIT  
8           48, THAT NORCAL CONTINUALLY REPRESENTED TO US THAT THEY HAD AN  
9           AGREEMENT WITH THE MAYOR'S OFFICE AND THAT IT WAS GOING TO  
10          COME FORWARD.

11 THE REASON JOHN NICOLETTI MET WITH JOE GUERRA IN  
12 THIS E-MAIL TRAIL YOU DESCRIBED, NORCAL THOUGHT THAT THE  
13 MAYOR'S OFFICE WAS GOING TO BRING FORWARD THIS AMENDMENT. AND  
14 THEY ALSO THOUGHT WE WERE, BUT THEY KNEW I WASN'T. SO NORCAL  
15 WAS MEETING WITH THE MAYOR'S OFFICE. WHEN IS THIS GOING TO  
16 COME FORWARD.

17 AND THE SAME TIME NORCAL WAS MEETING WITH THE  
18 MAYOR'S OFFICE, WHEN IS THIS GOING TO COME FORWARD, THEY WERE  
19 BEING SQUEEZED BY CWS BECAUSE THEY HAD MADE THIS AGREEMENT  
20 SUBCONTRACT AND WERE NOW ON THE HOOK TO PAY CWS, SO NOW NORCAL  
21 WAS ON THE HOOK FOR THE DOLLARS.

22 THEY WENT BACK TO THE MAYOR'S OFFICE AND SAID, WE  
23 ARE ON THE HOOK FOR THE DOLLARS, WHEN IS THIS GOING TO COME  
24 FROM THE CITY?

25 Q. I UNDERSTAND. SO LET ME TRY ONE OR TWO MORE TIMES.

26 WHY NOT DEFER THE ADDITIONAL RATE INCREASE TO PAY  
27 FOR LABOR COSTS UNTIL IT BECAME CLEARER THE CITY WAS GOING TO  
28 GO FORWARD WITH THE CONTRACT AMENDMENT?

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1 A. THAT'S A GOOD QUESTION. AND WE COULD HAVE, WE WOULD  
2 HAVE REQUIRED, BECAUSE WE HAD TALKED LAST WEEK IN THE  
3 TESTIMONY IT WOULD HAVE REQUIRED A DOUBLE-DIGIT RATE INCREASE  
4 BECAUSE WE WERE NOW TALKING ABOUT AN INCREASE THAT WAS GOING  
5 TO CAPTURE THE DOLLARS NECESSARY TO PAY PRESENTLY, BUT ALSO  
6 PAY FOR PAST YEARS IF WE WERE GOING TO END UP DOING THAT.

7 Q. HAVE YOU EVER SEEN AS A SITUATION LIKE THIS, WHERE A  
8 CONTRACT IS AMENDED TO PAY A SIGNIFICANT RETROACTIVE PAYMENT

9 TO A CONTRACTOR?  
10 A. I HAVE NOT.  
11 MR. FINKELSTEIN: I ASK TO MARK AS EXHIBIT 52 AN  
12 APRIL 30, 2004 LETTER FROM CARL MOSHER TO JOHN NICOLETTI.  
13 THE FOREMAN: SO MARKED.  
14 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
15 JURY EXHIBIT 52.)  
16 BY MR. FINKELSTEIN:  
17 Q. MR. MOSHER, TAKE A LOOK AT THAT AND TELL US IF YOU  
18 RECOGNIZE THIS DOCUMENT.  
19 A. YES, I DO. THIS WAS THE APRIL 30, I WROTE BACK TO  
20 JOHN NICOLETTI IN RESPONSE TO THE HAND DELIVERY OF THE SECOND  
21 LETTER.  
22 Q. IN THIS LETTER YOU TELL MR. NICOLETTI WHAT, ABOUT  
23 AMENDING THE NORCAL AGREEMENT WITH THE CITY?  
24 A. I TELL MR. NICOLETTI AT PARAGRAPH TWO THAT THE  
25 AMENDMENT MENTIONS A PROPOSED INCREASE OF PAYMENTS FROM THE  
26 CITY TO NORCAL.  
27 Q. THE FIRST AMENDMENT, YOU'RE TALKING ABOUT AN  
28 AMENDMENT BETWEEN THE NORCAL AND CWS AGREEMENT MENTIONS AN

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1 INCREASED PAYMENT FROM THE CITY?  
2 A. CORRECT, WE ARE NOT SPEAKING ABOUT NORCAL. WE WERE  
3 SPEAKING OF THE SECOND AMENDMENT BETWEEN NORCAL AND CWS.  
4 Q. YES.  
5 A. THERE WAS NOTHING IN THE RECYCLE PLUS AGREEMENT,  
6 THAT'S THE AGREEMENT BETWEEN NORCAL AND THE CITY OF SAN JOSE

7 THAT PROVIDES FOR SUCH THINGS.

8 ADDITIONALLY, THERE IS NOTHING IN THE AGREEMENT  
9 THAT'S BINDING OR THAT IMPOSES ANY OBLIGATION ON THE CITY.

10 Q. SO YOU'RE TALKING ABOUT THERE'S, THERE BEING NOTHING  
11 IN THE NORCAL/CWS AGREEMENT THAT IN ANY WAY BINDS THE CITY OF  
12 SAN JOSE?

13 A. CORRECT.

14 MR. FINKELSTEIN: I WILL HAVE MARKED AS EXHIBIT 53  
15 AN E-MAIL CHAIN, THE BOTTOM OF THE CHAIN IS AN APRIL 29, 2004  
16 E-MAIL FROM CARL MOSHER TO JIM HOLGERSON AND SUSAN DEVENCENZI,  
17 AND THE TOP OF THE CHAIN IS AN APRIL 29, 2004 E-MAIL FROM  
18 SUSAN DEVENCENZI TO CARL MOSHER AND JIM HOLGERSON.

19 THE FOREMAN: SO MARKED.

20 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
21 JURY EXHIBIT 53.)

22 BY MR. FINKELSTEIN:

23 Q. NOW, LOOKING AT THIS NEXT EXHIBIT, CAN YOU TELL US  
24 WHAT THIS IS?

25 A. THERE IS AN E-MAIL EXCHANGE BETWEEN MYSELF AND  
26 JIM HOLGERSON AND SUSAN DEVENCENZI.

27 Q. WHAT DOES THAT RELATE TO?

28 A. I BELIEVE IT RELATES TO THE LETTER THAT WE WERE JUST

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1 DESCRIBING.

2 Q. IN OTHER WORDS, YOU CONSULTED WITH THEM ON THE  
3 WORDING OF THAT LETTER?

4 A. YES.

5 Q. THAT'S WHAT THE CHAIN RELATES TO?

6 A. YES.

7 Q. LET ME TAKE A LOOK AT THIS FOR A MOMENT.

8 IN THE TOP OF THE E-MAIL EXCHANGE, TOP OF THE  
9 EXCHANGE, MISS DEVENCENZI NOTES THAT SHE LIKES YOUR LAST  
10 SENTENCE BECAUSE IT PUTS NORCAL ON NOTICE THAT WE, MEANING THE  
11 CITY OF SAN JOSE, HAVE NO OBLIGATION UNDER THE AGREEMENT THEY  
12 HAVE WITH CWS.

13 A. THAT'S CORRECT.

14 Q. BOTH YOU AND THE CITY ATTORNEY'S OFFICE WERE OF THE  
15 SAME MIND ON THAT POSITION?

16 A. CORRECT.

17 MR. FINKELSTEIN: I WOULD LIKE TO MARK AS EXHIBIT 54  
18 AN E-MAIL FROM SKIP LACAZE, L-A-C-A-Z-E, SKIP, TO CARL MOSHER,  
19 DATED MAY 6, 2004.

20 THE FOREMAN: SO MARKED.

21 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
22 JURY EXHIBIT 54.)

23 BY MR. FINKELSTEIN:

24 Q. CAN YOU TAKE A LOOK AT THIS NEXT EXHIBIT AND TELL US  
25 WHAT IT IS?

26 A. THIS IS THE E-MAIL YOU DESCRIBED FROM SKIP LACAZE TO  
27 MYSELF AND STEVE WILLIS AND SUSAN DEVENCENZI AND OTHERS.

28 Q. WHO IS SKIP LACAZE?

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1 A. SKIP LACAZE WAS A SUPERVISOR THAT WORKED FOR  
2 STEVE WILLIS. HIS GENERAL RESPONSIBILITY WAS LANDFILL

3 AGREEMENTS FOR OUR DEPARTMENT.

4 Q. AND WHAT IS THIS E-MAIL ABOUT?

5 A. IT IS IN GENERAL ABOUT THE WHOLE ISSUE WE'RE  
6 DESCRIBING, WHETHER OR NOT NORCAL SHOULD BE PAID THESE  
7 ADDITIONAL DOLLARS.

8 WHAT THIS E-MAIL PORTRAYS IN GENERAL WAS THAT IT WAS  
9 PRETTY COMMON KNOWLEDGE THAT NORCAL HAD BEEN REQUESTING THIS.  
10 SKIP LACAZE WAS THE ONE, AS THE RECYCLE PLUS PROGRAM MANAGER,  
11 WHO WAS AT THE TIME MANAGING THESE CONTRACTS.

12 JORDAN CIPRIAN, WHO IS MENTIONED IN VERY FIRST LINE,  
13 WAS THE PARTICULAR PROJECT PROGRAM MANAGER FOR THE NORCAL  
14 CONTRACT.

15 Q. LET ME ASK A FEW QUESTIONS ABOUT THIS E-MAIL. WHAT  
16 WAS JORDAN'S LAST NAME?

17 A. CIPRIAN.

18 Q. AND IN THIS E-MAIL, DOES JORDAN MAKE THE FOLLOWING  
19 POINT -- STRIKE THAT. DOES MR. LECAZE REPEAT A CONCERN OF  
20 JORDAN'S THAT WHEN IWM, INTEGRATED WASTE MANAGEMENT, STAFF  
21 FIRST LEARNED OF THE PROPOSED PAYMENT OF ALMOST TWO MILLION  
22 PER YEAR, NONE OF US COULD SEE HOW THAT COULD HAVE ANYTHING TO  
23 DO WITH THE DIFFERENCE IN LABOR RATES AND BENEFITS FROM THE  
24 ILW CONTRACT AND CWS, CORRECT?

25 A. THAT'S CORRECT.

26 Q. THEN THEY TALK ABOUT QUESTIONING WHETHER IT'S IN THE  
27 RIGHT ORDER OR MAGNITUDE?

28 A. CORRECT.

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- 1 Q. IT GOES ON TO SAY, "IT SEEMS TO ME THAT THE INCREASED  
2 COST OF CWS" -- I'M SORRY. "IN ANY CASE, UNDER THE TERMS OF  
3 OUR AGREEMENT, THE PAYMENT MADE TO NORCAL CLEARLY SHOULD HAVE  
4 NOTHING TO DO WITH THE WAGES PAID TO CWS'S WORKERS," CORRECT?  
5 A. THAT'S CORRECT.  
6 Q. DID YOU AGREE WITH THAT?  
7 A. YES.  
8 Q. DOES MR. LACAZE GO ON TO POINT OUT THAT AMENDING THE  
9 AGREEMENT WITH NORCAL WOULD BE RISKY FOR THE CITY?  
10 A. I THINK HE DOES. WHAT PARAGRAPH ARE YOU REFERENCING?  
11 Q. AND DOES HE EXPLAIN WHY IT WOULD BE RISKY FOR THE,  
12 WHAT DOES HE SAY?  
13 A. THE NUMBER OF THE PARAGRAPH?  
14 Q. IN PARAGRAPH FOUR HE SAYS --  
15 A. YES.  
16 Q. IT WOULD BE RISKY FOR THE CITY, AND THEN HE EXPLAINS  
17 WHY, CORRECT?  
18 A. IT SEEMS TO ME THAT AMENDING THE RP AGREEMENT, SHORT  
19 FOR RECYCLE PLUS, WITH NORCAL AS ENVISIONED IN THE DOCUMENT  
20 WOULD BE VERY RISKY FOR THE CITY. INCREASING NORCAL'S  
21 COMPENSATION BY TWO MILLION PER YEAR IN A MANNER THAT WAS NOT  
22 RAISED IN THE RFP WOULD CERTAINLY OFFER OUTSIDERS THE  
23 OPPORTUNITY TO CHALLENGE THE CONTRACT AWARD, THOSE BEING WASTE  
24 MANAGEMENT, BFI, AND GREEN TEAM.  
25 Q. DID YOU AGREE WITH THAT REASONING?  
26 A. YES, I DID.  
27 Q. SO, IN ADDITION TO THE FACT THAT THE ORIGINAL  
28 AGREEMENT BETWEEN THE CITY AND NORCAL CONTAINED THAT CLAUSE

1 17.02.3, WHICH BARRED ANY ADDITIONAL PAYMENTS TO NORCAL FOR  
2 INCREASED LABOR COSTS, IN ADDITION TO THAT FACTOR, WE HAVE  
3 ANOTHER FACTOR, WHICH IS NAMELY RISKS TO THE CITY BROUGHT  
4 ABOUT BY OTHER PROPOSERS CHALLENGING WHY NORCAL IS GETTING  
5 ADDITIONAL COMPENSATION BEYOND WHAT THEY PROPOSED, IS THAT  
6 CORRECT?

7 A. THAT'S CORRECT.

8 Q. WHAT KIND OF RISK COULD THAT BE TO THE CITY?

9 A. TWO. ONE BEING THEY COULD SUE THE CITY RELATED TO  
10 THE AWARDING PROCESS WE HAD MADE FOR THE ORIGINAL CONTRACT TO  
11 NORCAL.

12 AND TWO, IT PUTS THE CITY IN A VERY BAD SITUATION  
13 RELATING TO THE AWARD OF A CONTRACT FOR ONE PRICE AND THEN  
14 LATER ON THE PROPOSER SAYS, I WAS JUST KIDDING, I NEEDED MORE  
15 MONEY, AND YOU AMEND IT. YOU NO LONGER HAVE CREDIBILITY.

16 Q. PLUS, IT MIGHT OPEN THE DOOR FOR ANOTHER PROPOSER  
17 GOING BACK TO THE CITY FOR MORE MONEY.

18 A. DOING THE VERY SAME THING, THAT'S CORRECT.

19 Q. NOW, LET'S GO BACK TO THE E-MAILS FOR A SECOND. IF  
20 YOU GO TO PAGE TWO, SAME E-MAIL. DOES MR. LACAZE MAKE  
21 REFERENCE TO PROBLEMS IN THE 1990S OF A LESSER MAGNITUDE ALONG  
22 THESE SAME LINES?

23 A. YES.

24 Q. WHAT DOES HE SAY IN THIS REGARD?

25 A. I'LL READ THE SENTENCE. "FINALLY, I BELIEVE THAT  
26 CONTRACT PROBLEMS OF A LESSER MAGNITUDE IN THE EARLY 1990S LED  
27 TO CRIMINAL INVESTIGATIONS, WHICH WERE UNFOUNDED, REVIEWS BY  
28 THE CITY AUDITOR, WHICH WERE JUSTIFIABLY EMBARRASSING, AND

1 THIS ENDED IN THE DEPARTURE OF SEVERAL MANAGERS.

2 Q. DO YOU KNOW WHAT HE'S REFERRING TO?

3 A. NO, I DON'T. I WASN'T THERE AT THE TIME, AND SO I  
4 DON'T KNOW SPECIFICALLY WHAT HE'S REFERRING TO.

5 Q. DID YOU BOTHER FOLLOWING UP AND ASKING HIM WHAT HE  
6 WAS REFERRING TO?

7 A. I THINK WE HAD A CASUAL CONVERSATION, BUT I DON'T  
8 RECALL WHAT THAT ENDED UP BEING.

9 Q. IN ANY EVENT, YOU GOT THE POINT THAT THIS COULD BE  
10 BAD?

11 A. OH, YES. AND I WAS WELL AWARE OF IT BEFORE THAT,  
12 THAT THIS COULD BE BAD.

13 MR. FINKELSTEIN: LET'S MARK NEXT AS EXHIBIT 55 AN  
14 E-MAIL CHAIN STARTING FROM THE BOTTOM, APPEARS TO BE A MAY 10,  
15 2004 E-MAIL FROM LYDIA TOLLES TO RICHARD DOYLE AND  
16 CARL MOSHER, AND IT CONCLUDES AT THE TOP WITH AN E-MAIL FROM  
17 CARL MOSHER DATED MAY 11, 2004 TO SUSAN DEVENCENZI. I ASK  
18 THIS BE MARKED AS EXHIBIT 55.

19 THE FOREMAN: SO MARKED.

20 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
21 JURY EXHIBIT 55.)

22 BY MR. FINKELSTEIN:

23 Q. CAN YOU TELL US WHAT EXHIBIT 55 IS?

24 A. IT IS AN E-MAIL CHAIN YOU DESCRIBED BETWEEN MYSELF  
25 AND SUSAN DEVENCENZI; JIM HOLGERSON IS COPIED ON IT.

26 Q. LET'S LOOK AT THE CHAIN FROM THE BOTTOM UP -- SORRY  
27 ABOUT THAT. LET'S GO TO THE BOTTOM CHAIN. IS THAT A MAY 10

28 E-MAIL FROM LYDIA TOLLES TO RICHARD DOYLE AND CARL MOSHER AND

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1 CC TO JOE GUERRA?

2 A. THAT'S CORRECT.

3 Q. WHAT DOES THIS BOTTOM E-MAIL MAKE REFERENCE TO?

4 A. THE BOTTOM E-MAIL FROM LYDIA TOLLES TO MYSELF AND  
5 RICHARD DOYLE, THE CITY ATTORNEY, REFERENCES, IT SAYS,  
6 "ATTACHED IS A LIST OF NONCONTRACTUAL REQUIRED SERVICES  
7 SUPPLIED BY NORCAL PER JOE."

8 Q. WHEN YOU SAY PER JOE, WHAT JOE ARE WE TALKING ABOUT?

9 A. JOE GUERRA.

10 Q. WHY IS NORCAL SUPPLYING A LIST OF NONCONTRACTUALLY  
11 OBLIGATED SERVICES TO THE CITY OF SAN JOSE, DO YOU KNOW?

12 A. YES. THIS IS A RESULT OF WHEN WE WERE EARLIER --  
13 RELATED TO THE LETTER I SENT BACK, OR THE E-MAIL I SENT.  
14 THERE IS NO CONSIDERATION FOR THE PAYMENTS THAT WERE BEING  
15 PROPOSED TO BE MADE.

16 Q. SO NORCAL RESPONDED BY SUGGESTING WHAT ADDITIONAL  
17 SERVICES THEY MIGHT SUPPLY TO THE CITY AS CONSIDERATION FOR  
18 THIS 11 MILLION DOLLARS IN ADDITIONAL PAYMENTS, CORRECT?

19 A. THAT IS CORRECT.

20 Q. THANK YOU. AND WHO IS THE AUTHOR OF THIS E-MAIL, THE  
21 SENDER?

22 A. THE FIRST --

23 Q. ON THE BOTTOM.

24 A. LYDIA TOLLES. SHE WORKS IN THE MAYOR'S OFFICE. SHE  
25 WORKED FOR JOE GUERRA, SHE IS THE POLICY AND BUDGET ANALYST

26 THAT WAS ASSIGNED ENVIRONMENTAL ISSUES AND WORKED WITH OUR  
27 DEPARTMENT.

28 Q. DOES SHE WORK UNDER JOE GUERRA OR ALONGSIDE HIM?

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1 A. I BELIEVE SHE WAS SUPERVISED BY JOE GUERRA.

2 Q. SHE REPORTED TO JOE GUERRA?

3 A. YES.

4 Q. WHO REPORTS TO THE MAYOR?

5 A. THAT'S MY UNDERSTANDING, YES.

6 Q. DID YOU REPLY TO THIS?

7 A. YES.

8 Q. THAT WOULD BE THE NEXT ONE UP ON THE CHAIN?

9 A. YES, MAY 11.

10 Q. IS THAT THE E-MAIL THAT BEGINS: "JIM AND SUSAN, I HAD  
11 A CONVERSATION WITH LYDIA"?

12 A. YES, AND YOU ASKED ME, DID I REPLY TO THIS. THIS  
13 CHAIN SHOWS AN E-MAIL I SENT TO JIM AND SUSAN REGARDING  
14 LYDIA'S.

15 Q. THANK YOU FOR CLARIFYING THAT. YOU DIDN'T REPLY TO  
16 LYDIA TOLLES, YOU RESPONDED TO THAT E-MAIL BY SENDING AN  
17 E-MAIL TO JIM HOLGERSON AND SUSAN DEVENCENZI, CORRECT?

18 A. THAT'S CORRECT.

19 Q. WHAT DO YOU SAY IN THAT MAIL?

20 A. IT SAYS HERE, "I HAD A CONVERSATION WITH LYDIA  
21 YESTERDAY," WHICH WAS DURING THE BUDGET SESSIONS THAT WERE  
22 OCCURRING AT THAT TIME.

23 Q. THAT WOULD HAVE BEEN MAY 10?

- 24 A. YES.
- 25 Q. AND WHAT DO YOU SAY, AND DID YOU IN FACT HAVE A
- 26 CONVERSATION WITH LYDIA TOLLES ON MAY 10?
- 27 A. YES. WHAT TIME IS THIS? YES, THAT WOULD BE MAY 10.
- 28 Q. WHAT DID SHE TELL YOU IN THE CONVERSATION?

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- 1 A. SHE SAID, THE SECOND LINE IN THE E-MAIL SHE ASKED ME,
- 2 HOW FAST CAN YOU GET THE NORCAL AMENDMENT TO THE COUNCIL.
- 3 I SAID, I HAVE AN AMENDMENT BETWEEN NORCAL AND CWS;
- 4 HOWEVER, NOWHERE DOES IT PROVIDE ANY CONSIDERATION TO THE CITY
- 5 FOR THESE SERVICES THEY ARE ALREADY PROVIDING. IT DOES NOT
- 6 DETAIL THE NUMBER OF EMPLOYEES, DIFFERENCES IN WAGES, ET
- 7 CETERA.
- 8 Q. YOU GO ON AND SAY --
- 9 A. SHE SAID SHE WOULD PROVIDE ME WITH INFORMATION ON
- 10 WHAT NORCAL HAS DONE FOR US -- SEE ATTACHED. THE DOLLAR
- 11 AMOUNT OF THESE NONCONTRACTUALLY REQUIRED SERVICES IS NOWHERE
- 12 NEAR THE LABOR PEACE AMOUNT. I COULD ARGUE THAT SOME OF THESE
- 13 ARE NOT NOT CONTRACTUAL.
- 14 Q. IS THAT IN FACT WHAT TRANSPIRED IN THE CONVERSATION
- 15 YOU DOCUMENTED IN THE E-MAIL?
- 16 A. YES.
- 17 Q. THIS E-MAIL WAS MADE CLOSE IN TIME TO THAT
- 18 CONVERSATION?
- 19 A. YES.
- 20 Q. WITHIN A DAY OF THE CONVERSATION?
- 21 A. YES.

- 22 Q. WOULD YOU SAY THE STATEMENTS IN THE CONVERSATION WERE  
23 FRESH IN YOUR RECOLLECTION AT THAT TIME?  
24 A. YES.  
25 Q. AND THIS IS MEANT TO DOCUMENT THAT CONVERSATION?  
26 A. YES, IT WAS.  
27 Q. AND DO YOU BELIEVE IT TO BE TRUE?  
28 A. TO BE TRUE?

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- 1 Q. YEAH, WHAT I HAVE ATTRIBUTED TO LYDIA TOLLES.  
2 A. YES. OH, YES.  
3 Q. IS WHAT YOU'RE SAYING HERE THAT YOU DON'T THINK THE  
4 CONSIDERATION THAT'S BEING TALKED ABOUT BY NORCAL, THE  
5 ADDITIONAL CONSIDERATION, IS IN THE BALLPARK OF THE 11 MILLION  
6 DOLLAR COST THE CITY IS BEING ASKED TO PAY?  
7 A. THAT'S CORRECT.  
8 Q. AND ARE YOU ALSO SAYING THAT SOME OF THE PROPOSED  
9 CONSIDERATION THAT NORCAL IS PRESENTING FOR CONSIDERATION FOR  
10 THIS 11 MILLION DOLLAR PAYMENT MAY ACTUALLY BE ITEMS THAT THEY  
11 WERE ALREADY CONTRACTUALLY OBLIGATED TO PROVIDE THE CITY?  
12 A. CORRECT.  
13 THE FOREMAN: LET ME POINT OUT WE WOULD LIKE TO  
14 BREAK ABOUT QUARTER TO 12:00 FOR ANOTHER COMMITMENT.  
15 MR. FINKELSTEIN: THAT'S FINE. WHY DON'T WE TAKE A  
16 SHORT RECESS.  
17 MR. FINKELSTEIN: LET'S TAKE A FIVE-MINUTE BREAK.  
18 THANK YOU VERY MUCH.  
19 (A BRIEF RECESS WAS TAKEN.)

20 THE FOREMAN: LET' S CALL THE SESSION BACK TO ORDER.  
21 ALL JURORS ARE PRESENT AND ACCOUNTED FOR EXCEPT FOR MISS (NAME  
22 REDACTED).  
23 BY MR. FINKELSTEIN:  
24 Q. LET' S CONTINUE LOOKING AT THE SAME EXHIBIT, HIGHER IN  
25 THE CHAIN. AFTER YOUR E-MAIL TO JIM HOLGERSON AND  
26 SUSAN DEVENZENZI , SUSAN DEVENZENZI SENDS AN E-MAIL TO YOU,  
27 CORRECT?  
28 A. CORRECT.

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1 Q. AND WHAT IS MISS DEVENZENZI' S TAKE ON THIS PROPOSED  
2 NORCAL AMENDMENT WITH THE CITY IN HER E-MAIL?  
3 A. THAT WOULD BE CONTAINED IN THE FIRST LINE OF THE  
4 SECOND PARAGRAPH, WHICH SAYS, "I DON' T SEE THIS GOING FORWARD  
5 VERY QUICKLY. "  
6 Q. WHAT ELSE DOES SHE SAY ABOUT THE SUGGESTED  
7 CONSIDERATION FOR THE AMENDMENT?  
8 A. SHE SAYS, IN THE SECOND SENTENCE OF THAT PARAGRAPH,  
9 "FIRST, EXCEPT FOR COMMUNITY SERVICES, WHICH MIGHT BE ONGOING,  
10 THE LIST OF SERVICES SOUNDS LIKE THINGS NORCAL HAS ALREADY  
11 DONE. "  
12 Q. WHAT ELSE DOES SHE SAY?  
13 A. "EVEN IF THE CITY DECIDED TO COMPENSATE NORCAL FOR  
14 THESE ITEMS, THERE DOES NOT APPEAR TO BE ANYTHING THAT WOULD  
15 BE CONSIDERATION FOR THE CITY TO PAY ADDITIONAL MONEY FOR  
16 FUTURE YEARS.  
17 "SECOND, I AGREE THAT SOME OF THESE ITEMS ACTUALLY

18 ARE REQUIRED BY THE CURRENT AGREEMENT, SUCH AS LABOR COSTS,  
19 MONITORING OF CONTAMINATION LEVELS.

20 "THIRD, AS YOU HAVE INDICATED, THERE IS NO COST  
21 ANALYSIS OF ANY OF THESE ITEMS.

22 "FOURTH, THE DESCRIPTION OF THE SERVICES IS TOO  
23 VAGUE FOR ME TO DRAFT ANYTHING. "

24 Q. DID YOU TAKE FROM THIS, DID YOU GET THE IMPRESSION  
25 FROM THIS E-MAIL THAT MISS DEVENCENZI DID NOT SEE A LEGAL  
26 JUSTIFICATION FOR THE AMENDMENT BEING SOUGHT BY NORCAL AT THAT  
27 TIME?

28 A. THAT'S CORRECT.

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1 Q. AS A MATTER OF FACT, AT THE VERY TOP YOU INDICATE  
2 BACK TO MISS DEVENCENZI THAT YOU AGREE WITH HER ANALYSIS,  
3 CORRECT?

4 A. YES, I DID.

5 Q. AS YOU SIT THERE TODAY, DO YOU AGREE WITH THAT  
6 ANALYSIS?

7 A. YES, I DO. YOU INDICATED A WORD, AND THAT'S LEGAL  
8 ANALYSIS --

9 Q. NO, NO. I BELIEVE I SAID, I TRIED TO SUMMARIZE THE  
10 E-MAIL FROM MISS DEVENCENZI AS SAYING THERE DID NOT APPEAR TO  
11 BE ANY LEGAL CONSIDERATION FOR THE PROPOSED AMENDMENT,  
12 CORRECT?

13 A. CORRECT.

14 Q. I MEAN, THAT'S WHY YOU INCLUDED MISS DEVENCENZI IN  
15 THE COMMUNICATION, WAS TO GET A LEGAL OPINION, CORRECT?

16 A. ABSOLUTELY.

17 MR. FINKELSTEIN: I WOULD LIKE TO MARK AS EXHIBIT 56  
18 ANOTHER E-MAIL CHAIN, THE BOTTOM OF THE CHAIN IS A MAY 10  
19 E-MAIL FROM LYDIA TOLLES, AND THE TOP IS A MAY 25, 2004 E-MAIL  
20 FROM CARL MOSHER TO LYDIA TOLLES AND RICHARD DOYLE.

21 THE FOREMAN: SO MARKED.

22 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
23 JURY EXHIBIT 56.)

24 BY MR. FINKELSTEIN:

25 Q. CAN YOU TELL US WHAT THIS EXHIBIT IS?

26 A. THIS IS THE E-MAIL TRAIL YOU DESCRIBED. THE LAST ONE  
27 IS AN E-MAIL FROM ME, DATED MAY 25, TO LYDIA TOLLES AND  
28 RICHARD DOYLE, REGARDING THE NORCAL CONTRACT.

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1 Q. AND LET'S GO RIGHT TO THE TOP OF THE CHAIN. IS THAT  
2 AN E-MAIL THAT YOU SENT ON MAY 25, 2004, TO LYDIA TOLLES AND  
3 RICHARD DOYLE?

4 A. YES, IT IS.

5 Q. WHAT WAS PURPOSE OF THE E-MAIL?

6 A. IT WAS TO RESPOND TO THE E-MAIL SHE HAD SENT  
7 PREVIOUSLY THAT, AS WE DESCRIBED, WE HAD THE TRAIL BETWEEN  
8 MYSELF, JIM HOLGERSON, AND SUSAN DEVENCENZI. SO I WAS JUST  
9 FOLLOWING BACK TO LYDIA.

10 Q. OKAY. COULD YOU BASICALLY JUST SUMMARIZE FOR US WHAT  
11 IT IS YOU'RE TELLING LYDIA TOLLES IN THIS E-MAIL?

12 A. I SAID THE AMENDMENT OF THE CONTRACT BETWEEN NORCAL  
13 AND CWS SAID THERE WAS THIS REQUEST FOR JOINT LETTER THAT

14 WOULD BE SUBMITTED TO THE CITY FOR ADDITIONAL PAYMENTS, BUT WE  
15 HAD NOT RECEIVED SUCH A DOCUMENT, AND THAT WE HAVEN'T RECEIVED  
16 ANY OF THE DOCUMENTATION THAT WOULD RELATE TO THE ADDITIONAL  
17 PAYMENTS OR THE CONSIDERATION THE CITY WOULD RECEIVE IF WE  
18 MADE THOSE PAYMENTS.

19 Q. DO YOU MAKE THE FOLLOWING STATEMENT -- STRIKE THAT.  
20 IN THIS E-MAIL, DO YOU MAKE ANY STATEMENT REGARDING THE VALUE  
21 OF THE PROPOSED CONSIDERATION IN COMPARISON TO WHAT'S BEING  
22 ASKED BY NORCAL BY WAY OF ADDITIONAL PAYMENTS?

23 A. YES, IN PARAGRAPH TWO, SENTENCE TWO AND THREE, THERE  
24 ARE ONE-TIME ITEMS NORCAL HAS ALREADY COMPLETED, AND THEY  
25 WOULD NOT JUSTIFY ONGOING ADDITIONAL PAYMENTS. THE SUM OF THE  
26 TOTAL OF THE COST OF THESE ITEMS DOES NOT ADD UP TO ANYWHERE  
27 NEAR THE PROPOSED ADDITIONAL PAYMENTS.

28 Q. OKAY.

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1 MR. FINKELSTEIN: LET'S MARK AS EXHIBIT 57 AN E-MAIL  
2 CHAIN, THE TOP OF THE CHAIN IS A MAY 26, 2004 E-MAIL FROM  
3 JIM HOLGERSON TO JOE GUERRA WITH CC TO DEL BORGS DORF, RICHARD  
4 DOYLE, CARL MOSHER, AND LYDIA TOLLES. THE SUBJECT IS "THE  
5 NORCAL CONTRACT."

6 THE FOREMAN: SO MARKED.

7 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
8 JURY EXHIBIT 57.)

9 BY MR. FINKELSTEIN:

10 Q. CAN YOU TELL US WHAT THIS EXHIBIT IS?

11 A. THIS IS AN E-MAIL FROM JIM HOLGERSON, DEPUTY CITY

12 MANAGER, TO JOE GUERRA, AND COPIES TO DEL BORGS DORF, RICHARD  
13 DOYLE AND MYSELF, AND LYDIA TOLLES.

14 Q. AND WHAT DOES MR. HOLGERSON SAY TO MR. GUERRA IN THIS  
15 E-MAIL?

16 A. HE SAYS THAT "DEL HAS SHARED WITH US A STRONG DESIRE  
17 TO MOVE TOWARD WITH THE CONTRACT AMENDMENT FOR NORCAL. WE  
18 HAVE MET, WE NEED ADDITIONAL DOCUMENTATION, AND -- SHOULD WE  
19 MEET WITH THEM AND YOU, WE WILL CONTINUE TO MEET AND WORK WITH  
20 NORCAL AND CWS" --

21 Q. IN THIS E-MAIL, DOES MR. HOLGERSON INDICATE THAT HE  
22 HAS MET NUMEROUS TIMES WITH NORCAL TO DISCUSS THEIR  
23 JUSTIFICATION FOR THE CONTRACT INCREASE?

24 A. CORRECT.

25 Q. DOES DID HE GO ON TO SAY, "BUT TO DATE, AS CARL'S  
26 E-MAIL TO LYDIA STATES, NO SUBSTANTIAL BASIS FOR A CONTRACT  
27 ADJUSTMENT HAS BEEN PUT FORWARD"?

28 A. THAT'S CORRECT.

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1 Q. AND HE'S REFERRING TO YOUR EARLIER E-MAIL WE TALKED  
2 ABOUT?

3 A. THAT'S CORRECT.

4 Q. "WE APPRECIATE THAT NORCAL MAY NOT HAVE ANTICIPATED  
5 THE CHALLENGES WITH THEIR SUBCONTRACTOR, AND THAT COSTS,  
6 ESPECIALLY LABOR AND A PROBLEMATIC RECYCLING OPERATION, MOST  
7 LIKELY ARE HIGHER FOR THEM THAN WHAT THEY ESTIMATED IN THEIR  
8 LOW BID." IT GOES ON TO TALK ABOUT MEETINGS TO RESOLVE IT AND  
9 CONCLUDES BY SAYING, "SHOULD THEY PRESENT A PROPOSAL THAT

10 WOULD WARRANT A RECOMMENDATION TO AMEND THE CONTRACT, WE WILL  
11 CERTAINLY BRING THAT FORWARD TO THE CITY COUNCIL," CORRECT?

12 A. CORRECT.

13 Q. JUMPING AHEAD, WE KNOW IT WAS BROUGHT FORWARD TO THE  
14 COUNCIL, CORRECT?

15 A. CORRECT.

16 Q. THE COUNCIL EVENTUALLY AMENDED THE AGREEMENT,  
17 CORRECT?

18 A. CORRECT.

19 Q. WAS ANYTHING ADDITIONAL BROUGHT FORWARD THAT HADN'T  
20 BEEN ALREADY BROUGHT FORWARD BY NORCAL?

21 A. NO. THE WAY -- NO. NOTHING NEW WAS BROUGHT FORWARD  
22 FROM THE HISTORY OF THINGS WE DISCUSSED.

23 Q. CAN YOU SHED ANY LIGHT FOR US ON HOW IT IS THAT  
24 CONSIDERATION THAT WAS CONSIDERED BY YOU AND APPARENTLY OTHERS  
25 IN THE CITY OF SAN JOSE TO BE INADEQUATE AND WOEFULLY LACKING  
26 COMPARED TO THIS 11 MILLION DOLLAR PAYMENT SUDDENLY BECAME A  
27 REASON FOR BRINGING FORWARD TO THE CITY COUNCIL AND OBTAINING  
28 AN AMENDMENT?

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1 A. WHICH IS WHY I DIDN'T BRING IT FORWARD.

2 Q. OKAY. I WOULD LIKE TO SHOW YOU WHAT HAS BEEN MARKED  
3 EXHIBIT 40. TELL US IF YOU RECOGNIZE THIS E-MAIL.

4 A. THIS IS AN E-MAIL FROM JOE GUERRA TO RICHARD DOYLE,  
5 JIM HOLGERSON, DEL BORGS DORF, AND MYSELF, AS A RESULT OF THE  
6 E-MAIL THAT WE WERE JUST DISCUSSING PREVIOUSLY, WHICH YOU HAD  
7 ON THE SCREEN.

8 Q. COULD YOU READ OUT LOUD FOR US, MR. GUERRA -- THIS IS  
9 AN E-MAIL FROM JOE GUERRA?

10 A. YES.

11 Q. ACTUALLY, IT'S A PRINTED OUT COPY OF AN E-MAIL?

12 A. YES.

13 Q. COULD YOU -- CAN YOU READ WHAT MR. GUERRA IS  
14 SUPPOSEDLY SAYING IN THE E-MAIL?

15 A. "GENTLEMEN, AS I HAVE POINTED OUT TO RICK AND DEL BY  
16 PHONE TODAY, WE RAISED THE CUSTOMERS' RATES ALREADY TO  
17 SPECIFICALLY COVER THIS ADDITIONAL COST. I BELIEVE I EVEN  
18 STILL HAVE THE SPREADSHEET CARL MADE WHICH SHOWED THE  
19 JUSTIFICATION FOR THE RATE AMOUNT THAT WAS SETTLED ON.

20 IT IS DISINGENUOUS AT BEST TO NOW BE QUESTIONING  
21 AMENDING THE CONTRACT. I AM TERRIBLY UNEASY WITH CONTINUING  
22 TO CHARGE CUSTOMERS AND KEEPING THE MONEY. WE EITHER NEED TO  
23 PROCESS THIS AMENDMENT SOMETIME SOON OR REFUND THE MONEY TO  
24 THE CUSTOMERS AND LOWER THEIR RATES. I'D REALLY LIKE US TO  
25 AGREE ON A TIMELINE WHEN EITHER THE ADMINISTRATION OR OUR  
26 OFFICE WILL BRING ONE OF THOSE OPTIONS TO THE COUNCIL FOR  
27 APPROVAL. "

28 Q. NOW, LET'S LOOK AT THE FIRST PARAGRAPH. THE

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1 STATEMENT THAT WE RAISED OUR CUSTOMERS' RATES ALREADY TO  
2 SPECIFICALLY COVER THIS ADDITIONAL COST, IN YOUR VIEW, WAS  
3 THAT AN ACCURATE STATEMENT?

4 A. I THINK THE MAYOR'S OFFICE BELIEVED WE RAISED THE  
5 RATES FOR ONE REASON, AND I BELIEVE WE RAISED THE RATES TO BE

6 PREPARED FOR THAT REASON AND IT WOULD BE A CONTINGENCY IN THE  
7 FUND IF NECESSARY IN THE FUTURE.

8 Q. SO YOU'RE SUGGESTING A DISTINCTION IN LANGUAGE.  
9 YOU'RE SAYING WE DIDN'T TECHNICALLY RAISE THE RATES FOR THAT  
10 PURPOSE, WE RAISED THE RATES AS A CONTINGENCY IN CASE WE  
11 NEEDED TO PAY FOR THAT PURPOSE?

12 A. THAT'S CORRECT.

13 Q. IS THAT THE DISTINCTION YOU'RE DRAWING?

14 A. THAT'S, YES, THAT'S WHAT I'M SAYING.

15 Q. YOU CAN SAY IT BETTER THAN THAT --

16 A. I THINK YOU SAID IT WELL. I SAID IT LIKE AN  
17 ENGINEER. YOU SAID IT --

18 Q. NOW, THE REFERENCE IN THE FIRST PARAGRAPH TO THE  
19 SPREADSHEET, IS THAT THE SPREADSHEET WE PREVIOUSLY TALKED  
20 ABOUT?

21 A. YES. THAT'S THE SPREADSHEET WE SPOKE ABOUT IN MY  
22 TESTIMONY OF LAST WEEK REVIEWING WITH JOE GUERRA WHAT  
23 DIFFERENT RATE SCENARIOS WOULD BE.

24 Q. RIGHT. AND, I MEAN, IT'S CORRECT, IS IT NOT, THAT  
25 THE INCREASE FROM THE INITIALLY PROPOSED OR -- STRIKE THAT.

26 THE INCREASE FROM THE INITIAL 4% AND 5% RATE  
27 INCREASE TO 9% IS MEANT TO COVER THE POSSIBILITY OF PAYING FOR  
28 INCREASED LABOR COSTS, CORRECT?

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1 A. YES. THE SUM OF THE DOLLARS, IT WAS --

2 Q. NO, IT'S NOT JUST A COINCIDENCE THAT THE CHANGE FROM  
3 5% TO 9% IS EXACTLY WHAT YOU NEED TO COVER THE LABOR COSTS,

4 RIGHT?

5 A. THAT'S CORRECT.

6 Q. IT'S NOT A COINCIDENCE?

7 A. IT'S NOT.

8 Q. THAT'S BY DESIGN?

9 A. YES. IT, HOWEVER, COULD NOT BE USED FOR ANY OTHER

10 PURPOSE UNTIL THE COUNCIL MADE THAT DECISION.

11 Q. NOW, LET ME ASK YOU, WHAT IS MR. GUERRA TALKING ABOUT

12 WHEN HE TALKS ABOUT CONTINUING TO CHARGE CUSTOMERS AND KEEPING

13 THE MONEY? WHAT IS THAT A REFERENCE TO?

14 A. HERE'S MY -- I THINK HE WAS TRYING TO PUT PRESSURE ON

15 US TO BRING THE AMENDMENT FORWARD. AND, YOU KNOW, EITHER YOU

16 BRING IT FORWARD OR YOU DO SOMETHING WITH THE RATES TO REDUCE

17 THEM. I THINK THIS WAS TO EXERT PRESSURE ON THE

18 ADMINISTRATION.

19 Q. WHEN HE SAYS "KEEPING THE MONEY," THE MONEY WAS

20 GENERATED BY THE '03 RATE INCREASE?

21 A. THAT'S CORRECT.

22 Q. DID ANY PORTION OF THAT GET DIVERTED INTO SOME

23 SUSPENSE FUND OR HOLDING ACCOUNT?

24 A. IT JUST WAS IN THE INTEGRATED WASTE FUND.

25 Q. IT JUST INCREASED THE SIZE OF THE FUND?

26 A. YES, THE TOTAL AMOUNT OF THE FUND.

27 Q. LET'S TAKE A LOOK AT WHAT'S BEEN MARKED AS GRAND JURY

28 EXHIBIT 41. CAN YOU TELL US WHAT THIS IS? I'M HANDING IT TO

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1 YOU, AND I'LL PUT ANOTHER ON THE SCREEN.

2           A.       THE MIDDLE PORTION OF THIS DOCUMENT IN THE SMALL  
3 PRINT IS THE CITY ATTORNEY'S RESPONSE TO JOE GUERRA'S E-MAIL  
4 WE WERE JUST DISCUSSING.

5           Q.       TALKING ABOUT THE E-MAIL FROM RICHARD DOYLE TO  
6 JOE GUERRA, JIM HOLGERSON, DEL BORGS DORF, AND CARL MOSHER,  
7 DATED MAY 27, 2004 AT 8:59 A.M. ?

8           A.       CORRECT.

9           Q.       WHAT DOES RICHARD DOYLE, THE CITY ATTORNEY, SAY?

10          A.       HE SAYS "JOE, AS WE DISCUSSED, WE ARE WILLING TO SIT  
11 DOWN ASAP WITH NORCAL TO FIND A SOLUTION. I DON'T THINK,  
12 HOWEVER, THAT IT'S DISINGENUOUS TO RAISE QUESTIONS OVER THE  
13 AMENDMENT. AS I REMEMBER, THE COUNCIL DID NOT RAISE RATES TO  
14 COVER ANY SPECIFIC ADDITIONAL COSTS. THERE WAS NOTHING IN THE  
15 STAFF MEMO THAT MENTIONED THIS ISSUE. THE COUNCIL'S ACTION  
16 WAS TO MAKE THE RECYCLE PLUS PROGRAM CLOSE TO COST RECOVERY,  
17 WHICH APPARENTLY STILL IS ONLY AT 91%."

18          Q.       FROM YOUR PERSPECTIVE, WOULD YOU SAY THAT'S AN  
19 ACCURATE STATEMENT?

20          A.       YES. WE DESCRIBED HOW WE GOT TO THE NUMBERS, FROM 5%  
21 TO 9%, BUT WE INCREASED RATES FOR THE REASON RICK JUST  
22 DESCRIBED.

23          Q.       OKAY.

24                   MR. FINKELSTEIN: I WOULD LIKE TO HAVE MARKED AS  
25 EXHIBIT 58 AN AUGUST 10, 2004 E-MAIL FROM STEVE WILLIS TO  
26 CARL MOSHER, AND THERE'S A CC TO JORDAN CIPRIAN AND DONNA  
27 PERALA.

28                   THE FOREMAN: SO MARKED.

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1 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
2 JURY EXHIBIT 58.)

3 BY MR. FINKELSTEIN:

4 Q. PLEASE TELL ME, IF YOU WOULD, IF YOU RECOGNIZE THIS  
5 EXHIBIT, AND IF SO, WHAT IT IS?

6 A. IT'S A -- YES, I RECOGNIZE IT. IT'S AN E-MAIL DATED  
7 AUGUST 10 TO STEVE WILLIS FROM MYSELF.

8 Q. ISN'T IT AN E-MAIL FROM STEVE WILLIS TO YOU -- I'M  
9 SORRY.

10 A. YEAH. THE TOP IS AN E-MAIL FROM STEVE TO ME WHICH  
11 HAS AN ATTACHMENT.

12 Q. YOU'RE LOOKING AT THE CHAIN BELOW?

13 A. CORRECT.

14 Q. THAT'S AN E-MAIL OF THE SAME DATE, AUGUST 10, FROM  
15 YOU TO STEVE WILLIS, CORRECT?

16 A. CORRECT. THIS IS A REQUEST BY ME TO STEVE TO HAVE HE  
17 AND HIS GROUP CONSIDER WHAT ADDITIONAL SERVICES WE COULD HAVE  
18 NORCAL PROVIDE FOR THE CITY, IDEAS ASSOCIATED THERE IN THE  
19 SECOND SENTENCE LIKE ADDITIONAL BINS FOR NEIGHBORHOOD  
20 CLEANUPS, FOR AUDITS OR CHARACTERIZATION STUDIES, ET CETERA,  
21 WHATEVER, IN CAPITAL LETTERS, BRAINSTORM. ALSO, WHAT YOU  
22 THINK THE RELATIVE VALUE OF EACH OF THOSE SERVICES WOULD BE ON  
23 AN ORDER OF MAGNITUDE OF \$100,000.

24 Q. NOW --

25 A. WOULD YOU LIKE ME TO CONTINUE TO READ THE REMAINDER  
26 OF THAT?

27 Q. NO, THAT'S FINE, WE CAN ALL SEE THE E-MAIL, IT'S AN  
28 EXHIBIT. SO, MR. MOSHER, SOMEONE READING THIS E-MAIL MIGHT

1 FORM THE IMPRESSION THAT, NOTWITHSTANDING YOUR APPARENT  
2 OPPOSITION TO THIS AMENDMENT, TO ANY INCREASED PAYMENTS, YOU  
3 NOW APPEAR TO BE DIRECTING YOUR STAFF TO TRY TO COME UP WITH  
4 SOME JUSTIFICATION THAT WOULD SUPPORT AN AMENDMENT; WOULD THAT  
5 BE AN INCORRECT IMPRESSION?

6 A. WE WERE NOW, LET'S SEE WHAT WE CAN DO TO SEE WHAT ARE  
7 THE POSSIBILITIES THAT THIS COULD COME FORWARD. WE WERE IN  
8 THIS LOOK AND SEE MODE.

9 Q. WHO IS STEVE WILLIS?

10 A. STEVE WILLIS WAS, AT THE TIME, THE ACTING DEPUTY  
11 DIRECTOR IN THE DEPARTMENT OF ENVIRONMENTAL SERVICES MANAGING  
12 THE INTEGRATED WASTE MANAGEMENT PROGRAM.

13 Q. WERE YOU, WAS ANYONE APPLYING ANY PRESSURE TO YOU  
14 FROM THE CITY TO GET YOU TO COME UP WITH SOME JUSTIFICATION  
15 THAT WOULD ALLOW YOU TO SIGN OFF ON THE CONCEPT OF AMENDING  
16 THE NORCAL AGREEMENT WITH THE CITY?

17 A. NO. I WAS NOT RECEIVING ANY DIRECT PRESSURE. WE  
18 WERE IN A WHAT CAN WE DO MODE, LOOK AND SEE MODE.

19 Q. WHO, IF ANYONE, AT THE CITY WAS PUSHING TO HAVE THIS  
20 AMENDMENT GO BEFORE THE COUNCIL AND GET APPROVED?

21 A. I THINK YOUR QUESTION IS WHO, IF ANYONE, WAS PUSHING  
22 TO HAVE THIS AMENDMENT BROUGHT FORWARD?

23 Q. YES, IF ANYONE?

24 A. THE MAYOR'S OFFICE.

25 Q. WHO AT THE MAYOR'S OFFICE?

26 A. JOE GUERRA.

27 MR. FINKELSTEIN: I WOULD LIKE TO HAVE MARKED AS  
28 EXHIBIT 59 AN AUGUST 17, 2004 E-MAIL FROM JORDAN CIPRIAN TO

1 DONNA PERALA AND CARL MOSHER, RE: NORCAL, WITH A PROGRAM  
2 --IT'S ACTUALLY A CHAIN, IT CONTAINED AN EARLIER E-MAIL FROM  
3 DONNA PERALA TO CARL MOSHER OF THE DAY BEFORE, AUGUST 16.

4 THE FOREMAN: SO MARKED.

5 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
6 JURY EXHIBIT 59.)

7 BY MR. FINKELSTEIN:

8 Q. MR. MOSHER, IS THAT DOCUMENT, THAT EXHIBIT FAMILIAR  
9 TO YOU?

10 A. THIS IS AN E-MAIL EXCHANGE BETWEEN DONNA PERALA AND  
11 MYSELF ON AUGUST 16, AND AGAIN FROM JORDAN CIPRIAN ON AUGUST  
12 17 TO DONNA AND MYSELF.

13 Q. I DON'T HAVE ANOTHER COPY, SO LET'S LOOK AT THIS ON  
14 THE SCREEN.

15 FIRST OF ALL, WHO IS DONNA PERALA?

16 A. DONNA PERALA IS THE PROGRAM MANAGER, SHE MANAGES ALL  
17 RECYCLE PLUS PROGRAMS, WHICH WOULD BE CONTRACTS FOR NORCAL,  
18 GREEN TEAM, AND GREEN WASTE.

19 Q. AND WHY DID YOU SEND HER THIS E-MAIL -- DID YOU SEND  
20 IT ON AUGUST 16, THE DATE INDICATED?

21 A. SHE WAS --

22 Q. DID SHE SEND IT ON AUGUST 16?

23 A. YEAH.

24 Q. WHY DID YOU SEND THIS E-MAIL?

25 A. SHE SENT ME THIS, THIS IS --

26 Q. I'M SORRY. WHY DID SHE SEND YOU THIS E-MAIL?

27 A. THIS WAS, I BELIEVE, IN RESPONSE TO THE E-MAIL WE

28 WERE TALKING ABOUT WHERE I ASKED PEOPLE TO BRAINSTORM.

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1 Q. SHE CAME UP WITH SOME IDEAS?

2 A. YES. THE FIRST ONE HERE IS NORCAL'S PROPOSAL,  
3 REDISTRIC TED DROPOFF PROGRAM. NUMBER TWO WAS THE CITY WOULD  
4 BE RESPONSIBLE --

5 Q. LOOKS LIKE NUMBER FIVE.

6 A. OH, YEAH.

7 Q. I'M ASSUMING SHE IS REFERRING TO ITEMS ON THE LIST  
8 THAT NORCAL SUPPLIED.

9 A. SHE IS EITHER -- YES, OR ONE THAT WAS A GENERIC ONE,  
10 TWO, THREE, FOUR --

11 Q. RATHER THAN GO THROUGH THESE IN DETAIL, HOW WOULD YOU  
12 SUM UP WHAT SHE, HER COMMENTS HERE ABOUT THE PROPOSED  
13 CONSIDERATION FOR THE AMENDMENT?

14 A. NOT SUFFICIENT CONSIDERATION FOR THE AMOUNT BEING  
15 PROPOSED, AND MUCH MORE THOUGHT NEEDS TO BE GIVEN.

16 Q. AND YOU REPLY; IS THAT CORRECT?

17 A. THIS IS --

18 Q. WHAT'S THE E-MAIL TO THE TOP?

19 A. IT'S FROM JORDAN CIPRIAN.

20 Q. I'M SORRY, YOU DON'T REPLY, THIS IS AN ADDITIONAL  
21 COMMENT?

22 A. YES. JORDAN CIPRIAN IS THE ACTUAL MANAGER FOR THE  
23 NORCAL CONTRACT.

24 Q. DOES HE WORK UNDER --

25 A. HE REPORTS TO DONNA PERALA.

26 Q. WHAT'S HIS TAKE ON THIS PROPOSED ADDITIONAL  
27 CONSIDERATION?

28 A. IN THE SECOND PARAGRAPH HE SAID, "I AGREE WITH

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1 DONNA'S COMMENTS." IN THE MIDDLE OF PARAGRAPH HE SAYS,  
2 "NORCAL IS NOT OFFERING THE CITY AND ITS RESIDENTS ANY  
3 ADDITIONAL SERVICES OR ENHANCEMENT OF SERVICES IN THE  
4 PROPOSAL."

5 MR. FINKELSTEIN: MR. FOREMAN, I KNOW YOU WANTED TO  
6 BREAK A LITTLE BIT EARLIER TODAY; WOULD THIS BE A GOOD TIME TO  
7 RECESS FOR LUNCH?

8 THE FOREMAN: YES, AND RECONVENE AT 1:30.

9 MR. FINKELSTEIN: THANK YOU VERY MUCH.

10 THE FOREMAN: I WOULD JUST REMIND MR. MOSHER ABOUT  
11 THE SAME ADMONISHMENT ABOUT CONFIDENTIALITY.

12 THE WITNESS: YES, I UNDERSTAND.

13 (THE LUNCHEON RECESS WAS TAKEN.)

14

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1 SAN JOSE, CALI FORNIA JANUARY 31, 2006

2

3

AFTERNOON SESSION:

4

5

6

THE FOREMAN: I'D LIKE TO CALL THIS AFTERNOON'S  
SESSION TO ORDER AND LET THE RECORD SHOW THAT ALL JURORS ARE  
HERE EXCEPT FOR MISS (NAME REDACTED).

7

8

MR. FINKELSTEIN: I BELIEVE WE HAD MR. MOSHER  
CONTINUING ON THE STAND.

9

EXAMINATION:

10

BY MR. FINKELSTEIN:

11

12

13

14

Q. GOOD AFTERNOON, MR. MOSHER. I'LL JUST REMIND YOU  
THAT YOU'RE STILL UNDER OATH. WE WERE TALKING ABOUT THE  
EVENTS OF 2004 CONCERNING A POSSIBLE AMENDMENT TO THE NORCAL  
AGREEMENT WITH THE CITY OF SAN JOSE; DO YOU RECALL THAT?

15

A. YES.

16

17

18

Q. IN SEPTEMBER OF 2004, DID THE CITY COUNCIL APPROVE IN  
PRINCIPLE AN AMENDMENT TO THE NORCAL AGREEMENT WITH THE CITY  
OF SAN JOSE?

19

A. YES, THEY DID.

20

Q. DID THEY DIRECT THE ADMINISTRATION TO NEGOTIATE THAT

21 AMENDMENT?

22 A. YES, THEY DID.

23 Q. AND THIS IS AN AMENDMENT THAT WOULD HAVE PROVIDED FOR  
24 SOME 11 MILLION DOLLARS INCREASE IN PAYMENTS TO NORCAL TO  
25 COVER INCREASED LABOR COSTS; IS THAT CORRECT?

26 A. THAT'S CORRECT.

27 Q. I HAVE A COPY OF A SECOND AMENDMENT TO THE AGREEMENT  
28 BETWEEN THE CITY OF SAN JOSE AND NORCAL WASTE SYSTEMS OF SAN

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1 JOSE, INC. IT APPEARS TO HAVE BEEN EXECUTED IN DECEMBER OF  
2 2004, AND I WOULD ASK TO HAVE THIS MARKED AS EXHIBIT 60.

3 THE FOREMAN: SO MARKED.

4 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
5 JURY EXHIBIT GRAND JURY 60.)

6 BY MR. FINKELSTEIN:

7 Q. COULD YOU LOOK AT EXHIBIT 60 AND TELL ME WHETHER YOU  
8 KNOW WHAT THAT DOCUMENT IS?

9 A. IT'S A DOCUMENT DESCRIBED AS A SECOND AMENDMENT  
10 BETWEEN THE CITY OF SAN JOSE AND NORCAL WASTE SYSTEMS.

11 Q. WERE YOU INVOLVED IN THE NEGOTIATIONS THAT LED UP TO  
12 THAT SECOND AMENDMENT?

13 A. YES, I WAS.

14 Q. WHO WAS, WHO ELSE WAS INVOLVED IN NEGOTIATIONS?

15 A. JIM HOLGERSON AND SUSAN DEVENCENZI AND MYSELF FOR THE  
16 CITY OF SAN JOSE.

17 Q. AND WHAT WAS YOUR INVOLVEMENT IN THIS NEGOTIATIONS?

18 A. MY INVOLVEMENT WAS TO REVIEW THE DOCUMENTATION

19 PRESENTED BY NORCAL, WHICH WAS A SERIES OF BINDERS SHOWING  
20 WHAT THE DIFFERENTIAL IN COST WAS BETWEEN THE WORKERS AS IF  
21 THEY WERE GOING TO BE REPRESENTED BY LONGSHOREMEN, AND NOW  
22 BEING REPRESENTED BY TEAMSTERS.

23 DID YOU PARTICIPATE IN ANY DISCUSSIONS OR  
24 COMMUNICATIONS WITH EITHER JIM HOLGERSON OR SUSAN DEVENCENZI  
25 REGARDING THE TERMS OF THE AMENDMENT?

26 A. YES, I DID.

27 Q. WAS THERE ANY EFFORT MADE TO NEGOTIATE BETTER TERMS  
28 ON BEHALF OF THE CITY, OTHER THAN PAYING THE AGREED UPON EXTRA

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1 COSTS FOR USING TEAMSTERS INSTEAD OF LONGSHOREMEN?

2 A. NO.

3 Q. DO YOU KNOW WHY THAT WAS?

4 A. ESSENTIALLY THE COUNCIL DIRECTED THE ADMINISTRATION  
5 TO NEGOTIATE AN AGREEMENT, WHICH WAS NEGOTIATE THE TERMS THAT  
6 HAD BEEN PRESENTED, VERIFY THOSE NUMBERS, AND REPORT BACK WITH  
7 THIS DOCUMENT.

8 Q. WHAT WAS YOUR THINKING ON THE FACT THAT THERE WAS NO  
9 EFFORT MADE ON BEHALF OF THE CITY TO STOP THE ATTEMPT TO PAY  
10 LESS THAN THE FULL COST OF THIS EXTRA LABOR COST?

11 A. WELL, I COULD CHARACTERIZE IT, IT TRULY WASN'T A  
12 NEGOTIATION, THEY HAD ONLY BEEN PRESENTED AS TO THAT'S WHAT  
13 THE DEAL WAS, WE WERE TO VERIFY THAT THOSE NUMBERS AND WHAT  
14 DOLLAR AMOUNT WAS PAID AND WHAT WAS TO BE PAID.

15 Q. WAS THERE DISCUSSION OR COMMUNICATION AMONGST  
16 YOURSELVES, JIM HOLGERSON, AND/OR SUSAN DEVENCENZI ABOUT

17 WHETHER OR NOT THE AGREEMENT SHOULD PROVIDE FOR RETROACTIVE  
18 PAYMENTS FOR THESE INCREASED LABOR COSTS?

19 A. YES, THERE WAS A SESSION.

20 Q. AND WHAT WAS YOUR POSITION ABOUT THAT?

21 A. WELL, MY POSITION WAS THE SAME AS THE AMENDMENT  
22 ITSELF, WHICH WAS I COULDN'T GET TO THE POINT WHERE I COULD  
23 RECOMMEND PRESENTING THE AGREEMENT AND INCLUDING THE FACT THAT  
24 WE WERE PAYING RETROACTIVELY.

25 Q. YOU THOUGHT THAT MADE THE SITUATION WORSE?

26 A. YES.

27 Q. WHAT WAS JIM HOLGERSON'S VIEW OF THAT, IF YOU CAN  
28 SAY?

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1 A. I DON'T RECALL, OTHER THAN JIM WAS IN A SITUATION OF  
2 TRYING TO GET US ALL TO, LET'S GET THIS TAKEN CARE OF.

3 Q. WHAT ABOUT MISS DEVENCENZI, WHAT WAS HER VIEW OF  
4 THAT, IF YOU REMEMBER?

5 A. I THINK I CAN CHARACTERIZE HER VIEW AS SIMILAR TO  
6 MINE, THAT THIS WAS NOT ADVISABLE.

7 MR. FINKELSTEIN: I WOULD LIKE TO MARK AS EXHIBIT 61  
8 AN OCTOBER 6, 2000 E-MAIL FROM CARL MOSHER TO JOE GUERRA WITH  
9 COPY TO DEL BORGSDORF.

10 THE FOREMAN: SO MARKED.

11 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
12 JURY EXHIBIT 61.)

13 BY MR. FINKELSTEIN:

14 Q. MR. MOSHER, COULD YOU LOOK AT EXHIBIT 61 AND TELL US

15 WHAT THIS DOCUMENT IS?

16 A. THIS IS AN E-MAIL FROM ME TO JOE GUERRA WITH COPY TO  
17 DEL BORGSDORF, DATED OCTOBER 6, 2000, REGARDING PREVAILING  
18 WAGES.

19 Q. AND DID YOU SEND THIS E-MAIL ON THE DATE AND TIME  
20 INDICATED?

21 A. YES.

22 Q. AND WHAT PROMPTED YOU TO SEND THIS E-MAIL, DO YOU  
23 RECALL?

24 A. THERE WAS DISCUSSION AMONGST -- I DON'T RECALL IF  
25 THERE WAS THE COMPLETE COUNCIL, BUT I KNOW THERE WAS  
26 DISCUSSION ABOUT WHAT WAS THE PREVAILING WAGE AND WHO DID THE  
27 PREVAILING WAGE APPLY TO.

28 Q. AND IN THIS E-MAIL, DID YOU CONCLUDE THAT PREVAILING

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1 WAGE DIDN'T APPLY IF THE WORKERS ALREADY HAD A COLLECTIVE  
2 BARGAINING AGREEMENT?

3 A. YES.

4 Q. DID YOU ALSO CONCLUDE THAT, IN ANY EVENT, IT DIDN'T  
5 APPLY TO THE MRF WORKERS BECAUSE THEY DID THEIR WORK IN A  
6 PRIVATE FACILITY, NOT ON THE CITY STREETS?

7 A. THAT'S CORRECT.

8 Q. WHAT DID YOU SAY IN THE E-MAIL ABOUT THOSE POINTS?  
9 WHY DON'T YOU READ IT TO US.

10 A. "JOE, I SPOKE TO NINA AND CONFIRMED THE FOLLOWING."  
11 NINA GRAYSON IS WHO I'M REFERRING TO. SHE IS THE MANAGER OF  
12 CONTRACT COMPLIANCE AND WAS ALSO RESPONSIBLE FOR PREVAILING

13 WAGES.

14 Q. SHE WOULD BE THE CITY PERSON TASKED WITH KEEPING UP  
15 ON THE PREVAILING WAGE POLICY AND FIELDING QUESTIONS ABOUT HOW  
16 IT APPLIED OR DIDN'T APPLY IN DIFFERENT SITUATIONS?

17 A. THAT IS CORRECT. "IN ABSENCE OF A COLLECTIVE  
18 BARGAINING AGREEMENT, THE PREVAILING WAGE TAKES PRECEDENCE.  
19 IF A COLLECTIVE BARGAINING AGREEMENT IS IN PLACE, IT TAKES  
20 PRECEDENCE OVER PREVAILING WAGES EVEN IF THE WAGES IN THE CBA,  
21 COLLECTIVE BARGAINING AGREEMENT ARE BELOW THE PREVAILING  
22 WAGE. "

23 SECOND PARAGRAPH. "PREVAILING WAGES FOR SORTERS,  
24 MECHANICS, AND MRF WORKERS WERE NOT SET BECAUSE THAT IS NOT  
25 THE LOCATION WHERE THE ON-SITE WORK TAKES PLACE. THE ON-SITE  
26 WORK FOR US TAKES PLACE ON THE CITY STREETS WHERE RECYCLING  
27 AND GARBAGE IS COLLECTED. PROCESSING AND SORTING TAKES PLACE  
28 OFF-SITE. THIS IS SIMILAR TO A CONSTRUCTION PROJECT WHERE THE

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1 CABINETMAKER OFF-SITE IS NOT SUBJECT TO PREVAILING WAGE.  
2 HOWEVER, THE INSTALLER INSTALLING THE CABINETS ON-SITE AT THE  
3 JOB SITE IS SUBJECT TO PREVAILING WAGES. "

4 I SAY "I AM FAXING A COPY TO YOUR OFFICE OF A  
5 DECEMBER 10, 1999 E-MAIL FROM NINA GRAYSON ON PREVAILING  
6 WAGES. "

7 Q. OKAY. SO, BY THIS E-MAIL YOU WERE INFORMING  
8 JOE GUERRA THAT THE PREVAILING WAGE POLICY OF THE CITY OF SAN  
9 JOSE WAS NOT SOMETHING THAT APPLIED TO CWS' S MRF WORKERS.

10 A. THAT'S CORRECT.

11 Q. AND THE DATE OF THIS E-MAIL WAS WHAT AGAIN?

12 A. OCTOBER 6, 2000.

13 Q. I THINK THAT'S ALL THE QUESTIONS I HAVE AT THIS TIME,  
14 UNLESS THERE ARE QUESTIONS FROM THE JURY.

15 MR. FINKELSTEIN: I HAVE THREE QUESTIONS. LET ME  
16 TAKE THEM UP.

17 BY MR. FINKELSTEIN:

18 Q. ONE JUROR WOULD LIKE TO KNOW THE FOLLOWING:

19 MR. MOSHER, IF YOU DISAGREED WITH THE REQUIREMENT TO  
20 PAY ADDITIONAL SALARY AND BENEFITS TO CWS' S MRF WORKERS, WHY  
21 DID YOU PARTICIPATE IN CREATING A SECOND AMENDMENT TO THE  
22 CITY' S AGREEMENT WITH NORCAL INSTEAD OF ESCALATING YOUR  
23 CONCERNS I GUESS HIGHER UP, OR REFUSING TO PARTICIPATE IN THE  
24 PREPARATION OF THE AMENDMENT?

25 A. AT THE POINT THAT THE CITY COUNCIL APPROVED THE  
26 NEGOTIATION FOR THE SECOND AMENDMENT, THE COUNCIL ESSENTIALLY  
27 SET POLICY FOR THE ADMINISTRATION. UP TO THIS POINT, AT THAT  
28 POINT THE CITY ATTORNEY ALSO INDICATED THAT IT WAS APPROPRIATE

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1 THAT THE COUNCIL BE DEEMED TO ENTER INTO THIS AMENDMENT. SO  
2 AT THIS POINT THE POLICY OF THE CITY IS NOW TO ENTER THE  
3 ADDITIONAL AMENDMENT, AND I DID THE WORK I DID.

4 Q. YOU' RE SAYING ONCE THE COUNCIL APPROVED THIS COURSE  
5 OF ACTION IT BECAME CITY POLICY, REGARDLESS OF WHETHER IT HAD  
6 BEEN CITY POLICY IN THE PAST?

7 A. THAT' S CORRECT.

8 Q. YOU WERE EMPLOYED BY SAN JOSE FOR APPROXIMATELY

- 9 SEVEN-AND-A-HALF YEARS; IS THAT CORRECT?
- 10 A. ACTUALLY I WAS EMPLOYED BY SAN JOSE APPROXIMATELY 29
- 11 YEARS. SEVEN-AND-A-HALF WAS AS DIRECTOR OF ENVIRONMENTAL
- 12 SERVICES.
- 13 Q. BEFORE THAT?
- 14 A. I WAS DEPUTY DIRECTOR OF PUBLIC WORKS FOR
- 15 APPROXIMATELY SIX OR SEVEN YEARS.
- 16 Q. WHAT WERE THE CIRCUMSTANCES OF YOUR DEPARTURE FROM
- 17 CITY SERVICE?
- 18 A. I PREVIOUSLY MOVED TO EL DORADO HILLS, ABOVE
- 19 SACRAMENTO, IN JUNE OF 2004, AND AFTER MOVING THERE AND MOVING
- 20 MY FAMILY THERE I WAS LOOKING FORWARD TO EMPLOYMENT AT THAT
- 21 LOCATION. AND IN SEPTEMBER OF 2004 I FOUND EMPLOYMENT AS THE
- 22 COUNTY ENGINEER OF SACRAMENTO.
- 23 Q. DID YOU RETIRE AT THAT POINT?
- 24 A. I WAS NOT ELIGIBLE TO RETIRE AT THAT POINT.
- 25 Q. BECAUSE OF YOUR AGE?
- 26 A. THAT'S CORRECT.
- 27 Q. SO YOUR DEPARTURE WAS NOT INFLUENCED BY THE EVENTS WE
- 28 HAVE BEEN DISCUSSING?

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- 1 A. NO, IT WAS NOT.
- 2 Q. A COUPLE MORE QUESTIONS. IS IT YOUR CONTENTION THAT
- 3 THE SPREADSHEET SHOWING THE 9% INCREASE WAS TO BOLSTER THE
- 4 WASTE, ACTUALLY, THE INTEGRATED WASTE MANAGEMENT FUND AND NOT
- 5 THE INCREASED LABOR COSTS?
- 6 A. THE SPREADSHEET THAT WE DESCRIBED, IT HAD THE

7 SUMMARY. I THINK THERE WERE FIVE SCENARIOS. IT WAS FOR THE  
8 PURPOSE OF DOING ALL OF THOSE THINGS.

9 Q. IT COULD HAVE BEEN FOR EITHER PURPOSE?

10 A. IT COULD HAVE BEEN FOR EITHER PURPOSE, AND IT COULD  
11 NOT HAVE BEEN FOR THE AMENDMENT PURPOSE UNLESS THE COUNCIL  
12 APPROVED THE AMENDMENT.

13 Q. AT LEAST ONE PURPOSE WAS TO PAY INCREASED LABOR COSTS  
14 SHOULD THAT COURSE OF ACTION BE APPROVED BY THE CITY?

15 A. THAT'S CORRECT.

16 Q. WAS THIS MADE CLEAR TO MR. GUERRA?

17 A. THAT IT WAS FOR THAT PURPOSE?

18 Q. YES.

19 A. YES.

20 Q. IN OTHER WORDS, WE HAVE SEEN THIS E-MAIL FROM  
21 MR. GUERRA WHERE HE INDICATES THAT, FROM HIS POINT OF VIEW,  
22 THE PURPOSE OF THE RATE HIKE IS TO PAY FOR INCREASED LABOR  
23 COSTS.

24 A. THAT'S CORRECT.

25 Q. WAS HE WRONG TO DRAW THAT CONCLUSION?

26 A. NO, IT COULD HAVE BEEN USED FOR THAT PURPOSE. THAT  
27 WAS ONE OF THE PURPOSES.

28 Q. DOES THAT ANSWER ALL OF THE QUESTIONS? I SEE NODDING

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1 OF HEADS.

2 ANY OTHER QUESTIONS?

3 MR. MOSHER, I WANT TO THANK YOU VERY MUCH FOR COMING  
4 THIS DISTANCE TO TESTIFY. WE HAVE NO FURTHER QUESTIONS AT

5 THIS TIME; HOWEVER, YOU'RE NOT EXCUSED, WHICH MEANS IN THE  
6 UNLIKELY EVENT WE NEED TO CLARIFY SOMETHING, WE MAY ASK YOU TO  
7 COME BACK. BUT FOR NOW YOU MAY LEAVE. THANK YOU VERY MUCH.

8 THE FOREMAN: LET ME REMIND YOU OF THE ADMONITION OF  
9 CONFIDENTIALITY. I'M ASSUMING I DON'T HAVE TO RELATE THE  
10 WHOLE --

11 THE WITNESS: YES, I UNDERSTAND.

12 LARRY LI SENBEE,  
13 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
14 AS FOLLOWS:

15 THE WITNESS: I DO.

16 EXAMINATION:

17 BY MR. FINKELSTEIN:

18 Q. WOULD YOU PLEASE TELL US YOUR FULL LEGAL NAME AND  
19 SPELL YOUR NAME FOR THE REPORTER?

20 A. LARRY DAVID LI SENBEE, L-I-S-E-N-B-E-E.

21 Q. MR. LI SENBEE, BEFORE GETTING INTO THE SUBSTANCE OF  
22 OUR INQUIRY I NEED TO ADVISE YOU OF CERTAIN MATTERS, SO PLEASE  
23 LISTEN CAREFULLY.

24 THE GRAND JURY IS CONDUCTING AN INVESTIGATION INTO  
25 THE FOLLOWING SUBJECTS:

26 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND APPROVED  
27 THE SELECTION OF NORCAL WASTE SYSTEMS OF SAN JOSE TO PROVIDE  
28 FOR COLLECTION OF RESIDENTIAL WASTE AND RECYCLABLE MATERIALS.

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1 WHAT SAN JOSE CITY OFFICIALS KNEW ABOUT INCREASED  
2 COSTS THAT MIGHT ARISE FROM THE EMPLOYMENT OF TEAMSTERS TO DO

3 RECYCLING WORK FOR NORCAL' S SUBCONTRACTOR, CALI FORNIA WASTE  
4 SOLUTIONS, INC.

5 WHEN SAN JOSE CITY OFFICIALS FIRST LEARNED ABOUT  
6 SUCH INCREASED COSTS.

7 WHY SAN JOSE CITY OFFICIALS GAVE SECRET ASSURANCES  
8 TO NORCAL THAT ADDITIONAL COSTS ARISING FROM THE USE OF  
9 TEAMSTERS BY CWS FOR THE SORTING OF RECYCLABLE MATERIALS WHICH  
10 WERE NOT INCLUDED IN THE ORIGINAL AGREEMENT WITH NORCAL WOULD  
11 NONETHELESS BE PAID FOR BY THE CITY OF SAN JOSE.

12 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND APPROVED  
13 A RATE HIKE IN MAY 2003 TO PAY FOR THESE ADDITIONAL COSTS.

14 WHETHER SAN JOSE CITY OFFICIALS MISLED THE PUBLIC  
15 ABOUT THE TRUE REASONS FOR THIS RATE HIKE.

16 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND APPROVED  
17 A CONTRACT AMENDMENT TO THE NORCAL AGREEMENT IN 2004 TO PAY  
18 FOR ADDITIONAL COSTS DUE TO THE USE OF TEAMSTERS FOR THE  
19 SORTING OF RECYCLEABLE MATERIALS.

20 AND, WHETHER ANYTHING WAS GIVEN OR PROMISED TO SAN  
21 JOSE CITY OFFICIALS AS AN INDUCEMENT TO TAKE THESE ACTIONS.

22 YOU ARE A SUBJECT OF THE GRAND JURY' S INVESTIGATION,  
23 AND BY THAT I SIMPLY MEAN THAT YOU' RE A PERSON WHOSE CONDUCT  
24 IS WITHIN THE SCOPE OF THE GRAND JURY' S INVESTIGATION. I' M  
25 NOT SUGGESTING ANYTHING SINISTER OR UNTOWARD BY THAT, I JUST  
26 NEED TO HAVE YOU ADVISED OF THAT.

27 YOU MAY REFUSE TO ANSWER ANY QUESTION IF A TRUTHFUL  
28 ANSWER TO THE QUESTION WOULD TEND TO INCRIMINATE YOU.

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1 ANYTHING THAT YOU DO SAY MAY BE USED AGAINST YOU BY  
2 THE GRAND JURY OR IN A SUBSEQUENT LEGAL PROCEEDING.

3 IF YOU HAVE RETAINED COUNSEL, THE GRAND JURY WILL  
4 PERMIT YOU A REASONABLE OPPORTUNITY TO STEP OUTSIDE THE GRAND  
5 JURY ROOM TO CONSULT WITH COUNSEL IF YOU SO DESIRE. DO YOU  
6 UNDERSTAND EACH OF THESE RIGHTS?

7 A. I DO.

8 Q. DO YOU HAVE A QUESTION ABOUT THE RIGHTS?

9 A. NO.

10 Q. YOU ARE THE DIRECTOR OF THE SAN JOSE CITY MANAGER'S  
11 BUDGET OFFICE?

12 A. THAT'S CORRECT.

13 Q. WHEN WERE YOU FIRST APPOINTED?

14 A. NOVEMBER 10, 1986.

15 Q. WHO APPOINTED YOU?

16 A. CITY MANAGER GERALD NEWFARMER.

17 Q. AND WHO DO YOU REPORT TO?

18 A. I REPORT TO THE CITY MANAGER, WHO AS OF THIS MORNING  
19 IS, I GUESS, LES WHITE, SO --

20 Q. IS YOUR POSITION AN AT WILL POSITION?

21 A. YES. IF AT WILL MEANS I CAN BE DISMISSED AT ANY  
22 TIME, YES.

23 Q. AT WILL MEANS YOU CAN BE DISMISSED WITHOUT CAUSE?

24 A. THAT'S CORRECT.

25 Q. AT WHOSE PLEASURE DO YOU SERVE?

26 A. THE CITY MANAGER.

27 Q. DOES THE CITY MANAGER'S BUDGET OFFICE PROVIDE  
28 ANALYSIS AND RECOMMENDATIONS TO THE CITY MANAGER REGARDING

1 FISCAL AND OPERATIONAL ISSUES?

2 A. YES, SIR.

3 Q. DOES THE BUDGET OFFICE PREPARE AND PUBLISH THE  
4 PRINCIPAL BUDGET DOCUMENTS?

5 A. YES, SIR.

6 Q. DO THOSE DOCUMENTS INCLUDE THE PROPOSED AND ADOPTED  
7 OPERATING AND CAPITAL BUDGET?

8 A. YES, SIR.

9 Q. FEES AND CHARGES REPORTS?

10 A. YES, SIR.

11 Q. ANNUAL REPORT?

12 A. THE CITY MANAGER'S ANNUAL REPORT, WHICH IS A REPORT  
13 THAT SUMMARIZES THE PRIOR YEAR CLOSE OF THE BUDGETARY  
14 SITUATION AT YEAR CLOSE.

15 Q. THE CITY MANAGER'S FIVE-YEAR FORECAST AND REVENUE  
16 PROJECTION?

17 A. YES, SIR.

18 Q. MIDYEAR BUDGET REQUEST AND REVIEW?

19 A. YES, SIR.

20 Q. SO I TAKE IT FROM ALL THAT YOU ARE THE BUDGET PERSON  
21 AT THE CITY OF SAN JOSE?

22 A. MYSELF AND MY STAFF. I HAVE 17 PEOPLE WHO WORK FOR  
23 ME, SO I DON'T DO IT BY MYSELF, BUT YES, SIR.

24 Q. DOES THE BUDGET OFFICE ALSO PREPARE A MONTHLY  
25 FINANCIAL REPORT, OR MFR?

26 A. YES.

27 Q. THAT'S FOR SUBMISSION TO THE CITY COUNCIL ON A  
28 MONTHLY BASIS?

1           A.       IT IS, ALTHOUGH WE DON'T PUBLISH IT 12 TIMES. THERE  
2 ARE, WE DON'T DO A JULY OR AUGUST MONTHLY FINANCIAL REPORT,  
3 IT'S TOO EARLY IN YEAR. THE DECEMBER MONTHLY FINANCIAL REPORT  
4 IS BASICALLY THE MIDYEAR DOCUMENT, AND WE DON'T DO A JUNE  
5 REPORT BECAUSE THE ANNUAL REPORT IS THAT, SO IT'S A MONTHLY  
6 FINANCE REPORT PROBABLY PUBLISHED EIGHT TIMES A YEAR.

7           Q.       WHAT'S THE FUNCTION OF THE MFR, OR MONTHLY FINANCIAL  
8 REPORT?

9           A.       IT IS TO KEEP THE COUNCIL UPDATED ON THE STATUS OF  
10 THE FINANCES OF THE CITY WITH THE PARTICULAR FRAME OF  
11 REFERENCE BEING THE BUDGET. SO IT IS USED AS A TOOL TO INFORM  
12 THE COUNCIL OF ANY SIGNIFICANT BEARINGS ON THE BUDGET THEY  
13 HAVE ADOPTED AND THE ACTUAL PERFORMANCE OF THAT BUDGET, EITHER  
14 FROM AN EXPENDITURE OR REVENUE POINT OF VIEW.

15          Q.       WOULD ONE OF THE PURPOSES BE TO HIGHLIGHT  
16 UNANTICIPATED OR POTENTIAL PROBLEM AREAS?

17          A.       YEAH, THE PRIMARY PURPOSE.

18          Q.       WHAT KIND OF INFORMATION GOES INTO THE MFR?

19          A.       WELL, THERE'S TWO PARTS; THERE'S A TECHNICAL PART  
20 PREPARED BY THE FINANCE DEPARTMENT, WHICH IS A BUNCH OF GRAPHS  
21 AND TABLES THAT SHOWS THE COUNCIL THE ACTUAL NUMBERS OF WHAT'S  
22 THE BUDGET, WHAT'S THE ACTUAL COLLECTIONS, WHAT ARE  
23 EXPENDITURES TO DATE, AND A NUMBER OF THE KEY FUND AREAS OF  
24 THE CITY. THEN THERE'S A NARRATIVE PORTION WHICH I WRITE IN  
25 MY OFFICE THAT IS FOCUSED ON POINTING OUT TO THE COUNCIL  
26 ANYTHING I THINK BASICALLY IS NECESSARY TO POINT OUT, SO THERE  
27 ARE CERTAIN THINGS WE ALWAYS DISCUSS, THE SUBJECT OF REVENUE  
28 COLLECTION AND THE GENERAL FUND. THERE ARE OTHER THINGS THAT

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1 WOULD ONLY BE DISCUSSED IF THERE IS SOMETHING WORTH  
2 DISCUSSING. THERE ARE 113 FUNDS IN THE CITY'S BUDGET. MOST  
3 OF THEM MOST OF TIME ARE RUNNING JUST FINE. IF I TRY TO SAY  
4 JUST FINE 112 TIMES, IT WOULDN'T BE MUCH USE.

5 Q. IS THE INTEGRATED WASTE MANAGEMENT FUND ONE OF 113  
6 FUNDS?

7 A. YES.

8 Q. HOW WOULD YOU RANK THE IMPORTANCE OF THAT FUND  
9 COMPARED TO OTHER 112 FUNDS IN TERMS OF SIZE?

10 A. WELL, SIZE, IT'S PROBABLY, AND I DON'T KNOW EXACTLY,  
11 IT'S IN THE, IT'S NOT AMONG THE LARGER FUNDS, IT'S PROBABLY  
12 SOMEWHERE IN THE MIDDLE SIZE IN TERMS OF IMPORTANCE.

13 THE GENERAL FUND IS, EVEN THOUGH THE GENERAL FUND IS  
14 MAYBE A THIRD OF THE TOTAL BUDGET, IT ALWAYS GETS 90 PERCENT  
15 OF THE ATTENTION, BUT THE IWM FUND AT VARIOUS TIMES,  
16 PARTICULARLY WHEN TALKING ABOUT RATES, IS ALWAYS A SIGNIFICANT  
17 FUND.

18 Q. SO MATTERS AFFECTING THE RECYCLE PLUS SERVICE RATES  
19 WHICH WOULD IMPACT ON THIS INTEGRATED WASTE MANAGEMENT FUND IS  
20 THAT THE KIND OF THING YOU WOULD EXPECT TO BRING TO THE  
21 COUNCIL'S ATTENTION IN YOUR MRF [SIC]?

22 A. MFR. IF THERE WAS ANYTHING HAPPENING OF  
23 SIGNIFICANCE. GENERALLY I WOULDN'T FIND THE MFR MENTIONING  
24 THE IWF FUND BECAUSE DURING THE FISCAL YEAR, BECAUSE THE RATE,  
25 THE REVENUE COLLECTIONS ARE BASED ON PEOPLE'S GARBAGE BILLS  
26 WHICH THEY ALL PAY OR ARE BASED ON IN THE CASE OF EXPENSES OR

27 CONTRACTS WHICH ARE SORT OF CUT AND DRIED, THERE IS VERY  
28 SELDOM ANY KIND OF BUDGETARY EXCEPTION, ANYTHING GOING AWRY

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1 WITH EITHER THE COLLECTIONS OR EXPENDITURES OF THE BUDGET.

2 SO VERY FEW TIMES WOULD I HAVE WRITTEN ABOUT THE IWM  
3 FUND IN THE MFR IN TERMS OF YOU NEED TO WORRY ABOUT THIS OR  
4 THAT IN TERMS OF THE EXPENSES, REVENUES.

5 WHERE IT COMES INTO PLAY MUCH MORE PROMINENTLY IS  
6 DURING THE BUDGET SETTING PROCESS EACH YEAR.

7 Q. WHO PREPARES THE MFR?

8 A. THE FINANCIAL DEPARTMENT PREPARES THE PORTION WHICH  
9 IS THE TABLES AND THE ACTUALLY REPORTING ON DOLLARS. MY  
10 OFFICE PREPARES THE NARRATIVE PORTION, AND I SIGN IT.

11 Q. SO YOU REVIEW AND APPROVE THE MFR BEFORE IT'S  
12 SUBMITTED TO THE CITY COUNCIL?

13 A. THAT'S CORRECT.

14 Q. DOES THE CITY MANAGER ALSO REVIEW AND APPROVE THE MFR  
15 BEFORE SUBMISSION?

16 A. THAT'S CORRECT. THERE'S A PLACE IN THE MFR WHERE IT  
17 SAYS APPROVED BY, AND THE CITY MANAGER SIGNS THAT.

18 Q. MR. LI SENBEE, LIKE MANY WITNESSES I KNOW YOU'RE  
19 ANXIOUS TO ANSWER MY QUESTIONS, BUT THE COURT REPORTER CANNOT  
20 REPORT IN STEREO, IT'S A SERIAL PROCESS.

21 A. THEN YOU NEED TO --

22 Q. YOU NEED TO PAUSE A MOMENT AND LET ME GET OUT SOME OF  
23 MY QUESTIONS AND MAKE SURE I HAVE COMPLETED MY QUESTION BEFORE  
24 YOU START TO ANSWER; OTHERWISE, THIS NICE YOUNG LADY IS NOT

25 GOING TO BE VERY HAPPY. OKAY?

26 COURT REPORTER: AND IF YOU COULD PAUSE JUST ONE  
27 SECOND AFTER THE WITNESS FINISHES.

28 Q. WHAT'S THE DISTRIBUTION LIST FOR THE MFR?

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1 A. IT IS ADDRESSED TO THE MAYOR AND CITY COUNCIL, IT IS  
2 CIRCULATED TO ALL DEPARTMENT HEADS AND ALL SENIOR STAFF, I  
3 BELIEVE. I DON'T DO THE DISTRIBUTION MYSELF, BUT IT IS  
4 ADDRESSED "HONORABLE MAYOR AND CITY COUNCIL."

5 Q. ARE YOU FAMILIAR WITH JOE GUERRA?

6 A. I AM.

7 Q. WHO IS JOE GUERRA?

8 A. JOE GUERRA IS THE MAYOR'S, I BELIEVE HIS TITLE IS  
9 BUDGET AND POLICY DIRECTOR.

10 Q. WHAT'S HIS FUNCTION AND HOW DOES IT DIFFER FROM YOUR  
11 FUNCTION AT THE CITY?

12 A. UH -- HIS FUNCTION IS MORE THAN JUST BUDGET, HE'S THE  
13 BUDGET AND POLICY DIRECTOR. HE, IN TERMS OF HIS INTERACTION  
14 WITH MY WORLD, IS THE MAYOR'S KEY BUDGET PERSON, AND HIS JOB  
15 WOULD DIFFER FROM MINE. I IN MY OFFICE FORMULATE THE BUDGET,  
16 TECHNICAL CALCULATIONS OF REVENUES, TECHNICAL CALCULATIONS OF  
17 EXPENSES, MONITORING OF THOSE DURING THE YEAR, THE WEEKLY, AND  
18 IT IS ALMOST WEEKLY, MODIFICATIONS OF THE BUDGET WE MIGHT  
19 BRING TO THE COUNCIL.

20 JOE'S OFFICE IS MUCH MORE INVOLVED IN THE POLICY,  
21 FORMULATION OF BUDGET GUIDANCE SO THAT THE MAYOR AND COUNCIL  
22 PROVIDE TO THE CITY MANAGER IN TERMS OF BUDGET FORMULATION

23 EITHER IN TERMS OF ANNUAL BUDGET OR BUDGET ISSUES AS THEY  
24 ARISE ON A DAY-TO-DAY BASIS.

25 Q. SO WOULD ONE WAY TO CHARACTERIZE WHAT YOU JUST SAID  
26 TO SAY THAT MR. GUERRA, ON BEHALF OF THE MAYOR, SETS, MAKES  
27 SUGGESTIONS SUBJECT TO COUNCIL APPROVAL AS TO WHERE THE MONEY  
28 SHOULD BE SPENT, AND YOU'RE THE PERSON WHO IS MORE CONCERNED

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1 WITH MAKING THAT HAPPEN IF APPROVED BY THE COUNCIL AND  
2 WATCHING THAT IT HAPPENS IN THE RIGHT WAY?

3 A. I THINK THAT'S A FAIR DISTINCTION, CORRECT.

4 Q. NOW I WANT TO TALK ABOUT THIS SO-CALLED NORCAL DEAL  
5 THAT BRINGS US ALL TOGETHER THIS AFTERNOON.

6 IN THE YEAR 2000, DID THE CITY OF SAN JOSE RELEASE A  
7 REQUEST FOR PROPOSALS FOR RECYCLE PLUS SERVICES?

8 A. I BELIEVE SO, AND I WAS NOT DIRECTLY INVOLVED IN  
9 THAT, SO I HAVE NO DIRECT INVOLVEMENT IN IT, AND I KNOW ONLY  
10 THROUGH READING ABOUT IT, BASICALLY.

11 Q. OKAY. THAT WAS GOING TO BE MY NEXT QUESTION, WHICH  
12 IS DO YOU HAVE ANY INVOLVEMENT IN DEVELOPING THE RFP?

13 A. NO.

14 Q. NOW, DO YOU KNOW THAT -- YOU ARE AWARE THAT THE CITY  
15 OF SAN JOSE DID SELECT NORCAL AS ONE OF THE CONTRACTORS TO  
16 PROVIDE RECYCLE PLUS SERVICES IN THE YEAR 2000, CORRECT?

17 A. THAT'S CORRECT.

18 Q. AND I BELIEVE THE AGREEMENT WAS ACTUALLY EXECUTED IN  
19 EARLY 2001; IS THAT CORRECT, IF YOU KNOW?

20 A. NO, I DO NOT KNOW THE EXACT DATE.

21 Q. DO YOU KNOW WHEN THIS AGREEMENT BECAME OPERATIONAL,  
22 WHEN NORCAL WAS GOING TO START ACTUALLY COLLECTING THE SOLID  
23 WASTE?

24 A. I DO NOT KNOW THE EXACT DATE.

25 Q. WELL, LET ME JUMP AHEAD AND ASK YOU MORE DIRECTLY,  
26 WHEN DID YOU FIRST LEARN THAT THE CITY OF SAN JOSE MIGHT BE  
27 CALLED UPON TO PAY ADDITIONAL PAYMENTS TO NORCAL BEYOND WHAT  
28 THE ORIGINAL AGREEMENT CALLED FOR TO COVER NORCAL'S INCREASED

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1 LABOR COSTS?

2 A. DURING THE PROCESS OF FORMULATING THE 2003, 2004  
3 PROPOSED BUDGET, AND I COULDN'T TELL YOU THE EXACT DATE, BUT  
4 IT WOULD HAVE BEEN SOME TIME IN DECEMBER, JANUARY, AND  
5 FEBRUARY, WHEN THE SORT OF PRELIMINARY ISSUES THAT ARE GOING  
6 TO BE COMING UP IN THE UPCOMING BUDGET START TO ARISE. SO IT  
7 WOULD HAVE BEEN IN THAT TIME FRAME -- I'M PAUSING.

8 I AM AWARE, I REMEMBER SEEING SOME E-MAIL COPIES  
9 THAT DATED FROM FEBRUARY, I BELIEVE, BUT I MAY WELL HAVE HEARD  
10 THIS ISSUE WAS OUT THERE AS EARLY AS MID TO LATE DECEMBER,  
11 BECAUSE THAT'S WHEN WE STARTED HAVING MEETINGS INTERNALLY WITH  
12 THE DEPARTMENTS TO SURFACE ISSUES WE NEEDED TO WORRY ABOUT IN  
13 THE UPCOMING PROCESS, BUT I COULDN'T TELL YOU EXACTLY.

14 Q. WHEN YOU SAY DECEMBER, JANUARY, FEBRUARY, DO YOU MEAN  
15 DECEMBER '02, JANUARY AND FEBRUARY '03?

16 A. THAT'S CORRECT.

17 Q. HOW DID YOU FIRST LEARN ABOUT THIS?

18 A. I'M NOT SURE. I KNOW THERE WERE E-MAILS, I KNOW I

19 HAD CONVERSATIONS WITH CARL MOSHER, I DON'T KNOW, I DON'T  
20 RECALL WHEN, WHICH OF THOSE TWO AVENUES OF COMMUNICATION WERE  
21 THE FIRST PLACE IN TIME I HEARD THAT.

22 Q. AS BEST YOU CAN RECALL, WHAT WAS IT THAT YOU FIRST  
23 LEARNED ABOUT THIS ISSUE?

24 A. THAT THE MAYOR WAS GOING TO BRING FORWARD AT SOME  
25 POINT TO THE COUNCIL A PROPOSAL TO PROVIDE ADDITIONAL FUNDING  
26 TO NORCAL TO HELP PAY FOR THE ADDITIONAL LABOR COSTS THAT HAD  
27 OCCURRED BECAUSE OF A LABOR DISPUTE, THE WAY A LABOR DISPUTE  
28 HAD BEEN SETTLED BETWEEN THE SUBCONTRACTOR, CWS, AND NORCAL

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1 THAT CAUSED NORCAL TO HAVE ADDITIONAL COSTS OVER AND ABOVE  
2 WHAT IT DID.

3 Q. AND WHO DID YOU LEARN THIS FROM?

4 A. LIKE I SAID, I'M NOT SURE WHO, I BELIEVE IT WAS  
5 CARL MOSHER, BUT I'M NOT, AGAIN, WHETHER THE E-MAIL CIRCUIT  
6 WAS THE WAY I LEARNED IT OR I HEARD IT IN A MEETING FROM DEL  
7 AND CARL OR I HEARD IT FROM CARL HIMSELF. I COULDN'T TELL  
8 YOU.

9 Q. WE'VE HEARD SOME TESTIMONY AND SEEN SOME EVIDENCE  
10 THAT IN THE SPRING OF '03 THE CITY APPROVED A 9% RATE HIKE FOR  
11 THE RECYCLE PLUS SERVICES, ARE YOU FAMILIAR WITH THAT?

12 A. YES.

13 Q. ARE YOU INVOLVED IN THAT PROCESS IN ANY WAY?

14 A. YES, DIRECTLY.

15 Q. WHAT WAS YOUR INVOLVEMENT?

16 A. I WOULD HAVE BEEN INVOLVED IN THE DEVELOPMENT OF THE  
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17 PROPOSAL TO THE COUNCIL -- THE FIRST STEP WOULD HAVE BEEN I  
18 WOULD HAVE BEEN INVOLVED IN THE DEVELOPMENT OF RECOMMENDATIONS  
19 TO THE CITY MANAGER CONCERNING WHAT TO RECOMMEND TO THE CITY  
20 COUNCIL, AND MY BUDGET DOCUMENTS, THE PROPOSED BUDGET THAT  
21 WOULD HAVE PROVIDED THE PROPOSAL TO THE COUNCIL TO BUILD INTO  
22 THE BUDGET BALANCING FOR THAT FUND THE RATE INCREASE IN  
23 QUESTION.

24 Q. SO WE UNDERSTAND THAT INITIALLY THE '03 RATE INCREASE  
25 WAS GOING TO BE IN THE 4% AND 5% RANGE FOR SINGLE AND  
26 MULTIFAMILY DWELLINGS, BUT DURING THE PROCESS OF THE RATE  
27 REVIEW IT WAS INCREASED TO 9%. DOES THAT COMPORT WITH YOUR  
28 RECOLLECTION?

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1 A. I DO NOT REMEMBER THAT WE HAD EVER SETTLED ON A  
2 NUMBER THAT IT WAS GOING TO BE AT ANY POINT IN TIME. A NUMBER  
3 IS NEVER REALLY SETTLED UNTIL SUCH TIME AS YOU BRING IT  
4 FORWARD IN THE PROPOSED BUDGET, SO THERE WAS PROBABLY  
5 DISCUSSION ABOUT VARIATIONS THAT WOULD BE BROUGHT FORWARD, BUT  
6 I DON'T REMEMBER THAT WE HAD SETTLED ON ANYTHING IN  
7 PARTICULAR.

8 Q. DID THIS 9% -- ULTIMATELY, THE RATE INCREASE APPROVED  
9 IN '03 WAS 9%?

10 A. THAT'S CORRECT, AND IN THE ADOPTED BUDGET  
11 FOR '03-'04, WHICH WOULD HAVE BEEN APPROVED IN JUNE '03, THERE  
12 WAS A 9% INCREASE APPROVED.

13 Q. DID ANY PART OF THAT RATE INCREASE INCLUDE A  
14 COMPONENT THAT COULD BE USED TO PAY ADDITIONAL PAYMENTS TO

15 NORCAL FOR INCREASED LABOR COSTS?

16 A. YES, IT DID.

17 Q. HOW MUCH OF THAT 9% INCLUDED THAT COMPONENT?

18 A. THE EQUIVALENT OF ABOUT 6% OF THE 9% WAS A DOLLAR  
19 AMOUNT THAT WAS, IN MY TERMINOLOGY, SET ASIDE IN CASE THE  
20 COUNCIL DECIDED TO APPROVE THE AMENDMENT THAT WAS, THAT WE  
21 WERE HEARING WAS GOING TO BE BROUGHT FORWARD.

22 Q. AND WHO WAS IT WHO DIRECTED YOU, IF ANYONE, TO  
23 INCLUDE A 6% COMPONENT IN THIS 9% RATE INCREASE TO COVER  
24 ADDITIONAL PAYMENTS TO NORCAL IN THE EVENT THAT THE COUNCIL  
25 APPROVED SUCH ACTION?

26 A. NO ONE DIRECTED ME TO DO THAT. IN FACT, I BELIEVE  
27 THAT I WOULD BE BETTER CHARACTERIZED THAT I BROUGHT FORWARD A  
28 RECOMMENDATION TO THE CITY MANAGER TO PROPOSE A 9% RATE

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1 INCREASE THAT INCLUDED A COMPONENT OF EXPENSES FOR THE  
2 CONTRACT COSTS THAT ARE IN THAT FUND THAT WOULD ALLOW FOR THE  
3 CONTRACT AMENDMENT, SHOULD IT HAPPEN.

4 Q. SO THIS WAS A CONTINGENCY COMPONENT?

5 A. TO ME IT WAS A CONTINGENCY COMPONENT.

6 Q. IN CONNECTION WITH SEEKING THIS RATE HIKE, DID THE  
7 CITY HAVE TO SEND OUT PROP 218 NOTICES?

8 A. THAT'S CORRECT. YOU ALWAYS HAVE TO DO THAT.

9 Q. ARE YOU INVOLVED IN THE PREPARATION OF PROPOSITION  
10 218 NOTICES?

11 A. NO, NOT DIRECTLY.

12 Q. INDIRECTLY?

13 A. INDIRECTLY IN THE SENSE THAT I KNOW THEY HAVE TO BE  
14 PREPARED, AND THE TIMING OF WHEN YOU HAVE TO PREPARE THEM IN  
15 CONJUNCTION WITH WHEN WE HAVE TO GET THE COUNCIL TO APPROVE  
16 THE BUDGET SO THAT THERE CAN BE THE ADEQUATE NOTICE TIME FOR  
17 THE NOTICES IS AN IMPORTANT COMPONENT OF TIMING. THE ACTUAL  
18 WORDING OF THOSE I'M NOT INVOLVED IN AT ALL.

19 Q. DO YOU KNOW WHO IN THE CITY WORKS ON THE WORDING OF  
20 218 NOTICES?

21 A. INDIVIDUALLY, NO. IT WOULD HAVE BEEN SOMEBODY IN THE  
22 ENVIRONMENTAL SERVICES DEPARTMENT.

23 Q. YOU'RE NOT IN THE LOOP ON THAT 218 NOTICE ISSUE?

24 A. WELL, NO, I WOULD SAY I'M IN THE LOOP ON ALL THAT  
25 STUFF IN THAT I KNOW WHAT'S HAPPENING, I MAY HAVE EVEN SEEN A  
26 DRAFT, BUT I WOULD NOT HAVE BEEN PREPARING --

27 Q. DO YOU KNOW WHETHER YOU ACTUALLY SAW THIS 218 NOTICE  
28 BEFORE IT WAS APPROVED AND SENT OUT?

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1 A. I DO NOT KNOW THAT FOR SURE.

2 Q. JUST A MINUTE AND I'LL SHOW YOU AN EXHIBIT.

3 I WOULD LIKE TO DIRECT YOUR ATTENTION TO WHAT'S BEEN  
4 MARKED AS EXHIBIT 37. IT'S A CERTIFIED COPY OF AN APRIL 11,  
5 2003 218 NOTICE. HAVE YOU SEEN THIS DOCUMENT BEFORE?

6 A. I COULD NOT TELL YOU FOR SURE WHETHER I HAVE OR NOT.  
7 THERE ARE ANNUAL DOCUMENTS JUST LIKE THAT EVERY YEAR, AND I  
8 CANNOT SAY I HAVE SEEN THIS PARTICULAR ONE.

9 Q. I WANT TO DIRECT YOUR ATTENTION TO A STATEMENT  
10 CONTAINED IN THE FOURTH PARAGRAPH, THE SECOND SENTENCE, WHICH

11 READS AS FOLLOWS: THE PROPOSED RATE INCREASE IS NEEDED TO  
12 HELP MAKE GARBAGE AND RECYCLING SERVICES MORE SELF-SUPPORTING,  
13 MINIMIZE THE AMOUNT OF TAXPAYER FUNDS REQUIRED TO SUPPORT  
14 THEM, AND COVER RISING COSTS SINCE RATES WERE LAST INCREASED.  
15 DO YOU HAVE THAT SENTENCE IN FRONT OF YOU?

16 A. YES, I SEE IT ON THE SCREEN.

17 Q. OKAY. LET ME HAND THE DOCUMENT UP TO YOU SO THAT YOU  
18 CAN LOOK AT IT MORE READILY. IS THERE ANYTHING IN THAT  
19 DOCUMENT THAT WOULD ALERT THE RATEPAYER OR PROPERTY OWNER TO  
20 THE FACT THAT A PORTION OF THIS RATE INCREASE, IN FACT THE  
21 BIGGEST PORTION, 6% OF THE 9%, IS BEING SOUGHT TO PROVIDE A  
22 CONTINGENCY AMOUNT IN THE EVENT THAT THE COUNCIL AMENDS THE  
23 AGREEMENT WITH NORCAL AND DECIDES TO PAY NORCAL ADDITIONAL  
24 MONEY TO COVER LABOR COSTS NOT INCLUDED IN THE PROPOSAL THAT  
25 WAS ACCEPTED BY THE COUNCIL?

26 A. NO, THERE IS NOTHING THAT WOULD DIRECTLY ALERT THEM  
27 TO THAT.

28 Q. NOW, THE WAY I UNDERSTAND PROP 218 NOTICES WORK, THE

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1 PURPOSE OF THIS NOTICE IS TO GIVE THE RATEPAYERS A CHANCE TO  
2 PROTEST THE RATE INCREASE, CORRECT?

3 A. THAT'S CORRECT.

4 Q. AND IF A MAJORITY OF THE RATEPAYERS PROTEST THE RATE  
5 INCREASE, THE CITY CANNOT INCREASE THE RATES, RIGHT?

6 A. THAT'S MY UNDERSTANDING.

7 Q. IN YOUR VIEW, DO YOU THINK THAT THE RATEPAYERS SHOULD  
8 HAVE BEEN TOLD THAT 6% OF THIS 9% RATE INCREASE WAS BEING

9 SOUGHT TO PROVIDE AN AMOUNT OF DOLLARS IN CASE THE CITY GOING  
10 FORWARD DECIDED TO AMEND ITS CURRENT AGREEMENT WITH NORCAL AND  
11 PAY THEM ADDITIONAL MONEY TO COVER ADDITIONAL LABOR COSTS?

12 A. UH -- IN HINDSIGHT, THAT'S PROBABLY CORRECT. IT  
13 WOULD HAVE BEEN MORE COMPLETE DISCLOSURE TO HAVE DONE SO.  
14 THERE ARE, HOWEVER, LOTS OF CONTINGENT AMOUNTS IN THESE FUNDS  
15 -- NOT AS LARGE AS THIS, WHERE IF YOU CALLED THEM ALL OUT,  
16 WOULD REQUIRE A 15-PAGE DOCUMENT. THIS IS THE SORT OF LEVEL  
17 OF DISCLOSURE OR DESCRIPTION THAT TYPICALLY YOU WOULD FIND IN  
18 A PUBLIC HEARING NOTICE LIKE THIS, BUT OBVIOUSLY IN HINDSIGHT,  
19 GIVEN THE ATTENTION THAT THIS HAS RECEIVED, IT CERTAINLY WOULD  
20 HAVE BEEN A BETTER IDEA TO HAVE DISCLOSED IT.

21 Q. DID YOU ATTEND THE PUBLIC HEARING ON THIS RATE  
22 INCREASE?

23 A. I'M NOT SURE. THE PUBLIC HEARINGS -- ACTUALLY, I DO  
24 NOT KNOW. THESE ARE TYPICALLY DONE AS PART OF COUNCIL  
25 SESSIONS, AND I DON'T KNOW WHETHER I WAS PRESENT AT THE  
26 PARTICULAR SESSION THAT THIS WAS WRITTEN.

27 Q. NOW, DID THE COUNCIL EVENTUALLY AMEND ITS AGREEMENT  
28 WITH NORCAL TO PROVIDE FOR ADDITIONAL PAYMENTS TO NORCAL TO

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1 COVER INCREASED LABOR COSTS?

2 A. YES, THEY DID.

3 Q. DO YOU REMEMBER ABOUT APPROXIMATELY HOW MUCH  
4 MONEY -- STRIKE THAT. HOW MUCH ADDITIONAL MONEY DID THE  
5 AMENDMENT PROVIDE TO NORCAL?

6 A. THE ANNUAL AMOUNT WAS APPROXIMATELY 2.4 MILLION

7 DOLLARS, SIR. THERE WAS A RETROACTIVITY, RETROACTIVE NATURE  
8 TO THE CONTRACT, SO THE TOTAL AMOUNT GOING BACKWARDS, I'M NOT  
9 SURE I KNOW FOR SURE, IN FACT I DON'T THINK I KNOW FOR SURE.  
10 THERE WAS AT LEAST PROBABLY ONE YEAR'S WORTH OF RETROACTIVITY,  
11 BUT I DON'T KNOW THE TOTAL AMOUNT. I KNOW THE ANNUAL AMOUNT  
12 VERY WELL BECAUSE THAT'S WHAT WE BUILT INTO THE BUDGET.

13 Q. WAS THE TOTAL VALUE OF THE AMENDMENT IN EXCESS OF 11  
14 MILLION DOLLARS?

15 A. THIS IS A NUMBER I HEARD, I DID NOT CALCULATE IT  
16 MYSELF, I'VE HEARD THIS WAS THE VALUE.

17 Q. WERE YOU INVOLVED OR CONSULTED IN NEGOTIATING THE  
18 AMENDMENT?

19 A. NO, NOT DIRECTLY.

20 Q. HAVE YOU SEEN WHAT THE STATED CONSIDERATION FOR THIS  
21 AMENDMENT WAS?

22 A. NO, I DON'T THINK I HAVE SEEN THE AMENDMENT.

23 Q. LET ME ASK YOU THIS: WE'VE SEEN EVIDENCE THAT THE  
24 AMENDMENT DIDN'T TAKE PLACE UNTIL MORE THAN A YEAR AFTER THE  
25 RATE HIKE, CORRECT?

26 A. CORRECT.

27 Q. WHAT HAPPENED TO THE MONEY THAT WAS RAISED BETWEEN  
28 THE TIME THE RATE HIKE BECAME EFFECTIVE AND I THINK JULY

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1 OF '03, UNTIL THE AMENDMENT WAS SIGNED IN LATE '04?

2 A. THE INTEGRATED WASTE MANAGEMENT FUND IS A SPECIAL  
3 FUND. IT IS SELF-CONTAINED AND NOT INTERMINGLED WITH ANY  
4 OTHER FUNDS. SO ANY FUNDS THAT WERE COLLECTED IN THIS FUND

5 AND NOT EXPENDED FOR WHATEVER PURPOSE STAY IN THE FUND IN THE  
6 FORM OF ENDING FUND BALANCE, USING BUDGET TERMINOLOGY, AND IT  
7 SIMPLY MEANS THERE IS AN ADDITIONAL ENDING FUND BALANCE AT THE  
8 END OF THE YEAR THAT DIDN'T GET EXPENDED.

9 Q. WHY DIDN'T THE CITY WAIT UNTIL THE COUNCIL HAD RULED  
10 UPON WHETHER OR NOT TO AMEND THE AGREEMENT WITH NORCAL BEFORE  
11 SEEKING THIS RATE INCREASE?

12 A. THE INFORMATION THAT I HAD BEEN PROVIDED GOING INTO  
13 THE 2003, 2004 BUDGET PROCESS WAS THAT IT WAS THE INTENTION OF  
14 THE MAYOR TO BRING FORWARD THIS AMENDMENT EARLY IN THE YEAR  
15 2003-2004, THEREBY CAUSING THESE EXPENSES, BOTH RETROACTIVE  
16 AND GOING FORWARD, TO BE NECESSARY TO BE EXPENDED IN  
17 YEAR '03-'04.

18 SO FROM THE INFORMATION I HAD, IT WAS NECESSARY TO  
19 SET UP A CONTINGENT AMOUNT OF REVENUE TO COVER THOSE EXPENSES  
20 IN THE YEAR '03-'04.

21 Q. WHY DID YOU ASSUME BECAUSE THE MAYOR WAS GOING TO GO  
22 FORWARD WITH THIS PROPOSAL TO AMEND THE NORCAL AGREEMENT THAT  
23 THE REST OF THE COUNCIL WOULD GO ALONG WITH HIM?

24 A. IT WASN'T SO MUCH THAT I ASSUMED IT, ALTHOUGH I DID  
25 ASSUME, GIVEN HIS TRACK RECORD, THAT HE WOULD BE SUCCESSFUL.  
26 AND GIVEN THE FACT THAT THIS, AND THIS WAS MY OWN PROBABLY  
27 READING OF THE POLITICAL, THIS COUNCIL HAS GENERALLY BEEN A  
28 LABOR FRIENDLY COUNCIL, AND SINCE THERE WAS A DISPUTE THAT

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1 INVOLVES LABOR ISSUES AND LABOR PEACE, THAT THE COMBINATION OF  
2 HIS TRACK RECORD OF ACHIEVING WHAT HE WENT FOR AS A POLICY

3 PROPOSAL FOR COUNCIL AND THAT IT WAS A LABOR ISSUE, I FELT  
4 THERE WAS A HIGH PROBABILITY THAT THIS WOULD HAPPEN. BUT I  
5 DID NOT ASSUME IT WOULD HAPPEN, BECAUSE AS FAR AS I WAS  
6 CONCERNED, IF IT DIDN'T HAPPEN, SINCE THIS IS AN ENTERPRISE  
7 FUND OR A SPECIAL FUND WHERE MONEY ISN'T GOING ANYWHERE  
8 ELSE --

9 Q. DO YOU MEAN AN EARMARKED FUND?

10 A. THE AIRPORT IS ANOTHER EXAMPLE.

11 Q. I'M SAYING EARMARKED.

12 A. EXCUSE ME. ALL OF THE FUNDS IN THAT FUND CANNOT BE  
13 EXPENDED ON ANYTHING OTHER THAN THE EXPENSES ASSOCIATED WITH  
14 THIS PROGRAM.

15 Q. HOW ABOUT A RESTRICTED FUND?

16 A. RESTRICTED IS ANOTHER TERM, OR SPECIAL FUND. SO FROM  
17 MY POINT OF VIEW, ALL WE WERE DOING IS PROVIDING THE  
18 CONTINGENT, THE TERM YOU USED, FUNDING NECESSARY TO COVER THE  
19 EXPENSE SHOULD IT HAPPEN. THE ONLY THING THAT WOULD HAPPEN IF  
20 IT DIDN'T GET APPROVED IS WE WOULD NEED A LOWER RATE INCREASE  
21 IN THE FUTURE.

22 WHEN I PROVIDE MY POLICY GUIDANCE TO THE CITY  
23 MANAGER IN TERMS OF RATE PROPOSALS TO BE MADE TO THE COUNCIL  
24 FOR ANY OF THE RATE-SUPPORTED PROGRAMS, AND THERE ARE A NUMBER  
25 OF THEM BESIDES THIS ONE, I LOOK AT A FIVE-YEAR FORECAST FOR  
26 REVENUES AND EXPENDITURES FOR THESE FUNDS AND WHAT WILL HAPPEN  
27 IF VARIOUS RATE CONTINGENCIES ARE APPROVED OR NOT. AND IT WAS  
28 CLEAR IN THIS FUND THAT, REGARDLESS OF NORCAL'S ADDITIONAL

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1 AMENDMENT, THIS FUND NEEDED A RATE INCREASE OR IT WAS GOING TO  
2 GO UNDERWATER, IN MY TERMINOLOGY, WITHIN A COUPLE OF YEARS.  
3 IT WAS JUST THE SIZE OF THE RATE INCREASE THAT WAS IN  
4 QUESTION.

5 Q. YOU SAID THAT YOU WERE LED TO BELIEVE THAT THE MAYORS  
6 WOULD GO FORWARD WITH THIS IN '03-'04?

7 A. YES.

8 Q. WHO LED YOU TO BELIEVE THAT?

9 A. THAT, I BELIEVE IT CAME FROM CARL MOSHER'S  
10 CONVERSATIONS THAT HE RELATED TO ME.

11 Q. WE'VE SEEN SOME E-MAILS AND MEMOS FROM MR. MOSHER  
12 COMMENTING ON, AND OTHERS AT THE CITY COMMENTING ON THE STATE  
13 OF COST RECOVERY WITH AND WITHOUT THIS PROPOSED RATE HIKE. I  
14 THINK THERE WAS A MEMO TO THE COUNCIL AS WELL. DID YOU  
15 PROVIDE ANY INPUT INTO THOSE MEMOS?

16 A. I WAS CERTAINLY PART OF THE ANALYSIS THAT WENT INTO  
17 THE CONCLUSIONS THAT WERE DRAWN.

18 Q. IN OTHER WORDS, THE NUMBERS THAT MR. MOSHER REPORTS  
19 TO THE COUNCIL ABOUT PERCENTAGES OF COST RECOVERY WITH OR  
20 WITHOUT THE RATE HIKE ON THE DIFFERENT SCENARIOS, WOULD YOU OR  
21 YOUR DEPARTMENT BE THE SOURCE OF THE NUMBERS?

22 A. NO. HIS DEPARTMENT WOULD HAVE BEEN THE SOURCE OF THE  
23 NUMBERS, ALWAYS. WE, IN OUR OFFICE, THEN, OUR FUNCTION IS TO  
24 GO OVER THOSE NUMBERS AND EITHER AGREE OR DISAGREE, AND THEN  
25 IF WE DISAGREE, HASH OUT WHY WE THINK THE NUMBERS SHOULD BE  
26 DIFFERENT IN TERMS OF THE PROJECTIONS GOING FORWARD, BUT THE  
27 SOURCE OF THE BEGINNING ESTIMATES WOULD HAVE BEEN FROM THE ESD  
28 DEPARTMENT.

1 Q. OKAY. JUST SO I'M CLEAR, YOU MAY HAVE ALREADY BEEN  
2 CLEAR, THE 9% NUMBER ORIGINATES FROM YOUR OFFICE FOR A RATE  
3 HIKE IN '03?

4 A. THE 9% NUMBER ULTIMATELY ORIGINATES FROM A PROPOSED  
5 BUDGET DOCUMENT SIGNED BY THE CITY MANAGER.

6 Q. I GUESS -- WHO FIRST DISCOVERED WE NEED 9% IF WE WANT  
7 TO INCLUDE ENOUGH TO PAY FOR THESE EXTRA LABOR COSTS, WHO CAME  
8 UP WITH THE 9% FIGURE AS OPPOSED TO 10% OR 8% OR ANY OTHER?

9 A. THE 9% NUMBER WOULD HAVE SORT OF THE COLLABORATIVE  
10 RESULT OF A DISCUSSION WITH A NUMBER OF PARTIES, INCLUDING  
11 MYSELF, THE ESD DIRECTOR, DEPUTY CITY MANAGER WHO HAD  
12 AUTHORITY OVER THAT AREA OF THE BUDGET, MR. HOLGERSON, AND DEL  
13 BORGS DORF IN BUDGET MEETINGS AS WE DECIDED HOW TO GO FORWARD.

14 Q. AND AS I UNDERSTAND YOUR TESTIMONY, THE REASON THE  
15 NUMBER IS 9% IS BECAUSE YOU WERE LED TO BELIEVE THE MAYOR WAS  
16 GOING TO GO FORWARD IN '03-'04 WITH A PROPOSAL TO AMEND THE  
17 NORCAL AGREEMENT TO PROVIDE ADDITIONAL PAYMENTS TO NORCAL FOR  
18 INCREASED LABOR COSTS.

19 A. I WOULD CHARACTERIZE IT A LITTLE BIT DIFFERENTLY THAN  
20 THAT.

21 Q. TELL US THE SITUATION.

22 A. TO ME, WHAT WE MADE WAS A MULTI-YEAR RATE  
23 RECOMMENDATION TWO 9% RATE INCREASES IN A ROW. THERE WAS  
24 ENOUGH RISING COSTS IN THAT PROGRAM, IN THAT TWO-YEAR PERIOD,  
25 TO JUSTIFY WELL OVER 9%, AND PROBABLY MORE LIKE 15%, WITHOUT  
26 THE APPROVAL OF THAT AMENDMENT. SO THE DECISION TO GO 9% AND  
27 9% WAS SIMPLY THE REGULAR COST INCREASES, REGULAR MEANING THE  
28 PRICE OF DOING BUSINESS OTHERWISE, OTHER THAN THIS CONTRACT

1 AMENDMENT AND A CONTINGENT AMOUNT FOR THE CONTRACT AMENDMENT  
2 WE' RE TALKING ABOUT.

3 IF THE FIRST 9%, IF THE CONTRACT HAD NOT HAVE BEEN  
4 APPROVED, THIS IS MY CHARACTERIZATION, IF THE CONTRACT HAD NOT  
5 HAVE BEEN APPROVED IN EITHER 2003-4 OR 2004-5, WE WOULD HAVE  
6 BEEN ABLE TO GO IN A SECOND YEAR WITH SOMETHING LESS THAN THE  
7 SECOND 9% INCREASE.

8 SPECIFICALLY WHAT THE COUNCIL APPROVED IN THEIR  
9 ACTION WAS TWO THINGS. NOTICING THE PUBLIC THAT THERE WERE UP  
10 TO 9% RATE INCREASES TO BE CONSIDERED BY THE COUNCIL, AND THEY  
11 APPROVED A 9% INCREASE AS PART OF THE BUDGET '03-'04, COMING  
12 BACK IN '04-'05 HAVING NOTICED THE 9%, THERE WAS ABSOLUTELY  
13 NOTHING ILLEGAL OR UNUSUAL ABOUT US -- WOULD HAVE BEEN NOTHING  
14 UNUSUAL ABOUT US BRINGING FORTH A 6% INCREASE RATHER THAN 9%  
15 IF THE AMENDMENT HADN'T PASSED AND WE DECIDED WE DIDN'T NEED  
16 AS MUCH MONEY AS THE CONTRACT ITSELF PUT INTO THE EXPENSE  
17 COLUMN.

18 Q. ARE YOU SAYING, THEN, IF YOU HAD NOT BEEN LED TO  
19 BELIEVE THAT THE MAYOR WAS PUTTING FORWARD A CONTRACT AMOUNT  
20 IN '03-'04 TO PICK UP THE ADDITIONAL LABOR COSTS, YOU WOULD  
21 HAVE STILL RECOMMENDED 9% IN '03?

22 A. I CAN'T SAY THAT FOR SURE. THAT WOULD BE PURE  
23 SPECULATION, BECAUSE WE WERE DEALING WITH A CONTINGENCY THAT  
24 WE BELIEVED, AND CLEARLY IT WAS, A VERY SERIOUS CONTINGENCY  
25 THAT WE NEEDED TO PLAN FOR.

26 IF IT HADN'T BEEN THERE AND WE WERE LOOKING AT THE  
27 RISING COSTS OTHERWISE STARING US IN THE FACE, WOULD WE HAVE

28 GONE FOR A 9% AND 6% OR A 7% AND A 7% OR SOME OTHER

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1 COMBINATION, IT MIGHT WELL HAVE BEEN DIFFERENT, I COULDN'T  
2 TELL YOU. THOSE WERE NOT THE FACTS ON THE GROUND, IF YOU  
3 WOULD, THAT WE WERE LOOKING AT WHEN WE MADE THAT DECISION.

4 Q. IT SEEMS LIKE YOU TOLD US TWO DIFFERENT THINGS. I  
5 APOLOGIZE IF THAT'S NOT THE CASE FOR MY MISUNDERSTANDING, BUT  
6 YOU STARTED OUT IN YOUR TESTIMONY SAYING THAT 6% OF THE 9%  
7 INCLUDED ENOUGH DOLLARS TO PAY FOR THE NORCAL CONTRACT  
8 AMENDMENT IF THAT WENT THROUGH. OTHERWISE, IF IT DIDN'T GO  
9 THROUGH IT'S ALWAYS GOOD TO HAVE EXTRA MONEY AROUND, YOU COULD  
10 APPLY IT TO SOME OTHER SOLID WASTE MANAGEMENT EXPENSE,  
11 CORRECT?

12 A. CORRECT.

13 Q. BUT NOW I THOUGHT I HEARD YOU SAY YOU WOULD HAVE  
14 SUGGESTED THAT YOU MIGHT HAVE ASKED FOR THE 9% RATE INCREASE  
15 IN '03 EVEN WITHOUT THE SUGGESTION THE MAYOR WAS GOING TO  
16 BRING FORWARD A PROPOSAL TO AMEND THE AGREEMENT, AND SO THAT  
17 SEEMS TO BE TWO DIFFERENT THINGS, OR IS IT?

18 A. I DON'T BELIEVE SO. WHAT I SAID IS THAT THERE WERE,  
19 OVER A TWO-YEAR PERIOD, WELL OVER 9% WORTH OF THE COST  
20 INCREASE FACING US, AND HOW YOU SPLIT RATE INCREASES INTO TWO  
21 YEARS, BECAUSE WE HAD DECIDED TO DO IT IN MULTIPLE YEARS, NOT  
22 LOAD IT ALL INTO ONE YEAR INCREASE, WOULD HAVE BEEN A MATTER  
23 WE WOULD HAVE SAT AND DISCUSSED. IT MIGHT HAVE BEEN 9% OR  
24 SOMETHING DIFFERENT.

25 Q. WELL, THE REASON YOU CHOSE 9% AS OPPOSED TO 8% OR 10%

26 OR ANY OTHER NUMBER IS BECAUSE YOU PLUGGED IN THE LABOR PEACE  
27 NUMBER; ISN'T THAT CORRECT?  
28 A. THAT'S CORRECT.

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1 Q. WE'VE SEEN SOME SPREADSHEETS, I GUESS ESD HAS A  
2 PROGRAM THAT ACCEPTS ASSUMPTIONS AND GENERATES SCENARIOS?  
3 A. THAT'S CORRECT.  
4 Q. THEY PLUG IN NUMBERS DIRECTLY FROM WHAT NORCAL WAS  
5 SAYING THEY NEEDED TO BE PAID TO COVER THE INCREASED LABOR  
6 COSTS?  
7 A. EXACTLY TRUE, AND WE, IF YOU LOOK IN THE BUDGET  
8 COLUMNS IN DETAILED BUDGET SHEETS FOR 2003-4, IT CLEARLY LISTS  
9 FOR THE CONTRACT EXPENSE ESTIMATES FOR THE NEXT YEAR ENOUGH  
10 FUNDING TO PAY FOR THE CURRENT CONTRACT PLUS THE 2.4 MILLION  
11 DOLLARS I BELIEVE THAT WOULD HAVE BEEN NECESSARY FOR THIS  
12 CONTRACT.  
13 Q. SO, WHILE IT MAY BE TRUE THAT THE STATE OF COST  
14 RECOVERY WAS SUCH THAT, HAD THERE BEEN NO CONTRACT AMENDMENT,  
15 YOU COULD HAVE APPLIED THE 9% FULLY TO RECOVER COSTS, THAT  
16 WASN'T THE MOTIVATION AT THAT TIME IN '03 FOR THE 9% FIGURE,  
17 WAS IT?  
18 A. THAT'S CORRECT.  
19 Q. THE MOTIVATION WAS THE LABOR PEACE ISSUE?  
20 A. THAT'S CORRECT. THE ANSWER TO YOUR FORMER QUESTION,  
21 WAS THERE ENOUGH COST JUSTIFICATION FOR A 9% INCREASE ANYWAY.  
22 THE ANSWER TO THAT IS YES.  
23 Q. THE REAL MOTIVATION FOR THE 9% WAS THE LABOR PEACE

24 ISSUE?

25 A. NO QUESTION.

26 Q. THAT'S CORRECT?

27 A. THAT'S CORRECT.

28 MR. FINKELSTEIN: LET ME SEE IF THE JURORS HAVE ANY

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1 QUESTIONS.

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2 MR. LI SENBEE, THANK YOU VERY MUCH, AND THANK YOU FOR  
3 COMING THIS MORNING AS WELL. SORRY WE DIDN'T GET TO YOU.

4 THE FOREMAN: MR. LI SENBEE, LET ME READ YOU AN  
5 ADMONITION OF CONFIDENTIALITY.

6 YOU ARE ADMONISHED NOT TO REVEAL TO ANY PERSON,  
7 EXCEPT AS DIRECTED BY THE COURT, WHAT QUESTIONS WERE ASKED OR  
8 WHAT RESPONSES WERE GIVEN, OR ANY OTHER MATTERS CONCERNING THE  
9 NATURE OR SUBJECT OF THE GRAND JURY'S INVESTIGATION WHICH YOU  
10 LEARNED DURING YOUR APPEARANCE BEFORE THE GRAND JURY, UNLESS  
11 AND UNTIL SUCH TIME AS THE TRANSCRIPT OF THIS GRAND JURY  
12 PROCEEDING IS MADE PUBLIC. VIOLATION OF THIS ADMONITION IS  
13 PUNISHABLE AS CONTEMPT OF COURT.

14 THE WITNESS: THAT'S UNDERSTOOD.

15 MR. FINKELSTEIN: THANK YOU VERY MUCH. MAY I JUST  
16 CONFER WITH THE REPORTER ABOUT THE BREAK SITUATION.

17 (PAGE 362, LINE 17 TO PAGE 369, LINE 28 HAS BEEN  
18 REDACTED AND IS UNDER SEAL.)

19  
20  
21

22  
23  
24  
25  
26  
27  
28

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1 SAN JOSE, CALI FORNIA

FEBRUARY 1, 2006

2

3

PROCEEDINGS:

4

THE FOREMAN: CAN I CALL THE GRAND JURY TO ORDER,

5

PLEASE.

6

(ROLL WAS TAKEN.)

7

MR. FINKELSTEIN: MR. FOREMAN, PERHAPS YOU COULD

8

PLACE ONTO THE RECORD A FEW REMARKS TO EXPLAIN THE ABSENCE OF

9

THE LAST GRAND JUROR STEPPING DOWN, AND THE REASON FOR THAT

10

AND THE REPLACEMENT WITH AN ALTERNATE GRAND JUROR.

11

THE FOREMAN: YES. MISS (NAME REDACTED'S) HUSBAND

12

HAD A STROKE THIS PAST WEEKEND WHICH IS QUITE SERIOUS AND THE

13

PROGNOSIS IS VERY UNCERTAIN, SO SHE FEELS THAT SHE NEEDED TO

14

DEDICATE SO MUCH TIME TO HIS CONVALESCENCE SHE WILL BE UNABLE

15

TO FULFILL HER RESPONSIBILITIES AS A GRAND JUROR AND HAS

16

SUBMITTED HER RESIGNATION, AND IT HAS BEEN ACCEPTED BY

17

PRESIDING JUDGE DANNER.

18

IN CONSULTATION WITH JUDGE DANNER, WE HAVE CONTACTED

19

THE FIRST ALTERNATE JUROR, AND SHE HAS AGREED TO SERVE ON THE

20 GRAND JURY. AND I'M TRYING TO WORK OUT LOGISTICS TO MAKE THAT  
21 HAPPEN EFFECTIVE TODAY, IF POSSIBLE. AND WHAT I WOULD LIKE TO  
22 ASK OF MR. FINKELSTEIN IS WHETHER IT WOULD BE APPROPRIATE FOR  
23 HER TO JOIN THE SESSIONS HERE IN COURT, KNOWING THAT SHE COULD  
24 NOT PARTICIPATE IN ANY DELIBERATION, BUT TO ORIENT HERSELF TO  
25 THE MATERIAL SHOULD THE OUTCOME BE A GRAND JURY REPORT AS  
26 OPPOSED TO ANY SEVERE LEGAL ACTION.

27 MR. FINKELSTEIN: YES, MR. FOREMAN. THAT'S CORRECT,  
28 SHE CANNOT PARTICIPATE IN ANY DELIBERATIONS WITH REGARD TO ANY

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1 FORMAL ACTION SUCH AS AN ACCUSATION OR INDICTMENT, BUT OF  
2 COURSE, AS YOU HAVE POINTED OUT, SHOULD THE GRAND JURY DECIDE  
3 TO TAKE NO ACTION OR ISSUE A FURTHER REPORT, SHE COULD  
4 PARTICIPATE IN THAT. AND AS LONG AS THAT'S MADE CLEAR TO HER  
5 AND OTHER GRAND JURORS, WE DON'T HAVE A PROBLEM WITH HER  
6 STEPPING IN AND HEARING TESTIMONY.

7 THE FOREMAN: THANK YOU VERY MUCH. I WILL CONTACT  
8 HER DURING A BREAK LATER THIS MORNING, AND I BELIEVE IT IS  
9 LIKELY THAT SHE WILL JOIN THE SESSION AT 1:30 THIS AFTERNOON.

10 MR. FINKELSTEIN: OKAY. IF THERE'S NO OTHER  
11 BUSINESS, WHY DON'T WE CALL OUR NEXT WITNESS.

12 SUSAN DEVENCENZI,  
13 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
14 AS FOLLOWS:

15 THE WITNESS: I DO.

16 EXAMINATION:

17 BY MR. FINKELSTEIN:

- 18 Q. COULD YOU PLEASE TELL US YOUR FULL LEGAL NAME?  
19 A. SUSAN DEVENCENZI .  
20 Q. AND COULD YOU SPELL YOUR LAST NAME FOR THE REPORTER  
21 PLEASE.  
22 A. D-E-V-E-N-C-E-N-Z-I .  
23 Q. AND COULD YOU MOVE THE MICROPHONE JUST A LITTLE  
24 CLOSER TO YOU. COULD YOU TELL US HOW YOU'RE EMPLOYED?  
25 A. I'M EMPLOYED AS A SENIOR DEPUTY CITY ATTORNEY FOR THE  
26 CITY OF SAN JOSE.  
27 Q. MISS DEVENCENZI BEFORE PROCEEDING WITH THE  
28 QUESTIONING, I HAVE TO GIVE YOU A CAUTION, SO I WOULD ASK THAT

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- 1 YOU LISTEN CAREFULLY AND I WILL BE ASKING SOME QUESTIONS ABOUT  
2 IT IN A MOMENT.  
3 THE GRAND JURY IS CONDUCTING AN INVESTIGATION INTO  
4 THE FOLLOWING SUBJECTS:  
5 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND APPROVED  
6 THE SELECTION OF NORCAL WASTE SYSTEMS OF SAN JOSE, INC. TO  
7 PROVIDE FOR COLLECTION OF RESIDENTIAL WASTE AND RECYCLABLE  
8 MATERIALS.  
9 WHAT SAN JOSE CITY OFFICIALS KNEW ABOUT INCREASED  
10 COSTS THAT MIGHT ARISE FROM THE EMPLOYMENT OF TEAMSTERS TO DO  
11 RECYCLING WORK FOR NORCAL SUBCONTRACTOR CALIFORNIA WASTE  
12 SOLUTIONS, INC.  
13 WHEN SAN JOSE CITY OFFICIALS FIRST LEARNED ABOUT  
14 SUCH INCREASED COSTS.  
15 WHY SAN JOSE OFFICIALS GAVE SECRET ASSURANCES TO

16 NORCAL THAT ADDITIONAL COSTS ARISING FROM THE USE OF TEAMSTERS  
17 BY CWS, WHICH WERE NOT INCLUDED IN THE ORIGINAL AGREEMENT WITH  
18 NORCAL, WOULD NONETHELESS BE PAID FOR BY THE CITY OF SAN JOSE.

19 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND APPROVED  
20 A RATE HIKE IN MAY OF 2003 TO PAY FOR THESE ADDITIONAL COSTS.

21 WHETHER SAN JOSE CITY OFFICIALS MISLED THE PUBLIC  
22 ABOUT THE TRUE REASON FOR THIS RATE HIKE.

23 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND APPROVED  
24 A CONTRACT AMENDMENT TO THE NORCAL AGREEMENT IN 2004 TO PAY  
25 FOR ADDITIONAL COSTS DUE TO THE USE OF TEAMSTERS FOR THE  
26 SORTING OF RECYCLABLE MATERIALS.

27 AND, WHETHER ANYTHING WAS GIVEN OR PROMISED TO SAN  
28 JOSE CITY OFFICIALS AS AN INDUCEMENT TO TAKE THESE ACTIONS.

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1 I WISH TO INFORM YOU THAT YOU ARE A SUBJECT OF THE  
2 GRAND JURY'S INVESTIGATION. AND I DON'T MEAN TO SUGGEST  
3 ANYTHING SINISTER BY THAT, SIMPLY THAT YOU'RE A PERSON WHOSE  
4 CONDUCT IS WITHIN THE SCOPE OF THE GRAND JURY'S INVESTIGATION.

5 YOU MAY REFUSE TO ANSWER ANY QUESTION IF A TRUTHFUL  
6 ANSWER TO THE QUESTION WOULD TEND TO INCRIMINATE YOU.

7 ANYTHING YOU DO SAY MAY BE USED AGAINST YOU BY THE  
8 GRAND JURY OR IN A SUBSEQUENT LEGAL PROCEEDING.

9 IF YOU HAVE RETAINED COUNSEL, THE GRAND JURY  
10 WILL PERMIT YOU A REASONABLE OPPORTUNITY TO STEP OUTSIDE THE  
11 GRAND JURY ROOM TO CONSULT WITH COUNSEL IF YOU SO DESIRE.

12 DO YOU UNDERSTAND THESE RIGHTS?

13 A. YES.

- 14 Q. DO YOU HAVE ANY QUESTIONS ABOUT THESE RIGHTS?  
15 A. NO.  
16 Q. WHEN WERE YOU FIRST HIRED BY THE CITY ATTORNEY'S  
17 OFFICE?  
18 A. IN MAY OF 1984.  
19 Q. YOU SAID MAY OF 1984?  
20 A. MAY OF 1984.  
21 Q. WAS THAT AN APPOINTED POSITION?  
22 A. I STARTED AS A CONTRACT EMPLOYEE AND THEN WAS  
23 APPOINTED PROVISIONALLY IN JANUARY '05.  
24 Q. AND WHO HIRED YOU?  
25 A. THE CITY ATTORNEY AT THAT TIME WAS BOB LOGAN.  
26 Q. IS YOUR POSITION AN AT WILL POSITION?  
27 A. NO, IT'S A CIVIL SERVICE POSITION.  
28 Q. SO YOU CAN ONLY BE TERMINATED FOR CAUSE?

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- 1 A. I GUESS THAT'S TRUE.  
2 Q. AND WHAT IS YOUR CURRENT ASSIGNMENT?  
3 A. I'M NOT SURE I UNDERSTAND WHAT YOU MEAN.  
4 Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES IN THE CITY  
5 ATTORNEY'S OFFICE?  
6 A. I AM IN THE TRANSACTIONAL GROUP; I WORK WITH THE  
7 DEPARTMENT OF ENVIRONMENTAL SERVICES, CIVIL SERVICE  
8 COMMISSION, RETIREMENT SYSTEMS, DEFERRED COMP PLANNING, AND  
9 THE BUDGET OFFICE.  
10 Q. AND WHEN YOU SAY THE TRANSACTIONAL GROUP, FOR THOSE  
11 OF US WHO ARE NOT LAWYERS, COULD YOU EXPLAIN WHAT IS?

12 A. IT MEANS I DO GENERAL LEGAL ADVICE, CONTRACT  
13 NEGOTIATIONS OR CONTRACT INTERPRETATION, DRAFT LEGISLATION,  
14 AND ATTEND ALL OF THE RETIREMENT BOARD MEETINGS AND DEFERRED  
15 COMPENSATION COMMITTEE MEETINGS; I'M THEIR LEGAL ADVISER.

16 Q. PERHAPS IT'S ME, I'M HAVING A LITTLE DIFFICULTY  
17 HEARING YOU. IF YOU COULD MOVE THE MICROPHONE YET CLOSER.  
18 HOW LONG HAVE YOU HAD THOSE RESPONSIBILITIES AT THE CITY  
19 ATTORNEY'S OFFICE?

20 A. WELL, ENVIRONMENTAL SERVICES, PROBABLY FROM THE VERY  
21 BEGINNING, ALTHOUGH IT WASN'T CALLED ENVIRONMENTAL SERVICES AT  
22 THE TIME. THE RETIREMENT SYSTEMS SINCE JULY OF '84. THE  
23 BUDGET OFFICE HAS GONE BACK AND FORTH, SOMETIMES I'VE IT HAD  
24 IT, SOMETIMES SOMEBODY ELSE HAS DONE THAT WORK, AND THE SAME  
25 WITH THE DEFERRED COMP PLAN, I HAVE BEEN DOING IT SINCE '95.

26 Q. WHEN WERE YOU FIRST ADMITTED TO PRACTICE LAW IN  
27 CALIFORNIA?

28 A. 1983.

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1 Q. I TAKE IT YOU WERE AWARE THAT IN THE YEAR 2000, THE  
2 CITY OF SAN JOSE RELEASED A REQUEST FOR PROPOSALS IN  
3 CONNECTION WITH THE RECYCLE PLUS SERVICES?

4 A. YES.

5 Q. DID YOU HAVE ANY INVOLVEMENT IN THE DRAFTING OF THAT  
6 REQUEST FOR PROPOSALS?

7 A. A LOT OF IT WAS DONE BY A CONSULTANT. I DID DO SOME  
8 REVIEWING, AND I WORKED ON THE EXEMPLAR AGREEMENT THAT WAS  
9 PART OF IT.

10 Q. AS A RESULT OF YOUR WORK IN CONNECTION WITH THE RFP,  
11 DO YOU HAVE SOME FAMILIARITY WITH ITS CONTENTS AND  
12 REQUIREMENTS?

13 A. YES.

14 Q. WAS THERE ANYTHING IN THE RFP THAT REQUIRED THAT THE  
15 MRF WORKERS BE REPRESENTED BY THE TEAMSTERS?

16 A. NO.

17 Q. COULD THE CITY HAVE LAWFULLY INCLUDED A REQUIREMENT  
18 IN THE RFP THAT MRF WORKERS BE REPRESENTED BY TEAMSTERS?

19 A. IT'S MY UNDERSTANDING THAT WE COULD NOT REQUIRE THAT  
20 THEY EVEN BE REPRESENTED BY A UNION, LET ALONE --

21 Q. THAT COULD VIOLATE THE FEDERAL LABOR LAWS?

22 A. THAT'S MY UNDERSTANDING.

23 Q. WAS THERE ANYTHING IN THE RFP THAT REQUIRED ANY OF  
24 THE CONTRACTORS TO GIVE A PREFERENCE TO HIRING MEMBERS OF A  
25 PARTICULAR UNION?

26 A. NO.

27 Q. WAS THERE ANYTHING IN THE RFP THAT REQUIRED THAT THE  
28 MRF WORKERS BE PAID WAGES AND BENEFITS THAT WERE AT LEAST

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1 COMMENSURATE WITH THE WAGES AND BENEFITS THEY WERE RECEIVING  
2 UNDER THE THEN EXISTING CONTRACTS WITH THE CITY?

3 A. NO.

4 Q. SO IF SOMEONE WERE TO PUT FORWARD THE ARGUMENT WE  
5 NEEDED TO PAY THE MRF WORKERS MORE BECAUSE OTHERWISE THE  
6 EXISTING MRF WORKERS WHO WERE OFFERED JOBS WOULD BE OFFERED  
7 JOBS AT LOWER WAGES AND BENEFITS, THAT WOULD NOT BE AN

8 ARGUMENT THAT WOULD BE SUPPORTED BY THE REQUEST FOR PROPOSAL,  
9 CORRECT?

10 A. SOMEBODY COULD CERTAINLY MAKE THE ARGUMENT, BUT THERE  
11 WAS NOTHING IN THE RFP THAT REQUIRED THAT.

12 Q. DID THE CITY'S PREVAILING WAGE POLICY APPLY TO THE  
13 MRF WORKERS?

14 A. NO.

15 Q. CAN YOU, DO YOU KNOW WHY THAT IS?

16 A. NO, NOT REALLY.

17 Q. WELL, DO YOU HAVE ANY FAMILIARITY WITH THE PREVAILING  
18 WAGE POLICY?

19 A. SOME.

20 Q. ISN'T IT THE CASE THAT IT ONLY APPLIES TO WORK  
21 PERFORMED ON CITY OR PUBLIC AREAS?

22 A. I THINK PEOPLE HAVE INTERPRETED IT THAT WAY; I DON'T  
23 HAVE IF IN FRONT OF ME, SO I CAN'T QUOTE.

24 Q. DOES THE PREVAILING WAGE POLICY APPLY WHERE THERE'S  
25 ALREADY IN PLACE A COLLECTIVE BARGAINING AGREEMENT?

26 A. UNDER THE TERMS OF THE CONTRACT THAT WE HAVE,  
27 PREVAILING WAGE IS DEFINED AS A SPECIFIC NUMBER THAT'S  
28 DETERMINED BY EITHER THE DEPARTMENT OF INDUSTRIAL RELATIONS OR

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1 BY THE CITY'S DEPARTMENT UNLESS THERE IS A COLLECTIVE  
2 BARGAINING AGREEMENT IN PLACE. THEN IT IS WHATEVER IS IN THE  
3 AGREEMENT.

4 Q. IF THERE IS A COLLECTIVE BARGAINING AGREEMENT IN  
5 PLACE, IRRESPECTIVE OF PUBLIC VERSUS PRIVATE SITES FOR THE

6 WORK TO BE PERFORMED, THAT WOULD GOVERN OVER ANY OTHER  
7 PREVAILING WAGE NUMBER THAT MIGHT EXIST?

8 A. UNDER THIS CONTRACT THAT'S TRUE; I CAN'T SPEAK TO  
9 OTHER CONTRACTS.

10 Q. UNDER SAN JOSE'S FORM OF GOVERNMENT, WAS THE MAYOR  
11 AUTHORIZED TO NEGOTIATE WITH NORCAL OVER THE TERMS OF THE  
12 RECYCLE PLUS AGREEMENT?

13 A. I DON'T KNOW THAT HE SPECIFICALLY WAS ASKED TO DO  
14 THAT. HE COULD TALK TO THEM, CERTAINLY.

15 Q. IS THE MAYOR AUTHORIZED TO GIVE ASSURANCES TO  
16 CONTRACTORS THAT ADDITIONAL MONEY WOULD BE PAID TO THAT  
17 CONTRACTOR ABOVE AND BEYOND WHAT THE CONTRACTOR WAS SEEKING IN  
18 ITS PROPOSAL?

19 A. I'M, NOT THAT I KNOW OF SPECIFICALLY, BUT IF HE  
20 WANTED TO TELL THEM THAT HE WOULD SUPPORT THAT, THAT'S  
21 SOMETHING HE CERTAINLY COULD SAY.

22 Q. BUT IT WOULDN'T BE BINDING ON THE CITY?

23 A. NO.

24 Q. WELL, LET ME JUST VISIT THAT AREA FURTHER WITH YOU.  
25 DID YOU ATTEND THE CITY COUNCIL MEETINGS THAT TOOK  
26 PLACE IN CONNECTION WITH THIS RFP?

27 A. PROBABLY MOST OF THEM.

28 Q. AND DID YOU ATTEND THE MEETING, THIS CITY COUNCIL

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1 MEETING IN DECEMBER OF 2000 WHERE NORCAL WAS CHOSEN AS ONE OF  
2 THE CONTRACTORS TO BE AWARDED A CONTRACT?

3 A. I BELIEVE I DID.

4 Q. AT THAT COUNCIL MEETING, DID THE COUNCIL DIRECT THE  
5 ADMINISTRATION TO NEGOTIATE A CONTRACT WITH NORCAL?

6 A. I'M NOT SURE WHETHER IT WAS AT THAT ONE SPECIFICALLY,  
7 BUT WE WERE DIRECTED TO GO AHEAD AND PREPARE THE AGREEMENT.

8 Q. AND WHEN THE COUNCIL GIVES A DIRECTION TO  
9 ADMINISTRATION TO NEGOTIATE AN AGREEMENT, ARE THEY TALKING  
10 ABOUT THE MAYOR OR SOMEONE ELSE?

11 A. UNDER THOSE CIRCUMSTANCES IT WOULD HAVE BEEN STAFF.

12 Q. CITY MANAGER'S STAFF?

13 A. RIGHT.

14 Q. NOT THE MAYOR?

15 A. RIGHT.

16 Q. WERE YOU INVOLVED IN NEGOTIATING THE NORCAL AGREEMENT  
17 WITH THE CITY OF SAN JOSE?

18 A. YES.

19 Q. WHAT WAS YOUR INVOLVEMENT?

20 A. I WAS THE CONTRACT DRAFTER, SO I DID ALL THE DRAFTING  
21 OF THE TERMS AND CONDITIONS.

22 Q. OKAY. DID YOU PARTICIPATE IN NEGOTIATION MEETINGS  
23 BETWEEN THE CITY AND NORCAL?

24 A. YOU KNOW, I DON'T REALLY REMEMBER. I KNOW THAT I HAD  
25 TO DRAFT THE CONTRACT, BUT WHETHER I ACTUALLY MET WITH THEM ON  
26 A REGULAR BASIS OR EVEN -- I KNOW I MET THE PEOPLE, BUT I  
27 DON'T KNOW THAT WE ACTUALLY SAT DOWN AND NEGOTIATED.

28 Q. DO YOU KNOW WHO DID THE NEGOTIATING ON BEHALF OF THE

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1 CITY?

- 2 A. IT WOULD HAVE BEEN STAFF OF THE ENVIRONMENTAL  
3 SERVICES DEPARTMENT.
- 4 Q. DO YOU KNOW WHO IN PARTICULAR?
- 5 A. I THINK AT THE TIME ELLEN RYAN WAS HEADING UP THAT  
6 PROGRAM.
- 7 Q. HOW IS THAT NAME SPELLED?
- 8 A. R-Y-A-N, ELLEN.
- 9 Q. OKAY.
- 10 A. SO SHE WOULD HAVE BEEN INVOLVED; I'M NOT SURE WHO SHE  
11 HAD IN HER GROUP.
- 12 Q. IS SHE STILL WITH THE CITY?
- 13 A. NO.
- 14 Q. IS SHE RETIRED?
- 15 A. NO, SHE MOVED TO NEW YORK.
- 16 Q. HOW DID YOU KNOW WHAT TO DRAFT INTO THE AGREEMENT?
- 17 A. WELL, A LOT OF IT WAS ALREADY DRAFTED BECAUSE IT WAS  
18 PART OF THE RFP.
- 19 Q. SO THE RFP HAD A SAMPLE AGREEMENT INCLUDED AS AN  
20 EXHIBIT?
- 21 A. RIGHT. MOST OF IT WAS ALREADY DRAFTED. IT WAS A  
22 MATTER OF PUTTING IN THE NUMBERS, AND IF SOMEBODY HAD SOME  
23 SPECIAL ADDITIONAL WORK THAT THEY WERE GOING TO PROVIDE.
- 24 Q. DID ANYONE BRING TO YOUR ATTENTION, DURING THE COURSE  
25 OF YOUR WORK ON THE AGREEMENT, THE ISSUE OF INCREASED LABOR  
26 COSTS THAT NEEDED TO BE PAID TO NORCAL?
- 27 A. NO.
- 28 Q. WAS THERE ANYTHING IN THE NORCAL AGREEMENT THAT THE

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1 MRF WORKERS BE REPRESENTED BY TEAMSTERS?

2 A. NO.

3 Q. WAS THERE ANYTHING IN THE NORCAL AGREEMENT THAT  
4 REQUIRED THAT THE MRF WORKERS BE PAID WAGES AND BENEFITS AT  
5 LEAST COMMENSURATE WITH THE WAGES AND BENEFITS THEN PAID TO  
6 MRF WORKERS UNDER EXISTING CONTRACTS WITH THE CITY?

7 A. NO.

8 Q. UNDER THE NORCAL AGREEMENT THAT WAS ULTIMATELY SIGNED  
9 AND AGREED TO AND APPROVED BY THE CITY COUNCIL, WAS THE CITY  
10 RESPONSIBLE IN ANY WAY FOR PAYMENT OF INCREASED LABOR COSTS  
11 INCURRED BY NORCAL OR CWS?

12 A. THERE IS A PROVISION IN THE CONTRACT FOR ANNUAL RATE  
13 ADJUSTMENT. THAT IS THE RATES PAID TO THE CONTRACTOR.

14 Q. TALKING ABOUT COLAS?

15 A. IT'S NOT CALLED COLA, BUT IT'S ESSENTIALLY A COLA  
16 THAT HAS A LABOR FACTOR IN IT THAT DETERMINES WHAT THE COLA IS  
17 GOING TO BE.

18 Q. OTHER THAN THAT, DID THE CITY BEAR ANY RESPONSIBILITY  
19 FOR PAYING FOR INCREASED LABOR COSTS?

20 A. NOT THAT I'M AWARE OF.

21 Q. SO IF NORCAL'S SUBCONTRACTOR CWS DECIDED TO AGREE TO  
22 PAY HIGHER WAGES AND BENEFITS TO THE MRF WORKERS, WAS THAT  
23 SOMETHING THE CITY HAD ANY LEGAL RESPONSIBILITY FOR PAYING  
24 FOR?

25 A. NO.

26 Q. WASN'T THERE A CLAUSE SPECIFICALLY IN THE AGREEMENT  
27 THAT SAID AS MUCH?

28 A. I DON'T KNOW THAT IT SAID IT EXACTLY IN THOSE WORDS,

1 BUT ESSENTIALLY, NORCAL HAD A SUBCONTRACTOR, WE DIDN'T EVEN  
2 HAVE A CONTRACT WITH CWS.

3 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 26.  
4 PLEASE LOOK AT THAT FOR A MOMENT.

5 A. OKAY.

6 Q. LET ME DIRECT YOUR ATTENTION -- FIRST OF ALL, DO YOU  
7 RECOGNIZE THAT DOCUMENT?

8 A. YES.

9 Q. WHAT IS THAT?

10 A. IT LOOKS LIKE A COPY OF THE AGREEMENT BETWEEN THE  
11 CITY AND NORCAL FOR PROVIDING RECYCLE PLUS SERVICES.

12 Q. THAT'S THE AGREEMENT THAT WAS NEGOTIATED AT THE END  
13 OF 2000, BEGINNING OF 2001, AFTER APRIL OF 2001?

14 A. RIGHT.

15 Q. IS THERE A CLAUSE 17.3.02?

16 A. 1703 WHAT?

17 Q. 1703.2, OR IS IT 1702.3?

18 A. 1702.3, NO COMPENSATION ADJUSTMENT?

19 Q. THAT'S THE CLAUSE. JUST BEAR WITH ME FOR A MOMENT.

20 A. PAGE 50.

21 Q. 1702.3. I'LL PUT IT UP. THAT'S THE CLAUSE ENTITLED  
22 "NO COMPENSATION ADJUSTMENT"?

23 A. RIGHT.

24 Q. WHAT DOES THAT CLAUSE PROVIDE?

25 A. THAT IF THE CONTRACTOR HAS TO PAY AN ADJUSTMENT IN  
26 WAGES BECAUSE OF THE PREVAILING WAGE POLICY IN THE CONTRACT,  
27 THAT THAT'S THE CONTRACTOR'S RISK.

28 Q. OKAY. AND THERE'S ALSO SOMETHING CALLED, SOMETIMES

1 REFERRED TO AS AN INTEGRATION CLAUSE IN THE CONTRACT?

2 A. YES.

3 Q. WHERE IS THAT CONTAINED?

4 A. IT SHOULD BE IN ARTICLE 24.24.

5 Q. THAT'S THE CLAUSE THAT READS "ENTIRE AGREEMENT"?

6 A. THAT'S RIGHT.

7 Q. AND WHAT'S THE PURPOSE OF THAT CLAUSE?

8 A. THAT'S SO THAT YOU KNOW WHAT DOCUMENTS YOU'RE LOOKING  
9 AT WHENEVER YOU'RE TRYING TO DEAL WITH THE CONTRACT. SO YOU  
10 HAVE THE CONTRACT AND YOU HAVE THE EXHIBITS, AND THERE ISN'T  
11 SOMETHING ELSE OUT THERE YOU SHOULD BE LOOKING AT.

12 Q. IS THERE ALSO ANOTHER PURPOSE TO THAT CLAUSE, NAMELY  
13 TO PRECLUDE A PARTY FROM COMING BACK AFTER SIGNING THIS  
14 AGREEMENT AND SAYING, NOTWITHSTANDING THIS WRITTEN AGREEMENT  
15 WE HAD, THIS SIDE UNDERSTANDING THAT WAS NOT EMBODIED IN THE  
16 WRITTEN AGREEMENT?

17 A. WELL, IT'S TO MAKE SURE THAT ANY CORRESPONDENCE, ANY  
18 CONVERSATIONS, ANY NEGOTIATIONS HAVE ALREADY BEEN PUT INTO THE  
19 DOCUMENT, SO EVERYTHING IS IN ONE PLACE.

20 Q. ISN'T ONE OF THE PURPOSES OF THAT CLAUSE SO THAT  
21 PARTIES KNOW THAT IF IT'S NOT IN THE AGREEMENT, IT'S NOT PART  
22 OF THE AGREEMENT?

23 A. THAT WOULD BE ONE OF THE PURPOSES, YES.

24 Q. I TAKE IT SO IF NORCAL WERE TO COME BACK AT A LATER  
25 DATE AND SAY, NOTWITHSTANDING THIS WRITTEN AGREEMENT, WE HAD  
26 AN ORAL OR VERBAL UNDERSTANDING THAT WE WOULD BE GETTING

27 ADDITIONAL COMPENSATION TO PAY OUR ADDITIONAL LABOR COSTS, THE  
28 CITY WOULD HAVE THE LEGAL ARGUMENT TO SAY, ORAL AGREEMENTS

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1 DON' T COUNT, WE HAVE AN INTEGRATION CLAUSE, IF IT' S NOT IN THE  
2 CONTRACT WE' RE NOT BOUND BY IT.

3 A. THE CITY COULD MAKE THAT ARGUMENT.

4 Q. HOW DID YOU FIRST LEARN THAT THE CITY MIGHT BE ASKED  
5 TO PAY ADDITIONAL MONEY TO NORCAL FOR ADDITIONAL LABOR COSTS?

6 A. THERE WAS AN E-MAIL THAT WAS SHOWN TO ME, IT WAS  
7 PRINTED OUT AND SHOWN TO ME, THAT INDICATED THAT THERE WERE  
8 CONVERSATIONS GOING ON TO THAT EFFECT.

9 Q. WHO SHOWED YOU THIS E-MAIL?

10 A. CARL MOSHER, WHO WAS DIRECTOR OF ENVIRONMENTAL  
11 SERVICES.

12 Q. DO YOU REMEMBER APPROXIMATELY WHEN THAT WAS?

13 A. PROBABLY FEBRUARY ' 03.

14 Q. DO YOU REMEMBER WHO THE E-MAIL WAS FROM?

15 A. I BELIEVE IT WAS FROM JOE GUERRA.

16 Q. LET ME SHOW YOU WHAT HAS BEEN MARKED AS GRAND JURY  
17 EXHIBIT 29 IN THIS PROCEEDING. ARE YOU ABLE TO SEE THAT FROM  
18 WHERE YOU ARE?

19 A. YES.

20 Q. IS THIS THE E-MAIL YOU' RE REFERRING TO GO?

21 A. LOOKS LIKE IT PROBABLY IS.

22 Q. WHAT WAS YOUR REACTION WHEN YOU WERE SHOWN THIS  
23 E-MAIL BY CARL MOSHER?

24 A. SURPRISE.

25 Q. WHY IS THAT?

26 A. BECAUSE IT'S THE FIRST I HEARD OF IT. IT COULD BE  
27 THE ONE, IT'S GOT THE RIGHT DATE, I DON'T KNOW IF THERE WAS  
28 ANOTHER ONE, BUT THE ONE I SAW TALKED ABOUT PAYING ADDITIONAL

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1 MONEY TO --

2 Q. LET US LOOK AT ANOTHER E-MAIL FOR A MOMENT. WE HAVE  
3 A BUNCH.

4 A. I FIGURED YOU PROBABLY DID.

5 Q. LET'S LOOK AT EXHIBIT 31. TAKE A MOMENT AND REVIEW  
6 THAT.

7 A. I HAVE SEEN THAT BEFORE. AGAIN, I DON'T KNOW IF  
8 THAT'S THE FIRST ONE I EVER SAW.

9 Q. YOUR RECOLLECTION IS THAT THE E-MAIL THAT FIRST MADE  
10 YOU AWARE THAT THE CITY MIGHT BE CALLED UPON TO PAY INCREASED  
11 LABOR COSTS TO NORCAL WAS SOME E-MAIL IN FEBRUARY OF '03 THAT  
12 CARL MOSHER BROUGHT TO YOUR ATTENTION?

13 A. THAT'S CORRECT.

14 Q. COULD HAVE BEEN THIS ONE OR THE OTHER ONE, YOU'RE NOT  
15 SURE?

16 A. RIGHT.

17 Q. OR YET A DIFFERENT ONE?

18 A. THAT'S POSSIBLE TOO.

19 Q. NOW, WHAT DID YOU INFER FROM THESE E-MAILS OR E-MAIL  
20 THAT YOU SAW IN FEBRUARY OF '03 ABOUT THIS SITUATION? DID YOU  
21 DRAW ANY INFERENCES AT THAT TIME?

22 A. NOT PARTICULARLY, NO.

23 Q. DID YOU DRAW ANY INFERENCES ABOUT WHETHER ANYONE IN  
24 THE MAYOR'S OFFICE HAD HAD PRIVATE CONVERSATIONS WITH NORCAL?

25 A. I HAVE NO WAY OF KNOWING THAT.

26 Q. DID YOU INITIATE ANY INQUIRIES TO FIND OUT THE  
27 GENESIS OF THIS ISSUE, WHY IT WAS COMING FORWARD NOW?

28 A. NO.

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1 Q. IS THERE ANY REASON WHY NOT?

2 A. WELL, WE HAD NO OBLIGATION TO DO ANYTHING, IT DIDN'T  
3 LOOK TO ME AS THOUGH THERE WAS ANY PROPOSAL THAT NEEDED TO BE  
4 ANALYZED. THERE WASN'T ANYTHING COMING FORWARD OTHER THAN  
5 DISCUSSIONS.

6 Q. YOUR REACTION AT THAT POINT WAS WE HAVE A CONTRACT IN  
7 PLACE, IT DOESN'T REQUIRE THIS ADDITIONAL PAYMENT, WE DON'T  
8 NEED TO DO ANYTHING?

9 A. CORRECT.

10 Q. IN 2003, DID THE CITY RAISE THE RECYCLE PLUS RATES?

11 A. YES.

12 Q. AND WAS A PORTION OF THAT RATE HIKE CALCULATED ON THE  
13 BASIS THAT WE MIGHT NEED TO PAY ADDITIONAL MONEY TO NORCAL FOR  
14 THESE INCREASED LABOR COSTS?

15 A. I DIDN'T ACTUALLY DO ANY OF THE CALCULATIONS. IT'S  
16 MY UNDERSTANDING THAT A NUMBER OF DIFFERENT SCENARIOS WERE  
17 ANALYZED TO DETERMINE WHAT KIND OF A RATE INCREASE MIGHT BE  
18 NEEDED, BUT THAT ULTIMATELY IT WAS BASED ON THE FACT THAT  
19 THERE WERE INCREASED COSTS FOR DISPOSAL OF MATERIAL, THE COST  
20 OF LIVING ADJUSTMENTS, A NEED TO MAINTAIN A SUFFICIENT FUND

21 BALANCE FOR CONTINGENCIES AND EMERGENCIES, AND THAT THE  
22 PROGRAM STILL WAS NOT AT FULL COST RECOVERY.

23 Q. OKAY. DID YOU HAVE ANY INVOLVEMENT IN THE PROP 218  
24 NOTICE THAT WENT OUT?

25 A. I DON'T KNOW WHEN THE NOTICE WENT OUT, AND I DON'T  
26 THINK I DID BECAUSE I WAS OUT OF TOWN MOST OF MARCH.

27 Q. LET'S LOOK AT THE NOTICE FOR A MOMENT. EXHIBIT 37.  
28 WE UNDERSTAND THAT THIS IS THE NOTICE THAT WENT OUT IN '03 IN

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1 CONNECTION WITH RATE HIKE, IT HAS THE DATE APRIL 7, 2003; DO  
2 YOU SEE THAT?

3 A. YES.

4 Q. ARE YOU SAYING YOU WERE OUT OF TOWN AT THAT TIME?

5 A. I WAS BACK IN APRIL, BUT I WAS IN FLORIDA ALMOST ALL  
6 OF THE MONTH OF MARCH.

7 Q. ALL OF WHAT?

8 A. THE MONTH OF MARCH.

9 Q. SO, AND AS YOU SIT HERE TODAY YOU DON'T RECOLLECT  
10 WHETHER YOU REVIEWED THE NOTICE BEFORE IT WENT OUT?

11 A. I DON'T.

12 Q. IS THERE ANYONE ELSE IN THE CITY ATTORNEY'S OFFICE  
13 WHO MIGHT HAVE DONE THAT IN YOUR ABSENCE?

14 A. WELL, THE WOMAN THAT GENERALLY COVERS WHEN I'M GONE  
15 MIGHT HAVE LOOKED AT IT. THAT'S MOLLY DENT.

16 Q. SHE IS ANOTHER CITY ATTORNEY?

17 A. YES. AND SOMEBODY ELSE IN THE OFFICE CERTAINLY COULD  
18 HAVE BEEN LOOKING AT IT TOO.

19 Q. DIDN'T CARL MOSHER TELL YOU THAT THE RATE HIKE  
20 INCLUDED A COMPONENT FOR LABOR PEACE?

21 A. LABOR PEACE. I DON'T THINK HE TOLD ME THAT.

22 Q. DID CARL MOSHER EVER TELL YOU AT THE TIME THIS RATE  
23 HIKE WAS BEING SOUGHT THAT A PORTION OF THE RATE HIKE HAD BEEN  
24 CALCULATED TO COVER ADDITIONAL PAYMENTS TO NORCAL FOR  
25 INCREASED LABOR COSTS IN THE EVENT THAT THE CITY COUNCIL  
26 APPROVED SUCH ACTION?

27 A. HE TOLD ME THAT THEY HAD DONE A SCENARIO THAT WAY,  
28 BUT IT'S MY UNDERSTANDING THAT WAS NOT THE FINAL --

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1 Q. THAT WAS NOT FINAL?

2 A. THAT WAS NOT THE FINAL DETERMINATION.

3 Q. YOUR UNDERSTANDING WAS THAT NO PORTION OF THIS RATE  
4 HIKE WAS TO COVER THE POSSIBILITY OF PAYING INCREASED LABOR  
5 COSTS TO NORCAL?

6 A. IT CERTAINLY COULD HAVE BEEN, BUT MY UNDERSTANDING  
7 WAS THAT THE RATE THAT WAS ACTUALLY PROPOSED TO THE CITY  
8 COUNCIL AND ADOPTED WAS TO COVER OTHER COSTS AND THAT IF,  
9 BECAUSE I KNOW I ASKED CARL, IF THE NORCAL THING DOESN'T GO  
10 THROUGH AND THE COUNCIL DECIDES THEY DON'T WANT TO DO IT, THEN  
11 WHAT.

12 HE SAID, WE STILL WON'T BE AT COST RECOVERY.

13 Q. I UNDERSTAND THAT THE NUMBER IS IN THIS MIDDLE  
14 GROUND, IT'S BIG ENOUGH TO COVER INCREASED LABOR COSTS, BUT  
15 SMALL ENOUGH NOT TO EXCEED 100% COST RECOVERY, CORRECT?

16 A. SORRY, WOULD YOU REPEAT THAT?

- 17 Q. OKAY. WE'RE TALKING ABOUT A 9% RATE HIKE.
- 18 A. OKAY.
- 19 Q. AND EARLIER THE YEAR BEFORE, IT WAS PROJECTED THAT
- 20 THE RATE HIKE COULD BE SOMETHING IN THE THREE OR FOUR PERCENT
- 21 RANGE, CORRECT?
- 22 A. I THINK SO.
- 23 Q. AND YET AFTER THIS SERIES OF E-MAILS WITH NORCAL AND
- 24 CWS REQUESTING ADDITIONAL COMPENSATION, THE RATE HIKE WAS
- 25 INCREASED TO 9%, CORRECT?
- 26 A. THAT'S TRUE.
- 27 Q. AND YOU'RE SAYING THAT THAT 9% IS STILL BELOW 100%
- 28 COST RECOVERY?

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- 1 A. THAT'S MY UNDERSTANDING.
- 2 Q. I'M SAYING THE MOTIVATING FACTOR FOR GOING UP FROM
- 3 THREE OR FOUR PERCENT TO 9% WAS TO PROVIDE A CONTINGENCY FOR
- 4 PAYING NORCAL ADDITIONAL MONEY. IS THAT NOT CORRECT?
- 5 A. I DIDN'T DO THE NUMBERS, I CAN'T, I WOULD ONLY BE
- 6 SPECULATING.
- 7 Q. HAVE YOU WORKED ON OTHER PROP 218 NOTICES?
- 8 A. YEAH, THERE WAS ONE THAT WENT OUT --
- 9 Q. IN '02?
- 10 A. I'M THINKING OF THE ONE THAT WENT OUT IN THE EARLIER
- 11 PART OF '05.
- 12 Q. WELL, HAVE YOU WORKED ON PROP 218 NOTICES IN THE
- 13 PAST?
- 14 A. SOMETIMES, YES.

15 Q. WHEN DID YOU FIRST START WORKING ON THE PROP 218  
16 NOTICES?

17 A. I DON'T REMEMBER WHEN PROP 218 PASSED. WHENEVER THE  
18 FIRST RATE INCREASED AFTER 218.

19 Q. ARE YOU THE PERSON IN THE CITY ATTORNEY'S OFFICE WHO  
20 GENERALLY WORKS ON THE RECYCLE PLUS PROP 218 NOTICES?

21 A. GENERALLY THAT WOULD BE TRUE.

22 Q. THIS ONE THAT WENT OUT IN '02, ARE YOU LIKELY TO BE  
23 THE FIRST PERSON WHO WORKED ON IT?

24 A. PROBABLY.

25 Q. AS I HEAR YOUR TESTIMONY, THE ONLY REASON YOU DON'T  
26 THINK YOU WORKED ON THE ONE IN '03 IS BECAUSE YOU THINK YOU  
27 WERE AWAY IN MARCH, OUT OF STATE?

28 A. THAT'S CORRECT.

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1 Q. AND WHAT'S YOUR UNDERSTANDING OF WHAT'S REQUIRED TO  
2 GO INTO A PROP 218 NOTICE?

3 A. YOU HAVE TO NOTIFY THE PUBLIC THAT THE FEES ARE GOING  
4 TO BE INCREASED. TELL THEM HOW MUCH.

5 Q. YOU HAVE TO TELL THEM THE REASON FOR THE INCREASE?

6 A. I WOULD HAVE TO GO BACK AND LOOK AT 218.

7 Q. LET'S LOOK AT THE NOTICE THAT WENT OUT IN '03. DO  
8 YOU SEE THE LINE IN THE THIRD PARAGRAPH, SECOND SENTENCE, THAT  
9 READS "THE PROPOSED RATE INCREASE IS NEEDED TO HELP MAKE  
10 GARBAGE AND RECYCLING SERVICES MORE SELF SUPPORTING"?

11 A. I SEE THAT.

12 Q. ARE YOU SUGGESTING THAT'S JUST SURPLUSAGE IN THAT

13 NOTICE, OR IS THAT SOMETHING LEGALLY REQUIRED AS PART OF THE  
14 NOTICE?

15 A. I DON'T KNOW, BECAUSE I HAVE NOT LOOKED AT A 218 IN  
16 SOME TIME.

17 Q. WELL, YOU TOLD US THAT -- HOW MANY OF THESE DO YOU  
18 THINK YOU HAVE REVIEWED IN YOUR CAREER?

19 A. THREE, SOMETHING LIKE THAT.

20 Q. AS A LAWYER, WHEN YOU REVIEW THEM WOULDN'T YOU HAVE  
21 TO HAVE SOME FAMILIARITY WITH THE LEGAL REQUIREMENTS TO MAKE A  
22 DETERMINATION WHETHER THE NOTICE WAS LEGALLY ADEQUATE OR NOT?

23 A. YES, BUT YOU KNOW IT'S BEEN SOME TIME SINCE I HAVE  
24 EVEN LOOKED AT THIS. I GENERALLY WOULD GO BACK AND LOOK AT,  
25 AT THAT POINT AGAIN, IF THE NOTICE WAS GOING TO GO OUT.

26 Q. YOU'RE NOT ABLE TO SAY JUST FROM RECOLLECTION TODAY  
27 WHETHER OR NOT PROP 218 REQUIRES THAT THE RATEPAYERS BE GIVEN  
28 NOTICE OF A REASON FOR THE RATE HIKE?

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1 A. THAT'S CORRECT, I WOULD HAVE TO GO BACK AND REVIEW  
2 PROP 218.

3 Q. DO YOU KNOW WHETHER OR NOT UNDER PROP 218 THE  
4 PROPERTY OWNERS CAN SUBMIT PROTESTS IN RESPONSE TO THE NOTICE?

5 A. YES, I KNOW THEY CAN.

6 Q. AND IF THE MAJORITY OF PROPERTY OWNERS PROTEST THE  
7 RATE HIKE, DOES THAT PRECLUDE THE CITY COUNCIL FROM ADOPTING  
8 THE RATE HIKE?

9 A. I'M NOT SURE WHETHER THE COUNCIL CAN OVERRULE OR  
10 OVERRIDE A MAJORITY OF THE PROTEST OR NOT. IT HAS NOT COME UP

11 BECAUSE WE'VE NEVER HAD ENOUGH TO BE MORE THAN ONE OR TWO  
12 PERCENT I THINK.

13 Q. THE PROTESTS HAVE TO BE SUBMITTED IN ADVANCE OF THE  
14 HEARINGS SO THEY CAN BE TALLIED BY THE CITY CLERK?

15 A. THAT'S CORRECT.

16 Q. IN ORDER FOR PROPERTY OWNERS TO MAKE AN INTELLIGENT  
17 DECISION ABOUT WHETHER OR NOT TO PROTEST THE RATE HIKE,  
18 WOULDN'T YOU ASSUME THEY WOULD HAVE TO BE GIVEN SOME NOTICE OF  
19 THE REASON FOR THE RATE HIKE?

20 A. THAT'S A POSSIBILITY. YOU'RE ASKING ME TO ASSUME  
21 SOMETHING A TAXPAYER MIGHT THINK ABOUT.

22 Q. NOW, DID I HEAR YOU SAY THAT YOU HAD, YOU THOUGHT YOU  
23 HAD REVIEWED ONE OF THESE NOTICES AS RECENTLY AS LAST YEAR?

24 A. I PROBABLY DID.

25 Q. AND HAVING DONE THAT, YOU'RE NOT FAMILIAR ENOUGH WITH  
26 PROP 218 TO RECALL WHETHER OR NOT THE REQUIREMENTS OF 218  
27 INCLUDE A NOTICE OF THE REASON FOR THE RATE HIKE?

28 A. THAT'S RIGHT, I WOULD HAVE TO GO BACK AND LOOK AT IT

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1 AGAIN.

2 Q. IN READING THIS NOTICE THAT WE HAVE BEFORE US, THE  
3 APRIL 2003 NOTICE, IS THERE ANYTHING IN THIS NOTICE THAT IN  
4 YOUR OPINION DISCLOSES AS ONE OF THE REASONS FOR THE RATE HIKE  
5 THE POTENTIAL OF PAYING NORCAL ADDITIONAL MONEY TO COVER  
6 ADDITIONAL LABOR COSTS?

7 A. THE PART OF IT THAT I CAN SEE DOESN'T MENTION NORCAL  
8 AT ALL.

9 Q. LET ME PUT IT TO YOU MORE DIRECTLY. WE'VE HEARD  
10 TESTIMONY FROM OTHER WITNESSES, CARL MOSHER, LARRY LI SENBEE,  
11 YOU'RE FAMILIAR WITH THOSE GENTLEMEN?

12 A. YES.

13 Q. THAT THEY ACTUALLY PLUGGED INTO THEIR SOFTWARE THAT  
14 ESTIMATES RATE HIKE FOR THEM NUMBERS THAT THEY GOT FROM  
15 NORCAL AS TO WHAT THESE INCREASED LABOR COSTS AND THOSE  
16 NUMBERS REPRESENT 6% OF THE 9% PROPOSED RATE HIKE WE HAVE BEEN  
17 TALKING ABOUT.

18 IS IT YOUR TESTIMONY THAT YOU'RE TOTALLY NOT AWARE  
19 OF THAT OR OUT OF THE LOOP ON THAT?

20 A. I DON'T THINK I KNEW ABOUT A 6%. I KNEW THEY HAD RUN  
21 THE NUMBERS, BUT I WASN'T RUNNING THE NUMBERS, AND I KNEW THEY  
22 DID RUN THE NUMBERS TO SEE WHAT KIND OF A RATE INCREASE THEY  
23 WERE GOING TO PROPOSE. AND I KNOW THEY HAD HAD DIFFERENT  
24 SCENARIOS, AND I KNOW THAT THEY LOOKED AT HOW MUCH IT WOULD  
25 BE. AND HOW THEY ALL CAME TOGETHER, I DON'T KNOW.

26 Q. MY QUESTION IS A LITTLE DIFFERENT. BASED ON THEIR  
27 TESTIMONY, THEY HAVE SUGGESTED THAT 6% OF THAT 9% PROPOSED  
28 RATE HIKE IS AN AMOUNT NECESSARY TO GENERATE THE DOLLARS

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1 NEEDED TO PAY NORCAL FOR ITS EXTRA LABOR COSTS. THAT'S WHAT  
2 I'M SPECIFICALLY ASKING ABOUT. WERE YOU AWARE OF ANY OF THAT?

3 A. (NO RESPONSE.)

4 Q. IT'S ONE THING TO RUN NUMBERS, IT'S ANOTHER TO  
5 INCLUDE THE NUMBERS INTO THE RATE HIKE. I'M MAKING THAT  
6 DISTINCTION, DO YOU UNDERSTAND THAT?

7 A. YEAH.

8 Q. MY QUESTION IS, IS IT YOUR TESTIMONY THAT YOU DID NOT  
9 KNOW OR REALIZE THAT A SUBSTANTIAL PORTION OF THAT RATE HIKE,  
10 THAT 9% HIKE IN '03, WAS CALCULATED TO COVER THE POTENTIALITY  
11 OF PAYING NORCAL INCREASE LABOR COSTS?

12 A. ALL I KNOW IS THAT THEY DID CALCULATE THAT NUMBER,  
13 BUT I WAS UNDER THE IMPRESSION AT THE END OF THE DAY WHEN IT  
14 WENT TO THE COUNCIL FOR APPROVAL THAT THE RATE INCREASE IS  
15 BASED ON THE COST OF LIVING ADJUSTMENTS IN BOTH RECYCLE PLUS  
16 CONTRACTS, DISPOSAL CONTRACTS, BUILDING UP THE FUND BALANCE,  
17 TRYING TO FIGURE OUT HOW MUCH MONEY THEY WERE GOING TO NEED TO  
18 DO TO THE BILLING SYSTEM, AND THAT IT WAS NOT SPECIFICALLY IN  
19 THERE FOR THAT PURPOSE.

20 Q. OKAY. WASN'T THERE A RATE HIKE JUST BEFORE THE '03  
21 RATE HIKE, IN DECEMBER OF '02?

22 A. I DON'T REMEMBER EXACTLY WHEN IT WAS. I KNOW THERE  
23 WAS ONE.

24 Q. AND IN DECEMBER OF '02, WASN'T THE STAFF PROJECTING  
25 THAT THE '03 RATE HIKE WOULD BE IN THE THREE OR FOUR PERCENT  
26 RANGE?

27 A. THAT'S QUITE POSSIBLE.

28 Q. AND DID IT STRIKE YOU AS CURIOUS THAT SUDDENLY, A FEW

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1 MONTHS LATER, THAT RATE HIKE PROJECTED TO BE THREE OR FOUR OR  
2 FIVE PERCENT WAS NOW 9%?

3 A. THEY EXPLAINED TO ME THAT THEY COULD JUSTIFY 9%.

4 Q. WHO EXPLAINED THAT TO YOU?

- 5 A. THE ENVIRONMENTAL SERVICES PEOPLE. I SUPPOSE IT  
6 WOULD MOSTLY BE CARL.
- 7 Q. CARL MOSHER?
- 8 A. RIGHT.
- 9 Q. DID YOU HAVE ANY INVOLVEMENT IN NEGOTIATING THE 2004  
10 AMENDMENT TO THE NORCAL AGREEMENT WITH THE CITY OF SAN JOSE?
- 11 A. YES.
- 12 Q. WHAT WAS YOUR INVOLVEMENT?
- 13 A. I ACTUALLY WAS AT A NUMBER OF MEETINGS, ALSO DID THE  
14 DRAFTING OF THE DOCUMENT.
- 15 Q. AND WHEN YOU SAY MEETINGS, WHAT MEETINGS ARE YOU  
16 REFERRING TO?
- 17 A. MEETINGS BETWEEN CITY REPRESENTATIVES AND NORCAL.
- 18 Q. CAN YOU GIVE US SOME NAMES OF THE CITY  
19 REPRESENTATIVES AND NORCAL REPRESENTATIVES?
- 20 A. FOR THE CITY, MOST OF THE TIME IT WAS THE DEPUTY CITY  
21 MANAGER, JIM HOLGERSON, AND CARL MOSHER. FOR NORCAL, PROBABLY  
22 JOHN NICOLETTI, DAN DAY, AND THEIR ATTORNEY, WHO AT THAT TIME  
23 WAS TODD THOMPSON.
- 24 Q. TODD THOMPSON?
- 25 A. MM-HMM.
- 26 Q. WHO WAS THE PERSON, THE OTHER PERSON YOU MENTIONED  
27 OTHER THAN JOHN NICOLETTI AND TODD THOMPSON?
- 28 A. DAN DAY.

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- 1 Q. DO YOU KNOW WHAT HIS TITLE AT NORCAL WAS?
- 2 A. NO, I'M SORRY, JOE GUERRA. I KNOW HE'S A MANAGER,

3 BUT I DON' T KNOW WHAT HIS TITLE IS.

4 Q. JOHN NICOLETTI WAS GENERAL MANAGER OR VICE PRESIDENT  
5 OF NORCAL?

6 A. PROBABLY ONE OF THOSE.

7 Q. MR. THOMPSON WORKED FOR A LAW FIRM AND REPRESENTED  
8 NORCAL?

9 A. THAT' S CORRECT.

10 Q. HOW DID YOU FIRST LEARN THAT THE CITY MIGHT BE ASKED  
11 TO AMEND THE NORCAL AGREEMENT?

12 A. WELL, THE E-MAILS THAT WE TALKED ABOUT EARLIER IS  
13 WHEN I FIRST KNEW THAT THERE WAS ANY KIND OF MONETARY CHANGE.  
14 BUT WE WERE' S TALKING ABOUT AMENDMENT AT THAT TIME. SO I' M  
15 NOT SURE WHEN --

16 Q. RIGHT. SO HOW DID YOU FIRST LEARN THAT THE  
17 COMMUNICATION ABOUT MONETARY CHANGE WAS GOING TO RESULT IN  
18 SOME REQUEST FOR AMENDMENT?

19 A. WELL, IT WAS ONE OF THOSE THINGS WHERE WE SAID WE  
20 COULDN' T DO IT WITHOUT AN AMENDMENT, SO SOMEWHERE ALONG THE  
21 WAY, I DON' T KNOW EXACTLY WHO -- I HAD A CONVERSATION WITH  
22 MR. THOMPSON ABOUT IT, AND BASICALLY SAYING WE CAN' T PAY THE  
23 MONEY UNLESS THERE IS A CONTRACT AMENDMENT, AND THEN HE WANTED  
24 TO KNOW WHEN WE COULD HAVE AN AMENDMENT READY, AND I' M NOT  
25 SURE --

26 Q. JUST GIVE US A MOMENT.

27 MR. FINKELSTEIN: I WILL ASK TO HAVE MARKED THAT AS  
28 GRAND JURY EXHIBIT 62.

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1 THE FOREMAN: SO MARKED.

2 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
3 JURY EXHIBIT 62.)

4 MR. FINKELSTEIN: I WILL ASK TO HAVE MARKED A MARCH  
5 5, 2003 E-MAIL FROM STEVE WILLIS TO SUSAN DEVENCENZI.  
6 BY MR. FINKELSTEIN:

7 Q. COULD YOU LOOK AT EXHIBIT 62 FIRST AND TELL US IF YOU  
8 RECOGNIZE THIS E-MAIL?

9 A. I DON'T RECOGNIZE THIS SPECIFICALLY, BUT I KNOW I  
10 HAVE SEEN THESE QUESTIONS BEFORE.

11 Q. DOES IT APPEAR AT ALL FAMILIAR TO YOU?

12 A. LIKE I SAID, I WAS NOT IN TOWN --

13 Q. SORRY, WHY DON'T WE WAIT UNTIL THE PLANE PASSES.

14 A. I MAY NOT HAVE RECEIVED THIS AT THIS TIME. I DON'T  
15 KNOW IF I WAS IN TOWN ON MARCH 5.

16 Q. WAS IT YOUR PRACTICE WHEN -- WHEN YOU WERE ABSENT  
17 FROM THE CITY TO REVIEW E-MAILS THAT MAY HAVE COME IN DURING  
18 YOUR ABSENCE WHEN YOU RETURNED?

19 A. WHEN I RETURNED, YES.

20 Q. WAS IT YOUR PRACTICE IN '03 WHEN YOU WENT ON EXTENDED  
21 ABSENCE FROM THE CITY, YOU COULD PUT SOME KIND OF RULE IN  
22 PLACE, HAVE THE E-MAIL GENERATE AN AUTOMATIC MESSAGE, RETURN  
23 MESSAGE ADVISING PEOPLE THAT YOU WERE UNAVAILABLE OR OUT OF  
24 THE OFFICE?

25 A. YES. AND I MAY HAVE READ THIS BEFORE I LEFT,  
26 BUT -- I REALLY DON'T KNOW WHEN I READ IT.

27 Q. DO YOU KNOW WHETHER OR NOT THIS IS HOW YOU LEARNED  
28 ABOUT THE EFFORT TO AMEND THE NORCAL AGREEMENT?

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1           A.       I DON'T KNOW.

2           Q.       TAKE A LOOK AT EXHIBIT 53 IF YOU WOULD. DO YOU

3 RECOGNIZE THIS E-MAIL?

4           A.       NOT SPECIFICALLY -- OH, IS IT DONE MOVING?

5           Q.       WE'RE GOING TO GIVE YOU THE ACTUAL E-MAIL.

6           A.       I DON'T SPECIFICALLY RECALL IT, BUT I KNOW WE WERE

7 HAVING DISCUSSIONS BACK AND FORTH REGARDING THE LETTER.

8           Q.       DO YOU HAVE ANY REASON TO DOUBT THE GENUINENESS OF

9 THIS E-MAIL?

10          A.       NO.

11          Q.       IT'S JUST A MATTER THAT'S NOT SOMETHING IN YOUR

12 RECOLLECTION?

13          A.       NOT SPECIFICALLY, NO. APRIL OF '04, IT'S A WHILE

14 BACK. WE WERE WORKING ON THE ISSUE AT THAT TIME.

15          Q.       LET ME MARK ANOTHER EXHIBIT -- APPARENTLY, WE HAVE

16 ALREADY MARKED IT AS EXHIBIT 55. LET ME HAND THIS TO YOU SO

17 YOU CAN HAVE THE HARD COPY IN FRONT OF YOU TO REFER TO.

18                   DID YOU SEND THE E-MAIL THAT'S SECOND IN THE CHAIN

19 FROM THE TOP?

20          A.       IT LOOKS LIKE I DID.

21          Q.       LET ME DIRECT YOUR ATTENTION, THERE'S THREE BULLET

22 ITEMS, CORRECT?

23          A.       MM-HMM.

24          Q.       YES?

25          A.       YES.

26          Q.       BELOW THAT, YOU POSE A QUESTION TO MR. MOSHER: "DO

27 YOU THINK THERE ARE MEMBERS OF THE COUNCIL WHO ARE AWARE THAT

28 THE MAYOR'S OFFICE HAS BEEN WORKING ON THIS?"

1 DO YOU SEE THAT QUESTION?

2 A. YES.

3 Q. WHY DID YOU POSE THAT QUESTION TO MR. MOSHER?

4 A. I DON'T KNOW.

5 Q. WOULD IT BE FAIR TO ASSUME FROM THAT E-MAIL THAT AT  
6 THE TIME YOU SENT THAT E-MAIL, YOU BELIEVED THAT THE MAYOR'S  
7 OFFICE HAD BEEN WORKING ON THIS?

8 A. BY 2004, I'M SURE THEY WERE THINKING ABOUT IT. I  
9 MEAN, THEY WERE TALKING ABOUT IT.

10 Q. NO, MY QUESTION IS YOU MADE THE STATEMENT THAT  
11 SUGGESTS YOUR BELIEF AT THAT TIME THAT THE MAYOR'S OFFICE HAD  
12 BEEN WORKING ON THIS, CORRECT?

13 A. YES. BECAUSE OF THE E-MAIL THAT MR. GUERRA SENT.

14 Q. GIVE US A MOMENT WHILE WE CHECK ANOTHER E-MAIL.

15 ULTIMATELY THE CITY DID ENTER INTO AN AMENDMENT; IS  
16 THAT CORRECT?

17 A. AN AMENDMENT WITH NORCAL?

18 Q. YES.

19 A. YES.

20 Q. AND YOU TOLD US YOU WORKED ON THAT AMENDMENT, RIGHT?

21 A. THAT'S CORRECT.

22 Q. AND AS A RESULT OF THIS AMENDMENT, THE CITY OBLIGATED  
23 ITSELF TO PAY NORCAL MORE THAN 11 MILLION DOLLARS, CORRECT?

24 A. SOMETHING LIKE THAT, YES.

25 Q. WHAT WAS THE CONSIDERATION FOR THE CITY FOR THAT  
26 AMENDMENT?

27 A. WELL, NORCAL PROVIDED SOME ADDITIONAL COMMITMENT  
28 TOWARDS THE WASTE CHARACTERIZATION STUDY, THEY PROVIDED

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1 ADDITIONAL BINS, DUMPSTER TYPE ROLLING BOXES FOR ADDITIONAL  
2 NEIGHBORHOOD CLEANUPS. THEY COMMITTED TO AN E-WASTE PROGRAM.  
3 THOSE WERE THE MAJOR --

4 Q. IS THAT THE SAME CONSIDERATION THAT EARLIER IN 2004  
5 YOU CHARACTERIZED AS INADEQUATE TO SUPPORT THIS AMENDMENT?

6 A. NO. WHAT THEY WERE ORIGINALLY PROPOSING WAS THAT  
7 THEY WOULD DO, THAT THEY HAD DONE SOME THINGS LIKE PUT MORE  
8 PEOPLE OUT ON THE STREET TO WORK WITH CARTS, GET THE CARTS OUT  
9 FASTER. THOSE WERE THE ONES I SAID THEY HAVE ALREADY DONE  
10 THAT STUFF, IT'S NOTHING NEW.

11 Q. SO THE CONSIDERATION YOU JUST LISTED FOR US THAT  
12 SUPPORTS THIS 11 MILLION DOLLAR AMENDMENT, WHAT DOLLAR VALUE  
13 WOULD YOU PUT ON THAT CONSIDERATION?

14 A. I COULDN'T COME UP WITH A DOLLAR VALUE, I HAVE NO  
15 IDEA WHAT IT WOULD BE. THE WASTE CHARACTERIZATION PIECE OF  
16 IT, I BELIEVE THEY COMMITTED TO PUTTING IN \$100,000, BUT WHAT  
17 THE E-WASTE PROGRAM WOULD COST, I HAVE NO WAY OF KNOWING.

18 Q. DID YOU MAKE ANY EFFORT TO ASSESS WHETHER OR NOT THE  
19 OFFER OF THE CONSIDERATION WAS ADEQUATE TO SUPPORT AN 11  
20 MILLION DOLLAR ADDITIONAL PAYMENT BY THE CITY?

21 A. MY UNDERSTANDING OF CONSIDERATION IS THAT IT DOES NOT  
22 HAVE TO BE DOLLAR FOR DOLLAR.

23 Q. SO \$150,000 COULD LEGALLY SUPPORT AN 11 MILLION  
24 DOLLAR PAYMENT?

25 A. I THINK IT COULD.

26 Q. WOULD IT BE FAIR TO SAY WHEN THIS NOTION OF AMENDING  
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27 THE NORCAL AGREEMENT TO PAY FOR ADDITIONAL LABOR COSTS FIRST  
28 CAME TO YOUR ATTENTION, YOU DIDN' T SEE ANY NEED FOR SUCH AN

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1 AMENDMENT?

2 A. THAT' S CORRECT. THERE WAS NO OBLIGATION ON OUR PART  
3 TO ENTER INTO AN AMENDMENT.

4 Q. AT SOME POINT DID YOUR THINKING ON THIS CHANGE?

5 A. WELL, IF SOMEBODY WANTED TO PAY ADDITIONAL MONEY,  
6 THEN THERE HAD TO BE AN AMENDMENT.

7 Q. I UNDERSTAND. CAN THE CITY LEGALLY MAKE A GIFT OF  
8 PUBLIC FUNDS?

9 A. NO.

10 Q. SO IN ORDER TO MAKE THIS ADDITIONAL PAYMENT TO  
11 NORCAL, THERE WOULD HAVE TO BE SOME GOING BACK TO THE CITY  
12 COUNCIL, CORRECT?

13 A. THAT' S CORRECT.

14 Q. BUT IN YOUR VIEW, EVEN IF THE AMOUNTS OR VALUES OF  
15 THE CONSIDERATION WERE GROSSLY DISPARATE, THAT WOULD BE OKAY.

16 A. THAT WOULD BE UP TO THE COUNCIL TO MAKE THAT  
17 DECISION. FROM A LEGAL PERSPECTIVE, IT WOULD WORK.

18 Q. JUST GIVE ME A MOMENT AND I' LL CHECK MY NOTES.

19 JUST SO WE' RE CLEAR, THE CONSIDERATION THAT  
20 ULTIMATELY WAS USED TO SUPPORT THIS 11 MILLION DOLLAR PAYMENT  
21 TO NORCAL WAS AN E-WASTE PROGRAM, CORRECT?

22 A. PART OF IT.

23 Q. AND AN ADDITIONAL STUDY TO DO WHAT?

24 A. WASTE CHARACTERIZATION STUDY.

25 Q. WHAT DOES THAT MEAN?

26 A. IF YOU CAN TAKE A LOOK AT THE MATERIAL THAT'S IN THE  
27 CARTS, IT DEPENDS ON WHERE YOU WANT TO DO THIS, BUT YOU COULD  
28 LOOK AT THE MATERIAL IN THE CARTS THAT ARE SET OUT ON THE

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1 STREET, LOOK AT THE MATERIAL AS IT IS EMPTIED ON THE TIPPING  
2 FLOOR AT THE FACILITY, OR YOU COULD LOOK AT IT AFTER IT COMES  
3 OFF THE LINE, WHATEVER YOU HAVE LEFT FROM THE RECYCLING  
4 PROCESS, GENERALLY CALLED A BALE STUDY.

5 Q. ANYTHING ELSE?

6 A. IN THE WASTE CHARACTERIZATION STUDY?

7 Q. NO, IN TERMS OF CONSIDERATION FOR THIS 11 MILLION  
8 DOLLAR EXTRA PAYMENT.

9 A. WELL, YOU KNOW, AS FAR AS WHAT WE WROTE INTO THE  
10 DOCUMENT, THAT'S BASICALLY WHAT, ADDITIONAL BINS FOR THE  
11 NEIGHBORHOOD CLEANUPS, E-WASTE, AND WASTE CHARACTERIZATION,  
12 BUT AT THE SAME TIME I THINK THERE WERE, THERE WAS A LOT OF  
13 DISCUSSION AT THE CITY COUNCIL MEETING ABOUT LABOR PEACE AND  
14 ABOUT DOING THE RIGHT THING FOR WORKERS. SO THAT PROBABLY WAS  
15 PART OF THE DISCUSSION, EVEN THOUGH WE DIDN'T REQUIRE THEM TO  
16 PAY PREVAILING WAGES.

17 Q. LET'S LOOK AT EXHIBIT 60. CAN YOU TELL US WHAT  
18 EXHIBIT 60 IS?

19 A. MOST OF IT LOOKS LIKE A COPY OF THE SECOND AMENDMENT  
20 TO THE AGREEMENT WITH NORCAL.

21 Q. SO THIS IS THE AMENDMENT WE'RE TALKING ABOUT THAT  
22 RESULTED IN THE PAYMENT TO NORCAL OF MORE THAN 11 MILLION

23 DOLLARS, CORRECT?

24 A. THAT'S CORRECT. THERE'S A BLANK PAGE IN THERE, I  
25 DON'T KNOW WHAT THAT IS.

26 Q. APPARENTLY, IT'S THE BACK OF THE PAGES.

27 A. OH, OKAY.

28 Q. APPARENTLY, IT WAS A TWO-SIDED COPY. COULD YOU

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1 IDENTIFY WHERE IN THE AGREEMENT THE CONSIDERATION GIVEN TO THE  
2 CITY IS SET FORTH?

3 A. IN SECTION ONE, STARTING AT PAGE ONE -- ACTUALLY  
4 IT'S, IT GOES INTO PAGE TWO. STARTING AT LINE FOUR, THERE IS  
5 A PROVISION FOR ADDITIONAL BINS FOR THE NEIGHBORHOOD CLEANUPS  
6 AND ALSO FOR TARGETED CLEANUPS. THAT'S ONE.

7 SECTION THREE SETS OUT -- WE HAVE BEEN CALLING IT  
8 WASTE CHARACTERIZATION STUDY; IN THE CONTRACT IT'S CALLED A  
9 MATERIAL COMPOSITION STUDY. AND SECTION FOUR SETS OUT THE  
10 E-WASTE PROGRAM.

11 Q. NOW, IN SECTION THREE THE MATERIAL CHARACTERIZATION  
12 STUDY, ACTUALLY WHAT THE CONTRACTOR IS OBLIGATING THEMSELVES  
13 TO DO IS TO FUND UP TO \$100,000 TOWARDS THAT?

14 A. THAT'S RIGHT.

15 Q. SO THEY'RE NOT ACTUALLY PICKING UP THE WHOLE COST OF  
16 THE STUDY?

17 A. THAT WOULD BE CORRECT, UNLESS YOU DIDN'T DO A VERY  
18 GOOD ONE.

19 Q. SO WE KNOW, AT LEAST BASED ON THE RECITAL HERE, AT  
20 LEAST AS FAR AS THE DOLLAR VALUE OF THE WASTE AND MATERIAL

21 CHARACTERIZATION STUDY, THE CONTRACTORS ONLY PROVIDED THE CITY  
22 WITH \$100,000 IN VALUE, CORRECT?

23 A. FOR THE WASTE CHARACTERIZATION STUDY, THAT WOULD BE  
24 CORRECT.

25 Q. AND WHERE IS THE E-WASTE PROGRAM SET FORTH?

26 A. SECTION FOUR, STARTING AT PAGE FOUR. IT'S CALLED THE  
27 SCRAP ELECTRONIC EQUIPMENT PROGRAM IN THE CONTRACT.

28 Q. YOU TOLD US, I THINK, THAT YOU ATTENDED MANY IF NOT

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1 MOST OF THE MEETINGS AND DISCUSSIONS THAT TOOK PLACE IN  
2 CONNECTION WITH THIS AMENDMENT.

3 A. YES.

4 Q. AND I GET THE IMPRESSION THAT THE DOLLAR VALUE OF  
5 NORCAL'S CONSIDERATION IS REALLY NOT SOMETHING THAT YOU AND  
6 THE CITY FOCUSED UPON IN THIS NEGOTIATION; WOULD THAT BE TRUE?

7 A. I DIDN'T FOCUS ON IT BEING, WHETHER IT OUGHT TO BE, I  
8 DON'T KNOW IF ANYBODY ELSE DID.

9 Q. AND ISN'T THE REASON FOR THAT BECAUSE THE  
10 CONSIDERATION RECITED IN THIS AGREEMENT IS NOT THE REAL  
11 MOTIVATION FOR THE CITY ENTERING INTO THIS AMENDMENT?

12 A. YOU WOULD HAVE TO ASK SOMEBODY WHO ACTUALLY APPROVED  
13 THE AMENDMENT WHAT THEIR MOTIVATION WAS.

14 Q. WHERE IN THE AMENDMENT DOES IT SET FORTH ADDITIONAL  
15 PAYMENTS TO NORCAL?

16 A. THERE WAS, IN SECTION TWO THERE WAS AN AMENDMENT TO  
17 ADD IN AT LINE 38 THE ADDITIONAL PAYMENTS THAT WERE GOING TO  
18 BE MADE, AND THEN THERE'S A SCHEDULE OF PAYMENTS THAT IS PART

19 OF EXHIBIT 1. THE LAST PAGE OF THE DOCUMENT IS NOT PART OF  
20 THE CONTRACT.

21 Q. WHAT'S THE LAST PAGE?

22 A. IT SAYS FUND 423 CONTRACT.

23 Q. I SEE. OKAY. SO ARE WE LOOKING AT THE EXHIBIT 1,  
24 PAGE FOUR OF FOUR, IS THAT THE SCHEDULE OF PAYMENT?

25 A. YES.

26 Q. WE'RE GOING TO BREAK IN A MOMENT AND GIVE THE  
27 REPORTER A REST, BUT LET ME ASK YOU A FEW MORE QUESTIONS.

28 DID SOME OF THESE PAYMENTS COVER RETROACTIVELY COSTS

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1 THAT HAD BEEN INCURRED BY NORCAL?

2 A. YES. THE ONES IN THE FIRST YEAR.

3 Q. WHAT IS THE JUSTIFICATION OR REASON FOR GIVING NORCAL  
4 RETROACTIVE PAYMENT FOR THESE COSTS?

5 A. IT WAS MONEY THAT NORCAL HAD PAID TO CWS SPECIFICALLY  
6 FOR THE MATERIALS RECOVERY FACILITY WORKERS. THAT WAS WHAT WE  
7 WERE TOLD JUSTIFIED ALL THE NUMBERS. THE NUMBERS THAT CAME  
8 OUT WERE ONES THAT WERE GIVEN TO US TO PUT IN THE CONTRACT.

9 Q. AS SOMEONE WHO HAS WORKED FOR A NUMBER OF YEARS FOR  
10 THE CITY ATTORNEY'S OFFICE IN TRANSACTIONS, CAN YOU THINK OF  
11 ANY OTHER OCCASION WHEN THE CITY AMENDED A CONTRACTOR'S  
12 AGREEMENT TO PROVIDE RETROACTIVE PAYMENTS TO THE CONTRACTOR?

13 A. THERE HAVE BEEN SOME WHERE THE CONTRACTOR DID EXTRA  
14 WORK OR THE MONEY RAN OUT AND THEY WERE CONTINUING TO WORK AND  
15 WE WOULD DO AN AMENDMENT TO MAKE THEM WHOLE. IT'S NOT VERY  
16 OFTEN.

17 Q. WELL, IN THE CASE OF NORCAL WE'RE NOT TALKING ABOUT  
18 WORKERS HAVING DONE WORK WITH NO COMPENSATION UNDER THIS  
19 AGREEMENT, ARE WE?

20 A. NOT FROM MY PERSPECTIVE, BUT FROM THEIR -- I THINK  
21 THEY PROBABLY WOULD TAKE A DIFFERENT POSITION.

22 Q. DID MORE GARBAGE GET PICKED UP?

23 A. NO.

24 Q. DID MORE MATERIALS GET RECYCLED?

25 A. THAT I CAN'T TELL YOU BECAUSE I DON'T KNOW WHETHER IF  
26 THE WORKERS HAD NOT BEEN, IF THEY HAD NOT PUT UPON SECOND  
27 SHIFT AND NOT PAID FOR MORE WORKERS, WHAT THE RESULT WOULD  
28 HAVE BEEN.

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1 Q. WELL, THE AGREEMENT OBLIGATED THE CONTRACTOR NORCAL  
2 TO DELIVER CERTAIN SERVICES TO THE CITY OF SAN JOSE, CORRECT?

3 A. RIGHT.

4 Q. AND HOW MANY WORKERS THEY CHOSE TO EMPLOY TO PROVIDE  
5 THAT SERVICE, THAT WAS NORCAL'S PROBLEM, NOT THE CITY'S,  
6 CORRECT?

7 A. NORCAL, OR IN THIS CASE THE SUBCONTRACTOR'S.

8 Q. IT WASN'T A CITY PROBLEM?

9 A. NO.

10 Q. THE CITY, UNDER THE ORIGINAL AGREEMENT, WAS NOT ON  
11 THE HOOK FOR ANY INCREASED LABOR COSTS OF THOSE KINDS,  
12 CORRECT?

13 A. CORRECT.

14 MR. FINKELSTEIN: WHY DON'T WE TAKE OUR MORNING  
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15 RECESS.

16 THE FOREMAN: LET' S RECESS FOR 10 MINUTES.

17 (A BRIEF RECESS WAS TAKEN.)

18 THE FOREMAN: LET' S RECONVENE THE GRAND JURY  
19 SESSION. THE RECORD WILL SHOW 18 JURORS ARE PRESENT, AND MISS  
20 (NAME REDACTED) IS ABSENT.

21 BY MR. FINKELSTEIN:

22 Q. MISS DEVENCENZI, FROM A LEGAL POINT OF VIEW, WERE  
23 THERE ANY RISKS TO THE CITY THAT MIGHT FLOW FROM THE CITY  
24 ENTERING INTO THIS AMENDMENT?

25 A. I THINK WE HAD SOME INDICATION THAT ONE OF THE OTHER  
26 COMPANIES MIGHT INITIATE LITIGATION OVER IT, BUT THEY NEVER  
27 DID.

28 Q. WELL, I' M ASKING ABOUT POTENTIAL RISKS AT THE TIME

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1 THAT WERE FORESEEABLE, NOT WHAT TRANSPIRED AFTERWARD. IN  
2 OTHER WORDS, AT THE TIME YOU WERE INVOLVED IN DRAFTING THIS  
3 AMENDMENT, DID YOU THINK THAT THE CITY MIGHT BE OPENING ITSELF  
4 UP TO LITIGATION OR CLAIMS BY OTHER CONTRACTORS WHO WERE NOT  
5 BEING OFFERED SIZEABLE INCREASES IN PAYMENTS?

6 A. NO. THAT THREAT CAME FROM SOMEBODY WHO WAS NOT A  
7 CONTRACTOR, BUT HAD PARTICIPATED IN THE REQUEST FOR PROPOSALS  
8 PROCESS.

9 Q. LET ME BREAK DOWN MY QUESTION. I APOLOGIZE, IT' S NOT  
10 A GOOD QUESTION.

11 WHEN THE CITY ENTERED INTO THESE CONTRACTS FOR  
12 RECYCLE PLUS SERVICES IN 2000 AND 2001, IT DID SO THROUGH A

13 FORMAL PROCESS, CORRECT?

14 A. YES.

15 Q. A REQUEST FOR PROPOSALS PROCESS, CORRECT?

16 A. THAT' S CORRECT.

17 Q. DID YOU GIVE THAT ANY CONSIDERATION TO WHETHER -- DID  
18 YOU GIVE ANY CONSIDERATION TO WHETHER OR NOT AMENDING THE  
19 CONTRACT TO PROVIDE FOR SUBSTANTIAL INCREASES IN THE PAYMENTS  
20 TO ONE OF THE CONTRACTORS NOT CALLED FOR IN THE ORIGINAL RFP  
21 MIGHT CALL INTO QUESTION THE INTEGRITY OF THE RFP PROCESS?

22 A. THERE' S ALWAYS THAT POSSIBILITY.

23 Q. BUT DID YOU GIVE ANY CONSIDERATION TO WHETHER OR NOT  
24 ENTERING INTO THIS AMENDMENT WITH NORCAL TO PROVIDE FOR THIS  
25 SUBSTANTIAL INCREASE IN PAYMENTS TO NORCAL MIGHT PRECIPITATE  
26 OTHER CONTRACTORS TO SEEK AMENDMENTS TO THEIR CONTRACTS SO  
27 THEY COULD GET MORE MONEY?

28 A. CONTRACTORS IN GENERAL OR --

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1 Q. CONTRACTORS, RECYCLE PLUS CONTRACTORS.

2 A. NO, WE DID NOT THINK THAT WOULD HAPPEN.

3 Q. WHY IS THAT?

4 A. THE OTHER CONTRACTORS HAD NO, AS FAR AS I KNOW, NO  
5 LABOR COSTS THAT THEY WERE INCURRING THAT WERE NOT PART OF  
6 THEIR PROPOSAL. I COULDN' T THINK OF A REASON WHY THEY WOULD  
7 COME BACK AND ASK FOR MORE MONEY.

8 Q. LET' S TAKE GREEN TEAM. THAT WAS ONE OF THE  
9 SUCCESSFUL CONTRACTORS?

10 A. RIGHT.

11 Q. THEY WERE AWARDED A RECYCLE PLUS CONTRACT WITH THE  
12 CITY, CORRECT?

13 A. THAT'S CORRECT.

14 Q. THEY USED MEMBERS OF THE CARPENTER'S UNION AS MRF  
15 WORKERS, DID THEY NOT?

16 A. THAT'S MY UNDERSTANDING, YES.

17 Q. WHO GOT PAID LESS THAN TEAMSTERS, DID THEY NOT?

18 A. I DON'T KNOW WHAT THEIR WAGE SCALE IS.

19 Q. IS IT A POSSIBILITY THEY MIGHT SEEK TO INCREASE WAGES  
20 AND BENEFITS FOR THEIR WORKERS, TO SEEK REIMBURSEMENT FROM THE  
21 CITY FOR THOSE EXTRA COSTS?

22 A. IT'S CONCEIVABLE, I SUPPOSE, BUT THEY WERE UNDER A  
23 COLLECTIVE BARGAINING AGREEMENT, SO --

24 Q. WASN'T CWS UNDER A COLLECTIVE BARGAINING AGREEMENT?

25 A. NOT UNTIL THEY ACTUALLY HIRED THEIR WORKERS, AND THEN  
26 THEY HAD TO NEGOTIATE, I DON'T KNOW WHEN THEY FINALLY  
27 NEGOTIATED A CONTRACT.

28 Q. TO YOUR KNOWLEDGE, DID THE CITY EVER EXPLORE ANY

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1 AMENDMENT TO THE GREEN TEAM AMENDMENT SO THAT THE LOWER PAID  
2 CARPENTER'S UNION MEMBERS WOULD BE BROUGHT UP TO THE SAME  
3 SCALE AS THE TEAMSTERS?

4 A. I'M NOT AWARE OF THAT AT ALL.

5 Q. DO YOU BELIEVE THAT AMENDING THE NORCAL AGREEMENT TO  
6 PAY THEM 11 MILLION DOLLARS MORE MONEY SO THAT THEY COULD PAY  
7 TEAMSTERS SCALE TO THEIR WORKERS WAS CARRYING OUT SOME CITY  
8 POLICY?

- 9 A. FIRST OF ALL, THESE WORKERS WERE NOT NORCAL WORKERS.  
10 Q. THE CWS WORKERS.  
11 A. WAS THAT TO CARRY OUT THE CITY POLICY?  
12 Q. YES. WAS THERE ANY ANYTHING IN THE CITY POLICY THAT  
13 REQUIRES THAT, TO YOUR KNOWLEDGE?  
14 A. NOT THAT I'M AWARE OF, NO.  
15 Q. BECAUSE IF THERE WERE, YOU WOULD EXPECT THAT GREEN  
16 TEAM WOULD HAVE A SIMILAR ISSUE SINCE THEY WERE USING LOWER  
17 PAID CARPENTER'S UNION MEMBERS, CORRECT?  
18 A. NOT NECESSARILY, THEY WERE ALREADY PAYING PREVAILING  
19 WAGE.  
20 Q. AS WE STARTED OUT THIS MORNING, PEOPLE UNDER A  
21 COLLECTIVE BARGAINING AGREEMENT WORKING IN A PRIVATE FACILITY  
22 NOT ON THE PUBLIC STREETS ARE NOT SUBJECT TO PREVAILING WAGE,  
23 ARE THEY?  
24 A. THEY WERE NOT SUBJECT TO PREVAILING WAGES UNDER THIS  
25 CONTRACT, BUT THERE IS NOTHING THAT PRECLUDES THE CITY FROM  
26 ASKING THE CONTRACTOR TO PAY PREVAILING WAGES EVEN THOUGH  
27 WORKERS ARE SOMEPLACE ELSE.  
28 Q. BUT THE CITY DIDN'T DO THAT IN THIS CASE, DID THEY?

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- 1 A. NO.  
2 Q. THAT'S ALL THE QUESTIONS I HAVE AT THIS TIME. YOU'RE  
3 NOT EXCUSED, WHICH MEANS YOU ARE SUBJECT TO BEING RECALLED AT  
4 A LATER DATE SHOULD THAT BECOME NECESSARY. I DON'T ANTICIPATE  
5 THAT, BUT SHOULD IT BECOME NECESSARY WE'LL CONTACT YOU AND  
6 GIVE YOU AS MUCH NOTICE AS POSSIBLE.

7 AS FAR AS TODAY IS CONCERNED, I HAVE NO MORE  
8 QUESTIONS. LET ME SEE IF THE JURORS HAVE ANY QUESTIONS. I  
9 DON'T SEE ANY.

10 THE FOREMAN HAS AN ADMONITION HE WANTS TO READ TO  
11 YOU.

12 THE FOREMAN: I WOULD LIKE TO READ A CONFIDENTIALITY  
13 ADMONITION.

14 YOU ARE ADMONISHED NOT TO REVEAL TO ANY PERSON,  
15 EXCEPT AS DIRECTED BY THE COURT, WHAT QUESTIONS WERE ASKED OR  
16 WHAT RESPONSES WERE GIVEN, OR ANY OTHER MATTERS CONCERNING THE  
17 NATURE OR SUBJECT OF THE GRAND JURY'S INVESTIGATION WHICH YOU  
18 LEARNED DURING YOUR APPEARANCE BEFORE THE GRAND JURY, UNLESS  
19 AND UNTIL SUCH TIME AS THE TRANSCRIPT OF THIS GRAND JURY  
20 PROCEEDING IS MADE PUBLIC. VIOLATION OF THIS ADMONITION IS  
21 PUNISHABLE AS CONTEMPT OF COURT.

22 DO YOU UNDERSTAND THAT?

23 THE WITNESS: I DO. HOW MUCH NOTICE WILL I GET IF I  
24 HAVE TO COME BACK?

25 MR. FINKELSTEIN: I'M SURE WE'LL GIVE YOU AS MUCH AS  
26 WE CAN, AT LEAST 24 HOURS, IF NOT MORE. PLEASE NOTIFY MY  
27 OFFICE IF YOU'RE GOING TO BE OUT OF THE AREA.

28 THE WITNESS: I WILL BE OUT ON THE 17TH, BUT PART OF

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1 THE PROBLEM IS JUGGLING SOME OF THE OTHER RESPONSIBILITIES I  
2 HAVE.

3 MR. FINKELSTEIN: I UNDERSTAND. WE'LL TRY TO  
4 ACCOMMODATE YOU.

5 THE WITNESS: I APPRECIATE THAT. THANK YOU.  
6 RICHARD DOYLE,  
7 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
8 AS FOLLOWS:

9 THE WITNESS: YES, I DO.

10 EXAMINATION:

11 BY MR. FINKELSTEIN:

12 Q. COULD YOU PLEASE STATE YOUR FULL NAME FOR THE RECORD?

13 A. JOHN RICHARD DOYLE.

14 Q. COULD YOU SPELL YOUR LAST NAME FOR THE REPORTER?

15 A. D-O-Y-L-E.

16 Q. YOU ARE CITY ATTORNEY FOR THE CITY OF SAN JOSE?

17 A. YES, I AM.

18 Q. BEFORE CONTINUING THE QUESTIONING, I HAVE TO GIVE YOU  
19 AN ADVISEMENT OF RIGHTS.

20 THE GRAND JURY IS CONDUCTING AN INVESTIGATION INTO  
21 THE FOLLOWING SUBJECTS:

22 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND APPROVED  
23 THE SELECTION OF NORCAL WASTE SYSTEMS OF SAN JOSE TO PROVIDE  
24 FOR COLLECTION OF RESIDENTIAL WASTE AND RECYCLABLE MATERIALS.

25 WHAT SAN JOSE CITY OFFICIALS KNEW ABOUT INCREASED  
26 COSTS THAT MIGHT ARISE FROM THE EMPLOYMENT OF TEAMSTERS TO DO  
27 THE RECYCLING FOR NORCAL SUBCONTRACTOR CALIFORNIA WASTE  
28 SOLUTIONS, INC.

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1 WHEN SAN JOSE CITY OFFICIALS FIRST LEARNED ABOUT  
2 SUCH INCREASED COSTS.

3                   WHY SAN JOSE CITY OFFICIALS GAVE SECRET ASSURANCES  
4 TO NORCAL THAT ADDITIONAL COSTS ARISING FROM THE USE OF  
5 TEAMSTERS BY CWS FOR THEIR SORTING OF RECYCLEABLE MATERIALS,  
6 WHICH WERE NOT INCLUDED IN THE ORIGINAL AGREEMENT WITH NORCAL,  
7 WOULD NONETHELESS BE PAID FOR BY THE CITY OF SAN JOSE.

8                   WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND APPROVED  
9 A RATE HIKE IN MAY 2003 TO PAY FOR THESE ADDITIONAL COSTS.

10                   WHETHER SAN JOSE OFFICIALS MISLED THE PUBLIC ABOUT  
11 THE REASON FOR THIS RATE HIKE.

12                   WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND APPROVED  
13 A CONTRACT AMENDMENT TO THE NORCAL AGREEMENT IN 2004 TO PAY  
14 FOR ADDITIONAL COSTS DUE TO THE USE OF TEAMSTERS FOR THE  
15 SORTING OF RECYCLABLE MATERIALS.

16                   AND, WHETHER ANYTHING WAS GIVEN OR PROMISED TO SAN  
17 JOSE CITY OFFICIALS AS AN INDUCEMENT TO TAKE THESE ACTIONS.

18                   YOU ARE A SUBJECT OF THE GRAND JURY'S INVESTIGATION.  
19 I'M NOT SUGGESTING ANYTHING SINISTER OR UNTOWARD BY THAT,  
20 SIMPLY THAT YOU ARE A PERSON WHOSE CONDUCT IS WITHIN THE SCOPE  
21 OF THE GRAND JURY'S INVESTIGATION.

22                   AS SUCH, YOU MAY REFUSE TO ANSWER ANY QUESTION IF A  
23 TRUTHFUL ANSWER TO THE QUESTION WOULD INCRIMINATE YOU.

24                   ANYTHING YOU DO SAY MAY BE USED AGAINST YOU BY THE  
25 GRAND JURY OR IN A SUBSEQUENT LEGAL PROCEEDING.

26                   IF YOU HAVE RETAINED COUNSEL, THE GRAND JURY WILL  
27 PERMIT YOU A REASONABLE OPPORTUNITY TO STEP OUTSIDE THE GRAND  
28 JURY ROOM TO CONSULT WITH COUNSEL IF YOU SO DESIRE.

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- 1 DO YOU UNDERSTAND EACH OF THESE RIGHTS?
- 2 A. YES, I DO.
- 3 Q. DO YOU HAVE ANY QUESTIONS ABOUT THESE RIGHTS?
- 4 A. NO.
- 5 Q. WHEN WERE YOU FIRST APPOINTED AS CITY ATTORNEY?
- 6 A. JANUARY, 2000.
- 7 Q. AND WHO APPOINTED YOU?
- 8 A. THE CITY COUNCIL OF THE CITY OF SAN JOSE.
- 9 Q. AND IS YOUR POSITION AN AT WILL POSITION?
- 10 A. IT'S AN AT WILL POSITION.
- 11 Q. AT WHOSE PLEASURE DO YOU SERVE?
- 12 A. THE CITY COUNCIL.
- 13 Q. NOW, YOU'RE AWARE THAT IN THE YEAR 2000 THE CITY
- 14 RELEASED A REQUEST FOR PROPOSALS FOR RECYCLE PLUS SERVICES?
- 15 A. YES.
- 16 Q. AND THAT ULTIMATELY, AT THE END OF 2000, THE CITY
- 17 COUNCIL SELECTED THREE OF THE PROPOSERS, WHICH WOULD BE
- 18 NORCAL, GREEN TEAM, AND GREEN WASTE, CORRECT?
- 19 A. THAT'S CORRECT.
- 20 Q. AND WHICH RESULTED IN AGREEMENTS BEING EXECUTED IN
- 21 EARLY 2001 WITH EACH OF THOSE CONTRACTORS, CORRECT?
- 22 A. THAT'S CORRECT.
- 23 Q. AND THE SERVICES WERE ACTUALLY SUPPOSED TO START JUNE
- 24 1 OF '02?
- 25 A. I THINK THAT'S CORRECT.
- 26 Q. AT THE END OF '02 THE CITY APPROVED A MODEST RATE
- 27 INCREASE FOR THOSE SERVICES; IS THAT CORRECT?
- 28 A. I DON'T RECALL A RATE INCREASE --

1 Q. IN SPRING OF '03, THE CITY APPROVED A SECOND RATE  
2 INCREASE, CORRECT?

3 A. YES.

4 Q. AND TO YOUR KNOWLEDGE WAS -- AND THIS WAS THE 9%  
5 INCREASE?

6 A. THAT'S CORRECT.

7 Q. DO YOU KNOW WHETHER OR NOT ANY PORTION OF THIS 9%  
8 RATE INCREASE INCLUDED AS A COMPONENT AN AMOUNT OF MONEY THAT  
9 COULD BE USED TO PAY ADDITIONAL MONEY FOR ADDITIONAL LABOR  
10 COSTS NOT PROVIDED FOR IN THE THEN EXISTING CONTRACT?

11 A. AT THE TIME OF RATE INCREASE?

12 Q. YES.

13 A. NO.

14 Q. SOMETIME LATER, DID YOU LEARN THAT?

15 A. YES.

16 Q. HOW DID YOU LEARN THAT?

17 A. I LEARNED THAT -- WELL, TWO SEPARATE TIMES. THERE  
18 WAS A, IN 2004, I BELIEVE IN SPRING OF 2004, THERE WAS AN  
19 EXCHANGE OF E-MAILS CONCERNING THE PURPOSE OF THE RATE  
20 INCREASE, AND SO IT WAS ALLUDED TO IN THE E-MAILS THAT I  
21 RECEIVED FROM THE MAYOR'S OFFICE -- I BELIEVE YOU HAVE THAT  
22 DOCUMENT.

23 THE OTHER TIME WAS AFTER THE GRAND JURY REPORT CAME  
24 OUT IN JUNE OF 2005.

25 MR. FINKELSTEIN: I WOULD LIKE TO MARK AS EXHIBIT 63  
26 A MEMORANDUM FROM RON GONZALES, DEL BORGS DORF, AND RICHARD  
27 DOYLE TO CITY COUNCIL. SUBJECT IS "RESPONSE TO GRAND JURY  
28 REPORT ON NORCAL AGREEMENT."

1 THE FOREMAN: SO MARKED.

2 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
3 JURY EXHIBIT 63.)

4 BY MR. FINKELSTEIN:

5 Q. MR. DOYLE, COULD YOU TAKE A LOOK AT 63 AND TELL US,  
6 DO YOU KNOW WHAT THAT DOCUMENT IS?

7 A. YES. THIS IS A DOCUMENT, I BELIEVE IT CONTAINS MY  
8 SIGNATURE ALONG WITH THE MAYOR AND CITY MANAGER, WHICH WAS A  
9 PROPOSED RESPONSE TO THE ORIGINAL GRAND JUROR REPORT THAT WAS  
10 FILED WITH THE CITY COUNCIL.

11 Q. LET'S TAKE A LOOK AT PAGE 36 OF THIS DOCUMENT. IS  
12 THAT THE SIGNATURE PAGE?

13 A. YES.

14 Q. AND YOU RECOGNIZE THE SIGNATURES ON THIS PAGE?

15 A. YES.

16 Q. THE SIGNATURE ABOVE THE PRINTED NAME RON GONZALES,  
17 WHOSE SIGNATURE IS THAT?

18 A. THAT'S RON GONZALES'.

19 Q. THE MAYOR OF SAN JOSE?

20 A. YES.

21 Q. AND THE SIGNATURE BELOW THAT, ABOVE THE PRINTED  
22 PORTION THAT READS DEL BORGSORF, WHOSE SIGNATURE IS THAT?

23 A. THAT'S DEL'S SIGNATURE.

24 Q. THE SIGNATURE BELOW THE ABOVE PRINTED NAME, WHOSE  
25 SIGNATURE IS THAT?

26 A. THAT'S MY SIGNATURE.

27 Q. DID YOU PREPARE THE DOCUMENT?

28 A. I HAD A PART IN PREPARING IT.

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1 Q. I'M SORRY?

2 A. I PLAYED A PART IN PREPARING THE DOCUMENT; I PREPARED  
3 PART OF THE DOCUMENT, NOT THE ENTIRE DOCUMENT.

4 Q. THIS MIKE SYSTEM --

5 A. IT IS LIKE OUR SYSTEM AT THE CITY COUNCIL MEETING. I  
6 AM ALWAYS CONCERNED IT'S NOT AUDIBLE.

7 Q. IT'S NOT VERY SENSITIVE.

8 A. I'M SORRY. I PREPARED PART OF THE DOCUMENT OR  
9 PARTICIPATED IN THE PREPARATION, BUT NOT DID NOT PREPARE THE  
10 ENTIRE DOCUMENT.

11 Q. YOU PREPARED A PORTION OF THE DOCUMENT?

12 A. YES.

13 Q. WHO ELSE WORKED ON THE DOCUMENT?

14 A. THE DOCUMENT WAS WORKED ON BY MEMBERS OF THE MAYOR'S  
15 STAFF, CITY MANAGER'S STAFF, AND MY STAFF.

16 Q. WHICH MEMBERS OF THE MAYOR'S STAFF WORKED ON THE  
17 PREPARATION OF THIS DOCUMENT?

18 A. DAVE OSBORNE, AND I BELIEVE REBECCA DI SHOTSKI.

19 Q. HOW DO YOU SPELL HER LAST NAME?

20 A. D-I-S-H-O-S-H-K-I. AND JOE GUERRA.

21 Q. AND JOE GUERRA IS WHO?

22 A. JOE GUERRA IS THE MAYOR'S BUDGET CHIEF.

23 Q. BUDGET AND POLICY DIRECTOR?

24 A. THAT'S HIS TITLE, YES.

25 Q. LET ME DIRECT YOUR ATTENTION TO A PORTION OF THIS

26 DOCUMENT. LET ME START WITH PAGE 15. THERE IS A -- THIS IS,  
27 I GUESS, A RESPONSE TO FINDING 1D OF THE GRAND JURY'S REPORT?  
28 A. YES, ON PAGE 15.

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1 Q. LET ME DIRECT YOUR ATTENTION TO PAGE 15, PARAGRAPH  
2 UNDER THE HEADING RESPONSE, PARAGRAPH A. THAT READS, THE  
3 MAYOR AND HIS BUDGET AND POLICY DIRECTOR HAVE DENIED -- I'M  
4 SORRY, STRIKE THAT.

5 PARAGRAPH A: THE MAYOR MET WITH NORCAL  
6 REPRESENTATIVES ON OCTOBER 6, 2000. DO YOU SEE THAT LINE?

7 A. YES.

8 Q. AND WHERE DOES THAT INFORMATION COME FROM?

9 A. THE MAYOR'S OFFICE.

10 Q. AND THE MAYOR SIGNED THIS DOCUMENT, CORRECT?

11 A. YES.

12 Q. DID THE MAYOR EVER TELL YOU THAT THAT WAS NOT TRUE OR  
13 ACCURATE?

14 A. UH -- NO.

15 Q. SO HE NEVER DENIED MEETING WITH NORCAL'S  
16 REPRESENTATIVES ON OCTOBER 6, 2000 AS STATED IN THIS DOCUMENT  
17 WHICH HE SIGNED, CORRECT?

18 A. NO -- THAT'S CORRECT, HE DID NOT DENY THAT.

19 Q. IT'S CORRECT HE NEVER DISAVOWED OR DENIED THE  
20 STATEMENT IN THE DOCUMENT WHICH BEARS HIS SIGNATURE THAT HE  
21 MET WITH NORCAL REPRESENTATIVES ON OCTOBER 6, 2000. THAT IS  
22 TRUE, RIGHT?

23 A. THAT'S TRUE.

24 Q. LET' S GO TO PAGE 16, PARAGRAPH B. THERE' S A  
25 STATEMENT THAT READS "NEITHER THE MAYOR NOR HIS BUDGET AND  
26 POLICY DIRECTOR MADE ASSURANCES TO NORCAL CWS AT THE OCTOBER 6  
27 MEETING THAT THE MAYOR WOULD TAKE STEPS NECESSARY TO HAVE SAN  
28 JOSE PAY THE INCREASED COSTS." THAT STATEMENT APPEARS HERE,

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1 DOES IT NOT?

2 A. THAT' S CORRECT.

3 Q. AND DID THE MAYOR EVER, SINCE THE SIGNING OF THIS  
4 DOCUMENT, HAS THE MAYOR EVER DENIED OR DISAVOWED THAT  
5 STATEMENT?

6 A. NO, I DON' T RECALL. I KNOW THERE HAVE BEEN A NUMBER  
7 OF SUBSEQUENT PRESS RELEASES AND COMMENTS FROM THE MAYOR ON  
8 THIS TOPIC. I DON' T KNOW TO THE EXTENT THEY MAY BE AT  
9 VARIANCE WITH THAT STATEMENT, BUT IN JULY 2005 WHEN DOCUMENT  
10 WAS PREPARED --

11 Q. THAT WAS THE MAYOR' S POSITION?

12 A. YES. JUST FOR CLARIFICATION, THE REASON IT WAS --  
13 JUST IN CONTEXT, THIS DOCUMENT WAS UNIQUE THAT THE MAYOR' S  
14 OFFICE, THE MANAGER' S OFFICE AND THE CITY ATTORNEY' S OFFICE  
15 WOULD BE INVOLVED IN PREPARING THE RESPONSE TO A GRAND JURY  
16 REPORT. TYPICALLY IT' S A STAFF RESPONSE, THEN IT IS APPROVED  
17 BY THE COUNCIL. BUT BECAUSE SO MANY OF THE FACTS WERE FALLING  
18 ON THE MAYOR THAT, TO THE EXTENT THOSE REPRESENTATIONS WERE  
19 MADE, THOSE ARE FROM THE MAYOR' S OFFICE. THERE' S EVIDENCE  
20 HERE OR FACTS HERE THAT ONLY THE MANAGER COULD HAVE RESPONDED  
21 TO, AND THERE ARE LEGAL ISSUES THAT ONLY THE CITY ATTORNEY

22 COULD ADDRESS. THAT'S WHY IT'S A JOINT DOCUMENT.

23 Q. IT'S A COMBINED EFFORT OF YOU, THE MANAGER'S OFFICE,  
24 AND THE MAYOR'S OFFICE?

25 A. RIGHT. WE HAD THE OPTION OF DOING THREE SEPARATE  
26 MEMOS OR COMBINED RESOURCES.

27 Q. THAT'S WHY IT HAS ALL THREE SIGNATURES?

28 A. THAT'S CORRECT.

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1 Q. PRESUMABLY THE PEOPLE SIGNING IT SIGNED OFF ON THE  
2 CONTENTS OF THAT MEMO?

3 A. THEY SIGNED OFF TO THE EXTENT THEY WERE REPRESENTED.  
4 I DID NOT SIGN OFF ON THE MEMO IN TERMS OF THE ACCURACY, OTHER  
5 THAN THAT IS REPRESENTED BY THE MAYOR'S OFFICE AND THE  
6 MANAGER'S OFFICE, TO THE EXTENT I KNEW THE FACTS.

7 WE WERE INVOLVED TO ASSIST THE STAFF IN PREPARING  
8 THIS, BOTH THE MAYOR'S STAFF AND THE MANAGER'S STAFF, AND TO  
9 ADDRESS SPECIFIC LEGAL ISSUES RAISED BY THE GRAND JURY.

10 Q. I GUESS YOU'RE SAYING YOU DON'T WANT TO BE HELD  
11 ACCOUNTABLE FOR THE REPRESENTATIONS MADE BY THE MAYOR THAT YOU  
12 DON'T HAVE FIRSTHAND KNOWLEDGE OF.

13 A. THAT'S CORRECT.

14 Q. THAT WOULDN'T BE TRUE OF THE MAYOR, WHO MAY OR MAY  
15 NOT HAVE FIRSTHAND KNOWLEDGE?

16 A. YOU'RE ABSOLUTELY RIGHT.

17 MR. FINKELSTEIN: LADIES AND GENTLEMEN, LET ME GIVE  
18 YOU A CAUTION ABOUT THIS DOCUMENT THAT WAS MARKED. THIS  
19 DOCUMENT CONTAINS A LOTS OF STATEMENTS WHICH LAWYERS SOMETIMES

20 REFER TO AS HEARSAY, AND WE'RE NOT OFFERING THIS DOCUMENT TO  
21 PROVE THAT ANY OF THE STATEMENTS IN HERE ACTUALLY HAPPENED OR  
22 ARE TRUE. THIS IS BEING OFFERED FOR A DIFFERENT PURPOSE,  
23 SIMPLY TO SHOW WHAT PEOPLE SAY IN THIS DOCUMENT ABOUT WHAT  
24 HAPPENED, WHICH MAY OR MAY NOT BE TRUE BASED ON OTHER EVIDENCE  
25 I PRESENT, SO YOU SHOULD BEAR THAT IN MIND.

26 BY MR. FINKELSTEIN:

27 Q. LET'S RETURN IF WE CAN TO THE NORCAL AGREEMENT,  
28 STARTING WITH THE PROPOSAL PROCESS. DO YOU KNOW APPROXIMATELY

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1 HOW LONG IT TOOK TO DEVELOP THE REQUEST FOR PROPOSALS?

2 A. YOU KNOW, IT WAS IN PROCESS FOR A LONG TIME.  
3 ACTUALLY, I WAS HIRED WHILE THE PROCESS WAS IN ITS BEGINNINGS.  
4 I KNOW THERE WERE A FEW COUNCIL MEETINGS WHERE THEY DISCUSSED  
5 THE PROPOSAL. I BELIEVE SUMMER OF 2000 WAS WHEN THE ACTUAL  
6 RFP WENT OUT ON THE STREET.

7 Q. AND YOU WERE HIRED WHEN?

8 A. IN JANUARY.

9 Q. SO IT WAS AT LEAST ONGOING WHEN YOU TOOK OFFICE?

10 A. YES. IN FACT, I THINK AT MY FIRST MEETING THERE WAS  
11 A DISCUSSION ABOUT THE NORCAL ISSUE, AND I ONLY KNOW THAT  
12 BECAUSE IN REFERENCE, ONE OF THE COUNCIL MEETING DATES WHERE  
13 IT WAS DISCUSSED CAME UP.

14 Q. AND AS FAR AS YOU KNEW, DID THE REQUEST FOR PROPOSAL  
15 SPECIFY EVERYTHING THAT NEEDED TO BE SPECIFIED TO BE  
16 CONSISTENT WITH CITY POLICY?

17 A. YES. I THINK THE RFPS ARE DESIGNED TO BE FLEXIBLE,

18 BUT THE ISSUES AROUND WHAT' S IMPORTANT TO THE CITY, DEALING  
19 WITH ISSUES LIKE LABOR PEACE, ISSUES LIKE MAKING SURE THAT YOU  
20 HAVE AN ABILITY TO DEAL WITH THE YARD WASTE, ALL THE NECESSARY  
21 THINGS THE CITY IS VERY CONCERNED ABOUT, RECYCLING, I THINK IT  
22 DID ADEQUATELY ADDRESS.

23 Q. SO, SPECIFICALLY, YOU BELIEVE THAT THE RFP WAS  
24 CONSISTENT WITH THE CITY' S THEN PREVAILING WAGE POLICY?

25 A. YES.

26 Q. AND IN PARTICULAR, WAS IT YOUR VIEW THAT AS TO THE  
27 MRF WORKERS, THE MATERIALS RECOVERY FACILITY WORKERS, THAT  
28 WORKED IN A PRIVATE FACILITY AND NOT ON PUBLIC LAND, THEY WERE

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1 NOT COVERED BY THE PREVAILING WAGE POLICY, WERE THEY?

2 A. NOT IN THIS CASE, NO.

3 Q. AND EVEN IF THEY HAD BEEN, IF THEY WERE SUBJECT TO AN  
4 EXISTING COLLECTIVE BARGAINING AGREEMENT, THAT WOULD BE YET  
5 ANOTHER REASON WHY THEY WOULD NOT HAVE TO BE PAID THE  
6 PREVAILING WAGE.

7 A. I THINK THE CITY' S POLICY IS THAT A COLLECTIVE  
8 BARGAINING AGREEMENT WOULD SUPERSEDE OR PREVAIL OVER THE  
9 PREVAILING WAGE CONCEPT.

10 Q. WAS THERE ANYTHING IN THE RFP THAT REQUIRED MRF  
11 WORKERS TO BE REPRESENTED BY THE TEAMSTERS?

12 A. NO.

13 Q. COULD THE CITY HAVE LAWFULLY INCLUDED A REQUIREMENT  
14 IN THE RFP THAT WOULD HAVE REQUIRED THE MRF WORKERS TO BE  
15 REPRESENTED BY THE TEAMSTERS?

16 A. NO, NOT IN MY VIEW.  
17 Q. THAT WOULD HAVE BEEN AN IMPROPER INTERFERENCE WITH  
18 THE WORKERS REPRESENTATIONAL RIGHTS UNDER THE FEDERAL LABOR  
19 LAW?

20 A. THAT WAS MY VIEW, YES.

21 Q. WAS THERE ANYTHING IN THE RFP THAT REQUIRED THE  
22 CONTRACTOR TO GIVE PREFERENCE IN HIRING TO MEMBERS OF A  
23 PARTICULAR UNION?

24 A. NO.

25 Q. WAS THERE ANYTHING IN THE RFP THAT REQUIRED THAT THE  
26 MRF WORKERS BE PAID WAGES AND BENEFITS THAT WERE AT LEAST  
27 COMMENSURATE WITH THE WAGES AND BENEFITS THAT THEY WERE THEN  
28 RECEIVING UNDER THE EXISTING CONTRACTS WITH THE CITY?

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1 A. NO.

2 Q. UNDER SAN JOSE'S FORMER GOVERNMENT, WAS THE MAYOR  
3 AUTHORIZED TO NEGOTIATE WITH NORCAL OVER ANY OF THE TERMS OF  
4 THE RECYCLE PLUS AGREEMENT?

5 A. THE MAYOR DOES NOT NEGOTIATE, NO. IT WOULD NOT BE  
6 THE APPROPRIATE PROTOCOL, EITHER UNDER THE CITY POLICIES OR  
7 THE CHARTER.

8 Q. IF THE MAYOR OR HIS BUDGET DIRECTOR HAD SUGGESTED OR  
9 INSINUATED TO NORCAL ON OCTOBER 6, 2000, THAT NOTWITHSTANDING  
10 THE AMOUNTS TO BE PAID FOR NORCAL UNDER THEIR PROPOSAL, THE  
11 CITY WOULD PAY ADDITIONAL AMOUNTS TO THEM SOMEHOW, WOULD THAT  
12 BE A VIOLATION OF THE CITY CHARTER IN YOUR OPINION?

13 A. I DON'T KNOW THAT IT WOULD BE A VIOLATION OF THE

14 CITY' S CHARTER IN AND OF ITSELF, BUT IT WAS NOT LEGALLY  
15 BINDING ON THE CITY.

16 Q. WHY IS THAT?

17 A. BECAUSE THE MAYOR, NOR ANY MEMBER OF THE COUNCIL,  
18 CANNOT COMMIT THE CITY TO ANYTHING. IT REQUIRES A VOTE OF THE  
19 CITY COUNCIL.

20 Q. IF THE MAYOR HAD SUGGESTED TO NORCAL AT THIS OCTOBER  
21 6, 2000 MEETING THAT NORCAL' S CHANCES OF WINNING A CONTRACT  
22 WOULD BE IMPROVED IF THEY ENTERED INTO A COLLECTIVE BARGAINING  
23 AGREEMENT WITH THE TEAMSTERS THAT COVERED MRF WORKERS THAT CWS  
24 WAS GOING TO EMPLOY, WOULD THAT HAVE BEEN IN YOUR VIEW A  
25 VIOLATION OF FEDERAL LABOR LAWS?

26 A. NO, I' M NOT A FEDERAL LABOR LAW EXPERT. MY CONCERN,  
27 AND I HAVE EXPRESSED IT, IS THAT THE CITY SHOULD NOT BE  
28 INVOLVED IN PICKING FAVORITES AMONG UNIONS. BUT FOR THE

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1 REASON YOU STATED, FEDERAL LABOR LAW, I DON' T KNOW IF IT' S A  
2 VIOLATION.

3 I CAN SAY THIS, THE CITY IS NOT REQUIRED. WHETHER  
4 AN INDIVIDUAL MEMBER OF THE CITY COUNCIL, INCLUDING THE MAYOR,  
5 CAN SAY, WE PREFER THIS, OR MAKE A STATEMENT TO THAT EFFECT, I  
6 DON' T KNOW IF THAT' S A VIOLATION, BUT THE CITY COULD NOT  
7 REQUIRE ONE UNION OVER THE OTHER.

8 Q. SO TO PUT IT IN THE SIMPLEST TERMS, THE CITY IS NOT  
9 SUPPOSED TO PLAY FAVORITES WHEN IT COMES TO SELECTING THE  
10 UNION REPRESENTING THE WORKERS IN A CONTRACT?

11 A. THAT' S CORRECT.

12 Q. DID YOU HAVE ANY INVOLVEMENT IN NEGOTIATING THE  
13 NORCAL AGREEMENT WITH THE CITY OF SAN JOSE?

14 A. NO. MY OFFICE DID, BUT I DIDN' T.

15 Q. HOW DID YOU FIRST COME TO LEARN THAT THE CITY MIGHT  
16 BE ASKED TO PAY ADDITIONAL MONEY TO NORCAL, ADDITIONAL LABOR  
17 COSTS NOT COVERED IN THE CONTRACT?

18 A. UH -- IN 2003, FEBRUARY OF 2003.

19 Q. WHAT HAPPENED THEN?

20 A. THERE WAS A SERIES OF E-MAILS THAT I WAS PRIVY TO,  
21 EITHER CC' S OR I WAS ONE OF THE ADDRESSEES. IT WAS FROM THE  
22 MAYOR' S BUDGET CHIEF, MR. GUERRA, AND HE HAD INDICATED THAT  
23 THEY HAD WANTED TO BRING FORWARD AN AMENDMENT TO THE CITY  
24 COUNCIL TO SEEK ADDITIONAL COMPENSATION, TO COVER THE MRF  
25 WORKERS.

26 Q. ACTUALLY, WASN' T IT THE CASE THAT INITIALLY THERE WAS  
27 SOME EFFORT TO SEE IF A WAY COULD BE FOUND TO MAKE ADDITIONAL  
28 PAYMENTS TO NORCAL WITHOUT AN AMENDMENT TO THE AGREEMENT?

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1 A. I THINK THAT' S CORRECT.

2 Q. WHO WAS INVOLVED IN THAT EFFORT?

3 A. I BELIEVE IT WAS JOE GUERRA AND CARL MOSHER.

4 Q. AND IN CONNECTION WITH -- WE' VE HEARD TESTIMONY ABOUT  
5 A 2003 RATE HIKE FOR THE RECYCLE PLUS SERVICES IN THE AMOUNT  
6 OF 9%. ARE YOU FAMILIAR WITH THAT?

7 A. YES.

8 Q. DO YOU KNOW WHETHER ANY PORTION OF THAT 9% WAS  
9 DESIGNED TO COVER THE POSSIBILITY OF MAKING EXTRA PAYMENTS TO

10 NORCAL FOR THE PURPOSE OF REIMBURSING NORCAL FOR EXTRA LABOR  
11 COSTS NOT PROVIDED FOR IN THE THEN EXISTING CONTRACT?

12 A. AT THE TIME, NO. BUT I'VE COME SINCE, I HAVE BEEN  
13 THROUGH THESE DOCUMENTS MANY TIMES IN CONNECTION WITH  
14 PREPARATION OF THIS RESPONSE TO THE GRAND JURY REPORT, YES.

15 Q. YOU NOW KNOW THAT, BUT DIDN'T AT THE TIME?

16 A. THAT'S CORRECT.

17 Q. IN CONNECTION WITH THESE RATE HIKES, DOESN'T  
18 PROPOSITION 218 REQUIRE THAT A NOTICE GO OUT TO THE  
19 RATEPAYERS, OR IN THIS CASE THE PROPERTY OWNERS?

20 A. THAT'S RIGHT.

21 Q. IS IT TRUE THAT IF A MAJORITY OF THE PROPERTY OWNERS  
22 PROTEST THE RATE HIKE, THE CITY COUNCIL COULD NOT IMPOSE THE  
23 RATE HIKE?

24 A. THAT'S CORRECT.

25 Q. IS IT TRUE THE PROP 218 NOTICE REQUIRES THAT THE  
26 PROPERTY OWNERS BE TOLD THE REASON FOR THE RATE HIKE?

27 A. YES.

28 MR. FINKELSTEIN: WE'RE GOING TO HAVE TO BREAK IN A

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1 MOMENT, UNFORTUNATELY.

2 BY MR. FINKELSTEIN:

3 Q. I WOULD LIKE YOU TO TAKE A LOOK AT WHAT HAS BEEN  
4 MARKED AS EXHIBIT 37. THIS IS THE APRIL 11, 2003 NOTICE THAT  
5 WE UNDERSTAND WENT OUT IN CONNECTION WITH THE 2003 RATE HIKE;  
6 IS THAT CORRECT?

7 A. YEAH, I THINK THAT'S RIGHT. I NEVER SAW THAT

8 PERSONALLY, NO.

9 Q. WELL, LET ME ASK YOU TO TAKE A LOOK AT IT NOW FOR A  
10 MOMENT IF YOU WOULD, AND IF YOU LOOK AT THE THIRD PARAGRAPH  
11 DOWN. THE SECOND SENTENCE SAYS, "THE PROPOSED RATE INCREASE  
12 IS NEEDED TO HELP MAKE GARBAGE AND RECYCLING SERVICES MORE  
13 SELF-SUPPORTING, MINIMIZE THE AMOUNT OF TAXPAYER FUNDS TO  
14 REQUIRED TO SUPPORT THEM, AND COVER RISING COSTS SINCE RATES  
15 WERE LAST INCREASED." DO YOU SEE THAT?

16 A. YES.

17 Q. IS THERE ANYTHING THERE THAT TO YOU DISCLOSES TO THE  
18 PROPERTY OWNERS THAT 6% OF THIS 9% RATE INCREASE IS FOR THE  
19 PURPOSE OF POTENTIALLY PAYING NORCAL ADDITIONAL MONEY TO COVER  
20 THEIR INCREASED LABOR COSTS?

21 A. NO.

22 Q. KNOWING TODAY THAT -- IF IN FACT 6% OF THIS 9% RATE  
23 INCREASE IN 2003 WAS BUILT IN TO COVER THE POTENTIAL OF PAYING  
24 THE NORCAL INCREASED LABOR COSTS THAT THE CITY WAS NOT  
25 OBLIGATED TO PAY IN '03, IS IT YOUR VIEW THIS NOTICE IN  
26 RETROSPECT WAS INADEQUATE?

27 A. THE NOTICE SHOULD HAVE DISCLOSED THAT IF THAT WAS THE  
28 PURPOSE OF THE RATE INCREASE.

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1 MR. FINKELSTEIN: WHY DON'T WE TAKE OUR LUNCHEON  
2 RECESS.

3 THE FOREMAN: MR. DOYLE, I WOULD LIKE TO READ AN  
4 ADMONITION OF CONFIDENTIALITY THAT APPLIES THROUGHOUT YOUR  
5 TESTIMONY.

6                   YOU ARE ADMONISHED NOT TO REVEAL TO ANY PERSON,  
7                   EXCEPT AS DIRECTED BY THE COURT, WHAT QUESTIONS WERE ASKED OR  
8                   WHAT RESPONSES WERE GIVEN OR ANY OTHER MATTERS CONCERNING THE  
9                   NATURE OR SUBJECT OF THE GRAND JURY'S INVESTIGATION WHICH YOU  
10                  LEARNED DURING YOUR APPEARANCE BEFORE THE GRAND JURY, UNLESS  
11                  AND UNTIL SUCH TIME AS THE TRANSCRIPT OF THIS GRAND JURY  
12                  PROCEEDING IS MADE PUBLIC. VIOLATION OF THIS ADMONITION IS  
13                  PUNISHABLE AS CONTEMPT OF COURT.

14                  DO YOU UNDERSTAND THAT?

15                  THE WITNESS: I UNDERSTAND.

16                  MR. FINKELSTEIN: THANK YOU VERY MUCH. SEE YOU AT  
17                  1:30.

18                  THE FOREMAN: LET'S ADJOURN, AND WE'LL RESUME AT  
19                  1:30 THIS AFTERNOON.

20                  (THE LUNCHEON RECESS WAS TAKEN.)

21  
22  
23  
24  
25  
26  
27  
28

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4 THE FOREMAN: COULD I CALL THE GRAND JURY BACK TO  
5 ORDER, PLEASE. LET THE RECORD SHOW THAT THE 18 JURORS WHO  
6 WERE PRESENT THIS MORNING ARE PRESENT THIS AFTERNOON, AND WE  
7 HAVE IN ADDITION MISS (NAME REDACTED), WHO IS THE NEW GRAND  
8 JUROR FILLING IN FOR (NAME REDACTED).

9 MISS (NAME REDACTED), I WOULD LIKE TO READ FOR YOU A  
10 DESCRIPTION OF THE CASE THAT WE ARE CONSIDERING HERE, AND THEN  
11 AN ADMONITION AS FAR AS IMPARTIALITY AND OBJECTIVITY.

12 WE HAVE OPENED A FORMAL INVESTIGATION OF THE CITY OF  
13 SAN JOSE'S NEGOTIATION AND EXECUTION OF A CONTRACT WITH  
14 VARIOUS WASTE MANAGEMENT SYSTEM PROVIDERS, IN PARTICULAR  
15 NORCAL. AND AS PART OF THAT INVESTIGATION THERE ARE A NUMBER  
16 OF THINGS THAT WE ARE LOOKING INTO, INCLUDING WHY SAN JOSE  
17 CITY OFFICIALS RECOMMENDED AND APPROVED THE SELECTION OF  
18 NORCAL WASTE SYSTEMS OF SAN JOSE, INC. TO PROVIDE FOR THE  
19 COLLECTION OF RESIDENTIAL WASTE AND RECYCLABLE MATERIALS.

20 WHAT SAN JOSE CITY OFFICIALS KNEW ABOUT INCREASED  
21 COSTS THAT MIGHT ARISE FROM THE EMPLOYMENT OF TEAMSTERS TO DO  
22 RECYCLING WORK FOR NORCAL'S SUBCONTRACTOR CALIFORNIA WASTE  
23 SOLUTIONS, CWS.

24 WHEN SAN JOSE CITY OFFICIALS FIRST LEARNED ABOUT  
25 SUCH INCREASED COSTS.

26 WHY SAN JOSE CITY OFFICIALS GAVE SECRET ASSURANCES  
27 TO NORCAL THAT ADDITIONAL COSTS ARISING FROM THE USE OF  
28 TEAMSTERS BY CWS FOR THE SORTING OF RECYCLEABLE MATERIALS,

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2 WOULD NONETHELESS BE PAID FOR BY THE CITY OF SAN JOSE.

3 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND APPROVED  
4 A RATE HIKE IN MAY 2003 TO PAY FOR THESE ADDITIONAL COSTS.

5 WHETHER SAN JOSE CITY OFFICIALS MISLED THE PUBLIC  
6 ABOUT THE TRUE REASONS FOR THIS RATE HIKE.

7 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND APPROVED  
8 A CONTRACT AMENDMENT TO THE NORCAL AGREEMENT IN 2004 TO PAY  
9 FOR ADDITIONAL COSTS DUE TO THE USE OF TEAMSTERS FOR SORTING  
10 OF RECYCLABLE MATERIALS.

11 AND FINALLY, WHETHER ANYTHING WAS GIVEN OR PROMISED  
12 TO SAN JOSE CITY OFFICIALS AS AN INDUCEMENT TO TAKE THESE  
13 ACTIONS.

14 THE ADMONITION THAT I WOULD LIKE TO READ IN TERMS OF  
15 IMPARTIALITY STATES: I DIRECT ANY MEMBER OF THE GRAND JURY  
16 WHO HAS A STATE OF MIND IN REFERENCE TO THE CASE OR TO THE  
17 PEOPLE OF THE STATE OF CALIFORNIA, REPRESENTED BY THE DISTRICT  
18 ATTORNEY, OR THE POSSIBLE PERSONS TO BE CHARGED WITH AN  
19 OFFENSE WHICH WILL PREVENT HIM OR HER FROM ACTING IMPARTIALLY  
20 AND WITHOUT PREJUDICE TO THE SUBSTANTIAL RIGHTS OF THE PARTIES  
21 TO COME FORWARD AN RETIRE FROM THESE PROCEEDINGS, FAILURE TO  
22 DO SO BEING PUNISHABLE BY THE COURT AS A CONTEMPT.

23 DO YOU HAVE ANY PROBLEM WITH THAT ADMONITION?

24 A JUROR: NONE.

25 THE FOREMAN: I THINK WE'RE READY TO GO WITH THE  
26 FULL PANEL OF 19 JURORS, AND I SHOULD SAY THAT MISS (NAME  
27 REDACTED), BECAUSE SHE IS COMING INTO THIS PROCEEDING AT AN  
28 ADVANCED TIME WILL NOT PARTICIPATE IN ANY DELIBERATION OF THE

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1 GRAND JURY SHOULD THERE BE A FORMAL LEGAL ACTION CONTEMPLATED.

2 MR. FINKELSTEIN: THAT'S CORRECT, MR. FOREMAN. I  
3 THINK IT'S IMPORTANT THAT OUR NEW GRAND JUROR AND ALL THE  
4 GRAND JURORS UNDERSTAND THAT IN A FORMAL HEARING, ONLY THOSE  
5 JURORS WHO HEARD ALL THE TESTIMONY IN EVIDENCE CAN PARTICIPATE  
6 IN DELIBERATION. AS WE SAID AT THE OUTSET, WE DON'T KNOW THAT  
7 WE ARE GOING TO BE RECOMMENDING OR ASKING YOU TO DELIBERATE ON  
8 ANY FORMAL MATTERS, AND THERE ARE FOUR OPTIONS THAT CAN TAKE  
9 PLACE IN CONNECTION WITH THIS INVESTIGATION.

10 WE CAN ASK YOU TO DELIBERATE ON WHETHER AN  
11 INDICTMENT SHOULD BE RETURNED, IN WHICH CASE THE NEW GRAND  
12 JUROR COULD NOT PARTICIPATE IN THE DELIBERATION.

13 WE CAN ASK YOU TO RETURN AN ACCUSATION TO REMOVE  
14 PUBLIC OFFICIALS FROM OFFICE. AGAIN, THE NEW GRAND JUROR  
15 WOULD NOT PARTICIPATE.

16 OR THE GRAND JURY CAN DECIDE TO ISSUE A FURTHER  
17 REPORT, IN WHICH CASE THE NEW GRAND JUROR COULD PARTICIPATE.  
18 OR YOU CAN DO NOTHING. SO THAT'S THE STATE OF THE  
19 INVESTIGATION.

20 ALL RIGHT? ANY QUESTIONS?

21 A JUROR: NO.

22 THE FOREMAN: WHY DON'T WE ASK OUR WITNESS TO COME  
23 BACK IN.

24 EXAMINATION, CONTINUED:

25 BY MR. FINKELSTEIN:

26 Q. MR. DOYLE, THANKS FOR COMING BACK THIS AFTERNOON.  
27 I'LL REMIND YOU THAT, HAVING BEEN SWORN IN THIS MATTER, YOU'RE  
28 STILL UNDER OATH. DO YOU UNDERSTAND THAT?

1 A. CORRECT.

2 Q. MR. DOYLE, WHEN WE BROKE FOR LUNCH WE HAD BEEN  
3 LOOKING AT THE RATE INCREASE IN 2003 FOR THE RECYCLE PLUS  
4 SERVICES; DO YOU RECALL THAT?

5 A. YES.

6 Q. I BELIEVE YOU INDICATED THAT, AT THE TIME THIS NOTICE  
7 WENT OUT IN APRIL OF 2003, YOU DID NOT UNDERSTAND THAT A LARGE  
8 COMPONENT OF THIS RATE INCREASE WAS BEING SOUGHT TO PAY FOR  
9 ADDITIONAL LABOR COSTS THAT NORCAL HAD OR MIGHT INCUR IN THE  
10 EVENT THAT THE COUNCIL APPROVED THAT ACTION, CORRECT?

11 A. THAT'S CORRECT.

12 Q. LET ME DIRECT YOUR ATTENTION TO EXHIBIT 29, WHICH IS  
13 AN E-MAIL CHAIN, I DON'T KNOW IF YOU CAN SEE IT FROM WHERE YOU  
14 ARE.

15 A. I CAN SEE IT.

16 Q. CAN YOU SEE IT?

17 A. YES.

18 Q. CAN YOU TELL US WHETHER OR NOT YOU RECALL RECEIVING  
19 THIS E-MAIL FROM JOE GUERRA ON FEBRUARY 10, 2003?

20 A. YEAH, I HAVE RECEIVED IT, I DID RECEIVE IT, AND I  
21 RECALL I HAVE SEEN THAT E-MAIL MANY TIMES SINCE THE GRAND JURY  
22 REPORT WAS RELEASED LAST YEAR, SO --

23 Q. DID YOU RECEIVE IT BACK AT THE TIME OF THE DATE  
24 INDICATED ON OR ABOUT FEBRUARY 10 OF 2003?

25 A. I'M SURE I DID. DO I RECALL RECEIVING IT ON FEBRUARY  
26 10, 2003, READING IT THEN, I CAN'T SAY.

27 Q. THEREABOUTS?

28 A. YEAH, I DO RECALL.

1 Q. OKAY. WAS THERE ANYTHING IN THIS E-MAIL THAT,  
2 LOOKING BACK ON IT NOW, SHOULD HAVE ALERTED YOU TO THE FACT  
3 THAT A SUBSTANTIAL PORTION OF THIS RATE INCREASE IN '03 WAS  
4 BEING SOUGHT TO COVER THE POSSIBILITY OF PAYING NORCAL MORE  
5 MONEY FOR ADDITIONAL LABOR COSTS?

6 A. NOT LOOKING AT THE E-MAIL IN AND OF ITSELF, NO.

7 Q. NOW, JUST TO MAKE SURE YOU UNDERSTAND MY QUESTION,  
8 I'M ASKING YOU WHETHER YOU MADE THAT REALIZATION AT THE TIME,  
9 I'M SAYING LOOKING BACK ON THIS E-MAIL TODAY --

10 A. IF I CONNECTED THE DOTS. IT WAS ONE DOT IN THE  
11 CHAIN, YES. BUT AT THE TIME I DIDN'T.

12 Q. AND LOOKING AT EXHIBIT 30, WHICH IS ANOTHER E-MAIL, A  
13 LATER E-MAIL OF FEBRUARY 10 FROM CARL MOSHER. IT MAKES  
14 REFERENCE TO A 1.9 MILLION DOLLAR FIGURE AND A 6% RATE  
15 INCREASE, DOES IT NOT?

16 A. THAT'S CORRECT.

17 Q. AT THE TIME, DID YOU KNOW WHAT THEY WERE TALKING  
18 ABOUT?

19 A. NO, THEY WERE TALKING DOLLAR AMOUNTS, BUT WE WERE  
20 FOCUSING ON THE LEGAL ISSUES CONCERNING THE CONTRACT.

21 Q. WASN'T THERE AN ATTACHMENT TO THESE E-MAILS THAT WAS  
22 IN THE FORM OF A LETTER FROM DAVID DUONG THAT WAS SEEKING 1.9  
23 MILLION FOR LABOR COSTS?

24 A. I DON'T RECALL THAT, THERE MAY HAVE BEEN.

25 Q. LET'S LOOK AT EXHIBIT 28. HAVE YOU EVER SEEN THIS  
26 DOCUMENT BEFORE?

27 A. YEAH, AGAIN, I THINK IN CONNECTION WITH OUR PREPARING  
28 THE RESPONSE TO THE GRAND JURY REPORT I HAVE SEEN A LOT OF

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1 THESE DOCUMENTS, AND THAT WOULD BE ONE, YES.

2 Q. SOME OF US HAVE DIFFERENT LEVELS OF SKILL USING  
3 COMPUTERS. DO YOU KNOW HOW TO OPEN ATTACHMENTS TO E-MAILS?

4 A. YEAH. IF AT LEAST THE ATTACHMENT IS THERE AND I CAN  
5 CLICK ON IT WITH THE MOUSE, I CAN DO THAT.

6 Q. WELL, GOING BACK TO EXHIBIT 30, IN THE E-MAIL CHAIN  
7 THERE'S A REFERENCE TO AN ATTACHED LETTER FROM DAVID DUONG, IS  
8 THERE NOT?

9 A. YES.

10 Q. AS A MATTER OF FACT, ISN'T THIS EXHIBIT 28 THE  
11 ATTACHED LETTER THAT'S BEING REFERENCED IN THAT E-MAIL?

12 A. IT LOOKS LIKE IT, YES.

13 Q. DID YOU OPEN THAT ATTACHMENT AT THE TIME YOU LOOKED  
14 AT THAT E-MAIL?

15 A. I CAN'T SAY IF I DID OR NOT. YOU KNOW I'M FAMILIAR  
16 WITH THE ISSUE, I CAN'T SAY IF I OPENED THAT ATTACHMENT.

17 Q. WOULD BE IT BE FAIR TO SAY, LOOKING AT THE CONTENT OF  
18 THE LETTER FROM MR. DUONG, HAD YOU OPENED THAT ATTACHMENT AT  
19 THAT TIME YOU WOULD HAVE BEEN ON NOTICE THAT A PORTION OF THIS  
20 RATE INCREASE WAS FOR THE PURPOSE OF RAISING MONEY TO PAY  
21 NORCAL FOR ADDITIONAL LABOR COSTS, CORRECT?

22 A. NO. I WOULDN'T HAVE. I MEAN, THIS WAS FEBRUARY  
23 2003. THIS IS WHEN THE ISSUE FIRST CAME TO OUR ATTENTION, OUR  
24 BEING THE CITY ATTORNEY'S OFFICE AND MY ATTENTION,

25 SPECIFICALLY ABOUT THIS INCREASED AMOUNT. AND THERE'S A CHAIN  
26 OF E-MAILS THAT TAKE PLACE DURING THIS TIME PERIOD, FEBRUARY,  
27 AND WE DON'T SEE ANYTHING AFTER THAT, AND WHEN I SAY AFTER  
28 THAT, FOR SOME TIME, FOR ALMOST EIGHT OR NINE MONTHS, ANY

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1 DISCUSSION ABOUT AN AMENDMENT. AND FROM MY STANDPOINT THERE  
2 WAS NO AMENDMENT BEING PROCESSED AT THE TIME, SO THIS WAS  
3 SOMETHING THAT SORT OF HAD FALLEN OFF THE CLIFF.

4 Q. OKAY. SO WHILE THAT MAY BE TRUE ABOUT AMENDMENTS,  
5 THERE IS CLEAR REFERENCE IN THE ATTACHED LETTER FROM MR. DUONG  
6 TO ADDITIONAL LABOR COSTS.

7 A. YES, THERE'S CLEAR REFERENCE TO ADDITIONAL LABOR  
8 COSTS, BUT THE CONNECTION IN MY MIND AN AMENDMENT AND A RATE  
9 INCREASE WOULD BE CONTEMPORANEOUS, WE WOULD GO  
10 CONTEMPORANEOUSLY.

11 Q. SO LET ME ASK YOU THIS: YOU HAVE AN E-MAIL THAT  
12 TALKS ABOUT A RATE INCREASE AND ATTACHED TO THAT E-MAIL IS A  
13 LETTER THAT TALKS ABOUT LABOR COSTS. ARE YOU SAYING THAT YOU  
14 DIDN'T SEE ANY CONNECTION BETWEEN THOSE TWO SUBJECTS?

15 A. NO, I'M NOT SAYING THAT. I'M SAYING AS I INTERPRETED  
16 THE E-MAILS, AND THERE MAY BE MORE THAN THIS ONE, AS I  
17 INTERPRETED THE E-MAILS PRIMARILY FROM JOE GUERRA WHAT WOULD  
18 IT TAKE TO BRING A RATE INCREASE FORWARD WAS THE QUESTION. AT  
19 THE SAME TIME WE WERE ASKED WHAT WOULD IT TAKE TO BRING A  
20 CONTRACT AMENDMENT FORWARD.

21 THE ISSUE FROM MY STANDPOINT JUST DIES AT THE END OF  
22 THE MONTH OF FEBRUARY OR AFTER THAT CHAIN OF E-MAILS AND WE

23 DON' T SEE THIS ISSUE OF PAYING ADDITIONAL MONEY TO CWS OR  
24 NORCAL COME BACK UNTIL LATE FALL OF 2003.

25 Q. OKAY. SO YOUR TESTIMONY IS YOU DIDN' T SEE ANY  
26 CONNECTION BETWEEN THE RATE INCREASE IN ' 03S AND ADDITIONAL  
27 LABOR COSTS INCURRED BY CWS FOR NORCAL?

28 A. THAT' S CORRECT.

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1 Q. NOW, THE GRAND JURY HAS HEARD EVIDENCE THAT IN 2004  
2 THE NORCAL AGREEMENT WITH THE CITY WAS IN FACT AMENDED TO  
3 PROVIDE FOR APPROXIMATELY 11 AND QUARTER MILLION DOLLARS IN  
4 ADDITIONAL PAYMENTS TO NORCAL TO RECOVER ADDITIONAL LABOR  
5 COSTS, CORRECT?

6 A. THAT' S RIGHT.

7 Q. AND YOUR OFFICE WAS RESPONSIBLE IN DRAFTING THAT  
8 AGREEMENT, CORRECT, THE AMENDMENT?

9 A. YEAH WE PREPARED THE AND THE I THINK I THINK  
10 SUSAN DEVENCENZI IN MY OFFICE AND WORK WITH ATTORNEY FROM  
11 NORCAL I THINK WE TOOK THE LEAD IN DRAFTS THE DOCUMENT.

12 Q. DO YOU RECALL WHAT THE CONSIDERATION WAS FOR THAT  
13 AMENDMENT?

14 A. THE CONSIDERATION WAS THE -- YOU' RE TESTING MY MEMORY  
15 HERE.

16 Q. I DON' T WANT YOU TO GUESS.

17 A. I' M RECALLING AS BEST AS I CAN. THE CONSIDERATION  
18 WAS, AT FIRST THERE WASN' T SUFFICIENT CONSIDERATION.

19 Q. WHY DO YOU SAY THAT?

20 A. BECAUSE WHEN THE PROPOSAL FIRST CAME TO OUR ATTENTION

21 IT WAS IN THE FORM OF PLEASE PROCESS THIS TO THE COUNCIL. WE  
22 SAID IT COULDN'T GO TO COUNCIL WITHOUT ADDITIONAL  
23 CONSIDERATION.

24 Q. WHY IS THAT?

25 A. BECAUSE IT'S A MATTER OF BASIC CONTRACT LAW WITHOUT  
26 ADDITIONAL VALUE THERE IS NO LEGAL OBLIGATION AND THE COUNCIL  
27 COULD NOT PAY ANY ADDITIONAL AMOUNTS --

28 Q. THE COUNCIL CAN'T JUST MAKE A GIFT OF PUBLIC FUNDS?

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1 A. NO.

2 Q. WHY NOT?

3 A. BECAUSE THE CONSTITUTION OF THE STATE OF CALIFORNIA  
4 PROHIBITS THAT.

5 Q. OKAY.

6 A. MOVING BEYOND THAT WE HAD IDENTIFIED THAT IN  
7 NEGOTIATIONS BETWEEN NORCAL AND CITY STAFF ADDITIONAL  
8 CONSIDERATION THAT WAS IN THE FORM OF ADDITIONAL DUMPSTERS FOR  
9 NEIGHBORHOOD CLEANUPS. THAT HAD BEEN A HIGH PRIORITY OF THE  
10 CITY GIVEN THE CITY HAS A STRONG NEIGHBORHOODS INVESTMENT  
11 POLICY AND THE HAD WANTED THESE CLEANUPS TO TAKE PLACE EVERY  
12 WEEKEND. SO THAT WAS THROWN ON THE TABLE.

13 THERE WAS A WASTE CHARACTERIZATION STUDY, THERE HAD  
14 BEEN DISPUTE BETWEEN NORCAL AND THE CWS OVER RECYCLING AND THE  
15 ISSUE OF CONTAMINATION GETTING INTO THE RECYCLING BINS OR  
16 GETTING INTO THE LINE. AND WE HAD ASKED NORCAL TO HELP FUND A  
17 WASTE CHARACTERIZATION STUDY SO THAT THE CITY COULD LOOK AT  
18 FROM THE BINS AND FROM THE POINT IN TIME THE RESIDENTS PUT

19 RECYCLEABLES IN THE BINS TO THE END OF THE ASSEMBLY LINE WHERE  
20 THEY REMOVED THE RECYCLABLES TO FIND OUT WHAT THE PROBLEMS  
21 WERE IN CONNECTION WITH THE CONTAMINATION OF RECYCLEABLES.

22 THERE WAS ANOTHER PROPOSAL OR ADDITIONAL  
23 CONSIDERATION OF WHAT'S CALLED E-WASTE. I CAN OPEN AN  
24 ATTACHMENT BUT OTHER THAN KNOWING IT'S PROBABLY COMPUTERS THAT  
25 ARE DISCARDED AND YOU WANT TO RECYCLE THESE, DISPOSE OF THE  
26 WASTE NOT CONTAMINATE THE LANDFILL OR DO IT IN AN IMPROPER  
27 WAY. THERE WAS AN E-WASTE PROGRAM NORCAL WAS GOING TO  
28 COMMENCE.

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1 THERE HAVE BEEN SOME CLAIMS FROM THIS, IN THE FORM  
2 OF CONSIDERATION. IN ANY CONTRACT IF SOMEBODY HAS A CLAIM  
3 AGAINST THE CITY OR A CLAIM AGAINST A PARTY IF THEY FOREGO  
4 THAT CLAIM THAT'S DEEMED CONSIDERATION.

5 NORCAL HAD MADE A CLAIM THAT THEY HAD RELIED ON  
6 REPRESENTATIONS FROM THE MAYOR'S OFFICE THAT THIS AGREEMENT  
7 WAS GOING TO BE BROUGHT FORWARD AND AMENDED AND IN RELIANCE ON  
8 THAT THEY WERE SAYING THAT THEY WOULD FILE A CLAIM AGAINST THE  
9 CITY.

10 I THINK WE HAD TREATED THAT CLAIM WITH LITTLE MERIT,  
11 WE DIDN'T BELIEVE IT HAD MUCH MERIT. ANY TIME THERE IS AN  
12 ISSUE, THERE'S A POTENTIAL FOR A LAWSUIT, IT'S AN ISSUE, SO  
13 THAT WAS THE GIST OF THE CONSIDERATION.

14 Q. AS FAR AS THE ADDITIONAL DUMPSTERS, THE E-WASTE  
15 PROGRAM AND THE MATERIALS COMPOSITION STUDY WHAT WAS YOUR  
16 UNDERSTANDING OF THE DOLLAR VALUE OF THOSE THREE ITEMS?

17 A. I THINK THE WASTE CHARACTERIZATION STUDY THEY WERE  
18 GOING TO CONTRIBUTE A HUNDRED THOUSAND DOLLARS. I THINK THE  
19 DUMPSTERS THE NUMBERS RANGED FROM 100 TO 200 SO HUNDRED BEING  
20 TO THE LOW END 200 ON THE MY END DEPENDING ON THE NEED. I  
21 BELIEVE THE E-WASTE I HAVE NO IDEA WHAT THAT WAS.

22 Q. ARE WE TALKING SOMETHING IN THE ORDER EVER \$100,000  
23 OR 2?

24 A. YEAH IT WASN'T MORE SIGNIFICANT THAN THE OTHER TWO.

25 Q. WERE YOU CONCERNED ABOUT THE DISPARITY IN DOLLAR  
26 VALUE BETWEEN THE CONSIDERATION OFFERED BY NORCAL VERSUS THE  
27 11 AND A QUARTER MILLION DOLLAR IN PAYMENTS THE CITY WOULD BE  
28 MAKING IF THIS AGREEMENT WENT THROUGH?

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1 A. I THINK I WAS CONCERNED ABOUT BUT THE LEGAL ISSUE WAS  
2 WAS THERE ADEQUATE CONSIDERATION AS A LEGAL PRINCIPLE TO  
3 JUSTIFY THE MATTER GOING TO THE CITY COUNCIL FOR COUNCIL  
4 REVIEW AND AUTHORIZATION.

5 SO WHAT CAME TO US INITIALLY WHEN THERE WAS NO  
6 CONSIDERATION WE PASSED ON THE ADEQUACY OF THE CONSIDERATION  
7 AS OPPOSED TO THE SUFFICIENCY IN TERMS OF WHETHER IT'S A  
8 DOLLAR FOR DOLLAR EXCHANGE. BUT LEGALLY IT COULD GO TO THE  
9 COUNCIL FOR CONSIDERATION.

10 Q. WOULD YOU SAY THAT THIS CONSIDERATION WAS WINDOW  
11 DRESSING TO MAKE LEGAL THE PAYMENT OF THIS 11 AND A QUARTER  
12 MILLION DOLLARS TO NORCAL?

13 A. NO, I WOULDN'T CALL THAT WINDOW DRESSING. IT WAS  
14 CLEARLY NOT DOLLAR FOR DOLLAR BUT I THINK THE PUBLIC POLICY

15 RATIONALE WILL BE THERE WAS A THREAT OF A LABOR DISTURBANCE IN  
16 LABOR PEACE PROVISION IN THE RFP I MADE REFERENCE TO OR WAS  
17 SOMETHING THAT WAS IMPORTANT TO THE CITY. AND THIS WAS SEEN  
18 AS NOT MONEY GOING TO NORCAL BUT A PASS THROUGH GOING TO  
19 WORKERS TO PAY WORKERS THE PREVAILING WAGE.

20 Q. WHICH THEY WERE ENTITLED TO RECEIVE?

21 A. WHICH THEY WERE ENTITLED TO RECEIVE UNDER THE  
22 CONTRACT, YOU' RE RIGHT.

23 Q. EVEN IF THIS CONSIDERATION --

24 A. CAN I GO BACK? I WANT MAKE SURE WHEN I SAY MOVES  
25 TITLE TO RECEIVE THE WORKER UNDER COLLECT LIVE BARGAINING  
26 AGREEMENT AS I UNDERSTOOD I HAD NOTHING DO IT THAT NEGOTIATION  
27 WERE ENTITLED TO RECEIVE WHATEVER THAT PRESENT RAILING WAGE WAS  
28 NORCAL WAS NOT TITLE MEAN TO RECEIVE ISN' T ADDITIONAL PAYMENTS

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1 THEY HAD ASSUMED FALSE PART OF THEIR ACCOUNT CONTRACT THE  
2 ADDITIONAL COULD SAY WHATEVER IT MAY BE IT WAS NOT CITY  
3 OBLIGATION.

4 Q. THIS IS ALL ABOUT THE MRF WORKERS EMPLOYED BY CWS?

5 A. THAT' S CORRECT.

6 Q. THE MRF WORKERS WEREN' T ENTITLED TO PREVAILING WAGE  
7 WERE THEY?

8 A. THEY WERE ENTITLED TO WHATEVER WAGE WAS AGREED TO  
9 BETWEEN CWS AND TEAMSTERS.

10 Q. RIGHT. WHICH MAY NOT --

11 (INTERRUPTION BY THE REPORTER.)

12 Q. RIGHT. AND THAT WAGE MAY OR MAY NOT BE THE

13 PREVAILING WAGE?

14 A. IT COULD BE MORE IT COULD BE LESS.

15 Q. EVEN IF THIS CONSIDERATION THAT'S RECITED IN THE  
16 AMENDMENT IN YOUR JUDGMENT WAS LEGALLY ADEQUATE THE TRUTH IS,  
17 IS IT NOT, THAT THAT CONSIDERATION NAMELY THE ADDITIONAL  
18 DUMPSTERS, THE MATERIALS COMPOSITION STUDY AND THE E-WASTE  
19 SCRAP PROGRAM WAS NOT WHAT WAS MOTIVATING THIS AMENDMENT WAS  
20 IT?

21 A. IT DEPENDS UPON WHO YOU TOOK TO WHOSE MOTIVATION IF I  
22 CAN ASK MOTIVE VAGUE THE AMENDMENT FROM THE PERCEPTION MUCH  
23 MAYOR'S OFFICE THE MANAGER PALE OFFICE, NORCAL, I REALLY  
24 DEPENDS ON WHOSE --

25 Q. LET'S TAKE THEM ONE AT A TIME. YOUR COMMUNICATIONS  
26 WITH JOE GUERRA FROM THE MAYOR'S OFFICE MADE THAT CLEAR NOW  
27 THAT MR. GUERRA'S INTEREST IN SUCH AN AMENDMENT WAS TO  
28 COMPENSATE NORCAL FOR ITS INCREASED LABOR COSTS, CORRECT?

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1 A. THAT'S CORRECT.

2 Q. THERE'S NO E-MAIL THAT YOU'VE SEEN OR COULD FIND FROM  
3 MR. GUERRA THAT TALKS ABOUT ADDITIONAL DUMPSTERS, OR A  
4 MATERIALS COMPOSITION STUDY OR AN E-MAIL WASTE PROGRAM AS  
5 BEING A REASON FOR SEEKING THIS AMENDMENT?

6 A. THAT'S RIGHT.

7 Q. AND WHO IN THE CITY WOULD YOU SAY WAS THE DRIVING  
8 FORCE BEHIND SEEKING THIS AMENDMENT AND BRINGING IT TO  
9 COUNCIL?

10 A. IT WAS THE MAYOR'S OFFICE AND CITY MANAGER'S OFFICE.

11 Q. AND IN THE MAYOR' S OFFICE ANYONE IN PARTICULAR?  
12 A. FOR GUERRA HAD BEEN THE DRIVING FORCE AS YOU  
13 INDICATED.  
14 Q. AGAIN, HIS EXPRESS REASONS HAD NOTHING TO DO WITH THE  
15 STATED CONSIDERATION IN THE AGREEMENT?  
16 A. THAT' S CORRECT.  
17 Q. IT HAD TO DO WITH ADDITIONAL LABOR COSTS?  
18 A. THAT' S CORRECT AND TO ACCOMPLISH IN HIS MIND THAT  
19 WOULD ACCOMPLISH LABOR PEACE.  
20 Q. LET ME CHANGE TOPIC THE FOR A MOMENT.  
21 LET ME SHOW YOU EXHIBIT 55, WHICH IS ANOTHER E-MAIL  
22 CHAIN, I DON' T BELIEVE YOU' RE INCLUDED ON THIS CHAIN.  
23 A. MY NAME IS UP THERE.  
24 Q. OH, YOU ARE. OKAY. I WANT TO DIRECT YOUR ATTENTION  
25 TO MISS DEVENCENZI' S E-MAIL AND THERE' S A QUESTION HERE AT THE  
26 BOTTOM ABOVE HER NAME THAT SAYS, DO YOU THINK THERE ARE  
27 MEMBERS OF COUNCIL WHO ARE AWARE THAT THE MAYOR' S OFFICE HAS  
28 BEEN WORKING --

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1 (WHEREUPON, THERE WAS AN INTERRUPTION.)  
2 Q. I' LL START AGAIN. LET ME DIRECT YOUR ATTENTION TO  
3 MISS DEVENCENZI' S E-MAIL NEAR THE BOTTOM OF HER MESSAGE ABOVE  
4 HER NAME THERE IS A QUESTION THAT SAYS DO YOU THINK THERE ARE  
5 MEMBERS OF THE COUNCIL WHO ARE AWARE THAT THE MAYOR' S OFFICE  
6 HAS BEEN WORKING ON THIS? DO YOU SEE THAT?  
7 A. YES.  
8 Q. YEAH. AND BY WORKING ON THIS WHAT DID YOU UNDERSTAND

9 THAT TO MEAN?

10 A. THAT THE MAYOR'S OFFICE HAD BEEN IN DISCUSSIONS WITH  
11 NORCAL CONCERNING THE BRINGING FORTH AN AMENDMENT TO THE  
12 CONTRACT.

13 Q. DO YOU KNOW WHY MISS DEVENCENZI MAY HAVE POSED THAT  
14 QUESTION IN HER E-MAIL?

15 A. ALL I KNOW IS THAT WE HAD FORWARD TO THE CITY COUNCIL  
16 WE WERE HAVING DISCUSSIONS WITH NORCAL AND IN TERMS OF  
17 BRINGING SOMETHING FORWARD TO THE CITY COUNCIL AND SHE WAS  
18 INQUIRING WHETHER ANY COUNCIL MEMBERS HAD BEEN AWARE OF THIS.

19 Q. WHY MIGHT SHE MAKE THAT INQUIRY?

20 A. I DON'T KNOW.

21 Q. WHAT DID YOU MAKE OF IT AT THE TIME?

22 A. I REALLY DON'T RECALL. I WOULD IN LOOKING AT IT NOW,  
23 THE INQUIRY WOULD BE ARE ANY OTHER MEMBERS OTHER THAN THE  
24 MAYOR PRIVY TO THIS PROPOSED AMENDMENT.

25 Q. WHY MIGHT THAT BE A CONCERN?

26 A. BECAUSE IT WAS CONCERN THAT THE MAYOR'S OFFICE HAD  
27 GONE OUT AND AGAIN I THINK I MENTIONED EARLIER IT WASN'T  
28 NORMAL PROTOCOL FOR THE MAYOR'S OFFICE OR FOR ANYONE ON THE

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1 COUNCIL TO HAVE A SEPARATE DISCUSSION WITH A CITY VENDOR OR  
2 CONTRACTOR.

3 Q. AND WHAT HAD TRANSPIRED TO THIS DATE I GUESS  
4 SUGGESTED THAT THAT MIGHT OCCUR?

5 A. YES.

6 Q. DID YOU DO ANY FOLLOWUP IN CONNECTION WITH THIS

7 E-MAIL? DID YOU ASK THE MAYOR'S OFFICE IF OTHER MEMBERS OF  
8 THE COUNCIL HAD BEEN KEPT IN THE LOOP.

9 DID YOU SPEAK TO THE CITY COUNCIL MEMBERS? DID YOU  
10 BRING IT UP AT CITY COUNCIL? DID YOU DO ANYTHING?

11 A. NO. NOT UNTIL THE POINT IN TIME IT WAS READY TO GO  
12 TO CITY COUNCIL.

13 Q. YOU MADE REFERENCE A FEW TIMES IN THE IN THE CHAIN OF  
14 E-MAILS ABOUT A RATE HIKE STARTING IN FEBRUARY 2003?

15 A. YES.

16 Q. DID YOU EVER TALK TO THE MAYOR OR JOE GUERRA ABOUT  
17 THIS OUTSIDE OF COMMUNICATING BY E-MAIL?

18 A. IN FEBRUARY OF 2003?

19 Q. AT ANY TIME ON OR AFTER FEBRUARY '03 PRIOR TO THE  
20 GRAND JURY'S REPORT BEING RELEASED?

21 A. OH, PRIOR TO THE GRAND JURY'S REPORT. WE HAD  
22 DISCUSSED THE TOPIC, BUT THOSE SPECIFIC E-MAILS NO.

23 Q. WELL, DID YOU HAVE ANY DISCUSSIONS WITH THE MAYOR OR  
24 JOE GUERRA ABOUT THE 2003 RATE HIKE -- I'LL LEAVE IT THERE FOR  
25 A START. IN THAT SAME TIME FRAME ON OR AFTER FEBRUARY '03 AND  
26 BEFORE THE OF GRAND JURY REPORT?

27 A. I HAD ONE COMMUNICATION WITH JOE GUERRA IN THE FORM  
28 OF AN E-MAIL CONCERNING THE RATE HIKE.

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1 Q. OUTSIDE OF THE E-MAIL COMMUNICATIONS DID YOU HAVE ANY  
2 FORMAL COMMUNICATIONS WITH HIM?

3 A. NO, NOT THAT I RECALL.

4 Q. WHAT ABOUT THE MAYOR?

5 A. NO.

6 Q. YOU REGULARLY ATTEND THE CITY COUNCIL AS CITY  
7 ATTORNEY?

8 A. YES.

9 Q. AND WHEN THIS ISSUE OF THE AMENDMENT TO THE NORCAL  
10 AGREEMENT CAME UP IN '04 WHO WAS IT WHO BROUGHT THIS MATTER  
11 FORWARD TO THE CITY COUNCIL?

12 A. THE CITY MANAGER'S OFFICE.

13 Q. WHO AT THE COUNCIL ACTUALLY MADE THE MOTION TO  
14 APPROVE THE AMENDMENT AS YOU RECALL?

15 A. I DON'T RECALL WHO MADE MOTION. I REMEMBER THE VOTE  
16 BUT I DON'T REMEMBER WHO MADE MOTION.

17 Q. WAS THE VOTE UNANIMOUS?

18 A. NO.

19 Q. WHO VOTED AGAINST IT?

20 A. COUNCIL MEMBERS REED, LEZOTTE AND CORTESE.

21 Q. WHAT REASONS IF ANY DID THEY EXPRESS FOR VOTING  
22 AGAINST IT?

23 A. COUNCIL MEMBER REED EXPRESSED CONCERN ABOUT A GIFT OF  
24 THE PUBLIC FUNDS. COUNCIL MEMBER LEZOTTE, I JUST DON'T THINK  
25 SHE FELT IT PASSED THE SMELL TEST IS THE ONLY WAY I CAN PUT  
26 IT. AND I THINK COUNCIL MEMBER CORTESE, I REMEMBER HIS  
27 COMMENT THAT THE MAYOR'S OFFICE HAD MEDIATED THE LABOR DISPUTE  
28 AND THE MEDIATOR GOT STUCK WITH THE BILL. AND I THINK THAT

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1 WAS HIS TAKE ON IT, JUST FROM A POLICY STANDPOINT THAT IT WAS  
2 NOT A GOOD DECISION.

3 Q. NORCAL WASN' T THE ONLY CONTRACTOR THAT WAS PROVIDING  
4 RECYCLING PLUS SERVICES TO THE CITY WAS IT?

5 A. NO.

6 Q. YOU HAD GREEN TEAM AND GREEN WASTE RECOVERY?

7 A. CORRECT.

8 Q. ISN' T IT TRUE THAT GREEN TEAM DIDN' T USE TEAMSTERS AS  
9 MRF WORKERS EITHER, THEY USED CARPENTERS?

10 A. THAT' S CORRECT.

11 Q. CARPENTERS WERE ALSO PAID LESS THAN TEAMSTERS?

12 A. THAT' S CORRECT.

13 Q. WAS THERE ANY EFFORT OR DISCUSSION THAT YOU AWARE OF  
14 TO RAISE THE RATES OF THE CARPENTERS TO GIVE THE MRF WORKERS  
15 WHO DID THE MRF WORK FOR GREEN TEAM?

16 A. NOT THAT I' M AWARE OF.

17 Q. DO YOU KNOW WHY NORCAL WAS SINGLED OUT FOR THIS  
18 SPECIAL TREATMENT?

19 A. WELL, I THINK -- AGAIN, YOU GO TO THE MAYOR' S OFFICE.  
20 AND ALL THIS CAME TO LIGHT, LET ME PUT IT IN CONTEXT, IN  
21 RESPONSE TO THE GRAND JURY REPORT.

22 THE MAYOR' S OFFICE VIEW WAS THAT THE CITY HAD  
23 IMPOSED A WORKER RETENTION POLICY AS PART OF LABOR PEACE AND  
24 THAT MEANT THE PRIOR GARBAGE CONTRACTOR RECYCLE PLUS CONTRACT  
25 OR BFI OR WASTE MANAGEMENT AND THE MRF WORKERS THERE WERE  
26 UNDER A TEAMSTERS CONTRACT.

27 WHEN CWS AND NORCAL TEAMED UP, THE MRF WORKERS, IT  
28 WAS PROPOSED THAT THEY WOULD BE LONGSHOREMEN AND THEY WERE AND

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1 THE TEAMSTERS OBJECTED ON JURISDICTIONAL GROUNDS AND THAT WAS  
2 THE DISPUTE.

3 WHEN IT TURNED OUT TO BE A DOLLAR AMOUNT DIFFERENCE  
4 I THINK THE MAYOR'S OFFICE FELT THAT IT WAS OUR REQUIREMENT,  
5 OUR BEING THE CITY, REQUIREMENT THAT THEY HIRE THESE WORKERS  
6 THAT HAD COME FROM BFI OR WASTE MANAGEMENT ACCORDING TO THE  
7 PRIOR CONTRACT SO, AND THEY WERE TEAMSTERS, SO THAT THEY  
8 SHOULD HAVE TO PAY THEM THE SAME WAGE RATES AS OR TEAMSTER'S  
9 RATES AND THAT WAS THE FAIRNESS ISSUE SO I BELIEVE THAT WAS  
10 THEIR MOTIVATION.

11 Q. IF THIS WAS A FAIRNESS ISSUE, WHY WOULDN'T THAT SAME  
12 FAIRNESS DICTATE THAT THE FORMER TEAMSTER WORKERS WHO MIGHT BE  
13 OFFERED POSITIONS WITH GREEN TEAM AND PAID LOWER CARPENTER  
14 RATES ALSO GET HIGHER RATES?

15 A. I DON'T KNOW IF THERE WERE FORMER WASTE MANAGEMENT OR  
16 THE TEAMSTERS WORKERS ON GREEN TEAM. I THINK GREEN TEAM HAD  
17 THE CONTRACT BEFORE, THEY MIGHT HAVE BEEN GIVEN A DIFFERENT  
18 DISTRICT IN THE CITY BUT THEY WERE -- NOTHING HAD CHANGED ON  
19 THE LABOR END AS FAR AS I KNOW WITH RESPECT TO GREEN TEAM.

20 Q. YOU'RE SUGGESTING THAT THE WAY THE WORK WAS DIVIDED  
21 UP IN THE CITY, GREEN TEAM HAD BEEN A FORMER CONTRACTOR  
22 PROVIDING RECYCLE PLUS SERVICES AND USING CARPENTERS TO DO THE  
23 MRF WORK; AND THEREFORE, WHEN GREEN TEAM GOT THE AWARD AGAIN,  
24 IT WAS NO ISSUE ABOUT WORKER HAVING TO CHANGE UNIONS?

25 A. THAT'S MY UNDERSTANDING.

26 Q. THANK YOU FOR CLARIFYING THAT.

27 MR. FINKELSTEIN: LET ME SEE IF THE JURORS HAVE ANY  
28 QUESTIONS. JUST A MOMENT.

1 MR. FINKELSTEIN: WE HAVE A QUESTION FROM A JUROR.  
2 THE QUESTION IS IS IT LEGAL, AND LEGAL IS IN QUOTES, FOR THE  
3 MAYOR OR JOE GUERRA TO HAVE A DISCUSSION WITH NORCAL BUT NOT  
4 COMMIT THE CITY. DO YOU UNDERSTAND THE QUESTION?

5 A. YES.

6 Q. LET ME REPHRASE THE QUESTION. I THINK THIS WAS WHAT  
7 THE JUROR MEANT. WOULD IT BE LEGAL FOR THE MAYOR OR JOE  
8 GUERRA TO HAVE A DISCUSSION WITH A CONTRACTOR SUCH AS NORCAL  
9 AS LONG AS THEY DID NOT MAKE ANY COMMITMENTS AS TO WHAT THE  
10 CITY WOULD OR WOULDN'T DO?

11 A. IT WOULD BE LEGAL FOR THEM TO HAVE A CONVERSATION  
12 WITH NORCAL, SO LONG AS THEY DID NOT MAKE A COMMITMENT FROM  
13 THE CITY STANDPOINT. POLITICAL COMMITMENTS, I DON'T KNOW BUT  
14 THAT'S SEPARATE AND THEY ARE LOBBIED ALL THE TIME. BUT TO  
15 YOUR POINT, THEY COULD NOT COMMIT THE CITY, SO IT WOULD BE  
16 LEGAL SO LONG AS THEY DID NOT COMMIT THE CITY.

17 Q. IN OTHER WORDS, NOTHING WRONG AS FAR AS YOU CAN TELL  
18 WITH THE MAYOR HEARING A CONTRACTOR'S CONCERNS?

19 A. NO, I THINK THE FIRST AMENDMENT TO THE CONSTITUTION  
20 ALLOWS THE RIGHT TO PETITION THE GOVERNMENT AND THAT'S  
21 CONSIDERED PETITIONING THE GOVERNMENT.

22 Q. IF THE CONTRACTOR HAS A PROBLEM WITH A CONTRACT WITH  
23 THE CITY NOTHING WRONG WITH CONTACTING THE MAYOR OR CITY  
24 COUNCIL MEMBERS TO VOICE THOSE CONCERNS OR PROBLEMS?

25 A. RIGHT THEY JUST CAN'T COMMIT THE CITY.

26 Q. THE PROBLEM ARISES WHEN THE MAYOR OR COUNCIL MEMBERS  
27 GIVE SOME ASSURANCE TO THE CONTRACTOR AS TO WHAT THE CITY WILL  
28 OR WON'T DO?

1 A. THAT' S CORRECT.

2 Q. OKAY ANY OTHER QUESTIONS.

3 MR. DOYLE THANK YOU FOR COMING TODAY. BEFORE YOU  
4 LEAVE WE HAVE NO MORE QUESTIONS AT THIS TIME BUT YOU' RE NOT  
5 EXCUSED WHICH MEANS YOU ARE SUBJECT TO BEING RECALLED AT A  
6 LATER DATE SHOULD THAT BECOME NECESSARY. I DON' T ANTICIPATE  
7 THAT BECOMING NECESSARY BUT IT MAY. WE' LL CONTACT YOU AND  
8 GIVE YOU AS MUCH NOTICE AS POSSIBLE AND TRY TO ACCOMMODATE  
9 YOUR SCHEDULE IF THAT BECOMES NECESSARY.

10 ANY QUESTIONS ABOUT THAT?

11 THE WITNESS: NO.

12 THE FOREMAN: I READ THE ADMONITION JUST BEFORE NOON  
13 BREAK. WOULD YOU LIKE ME TO REPEAT IT?

14 THE WITNESS: NO. I WON' T BE DISCUSSING THIS WITH  
15 ANYONE.

16 MR. FINKELSTEIN: THANK YOU VERY MUCH.

17 WE HAVE NO MORE WITNESSES FOR TODAY. WE WOULD  
18 PROPOSE THAT WE REASSEMBLE NEXT WEDNESDAY AT 10 A. M. , IF THAT  
19 FITS EVERYONE' S SCHEDULE.

20 UNLESS THERE IS ANY OTHER BUSINESS, I RECOMMEND THAT  
21 WE ADJOURN.

22 THE FOREMAN: YOU' RE SAYING YOU NEED ONE DAY NEXT  
23 WEEK, WEDNESDAY?

24 MR. FINKELSTEIN: POSSIBLY THURSDAY IF THERE IS A  
25 SPI LLOVER FROM WEDNESDAY. I CAN JUST TELL YOU IT' S MY INTENT  
26 TO TRY AND CALL ROBERT MORALES NEXT WEDNESDAY TO LOOK AT THIS  
27 FROM THE TEAMSTER POINT OF VIEW, AND AFTER THAT WE ARE  
28 PROBABLY GOING TO WANT TO CALL WITNESSES FROM NORCAL TO SEE

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1 FROM THEIR POINT OF VIEW HOW THE TRANSACTIONS UNFOLDED. AND I  
2 BELIEVE MR. MORALES WAS PRESENT AT THIS OCTOBER 6, 2000  
3 MEETING, SO IT MAY BE INTERESTING TO HEAR WHAT HE HAS TO SAY  
4 ABOUT IT.

5 THE FOREMAN: LET US ADJOURN FOR TODAY, AND WE' LL  
6 REASSEMBLE NEXT WEDNESDAY AT 10: 00.

7 A JUROR: MAYBE WE SHOULD JUST OUR SCHEDULE BECAUSE  
8 WEDNESDAY WILL AFFECT TWO OF OUR --

9 THE FOREMAN: LET' S ADJOURN THIS MEETING, GO OFF THE  
10 RECORD.

11 MR. FINKELSTEIN: THAT' S FINE, IF WE ARE TALKING  
12 ABOUT SCHEDULING.

13 THE FOREMAN: I WOULD PREFER TO ACCELERATE IF WE CAN  
14 TAKE ADVANTAGE OF.

15 MR. FINKELSTEIN: PLEASE UNDERSTAND, ONE OF THE  
16 REASONS WE NEED TO HAVE TIME BETWEEN CALLING WITNESSES, IN  
17 RESPONSE TO OUR SUBPOENAS WE HAVE 50 BOXES OF DOCUMENTS AND WE  
18 WANT TO MAKE SURE THAT WE HAVE EXAMINED AS MANY OF THEM AS  
19 POSSIBLE THAT MIGHT BEAR ON EACH WITNESS' S TESTIMONY.

20 THE FOREMAN: ON BEHALF OF THE GRAND JURY LET ME  
21 ASSURE YOU THAT WE FULLY UNDERSTAND THAT AND ARE TRYING TO BE  
22 AS AVAI LABLE AND COMPLIANT WITH YOUR NEEDS AS POSSIBLE WHILE  
23 WE DO THE REST OF OUR BUSINESS AS WELL.

24 MR. FINKELSTEIN: I APPRECIATE THAT. WE DO  
25 RECOGNIZE THAT AND THANK YOU VERY MUCH.

26 THE FOREMAN: THEN LET US ADJOURN FOR TODAY. WE

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27 WILL REASSEMBLE NEXT WEDNESDAY AT 10:00 UNLESS WE HEAR  
28 OTHERWISE.

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1 MR. FINKELSTEIN: THANK YOU VERY MUCH.  
2 (COURT WAS ADJOURNED FOR THE DAY.)  
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REPORTER' S CERTIFICATE

I, SUE HERFURTH, DO HEREBY CERTIFY THAT THE FOREGOING IS A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HAD IN THE WITHIN-ENTITLED ACTION HELD ON THE 27TH AND 31ST DAYS OF JANUARY AND THE 1ST DAY OF FEBRUARY, 2006.

THAT I REPORTED THE SAME IN STENOTYPE, BEING THE QUALIFIED AND ACTING OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, APPOINTED TO SAID COURT, AND THEREAFTER THE SAME WAS TRANSCRIBED BY COMPUTER UNDER MY DIRECTION AS HEREIN APPEARS.

I HAVE ADHERED TO CIVIL CODE OF PROCEDURE SECTION 237(1)(2), SIXTH DISTRICT COURT OF APPEAL MISCELLANEOUS ORDER 96-02, BY SEALING THROUGH REDACTION OF ALL REFERENCES, IF ANY, TO JUROR-IDENTIFYING INFORMATION, INCLUDING BUT NOT LIMITED TO NAMES, ADDRESSES AND TELEPHONE NUMBERS.

DATED THIS 25TH DAY OF JUNE, 2006.

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SUE HERFURTH, C. S. R.  
CERTIFICATE NO. 9645

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